

**NON-EMERGENCY HUMAN SERVICE TRANSPORTATION
BROKER SERVICES CONTRACT**

**APPENDIX 7:
TRANSPORTATION PROVIDER PERFORMANCE STANDARDS
ENHANCED WHEELCHAIR VAN**

DRAFT

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SECTION 1. INTRODUCTION

The Commonwealth of Massachusetts has established a statewide Human Service Transportation (HST) coordination initiative, which utilizes a Broker system of managing transportation services for eligible Consumers from various programs and state agencies (HST Brokerage System). Brokers arrange transportation by subcontracting with qualified Transportation Providers. By participating in the HST Brokerage System, the Transportation Provider is under contractual agreement to provide safe, professional and on-time transportation service, which is provided with dignity and respect and in the least intrusive way possible for eligible HST Consumers. It is the Transportation Provider's responsibility to be aware of, and to comply with all terms, conditions and requirements of its contractual agreements with the HST Broker. The contractual agreement between the HST Broker and the Transportation Provider is referred to herein as the **"Transportation Provider Subcontract."**

This "Transportation Provider Performance Standards" document specifies the Commonwealth of Massachusetts' minimum performance standards and requirements for all transportation services delivered under a Transportation Provider Subcontract with an HST Broker. This document is subject to periodic revision, as needed, to further enhance the HST Transportation Program and/or to comply with federal, state or local regulations or standards.

Participating Massachusetts Agencies may also establish additional Transportation Provider performance standards that are unique to each Agency due to the specific Consumers served and/or program requirements.

SECTION 2. GENERAL

Section 2.1 Definitions

Critical Incident: Any Incident that involves an emergency or urgent event, including vehicle crash, Consumer medical emergency, suspected Consumer abuse, Consumer behavior, fall and/or injury, possible abandoned child or Consumer unaccounted for, EMT or police involvement or any loss of mobile device containing protected Consumer information.

Incident: Any occurrence that impacts the provision of normal transportation services and thereby interferes with the strict performance of the Transportation Provider Subcontract. Examples include, but are not limited to vehicle accident, Consumer fall and/or injury, disruptive Consumer behavior, health, hygiene or medical event for person on board, seat belt or wheelchair securement issue, late pickup or vehicle no-show.

Wheelchair Van Transportation: Transportation provided by a motor vehicle that is specifically equipped to carry one or more persons who use a wheelchair or other mobility devices and that meets the vehicle specifications in **Section 4**.

Section 2.2 General Business Standards

- A. The Transportation Provider shall, unless otherwise exempted by law, indemnify and hold harmless the Commonwealth of Massachusetts, including, without limitation, EOHHS, the HST Office, any Agency, its agents, officers and employees against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement or other damages that the Commonwealth may sustain, which arise out of or in connection with the Transportation Provider's performance under the Transportation Provider Subcontract, including but not limited to the negligence, reckless or intentional conduct of the Transportation Provider, its agents, officers, employees or subcontractors. This provision shall survive the termination of the Transportation Provider Subcontract.
- B. The Transportation Provider shall at no time be considered an agent or representative of a state Agency or the Commonwealth, and it shall not hold itself out as such.
- C. The Transportation Provider shall not have any claim against or seek payment from the Commonwealth of Massachusetts, including, without limitation, EOHHS, the HST Office, any Agency, its agents, officers and employees, for any service rendered pursuant to the Transportation Provider Subcontract with Broker, or the Broker Contract between the Broker and EOHHS. Instead, the Transportation Provider shall look solely to the Broker for payment with respect to services rendered. Furthermore, the Transportation Provider shall not maintain any action at law or in equity against the Commonwealth of Massachusetts, including, without limitation, EOHHS, the HST Office, any Agency, its agents, officers and employees, to collect any sums that are owed by the Broker under the Transportation Provider Subcontract for any reason, even in the event that the Broker fails to pay for or becomes insolvent or otherwise breaches the terms and conditions of that agreement. This provision shall survive the termination of the Transportation Provider Subcontract with the Broker.
- D. The Transportation Provider is a subcontractor to the Broker and is subject to the provisions of the Commonwealth Terms and Conditions and Standard Contract terms. In addition to any termination provisions established by the Broker under its Transportation Provider Subcontract with the Transportation Provider, the HST Office retains the right to require the Broker to terminate the Transportation Provider Subcontract for cause if the Transportation Provider breaches any material term or condition or fails to satisfactorily meet the general performance standards specified in this Attachment. Transportation Provider subcontracts are not transferable, unless prior approval of the HST Office is granted.
- E. The Transportation Provider must obtain and maintain in current status any and all business licenses, permits, certificates and registrations required by Federal, State or local laws, rules and regulations and must provide copies to the Broker upon request.
- F. Disclosures on Ownership and Control; Business Transactions; Criminal Convictions
 - 1. The Transportation Provider must:
 - a. Make disclosures to the Broker required of a provider under 42 CFR 455.104 on ownership and control at any of the following times, or upon Broker or EOHHS request: (i) upon submission of an application to become a Transportation Provider; (ii) upon executing a Transportation Provider Subcontract with the Broker to be a Transportation Provider; (iii) upon request during

requalification; and (iv) within 35 days after any change in ownership of the Transportation Provider;

- b. Furnish full and complete information to the Secretary of the United States Department of Health and Human Services, the Broker or EOHHS, as applicable, required of a provider under 42 CFR 455.105 related to business transactions within 35 days of the date on a request for such information by the Secretary of the United States Department of Health and Human Services, the Broker or EOHHS;
 - c. Make disclosures to the Broker required of a provider under 42 CFR 455.106 on persons convicted of crimes before entering into or renewing a Transportation Provider Subcontract with the Broker to be a Transportation Provider, or at any time upon written request; and
 - d. Make disclosures to the Broker required of a provider under 42 CFR 1002.3(a) on relationships to excluded, penalized or convicted persons upon entering into or renewing a Transportation Provider Subcontract with the Broker to be a Transportation Provider, or at any time upon written request.
2. Unless otherwise instructed, for purposes of making the disclosures set forth in **Section 2.2.F.1**, above, the Transportation Provider shall use the form required by the Broker for such purpose. The Transportation Provider or applicant must fully and accurately complete the form (or such portions as directed) and sign, date and return it to the Broker within the required time period. Notwithstanding anything to the contrary on the form, the Transportation Provider must return the completed form to the Broker, and completion of such form (or portions thereof as directed) shall be required, at the times set forth in **Section 2.2.F.1**, above.
 3. The Broker reserves the right to terminate the Broker's Transportation Provider Subcontract with the Transportation Provider, require the removal of Transportation Provider personnel, or take other action if the Transportation Provider fails to timely provide such information or due to the information contained in the Transportation Provider's disclosures.
- G. The Transportation Provider may not offer or make any payment or other form of remuneration, including any kickback, rebate, cash, gifts, or service in kind to the broker in order to influence referrals or subcontracting for non-emergency medical transportation provided to a Member.

SECTION 3. TRANSPORTATION OPERATIONS

Section 3.1 Administration

The Transportation Provider shall:

- A. Ensure that vehicles used for HST Transportation are owned, leased, or otherwise controlled by the Transportation Provider by means of a written agreement.
- B. Ensure that all vehicles (both primary and backup) used for HST Transportation meet the specifications as described herein in **Section 4**, and have a sufficient number available to transport Consumers during the time established by the Broker or when an emergency arises. The Provider shall furnish to the Broker a list of all vehicles that will be used under the provisions of the Transportation Provider

Subcontract and update that list whenever any changes are made. This list shall include the make, model year, vehicle identification number (VIN), license number and vehicle type for each vehicle to be used to transport HST Consumers.

- C. Remove from service any vehicle that is unsatisfactory or questionable for safety or roadworthiness (e.g., two-way radio inoperative, inspection shows problems, check engine dashboard indicator light on, due for maintenance, wheel and tire condition (*according to the standards in 540 CMR*), etc., and comply with any instruction from the Broker to immediately remove a vehicle from service when deemed unsafe or unsuitable by the Broker
- D. Ensure that all personnel meet the applicable qualification requirements. The Transportation Provider shall designate at least one employee to obtain CORI (Criminal Offender Record Information) certification, who is responsible for requesting CORIs and ensuring employment decisions are consistent with EOHHS CORI requirements specified in 101 CMR 15.00. The Provider must have a CORI policy that meets the Department of Criminal Justice Information Services' (DCJIS) requirements. The Provider's CORI procedures are subject to audit. The Provider must furnish to the Broker a list of all drivers, supervisors, dispatchers and other employees who provide any services associated with the provisions of the Transportation Provider Subcontract with the Broker, and update that list whenever any changes are made.
- E. Upon request, provide the Broker, HST Office or Agency with the credentials of any Transportation Provider employee. The Broker or Agency has the right to deny the approval of any driver, or to require the Provider to replace any driver in the performance of HST services, for any reason.
- F. Be responsible for all recruiting and hiring of backup drivers. Such responsibility shall not be delegated to the drivers. The Transportation Provider shall ensure that all back up, replacement, and substitute personnel (drivers, dispatchers, supervisors, etc.) meet all of the requirements as set forth in this document and in any attachments. The Transportation Provider shall ensure that transport personnel are licensed, qualified, competent and courteous.
- G. Ensure that a training officer or other supervisor attends Broker sponsored training sessions and provides such training to drivers.
- H. Submit to the Broker for approval any policies relating to personnel, procedures or equipment that will be used in the provision of services under the Transportation Provider Subcontract with the Broker.
- I. Demonstrate continual compliance with HST Office, EOHHS, Agency-specific and Broker standards for transportation service, trip verification, personnel qualifications and performance, field inspections and audit, reporting, record keeping, billing and complaint response.
- J. The Transportation Provider is responsible for requesting a Sex Offender Registration Information (SORI) check and ensuring employment decisions are consistent with EOHHS SORI requirements specified in 606 CMR 14.00. If the results of the SORI check indicate a positive result for any driver or monitor, they will be prohibited from providing transportation to HST Consumers. The Transportation Provider must have a SORI policy that meets the Department of Criminal Justice Information Services' (DCJIS) requirements. The Transportation Provider's SORI procedures are subject to audit. The Transportation Provider must furnish to the Broker a list of all drivers, Monitors (where applicable), supervisors, dispatchers and other employees who provide any services associated with the provisions

of the Transportation Provider Subcontract with the Broker, and update that list whenever any changes are made.

Section 3.2 Transportation Service Standards

The Transportation Provider shall:

- A. Provide Enhanced Wheelchair service, unless another level is authorized by the Agency, in a professional, safe and courteous manner. The driver shall assist Consumers with entry or exit of vehicle.
- B. Ensure that Consumers are not transported to any destination, for any scheduled session, or released to any person without prior authorization from the Broker.
 - 1. A Consumer may be transported without prior authorization from the Broker in certain cases. For trips organized for certain categories of MassHealth members as outlined in 130 CMR 407, the Broker shall be required to implement the request in a shorter time period without prior approval from the Transportation Authorization Unit. Member categories include members in LTC institutions, members in the community that require door through door assistance, hospitalization discharges, members that require non-emergency Ambulance service, or other categories outlined in 130 CMR 407. An Authorized Provider may coordinate services directly with a transportation provider, provided that a valid Transportation Request form has been submitted and is pending authorization. Or, an Authorized Provider may request that the Broker schedule transportation services for the consumer.

C. Ensure that upon arrival, the driver must confirm their presence is acknowledged:

- 1. For Consumers being picked up from a residence, the driver may ring the doorbell, knock on the door, briefly sound the horn, or attempt to contact the consumer by phone. If the consumer is then not present for pick up, the driver shall notify the Provider's dispatcher and await instructions from the dispatcher before departing from the pick-up location. The driver must not arrive more than 15 minutes before the scheduled pick-up time. Unless otherwise directed by the dispatcher, the driver shall wait until at least ten (10) minutes after the scheduled pick-up time before departing without the Consumer, and must make all reasonable attempts to establish contact and assistance before leaving without the Consumer.
- 2. For Consumers being picked up from a facility, the driver may contact the facility by phone or entering the facility. If the Consumer is not ready to be transported, the facility and provider can determine whether to wait or reschedule the trip. If the trip is to be rescheduled, the facility will contact the broker to reschedule transportation.
- 3. For return trips from facilities, the driver may contact the facility by phone or entering the facility. If the Consumer is not ready to be transported, the facility and provider can determine whether waiting for the Consumer to complete treatment or rescheduling the return trip would be more efficient. "

- D. Ensure that a Consumer is never stranded. A Consumer is stranded if he or she has been transported to their scheduled service and is left without a return trip (unless alternate arrangements have been timely made and communicated among the Consumer, Destination Facility, parent/guardian and/or residential facility staff, as applicable). If the Provider is assigned a trip by the Broker and accepts it, then the Provider is obligated to complete the assignment, unless properly cancelled prior to initiation due to inclement weather.
- E. Allow only persons authorized by the Broker to be transported in vehicles with Agency Consumers. The following may not be transported: children of employees or other children in their care and pets other than Consumers' service animals (e.g., guide dogs). Drivers must be aware of and comply with the Americans with Disabilities Act (ADA), and all other applicable federal and state laws and regulations pertaining to the requirement to transport and accommodate service animals.
- F. Ensure the number of persons in the vehicle, including the driver, shall not exceed the vehicle manufacturer's approved seating capacity.
- G. Report Consumer no-shows to the Broker and the Facility staff, where applicable, when the Consumer doesn't call the Transportation Provider or Broker to cancel a trip at least one (1) hour before the scheduled pick-up time. The Broker or Agency may conduct a service review for any Consumer with repeated no-shows. The Transportation Provider cannot initiate or demand a suspension of services to a Consumer.
- H. Ensure that services are not suspended for any Consumer without prior authorization from the Broker.
- I. Place in service all back up vehicles within thirty (30) minutes of such a request. If the Transportation Provider fails to comply with this provision, alternate quality service shall be authorized by the Broker at the Transportation Provider's expense.
- J. Exercise due diligence in actively verifying the identity of every Consumer transported prior to the Consumer boarding the vehicle or embarking on the trip. Identity should be verified by asking the Consumer to state their name, or in the case of Consumers traveling with escorts, children, or parents, asking that the name of the Consumer for whom the trip is scheduled be given. If the name given is not the name of the Consumer for whom the trip is scheduled, transportation should not be provided.

Section 3.3 Emergency, Accident and Safety Response Reporting

The Transportation Provider shall:

- A. Ensure that drivers are aware of the condition of any Consumer while in transit and if an emergency arises (including, but not limited to bleeding, breathing difficulty, unconsciousness, suicide threat, etc.) adhere to the following procedures:
 - 1. Driver must notify the dispatcher/supervisor immediately and if an emergency Facility (hospital, Police Dept., Fire Dept., etc.) that is known to be staffed with emergency response personnel is within one minute's travel time of the driver's location then proceed immediately to that emergency facility.

2. If the driver is unsure of the distance, location or appropriate staffing of the emergency Facility or circumstances prohibit transport (i.e., disabled vehicle), or the nature of the emergency (i.e., life threatening) requires immediate first aid, then the driver should notify the dispatcher and give his/her exact location and request emergency assistance (EMT, ambulance, state/local police, Fire Department, etc.).
 3. If the emergency is the result of a motor vehicle accident involving personal injury and/or property damage, the driver must remain at the scene and request emergency assistance. The driver should then administer first aid as needed and when emergency personnel arrive, explain to them in detail the Incident and the care that was provided;
 4. Throughout the emergency, all possible efforts should be made to reassure and keep calm all Consumers in the vehicle.
 5. If requested, the dispatcher/supervisor must immediately contact emergency personnel that are nearest to the driver's location and dispatch a back-up vehicle to transport any Consumers not involved in the emergency to their destinations.
 6. The dispatcher/supervisor must notify the Facility, parents or residential staff and the Broker immediately by phone and provide the names of the Consumers involved and the nature of the emergency. Extreme care should be exercised so as not to alarm the caregivers of Consumers who may be in the vehicle but not in danger.
 7. A formal written report must be submitted to the Broker within 24 hours.
- B.** Report immediately by phone to the Broker and the Facility, if applicable, each and every Critical Incident, as defined. The Transportation Provider shall establish live verbal contact with the Broker and the Facility, if applicable. Leaving a voicemail message does not satisfy this requirement.
1. In the event of a motor vehicle accident with Consumers on board, seek medical help. If there are no obvious injuries, consult with family, day or residential staff members to determine that need. A formal written report shall be submitted to the Broker within twenty-four (24) hours; and
 2. For any of the following Incidents involving a Consumer, whether injury is apparent or not, ensure the Driver reports to the Facility and the dispatcher; the dispatcher must in turn notify the Broker immediately by phone:
 - a. Falling while getting into or out of the vehicle;
 - b. Falling while in the vehicle;
 - c. Any assault, including biting Incidents; or
 - d. Emergency braking of the vehicle or any other Incident that results in tipping over of a wheelchair.
- C.** Comply with M.G.L. chapter 119, §51A, M.G.L. chapter 19A, §15 and M.G.L. chapter 19C regarding mandated reporting of suspected abuse or neglect, as follows:
1. Transportation Provider employees who, in their professional capacity, have reasonable cause to believe that abuse of a disabled person, elder person, or abuse or neglect of a child has occurred

shall make an oral report to their supervisor immediately and in writing within twenty-four (24) hours after the oral report;

2. The supervisor must notify the Referring Agency and Broker immediately by phone and submit a copy of the report within twenty-four (24) hours;
 3. Further, the Provider shall ensure the appropriate state investigative agency is notified:
 - a. If a disabled person between the ages of 18 to 59 is involved, then notify the Disabled Persons Protection Commission (DPPC) at **1-800-426-9009**;
 - b. If abuse of an elder person (60 years of age and older) is involved, contact the Elder Abuse Hotline at **1-800-922-2275**;
 - c. If a child up to 18 years of age is involved, notify the Department of Children and Families (DCF) – Child at Risk Hotline at: **1-800-792-5200**; or
 - d. If a Consumer of any age residing in a long-term care facility is involved, notify the Department of Public Health at **1-800-462-5540**.
 4. Cooperate with the DPPC, DCF and the Agency in the investigation and disposition of any complaint or claim alleging individual abuse by a Transportation Provider employee.
- D.** Investigate and correct immediately any negative safety or Incident reports issued by the Broker, HST Office, Facility staff or the Provider itself and contact the Broker by telephone within one (1) business day of receipt of the form. Verify the investigation, correction and any other action taken in writing to the Broker within three (3) days of receipt of the report.

Section 3.4 Insurance Requirements

The Transportation Provider shall:

- A.** Maintain Worker's Compensation or equivalent insurance on all drivers who work under the provisions of the Transportation Provider Subcontract with the Broker and furnish a certificate of insurance to the Broker evidencing compliance with this provision prior to transporting any Agency Consumers.
- B.** Maintain liability insurance on all vehicles used under the Transportation Provider Subcontract with Broker at a level that meets or exceeds the amount of compulsory motor vehicle liability insurance level required: Liability: \$250,000/person and \$500,000/ occurrence; Property damage: \$50,000. The Broker shall be named as an "additional insured" on the policy and the Provider shall submit a certificate of such insurance to the Broker before transporting any Agency Consumers.

Section 3.5 Communications/Dispatch

The Transportation Provider shall:

- A.** Establish and maintain communications capability from 7:00 AM to 6:00 PM Monday through Friday plus any additional time a Provider vehicle is still in service, except for all holidays on which the state agencies are closed, in order to receive and respond to telephone requests from the Broker, Agency and/or Consumers regarding HST Services to Consumers.

- B. Provide twenty-four (24) hour answering system or service to record messages and to inform Consumers of transportation options available outside of regular service hours.
- C. Ensure there is no contact with any Consumer or their caregiver/guardian for any reason other than to exchange information that is necessary in the provision of transportation services. Any other contact (i.e., investigation of service complaints, surveys, etc.) must have prior written approval from the Broker and Facility, if applicable.

SECTION 4. VEHICLE AND EQUIPMENT REQUIREMENTS

Section 4.1 Minimum Standards for Vehicles

- A. The Transportation Provider shall ensure that vehicles (both primary and backup) conform to all applicable state and federal statutes, regulations or standards, including, but not limited to the rules and regulations of the Agencies, the Broker, and the Registry of Motor Vehicles.
- B. All vehicles used under the terms of the Transportation Provider Subcontract with Broker must:
 - 1. Be garaged and registered in the Commonwealth of Massachusetts or states immediately adjacent to the Commonwealth of Massachusetts;
 - 2. Have passed inspection by the Registry of Motor Vehicles prior to being used under the Transportation Provider Subcontract with the Broker with written verification kept on file at the Transportation Provider's offices;
 - 3. Be clearly identified with the corporate or business name affixed to the vehicle in a permanent or semi-permanent manner in no less than two (2) inch high letters. One location of such name shall be on the right side of the passenger's door, and the other shall be located on the rear of the vehicle, as per Registry of Motor Vehicles regulations. No advertising or other labeling is permitted while Consumers are in the vehicle unless specifically authorized by the Broker;
 - 4. Be maintained in good working order (including but not limited to brakes, tires, heater, windshield, wipers, defroster, speedometer, etc.) with an established preventive maintenance program and all necessary gasoline, oil, grease, and repairs furnished through the entire period of the Transportation Provider Subcontract with Broker; and
 - 5. Be cleaned regularly and have exteriors which are free of grime, cracks, breaks, dents, and damaged paint that noticeably detracts from the overall appearance of the vehicle, in addition, passenger compartments must be clean and free from torn upholstery or floor coverings, damaged or broken seats, and protruding sharp edges.
- C. Vehicles must be equipped with:
 - 1. A seat with installed seat belts for every vehicle occupant (including driver), which shall be in proper working order and accessible to the occupant. The Transportation Provider shall provide a seat belt cutter within easy reach of the driver, and seat belt extensions and seat belt covers, when needed;
 - 2. A cellular phone or FM two-way radio licensed under the direction of the Federal Communications Commission. Mobile units shall be able to contact the base station at all times while Consumers

are on board. The base station shall be manned while any vehicle is in transit and vehicles in transit and the base station must be able to communicate at all times;

3. A working air conditioning system of sufficient capacity to cool the entire vehicle (auxiliary air may be necessary);
 4. Snow tires or their equivalent during the period November 15 through April 15 of each year;
 5. Spare tire and jack (unless covered by vendor maintenance policy);
 6. Portable step (optional for lift equipped vehicles) – Stools should be made of high-strength material, preferably metal and have rubber tips on the bottom to prevent slipping on wet or icy pavement. The design must be satisfactory to both the Transportation Provider and the Agency;
 7. Chock blocks (except with respect to sedans and minivans), multifunctional fire extinguisher (universal class C, UL rated), flags, reflectors, and flashlight
 8. An up-to-date (non-expired) first aid kit that meets the Red Cross family first aid kit standards plus a biohazard bag;
 9. GPS technology that tracks, monitors, and reports the vehicle's location and shares this information with the Broker and EOHHS in real-time or near real-time. The GPS technology shall accurately report on the vehicle's actual arrival time at pick-up and drop-off locations; and
 10. An identification card in plain view of the Consumer that clearly displays the Transportation Provider's name, the Broker's name, the Broker's phone number to file a complaint, and information about how to file a complaint with the HST Office.
- D. Age of Vehicle – During the term of the Transportation Provider Subcontract with Broker, vehicles may not have a date of manufacture that is equal to or more than Fifteen (15) years for all demand-response vehicles.
- E. A Transportation Provider may submit to the Broker a formal written request for a vehicle age waiver along with proof of a Massachusetts state inspection sticker no older than 60 days from the date of the request. The Broker may grant waivers in six month increments for up to a maximum of two additional years of vehicle age, beyond the vehicle age limit, upon physical inspection and written approval by the Broker for each such request. Vehicles must pass a new Massachusetts state inspection for each six-month waiver granted.
- F. For those vehicles undergoing conversion before initial use, the vehicle age may be calculated beginning from the date of registration after conversion (rather than date of manufacture), with documentation of the initial vehicle registration date kept readily available for inspection by the Broker.
- G. Regardless of vehicle age, the Transportation Provider must comply with any instruction from the Broker to immediately remove a vehicle from services when deemed unsafe or unsuitable by the Broker.

Section 4.2 Wheelchair Van Requirements and Securement Standards

- A. Any vehicle used for Wheelchair Van Transportation must be equipped with the following equipment specifications:

1. A hydraulic lift with manual backup operational capacity and/or retractable ramp;
 2. A raised roof at least 12 inches high;
 3. Raised side doors at least 54 inches high; and
 4. Four securement straps, a lap belt and a shoulder belt assembly for each wheelchair. If the vehicle is equipped with a "locking bar" system, then only two securement straps are needed for that wheelchair.
- B. Wheelchair securement requirements are as follows:
1. All wheelchairs must face forward in van;
 2. All wheelchairs must be secured in the front and rear. If using a "locking bar" system, the front of the wheelchair must still be secured with straps;
 3. All Consumers must be secured into their wheelchairs using the lap/shoulder belt assembly that works in conjunction with the securement system. The lap/shoulder belt assembly must be used in addition to any other wheelchair securement devices;
 4. The use of table/tray attachments must not interfere with proper securement of Consumers by lap/shoulder belt assemblies. They must be removed if they prevent the Consumer from being properly secured; and
- C. Do not use the shoulder belt if it extends across the Consumer's neck or face, or if there is a medical condition that interferes with its proper use. (i.e., feeding or breathing tubes).
- D. Drivers operating wheelchair van vehicles for HST work under the Transportation Provider Subcontract with Broker must receive hands-on training in order to ensure that they understand and are able to properly follow the procedures for proper securement of wheelchairs in vehicles prior to transportation.
- E. Drivers are expected to comply with all policies and procedures outlined in this document. Employees who fail to perform to their duties in accordance with these policies and procedures will be subject to progressive disciplinary action as deemed necessary.
- F. **ENHANCED WHEELCHAIR VAN** - Each and every patient who is being transported to a physician's office, hospital or clinic for a medical appointment must be transported in a wheelchair at all times, regardless of his/her physical condition.

SECTION 5. PERSONNEL REQUIREMENTS

Section 5.1 Driver Qualifications

- A. Drivers must have a valid Massachusetts Driver's License (or valid license from a contiguous state) appropriate to the type of vehicle they will be operating and at least 1 year of driving experience, including experience driving multi-passenger vehicles.
- B. Ensure drivers do not use drugs or alcohol at any time when it might affect a safety sensitive duty (including, but not limited to, within the 4 hours preceding driving), and if taking medications, must still be able to perform his/her duties in a safe manner. Any driver taking medications that may hinder performance must report such use to his/her supervisor, and not transport Agency Consumers
- C. Drivers must be at least nineteen (19) years of age and have completed all required training specified in Section 5.2 prior to HST work.
- D. Drivers must provide references, have effective oral communication skills in English sufficient to communicate effectively with Consumers and facilities' staff and to perform their other job duties, and undergo a Criminal Offender Record Information (CORI) check, with results verified, prior to any contact with Agency Consumers. The references and CORI results must remain on file at the Transportation Provider's place of business and the CORI must be conducted annually thereafter. The Transportation Provider must follow the DCJIS requirements for CORI request procedures and hire in accordance with 101 CMR 15.00. Prior to a driver providing services to HST consumers, the Transportation Provider must, as directed by the Broker, 1) receive approval from the Broker or 2) provide an attestation to the Broker that the driver is properly credentialed.
- E. Drivers must be physically able to assist Consumers entering and exiting vehicles.
- F. Transportation Providers must obtain a driving history report for each of its drivers and driver applicants from all appropriate state agency(ies) on any moving violations. The report(s) must be obtained and maintained on file at the transportation provider's place of business prior to any contact by the driver with Agency Consumers. The Transportation Provider must secure a driving history report from every state in which the driver applicant resided or was a licensed motor vehicle operator during the past 7 years. The Transportation Provider must exercise judgment in determining the appropriateness of any driver whose report(s) indicates any violation. The driving history report(s) must be updated and reviewed annually, and at a minimum, should not reflect within the previous 7 years any of the violations specified below:
 - 1. Driving under the influence of alcohol or drugs/driving while intoxicated;
 - 2. Reckless driving/driving to endanger;
 - 3. Leaving the scene of an accident;
 - 4. Driving without a license and/or insurance;
 - 5. Driving with a suspended license; and
 - 6. Any record with multiple or repeated violations (other than parking).

7. At a minimum, if any of the above violations are found within the previous 7 years, that driver or driver applicant should be prohibited from contact with HST Consumers.
- G. For drivers not barred from providing transportation to HST Consumers, the Transportation Provider must have a process to disclose to the Broker (and through it MassHealth) any negative driving history, including any traffic violations.
- H. Transportation Providers must enroll in the Massachusetts RMV Driver Verification System (DVS) starting July 1, 2022. The DVS program gives the Transportation Provider the ability to track license statuses of employees/drivers and receive email notification from the RMV if there is a change in their license status at any time while they are enrolled in DVS. The Provider is required to provide view access to its Broker and HST Staff so they will be notified if a license status changes. The Transportation Provider will be notified via email and can view the driver(s) that has had a status change. DVS also allows the Transportation Provider to obtain driving records for any driver enrolled in the DVS program. There is no fee to participate in the DVS program and receive license status notification. If the Transportation Provider chooses to obtain a public driving record, there is a fee. The Transportation Provider must take appropriate action when it receives notice of a license status change, including determining whether the driver continues to meet the Driver Qualifications set forth in this **Section 5.1**.
- I. All drivers who work under the provisions of the Transportation Provider Subcontract with an HST Broker shall adhere to the following provisions regarding drug/alcohol testing. All drug and alcohol testing must be conducted by an independent (non-affiliated/off-site) laboratory certified under the National Laboratory Certification Program (NLCP). Transportation Providers are not allowed to collect testing samples or conduct any testing, whether at the Transportation Provider's facilities or otherwise. Drug testing must be conducted for marijuana, cocaine; opioids (codeine, heroin, morphine, oxycodone, oxymorphone, hydrocodone, hydromorphone), amphetamines (amphetamine, methamphetamine, MDMA, MDA) and phencyclidines (PCP), and the results must be verified as "negative". The Transportation Provider shall submit a copy of the results to the Broker.
1. Pre-contact – Prior to being assigned to any work directly or indirectly involving Agency Consumers, under a drug test as described above.
 2. Reasonable suspicion - Any driver who is suspected to be under the influence of alcohol or drugs must be removed immediately from any contact with Agency Consumers and the removal must remain in effect pending the results of a drug/alcohol test. The alcohol test must be conducted within 8 hours of the Incident and the drug test within 32 hours. Positive test results or failure to administer the test within the prescribed time limits will result in the permanent removal of the individuals from any Agency contract work.
 3. Post-accident - Any driver involved in an accident with Agency Consumers on board the vehicle must be removed immediately from any contact with Agency Consumers, and the removal must remain in effect pending the results of a drug/alcohol test. The alcohol test must be conducted within 8 hours of the Incident and the drug test within 32 hours. Positive test results or failure to administer the test within the prescribed time limits will result in the permanent removal of the individuals from any Agency contract work. For this provision, an accident includes, but is not limited to, an occurrence associated with the operation of a vehicle, if as a result:

- a. An individual dies; or
 - b. An individual suffers bodily injury and immediately receives medical treatment at or away from the scene of the accident; or
 - c. One or more vehicle(s) involved incurs disabling damage and such vehicle or vehicles are transported away from the scene by a tow truck or other vehicle; or
 - d. There has been \$1000 or more of property damage.
- J. The Transportation Provider is responsible for requesting SORIs and ensuring employment decisions are consistent with EOHHS SORI requirements specified in 606 CMR 14.00. The SORI check results must remain on file at the Transportation Provider's place of business and the SORI check must be conducted annually thereafter. If the results of the SORI check indicate a positive result for any driver or monitor, they will be prohibited from providing transportation to HST Consumers.

Section 5.2 Driver Training

The Transportation Provider shall:

- A. Ensure that all drivers have successfully completed the applicable in-service training program prior to their transporting any HST Consumers. The Broker reserves the right to request documentation of trainings conducted. The mandatory training shall include at a minimum the following and must be conducted annually thereafter.
 - 1. Driver rules and regulations; Defensive driving & reacting to skids, and Vehicle stalling & brake failure
 - 2. Proper use of vehicle safety equipment; content and use of all first aid kit items; Blood borne & Airborne Pathogens training, use of two-way radios, if applicable, and emergency vehicle evacuation procedures;
 - 3. Accident procedures, passenger safety in the event of MVA, Incident reporting, scene safety;
 - 4. First Aid, reaction to seizures and universal precautions;
 - 5. Familiarization with the HST and Agency standards, specifications and procedures, including mandated reporting of suspected abuse or neglect and suspected Medicaid member or provider fraud and abuse, driver and monitor performance standards, consumer pickup protocols, and data privacy and security rules and requirements, including compliance with the HIPAA Rules and all other applicable laws, regulations, policies, procedures and standards applicable to Transportation Provider
 - 6. Human rights and sensitivity to Consumer needs, including disability awareness, passenger assistance and accommodations for service animals (guide dogs) in vehicles
 - 7. Wheelchair lift & proper wheelchair securement, Loads Lifts & Carries, Weather related concerns

8. Customer Service, understanding passenger needs, door to door, door through door, passenger comfort, following protocols, behavior/communication;
 9. Sexual Harrassment Training. (All vendors must be in compliance by 9/30/23).
- B. Ensure that staff attend Broker sponsored, coordinated, or arranged meetings as determined to be necessary by the Broker.
- C. Ensure that drivers have a good basic knowledge of the service area and are provided with detailed maps of the service area. Drivers and dispatchers must be aware of the locations and telephone numbers of emergency facilities (police, fire, hospital, etc.) in the service area.
- D. **DOOR-THROUGH-DOOR TRANSPORTATION ONLY.** Ensure that all drivers have successfully completed trainings in the following:
1. Respectful communications;
 2. Professional Boundaries;
 3. Sensitivity/Senior Sensitivity;
 4. Bariatric Patient Transfer Protocol (Non-emergency Ambulance only);
 5. Door-through-door transportation protocols such as:
 - a. Gentle support: Opening doors and providing verbal guidance.
 - b. Physical support: Providing physical support for the consumer to assist with balance
 - c. Activity support: The driver stays with the consumer and helps with the activity at the destination.
 - d. Personal support: The driver or assist may help the consumer put on coat.

Section 5.3 Personnel Policies/Documentation

The Transportation Provider shall:

- A. Maintain a personnel file on each driver (including owners when they have driving responsibilities) which shall include:
1. Credentials;
 2. Written references; documented verbal references;
 3. Copy of driver's license (drivers only);
 4. Results from annual CORI check;
 5. Health records, including results of drug/alcohol testing and any other agency specific requirements (annual health exam, TB test, etc.);

6. Annual driving history reports from the appropriate state agenc(ies);
 7. Training records;
 8. Performance evaluation results; and
 9. Any other Broker required documents.
- B. This file shall be available for review by the Broker and/or HST Office, upon request.
- C. Develop and maintain written procedures for driver orientation and training, and performance Monitoring.
- D. Ensure it has a process to address any violation of a state drug law by its employees and contractors.

Section 5.4 Operational Safety

The Transportation Provider shall ensure that drivers adhere to the following:

- A. If a driver should need to call their base using a cell phone, the vehicle must be stopped in a safe location to allow for safe usage (dialing, etc.). Drivers must NEVER text message while they have Consumers on board;
- B. No eating or drinking is allowed in the vehicle while any Consumer is in the vehicle (this also applies to the driver);
- C. The doors of the vehicle are closed and locked while the vehicle is in motion (except for the rear emergency door of vehicles which must remain unlocked in transit);
- D. No fueling of the vehicle is conducted while Consumers are on board;
- E. All vehicles used to transport Consumers must be smoke free and no driver may smoke on the grounds of the Facility, Residence or Day Care Facility;
- F. Only the driver shall occupy the driver's seat;
- G. Shut off the vehicle and remove the keys when not occupying the driver's seat (not applicable for vehicles when operating hydraulic lift);
- H. No pushing a vehicle with their vehicle or allowing the vehicle to be pushed while a Consumer is located in either vehicle;
- I. Operate vehicles at all times in compliance with all federal, state and local laws;
- J. No personal stops while transporting HST Consumers, unless specifically authorized;
- K. No headphones (including Bluetooth or any other type of wireless phone headset) while on duty; and
- L. No firearms, alcoholic beverages, unauthorized controlled substances or highly combustible materials (other than oxygen tanks required by Consumers) shall be transported in the vehicle.

SECTION 6. REPORTS AND BILLING

Section 6.1 Reports

The Transportation Provider must submit all required documentation, polices and reports specified in these Transportation Provider Performance Standards to the Broker within the specified time frames.

Section 6.2 Billing

- A. The Transportation Provider must bill the Broker on a monthly basis for transportation services provided, in accordance with each Agency/Program's specifications and as required by the Broker. Invoices should be submitted within 30 days of completion of delivery and accompanied by any required supporting documentation, including the verification documentation described in Section 6.2.B below.
- B. The Transportation Provider must ensure that all trips invoiced to the Broker have been verified. Verification systems should include, but not be limited to, the following:
 1. Daily trip sheet identifying each scheduled One-Way Trip with a check box indicating if the Consumer was transported, canceled or was no-show and signed by the driver (and by program staff, if required). Trip sheets must include the driver's name and vehicle license plate number listed, the date, the Consumer's name, pickup location, time of pickup, drop off location, and time of drop off.
 2. Random, on-site inspections at destination facilities by supervisory staff.
 3. Random surveys of destination facilities to confirm transportation.
 4. Random surveys of Consumers to confirm transportation (and pick-up and drop-off times and quality of service).
- C. NOTE: Agency specific requirements may be incorporated by supplemental attachment to this document.

SECTION 7. DATA PRIVACY AND SECURITY

Section 7.1 Definitions

The following capitalized terms, as used in this **Section 7**, shall have the meanings ascribed to them below:

"Activities" shall mean the activities, functions and/or services to be performed or provided by the Transportation Provider for, on behalf of and/or to EOHHS under this Contract.

"Applicable Law" shall mean M.G.L. c. 66A, M.G.L. c. 93H, 801 CMR 3.00, 201 CMR 17, the HIPAA Rules, 42 CFR Part 431, Subpart F, 42 CFR Part 2 and any other applicable federal or state law or regulation pertaining to the use, disclosure, maintenance, privacy or security of PI or Commonwealth Security Information.

"Breach Notification Rule" shall mean the Breach Notification Rule at 45 CFR Part 164, Subpart D.

“Commonwealth Security Information” shall mean all data that pertains to the security of the Commonwealth’s information technology, specifically, information pertaining to the manner in which the Commonwealth protects its information technology systems against unauthorized access to or modification of information, whether in storage, processing or transit, and against the denial of service to authorized users, or the provision of service to unauthorized users, including those measures necessary to detect, document and counter such threats.

“Enforcement Rule” shall mean the HIPAA Enforcement Rule at 45 CFR Part 160, Subparts C, D and E.

“EOTSS” shall mean the Massachusetts Executive Office of Technology Services and Security.

“Event” shall mean the following, either individually or collectively: 1) any use or disclosure of PI not permitted under these Transportation Provider Performance Standards; 2) any Security Incident; or 3) any other event that would trigger notification obligations under the Breach Notification Rule, M.G.L. c. 93H or other similar Applicable Law requiring notice to consumers and/or oversight agencies in connection with an impermissible use or disclosure or breach of PI.

“HIPAA Rules” shall mean the Privacy Rule, the Security Rule, the Breach Notification Rule and the Enforcement Rule.

“Individual” shall mean the person to whom the PI refers and shall include a person or organization who qualifies as a personal representative in accord with 45 CFR § 164.502 (g).

“Privacy Rule” shall mean the Standards of Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

“PI” shall mean any Protected Health Information, any “personal data” as defined in M.G.L. c. 66A, any “patient identifying information” as used in 42 CFR Part 2, any “personally identifiable information” as used in 45 CFR §155.260 and any other individually identifiable information that is treated as confidential under Applicable Law (including, for example, any state and federal tax return information) that the Transportation Provider uses, maintains, discloses, receives, creates, transmits or otherwise obtains in connection with its performance of the Activities. Information, including aggregate information, is considered PI if it is not fully de-identified in accord with 45 CFR §§164.514(a)-(c).

“Security Rule” shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and Part 164, Subparts A and C.

“Subcontractor” shall mean any person or entity that (a) performs an activity or provides goods or services that are necessary for the performance of the Activities or (b) performs, undertakes or assumes an obligation of the Transportation Provider under the Transportation Provider Subcontract, in each case, other than in the capacity of a member of the Transportation Provider’s workforce.

“System” shall mean any system, database, application or other information technology resource.

The following capitalized terms, as used in this **Section 7**, shall have the same meaning as those terms are used in the HIPAA Rules: Business Associate, Covered Entity, Data Aggregation, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary and Security Incident. All

other terms used but not otherwise defined in this **Section 7** shall be construed in a manner consistent with the HIPAA Rules, M.G.L. c. 66A and all other Applicable Laws.

Section 7.2 Transportation Provider Obligations

A. Mass.Gen. Laws C. 66A and Other Privacy and Security Obligations

1. The Transportation Provider must comply with all Applicable Laws that may be in effect upon execution of, or as may be effective during the course of, the Transportation Provider Subcontract, including, but not limited to, the Privacy and Security Rules, 42 CFR 431, Subpart F, 42 CFR Part 2 and M.G.L. c. 66A. Without limiting the generality of the foregoing, the Broker acknowledges and agrees as follows:
2. Obligations under M.G.L. c. 66A. The Transportation Provider acknowledges that in performing the Activities it will create, receive, use, disclose, maintain, transmit or otherwise obtain “personal data” (as defined in M.G.L. c. 66A) and that, in so doing, it will become a “holder” of such data for purposes of M.G.L. c. 66A. The Transportation Provider agrees that in performing the Activities and otherwise complying with the Transportation Provider Subcontract it shall, in a manner consistent with the Privacy and Security Rules and other Applicable Laws, comply with M.G.L. c. 66A.
3. Business Associate. In performing the Activities, the Broker acknowledges and agrees that it is acting as the Broker’s Business Associate and agrees to comply with all requirements of the HIPAA Rules applicable to a Business Associate. To the extent that the Transportation Provider is to carry out an obligation of the Broker under the Privacy Rule pursuant to the Transportation Provider Subcontract, the Transportation Provider agrees that it shall comply with the requirements of such Rule that apply to Broker in the performance of such obligation.
4. 42 CFR Part 2. The Transportation Provider agrees that with respect to drug or alcohol abuse information that the Transportation Provider receives, stores, processes or otherwise deals with under the Transportation Provider Subcontract that was obtained by a federally assisted drug or alcohol abuse program for the purpose of treating drug or alcohol abuse, making a diagnosis for that treatment, or making a referral for that treatment (as such terms are used in 42 CFR Part 2), it is bound by 42 CFR Part 2 and shall not access, use or disclose information except as permitted under 42 CFR Part 2.
5. Telephone Communications, Video/Audio Recordings, and Other. If the Broker is contacting Individuals via telephone, text message, or other telephonic communication, such communication shall be compliant with all applicable Federal and State telephonic laws, including the Telephonic Consumer Protection Act of 1991 (47 U.S.C. § 227). For video and audio recordings, the Broker shall comply with all Federal and State audio, video, wiretapping, and recording statutes, including M.G.L. c. 272 § 99.
6. The Transportation Provider further agrees that it shall comply (and shall cause its employees and other workforce members to comply) with any other privacy and security obligation that is required as the result of EOHHS (or EOTSS or another third party, on EOHHS’ behalf) having entered into an agreement (any such agreement, a “Third Party Agreement”) with a third party (such as the Social Security Administration, the Department of Revenue or the Centers for Medicaid and Medicare Services) to obtain or to access PI from a third party (any such PI, “Third Party Data”) or to access any System containing Third Party Data or through which Third Party Data could be

accessed, including, by way of illustration and not limitation, signing a written compliance acknowledgment or confidentiality agreement, undergoing a background check or completing training. The Parties acknowledge and agree that Third Party Data includes, without limitation, all data that EOHHS receives or obtains from Massachusetts Department of Revenue, the Social Security Administration, the Internal Revenue Service, the Department of Homeland Security or through the Federal Data Services Hub and, notwithstanding anything herein to the contrary, the Transportation Provider may not access any such Third Party Data unless disclosure of such data to the Transportation Provider is permitted under the applicable Third Party Agreement(s), all conditions for disclosure under such Agreement(s) have been satisfied and the Transportation Provider's access to such data is otherwise permitted under the terms of this subsection. Notwithstanding the foregoing, the Transportation Provider shall not be required to comply (or ensure compliance) with a Third-Party Agreement under this paragraph unless it has been provided with a copy of the applicable Third-Party Agreement.

B. Ownership of Data

The Transportation Provider's access to and receipt, creation, use, disclosure and maintenance of, any PI, and any data derived or extracted from such data, arises from and is defined by the Transportation Provider's obligations under the Transportation Provider Subcontract, and the Transportation Provider does not possess any independent rights of ownership to such data.

C. Employees, Agents and Subcontractors

1. The Transportation Provider may hire Subcontractors in performing the requirements of the Transportation Provider Subcontract. The Transportation Provider shall enter into written agreements with each Subcontractor and shall maintain such written agreements.
2. All such subcontracts must contain all relevant provisions of the Transportation Provider Subcontract and the Contract (including the Commonwealth Terms and Conditions) related to privacy and security, and otherwise must be consistent with all such terms and conditions. Without limiting the generality of the foregoing, the Transportation Provider shall ensure that any such agreement satisfies all requirements under the Privacy and Security Rules for a contract or other arrangement with a Business Associate.
3. The Transportation Provider shall ensure that any Subcontractor that needs access to Third Party Data or a System containing such Data or through which it may be accessed to comply (and to cause its employees and other workforce members to comply) with any privacy and/or security obligation that may be required under a Third Party Agreement including, by way of illustration and not limitation, signing any written compliance acknowledgment or confidentiality agreement, undergoing a background check or completing training. The Transportation Provider shall ensure that any such Subcontractor has satisfied all such obligations prior to being granted access to the Third-Party Data or System. The Transportation Provider shall work with EOHHS to ensure that all such obligations are satisfied. Notwithstanding the foregoing, the Transportation Provider shall not be required to cause a subcontractor to comply with a Third-Party Agreement under this paragraph unless the Transportation Provider has been provided with a copy of the applicable Third-Party Agreement in accordance with this subsection.
4. The Transportation Provider is fully responsible for any Subcontractor's performance and for meeting all terms and requirements of the Transportation Provider Subcontract. The

Transportation Provider will not be relieved of any legal obligation under the Transportation Provider Subcontract, regardless of whether the Transportation Provider subcontracts for performance of any Transportation Provider Subcontract responsibility or whether PI or other information was in the hands of a Subcontractor.

5. The Transportation Providers must include, as an additional safeguard to protect consumer personal information, the following statement on all driver logs and manifests: “The information contained in this document is private, confidential, and subject to state and federal privacy and security laws including, the Health Insurance Portability and Accountability Act (HIPAA), Massachusetts Fair Information Practices Act (FIPA), and other privacy and security regulations. This information should only be used to perform the services prescribed and cannot be shared with anyone, except as specifically directed by your supervisor. Driver logs and manifests should never be left unattended, even in a locked vehicle. Consumer information should not be downloaded onto unsecured laptops, USB drives or mobile devices. All driver logs and manifests must be turned into your employer upon completion of the prescribed services. Transportation providers that violate federal or state privacy or security requirements may be subject to actual and exemplary damages, civil money penalties, or criminal prosecution.”

D. Data Security

1. Administrative, Physical and Technical Safeguards

- a. Administrative, Physical and Technical Safeguards. The Transportation Provider shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of PI and that prevent use or disclosure of such data other than as provided for by these Transportation Provider Performance Standards. All such safeguards must meet, at a minimum, all standards set forth in the Privacy and Security Rules, as applicable to a Business Associate, the standards set forth in National Institute of Standards and Technology standard: NIST 800-53 rev4, Moderate overlay, and all applicable EOHHS, EOTSS and other Commonwealth security and information technology resource policies, processes and mechanisms regarding access to PI or to Systems containing PI or through which PI may be accessed.
- b. If the Transportation Provider must access any EOHHS System to perform the Activities, the Transportation Provider shall comply with all applicable EOHHS, EOTSS and other Commonwealth security and information technology resource policies, processes and mechanisms regarding access to PI, and any specific security mechanisms and processes adopted by EOHHS for access to the System. The Transportation Provider shall protect from inappropriate use or disclosure any password, user ID or other mechanism or code permitting access to any EOHHS System or third-party System containing PI or through which PI may be accessed. The Transportation Provider shall give EOHHS prior notice of any change in personnel whenever the change requires a termination or modification of any such password, user ID or other security mechanism or code, to maintain the integrity of the System.
- c. Upon reasonable notice, the Transportation Provider agrees to allow representatives of EOHHS access to premises where PI is stored for the purpose of inspecting privacy and physical security arrangements implemented by the Transportation Provider to protect such data.

d. Commonwealth Security Information. If the Transportation Provider obtains access to any Commonwealth Security Information in connection the Transportation Provider Subcontract, the Transportation Provider may only use such information for the purposes for which it obtained access. In using the information for such permitted purposes, the Transportation Provider shall limit access to the information only to its employees and other workforce members as necessary to perform the permitted purposes. The Transportation Provider shall not release or disclose such information except in accord with EOHHS's express written instructions, unless such disclosure is Required by Law and then only in accordance with these Transportation Provider Performance Standards. While in possession of such information, the Transportation Provider shall apply all applicable privacy and security requirements set forth in these Transportation Provider Performance Standards to maintain the confidentiality, security, integrity and availability of such information. Notwithstanding any other provision in in these Transportation Provider Performance Standards, the Transportation Provider shall report any non-permitted use or disclosure of Commonwealth Security Information to EOHHS within twenty-four (24) hours following the date upon which the Transportation Provider becomes aware of the use or disclosure (or such earlier time as may be required under a Third-Party Agreement). The Transportation Provider shall immediately take all reasonable actions to retrieve such information if disclosed to any non-permitted person or entity; shall include a summary of such retrieval actions in its required report of the non-permitted disclosure; and shall take such further retrieval action as EOHHS may reasonably require. Notwithstanding any other provision in the Transportation Provider Subcontract regarding termination, the Transportation Provider may not retain any Commonwealth Security Information upon termination of the Transportation Provider Subcontract unless such information is expressly identified in any retention permission granted in accord. If retention is expressly permitted, all data protections stated herein survive termination of the Transportation Provider Subcontract and shall apply for as long as the Transportation Provider retains the information.

2. Non-Permitted Use or Disclosure Report and Mitigation Activities

- a. Mitigation and Other Activities. Immediately upon becoming aware of an Event, the Transportation Provider shall take all reasonable and appropriate action necessary to: a) retrieve, to the extent practicable, any PI involved in the Event; b) mitigate, to the extent practicable, any harmful effect of the Event known to the Transportation Provider; and c) take such other action(s) as may be required in connection with the Event to comply with any Applicable Law.
- b. Upon request, the Transportation Provider shall take such further actions as EOHHS, may reasonably request to, or shall take such additional action to assist EOHHS further mitigate, to the extent practicable, any harmful effect of the Event. Any actions to mitigate harmful effects of such Event undertaken by the Transportation Provider on its own initiative or pursuant to EOHHS' request shall not relieve the Transportation Provider of its obligations to report such Event or otherwise comply with Section 7, any other provisions of the Transportation Provider Subcontract or Applicable Law.
- c. Notification and Reporting Activities. As soon as possible, but in any event no later than two (2) business days following the date upon which the Transportation Provider becomes aware of the Event, the Transportation Provider shall verbally report the Event to EOHHS with as much

of the details listed below as possible, and shall follow such verbal report within five (5) business days with a written report outlining the Event with the following information:

- 1) The date of the Event if known or, if the date is unknown, the estimated date;
- 2) The date of the discovery of the Event;
- 3) The nature of the Event, including as much specific detail as possible (e.g., cause, contributing factors, chronology of events);
- 4) The nature of the PI involved in the Event (e.g., the types of identifiers and other information involved), together with samples of any forms or documents that were involved in the Event to illustrate the type of PI involved (with personal identifiers removed or redacted);
- 5) The exact number of individuals whose PI was involved in the Event if known or, if unknown, a reasonable estimate based on known facts (categorized according to the type of PI involved, if different types of PI was involved for different individuals), together with a description of how the exact or estimated number of individuals was determined;
- 6) A summary of the nature and scope of the Transportation Provider's investigation into the Event;
- 7) The harmful effects of the Event known to the Transportation Provider, all actions the Transportation Provider has taken or plans to take to mitigate such effects, and the results of all mitigation actions already taken;
- 8) A summary of steps taken in connection with and to prevent such Event in the future, including copies of revised policies and procedures, changes in business processes and staff training; and
- 9) Any additional information and/or documentation that the Transportation Provider is required to provide to EOHHS under 45 CFR §164.410, M.G.L. c. 93H, §3(a) or other similar Applicable Law.

To the extent that any such information is not available at the time of the report, the Transportation Provider shall provide such information to EOHHS as such information becomes available in one or more subsequent written reports. The Transportation Provider shall provide EOHHS with such additional information regarding the Event as EOHHS may reasonably request, which additional information may include a written risk analysis rebutting any presumption that the Event constituted a breach for purposes of the Breach Notification Rule. The Transportation Provider acknowledges and agrees that it may be subject to reporting obligations under one or more Third Party Agreements in addition to, and/or that differ from, its obligations under this section.

- d. Obligations under Consumer Notification Laws. If EOHHS determines, in its sole discretion, that it is required to provide notifications to consumers or state or federal agencies under the Breach Notification Rule, M.G.L. c. 93H or other Applicable Law as a result of the Event, the

Transportation Provider shall, at EOHHS' request, assist EOHHS in drafting such notices for EOHHS' review and approval, and shall take such other action(s) as EOHHS may reasonably request in connection with EOHHS' compliance with the Breach Notification Rule, M.G.L. c. 93H or other Applicable Law, but in no event shall the Transportation Provider have the authority to give any such notifications on EOHHS' behalf unless EOHHS authorizes and directs the Transportation Provider to do so in writing.

- e. The Transportation Provider shall reimburse EOHHS for reasonable costs incurred by EOHHS associated with any such notifications to the extent that such costs are due to: (a) the Transportation Provider's failure to meet its responsibilities under, or in violation of, any provision of the Transportation Provider Subcontract (b) the Transportation Provider's violation of Applicable Law; (c) the Transportation Provider's negligence; (d) the Transportation Provider's failure to protect data under its control with encryption or other security measures that constitute an explicit safe-harbor or exception to any requirement to give notice under Applicable Law; or (e) any activity or omission of the Transportation Provider resulting in or contributing to an Event triggering such notification requirement under Applicable Law.

Section 7.3 Business Associate Related Provisions

A. Transportation Provider Obligations

1. **Response to Legal Process.** The Transportation Provider shall report to EOHHS, both verbally and in writing, any instance where PI or any other data obtained in connection with the Transportation Provider Subcontract is subpoenaed or becomes the subject of a court or administrative order or other legal process. The Transportation Provider shall provide such report to EOHHS as soon as feasible upon receiving or otherwise becoming aware of the legal process; provided, that the Transportation Provider shall provide such report no later than five business days prior to the applicable response date. In response to such legal process, and in accordance with instructions from EOHHS, the Transportation Provider shall take all reasonable steps, including objecting to the request when appropriate, to comply with M.G.L. c. 66A § 2(k), 42 CFR § 431.306(f), 42 CFR Part 2 and any other Applicable Law. If EOHHS determines that it shall respond directly, the Transportation Provider shall cooperate and assist EOHHS in its response.
2. **Individual's Privacy Rule Rights.** With respect to any relevant PI in the Transportation Provider's possession, the Transportation Provider shall take such action as may be requested by EOHHS to meet EOHHS' obligations under 45 CFR §§ 164.524, 164.526 or 164.528 or other Applicable Law pertaining to an Individual's right to access, amend or obtain an accounting of uses and/or disclosures of its PI, in sufficient time and manner for EOHHS to meet its obligations under such Privacy Rule provisions or other Applicable Law. If an Individual contacts the Transportation Provider with respect to exercising any rights the Individual may have under 45 CFR §§ 164.524, 164.526 or 164.528 or similar Applicable Law with respect to PI in the Transportation Provider's possession, the Transportation Provider shall notify EOHHS' Privacy Officer within two business days of the Individual's request and cooperate with EOHHS to meet any of its obligations with respect to such request.

With respect to an Individual's right to an accounting under 45 CFR § 164.528, the Transportation Provider shall document all disclosures of PI and other data access activities as would be necessary for EOHHS to respond to a request by an Individual for an accounting in accord with 45 CFR § 164.528. The Transportation Provider shall also document uses and disclosures of PI and other data access activities to the extent required under M.G.L. c. 66A, § 2(f).

3. Record Access. The Transportation Provider shall make its internal practices, books and records, including policies and procedures, relating to the protection, security, use and disclosure of PI and Commonwealth Security Information obtained under the Transportation Provider Subcontract, and the security and integrity of Systems containing PI or Commonwealth Security Information or through which it may be accessed, available to EOHHS and the Secretary, in a time and manner designated by the requesting party, for purposes of enabling EOHHS to determine compliance with the Transportation Provider Subcontract or for purposes of enabling the Secretary to determine compliance with the HIPAA Rules.
4. Electronic and Paper Databases Updates. Within thirty days of the effective date of the Transportation Provider Subcontract, the Transportation Provider shall provide EOHHS an accurate list of electronic and paper databases and other Systems containing PI, together with a brief description of the various uses of the databases and Systems. The Transportation Provider shall update such lists as necessary in accord with the addition or termination of such databases and Systems.
5. CORI Regulations. The Transportation Provider shall, pursuant to and in accordance with 101 CMR 15.03(1)(B), require and consider the criminal history information pertaining to all employees of the Transportation Provider who will be given access or potential access to PI, and all applicants for employment with the Transportation Provider where the position applied for entails access or potential access to PI. The Transportation Provider shall otherwise comply with all applicable terms of 101 CMR 15.00 in connection with the review and consideration of employee and applicant criminal records.
6. Compliance Officer. The Transportation Provider designates _____ as its Compliance Officer, who shall be responsible for compliance with the Transportation Provider Subcontract. Such designations may be changed during the period of the Transportation Provider Subcontract only by written notice.

B. Broker Obligations

The Broker shall notify the Transportation Provider in writing of any of the following:

1. Changes in Notice of Privacy Practices. The Broker shall notify the Transportation Provider in writing of any change in EOHHS' Notice of Privacy Practices to the extent that such change may affect the Transportation Provider's use or disclosure of PI under the Transportation Provider Subcontract, and shall provide the Transportation Provider with a new copy of its Notice of Privacy Practices reflecting such change.
2. Notification of Changes in Authorizations to Use or Disclose PI. The Broker shall notify Transportation Provider in writing of any change in, or revocation of, permission by an Individual to use or disclose PI that is known to EOHHS, to the extent that such change may affect the Transportation Provider's use or disclosure of PI under the Transportation Provider Subcontract.

3. Notification of Restrictions. The Broker shall notify the Transportation Provider in writing of any restriction to the use or disclosure of PI that EOHHS has agreed to in accord with 45 CFR §164.522, to the extent that such restriction may affect the Broker's use or disclosure of PI under the Transportation Provider Subcontract.
4. Requests to Use or Disclose PI. The Broker shall not request that the Transportation Provider use or disclose PI in a manner that the Broker knows would violate the Privacy Rule if done by the Broker.

Section 7.4 Permitted Uses and Disclosures of PI by Transportation Provider

Except as otherwise limited in the Transportation Provider Performance Standards, including in this section, the Transportation Provider may use or disclose PI only as follows:

- A. Activities. The Transportation Provider may use or disclose PI to perform the Activities or as otherwise required by, and in accordance with, the provisions of these Transportation Provider Performance Standards, provided, that such use or disclosure would not: (a) violate the Privacy Rule or other Applicable Law if done by EOHHS; (b) violate the EOHHS' Minimum Necessary policies and procedures that are known to the Transportation Provider or that EOHHS advises the Transportation Provider of; or (c) conflict with statements in EOHHS' Notice of Privacy Practices. When using or disclosing PI or when requesting PI from EOHHS or another party in performing the Activities, the Transportation Provider represents that it shall make reasonable efforts to limit the amount of PI used, disclosed or requested to the minimum necessary to accomplish or perform the particular Activity for which the PI is being used, disclosed or requested.
- B. Required by Law. The Transportation Provider may use or disclose PI as Required by Law, consistent with the restrictions of 42 CFR Part 431, Subpart F, 42 CFR Part 2, M.G.L. c. 66A, any other Applicable Law or any applicable Third-Party Agreement; provided, that, the Transportation Provider is not required to comply with the restrictions of a Third-Party Agreement unless it has been provided a copy of such Agreement in accordance with this section.
- C. Restriction on Contacting Individual. The Transportation Provider shall not use PI to contact or to attempt to contact an Individual unless such contact is made in accordance with EOHHS' written instructions.
- D. Publication Restriction. The Transportation Provider shall not use PI for any publication, statistical tabulation, research, report or similar purpose, regardless of whether or not the PI can be linked to a specific individual or has otherwise been de-identified in accord with the standards set forth in 45 CFR §164.514, unless the Transportation Provider has obtained EOHHS' prior written consent. In no event shall any resulting publication, report or other material contain PI unless the publication, report or other material is made available only to EOHHS or the Transportation Provider has obtained the specific written approval of EOHHS' Privacy Officer.

Section 7.5 Termination

- A. Termination for Violation

Notwithstanding any other provision in the Transportation Provider Subcontract, Broker may terminate such Subcontract, immediately upon written notice, if the Broker determines, in its sole discretion, that the Transportation Provider has violated any material term in this Section 7 or any material term of the Transportation Provider Subcontract pertaining to the security or privacy of PI.

B. Cure

Prior to terminating the Transportation Provider Subcontract as permitted above, the Broker, in its sole discretion, may provide an opportunity for the Transportation Provider to end the violation and cure any related breach. If such an opportunity is provided, but cure is not feasible, or the Transportation Provider fails to end the violation and cure the breach within a time period set by the Broker, the Broker may terminate the Transportation Provider Subcontract immediately upon written notice.

C. HHS Report

In the event that termination of the Transportation Provider Subcontract for a violation of a material term is not feasible, or if cure is not feasible, the Broker or EOHHS may report such violation to the Secretary, if such violation and termination pertains to work performed for an EOHHS-CE (as defined in 45 CFR 160.103) under the Transportation Provider Subcontract.

Section 7.6 Effect of Termination

A. Return or Destroy Data

Except as provided immediately below, upon termination of the Transportation Provider Subcontract for any reason whatsoever, the Transportation Provider shall, at the Broker's option, either return or destroy all PI in any form in its possession, and the Transportation Provider shall not retain any copies of such data in any form. In no event shall the Transportation Provider destroy any PI without first obtaining the Broker's approval. In the event destruction is permitted, the Transportation Provider shall destroy PI in accord with standards set forth in NIST Special Publication 800-88 Guidelines for Media Sanitization, all applicable state retention laws, all applicable state and federal security and privacy laws and regulations (including the Privacy and Security rules), and all state data security policies including policies issued by EOHHS and the Information Technology Division. All paper copies of PI must be shredded or otherwise destroyed to a degree that will render the copies unreadable, unusable and indecipherable without the possibility of reconstruction. Within five (5) days of any permitted destruction, the Transportation Provider shall provide the Broker with a written certification that destruction has been completed in accord with the required standards and that the Transportation Provider and its Subcontractors no longer retain such data or copies of such data. This provision shall also apply to all PI in the possession of the Transportation Provider's Subcontractors, and the Transportation Provider shall ensure that all such data in the possession of its Subcontractors has been returned or destroyed and that no Subcontractor retains any copies of such data in any form, in accord with the Broker's instructions.

B. Transfer Data

Notwithstanding subsection A immediately above, Transportation Provider shall, at the Broker's option upon termination of the Transportation Provider Subcontract for any reason whatsoever, transfer all PI in any form in its possession, or some portion thereof, to a third party identified by the Broker. Such

transfer shall proceed in accord with all applicable security standards for transfer of PI set forth in this Section 7 and any other transfer directions provided by the Broker at the time. Within five (5) days of any requested transfer, the Transportation Provider shall provide the Broker with a written certification that the transfer was successfully completed. To the extent that the requested transfer involves only a portion of PI in the Transportation Provider's possession, the Transportation Provider shall, at the Broker's direction, follow subsection A immediately above or subsection C immediately below with respect to the remaining data. This provision shall also apply to all PI in the possession of the Transportation Provider's Subcontractors, and the Transportation Provider shall ensure that all such data in the possession of its Subcontractors is transferred and that no Subcontractor retains any copies of such data in any form, in accord with the Broker's instructions.

C. Retain Data

1. If the Transportation Provider determines that returning or destroying PI when required under the Transportation Provider Subcontract is not feasible, the Transportation Provider shall provide the Broker with written notification of the conditions that make return or destruction not feasible. If based on the Transportation Provider's representations, the Broker concurs that return or destruction is not feasible, the Transportation Provider shall extend all protections set forth in this Section 7 to all such PI and shall limit further uses and disclosures of such data to those purposes that make the return or destruction of such data not feasible, for as long as the Transportation Provider maintains the data.
2. Notwithstanding subsections A and B above, the Transportation Provider shall, at the Broker's option upon termination of the Transportation Provider Subcontract for any reason whatsoever, retain all PI in its possession, or some portion thereof, upon termination, solely for storage purposes without any authority to use or disclose such PI. In such event, the Transportation Provider shall extend all applicable data protections in this Section 7 and shall not use or disclose such PI for any purpose. Upon termination of such retention period, the Transportation Provider shall, at the Broker's direction, return or destroy such PI in accord with subsection A above, or transfer such data to a third party in accord with subsection B above. This provision shall also apply to all PI in the possession of the Transportation Provider's Subcontractors, and Transportation Provider shall ensure that all such data in the possession of its Subcontractors is retained, transferred, returned or destroyed in accord with the Broker's direction and subsections A, B and C, as applicable in accord with Broker's instructions, and that no Subcontractor retains any copies of such data in any form, in accord with Broker's instructions.

SECTION 8. ADDITIONAL TERMS AND CONDITIONS

Section 8.1 Survival

Notwithstanding any other provision concerning the term of the Transportation Provider Subcontract, all protections and other obligations of the Transportation Provider pertaining to PI and/or Commonwealth Security Information set forth herein shall survive the termination of the Transportation Provider Subcontract and shall continue to apply until such time as all such information is returned or destroyed in accordance with this subsection or, if later, until any outstanding obligation of the Transportation Provider with respect to such information has been satisfied.

Section 8.2 Interpretation

- A. Any ambiguity in these Transportation Provider Performance Standards shall be resolved to permit EOHHS to comply with the HIPAA Rules, 42 CFR Part 431, Subpart F, M.G.L. c. 66A and any other applicable state or federal law or regulation.
- B. For purposes of these Transportation Provider Performance Standards, (a) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; and (c) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to these Transportation Provider Performance Standards as a whole. The definitions given for any defined terms in these Transportation Provider Performance Standards shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms.
- C. Unless the context otherwise requires, references herein to: (x) Sections, Attachments and Appendices mean the Sections of, and Attachments and Appendices attached to, these Transportation Provider Performance Standards; (y) an agreement, instrument or other document means such agreement, instrument or other document as amended, amended and restated, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (z) a statute or regulation, including an Applicable Law, refers to that law or regulation as in effect or as amended from time to time and includes any successor legislation or regulation.
- D. The Attachments and Appendices referred to herein shall be construed with, and as an integral part of, these Transportation Provider Performance Standards to the same extent as if they were set forth verbatim herein.