

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

THIS AGREEMENT (“Agreement”) is entered into by and between the VIRGINIA HEALTH BENEFIT EXCHANGE (“Exchange”) 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 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 provide the following services to consumers:
 - 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 personal information to the extent that these activities are necessary to carry out the authorized functions 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 function” means a task performed by a non-exchange entity that the non-exchange entity is explicitly authorized or required to perform based on applicable law or regulation, and as enumerated herein.

“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 personal information; or (2) an authorized user accesses or potentially accesses personal information 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 an applicant, enrollee, qualified individual, qualified employer, or qualified employee and (if applicable) their legal or authorized representatives, or any individual who presents himself or herself for assistance related to an authorized function from a non-exchange entity, or who is offered assistance related to an authorized function by a non-exchange entity, as applicable.

“Downstream entities” means any party that enters into an agreement with the CDO or with another downstream entity, for purposes of providing services related to 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.

“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 programs” means the programs provided under the state plan for medical assistance services pursuant to Title XIX of the Social Security Act, as amended, and the Family Access to Medical Insurance Security (FAMIS) Plan developed pursuant to Title XXI of the Social Security Act, as amended.

“Non-exchange entity” has the meaning at 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.

“Personal information” has the same meaning assigned to the term in §38.2-602 of the Code.

“Qualified dental plans” 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 plans” 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. 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, as described in Section II.3 of this Agreement, 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.

2. 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 that is appropriate 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 appropriate 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 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, and to comply with Section II.8 of this Agreement by disclosing to any consumers all potential conflicts of interest of CDO;
 - iii. Comply with the Exchange's Privacy and Security Standards for Certified Application Counselors and Certified Application Counselor Designated Organizations specified in Section III and Appendix A of this Agreement;
 - iv. Prior to creating, collecting, disclosing, accessing, maintaining, storing, or using any personal information of

consumers, obtain the authorization required by 14VAC 7-10-40.5.b and Section II.11.b of this Agreement (hereinafter referred to as "authorization"). This authorization is separate and distinct from any informed consent obtained pursuant to Section II(b) of Appendix A of this Agreement;

- v. Permit the consumer to revoke the authorization described in Section II.11.b at any time;
- 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;
- viii. When assisting consumers:
 1. Inform them of the functions 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;
 2. Act in their best interest;
 3. Either directly or through an appropriate referral to a CDO or non-CDO assistance personnel authorized under 45 CFR §§155.205(d) and (e) or 155.210, or to the Exchange 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 U.S.C. §12101, *et seq.* and §504 of the Rehabilitation Act, as amended, 29 U.S.C. §794;
 4. Provide information to them 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;

5. Assist them in applying for coverage in a qualified health plan or qualified dental plan through the Exchange and for insurance affordability programs;
 6. Help to facilitate their enrollment in qualified health plans or qualified dental plans and insurance affordability programs;
 7. 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;
 8. 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;
 9. Not solicit any consumer for application or enrollment assistance by going door-to-door or through other unsolicited means of direct contact with 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 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 with a consumer; and
 10. 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.
- ix. For as long as the CAC continues providing CAC services, seek recertification on at least an annual basis after successfully completing recertification training;

- x. 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;
 - xi. 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;
 - xii. Not collect or otherwise maintain information provided by consumers, except as specifically provided for in this Agreement;
 - xiii. 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 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.2.b of this Agreement has been entered into and remains in effect.
3. 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;
4. 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;

5. 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 2021, 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;
6. Provide the Exchange with updates on any changes with organizational program contact information;
7. 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;
8. Establish procedures for CDO's CACs to disclose all potential conflicts of interest of CDO to consumers prior to providing assistance to any such individuals, including any relationships CDO has with qualified health plan or qualified dental plans or insurance affordability programs, or other potential conflicts of interest;
9. Act in the best interests of the consumers assisted by CDO and by its CACs;
10. Either directly or through an appropriate referral to a CDO or non-CDO assistance personnel authorized under 45 CFR §§155.205(d) and (e) or 155.210, or to the Exchange 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 U.S.C. §12101, et seq. and section 504 of the Rehabilitation Act, as amended, 29 U.S.C. §794;
11. Establish procedures to ensure, pursuant to 14VAC 7-10-40.5 and 45 CFR §155.225(f), that consumers:

- a. Are informed of the functions 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;
 - b. Provide authorization, before CDO and CACs create, collect, disclose, access, maintain, store, or use any of the consumer's personal information, for CDO and CACs to create, collect, disclose, access, maintain, store, and use the consumer's personal information to carry out its authorized duties. This authorization is separate and distinct from any informed consent obtained pursuant to Section (2)(b) of Appendix A of this Agreement. CDO shall maintain a record of the authorization for at least six (6) years; and,
 - c. May revoke at any time the authorization provided.
12. Oversee and monitor any staff member or volunteer it certifies as a CAC to ensure that each CAC complies with all requirements of the program specified in all applicable Exchange regulations and guidance, including 14VAC 7-10-60 and 45 CFR §155.225, and with all requirements set forth in Section II.2 of this Agreement.
13. Establish and comply with procedures to do the following:
 - a. Protect any personal information 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 (20) days 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.2.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 this notice, cease holding out him/herself 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.

14. Not impose any charge on consumers for application or other assistance related to the Exchange;
15. 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 CDO receives from a health insurance issuer for health care services provided;
16. Not provide compensation to CACs on a per-application, per-individual-assisted, or per-enrollment basis;
17. 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;
18. Not solicit any consumer for application or enrollment assistance by going door-to-door or through other unsolicited means of direct contact with 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 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, with a consumer;
19. 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 CAC or CDO has a relationship with the consumer and so long as other applicable state and federal laws are otherwise complied with;
20. 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;

21. Not act as, or permit a CAC to act as, an insurance agent or broker;
22. 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 hereby waive its rights to any compensation from the Exchange, State Corporation Commission or the Commonwealth of Virginia (“Commission”) to which it may be entitled under law; and,
23. Directly, and through its CACs, comply with Chapter 10 of Title 14 of the Virginia Administrative Code entitled “Rules Governing the Certified Application Counselor Program” as of the effective date and with any subsequent amendments.

III. OBLIGATIONS RELATED TO THE PRIVACY AND SECURITY OF PERSONAL INFORMATION.

1. CDO 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 CDO authorized function.

IV. EFFECTIVE DATE; TERM AND NONRENEWAL.

1. Effective Date and Term. 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.
2. The Agreement is deemed to be executed by the Exchange on the date the Exchange designates CDO.

V. 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.

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, and must carry out procedures described in Sections II.7 and II.13 of this Agreement.

VI. DESTRUCTION OF PERSONAL INFORMATION: CDO covenants and agrees to destroy all personal information in its possession at the end of the record retention period required under Appendix A. CDO's duty to protect and maintain the privacy and security of personal information, as provided for in Appendix A of this Agreement, shall continue in full force and effect until such personal information is destroyed and shall survive the termination or expiration of this Agreement.

VII. 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:

CDO:

Address: _____

Address: _____

Attn: _____

Attn: _____

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. 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.
13. Right to Audit. CDO shall retain all books, records, and other documents relative to the Agreement. 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.

[ENDORSEMENT ON FOLLOWING PAGE]

This Agreement between CDO and the Exchange has been signed by:

For CDO: The undersigned is an official of CDO who is authorized to represent and bind CDO for purposes of this agreement.

Signature of Senior Official

Date

Name and Title of Senior Official

CDO Name:

Corresponding Application 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

Prior to collecting personal information or other information from consumers for purposes of fulfilling an authorized function, CDO must provide consumers with a privacy notice statement. The privacy notice statement 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 personal information or other information from consumers. The privacy notice statement must also be prominently and conspicuously displayed on CDO’s public-facing website, if applicable, if the CDO will gather or request personal information or other information from consumers through that website.

A. Privacy Notice Statement Requirements

The privacy notice statement must be written in plain language and, to the extent possible, provided in a manner that is accessible and timely to people living with disabilities and with limited English proficiency.

The statement must contain at a minimum the following information:

- A description of the information to be collected;
- The purpose for which the information is being collected;
- The intended use(s) of the information;
- To whom the information may be disclosed, for what purposes, and how a record of any disclosures may be requested from CDO;

- What, if any, notice or opportunities for consent will be provided regarding the collection, use, or disclosure of the information;
- How the information will be secured;
- Whether the request to collect information is voluntary or mandatory under the applicable law;
- Effects of non-disclosure if a consumer chooses not to provide the requested information;
- Any rights the consumer may have under state or federal laws relevant to the protection of the privacy of an individual; and
- Information on how to file complaints with the Exchange and CDO related to the CDO's activities in relation to the information.

CDO shall maintain its privacy notice statement content by reviewing and revising it as necessary on an annual basis, at a minimum, and before or as soon as possible after any change to its privacy policies and procedures.

Notwithstanding the general requirement above to provide a written privacy notice statement prior to collecting personal 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 function or sending to the consumer educational information that is directly relevant to authorized functions. 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 and §38.2-612.1, §38.2-613, and §38.2-6514 of the Code.

II. Permissible Uses and Disclosures of Personal Information

CDO and its CACs may create, collect, disclose, access, maintain, store, and use personal information from consumers only for authorized functions, unless CDO obtains informed consent as described in Section II.B of this agreement.

A. Authorization

Prior to creating, collecting, disclosing, accessing, maintaining, storing, or using any consumer's personal information to perform an authorized function CDO or CAC must obtain the authorization required by 45 C.F.R. §155.225(f) , 14VAC7-10-40.5.b, and Section II.11.b of the Agreement, and otherwise comply with applicable disclosure requirements under Virginia law, including §38.2-612.1 and § 38.2-613 of the Code. This authorization is separate and distinct from the informed consent referenced in Section II.B below.

CDO must maintain a record of the authorization provided for a period of no less than six (6) years.

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

B. Informed Consent

CDO and/or CAC must obtain informed consent from consumers for any creation, collection, use, or disclosure of information that is not for an authorized function. Such informed consent must be in writing, signed by the consenting party, and subject to a right of revocation.

CDO and its CACs are prohibited from denying information or assistance to persons or entities that do not wish to grant consent for any creation, collection, use, or disclosure of a consumer's personal information that is not for an authorized function.

Informed consent must:

- Be provided in specific terms and in plain language;
- Identify who will obtain access to the consumer's personal information under the terms of the informed consent;
- Describe the purpose for which the informed consent is being obtained;
- Explain what information CDO and/or CAC will use or disclose to a specific recipient(s);
- Provide notice of a consumer's ability to revoke the consent at any time; and
- Include an expiration date or event, unless effectively revoked in writing by the consumer before that date or event.

Informed consent must otherwise comply with applicable disclosure requirements under Virginia law, including §38.2-612.1 and §38.2-613 of the Code.

Informed consent documents must be appropriately secured and retained for no less than six (6) years.

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

A. Permissible Creation and Use of Personal Information

Other than in accordance with the informed consent procedures outlined in Section II.B above, CDO and its CACs shall only create, collect, disclose, access, maintain, store, or use personal information it receives in their capacity as a CDO or CAC: (1) in accordance with the privacy notice statement referenced in Section I above; and/or (2) in accordance with an authorized function.

B. Prohibited Requests for and Collections or Uses of Personal Information

CDO and its CACs shall not:

- 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;
- 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 personal information to discriminate against them, such as by refusing to assist individuals who have significant or complex health care needs.

C. Accounting for Disclosures

Except for those disclosures necessary to carry out an authorized function, CDO and/or CAC that maintains and/or stores personal information shall maintain an accounting of any and all disclosures of personal information.

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 Personal Information

CDO and its CACs must ensure that personal information 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:

- Personal information is only used by or disclosed to those authorized to receive or view it;
- Personal information is protected against any reasonably anticipated threats or hazards to the confidentiality, integrity, and availability of such information;
- Personal information is protected against any reasonably anticipated uses or disclosures of such information that are not permitted or required by law; and
- Personal information 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 develop and CDO and CAC must utilize secure electronic interfaces when transmitting personal information electronically.

V. Breach and Incident Handling Requirements

A. Reporting

CDO must implement and comply with procedures for reporting and addressing any breach or incident that are consistent with those procedures for reporting and addressing cybersecurity events, as established by the Exchange and the Commission through regulations issued pursuant to §38.2-625 and §38.2-627 of the Code. Those breach and incident procedures shall be memorialized in CDO's own written policies and procedures.

CACs and all other employees, agents, and other representatives of CDO must comply with CDO's breach and incident procedures.

B. 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 personal information; the provision of a formal response to an allegation of unauthorized use, reuse, or disclosure of personal information; and/or the submission of a corrective action plan with steps designed to prevent any future unauthorized use, reuse, or disclosure of personal information.

VI. Training and Awareness Requirements

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

VII. Standard Operating Procedures Requirements

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 functions authorized under the Agreement involving the creation, collection, disclosure, access, maintenance, storage, or use of personal information. CACs must comply with these 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 ensure CDO's and CACs' cooperation with the Exchange in resolving any breach or incident, including, if requested by the Exchange, the return or destruction of any personal information; the provision of a formal response to an allegation of unauthorized use, reuse, or disclosure of personal information; and/or the submission of a corrective action plan with steps designed to prevent any future unauthorized use, reuse, or disclosure of personal information; and
- Must be designed and implemented to ensure CDO and its staff, volunteer and representatives 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 personal information undertaken by CDO, to ensure such compliance.

VIII. Other Requirements

A. Required Flow-Down of the Privacy and Security Agreement

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, it must be kept confidential and disclosed, used, and maintained only in accordance with §6103 of the Internal Revenue Code.

IX. 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.