

MEMORANDUM OF UNDERSTANDING

by and between
the Integrated Justice Information Systems Institute, Inc.
and
[STATE NAME]

This Memorandum of Understanding (“MOU”) sets forth the terms under which the Integrated Justice Information Systems Institute, Inc. (“IJIS”) will provide Authorized Users, as such term is defined below, from the State of [State Name] (the “State”) with access to an automated process to facilitate the State’s exchange of prescription drug monitoring program (“PDMP”) data owned by the State with the PDMP data of other states authorized by the respective states as may be identified in related MOUs and/or agreements with those states. IJIS and the State may be individually referred to herein as “Party” or collectively as “Parties.”

RECITALS:

WHEREAS, the State’s PDMP and/or Health Information Exchange (“HIE”) collects prescription drug dispensing or prescribing information, collectively referred to throughout this MOU as “State Prescription Data,” and maintains a database that contains such State Prescription Data; and

WHEREAS, IJIS provides computerized data communications services to be hosted by IJIS on a provisional basis in support of its RxCheck System (“RxCheck”), a portal through which authorized end users from the State and third-party states (“Third-Party States”) may request access to and information regarding the other party’s State Prescription Data, to facilitate the State’s exchange of State Prescription Data with Third-Party States, as may be identified in related MOUS and other agreements with Third-Party States; and

WHEREAS, in connection with this MOU and pursuant to the terms and conditions set forth herein, the State desires to permit authorized users in third party states to access prescription drug information for controlled substance prescriptions through RxCheck in order to facilitate the prevention of illegal use of controlled substances prescriptions by individuals who use prescription dispensers and/or prescribers.

NOW, THEREFORE, in consideration of the aforementioned premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agrees as follows:

1. Overview and Scope.

1.1 RxCheck shall provide State with a set of technical services that are conformant to the consensus-based national standard called the PDMP Information Exchange (“PMIX”) Specification, as set forth in the “Prescription Monitoring Program Information Exchange Service, Service Interface Description Version 1.0.1, dated December 2011 (the “PMIX Specification”) to enable the reliable, secure sharing of State Prescription Data using Web services over the Internet.

1.2 Through its RxCheck, IJIS shall provide the State with a message brokering service (the “Services”) for the routing of request and response messages between the State and Third-Party States representing PDMPs. The Services are described in more detail in Attachment B hereto.

2. Term and Termination.

2.1 **Term.** This MOU is effective upon the date of the last signatory hereto (the “Effective Date”) and will continue for one year from the Effective Date (the “Initial Term”). The MOU will renew automatically each year following the expiration of the Initial Term terminated earlier by a party in accordance with the termination provisions of this Section.

2.2 **Termination.** This MOU and State’s authorization to utilize RxCheck may be terminated by either Party upon thirty (30) days written notice to the other party.

2.3 **Consequences of Termination.** Upon termination of this agreement, a state will no longer participate in multi-state data sharing through RxCheck and authorized users from that state will no longer be permitted to access interstate data. Authorized users from other states will no longer be able to access or query data from the terminated state through RxCheck.

3. **RxCheck License.** IJIS shall provide the State with access to RxCheck and the associated services and capabilities of RXCheck. Subject to the terms and conditions of this MOU, IJIS grants to the State’s Authorized Users a non-exclusive and non-transferable license to access RxCheck and to use it solely for the purposes authorized herein during the Term of this MOU. No other license is granted under this MOU.

4. **Authorization of Users.** As used herein, the term “Authorized Users” shall include:

- (a) those individuals or entities specifically granted permission by the State, through RxCheck, to have access to State Prescription Data; and
- (b) those individuals specifically granted permission by Third-Party States, through RxCheck to have access to such State Prescription Data.

The State agrees that it is solely responsible for determining those individuals and/or entities who it shall deem to be Authorized Users. To that end, the State shall be responsible for reviewing, addressing and responding to request for authorization to access its State Prescription Data through RxCheck. Prior to granting access to RxCheck and its associated capabilities, the State shall verify the identity and credentials of those requesting permission to access the State Prescription Data. The State shall be solely responsible for requesting such information it deems necessary and proper to accomplish this verification. Further, the State agrees that it shall be responsible for complying with any applicable local, state, or federal law concerning the categories of individuals or entities it may authorize to have access to the State Prescription Data.

The authorized users permitted access and a description of the data shared is provided in Attachment A.

5. Information to be Disclosed. At all times throughout the term of this MOU, the State shall maintain ownership of the State Prescription Data it makes available through RxCheck. Further, the State maintains control what, if any, records are contained within and accessible through RxCheck. Except as necessary for development, testing and continual maintenance, the functionality of RxCheck shall not allow IJIS access to the State Prescription Data. Except as necessary for the development, operation and maintenance of RxCheck, IJIS will not use any protected health information or personally identifiable patient information that is transmitted through RxCheck.

6. Transmission of Data. Any messages sent by the State through RxCheck shall meet the following requirements pertaining to confidentiality:

6.1 The only information disclosed to IJIS shall be the identity of the transmitting State and the intended recipient State. IJIS has no ability to decrypt information, data or messages in RxCheck.

6.2 Any information sent by a transmitting State identifying any individual or organization and any confidential information pertaining to the health of the subject of the message shall be encrypted at the message level (in addition to internet transport-layer security) using a private key known only to the ultimate recipient, rendering this information indecipherable by RxCheck.

6.3 The State(s) shall be responsible for the quality and confidentiality of all transmitted data.

6.4 IJIS assumes no responsibility for the disclosure of any identifying information other than the identity of the State to the ultimate recipient. The State acknowledges that IJIS has no ability to encrypt information and no responsibility for disclosure.

6.5 All Web services call between the state PDMPs and the Provisional RxCheck Service will utilize the standard Secure Socket Layer (“SSL”) data encryption methodology. In addition, all Protected Health Information (“PHI”) will further be encrypted using the Advanced Encryption Standard (“AES”) Public Key Infrastructure (“PKI”) data encryption methodology. Under the PMIX Architecture, the Provisional RxCheck Service will only be able to decrypt the data used for message routing and control that is encrypted using the SSL methodology. This dual encryption design is intended to provide an industry standard secure data transmission method and to ensure that there will be no prescriber, dispenser or patient data accessible to RxCheck or any other entity that does not possess the proper authorization and/or decryption keys. The State agrees that the prescription data will be provided to an Authorized User via a secure method that meets the most current version of the Federal Information Processing Standards secure method (“FIPS 140”). Conformance to the PMIX Specification and the methodology set forth in this Section will generally suffice to ensure that this provision is met. IJIS does not guarantee to the State that the service will be available without interruption and the

Parties have no responsibilities whatsoever in relation to the other Party as regards interruptions pursuant to this MOU and the description of Services.

6.6 IJIS shall ensure that the MOUs signed by all participating states are substantively identical to this Memorandum of Understanding, including all attachments. However, variation in the itemized data elements and user roles enumerated in Attachment A is permissible.

6.7. The State agrees that the Prescription Data that it transmits to Authorized Users shall be provided via a secure method. Any Prescription Data transmitted to an Authorized User shall be transmitted by the State directly to such Authorized User. Likewise, any Prescription Data received by an Authorized User within the State from a Third-Party State shall be transmitted directly by a Third-Party State to such Authorized User. By and through this MOU, the State agrees to cooperate with Third-Party States in the coordination of the delivery and receipt of Prescription Data requested through the RxCheck.

7. Costs.

7.1 IJIS shall provide the State access to the RxCheck at no charge. The State will use RxCheck on a voluntary basis to transmit messages to Third-Party States. All costs to the State for utilizing RxCheck during the MOU term shall be waived provided that all transmitted messages maintain conformance with the PMIX Specification and all security and confidentiality requirements set forth herein.

7.2 The State will be responsible for any other charges or expenses, including but not limited to any custom adapter software that does not conform to the PMIX Specification, Internet service provider and equipment charges, and fees charged by vendors of third party products.

7.3 Upon the expiration or termination of the MOU, the Parties may negotiate and enter into an MOU whereby the State may continue its use and access to the RxCheck upon terms, conditions and payment of fees found to be agreeable at such time.

7.4 The Parties agree that State may request IJIS assistance in acquiring additional capabilities, but any such additional services are outside the scope of this MOU and shall be acquired and provided under a separate agreement.

8. State Representations.

8.1 State agrees to use, process, transmit, retransmit, retain and store the State Prescription Data that flows through, by or from IJIS, directly or indirectly, in connection with this MOU in compliance with all Applicable Laws. In addition, State shall require each of its authorized users to certify that he or she will adhere to all applicable laws regarding the access, use, and disclosure of prescription data. State is responsible for investigating and pursuing any necessary disciplinary action relating to claims that a State employee, agent, contractor, or Authorized User located within the State failed to comply with Applicable Laws or the terms of

this MOU in the use of State Prescription Data requested through RxCheck. As used herein, the term “Applicable Law” or “Applicable Laws” shall mean those local, state and federal laws, rules and regulations applicable to the State Prescription Data, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, including any and all regulations promulgated thereunder (“HIPAA”); the Health Information Technology for Economic and Clinical Health Act, Title XIII of the American Recovery and Reinvestment Act of 2009, Public Law 111-5, and any and all regulations promulgated thereunder (“HITECH”); the applicable rules, regulations, instruction and guidelines promulgated by the Centers for Medicare and Medicaid Services (“CMS”); 42 C.F.R. § 422.504(e)(4), (h), (i)(2), and (i)(4)(v); Medicare Managed Care Manual Ch. 11, § 100.4; and applicable Medicare fraud, waste and abuse laws.

8.2 State agrees to notify any Third-Party State, in writing, of any use or disclosure of the State Prescription Data that is received from said Third-Party State that is not permitted or required according to Applicable Laws within three (3) business days of the State’s discovery of such unauthorized use or disclosure or within such other timeframe as required by Applicable Laws, as amended. In addition, State agrees to notify any Third-Party State within three (3) business days of discovery or any breach of unsecured Protected Health Information that involves the Third-Party State’s Protected Health Information (“PHI”), as the terms “breach” and “unsecured Protected Health Information” are defined in 45 CFR 164.402 and any subsequent regulations and guidance from the Secretary of the United States Department of Health and Human Services. Notice of such breach shall include the identification of each individual whose unsecured PHI has been, or is reasonably believed to have been accessed, acquired or disclosed during such breach. State further agrees to make available in a reasonable time and manner any information needed by the Third-Party State to respond to individuals’ inquiries regarding said breach. State shall bear its own expense connected to any notification requirements imposed by its state law. Any notifications imposed under HIPPA, CFR 164.402, shall be carried out and paid for by the party deemed a covered entity.

8.3 State shall not knowingly or voluntarily transmit any defamatory, libelous, spamming, obscene or pornographic information. State shall not misrepresent any information associated with this MOU. State acknowledges that it is aware that data or information received or transmitted by a third party in connection with this MOU may not be accurate through no fault of the State or IJIS. Upon notification by IJIS that any information transmitted or received in connection with this MOU is not accurate, State agrees to use good faith efforts to stop or avoid any further disclosure of inaccurate information.

8.4 State shall immediately notify the Third-Party States upon learning of any impending change in statutes or regulations that may materially alter or affect either of the following:

- i) The classes of persons who State may approve as authorized users; or
- ii) Any clause in this Memorandum of Understanding.

9. Indemnification. No party waives any right or defense to indemnification that may exist in law or equity

10. Information Disclaimer. The Parties agree that any State Prescription Data received by an Authorized User located in the State, pursuant to a request through RxCheck will be transmitted from the Third-Party State without being reviewed or verified by IJIS. State Prescription Data that is received pursuant to a request through RxCheck is provided “as is,” meaning it is maintained and transmitted by the Third-Party State without any guarantee or warranty from the Third-Party State or IJIS as to its completeness, accuracy or reliability.

11. No Warranties. UNLESS SPECIFICALLY SET FORTH HEREIN, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, IJIS EXPRESSLY DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, OR ANY EXPRESS OR IMPLIED WARRANTY ARISING OUT OF TRADE USAGE, OR OUT OF A COURSE OF DEALING OR COURSE OF PERFORMANCE. THE REQUIREMENTS UNDER THIS PROVISION SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS MOU.

12. LIMITATION OF LIABILITY. Each party shall assume the responsibility and liability for acts and omissions of its own officers, agents, or employees in connection with the performance of their official duties. For tort liability purposes, no participating party shall be considered the agent of the other participating parties. Each party shall be liable (if at all) only for the torts of its own officers, agents, or employees that occur within the scope of their official duties. The parties expressly agree that no provision of his agreement is in any way intended to constitute a waiver, by either party, of any immunity from suit that either party may have by operation of law. IJIS shall not be liable for any penalties, damages, or losses incurred by states that are the result of any occurrence or failure to perform by the state which caused or contributed to the state’s failure to comply with any applicable laws or its performance obligations under this MOU.

13. Disputes. The Parties shall use their best efforts to resolve any dispute between the Parties arising under this MOU through face-to-face good faith negotiations. Disputes not resolved within sixty (60) days following notice of the dispute shall be resolved to by escalation. In the event of any dispute or claim arising out of or relating to this agreement, or a breach thereof, the parties hereto shall first attempt to settle the dispute by voluntary, non-binding mediation.

14. Notices. Notices given by the Parties to one another in connection with this MOU shall be given in writing and delivered by hand delivery, return mail, by email with appropriate confirmation of receipt, or by nationally-recognized express delivery service to the Parties’ respective addresses set forth below or to such other address as the Parties may substitute by giving notice to one another in accordance with this Section. Notices shall be deemed to have been received upon the earlier of actual receipt thereof, or, with respect to (a) overnight delivery, by the next business day following delivery to such express delivery service, (b) U.S. mail, by the third business day following such delivery to the U.S. Postal Service.

Designated Representative of IJIS:

Name:

Title:

Telephone:

Address:

Email:

Alternate Designated Representative of IJIS:

Name:

Title:

Telephone:

Address:

Email:

Designated Representative of State:

Name:

Title:

Telephone:

Address:

Email:

Alternate designated Representative of State:

Name:

Title:

Telephone:

Address:

Email:

15. Assignment. State shall not assign or transfer its rights or obligations under this MOU without the prior written consent of IJIS. Any assignment or transfer without the required consent will be void and will be a material breach of this MOU. Upon any permitted assignment, State shall remain jointly and severally liable for performance under this MOU, unless expressly released in writing by IJIS.

16. Binding Nature and Assignment. This MOU shall be binding upon and inure to the benefit of the Parties hereto and their successors and assigns.

17. Reserved.

18. Force Majeure. Neither Party shall be liable for any failure or delay in performing all or part of its obligations under the terms of this MOU caused by or resulting from, legislative action or other acts of government, war, acts of any person engaged in a subversive activity, sabotage, riots, strikes, slow-downs, lock-outs, or labor stoppage, freight embargoes, fires, explosions, flood, earthquake or other acts of God, or by reason of the judgment, filing or order of any court or agency of competent jurisdiction occurring subsequent to the signing of this MOU, unavailability of PDMP data, fiber cut caused by a third party or any other circumstances reasonably beyond a Party's control (a "Force Majeure Event").

19. Entire Understanding and Modification. This MOU contains all of the terms and conditions agreed upon by the Parties related to RxCheck, and supersedes all prior understandings, writings, proposals, representations, or communications, oral or written, of the Parties hereto as to the subject matter addressed herein. Each party represents and warrants that any changes to this MOU made by a Party prior to execution were clearly marked as changes and that it made no changes to this MOU that were not properly and clearly marked as changes to this MOU. After execution, this MOU may not be modified, amended or changed except by a written MOU signed by the Parties.

20. Authority. IJIS and the State warrant that each has full power and authority to enter into and perform this MOU, and the person signing this MOU on behalf of each Party has been properly authorized and empowered to enter into this MOU on behalf of such Party.

21. No Implied Waiver. Except as expressly provided herein, the failure of either Party to insist, in any one or more instances, upon the performance of any provision of this MOU shall not be construed as a waiver or a relinquishment of any right granted or arising hereunder or of the future performance of any such provision. Such failure shall in no way affect the validity of this MOU or the rights and obligations of the Parties hereunder.

22. Relationship of Parties. This MOU shall not constitute or otherwise imply a joint venture, partnership or formal business organization of any kind. Both Parties shall be

considered independent contractors and neither Party shall be considered an agent, designee or representative of the other for any purpose. Under no circumstances shall employees of one Party be deemed the employees of the other Party.

23. Survival. The Parties' respective representations, warranties and covenants, together with the obligations of confidentiality and limitations on liability will survive the expiration, termination or rescission of this MOU and shall continue in full force and effect.

24. Severability. Should any part, term or condition of this MOU be declared illegal, invalid or unenforceable or in conflict with any other laws, the remaining provisions shall be valid and not affected thereby.

25. Headings. The headings in this MOU are strictly for convenience and do not amplify or limit any of the terms, provisions or conditions contained herein.

26. No Third Party Beneficiary Rights. Except as otherwise expressly provided in this MOU, nothing in this MOU shall be enforceable by any person other than IJIS and the State, and no third party beneficiary rights are conferred on any such third party.

27. Counterparts. This MOU may be executed in any number of counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

The undersigned warrant that they are authorized representatives of their respective Party and that they have full power and authority to enter into this MOU and bind their respective Party to its terms and, in the case of the State, the State, to its terms.

[Signatures appear on following page]

**Integrated Justice Information Systems
Institute, Inc.**

[STATE]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____