AGREEMENT BETWEEN
WEB-BROKERS AND
THE CENTERS FOR MEDICARE & MEDICAID SERVICES (“CMS”)

THIS WEB-BROKER AGREEMENT (“AGREEMENT”) IS ENTERED INTO by and between THE CENTERS FOR MEDICARE & MEDICAID SERVICES (“CMS”), as the party responsible for the management and oversight of the Federally-facilitated Exchange (“FFE”) and the CMS Data Services Hub (“Hub”), and an agent or broker that uses a non-FFE internet web site to assist Consumers, Applicants, and Enrollees in applying for advance payments of 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 (hereinafter referred to as “Web-broker”).

1. Purpose and Scope.
   a. Web-brokers may assist Consumers, Applicants and Enrollees in: (1) applying for health care coverage under a QHP offered through the FFE; (2) applying for APTCs and CSRs; and/or (3) completing enrollment in a QHP through its web site for individual market coverage. An enrollment through the FFE is achieved if the Web-broker either directs a Consumer, Applicant, or Enrollee to file an application with the FFE, or ensures that a Consumer, Applicant, or Enrollee receives an eligibility determination for coverage through the FFE website.
   b. To facilitate the enrollment process, CMS will provide centralized and standardized business and technical services (“Hub Web Services”) to Web-brokers that will enable Web-brokers to establish a secure connection with the Hub.
   c. Should a Web-broker choose to provide enrollment services using CMS’ Hub Web Services, the Web-broker’s access to the Hub and use of Hub Web Services are subject to the terms of this Agreement.

2. Definitions.¹
   a. Agent or broker: Has the meaning set forth in 45 CFR 155.20.
   b. CMS Data Services Hub (“Hub”): As defined for the purposes of this Agreement, the federal service managed by CMS to transmit data between federal and state entities that administer Insurance Affordability Programs (e.g., a state Medicaid agency, a state children’s health insurance program (CHIP), a state basic health program (BHP), or an Exchange) to interface with federal agency partners, including, but not limited to the Internal Revenue Service, Social Security Administration, and Department of Homeland Security.
   c. CMS Data Services Hub Web Services (“Hub Web Services ‘”): As defined for the purposes of this Agreement, business and technical services made available by CMS to enable the determination of certain eligibility and enrollment data through the FFE website, including the collection of personal and financial information necessary for Consumer, Applicant or

¹ Terms in this paragraph are defined pursuant to federal regulations, and are subject to change through future rulemaking.
Enrollee account creations, QHP application submissions, and Insurance Affordability Program eligibility determinations.
d. **Consumer or Applicant:** As defined for the purposes of this Agreement, a person who, for himself or herself, or on behalf of another individual, seeks from the Web-broker information related to eligibility for FFE participation or coverage under a QHP or other Insurance Affordability Program, or whom the Web-broker assists in applying for FFE participation, health care coverage under a QHP, applying for APTCs and CSRs, and/or completing enrollment in a QHP through its web site for individual market coverage.
e. **Enrollee:** As defined for the purposes of this Agreement, an individual enrolled in a QHP or other Insurance Affordability Program.
f. **Federally-facilitated Exchange (“FFE”):** As defined for the purposes of this Agreement, an Exchange established by HHS and operated by CMS under Section 1321(c)(1) of the Affordable Care Act for individual market coverage.
g. **Insurance Affordability Program:** Has the meaning set forth in 45 CFR 155.300.
h. **Minimum Acceptable Risk Standards—Exchanges (“MARS-E”):** As defined for the purposes of this Agreement, a CMS-published suite of documents that define the security standards required pursuant to 45 CFR 155.260 and 45 CFR 155.270, for any Exchange, individual, or entity gaining access to information submitted to an Exchange or through an Exchange using a direct, system-to-system connection to the CMS Hub.
i. **Personally identifiable information (“PII”):** Has the meaning contained in OMB Memoranda M-07-16 and M-10-22 — “information that can be used to distinguish or trace an individual’s identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual.”
j. **Qualified Health Plan (QHP):** Has the meaning set forth in 45 CFR 155.20.
k. **Web-broker:** An agent or broker that uses a non-FFE internet web site to assist Consumers, Applicants, and Enrollees in the QHP selection and enrollment process as described in 45 CFR 155.220(c).

3. Terms and Conditions.

a. **Term.** The term of this Agreement begins on the dates signed by the Web-broker and CMS, and ends September 30, 2014, after which this Agreement may be renewed for a subsequent period subject to CMS’ discretion.
b. **Authority.** CMS enters into this Agreement pursuant to its authority under 45 CFR 155.220 and the CMS System of Records Notice, “CMS Health Insurance Exchanges System (HIX), CMS System No. 09-70-0560” (the SORN). Under the terms of the SORN, Routine Use No. 8, CMS will provide PII to Web-brokers for the purpose of filing applications for coverage under QHPs and other Insurance Affordability Programs, when relevant and necessary to determine eligibility to enroll in a QHP or in another Insurance Affordability Program.
c. **Compliance with Agreement.** Web-broker acknowledges and agrees that its relationship with the FFE is contingent upon compliance with the terms of this Agreement and any applicable existing and future laws, statutes, and regulations as of their effective dates, including but not limited to the following:
   i. All applicable state laws related to agents and brokers in each state in which Web-broker operates, including but not limited to:
      1. Maintaining valid licensure in every state that Web-broker offers QHPs through the FFE;

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3 78 Federal Register 8538, March 6, 2013.
2. Ensuring Web-brokers’ employees, contractors, agents, or representatives who assist Consumers, Applicants, and Enrollees with QHP enrollment in a particular state are licensed in that state;

3. Compliance with state laws related to appointments, as a condition of enrolling Consumers, Applicants, and Enrollees in QHPs through the FFE.

ii. The Affordable Care Act and all applicable current and future regulations and guidance, including

1. Requirements set forth in 45 CFR 155.220(c)(3);
2. Registration and training requirements set forth in 45 CFR 155.220(d) for Web-broker and Web-brokers’ employees that assist Consumers, Applicants and Enrollees in eligibility applications or enrollment in QHPs through the FFE;
3. All other applicable federal laws, including the Health Insurance Portability and Accountability Act (HIPAA), Section 6103(b)(2) of the Internal Revenue Code, the Federal Privacy Act, and the Federal Information Security Management Act;

4. Ensuring Web-brokers’ employees, contractors, agents, or representatives that may access data and PII Web-broker receives from the Hub, comply with minimum FFE privacy and security standards pursuant to 45 CFR 155.260; and

5. In accordance with future regulations and guidance, prominently displaying language that notifies Consumers, Applicants, and Enrollees that Web-broker has entered into this Agreement with CMS, and has agreed to conform to web site display, privacy, and security standards of the FFE.

d. Amendment of Agreement. Web-broker acknowledges that during the term of this Agreement, CMS may amend this Agreement to incorporate any additional standards required by statute and any regulations or policies implementing or interpreting such statutory provisions. Notwithstanding the foregoing, should there be any conflict or inconsistency between the standards and obligations in this Agreement and any statutory, regulatory, or sub-regulatory guidance released by CMS, Web-broker must comply with the statutory, regulatory, and sub-regulatory standards released by CMS.

e. FFE Privacy and Security Policy. Web-broker agrees that as a condition of this Agreement, it will implement and comply with all existing and future privacy and security standards adopted by the FFE, and any sub-regulatory guidance issued or published by CMS as it relates to those privacy and security requirements.

i. Web-broker agrees that, as a condition of this Agreement, it will require its employees, contractors, agents or representatives who collect PII from Consumers, Applicants, or Enrollees, to use, disclose or gain access to PII provided by the FFE through the Hub, or otherwise assist Consumers, Applicants, or Enrollees, with obtaining eligibility determinations or enrolling in Insurance Affordability Programs, to comply with FFE or CMS privacy and security standards and any privacy and security standards that Web-broker must or may implement to comply with the terms and conditions of this Agreement, including but not limited to:

1. Proper and timely destruction of PII;
2. Record-keeping requirements for PII collection, creation, use, and disclosure;
3. Sufficient training in all FFE and CMS privacy and security standards for Web-broker’s employees, contractors, agents or representatives, who may come into contact with PII or other information provided by a Consumer, an Applicant, or an Enrollee or from the Hub; and
4. Appropriate actions against any employee, contractor, agent or representative who fails to comply with the applicable privacy and security standards.

ii. **Security and Technical Standards.** Web-broker agrees to comply with all current and future FFE and CMS technical, security, management, and control requirements, including but not limited to *MARS-E* requirements associated with the implementation and usage of information exchanged through the Hub.

iii. **Data Received.** Subject to the terms and conditions of this agreement and applicable laws, in performing the tasks contemplated under this Agreement, Web-broker may collect and/or access the following data and PII of an applicant, including but not limited to:

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<thead>
<tr>
<th>Category</th>
<th>Description</th>
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<tbody>
<tr>
<td>Personally Identifiable Information</td>
<td>APTC percentage and amount applied</td>
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<td>Auto disenrollment information</td>
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<td>Applicant Name</td>
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<td>Applicant Address</td>
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<td>Applicant Birthdate</td>
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<td>Applicant Telephone number</td>
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<td>Applicant Email</td>
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<td>Applicant spoken and written language preference</td>
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<td>Applicant Medicaid Eligibility indicator, start and end dates</td>
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<td>Applicant Children’s Health Insurance Program eligibility indicator, start and end dates</td>
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<td>Applicant QHP eligibility indicator, start and end dates</td>
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<tr>
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<td>Applicant APTC percentage and amount applied eligibility indicator, start and end dates</td>
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<td>Applicant Maximum APTC amount</td>
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<td>Applicant CSR eligibility indicator, start and end dates</td>
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<td>Applicant CSR level</td>
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<td>Applicant QHP eligibility status change</td>
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<td>Applicant APTC eligibility status change</td>
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<td>Applicant CSR eligibility status change</td>
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<td></td>
<td>Applicant Initial or Annual Open Enrollment Indicator, start and end dates</td>
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<td>Applicant Special Enrollment Period eligibility indicator and reason code</td>
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<td>Contact Name</td>
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<td>Contact Address</td>
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<td>Contact spoken and written language preference</td>
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<td>Enrollment group history (past six months)</td>
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<td>Enrollment type period</td>
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<td>FFE Applicant ID</td>
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<td>FFE Member ID</td>
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<td>Issuer Member ID</td>
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<td>Net premium amount</td>
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<td>Premium Amount, start and end dates</td>
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<td>Special enrollment period reason</td>
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<td>Subscriber Indicator and relationship to subscriber</td>
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<td>Tobacco use indicator and last date of tobacco use</td>
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<td>Affordable Care Act Program Data</td>
<td>Any QHP data provided to the Web-broker by the FFE, including benefit, rate factors, premium, cost-sharing, service area, and quality rating data</td>
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4 Consistent with section 1411(b)(1) of the Affordable Care Act, the applicant information fields listed in this table also includes the personally identifiable information of other individuals on whose behalf an applicant seeks coverage.
iv. **Permissible Uses and Disclosures.** Web-broker shall use or disclose the data/PII it receives from Consumers, Applicants, Enrollees, or the Hub, only to perform the specific functions expressly authorized in this Agreement, including:

1. Display of all QHPs available through the FFE;
2. Support the selection of a QHP and the enrollment in a QHP;
3. Facilitation of the application for and the receipt of APTCs, and the collection of standardized attestations acknowledging the receipt of the APTC determination, if applicable;
4. Inform Consumers, Applicants, or Enrollees of eligibility for Medicaid or Children’s Health Insurance Program (CHIP);
5. Transmission of information about the Consumer, Applicant, or Enrollee’s decisions regarding QHP enrollment and/or CSR and APTC information from the Web-broker’s web site to the FFE;
6. Facilitation of payment of the initial premium amount;
7. Support of an Enrollee’s ability to disenroll from a QHP;
8. Facilitation of an Enrollee’s ability to report changes in eligibility status to the FFE;

v. **Restrictions on Use.** Pursuant to 1411(g), Web-broker agrees that it, and any of its employees, contractors, agents or representatives to whom it discloses the data/PII it receives from the Consumers, Applicants, or Enrollees, or the Hub, may use such information only for the purposes of, and to the extent necessary, in verifying the eligibility of Consumers, Applicants, or Enrollees to enroll in a QHP, or for Consumers, Applicants, or Enrollees to claim an APTC or CSR or obtain the amount of the APTC or CSR. Web-broker shall implement and use appropriate safeguards to protect the data/PII from misuse or inappropriate disclosure and to prevent any use or disclosure of the data/PII other than as provided for in this Agreement, or as otherwise required by law or regulation.

vi. **Civil Penalties for Unauthorized Use or Disclosure of Information.** If Web-broker knowingly and willfully uses or discloses any Consumer’s, Applicant’s, or Enrollee’s PII, including citizenship or immigration status, social security number, or personal income information, for purposes not authorized by a law, regulation, or this Agreement, in violation of section 1411(g) of the Affordable Care Act, Web-broker may be subject to a civil penalty of not more than $25,000 per person or entity, per use or disclosure, in addition to other penalties that may be prescribed by law.

vii. **Survival.** Web-broker’s duty to protect and maintain the privacy and security of PII under this Agreement shall survive the termination of this Agreement.

f. **Compensation.** CMS will not compensate Web-broker for any service it provides to Consumers, Applicants, and Enrollees in the FFE.

4. **Termination.**

a. **Right to Termination without Cause.** Web-broker may terminate this Agreement at any time, without cause, by complying with the termination standards adopted by the FFE.
b. **Termination with Cause.** At its sole discretion, CMS may revoke Web-broker’s access to the Hub or terminate this Agreement and Web-broker’s relationship with the FFE, with or without notice, at any time, in accordance with the standards adopted by the FFE, if CMS determines that Web-broker materially breached any term of this Agreement or applicable laws, including but not limited to potential unlawful use or disclosure of PII, or to protect the security and integrity of the Hub or other FFE-related information systems.

c. **Opportunity to Cure.** Upon notice of revocation or termination from CMS, Web-broker agrees to correct any breach of this Agreement through good-faith negotiation with, and to the satisfaction of CMS, in accordance with the standards adopted by the FFE.

d. **Reconsideration of Revocation or Termination.** Web-broker shall comply with the standards adopted by the FFE when requesting reconsideration or appeal of any action taken by CMS to revoke access to the Hub or terminate this Agreement.

5. **Representations and Warranties.** Web-broker agrees that by utilizing the Hub, it accepts risks associated with the sharing of information and data between CMS and Web-broker, and shall not hold CMS responsible for any resulting damages or losses. CMS does not provide any warranty or guarantee regarding the timeliness, accuracy, efficacy, or technology capabilities of any transactions involving the Hub.
Appendix A: Web-broker Best Practices for the FFE Individual Market

CMS acknowledges that Web-brokers will provide a critical service in assisting Consumers, Applicants, or Enrollees in obtaining healthcare coverage through Qualified Health Plans (“QHPs”), with applying for advance payments of premium tax credit (“APTCs”) and cost-sharing reductions (“CSRs”) for Qualified Health Plans (“QHPs”), and/or completing enrollment in QHPs through the FFE. Accordingly, CMS has identified the following best practices applicable to Web-brokers and Web-broker’s employees, agents, contractors, and representatives assisting Consumers, Applicants, or Enrollees with individual market coverage through the FFE:

1. Offer a QHP plan selection process on Web-broker’s web site that does not display sponsored links or paid advertising related to health insurance products for the FFE individual market;

2. Offer non-QHP health plans or non-QHP ancillary products on a separate web page from the QHP web pages (notwithstanding the fact that Consumers, Applicants, or Enrollees may search for non-QHP health plans in a separate page of Web-broker’s web site other than QHP web pages);

3. If the web-broker is not appointed by every QHP issuer offering a QHP in a state, prominently display language that notifies Consumers, Applicants, or Enrollees that the Web-broker is not appointed with every QHP displayed on its web site;

4. If a Consumer, Applicant, or Enrollee expresses desire to enroll in a QHP for which Web-broker is not appointed by the QHP issuer as required by state law, direct them to the FFE;

5. Communicate to Consumers, Applicants, or Enrollees that they are not required to receive assistance from the Web-broker to enroll in a QHP, and that they can receive information about all available QHPs through the FFE;

6. Act in the best interest of Consumers, Applicants, or Enrollees when presenting QHP options based upon the preferences and needs of the Consumers, Applicants, or Enrollees, regardless of the compensation or appointment relationship between the Web-broker and issuers;

7. Refrain from steering a Consumer, Applicant, or Enrollee to a particular QHP based on financial or other non-financial factors that do not reflect Consumer, Applicant, or Enrollee preferences;

8. Assist all members of a family, including individuals who are ultimately determined eligible for Medicaid or the Children’s Health Insurance Program (CHIP), and refer individuals who are determined eligible for Medicaid or CHIP to the appropriate resources;

9. If Web-broker or Web-broker’s employees’ licenses are revoked by state licensing entity, notify CMS of the license revocation in a timely manner;

10. If Web-broker elects to terminate its relationship with the FFE without cause, either notify the Consumers, Applicants, or Enrollees as of the date of the termination notice or complete the assistance for the Consumers, Applicants, or Enrollees.

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5 These terms have the meaning set forth in the “Definitions” section of the “Agreement between Web-Brokers and the Centers for Medicare and Medicaid.”
This “Agreement between Web-Brokers and the Centers for Medicare & Medicaid Services” has been signed by:

FOR THE WEB-BROKER

The undersigned is an official of Web-broker who is authorized to represent and bind the Web-broker for purposes of this Agreement.

_______________________________________  _______________________
Name and Title of Senior Official                 Date

______________________________________________
Entity Name

______________________________________________
Entity Address
This “Agreement between Web-Brokers and the Centers for Medicare & Medicaid Services” has been signed by:

FOR THE CENTERS FOR MEDICARE & MEDICAID SERVICES (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

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

Date  

Date  

Date