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Transportation Provider Performance Standards  
Revised: Effective 07-01-14

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## **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). Selected Regional Transit Authorities act as HST Brokers and 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.

## **I. GENERAL**

### **A. DEFINITIONS**

Agency (also known as Funding or Referring Agency or Department): an eligible state entity that purchases brokerage and transportation services in the HST Brokerage System for its Consumers that are provided pursuant to the Broker Contract between EOHHHS and the Broker.

Ambulatory Transportation: Transportation primarily intended for persons who are able to travel without significant assistance. Such transportation is provided by any of several types of vehicles, including passenger sedans and station wagons, vans, or mini-buses, and which are licensed by the city or town in which the operating business is located.

Broker (also referred to as HST Broker or Contractor): The entity selected by EOHHHS to procure and manage certain human service Consumer transportation within a defined HST service area.

Broker Contract (or HST Broker Contract or HST Broker Services Contract): the currently-effective agreement between EOHHHS and the Broker whereby the Broker arranges transportation for Agency Consumers through subcontracts with Transportation Providers within a designated HST service area.

Consumer (or Agency Consumer or HST Consumer): A person eligible for Agency-funded transportation services under the HST Brokerage System. May also be referred to as a Member.

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.

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Curb-to-Curb Service – The level of transportation service in which the Consumer/passenger is picked up at the curb by their location of origin and dropped off at the curb by their destination. The driver may help passengers with boarding and exiting but does not provide assistance in getting from the door of a building to the curb or vice versa.

Demand-Response Transportation: Transportation provided in response to an approved request for transportation of a Consumer to a covered medical service or other human service activity that occurs on an *as needed* basis. Demand-Response Transportation includes but is not limited to: transportation to MassHealth eligible medical services, excluding day habilitation (however, transportation for mid-day medical appointments from day habilitation programs would also be considered Demand-Response); and, in limited cases, transportation for Massachusetts Commission for the Blind (MCB) and Massachusetts Rehabilitation Commission (MRC) Agency Consumers.

Destination Facility (may also be referred to as Facility or Program): Site where the human service program or medical service for the Consumer is being provided, such as a clinical site, childcare facility, or day program site and to which transportation is being provided.

Human Service Transportation (HST): Includes the transportation needs for Consumers of several human service agencies within the Executive Office of Health and Human Services (EOHHS). The scope of the Transportation Provider Subcontract may expand to Consumers of other agencies in the future.

HST Office: The central administrative entity within EOHHS that coordinates HST contracting for state human service, elder and transportation agencies. The HST Office administers and monitors the Broker Contract.

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.

Monitor: An employee of the Transportation Provider who serves to assist or ensure the safety of one or more Consumers during Transportation, by following designated Consumer-specific assignments and providing supervision and assistance to all Consumers on the vehicle when necessary and providing mobility assistance upon entering or exiting the vehicle, or from the pick-up point to the Destination Facility (if door-to-door transportation is authorized).

Non-Ambulatory (Chair Car) 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 III.B.

One-Way Trip: Transportation of a Consumer between the pick-up point (origin) and the destination point, as indicated on the Transportation Request. The return trip to the origin point is considered a separate One-Way Trip.

Program-Based Transportation: Transportation that occurs on a regular schedule (e.g. daily) to a common program or Destination Facility, typically provided on a scheduled route, grouped trip basis. Program-Based Transportation includes, but is not limited to, transportation to the following programs: Department of Public Health's (DPH) Early Intervention program, Department of Developmental Services (DDS) day/work programs, Department of Mental Health (DMH) Clubhouse programs, MassHealth funded Day Habilitation, and certain programs or services through Massachusetts Commission for the Blind (MCB) and Massachusetts Rehabilitation Commission (MRC).

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Transportation Provider or Provider (also referred to more generally as a subcontractor of Broker): A local transportation delivery entity under contract to a Broker for the direct provision of transportation services (vehicles and drivers) for HST Consumers.

Transportation Request: Documentation prepared by an Agency and forwarded to the Broker to initiate transportation services for a Consumer. This includes the MassHealth Prescription-For-Transportation Form (PT-1) and the HST Transportation Request Form (TR). The PT-1 form is used for MassHealth Demand-Response Transportation service. The TR form is used for both Demand-Response and Program Based service. The TR form will note if the request is for Demand-Response Transportation service; otherwise the request is for Program-Based Transportation service.

Universal: When a standard is labeled “universal”, that means the standard applies to all forms of transportation provided under the Transportation Provider Subcontract, including both Demand-Response and Program-Based Transportation.

#### **B. GENERAL BUSINESS STANDARDS**

- 1. UNIVERSAL**> 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.
- 2. UNIVERSAL**> 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.
- 3. UNIVERSAL**> 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.
- 4. UNIVERSAL**> 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.
- 5. UNIVERSAL**> 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.

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#### 6. UNIVERSAL> Disclosures on Ownership and Control; Business Transactions; Criminal Convictions

##### A. The Transportation Provider must:

- (1) 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;
- (2) 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;
- (3) 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
- (4) 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.

B. Unless otherwise instructed, for purposes of making the disclosures set forth in **subsection B.6.A**, 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 **subsection B.6.A**, above.

C. 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.

## II. TRANSPORTATION OPERATIONS

### A. ADMINISTRATION

The Transportation Provider shall:

1. **UNIVERSAL>** Ensure that vehicles used for HST Transportation are owned, leased, or otherwise controlled by the Transportation Provider by means of a written agreement.
2. **UNIVERSAL>** Ensure that all vehicles (both primary and backup) used for HST Transportation meet the specifications as described herein in Section III, 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.

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3. **UNIVERSAL**> Remove from service any vehicle that is unsatisfactory or questionable for safety or roadworthiness (e.g. two-way radio inoperative, inspection shows problems, due for maintenance, etc.), and comply with any instruction from the Broker to immediately remove a vehicle from service when deemed unsafe or unsuitable by the Broker.
4. **UNIVERSAL**> 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.
5. **UNIVERSAL**> 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.
6. **UNIVERSAL**> 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.
7. **UNIVERSAL**> Ensure that a training officer or other supervisor attends Broker sponsored training sessions and provides such training to drivers and Monitors (where applicable).
8. **UNIVERSAL**> 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.
9. **UNIVERSAL**> 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.

#### **B. TRANSPORTATION SERVICE STANDARDS**

The Transportation Provider shall:

1. **UNIVERSAL**> Provide Curb-to-Curb service, unless another level is specifically 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 at all times that a Consumer is present in the vehicle and shall not enter any buildings.
2. **UNIVERSAL**> Ensure that Consumers are not transported to any destination, for any scheduled session, or released to any person without prior authorization from the Broker. The Broker has the right to approve all stops, routes and changes.

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3. **UNIVERSAL**> 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.
4. **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.
5. **UNIVERSAL**> 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.
  - 5.a. **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.
6. **UNIVERSAL**> 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.
7. **UNIVERSAL**> Ensure the number of persons in the vehicle, including the driver, shall not exceed the vehicle manufacturer's approved seating capacity.
8. **UNIVERSAL**> 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.
9. **UNIVERSAL**> Ensure that services are not suspended for any Consumer without prior authorization from the Broker.
10. **UNIVERSAL**> 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.
11. **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.
12. **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

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

**13. 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 forward facing, and in the case of private driveways, with the owner's permission. No vehicle shall back out of driveway onto the street, except as specified below in 13.a. 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.

**13.a DPH ONLY**> The Provider may allow a vehicle to back out of a driveway only when transporting children and maximum safety for boarding and exiting vehicles requires it.

**13.b. 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 13, for the corresponding month of service.

**13.c. 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 DayHab routes. Waivers of these standards must be in writing and are at the discretion of the Broker/RTA.

**14. PROGRAM-BASED TRANSPORTATION ONLY**> Respond to any program-based Transportation Request (TR) Form submitted by the Broker within two (2) business days.

**15. 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.

**C. PROGRAM AFFILIATION AGREEMENTS: Program-Based Transportation Only:**

The Transportation Provider shall:

1. Develop with the Facility Director (or his/her designee) and execute with the Facility a written affiliation agreement regarding the following:
  - a. 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.
  - b. Overall communication procedures, including:



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- Contact persons;
  - Telephone/fax numbers; and
  - Emergency contacts and telephone numbers.
- c. 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.
- d. Incident reporting procedures – including:
- The Transportation Provider shall immediately notify the Broker and the Facility of an Incident occurring during the transit of Consumers.
  - A follow-up report shall be filed with the Broker and the Facility within twenty-four (24) hours.
- e. 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 insure 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.
2. 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.

**D. INCLEMENT WEATHER**

1. **UNIVERSAL>** 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.
2. **UNIVERSAL>** The decision to cancel transportation should:
- a. Consider road conditions, weather forecasts, school closings, emergency declarations, etc.;
  - b. Be made in consultation with the Facility/Program, if applicable; and
  - c. Be made as soon as possible and optimally at least two hours before the scheduled trip.
3. **UNIVERSAL>** 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.
4. **UNIVERSAL>** 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.

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- 5. PROGRAM-BASED TRANSPORTATION ONLY**> The Transportation Provider must also adhere to specific Affiliation Agreement requirements regarding inclement weather cancellation procedures. (See **Section II.C.1.a.** above.).

**E. EMERGENCY, ACCIDENT AND SAFETY RESPONSE AND REPORTING**

The Transportation Provider shall:

- 1. UNIVERSAL**> 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:
  - a. 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.
  - b. 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.).
  - c. 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;
  - d. Throughout the emergency, all possible efforts should be made to reassure and keep calm all Consumers in the vehicle.
  - e. 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.
  - f. 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.
  - g. A formal written report must be submitted to the Broker within 24 hours.
- 2. UNIVERSAL**> Report immediately by phone to the Broker and the Facility, if applicable, each and every Critical Incident, as defined. The Transportation Provider shall establish live verbal contact with the Broker and the Facility, if applicable. Leaving a voicemail message does not satisfy this requirement.
  - a. In the event of a motor vehicle accident with Consumers on board, seek medical help as specified in Section II.E.1 above. If there are no obvious injuries, consult with family, day or residential staff members to determine that need. A formal written report shall be submitted to the Broker within twenty-four (24) hours; and

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- b. For any of the following Incidents involving a Consumer, whether injury is apparent or not, ensure the Driver reports to the Facility and the dispatcher; the dispatcher must in turn notify the Broker immediately by phone:
  - (1) Falling while getting into or out of the vehicle;
  - (2) Falling while in the vehicle;
  - (3) Any assault, including biting Incidents; or
  - (4) Emergency braking of the vehicle or any other Incident that results in tipping over of a wheelchair.
- 3. **UNIVERSAL**> 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:
  - a. 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;
  - b. The supervisor must notify the Referring Agency and Broker immediately by phone and submit a copy of the report within twenty-four (24) hours;
  - c. Further, the Provider shall ensure the appropriate state investigative agency is notified:
    - (1) 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**;
    - (2) If abuse of an elder person (60 years of age and older) is involved, contact the Elder Abuse Hotline at **1-800-922-2275**;
    - (3) 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
    - (4) 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**.
  - d. 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.
- 4. **UNIVERSAL**> 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.
- 5. **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.
- 6. **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

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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.

**F. INSURANCE REQUIREMENTS**

The Transportation Provider shall:

1. **UNIVERSAL>** 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.
2. **UNIVERSAL>** Subject to subsection **F.3** 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 by state regulation. (Liability: \$20,000/person and \$40,000/occurrence; Property damage: \$5,000). 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.
3. **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.

<b>Vehicle seating capacity &lt; 6 (including driver)</b>	<b>Vehicle seating capacity 6-8 (including driver)</b>	<b>Vehicle seating capacity 9-15 (including driver)</b>	<b>Vehicle seating capacity &gt;15 (including driver)</b>
State mandated minimum coverage: (\$20,000/\$40,000)	Combined liability: \$500,000	Combined liability: \$1,500,000	Combined liability: \$5,000,000
Property: \$5,000	Property: \$50,000	Property: \$50,000	Property: \$50,000

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**G. COMMUNICATIONS/DISPATCH**

The Transportation Provider shall:

1. **UNIVERSAL>** Establish and maintain communications capability from 8:00 AM to 5:00 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.
2. **UNIVERSAL>** 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.
3. **UNIVERSAL>** 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.

**III. VEHICLE AND EQUIPMENT REQUIREMENTS**

**A. MINIMUM STANDARDS FOR VEHICLES**

1. **UNIVERSAL>** 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.
2. **UNIVERSAL>** All vehicles used under the terms of the Transportation Provider Subcontract with Broker must:
  - a. Be garaged and registered in the Commonwealth of Massachusetts;
  - b. 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;
  - c. 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;
  - d. 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
  - e. 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.

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**3. UNIVERSAL>** Vehicles must be equipped with:

- a. 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;
- b. 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;
- c. A working air conditioning system of sufficient capacity to cool the entire vehicle (auxiliary air may be necessary);
- d. Snow tires or their equivalent during the period November 15 through April 15 of each year;
- e. Spare tire and jack (unless covered by vendor maintenance policy);
- f. Portable step (optional for lift equipped vehicles) – Stools should be made of high-strength material, preferably metal and have rubber tips on the bottom to prevent slipping on wet or icy pavement. The design must be satisfactory to both the Transportation Provider and the Agency;
- g. Chock blocks, multifunctional fire extinguisher (universal class C, UL rated), flags, reflectors, and flashlight; and
- h. A first aid kit that meets the Red Cross family first aid kit standards plus a biohazard bag.

**4. PROGRAM-BASED TRANSPORTATION ONLY>**

- a. 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:
  - (1) **Five (5) years** for vans, sedans & station wagons; and
  - (2) **Seven (7) years** for wheelchair lift equipped vehicles and vehicles with seating capacity > 15.
- b. Notwithstanding the provisions of **4.a.** 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.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.
- c. Notwithstanding the provisions of **4.a.** 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.

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- d. 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.

#### **B. NON-AMBULATORY VEHICLE (CHAIR CAR) ADDITIONAL REQUIREMENTS AND SECUREMENT STANDARDS**

1. **UNIVERSAL>** Any vehicle used for Non-Ambulatory Transportation must be equipped with the following equipment specifications:
  - a. A hydraulic lift with manual backup operational capacity and/or retractable ramp;
  - b. A raised roof at least 12 inches high;
  - c. Raised side doors at least 54 inches high; and
  - d. Four securement straps, a lap belt and a shoulder belt assembly for each wheel chair. If the vehicle is equipped with a “locking bar” system, then only two securement straps are needed for that chair.
2. **UNIVERSAL>** Wheel chair securement requirements are as follows:
  - a. All wheel chairs must face forward in van;
  - b. All wheel chairs must be secured in the front and rear. If using a “locking bar” system, the front of the wheel chair must still be secured with straps;
  - c. All Consumers must be secured into their wheel chairs 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 wheel chair securement devices;
  - d. The use of table/tray attachments must not interfere with proper securement of Consumers by lap/shoulder belt assemblies. They must be removed if they prevent the Consumer from being properly secured; and
  - e. Do not use the shoulder belt if it extends across the Consumer’s neck or face, or if there is a medical condition that interferes with its proper use. (i.e., feeding or breathing tubes).
3. **UNIVERSAL>** Drivers operating non-ambulatory vehicles for HST work under the Transportation Provider Subcontract with Broker must receive hands-on training in order to ensure that they understand and are able to properly follow the procedures for proper securement of wheelchairs in vehicles prior to transportation.

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## **IV. PERSONNEL REQUIREMENTS**

### **A. DRIVER QUALIFICATIONS**

1. **UNIVERSAL**> 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.
2. **UNIVERSAL**> Drivers must be at least nineteen (19) years of age and have completed all required training specified in Section IV.C prior to HST work.
3. **UNIVERSAL**> Drivers must furnish written 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 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.
4. **UNIVERSAL**> Drivers must supply written health records on their physical condition and must be physically able to assist Consumers entering and exiting vehicles.
  - 4.a. **DPH ONLY**> The Transportation Provider must ensure that drivers have had a physical examination before any contact with Agency Consumers (within the preceding twelve months). The examination must verify good physical health and be conducted bi-annually thereafter (if over 70 years of age the physical examination requirement will be annual). The examination must include a vision and hearing test and a Mantoux TB test. The results of the TB test must be verified negative; however, (if test results are positive the individual may still be eligible, upon approval of the Broker).
5. **UNIVERSAL**> 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 10 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 10 years any of the violations specified below:
  - Driving under the influence of alcohol or drugs/driving while intoxicated;
  - Reckless driving/driving to endanger;
  - Leaving the scene of an accident;
  - Driving without a license and/or insurance;
  - Driving with a suspended license; and
  - Any record with multiple or repeated violations (other than parking).

At a minimum, if any of the above violations are found within the previous 10 years, that driver or driver applicant should be prohibited from contact with HST Consumers.



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- 6. UNIVERSAL**> 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 a laboratory certified under the National Laboratory Certification Program (NLCP). Drug testing is conducted for marijuana, cocaine, opiates, amphetamines and phencyclidines (PCP), and the results must be verified as “negative.”
- a. 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.
  - b. 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:
    - (1) An individual dies; or
    - (2) An individual suffers bodily injury and immediately receives medical treatment at or away from the scene of the accident; or
    - (3) 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
    - (4) There has been \$1000 or more of property damage.
- 7. PROGRAM-BASED TRANSPORTATION ONLY**> All drivers and Monitors who work under the provisions of the Transportation Provider Subcontract with the Broker shall adhere to the following additional provisions regarding drug/alcohol testing.
- a. Pre-contact – Prior to being assigned to any work directly or indirectly involving Agency Consumers, undergo a drug test as described in **Section IV.A.6.**, above.

## **B. MONITOR QUALIFICATIONS**

- 1. UNIVERSAL**> Monitors must be at least nineteen (19) years of age and have completed all required training specified in Section IV.C prior to HST work.
- 2. UNIVERSAL**> Monitors must furnish written 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 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.

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3. **UNIVERSAL**> Monitors must be physically able to assist Consumers entering and exiting vehicles.
  - 3.a. **DPH ONLY**> The Provider must ensure that Monitors have a Mantoux TB test. The results of the TB test must be verified negative; however, if test results are positive the individual may still be eligible, upon approval of the Broker.
4. **UNIVERSAL**> 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.
5. **PROGRAM-BASED TRANSPORTATION ONLY**> Monitors are also subject to the drug/alcohol testing provisions set forth in **Section IV.A.6**.

**C. DRIVER AND MONITOR TRAINING**

The Transportation Provider shall:

1. **UNIVERSAL**> Ensure that all drivers and Monitors have successfully completed the applicable in-service training program prior to their transporting any HST Consumers. The Broker reserves the right to request documentation of trainings conducted. The mandatory training shall include at a minimum the following and must be conducted annually thereafter:

<b>Program Application</b>	<b>TRAINING REQUIREMENT</b>
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 programs serving children
Universal	DRIVER AND MONITOR: Use of Wheelchair lift & proper wheelchair securement
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: 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, EO 504 and all other applicable laws, regulations, policies, procedures and standards applicable to Transportation Provider (including those set forth in <b>Section VIII</b> , 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

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2. **UNIVERSAL**> Ensure that drivers and Monitors attend Broker sponsored, coordinated, or arranged meetings as determined to be necessary by the Broker.
3. **UNIVERSAL**> 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.
4. **PROGRAM-BASED TRANSPORTATION ONLY**> Pre-qualify drivers prior to being assigned to a route:
  - a. Current Transportation Providers – driver must accompany an experience driver or supervisor on a minimum of one established route during regularly scheduled Facility hours.
  - b. New Transportation Providers – driver must accompany a supervisor on a minimum of one simulated route in the service area during regularly scheduled Facility hours.

#### **D. PERSONNEL POLICIES/DOCUMENTATION**

The Transportation Provider shall:

1. **UNIVERSAL**> Maintain a personnel file on each driver (including owners when they have driving responsibilities) and Monitor which shall include:
  - a. Credentials;
  - b. Written references;
  - c. Copy of driver's license (drivers only);
  - d. Results from annual CORI check;
  - e. Health records, including results of drug/alcohol testing and any other agency specific requirements (annual health exam, TB test, etc.);
  - f. Annual driving history reports from the appropriate state agenc(ies) (drivers only);
  - g. Training records;
  - h. Performance evaluation results; and
  - i. Any other Broker required documents.

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

2. **UNIVERSAL**> Develop and maintain written procedures for driver and Monitor orientation and training, and performance Monitoring.

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**V. DRIVER AND MONITOR PERFORMANCE STANDARDS**

1. **UNIVERSAL**> 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.
2. **UNIVERSAL**> 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 should not discuss 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.
3. **UNIVERSAL**> 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.
  - 3.a. **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.
4. **UNIVERSAL**> 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;

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- 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 shall be transported in the vehicle.
5. **UNIVERSAL**> 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.
6. **UNIVERSAL**> 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 insure 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.
- a. 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;
  - b. Children under 13 years of age must wear a properly adjusted and fastened safety belt, unless required to be in a child passenger restraint;
  - c. Older children and adults must wear a safety belt; and
  - d. 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.
7. **UNIVERSAL**> Ensure that:
- a. No Consumer is seated in any side or rear-facing seat (only forward facing seats);
  - b. 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
  - c. No child in a child passenger restraint is in the rear most bench seat of a fifteen-passenger van.
8. **UNIVERSAL**> 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.
9. **UNIVERSAL**> Ensure that drivers carry and maintain "fact sheets" and/or Transportation Plans and daily attendance and/or trip/route sheets for all Consumers on their route. Driver must maintain the log/trip sheet legibly and completely.
10. **UNIVERSAL**> Ensure that Monitors, in addition to all other requirements contained herein, perform the following:

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- a. Constantly observe/monitor the Consumer(s) to whom they are assigned while in transit;
  - b. Provide one-to-one assistance to Consumers, upon assignment, but also provide supervision and assistance to other Consumers on the vehicle when necessary;
  - c. Follow designated assignments and accept supervisory guidance;
  - d. Attend specialized training upon request by the Broker. The Broker reserves the right to request documentation of trainings conducted;
  - e. 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;
  - f. Notify Facility staff of any significant Incident that occurred while in transit;
  - g. 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
  - h. Perform any additional Consumer-specific duties. The Broker may request that the Monitor assist the Consumer when necessary from door to door.
- 11. UNIVERSAL>** 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.
- 12. UNIVERSAL>** 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.
- 13. UNIVERSAL>** 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.
- 14. UNIVERSAL>** 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.
- 15. PROGRAM-BASED TRANSPORTATION ONLY>** Ensure that 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.
- 16. PROGRAM-BASED TRANSPORTATION ONLY>** Ensure that drivers, after discharging all Consumers on a route (inbound or outbound), physically inspect the entire interior section of the vehicle to ensure that all Consumers have exited and no Consumer belongings have been left behind and place a “Vehicle Empty” sign in the rear window.

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- 17. 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):
- a. Notify the transportation coordinator or director at the Consumer's Facility;
  - b. Attempt to contact the parent/Day Care provider by phone;
  - c. If there are other Consumers on the vehicle instruct the driver to continue on with the route and then return;
  - d. 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
  - e. If there is no authorized staff at the Consumer's Facility or if unable to contact the Facility, then notify the Broker.

At this point, if no contact can be established with the parent, residential staff, or Facility staff then the Broker will:

**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).

**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.

## **VI. TRIP PERFORMANCE STANDARDS**

### **A. TIME MEASURED STANDARDS**

- 1. UNIVERSAL**> **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. Unless otherwise directed by the dispatcher, the driver shall wait until at least five minutes after the scheduled pick-up time before departing without the Consumer. 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).
- 2. 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.

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3. **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.)
4. **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.
5. **PROGRAM-BASED TRANSPORTATION ONLY**> Ensure that Consumers are transported within the following timelines:
  - a. Pick up at their Residence or Day Care site within 15 minutes (plus or minus) of their scheduled pick up time. In the event of a possible Consumer "no-show", Drivers must radio the dispatcher who in turn will attempt to contact the Consumer by phone. Drivers should initiate a call to the dispatcher within two minutes of arriving at a Consumer's residence. However, they need not wait more than five minutes for an acknowledgement before continuing on with the route. In no event shall a driver be considered to have fulfilled the obligation by merely sounding the horn.
  - b. 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.
  - c. 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.
  - d. Drop off at their Residence or Day Care site within 15 minutes (plus or minus) of their scheduled return time.
  - e. 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.
  - f. 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.
6. **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:
  - a. Attempt to establish radio contact with the driver;
  - b. Maintain contact with the person who initiated the report;
  - c. Inform Facility staff of the delay;



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- d. **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 #);
- e. **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
- f. **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.

**7. 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:

- a. Attempt to establish radio contact with the driver;
- b. Maintain contact with the person who initiated the report;
- c. Contact Facility staff;
- d. 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 #).
- e. 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.

## **B. QUALITY MONITORING**

The Transportation Provider shall:

1. **UNIVERSAL>** Respond to complaints forwarded by the Broker within 48 hours and provide resolution and/or a corrective action plan approved by the Broker.
2. **UNIVERSAL>** 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.
3. **UNIVERSAL>** 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.

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- 4. 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.

#### **C. CORRECTIVE ACTION/PROVIDER ACCOUNTABILITY**

- 1. UNIVERSAL**> 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.
- 2. UNIVERSAL**> 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.

#### **VII. REPORTS AND BILLING**

- 1. UNIVERSAL**> The Transportation Provider must submit all required documentation, polices and reports specified in this Attachment to the Broker within the specified time frames.
- 2. UNIVERSAL**> 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.
- 3. UNIVERSAL**> 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:
  - 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 should also include Consumer pickup and drop-off times.
  - Random, on-site inspections at destination facilities by supervisory staff.
  - Random surveys of destination facilities to confirm transportation.
  - 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.

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## **VIII. DATA PRIVACY AND SECURITY**

### **A. DEFINITIONS**

1. **UNIVERSAL**> The following capitalized terms, as used in this **Section VIII**, shall have the meanings ascribed to them below:

Commonwealth Security Information: 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 authorized users, including those measures necessary to detect, document and counter such threats.

EOHHS-CE: Any component of EOHHS and its constituent agencies that constitutes a Covered Entity under the Privacy and Security Rules, including: the Office of Medicaid; the Department of Developmental Services; the Department of Mental Health; the Soldiers' Home in Massachusetts; the Soldiers' Home in Holyoke; the covered components of the Department of Public Health, a hybrid agency, having designated its covered components as: the Childhood Lead Screening Laboratory and the MDPH Public Health Hospitals (Lemuel Shattuck Hospital; Massachusetts Hospital School; Tewksbury Hospital; Western Massachusetts Hospital; and State Office of Pharmacy Services).

HIPAA Rules: The Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Parts 160 and Part 164.

Individual: The person to whom the PI refers and shall include a person who qualifies as a personal representative in accord with 45 CFR § 164.502(g).

PHI: Any Protected Health Information that the Transportation Provider: (a) receives from an EOHHS-CE or the Broker on behalf of such EOHHS-CE; or (b) creates, receives, maintains or transmits for or on behalf of an EOHHS-CE or the Broker on behalf of such EOHHS-CE, in each case, in connection with the performance of any function, activity or service under the Transportation Provider Subcontract. PHI is a subset of PI.

Privacy Rule: The Standards of Privacy of Individually Identifiable Health Information, at 45 CFR Parts 160 and 164.

Protected Information (PI): Any Protected Health Information, "Personal Data" as defined in Mass. Gen. Laws c. 66A, "Personal Information" as defined in Mass. Gen. Laws c. 93H, "Patient Identifying Information" as defined in 42 CFR Part 2 and any other personally identifiable information that is treated as confidential under any federal or state law or regulation (including for example any state and federal tax return information) that the Transportation Provider: (a) receives from an Agency, Broker or its contractor or (b) creates, receives, maintains or transmits for or on behalf of an Agency, Broker or its contractor in connection with the performance of any function, activity or service under the Transportation Provider Subcontract. Information, including aggregate information, is considered PI if it is not fully de-identified in accord with 45 CFR 164.514 (a), (b), and (c).

Security Rule: The Security Standards for the Protection of Electronic Protected Health Information, at 45 CFR Parts 160 and 164.

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Subcontractor: Any person or entity acting or serving as an agent, subcontractor or service provider of the Transportation Provider.

2. **UNIVERSAL**> The following capitalized terms, as used in this **Section VIII**, shall have the same meaning ascribed to those terms in the HIPAA Rules: Business Associate, Covered Entity, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary and Security Incident. All other terms used but not defined in this *Section VIII* shall be construed in a manner consistent with the HIPAA Rules and all other applicable privacy or security laws or regulations (state or federal).

**B. TRANSPORTATION PROVIDER'S OBLIGATIONS**

**1. UNIVERSAL> MASS.GEN. LAWS C. 66A AND OTHER PRIVACY AND SECURITY OBLIGATIONS**

- a. Transportation Provider acknowledges that in the performance of the Transportation Provider Subcontract it will create, receive, use, disclose, maintain, or otherwise obtain "Personal Data," and that in so doing, it becomes a "Holder" of Personal Data, as such terms are used within Mass. Gen. Laws c. 66A. Transportation Provider agrees that it shall comply with Mass. Gen. Laws c. 66A, and any other applicable privacy or security law or regulation (state or federal) governing Transportation Provider's use, disclosure, and maintenance of any PI under the Transportation Provider Subcontract, including for example, 42 CFR Part 431, Subpart F, Mass. Gen. Laws c. 93H and Executive Order 504.
- b. Transportation Provider further agrees that it shall comply with any other privacy and security obligation that is applicable to any PI as the result of EOHHS or an Agency having entered into an agreement with a third party (such as the Social Security Administration) to obtain or to access data, including, by way of illustration and not limitation, signing any written compliance acknowledgment or confidentiality agreement or complying with any other privacy and security obligation required by the third party for access to data that EOHHS or an Agency receives from the third party or for access to any system or database containing any such data or through which such data could be accessed.

2. **UNIVERSAL> 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.

**3. UNIVERSAL> EMPLOYEES, AGENTS AND SUBCONTRACTORS**

- a. The Transportation Provider shall ensure that any Subcontractor that receives PI from the Transportation Provider, or that creates, receives, maintains or transmits PI for or on behalf of the Transportation Provider, agrees in writing to the same restrictions and conditions that apply to the Transportation Provider under this **Section VIII** with respect to such PI, including, but not limited to, implementing reasonable safeguards to protect such information. With respect any Subcontractor acting as the Business Associate of Transportation Provider in connection with the Transportation Provider Subcontract, the Transportation Provider shall also comply with the requirements set forth at **Section VIII.C.1.d.**, below.
- b. The Transportation Provider is solely responsible for its employees' and Subcontractors' compliance with all requirements in this **Section VIII**, and shall not be relieved of any obligation under this **Section VIII** because the data was in the hands of such entities or persons.

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- c. The Transportation Provider must obtain the written agreement of its employees providing transportation services under the Transportation Provider Subcontract to comply with the data privacy and security requirements set forth in this **Section VIII**.

#### 4. UNIVERSAL>DATA SECURITY

##### a. **Administrative, Physical and Technical Safeguards**

- (1) 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 the Transportation Provider Subcontract. All such safeguards must meet, at a minimum, all standards set forth in the Privacy and Security Rules, as applicable to a Business Associate, and must comply with all Commonwealth security and information technology resource policies, processes and mechanisms established for access to PI, including any applicable data security policies and procedures established by Executive Order 504, EOHHS and the Information Technology Division, and the standards outlined by the National Institute of Standards and Technology publication: NIST 800-53, revision 3-Recommended Security Controls for Federal Information Systems and Organizations, Information Security, Moderate Controls. As one of its safeguards, the Transportation Provider shall not transmit PI in a non-secure manner, whether over the Internet or any wireless communication device or otherwise. The Transportation Provider shall protect from inappropriate use or disclosure any password, user ID or other mechanism or code permitting access to any database containing PI.
- (2) If granted access to any EOHHS, Agency or Broker systems or databases or other information technology resources, the Transportation Provider must comply with all Commonwealth security and information technology resources policies, processes, procedures and mechanisms established for access to such systems or databases by Executive Order 504, EOHHS, the Information Technology Division, the particular Agency whose data is involved and the Broker, as applicable, and shall give EOHHS, the applicable Agency or the Broker, as appropriate, prior notice of any change in personnel whenever the change requires a termination or modification of any EOHHS, Agency or Broker password, user ID or other security mechanism or code to maintain the integrity of the system or database.
- (3) The Transportation Provider must allow representatives of Broker, or at the Broker's option, EOHHS or any Agency whose data is involved, access to its premises where PI is kept for the purpose of inspecting privacy and physical security arrangements implemented by the Transportation Provider to protect such data.
- (4) Upon request, the Transportation Provider shall provide the Broker with copies of all written policies, procedures, standards and guidelines related to the protection, security, use and disclosure of PI, Commonwealth Security Information or other confidential information and the security and integrity of its technology resources.

- b. **Commonwealth Security Information.** If through the Transportation Provider Subcontract, the Transportation Provider obtains access to any Commonwealth Security Information, Transportation Provider is prohibited from making any disclosures of or about such information, unless in accord with EOHHS's or Broker's express written instructions. If the Transportation Provider is granted access to such information in order to perform its obligations under its 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 staff or agents necessary to perform the permitted purposes. While in

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possession of such information, the Transportation Provider shall apply all privacy and security requirements set forth in this **Section VIII**, as applicable, to maintain the confidentiality, security, integrity and availability of such information. Notwithstanding any other provision in the Transportation Provider Subcontract, the Transportation Provider shall report any non-permitted use or disclosure of such information to the Broker within twenty-four (24) hours of discovery. The Transportation Provider shall immediately take all reasonable and legal actions to retrieve such information if disclosed to any non-permitted individual 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 the Broker or EOHHS shall 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 such Subcontract, unless such information is expressly identified in any retention permission granted in accord with **Section VIII.F. (Effect of Termination)**. 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.

#### c. **Non-Permitted Use or Disclosure Report and Mitigation Activities**

- (1) As used in this **subsection c**, the term Event refers to the following, either individually or collectively: 1) any use or disclosure of PI by the Transportation Provider or its Subcontractors not permitted under this **Section VIII** or the Transportation Provider Subcontract; 2) any Security Incident by the same; or 2) any event that would trigger consumer or oversight agency notification obligations under 45 CFR Part 164, Part D, Mass. Gen. Laws 93H or any other applicable federal or state data privacy or security law or regulation.
- (2) Immediately upon becoming aware of an Event, the Transportation Provider shall take all appropriate lawful action necessary to: (1) retrieve, to the extent practicable, any PI involved in the Event; (2) mitigate, to the extent practicable, any known harmful effect of the Event; and (3) take such further action as may be required by any applicable state or federal law or regulation concerning the privacy and security of any PI involved in the Event. 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 report to the Broker, both verbally and in writing: (i) the date of the Event, if known, or if not known, the estimated date; (ii) the date of the discovery of the Event; (iii) the nature of the Event, including as much specific detail as possible describing the Event, as well as the nature of the PI involved (for example, types of identifiers involved such as name, address, age, social security numbers or account numbers; or medical or financial or other types of information); (iv) the number of individuals whose PI was involved in the Event; (v) a summary of the nature and scope of Transportation Provider's investigation of the Event; (vi) the harmful effects of the Event known to Transportation Provider, all actions it has taken or plans to take to mitigate such effects, and the results of all mitigation actions already taken; and (vii) a review of and any plans to implement changes to Transportation Provider's policies and procedures, including staff training, to prevent such Events in the future. Upon Broker's or EOHHS' request, Transportation Provider shall take such further actions as requested by Broker or EOHHS, and shall cooperate with Broker and EOHHS, to further mitigate, to the extent practicable, any harmful effect of the Event. Any actions to mitigate harmful effects of such Events undertaken by Transportation Provider on its own initiative or pursuant to Broker's or EOHHS' request under this paragraph shall not relieve Transportation Provider of its obligations to report such Events under this paragraph or any other provision of the Transportation Provider Subcontract.

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- d. **Consumer Notification.** In the event that EOHHS determines, in its sole discretion, that it or an Agency is required to provide notification(s) to one or more consumers or oversight agencies as a result of an Event, Transportation Provider shall, at the request of EOHHS or Broker, assist the EOHHS, the Agency or the Broker in undertaking all actions necessary to meet such notification requirements and in drafting the notices for EOHHS or Broker review and approval, but in no event shall Transportation Provider have the authority to give these notifications on behalf of EOHHS or an Agency. Transportation Provider shall reimburse Broker for reasonable costs incurred by Broker, EOHHS and the Agency associated with a such notification, but only to the extent that such costs are due to: (1) Transportation Provider's failure to meet its responsibilities under, or in violation of, any provision of this **Section VIII** or the Transportation Provider Subcontract; (2) Transportation Provider's violation of law; (3) Transportation Provider's negligence; (4) 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 such laws; or (5) any activity or omission of Transportation Provider or its Subcontractors resulting in or contributing to a breach triggering such laws.
- e. **Response to Legal Process/Data Requests.** The Transportation Provider shall immediately report to the Broker, both verbally and in writing, any instance where PI, Commonwealth Security Information or any other data obtained under the Transportation Provider Subcontract is requested, subpoenaed or becomes the subject of a court or administrative order or other legal process. If the Broker or EOHHS directs the Transportation Provider to respond, the Transportation Provider shall take all necessary legal steps, including objecting to the request when appropriate, to comply with Mass. Gen. Laws c. 66A, 42 CFR 431.306(f) and any other applicable federal or state law or regulation. If the Broker or EOHHS determines that the Broker, EOHHS or the applicable Agency shall respond directly, the Transportation Provider shall fully cooperate and assist the Broker, EOHHS or the applicable Agency in its response. In no event shall the Transportation Provider's reporting obligations under this paragraph be delayed beyond two (2) business days preceding the return date in such request, subpoena or legal process, or two (2) business days from obtaining such request for data, whichever is shorter.
- f. **Individual's Authorization to Disclose PI to a Third Party.** In the event the Transportation Provider receives a request from the Individual or from a third party to release PI to a third party pursuant to a consent, authorization or other written document, the Transportation Provider shall, within three (3) business days of receipt of such consent, authorization or other written document, notify the Broker and shall cooperate with the Broker, EOHHS and the Agency whose data is involved in the request in confirming the validity and sufficiency of such document under applicable laws and regulations before releasing any PI to the Individual or third party.
- g. **Electronic and Paper Databases Updates.** Within thirty days of execution of the Transportation Provider Subcontract, Transportation Provider shall provide the Broker an accurate list of electronic and paper databases containing PI, together with a description of the various uses of the databases. The Transportation Provider shall update such lists as necessary in accord with the addition or termination of such databases.
- h. **Data Privacy and Security Custodian.** Within five (5) days of the effective date of the Transportation Provider Subcontract, the Transportation Provider shall provide the Broker in writing with the name of an individual(s), who shall act as Privacy and Security Officer(s) and be responsible for compliance with this **Section VIII**. Transportation Provider shall also notify the Broker in writing within five (5) business days of any transfer of such duties to other persons within its organization.

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**C. BUSINESS ASSOCIATE RELATED PROVISIONS**

**1. UNIVERSAL> TRANSPORTATION PROVIDER OBLIGATIONS**

- a. **Generally.** In connection with the performance of any function, activity or service under the Transportation Provider Subcontract, Transportation Provider will receive Protected Health Information from, and/or create, receive, maintain or transmit Protected Health Information for or on behalf of, an EOHHS-CE or the Broker acting on its behalf. In doing so, the Transportation Provider will be acting as the Business Associate of Broker and must comply with all provisions of this **Section VIII.C.1.** and all requirements of the HIPAA Rules applicable to a Business Associate with respect to any such EOHHS-CE and any associated PHI.
- b. **Compliance with Access for Secretary.** Transportation Provider shall make its internal policies, procedures, practices, books and records relating to the use and disclosure of PHI available to Broker or the Secretary, in a time and manner designated by either Broker or the Secretary, for purposes of the Secretary determining compliance with the HIPAA Rules.
- c. **Individual's Rights.**
  - (1) Transportation Provider shall take such actions as may be requested by Broker or EOHHS for any EOHHS-CE to meet its obligations under 45 CFR §§ 164.524, 164.526 and 164.528 with respect to any such EOHHS-CE's PHI in Transportation Provider's possession. If an Individual contacts Transportation Provider with respect to exercising any rights the Individual may have under 45 CFR §§ 164.524, 164.526 and 164.528 with respect to PHI in Transportation Provider's possession, Transportation Provider shall notify Broker within two (2) business days of the Individual's request, and cooperate with Broker, EOHHS or the applicable EOHHS-CE to meet any EOHHS-CE's obligations with respect to such request.
  - (2) With respect to an Individual's right to an accounting under 45 CFR § 164.528, Transportation Provider shall document all disclosures of PHI and other data access activities as would be necessary for EOHHS or the particular EOHHS-CE whose PHI is involved to respond to a request by an Individual for an accounting in accord with 45 CFR § 164.528.
- d. **Subcontractors.** With respect to Subcontractors of Transportation Provider, Transportation Provider must comply with **Section VIII.B.3.a.**, above. In addition, with respect to any Subcontractor that receives Protected Health Information from the Transportation Provider, or that creates, receives, maintains or transmits Protected Health Information for or on behalf of the Transportation Provider, in connection with the Transportation Provider's performance of any function, activity or service under the Transportation Provider Subcontract, the Transportation Provider must ensure that the written agreement referenced in **Section VIII.B.3.a.** meets all requirements of a business associate agreement, as required for subcontractors of a Business Associate, under the Privacy and Security Rules (including, but not limited to, those required under 45 CFR § 164.308(b), 45 CFR 164.314(a), 45 CFR 164.502(e) and 45 CFR 164.504(e)).

**2. UNIVERSAL> EOHHS OBLIGATIONS.** Broker shall notify Transportation Provider of any of the following:

- a. Any limitation(s) in any EOHHS-CE's Notice of Privacy Practices, to the extent that such limitation may affect Transportation Provider's use or disclosure of Protected Health Information.



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- b. Any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Transportation Provider's use or disclosure of Protected Health Information.
- c. Any restriction to the use or disclosure of Protected Health Information that an EOHHS-CE has agreed to in accord with 45 CFR § 164.522, to the extent that such restriction may affect Transportation Provider's use or disclosure of Protected Health Information.

#### **D. PERMITTED USES AND DISCLOSURES OF PI BY TRANSPORTATION PROVIDER**

##### **1. UNIVERSAL> AGREEMENT FUNCTIONS AND SERVICES**

- a. Except as otherwise limited in this **Section VIII** or the Transportation Provider Subcontract, Transportation Provider may only use and disclose PI as follows:
  - (1) To perform functions, activities or services for or on behalf of, Broker (as specified in the Transportation Provider Subcontract), provided, that such use or disclosure would not: (A) violate any applicable law, including for example, the Privacy Rule, 42 CFR Subpart F or Mass. Gen. Laws c. 66A if done by the Broker, EOHHS or the applicable Agency; (2) violate the minimum necessary standards set forth in the Privacy Rule; or (3) conflict with any statements in any applicable EOHHS-CE's Notice of Privacy Practices.
  - (2) As required by, and in accordance with, the provisions of this **Section VIII**; and
  - (3) As Required by Law, consistent with any restrictions in any applicable state or federal law or regulation governing Transportation Provider's use, disclosure, or maintenance of any PI under the Transportation Provider Subcontract.
- b. In performing functions, activities, or services under the Transportation Provider Subcontract, Transportation Provider represents that it shall seek from Broker only the amount of PI that is minimally necessary to perform the particular function, activity, or service. To the extent the Transportation Provider Subcontract permits Transportation Provider to request PI from any other entity or individual, Transportation Provider shall only request an amount of PI that is reasonably limited to the minimal necessary to perform the intended function, activity, or service.

**2. UNIVERSAL> RESTRICTION ON CONTACTING THE INDIVIDUAL.** Transportation Provider may not use PI to attempt to contact the Individual, unless such contact is otherwise necessary to perform functions, activities or services under the Transportation Provider Subcontract, or unless Broker or EOHHS otherwise instructs Transportation Provider to do so in writing.

**3. UNIVERSAL> PUBLICATION RESTRICTION.** Transportation Provider shall not use PI for any publication, statistical tabulation, research or similar purpose, even if the PI has been transformed into de-identified data in accord with the standards set forth in 45 CFR § 164.514(a), (b) and (c).

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#### **E. TERMINATION**

- 1. UNIVERSAL> 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 VIII** or any material term of the Transportation Provider Subcontract pertaining to the security or privacy of PI.
- 2. UNIVERSAL> 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.
- 3. UNIVERSAL> 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.

#### **F. EFFECT OF TERMINATION**

- 1. UNIVERSAL> 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.
- 2. UNIVERSAL> TRANSFER DATA.** Notwithstanding **subsection 1** 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 VIII** 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 1** immediately above or **subsection 3** 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

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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.

**3. UNIVERSAL> RETAIN DATA**

- a. 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 VIII** 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.
- b. Notwithstanding **subsections 1 and 2** 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 VIII** 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 1** above, or transfer such data to a third party in accord with **subsection 2** 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 1, 2 and 3**, 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.