EOHHS ENS Initiative – Draft Certification Criteria

Public Forum: **October 4, 2019, 2 – 4 p.m. ET**, 21st Floor Conference Rooms 2 & 3, McCormack Building, One Ashburton Place, Boston MA 02108

Submit Written Comment: Due **October 11, 2019, 5 p.m. ET**, Masshiway@MassMail.State.MA.US with subject line – ENS Certification Written Comments

1. **EOHHS ENS Initiative**

The Massachusetts Executive Office of Health and Human Services (EOHHS) seeks to develop timely statewide Event Notification Services (ENS) across the Commonwealth in order to improve health care delivery, quality, and care coordination. EOHHS seeks to leverage the gains existing ENS service providers have made to create a statewide ENS framework. The proposed ENS framework seeks to promote data sharing to increase access to ENS for providers of all sizes; to streamline the provider experience by allowing for single submission and single reception of data; and to improve timing for the flow of data.

Pursuant to 101 CMR 20.00, EOHHS will create a certification process to develop the statewide ENS framework. The state will certify ENS vendors that show the capability to accept ADTs, share ADTs with other Certified ENS vendors, and produce notifications in a secure environment.

**II. Certification Overview**

1. Solicitations for Certified ENS vendors will be posted on COMMBUYS.
2. Certified ENS vendors will have an initial set 2-year term
	1. After the initial 2-year period, with the goal of moving toward future renewal 2-year terms accepted on a rolling basis. (Certification renewal information will be posted in advance of expiry of the initial 2-year term.)
3. Certified ENS vendors must submit information for all **Certification Criteria** (described below) for review by EOHHS
4. Certified ENS vendors must accept the **Statewide ENS Framework Obligations** and comply with the Statewide ENS Framework Obligations for the duration of their certification term (described below)
5. Definitions
	1. 101 CMR 20.00 terms
		1. Admission Discharge and Transfer Messages (ADTs). Types of messages that can track a patient’s transitions in or out of a site of care such as admissions, discharges, or transfers. The focus of ADT messages is to convey data related to patient demographics and/or to health care encounters.
		2. ENS Recipient. A provider that has a contractual relationship, including, but not limited to, a business associate agreement, with a Certified ENS vendor(s) for treatment or care coordination in accordance with 101 CMR 20.11.
		3. Event Notification Service (ENS). A service that provides real-time alerts about certain patient medical service encounters, for example, at the time of hospitalization, to a permitted recipient with an existing treatment relationship to the patient, such as a primary care provider.
		4. Patient Matching Process. A Certified ENS vendor’s proprietary algorithmic process(es) used to match ADTs with patients.
		5. Reflection or Reflect. The process Certified ENS vendors use to disclose ADTs with all other Certified ENS vendors for treatment or care coordination.
		6. Statewide Event Notification Service (ENS) Framework. An event notification service framework created as a HIway-facilitated service by the HIway under 101 CMR 20.11.
	2. Additional Terms
		1. Certified ENS vendor. A vendor who has been certified by EOHHS to participate in the Statewide ENS Framework.
		2. HITRUST Common Security Framework (HITRUST CSF). The HITRUST CSF is created by the HITRUST Alliance as a certifiable framework that provides organizations with a comprehensive, flexible, and efficient approach to regulatory compliance and risk management. The HITRUST CSF leverages nationally and internationally accepted standards including ISO, NIST, PCI, and HIPAA.
		3. Processed ADT. Raw ADT data that has been transformed to canonical form to be used by Certified ENS vendor.
		4. Raw ADT. Raw ADT data received by a Certified ENS vendor from an Acute Care Hospitals (as defined in 101 CMR 20.11); additionally, any Raw ADT data converted to HL7 for the purpose of reflection will still be considered a Raw ADT.
		5. Written Information Security Program (WISP). The Comprehensive Written Information Security Program as developed pursuant to M.G.L. 93H and 201 CMR 17.00.

**III. Certification Criteria**

ENS vendors that wish to apply to become certified to operate in the Statewide ENS Framework will be required to submit the information specified in this section for review by EOHHS. EOHHS will review the submissions to determine whether to grant the certification, request additional information, or deny the certification.

1. Business Requirements
	1. Certificate of Good Standing – ENS vendors must submit to EOHHS a copy of their Certificate of Good Standing from MA.
	2. Operating ENS in MA – ENS vendors must submit information to EOHHS regarding their ability to maintain business in the Commonwealth:
		1. Full status:
			1. Existing Massachusetts client contracts at the time of submission threshold:
				1. 20 MA clients under contract, or
				2. 700,000 MA covered lives in client patient panels
		2. Provisional status:
			1. Potential MA contracts or existing national contract at the time of submission threshold:
				1. 20 MA clients or 700,000 covered lives in client patient panels under existing contracts or Memorandum of Understanding (MOU), or
				2. 20 clients outside Massachusetts or 700,000 covered lives in client patient panels outside of Massachusetts
			2. EOHHS to review provisional status six months after provisional status is granted
				1. ENS vendors with provisional status must submit additional information as proof of clientele or lives covered.
				2. If provisional vendor submits information that meets full status requirements, the vendor will be granted full certification status.
				3. If a provisional vendor fails to submit information that meets full certification status requirements, then its provisional status will be revoked and the vendor will be no longer receive Raw ADTs through the Statewide ENS Framework.
	3. Proof of Cyber Liability Insurance – ENS vendors must submit to EOHHS proof of insurance from an insurer having an AM Best Rating of A- or higher, and including the following coverage amounts: Cyber Liability - first-party liability coverage, Cyber Liability - third-party liability coverage, Commercial General Liability, Employer’s Liability Insurance, Fidelity – Employee Dishonesty, Network Security and Privacy, Professional Liability Insurance, Errors and Omissions and Umbrella Liability. ENS vendor insurance coverage must include, at a minimum, polices that cover breaches, ransomware, and business downtime.
	4. Ability to Provide the Services without Subcontracting – ENS vendors must attest that they are able fulfill all of the Statewide ENS Framework Obligations without the use of any subcontractors.
	5. No Offshoring – ENS vendors must attest that they are able to fulfill all of the Statewide ENS Framework Obligations on shore.
	6. Litigation and Other Actions – ENS vendors must include relevant information pertaining to the following, or attest that none of the following have occurred:
		1. Any litigation in the past five (5) years.
		2. Any criminal conviction or indictment in any jurisdiction in the current and past five (5) years.
		3. Any debarments, suspensions, or other ineligibilities, or notices of same, under any local, state, or federal law or regulation in the current or past five (5) years.
		4. Any terminations of contract for cause or default in the current or past five (5) years.
		5. Any pending criminal investigation in any jurisdiction of which, to the ENS vendor’s knowledge, the ENS vendor is a target.
		6. Any settlement or civil judgment in the current and last five (5) years or any pending civil action that:
			1. Would affect the ENS vendor’s ability to perform any of its obligations as a Certified ENS vendor;
			2. Relates to any current or past contract between the Commonwealth or EOHHS and the ENS vendor; and/or
			3. Resulted from a suit brought by any local, state, or federal authority.
	7. Data Breaches – ENS vendors must disclose all details of any circumstances over the past five (5) years in which the ENS vendor has been involved in a breach of the security, confidentiality, or integrity of a customer's data. For the purposes of this section, a breach shall include any unauthorized disclosure of, or unauthorized access to confidential information or customer data.
2. Functionality Requirements – EOHHS requires ENS vendors to “attest” to the ability to meet functionality standards, by providing EOHHS an assurance that such standards are met, as well as a detailed description setting forth how the ENS vendor meets specific functional requirement. ENS vendors must attest to the following functions, all subject to audits:
	1. Transmitting HL7 ADTs – ENS vendors must be capable of transmitting HL7 ADT feeds to other Certified ENS vendors.
	2. Receiving HL7 ADTs – ENS vendors must be able to receive HL7 ADT feeds.
	3. Patient matching of HL7 ADTs – ENS vendors must be able to match patient data with a high degree of accuracy with the goal of eliminating false positives.
	4. Notification to ENS recipients – ENS vendors must be able to provide notification to ENS recipients.
	5. Destruction of ADT feeds and information – ENS vendors must be capable of immediately destroying Raw ADT data after processing and Processed ADT when there is no match with a patient panel.
	6. Metadata generation & reporting – ENS vendors must be capable of generating metadata and reports for the purposes of programmatic and security audits.
3. Security Requirements – EOHHS will require ENS vendors to submit certification or program information or attest to the ability to meet the following security standards, by providing EOHHS an assurance that such standards are met, as well as a detailed description setting forth how the vendor meets specific functional requirement, which are further defined in the Statewide ENS Framework Obligations below:
	1. HITRUST Certification – ENS vendors must submit documentation of their HITRUST certification, including reports prepared by the recognized assessor.
	2. Data Treatment –
		1. ENS vendors must be able maintain encryption of data at rest and data in transit, subject to EOHHS review and audit.
		2. Data in transit must be sent through a secured channel.
		3. ENS vendors must be able to maintain endpoint security measures like antivirus, security awareness training, and secure destruction of ADTs, subject to EOHHS review and audit.
		4. ENS vendors must be able to destroy ADTs in accordance with NIST 800-88 and be willing to demonstrate that capability to EOHHS.
	3. Written Information Security Program (WISP) – ENS vendors must submit to EOHHS its most current Written Comprehensive Information Security Program as developed pursuant to M.G.L. 93H and 201 CMR 17.00.
4. Debrief – ENS vendors who are not granted certification may request a debrief with EOHHS to discuss the rationale for failure to meet the criteria set forth above. ENS vendors must submit the request in writing to EOHHS staff within 14 days of the notification of failure to meet certification criteria.

**IV. MA ENS Framework Obligations**

Certified ENS vendors that have been certified by the state to participate in the Statewide ENS Framework will be subject to the obligations in this section. The section establishes the standards to which Certified ENS vendors must adhere to maintain their certification status within the Statewide ENS Framework.

**1. Framework Standards**

1. Business Requirements
	1. Certified ENS vendors must remain in good standing in the Commonwealth throughout the term.
	2. Certified ENS vendors must have an operating ENS presence in MA as follows:
		* 1. Existing Massachusetts client contracts at the time of submission threshold:
				1. 20 MA clients under contract, or
				2. 700,000 MA covered lives in client patient panels
			2. If a Certified ENS vendor’s operating ENS presence in MA drops below the levels set forth in subsection (A), the ENS vendor’s status will change to Provisional (as set forth above).
2. Functional Requirements – Data security
	1. Certified ENS vendors must maintain HITRUST certification throughout the term.
	2. Data Treatment
		1. Certified ENS vendors must maintain encryption of data at rest and data in transit.
		2. In addition to encryption, data in transit must be sent through a secured channel.
		3. Certified ENS vendors must maintain endpoint security measures like antivirus, security awareness training, and secure destruction of information.
		4. Information must be destroyed in accordance with NIST 800-88.
	3. Certified ENS vendors must maintain a documented plan for disaster recovery.
	4. Certified ENS vendors that update their WISP must provide a copy to EOHHS within 30 days of adopting the updated WISP.
3. Functional Requirements – Data reflection
	1. Certified ENS vendors must transmit acute care hospital ADT data collected pursuant to 101 CMR 20.00 to all other Certified ENS vendors for the purpose of treatment or care coordination in real-time or near real-time if original feeds are not in HL7.
		1. All reflected Raw ADTs will be in HL7 format.
		2. Recipient Certified ENS vendors must instantaneously process the reflected Raw ADTs to a canonical form, the Processed ADT, to include in their system for the purpose of utilizing its patient matching algorithm.
			1. Certified ENS vendors must instantaneously delete the reflected Raw ADT data once it has been turned into a Processed ADT.
		3. The ENS recipient’s Certified ENS vendor will use accurate matching techniques to successfully match the Processed ADT with client patient panels.
			1. Certified ENS vendors must implement a matching technique with a high degree of accurate matching of data to clients’ patient panels. The matching technique must be configured to minimize the level of false positives and false negatives. Certified ENS vendors must provide quarterly reports to EOHHS pursuant to section (e).
		4. If there is a positive match of the Processed ADT, the recipient Certified ENS vendor may generate a notification.
			1. Certified ENS vendors may retain the Processed ADT on behalf of ENS recipient pursuant to their HIPAA compliant BAA or ENS-related contracts. Certified ENS vendors may only handle Processed ADT in a manner consistent with the contract(s) in place with the ENS recipient. Certified ENS vendors that either voluntarily or involuntarily lose certification status must delete Processed ADTs in accordance to the deletion schedule within the terms that ENS recipient’s BAA.
		5. If there is no positive match of the Processed ADT, the recipient Certified ENS vendor must securely delete the Processed ADT in accordance with NIST 800-88.
			1. Recipient Certified ENS vendors must maintain an auditable log related to the ADT data received through the Statewide ENS Framework.
		6. EOHHS reserves the right to audit the matching technique, the number of false positives, the number of false negatives, or other issue arising from this section pursuant to section (f).
4. Functional Requirements – Federal and state privacy standards
	1. Certified ENS vendors shall be subject to all applicable laws, including but not limited to, HIPAA and other existing state and federal requirements related to the use and disclosure of data, including 42 CFR Part 2 and state laws regarding genetic testing and HIV.
5. Certified ENS vendor reporting Obligations
	1. Certified ENS vendors must submit quarterly reports to EOHHS on the following:
		1. Transactions data
			1. Number of ADTs reflected,
			2. Number of ADTs deleted,
			3. Number of false positives,
			4. Number of false negatives, and
			5. Number of notifications sent.
		2. List of clients subject to EOHHS regulations and contractual obligations
			1. List of acute care hospitals required to submit ADT feeds to the Statewide ENS Framework pursuant to 101 CMR 20.00; and
			2. List of MassHealth providers, including, but not limited to, Accountable Care Organizations and Community Partners.
6. Audit rights
	1. The Commonwealth, or a third-party contractor of the Commonwealth, reserves the right to conduct operational audits on Certified ENS vendors for the following reasons:
		1. Data integrity;
		2. Written Information Security Plan;
		3. Functionality criteria as established;
		4. Accuracy of matching algorithm such as:
			1. Number of false positives, or
			2. Number of false negatives;
		5. Failure to maintain auditable log;
		6. Failure to meet reporting obligations to EOHHS;
		7. Failure to share ADT feeds with other Certified ENS vendors;
			1. Within 15 minutes of receipt from a data submitter;
		8. Failure to delete Raw ADTs in a timely fashion after transformation;
		9. Failure to delete Processed ADTs that do not have a match;
		10. Failure to adhere to privacy rules; or
		11. Investigate privacy concerns.
7. Data breach notifications
	1. Certified ENS vendors must provide a notification of a breach of matched patient data, pursuant to HIPAA and M.G.L. c. 93H, to the appropriate entities such as CMS, OCABR, Massachusetts Attorney General’s Office, and the Covered Entities affected; and submit a copy of that notification to EOHHS.
	2. Certified ENS vendors must notify EOHHS of all data breaches that affect non-matched patients, including, but not limited to false positives.
		1. Certified ENS vendors must provide notification to individuals subject to the data breach.
8. Fair pricing & reasonable pricing
	1. Certified ENS vendors must provide fair and reasonable pricing to providers accounting for provider size and service type.
9. Notifications related to material change with respect to any Statewide ENS Framework Obligation or violations of any Statewide ENS Framework Obligation
	1. Certified ENS vendors shall notify EOHHS of any material changes to any obligation within 10 business days.
		1. Material changes may include, but are not limited to, changes in insurance, changes in security controls, and significant changes in business operations.
	2. Certified ENS vendors shall notify the state of any violation of certification conditions within five business days.
	3. Certified ENS vendors shall provide the Commonwealth with a plan to avoid or correct the violation of certification conditions within 60 days of the notification.
10. Remedies for violating certification conditions
	1. Commonwealth may use the following remedies if a Certified ENS vendor violates its obligations as a Certified ENS vendor under the Statewide ENS Framework:
		1. Monetary penalties,
		2. Revoke certification, and
		3. Any notification processes required by State and Federal law.
11. Certification revocation
	1. EOHHS may revoke the certification of a Certified ENS vendor for the following reasons:
		1. Failure of a Certified ENS vendor under provisional status to meet full status requirements within the timeframe as conditioned on the provisional status;
		2. Failure to meet any condition of the certification criteria;
		3. Failure to meet any obligation of the certification contracts; or
		4. Failure to respond to an audit request by EOHHS.
	2. EOHHS will notify with an initial notice of revocation to a Certified ENS vendor subject to certification revocation at least 60 days prior to a decision to revoke.
		1. The Certified ENS vendor subject to certification revocation may request a meeting with EOHHS staff regarding the decision.
			1. The Certified ENS vendor must provide notice to EOHHS staff within 14 days of the initial notice of revocation.
	3. EOHHS will publicly notify all Certified ENS vendors at least 30 days before the potential certification revocation of an ENS vendor from the Statewide ENS Framework.
		1. The Certified ENS vendor subject to revocation notice must provide their clients notice the same day as the EOHHS notification.
	4. EOHHS will publicly notify all Certified ENS vendors its decision to revoke the certification.

**2. Additional Terms**

Certification status is subject to your agreement and compliance with the Commonwealth Terms and Conditions and the Commonwealth’s Standard Contract Form. Your obligations as a Certified ENS vendor consists of the following documents in the following order of precedence (collectively, the “Terms”): (1) the Commonwealth Terms and Conditions; (2) the Commonwealth’s Standard Contract Form; (3) [ADD PROCUREMENT DOCUMENT TITLE AND REFERENCE]; (4) these Additional Terms and (5) your response to [ADD PROCUREMENT DOCUMENT TITLE AND REFERENCE], inclusive of all attachments and modifications.

1. These Terms shall apply to your status as a Certified ENS vendor. You agree to comply with, and be bound by, these Terms, and your certification status is contingent upon your compliance with these Terms. EOHHS may revise these Terms as set forth in Section G and notice of such change shall constitute your acceptance of the new terms. You agree to comply with all guidelines, supplements, notices, statements, advisories, or other regulatory or sub-regulatory guidance related to the Statewide ENS Framework or that may otherwise be communicated to you in writing.
2. We are not responsible for the security or privacy of any information transmitted to or from your or your devices via the Statewide ENS Framework. By participating in the Statewide ENS Framework, you fully assume all security risks related to such access. You are solely responsible if your device has been circumvented or compromised in any way. You are responsible for implementing sufficient procedures and checkpoints to satisfy your particular requirements for anti-virus protection and accuracy of data input and output, and for maintaining a means external to our site for any reconstruction of any lost data. WE WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY A DISTRIBUTED DENIAL-OF-SERVICE ATTACK, VIRUSES, OR OTHER TECHNOLOGICALLY HARMFUL MATERIAL THAT MAY INFECT YOUR COMPUTER EQUIPMENT, COMPUTER PROGRAMS, DATA, OR OTHER PROPRIETARY MATERIAL DUE TO YOUR PARTICIPATION IN THE STATEWIDE ENS FRAMEWORK OR ANY INFORMATION OBTAINED THROUGH THE STATEWIDE ENS FRAMEWORK OR TO YOUR DOWNLOADING OF ANY MATERIAL RECEIVED THROUGH IT. We make no warranty that a third party cannot decrypt information or be able to access your device.

Because, among other things, of the nature of computer information technology, including but not limited to the use of the Internet, and the necessity of relying upon third party sources and data obtained from third parties, the Statewide ENS Framework and the information contained therein is provided to you on an “AS IS” “AS AVAILABLE” BASIS WITHOUT ANY WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, TO THE FULLEST EXTENT PERMITTED BY LAW.

WE DO NOT MAKE ANY WARRANTIES OR REPRESENTATIONS REGARDING THE STATEWIDE ENS FRAMEWORK, ITS PARTICIPANTS, ITS CONTENT, OR ANY INFORMATION OR MATERIALS OBTAINED THROUGH THE STATEWIDE ENS FRAMEWORK INCLUDING, WITHOUT LIMITATION, RELATING TO THE SECURITY, TITLE, ACCURACY, RELIABILITY, MERCHANTABILITY, COMPLETENESS, QUALITY, FITNESS FOR A PARTICULAR USE, TIMELINESS, PERFORMANCE OR AVAILABILITY OF THE STATEWIDE ENS FRAMEWORK AND PARTICIPANT SYSTEMS THEREIN, CONTENT, OR ANY SUCH INFORMATION OR MATERIALS OBTAINED THROUGH THE STATEWIDE ENS FRAMEWORK. FURTHER, WE DO NOT MAKE ANY WARRANTIES OR REPRESENTATIONS THAT THE STATEWIDE ENS FRAMEWORK, ITS CONTENT, OR ANY INFORMATION OR MATERIALS OBTAINED THROUGH THE STATEWIDE ENS FRAMEWORK WILL BE ERROR-FREE, UNINTERRUPTED, THAT DEFECTS WILL BE CORRECTED OR THAT THE STATEWIDE ENS FRAMEWORK AND PARTICIPANT SYSTEMS ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

IN NO EVENT WILL WE, OUR SUB-AGENCIES, SERVICE PROVIDERS, EMPLOYEES, AGENTS OR OFFICERS BE LIABLE FOR DAMAGES OF ANY KIND, UNDER ANY LEGAL THEORY, ARISING OUT OF OR IN CONNECTION WITH YOUR USE, OR INABILITY TO USE, THE ENS FRAMEWORK OR ANY CONTENT OR INFORMATION FROM THE STATEWIDE ENS FRAMEWORK, INCLUDING ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY, PAIN AND SUFFERING, EMOTIONAL DISTRESS, LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF BUSINESS OR ANTICIPATED SAVINGS, LOSS OF USE, LOSS OF GOODWILL, LOSS OF DATA, AND WHETHER CAUSED BY TORT (INCLUDING NEGLIGENCE), BREACH OF CONTRACT, OR OTHERWISE, EVEN IF FORESEEABLE. Your exclusive remedy and our entire liability for any dispute or claim related to these Terms is your cessation as a Certified ENS vendor.

#### Notwithstanding Section 11 of the Commonwealth Terms and Conditions, you agree to defend, indemnify, and hold harmless EOHHS and its service providers, and its and their respective officers, directors, employees, contractors, agents, licensors, suppliers, successors, and assigns from and against any claims, liabilities, damages, judgments, awards, losses, costs, expenses, or fees (including reasonable attorneys’ fees) arising out of or relating to your violation of these Terms or your status as a Certified ENS vendor, including, but not limited to, any information obtained, received or delivered through the Statewide ENS Framework. In the event we are assessed any fine, penalty, or monetary damages as a result of a finding or judgment based in whole or in part on your failure to comply with the Statewide ENS Framework Obligations, including but not limited to any misstatements or omissions in connection with your status as a Certified ENS vendor (collectively and for the purpose of this section, “Liabilities”), you will indemnify us for any such Liabilities and we will be entitled to reimbursement from you for any such Liabilities.

1. You represent that your current policies and procedures provide security in accordance with applicable laws and regulations, for protected health information and other personal data obtained or created in the course of fulfilling your obligations under these Terms. You agree to provide such further written assurances regarding the security and privacy of protected health information that we deem reasonably necessary to meet the requirements of such laws and regulations.

You represent, covenant, and warrant that you will use ADT data received as a result of your participation in the Statewide ENS Framework only in compliance with (i) these Terms and (ii) all applicable laws.

Although records submitted by Certified ENS vendors will not be made publicly available as a matter of course, the records are public records and may be produced to the extent they are responsive to a request, in accordance with Massachusetts General Law chapter 4, section 7, clause twenty-six (the public records statute). EOHHS handles public records requests in accordance with relevant laws, including by withholding from production documents and information in the exempt categories specified in the public records statute. All statements included in records regarding the confidential and proprietary nature of the record shall be null and void.

D. You will promptly notify us of: (a) any notice of violation of any applicable statutes, ordinances, orders, directives, decisions, judgments, decrees, rules or regulations promulgated by any regulatory, administrative or judicial authority that relates to the performance of your duties as a Certified ENS vendor or which may have a material adverse effect on your ability to fulfill its duties and obligations under these Terms; (b) the commencement of any litigation or any regulatory, administrative or judicial proceeding or investigation adverse to you that relates to the performance of your duties as a Certified ENS vendor or which may have a material adverse effect on your ability to fulfill your duties and obligations under these Terms or relating to any breach of privacy or security; (c) any material adverse change in your financial condition, including but not limited to a downgrade in your credit rating, making of a general assignment for the benefit of creditors, or the appointment of a receiver for all or substantially all of its business assets, or the filing of a voluntary or involuntary petition in bankruptcy; (d) any other event which may have a material adverse effect on your ability to perform your duties as a Certified ENS vendor or fulfill your duties and obligations under these Terms, as the case may be, including, but not limited to, any applicable statutes, ordinances, orders, judgments, directives, decisions, decrees, rules or regulations that would have a substantial adverse effect on the confidentiality, privacy or security-related obligations provided for under these Terms; (e) any breach or suspected breach by you or your personnel, subcontractors, agents or others of any security, confidentiality or privacy provision hereunder; and (f) any misuse of, or improper access to any ADT data received by you under the Statewide ENS Framework.

E. You represent, warrant and undertake that the execution, delivery and performance of these Terms: (a) are within your corporate powers; (b) have been duly authorized by all necessary corporate action under its organizational documents, (c) require no action by or in respect of, or filing with, any governmental body, agency or official other than those which have already been duly taken or made or will be duly taken or made as and when required; (d) do not contravene or constitute a default under any provision of applicable law, regulation or decision or of the organizational documents of you or any agreement, judgment, order, decree or other instrument binding upon you; and (e) these Terms constitute a legal, valid and binding obligation. You represent, warrant, and undertake that you are not the defendant in any litigation anywhere in the world which if determined adversely would have a material and adverse effect on your ability to perform your duties as a Certified ENS vendor or comply with these Terms; or concerning the infringement and/or misappropriation of any intellectual property rights and no claims are pending relating to any intellectual property services performed or products developed by you. You further represent, warrant and undertake that you comply with and shall continue to comply with all applicable laws, regulations, and other legal obligations relating to your status as a Certified ENS vendor and you will operate any services in connection with your status as a Certified ENS vendor in compliance with the obligations and standards as set forth in the Statewide ENS Framework and these Terms. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THESE TERMS, EACH PARTY HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THESE TERMS.

You represent and warrant that you are able to maintain, for the duration of your certification, the following insurance types, with insurers having an AM Best Rating of A- or higher, and including coverage amounts: Cyber Liability - first-party liability coverage, Cyber Liability - third-party liability coverage, Commercial General Liability, Employer’s Liability Insurance, Fidelity – Employee Dishonesty, Network Security and Privacy, Professional Liability Insurance, Errors and Omissions and Umbrella Liability. Your insurance coverage must include, at a minimum, polices that cover breaches, ransomware, and business downtime.

You represent and warrant that you shall not subcontract any of your obligations under the Statewide ENS Framework to any other party and that any work or activities in connection with your as a Certified ENS vendor under the Statewide ENS Framework shall be done onshore.

F. In addition to the obligations in Section 7 of the Commonwealth Terms and the rights of EOHHS and the Commonwealth pursuant to the terms of the Standard Contract Form, you will permit authorized representatives of EOHHS, the Commonwealth, and/or any other Agency of the United States government, upon reasonable prior notice, to inspect all facilities where the services are performed and data is maintained or accessed, to have reasonable access to all personnel assigned to perform services and to perform such further audit or examination of the security practices, procedures and safeguards employed by you as EOHHS, the Commonwealth, and/or any other Agency of the United States government may reasonably request to assure itself of the security of any ADT data. Such inspection, access, audit and examination may be made at such time as is mutually convenient to you and EOHHS, the Commonwealth, and/or any other Agency of the United States government during your normal business hours.

In addition to the obligations in Section 7 of the Commonwealth Terms and the rights of EOHHS and the Commonwealth pursuant to the terms of the Standard Contract Form, EOHHS, the Commonwealth and/or any other Agency of the United States government may request, upon at least ten (10) Business Days prior written notice, that you produce records to verify, or have an independent auditor verify, your compliance with the Statewide ENS Framework Obligations. You shall make any applicable books, records and personnel available for such audit and inspection during normal business hours at your principal place of business or any other location mutually agreed upon by the parties. You must promptly respond to the authorized representatives of the Commonwealth, EOHHS and/or any other Agency of the United States government regarding any issues that require follow-up.

G. These Terms may be amended, modified, or supplemented only by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Notwithstanding the foregoing, where a change in law, rule or regulation would impact the Statewide ENS Framework, we may issue, by an administrative bulletin, additional or modified terms, which shall be effective as noted as of the date in the notice.

H. Notwithstanding the obligations set forth in the Standard Contract Form, you may refer to yourself as a ‘Certified ENS vendor’ in connection with your corporate profile and other corporate branding information, including but not limited to in connection with any internal or external business marketing activities; provided, however that you do not use the seal of the Commonwealth or the name EOHHS; and, provided, further, that such reference does not indicate, directly or indirectly, any endorsement of any of your services by EOHHS or the Commonwealth. You are solely responsible for any legal liability arising out of or relating to your use of the reference of a ‘Certified ENS vendor.’ Your use of the name ‘Certified ENS vendor’ will not (i) infringe upon any third party’s copyright, patent, trademark, trade secret or other proprietary rights or rights or rights of publicity or privacy; (ii) violate any law, statue, ordinance or regulation, including without limitation any laws regarding unfair competition, antidiscrimination or false advertising; (iii) be pornographic or obscene or (iv) be defamatory or trade libelous, with respect to any other vendor, the Commonwealth, EOHHS or the ENS vendor certification program.

1. Your term as a Certified ENS vendor term shall commence as of the effective date as set forth in the Commonwealth's Standard Contract Form and shall continue for a period of two years from such effective date. Upon expiry of the term, you may apply to renew its certification via such process as communicated to all vendors by EOHHS.
2. Any actions arising out of your participation in the Statewide ENS Framework as a Certified ENS vendor shall be governed by the laws of Massachusetts and shall be brought and maintained in a state or federal court in Massachusetts which shall have exclusive jurisdiction thereof.
3. The terms and conditions of these Terms that by their nature are intended to survive shall survive notwithstanding termination of these Terms, including without limitation, terms relating to warranty and disclaimers thereof, liability and limits thereof, indemnity, and protection of personal information.
4. No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights and remedies provided by law.
5. If any term or provision of these Termsis invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of these Termsor invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify these Termsso as to affect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

You hereby accept and agree to these Terms and acknowledge that these Terms and any other terms and conditions which may be required by us shall constitute the sole and entire understanding between you and us concerning your status as a Certified ENS Vendor and supersede all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such certification status.