

Virtual Gateway Terms and Conditions

The Virtual Gateway and applications and services hosted thereon (hereinafter "VG") are provided to you by the Executive Office of Health and Human Services of the Commonwealth of Massachusetts ("EOHHS") on the condition of your agreement and compliance with the Terms and Conditions of Use set forth below as well as the terms and conditions of any underlying application, system or information that you access through VG (collectively, the "Terms"). Please read the following Terms carefully before you start to use the VG and retain a copy for your records. You agree that a printed version of the Terms shall be admissible in judicial or administrative proceedings to the same extent as other business documents and records. If you do not agree to be bound by the Terms, promptly exit and cease use of the VG.

The VG is a web portal for the public, providers, and agency staff to access, through underlying applications and systems, critical health and human services programs and information, including, but not limited to, management and reporting tools. VG users include (a) public users, who may use and access the VG to obtain information regarding their benefits; (b) non-public users, which include service providers, who may use and access the VG to obtain or provide information directly related to the services provided to their constituents, with such access being provided by their respective VG access administrator; and (c) government users, which include EOHHS (and its constituent agencies) and other executive offices (and their constituent agencies) staff and contractors, who may use and access the VG as determined by their respective VG access administrator based upon, amongst other factors, their role and responsibilities within EOHHS.

1. Use: The Terms shall apply to your access and use of the VG and any application, system or information accessed through the VG. You agree to comply with, and be bound by, the Terms, and to use the VG only for the purposes for which your use and access has been granted. Your use and access of the VG is contingent upon your compliance with the Terms. Upon acceptance of the Terms, you will be provided access to the VG. By accessing the VG, you will be conclusively presumed to have notice of and to have consented and agreed to the most recent version of the Terms as posted on the VG. EOHHS may revise the Terms at any time and your continued use of the VG after notice of such change shall constitute your acceptance of the new terms. You agree to comply with all guidelines, supplements, notices, statements, advisories, restrictions, legends or disclaimers displayed electronically on or linked to the VG or that may otherwise be communicated to you in writing.

To access the VG, you may be required to provide certain registration details or other information and you may also receive or create a VG username and password as part of our security procedures to access or submit information to the VG (the "Access Methods"). It is a condition of your use of the VG that all information you provide the VG is correct, current and complete.

The Commonwealth of Massachusetts, EOHHS, or the VG will never ask you for your password in an unsolicited phone call or email. You must never share your password with any other person. When you are finished with sites that are password protected, you should exit the page and close your browser. Do not save your login credentials to any shared computer.

EOHHS reserves the right to exercise complete control over the access, use, disclosure, and disposition of the information in the VG. We reserve the right to amend the VG, and any service or material we provide on the VG, in our sole discretion without notice. We will not be liable if for any reason all or any part of the VG is unavailable at any time or for any period. From time to time, we may restrict access to some parts of the VG, or the entire VG, to users.

2. Unauthorized Access/User Responsibilities: You agree to use the VG to access only the information that you are lawfully permitted to access and to otherwise obtain, use and store such information in a manner compliant with the Terms and all applicable state and federal laws, including but not limited to those concerning the confidentiality of personal information such as M.G.L. c. 66A, M.G.L. c. 93H, the Health Insurance Portability and Accountability Act (HIPAA) Rules (inclusive of 45 CFR Parts 160, 162, and 164), 42 CFR Part 431, Subpart F, and 42 CFR Part 2. By using the VG, you agree, to protect the privacy and security of the information as required by law, including, but not limited to personal information, contained within and accessed as a result of your use of the VG. You agree: (a) to use your best efforts and to take all steps reasonably necessary to prevent unauthorized access to, use of, or disclosure of your password or any data or any other person's information in the VG; (b) to notify the VG both orally and in writing as soon as possible about any unauthorized access to, use of, or disclosure of your password, data or anyone's information, and to notify the VG within 24 hours of becoming aware of any Security Incident that may impact the electronic exchange of information with EOHHS, by calling 800-421-0938, or emailing ehs-dl-idmoperations@massmail.state.ma.us; and (c) to take such measures, in consultation with EOHHS, as are reasonably necessary to mitigate or address any unauthorized access to, use of, or disclosure of such information. You acknowledge by your use and access to the VG that you are authorized to use the VG consistent with your user type. You further agree and certify that you will not seek to access any information of others unless you have received express consent by the applicable information owner to do so and will not falsely represent to the VG or EOHHS the existence of such consent. None of the foregoing shall be construed to waive any rights or remedies that EOHHS possesses in the event of unauthorized access to, use of, or disclosure of such information.

In no event may you use the VG or any information contained therein in a manner that

- (i) harasses, abuses, threatens, defames or otherwise infringes or violates the rights of any other party;
- (ii) is unlawful, fraudulent or deceptive;
- (iii) uses or launches any automated system to access any of our websites or computer systems;
- (iv) attempts to introduce viruses or any other malicious computer code that interrupts, destroys or limits the functionality of any computer software, hardware or telecommunications equipment;
- (v) attempts to gain unauthorized access to our computer network or user accounts;
- (vi) encourages conduct that would constitute a criminal offense, or would give rise to civil liability;
- (vii) uses the VG to store, upload, send or process any content, data or material for any purpose or in any manner unrelated to the VG or a VG application;
- (viii) could disable, overburden, damage, or impair the site or interfere with any other party's use of the VG, including their ability to engage in real time activities through the VG; and
- (ix) that is inconsistent with the Terms.

You agree that you will not modify the VG in any way, enhance or otherwise create derivative works based in whole or in part on the VG or any part thereof, or reverse engineer, decompile or otherwise attempt to secure the source code for all or any part of the VG.

EOHHS reserves the right to prohibit anyone access to the VG that we determine is violating the Terms, restricting or inhibiting any other user from using the VG, or whose conduct we determine may violate the rights of a third party or constitute a criminal offense, give rise to civil liability or otherwise violate any local, state, federal or international law, rule or regulation.

3. Use of Other Automated Methods: Except as otherwise approved in writing by EOHHS, use of bots or other automated methods, devices or processes, including but not limited to through Single-Sign-On (SSO), to access the VG as well as to retrieve, upload, add and/or modify data and/or content contained within the VG is prohibited. Any such use may result in termination of the user account.

4. **User Accounts and Passwords:** Your Access Methods are non-transferable and may not be shared with any other individual. For specific application users, User IDs shall be generated for individuals and must, at a minimum, contain both a first name and last name. Common named User IDs (e.g., front desk) are prohibited. You are solely responsible for your use of the VG, including without limitation, (a) for ensuring that the VG and your Access Methods are provided to and used by only you; and (b) for any and all use and/or misuse of the VG by any person who accesses the VG using your Access Methods, whether or not you have authorized them to do so. You may access the VG only through Access Methods assigned to you. If your Access Methods have been lost, stolen or compromised, you will promptly notify the VG in writing so that we may cancel relevant Access Methods. Notwithstanding the foregoing, public users may authorize another person (a "Designee") to use their Access Methods to use and access the VG, solely on such public user's behalf and benefit. A public user shall remain responsible for ensuring that their Designee is aware of these Terms and that the Designee's access and use of the VG is in compliance with these Terms relative to the individual public user upon whose behalf they are acting. For clarity, the use of a Designee shall only apply to public users. Non-public users and government users shall have no right to designate any use of their Access Methods to another individual.

5. **User Contributions:** The VG may contain features that allow users to submit, display, or transmit content or materials (collectively, "User Contributions") on or through the VG. You understand and acknowledge that you are responsible for any User Contributions you submit or contribute, and you have full responsibility for such content, including its legality, reliability, accuracy, and appropriateness. We are not responsible or liable to any third party for the content or accuracy of any User Contributions posted by you or any other user of the VG.

6. **Monitoring; Usage Data:** VG administrators routinely monitor system activity in order to ensure the confidentiality, integrity and availability of the VG, as well as to ensure its users are in compliance with the Terms. Use of the VG constitutes your express consent to monitoring, inspection and/or copying of all activity and information that you view, create, or receive during your use of the VG.

To the extent permitted by applicable law, we will cooperate fully with any law enforcement authorities or court order requesting or directing us to disclose the identity or other information of anyone posting any materials on or through the VG.

You acknowledge and agree that VG staff and other personnel may, to the extent permitted by applicable law, collect, use, process and store diagnostic and usage related content from the computer or other devices you use to access the VG. This may include, but is not limited to, internet protocol (IP) addresses and other information like internet service, location, the type of browser and features that are used and/or accessed, the number and type of data inputs used, and the performance results for the VG (the "Usage Data"). You agree that we own the Usage Data and that nothing herein shall be construed as prohibiting us from utilizing the Usage Data for purposes of operating the VG, including but not limited to: (a) maintaining and improving the performance and integrity of VG, (b) understanding which features of the VG are most commonly deployed and preferred by users and how users interact with the VG and (c) identifying the features of the VG that may require additional maintenance or support.

7. **Intellectual Property Rights:** The VG and its entire contents, features, and functionality (including but not limited to all information, software, text, displays, and images, and the design, selection, and arrangement thereof) are owned by EOHHS, its licensors, or other providers of such information or material and are protected by United States and international copyright, trademark, patent, trade secret, and other intellectual property or proprietary rights laws.

8. **Disclaimers and Liability:** EOHHS is not responsible for the security or privacy of any information transmitted to or from your device to the VG. By accessing the VG, you fully assume all security risks related to such access. You are solely responsible if your device has been circumvented or

compromised in any way. You are responsible for implementing sufficient procedures and checkpoints to satisfy your particular requirements for anti-virus protection and accuracy of data input and output, and for maintaining a means external to our site for any reconstruction of any lost data. WE WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY A DISTRIBUTED DENIAL-OF-SERVICE ATTACK, VIRUSES, OR OTHER TECHNOLOGICALLY HARMFUL MATERIAL THAT MAY INFECT YOUR COMPUTER EQUIPMENT, COMPUTER PROGRAMS, DATA, OR OTHER PROPRIETARY MATERIAL DUE TO YOUR USE OF THE VG OR ANY INFORMATION OBTAINED THROUGH THE VG OR TO YOUR DOWNLOADING OF ANY MATERIAL POSTED ON IT, OR ON ANY WEBSITE LINKED TO IT. The Internet is an open system, and there is no absolute guarantee that the information you access or transmit will not be intercepted and read by others. We make no warranty that a third party cannot decrypt information or be able to access your device. You should use particular caution when accessing the VG from a public or shared computer so that others are not able to view or record your Access Methods or other information, including any personal information, available through the VG.

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

WE DO NOT MAKE ANY WARRANTIES OR REPRESENTATIONS REGARDING THE VG, ITS CONTENT, OR ANY INFORMATION OR MATERIALS OBTAINED THROUGH THE VG INCLUDING, WITHOUT LIMITATION, RELATING TO THE SECURITY, TITLE, ACCURACY, RELIABILITY, MERCHANTABILITY, COMPLETENESS, QUALITY, FITNESS FOR A PARTICULAR USE, TIMELINESS, PERFORMANCE OR AVAILABILITY OF THE VG, ITS CONTENT, OR ANY SUCH INFORMATION OR MATERIALS OBTAINED THROUGH THE VG. FURTHER, WE DO NOT MAKE ANY WARRANTIES OR REPRESENTATIONS THAT THE VG, ITS CONTENT, OR ANY INFORMATION OR MATERIALS OBTAINED THROUGH THE VG WILL BE ERROR-FREE, UNINTERRUPTED, THAT DEFECTS WILL BE CORRECTED OR THAT OUR SITE OR THE SERVER THAT MAKES THE VG AVAILABLE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

IN NO EVENT WILL WE, OUR CONSTITUENT AGENCIES, SERVICE PROVIDERS, EMPLOYEES, AGENTS OR OFFICERS BE LIABLE FOR DAMAGES OF ANY KIND, UNDER ANY LEGAL THEORY, ARISING OUT OF OR IN CONNECTION WITH YOUR USE, OR INABILITY TO USE, THE VG, ANY WEBSITES LINKED TO IT, ANY CONTENT ON THE VG OR SUCH OTHER WEBSITES, INCLUDING ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY, PAIN AND SUFFERING, EMOTIONAL DISTRESS, LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF BUSINESS OR ANTICIPATED SAVINGS, LOSS OF USE, LOSS OF GOODWILL, LOSS OF DATA, AND WHETHER CAUSED BY TORT (INCLUDING NEGLIGENCE), BREACH OF CONTRACT, OR OTHERWISE, EVEN IF FORESEEABLE. Your exclusive remedy and our entire liability for any dispute or claim related to the Terms is your cessation of access and use of the VG.

The following sentence applies to all users of the VG except for Commonwealth employees, state agencies and MassHealth members: You agree to defend, indemnify, and hold harmless EOHHS and its service providers, and its and their respective officers, directors, employees, contractors, agents, licensors, suppliers, successors, and assigns from and against any claims, liabilities, damages, judgments, awards, losses, costs, expenses, or fees (including reasonable attorneys' fees) arising out of or relating to your violation of the Terms or your use of the VG, including, but not limited to, your User Contributions or your use of any information obtained from the VG.

Notwithstanding the foregoing in this **Section 8: Disclaimers and Liability**, Commonwealth employees who access the VG in connection with their roles and responsibilities as Commonwealth employees must adhere to all applicable laws, standards, policies and requirements (including the Commonwealth Enterprise Security Standards and all other requirements associated with employment with the Commonwealth) in connection with such access. As to Commonwealth employees, in the event of a conflict between the provisions of this Section 8 and such laws, standards, policies, and requirements, the latter shall control.

9. **Termination of Access:** EOHHS may terminate any user's access to the VG at any time, with or without cause, without notice and without penalty. None of the foregoing shall be construed: (1) to relieve user of any of the responsibilities imposed by the Terms or by applicable law; or (2) to waive any rights or remedies that EOHHS possesses in the event of unauthorized access to or use of the VG.

10. **Miscellaneous:**

- a. **Governing Law.** Any actions arising out of user's access to the VG shall be governed by the laws of Massachusetts and shall be brought and maintained in a state or federal court in Massachusetts which shall have exclusive jurisdiction thereof.
- b. **Survival.** The portions of the Terms that by their nature are intended to survive shall survive notwithstanding termination of the Terms, including without limitation, terms relating to warranty and disclaimers thereof, liability and limits thereof, indemnity, and protection of personal information.
- c. **Waiver.** No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights and remedies provided by law.

11. **Acknowledgement:** You hereby accept and agree to the Terms and acknowledge that the Terms and any other terms and conditions which may be required by EOHHS shall constitute the sole and entire understanding between user and EOHHS concerning access and use of the VG and supersede all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such access and use of the VG.

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