



MASS HIWAY PARTICIPATION AGREEMENT

1. Purpose.

This Participation Agreement is being entered into between the Massachusetts Executive Office or Health and Human Services (“EOHHS”) and [Name of Participant] (“Participant”), referred to herein individually as “Party” and collectively as “Parties”, in order to detail the terms and limitations of Participant’s access to and use of the Massachusetts Health Information Highway (“Mass HIway”) and its related online tools and services.

2. Scope.

This Agreement governs the terms and limitations of Participant’s access to and use of the Mass HIway. Nothing in this Agreement shall preclude Participant from lawfully exchanging health information with the Commonwealth or with other providers who may or may not participate in the Mass HIway using other methods of communication, including but not limited to telephone, hard copy delivery, facsimile, and other Health Information Exchange (“HIE”) networks, and nothing in this Agreement shall apply to these alternative methods of communication.

3. Terms of Access

The terms under which the Participant may access and use the Mass HIway are set forth in this Agreement, including its Attachments, and the Mass HIway Policies & Procedures (“Policies & Procedures”).

4. Amendments

EOHHS may amend the terms of this Agreement from time to time. EOHHS will provide notice of changes by email to the Participant’s designated Access Administrator and by posting changes to the Mass HIway website in a manner and form that makes the changes readily available for review. EOHHS will post any such amendments on the Mass HIway website at least thirty days before implementation of the amendment, but reserves the right to provide less notice, including no prior notice, if EOHHS reasonably determines that less notice is necessary for the security of the Mass HIway, or unless the amendment is required in order for EOHHS, the Participant, or any other HIway User to comply with applicable laws or regulations. In that case, EOHHS may implement the amendment within a shorter period of time as EOHHS reasonably determines is appropriate under the circumstances, but will provide as much notice of the amendment as reasonably possible. It is the responsibility of the Participant to check the Mass HIway website periodically for such updates. Participant’s continued use of the Mass HIway shall constitute acknowledgement and acceptance of the amendments.

Mass HIway Participation and Business Associate Agreement

5. Order of Precedence

This Participation Agreement supplements the Policies & Procedures. In the event of an express conflict between the terms of this Participation Agreement and the Policies & Procedures, the terms of this Participation Agreement will take precedence. Unless otherwise stated, capitalized terms shall have the same meaning as they have in the Policies & Procedures.

6. Business Associate Terms

The Parties hereby acknowledge that use of the Mass HIway involves transmission of Protected Health Information or other personally identifiable information. The Parties shall comply with the terms of the Business Associate Agreement included in this Participation Agreement as Attachment 1.

7. Participant Compliance with Mass HIway Policies & Procedures

Participant hereby agrees to comply with the provisions of the Policies & Procedures, as amended, including without limitation those provisions governing Access Control (Section 7) and Safeguards (Section 12).

8. Authority Delegated to Participants

EOHHS hereby delegates, and Participant hereby acknowledges and accepts, the authority and responsibility to control individual access to the Mass HIway through Participant's HIway connection. Participants shall implement all delegated responsibilities set forth in the Mass HIway Policies & Procedures, including but not limited to those set forth in Section 7.3 "Delegated Authority – Access Control by Participants."

9. Technical Participation Requirements

The Participant must access the Mass HIway by one of the following three methods:

- 1) Direct XDR
- 2) Local Access Network Distribution (LAND) Appliance
- 3) Direct Webmail

These methods of connection are provided through EOHHS contractors and their subcontractors, licensors and suppliers, referred to herein individually as "Contractor" and collectively as "Contractors". The Participant must select at least one of these methods of connecting to the Mass HIway. Additional methods of connection may be added at a later date through amendment of this Participation Agreement.

The applicability of the following Sections 9.1 through 9.3 shall vary depending on the method(s) by which the Participant elects to connect to the Mass HIway. For the purposes of

Mass HIway Participation and Business Associate Agreement

Sections 9.1 through 9.3, a Participant that connects to the Mass HIway via Direct XDR shall be referred to as a “Direct Participant”. A Participant that connects to the Mass HIway via a Local Access Network Distribution (LAND) Appliance shall be referred to as a “LAND Participant”. A Participant that connects to the Mass HIway via Direct Webmail shall be referred to as a “Webmail Participant”.

9.1 Direct XDR Additional Terms

The following provisions shall apply to Direct Participants:

The Direct XDR service is provided to Participants through a Contractor in the form of Software as a Service (“SaaS”). If Participant elects to use the Direct XDR service (“SaaS Service”), Participant shall indemnify EOHHS and Contractor for any damages to Contractor resulting from Participant’s breach of its obligations under this Participant Agreement.

9.2 Local Access Network Distribution (LAND) Appliance Additional Terms

The following provisions shall apply to LAND Participants:

(a) Without limiting the general meaning of the term “Contractor” defined above, as used in this Section 9.2, “LAND Contractor” shall mean any Contractor(s) used by EOHHS to provide hardware, software, or services in connection with the LAND Appliance.

(b) LAND License Grant

Subject to the terms and conditions of this Participation Agreement and the Policies & Procedures, LAND Participant is granted a non-exclusive, annual license, renewable upon payment of the annual fee, to use: (i) certain LAND Contractor proprietary computer software contained in the Appliance in binary executable form only (the "Software"), (ii) certain LAND Contractor supplied computer hardware (the "Hardware") and (iii) certain LAND Contractor proprietary documentation in the form generally made available by LAND Contractor to its customers for use with these deliverables, (the "Documentation"). The Software and Hardware are collectively referred to in this Section 9.2 as the Appliance ("Appliance"). The Appliance and Documentation are collectively referred to in this Section 9.2 as the "Product."

(c) LAND Intellectual Property Rights

"LAND Intellectual Property Rights" means in connection with the Product, any and all rights existing from time to time under patent law, copyright law, semiconductor chip protection law, moral rights law, trade secret law, trademark law, unfair competition law, publicity rights law, privacy rights law, and any and all other proprietary rights, and any and all applications, renewals, extensions and restorations thereof, now or hereafter in force and effect worldwide. The LAND Contractor, its licensors, and EOHHS will retain

Mass HIway Participation and Business Associate Agreement

all ownership rights, title, and LAND Intellectual Property Rights in and to the Product. LAND Participant acknowledges that its possession, installation or use of the Product will not transfer to it any title to such property.

(d) Use of LAND Software, Documents, and Appliance

The LAND Participant hereby agrees that it shall not, nor shall it allow others to: (i) adapt, alter, modify, decompile, translate, disassemble, or reverse engineer the Product or any component thereof, including without limitation, the source code and any other underlying ideas or algorithms of the Software (except to the extent applicable laws specifically prohibit such restriction); (ii) alter the number of documents authorized for Participant's use; (iii) create separate license keys that enable the Software; (iv) copy the Software; (v) use the Product for high risk activities; (vi) transfer, sublicense, loan, sell, lease or use for timesharing or service bureau purposes the Product or any component thereof; or (vii) ship, divert, transship, transfer, export or re-export the Product or any component thereof into any country or use it in any manner prohibited by any export control laws, restrictions, or regulations administered by the U.S. Commerce Department's Bureau of Export Administration, the U.S. Department of Treasury's Office of Foreign Assets Control or any other applicable government agency. For the avoidance of doubt, nothing in this Participation Agreement nor in the Policies & Procedures grants to LAND Participant any rights whatsoever in or relating to the source code of the Software. Any trade names, trademarks, service marks, logos, trade dress, and any other distinctive or proprietary symbols, labels, designs or designations ("Brand Features") as well as any copyright or other proprietary notices appearing on or in the Product shall be maintained and shall not be removed, modified or altered by LAND Participant.

(e) License Term and Termination

The term of the license provided hereunder commences upon shipment of the Appliance to LAND Participant. In addition to any other rights of termination provided under this Participation Agreement, EOHHS may terminate this Participation Agreement, in whole or in part, (a) if the LAND Participant materially breaches this Agreement and does not cure such material breach within thirty (30) calendar days after receipt of written notice of such breach; (b) immediately following the failure to resolve the suspension of business, insolvency, institution of bankruptcy, liquidation proceedings by or against the LAND Participant, appointment of a trustee or receiver for LAND Participant's property or business, or any assignment, reorganization or arrangement by LAND Participant for the benefit of its creditors; (c) immediately, in the event that the LAND Contractor determines that the Product may be infringing and that no commercially reasonable alternative product is available or, (d) immediately if LAND Participant is in breach of the ownership, restricted use or confidential information provisions herein. Upon expiration or termination of this Agreement all licenses, and any other rights and services

Mass HIway Participation and Business Associate Agreement

provided to LAND Participant as set forth in this Agreement, shall cease immediately and LAND Participant shall immediately return the Product, at LAND Participant's sole cost, to EOHHS as directed by EOHHS.

(f) Confidential Information

LAND Participant acknowledges that the source and object code of the Software remains a confidential trade secret of LAND Contractor and/or its licensors and that LAND Participant is not entitled to review either the object code or the source code of the Software for any reason at any time. LAND Participant shall not disclose or cause to be disclosed any Confidential Information of the LAND Contractor.

(g) LAND – Provisioning

The Mass HIway or its LAND Contractor will ship or deliver an Appliance to LAND Participant according to an agreed-to schedule following LAND Participant's election to use the LAND Services. LAND Contractor shall ensure such Appliance is configured for remote management to allow for software upgrades installed automatically from a remote site and reinstallation of standard and specialized configuration parameters that will be retained electronically at a remote site to facilitate ready deployment of a replacement unit if necessary. The LAND Contractor shall provide Tier 2 and 3 technical support to LAND Participant as part of the annual fee established in Section 14 of the Policies & Procedures. If the LAND Contractor determines that an issue cannot be resolved remotely, the LAND Contractor will arrange to exchange the Appliance.

9.3 Webmail

The following additional provisions shall apply to Webmail Participants:

(a) Security Procedures

Webmail Participants shall implement safeguards that are reasonable and appropriate to ensure the security of the Mass HIway. Webmail Participant shall secure its Authorized Users' PCs, laptops, tablets or other devices which use Webmail to connect to the Mass HIway. Webmail Participant shall also implement processes to reduce vulnerabilities for data breach. Webmail Participant is responsible for the security of webmail content downloaded via the Mass HIway Webmail interface. Such security procedures shall include administrative procedures, physical security measures, and technical security safeguards.

(b) Webmail Capacity

EOHHS will notify a Webmail Participant when an Authorized User's webmail account has reached its storage capacity limit, after which the webmail account will not be able to

Mass HIway Participation and Business Associate Agreement

receive additional messages until messages have been removed to allow additional storage. EOHHS will inform the Participant's Access Administrator when an account has reached capacity. EOHHS will not delete or archive message in an Authorized User's webmail account, nor will it deliver messages to an account when it is over its storage capacity limit. WEBMAIL PARTICIPANT AND ITS AUTHORIZED USER(S) AGREE AND ACKNOWLEDGE THAT THEY WILL NOT BE ABLE TO RECEIVE MESSAGES SENT TO THEIR WEBMAIL ACCOUNT WHEN IT IS OVER ITS STORAGE LIMIT CAPACITY.

(c) Supported Browsers

The Mass HIway supports browsers based on a default or Medium security setting as specified in the Policies & Procedures. A list of specific browsers supported is included in the Policies & Procedures.

10. Mass HIway Web Portal Terms

The following additional provisions shall apply to the use of Mass HIway Web Portal:

(a) Workforce and Permitted Users

Participant shall be responsible for training its own workforce regarding the fundamentals of operating the Mass HIway Web Portal. Participant shall comply with all Mass HIway policies relating to the use of the Portal, including without limitation Mass HIway privacy, information security, and permitted use policies as further described in the Policies & Procedures.

(b) Suspension of Account

EOHHS may at any time suspend Participant's access to the Mass HIway Web Portal or suspend any Authorized User in order to prevent unauthorized use of the Mass HIway Web Portal, to prevent, investigate, or remedy a privacy breach or security incident, or to protect the integrity of the information systems operated by EOHHS and its Contractors. EOHHS may restore such access as determined by EOHHS in its sole discretion.

(c) EOHHS Safeguards

Participant shall not attempt to disable, modify or circumvent any security safeguard adopted by EOHHS. Participant acknowledges and agrees that EOHHS may monitor, record and audit Participant's use of the Mass HIway Web Portal in order to protect patient privacy, protect the security of information maintained in databases, and protect the security of EOHHS's information system.

(d) Participant Safeguards

Mass HIway Participation and Business Associate Agreement

Participant shall implement reasonable and appropriate safeguards to protect the confidentiality, integrity and availability of the information it maintains, stores and transmits using the Mass HIway Web Portal and all information made available to Participant, including but not limited to keeping information such as user names and passwords confidential.

11. Use, Ownership, and Intellectual Property

11.1 Retention of Ownership Rights

Participant and EOHHS retain all rights not expressly granted herein, including each Party's rights to and ownership of their content, data, confidential information, and any other information or materials relating to or exchanged via the Mass HIway.

11.2 Software Certificate, Private Keys, and Network Connected Appliance

Participant acknowledges and agrees that its possession, installation or use of any EOHHS or EOHHS Contractor software or appliance, HIE related software, private keys or other devices, appliances and HIE-related intellectual property ("EOHHS Technology") in conjunction with its use of the Mass HIway, or the payment of any fee established in Section 14 of the Policies & Procedures, will not transfer to Participant any title to the EOHHS Technology and Participant agrees to comply with any terms of use related to such EOHHS Technology. Any EOHHS Technology must be securely stored at the Participant's location. If any EOHHS Technology is compromised, it is the responsibility of the Participant to notify EOHHS immediately after discovery of such compromise of the EOHHS Technology.

12. Miscellaneous Terms and Conditions.

12.1 Term and Termination.

The term of this Agreement shall commence upon the Effective Date specified below and shall continue until terminated. Either Participant or EOHHS may terminate this Agreement without cause upon not less than thirty (30) days prior written notice, at which time this Agreement, and Participant's access to the Mass HIway, shall terminate.

12.2 Suspension of Access

EOHHS may, at any time, suspend Participant's access to the Mass HIway or suspend any user account associated with Participant, as required in its sole discretion, to prevent unauthorized use of the Mass HIway, to prevent, investigate, or remedy a privacy breach or security incident, or to protect the integrity of the information systems operated by EOHHS and its Contractors or for non-payment of fees established in Section 14 of the Policies & Procedures. Restoration of such access or account may be at EOHHS' sole discretion.

12.3 Accuracy of Information.

Mass HIway Participation and Business Associate Agreement

(a) Participant hereby acknowledges and agrees that all information available through the Mass HIway originates from and is controlled by the Participant and/or other HIway Participants, and not EOHHS. All such information is subject to change arising from numerous factors, including without limitation, changes to patient health information made at the request of the patient, changes in the patient's health condition, the passage of time and other factors. EOHHS neither initiates the transmission of any data via the Mass HIway nor monitors the content of data being transmitted. EOHHS has no responsibility, makes no guarantees, and assumes no liability for the accuracy, content, currency, completeness, content or delivery of any information either transmitted to or accessed by the Participant via the Mass HIway. In time sensitive or life threatening situations, Participant should use additional means of communication and not rely solely on the Mass HIway to communicate.

(c) Use of the Mass HIway is not a substitute for a health care provider's standard practice or professional judgment. Any decisions with respect to the appropriateness of diagnoses or treatments or the validity or reliability of information transmitted via the Mass HIway are the sole responsibility of the patient's health care provider.

12.4 Disclaimer of Liability.

Except as may be required by law (and in that sole case, only to the extent required by law), EOHHS and its Contractor(s) disclaim all liability whatsoever arising out of Participant's use of the Mass HIway, and of the products and services described in this Participation Agreement.

12.5 NO WARRANTIES.

ACCESS TO THE MASS HIWAY, INCLUDING ALL PRODUCTS AND SERVICES DESCRIBED IN THIS PARTICIPATION AGREEMENT, WHETHER PROVIDED BY EOHHS OR ITS CONTRACTOR(S), AND THE INFORMATION OBTAINED OR TRANSMITTED BY THE PARTICIPANT BY USE OF THE MASS HIWAY ARE PRODUCTS, SERVICES AND INFORMATION PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT ANY WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. EOHHS AND ITS CONTRACTOR(S) DO NOT WARRANT THAT THE PRODUCT OR SERVICES, OR ANY PORTION THEREOF, ARE ERROR OR BUG FREE, OR THAT PARTICIPANT'S USE OF THE PRODUCT OR SERVICES WILL BE UNINTERRUPTED. EOHHS AND ITS CONTRACTOR(S) ASSUME NO RESPONSIBILITY FOR THE PROPER INSTALLATION AND USE OF THESE PRODUCTS OR SERVICES. THE PARTICIPANT IS SOLELY RESPONSIBLE FOR ANY AND ALL ACTS OR OMISSIONS TAKEN OR MADE IN RELIANCE ON THE MASS HIWAY OR THE INFORMATION OBTAINED OR TRANSMITTED BY USE OF THE MASS HIWAY,

Mass HIway Participation and Business Associate Agreement

INCLUDING INACCURATE OR INCOMPLETE INFORMATION. EOHHS AND ITS CONTRACTOR(S) MAKE NO REPRESENTATIONS ABOUT ANY CONTENT OR INFORMATION MADE ACCESSIBLE BY THESE PRODUCT OR SERVICES. IT IS EXPRESSLY AGREED THAT IN NO EVENT WILL EOHHS BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES, LOSS OF USE, OR LOSS OF INFORMATION OR DATA, WHETHER A CLAIM FOR ANY SUCH LIABILITY OR DAMAGES IS PREMISED UPON BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORIES OF LIABILITY, EVEN IF SUCH PARTY HAS BEEN APPRISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING. EACH PARTY DISCLAIMS ANY AND ALL LIABILITY FOR ERRONEOUS TRANSMISSIONS AND LOSS OF SERVICE RESULTING FROM COMMUNICATION FAILURES BY TELECOMMUNICATION SERVICE PROVIDERS OR THE MASS HIWAY. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES. IN THAT EVENT, TO THE EXTENT PERMISSIBLE, ANY IMPLIED WARRANTIES ARE LIMITED IN DURATION TO NINETY (90) DAYS FROM (i) THE DATE OF SHIPMENT OF THE APPLICABLE PRODUCT OR (ii) THE DATE PARTICIPANT FIRST USES THE SERVICES.

12.6 Severability.

Any provision of this Agreement which is determined to be invalid or unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.

12.7 Governing Laws.

This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts, without regard to its conflict of law provisions, and the Commonwealth of Massachusetts shall be the sole forum for resolution of disputes regarding this Agreement or the subject matter thereof.

12.8 Survival.

The obligations of this Agreement that by their terms naturally survive the expiration or termination of this Agreement, shall so survive, including without limitation Sections 9.1, 9.2, 10.4, 10.5, 10.6, 10.8, and Attachment 1 - Business Associate Agreement.

Mass HIway Participation and Business Associate Agreement

13. Participation Agreement Execution

IN WITNESS WHEREOF, the Participant hereby executes this Agreement by signing in the places allocated below according to the convention /s/ Name, and agrees said electronic signature shall be valid and binding under the Uniform Electronic Transactions Act and the E-Signatures in Global and National Commerce Act and other applicable law.

Participant (Legal Entity Name)

By (Signature)

Name (Printed Name)

Title

Date (the Effective Date)

Mass HIway Participation and Business Associate Agreement

ATTACHMENT 1: BUSINESS ASSOCIATE AGREEMENT

Definitions

Catch-all definitions:

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

Specific definitions:

- (a) Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR 160.103, and in reference to the party to this Agreement, shall mean the Commonwealth of Massachusetts, Executive Office of Health and Human Services.
- (b) Covered Entity. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR 160.103, and in reference to the party to this agreement, shall mean [Insert Name of Covered Entity].
- (c) HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
- (d) Participation Agreement. “Participation Agreement” shall mean the agreement executed by the Business Associate and the Covered Entity governing the terms and limitations of the Covered Entity’s access to and use of the Mass HIway (“Mass HIway”).

Obligations and Activities of Business Associate

Business Associate agrees to:

- (a) Not use or disclose protected health information other than as permitted or required by this Agreement or as required by law;
- (b) Use appropriate safeguards, and comply, where applicable, with Subpart C of 45 CFR Part 164 of the HIPPA Rules with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by this Agreement or as required by law;
- (c) Report to Covered Entity any use or disclosure of protected health information not provided for by this Agreement of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR 164.410;

Mass HIway Participation and Business Associate Agreement

- (d) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information;
- (e) Make available protected health information in a designated record set to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.524;
- (f) Make available protected health information for amendment and incorporate any amendment(s) to protected health information in a designated record set in accordance with 45 CFR 164.526;
- (g) Maintain and make available the information required to provide an accounting of disclosures to the covered entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528;
- (h) To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the covered entity in the performance of such obligation(s); and
- (i) Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

Permitted Uses and Disclosures by Business Associate

- (a) Business Associate may only use or disclose protected health information as necessary to perform the services, functions, and activities set forth in the laws and regulations governing access to, and use of, the Mass HIway, including 101 CMR 20.00 *et seq.*, the *Mass HIway Policies & Procedures*, and any subsequently published conditions of participation, guidelines, and bulletins, or as required by law.
- (b) Business Associate is authorized to use protected health information to de-identify the information in accordance with 45 CFR 164.514(a)-(c).
- (c) Business Associate agrees to make uses and disclosures and requests for protected health information only as minimally necessary to perform the services, functions, and activities of the Mass HIway.
- (d) Business Associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by covered entity, except for the specific uses and disclosures set forth below.

Mass HIway Participation and Business Associate Agreement

(e) Business Associate may use protected health information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

(f) Business Associate may disclose protected health information for the proper management and administration of business associate or to carry out the legal responsibilities of the Business Associate, provided the disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(g) Business Associate may provide data aggregation services relating to the health care operations of the covered entity.

Permissible Requests by Covered Entity

The covered entity shall not request that the Business Associate use or disclose, protected health information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity, except that:

- (a) Business Associate may use and disclose protected health information for the proper management and administration of the business associate as set forth above; and
- (b) Business Associate may provide data aggregation services relating to the health care operations of the covered entity as set forth above.

Term and Termination

(a) Term. The Term of this Agreement shall be effective upon mutual execution of the Participation Agreement, and shall terminate upon termination of the Participation Agreement or on the date covered entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.

(b) Termination for Cause. Business Associate authorizes termination of this Agreement by covered entity, if Covered Entity determines Business Associate has violated a material term of the Agreement and business associate has not cured the breach or ended the violation within a reasonable time, as specified by Covered Entity.

(c) Obligations of Business Associate Upon Termination. Upon termination of this Agreement for any reason, Business Associate shall, if feasible, return or destroy all protected health information received from, or created or received by the Business Associate on behalf of, the Covered Entity that the Business Associate still maintains in any form and retain no copies of such information or, if such return or destruction is not

Mass HIway Participation and Business Associate Agreement

feasible, extend the protections of this Agreement to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

(d) Survival. The obligations of business associate under this Section shall survive the termination of this Agreement.

Miscellaneous

(a) Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

(b) Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.

(c) Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.