**ATTACHMENT B**

**GRANT AGREEMENT**

**between**

**THE COMMONWEALTH OF MASSACHUSETTS**

**EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES**

**and**

**[ELIGIBLE ORGANIZATION]**

**for the**

**BEHAVIORAL HEALTH MOBILE APPLICATIONS GRANT PROGRAM**

This Grant Agreement (the “Agreement”) is by and between the Commonwealth of Massachusetts, Executive Office of Health and Human Services (“EOHHS”) and [Eligible Organization] (the “Recipient”).

**WHEREAS**, EOHHS oversees 11 state agencies and is the single state agency responsible for the administration of the Medicaid program and the State Children’s Health Insurance Program within Massachusetts (collectively, MassHealth) and other health and human services programs designed to pay for medical services for eligible individuals pursuant to M.G.L. c. 118E, Title XIX of the Social Security Act (42 U.S.C. sec. 1396 et seq.), Title XXI of the Social Security Act (42 U.S.C. sec. 1397aa et seq.), and other applicable laws and waivers;

**WHEREAS**, EOHHS is implementing a grant to implement Grant Programs that (1) increase access to therapeutic extensions services via behavioral health mobile applications, (2) to improve efficiency in the delivery of services, and (3) to gauge user experience, clinical outcomes, and clinician experience with behavioral health mobile applications.

**WHEREAS**, EOHHS issued a Grant Solicitation for the Behavioral Health Mobile Applications (the Grant Solicitation) on [DATE], to solicit responses, to include proposals for Grant Programs to be funded through such grant, from potential Applicants;

**WHEREAS**, Recipient is an eligible Applicant that submitted a Response to the Grant Solicitation, and EOHHS has reviewed the Recipient’s Response in accordance with the various factors and requirements set forth in the Grant Solicitation; and

**WHEREAS**, based on its review of the Recipient’s Application, EOHHS has determined to issue a Grant Award for the Recipient’s proposed Grant Program described in its response in the amount indicated in the attached Grant Award Notice, and Recipient appears capable and is willing to perform its duties as set forth herein subject to the terms and conditions herein and those contained in the Response and the Grant Award Notice;

**NOW THEREFORE**, in consideration of the mutual covenants and agreements contained herein, EOHHS and the Recipient agree as follows:

**TABLE OF CONTENTS**

[Section 1. Definitions 3](#_Toc157080809)

[Section 2. Recipient Responsibilities 6](#_Toc157080810)

[Section 2.1 General Grant Requirements 6](#_Toc157080811)

[Section 2.2 Administrative Responsibilities 7](#_Toc157080812)

[Section 2.3 Reporting Requirements 7](#_Toc157080813)

[Section 3. EOHHS Responsibilities 8](#_Toc157080814)

[Section 3.1 Grant Agreement Management 8](#_Toc157080815)

[Section 3.2 Payment 9](#_Toc157080816)

[Section 4. Payment 9](#_Toc157080817)

[Section 4.1 Payment 9](#_Toc157080818)

[Section 4.2 Supporting Documentation 9](#_Toc157080819)

[Section 4.3 Return or Recoupment of Funds 9](#_Toc157080820)

[Section 5. Additional Terms and Conditions 9](#_Toc157080821)

[Section 5.1 Grant Agreement Term 9](#_Toc157080822)

[Section 5.2 Assignment 9](#_Toc157080823)

[Section 5.3 Independent Contractors 9](#_Toc157080824)

[Section 5.4 Publications Regarding or Derived from this Grant Agreement 10](#_Toc157080825)

[Section 5.5 Prohibited Activities and Conflict of Interest 10](#_Toc157080826)

[Section 5.6 Insurance for Recipient’s Employees 10](#_Toc157080827)

[Section 5.7 Waiver 10](#_Toc157080828)

[Section 5.8 Indemnification 11](#_Toc157080829)

[Section 5.9 Compliance with Laws 11](#_Toc157080830)

[Section 5.10 Counterparts 11](#_Toc157080831)

[Section 5.11 No Third-Party Enforcement 11](#_Toc157080832)

[Section 5.12 Section Headings 11](#_Toc157080833)

[Section 5.13 Administrative Procedures Not Covered 11](#_Toc157080834)

[Section 5.14 Effect of Invalidity Clauses 11](#_Toc157080835)

[Section 5.15 Corrective Action Plan 11](#_Toc157080836)

[Section 5.16 EOHHS’ Option to Modify Scope of Work 12](#_Toc157080837)

[Section 5.17 Authorizations 12](#_Toc157080838)

[Section 5.18 Amendments 12](#_Toc157080839)

[Section 5.19 Notification of Administrative Change 12](#_Toc157080840)

[Section 5.20 Termination 12](#_Toc157080841)

[Section 5.21 Record Keeping, Audit and Inspection of Records 13](#_Toc157080842)

[Section 5.22 Use and Disclosure of Data 13](#_Toc157080843)

[Section 5.23 Equal Employment Opportunity 13](#_Toc157080844)

[Section 5.24 Restrictions on the Use of the Commonwealth Seal 13](#_Toc157080845)

[Section 5.25 Grant Program Officer 13](#_Toc157080846)

[Section 5.26 Order of Precedence/Entire Agreement 14](#_Toc157080847)

[Section 5.27 Notices 14](#_Toc157080848)

**Appendix 1 – Recipient’s Application Response**

**Appendix 2 – Initial Report Form**

**Appendix 3 – Final Report and Written Summary Forms**

# Definitions

The following terms appearing capitalized throughout this Grant Agreement and appendices have the following meanings.

**Applicant**: Any provider that provides behavioral health services to Medicaid members in Massachusetts who responds to the Grant Solicitation.

**Application Form:** The portion of the applicant response that includes the Applicant’s profile and contact information. The Application is incorporated into this Grant Agreement pursuant to **Appendix 1.**

**Behavioral Health Disorder:** any disorder pertaining to mental health or substance use as defined by the current edition of the Diagnostic and Statistical Manual of Mental Disorders

**Budget Request Narrative Form:** Program Budget.

**Cultural Competence:** The ability to understand, appreciate, and account for different cultures or belief systems based on race, ethnicity, income strata, religious beliefs, etc.

**Device Software Function:** Functions utilizing a device and deployed on mobile platforms, other general-purpose computing platforms, or in the function or control of a hardware device.

**Diversity:** Variety in people’s lived experiences, perspectives, identities, languages, cultures, and values.

**Electronic Health Information (EHI):** means electronic protected health information as defined in 45 CFR 160.103 to the extent that it would be included in a [designated record set](https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-C/part-164/subpart-E/section-164.501#p-164.501(Designated%20record%20set)) as defined in 45 CFR 164.501, regardless of whether the group of records are used or maintained by or for a covered entity as defined in [45 CFR 160.103](https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-C/part-160/subpart-A/section-160.103), but EHI shall not include: (1) Psychotherapy notes as defined in [45 CFR 164.501](https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-C/part-164/subpart-E/section-164.501#p-164.501(Psychotherapy%20notes)); or (2) Information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding.

**Eligible Expenses:** Expenses proposed by the Applicant to be expended in furtherance of one or more of the objectives listed in **Section 4** of the Grant Solicitation, and which are not determined unreasonable or impermissible by EOHHS. Eligible Expenses may include, without limitation, those identified in **Section 5**.**1**.

**Executive Office of Health and Human Services (EOHHS)**: The Massachusetts agency responsible for the administration of the MassHealth program, pursuant to M.G.L. c. 118E and Title XIX and XXI of the Social Security Act and other applicable laws and waivers.

**Final Report:** Report consisting of data that is non-identifiable by member.

**Grant Agreement:** The agreement to be executed between EOHHS and each Recipient, creating mutual obligations that are legally enforceable.

**Grant Award Notice**: The notice provided to the Recipient listing the Program activities within the Recipient’s proposal that were approved for funding, providing the total grant funding awarded to the Recipient, and detailing other conditions, as applicable.

**Grant Program**: Behavioral Health Mobile Application Grant Program as described in the Grant Solicitation including an activity or set of activities utilized by a Recipient as part of their provision of behavioral health services to a MassHealth Member.

**Grant Response (Response):** The completed application and documentation submitted by an Applicant in response to the Grant Solicitation including the application form, project form, Implementation Plan, and Program Budget.

**Grant Solicitation:** This Behavioral Mobile Application Grant Solicitation and its accompanying attachments.

**Health Information:** any information, including genetic information, whether oral or recorded in any form or medium, that: (1) Is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and (2) Relates to the pasts, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.

**Implementation Plan:** The portion of the Recipient’s Response outlining a step-by-step plan to implement the utilization of a behavioral health Mobile Application, including any revisions required by EOHHS as a condition of receipt of award and as approved by EOHHS in accordance with the Grant Award Notice. The Implementation Plan is incorporated into this Grant Agreement pursuant to **Appendix 1**.

**Individually Identifiable Health Information (IIHI):** Individually identifiable health information is information that is a subset of health information, including demographic information collected from an individual, and: (1) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (i) That identifies the individual; or (ii) With respect to which there is a reasonable basis to believe the information can be used to identify the individual.

**Informed Consent:** Permission granted in the knowledge of the possible consequences, typically that which is given by a patient to a doctor for treatment with full knowledge of the possible risks and benefits.

**Initial Report:** Report consisting of data that is de-identified. Report will include aggregated data for the population being served and will be collected using a selected validated behavioral health assessment tool that will serve as an outcome measure.

**MassHealth Member:** a person determined by EOHHS to be eligible for MassHealth.

**Metrics:** Specific, measurable, and relevant measurements used to evaluate the success of a Grant Program.

**Mobile Application (Mobile App):** a software application that can be executed (run) on a mobile platform (i.e., a handheld commercial off-the-shelf computing platform, with or without wireless connectivity), or a web-based software application that is tailored to a mobile platform but is executed on a server.

**Mobile Platform:** commercial off-the-shelf (COTS) computing platforms, with or without wireless connectivity, that are handheld in nature, including mobile computers such as smart phones, tablet computers, or other portable computers and laptops.

**Mobile Medical Application (Mobile Medical App):** a mobile app that incorporates device software functionality that: 1) meets the definition of a device in section 201(h) of the FD&C Act: and 2) is either intended: to be used as an accessory to a regulated medical device; or to transform a mobile platform into a regulated medical device.

**Outcome Measure:** Measures from a validated behavioral health tool. For example, but not limited to the below.

* Generalized Anxiety Disorder (GAD 7) Beck Anxiety Inventory (BAI)
* BPRS: Brief Psychotic Rating Scale
* PANNS: Positive and Negative Syndrome Scale
* DAST 10: Drug Abuse Screening Test 10

**Program Budget**: The portion of the Recipient’s Response outlining the funding requested to implement the utilization of a behavioral health mobile application, including any revisions required by EOHHS as a condition of receipt of award and, as approved by EOHHS in accordance with the Grant Award Notice. The Budget Request Narrative is incorporated into this Grant Agreement pursuant to **Appendix 1.**

**Project Form**: The portion of the Recipient’s Response identifying the Mobile Medical Application they will implement using grant funds and the organization’s goals pertaining to the utilization of the Mobile Application of choice. The Project Form is incorporated into this Grant Agreement pursuant to **Appendix 1.**

**Protected Health Information (PHI):** is individually identifiable health information maintained or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper, or oral.

**Qualifying Provider:** Enrolled MassHealth FFS Providers or MCE providers of behavioral health or substance use services to MassHealth Members when provided in non-inpatient settings.

**Recipient**: Any Applicant that submitted an application in response to this Grant Solicitation, is selected for a grant award under this Grant Solicitation, enters into a Grant Agreement with EOHHS, or its designee, and receives funding as a result of this Grant Solicitation.

**Regulated Medical Device:** a product that meets the definition of device in section 201(h) of the FD&C Act and that has been cleared or approved by the Food and Drug Administration (FDA) review of a premarket submission or otherwise classified by FDA.

**State Fiscal Year**: The twelve-month period commencing July 1 and ending June 30 and designated by the calendar year in which the fiscal year ends (e.g., State Fiscal Year 2023 ends June 30, 2023).

**Written Summary:** A final summary of Recipient experience and insights related to the implementation of a behavioral health mobile application.

# Recipient Responsibilities

Recipients shall use funds awarded through this Grant Agreement to help a Recipient increase access to therapeutic services through the use of behavioral health mobile applications, in accordance with the requirements set forth herein and as described in the Grant Solicitation, and grant application. All funds awarded to the Recipient under this Grant Agreement must be expended prior to March 31, 2025.

## General Grant Requirements

The Recipient:

### Certifies and attests that its Response was complete, true, and accurate at the time of submission, and remains complete, true, and accurate at the time of execution.

### Shall promptly notify EOHHS if any circumstances arise which would affect the accuracy of its Response, or its ability to meet the, at any point during the duration of the Grant Agreement.

### Certifies and attests that it has met all conditions required for grant award disbursement or Grant Agreement execution described in the Grant Solicitation and Grant Agreement.

### Shall complete all tasks and produce all reports and summaries described in **Section 2.3** within the timeframes described therein and within the budget parameters described in the Program Budget. The Implementation Plan and Program Budget may not be amended without written agreement by the parties.

### Shall spend all funds by March 31, 2025, unless otherwise directed by EOHHS. EOHHS may extend the date by which funds may be expended, in its discretion, by providing notice to the Recipient and without requiring an amendment to the Grant Agreement.

### Shall use the Grant funds to support utilization of a behavioral health mobile application that can include but is not limited to the following features:

Skills training modules;

Tracking and/or monitoring features;

Psychoeducation modules;

Apps that facilitate text messaging interactions;

Apps that facilitate audio chat interactions; and

Apps that facilitate video chat interactions.

### Shall not use Grant funds for activities that were not listed as approved for funding in Recipient’s Implementation Plan and proposed Program Budgett or for otherwise ineligible expenses, as determined by EOHHS.

### Shall obtain Informed Consent, as applicable, to support utilization of a behavioral health mobile application.

### Shall ensure the behavioral health mobile application complies with the HIPAA Rules, FD & C Act, Federal FTC Act, FTC’s, Health Breach Notification Rule, COPPA, 21st Century Cures Act and ONC Information Blocking Regulations, Confidentiality of Substance Use Disorder Patient Records law (Part 2), and all other applicable laws, regulations, subregulatory guidance, rules, protocols and other guidance, follows the AHQR Guidelines, and is consistent the Commonwealth’s Enterprise Information Technology Accessibility Policy. The behavioral health mobile application is not permitted to use tracking technologies in a manner that would result in impermissible disclosures of PHI to tracking technology vendors or any other violations of the HIPAA Rules.

### Shall comply with, and is subject to, all federal and state statutes, rules and regulations governing the MassHealth Program.

### Shall not use Grant funds for:

* Telehealth therapy sessions.
* Communication features designed to replace the therapeutic relationship with the Recipient.
* Purchase of equipment.
* Ongoing operating costs.
* Loan repayment, retention bonuses, referral bonuses, or recruitment bonuses.
* Temporary salary increases.
* Transportation.
* Internet, hot spot, or utility payments.
* Capital expenses.

### Shall maintain all records and documents relating to this Grant Agreement for a minimum of 6 years after the completion of the Grant Agreement term.

### Shall, at all times, abide by and be subject to the provisions of Grant Agreement, including but not limited to, the Commonwealth Terms and Conditions, the Massachusetts Standard Contract Form, the Grant Solicitation, and the Implementation Plan and Program Budget attached hereto as **Appendix 1**.

### Shall register and maintain an active account with [www.SAM.gov](http://www.SAM.gov) in order to receive federal funds. The Recipient shall also register and maintain an active account with the Massachusetts Management Accounting & Reporting System (MMARS) to receive Grant funds.

## Administrative Responsibilities

The Recipient shall:

#### Within one week of execution of this Grant Agreement, designate a grant program leader to oversee this Grant Agreement and provide the name, title, email, and phone number of this grant program leader to EOHHS. This grant program leader shall be responsible for reporting to EOHHS and responding to EOHHS’s requests. The Recipient shall not change the grant program leader without two weeks’ prior written notice to EOHHS or, in the event of an emergency, within two business days after such change.

#### Actively participate in scheduled meetings and conference calls with EOHHS, at EOHHS’ request, to review the Recipient’s progress, provide updates, share lessons learned, and make any necessary adjustments to the Recipient’s process, sequencing of activities, or approach based on feedback provided by EOHHS.

* + 1. Participate in activities EOHHS deems necessary to monitor the response to Grant Solicitation implementation and status during the term of the Grant Agreement Term, and to support the Grant objectives.

## Reporting Requirements

Recipients shall submit reports both before and after implementation of the behavioral health mobile application regarding selected validated clinical outcome measures as follows:

### Initial Report

Pursuant to **Appendix 2** of this **Grant Agreement**, Initial Reportsmust be submitted to EOHHS within 60 days of the contract start date in a format provided by EOHHS and must include aggregated and fully deidentified data for the following:

1. Count of members;
2. Demographics, including but not limited to, age, race, diagnosis and ethnicity; and
3. Results of outcome measures

### Final Report

Pursuant to **Appendix 3** of this **Grant Agreement,** Final Reports must be submitted to EOHHS by May 1, 2025, in a format provided by EOHHS. The Final Report shall include aggregated data using a selected validated behavioral health assessment tool that will serve as an outcome measure for the following:

1. count of members;
2. Demographics, including but not limited to, age, race, diagnosis and ethnicity; and
3. Results of outcome measures

### Written Summary

Pursuant to **Appendix 3** of this **Grant Agreement,** a Written Summary (1-3 pages) must be submitted to EOHHS by May 1, 2025, in a format provided by EOHHS. The Written Summary shall include the following:

1. A narrative about the Recipient’s experience implementing mobile applications into their practice including, but not limited to, successes, barriers and utilization trends;
2. A narrative explaining how implementation impacted the final aggregated and fully deidentified data; and
3. A description of the Recipient’s future plans to continue use of mobile applications, if any.

EOHHS may change the reporting requirements without amendment to this Grant Agreement.

# EOHHS Responsibilities

## Section 3.1 Grant Agreement Management

### EOHHS shall:

### Provide Recipient with reasonable access to the materials, information, and EOHHS personnel needed to support the completion of all reports, as determined by EOHHS.

### Timely review and, as appropriate and necessary, provide approval for all required reports and inquiries submitted by Recipient to EOHHS.

### Schedule and participate in ad-hoc meetings or phone calls with the Recipient, as necessary to resolve issues related to the Grant Program.

### Notify the Recipient promptly and in writing of any concerns related to the Grant Program.

## Section 3.2 Payment

### EOHHS shall pay the Recipient in accordance with the payment terms in **Section 4**.

# Payment

## Payment

Subject to Recipient’s execution of this Grant Agreement, all required conditions described in the Recipient’s response to Grant Solicitation and proposed budget and other terms and conditions of the Grant Agreement, EOHHS shall pay the Recipient a single lump sum amount totaling the amount in the Grant Award Notice, as reflected in the Recipient’s proposed Program Budget which shall constitute the full Grant funds awarded to the Recipient.

## Supporting Documentation

The Recipient shall maintain supporting documentation applicable to the Grant Agreement of all expenses and how they relate to Grant Program (e.g., receipts, invoices, subcontracts, etc.) and shall provide such documentation to EOHHS upon request. Without limitation, inadequate or incomplete documentation of expenses, or failure to provide documentation within a reasonable time upon request, may result in a determination that funds were not used as approved or allowable.

## Return or Recoupment of Funds

EOHHS reserves the right to require repayment of grant funds if: (1) the Recipient does not complete the approved scope of work set forth in the Grant Solicitation application or in accordance with the Proposed Program Budget; (2) the Recipient fails to follow Grant Agreement, including failure to comply with reporting requirements and expending funds for purposes other than implementation of the Grant Program; or (3) the Recipient completes the scope of work for less than the obligated amount, in which event the unspent funds must be returned. If EOHHS determines that funds are not used as approved or as allowable under this Grant Agreement, the Recipient shall return such funds to EOHHS. In its discretion, EOHHS may opt to recoup such funds from the Recipient by offsetting any other payments that EOHHS would otherwise pay to the Recipient, including but not limited to any payments due to the Recipient under the MassHealth program.

# Additional Terms and Conditions

## Grant Agreement Term

The Grant Agreement term (the “Term”) begins upon execution (the “Effective Date”) and shall terminate on May 1, 2025 (“Termination Date”) and may be extended at the sole discretion of EOHHS for up to four years after initial Termination Date, in increments to be determined by EOHHS. Notwithstanding the foregoing, any obligations related to record retention, confidentiality, privacy, or data security shall survive the termination of this Grant Agreement.

## Assignment

The Recipient shall not assign or transfer any right, interest, or obligation under this Grant Agreement to any successor entity or other entity without the prior written consent of EOHHS.

## Independent Contractors

The Recipient, its employees, subcontractors, and any other of its agents in the performance of this Grant Agreement, shall act in an independent capacity and not as officers or employees of the Commonwealth of Massachusetts.

## Publications Regarding or Derived from this Grant Agreement

Material derived from the Recipient’s performance of this Grant Agreement shall not be published or offered for publication through any medium of communication, including press release, without the prior approval of EOHHS. Any material that is deliverable to EOHHS in the performance of this Grant Agreement shall be deemed Work Product made for hire, and the Commonwealth shall exclusively own the copyright in such material.

If the Recipient publishes a work dealing with its performance under this Grant Agreement, or the results and accomplishments attained in such performance (with EOHHS prior written consent as set forth above), the Commonwealth shall have a non-exclusive, irrevocable, royalty-free license to reproduce, publish or otherwise use and authorize others to use the publication.

The Recipient shall not disseminate, reproduce, display or publish any report, information, data or other materials or documents produced in whole or in part pursuant to this Grant Agreement without the prior written consent of EOHHS, nor shall any such report, information, data or other materials or documents be the subject of an application for copyright by or on behalf of the Recipient without the prior written consent of EOHHS.

When presenting the Grant Program or the results of the Grant Program in any public forum (with EOHHS prior written consent as set forth above), the Recipient shall acknowledge in presentation materials that EOHHS awarded Grant funding.

## Prohibited Activities and Conflict of Interest

The Recipient represents that no person who is an owner, employee, consultant, or subcontractor of the Recipient, has been debarred by any federal agency, excluded from participation in a program under Titles XVIII, XIX, or XXI of the Social Security Act, or subjected to a civil money penalty under the Social Security Act.

During the term of this Grant Agreement, the Recipient shall not have any interest that conflicts with the performance of services under the Grant Agreement for the duration of the Grant Agreement, as determined by EOHHS. If the Recipient becomes aware of any interest that conflicts with the performance of services under the Grant Agreement, the Recipient shall promptly notify EOHHS of such interest and shall propose measures that will eliminate or mitigate the conflict for EOHHS’ consideration. If EOHHS, in its discretion, does not agree that the conflict can be eliminated or mitigated, EOHHS may terminate this Grant Agreement and require return or may recoup grant funding, as set forth in **Section 4.3**.

## Insurance for Recipient’s Employees

The Recipient shall agree to maintain at the Recipient’s expense all insurance required by state or federal law for its employees, as applicable, including worker’s compensation and unemployment compensation. The Recipient shall provide EOHHS with evidence of proper workers’ compensation insurance and general liability insurance upon request.

## Waiver

The acceptance of, or payment for, services rendered by the Recipient shall not be construed to waive any requirements of this Grant Agreement, or any of EOHHS’s remedies for failure to fulfill such requirements.

## Indemnification

Unless otherwise exempted by law, the Recipient shall indemnify and hold harmless the Commonwealth, including EOHHS, its agents, officers and employees against any claims, liabilities and costs for any personal injury or property damages, patents, copyright infringement or other damages that the Commonwealth may sustain which arise out of or in connection with the Recipient’s performance under this Grant Agreement, including but not limited to the negligence, reckless or intentional conduct of the Recipient, its agents, officers, employees or subcontractors. The Recipient shall at no time be considered an agent or representative of EOHHS or the Commonwealth. After prompt notification of a claim by the Commonwealth, the Recipient shall have an opportunity to participate in the defense of such claim and any negotiated settlement or judgment. The Commonwealth shall not be liable for any costs incurred by the Recipient arising under this paragraph. Any indemnification of the Recipient shall be subject to appropriation and applicable law. This is a restatement of Section 11 of the Commonwealth Terms and Conditions.

## Compliance with Laws

The Recipient shall comply with all applicable statutes, orders, and regulations promulgated by any federal, state, municipal, or other governmental authority relating to its property or its operations under the terms of this Grant Agreement.

## Counterparts

This Grant Agreement may be executed simultaneously in two or more counterparts, each of which will be deemed an original, and all of which together will constitute one and the same instrument.

## No Third-Party Enforcement

This Grant Agreement shall be enforceable only by the parties, or officers or agencies of the Commonwealth authorized to act on behalf of EOHHS or its successors. Nothing in this Grant Agreement shall be deemed to confer benefits or rights to any other parties.

## Section Headings

The headings of the sections of this Grant Agreement are for convenience only and will not affect the construction hereof.

## Administrative Procedures Not Covered

Administrative procedures not provided for in this Grant Agreement will be set forth where necessary in separate memoranda from time to time.

## Effect of Invalidity Clauses

If any clause or provision of this Grant Agreement is in conflict with any state or federal law or regulation, that clause or provision shall be null and void and any such invalidity shall not affect the validity of the remainder of this Grant Agreement.

## Corrective Action Plan

If, at any time, EOHHS reasonably determines that the Recipient is deficient in the performance of its obligations under the Grant Agreement, EOHHS may require the Recipient to develop and submit a corrective action plan that is designed to correct such deficiency. EOHHS shall approve, disapprove, or require modifications to the corrective action plan based on its reasonable judgment as to whether the corrective action plan will correct the deficiency. The Recipient shall promptly and diligently implement the corrective action plan as approved by EOHHS.

EOHHS may also initiate a corrective action plan for the Recipient to implement. The Recipient shall promptly and diligently implement any EOHHS-initiated corrective action plan. Failure to implement the corrective action plan may subject the Recipient to termination of the Grant Agreement by EOHHS and/or recoupment of funds as described in **Sections 5.20 and 4.3**, respectively.

## EOHHS’ Option to Modify Scope of Work

If additional funds become available during the Grant Agreement term, EOHHS reserves the right to increase the maximum obligation of the Grant Agreement, subject to available funding, satisfactory Grant Agreement performance, and service or commodity need.

EOHHS shall have the option at its sole discretion to modify, increase, reduce or terminate any activity related to this Grant Agreement whenever, in the judgment of EOHHS, the objectives of the Grant Program have been modified or altered in a way that necessitates such changes. In particular, EOHHS reserves the right to modify Grant Agreement requirements to conform more closely to the specifications of any funding for which the Legislature appropriates funds, and to address the availability of federal financial participation for expenditures under this Grant Agreement. EOHHS will provide written notice of such action to the Recipient, and the parties will negotiate the effect of such changes in scope on the schedule and payment terms.

## Authorizations

This Grant Agreement is subject to all necessary federal and state approvals, including but not limited to the Centers for Medicare and Medicaid Services (CMS), the Executive Office of Administration and Finance, the Massachusetts Office of the Comptroller and, where applicable, the State Legislature and the Massachusetts Office of the Attorney General.

## Amendments

No amendment to this Grant Agreement shall be effective unless it is signed by authorized representatives of the Recipient and EOHHS. All amendments are subject to appropriation, availability of funding, applicable law and regulations, and mutual agreement. The parties agree to negotiate in good faith to cure any omissions, ambiguities, or manifest errors herein.

## Notification of Administrative Change

The Recipient shall notify EOHHS in writing no later than 30 days prior to any change affecting its organization, or its performance of its responsibilities under this Grant Agreement, but if a change in business structure is voluntary, the Recipient shall provide a minimum of three months’ notice to EOHHS. (See also **Assignment,** as described in **Section 5.2**.)

## Termination

Termination Without Prior Notice

### EOHHS may terminate this Grant Agreement immediately and without prior written notice upon any of the following events:

1. If EOHHS determines, in its sole discretion, that the Recipient has materially breached any of its obligations under this Grant Agreement or fails to complete obligations under this Grant Agreement to EOHHS’s satisfaction;
2. Cessation in whole or in part of state or federal funding for the Grant Agreement;
3. The Recipient fails to accept payment terms offered by EOHHS; and

### Prior to terminating this Grant Agreement as permitted above, EOHHS in its sole discretion, may provide an opportunity for the Recipient to cure or end the breach, including through a corrective action plan described in **Section 5.15**. If such an opportunity is provided, but cure is not feasible, or the Recipient fails to cure the breach or end the violation within a time period set by EOHHS, EOHHS may terminate the Grant Agreement immediately upon written notice.

## Record Keeping, Audit and Inspection of Records

### The Recipient shall maintain books, records and other compilations of data pertaining to the performance of the provisions and requirements of the Grant Agreement to the extent and in such detail as shall properly substantiate payment and use of funds under the Grant Agreement. All such records shall be kept for a period of six (6) years.

### EOHHS, the Governor, the Secretary of Administration and Finance, the Comptroller, the State Auditor, the Attorney General, and any other federal or state agency, office, department, or entity with appropriate legal authorization, or any of their duly authorized representatives or designees shall have the right at reasonable times and upon reasonable notice to examine and copy books, records, and other compilations of data of the Recipient which pertain to the performance of this Grant Agreement and to evaluate through inspection or other means the quality, appropriateness and timeliness of the Recipient’s performance under the Grant Agreement.

### EOHHS, the Governor, the Secretary of Administration and Finance, the Comptroller, the State Auditor, the Attorney General, and any other federal or state agency, office, department, or entity with appropriate legal authorization, or any of their duly authorized representatives or designees shall have the right at reasonable times and upon reasonable notice to inspect and audit the financial records of the Recipient and its subcontractors related to the performance of this Grant Agreement.

## Use and Disclosure of Data

The Recipient and its employees and subcontractors shall comply with all state and federal laws, rules, regulations, guidance, other requirements and best practices relating to data confidentiality, privacy, and security.

## Equal Employment Opportunity

Recipient shall comply with federal Executive Order 11246, as amended by Executive Order 11375, and as supplemented by regulations at 41 CFR part 60.

## Restrictions on the Use of the Commonwealth Seal

Recipients are not allowed to display the Commonwealth of Massachusetts Seal in their proposals or subsequent marketing materials if they are awarded a Grant Agreement because use of the coat of arms and the Great Seal of the Commonwealth for advertising or commercial purposesis prohibited by law.

## Grant Program Officer

The Recipient designates [NAME], as Grant Program Officer, who shall be authorized and empowered to represent the Recipient with respect to all matters relating to the implementation of this Grant Agreement. Such designation may be changed during the period of this Grant Agreement only by written notice.

## Order of Precedence/Entire Agreement

The Grant Agreement between EOHHS and the Recipient consists of the following documents, listed in order of precedence:

### The Massachusetts Standard Contract Form;

### The Commonwealth Terms and Conditions;

### The Grant Agreement between EOHHS and the selected Recipient, incorporating all provisions, terms, and conditions of the Implementation Plan, and the Proposed Program Budget;

### The Recipient’s Response to the Grant Solicitation, exclusive of any terms that are inconsistent with, or purport to modify or supersede, the Massachusetts Standard Contract Form, the Commonwealth Terms and Conditions, or the mandatory terms of the Grant Solicitation; and

### EOHHS’s Solicitation for the Behavioral Health Mobile Applications Grant, as it may be amended.

The documents listed above, including attachments and exhibits, constitute the entire agreement of the parties with respect to the subject matter of the Grant Solicitation, and supersede all prior written or verbal negotiations and statements. This document shall not be modified by any subsequent written or verbal communications other than in accordance with **Section 5.18**.

## Notices

Notices to the parties as to any matter hereunder will be sufficient if given in writing and sent by certified mail (return receipt requested), postage prepaid, or delivered in hand or by an overnight delivery service (with acknowledgment of receipt), or sent via email and addressed as follows:

|  |  |
| --- | --- |
| **To EOHHS**:EOHHS, Office of MedicaidOne Ashburton Place, 11th floorBoston, MA 02108EOHHSGrantsInbox@mass.gov**With a copy to:**EOHHS General Counsel1 Ashburton Place, 11th floorBoston, MA 02108 | **To the Recipient**:[ORGANIZATION NAME][ORGANIZATION ADDRESS]     |

**Appendix 1: Grant Response, including Application Form, Project Form, Implementation Plan and Program Budget**