

**SCHOOL-BASED MEDICAID PROGRAM
AMENDED AND RESTATED PROVIDER CONTRACT**

This Contract, effective is hereby amended and restated effective July 1, 2019, and is by and between the Commonwealth of Massachusetts Executive Office of Health and Human Services (hereinafter, “EOHHS”), with a business address of One Ashburton Place, Boston, Massachusetts 02108 and

(the legal name of the School-Based Medicaid Provider, hereinafter, the “Provider”)
with a principal place of business located at

[Provider’s address]

RECITALS

WHEREAS, EOHHS is the single state agency designated to administer the programs of medical assistance under 42 U.S.C. § 1396 et seq., and M.G.L. c. 118E; and

WHEREAS, the Provider desires to participate in the School-Based Medicaid Program under the terms and conditions set forth in this Contract;

WHEREAS, the scope of services and providers payable under the School-Based Medicaid Program expanded; and

WHEREAS, in accordance with **Section 7.4** of the Contract, EOHHS and the Provider desire to amend the Contract;

NOW, THEREFORE, in consideration of the mutual obligations contained in this Contract, the parties agree as follows:

1. DEFINITIONS

The following terms that appear capitalized throughout this Contract shall have the following meanings, unless the context clearly indicates otherwise.

Administrative Activities – Activities performed by a School-Based Medicaid Provider on behalf of EOHHS that are necessary for the proper and efficient administration of the Medicaid State Plan, the State Child Health Insurance Program State Plan, and all 1115 Demonstration Projects or other federal waivers within the meaning of Section 1903(a)(7) of the Medicaid Act and 42 CFR §§ 430.1 and 431.15. Administrative Activities are further described in **Section 2.2.B** of this Contract.

Administrative Activities Claiming – The process through which a Provider requests payment based on Medicaid-allowable actual incurred costs related to Administrative Activities. Administrative Activities Claiming is further described in **Section 2.3.B** of this Contract.

Direct Services – School-Based Services performed by a School-Based Medicaid Provider pursuant to the terms of this Contract. Direct Services are further described in **Section 2.2.A** of this Contract.

Direct Services Claiming – The process through which a Provider requests payment based on Medicaid-allowable actual incurred costs related to Direct Services. Direct Services Claiming is further described in **Section 2.3.A** of this Contract.

Eligible Members – MassHealth Members who are eligible for federal payment for non-emergency services.

For dates of services before January 1, 2014:

In general, eligible MassHealth Members include members up to age 22 who are enrolled in the following aid categories and eligible for federal payment for non-emergency services: MassHealth Standard, CommonHealth, Family Assistance, or Basic or Essential Coverage Types.

For dates of services after January 1, 2014:

In general, eligible MassHealth Members include members up to age 22 who are enrolled in the following programs and eligible for federal payment for non-emergency services: MassHealth Standard, CommonHealth, Family Assistance, or CarePlus, provided, however, members who are in the following subcategories are not eligible for federal payment for non-emergency services.

- MassHealth Standard (16, 41, 44, 45, VX, and VW);
- MassHealth CommonHealth (51, 54, 55, E1, E2, E3, E4, ED, EH, EN); or
- MassHealth Family Assistance (58, 73, 85, 87, 90, 91, 95, 96, AC, ED, EH, N1, P1, P2, P4, P5, Q1, S2, S3, V1, V2, W9).

Executive Office of Health and Human Services (EOHHS) – The executive department of the Commonwealth of Massachusetts established under M.G.L. c. 6A, § 2 that is the single state agency responsible for the administration of the MassHealth program (Medicaid), pursuant to M.G.L. c. 118E, Titles XIX and XXI of the Social Security Act, the § 1115 MassHealth Demonstration, and other applicable laws and waivers.

Federal Financial Participation (FFP) – The amount of the federal share of qualifying expenditures made by a School-Based Medicaid Provider for Direct Services and Administrative Activities provided pursuant to this Contract.

Individualized Education Program (IEP) – A written statement, developed and approved in accordance with federal special education law in a form established by the Department of Elementary and Secondary Education, that identifies a student’s special education needs and describes the services a school district shall provide to meet those needs.

Individualized Health Care Plan (IHCP) - Documentation of the health services that need to be provided to a student during the school day. For the purpose of the School-Based Medicaid Program, any equivalent health plan that documents how the health needs of a student will be met during school, including a Diabetes Medical Management Plan (DMMP) and a Diabetes Emergency Action Plan (DEAP), will be considered equivalent documents/forms of an IHCP.

Individualized Family Service Plan (IFSP) —The written plan for providing early intervention services to an eligible infant or toddler until age 3 and the infant or toddler’s family in accordance with federal regulations and with the Department of Public Health regulations and guidance, including Early Intervention Operational Standards.

Interim Rates – Quarterly payments provided by EOHHS to a School-Based Medicaid Provider for Direct Services based on submitted claims by Local Government Entities to the Medicaid Management Information System (MMIS).

Local Government Entity – Pursuant to M.G.L. c. 44, § 72, and for purposes of this Contract, a city or town, charter school, or regional school district that is responsible, or assumes responsibility, either directly or indirectly through an agency or other political subdivision, for the non-federal share of School-Based Medicaid Program expenditures. Local Governmental Entity is also referred to as Local Educational Authority (LEA) in some of the Massachusetts School-Based Medicaid Program guides and bulletins.

MassHealth – The medical assistance and benefit programs administered by EOHHS pursuant to Title XIX of the Social Security Act (42 U.S.C. § 1396), Title XXI of the Social Security Act (42 U.S.C. § 1397), Section 1115 demonstration, M.G.L. c. 118E, and other applicable laws and waivers.

MassHealth Coverage Type – The MassHealth eligibility category within 130 CMR 505.000 for which an individual is determined eligible.

MassHealth Member (Member) – Any individual determined by EOHHS to meet the requirements of 130 CMR 505.000.

Medicaid State Plan – A comprehensive written statement submitted by EOHHS to the federal Centers for Medicare and Medicaid Services (CMS) pursuant to 42 CFR § 430, Subpart B, describing the nature and scope of the Commonwealth’s Medicaid program and any other information required by 42 CFR § 430, Subpart B.

Medically Necessary – As defined at 130 CMR § 450.204.

Random Moment Time Study (RMTS) – A process that identifies the portion of time that staff and contracted employees of School-Based Medicaid Providers spend performing reimbursable and health related tasks under the Massachusetts School-Based Medicaid program.

Random Moment Time Study Instruction Guide – A document with instructions and guidance for the RMTS, including participant submission.

School-Based Medicaid Program – The program through which Local Government Entities participate in Administrative Activities Claiming and Direct Service Claiming.

School-Based Medicaid Provider (Provider) – A Local Government Entity that provides School-Based Services to Members and performs Administrative Activities on behalf of EOHHS pursuant to this Contract.

School-Based Services – Medically Necessary MassHealth covered services, as delineated in the Medicaid State Plan, which are provided to a Member by a School-Based Medicaid Provider when listed in the Member’s IEP; Section 504 Accommodation Plan; IHCP; IFSP; or are otherwise Medically Necessary.

School Personnel – A School-Based Medicaid Provider’s salaried and/or contract staff operating under a contractual agreement with the School-Based Medicaid Provider. School Personnel include, but are not limited to, nurses, therapists, special education administrators, social workers, and clerical support.

Section 504 Accommodation Plan - Section 504 Accommodation Plan delineates accommodations that will be made on behalf of a disabled student to allow them to fully participate in their education pursuant to 34 CFR § 104.36.

State Fiscal Year – The 12-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 2014 starts on July 1, 2013 and ends June 30, 2014).

2. PROVIDER RESPONSIBILITIES

The Provider shall comply, to the satisfaction of EOHHS, with: (1) all provisions set forth in this Contract and (2) all applicable provisions of state and federal laws, regulations, and waivers, including MassHealth provider regulations at 130 CMR 450.000 et seq., any relevant provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and any other applicable privacy or security law or regulation.

2.1 PROVIDER ELIGIBILITY

The Provider must be a Local Government Entity as defined by this Contract.

2.2 PROVIDER SERVICES

A. Direct Services

1. Direct Services consist of the following School-Based Services:
 - a. physical therapy, occupational therapy and other services, including services provided by audiologists and services for individuals with speech, hearing and language disorders, performed by, or under the direction of, service providers who meet the qualifications set forth at 42 CFR § 440.110;
 - b. physician services under 42 CFR § 440.50(a);
 - c. optometry services provided by a qualified professional under 42 CFR § 440.60;
 - d. respiratory therapy provided by a qualified professional under 42 CFR § 440.60;
 - e. nursing services coverable under 42 CFR § 440.80 and 42 CFR § 440.60 ordered by a licensed physician and performed by a registered nurse or licensed practical nurse;
 - f. nursing services provided on a restorative basis under 42 CFR § 440.130(d), including services delegated to individuals who receive appropriate teaching, direction, and supervision from a registered nurse or licensed practical nurse;
 - g. fluoride varnish performed by a dental hygienist under 130 CMR § 420.424(b) in accordance with 42 CFR § 440.100;
 - h. personal care services coverable and performed by individuals qualified under 42 CFR § 440.167 and properly authorized by physician or nurse practitioner;
 - i. services performed by licensed practitioners within the scope of their practice for individuals with behavioral health (mental health and substance abuse) disorders, as defined under state law, and coverable as medical or other remedial care under 42 CFR § 440.60;
 - j. diagnostic, screening, preventive, and rehabilitative services covered under 42 CFR § 440.130;
 - k. medical nutritional services provided by a qualified professional under 42 CFR § 440.60;
 - l. sports related or other injury assessment and therapy provided by a qualified professional under 42 CFR § 440.60; and
 - m. assessments, as necessary to assess or reassess the need for medical services in a child's treatment plan, and performed by any of the above licensed practitioners within the scope of practice.
2. Federal Financial Participation (FFP) may be available for Direct Services when such services are:
 - a. provided to an Eligible Member;
 - b. listed in the Eligible Member's Individual Education Program (IEP); Section 504 Accommodation Plan pursuant to 34 C.F.R. § 104.36, Individualized Health Care Plan, Individualized Family Service Plan, or are otherwise medically necessary;
 - c. Medically Necessary, as defined by MassHealth regulations and subregulatory guidance (including MassHealth bulletins);
 - d. furnished by qualified practitioners, as defined by MassHealth regulations and subregulatory guidance, who are acting within the scope of their license; and
 - e. documented as delivered in accordance with MassHealth regulations and subregulatory guidance.

B. Administrative Activities

The following are Administrative Activities that may be eligible for FFP when they are performed by the Provider's School Personnel.

1. **Medicaid Outreach** – this involves informing eligible or potentially eligible individuals about MassHealth and how to access it. This may include bringing potentially eligible individuals into the MassHealth system for the purpose of determining eligibility and arranging for the provision of MassHealth services. This may also include coordinating, conducting, or participating in training events and seminars for outreach staff regarding the benefit of the MassHealth program, and how to assist families in how to access MassHealth services, and how to more effectively refer students for services.
2. **Facilitating/Assisting in the MassHealth Application Process** – this involves assisting individuals in applying for MassHealth.
3. **Provider Networking/Program Planning/Interagency Coordination** – this involves assisting in developing strategies to improve the coordination and delivery of MassHealth covered services to school-age children, including collaborative activities with other agencies.
4. **Individual Care Planning, Monitoring, Coordination and Referral** – this involves making referrals for, coordinating, or monitoring the delivery of MassHealth covered services.
5. **Arrangement of Transportation and Translation Related to Medicaid Services** – this involves assisting Members to obtain MassHealth-covered transportation or translation services that are related to MassHealth covered services.

2.3 PROVIDER CLAIMING

The Provider shall comply with the following procedures when claiming for Direct Services and/or Administrative Activities.

A. Direct Services Claiming

1. Final payment for Direct Services is based on Medicaid-allowable actual incurred costs related to service delivery. To receive payment for Direct Services, the Provider must comply with all of the components outlined below:
 - a. Unless otherwise directed by EOHHS, submit all interim claims for direct per-unit-services provided to Medicaid-eligible students listed in an IEP; a Section 504 Accommodation Plan pursuant to 34 CFR § 104.36; an IHCP, or an IFSP, or are otherwise Medically Necessary.
 - b. submit actual costs using the Massachusetts School-Based Direct Services Cost Report on an annual basis and in accordance with the Instruction Guide for the Massachusetts School-Based Direct Services Cost Report and timelines issued by MassHealth; and
 - c. participate in the Massachusetts RMTS in accordance with the Instruction Guide for the Massachusetts School-Based Random Moment Time Study, including:
 - i. designating a single RMTS contact by providing the name, phone number, fax number and email address for this RMTS contact to EOHHS or its designee;
 - ii. providing information as requested to EOHHS or its designee related to potential RMTS participants;
 - iii. ensuring that RMTS participants who are engaged in Direct Services Claiming activities on behalf of the Provider have completed the online RMTS training;

- iv. ensuring that employed and contracted staff members included in the RMTS for direct services reimbursement meet all qualifications for reimbursement under the program, including holding an active license that qualifies them for Direct Services Claiming, receiving appropriate supervision if their license so requires, fully documenting all services delivered to Medicaid enrollees, and submitting interim claims for all services provided to Medicaid enrollees; and
 - v. ensuring an RMTS response rate of participants who are engaged in Direct Service Claiming activities on behalf of the Provider at a minimum of 85% per direct service cost pool.
2. EOHHS will provide Interim Rate payments for Direct Services on a quarterly basis. Interim Rate payments are based on per-unit-service claims filed by the Provider in accordance with sub-regulatory guidance and the following requirements.
- a. The Provider shall only submit claims for Interim Rates for Direct Services provided in accordance with **Section 2.2.A** of this Contract.
 - b. After the close of each State Fiscal Year, any Interim Rate claims paid to the Provider will be reconciled to actual costs as determined by EOHHS based on the Provider's submitted Massachusetts School-Based Direct Services Cost Report. Interim Rate claims will be reconciled according to the following process.
 - i. Certified costs on the Massachusetts School-Based Direct Services Cost Report will be compared to the Provider's Interim Rate claims for services delivered during the reporting period, as documented in the Commonwealth's Medicaid Management Information System (MMIS).
 - ii. The Provider's Interim Rate claims will be adjusted to reflect, in the aggregate, the total Medicaid-allowable actual incurred costs based on the certified Massachusetts School-Based Direct Services Cost Report.
 - iii. If EOHHS determines that an underpayment has been made, the difference between the value of the Interim Rate claims and the value of the certified costs on the Massachusetts School-Based Direct Services Cost Report will be paid to the Provider. If EOHHS determines that an overpayment has been made, EOHHS will recoup the amount of the overpayment from the Provider.
 - c. EOHHS may disallow costs from the School-Based Direct Services Cost Report for failure to submit interim claims. If the provider seeks reimbursement through the inclusion of costs related to the provision of a service type (i.e. occupational therapy, speech therapy, physical therapy, nursing, psychological counseling etc.), there must be interim claims submitted and paid during the fiscal year of the cost report, or those costs may be disallowed. Additionally, supporting documentation may be requested to substantiate that all program requirements have been followed, including but not limited to for service types with a large variance between incurred claims and costs claimed, prior to calculation of the final settlement amount.

B. Administrative Activities Claiming

Final payment for Administrative Activities is based on Medicaid-allowable actual incurred costs related to Administrative Activities. To receive payment for Administrative Activities, the Provider must:

- 1. submit actual costs using the Massachusetts School-Based Administrative Activities Cost Report on a quarterly basis and in accordance with timelines issued by MassHealth;
- 2. submit actual costs using the Massachusetts School-Based Administrative Activities Cost Report in accordance with the Instruction Guide for the Massachusetts School-Based Administrative Activities Cost Report, issued by MassHealth; and

3. participate in the Massachusetts statewide RMTS in accordance with the Instruction Guide for the Massachusetts School-Based Random Moment Time Study, including:
 - a. designating a single RMTS contact by providing the name, phone number, fax number and email address for this RMTS contact to EOHHS or its designee. The RMTS contact for the Administrative Activities Claiming component of the School-Based Medicaid Program must be the same individual as the RMTS contact for the Direct Services Claiming component (see **Section 2.3.A.1.d** above);
 - b. providing information as requested to EOHHS or its designee related to potential RMTS participants;
 - c. ensuring that RMTS participants who are engaged in Administrative Activities Claiming on behalf of the Provider have completed the online RMTS training; and
 - d. ensuring an RMTS response rate of participants who are engaged in Administrative Activities Claiming on behalf of the Provider at a minimum of 85%.

C. Claims Repayment and Disallowance of FFP

1. The Provider must repay to EOHHS any amounts resulting from any overpayment, administrative fine, or otherwise, in accordance with this Contract, the MassHealth program's rules and regulations, and all other applicable law.
2. The Provider and EOHHS agree that this Contract, and all previous and subsequent provider contracts or other provider agreements entered into by the Provider and EOHHS, constitute a single transaction for purposes of recovery of amounts owed to the MassHealth program by the Provider and recoupment by EOHHS of amounts owed by the Provider.
3. In the event that a review by either EOHHS or CMS reveals that the Provider did not administer this Contract in accordance with the terms specified herein or applicable state and/or federal laws, EOHHS retains the right to retroactively disallow the FFP claimed and recover the disallowed amount from any FFP paid or due to the Provider as a result of FFP claims processed for Medicaid services delivered under this Contract. Such reviews and subsequent disallowances and recoveries may occur following termination of this Contract.
4. Any costs incurred by EOHHS to generate FFP under these contracts including contingency fees for services will be offset against revenue received by the providers to the extent authorized by M.G.L. c.44, §72.

D. Claims Monitoring

MassHealth performs several monitoring/quality assurance procedures: review and approval of AAC, review of annual DSC Reports, monitoring interim claims, and monitoring of the RMTS participant lists and level of responsiveness. The Provider must cooperate and respond to any federal or state audit and program integrity request made by EOHHS or on behalf of EOHHS.

2.4 PROVIDER REPORTING REQUIREMENTS

A. Massachusetts School-Based Direct Services Cost Report

1. The Provider shall submit a Massachusetts School-Based Direct Services Cost Report to EOHHS or its designee by December 31 of each year. The Provider shall certify annually, through its completed report, its total actual incurred allowable costs/expenditures.
2. The Provider shall ensure that all costs reported on the Massachusetts School-Based Direct Services Cost Report comply with Office of Management and Budget (OMB) Circular A87 ("Cost Principles for State, Local and Indian Tribal Government" Vol. 60, No. 95, Pt II (1995)) codified at 2 CFR § 225.

3. The Provider shall ensure that only costs paid from state and local funds were included in the cost report, and that all costs paid from federal funds as well as all state and local funds that were a required match to receive a federal grant were excluded from the cost report.
4. The Provider shall ensure that no costs were directly claimed in the cost report were duplicative of costs claimed through the application of the indirect cost rate.
5. The Provider shall ensure that the completed cost report complies with the Instruction Guide for Direct Service Cost Reports.
6. The Provider shall submit an executed copy of the certification form that is provided by the Commonwealth as part of the Massachusetts School-Based Direct Services Cost Report.

B. Massachusetts School-Based Administrative Activities Cost Report

1. The Provider shall capture allowable Administrative Activity costs for each billing quarter in the State Fiscal Year and submit a Massachusetts School-Based Administrative Activities Cost Report to EOHHS, or its designee, by October 15th following the end of the State Fiscal Year in which the activity occurred. The Provider shall certify quarterly, through its completed report, its total actual incurred allowable costs/expenditures.
2. The Provider shall ensure that all costs reported on the Massachusetts School-Based Administrative Activities Cost Report comply with OMB Circular A87 (“Cost Principles for State, Local and Indian Tribal Government” Vol. 60, No. 95, Pt II (1995)) codified at 2 CFR § 225. The Provider is responsible for certifying 100% of the public expenditure on Direct Services and Administrative Activities, including both the Federal and Non-Federal Share.
3. The Provider shall submit an executed copy of the certification form that is provided by the Commonwealth as part of the Massachusetts School-Based Administrative Activities Cost Report.

2.5 GENERAL PROVIDER RESPONSIBILITIES

- A. The Provider shall comply with all applicable state and federal requirements for FFP.
- B. The Provider shall supply EOHHS, within two weeks of the date of the request unless EOHHS instructs otherwise, with all information necessary for EOHHS to seek FFP for the Provider’s School-Based Medicaid expenditures. If an extension is necessary, the provider must inform EOHHS or its designee in writing of any extraordinary circumstances at least 10 days prior to the submission deadline.

3. EOHHS RESPONSIBILITIES

3.1 MEMBER REPORT

EOHHS shall make available to the Provider a School-Based Medicaid Eligibility matching process and formula, which the Provider must use to calculate the Medicaid eligibility rates in accordance with the Massachusetts School-Based Direct Services Cost Report and the Massachusetts School-Based Administrative Activity Cost Report. The matching process is provided and supported by UMMS on behalf of EOHHS.

3.2 INTERIM RATE CLAIMS PROCESSING

EOHHS or its designee shall, in a timely fashion, process Interim Rate claims received from the Provider pursuant to this Contract that are provided in a format compliant with all applicable Medicaid regulations and the terms of this Contract, and that are submitted according to any timelines established by EOHHS.

3.3 DIRECT SERVICE CLAIMING RECONCILIATION

EOHHS shall provide Interim Rate payments to the Provider for provision of Direct Services in accordance with **Section 2.2.A** of this Contract. After the close of each State Fiscal Year, EOHHS shall reconcile Interim Rate payments made to the Provider with the actual incurred Medicaid-allowable costs that the Provider has certified using the Massachusetts School-Based Direct Services Cost Report and in accordance with **Section 2.3.A.2** of this Contract.

3.4 ADMINISTRATIVE ACTIVITY CLAIMS PROCESSING

EOHHS or its designee shall, in a timely fashion, process Administrative Activity Claims received from the Provider pursuant to this Contract that are provided in a format compliant with all applicable Medicaid regulations and the terms of this Contract, and that are submitted according to any timelines established by EOHHS.

3.5 FEDERAL CLAIMING

Notwithstanding anything to the contrary herein, EOHHS shall exercise its discretion to seek FFP for expenditures claimed by the Provider under the terms of this Contract. All payments to the Provider, including Interim Rate payments for Direct Services, are contingent on EOHHS obtaining FFP for the Provider's expenditures. No action or failure to act by EOHHS under this section shall be subject to any administrative or judicial review.

4. ADDITIONAL TERMS AND CONDITIONS

4.1 ADMINISTRATIVE TERMS AND CONDITIONS

A. Changes to Provider Information

The Provider agrees to notify EOHHS in writing, on a form to be specified by EOHHS, of any changes to the information contained in the Provider's MassHealth provider application, its disclosure statement, this Contract, and any attachments to these documents within 14 days of any such changes. This notice requirement includes, without limitation, identification of persons convicted of crimes, in accordance with federal regulations at 42 CFR Part 455, Subpart B.

B. Compliance with Billing and Claims Requirements

The Provider shall comply with all billing and claims requirements set forth in this Contract and all provider bulletins, billing instructions and other MassHealth publications and issuances, and must comply with all applicable law regarding the same.

C. Nondiscrimination

The Provider must furnish Direct Services and Administrative Activities to Members without regard to race, color, religion, national origin, disability, age, sex, sexual orientation, or status as a recipient of public assistance, and must comply with all applicable law concerning the same.

D. Fair Employment

The Provider must comply with all federal and state applicable law promoting fair employment practices and prohibiting employment discrimination and unfair labor practices. The Provider must not discriminate in employment based on race, color, religion, national origin, disability, age, sex, sexual orientation, or status as a recipient of public assistance, and must comply with all applicable law.

E. Fraud or Abuse

The Provider represents that, as of the effective date of this Contract, it was not under investigation by any authority for fraud or abuse pursuant to federal regulations at 42 CFR Part 455, Subpart A. The Provider shall notify EOHHS within 10 business days of learning that it is under investigation by any authority for fraud or abuse. The Provider shall cooperate with and assist EOHHS and any state or federal agency charged with the duty of identifying, investigating, sanctioning, or prosecuting suspected fraud and abuse.

F. Convictions and/or Fraud or Abuse Liability

The Provider represents that none of its agents or managing employees have: (1) been convicted of any criminal offense relating to their involvement with any program under Medicare, Medicaid or the Title XX services since the inception of those programs (2) have been convicted of any criminal offense relating to neglect or abuse of patients in connection with the delivery of a health care item or service.

G. Corrective Action Plan

1. At any point during the Contract, if EOHHS, in its sole judgment, identifies any deficiency in the Provider's performance under the Contract, EOHHS may require the Provider to develop a corrective action plan to correct such deficiency. The corrective action plan must, at minimum
 - a. identify each deficiency and its corresponding cause;
 - b. describe corrective measures to be taken to address each deficiency and its cause;
 - c. provide a time frame for completion of each corrective measure;
 - d. describe the target outcome or goal of each corrective measure (i.e., how the action taken will be deemed successful);
 - e. describe the documentation to be submitted to EOHHS as evidence of success with respect to each corrective measure; and
 - f. identify the person responsible for each corrective measure, and any other information specified by EOHHS.
2. The Provider shall submit any such corrective action plan to EOHHS and shall implement such corrective action plan only as approved or modified by EOHHS. Under such corrective action plan, EOHHS may require the Provider to (1) alter the manner or method in which the Provider performs any Contract responsibilities, and (2) implement any other action that EOHHS may deem appropriate.
3. The Provider's failure to implement any corrective action plan may, in the sole discretion of EOHHS, be considered breach of Contract, subject to any and all contractual remedies including termination of the Contract.

H. Prohibited Affiliations and Exclusion of Entities

In accordance with 42 U.S.C. § 1396u-2(d) (1) and 42 CFR § 438.610, the Provider shall not knowingly have an employment, consulting or other agreement for the provision of items and services that are significant and material to the Provider's obligations under the Contract with any person, or affiliate of such person, who is debarred, suspended or otherwise excluded under federal law, regulation, executive order or guidelines from certain procurement and non-procurement activities. Any person who is an employee, consultant, or has a contract with the Provider shall

1. not have any direct or indirect financial interest with such entity; and

2. not have been directly excluded from participation in the program under Titles XVIII or XIX of the Social Security Act, or debarred by any federal agency, or subject to a civil monetary penalty under the Social Security Act.

I. Disclosure Requirements

1. The Provider shall immediately disclose to EOHHS any non-compliance by the Provider with any provision of this Contract, or any state or federal law or regulation governing this Contract.
2. The Provider shall make the following federally required disclosures in accordance with 42 CFR § 455.100-106, 42 CFR 455.436, 42 CFR § 1002.3, and 42 U.S.C. § 1396b (m)(4)(A) in the form and format and in the timeframes specified in Appendix A, and as requested by EOHHS.
3. The Provider shall comply with all reporting and disclosure requirements of 41 USC § 1396b (m)(4)(A).
4. Unless otherwise instructed by EOHHS, for the purposes of making disclosures set forth in **Sections 4.1.I**, the Provider shall fully and accurately complete the EOHHS form developed for such purpose, the current version of which is attached hereto as **Appendix A**.
5. The Provider shall search the U.S. Department of Health and Human Services Office of the Inspector General's List of Excluded Individuals/Entities (LEIE) and the General Services Administration's Excluded Persons List System (EPLS) for the names of agents or managing employees of the Provider at least monthly to ensure that EOHHS does not pay for services provided by excluded persons or entities.
6. EOHHS may immediately terminate this Contract in whole or in part if the Provider fails to comply with **Sections 4.1.I**, or in response to the information contained in the Provider's disclosures. In addition, the Provider shall not be entitled to payment for any MassHealth services for which EOHHS determines federal reimbursement is not available. Any such payments shall constitute an overpayment.

4.2 RECORDKEEPING, INSPECTION, AND AUDIT

A. Recordkeeping and Retention

The Provider agrees to make, keep and maintain in a systematic and orderly manner, and have readily retrievable, such records as are necessary to fully disclose the type and extent of all Direct Services and Administrative Activities provided to Members, including, but not limited to, the records described in 130 CMR 450.205 and the records described in federal regulations at 42 CFR § 431.107. The Provider further agrees that such records shall be created at the time Direct Services and Administrative Activities are delivered, and that such records shall be retained by the Provider for the period required under 130 CMR § 450.205.

B. Access to Records; Copies of Records

The Provider agrees to make available, during regular business hours, all pertinent financial books and all records concerning the provision of Direct Services and Administrative Activities to Members, and all records required to be retained pursuant to **Section 4.2.A**, above, to any duly authorized representative of the MassHealth program, EOHHS, the Office of the Massachusetts Attorney General's Medicaid Fraud Division, the Secretary of the U.S. Department of Health and Human Services, or any other state or federal oversight agency authorized by law.

4.3 DATA MANAGEMENT AND CONFIDENTIALITY

The Provider shall comply with the terms, conditions, and obligations relating to the privacy, security, and management of personal and other confidential information applicable to the Provider under this Contract, including, with respect to the performance of Administrative Activities hereunder, those set forth in **Appendix A** attached hereto and incorporated herein by reference, as well as any other laws, regulations and other legal obligations regarding the privacy and security of such information to which Provider is subject, including those set forth in any Trading Partner Agreement with EOHHS.

5. GENERAL TERMS AND CONDITIONS

5.1 ADMINISTRATIVE PROCEDURES NOT COVERED

Administrative procedures that are not provided for in this Contract may be set forth where necessary in separate memoranda from time to time.

5.2 APPLICABLE LAW

The term “applicable law,” as used in this Contract, includes, without limitation, all federal and state law and the regulations, policies and procedures of the MassHealth program, as existing now or during the term of this Contract. All applicable law is hereby incorporated into this Contract by reference.

5.3 ASSIGNMENT

The Provider shall not assign or transfer any liability, responsibility, obligation, duty, or interest under this Contract.

5.4 AUTHORITY

The execution of this Contract has been duly and validly authorized so that this Contract, when signed below, will be the valid and binding acts and obligations of the Provider and EOHHS in accordance with all of the terms and provisions hereof.

5.5 BREACH OF DUTY

In the event the Provider fails to meet its obligations under this Contract or has otherwise violated the laws, regulations, or rules that govern the MassHealth Program, EOHHS may take any or all action under this Contract, law, or equity. Without limiting the above, if EOHHS determines that the continued participation of the Provider in the MassHealth Program may threaten or endanger the health, safety, or welfare of Members or compromise the integrity of the MassHealth Program, EOHHS, without prior notice, may immediately terminate this Contract, suspend the Provider from participation, withhold any future payments to the Provider, or take any or all other actions under this Contract, law, or equity. The Provider is responsible for any direct, consequential, incidental, or other damages EOHHS and the Commonwealth suffer as a result of the Provider’s breach of its obligations hereunder, or damages arising out of or in connection with the Provider’s performance of the Contract.

5.6 COMPLIANCE WITH LAWS

The Provider shall comply with all applicable statutes, orders, and regulations promulgated by any federal, state, municipal, or other governmental authority relating to its property, employer practices and the conduct of operations.

5.7 EFFECT OF INVALIDITY OF CLAUSES

If any clause or provision of this Contract 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 Contract.

5.8 ENTIRE CONTRACT

This Contract constitutes the entire agreement of the parties with respect to the subject matter hereof including all appendices hereto, and supersedes all prior agreements, representations, negotiations, and undertakings not set forth or incorporated herein. The terms of this Contract shall prevail notwithstanding any variances with the terms and conditions of any written or verbal communication subsequently occurring, except as otherwise provided herein.

5.9 GOVERNING LAW

This Contract, including all rights, obligations, matters of construction, validity, and performance, is governed by the laws of the Commonwealth of Massachusetts.

5.10 INDEMNIFICATION

The Provider shall indemnify and hold harmless EOHHS and the Commonwealth from and against any and all liability, loss, damage, costs, or expenses which EOHHS or the Commonwealth of Massachusetts may sustain, incur, or be required to pay for third party claims or suits, arising out of or in connection with the Provider's breach of its obligations under the Contract, or any negligent action or inaction or willful misconduct of the Provider, or any person employed by the Provider, or any of its subcontractors, provided that the Provider is notified of any claim within a reasonable time from when EOHHS becomes aware of the claim and the Provider is afforded an opportunity to participate in the defense of such claim.

5.11 INTERPRETATION

Any ambiguity in this Contract shall be resolved to permit EOHHS to comply with HIPAA and its implementing regulations, M.G.L. c. 66A, M.G.L. c. 93H, and any other applicable law pertaining to the privacy, confidentiality, or security of PI (as defined in **Appendix A**) or other data.

5.12 MASSACHUSETTS APPROPRIATIONS LAW

All Contract payments hereunder are subject to appropriation and will be limited to the amount appropriated therefore to the extent permitted under applicable state and federal laws.

5.13 NO THIRD-PARTY ENFORCEMENT

No person not executing this Contract shall be entitled to enforce this Contract against a party hereto regarding such party's obligations under this Contract.

5.14 PRIVACY AND SECURITY AMENDMENTS

The Provider agrees to take such action as is necessary to amend this Contract in order for EOHHS to comply with any requirements of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (HIPAA) and its implementing regulations, and any other applicable law pertaining to the privacy, confidentiality, or security of PI (as defined in **Appendix A**) or other data. Upon EOHHS' request, the Provider agrees to enter promptly into negotiations for any amendment as EOHHS, in its sole discretion deems necessary for EOHHS' compliance with any such laws or third party contract. The Provider agrees that, notwithstanding any other provision in this Contract, EOHHS may terminate this Contract immediately upon written notice in the event the Provider fails to enter into negotiations for and to execute any such amendment.

5.15 PROVIDER CAPACITY

The Provider agrees that the Provider, and the officers, directors, employees, and agents of Provider, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the Commonwealth of Massachusetts.

5.16 REGULATORY REFERENCES

Any reference in this Contract to a section in an existing regulation or law refers to that section as in effect or as amended.

5.17 SECTION HEADINGS

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

5.18 SEVERABILITY

The terms of this Contract shall be construed, to the extent possible, to be consistent with applicable federal and state laws and regulations. Any determination that any provision of this Contract is invalid, illegal, or unenforceable in any respect will not affect the validity, legality, or enforceability of any other provision of this Contract.

5.19 SOVEREIGN IMMUNITY

Nothing in this Contract will be construed to be a waiver by EOHHS or the Commonwealth of Massachusetts of its rights under the doctrine of sovereign immunity and the Eleventh Amendment to the United States Constitution.

5.20 SUBCONTRACTS

The Provider will remain fully responsible for meeting all of the requirements of the Contract regardless of whether the Provider subcontracts for the performance of any Contract responsibility. No subcontract will operate to relieve the Provider of its legal responsibility under the Contract. The Provider agrees to require that any individual or entity with which it contracts to provide Direct Services comply with all relevant statutory, regulatory, or contractual requirements regarding the delivery of such services and to actively monitor the quality of care provided to Members under any subcontracts.

5.21 SURVIVAL

The obligations of the Provider pertaining to PI and/or Commonwealth Security Information shall survive the termination of this Contract in accordance with Section 5.1 of **Appendix A**.

5.22 VENUE

Any and all actions arising out of or relating to this Contract will be brought, maintained, and enforced in a state or federal court in the Commonwealth of Massachusetts, which shall have exclusive jurisdiction and venue over such actions.

5.23 WAIVER

EOHHS will not be deemed to have waived any of its rights under the terms of this Contract, unless such waiver is set forth in a written amendment to this Contract executed by the parties. No delay or omission on the part of EOHHS in exercising any right will operate as a waiver of such right or any other right. A waiver by EOHHS on any occasion will not be construed as a bar to or waiver of any right or remedy on any future occasion. The rights and remedies of EOHHS herein are cumulative and are in addition to any other rights or remedies that EOHHS may have at law or in equity.

6. CONTRACT TERM

The term of this Contract commences on the date that both parties sign it, and continues until terminated as set forth in this Contract or under applicable law, and subject to the Provider's satisfactory performance, as determined by EOHHS, of all duties and obligations under this Contract. Notwithstanding the effective period of the Contract as herein described, the Provider shall remain contractually obligated to pay EOHHS any amounts that EOHHS determines the Provider owes pursuant to **Section 2.3** or any disallowance of FFP determined pursuant to **Section 2.3.C** of this Contract.

7. TERMINATION OF CONTRACT

7.1. TERMINATION WITH CAUSE

EOHHS may terminate this Contract for cause immediately upon written notice to the Provider for reasons that include, but are not limited to, the following.

A. The Provider:

1. is no longer a Local Government Entity, as defined by this Contract;
2. fails to implement a corrective action plan as required by EOHHS in accordance with **Section 4.1.G**;
3. fails to perform any of its obligations under the Contract; or
4. has violated any material term of the Contract pertaining to the security or privacy of PI (as defined in **Appendix A**), as provided in **Appendix A, Section 4.1**.

B. Cessation in whole or in part of federal funding for this Contract, provided that termination for this reason shall occur no earlier than the last day of the month in which such funding ceases.

7.2 TERMINATION WITHOUT CAUSE

EOHHS may terminate this Contract without cause upon 30 days' written notice to the Provider.

7.3 CONTINUED OBLIGATIONS OF THE PARTIES

In the event that this Contract is terminated, expires, or is not renewed for any reason, the Provider shall be responsible for

- A. meeting with EOHHS, at EOHHS' request, to resolve all program transition issues;
- B. supplying to EOHHS, no later than 90 days after the termination of the Contract, all information necessary for the payment of any outstanding claims determined by EOHHS to be due to the Provider. Any such claims shall be paid to the Provider accordingly; and
- C. delivering to EOHHS all funds related to Interim Rate payments in the manner and method directed by EOHHS.

7.4 AMENDMENTS

The parties agree to negotiate in good faith to cure any omissions, ambiguities, or manifest errors herein. By mutual agreement, the parties may amend this Contract where such amendment does not violate state or federal statutory, regulatory, or waiver provisions, provided that such amendment is in writing, signed by both parties, and attached hereto.

7.5. WRITTEN NOTICES

Notices to the parties as to any matter hereunder will be sufficient if given in writing and sent by certified mail, postage prepaid, or delivered in hand to the following addresses.

To EOHHS

Caitlin Feuer, Cross Agency Medicaid Manager
Massachusetts Executive Office of Health and Human Services
1 Ashburton Place – 11th floor
Boston, MA 02108

Copies to

General Counsel

Massachusetts Executive Office of Health and Human Services
1 Ashburton Place – 11th floor
Boston, MA 02108

To the Provider:

[Name and Contact Information]

IN WITNESS WHEREOF, the parties have executed this Contract under seal as of the date stated above.

If the Provider is a legal entity other than a person, the person signing this Contract on behalf of the Provider warrants that he or she has the actual authority to bind the Provider.

PROVIDER (LEGAL NAME OF PROVIDER) _____

BY: (SIGNATURE) _____

The form can either be signed traditionally and then scanned, or it can be signed electronically using DocuSign or Adobe Sign. For electronic signatures, the signer can upload a picture of their wet signature. The typed text of a signature is not an acceptable form of an electronic signature.

NAME: (PRINTED NAME) _____

TITLE: _____

DATE: _____

DO NOT WRITE BELOW THIS LINE.

EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES

BY: (SIGNATURE) _____

NAME: (PRINTED NAME) _____

TITLE: _____

DATE: _____

APPENDIX A

DATA PRIVACY, SECURITY AND MANAGEMENT

The following terms and conditions of this **Appendix A** are deemed part of, and are fully incorporated into, the EOHHS School-Based Medicaid Program Provider Contract (the “Contract”).

SECTION 1. DEFINITIONS AND SCOPE

Section 1.1. Definitions.

When used in this Appendix, the following capitalized terms shall have the meanings ascribed to them below:

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

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

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

Event. “Event” shall mean the following, either individually or collectively: 1) any use or disclosure of PI not permitted under this Appendix; 2) any Security Incident; or 3) any other event that would trigger notification obligations under 45 CFR Part 164, Subpart D, M.G.L. c. 93H or other similar Applicable Law requiring notice to consumers and/or oversight agencies in connection with an impermissible use or disclosure or breach of PI.

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

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

MassIT. “MassIT” shall mean the Massachusetts Office of Information Technology.

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

Protected Information. “Protected Information” or “PI” shall mean any “protected health information” (PHI) as used in the Privacy and Security Rules, any “personal data” as defined in M.G.L. c. 66A, any “patient identifying information” as used in 42 CFR Part 2, any “personally identifiable information” as used in 45 CFR §155.260 and/or any other individually identifiable information that is treated as confidential under Applicable Law that the Provider (or its subcontractor or agent) creates, receives, acquires, uses, transmits or maintains in connection with its performance of Administrative Activities. Information, including aggregate information, is considered PI if it is not fully de-identified in accord with 45 CFR §§164.514(a)-(c).

Security Rule. “Security Rule” shall mean the Security Standards for the Protections of Electronic Protected Health Information at 45 CFR Parts 160, 162, and 164.

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

When used in this Appendix, the following capitalized terms shall have the meanings ascribed to them elsewhere in the Contract: Administrative Activities and Provider.

When used in this Appendix, the following terms shall have the same meaning as those terms are used in the Privacy and Security Rules: Business Associate, Covered Entity, Data Aggregation, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident and Workforce.

All other terms used in this Appendix but not otherwise defined herein or elsewhere in the Contract shall be construed in a manner consistent with the Privacy and Security Rules, M.G.L. c. 66A and all other Applicable Laws.

Section 1.2. Scope. The terms and conditions set forth in this **Appendix A** apply to the Provider in connection with its performance of Administrative Activities under the Contract.

SECTION 2. PRIVACY, SECURITY AND DATA MANAGEMENT OBLIGATIONS OF THE PROVIDER

Section 2.1 Compliance with Applicable Laws.

In its performance of Administrative Activities, the Provider must comply with all Applicable Laws that may be in effect upon execution of, or as may be effective during the course of the Contract, including, but not limited to, the Privacy and Security Rules, 42 CFR 431, Subpart F, 42 CFR Part 2 and M.G.L. c. 66A. Without limiting the generality of the foregoing, the Provider acknowledges and agrees as follows:

- A. *Obligations under M.G.L. c. 66A.* The Provider acknowledges that in performance of the Administrative Activities, it will create, receive, use, disclose, maintain, transmit or otherwise obtain “personal data” (as defined in M.G.L. c. 66A) and that, in so doing, it will become a “holder” of such data for purposes of M.G.L. c. 66A. The Provider agrees that, in a manner consistent with the Privacy and Security Rules, it shall comply with Mass. Gen. Laws c. 66A and any other applicable privacy or security law or regulation (state or federal) governing Provider’s use, disclosure, and maintenance of any PI, including for example, Mass. Gen. Laws c. 93H, 42 CFR Part 431, Subpart F, 801 CMR § 3.00 and Executive Order 504.
- B. *Business Associate.* In performing Administrative Activities under the Contract, the Provider acknowledges and agrees that it is acting as EOHHS’ Business Associate and agrees to comply with all requirements of the Privacy and Security Rules applicable to a Business Associate. To the extent that the Provider is to carry out an obligation of EOHHS under the Privacy Rule in its performance of Administrative Activities, the Provider agrees that it shall comply with the requirements of such Rule that apply to EOHHS in the performance of such obligation.
- C. *42 CFR Part 2.* The Provider agrees that with respect to drug or alcohol abuse information that the Provider receives, stores, processes or otherwise deals with in its performance of Administrative Activities that was obtained by a federally assisted drug or alcohol abuse program for the purpose of treating drug or alcohol abuse, making a diagnosis for that treatment, or making a referral for that treatment (as such terms are used in 42 CFR Part 2 as may be amended from time to time), it is bound by 42 CFR Part 2 and shall not access, use or disclose information except as permitted under 42 CFR Part 2.

Section 2.2 Compliance with Third Party Agreements.

The Provider agrees that it shall comply (and shall cause its employees and other workforce members to comply) with any other privacy and security obligation that is required as the result of EOHHS (or MassIT, on EOHHS' behalf) having entered into an agreement (any such agreement, a "Third Party Agreement") with a third party (such as the Social Security Administration, the Department of Revenue or the Centers for Medicaid and Medicare Services) to obtain or to access PI from a third party (any such PI, "Third Party Data") or to access any System containing Third Party Data or through which Third Party Data could be accessed, including, by way of illustration and not limitation, signing a written compliance acknowledgment or confidentiality agreement, undergoing a background check or completing training. The Provider acknowledges and agrees that Third Party Data includes, without limitation, all data that EOHHS receives or obtains from Massachusetts Department of Revenue, the Social Security Administration, the Internal Revenue Service, the Department of Homeland Security or through the Federal Data Services Hub and, notwithstanding anything herein to the contrary, the Provider may not access any such Third Party Data unless disclosure of such data to the Provider is permitted under the applicable Third Party Agreement(s), all conditions for disclosure under such Agreement(s) have been satisfied and the Provider's access to such data is otherwise permitted under the terms of the Contract (including this Appendix).

Section 2.3 Subcontractors and Agents.

- A. The Provider shall ensure that any subcontractor or agent that uses, maintains, discloses, receives, creates or otherwise obtains PI in connection with an Administrative Activity agrees in writing to the same restrictions and conditions that apply to the Provider under this Appendix A, including, but not limited to, implementing reasonable safeguards to protect such information. Without limiting the generality of the foregoing, the Provider shall ensure that any such agreement satisfies all requirements under the Privacy and Security Rules for a contract or other arrangement with a Business Associate. For the avoidance of doubt, the Provider's arrangements with subcontractors are subject to all other applicable requirements of the Contract, if any.
- B. The Provider shall cause any subcontractor or agent that needs access to "personal data," as defined in M.G.L. c. 66A, or "personal information," as defined in M.G.L. c. 93H, that is used, maintained, received, created or otherwise obtained in connection with the performance of an Administrative Activity, or any System containing such data or information, signs an Executive Order 504 Vendor Certification Form, in the form published on the Executive Office of Administration and Finance's website, or other written agreement containing all applicable terms and obligations as contained in such Certification Form, prior to being granted access to such data, information or System. Upon EOHHS' request, the Provider shall provide EOHHS with a listing of its subcontractors who have such access and copies of their signed Certification Forms or other written agreements.
- C. The Provider shall ensure that any subcontractor or agent that needs access to Third Party Data or a System containing such Data or through which it may be accessed to comply (and to cause its employees and other workforce members to comply) with any privacy and/or security obligation that may be required under a Third Party Agreement including, by way of illustration and not limitation, signing any written compliance acknowledgment or confidentiality agreement, undergoing a background check or completing training. The Provider shall ensure that any such subcontractor has satisfied all such obligations prior to being granted access to the Third Party Data or System. The Provider shall work with EOHHS to ensure that all such obligations are satisfied.
- D. For purposes of this Appendix A, a "subcontractor" shall include any person or entity that (a) performs an Administrative Activity or performs any other activity, or provides goods or services, that are necessary for the performance of an Administrative Activity or (b) performs, undertakes or assumes an obligation of the Provider with respect to the performance of an Administrative Activity, in each case, other than in the capacity of a member of the Provider's Workforce.

Section 2.4 Data Security.

- A. *Administrative, Physical and Technical Safeguards.* The 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 Contract. All such safeguards must meet, at a minimum, all standards set forth in the Privacy and Security Rules, as applicable to a Business Associate, the standards set forth in National Institute of Standards and Technology standard: NIST 800-53 – Information Security, moderate standard, and all applicable EOHHS, MassIT and other Commonwealth security and information technology resource policies, processes and mechanisms regarding access to PI or to Systems containing PI or through which PI may be accessed, including those established by Executive Order 504.

If the Provider must access any EOHHS System to perform an activity required by the Contract, the Provider shall comply with all applicable EOHHS, MassIT and other Commonwealth security and information technology resource policies, processes and mechanisms regarding access to PI, and any specific security mechanisms and processes adopted by EOHHS for access to the System. The Provider shall protect from inappropriate use or disclosure any password, user ID or other mechanism or code permitting access to any EOHHS System or third party System containing PI or through which PI may be accessed. The Provider shall give EOHHS prior notice of any change in personnel whenever the change requires a termination or modification of any such password, user ID or other security mechanism or code, to maintain the integrity of the System.

Upon reasonable notice, the Provider agrees to allow representatives of EOHHS access to premises where PI is stored for the purpose of inspecting privacy and physical security arrangements implemented by the Provider to protect such data.

- B. *Commonwealth Security Information.* If the Provider obtains access to any Commonwealth Security Information, the Provider may only use such information for the purposes for which it obtained access. In using the information for such permitted purposes, the Provider shall limit access to the information only to its employees and other Workforce members as necessary to perform the permitted purposes. The Provider shall not release or disclose such information except in accord with EOHHS' express written instructions, unless such disclosure is Required by Law and then only in accordance with the Contract (including this Appendix). While in possession of such information, the Provider shall apply all applicable privacy and security requirements set forth in the Contract (including this Appendix) to maintain the confidentiality, security, integrity and availability of such information. Notwithstanding any other provision in the Contract (including this Appendix), the Provider shall report any non-permitted use or disclosure of Commonwealth Security Information to EOHHS within twenty-four (24) hours following the date upon which the Provider becomes aware of the use or disclosure. The Provider shall immediately take all reasonable actions to retrieve such information if disclosed to any non-permitted person or entity; shall include a summary of such retrieval actions in its required report of the non-permitted disclosure; and shall take such further retrieval action as EOHHS may reasonably require. Notwithstanding any other provision in the Contract (including in this Appendix) regarding termination, the Provider may not retain any Commonwealth Security Information upon termination of the Contract unless such information is expressly identified in any retention permission granted in accord with Section 2.4 of Appendix A. If retention is expressly permitted, all data protections stated herein survive termination of the Contract and shall apply for as long as the Provider retains the information.

Section 2.5 Obligations upon a Non-Permitted Use or Disclosure of PI or other Event

- A. *Mitigation and Other Activities.* Immediately upon becoming aware of an Event, the Provider shall take all reasonable and appropriate action necessary to: a) retrieve, to the extent practicable, any PI involved in the Event; b) mitigate, to the extent practicable, any harmful effect of the Event known to the Provider; and c) take such other action(s) as may be required in connection with the Event to comply with any Applicable Law.

Upon request, the Provider shall take such further actions as EOHHS, may reasonably request to, or shall take such additional action to assist EOHHS further mitigate, to the extent practicable, any harmful effect of the Event. Any actions to mitigate harmful effects of such Event undertaken by the Provider on its own initiative or pursuant to EOHHS' request shall not relieve the Provider of its obligations to report such Event or otherwise comply with this Section 2.5 of Appendix A or any other applicable provisions of the Contract or this Appendix.

- B. *Notification and Reporting Activities.* As soon as possible, but in any event no later than two (2) business days following the date upon which the Provider becomes aware of the Event, the Provider shall orally report the Event to EOHHS with as much of the details listed below as possible, and shall follow such oral report within five (5) business days with a written report outlining the Event with the following information:

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

To the extent that any such information is not available at the time of the report, the Provider shall provide such information to EOHHS as such information becomes available in one or more subsequent written reports. The Provider shall provide EOHHS with such additional information regarding the Event as EOHHS may reasonably request, which additional information may include a written risk analysis rebutting any presumption that the Event constituted a breach for purposes of 45 CFR Part 164, Subpart D. The Provider acknowledges and agrees that it may be subject to reporting obligations under one or more Third Party Agreements in addition to, and/or that differ from, its obligations under **Section 2.5** of this **Appendix A**.

C. *Obligations under Consumer Notification Laws.* If EOHHS determines, in its sole discretion, that it is required to provide notifications to consumers or state or federal agencies under 45 CFR Part 164, Subpart D, M.G.L. c. 93H or other Applicable Law as a result of the Event, the Provider shall, at EOHHS' request, assist EOHHS in drafting such notices for EOHHS' review and approval, and shall take such other action(s) as EOHHS may reasonably request in connection with EOHHS' compliance with 45 CFR Part 164, Subpart D, M.G.L. c. 93H or other Applicable Law, but in no event shall the Provider have the authority to give any such notifications on EOHHS' behalf unless EOHHS authorizes and directs the Provider to do so in writing.

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

Section 2.6 Response to Legal Process.

The Provider shall report to EOHHS, both verbally and in writing, any instance where PI or any other data obtained in connection with the Contract is subpoenaed or becomes the subject of a court or administrative order or other legal process. The Provider shall provide such report to EOHHS as soon as feasible upon receiving or otherwise becoming aware of the legal process; *provided, that* the Provider shall provide such report no later than five business days prior to the applicable response date. In response to such legal process, and in accordance with instructions from EOHHS, the Provider shall take all reasonable steps, including objecting to the request when appropriate, to comply with M.G.L. c. 66A § 2(k), 42 CFR § 431.306(f), 42 CFR Part 2 and any other Applicable Law. If EOHHS determines that it shall respond directly, the Provider shall cooperate and assist EOHHS in its response.

Section 2.7 Individual's Privacy Rule Rights.

With respect to any relevant PI in the Provider's possession, the Provider shall take such action as may be requested by EOHHS to meet EOHHS' obligations under 45 CFR §§ 164.524, 164.526 or 164.528 or other Applicable Law pertaining to an Individual's right to access, amend or obtain an accounting of uses and/or disclosures of its PI, in sufficient time and manner for EOHHS to meet its obligations under such Privacy Rule provisions or other Applicable Law. If an Individual contacts the Provider with respect to exercising any rights the Individual may have under 45 CFR §§ 164.524, 164.526 or 164.528 or similar Applicable Law with respect to PI in the Provider's possession, the Provider shall notify EOHHS' Privacy Officer or other designated representative within two business days of the Individual's request and cooperate with EOHHS to meet any of its obligations with respect to such request. If EOHHS determines that the Provider should respond or otherwise take action in response to such request directly, the Provider shall respond or otherwise take such action in accordance with EOHHS' direction. At EOHHS' election, the Provider agrees to enter into a written agreement (including an amendment to the Contract) memorializing such direction.

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

Section 2.8 Record Access.

The Provider shall make its internal practices, books and records, including policies and procedures, relating to the protection, security, use and disclosure of PI and Commonwealth Security Information obtained under the Contract, and the security and integrity of Systems containing PI or Commonwealth Security Information or through which it may be accessed, available to EOHHS and the Secretary, in a time and manner designated by the requesting party, for purposes of enabling EOHHS to determine compliance with the Contract (including this Appendix) or for purposes of enabling the Secretary to determine compliance with the Privacy and Security Rules.

Section 2.9 Electronic and Paper Databases Updates.

Within thirty days of the effective date of the Contract, the Provider shall provide EOHHS an accurate list of electronic and paper databases and other Systems containing PI, together with a brief description of the various uses of the databases and Systems. The Provider shall update such lists as necessary in accord with the addition or termination of such databases and Systems.

Section 2.10 Compliance Officer.

Within five days of the effective date of the Contract, the Provider shall notify EOHHS in writing of the name of the individual(s) responsible for compliance with the provisions of this Appendix and any other Contract requirement relating to the privacy and security of PI (any such individual(s) or his or her replacement(s), the “Privacy/Security Officer”). The Provider shall also notify EOHHS in writing within five business days of any transfer of the Privacy/Security Officer’s duties to any other person(s) within its organization.

Section 2.11 Permitted Uses and Disclosures of PI by the Provider.

Except as otherwise limited in this Appendix, including in this Section 2.11, or elsewhere in the Contract, the Provider may use or disclose PI only as follows:

- A. *Administrative Activities.* The Provider may use or disclose PI to perform Administrative Activities; *provided, that* such use or disclosure would not: (a) violate the Privacy Rule or other Applicable Law if done by EOHHS; (b) violate the EOHHS’ Minimum Necessary policies and procedures that are known to the Provider or that EOHHS advises the Provider of; or (c) conflict with statements in EOHHS’ Notice of Privacy Practices. In performing Administrative Activities, the Provider represents that it shall seek from EOHHS only the amount of PI that is minimally necessary to perform or provide the particular activity. To the extent the Provider requests PI from other Covered Entities or parties under the Contract on EOHHS’ behalf, the Provider shall only request an amount of PI that is reasonably limited to the minimal necessary to perform or provide the intended activity for which the PI was requested.
- B. *Required by Law.* The Provider may use or disclose PI as Required by Law, consistent with the restrictions of 42 CFR Part 431, Subpart F, 42 CFR Part 2, M.G.L. c. 66A, and any other Applicable Law or any applicable Third Party Agreement.
- C. *Restriction on Contacting Individual.* The Provider shall not use PI to contact or to attempt to contact an Individual unless such contact is: (1) necessary to perform an Administrative Activity; or (2) made in accordance with EOHHS’ written instructions.
- D. *Publication Restriction.* The Provider shall not use PI for any publication, statistical tabulation, research, report or similar purpose, regardless of whether or not the PI can be linked to a specific individual or has otherwise been de-identified in accord with the standards set forth in 45 CFR §164.514, unless the Provider is specifically required to do so under the Contract (and has complied with all applicable requirements related thereto) or the Provider has obtained EOHHS’ prior written consent. In no event shall any resulting publication, report or other material contain PI unless the publication, report or other material is made available only to EOHHS or the Provider has obtained the specific written approval of EOHHS’ Privacy Officer.

SECTION 3. EOHHS' OBLIGATIONS UNDER THIS APPENDIX

Section 3.1 Changes in Notice of Privacy Practices.

EOHHS shall notify the Provider in writing of any change in its Notice of Privacy Practices to the extent that such change may affect the Provider's use or disclosure of PI under the Contract, and shall provide the Provider with a new copy of its Notice of Privacy Practices reflecting such change.

Section 3.2 Notification of Changes in Authorizations to Use or Disclose PI.

EOHHS shall notify the Provider in writing of any change in, or revocation of, permission by an Individual to use or disclose PI that is known to EOHHS, to the extent that such change may affect the Provider's use or disclosure of PI under the Contract.

Section 3.3 Notification of Restrictions.

EOHHS shall notify the Provider in writing of any restriction to the use or disclosure of PI that EOHHS has agreed to in accord with 45 CFR §164.522, to the extent that such restriction may affect the Provider's use or disclosure of PI under the Contract.

Section 3.4 Requests to Use or Disclose PI.

EOHHS shall not request that the Provider use or disclose PI in a manner that EOHHS knows would violate the Privacy Rule if done by EOHHS.

SECTION 4 TERMINATION

.Section 4.1 Termination for Privacy or Security Violation.

- A. Notwithstanding any other provision in the Contract, EOHHS may terminate the Contract immediately upon written notice to the Provider if EOHHS determines, in its sole discretion, that the Provider has violated any material term of this Appendix or any material term contained elsewhere in the Contract that pertains to the security or privacy of PI.
- B. Prior to terminating the Contract as permitted above, EOHHS, in its sole discretion, may provide an opportunity for the Provider to cure the breach or end the violation. If such an opportunity is provided, but cure is not feasible, or the Provider fails to cure the breach or end the violation within a time period set by EOHHS, EOHHS may terminate the Contract immediately upon written notice.

Section 4.2 Effects of Termination.

- A. Except as provided in Subsection 4.2.B immediately below, upon termination or expiration of the Contract for any reason whatsoever, the Provider shall, at EOHHS' direction, either return or destroy all PI and Commonwealth Security Information, and the Provider shall not retain any copies of such PI or Commonwealth Security Information in any form. In no event shall the Provider destroy any PI or Commonwealth Security Information without first obtaining EOHHS' approval. In the event destruction is permitted, the Provider shall destroy PI and Commonwealth Security Information in accord with standards set forth in NIST Special Publication 800-88, Guidelines for Media Sanitization, all Applicable Laws and applicable retention laws and regulations and all data security policies including policies issued by EOHHS and MassIT. This provision shall apply to all PI and Commonwealth Security Information in the possession of the Provider's subcontractors and agents, and the Provider shall ensure that all such information in the possession of its subcontractors and agents has been returned or destroyed and that no subcontractor or agent retains any copies of such information in any form, in accord with EOHHS' instructions.

- B. If the Provider determines that returning or destroying PI or Commonwealth Security Information is not feasible, the Provider shall provide EOHHS written notification of the conditions that make return or destruction not feasible. If, based on the Provider's representations, EOHHS concurs that return or destruction is not feasible, the Provider shall extend all protections pertaining to PI and/or Commonwealth Security Information set forth in this Appendix and elsewhere in the Contract to all such information and shall limit further uses and disclosures of such information to those purposes that make its return or destruction not feasible, for as long as the Provider (or any of its subcontractors or agents) maintains any PI or Commonwealth Security Information.

SECTION 5. MISCELLANEOUS PROVISIONS

Section 5.1 Survival.

Notwithstanding any other provision concerning the term of the Contract, all protections and other obligations of the Provider pertaining to PI and/or Commonwealth Security Information set forth in this Appendix shall survive the termination of the Contract and shall continue to apply until such time as all such information is returned or destroyed in accordance with Section 4.2.A of this Appendix A, or until any period of storage following termination is ended, or if return or destruction is not feasible, for as long as the Provider or a subcontractor or agent maintains the information in accord with Section 4.2.B of this Appendix A.