

**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

_____, 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:
 - a. Provide information about the full range of Qualified Health Plan (QHP) options and Insurance Affordability Programs for which Consumers are eligible which includes: providing fair, impartial, and accurate information that assists Consumers with submitting the eligibility application; clarifying the distinctions among health coverage options, including QHPs; and helping Consumers make informed decisions during the health coverage selection process;
 - 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 and Consumers, to the extent that these activities are necessary to carry out the Authorized Functions that the Affordable Care Act (“ACA”), implementing regulations, and this Agreement permit.

5. 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.
6. CMS, in the administration of the FFEs, has adopted privacy and security standards for CDO, as set forth in Appendix A, "Privacy and Security Standards for Certified Application Counselors and Certified Application Counselor Designated Organizations." Compliance with this Agreement satisfies the requirement under 45 CFR 155.225(d)(3) to comply with Exchange privacy and security standards and 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 of a CAC, as 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;
 2. Register for all 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 all 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 training examinations;

5. Provide proof in the form of his or her printed Certificate of Complete to CDO that he or she has fulfilled the training and certification examination requirements specified in Section II.a.i.2 through 4;
 6. Meet any licensing, certifications, or other standards prescribed by the State of FFE, if applicable, so long as such standards do not prevent the application of the provisions of title I of the Affordable Care Act;
 7. Execute this Agreement.
- ii. Staff Member/Volunteer shall disclose to CDO any relationship Staff Member/Volunteer has with QHPs or Insurance Affordability Programs, or other potential conflicts of interest;
 - iii. Staff Member/Volunteer shall comply with FFE's Privacy and Security Standards and Implementation Specifications for Non-Exchange Entities specified in Section III and with Appendix A of this Agreement;
 - iv. When assisting Consumers, Staff Member/Volunteer shall:
 1. Follow CDO's established procedures to prominently display to Consumers a current and effective CAC Certificate provided by CDO evidencing the individual's certification as a CAC each time Staff Member/Volunteer assists any Consumers;
 2. Follow CDO's established procedures to inform Consumers of functions and responsibilities of CACs;
 3. Follow CDO's established procedures to obtain the authorization required by 45 CFR 155.225(f) and section III.d of this Agreement, prior to creating, collecting, disclosing, accessing, maintaining, storing, and using PII of Consumers to carry out the Authorized Functions listed at Section III.b of this Agreement. This authorization is separate and distinct from any informed consent obtained pursuant to section 2(b) of Appendix A of this Agreement;
 4. Follow CDO's established procedures to maintain a record of the authorization provided under Section III.d for a period of no less than six (6) years, unless a different and longer retention period has already been provided under other applicable Federal law;
 5. Permit the Consumer to revoke the authorization described in Section III.d at any time;

6. Provide his or her unique CAC identification number to any Consumer being assisted so that the application reflects that he or she has provided assistance;
7. Not impose any charge or fee on Consumers for application or other assistance related to the FFE;
8. Not act as tax advisors or attorneys when providing assistance as CACs and cannot provide tax or legal advice within the capacity as CAC;
9. Act in the best interests;
10. 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 FFE call center, 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;
11. Provide information to Consumers about the full range of QHP options and Insurance Affordability Programs for which they are eligible, which includes: providing fair, impartial, and accurate information that assists Consumers with submitting the eligibility application; clarifying the distinctions among health coverage options, including QHPs; and helping Consumers make informed decisions during the health coverage selection process;
12. Assist them in applying for coverage in a QHP through the FFE and for Insurance Affordability Programs;
13. Help to facilitate their enrollment in QHPs and Insurance Affordability Programs;
14. Follow CDO's procedures to disclose to them any relationships the CAC has with QHPs or Insurance Affordability Programs, or other potential conflicts of interest;
15. [FOR USE ONLY IF THE CDO DECIDES TO REQUIRE THIS] Follow CDO's procedures to disclose to them any relationships the CAC has with QHPs or Insurance Affordability Programs, or other potential conflicts of interest, using language supplied by CDO;

16. Not provide to a Consumer gifts or any value as an inducement for enrollment, and not provide gifts to Consumers for purposes other than as an inducement for enrollment that exceed Nominal Value, either individually or in the aggregate when provided to that individual during a single encounter. The term “gifts” includes gift items, gift cards, cash cards, and promotional items that market or promote the products or services of a third party, but does not include the reimbursement of legitimate expenses, incurred by a Consumer in an effort to receive Exchange application assistance, such as, , travel or postal expenses;
 17. Not solicit any Consumer for application or enrollment assistance by going door-to-door or through other unsolicited means of direct contact, including calling a Consumer to provide application or enrollment assistance without the Consumer initiating the contact, unless the individual has a pre-existing relationship with the individual CAC or the CDO, and other applicable State and Federal laws are otherwise complied with. Outreach and education activities may be conducted by going door-to-door or through other unsolicited means of direct contact, including calling a Consumer; and
 18. Not initiate any telephone call to a Consumer using an automatic telephone dialing system or an artificial or prerecorded voice, except in cases where the individual certified application counselor or designated organization has a relationship with the Consumer and so long as other applicable State and Federal laws are otherwise complied with.
- v. For as long as the CAC continues providing CAC services, seek recertification on at least an annual basis after successfully completing recertification training;
 - vi. Upon termination or nonrenewal of CAC’s agreement with CDO, or withdrawal of designation from CDO or withdrawal of certification from CAC, immediately cease holding himself or herself out as a CAC to any Consumer, and immediately cease providing CAC services to the public;
 - vii. Not sell or otherwise transfer information that was provided to the CAC by Consumers to any person or entity other than for such actions as are specifically permitted by this Agreement or as expressly authorized;
 - viii. Not collect or otherwise maintain information provided by Consumers, except as specifically provided for in this Agreement;

- ix. Not receive any consideration directly or indirectly from any health insurance issuer or issuer of stop-loss insurance in connection with the enrollment of any individuals in a QHP or non-QHP. This prohibition does not apply to consideration the CAC receives from a health insurance for health care services provided; and
- x. 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 for Certified Application Counselors and Certified Application Counselor Designated Organizations,” which is incorporated by reference in this Agreement, when engaging in any activity as a CAC Authorized Function pursuant to 45 CFR 155.225. Staff Member/ Volunteer is thereby bound to strictly adhere to the privacy and security standards.
- b. Authorized Functions. Staff Member/ Volunteer may create, collect, disclose, access, maintain, store, and use PII of Consumers in order to:
 - i. Provide information to Consumers about the full range of QHP options and Insurance Affordability Programs for which these persons are eligible, which includes: providing fair, impartial, and accurate information that assists Consumers with submitting the eligibility application; clarifying the distinctions among health coverage options, including QHPs; and helping Consumers make informed decisions during the health coverage selection process;
 - ii. Assist Consumers with applications for coverage in a QHP through the FFE and for Insurance Affordability Programs;
 - iii. Help to facilitate the enrollment of Consumers in QHPs and Insurance Affordability Programs; and
 - iv. Perform other functions related to carrying out additional obligations as may be required under applicable state law or regulation, provided that (1) such a state requirement does not prevent the application of the provisions of title I of the Affordable Care Act within the meaning of section 1321(d) of the Affordable Care Act, and (2) Staff Member/Volunteer notifies Consumers in

advance, in writing, that collection, handling, disclosure, access maintenance, storage, and/or use of their PII might be required under applicable state law or regulations. Staff Member/Volunteer should provide the required notification through the authorization obtained in accordance with 155.22(f); and

- v. 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 Authorized Functions under this Agreement, Staff Member/Volunteer may create, collect, disclose, access, maintain, store, and use the following data and PII from Consumers, including but not limited to:

Access to or enrollment in employer or other health coverage
American Indian/Alaska Native status
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
Citizenship Status
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
Gender
Immigration document type and document numbers
Issuer Member ID
Membership in a Federally-recognized tribe
Net premium amount
Pregnancy indicator
Premium Amount, start and end dates
Race/ethnicity
Sex
Special enrollment period reason
Subscriber Indicator and relationship to subscriber
Social Security Number
Tax filing status (tax filer, tax dependent, non-flier)
Tobacco use indicator and last date of tobacco

- d. Authorization. Before Staff Member/Volunteer creates, collects, discloses, accesses, maintains, stores, or uses any of a Consumer's PII, Staff Member/Volunteer will obtain from Consumer the authorization required by 45 CFR 155.225(f) for Staff Member/Volunteer to create, collect, disclose, access, maintain, store, and use the Consumer's 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. This authorization is separate and distinct from any informed consent obtained pursuant to section 2(b) of Appendix A of this Agreement. The Staff Member/Volunteer 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. Except for collections, uses, or disclosures that are specifically authorized by Consumers in accordance with Section 2(b) of Appendix A, PII collected from Consumers may be used only for the Authorized Functions specified in Section III.b of this Agreement.
- f. Storing PII. To the extent that Staff Member/Volunteer maintains or stores PII, 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. Ability of Consumer to Limit Collection and Use. Staff Member/Volunteer agrees to allow the Consumer 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 and for its convenience upon at least 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, must immediately cease providing CAC services to the public, and must carry out the procedures described in Section II.vi of this Agreement.

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. 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 of Joint Venture. 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. Governing Law. This Agreement will be governed by the laws and common law of _____, including without limitation such regulations as may be promulgated by HHS or any of its constituent agencies, without regard to any conflict of laws statutes or rules. The Parties further agree and consent to the jurisdiction of _____ Courts located within _____ and the courts of appeal therefrom, and waives any claim of lack of jurisdiction or *forum non conveniens*.

- f. Notice. All notices to Parties specifically required under this Agreement shall be given in writing and shall be delivered as follows:

If to CDO:

By email:

By mail:

If to Staff Member/Volunteer, to Staff Member's/Volunteer's address on record.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by email shall be deemed to have been given when the appropriate confirmation of receipt has been received; provided, that notices not given on a business day (i.e., Monday-Friday excluding federal holidays) between 9:00 a.m. and 5:00 p.m. local time where the recipient is located shall be deemed to have been given at 9:00 a.m. on the next business day for the recipient. A Party to this Agreement may change its contact information for notices and other communications by providing written notice of such changes in accordance with this provision. Such notice should be provided thirty (30) days in advance of such change, unless circumstances warrant a shorter timeframe.

- g. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement. In the event that any provision of this Agreement is determined to be invalid, unenforceable or otherwise illegal, such provision shall be deemed restated, in accordance with applicable law, to reflect as nearly as possible the original intention of the parties, and the remainder of the Agreement shall be in full force and effect.

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

FOR CDO:

Signature:

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

Printed Name:

Date: _____

FOR Staff Member/Volunteer:

CAC ID issued: _____

Signature:

[Name of staff member/volunteer serving as a CAC]

Printed Name:

Date: _____