

**MODEL AGREEMENT BETWEEN CERTIFIED APPLICATION COUNSELOR
DESIGNATED ORGANIZATION IN A STATE IN WHICH THE FEDERALLY-
FACILITATED EXCHANGE IS OPERATING AND CERTIFIED APPLICATION
COUNSELOR**

THIS AGREEMENT (“Agreement”) is entered into between _____, an organization that The Centers for Medicare & Medicaid Services (“CMS”), which manages and oversees the Federally-facilitated Exchanges (“FFE”), has designated as a Certified Application Counselor Designated Organization in _____ [Insert name(s) of applicable FFE state(s) in which organization is designated], a State/States in which an FFE is operating (hereinafter referred to as “CDO”) and _____, a staff member or volunteer of the CDO who wishes to be certified by the CDO to act as a Certified Application Counselor (hereinafter referred to as “Staff Member/Volunteer”) and to perform the duties and meet the standards and requirements of 45 CFR 155.225. The CDO and Staff Member or Volunteer are hereinafter sometimes referred to as “Party,” or, collectively, as the “Parties.”

WHEREAS:

1. Pursuant to 45 CFR 155.225(b), CMS may designate an organization to certify its staff members or volunteers to act as Certified Application Counselors.
2. CMS has designated CDO to certify staff members and volunteers to act as certified application counselors in an FFE.
3. Pursuant to 45 CFR 155.225(c), CACs are expected to provide the following services to Consumers, Applicants, Qualified Individuals, Enrollees, Qualified Employees, and Qualified Employers, and/or these individuals’ legal representative(s) or Authorized Representative(s):
 - a. Provide information about the full range of Qualified Health Plan (QHP) options and Insurance Affordability Programs for which these persons are eligible;
 - b. Assist with applications for coverage in a QHP through the FFE and for Insurance Affordability Programs; and
 - c. Help to facilitate enrollment in QHPs and Insurance Affordability Programs.
4. The CDO, and the staff members and volunteers that the CDO certifies as CACs, will need to create, collect, disclose, access, maintain, store, and/or use the Personally Identifiable Information (“PII”) from CMS, Consumers, Applicants, Qualified Individuals, Enrollees, Qualified Employees, and Qualified Employers, and/or their legal representative(s) or Authorized Representative(s) that is necessary to carry out the Authorized Functions described at III.b below.
5. CDO has determined that it would be beneficial to permit the staff members and volunteers it certifies as CACs to create, collect, disclose, access, maintain, store, and use PII from CMS, Consumers, Applicants, Qualified Individuals, Enrollees, Qualified

Employees, and Qualified Employers, and/or their legal representative(s) or Authorized Representative(s), in order to perform the Authorized Functions described in Section III.b of this Agreement.

6. 45 CFR 155.225(d)(3) requires all CACs to comply with the Exchange's privacy and security standards adopted consistent with 45 CFR 155.260, and applicable authentication and data security standards.
7. CMS, in the administration of the FFEs, has adopted privacy and security standards concerning personally identifiable information ("PII") and applicable authentication and data security standards, which are set forth in Appendix A, "Privacy and Security Standards and Implementation Specifications for Non-Exchange Entities." Compliance with this Agreement satisfies the requirement under 45 CFR 155.225(d)(3) to comply with applicable authentication and data security standards.

Now, therefore, in consideration of the promises and covenants herein contained, the adequacy of which the Parties acknowledge, the Parties agree as follows.

I. DEFINITIONS. Capitalized terms not otherwise specifically defined herein shall have the meaning set forth in the attached Appendix B, "Definitions," and/or in 45 CFR 155.20, which definitions are hereby incorporated by reference.

II. OBLIGATIONS AND CONDITIONS

a. Staff Member/Volunteer's Obligations and Conditions. To carry out the functions authorized by 45 CFR 155.225, and as a condition of Staff Member/Volunteer's certification by CDO, Staff Member/Volunteer agrees to the following:

i. Prior to functioning as a CAC, Staff Member/Volunteer shall do all of the following:

1. Register with CDO and receive a unique identifying number and a CAC Certificate, in accordance with CDO's procedures [ADD FOLLOWING LANGUAGE ONLY IF THE CDO DECIDES TO INCORPORATE USER MANUAL BY REFERENCE RATHER THAN CREATE ITS OWN PROCEDURES] as set forth in Section 2 of the CAC User Manual, which is incorporated by reference into this Agreement Appendix C, "CAC User Manual"];
2. Register for CMS-approved training using Staff Member/Volunteer's unique CAC identification number and the name that will appear on both his or her CAC Certificate and Training Certificate;
3. Complete CMS-approved training regarding QHP options, Insurance Affordability Programs, eligibility, and benefits rules and regulations

governing all Insurance Affordability Programs operated in the state, as implemented in the state;

4. Complete and achieve a passing score on all CMS-approved certification examinations;
 5. Provide proof in the form of his or her printed Training Certificate to CDO that he or she has fulfilled the training and certification examination requirements specified in Section II.b.i.2 and 3; and
 6. Execute this Agreement.
- ii. Staff Member/Volunteer shall disclose to CDO and to Consumers, Applicants, Qualified Individuals, Enrollees, Qualified Employees, and Qualified Employers, and/or their legal representative(s) or Authorized Representative(s) any relationship Staff Member/Volunteer has with QHPs or Insurance Affordability Programs, or other potential conflicts of interest;
 - iii. [FOR USE ONLY IF THE CDO DECIDES TO REQUIRE THIS] Staff Member/Volunteer shall disclose to Consumers, Applicants, Qualified Individuals, Enrollees, Qualified Employees, and Qualified Employers, and/or their legal representative(s) or Authorized Representative(s) any relationship the CDO has with QHPs or Insurance Affordability Programs, or other potential conflicts of interest, using language supplied by CDO;
 - iv. Staff Member/Volunteer shall comply with all provisions of this Agreement and its attachments, all of which are hereby incorporated by reference, including Appendix A, "Privacy and Security Standards and Implementation Specifications for Non-Exchange Entities," which was drafted in conformance with 45 CFR 155.260;
 - v. Staff Member/Volunteer shall act in the best interests of any Consumer, Applicant, Qualified Individual, Enrollee, Qualified Employee, or Qualified Employer that he or she assists;
 - vi. Staff Member/Volunteer shall, either directly or through an appropriate referral to a Navigator or non-Navigator assistance personnel authorized under 45 CFR §§ 155.205(d) and (e) or 155.210, or to the Exchange call center authorized under 45 CFR § 155.205(a), provide information in a manner that is accessible to individuals with disabilities, as defined by the Americans with Disabilities Act, as amended, 42 USC § 12101, et seq. and section 504 of the Rehabilitation Act, as amended, 29 USC § 794;
 - vii. Staff Member/Volunteer shall provide information to Consumers, Applicants, Qualified Individuals, Enrollees, Qualified Employees, and Qualified Employers, and/or their legal representative(s) or Authorized

Representative(s) about the full range of QHP options and Insurance Affordability Programs for which they are eligible;

- viii. Staff Member/Volunteer shall assist Consumers, Applicants, Qualified Individuals, Enrollees, Qualified Employees, and Qualified Employers, and/or their legal representative(s) or Authorized Representative(s) in applying for coverage in a QHP through the Marketplace and for Insurance Affordability Programs;
- ix. Staff Member/Volunteer shall help to facilitate enrollment of eligible Consumers, Applicants, Qualified Individuals, Enrollees, Qualified Employees, and Qualified Employers in QHPs and Insurance Affordability Programs;
- x. Staff Member/ Volunteer shall follow CDO's established procedures[ADD FOLLOWING LANGUAGE ONLY IF THE CDO DECIDES TO INCORPORATE USER MANUAL AND SOPS BY REFERENCE RATHER THAN DEVELOP OTHER PROCEDURES] as set forth in Appendix C, "CAC User Manual," and Appendix D, "CAC Standard Operating Procedures (SOPs)," which are incorporated by reference into this Agreement], to:
 - 1. Prominently display to Consumers, Applicants, Qualified Individuals, Enrollees, Qualified Employees, and Qualified Employers, and/or their legal representative(s) or Authorized Representative(s) the CAC Certificate provided by CDO evidencing the individual's certification as a CAC each time Staff Member/Volunteer assists any of these persons;
 - 2. Inform Consumers, Applicants, Qualified Individuals, Enrollees, Qualified Employees, and Qualified Employers, and/or their legal representative(s) or Authorized Representative(s), of the functions and responsibilities of CACs. Staff Member/Volunteer may use the model form provided by CMS and appended hereto and referred to as Appendix E to fulfill this requirement;
 - 3. Prior to creating, collecting, disclosing, accessing, maintaining, storing, or using any PII of Consumers, Applicants, Qualified Individuals, Enrollees, Qualified Employees, Qualified Employers, and/or these individual's legal representatives(s) or Authorized Representative(s) obtain the authorization required by 45 CFR 155.225(f) and section III.d of this Agreement (hereinafter referred to as "authorization") to create, collect, disclose, access, maintain, store, and use PII of such person(s) to carry out the Authorized Functions listed at Section III.b of this Agreement. This authorization may be obtained either directly from the Consumer, Applicant, Qualified Individual, Enrollee, Qualified Employee, and/or Qualified Employer,

or through such person(s)' legal representative(s) or Authorized Representative(s). Staff Member/Volunteer may use the model form provided by CMS and appended hereto and referred to as Appendix E to fulfill this requirement. This authorization is separate and distinct both from any authorization obtained pursuant to section III.g of this agreement and from the informed consent referenced in Appendix A at 3(a);

4. Maintain a record of the authorization provided under Section II.a.x.3;
 5. Permit the Consumer, Applicant, Qualified Individual, Enrollee, Qualified Employee, and Qualified Employer, and/or their legal representative(s) or Authorized Representative(s) to revoke the authorization described in Section II.a.x.3. at any time;
 6. Provide his or her unique CAC identification number to any Consumer, Applicant, Qualified Individual, Enrollee, Qualified Employee, and Qualified Employer, and/or these individuals' legal representative(s) or Authorized Representative(s) assisted by Staff Member/Volunteer, and include his or her unique CAC identification number on any application that is partially or fully completed in connection with Staff Member/Volunteer's assistance for that individual;
- xi. Staff Member/Volunteer shall not impose any charge on any Consumers, Applicants, Qualified Individuals, Enrollees, Qualified Employees, and Qualified Employers, and/or their legal representative(s) or Authorized Representative(s) for application or other assistance related to the Exchange;
 - xii. Staff Member/Volunteer shall not sell or otherwise transfer information provided by Consumers, Applicants, Qualified Individuals, Enrollees, Qualified Employees, and Qualified Employers, and/or these individuals' legal representative(s) or Authorized Representative(s) to any person or entity other than such actions as are specifically permitted by this Agreement;
 - xiii. Staff Member/Volunteer shall not collect or otherwise maintain information provided by Consumers, Applicants, Qualified Individuals, Enrollees, Qualified Employees, and Qualified Employers, and/or these individuals' legal representative(s) or Authorized Representative(s), except as specifically provided for in this Agreement;
 - xiv. Upon termination or nonrenewal of Staff Member/Volunteer's agreement with CDO, Staff Member/Volunteer shall immediately cease holding himself or herself out as a CAC to any Consumer, Applicant, Qualified Individual, Enrollee, Qualified Employee, and Qualified Employer, and/or these

individuals' legal representative(s) or Authorized Representative(s), and immediately cease providing CAC services to the public; and

- xv. As evidenced by my signature hereon, I hereby agree to provide the duties and services described herein without compensation of any kind (other than the wages I may nonetheless earn as an employee of CDO for work performed on behalf of my employer), and hereby waive my rights to any fee, remuneration or compensation to which I might somehow be entitled to receive from the Government of the United States of America under applicable law.

III. OBLIGATIONS RELATED TO THE PRIVACY AND SECURITY OF PERSONALLY IDENTIFIABLE INFORMATION.

- a. Staff Member/Volunteer hereby acknowledges and agrees to accept and abide by the standards and implementation specifications set forth below and in Appendix A, "Privacy and Security Standards and Implementation Specifications for Non-Exchange Entities," which is incorporated by reference in this Agreement, when engaging in any activity as a CAC pursuant to 45 CFR 155.225. Staff Member/Volunteer is thereby bound to strictly adhere to the privacy and security standards, and to ensure that any Workforce it may have that creates, collects, accesses, stores, maintains, discloses, or uses PII, is contractually bound to strictly adhere to the equivalent standards and implementation specifications, so as to ensure the efficient operation of the FFE.
- b. Authorized Functions. Staff Member/ Volunteer may create, collect, disclose, access, maintain, store, and use PII of Consumers, Applicants, Qualified Individuals, Enrollees, Qualified Employees, and Qualified Employers, or these individuals' legal representative(s) or Authorized Representative(s), in order to:
 - 1. Provide information about the full range of QHP options and Insurance Affordability Programs for which these persons are eligible;
 - 2. Assist these persons with applications for coverage in a QHP through the FFE and for Insurance Affordability Programs;
 - 3. Help to facilitate the enrollment of these persons in QHPs and Insurance Affordability Programs; and
 - 4. Perform other functions authorized under 45 CFR 155.225, including functions substantially similar to those enumerated above, and such other functions that may be approved by CDO in writing from time to time, but only if CMS has expressly permitted CDO to carry out those functions.
- c. PII Received. Subject to the terms and conditions of this Agreement and applicable laws, in performing the tasks contemplated under this Agreement, Staff Member/Volunteer may create, collect, disclose, access, maintain, store, and use the following

data and PII from Consumers, Applicants, Qualified Individuals, Enrollees, Qualified Employees, Qualified Employers, or these individuals' legal representative(s) or Authorized Representative(s):

APTC percentage and amount applied
Auto disenrollment information
Applicant Name
Applicant Address
Applicant Birthdate
Applicant Telephone number
Applicant Email
Applicant spoken and written language preference
Applicant Medicaid Eligibility indicator, start and end dates
Applicant Children's Health Insurance Program eligibility indicator, start and end dates
Applicant QHP eligibility indicator, start and end dates
Applicant APTC percentage and amount applied eligibility indicator, start and end dates
Applicant household income
Applicant Maximum APTC amount
Applicant Cost-sharing Reduction (CSR) eligibility indicator, start and end dates
Applicant CSR level
Applicant QHP eligibility status change
Applicant APTC eligibility status change
Applicant CSR eligibility status change
Applicant Initial or Annual Open Enrollment Indicator, start and end dates
Applicant Special Enrollment Period eligibility indicator and reason code
Contact Name
Contact Address
Contact Birthdate
Contact Telephone number
Contact Email
Contact spoken and written language preference
Enrollment group history (past six months)
Enrollment type period
FFE Applicant ID
FFE Member ID
Issuer Member ID
Net premium amount
Pregnancy indicator
Premium Amount, start and end dates
Special enrollment period reason
Subscriber Indicator and relationship to subscriber
Social Security Number
Tobacco use indicator and last date of tobacco

- d. Authorization. Prior to creating, collecting, disclosing, accessing, maintaining, storing, or using any PII from Consumers, Applicants, Qualified Individuals, Enrollees, Qualified Employees, and Qualified Employers, and/or these individuals' legal representative(s) or Authorized Representative(s), Staff Member/Volunteer will obtain the authorization required under Section II.a.x.3 of this Agreement to create, collect, disclose, access, maintain, use, or store their PII to carry out the Authorized Functions listed at Section III.b of this Agreement, and will permit the authorization to be revoked at any time. Staff Member/Volunteer may use the model form provided by CMS and appended hereto and referred to as Appendix E to fulfill this requirement. This authorization is separate and distinct from any authorization obtained pursuant to section III.g of this agreement and the informed consent referenced in Appendix A at 3(a). The CDO should ensure that a record of the authorization provided is maintained in a manner consistent with the privacy and security standards set forth in Appendix A.
- e. Collection of PII. PII collected from Consumers, Applicants, Qualified Individuals, Enrollees, Qualified Employees, and Qualified Employers, and/or their legal representative(s) or Authorized Representative(s), may be used only for the Authorized Functions specified in Section III.b of this Agreement. Such information may not be reused for any other purpose.
- f. Storing PII. Other than documentation related to the authorization required by Section III.d above, Staff Member/Volunteer is not expected or required to maintain or store any of the above listed PII as a result of carrying out the Authorized Functions specified in Section III.b above. To the extent that Staff Member/Volunteer does maintain or store PII, such as documentation related to the authorization required by Section III.d, he or she must agree to comply with all provisions of this Agreement and Appendix A that apply to the maintenance or storage of PII.
- g. Collection and Use of Information Provided Under Other Authorities. This Agreement does not preclude Staff Member/Volunteer from separately collecting information from Consumers, Applicants, Qualified Individuals, Enrollees, Qualified Employees, Qualified Employers, or their legal representative(s) or Authorized Representative(s), for a non-FFE purpose, and using, reusing, and disclosing such non-FFE information obtained separately as permitted by applicable law and/or other applicable authorities. Such information must be separately collected and stored from any PII collected in accordance with this Agreement. Any authorization for collection and use of PII under this provision is separate and distinct from the authorization obtained pursuant to Section III.d above and II.a.x.3, and should be obtained and maintained separately from that authorization.
- h. Ability of Consumer to Limit Collection and Use. Staff Member/Volunteer agrees to allow the Consumer, Applicant, Qualified Individual, Enrollee, Qualified Employee, Qualified Employer, directly or through their legal representative(s) or Authorized Representative(s), to limit Staff Member/Volunteer's creation, collection, use, maintenance, storage, and disclosure of their PII to the sole purpose of obtaining Staff

Member/Volunteer's assistance for FFE purposes, and for performing Authorized Functions specified in Section III.b of this Agreement.

IV. EFFECTIVE DATE; TERM AND RENEWAL.

- a. Effective Date and Term. This Agreement becomes effective on the date the last of the two Parties signs this Agreement and ends one year from the effective date.
- b. Renewal. This Agreement will automatically renew for subsequent and consecutive one (1) year periods upon the expiration of this Agreement, unless:
 - i. CDO is no longer designated by CMS; or
 - ii. CDO, in its sole and absolute discretion, notifies Staff Member/Volunteer with 30 Days' advance written notice that it has determined that the Agreement will not be renewed. Such notice will specify whether and under what conditions CDO will renew the Agreement; or
 - iii. CDO terminates the Agreement pursuant to Section V of this Agreement.

V. Termination

- a. Termination without Cause. Either Party may terminate this Agreement without cause upon thirty (30) Days' prior written notice to the other Party.
- b. Termination with Cause. This Agreement shall terminate immediately when Staff Member/Volunteer no longer holds a position as a staff member or volunteer at CDO, or when CDO withdraws Staff Member/Volunteer's certification as a CAC, or when CMS has withdrawn CDO's designation as a CDO. CDO may terminate this Agreement for cause as soon as possible, but in no event later than twenty (20) Days after the triggering event (identification or notification of noncompliance) if CDO learns or is notified by CMS that Staff Member/Volunteer has failed to comply with the terms and conditions of this Agreement or with any applicable requirements of 45 CFR 155.225, unless Staff Member/Volunteer commences curing such breach(es) within such 20-Day period to the reasonable satisfaction CDO, and thereafter diligently implements such cure to completion. The 20-Day notice from CDO shall contain a description of the material breach, whereupon Staff Member/Volunteer shall have seven (7) Days from the date of the notice in which to propose a plan and a time frame to cure the material breach, which plan and time frame may be rejected, approved or amended in CDO's sole but reasonable discretion. Notwithstanding the foregoing, Staff Member /Volunteer shall be considered in "Habitual Default" of this Agreement in the event that it has been served with a 20-Day notice under this subsection more than three (3) times in any calendar year, whereupon CDO may, in its sole discretion, immediately thereafter terminate this Agreement upon notice to Staff Member/Volunteer without any further opportunity to cure or propose cure.
- c. Consequences of Termination or Nonrenewal. If this Agreement is not renewed pursuant to Section IV.b or is terminated pursuant to Sections V.a or V.b of this

Agreement, Staff Member/Volunteer's certification as a CAC is automatically withdrawn. If that occurs Staff Member/Volunteer must immediately cease holding himself or herself out as a CAC to any Consumer, Applicant, Qualified Individual, Enrollee, Qualified Employee, and Qualified Employer, and/or these individuals' legal representative(s) or Authorized Representative(s), and must immediately cease providing CAC services to the public.

VI. DESTRUCTION OF PII. Staff Member/Volunteer covenants and agrees to destroy all PII in his or her possession at the end of the record retention period required under Appendix A. If, upon the termination or expiration of this Agreement Staff Member/Volunteer has in his or her possession PII for which no retention period is specified in Appendix A, such PII shall be destroyed within thirty (30) Days of the termination or expiration of this Agreement. Staff Member/Volunteer's duty to protect and maintain the privacy and security of PII, as provided for in Appendix A of this Agreement, shall continue in full force and effect until such PII is destroyed and shall survive the termination or expiration of this Agreement.

VII. GENERAL PROVISIONS.

- a. Assignment and Delegation. Staff Member/Volunteer shall not assign its rights or delegate its performance under this Agreement. CDO shall not assign its rights or delegate its performance under this Agreement without the express prior written consent of CMS.
- b. Disclaimer. Neither this Agreement nor the activities of the Parties contemplated under this Agreement shall be deemed or construed to create in any way any partnership, joint venture or agency relationship between either or both of the Parties hereto on one hand and the United States of America (or any of its agencies or departments) on the other. Neither CDO nor Staff Member/Volunteer is, nor shall either CDO or Staff Member/Volunteer hold itself out to be, vested with any power, authority or right to act on behalf of the United States of America in any manner as an agent or representative thereof, or to bind the United States in any manner or fashion.
- c. Amendments. CDO may amend this Agreement for purposes of reflecting changes in applicable law, regulations, or CMS implementation guidance, with such amendments taking effect upon thirty (30) Days' written notice to Staff Member/Volunteer ("CDO notice period"). Staff Member/Volunteer may reject such amendment, by providing to CDO, during the CDO notice period, thirty (30) Days' written notice of its intent to reject the amendment ("rejection notice period"). Any such rejection of such amendment made by CDO for purposes of reflecting changes in applicable law, regulations, or CMS implementation guidance shall result in the termination of this Agreement upon expiration of the rejection notice period.

- d. Compliance with Law. CDO and Staff Member/Volunteer shall comply with any and all applicable laws, statutes, regulations or ordinances of the United States of America, and any Federal Government agency, board or court, that are applicable to the conduct of the activities that are the subject of this Agreement, including but not limited to, any additional and applicable standards required by statute, and any regulations or policies implementing or interpreting such statutory provisions hereafter issued by CMS. In the event of a conflict between the terms of this Agreement and, any statutory, regulatory, or sub-regulatory guidance released by CMS, the requirement which constitutes the stricter, higher or more stringent level of compliance controls.

- e. [Placeholder for Governing Law provision]

- f. [Placeholder for Notices provision]

- g. [Placeholder for Severability provision]

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This “Agreement between CDO and Staff Member/Volunteer has been signed by:

FOR CDO:

By: _____

[Title of person authorized to enter into agreements on behalf of organization to bind the organization]

Date: _____

FOR Staff Member/Volunteer:

By: _____

Printed Name:

Date: _____