

MASSACHUSETTS CANNABIS CONTROL COMMISSION
METRC APPLICATION PROGRAMMING INTERFACE
CONFIDENTIALITY & USER AGREEMENT

This is an Agreement between the Provider as signed below and the State in which the Provider hereby agrees to the following terms and conditions.

1. PARTIES

This Confidentiality and User (“**Agreement**”) is made as of this _____ day of _____, 20 ____ (“**Effective Date**”) by and between (“**Provider**”) and the Massachusetts Cannabis Control Commission (“**Commission**”) (collectively the “**Parties**”), with respect to the provision of one or more secondary software systems (“**System**,” as further defined below) to one or more entities licensed by the Commission to operate Marijuana Establishments or Medical Marijuana Treatment Centers in the Commonwealth (“**Licensees**”) and the integration of that System with an inventory tracking system developed and administered by Metrc. The Provider and the Commission hereby agree to the following terms and conditions.

2. RECITALS

A. Consideration

The Provider acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Agreement.

B. Purpose

Licensees are required to use the inventory tracking system developed by Metrc, currently known as METRC, as the primary inventory tracking system of record for the Commission. Licensees are also permitted to use the System in conjunction with METRC. Licensees have requested the ability to establish an interface between such System and METRC, to communicate information electronically between METRC and the System.

The Commission has agreed to permit Licensees to communicate information electronically to and from METRC through Provider's System or Services via an Application Programming Interface (“**API**”), but this permission is valid only if the Provider of the System enters an agreement to protect the confidentiality of the information/data contained in METRC, and to comply with the security requirements and standards set forth below.

3. DEFINITIONS

A. API

“**API**” means the Application Programming Interface designed, developed, and maintained by Metrc, or any successor organization.

B. API Key

“**API Key**” means an alphanumeric code generated through METRC to gain programmatic access to METRC and automatic electronic communication of data and information between Provider’s System and METRC. There are two kinds of API Keys:

i. Vendor API Key

“**Vendor API Key**” means an API Key that is specific to Provider and Provider’s System, which must be used by every instance of Provider’s System at all times, in combination with the User API Key specific to Licensee(s), in order to gain authorized programmatic access to METRC and automatic communication of data and information between Provider’s System and METRC pertaining to such Licensee(s).

ii. User API Key

“**User API Key**” means an API Key that is specific to a particular Licensee, which only such Licensee is able and authorized to generate and obtain or deactivate. The User API Key may be deactivated by generating a new User API Key. The User API Key is linked directly to that Licensee’s METRC account, and allows access to that Licensee’s METRC data and information.

C. Confidential Information

“**Confidential Information**” means all information, data, records, and documentary materials which are of a sensitive nature regardless of physical form or characteristics, and includes, but is not limited to, non-public State records, sensitive State data, protected State data, PII Data, as defined below, PCI Data, as defined below, and other information or data concerning individuals and Licensees including financial information such as banking information and social security numbers, which has been communicated, furnished, or disclosed by the Commission to Provider. Confidential information includes but is not limited to any information obtained by Provider through the interface between the METRC system and the System.

Confidential Information may also include any information disclosed to Provider by Licensee, either directly or indirectly, in writing, orally, or through the communication of data through the API, whenever or however disclosed, including but not limited to:

- (i) names, addresses, or records of consumers’ personal information;
- (ii) consumer information or data;
- (iii) PII Data;
- (iv) any other information that should reasonably be recognized as related to the PII Data of consumers;
- (v) PCI Data;

- (vi) inventory tracking data, reports, or records related to the cultivation, manufacture, distribution, or sale of marijuana or marijuana product, if such data, reports, or records are or are intended to be provided to the Commission through the METRC system or otherwise;
- (vii) business plans and performance related to the past, present or future activities of such party, its affiliates, subsidiaries and affiliated companies;
- (viii) all types of Licensee data, including but not limited to, names and lists of other license holders, service providers, or affiliates;
- (ix) business policies, practices, and procedures;
- (x) names of employees;
- (xi) and any other information that should reasonably be recognized as related to business conducted by Licensee.

D. Metrc

“**Metrc**” means Metrc, LLC., the company, and its successors and assigns, engaged by the Commission to design, develop, provide, host and maintain the Commission’s METRC system.

E. Incident

“**Incident**” means an accidental or deliberate event that results in or poses a threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of communication and information resources of the Commission. Incidents include, but are not limited to:

- (i) attempts to gain unauthorized access to the METRC system or Confidential Information regardless of where such information is located;
- (ii) unwanted disruption or denial of service;
- (iii) the unauthorized use of METRC for the processing or storage of data;
- (iv) any unauthorized access by any person to Confidential Information, or
- (v) changes to the Commission’s system hardware, firmware, or software characteristics without the Commission’s knowledge, instruction, or consent.

F. METRC

“**METRC**” or “**METRC system**” means the inventory tracking system developed by Metrc, or any successor organization, to enable the Commission to track all legally grown marijuana from seed to sale, and also includes any successor inventory tracking system that the Commission permits or requires Licensees to utilize.

G. PCI Data

“**PCI Data**” means payment card information data. That is, any data related to card holders’ names, credit card numbers, or other credit card or financial information as may be protected by State and/or federal law.

H. PII Data

“Personally Identifiable Information (PII) Data” means information about an individual collected by the Commission or any other governmental entity that could reasonably be used to identify such individual and includes, but is not limited to, any combination of

- (i) first and last name,
- (ii) first name or first initial and last name,
- (iii) residence or other physical address,
- (iv) electronic mail address,
- (v) telephone number,
- (vi) birth date,
- (vii) PCI Data,
- (viii) social security number,
- (ix) driver's license number,
- (x) identification card number, or
- (xi) any other information that identifies an individual personally.

I. Provider

“Provider” means a third-party system provider approved by the Commission to integrate with the statewide tracking system.

J. Provider Contract

“Provider Contract” means an agreement between a Licensee and Provider entered into for the purpose of providing a System or Services to the Licensee.

K. Services

“Services” means the services to be performed by Provider to Licensee pursuant to the Provider Contract in connection with the provision, operation or maintenance of the System.

L. State

“State” means the Commonwealth of Massachusetts and the Cannabis Control Commission, the latter of which is responsible for the oversight of adult-use and medical-use marijuana in the Commonwealth.

M. Subcontractor

“Subcontractor” means any third party engaged by Provider to aid in performance of Provider’s obligations to Licensee(s). Providers must identify and obtain approval from the Commission before using subcontractors.

N. System

“**System**” means the secondary software system provided by Provider for use by Licensee. Such Systems may be used to collect information to be used by the Licensees in operating their businesses, including, but not limited to, secondary inventory tracking and point of sale systems.

3. EFFECTIVE DATE AND NOTICE OF NONLIABILITY

The Provider hereby agrees the Agreement shall not be effective or enforceable until it is approved by the Commission. The Commission shall not be liable for the performance of any of its obligations hereunder, or be bound by any provision hereof prior to the Effective Date.

By entering into this Agreement, the Commission is under no obligation to appropriate funds for, or to make any payments to, Provider or any Licensee for any reason, including but not limited to the purpose of reimbursing Provider or Licensee for any payments or expenses Provider or any Licensee may make or incur, including, without limitation, any such payments or expenses made or incurred pursuant to any contract between Provider and any Licensee. Nor shall any provision in this Agreement be construed as imposing liability on the Commission for any expenses Provider or Licensee may make or incur in connection with this Agreement or the performance of this Agreement.

Provider expressly waives any claims asserting liability against Commission in connection with this Agreement or the performance of this Agreement.

4. AUTHORIZATION

The Commission hereby authorizes Metro to provide a Vendor API Key to Provider, which, when used in combination with a Licensee’s User API Key which the Licensee may furnish to Provider, permits Provider’s System to access the API for the purposes of communicating information to the METRC system, and retrieving such information from the METRC system, for use by Licensee(s) in operating the business of such Licensee(s). Provider must successfully complete METRC training and competency testing and Provider’s authorization is limited to the specific functionality of METRC for which Provider has successfully completed training and competency testing. This Agreement, and Provider’s rights and obligations hereunder, shall not be assigned without the prior written consent of the Commission, which may be approved or denied in the Commission’s sole discretion.

The Vendor API Key shall permit Provider’s System with access to the API only if the Vendor API Key is used in combination with the User API Key. A Licensee that contracts with Provider for use of Provider’s System may furnish Provider with its User API Key to grant access to the API. The Provider agrees that it is not authorized to share a User API Key with other entities without permission from the Commission or a Licensee.

The Provider acknowledges that the Commission or a Licensee shall have the right to block Providers’ access to Licensee’s METRC data by deactivating such Licensee’s User API Key and generating, or having Metro generate, a new User API Key through METRC. If the Commission deactivates the Vendor API Key, the User API Key may also be deactivated and a new User API Key must be generated.

The Provider agrees that notwithstanding any contrary provision in a Provider Contract, and in keeping with the Commission's obligation to maintain the confidentiality of Licensee(s) data and information, Provider expressly waives and shall not be entitled to seek or obtain injunctive, equitable or other relief against the Commission or Metrc to compel the furnishing of any Licensee's User API Key to Provider.

The Commission at its sole discretion, retains the right to revoke or withdraw a vendor API key at any time for any violations of the terms of use of this Agreement. The Provider agrees that the Licensee shall maintain at all times the right to terminate the Provider Contract or otherwise discontinue use of Provider's System and Services.

API keys are non-transferable and cannot be shared outside of the company obtaining the API key. Sharing an API key with any entity outside of the legal entity can without the expressed written consent of the Commission can result in the loss of the API key.

The Provider further agrees to operate in good faith and with fair dealing at all times when providing a System or Services that interface with the METRC system.

Any entity signing this Agreement is subject to the same rules and regulations defining the integrity and accuracy of data entered into the Commission's tracking system. Information entered into the system inaccurately or in violation of the Commission's rules or regulations could result in the states revocation of a vendor API key.

Misrepresentation or knowingly entering false information into the Commission's tracking system could result in the revocation of the vendor API key.

Data entered into the API should be done on a transactional / real-time basis. The Provider is required to perform a "GET" call on available daily purchasing limits before sale or transfer of marijuana.

5. CONFIDENTIALITY

Provider shall comply with and shall cause each of its agents, employees, approved Subcontractors, permitted assigns and any other individual or entity assisting with Provider's provision of a System or Services to Licensee to comply with the provisions of this and if that person will or may have access to Confidential Information in connection with its performance, which obligations shall survive the termination of this Agreement.

A. Confidentiality

Provider shall keep all Confidential Information confidential at all times, to ensure compliance with all laws and regulations concerning confidentiality of Confidential Information. Any request or demand, including subpoenas, by a third party for Confidential Information in the possession or control of Provider shall, to the extent not prohibited by law, rule or order, be

immediately forwarded to the Commission's representative by the recipient of the request. The Commission, or its representatives, shall have the right to move to quash any subpoena received from a third party seeking Confidential Information in the possession or control of Provider, whether the subpoena is directed to Provider or the Commission. Provider agrees to cooperate with the Commission, or its representatives, if requested, in proceedings related to any motion to quash a subpoena, at no expense to the Commission.

B. Personnel

Provider shall require its agents, employees, Subcontractors, and permitted assigns (collectively, "**Provider Personnel**"), who will or may come into contact with Confidential Information, to execute written agreements that bind such Provider Personnel to confidentiality provisions that are at least as protective of the Confidential Information as those contained in this Agreement.

C. Protection

Provider is responsible for the protection and security of all Confidential Information provided to it by the Commission or which is accessible using the API Key. If Provider provides physical or logical storage, processing or transmission of, or retains, stores, or is given, Confidential Information, Provider shall, and shall cause its agents, employees, Subcontractors, and permitted assigns to,

- (i) provide physical and logical protection for all related hardware, software, applications, and data that meet or exceed industry standards and requirements as set forth in this Agreement;
- (ii) maintain network, system, and application security, which includes, but is not limited to, network firewalls, intrusion detection (host and network), and annual security testing;
- (iii) comply with State and Federal regulations and guidelines related to overall security, confidentiality, integrity, availability, and auditing;
- (iv) ensure that security is not compromised by unauthorized access to computers, program, software, databases, or other electronic environments; and
- (v) report all Incidents immediately, and all attempted Incidents on an annual basis to the Commission.

Provider shall provide the Commission with access, subject to Provider's reasonable access security requirements, seven (7) days a week, twenty-four (24) hours a day, for the purpose of inspecting and monitoring access and use of Confidential Information and evaluating physical and logical security control effectiveness. As set forth in this Agreement, the Commission shall not be responsible for any expenses incurred in connection with this Agreement, including, but not limited to, Provider's expenses related to compliance with this section.

D. Use, Information Security Compliance, and Retention

Provider expressly agrees to be bound by and to comply with all rules, policies, standards and guidelines promulgated by the Commission and any subsequent amendments. Provider shall review such statutes, rules, policies, standards and guidelines on a semi-annual basis. Provider shall cooperate, and shall cause its Subcontractors to cooperate, with the performance of security audit and penetration tests by the Commission or its designee.

Confidential Information of any kind shall be stored, processed, or transferred only in or to facilities located within the United States, and shall not be distributed or sold to any third party, retained in any files or otherwise, or used by Provider or its agents in any way, except as authorized by this Agreement, by law, unless approved in writing by the Commission. Provider shall provide and maintain a secure environment that ensures confidentiality of all Confidential Information wherever located. Neither Provider nor any of its agents, employees, Subcontractors, or permitted assigns shall have any rights to use or access any data or information of the Commission or any other Massachusetts state agency, except with the prior approval of the Commission.

E. Incident Notice

If Provider becomes aware of an Incident involving any Confidential Information, it shall notify the Commission immediately and cooperate with the Commission regarding recovery, remediation, and the necessity to involve law enforcement, if any. Unless Provider establishes that neither Provider nor any of its agents, employees, Subcontractors, or permitted assigns was the cause or source of the Incident, Provider shall be responsible for the cost of notifying each person whose Confidential Information may have been compromised by the Incident.

In any case where an issue with Provider's system is found to cause a problem where data integrity, accuracy or ability to report data via the API is identified Provider shall notify all potentially affected licensees and the Commission as quickly as feasible to prevent Licensees from reporting inaccurate or false information.

F. Incident Remediation

Provider, at its sole cost and expense, shall be responsible for determining the cause of an Incident, and for producing a remediation plan to reduce the risk of a similar Incident in the future. Provider shall present its analysis and remediation plan to the State within two (2) days of notifying the Commission of an Incident. The Commission reserves the right to adjust this plan, in its sole discretion. If Provider cannot produce its analysis and plan within the allotted time, the Commission or an independent third-party engaged by the Commission, in the Commission's sole discretion, may perform such analysis and produce a remediation plan, and Provider shall timely reimburse the Commission for the reasonable costs thereof.

In any case where Provider has an issue with Provider's system providing information to the state tracking system via the API, Provider will furnish a written plan to the Commission within 48 hours showing the affected Licensees with a remediation plan addressing how the issue will be resolved and information corrected.

G. Incident Liability

Disclosure of Confidential Information by Provider or any of its agents, employees, Subcontractors, or permitted assigns for any reason may be cause for legal action by third parties (including Licensee(s)) against Provider, the Commission, or their respective agents. Provider shall indemnify, defend, and hold harmless the Commission, its employees, and agents against any and all claims, damages, liability, and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by Provider, or its employees, agents, Subcontractors, or assignees pursuant to this Agreement.

Notwithstanding any other provision of this Agreement, Provider shall be liable to the Commission for all direct, consequential and incidental damages arising from an Incident caused by Provider or its agents, employees, Subcontractors, or permitted assigns. The Commission will notify Provider in writing if indemnification is sought; however, failure to do so will not relieve Provider, except to the extent that Provider is materially prejudiced. Provider must, to the satisfaction of the Commission, demonstrate its financial ability to carry out these obligations.

The Commission is entitled to:

- (i) regular updates on proceeding status;
- (ii) participate in the defense of the proceeding;
- (iii) employ its own counsel; and to
- (iv) retain control of the defense, at its own expense, if the State deems necessary. Provider will not, without the State's prior written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding.

Any litigation activity on behalf of the Commission must be coordinated with the Massachusetts Office of the Attorney General (**OAG**). An attorney designated to represent the Commission may not do so until assigned by the OAG or appointed as a Special Assistant Attorney General.

H. End-of-Agreement Data Handling

At the request of the Commission made before or within thirty (30) days after the effective date of termination of the Agreement, Provider will make available to the Commission a complete and secure download file of all data, including, but not limited to, all Confidential Information, schema and transformation definitions, or delimited text files with documented, detailed schema definitions along with attachments in their native format. All such data shall be encrypted and appropriately authenticated. The Provider agree that on the termination of the provision of Services, Provider shall, at the choice of the Commission, return all Confidential Information in the possession or control of the Provider, and the copies thereof, to the Commission, or Provider shall destroy all such Confidential Information and certify to the Commission that it has done so.

If legislation imposed upon Provider prevents it from returning or destroying all or part of the Confidential Information in the possession or control of Provider or obtained through the API, Provider warrants that it will guarantee the confidentiality of all Confidential Information in the possession or control of Provider or obtained through the API and will cease any activity that processes or otherwise utilizes such data.

I. Disposition of Data

The Commission retains the right to use the System to access and retrieve Confidential Information stored on Provider's infrastructure at the Commission's sole discretion. Provider warrants and shall cause each Subcontractor to warrant that upon request of the Commission, Provider or such Subcontractor shall submit its data processing facilities for an audit of its compliance with this Agreement.

J. Safeguarding PII Data

If Provider or any of its agents, employees, Subcontractors, and permitted assigns will or may receive PII Data under this Agreement, Provider shall provide for the security of such PII Data, in a form acceptable to the Commission, including, without limitation, non-disclosure, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits.

If Provider or any of its agents, employees, Subcontractors, and permitted assigns will or may receive PII Data under this Agreement, Provider shall provide for the security of the PII Data, in accordance with the following:

- (i) Provider is responsible for the security of PII data in its possession. The data may only be used to assist the Commission or for other uses specifically authorized by law.
- (ii) Provider must adhere to any State or Federal standards for the security of cardholder data in its possession;
- (iii) Provider must adhere to industry standards.
- (iv) Provider must notify the Commission (within 24 hours of discovery) of any breaches in security where PII data has been compromised. Provider must provide, at the request of the Commission, the results of such third party security review. At the Commission's sole discretion, the Commission may perform its own security review, either by itself or through an approved third party.
- (v) Provider is responsible for all costs incurred as the result of the breach. Costs may include, but are not limited to, fines/fees for non-compliance, or Commission initiated security review.
- (vi) Without limiting Provider's obligations of indemnification as further described in this Agreement, Contractor must indemnify, defend, and hold harmless the Commission for any and all claims, including reasonable attorneys' fees, costs, and incidental expenses, which may be suffered by, accrued against, charged to, or recoverable from the Commission in connection with the breach.
- (vii) Provider must dispose of PII data when it is no longer needed. Provider must continue to treat the data as confidential upon termination of this Agreement.

- (viii) Provider must provide the Commission with an annual Attestation of Compliance (AOC) or a Report on Compliance (ROC) showing the Provider is in compliance with this Agreement. Provider must notify the Commission of all failures to comply with this Agreement.

Provider shall hold the Commission harmless for any damages or liabilities resulting from the unauthorized disclosure or loss thereof.

K. Safeguarding PCI Data

If Provider or any of its agents, employees, Subcontractors, and permitted assigns will or may receive PCI Data under this Agreement, Provider shall provide for the security of the PCI Data, in accordance with the following:

- (i) Provider is responsible for the security of cardholder data in its possession. The data may only be used to assist the Commission or for other uses specifically authorized by law.
- (ii) Provider must adhere to any State or Federal standards for the security of cardholder data in its possession;
- (iii) Provider must adhere to the Payment Card Industry Data Security Standard (PCI DSS).
- (iv) Provider must notify the Commission (within 24 hours of discovery) of any breaches in security where cardholder data has been compromised. In that event, provider must provide full cooperation to the card associations (e.g. Visa, MasterCard, and Discover) and state acquirer representative(s), or a PCI approved third party, to conduct a thorough security review. Provider must provide, at the request of the Commission, the results of such third party security review. The review must validate compliance with the PCI DSS for protecting cardholder data. At the Commission's sole discretion, the Commission may perform its own security review, either by itself or through a PCI approved third party.
- (v) Provider is responsible for all costs incurred as the result of the breach. Costs may include, but are not limited to, fines/fees for non-compliance, card reissuance, credit monitoring, and any costs associated with a card association, PCI approved third party, or Commission initiated security review.
- (vi) Without limiting Provider's obligations of indemnification as further described in this Agreement, Contractor must indemnify, defend, and hold harmless the Commission for any and all claims, including reasonable attorneys' fees, costs, and incidental expenses, which may be suffered by, accrued against, charged to, or recoverable from the Commission in connection with the breach.
- (vii) Provider must dispose of cardholder data when it is no longer needed in compliance with PCI DSS policy. Provider must continue to treat cardholder data as confidential upon termination of this Agreement.
- (viii) Provider must notify the Commission of all failures to comply with the PCI DSS.

Provider shall hold the Commission harmless for any damages or liabilities resulting from the unauthorized disclosure or loss thereof.

L. API Key Revocation

A violation of this section or Agreement including the failure to report or notify the Commission of any incident may result in the deactivation or revocation of the Vendor API Key.

Misrepresentation or knowingly entering false information into the system could result in the revocation of the Vendor API Key.

M. Ownership

Commission data, which for purposes of this Agreement shall mean all data collected, used, processed, stored, or generated in connection with the services, is and will remain the sole and exclusive property of the Commission and all right, title, and interest in the same is reserved by the Commission. Provider is provided a limited license to Commission data for the sole and exclusive purpose of providing the services, including a license to collect, process, store, generate, and display Commission data only to the extent necessary in the provision of the services.

Provider expressly agree that the METRC System is, and shall remain, the sole and exclusive property of Metrc with all title and rights of ownership therein. Nothing contained in this Agreement shall be construed as a sale of the METRC System or any portion thereof to Provider.

6. BREACH

A. Defined

In addition to any breaches specified in other sections of this Agreement, the failure of Provider to perform any of its material obligations hereunder in whole or in part or in a timely and satisfactory manner constitutes a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization, or similar law, by or against Provider, or the appointment of a receiver or similar officer for Provider or any of its property, which is not vacated or fully stayed within twenty (20) days after the institution or occurrence thereof, shall also constitute a breach. Breach also shall occur upon Provider's unauthorized use, disclosure or retention of Confidential Information. Provider shall, within 24 hours, provide the Commission with electric notice of the institution of proceedings under any bankruptcy, insolvency, reorganization, or similar law, by or against Provider, or the appointment of a receiver or similar officer for Provider or any of its property.

B. Notice and Cure Period

In the event of a breach, notice of such shall be given electronically by the aggrieved party to the other party. Any Party may from time to time designate in writing by electronic notice substitute addresses or persons to whom such notices shall be sent.

(i) Commission:

Massachusetts Cannabis Control Commission
Union Station, 2 Washington Square, Worcester, MA 01604
Commission@CCCMass.com

(ii) Provider:

Name and title of person:
Company Name:
Address:
Email address:

If such breach is capable of cure, as determined by the Commission, and is not cured within seven (7) days of receipt of written notice, or if a cure cannot be completed within seven (7) days, or if cure of the breach has not begun within seven (7) days and pursued with due diligence, the Commission may exercise any of the remedies set forth in the Agreement.

C. Deactivation

Notwithstanding any provision to the contrary herein, the Commission, in its sole discretion, need not provide advance notice or a cure period and may immediately deactivate Provider's Vendor API Key if the Commission determines such action is warranted to maintain the confidentiality of Confidential Information as required in this Agreement.

7. REMEDIES

If Provider is in breach under any provision of this Agreement, the Commission shall have all of the remedies listed in this § 7.A in addition to all other remedies set forth in other sections of this Agreement following the notice and cure period set forth in § 6.B. The Commission may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

A. Termination for Cause and/or Breach

The Commission may terminate this entire Agreement or any part of this Agreement. Exercise by the Commission of this right shall not be a breach of its obligations hereunder. Provider shall continue performance of this Agreement to the extent not terminated, if any.

i. Obligations and Rights

To the extent specified in any termination notice, Provider shall take timely, reasonable, and necessary action to protect and preserve Confidential Information in the possession or control of the Provider. All Confidential Information in the possession or control of Provider shall be immediately returned to the Commission as specified in this Agreement and Provider shall certify that no copies of Confidential Information remain in the possession or control of Provider.

ii. Vendor API Key Deactivation

Irrespective of any period set forth in § 6.B, immediately upon any breach of this Agreement, the Commission may deactivate Provider's Vendor API Key. Provider agrees that the Vendor API Key does not constitute a license and expressly waives any rights associated with the provision of a license. Provider specifically agrees it has no right to a hearing or other legal or administrative process regarding the deactivation of the Vendor API Key.

iii. Damages

Notwithstanding any other remedial action by the Commission, Provider shall remain liable to the Commission for any damages sustained by the Commission by virtue of any breach under this Agreement by Provider.

B. Early Termination in the Public Interest

The Commission is entering into this Agreement for the purpose of carrying out the public policy of the Commonwealth of Massachusetts. If this Agreement ceases to further the public policy of the Commission, the Commission, in its sole discretion, may deactivate Provider's Vendor API Key and terminate this Agreement. Exercise by the Commission of this right shall not constitute a breach of the Commission's obligations hereunder.

i. Obligations and Rights

Upon receipt of notice of breach, Provider shall be subject to and comply with the same obligations and rights set forth in §7. A.i.

C. Remedies Not Involving Termination

The Commission, in its sole discretion, may exercise one or more of the following remedies in addition to other remedies available to it:

i. Removal

Notwithstanding any other provision herein, the Commission may demand immediate removal of any of Provider's employees, agents, Subcontractors or permitted assigns whom the Commission deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Agreement is deemed to be contrary to the public interest or the Commission's best interest.

ii. Intellectual Property

If Provider infringes on a patent, copyright, trademark, trade secret, or other intellectual property right while performing the Services or providing the System, Provider shall, at the Commission's option,

- (a) obtain the right to use such products and Services;
- (b) replace any goods, Services, or product involved with non-infringing goods, Services or products or modify such goods, Services or products so that they become non-infringing; or
- (c) if neither of the foregoing alternatives are reasonably available, remove any infringing goods, Services, or products.

D. Equitable Relief

Provider acknowledges and agrees that (a) a breach or threatened breach of any of its obligations under this Agreement may give rise to irreparable harm to the Commission for which monetary damages would not be an adequate remedy and (b) in the event of a breach or a threatened breach by Provider of any such obligations, the Commission is, in addition to any and all other rights and remedies that may be available to the Commission at law, at equity or otherwise in respect of such breach, entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction, without any requirement to post a bond or other security, and without any requirement to prove actual damages or that monetary damages will not afford an adequate remedy.

8. OTHER PROVISIONS

A. Indemnification

Provider shall indemnify, defend, and hold the Commission, its directors, officers, employees and agents harmless from liability for (a) tangible property damage, bodily injury and death, to the extent caused by or contributed to by the Provider, and (b) for the fraud or willful misconduct of the Provider, including all related defense costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest

and penalties) arising from or relating to the performance of the Provider or its Subcontractors under this Agreement.

The Commission has no obligation to provide legal counsel or defense to the Provider or its Subcontractors in the event that a suit, claim or action of any character is brought by any person not party to this Agreement against the Provider or its subcontractors as a result of or relating to the Provider's obligations under this Agreement. The Commission has no obligation for the payment of any judgments or the settlement of any claims against the Provider or its Subcontractors as a result of or relating to the Provider's obligations under this Agreement.

The Provider shall immediately notify the Commission of any claim or suit made or filed against the Provider or its Subcontractors regarding any matter resulting from or relating to the Provider's obligations under the Agreement, and will cooperate, assist, and consult with the Commission in the defense or investigation of any claim, suit, or action made or filed by a third party against the Commission as a result of or relating to the Provider's performance under this Agreement.

The Provider shall contact the Commission upon receipt of any electronic discovery, litigation holds, discovery searches and expert testimonies related to the Commission's data under this Agreement, or which in any way might reasonably require access to the data of the Commission, unless prohibited by law from providing such notice. The Provider shall not respond to subpoenas, service of process and other legal requests related to the Commission without first notifying the Commission, unless prohibited by law from providing such notice.

B. Jurisdiction and Venue

All suits or actions related to this Agreement shall be filed and proceedings held in the Commonwealth of Massachusetts.

C. Governmental Immunity

Liability for claims for injuries to persons or property arising from the negligence of the Commonwealth of Massachusetts, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by law. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, defenses, protections allowed by law. The Provider agrees that the Commission retains all such immunities, rights, benefits, defenses, and protections.

D. Disclaimer of Damages and Limitation of Liability

THE COMMISSION WILL NOT BE LIABLE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY CLAIM FOR DIRECT, CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR SPECIAL DAMAGES.

E. Choice of Law

This Agreement shall be construed, interpreted, and enforced according to the laws of the Commonwealth of Massachusetts. Massachusetts law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Agreement, to the extent capable of execution.

F. Binding Arbitration Prohibited

The Commission does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Agreement or incorporated herein by reference shall be null and void.

G. Employee Financial Interest/Conflict of Interest.

The signatories aver that to their knowledge, no employee of the Commission has any personal or beneficial interest whatsoever in the System or Services described in this Agreement. Provider has no interests and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Provider's Services and Provider shall not employ any person having such known interests.

H. Entire Understanding & Severability

This Agreement represents the complete integration of all understandings between the Provider and the Commission, all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or effect whatsoever, unless embodied herein.

Should any portion of this MOU be judicially determined to be illegal or unenforceable, the remainder of the MOU shall continue in full force and effect, and either party may renegotiate the terms affected by the severance.

Facsimile and Portable Document Format ("PDF") copies of the Provider's signatures shall be treated as originals.

The Provider has caused their duly authorized representatives to execute this Agreement as of the date set forth above. The Provider hereby agrees to all the foregoing terms and conditions.

Provider: _____

Signature: _____

Print name: _____

Title: _____

On behalf of the Commission: _____

Signature: _____

Print name: _____

Title: _____

Effective Date: _____