

## **SOFTWARE AND TECHNOLOGY LICENSING AGREEMENT**

This Agreement is entered into as of this (the "Effective Date") by and between ArmorVax LLC, an Ohio limited liability company with its principal offices at 6111 Heisley Road, Mentor, OH 44060 ("Licensor") and Franklin County Health Department having its principal offices at 280 E Broad St, Columbus, OH 43215 ("Licensee").

### ***RECITALS***

ArmorVax is an application created to streamline the vaccination process for consumers and reduce the administrative burden for medical providers by offering:

- Mobile app for patients to input their data directly;
- Customizable platform for medical providers;
- Daily downloadable batch file for importing into existing healthcare software; and
- Scheduling module that automates the process.

Per the requirements of the Centers for Disease Control and Prevention ("CDC") to upload data into a state's immunization registry, ArmorVax offers an automated capability to report administration data from our app through:

- CSV file containing the required reporting data;
- HL7 file (final stages of development); and
- ODH CSV file.

In light of virtual demonstrations with multiple health departments across Ohio, and in further light of commitments made due to preparations for Phase 1 of distributing the current vaccine for COVID-19, Franklin County Health Department desires to license and deploy ArmorVax according to the terms herein.

### ***AGREEMENT***

#### **1. GRANT OF LICENSE.**

1.1 Licensor hereby grants to Licensee a non-transferable license to the software marketed as "ArmorVax" ("App"). This is to be understood as a license only and not a sale of anything. Your license to the App under this Agreement is also subject to the standard Terms of Use for the application and/or website (i.e., [Terms of Use | ArmorVax](#)) and Privacy Policy (i.e., [Privacy Policy | ArmorVax](#)) associated with its use, in addition to the obligations and responsibilities within this Agreement. Licensor reserves all rights in and to the App not expressly granted to you by Licensor under this Agreement.

1.2 Scope of License. Licensor grants to you a nontransferable right to use the App on any supported products that you own or control and as permitted by the App's Terms of Service. This license also governs any content, materials, or services accessible from or purchased within the App as well as upgrades provided by Licensor that replace or supplement the original App, unless such upgrade is accompanied by a separate

written addendum or separate written agreement. Except as provided in the App's Terms of Service, you may not distribute or make the App available over a network where it could be used by multiple devices at the same time. You may not transfer, redistribute, or unlicense the App. If you sell any supported hardware which has the App installed on it to any third party, you must remove the App from said hardware before doing so. You may not copy (except as permitted by this license and the App's Terms of Service) reverse-engineer, disassemble, attempt to derive the source code of, modify, or create derivative works of the App, as well as any updates or any part thereof (except as and only to the extent that any foregoing restriction is prohibited by applicable law or to the extent as may be permitted by the licensing terms governing use of any open-sourced components included with the App).

1.3. This license is an exclusive license only for the following territories: Franklin County Health Department All other territories will be open to Licensor.

1.4. The Licensee shall have the right to transfer, assign or sublicense this Agreement, subject to all the terms contained herein, with notice to but without the prior written consent of the Licensor only to a wholly owned subsidiary or an affiliate of the Licensee. An affiliate is defined as an entity where the Licensee holds the majority of shares of stock or membership interest. Except as provided in this paragraph, Licensee shall not have the right to assign or sublicense the license contained herein without the prior written consent of the Licensor. Nothing contained in this section shall be construed to rescind Licensor's right to collect the Royalty as set forth in this Agreement. This Agreement shall inure to the benefit of and be binding upon all successors and assignees.

1.5. The Licensee understands and agrees that Licensor may modify, change and/or adjust its policies, technology, designs, guidelines, products, materials, and pricing from time to time, and that such modification, change, and/or adjustments may be made after providing Licensee 30-day notice thereof. Licensor retains ownership of all rights, title and interest in and to any improvements derived from the Technology and all modifications and enhancements thereof (including ownership of all copyrights and patents pertaining thereto). Licensee herein assigns to Licensor any and all modifications and enhancements thereof (including ownership of all copyrights and patents pertaining thereto), to Licensor.

1.6. Consent to Use of Data. You agree that Licensor reserves the right to collect and use any and all technical data and related information-including, but not limited to, technical information about your device, system, and application software, as well as your peripherals-that is gathered periodically to facilitate the provision of software updates, product support, and/or other services to you (if any) related to the App. Licensor reserves the right to use this information, provided that such usage does not personally identify you, to improve its products or to provide services or technologies to you.

## 2. CONSIDERATIONS

2.1. Royalty. In consideration of the grant of the license here under the Licensee shall pay to Licensor a royalty equal to \$17,500 (the "Royalty") for unlimited documented vaccine encounters. (Use) A documented vaccine encounter or Use is defined as a successfully recorded vaccination documentation through the App, whether implemented through a recorded QR Code scan or other functionally equivalent method. As an example, for purpose of clarity, and not meant as a limitation, a completed. Use may be comprised of a number of steps including: a patient input their data directly into a mobile app; the patient being schedule for an appointment for vaccination; a confirmation of the patient at the appointment; administration of a vaccine to the patient; and recordation of the completed vaccination event and its associated data into the ArmorVax software. It is the last event, namely, the recordation of the completed vaccination event and its associated data into the Am1orVax software, that is further identified as a Use for royalty under this agreement. Such Use is currently implemented and documented by a QR code scan; however, such a mechanism and technology may change from time to time and shall be considered a functional equivalent for purposes of this Agreement. A product support fee of \$499.00 to be billed annually beginning 01/01/2023.

2.2. Payment Terms. The Royalty payments shall be made as a onetime payment due upon receipt of the invoice.

2.3. Licensee shall guarantee a minimum Royalty of none dollars (\$0.00) per month. The Licensee's obligation to pay the Royalty shall continue throughout the Tenn of this Agreement.

### 3. TERM AND TERMINATION.

3.1 Terms: This Agreement shall continue perpetually, commencing on the Effective Date, unless terminated earlier as provided herein.

#### 3.2 Termination;

3.2.1 Licensor can terminate this Agreement upon 90-day written notice to Licensee upon the occurrence of any of the following:

3.2.1.1. Licensee becomes insolvent or generally fails to pay, or admits in writing its inability to pay, debts as they become due, and such failure or inability to pay is not cured within the 90-day notice period;

3.2.1.2. any bankruptcy, reorganization, debt arrangement, or other case or proceeding under any bankruptcy or insolvency law, or any dissolution or liquidation proceeding is commenced with respect to the Licensee, and is not dismissed within 90 days, or if such case or proceeding is not commenced by the Licensee it is consented to or acquiesced in by the Licensee; or

3.2.1.3. immediately upon written notice to Licensee in the event Licensee breaches any other material tem1s of this Agreement, and such breach is not cured within 30 days of written notice thereof to Licensee.

3.2.2. Licensee can terminate this Agreement immediately upon written notice to Licensor in the event Licensee breaches any material terms of this Agreement, and such breach is not cured within 30 days of written notice thereof to Licensee.

3.2.3. Anti-shelving. If Licensee discontinues its use of the ArmorVax software without an intent to resume, it shall so notify Licensor within one month of such discontinuance, whereupon Licensor shall have the right to terminate this agreement, or terminate any exclusivity, upon one month's written notice, unless Licensee can show that it in good faith intends and has the capability to actually working to resume use and has a reasonable basis to justify its delay. In such case, Licensee shall advise Licensor in writing of the circumstances involved and Licensee shall thereupon have up to an additional six months to resume or begin its use. It is the intent of the parties hereto that Licensor shall not be deprived of the opportunity, for an unreasonable length of time, to exclusively license its patent if Licensee has discontinued or has not commenced manufacture or sales of Licensed Product.

3.3. Actions upon termination. Upon termination of this Agreement for any reason Licensee shall, within 10 business days, return to Licensor all originals and copies of documentation and materials provided to it by the Licensor. Upon termination of this Agreement Licensee shall further immediately cease using Licensor's intellectual property and marks and shall cease advertising or otherwise promoting its participation in this Agreement or the Technology.

#### 4. TRADEMARKS AND COPYRIGHTS, ENFORCEMENT

4.1 The Licensee acknowledges that the Licensor's copyrights, patents, trademarks and the goodwill attaching thereto are and shall remain the property of the Licensor. Licensee further shall mark, as feasible, any use or advertising thereof with an applicable copyright legend or "Patent Pending" or "Patented" that satisfies the proper notice of patent marking under 35 U.S.C. Section 287.

4.2 If either Licensee becomes aware of any infringements of the Technology or of Licensor's trademarks, copyrights, patents, or any act of unfair competition which in any way may impair the value or validity of Licensor's rights hereunder, the Licensee shall promptly notify Licensor of that event. The Licensor agrees to take such steps as it may deem reasonably necessary to protect its rights hereunder, it being understood that the commencement and conduct of any litigation which ensues shall be entirely within the discretion of the Licensor, under the Licensor's control and at the Licensor's expense. Should legal action against a third party be deemed necessary or desirable by the Licensor, the Licensee will, if requested by the Licensor, cooperate with the Licensee in rendering appropriate assistance in instituting and prosecuting such legal action.

5. COMPLIANCE WITH LAW. Licensor and Licensee specifically intend to comply with all applicable laws, rules and regulations. In the event that: (a) any applicable

licensing, administrative or government agency, authority or office investigates, questions, or challenges any aspect of the transaction contemplated by this Agreement, or (b) one or more of the parties has reasonable belief that the terms of this Agreement do not comply with the requirements of any such law or regulations, as they may be applicable to this management, then the parties shall, in good faith, renegotiate or reform this Agreement as may be necessary to comply with such requirements.

6. CONFIDENTIALITY. Each party shall, at all times during the term of this Agreement and thereafter, use its best efforts to strictly safeguard the confidentiality of the other party's confidential information including without limitation marketing and business plans, customer information, financial information, methods and algorithms, and trade secrets. All information passed by one party to the other shall be regarded confidential, whether or not marked "Confidential". Neither party shall use the Confidential Information for any purpose other than for carrying out its obligations under this Agreement.

7. INJUNCTIVE RELIEF. Licensor acknowledges and agrees that Licensee will suffer irreparable harm in the event of disclosure of Licensee's Confidential Information and Licensor agrees that, in addition to all other remedies in law and in equity, Licensee shall be entitled to injunctive relief to prevent or limit such disclosure.

#### 8. REPRESENTATIONS AND WARRANTIES. INDEMNIFICATION.

8.1. The parties represent and warrant as follows:

8.1.1 they are not subject to any prohibition, restriction, or restrictive covenant with respect to entering into this Agreement;

8.1.2 they are duly authorized to enter into this Agreement;

8.1.3. the parties respective boards of directors have approved their participation in this Agreement; and

8.1.4. they are currently in good standing in their respective jurisdictions.

Licensor agrees to indemnify and hold harmless the Licensee for any losses or liabilities arising from any breach of the foregoing representations or warranties.

8.2. NO OTHER WARRANTY. YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT USE OF THE APP IS AT YOUR SOLE AND EXCLUSIVE RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE APP AND ANY EXTERNAL SERVICES PERFORMED OR PROVIDED BY THE APP ARE PROVIDED "AS IS" AND "AS AVAILABLE," WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND LICENSOR HEREBY DISCLAIMS ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE APP AND ANY AND ALL EXTERNAL SERVICES, EITHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED

WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, OF SATISFACTORY QUALITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF ACCURACY, OF QUIET ENJOYMENT, AND OF NON-INFRINGEMENT OF THIRD-PARTY RIGHTS. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY LICENSOR OR ITS AUTHORIZED REPRESENTATIVE MUST CREATE A WARRANTY. SHOULD THE APP OR EXTERNAL SERVICES PROVE DEFECTIVE, YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR, OR CORRECTION. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON APPLICABLE STATUTORY RIGHTS OF A CONSUMER, SO THE ABOVE EXCLUSION AND LIMITATIONS MAY NOT APPLY TO YOU.

8.3. LIMITED LIABILITY. TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT MUST LICENSOR BE LIABLE FOR PERSONAL INJURY OR ANY INCIDENTAL, SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION, OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO YOUR USE OF OR INABILITY TO USE THE APP, HOWEVER CAUSED, REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT, OR OTHERWISE) AND EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OF LIABILITY FOR PERSONAL INJURY, OR OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION MAY NOT APPLY TO YOU. In no event must Licensor's total liability to you for all damages (other than as may be required by applicable law in cases involving personal injury) exceed the amount of ten thousand dollars (\$10,000.00). The foregoing limitations will apply even if the above stated remedy fails of its essential purpose.

8.4. Licensor hereto agrees to indemnify and hold harmless the Licensee from any and all liabilities, obligations, losses, claims, damages, actions, suits, proceedings, costs, and expenses including reasonable attorney fees, imposed or incurred by or asserted against each other or their permitted assigns, arising out of, in connection with, or resulting directly or indirectly from the negligence or willful misconduct of the parties, their employees, or agents.

9. EXPENSES. Each party shall bear its own expenses in connection with this Agreement.

10. GOVERNING LAW. JURISDICTION. This Agreement shall be governed by the laws of the State of Ohio, without regard to its conflicts of laws principles. The parties agree to the jurisdiction of state or federal courts in the State of Ohio with respect to any matter relating to this Agreement.

11. RECTIFICATION. In the event that any one or more of the provisions contained herein is held invalid or unenforceable in any respect, the parties shall negotiate in good faith with a view toward substituting therefor a suitable and equitable solution in order to

can-y out the intent and purpose of such invalid provision; provided, however that the validity and enforceability of any such provision in every other respect and of the remaining provision contained herein shall not be in any way impaired thereby it being intended that all of the rights and privileges of the parties shall be enforceable to the fullest extent permitted by law.

12. ENTIRE AGREEMENT WAIVER. This Agreement constitutes the entire understanding and agreement between the parties with respect to its subject matter, and supersedes all prior agreements, representations, and understandings of such parties whether oral or written. This Agreement may only be amended in writing, signed by both parties. Waiver by either party of a breach of any provision of this Agreement shall not be construed as a waiver of any different or subsequent breach of this Agreement.

IN WITNESS WHEREOF, Licensor and Licensee have executed this Agreement by their authorized representatives as of the date first written above.

**ArmorVax LLC**

*Cindy Gaul*

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Cindy Gaul  
Director of Training  
ArmorVax

10/6/2021

\_\_\_\_\_  
Date

Franklin County Health  
Department

\_\_\_\_\_  
Date

