

**NOTICE OF AMENDMENT OF AGREEMENT BETWEEN THE CENTERS FOR
MEDICARE & MEDICAID SERVICES AND CERTIFIED APPLICATION COUNSELOR
DESIGNATED ORGANIZATION IN A STATE IN WHICH A FEDERALLY-
FACILITATED EXCHANGE IS OPERATING**

Dated: July 27, 2015

This **Notice of Amendment** is being issued by the Centers for Medicare & Medicaid Services (CMS) to each Certified Application Counselor Designated Organization (CDO) which is a party to an existing “Agreement between the Centers of Medicare & Medicaid Services and Certified Application Counselor Designated Organization in a State in which a Federally-Facilitated Exchange is Operating” (“CMS-CDO Agreement”).

Section VII.h. of the CMS-CDO Agreement specifies that CMS may amend the Agreement for purposes of reflecting changes in applicable law, regulations, or CMS implementation guidance, with such amendments taking effect upon thirty (30) Days’ written notice to CDO (“CMS notice period”). This Notice of Amendment of Agreement is intended to provide CDO with notice of such intended amendments and commencement of the “CMS notice period” effective as of the above-referenced posting date.

Accordingly, CDO is hereby notified that the CMS-CDO Agreement is hereby modified and amended and shall hereafter be deemed for all purposes between CMS and CDO to provide as follows, unless otherwise rejected by CDO within the rejection notice period referenced in Section VII.h. of the Agreement.

All provisions of the CMS-CDO Agreement following “WHEREAS” are replaced with the following:

1. Pursuant to 45 CFR 155.225(b), to facilitate the operation of the FFE, CMS may designate an organization to certify its staff members or volunteers to act as Certified Application Counselors (CACs).
2. Pursuant to 45 CFR 155.225(c), CACs are expected to provide the following services to Consumers:
 - a. Provide information about the full range of Qualified Health Plan (QHP) options and Insurance Affordability Programs for which Consumers are eligible which includes: providing fair, impartial, and accurate information that assists Consumers with submitting the eligibility application; clarifying the distinctions among health coverage options, including QHPs; and helping Consumers make informed decisions during the health coverage selection process;

- b. Assist with applications for coverage in a QHP through the FFE and for Insurance Affordability Programs; and
 - c. Help to facilitate enrollment in QHPs and Insurance Affordability Programs.
3. Pursuant to 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 45 CFR 155.225, including but not limited to 45 CFR 155.225(d)(3)-(5).
4. To facilitate the operation of the FFE, CMS has determined that it would be beneficial to permit CDO, and the staff members and volunteers CDO certifies as CACs, to create, collect, disclose, access, maintain, store, or use Personally Identifiable Information ("PII") from CMS and Consumers, to the extent that these activities are necessary to carry out the Authorized Functions that the Affordable Care Act ("ACA"), implementing regulations, and this Agreement permit.
5. 45 CFR 155.260(b) provides that an 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. CMS, in the administration of the FFEs, has adopted privacy and security standards for CDO, as set forth in the attached Appendix A, "Privacy and Security Standards and Implementation Specifications for Certified Application Counselors and Certified Application Counselor Designated Organizations," which is hereby incorporated by reference. Compliance with this Agreement satisfies the requirement under 45 CFR 155.225(d)(3) to comply with Exchange privacy and security standards, and applicable authentication and data security standards.

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

- I. DEFINITIONS. Capitalized terms not otherwise specifically defined herein shall have the meaning set forth in the attached Appendix B, "Definitions," and/or in 45 CFR 155.20, which definitions are hereby incorporated by reference.
- II. OBLIGATIONS AND CONDITIONS. To carry out the functions of a CDO, as authorized by 45 CFR 155.225, and as a condition of its designation as a CDO by the FFE, CDO agrees to:
 1. Certify, and recertify on at least an annual basis, in a manner consistent with all applicable CMS regulations and guidance, one or more individual staff members and/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 that is certified by the CDO to serve as a CAC. 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 and/or volunteer, the 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 provided under this provision for a period of no less than six (6) years, unless a different and longer retention period has already been provided under other applicable Federal law.

2. Prior to certifying or recertifying any staff member or volunteer to serve as a CAC, do all of the following:
 - a. Ensure that each such staff member or volunteer seeking certification or recertification as a CAC completes all required CMS-approved training regarding QHP options, Insurance Affordability Programs, eligibility, and benefits rules and regulations governing all Insurance Affordability Programs operated in the state, as implemented in the state, and completes and achieves a passing score on all CMS-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 the CDO that requires the individual staff member or volunteer seeking certification as a CAC to do the following:
 - i. Register for all required CMS-approved training using his or her unique CAC identification number and the name that will appear on both his or her CAC Certificate and Training Certificate, complete the training and examination requirements described in Section II.2.a of this Agreement, and provide proof in the form of his or her Training Certificate to the CDO that he or she has fulfilled the training and examination requirements;
 - ii. Disclose to the CDO and to Consumers any relationships the CAC has with QHPs or Insurance Affordability Programs, or other potential conflicts of interest, and, if the CDO elects to comply with Section II.6 of this Agreement by requiring CACs to do so, disclose to any Consumers any potential conflicts of interest of the CDO;
 - iii. Comply with the FFE's Privacy and Security Standards and Implementation Specifications for Certified Application Counselor

Designated Organizations specified in Section III and Appendix A of this Agreement;

- iv. Meet any licensing, certification, or other standards prescribed by the State or FFE, if applicable, so long as such standards do not prevent the application of the provisions of title I of the Affordable Care Act;
- v. Prior to creating, collecting, disclosing, accessing, maintaining, storing, or using any PII of Consumers to carry out the Authorized Functions listed at Section III.2 of this Agreement, obtain the authorization required by 45 CFR 155.225(f) and section II.9.b of this Agreement (hereinafter referred to as “authorization”). This authorization is separate and distinct from any informed consent obtained pursuant to section 2(b) of Appendix A of this Agreement;
- vi. Maintain a record of the authorization provided under Section II.9.b for a period of no less than six (6) years, unless a different and longer retention period has already been provided under other applicable Federal law;
- vii. Permit the Consumer to revoke the authorization described in Section II.9.b at any time;
- viii. Not impose any charge or fee on Consumers for application or other assistance related to the FFE;
- ix. Each time the staff member or volunteer assists any Consumers, prominently display a current and effective CAC Certificate provided by the CDO evidencing the staff member’s or volunteer’s certification as a CAC;
- x. When assisting Consumers:
 - 1. Inform them of the functions and responsibilities of Certified Application Counselors;
 - 2. Act in their best interest;
 - 3. Either directly or through an appropriate referral to a Navigator or non-Navigator assistance personnel authorized under 45 CFR §§ 155.205(d) and (e) or 155.210, or to the FFE call center, provide information in a manner that is accessible to individuals with disabilities, as defined by the Americans with Disabilities Act, as amended, 42 USC §

12101, et seq. and section 504 of the Rehabilitation Act, as amended, 29 USC § 794;

4. Provide information to them about the full range of QHP options and Insurance Affordability Programs for which they are eligible, which includes: providing fair, impartial, and accurate information that assists Consumers with submitting the eligibility application; clarifying the distinctions among health coverage options, including QHPs; and helping Consumers make informed decisions during the health coverage selection process;
5. Assist them in applying for coverage in a QHP through the FFE and for Insurance Affordability Programs;
6. Help to facilitate their enrollment in QHPs 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 gifts, including gift cards or cash, unless they are of Nominal Value, or provide promotional items that market or promote the products or services of a third party, to any Applicant or potential Enrollee as an inducement for enrollment. Gifts, gift cards, or cash may exceed Nominal Value for the purpose of providing reimbursement for legitimate expenses incurred by a Consumer in an effort to receive Exchange application assistance, such as, but not limited to, 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, including calling a Consumer to provide application or enrollment assistance without the Consumer initiating the contact, unless the individual has a pre-existing relationship with the individual CAC or the CDO, and other applicable State and Federal laws are otherwise complied with. Outreach and education activities may be conducted by going door-to-door or through other unsolicited means of direct contact, including calling a Consumer; and
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.

- xii. For as long as the CAC continues providing CAC services, seek recertification on at least an annual basis after successfully completing recertification training;
 - xiii. 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 certified application counselor CAC services to the public;
 - xiv. 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;
 - xv. Not collect or otherwise maintain information provided by Consumers, except as specifically provided for in this Agreement; and
 - xvi. Not receive any consideration directly or indirectly from any health insurance issuer or issuer of stop-loss insurance in connection with the enrollment of any individuals in a QHP or non-QHP. This prohibition does not apply to consideration the CAC receives from a health insurance issuer for health care services provided.
 - c. When recertifying any staff member or volunteer to serve as a CAC, the CDO must ensure that the written, signed agreement with the 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 the CDO to serve as a CAC, which shall consist of an identification number that CMS assigns the CDO and that identifies the CDO, followed by the unique identification number assigned to each individual staff member or volunteer by the CDO;
- 4. Upon request, provide to CMS the names and CAC identification numbers assigned by the CDO of all staff members and volunteers that have been certified by the CDO to serve as CACs, including whether the CAC's certification is active;

5. Provide CMS with timely and appropriate updates and corrections to ensure the accuracy of the CDO's publicly available information on CMS's website, HealthCare.gov, through the submission of requests for changes on "Find Local Help," the assister search tool. In the event that the CDO has stopped or will stop providing CAC services to the public, it must submit a request that the CDO's information cease to be displayed on Find Local Help 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 the CDO has stopped or will stop providing CAC services to the public, the CDO should also provide a notice of termination to CMS as described in Section V of this Agreement;
6. Establish procedures to directly, or, if the CDO so elects, through its CACs, disclose all potential conflicts of interest of the CDO to Consumers prior to providing assistance to any such individuals, including any relationships the CDO has with QHPs or Insurance Affordability Programs, or other potential conflicts of interest;
7. Act in the best interests of the Consumers assisted by the CDO and by the staff members and volunteers it has certified as CACs;
8. Either directly or through an appropriate referral to a Navigator or non-Navigator assistance personnel authorized under 45 CFR §§ 155.205(d) and (e) or 155.210, or to the FFE call center authorized under 45 CFR § 155.205(a), provide information in a manner that is accessible to individuals with disabilities, as defined by the Americans with Disabilities Act, as amended, 42 USC § 12101, et seq. and section 504 of the Rehabilitation Act, as amended, 29 USC § 794;
9. Establish procedures to ensure, pursuant to 45 CFR §155.225(f), that Consumers:
 - a. Are informed of the functions and responsibilities of CACs;
 - b. Provide authorization, before CDO or any of CDO's staff members and/or volunteers create, collect, disclose, access, maintain, store, or use any of the Consumer's PII, for CDO and CDO's staff members and volunteers to create, collect, disclose, access, maintain, store, and use the Consumer's PII to carry out the Authorized Functions listed at Section III.2 of this Agreement. This authorization is separate and distinct from any informed consent obtained pursuant to section 2(b) of Appendix A of this Agreement. CDO must ensure that it or its staff members and/or volunteers maintain a record of the authorization for a period of no less than six (6) years, unless a different and longer retention period has already been provided under other applicable Federal law; and

- c. May revoke at any time the authorization provided, pursuant to 155.225(f)(3).
- 10. 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 CMS regulations and guidance, including 45 CFR 155.225, and with all requirements set forth in Section II.2 of this Agreement.
- 11. Establish and comply with procedures to do the following:
 - a. As soon as possible, but in no event later than twenty (20) Days after the triggering event (identification or notification of noncompliance), withdraw the certification of any staff member or volunteer that has been certified by the CDO if the CDO learns or is notified by CMS that the staff member or volunteer has failed to comply with the terms and conditions of the CAC's agreement with the CDO or with the requirements of 45 CFR 155.225;
 - b. Protect any PII of Consumers created, collected, disclosed, accessed, maintained, stored, or used by any CAC whose certification is withdrawn, by complying with the obligations set forth in Section VI of this Agreement;
 - c. 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 45 CFR 155.225, or upon notification from CMS that the 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- or herself as a CAC to any Consumer and cease providing CAC services to the public; and
 - d. In the event that CMS has notified the CDO that the 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.2.a. 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.
- 12. Not impose any charge on Consumers for application or other assistance related to the FFE;

13. Not receive any consideration directly or indirectly from any health insurance issuer or issuer of stop-loss insurance in connection with the enrollment of any individuals in a QHP or non-QHP. This prohibition does not apply to consideration the CDO receives from a health insurance issuer for health care services provided;
14. Not provide compensation to CACs on a per-application, per-individual- assisted, or per-enrollment basis;
15. Not provide gifts, including gift cards or cash, unless they are of Nominal Value, or provide promotional items that market or promote the products or services of a third party, to any Applicant or potential Enrollee as an inducement for enrollment. Gifts, gift cards, or cash may exceed Nominal Value for the purpose of providing reimbursement for legitimate expenses incurred by a Consumer in an effort to receive Exchange application assistance, such as, but not limited to, travel or postage expenses;
16. Not solicit any Consumer for application or enrollment assistance by going door-to-door or through other unsolicited means of direct contact, including calling a Consumer to provide application or enrollment assistance without the Consumer initiating the contact, unless the individual has a pre-existing relationship with the individual CAC or the CDO, and other applicable State and Federal laws are otherwise complied with. Outreach and education activities may be conducted by going door-to-door or through other unsolicited means of direct contact, including calling a Consumer;
17. 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 the CDO has a relationship with the Consumer and so long as other applicable State and Federal laws are otherwise complied with;
18. Comply with the privacy and security standards adopted by the FFE 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; and
19. Directly, or through its staff or volunteers it certifies as CACs, provide any and all services in connection with the obligations and conditions in this Agreement, as described in Sections II.1-19 and III of this Agreement, without compensation (excluding wages earned by employees of the CDO for work performed by such employee on behalf of its CDO employer), and hereby waive its rights to any compensation from the Government of the United States of America to which it may be entitled under law.

III. OBLIGATIONS RELATED TO THE PRIVACY AND SECURITY OF PERSONALLY IDENTIFIABLE 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 and Implementation Specifications 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 pursuant to 45 CFR 155.225. CDO is thereby bound to strictly adhere to the privacy and security standards, and to ensure that its Workforce that creates, collects, accesses, stores, maintains, discloses, or uses PII, is contractually bound to strictly adhere to those standards and implementation specifications.
2. Authorized Functions. CDO may create, collect, disclose, access, maintain, store, and use PII of Consumers in order to:
 - a. Provide information to Consumers about the full range of QHP options and Insurance Affordability Programs for which these persons are eligible, which includes: providing fair, impartial, and accurate information that assists Consumers with submitting the eligibility application; clarifying the distinctions among health coverage options, including QHPs; and helping Consumers make informed decisions during the health coverage selection process;
 - b. Assist Consumers with applications for coverage in a QHP through the FFE and for Insurance Affordability Programs;
 - c. Help to facilitate the enrollment of Consumers in QHPs and Insurance Affordability Programs;
 - d. Perform other functions related to carrying out additional obligations as may be required under applicable state law or regulation, provided that (1) such a state requirement does not prevent the application of the provisions of title I of the Affordable Care Act within the meaning of section 1321(d) of the Affordable Care Act, and (2) CDO notifies Consumers in advance, in writing, that collection, handling, disclosure, access maintenance, storage, and/or use of their PII might be required under applicable state law or regulations. CDO should provide the required notification through the authorization obtained in accordance with 155.225(f); and
 - e. Perform other functions authorized under 45 CFR 155.225, including functions substantially similar to those enumerated above, and such other functions that may be approved by CMS in writing from time to time.

3. PII Received. Subject to the terms and conditions of this Agreement and applicable laws, in performing the Authorized Functions under this Agreement, CDO, may create, collect, disclose, access, maintain, store, and use the following data and PII from Consumers, including but not limited to:
- Access to or enrollment in employer or other health coverage
 - American Indian/Alaska Native status
 - APTC percentage and amount applied
 - Auto disenrollment information
 - Applicant Name
 - Applicant Address
 - Applicant Birthdate
 - Applicant Telephone number
 - Applicant Email
 - Applicant spoken and written language preference
 - Applicant Medicaid Eligibility indicator, start and end dates
 - Applicant Children's Health Insurance Program eligibility indicator, start and end dates
 - Applicant QHP eligibility indicator, start and end dates
 - Applicant APTC percentage and amount applied eligibility indicator, start and end dates
 - Applicant household income
 - Applicant Maximum APTC amount
 - Applicant Cost-sharing Reduction (CSR) eligibility indicator, start and end dates
 - Applicant CSR level
 - Applicant QHP eligibility status change
 - Applicant APTC eligibility status change
 - Applicant CSR eligibility status change
 - Applicant Initial or Annual Open Enrollment Indicator, start and end dates
 - Applicant Special Enrollment Period eligibility indicator and reason code
 - Citizenship status
 - Contact Name
 - Contact Address
 - Contact Birthdate
 - Contact Telephone number
 - Contact Email
 - Contact spoken and written language preference
 - Enrollment group history (past six months)
 - Enrollment type period
 - FFE Applicant ID
 - FFE Member ID
 - Gender
 - Immigration document type and document numbers
 - Issuer Member ID
 - Membership in a Federally recognized tribe
 - Net premium amount

Premium Amount, start and end dates
Pregnancy indicator
Race/ethnicity
Sex
Special enrollment period reason
Subscriber Indicator and relationship to subscriber
Social Security Number
Tax filing status (tax filer, tax dependent, non-filer)
Tobacco use indicator and last date of tobacco

4. Authorization. Prior to creating, collecting, disclosing, accessing, maintaining, storing, or using any PII from Consumers, CDO will ensure that the CAC obtains the authorization required under Section II.9.b of this Agreement and will permit the authorization to be revoked at any time. This authorization is separate and distinct from any informed consent obtained pursuant to section 2(b) of Appendix A of this Agreement. The CDO should ensure that a record of the authorization provided is maintained in a manner consistent with the privacy and security standards set forth in Appendix A.
5. Collection of PII. Except for collections, uses or disclosures that are specifically authorized by Consumers in accordance with Section 2(b) of Appendix A, PII collected from Consumers may be used only for the Authorized Functions specified in Section III.2 of this Agreement.
6. Storing PII. To the extent that a CDO maintains or stores PII, it must agree to comply with all provisions of this Agreement and Appendix A that apply to the maintenance or storage of PII.
7. Ability of Consumer to Limit Collection and Use. CDO agrees to allow the Consumer to limit the CDO's creation, collection, use, maintenance, storage, and disclosure of their PII to the sole purpose of obtaining CDO's assistance for FFE purposes, and for performing Authorized Functions specified in Section III.2 of this Agreement.

IV. EFFECTIVE DATE; TERM AND RENEWAL.

1. Effective Date and Term. This Agreement becomes effective on the date the last of the two Parties executes this Agreement and ends one year from the effective date.
2. Renewal. This Agreement will automatically renew for subsequent and consecutive one (1) year periods upon the expiration of this agreement unless, in the sole and absolute discretion of CMS, thirty (30) Days' advance written notice of nonrenewal is provided by CMS to CDO, or the Agreement is terminated pursuant to Section V of this Agreement.

V. TERMINATION.

1. Termination without Cause. In addition to termination of this Agreement pursuant to Sections IV.2 above and VII.8 below, and as contemplated in section II.5 above, either party may terminate this Agreement without cause and for its convenience upon at least thirty (30) Days' prior written notice to the other Party, where practicable. Such notice will include the effective date on which the organization will no longer have its staff members or volunteers provide CAC services. CDO agrees to communicate with CMS in good faith, prior to exercising the right to termination for convenience, in order to continue to act in the consumer's best interests.
2. Termination with Cause. CMS may terminate this Agreement for cause, as follows:
 - a. Termination with Notice. This Agreement shall terminate immediately upon CMS's withdrawal of CDO's designation as a CDO. In the event that CMS determines, in its sole but reasonable discretion, that the CDO has materially breached this Agreement and that immediate termination of this Agreement is necessary and appropriate, CMS may immediately terminate this Agreement upon providing telephonic or electronic mail notice to CDO, which will be promptly followed by written notice memorializing the termination. In the event that CMS determines, in its sole but reasonable discretion, that the CDO has materially breached this Agreement but should be provided with an opportunity to cure the material breach(es), CMS may provide fourteen (14) Days' written notice to CDO that this Agreement will terminate unless CDO commences curing such breach(es) within such fourteen (14)-Day period to the reasonable satisfaction of CMS, and thereafter diligently prosecutes such cure to completion. In the event that CMS provides CDO with an opportunity to cure, the written notice from CMS shall contain a description of the material breach, whereupon CDO 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, CDO shall be considered in "Habitual Default" of this Agreement in the event that it has been served with a 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 as described above without any further opportunity to cure or propose cure.
3. Consequences of Termination or Nonrenewal. If this Agreement is not renewed pursuant to Section IV.2 or is terminated pursuant to Sections V.1 or V.2 of this Agreement, CDO's designation is automatically withdrawn. If that occurs 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 Section II.5 and II.11 of this Agreement.

- VI. DESTRUCTION OF PII. CDO covenants and agrees to destroy all PII 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 PII, as provided for in Appendix A of this Agreement, shall continue in full force and effect until such PII is destroyed and shall survive the termination or expiration of this Agreement.

VII. MISCELLANEOUS

1. Notice. Except as otherwise specifically provided herein, all notices required under this Agreement shall be given in writing and shall be delivered as follows:

If to CMS:

By email to CACProgram@cms.hhs.gov or by mail to:

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 CDO, to CDO's email or mailing 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. CMS and CDO may change their contact information for notices and other communications by providing thirty (30) Days' written notice of such change in accordance with this provision.

2. Assignment and Subcontracting. CDO 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 CDO 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. CDO further shall not assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the State. If CDO 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 CDO shall remain legally bound hereto and responsible for all obligations under this Agreement. CDO shall further be thereafter subject to such compliance actions as may otherwise be provided for under applicable law.

3. 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.
4. Disclaimer of Joint Venture. Neither this Agreement nor the activities of CDO 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 CDO. Neither CMS or CDO is, nor shall either CMS or CDO hold itself out to be, vested with any power or right to bind the other contractually or to act on behalf of the other, except to the extent expressly set forth in ACA and the regulations codified thereunder, including as codified at 45 CFR part 155.
5. 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.
6. Compliance with Law. CDO 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.

7. Governing Law. This Agreement shall 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. CDO 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*.
8. Amendment. CMS may amend this Agreement for purposes of reflecting changes in applicable law, regulations, or CMS implementation guidance, with such amendments taking effect upon thirty (30) Days' written notice to CDO ("CMS notice period"). Any amendments made under this provision will only have prospective effect and will not be applied retrospectively. CDO 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.
9. Audit. CDO agrees that CMS, the Office of the Inspector General of HHS, and the Comptroller General, as applicable, 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 CDO compliance with the requirements of this Agreement, upon reasonable notice to CDO and during CDO's regular business hours and at CDO's regular business location. CDO further agrees to allow reasonable access to the information and facilities requested by CMS, the Office of the Inspector General of HHS, and the Comptroller General, as applicable, or their designees for the purpose of such an audit.

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