

**AGREEMENT BETWEEN WEB-BROKER AND
THE CENTERS FOR MEDICARE AND MEDICAID SERVICES FOR THE
FEDERALLY-FACILITATED EXCHANGE INDIVIDUAL MARKET**

THIS WEB-BROKER AGREEMENT (“Agreement”) is entered into by and between THE CENTERS FOR MEDICARE & MEDICAID SERVICES (“CMS”), as the Party (as defined below) responsible for the management and oversight of the Federally-facilitated Exchange (“FFE”), including the CMS Data Services Hub (“Hub”), and _____, (hereinafter referred to as Web-broker Entity, or “WBE”), an Agent or Broker that uses a non-FFE Internet web site to, among other things, assist Consumers, Applicants, Qualified Individuals and Enrollees in applying for Advance Payments of the Premium Tax Credits (“APTCs”) and Cost-sharing Reductions (“CSRs”) for Qualified Health Plans (“QHPs”), and/or in completing enrollment in QHPs offered in the individual market through the FFE, and provides Customer Service (CMS and WBE hereinafter referred to as the “Party,” or collectively, as the “Parties”).

WHEREAS:

1. Section 1312(e) of the Affordable Care Act (“ACA”) provides that the Secretary of the U.S. Department of Health and Human Services (“HHS”) shall establish procedures that permit Agents and Brokers to enroll Qualified Individuals in QHPs through an Exchange, and to assist individuals in applying for Advance Payments of the Premium Tax Credit (“APTCs”) and Cost-sharing Reductions (“CSRs”), to the extent allowed by States. To participate in an FFE, Agents and Brokers must complete all necessary registration and training requirements under 45 CFR 155.220.
2. To facilitate the eligibility determination and enrollment processes, CMS will provide centralized and standardized business and technical services (“Hub Web Services”) through an application programming interface to WBE that will enable WBE to establish a secure connection with the Hub. The application programming interface will enable the secure transmission of key eligibility and enrollment information between CMS and WBE.
3. To facilitate the operation of the FFE, CMS desires to: (a) disclose PII which is held in the Health Insurance Exchanges Program (“HIX”) to WBE; (b) provide WBE with access to the Hub Web Services; and (c) permit WBE to create, collect, disclose, access, maintain, store, and use PII from CMS, Consumers, Applicants, Qualified Individuals and Enrollees, or these individuals’ legal representative or Authorized Representative, to the extent that these activities are necessary to carry out the functions that the ACA and implementing regulations permit WBE to carry out.
4. WBE is an entity licensed as an Agent or Broker and desires to gain access to the Hub Web Services, and to create, collect, disclose, access, maintain, store, and use PII from CMS, Consumers, Applicants, Qualified Individuals and Enrollees to perform the Authorized Functions described in Sections II.a of this Agreement.

5. 45 CFR 155.260(b) provides that an Exchange must require the same or more stringent privacy and security standards as are established and implemented for the Exchange under 45 CFR 155.260(a), as a condition of contract or agreement with Non-Exchange Entities, and WBE is a Non-Exchange Entity.
6. CMS, in the administration of the FFEs and the Hub, has adopted privacy and security standards concerning PII, as set forth in Appendix A, “Privacy and Security Standards and Implementation Specifications for Non-Exchange Entities.”

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. Acceptance of Standard Rules of Conduct.

WBE hereby acknowledges and agrees to accept and abide by the standard rules of conduct set forth below and in Appendix A, “Privacy and Security Standards and Implementation Specifications for Non-Exchange Entities,” and Appendix C, “Standards for Communication with the Hub,” which are incorporated by reference in this Agreement, while and as engaging in any activity as WBE for purposes of the ACA. WBE shall be bound to strictly adhere to the privacy and security standards, and to ensure that its employees, officers, directors, contractors, subcontractors, agents, and representatives strictly adhere to the same, to gain and maintain access to the Hub Web Services, and to create, collect, disclose, access, maintain, store, and use PII for the efficient operation of the FFE.

- a. Authorized Functions. WBE may create, collect, disclose, access, maintain, store, and use PII for:
 1. Assisting with applications for QHP eligibility;
 2. Supporting QHP selection and enrollment by assisting with plan selection and plan comparisons;
 3. Assisting with applications for the receipt of APTCs or CSRs, and selecting an APTC amount;
 4. Facilitating the collection of standardized attestations acknowledging the receipt of the APTC or CSR determination, if applicable;
 5. Assisting with the application for and determination of certificates of exemption;

6. Assisting with filing appeals of eligibility determinations in connection with the FFE;
7. Transmitting information about the Consumer's, Applicant's, Qualified Individual's, or Enrollee's decisions regarding QHP enrollment and/or CSR and APTC information to the FFE;
8. Facilitating payment of the initial premium amount to appropriate QHP;
9. Facilitating an Enrollee's ability to disenroll from a QHP;
10. Educating Consumers, Applicants, or Enrollees on insurance affordability programs, and if applicable, informing such individuals of eligibility for Medicaid or Children's Health Insurance Program (CHIP);
11. Assisting an Enrollee's ability to report changes in eligibility status to the FFE throughout the coverage year, including changes that may impact eligibility (*e.g.*, adding a dependent);
12. Correcting errors in the application for QHP enrollment;
13. Informing or reminding Enrollees when QHP coverage should be renewed, when Enrollees may no longer be eligible to maintain their current QHP coverage because of age, or to inform Enrollees of QHP coverage options at renewal;
14. Providing appropriate information, materials, and programs to Consumers, Applicants, Qualified Individuals, and Enrollees, to inform and educate them about the use and management of their health information, and services and options offered through the selected QHP or among the available QHP options;
15. Contacting Consumers, Applicants, Qualified Individuals, and Enrollees to assess their satisfaction or resolve complaints with services provided by WBE in connection with the FFE, WBE or QHPs;
16. Providing assistance in communicating with QHP Issuers;
17. Carrying out the legal responsibilities related to the efficient functions of QHP Issuers in the FFE, as permitted or required by WBE's contractual relationships with QHP Issuers; and
18. Other functions substantially similar to those enumerated above and such other functions that may be approved by CMS in writing from time to time.

- b. PII Received. Subject to the terms and conditions of this Agreement and applicable laws, in performing the tasks contemplated under this Agreement, WBE may create, collect, disclose, access, maintain, store, and use the following data and PII from Consumers, Applicants, Qualified Individual, or Enrollees:

APTC percentage and amount applied
Auto disenrollment information

Applicant Name
Applicant Address
Applicant Birthdate
Applicant Telephone number
Applicant Email
Applicant Social Security Number
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 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
Premium Amount, start and end dates
Credit or Debit Card Number, Name on Card
Checking account and routing number
Special enrollment period reason
Subscriber Indicator and relationship to subscriber
Tobacco use indicator and last date of tobacco use
Custodial parent
Health coverage
American Indian/Alaska Native status and name of tribe
Marital status
Race/ethnicity
Requesting financial assistance

Responsible person
Applicant/Employee/dependent sex name
Student status
Subscriber indicator and relationship to subscriber
Total individual responsibility amount

- c. Collection of PII. PII collected from Consumers, Applicants, Qualified Individuals, Enrollees, or their legal representative or Authorized Representative, in the context of completing an application for QHP, APTC or CSR eligibility, or any data transmitted from or through the Hub, may be used only for Authorized Functions specified in Section II.a of this Agreement. Such information may not be reused for any other purpose.
- d. Collection and Use of Information Provided Under Other Authorities. This Agreement does not preclude WBE from separately collecting information from Consumers, Applicants, Qualified Individuals, or Enrollees, or their legal representative or Authorized Representative, for a non-FFE/ non-Hub purpose, and using, reusing, and disclosing the non-FFE/non-Hub 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 Section II.c of this Agreement.
- e. Ability of Individuals to Limit Collection and Use. WBE agrees to allow the Consumer, Applicant, Qualified Individual or Enrollee to limit WBE's creation, collection, disclosure, access, maintenance, storage, and use of their PII to the sole purpose of obtaining WBE's assistance in applying for QHP, APTC or CSR eligibility, and for performing Authorized Functions specified in Section II.a of this Agreement.

III. Effective Date and Term; Renewal

- a. Effective Date and Term. This Agreement becomes effective on the date the last of the two Parties executes this Agreement and ends September 30, 2014.
- b. Renewal. This Agreement may be renewed in the sole and absolute discretion of CMS for subsequent and consecutive one (1) year periods upon thirty (30) Days' advance written notice to WBE.

IV. Termination.

- a. Termination without Cause. Either Party may terminate this Agreement without cause and for its convenience upon thirty (30)-Days' prior written notice to the other Party. This Agreement shall automatically terminate at the end of its term or in connection with the rejection of an amendment as provided for in Section V.i of this Agreement.

- b. Termination with Cause. CMS may terminate this Agreement for cause upon thirty (30)-Days' written notice to WBE if WBE materially breaches any term of this Agreement as determined at the sole but reasonable discretion of CMS, unless WBE commences curing such breach(es) within such 30-Day period to the reasonable satisfaction of CMS in the manner hereafter described in this subsection, and thereafter diligently prosecutes such cure to completion. The 30-Day notice from CMS shall contain a description of the material breach, whereupon WBE 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 CMS's sole but reasonable discretion. Notwithstanding the foregoing, WBE shall be considered in "Habitual Default" of this Agreement in the event that it has been served with a 30-Day notice under this subsection more than three (3) times in any calendar year, whereupon CMS may, in its sole discretion, immediately thereafter terminate this Agreement upon notice to WBE without any further opportunity to cure or propose cure.
- c. Destruction of PII. WBE covenants and agrees to destroy all PII in its possession at the end of the record retention period required under Appendix A. If, upon the termination or expiration of this Agreement, WBE has in its possession PII for which no retention period is specified in Appendix A, such PII shall be destroyed within 30 Days of the termination or expiration of this Agreement. The WBE'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. WBE acknowledges that the termination or expiration of this Agreement may result in the de-registration of WBE from FFE.

V. Miscellaneous.

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

If to CMS:

Centers for Medicare & Medicaid Services (CMS)
Center for Consumer Information & Insurance Oversight (CCIIO)
Attn: Office of the Director
Room 739H
200 Independence Avenue, SW
Washington, DC 20201

If to WBE, to WBE'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 facsimile 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 30 Days' written notice of such change in accordance with this provision.

- b. Assignment and Subcontracting. WBE shall not assign this Agreement in whole or in part, whether by merger, acquisition, consolidation, reorganization or otherwise, nor subcontract any portion of the services to be provided by WBE under this Agreement, nor otherwise delegate any of its obligations under this Agreement, without the express, prior written consent of CMS, which consent may be withheld, conditioned, granted or denied in CMS's sole and absolute discretion. WBE further shall not assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the State. If WBE attempts to make an assignment, subcontract its service obligations or otherwise delegate its obligations hereunder in violation of this provision, such assignment, subcontract or delegation shall be deemed void *ab initio* and of no force or effect, and WBE shall remain legally bound hereto and responsible for all obligations under this Agreement. WBE shall further be thereafter subject to such compliance actions as may otherwise be provided for under applicable law.
- c. Survival. WBE's duty to protect and maintain the privacy and security of PII under this Agreement shall survive the expiration or earlier termination of this Agreement.
- d. 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.
- e. Disclaimer of Joint Venture. Neither this Agreement nor the activities of WBE contemplated by and under this Agreement shall be deemed or construed to create in any way any partnership, joint venture or agency relationship between CMS and WBE. Neither Party is, nor shall either Party hold itself out to be, vested with any power or right to bind the other Party contractually or to act on behalf of the other Party, except to the extent expressly set forth in ACA and the regulations codified thereunder, including as codified at 45 CFR part 155.
- f. Remedies Cumulative. No remedy herein conferred upon or reserved to CMS under this Agreement is intended to be exclusive of any other remedy or remedies available to CMS under operative law and regulation, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy now or hereafter existing at law or in equity or otherwise.
- g. Compliance with Law. WBE covenants and agrees to 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 necessarily 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 shall control.

- h. Governing Law. This Agreement will be governed by the laws and common law of the United States of America, including without limitation such regulations as may be promulgated from time to time by the HHS or any of its constituent agencies, without regard to any conflict of laws statutes or rules. WBE further agrees and consents to the jurisdiction of the Federal Courts located within the District of Columbia and the courts of appeal therefrom, and waives any claim of lack of jurisdiction or *forum non conveniens*.
- i. Amendment. CMS may amend this Agreement for purposes of reflecting changes in applicable law or regulations, with such amendments taking effect upon thirty (30)-Days' written notice to WBE ("CMS notice period"). Any amendments made under this provision will only have prospective effect and will not be applied retrospectively. WBE may reject such amendment, by providing to CMS, during the CMS notice period, thirty (30)-Days' written notice of its intent to reject the amendment ("rejection notice period"). Any such rejection of an amendment made by CMS shall result in the termination of this Agreement upon expiration of the rejection notice period.
- j. Audit. WBE agrees that CMS, the Comptroller General, the Office of the Inspector General of HHS or their designees have the right to audit, inspect, evaluate, examine, and make excerpts, transcripts, and copies of any books, records, documents, and other evidence of WBE's compliance with the requirements of this Agreement, upon reasonable notice to WBE and during WBE's regular business hours and at WBE's regular business location. WBE further agrees to allow reasonable access to the information and facilities requested by CMS, the Comptroller General, the Office of the Inspector General of HHS or their designees for the purpose of such an audit.

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This “Agreement between WBE and the Centers for Medicare & Medicaid Services for the Federally-facilitated Exchange Individual Market” has been signed by:

FOR WBE

The undersigned is an official of WBE who is authorized to represent and bind WBE for purposes of this Agreement.

Name and Title of Senior Official of **WBE**

Date

WBE Name

WBE Address

FOR CMS

The undersigned are officials of CMS who are authorized to represent CMS for purposes of this Agreement.

James Kerr
Acting Deputy Director, Operations
Center for Consumer Information & Insurance Oversight
Centers for Medicare & Medicaid Services

Date

Tony Trenkle
Director and CMS Chief Information Officer
Office of Information Services
Centers for Medicare & Medicaid Services

Date

Robert Tagalicod
Director
Office of E-Health Standards and Services
Centers for Medicare & Medicaid Services

Date