



## CANADIAN PHARMACEUTICAL DISTRIBUTION NETWORK CONTROLLED SUBSTANCES E-ORDERING PROGRAM AGREEMENT

### *In this document:*

The Company refers to the hospital, hospital group, pharmacy, pharmacy group, or other entity that has been pre-registered by Canadian Pharmaceutical Distribution Network (herein called "CPDN") to use the **CPDN CONTROLLED SUBSTANCES E-ORDERING PROGRAM**. Reference to Company also includes the designated Primary Contact and additional users registered by the Primary Contact;

Primary Contact is the person designated by Company to act on its behalf with respect to the **CPDN CONTROLLED SUBSTANCES E-ORDERING PROGRAM**.

This Service Agreement (this "Agreement") is entered into between CPDN and the Company (User).

### **Glossary of Terms**

**Certificate repository (repository):** A secure, central database of completed CPDN CONTROLLED SUBSTANCES E-ORDERING PROGRAM applications. ALL TRANSACTIONAL data is digitally encrypted and includes date and time stamps for the purchase and RECEIPT of controlled substances.

**Digital signature (digital ID/digital signing key/PRIVATE KEY):** The use of a private key to "sign" a digital communication. For electronic ordering of controlled substances, each order must be digitally signed using a PRIVATE KEY for authentication, order integrity, validation, and non-repudiation (inability to deny placing an order) purposes.

### **I. SERVICES.**

A. The "Services" to be provided to Company pursuant to this agreement are described in Attachment A.

B. **DISCLAIMER OF WARRANTIES.** CPDN MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING ANY MATTER, INCLUDING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE OF (i) THE SERVICE(S) OR ANY COMPONENT THEREOF OR INFORMATION OR DATA DERIVED THEREFROM, OR (ii) THE SERVICES.



## **II. TERM AND TERMINATION.**

A. Term. The term of this Agreement shall commence from the date of the issuance of the PRIVATE KEY until the end of the users licence expiry (not to exceed 1-year). This Agreement will renew for successive terms, provided proof of recertification is provided. Prior to the expiry date of the PRIVATE KEY, system-generated renewal email reminders are sent (30 and 15-days prior to expiry date) to allow the user sufficient time to provide proof of recertification.

B. Termination. This Agreement shall also terminate if or upon a material breach by a Party to perform its obligations under this Agreement, which breach continues for a period of 30 days following email notice thereof by the other Party, the bankruptcy or insolvency of a Party (in which event no notice shall be required).

## **III. FEES.**

A. Annual Service Fees. The Company agrees to pay the fees for each term set forth by CPDN and may be amended from time to time. Such fees shall be net of all taxes that the Company is required by law to withhold and remit to a taxing authority. In addition to fees and charges under this Agreement, the Company is responsible for all taxes, which CPDN is required by law to collect. Unless otherwise specified, all fees exclude GST/HST and any other applicable federal and provincial taxes and duties (which must be paid by the Company).

B. Expenses. Expenses incurred by the Company associated with the installation, implementation, termination, and receipt of the Services shall be the responsibility of the Company.

C. Payment. Annual fees are payable by the Company on its application for registration for the services and for each successive Annual Term. For payment, select the appropriate item from the WebOMS and complete the transaction.

## **IV. LICENSE AGREEMENT.**

A. License Granted. Subject to this Agreement, CPDN grants to Company and Company accepts on behalf of itself and its Authorized Users, a non-exclusive, non-transferable, limited license to use and access the Services. This license shall include a limited sublicense to all third-party software and applications employed or otherwise embedded in the Services, but only to the extent, CPDN is authorized to license such third-party software and applications and only in accordance with the terms under which such authorization is expressly granted.

B. No Infringement of Third-Party Intellectual Property Rights. Based upon representations, warranties, and indemnities provided by third party software and



service providers, which have developed and implemented the Services on behalf of CPDN, CPDN represents that it has no knowledge that the Services violate or infringe upon the intellectual property rights of any other party.

C. Infringement Indemnification. Subject to the limitations in Article VI. below, CPDN agrees to indemnify and hold Company harmless from and against any damages, liabilities, costs, and expenses (including reasonable attorneys' fees) resulting from any judgment or proceeding in which it is determined that the Services violate or infringe any patent, copyright, trademark, trade name, trade secret, or other intellectual property right of any third party provided that: (i) Company shall promptly provide written notice thereof and reasonable cooperation, information, and assistance in connection therewith, and (ii) CPDN shall have sole control and authority with respect to the defense, settlement, or compromise thereof. If any component of the Services becomes or, in CPDN's opinion, is likely to become the subject of any injunction preventing its use as contemplated herein, CPDN may, at its option (1) procure for Company the right to continue using the Services, (2) replace or modify such component of the Services so that it becomes non-infringing without substantially compromising its functionality or, if (1) and (2) are not reasonably available to CPDN, then (3) terminate Company's license to the allegedly infringing component of the Services.

D. The Services shall be generally available for use on a seven day per week, 24-hour per day basis, excepting those times necessary to perform regularly scheduled and emergency maintenance. CPDN shall endeavor to conduct maintenance at times that minimize the impact on service availability to registered users. Support resources will be available as described in Attachment A, but CPDN reserves the right to modify such support services from time to time by publishing any changes on the **CPDN CONTROLLED SUBSTANCES E-ORDERING PROGRAM** website, and amending Attachment A to this Services Agreement.

## V. CONFIDENTIALITY.

A. Confidentiality. CPDN will not disclose or make available any of the Company's Proprietary Information in any form to any person, except to bona fide employees, officers, directors, and agents whose access is necessary for the Company to benefit from the **CPDN CONTROLLED SUBSTANCES E-ORDERING PROGRAM**, and then only in order to facilitate Company's participation in the Services. Subject to the limitations in Article, CPDN shall indemnify the Company against a breach of this obligation. The Company shall not copy, translate, disassemble or decompile, nor create or attempt to create the source code from the object code of the CPDN Proprietary Information or Services licensed hereunder, or use it to create a derivative work unless authorized in writing by CPDN.



B. Return of Materials. Upon termination of this Agreement, (i) Company shall immediately cease use of the Services (and access by Company and its Authorized Users to the Services may be blocked), and (ii) each Party shall immediately cease use of the other Party's Proprietary Information and shall, within 30 days after any such termination, destroy all copies of the other Party's Proprietary Information in any form than in its possession or control.

C. Designation of Authorized Users by Company. Company agrees that it is solely responsible for: 1) the designation of a Primary Contact and authorized representatives who can access the Services on behalf of Company in accordance with usage restrictions set forth in Attachment A ("Authorized Users"); 2) the provision of complete, true and accurate information for all Authorized Users and update such information upon any changes in the roles or authority of such Users and in no event less regularly than upon each Renewal Term; 3) ensuring that all Authorized Users shall keep all password(s), token(s) and private key(s) confidential and shall take all reasonable measures to prevent their loss, disclosure, modification or unauthorized use. Company and Authorized Users acknowledge that if CPDN issues PRIVATE KEY (as defined in Attachment A), CPDN will keep a copy of the associated private key(s), and CPDN will not disclose this key (these keys) except with the Authorized User's consent, or where required by law.

## **VI. LIABILITY.**

A. Limitation of Liability. NEITHER CPDN, OR THEIR SUPPLIERS, NOR COMPANY SHALL BE LIABLE FOR, AND THE MEASURE OF DAMAGES SHALL NOT INCLUDE, ANY AMOUNTS, FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE TOTAL LIABILITY OF CPDN, AND THEIR SUPPLIERS UNDER THIS AGREEMENT, WHETHER ON ACCOUNT OF ACTIONS OR CLAIMS BASED IN CONTRACT, EQUITY, TORT OR OTHERWISE, SHALL NOT EXCEED THE TOTAL AMOUNT OF FEES PAID BY COMPANY IN THE TWELVE MONTHS PRIOR TO THE LAST EVENT THAT GIVES RISE TO THE LIABILITY. CPDN WILL NOT BE LIABLE FOR ANY LOSSES RESULTING FROM COMPANY OR ITS AUTHORIZED USERS FAILING TO COMPLY WITH THIS AGREEMENT.

B. Force Majeure. No Party shall be liable to the other for any default, delay or hindrance in the performance of any of its obligations under this Agreement to the extent such default, delay or hindrance is caused by fire, flood, earthquake, elements of nature or acts of God, acts of war, riots, terrorism, revolutions in any



country, strikes or labour difficulties, or any other similar cause beyond its reasonable control (each a "Force Majeure Event"). In the event of a Force Majeure Event, the parties shall be excused from further performance of the obligation(s) for as long as such Force Majeure Event prevails and the parties continue to use commercially reasonable efforts to recommence performance to the extent possible. If either party is so prevented, hindered or delayed in its performance, the non-performing party shall immediately notify the other party.

## **VII. GENERAL.**

A. Governing Law; Venue. This Agreement and performance under it shall be governed by, construed in accordance with and enforced under the applicable laws of the Province of Ontario. Any legal actions or claims relating to this Agreement may be instituted only in the Courts of Ontario, Canada. The parties hereby consent to the exclusive jurisdiction of such court and waive any objection to such venue

B. Export. The Parties acknowledge that certain software, technical data, and PRIVATE KEY (as defined in Attachment A) to be provided hereunder and certain transactions hereunder may be subject to export controls under the laws and regulations of the United States and other countries. No Party shall export or re-export any such items or any direct product thereof or undertake any transaction in violation of any such laws or regulations.

C. Notices. All notices required to be given under this Agreement shall be in writing and shall be deemed delivered at the time of dispatch via email by the originator's computer system to the address of the recipient identified by the Company as its contact person in the Company's profile or to CPDN at [ecert@cpdn.ca](mailto:ecert@cpdn.ca).

D. Amendment. Company and its Authorized Users understand and agree that:

- these terms and conditions, as amended from time to time, form the entire agreement between CPDN and Company;
- despite any termination of this Agreement, the disclaimers and limits on liability shall survive;
- any provision of this Agreement declared by a court to be invalid, illegal, or unenforceable shall be severed from the Agreement, and that all other provisions shall remain in full force and effect;

E. Right of Refusal. CPDN RESERVES THE RIGHT TO REFUSE TO ISSUE PRIVATE KEY TO THE COMPANY'S AUTHORIZED USERS.



## ATTACHMENT A

### DEFINITIONS/DESCRIPTION OF SERVICE(S)/ OBLIGATIONS OF COMPANY SERVICE FEES

#### A. DEFINITIONS

"PRIVATE KEY" means an authorized digital identity that contains information about its owner. Canadian Pharmaceutical Distribution Network issues PRIVATE KEY for the electronic ordering of controlled substances. PRIVATE KEY contains subscriber data used for DIGITALLY SIGNING controlled substances orders. Canadian Pharmaceutical Distribution Network acts as a trusted party by validating the accuracy of the information associated with each PRIVATE KEY.

"CPDN Proprietary Information" means all software relating to the SERVICE(S), Documentation, Program Concepts, Third-Party Databases and any other third-party software licensed with or as part of the Services, and benchmark results; and information reasonably identifiable as the confidential and proprietary information of CPDN, which is not otherwise in the public domain. "Documentation" means all documentation (in any medium or form) with respect to the Services delivered to Company under this Agreement, including, but not limited to, manuals, training materials, program listings, data models, flow charts, logic diagrams, functional specifications, instructions, and complete or partial copies of the foregoing. "Program Concepts" means the concepts, techniques, ideas, and know-how embodied and expressed in any computer programs or modules included in the Services, including software structure, sequence, and organization, but excluding any modifications which are expressly paid for by Company. "Third Party Databases" means any third-party proprietary database software, which is licensed through CPDN to Company pursuant to the terms of this Agreement.

"Services" means, collectively, the total server and network equipment, storage systems, software, interfaces, documentation, network interfaces, and systems management processes which comprise the applications infrastructure for an internet-based trading communications system for which the Services are being provided hereunder, and which, among other things, facilitates Company's participation in the Services. Services shall exclude all hardware, application software and documentation independently owned or licensed by Company by which Company interfaces to Services.

#### B. DESCRIPTION OF SERVICES

1. Services Defined: For the Term of the Agreement and subject to the terms and conditions of the Agreement), Company and its Authorized Users shall have the right to





use and access the Services and CPDN Proprietary Information in order to apply for PRIVATE KEY required to place orders for controlled substances. When the Company uses its PRIVATE KEY to place orders for controlled substances, CPDN will, when queried, verify the validity of the request. The Company also shall be receiving the following Support resources (collectively "Services").

#### Service Description Hours

A Technical problem that prevents or hinders the Company's previously authenticated Authorized Users from using a commercial application for which there is no workaround available. Monday through Friday 9:00 AM – 5:00 PM (Eastern Time – Toronto)

B A request by Company for information regarding a commercial application, including registration or new user inquiries. Monday through Friday 9:00 AM - 5:00 PM (Eastern Time – Toronto)

2. Usage Restrictions; Audit Rights. The Company is solely responsible for designating the role and number of its Authorized Users in accordance with the restrictions (if any) set forth below. The Company acknowledges and agrees that sharing or unauthorized use of User ID or password is strictly prohibited. CPDN shall have the right to audit the Company's compliance with the terms and conditions of this Agreement.

### **C. OBLIGATIONS of The Company**

- 1) Maintenance of PRIVATE KEY. The Company acknowledges that they through their Authorized users are responsible for the timely use of the Services to maintain valid PRIVATE KEY that are required to order controlled substances. CPDN may - but is not obligated to - issue reminders to Authorized Users the PRIVATE KEY is about to expire but it is the Company's responsibility to submit the required renewal application. The Company And its Authorized users: 1) may request that CPDN revoke a PRIVATE KEY at any time prior to the expiration of its/their lifetime(s); 2) must request that CPDN revoke a PRIVATE KEY whenever Authorized User is no longer a signing authority for Company; 3) acknowledge that CPDN may revoke a PRIVATE KEY if: (i) any of the information in the Applicant's certificate(s) changes; (ii) CPDN knows or has reasonable grounds to suspect that the Authorized user's PRIVATE KEY or a private signing key of the issuing Certificate of Authority has been compromised; (iii) CPDN knows or has reasonable grounds to suspect that the Authorized User's PRIVATE KEY has/have been compromised; (iv) if the Authorized User fails to comply with his or her obligations under this Agreement. 4) acknowledges CPDN will notify the Authorized User of the revocation; 5) understands that, in the event that CPDN revokes the Authorized User's PRIVATE KEY(s), he/she may request new PRIVATE KEY(s).
- 2) Acceptable Use of PRIVATE KEY. Company and its Authorized Users understand that the use of PRIVATE KEY issued under this service for illegal activities, including the unauthorized export or use of the software outside of Canada is prohibited.