

MEMORANDUM OF UNDERSTANDING
Between
COUNTY OF MONTEREY
CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE
CALIFORNIA DEPARTMENT OF PUBLIC HEALTH
CALIFORNIA BUREAU OF CANNABIS CONTROL

This Memorandum of Understanding (“MOU” or “Agreement”) between the California Department of Food and Agriculture (“CDFA”), the California Department of Public Health (“CDPH”), the California Bureau of Cannabis Control (“Bureau”), and County of Monterey (“County”) (individually referred to herein as a “Party”, and collectively, as the “Parties”) is intended to provide information to the County as necessary for implementation in County staffs’ official duties to develop, implement, and enforce local laws regarding the licensing, taxation, and regulation of commercial cannabis activities by providing data from the California Cannabis Track-and-Trace System (“CCTT-Metric System”) as authorized by the Medicinal and Adult Use Cannabis Regulation and Safety Act (“MAUCRSA”).

I. BACKGROUND.

In 2015 and 2016, the Legislature created the first regulatory structure for commercial medical cannabis activity in California. (See Chapter 689, Statutes of 2015 [AB 266]; Chapter 688, Statutes of 2015 [AB 243]; Chapter 719, Statutes of 2015 [SB 643]; and Chapter 32, Statutes of 2016 [SB 837] known collectively as the Medical Cannabis Regulatory Safety Act). In November 2016, the voters passed Proposition 64 known as the Control, Regulate, and Tax Adult Use of Marijuana Act creating a regulatory structure for commercial adult use (non-medical) cannabis activity in California. To harmonize the Medical Cannabis Regulation and Safety Act and the Control, Regulate and Tax Adult Use of Marijuana Act, the Legislature adopted the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) (Bus. & Prof. Code, § 26000 *et seq.*).

The MAUCRSA established a comprehensive framework “to control and regulate the cultivation, distribution, transport, storage, manufacturing, processing, and sale of” medicinal and adult use cannabis. (Bus. & Prof. Code, § 26000.) The MAUCRSA expressly recognizes local jurisdiction control to allow or prohibit commercial cannabis activity and conditions state licensure on compliance with local ordinances and regulations. (See Bus. & Prof. Code, § 26055(d); § 26060(b)(2); § 26066.) The MAUCRSA also expressly ensures that its provisions not be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances to regulate commercial cannabis activities, including zoning and land use requirements, business license requirements, public health, and other authorization requirements, or to completely prohibit the establishment or operation of one or more types commercial cannabis businesses. (Bus. and Prof. Code, § 26200.)

One essential component of the comprehensive regulatory structure established in MAUCRSA is the CCTT-Metric System, a statewide database which all state-issued provisional and annual cannabis licensees are required to use to record, track, and maintain comprehensive information about cannabis, cannabis-product inventories, movement, and related activities throughout the commercial cannabis supply chain. (Bus. and Prof. Code, § 26067.) The CCTT-Metric System is designed to track cannabis and cannabis product movement through the supply chain to assist with enforcement of state and local laws regarding commercial cannabis activities. The CCTT-Metric System is designed to assist with preventing diversion of cannabis product to other states and inversion of unlicensed product into the licensed

California marketplace. MAUCRSA delegated CDFA as the responsible agency for implementing the CCTT-MetrC system and CDFA contracted with MetrC LLC. to utilize its MetrC software for that purpose.

MAUCRSA authorizes local jurisdictions (cities and counties) to receive information entered in the CCTT-MetrC System as necessary to perform official duties pursuant to the MAUCRSA or their local ordinances. (Bus. and Prof. Code, § 26067(b)(6) and (b)(7).)

II. THE PARTIES.

A. County of Monterey (“County”).

The County of Monterey is a political subdivision of the State of California. The Monterey County Cannabis Program Manager is the point of contact with the state Parties, and the Appropriate Authority for administering the County commercial cannabis permit application process as set forth in Chapter 7.90 of Monterey County Code. CCTT data will support the Appropriate Authority in ensuring compliance at the state and local levels.

B. The California Department of Food and Agriculture (“CDFA”).

CDFA is a Department of the State of California generally responsible for protecting and promoting agriculture in California. The MAUCRSA charged CDFA with licensing and regulating commercial cannabis cultivators, nurseries, and processors in California and to manage the state's track-and-trace system, which tracks the movement of commercial cannabis and cannabis products from cultivation to sale. (Bus. and Prof. Code, §§ 26012, 26067.)

The CDFA enters this MOU pursuant to its authority under the Business and Professions Code § 26012 to create, issue, deny, renew, discipline, suspend, or revoke licenses for commercial cannabis cultivation within the state; and its authority to establish and maintain the state track and trace program for reporting the movement of cannabis and cannabis products throughout the distribution chain pursuant to Chapter 6.5 of Division 10 of the Business and Professions Code.

C. The California Bureau of Cannabis Control (“Bureau”).

The Bureau is an agency within the California Department of Consumer Affairs and is responsible for creating, issuing, denying, renewing, disciplining, suspending, and/or revoking licenses for microbusinesses, transportation, storage unrelated to manufacturing activities, distribution, testing, temporary cannabis events, and sale of cannabis within the State and enters this MOU pursuant to that authority. (Bus. and Prof. Code, § 26012.)

D. The California Department of Public Health (“CDPH”).

The CDPH is a Department of the State of California generally responsible for policies and programs affecting the public's health. The Manufactured Cannabis Safety Branch in CDPH is responsible for creating, issuing, denying, renewing, suspending, revoking, regulating and enforcing licenses for the manufacturing of cannabis products and enters this MOU pursuant to that authority. (Bus. and Prof. Code, § 26012.)

III. PURPOSE.

Commercial cannabis activities present unique regulatory demands. Although track and trace data is not expected to eliminate illegal inversion or diversion of cannabis, it is expected to provide critical auditing tools necessary for local compliance. Specifically, County compliance inspectors will

conduct spot checks of inventory, asking operator staff to locate the physical inventory in Metrc to ensure it has been tagged properly. CCTT data reports will allow inspectors to print a list of what should be in physical inventory to compare against when on a site inspection. County staff whose official duties and responsibilities include Sections 7.90.100 and 7.90.130 of Monterey County Code, which outline operating requirements related to inspections and suspension or revocation of the commercial cannabis permit respectively. County officials may enter commercial cannabis premises from 8:00 a.m. – 8:00 p.m., where they are to receive unimpeded access to any and all data relevant to permitted activities for the purposes of conducting an audit which will determine if any act or omission in contravention of state law or the Monterey County Code has occurred. Providing the County with information from the CCTT-Metrc System is necessary to adequately and efficiently implement the Monterey County Code. The County will not have access to comprehensive Metrc data unless operators agree to provide their individual API key through a separate data platform, and therefore cannot make wholly informed decisions related to compliance without CCTT data. The County currently has a separate track and trace system, but because of local limitations requires Metrc data to ensure there is no gap in information.

In addition, dual licensing can create administrative and cost duplications for both cannabis related businesses as well as state and local governments. To avoid these duplicative costs and unnecessary regulatory burden as directed by MAUCRSA it is necessary to share data from the CCTT-Metrc System with Monterey County.

This MOU is intended to memorialize the understanding of the Parties with respect to providing the County information from the CCTT-Metrc System on behalf of its local government members and ensures that the data is secure and protected from inappropriate or disclosure.

IV. AGREEMENT TO HANDLING OF CCTT-METRC SYSTEM DATA.

A. The Parties shall share state data on a confidential basis, consistent with the California Public Records Act (CPRA), Government Code section 6254.5(e), Business and Professions Code section 26067, and other applicable laws, concerning commercial cannabis activities. Information for the CCTT-Metrc System that is shared with the County is not subject to the Public Records Act and cannot be disclosed.

B. Specifically, CDFA will provide the County information from the CCTT-Metrc system to all state licensee data, from state licensees whose premises is located in Monterey County, as reported to the CCTT-Metrc System in a reasonable and timely manner to be described by subsequent agreement. The method of providing the County state licensee data is not intended and shall not breach existing contractual obligations of the state nor infringe on the legitimate intellectual property interests of the state's track and trace contractor.

C. The Parties agree that all relevant records provided pursuant to the MOU are confidential, privileged, and exempt from public disclosure under the CPRA, Information Practices Act of 1977, and Business and Professions Code section 26067(b), including those records shared between the agencies pursuant to Government Code section 6254.5(e), and shall not be further distributed or disclosed without the originating agency's permission or as required by law. If any such information is inadvertently distributed or disclosed, then all reasonable attempts shall be made to obtain the return of that information. Any disclosure of information shared under this MOU that is not consistent with the MOU shall not waive the confidentiality, privilege, or exemptions otherwise applicable to the information shared.

D. The Parties agree that information shared between the Parties under this MOU shall be prominently labeled confidential and provide a basis for the confidentiality. However, failure to label a record as confidential or to provide the basis for such confidentiality shall not waive any disclosure exemptions that may otherwise apply.

E. The County agrees to maintain a list of individuals who will be permitted to receive records pursuant to this Agreement and to share an updated list with CDFA, CDPH, and the Bureau. Data disclosure agreements must be submitted to CDFA with original ink signatures of all persons that will be receiving and are deemed responsible for maintaining the confidentiality of CCTT-Metrc System data per this MOU. A modified list from County shall be effective as of the date it is transmitted to CDFA, CDPH, and the Bureau. The County shall share its current list with each of the other Parties to this Agreement within three (3) days of request.

F. If any of the Parties receives a CPRA Request or other request for records that have been shared by the other Party, the Party receiving the request shall immediately forward the request to the proper Party for response. The County shall notify the requestor that they do not have any documents responsive to the request and direct them to contact CDFA.

G. The Parties shall not make public use, including use in any enforcement action, of the information provided pursuant to this MOU without prior approval of the other Parties.

H. Any breach by the County of a material term of this Agreement shall be a cause for immediate termination of the Agreement. A material term shall include, but not be limited to, the provisions included in Part IV "Agreement of Handling of CCTT-Metrc System Data" in subsections A through G.

I. The County will indemnify, defend, and save harmless a state agency Party to this Agreement, including its officers, agents, and employees, from any and all third party claims, liabilities, damages, losses, costs (including without limitation reasonable attorneys' fees), and other expenses for any breach of the Agreement.

The defense and payment obligations will be the following:

(1) The state agency will notify the County of any such claim in writing and tender the defense thereof within a reasonable time; and

(2) The County will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); where a settlement would impose liability on a state agency, affect principles of California government or public law, or impact the authority of the State, the state agency will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and the state agency will reasonably cooperate in the defense and in any related settlement negotiations.

J. This Agreement remains in effect until terminated by one or all of the Parties. A Party may terminate this Agreement by providing five (5) days advanced, written notice to the other

Parties by e-mail, at which time information from the CCTT-Metric System by the County will no longer be shared. This Agreement, along with Attachment A specifying the transfer of the confidential information to the County, contains all the terms and conditions agreed upon by the Parties. This Agreement, including any attachments, may only be modified with the agreement of all the Parties. This Agreement becomes effective when the Parties listed below sign and the fully executed agreement has been delivered by email.

IN WITNESS WHEREOF and executed as of the date first written, the Parties to this Agreement do hereby agree and consent to all terms and conditions provided herein. The persons signed below are authorized to sign on behalf of their respective agencies.

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE:

By: RICHARD PARROTT

Title: DIRECTOR, CALCANNABIS
CULTIVATION LICENSING

Dated: _____

CALIFORNIA DEPARTMENT OF PUBLIC HEALTH:

By: MIREN KLEIN

Title: ASSISTANT DEPUTY DIRECTOR
CENTER FOR ENVIRONMENTAL HEALTH
CALIFORNIA DEPARTMENT OF PUBLIC
HEALTH

Dated: _____

CALIFORNIA BUREAU OF CANNABIS CONTROL:

By: LORI AJAX

Title: CHIEF, BUREAU OF CANNABIS
CONTROL

Dated: _____

County of Monterey:

By: Joann Iwamoto

Title: CANNABIS PROGRAM MANAGER

Dated: _____

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Attachment A

TERMS OF CONFIDENTIAL DATA TRANSFER

Between
COUNTY OF MONTEREY
CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE
CALIFORNIA DEPARTMENT OF PUBLIC HEALTH
CALIFORNIA BUREAU OF CANNABIS CONTROL

DESCRIPTION OF DATA

- The California Department of Food and Agriculture (CDFA) agrees to provide the County of Monterey reports that include the following information:
 - Licensee Report: This report provides a point-in-time look at the licensees currently operating within the requesting jurisdiction.
 - Licensee Sales (Aggregated): This report provides aggregated retail sales, by licensee, for a specified reporting period. It does not include sales taxes collected.
 - Facility Metrics Report (Licensee): This report provides a summary of facility data captured in Metrc, by licensee, for the requesting jurisdiction.
 - Harvest Report (Cultivators): This report provides harvest information for cultivators within the requesting jurisdiction during the requested reporting period.
 - Monthly Sales Report (Retail & Microbusiness): This report provides aggregated monthly sales data by facility within the specified jurisdiction. The sales data is reported by the licensee to Metrc via point-of-sale interface or manual entry.
 - Plants Destroyed Report: This report the number of plants destroyed by licensee within the jurisdiction during the specified reporting period.
 - Plants Trend Report: This report provides plant inventory data by licensee within the specified jurisdiction
 - Plants Inventory Report: This report provides high level counts of plants by growth phase in a licensee's inventory within the specified jurisdiction.
- Timing and Method of Transfer: CDFA agrees to provide the information identified above on a monthly basis via electronic mail to the Primary Point of Contact identified by County of Monterey, the list of individuals authorized to receive the confidential data. This information will be provided in a csv document unless otherwise agreed to by the Parties.