

AGREEMENT BETWEEN THE VIRGINIA HEALTH BENEFIT EXCHANGE AND CERTIFIED COUNSELOR DESIGNATED ORGANIZATION

THIS AGREEMENT (“Agreement”) is entered into by and between the Health Benefit Exchange Division (“Exchange”) of the Virginia State Corporation Commission and _____, an organization designated by the Exchange as a Certified Application Counselor Designated Organization (“CDO”) in the Commonwealth of Virginia, in accordance with the requirements of 14VAC7-10-30.A.2. The Exchange and CDO are hereinafter sometimes referred to as “Party” or, collectively, as the “Parties.”

WHEREAS:

1. Pursuant to §38.2-6514 of the Code of Virginia and 45 CFR §155.225(b), the Exchange may designate an organization to certify its staff members or volunteers to act as Certified Application Counselors (“CACs”).
2. Pursuant to 14VAC7-10-60 and 45 CFR §155.225(c), CACs are authorized to perform the following duties:
 - a. Provide information about the full range of qualified health plan and qualified dental plan options and insurance affordability programs for which consumers are eligible, including providing fair, impartial, and accurate information that assists consumers with submitting the eligibility application; clarify the distinctions among health coverage options, including qualified health plans or qualified dental plans; and help consumers make informed decisions during the health coverage selection process;
 - b. Assist individuals and employees to apply for coverage in a qualified health plan or qualified dental plan through the Exchange and for insurance affordability programs; and,
 - c. Help to facilitate enrollment of eligible individuals in qualified health plans or qualified dental plans and insurance affordability programs.
3. Pursuant to 14VAC7-10-30.A.2 and 45 CFR §155.225(b)(1)(i), to be designated as a CDO, an organization must enter into an agreement with the Exchange to comply with the standards and requirements of 14VAC7-10-10 *et seq.* and 45 CFR §155.225, including but not limited to 45 CFR §155.225(d)(3)-(5);
4. The Exchange has determined that it would be beneficial to permit CDO and its CACs to create, collect, disclose, access, maintain, store, or use personally identifiable information (“PII”) to the extent that these activities are necessary to carry out the authorized duties of CDOs and CACs.
5. 14VAC7-10-50.A.3 and 45 CFR §155.260(b) provide that the Exchange, in written contracts or agreements, must bind non-exchange entities to comply with privacy and security standards and obligations the Exchange adopts in accordance with 45 CFR §155.260(b)(3), and CDO is a non-exchange entity.

6. The Exchange 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,” which is hereby incorporated by reference. Compliance with this Agreement satisfies the requirement under 14VAC7-10-50.A.3 and 45 CFR §155.225(d)(3) to comply with Exchange privacy and security standards, and applicable authentication and data security standards.

Now, therefore, the Parties agree as follows.

I. DEFINITIONS:

Terms not otherwise specifically defined herein shall have the meaning set forth below and in 14VAC7-10-20 and §§38.2-3455 and 38.2-6500 of the Code, which definitions are hereby incorporated by reference.

“**Applicant**” has the meaning set forth in 45 CFR §155.20.

“**Authorized CAC duty(ies)**” means any duty, function, task, or activity authorized by 14VAC7-10-60 and 45 CFR §155.225(c) to be performed by a Certified Application Counselor and shall include, but is not limited to: 1) providing information to individuals and employees about the full range of QHP options and insurance affordability programs for which they are eligible; 2) providing fair, impartial, and accurate information that assists consumers with submitting the eligibility application; 3) clarifying distinctions among health coverage options; 4) helping consumers make informed decisions during the health coverage selection process; 5) assisting individuals and employees in applying for coverage in a QHP and applying for insurance affordability programs through the Exchange; 6) helping to facilitate enrollment of eligible individuals in QHPs and insurance affordability programs.

“**Authorized representative**” means a person or organization meeting the requirements set forth in 45 CFR §155.227.

“**Breach**” means the loss of control, compromise, unauthorized disclosure, unauthorized acquisition, or any similar occurrence where: (1) a person other than an authorized user accesses or potentially accesses PII; or (2) an authorized user accesses or potentially accesses PII for anything other than an authorized purpose.

“**CAC certificate**” means the certificate issued to each CAC by his or her CDO, indicating that he or she has been certified as a CAC, and containing the CAC’s name and unique CAC identification number.

“**Consumer**” means a person who seeks information or assistance related to eligibility for, enrollment in, or coverage under a Qualified Health Plan (QHP), Qualified Dental Plan (QDP), or an Insurance Affordability Program offered through the Exchange.

“**Downstream entities**” means any party that enters into an agreement with the CDO or with another downstream entity, such as an individual CAC, for purposes of providing services related to the authorized CAC duties or functions or the agreement between CDO and the Exchange. The term “downstream entity” is intended to reach the entity that directly provides services to consumers.

“**Enrollee**” has the same meaning set forth in 45 CFR §155.20.

“**Exchange**” means a health insurance exchange as contemplated by the Patient Protection and Affordable Care Act that facilitates or assists in facilitating enrollment in qualified health plans and qualified dental plans. For purposes of this Agreement, “Exchange” means the Virginia Health Benefit Exchange, a division of the State Corporation Commission, d.b.a. Virginia’s Insurance Marketplace or VIM.

“**Exchange Platform**” means the technical platform the SCC makes available to Assistors, Consumers, and Issuers for the purpose of meeting the Exchange objectives listed in Virginia Code § 38.2-6501.

“**Incident**” means an occurrence that: (1) actually or imminently jeopardizes, without lawful authority, the integrity, confidentiality, or availability of information or an information system; or (2) constitutes a violation or imminent threat of violation of law, security policies, security procedures, or acceptable use policies.

“**Insurance affordability program**” has the same meaning as in 42 CFR § 435.4.

“**Non-Exchange entity**” has the same meaning as in 45 CFR §155.260(b) and includes but is not limited to Certified Application Counselor Designated Organizations, and Certified Application Counselors under agreement with a Certified Application Counselor Designated Organization.

“**Personally Identifiable Information**” (“PII”) means any information that can be used to distinguish or trace an individual’s identity, either alone or when combined with other information that is linked or linkable to a specific individual. Examples of PII include things like social security numbers (SSNs), names, home addresses, email addresses, phone numbers, medical information, financial information, and employment information.

“**Qualified dental plan**” has the same meaning assigned to the term in §38.2-3455 and § 38.2-6500 of the Code.

“**Qualified employer**” has the meaning set forth in §38.2-6500.

“**Qualified health plan**” has the same meaning assigned to the term in §38.2-3455 and §38.2-6500 of the Code.

“**Qualified individual**” has the meaning set forth in §38.2-6500.

II. OBLIGATIONS AND CONDITIONS.

CDO agrees to:

1. Comply with the standards and requirements of 14VAC7-10-10 *et seq.* and 45 CFR §155.225, including but not limited to 45 CFR §155.225(d)(3)-(5);
2. Certify, and recertify on at least an annual basis, in a manner consistent with all applicable Exchange regulations and guidance, one or more individual staff members or volunteers of the CDO to serve as CACs. An initial certification must include the assignment of a unique CAC identification number, and the issuance of a CAC Certificate to each individual staff member or volunteer certified by the CDO. CAC Certificates must include the staff member or volunteer's name and

unique CAC identification number, and an expiration date that is one year from the date of issuance. When recertifying any individual staff member or volunteer, CDO shall issue an updated CAC Certificate to reflect the date that the CAC has been recertified, and an expiration date that is one year from the date of issuance. CDO must retain a record of each certification as directed by the Exchange.

3. In accordance with Exchange policy and 14VAC7-10-50(A)(2), CDO must:
 - a. Submit to the SCC a written attestation that CDO (i) is not a health insurance issuer or issuer of stop loss insurance; (ii) is not a subsidiary of a health insurance issuer or issuer of stop loss insurance; (iii) is not an association that includes members of, or lobbies on behalf of, the insurance industry; (iv) is not and will not receive any consideration or compensation directly or indirectly from any health insurance issuer or issuer of stop loss insurance in connection with the enrollment of any individuals or employees in a QHP.
 - b. Submit to the SCC a written plan with procedures to remain free of conflicts of interest during the period of performance specified in the Agreement;
 - c. Ensure that CDO and any of its certified CACs disclose to the SCC and, in plain language, to each consumer who receives application assistance from the CDO and its CACs: (i) any lines of insurance business, not covered by the restrictions on participation and prohibitions on conduct in §155.210(d), which the CDO intends to sell while carrying out the consumer assistance functions; (ii) any existing employment relationships, or any former employment relationships within the last five years, with any health insurance issuers or issuers of stop loss insurance, or subsidiaries of health insurance issuers or issuers of stop loss insurance.
4. Prior to certifying or recertifying any staff member or volunteer to serve as a CAC, CDO must:
 - a. Ensure that each such staff member or volunteer seeking certification or recertification as a CAC completes all required Exchange-approved training for the plan year for which the CAC is seeking certification or recertification regarding qualified health plan and qualified dental plan options, insurance affordability programs, eligibility, and benefits rules and regulations governing all insurance affordability programs operated in Virginia, as implemented in Virginia, and completes and achieves a passing score on all Exchange-approved certification or recertification examinations, prior to functioning as a CAC;
 - b. Require each such staff member or volunteer seeking certification as a CAC to enter into a written, signed agreement with CDO that requires the individual staff member or volunteer seeking certification as a CAC to:
 - i. Register for and complete all required Exchange-approved training, to include training for the plan year for which he or she

- seeks certification or recertification, and examination requirements using his or her unique CAC identification number, if applicable, and the name that will appear on both his or her CAC Certificate and training certificate, and provide proof of completion in the form of his or her training certificate to CDO;
- ii. Disclose to CDO, the Exchange, and to consumers any relationships the CAC has with qualified health plans, qualified dental plans or insurance affordability programs, or other potential conflicts of interest;
 - iii. Comply with the Exchange's Privacy and Security Standards for Certified Application Counselors and Certified Application Counselor Designated Organizations specified in Appendix A of this Agreement;
 - iv. Prior to creating, collecting, disclosing, accessing, maintaining, storing, or using any PII of consumers, obtain the authorization required by 14VAC 7-10-40.5.b (hereinafter referred to as "authorization") and permit the consumer to revoke the authorization at any time.
 - v. Only engage in authorized CAC duties, as defined by this Agreement.
 - vi. Not impose any charge or fee on consumers for application or other assistance related to the Exchange;
 - vii. Prominently display a current and effective CAC Certificate provided by CDO evidencing the staff member's or volunteer's certification as a CAC when performing CAC duties and 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;
 - viii. Inform consumers of the duties and responsibilities of CACs, including that CACs are not acting as tax advisers or attorneys when providing assistance as CACs and cannot provide tax or legal advice within their capacity as CACs;
 - ix. Act in consumers' best interest;
 - x. Refrain from acting as an insurance agent or broker;
 - xi. Provide information in a manner that is accessible to individuals with disabilities, as defined by the Americans with Disabilities Act, as amended, 42 U.S.C. §12101, et seq. and §504 of the Rehabilitation Act, as amended, 29 U.S.C. §794 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.
 - xii. Provide information to consumers about the full range of

- qualified health plan or qualified dental plan 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 qualified health plan or qualified dental plans; and helping consumers make informed decisions during the health coverage selection process;
- xiii. Assist consumers in applying for coverage in a qualified health plan or qualified dental plan through the Exchange and for insurance affordability programs;
 - xiv. Help to facilitate consumers' enrollment in qualified health plans or qualified dental plans and insurance affordability programs;
 - xv. Not provide gifts of any value to a consumer 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, cash, 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 postage expenses;
 - xvi. Not initiate any telephone call to a consumer using an automatic telephone dialing system or an artificial or prerecorded voice;
 - xvii. For as long as the CAC continues providing CAC services, seek recertification on at least an annual basis after successfully completing recertification training;
 - xviii. 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;
 - xix. 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;
 - xx. Not collect or otherwise maintain PII from consumers, except as specifically provided for in this Agreement;
 - xxi. 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 qualified health plan or qualified dental plan or non-qualified health plan

or non-qualified dental plan. This prohibition does not apply to consideration the CAC receives from a health insurance issuer for health care services provided.

- c. When recertifying any staff member or volunteer to serve as a CAC, CDO must ensure that the written, signed agreement with CDO specified in Section II.4.b of this Agreement has been entered into and remains in effect.
5. CDO shall establish processes to monitor all of its CACs and activities for compliance with statutory, regulatory and agreement requirements.
6. Maintain a registration process and method to track the performance of CACs. This tracking method shall include assigning a unique CAC identification number to each staff member or volunteer certified by CDO to serve as a CAC, which shall consist of an identification number that the Exchange assigns to CDO and that identifies CDO, followed by the unique identification number assigned to each individual staff member or volunteer by CDO. The unique CAC identification number should be assigned to only one person, and CDO should not re-use CAC identification numbers that were previously assigned to staff or volunteers who no longer are CACs;
7. Upon request, provide to the Exchange the names and CAC identification numbers assigned by CDO of all staff members and volunteers that have been certified by CDO to serve as CACs, including whether the CAC's certification is active;
8. Provide data and information to the Exchange regarding: (i) the identity, number, and performance of its CACs; and (ii) the consumer assistance provided by its CACs in the form and manner specified by the Exchange. Beginning in the first quarter of calendar year 2025, each CDO shall submit quarterly reports that include, at a minimum, data regarding the number and identifying information of individuals who have been certified by the organization; the total number of consumers who received application and enrollment assistance from the organization; and of that number, the number of consumers who received assistance in applying for and selecting a qualified health plan or qualified dental plan, enrolling in a qualified health plan or qualified dental plan, or applying for Medicaid or CHIP;
9. Provide the Exchange with updates on any changes with organizational program contact information;
10. Provide the Exchange with timely and appropriate updates and corrections to ensure the accuracy of CDO's publicly available information on the Exchange's website. In the event that CDO has stopped or will stop providing CAC services to the public, it must submit a request that CDO's information cease to be displayed on the Exchange website at least seven (7) days prior to the date when it will cease providing services, and in the event that such advance notice is not feasible, in no more than twenty-four (24) hours after it has ceased providing CAC services to the public. Whenever CDO has stopped or will stop providing CAC services to the public, CDO should also provide a notice of termination to

the Exchange as described in Section V of this Agreement;

11. Establish procedures to ensure that all requirements required to be in the Agreement between CDO and its CACs (Section II.4.b. of this Agreement) are adhered to by CDO's CACs and establish procedures to oversee and monitor any staff member or volunteer it certifies as a CAC to ensure compliance with all requirements of the CAC programs specified in Exchange regulations and guidance. CDO shall promptly report to the Exchange any instance of suspected fraud, misconduct, conflict of interest or non-compliance with statutory, regulatory, or agreement requirements on the part of the CDO, or any of CDO's CACs;
12. Establish and comply with procedures to do the following:
 - a. Protect any PII of consumers created, collected, disclosed, accessed, maintained, stored, or used by any CAC whose certification is withdrawn;
 - b. As soon as possible, but in no event later than twenty-four hours after the CDO learns that any staff members or volunteers who have been certified as CACs are out of compliance with the terms and conditions of the agreement required by Section II.4.b of this Agreement, or with any of the requirements of 14VAC 7-10-10 *et seq.* and 45 CFR §155.225, or upon notification from the Exchange that CDO must withdraw certification from any specific staff member and/or volunteer, notify the certified staff member or volunteer that he or she must, immediately upon receipt of notice, cease holding him/herself out as a CAC to any consumer and cease providing CAC services to the public; and,
 - c. In the event that the Exchange has notified CDO that CDO's designation as a CDO has been withdrawn, or that immediate termination of this Agreement is necessary and appropriate, as described in Section V of this Agreement, CDO shall immediately refrain from holding itself out as a CDO and refrain from providing CAC services to the public, and shall also ensure that all staff members and volunteers immediately refrain from holding themselves out as CACs and immediately refrain from providing CAC services to the public.
13. Not provide compensation to CACs on a per-application, per-individual- assisted, or per-enrollment basis;
14. Not provide to a consumer gifts of 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, cash, 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 postage expenses;
15. Not initiate any telephone call to a consumer using an automatic telephone dialing system or an artificial or prerecorded voice;

16. Comply with the privacy and security standards adopted by the Exchange pursuant to 45 C.F.R. §155.260(b), and applicable authentication and data security standards, in the manner set forth in Section III and Appendix A of this Agreement;
17. Not act as, or permit a CAC to act as, an insurance agent or broker;
18. Directly, or through its CACs, provide any and all services in connection with the obligations and conditions in this Agreement, as described in Sections II and III of this Agreement, without compensation (excluding wages earned by employees of CDO for work performed by such employee on behalf of its CDO employer); and,

III. EFFECTIVE DATE; TERM AND NON RENEWAL.

This Agreement becomes effective on the date the last of the two Parties executes this Agreement and ends two years from the date CDO is designated by the Exchange unless, in the sole and absolute discretion of the Exchange, thirty days (30) days' advance written notice of nonrenewal is provided by the Exchange to CDO, or the Agreement is terminated pursuant to Section V of this Agreement.

IV. TERMINATION.

1. Termination.

- a. Termination for Convenience: The Exchange may terminate the Agreement, in whole or in part, upon not less than thirty (30) days prior written notice at any time for any reason.
- b. Termination for Breach or Default: The Exchange shall have the right to terminate the Agreement, in whole or in part, for breach, default, or both by CDO. CDO shall be deemed in breach or default when CDO fails to meet any material obligation set forth in the Agreement.
 - i. If the Exchange deems CDO to have materially breached the Agreement, the Exchange shall provide CDO with notice and allow CDO a reasonable period to cure the breach not to exceed fifteen (15) days. If CDO fails to cure the breach, the Exchange may immediately terminate the Agreement, in whole or in part.
- c. Termination Requested by CDO: CDO shall provide notice to the Exchange and request termination of the Agreement when CDO is no longer capable of performing its requirements under this Agreement. The Exchange will review the notice and request and consider what, if any, actions can be taken to restore CDO's capability to perform its responsibilities under the Agreement, or if termination of the Agreement is in the best interests of the Exchange.

2. Consequences of Termination or Nonrenewal: If this Agreement is not renewed or is terminated, the Exchange will automatically terminate CDO's designation and decertify CDO's CACs. Accordingly, CDO must immediately cease holding itself out as a CDO to any consumer, must immediately cease providing CAC services to the public through its staff members and volunteers.

V. DESTRUCTION OF PII

CDO covenants and agrees to destroy all personally identifiable information in its possession as a result of functions or duties performed due to this agreement at the end of the record retention period required under Appendix A. CDO's duty to protect and maintain the privacy and security of personally identifiable information, 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.

VI. MISCELLANEOUS:

1. Relationship between the Exchange and CDO: CDO has no authority to contract for the Exchange or in any way to bind or commit the Exchange to any agreement of any kind, or to assume any liabilities of any nature in the name of or on behalf of the Exchange. Under no circumstances shall CDO, or any of its employees, hold itself out as or be considered an agent or an employee of the Exchange.
2. Remedies: The remedies set forth in the Agreement are intended to be cumulative. In addition to any specific remedy, the Exchange reserves other remedies that may be available at law or in equity.
3. Governing Law: The Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without regard to that body of law controlling choice of law. Litigation shall be brought in the courts of the Commonwealth of Virginia.
4. Modifications: The Agreement may be modified only by the representatives of the Parties authorized to do so. No modification to the Agreement shall be effective unless it is in writing and signed by the duly authorized representative(s) of both parties. No term or provision hereof shall be deemed waived, and no breach excused unless such waiver or consent to breach is in writing.
5. Advertising and Use of Proprietary Marks: CDO shall not use the name of the Exchange or refer to the Exchange, directly or indirectly, in any press release or formal advertisement without receiving prior written consent of the Exchange. In no event may CDO use a proprietary mark of the Exchange without receiving the prior written consent of the Exchange.
6. Notices: Any notice required or permitted to be given under the Agreement shall be in writing and shall be deemed to have been sufficiently given if delivered in person, or if deposited in the U.S. mails, postage prepaid, for mailing by registered, certified mail, or overnight courier service addressed to:

EXCHANGE CONTACT:

ATTN: Toni H. Janoski, Deputy Director
State Corporation Commission
Health Benefit Exchange Division
PO Box 1197
Richmond, VA 23218

CDO CONTACT:

Name: _____

Title: _____

Address: _____

7. No Waiver: Any failure to enforce any terms of the Agreement shall not constitute a waiver.
8. Captions: The captions are for convenience and do not define, limit, or enlarge the scope of the Agreement or any of its Sections.
9. Severability: Invalidity of any term of the Agreement, in whole or in part, shall not affect the validity of any other term. The Exchange and CDO further agree that in the event such provision is an essential part of the Agreement, they shall immediately begin negotiations for a suitable replacement provision.
10. Survival: Any provisions of the Agreement regarding Privacy and Security, auditing and retention of records, and Indemnification shall survive the expiration or termination of the Agreement.
11. Force Majeure: No Party shall be responsible for failure to meet its obligations under the Agreement if the failure arises from causes that were unforeseeable and beyond the control and without the fault or negligence of the non-performing Party. If any performance date under the Agreement is postponed or extended pursuant to this section for longer than thirty (30) calendar days, the Exchange, by written notice given during the postponement or extension, may terminate CDO's right to render further performance after the effective date of termination without liability for that termination.
12. Right to Audit. CDO shall retain all books, records, and other documents relative to the Agreement for a period of no less than six years. The Exchange reserves the right of the Exchange, its authorized agents, and state auditors to full access to audit those CDO records that relate to the Agreement. Stated right to audit shall be limited as follows:
 - a. Six (6) years from end date of the Agreement or until audited by the Exchange, whichever is sooner;
 - b. Performed at CDO's premises, during normal business hours at mutually agreed upon times; and
 - c. In no event shall CDO have the right to audit, or have audited, the Exchange.

VII. SIGNATURES: This Agreement between CDO and the Exchange is not fully executed until all of the signatures of individuals required to bind the Parties are obtained. Further, the Parties agree, no wet, handwritten signature shall be required for this Agreement to be legally enforceable, notwithstanding contrary requirement in any law or regulation.

IN WITNESS WHEREOF, the parties' duly authorized representatives have executed this agreement, as of the date indicated by each signature.

SCC: _____ CDO Name: _____

Date: _____ Date: _____

Signature of person authorized to bind SCC
to Agreement

Signature of person authorized to bind CDO
to Agreement

Printed name of person authorized to bind
SCC to Agreement

Printed name of person authorized to bind
CDO to Agreement

Title of person authorized to bind SCC to
Agreement

Title of person authorized to bind CDO to
Agreement

Federal Tax ID: _____

CDO Address: _____

APPENDIX A

PRIVACY AND SECURITY STANDARDS FOR CERTIFIED APPLICATION COUNSELORS AND CERTIFIED APPLICATION COUNSELOR DESIGNATED ORGANIZATIONS

These standards and implementation specifications are established in accordance with Section 1411(g) of the Affordable Care Act (42 U.S.C. §18081(g)) and 45 CFR §155.260. As used in this Appendix A, all terms used herein carry the meanings assigned in the Agreement between the Virginia Health Benefit Exchange and Certified Application Counselor Designated Organization.

CDO and any Certified Application Counselors (“CAC”) must adhere to the following privacy and security standards and implementation specifications in performing the duties and functions outlined under 45 C.F.R. §155.225(c) and 14VAC7-10-10 *et seq.*, and as further detailed in the Agreement.

I. Privacy Notice Statement and Authorization

Prior to collecting personally identifiable information (PII) or other information from consumers for purposes of fulfilling an authorized CAC duty, CDO or its CACs must provide consumers with Form 10-B, “Health Benefits Exchange Certified Application Counselor Privacy Notice Statement and Authorization Form,” located under “Forms” at 14VAC7-10. The privacy notice statement and authorization form must be in writing and must be provided on, or simultaneously with, any electronic and/or paper form CDO will use to gather and/or request personally identifiable information or other information from consumers. The privacy notice statement and authorization form must also be prominently and conspicuously displayed on CDO’s public-facing website, if applicable, if the CDO will gather or request personally identifiable information or other information from consumers through that website.

CDO must permit the consumer to revoke the authorization at any time.

CDO must maintain a record of the Privacy Notice Statement and Authorization Form for a period of no less than six (6) years.

If CDO makes a change to its privacy policies or procedures, such that the Privacy Notice Statement content requires revision, CDO shall update its Privacy Notice Statement and notify the Exchange of the changes.

Notwithstanding the general requirement above to provide a written privacy notice statement prior to collecting personally identifiable information or other information from consumers, this provision does not require CDO to provide a written privacy notice statement to consumers prior to collecting a consumer’s name, physical address, email address, or telephone number, so long as such information will be used solely for the purpose of making subsequent contact with the consumer to conduct an authorized CAC duty or sending to the consumer educational information that is directly relevant to authorized CAC duties. Nonetheless, with regard to such names, physical addresses, email addresses, or telephone numbers, CDO still must comply with all privacy and security standards and requirements outlined in the Agreement and as applicable under federal and state laws and regulations, including 45 C.F.R. §155.260.

II. Permissible Uses and Disclosures of PII

CDO and its CACs may create, collect, disclose, access, maintain, store, and use PII from consumers as necessary for, and only for authorized CAC duties, and in accordance with its Privacy Notice Statement and federal and state law.

CDO and its CACs shall only disclose PII when: (1) such disclosure is required by law; or (2) the CDO/CAC obtains reasonable assurance from the person or entity to whom personally identifiable information is disclosed that the personally identifiable information will remain confidential and be used or further disclosed only as required by federal and state law. CDO/CACs shall not create, collect, disclose, access, maintain, store, or use personally identifiable information in a manner that would violate 45 C.F.R. § 155.260.

III. Limitations on Creation, Collection, Disclosure, Access, Maintenance, Storage, and Use of PII

A. Prohibited Collections and Uses of PII

CDO and its CACs shall not:

- Directly or indirectly receive remuneration in exchange for any PII of any individual.
- Use or disclose PII for the purposes of marketing a product or service.
- Request or require a social security number, information regarding citizenship, status as a national, or immigration status for any individual who is not seeking coverage for himself or herself on an application, unless an application includes a tax filer that has a Social Security number and who filed a tax return for the year for which tax data would be utilized for verification of household income and family size;
- Request information from or concerning any individual who is not seeking coverage for himself or herself, unless the information is necessary for the eligibility determination for enrollment in a qualified health plan, qualified dental plan, and other insurance affordability program for those seeking coverage, or is required as part of a Small Business Health Options Program (SHOP) application. Such necessary information may include information on individuals who are in an individual's tax household or who live with an individual applying for coverage, including contact information, addresses, tax filing status, income and deductions, access to employer-sponsored coverage, familial or legal relationships, American Indian or Alaska Native status, or pregnancy status; or
- Use a consumer's or any other individual's PII to discriminate against them, such as by refusing to assist individuals who have significant or complex health care needs.

B. Accounting for Disclosures

Except for those disclosures necessary to carry out an authorized CAC duty, a CDO and/or CAC that maintains and/or stores PII shall maintain an accounting of any and all disclosures of PII. The accounting must:

- Contain the date, nature, and purpose of such disclosure and the name and address of the person or agency to whom the disclosure is made;
- Be retained for at least six (6) years after the disclosure; and
- Be available to the Exchange, or the consumer who is the subject of the record, upon request.

IV. Safeguarding PII

A. Safeguards

CDO and its CACs must ensure that PII is protected with reasonable operational, administrative, technical, and physical safeguards to ensure its confidentiality, integrity, and availability and to prevent unauthorized or inappropriate access, use, or disclosure. Specifically, CDO is required to establish and CDO and CAC are required to implement operational, administrative, technical, and physical safeguards that are consistent with any applicable federal and state laws and regulations and ensure that:

- PII is only used by or disclosed to those authorized to receive or view it;
- PII is secured from loss, theft, and inadvertent disclosure at *all* times;
- Laptops and other electronic devices/media containing PII are encrypted, and password protected;
- Electronic PII is stored in an encrypted format;
- PII sent by email is encrypted and being sent to and received by persons or entities authorized or intended to receive such information;
- Disclosure of the information and details related to PII loss is limited to only those with a legal right to know or possess such information;
- Access to PII is limited and only available for those authorized CACs who need such information to perform authorized CAC duties;
- All persons who have access to PII provided under this Agreement will be advised of the confidential nature of the information, the safeguards required to protect it, and the civil and criminal sanctions for noncompliance contained in the applicable federal and state laws;
- PII is protected against any reasonably anticipated threats or hazards to the confidentiality, integrity, and availability of such information;
- PII is protected against any reasonably anticipated uses or disclosures of such information that are not permitted or required by law; and

- PII is securely destroyed or disposed of in an appropriate and reasonable manner and in accordance with record retention requirements under the Agreement;

CDO must monitor, periodically assess, and update the security controls and related system risks to ensure the continued effectiveness of those controls. CDO must promptly notify the Exchange of any significant or material change in its administrative, technical, or operational environments. **Such a material change includes, but is not limited to, staff and employment changes to the extent a former CAC had access to the Exchange Platform.** CDO must develop and CDO and CAC must utilize secure electronic interfaces if PII is transmitted electronically.

B. Training and Awareness

CDO shall develop role-based training and awareness programs related to these privacy and security standards for its staff, volunteers, and representatives who have access to consumer PII. CDO shall require its CACs to participate in these training and awareness programs. Specifically, CDO must require its CACs to successfully complete privacy and security training that is specifically tailored and relevant to the CACs' work duties and level of exposure to PII, prior to when the CACs assume responsibility for or have access to PII.

C. Incorporation into Standard Operating Procedures

CDO shall incorporate the privacy and security standards and implementation specifications outlined in this agreement, where appropriate, in its standard operating procedures that are associated with the duties authorized under the Agreement involving the creation, collection, disclosure, access, maintenance, storage, or use of PII. CACs, whether paid or unpaid, who are certified by CDO to carry out authorized CAC duties, and who have access to consumer PII must comply with CDO's standard operating procedures. CDO's standard operating procedures:

- Must be written in plain language and be available to all staff, volunteers, and other representatives of CDO;
- Must be designed and implemented to ensure CDO and CACs comply with the privacy and security standards and implementation specifications contained herein, and must be reasonably designed, taking into account the size and the type of activities that relate to PII undertaken by CDO, to ensure such compliance.

V. Consumer Access and Right to Amend

CDO and its CACs must, to the greatest extent possible, collect PII directly from the consumer or authorized representative. In addition, CDO and its CACs must take reasonable steps to ensure PII is complete, accurate, and up to date.

CDO must provide consumers a simply and timely means to access their PII or the PII of the person for whom they act as an Authorized Representative. CDO must develop and implement policies and procedures to verify the identity of any consumer or authorized representative who requests access to, notification of, or modification of PII collected by CDO through its CACs.

CDO and its CACs must provide consumers with a simple and timely means to request amendment, correction, substitution, or deletion of PII maintained or stored by CDO or its CACs.

VI. Breach and Incident Handling Requirements

A. Reporting

CDO shall report any suspected or known Breach of PII and any suspected or known Security Incident to the Exchange immediately and no later than 24 hours. Reports shall be made to the Virginia's Insurance Marketplace Customer Assistance Center by telephone at 1-800-687-1501 and by email notification to the Marketplace's Chief of Privacy and Security at infosec@marketplace.virginia.gov. The person making a Breach or Incident Report must identify the Navigator Organization's designated contact responsible for handling and managing the Incident or Breach, and that person's contact information. An initial report should also include a description of the incident, its impact, and, if known, the estimated number of consumers impacted.

If a use or disclosure amounts to a Breach of PII, the CDO shall provide to the Exchange, at the Exchange's request:

- i. A report that includes the names of the individuals whose PII has been or are reasonably believed to have been the subject of the Breach;
- ii. A draft letter for the Exchange to review and approve prior to the CDO's notification to the affected individual(s) that their PII has been or is reasonably believed to have been the subject of the Breach.

B. Breach and Incident Handling Policies and Procedures

The CDO must implement and comply with procedures for reporting and addressing any Breach or Incident that are consistent with the requirements above. Those Breach and Incident Handling Procedures must be included in CDO's written policies and procedures. Further, CDO's policies regarding Breach and Incident handling, must, at a minimum:

- i. Identify CDO's personnel responsible for reporting and managing breaches and incidents to the Exchange;
- ii. Provide details regarding the identification, response, recovery, and follow-up of incidents and breaches, including triggers to notify the Exchange for a need to immediately suspend or revoke access to the Exchange Platform for containment purposes;
- iii. Require reporting of any incident or breach of PII to the Exchange within twenty-four (24) hours of discovery.

CDO must bind its CACs, in a signed writing, to comply with CDO's breach and incident handling policies and procedures.

C. Cooperation

CDO and its CACs must cooperate with the Exchange in resolving any breach or incident, including, if requested by the Exchange, the return or destruction of any PII; the provision of a formal response to an allegation of unauthorized use, reuse, or disclosure of PII; and/or the submission of a corrective action plan with steps designed to prevent any future unauthorized use, reuse, or disclosure of PII.

VII. Other Requirements

A. Required Flow-Down of these Privacy and Security Standards

CDO must bind, in a signed writing, its CACs and downstream entities to the same privacy and security standards and obligations contained herein.

B. Compliance with the Internal Revenue Code

If any “return information,” as defined in §6103(b)(2) of the Internal Revenue Code, is accessed or used by CDO or its CACs, it must be kept confidential and disclosed, used, and maintained only in accordance with §6103 of the Internal Revenue Code.

C. Records Available for Inspection

CDO agrees to make its internal practices, books, and records, including PII, available to the Exchange and/or the Secretary of the U.S. Department of Health and Human Services for purposes of determining compliance with the ACA’s privacy and security regulations as well as the privacy and security standards established and implemented by the Exchange.

D. Penalties for Improper Use and Disclosure of Information

CDO acknowledges that any person who knowingly and willfully uses or discloses information in violation of 42 U.S.C. §18081(g)-(h) will be subject to a civil money penalty, consistent with the bases and process for imposing civil penalties specified at 45 C.F.R. §155.260 and §155.285, in addition to other penalties that may be prescribed by law.

CDO also acknowledges that the unauthorized use or disclosure of such information by any person may also constitute a violation of Virginia law, subject to penalties under §38.2-218, §38.2-219, and §38.2-6514(D) of the Code.

Signature of CDO’s Legal or Authorized Representative

Date

Printed CDO Name

Printed Name of CDO’s Legal or Authorized Representative