

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

**APPENDIX 1: TRANSPORTATION PROVIDER PERFORMANCE STANDARDS
EFFECTIVE 07/01/2024**

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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 (and identified as "Universal"), unless specifically limited and so identified herein. Standards that are limited in scope to either a specific agency or category ("Program-Based" or "Demand-Response" transportation) are labeled accordingly. Both the Universal Standards and those limited in scope to a specific Agency or category are 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

Unless otherwise noted, capitalized terms in these Transportation Provider Performance Standards are defined in **Attachment B, Section 2.**

Applied Behavior Analysis (ABA): a service that provides for the performance of behavioral assessments; interpretation of behavior analytic data; development of a highly specific treatment plan; supervision and coordination of interventions; and training other interveners to address specific objectives or performance goals in order to treat challenging behaviors that interfere with the youth's successful functioning. ABA includes services provided by two different sets of credentials: Licensed Applied Behavior Analyst and behavior technician/paraprofessional. It is delivered by one or more members of a team of qualified providers consisting of professional and paraprofessional staff.

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 4.2**.

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 3**, 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, 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.
- E. 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.

- F. 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 Monitor, or to require the Provider to replace any driver or Monitor in the performance of HST services, for any reason.
- G. Be responsible for all recruiting and hiring of backup drivers and Monitors (where applicable). Such responsibility shall not be delegated to the drivers and Monitors. The Transportation Provider shall ensure that all back up, replacement, and substitute personnel (drivers, Monitors, 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.
- H. Ensure that a training officer or other supervisor attends Broker sponsored training sessions and provides such training to drivers and Monitors (where applicable).
- I. 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.
- J. 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.

Section 3.2 Transportation Service Standards

The Transportation Provider shall:

- A. Provide Curb-to-Curb service, unless another level is authorized by the Agency, in a professional, safe and courteous manner. The driver and Monitor (if present) shall assist Consumers with entry or exit of vehicle; however, the driver shall remain in or near the vehicle and shall not enter any buildings at all times that a Consumer is present in the vehicle.
 - 1. **DEMAND-RESPONSE ONLY** - Consumers under 13 years of age must be accompanied by a parent, guardian or escort. **Children under age 13** may not travel unaccompanied, unless explicitly authorized by HST. They must travel with another person who is at least 18 years of age or older.
 - a. A minor who is 13 years of age or older, who is a parent to children of any age, may travel independently with their children without restriction.
 - 2. **DPH (Early Intervention) ONLY** – Children attending Early Intervention may be transported without an escort with a properly qualified DPH vendor. A monitor must be provided whenever routing results in three or more children travelling without a parent or guardian in a vehicle.
 - 3. **ABA (Applied Behavioral Analysis) TRANSPORTATION ONLY** –Special consideration may be provided for youth under 13 being transported for the purposes of

receiving ABA services within an ABA Center. Youth under 13 years of age may be transported without parent, guardian or escort only when the referring program and caregiver have determined that safety for the youth, driver and other riders can be maintained without the accompaniment. Where required, accompaniment may be provided by a parent, guardian, escort or Monitor. A Monitor requires preauthorization when the transportation request form is submitted. When determining the appropriateness of an unaccompanied transport, the referring program and caregivers will consider whether:

- 1) The youth is familiar with the center-based care provider and appropriate ABA Center staff have been identified to escort youth to and from the vehicle;
- 2) The youth's behavioral presentation and clinical needs do not preclude the child from being safely transported unaccompanied;
- 3) The youth's behavioral presentation will not place the drivers or other rider's safety at risk;
- 4) The youth does not present with risk for eloping during the transport;
- 5) The youth can follow simple instruction or guidance if evacuation from the vehicle is required.

For transports of three or more unaccompanied youth to ABA Centers at the same time, a Monitor is required.

For transport of two unaccompanied youth, it is required that the transport be provided with like-aged consumers.

- 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, except for in cases described in provision II.B(2)(a). The Broker has the right to approve all stops, routes and changes.
 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 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.

- D. **PROGRAM-BASED TRANSPORTATION ONLY.** Ensure that Consumers are never left unattended. If the vehicle arrives late (after designated start/end time) to the Destination Facility and no staff is available, it is the driver/Monitor's responsibility to escort the Consumers together to and from a responsible staff person.
- E. Provide and assign transportation safety Monitors upon request by the Broker. Monitor requests will be processed by the Broker and forwarded to the Transportation Provider for implementation. Additionally, Monitors may be authorized for certain individual Consumers based on their behavioral or medical needs. No more than one Monitor will be funded in a vehicle without an approved waiver from the Broker.
 - 1. **DPH (Early Intervention) ONLY.** Provide a Monitor in any vehicle whenever routing results in three or more children without a parent or guardian in a vehicle.
- F. 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.
- G. Ensure the number of persons in the vehicle, including the driver, shall not exceed the vehicle manufacturer's approved seating capacity.
- H. 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.
- I. Ensure that services are not suspended for any Consumer without prior authorization from the Broker.
- J. 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.
- K. **PROGRAM-BASED TRANSPORTATION ONLY.** Provide adequate back-up vehicles and personnel to comply with the service requirements as set forth in these specifications for the duration of the Transportation Provider Subcontract with the Broker. It is recommended that, at a minimum, the Provider have one comparable spare vehicle and driver for every ten (10) vehicles under contract.
- L. **PROGRAM-BASED TRANSPORTATION ONLY.** Make every effort to assign consistent drivers and Monitors, where applicable, to each route. The Provider shall furnish to

parents/residential staff and Facility staff the names of their drivers and Monitors and notify them in advance of any scheduled change in these personnel.

- M. **PROGRAM-BASED TRANSPORTATION ONLY.** Perform all routing functions in accordance with the following safety performance standards. The Transportation Provider may alter Program-Based routes in order to ensure maximum safety for Consumers so that, wherever possible, pick-up and drop-off points are on the same side of the street as the Consumer's home or Destination Facility. Whenever possible, vehicles should pull into driveways, but only when there is sufficient space for the vehicle to turn around and exit the driveway . facing, and in the case of private driveways, with the owner's permission. The appropriateness of the routing and the number of vehicles used are subject to the discretion of the Broker, throughout the duration of the Transportation Provider Subcontract with the Broker. The Transportation Provider shall comply with the Agency's request not to combine routes going to different sites without the Broker's written approval.
1. **DDS ONLY.** The Provider shall adjust monthly billing to the Broker to reflect routing changes and all other alterations which take place due to the requirements of **Section 3.2.M**, for the corresponding month of service.
 2. **DDS/DAYHAB ONLY.** The Provider shall exercise due diligence (including any available electronic or other scheduling means available) in maintaining routing efficiency while seeking to maintain full vehicle capacity to include the 90 minutes of routing time commencing from the time of first pickup through and until the final destination. The routing time shall be inclusive of potential double runs that may be accomplished within the contracted 90-minute routing timeframe. Routing time and not vehicle capacity shall be the final determinant in scheduling consumers on DDS or Day Hab routes. Waivers of these standards must be in writing and are at the discretion of the Broker/RTA.
- N. **PROGRAM-BASED TRANSPORTATION ONLY.** Respond to any program-based Transportation Request (TR) Form submitted by the Broker within two (2) business days.
- O. **DEMAND RESPONSE ONLY.** Exercise due diligence in actively seeking ride share opportunities among the transportation consumers served. Ride share may not add more than 45 minutes of additional travel time for any consumer as compared to direct routing of a consumer's transportation.
- P. **DEMAND RESPONSE ONLY.** 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.
- Q. **DAY HABILITATION, DDS, AND EARLY INTERVENTION ONLY.** Create video-only (no audio) recordings of all trips, store these recordings for at least 3 months, and promptly share these recordings with the Broker or EOHHS upon their request of trips performed on a requested date or for a requested Consumer. This section is in effect beginning July 1, 2024 only.

Section 3.3 Program Affiliation Agreements: Program-Based Transportation Only

The Transportation Provider shall:

- A. Develop with the Facility Director (or his/her designee) and execute with the Facility a written affiliation agreement regarding the following:
 1. Inclement weather policy – the Transportation Provider’s decision to cancel transportation during inclement weather should be made two to three hours before the Facility’s start time in cooperation with the Facility Director. If the Transportation Provider determines that road conditions are too dangerous, he/she may cancel transportation even if the Facility remains open; however, the Transportation Provider must notify the Facility and parents/guardians of the cancellation.
 2. Overall communication procedures, including:
 - a. Contact persons;
 - b. Telephone/fax numbers; and
 - c. Emergency contacts and telephone numbers.
 3. Routing and schedules – including, specific arrival and departure locations and procedures and updated routing information as necessary. Transportation Provider is not required to remain longer than 15 minutes beyond the agreed upon departure time due to Consumer behavioral concerns.
 4. Incident reporting procedures – including:
 - a. The Transportation Provider shall immediately notify the Broker and the Facility of an Incident occurring during the transit of Consumers.
 - b. A follow-up report shall be filed with the Broker and the Facility within twenty-four (24) hours.
 5. Orientation - Drivers and Monitors (at the Transportation Provider's expense) must be available to attend an orientation with Facility staff within two weeks of hiring and annually thereafter. This may include Sensitivity and Human Rights training. The Transportation Provider shall initiate contact with the Facility to ensure compliance and to coordinate the scheduling of the orientation. The orientation will not exceed one hour in duration and its purpose is familiarization with Facility operations and sensitivity to Consumer needs.
 6. Securing Alternate Transportation – Transportation Provider, Program and Agency staff will work collaboratively to secure alternate transportation if a consumer demonstrates behaviors that make it unsafe to board the Transportation Provider’s vehicle.
- B. Ensure that a copy of this Affiliation Agreement is kept on file at both the Transportation Provider and Facility offices. This Affiliation Agreement shall be submitted to the Broker before the commencement of services. Any disputes between the Transportation Provider and the Facility should be referred immediately to the Broker.

Section 3.4 Inclement Weather

- A. It is the Transportation Provider's responsibility to make any decision to cancel transportation during inclement weather. The primary consideration in this decision-making process must always be Consumer safety.
- B. The decision to cancel transportation should:
 - 1. Consider road conditions, weather forecasts, school closings, emergency declarations, etc.;
 - 2. Be made in consultation with the Facility/Program, if applicable; and
 - 3. Be made as soon as possible and optimally at least two hours before the scheduled trip.
- C. If the Transportation Provider determines that conditions are too dangerous for the safe transportation of Consumers, the Provider may cancel transportation even if the Facility or Program/MassHealth Provider remains open; however, the Transportation Provider must notify the Consumer, Program (if applicable) and Broker of the cancellation.
- D. When notifying Consumers of the cancellation of transportation, the Transportation Provider must emphasize that the cancellation is only for transportation and that the Program may still be open for service.
- E. **PROGRAM-BASED TRANSPORTATION ONLY.** The Transportation Provider must also adhere to specific Affiliation Agreement requirements regarding inclement weather cancellation procedures. (See **Section 3.3.A.1** above.).

Section 3.5 Emergency, Accident and Safety Response Reporting

The Transportation Provider shall:

- A. Ensure that drivers and Monitors (where applicable) 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 or Monitor 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. If the accident impacts a Consumer in a wheelchair, if they fall out of or tip over in a wheelchair, the driver must remain at the scene and request emergency assistance. People in wheelchairs may be vulnerable to head or spinal injuries in the event of a fall and should not be moved unless they are in an unsafe area (i.e., middle of traffic).
 5. Throughout the emergency, all possible efforts should be made to reassure and keep calm all Consumers in the vehicle.
 6. 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.
 7. 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.
 8. A formal written report must be submitted to the Broker within 24 hours.
- B. Subject to Section 3.6.C below as applicable, 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.
- 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.
- E. **DDS AND DAYHAB ONLY.** Ensure that drivers and Monitors (where applicable) provide verbal reports of all acts of assault and/or seizure activity by the Consumer or any other significant Incident to their supervisor and to the Facility and/or residential program staff. The Transportation Provider must report orally to the Broker that day and must follow up with a written Incident report, submitted within twenty-four (24) hours, for all acts of assault, self-abuse, refusal to use seat belt, incontinence, seizure activity or any other significant health or safety concern.
- F. **DMH ONLY.** Ensure that Drivers and Monitors (where applicable) provide verbal reports of the following Incidents to their dispatcher/supervisor, and to the Facility and/or residential staff: any injury that requires medical intervention or hospitalization; any event that results in serious disability; any sexual assault or alleged sexual assault; any physical assault which results in staff or client requiring medical intervention or hospitalization; any arrest; any Incident that results in police or fire intervention during transit. Verbal reports must be filed on the day of the Incident and written reports must be filed with the Broker and the Facility within twenty-four (24) hours.

Section 3.6 Insurance Requirements

The Transportation Provider shall:

- A. Maintain Worker's Compensation or equivalent insurance on all drivers and Monitors 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. Subject to **Section 3.6.C** below as applicable, maintain liability insurance on all vehicles used under the Transportation Provider Subcontract with Broker at a level that meets or exceeds the current HST minimum: (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.
- C. **PROGRAM-BASED TRANSPORTATION ONLY.** Ensure the following limits of liability insurance are maintained as a minimum on all vehicles used for Program-Based Transportation, unless a higher level is required by federal or state regulation (such as DTE 220 CMR 152.04), by an Agency or by the Broker, in which case, the higher level must, as a minimum, be met and maintained. 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.

Vehicle Seating Capacity 1-5 (including driver)	Vehicle Seating Capacity 6-8 (including driver)	Vehicle Seating Capacity 9-15 (including driver)	Vehicle Seating Capacity 16+ (including driver)
Minimum Coverage: Bodily Injury: \$250,000/\$500,000 (per person/per accident) Property Damage: \$50,000	Minimum Coverage Combined Single Limit (CSL): \$500,000	Minimum Coverage Combined Single Limit (CSL): \$1,000,000	Minimum Coverage Combined Single Limit (CSL): \$5,000,000

Section 3.7 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.
6. Be inspected by a Broker's inspector to ensure the vehicle is compliant with the Transportation Provider Performance Standards prior to transporting Agency consumers. This applies to all new vehicles added after initial fleet inspection.

C. Vehicles must be equipped with:

1. A seat with installed seat belts for every vehicle occupant (including driver and Monitor), 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. A working heating system sufficient to heat the entire vehicle;
5. Snow tires or their equivalent during the period November 15 through April 15 of each year;
6. Spare tire and jack (unless covered by vendor maintenance policy);
7. Portable step (optional for lift equipped vehicles) – Stools should be made of high-strength material, preferably metal and have a ribbed rubber platform to provide stability as well as 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;
8. Chock blocks, (except with respect to sedans and minivans), flags, reflectors and flashlight.
9. One (1 multipurpose fire extinguisher (minimum Universal A-B-C, UL rated) with a gauge that can determine charge level to be maintained in a fully charged and operable condition. Size: Fire extinguisher of at least **2-2.5lb. for Automobiles** (sedans and minivans) and 5lb. for all 7D vehicles as well as larger Vans or Chair Vans with passenger capacity of 9 or more (including driver). Multipurpose extinguishers can be

used on different types of fires and will be labeled with more than one class, like A-B-C OR A-B-C-D. All fire extinguishers must meet these additional guidelines:

- a. Fire extinguishers shall be mounted or placed in a safe location so that they are readily accessible to employees without subjecting the employees or consumers to possible injury;
- b. Fire extinguishers shall be maintained in a fully-charged and operable condition and kept in their designated places at all times except during use;
- c. Fire extinguishers must be inspected daily to ensure they remain fully charged at all times (identified in green) and to ensure there are no dents or punctures. If there are dents the size of a dime or larger or punctures of any kind, the extinguisher must be replaced immediately;
- d. All extinguishers must be replaced every ten (10) years (from the date of manufacture) regardless of condition; and
- e. Drivers and monitors must be trained in the proper use of the fire extinguisher in accordance with the manufacturer's instructions.

10. An up-to-date (non-expired) first aid kit that meets the Red Cross family first aid kit standards plus a biohazard bag;

11. 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

12. 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. **DAY HABILITATION, DDS, AND EARLY INTERVENTION ONLY.** Vehicles must be equipped with equipment to make a video-only (no audio) recording of all trips. This section is in effect beginning July 1, 2024 only.

E. Age of Vehicle

1. 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:

a. PROGRAM-BASED TRANSPORTATION ONLY

1) Seven (7) years for vans, sedans & station wagons; and

2) Nine (9) years for wheelchair lift equipped vehicles and vehicles with seating capacity > 15.

b. DEMAND-RESPONSE TRANSPORTATION ONLY

- 1) Fifteen (15) years for all demand-response vehicles, except ambulances.
2. Notwithstanding the provisions of **Section 4.1.E.1.** above, 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 set forth in **subsection 4.1.E.a.(1) and (2)**, above, as applicable, 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.
3. Notwithstanding the provisions of **Section 4.1.E.1.** above, 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.
4. 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 Additional 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 retractable ramp;
 - a. A raised roof at least 12 inches high. (lower floor); and
 - b. Raised side doors at least 54 inches high.
 2. Converted minivan must have ramps that are rated for up to 600 pounds;
 3. Transportation providers shall use either the Q'Straint, AMF-Brunns or Sure-Lok wheelchair securement system;
 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; and
 5. Safeguard flyer or placard in the vehicle informing the driver about the state of proper wheelchair and passenger securement.
- B. Wheelchair securement requirements are as follows:
1. All wheelchairs must face forward in the van;

2. All wheelchairs must be secured with two securement straps in the front and two securement straps in the rear. All wheelchairs must be secured in the front and back. 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 the proper securement of Consumers by lap/shoulder belt assemblies. They must be removed if they prevent the Consumer from being properly secured; and
5. The Shoulder belt should be adjusted so that it does not extend across the Consumer’s neck or face. Do not use the shoulder belt if there is a medical condition that interferes with its proper use. (i.e., feeding or breathing tubes).
6. Drivers shall ensure securement straps are not secured to a moveable or removable part of the wheelchair;
7. Drivers shall apply the wheel locks when securing a manual wheelchair and ensure the power has been turned off when securing a motorized chair.
8. Drivers shall ensure that the lap belt is placed low across the front of the Consumer’s pelvis on the upper thighs, not on the abdomen.
9. Drivers shall ensure that the shoulder belt crosses the Consumer’s collarbone and the center of the chest. It should connect to the latch plate and buckle of the lap belt at the hip.
10. Drivers shall ensure the upper shoulder-belt anchor point or guide is above and behind the top of the Consumer’s shoulder.
11. Drivers must not take shortcuts to secure the wheelchair and the consumer. All wheelchairs must be secured according to the manufacturer’s specific instructions.

C. Wheelchair Securement: Drivers’ Training

1. Drivers operating wheelchair van vehicles for HST work under the Transportation Provider Subcontract with Broker must receive hands-on training from a qualified trainer certified by The Community Transportation Association of America (CTAA), the University of Wisconsin, or other certification approved by the Broker.
2. Drivers operating wheelchair van vehicles must receive hands-on training yearly to ensure that they understand and can properly follow the procedures stated above in 4.2.B for proper securement of wheelchairs in vehicles. In addition to yearly training, Brokers shall evaluate drivers every 6 months on the proper securement of wheelchairs. If Driver fails mid-year evaluation, they will be required to do a full retraining.
3. The annual training notwithstanding, HST/Broker shall ask the driver to attend hands-on retraining immediately after an incident or consumer complaint resulting from a failure to secure the consumer properly. HST may ask for evidence of retraining and a copy of the trainer’s certificate.

4. The Broker/Transportation Provider shall apply the Wheelchair Securement Corrective Action Schedule to address wheelchair securement deficiencies.

D. Lift Operations

1. The driver shall run a complete lift cycle each day before transporting any consumers who use the lift to ensure it is functioning properly.
2. The drivers shall immediately notify the supervisor/dispatch of any issues with the lift's functionality.
3. Preventive maintenance shall be conducted on the lift every 750 cycles. The Transportation Provider shall keep the maintenance record and present this to the Broker for an annual desk audit. This is the standard recommended number of cycles and vehicles should be maintained within 50 cycles of this suggested schedule and at least yearly.
4. Whenever possible, mobility devices should board in a rear-facing position and exit the vehicle in a forward-facing position. (The ADA always gives a choice to the passenger to ride either facing toward or away from the vehicle.)
5. Once a passenger has been moved onto the lift platform, the driver shall set the wheel locks on a manual chair. For a motorized chair, drivers shall ensure the power has been turned off once the consumer is on the lift.
6. The driver should never ride the lift with the consumer in the wheelchair unless it is required to ensure consumer safety and a monitor is not present.
7. The driver should never ride the lift with an ambulatory consumer unless it is required to ensure consumer safety and a monitor is not present.
8. While loading or unloading, the driver should remain on the ground with one hand firmly on the wheelchair and one hand operating the controls, except in the circumstances described in Section 4.D.6 and 7.

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 3 years of driving experience, including experience driving multi-passenger vehicles.
- B. Drivers must be at least nineteen (19) years of age and have completed all required training specified in **Section 5.3** prior to HST work.
- C. 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 findings 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.

- D. 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.
- E. Drivers must supply written health records on their physical condition and 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 agenc(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; Reckless driving/driving to endanger;
 3. Leaving the scene of an accident; Leaving the scene of an accident;
 4. Driving without a license and/or insurance;
 5. Driving with a suspended license; and Driving with a suspended license; and
 6. Any record with multiple or repeated violations (other than parking).

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. Transportation Providers must enroll in the Massachusetts RMV Driver Verification System (DVS). 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 IV.A.” Effective on or after December 27, 2021, 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. All drivers and Monitors 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 copies 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 or monitor 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 or Monitor 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.

Section 5.2 Monitor Qualifications

- A. Monitors must be at least nineteen (19) years of age and have completed all required training specified in **Section 5.3** prior to HST work.

B. Monitors 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 findings 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 monitor 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 monitor is properly credentialed.

1. 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.

C. Monitors must be physically able to assist Consumers entering and exiting vehicles.

D. If any Monitor is ever to be used as a driver, he or she must meet all driver qualifications prior to work as a driver.

E. **PROGRAM-BASED TRANSPORTATION ONLY.** Monitors are also subject to the drug/alcohol testing provisions set forth in **Section 5.1.G.**

Section 5.3 Driver and Monitor Training

The Transportation Provider shall:

A. Ensure that all drivers and Monitors have successfully completed the applicable in-service training program prior to their transporting any HST Consumers. Non-emergency ambulance drivers and Monitors are exempt from these training requirements. 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:

Program Application	TRAINING REQUIREMENT
Universal	*DRIVER ONLY: Driver rules and regulations; Defensive driving & reacting to skids, and Vehicle stalling & brake failure.
Universal	***DRIVER AND MONITOR: Proper use of vehicle safety equipment; content and use of all first aid kit items; use of two-way radios, if applicable, and emergency vehicle evacuation procedures.
Universal	***DRIVER AND MONITOR: Accident procedures & Incident reporting.

Universal	*DRIVER AND MONITOR: Correct use of Consumer seat belts, including correct use of child safety restraint devices for all transportation providers serving children. Driver is responsible for ensuring proper installation of child safety restraints.
Universal	*DRIVER AND MONITOR: Use of Wheelchair lift & proper wheelchair securement. by a Trainer Certified by the Community Transportation Association of America (CTAA), the University of Wisconsin, or other certification approved by the Broker. Training must be completed yearly.
Universal	*DRIVER AND MONITOR: Human rights and sensitivity to Consumer needs, including disability awareness, passenger assistance and accommodations for service animals (guide dogs) in vehicles.
Universal	*DRIVER AND MONITOR: Sexual Harassment Training
Universal	***DRIVER AND MONITOR: 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 (including those set forth in Section 9 , below).
Program-Based	*DRIVER AND MONITOR: First aid; reaction to seizures, universal precautions and “vehicle empty” inspection procedure.
DPH Only	**DRIVER AND MONITOR: Certified in basic first aid (4 hours). The certification must be through the American Red Cross, American Heart Association, or other equivalent training approved by the Broker and must be kept current.
DPH Only	**DRIVER AND MONITOR: Certified in CPR for infants and children. The certification must be through the American Red Cross, American Heart Association, or other equivalent training approved by the Broker and must be kept current.

*Training must be conducted annually by an Instructor Certified by the Community Transportation Association of America (CTAA), the University of Wisconsin, or other Broker approved training program and be kept current at all times.

**Training requires Certification from the American Red Cross or the American Heart Association and must be kept current at all times.

***Training and acknowledgement of policy and procedure can be conducted in-house by designated personnel”

- B. Ensure that drivers and Monitors 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. **PROGRAM-BASED TRANSPORTATION ONLY.** Pre-qualify drivers prior to being assigned to a route:
1. Current Transportation Providers – driver must accompany an experienced driver or supervisor on a minimum of one established route during regularly scheduled Facility hours.
 2. New Transportation Providers – driver must accompany a supervisor on a minimum of one simulated route in the service area during regularly scheduled Facility hours.
- E. **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. 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 5.4 Personnel Policies/Documentation

The Transportation Provider shall:

- A. Maintain a personnel file on each driver (including owners when they have driving responsibilities) and Monitor which shall include:
1. Credentials;
 2. Written references;
 3. Copy of driver’s license (drivers only);
 4. Results from annual CORI check;
 5. National Fingerprint/background check Suitability Letter (Only for vendors providing services to consumers attending DDS and Day Hab Programs);
 6. Health records, including results of drug/alcohol testing and any other agency specific requirements (annual health exam, TB test, etc.);
 7. Annual driving history reports from the appropriate state agenc(ies) (drivers only);
 8. Training records;

9. Performance evaluation results; and
10. Any other Broker required documents.

This file shall be available for review by the Broker and/or HST Office, upon request.

- B. Develop and maintain written procedures for driver and Monitor orientation and training, and performance Monitoring.
- C. Ensure that all direct employees or contract employees who may have unsupervised contact with DDS and Day Hab Consumers have undergone a Department of Developmental Services (DDS) Background Check, as described in DDS regulations at 115 CMR 12.00, and maintain documentation verifying the same. The Transportation Provider must ensure that any direct employee or contract employee who may have unsupervised contact with an DDS and Day Hab Consumer and has undergone a DDS Background Check, and must maintain documentation verifying the same, before the individual begins work for the Transportation Provider. Non-emergency ambulance providers are exempt from this provision.
- D. Ensure it has a process to address any violation of a state drug law by its employees and contractors, effective for dates of service on or after December 27, 2021.

SECTION 6. DRIVER AND MONITOR PERFORMANCE STANDARDS

Section 6.1 Dress Code and Demeanor

The Transportation Provider shall:

- A. Ensure that drivers and Monitors (where applicable) are clean and neat in appearance and look professional. Blouses, shirts, skirts, slacks and pants are acceptable. Clothing must not be ripped or torn. Drivers and monitors must wear footwear that is fully closed with a non-skid sole. Drivers and Monitors must wear a nametag and it must be visible to Consumers.
- B. Ensure that all personnel exercise patience and sensitivity and be exemplary in speech and action whenever they are in contact with parents, Consumers and Facility staff. Drivers and Monitors are prohibited from discussing with parents or residential staff the behavior or medical condition of any other individual other than those the parents or staff are directly responsible for.
- C. Ensure that all personnel are licensed, qualified, competent and courteous. Drivers must carry their license with them whenever transporting consumers.
- D. 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.
 1. **DPH ONLY.** Ensure that drivers report in person to supervisory staff at the Transportation Provider's place of business on any day they will be transporting Agency

Consumers. This may be done at any time of the day during the Transportation Provider's normal working hours.

Section 6.2 Vehicle Safety

The Transportation Provider shall ensure that drivers and Monitors (where applicable) 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 and Monitor);
- 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 or Monitor 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 6.3 Consumer Safety and Transportation Log

The Transportation Provider shall:

- A. Ensure that drivers and Monitors assist all Consumers upon entering and exiting the vehicle and assist in securing and releasing car seats and seat belts, as needed. The driver is ultimately accountable to ensure that all passengers, both adults and children, are properly secured with seat belts or in car seats before any movement of the vehicle and en route. Drivers and Monitors (where applicable) must not leave a vehicle unattended at all times when Consumers are in the vehicle.

- B. Ensure compliance with Massachusetts Seat Belt Law & Child Passenger Safety Law - MGL, C. 90, S. 13A & C. 90, S. 7AA. The Transportation Provider is not responsible to furnish car seats, only to ensure that they are being used properly when needed. Vehicles for hire, including taxicabs are not exempt. The standards are as follows, unless an exemption under the law is applicable.
1. Children under 8 years of age must be properly secured in an appropriate child passenger restraint (as defined in MGL C.90 S.1), unless they are more than 57 inches tall;
 2. Children under 13 years of age must wear a properly adjusted and fastened safety belt, unless required to be in a child passenger restraint;
 3. Older children and adults must wear a safety belt; and
 4. Child passenger restraints must meet current federal motor vehicle safety standards (49 CFR 571.213) and be in good working order, properly used and installed in the vehicle as specified by the manufacturer's instructions. Child passenger restraints may not be altered or modified unless approved by the manufacturer. Any restraint involved in a crash should no longer be used.
- C. Ensure that:
1. No Consumer is seated in any side or rear-facing seat (only forward-facing seats);
 2. No child under 12 years of age is seated in the front passenger seat of any vehicle equipped with a front air bag on the passenger side; and
 3. No child in a child passenger restraint is in the rear most bench seat of a fifteen-passenger van.
- D. Ensure that drivers and Monitors (where applicable) do not discipline any Consumer, under any circumstances. Circumstances that warrant action shall be reported at once to the appropriate Facility staff and to the Broker. Any behavior or Incident that affects the safety of Consumers should be reported immediately to the dispatcher and when required, the vehicle shall pull to a safe place to address the situation.
- E. Ensure that drivers carry and maintain electronic or written "fact sheets" and/or Transportation Plans and daily attendance and/or trip/route sheets for all Consumers on their route, so that there is a log or trip sheet documenting each time a Consumer is transported. The fact sheet must have the driver's name and vehicle license plate number listed, and must include the date, the Consumer's name, pickup location, time of pickup, drop off location, and time of drop off. Driver must maintain the fact sheet legibly and completely.
1. Attendance must be accurate. Vendor will be paid full route cost even if only a portion of the consumers attend on a given day. BUT if this attendance is inaccurate (recorded attendance for those who did not go), the vendor will be subject to recoupment and fines.
 2. Vendors must maintain "fact sheets" as outlined in Section 9.6.C. Retain Data.
- F. Ensure that Monitors, in addition to all other requirements contained herein, perform the following:

1. Constantly observe/monitor the Consumer(s) to whom they are assigned while in transit;
 2. Provide one-to-one assistance to Consumers, upon assignment, but also provide supervision and assistance to other Consumers on the vehicle when necessary;
 3. Follow designated assignments and accept supervisory guidance;
 4. Attend specialized training upon request by the Broker. The Broker reserves the right to request documentation of trainings conducted;
 5. Intervene only to prevent injury from occurring to a Consumer. Inform the driver of any situation that threatens or appears to threaten the well-being of any Consumer;
 6. Notify Facility staff of any significant Incident that occurred while in transit;
 7. Individual Monitors must sit next to the individual Consumer Monitored, or if a group Monitor, be seated in one of the middle or rear seats of the vehicle while any Consumer is in the vehicle. Monitor should under no circumstance be seated in the front seat with the driver; and
 8. Perform any additional Consumer-specific duties. The Broker may request that the Monitor assist the Consumer when necessary from door to door.
- G. Ensure that drivers and Monitors release children and cognitively impaired Consumers only to authorized individuals and that they confirm the identity of any individual to whom they release the Consumers. Drivers that are not familiar with a person(s) authorized to take custody of the Consumers must confirm identification of the person(s) either through a photo ID or physical description, confirmed by Facility personnel (drivers should never ask a person if they are “Ms. Jones;” rather drivers should ask the person to give their name). Whenever there is any doubt, contact the Facility and if necessary, return the Consumer to the Facility and notify the Broker immediately. In addition to caution, drivers and Monitors must exercise sensitivity in these situations.
- H. Ensure that all equipment is properly secured at all times and kept out of the reach of Consumers. The satisfactory condition of any vehicle and equipment is subject to the discretion of the Broker.
- I. Ensure that when in transit, any medical equipment (oxygen tanks, Monitoring equipment, etc.) is positioned and secured to the floor, vehicle seat or wall of the vehicle below the window line. Bungee cords and/or Velcro are not acceptable securement devices.
- J. Ensure that drivers perform a daily vehicle inspection before picking up any Agency Consumers. The daily vehicle inspection must be documented in writing and kept on file for three months. The daily vehicle inspection must include verification that the seat belts, wheelchair lift, wheelchair securements and lap and shoulder belts are in working order.
- K. Ensure that:
1. All drivers and Monitors wear in plain view a uniform ID card clearly displaying his/her full name and the Transportation Provider's name; and

2. **PROGRAM-BASED TRANSPORTATION ONLY**> All drivers and Monitors wear in plain view a uniform photo ID card clearly displaying his/her picture, full name and the Transportation Provider's name.

L. PROGRAM-BASED TRANSPORTATION ONLY. As part of their daily routine, ensure that drivers: after discharging all Consumers on a route (inbound or outbound), physically inspect the entire interior section of the vehicle.

1. Display a “Vehicle in Use” sign in the rear window while consumers are on board.
2. After discharging all consumers on a route (inbound or outbound), physically inspect the entire interior section on the vehicle to ensure that all consumers have exited and no consumer belongings have been left behind. The driver must display a “Vehicle Empty” sign in the rear window once all consumers have been dropped off.

M. PROGRAM-BASED TRANSPORTATION ONLY. Ensure that whenever a driver transports a Consumer to a Residence or Facility that shows no evidence of a parent/guardian, residential staff or other authorized person, that the driver immediately notify the supervisor/dispatcher who must (unless otherwise specified in writing by the Broker):

1. Notify the transportation coordinator or director at the Consumer’s Facility;
2. Attempt to contact the parent/Day Care provider by phone;
3. If there are other Consumers on the vehicle instruct the driver to continue on with the route and then return;
4. If there are no other Consumers on the vehicle and no contact with the parent/Day Care provider has been established, then notify the transportation coordinator or director at the Consumer’s Facility and return the Consumer to the Facility; and
5. If there is no authorized staff at the Consumer’s Facility or if unable to contact the Facility, then notify the Broker.
6. At this point, if no contact can be established with the parent, residential staff, or Facility staff then the Broker will:
 - a. **For children under 12 (DPH EI or unaccompanied MassHealth children)** - instruct the supervisor to notify the Department of Children and Families (DCF) and to turn the child over to DCF as an abandoned child (Transportation Provider must be aware of local and after hours DCF telephone numbers).
 - b. **For DDS/MassHealth Day Habilitation Consumers** – immediately contact the area DDS Administrator on-call for resolution.

A written report must be submitted to the Broker within 24 hours of the Incident.

N. Drivers and personnel shall demonstrate respect for consumers’ space, homes and property when conducting door-to-door or door-through-door service.

SECTION 7. TRIP PERFORMANCE STANDARDS

Section 7.1 Time Measured Standards

- A. **On-Time Arrival.** The driver shall make his presence known to the Consumer (briefly sounding the horn, if necessary.) 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. The Transportation Provider cannot change the assigned pickup time without permission from the Broker. If the driver cannot arrive on time to the pick-up location, the Provider shall notify the Broker and attempt to contact the Consumer or Consumer's representative and the Facility, if applicable. The performance goal is 100% on-time performance and late or missed trips may subject the Provider to the Broker's Provider Accountability Policy (see **Section 5.2.A.7** of the HST Broker Services Contract).
1. **DEMAND-RESPONSE TRANSPORTATION ONLY.** 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.
 2. **PROGRAM-BASED TRANSPORTATION ONLY.** Unless otherwise directed by the dispatcher, the driver shall wait until at least five (5) minutes after the scheduled pick-up time before departing without the Consumer.
- B. **Door-to-Door and Door-through-Door.** The Transportation Provider shall notify the Consumer or responsible person the scheduled pick-up time for the Consumer at least twenty-four (24) hours prior to initiation of transport or any changes in the schedule during the Transportation Provider Subcontract with Broker. Due to mobility limitations, the driver shall make his/her presence known to the Consumer or responsible person by knocking or ring the bell. The consumer may need assistance to exit their home or the facility.
- C. **PROGRAM-BASED TRANSPORTATION ONLY.** The Transportation Provider shall transport Consumers from their respective residences to the sites and at the times specified by the Broker on days that the programs are in session during the performance period of the Transportation Provider Subcontract with the Broker. Consumers will similarly be returned to their respective residences.
- D. **PROGRAM-BASED TRANSPORTATION ONLY.** The Transportation Provider shall notify the Consumer or responsible person of the times that the Consumer will be transported, no later than at least twenty-four (24) hours prior to initiation of transport or any changes in the schedule during the course of the Transportation Provider Subcontract with Broker. (For Demand-Response Transportation, the Provider is not responsible for communicating with Consumers about pickup time.)
- E. **PROGRAM-BASED TRANSPORTATION ONLY.** The Transportation Provider shall ensure that Consumer pick-up and drop-off times at their residence and day program are maintained and are as constant as can be reasonably expected. The Broker/Agency may require that actual pick-up and drop-off times begin to be recorded and submitted for specific routes where problems have arisen. Additionally, if a Consumer is not immediately present, the driver should initiate a call to the dispatcher who will attempt to contact the Consumer's residence by

telephone, and may be required to remain longer than five minutes for certain Consumers due to the presence of a physical limitation, behavioral challenge, or extreme weather conditions.

F. **PROGRAM-BASED TRANSPORTATION ONLY.** Ensure that Consumers are transported within the following timelines:

1. Transportation Provider can arrive at Consumer's Residence or Day Care site within 15 minutes (plus or minus) of their scheduled pick-up time. If a Consumer is not immediately present, the driver should initiate a call to the dispatcher who will attempt to contact the Consumer's residence by telephone. If no contact is made, the Driver shall wait until at least five (5) minutes after the scheduled pick-up time before proceeding with his route. In no event shall a driver be considered to have fulfilled the obligation by merely sounding the horn.
2. Arrive at the Destination Facility for drop-off no earlier than 15 minutes prior to and no later than the Facility's scheduled starting time. At the discretion of the Facility, Consumers may be required to wait in the vehicle until the scheduled starting time.
3. Arrive at the Facility for the return trip no earlier than 15 minutes prior to and no later than the Facility's scheduled ending time, or other agreed upon time if multiple sites are combined on one route, when transporting Consumers from the Facility to their Residence or Day Care site.
4. Drop off at their Residence or Day Care site within 15 minutes (plus or minus) of their scheduled return time.
5. No Consumer under six (6) years of age is to be on board a vehicle for more than 45 minutes, no Consumer six (6) years of age and older is to be on board a vehicle for more than 90 minutes and in all cases, transportation will be as expeditious as is practical under the circumstances.
6. Drivers must radio their dispatcher if their route is running more than 15 minutes late. The Dispatcher shall notify a responsible person at the Consumer's Residence and/or Facility.

G. **PROGRAM-BASED TRANSPORTATION ONLY.** Implement the following procedures when notified that a vehicle with Consumers on board is overdue en route to a Destination Facility. The Dispatcher shall:

1. Attempt to establish radio contact with the driver;
2. Maintain contact with the person who initiated the report;
3. Inform Facility staff of the delay;
4. When 15 minutes has elapsed since the Facility's scheduled starting time: continue with the above and contact all residences on the route to verify if and when the Consumer was picked up and confirm the missing vehicle's description (make, model, year, color & license number);
5. When 30 minutes has elapsed since the Facility's scheduled starting time: continue with the above, maintain contact with residences and dispatch a radio equipped backup vehicle to follow the missing vehicle's route; and

6. When 45 minutes has elapsed since the Facility's scheduled starting time: continue with the above and notify the local/state police.

The Transportation Provider shall notify the Broker and submit a written report to the Broker within 24 hours detailing the Incident, outcome, investigation and action taken.

- H. **PROGRAM-BASED TRANSPORTATION ONLY.** Implement the following procedures when notified that a vehicle with Consumers on board is overdue en route to a Residence or Day care site:
1. Attempt to establish radio contact with the driver;
 2. Maintain contact with the person who initiated the report;
 3. Contact Facility staff;
 4. When 30 minutes has elapsed since the designated drop-off time or 75 minutes since the Facility's scheduled ending time (whichever comes first): continue with the above and contact all residences on the route for verification that the Consumer was dropped off, dispatch a radio equipped backup vehicle to follow the missing vehicle's route and confirm the missing vehicle's description (make, model, year, color & license #).
 5. When 45 minutes has elapsed since the designated drop-off time or 90 minutes since the Facility's scheduled ending time (whichever comes first), continue with the above and notify the local/state police.

The Transportation Provider shall notify the Broker and submit a written report to the Broker within 24 hours detailing the Incident, outcome, investigation and action taken.

Section 7.2 Quality Monitoring

The Transportation Provider shall:

- A. Respond to complaints forwarded by the Broker within 48 hours and provide resolution and/or a corrective action plan approved by the Broker.
- B. Cooperate and participate in Broker or Agency on-site visits of the Transportation Provider's place of business and inspection of business records and vehicles.
- C. Upon request, make available any vehicles used in HST work for Broker or Agency inspection according to the contract requirements. Implement a system of reporting and tracking such inspections.
- D. **PROGRAM-BASED TRANSPORTATION ONLY.** Conduct a minimum of two (2) inspections annually (that drivers or Monitors are not aware of in advance) at each contracted Facility site or en route. The inspection is to Monitor the driver's (and Monitor if applicable) performance and the condition of the vehicle and equipment. Inspections must be conducted by supervisory staff at regularly scheduled Consumer drop off or pick up times and a report on the results of each such inspection is to be forwarded to the Broker within 30 days. In cases where complaints or disputes arise, additional inspections may be required by the Broker to be

held at the Facility site, Consumer's residence or at any point along the route. Inspection reports must be documented in writing and maintained for annual inspection.

Section 7.3 Corrective Action/Provider Accountability

- A. If the Broker or the HST Office representative identifies, in its sole judgment, any deficiency in the Transportation Provider's performance under these terms, the Broker or HST Office may require the Provider to develop a corrective action plan to correct such deficiency within a specified timeframe.
- B. The Transportation Provider agrees to respond to recommendations of any on-site visit and understands that failure to respond by the requested date or to implement a corrective action plan may result in future trips not being scheduled until such time as satisfactory responses are in place, fines or penalties in accordance with the HST Broker's "Provider Accountability Policy", or contract termination, at the Broker's discretion.

SECTION 8. REPORTS AND BILLING

Section 8.1 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 8.2 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 8.2.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).

NOTE: Agency specific requirements may be incorporated by supplemental attachment to this document.

SECTION 9. DATA PRIVACY AND SECURITY

Section 9.1 Definitions

- A. The following capitalized terms, as used in this **Section 9**, 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.

- B. The following capitalized terms, as used in this **Section 9**, 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 9** shall be construed in a manner consistent with the HIPAA Rules, M.G.L. c. 66A and all other Applicable Laws.

Section 9.2 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:
 - a. 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.
 - b. 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.

- c. 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.
 - d. 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.
2. 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 9**, 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 9.3 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.
3. 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).
4. 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.
5. 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.
6. 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.
7. 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.

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Section 9.4 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 9.5 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 9** 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 9.6 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, un-usable 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 9** 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 9** 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 9** 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 10. ADDITIONAL TERMS AND CONDITIONS

Section 10.1 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 10.2 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.