



Commonwealth Health Connector Connector Authority

**Outreach and Marketing Campaign
Request for Proposals**

Issued April 4, 2016

1 General Information

1.1 Introduction

The Commonwealth Health Insurance Connector Authority (the “Health Connector” or the “Connector”) is issuing this Request for Proposals (“RFP”) to obtain proposals from qualified vendors to support the agency’s outreach and marketing efforts.

The Health Connector is seeking support from experienced individuals or firms to design and implement a comprehensive outreach and marketing campaign aimed at uninsured individuals, current members, and small businesses. The Health Connector targets both the chronically uninsured and those experiencing short-term losses in coverage in its outreach and education. This RFP reflects the Health Connector’s intent to balance a statewide marketing campaign with its interest in utilizing creative strategies and in-depth knowledge of ethnic media to reach out to uninsured communities. The marketing campaign is part of the Health Connector’s overall outreach and education program, which is focused on:

- Reducing the state’s uninsured rate
- Increasing Health Connector enrollment and maintaining a high annual retention rate
- Improving the Health Connector’s brand position, in member and thought-leader populations
- Creating a marketing calendar that continues to focus on Open Enrollment but expands public exposure to the Health Connector brand
- Increasing awareness of key Health Connector programs and benefits
- Expanding the Health Connector’s visibility and awareness in priority communities
- Strengthening the Health Connector’s relationships with community organizations in communities with higher uninsured rates.

While these are sound qualitative objectives, we will be looking to outreach and marketing vendors who can clearly link their proposed approach(es) and qualifications to measurable impact in these areas.

1.1.1. The Health Connector

The Health Connector was established by the landmark Massachusetts Health Care Reform Law of 2006, known as Chapter 58. The mission of the Health Connector is to connect Massachusetts residents and small businesses with affordable health insurance. The Health Connector is an independent public authority governed by an eleven-member board, comprised of government officials and members of the public, representing a range of interests and expertise that includes organized labor, employee health benefits, consumers, small business, actuarial science, and health economics.

The Health Connector serves as the Commonwealth of Massachusetts’s public Health Insurance Exchange (Marketplace). The Health Connector serves Qualified Individuals, Qualified Employers, Qualified Employees, Brokers, Navigators, and the general public. In addition to managing coverage for these populations, the Health Connector is charged with several policy and regulatory responsibilities related to state reform, including those associated with implementation of the Commonwealth’s adult health care coverage mandate.

The Health Connector has played a critical role in implementing health reform in the Commonwealth of Massachusetts, which has achieved its goal of near-universal coverage with over 96 percent of its residents insured.

The Health Connector has been authorized under state law to serve as the American Health Benefit Exchange (AHBE or Exchange) and Small Business Health Options Program (SHOP) Exchange for the Commonwealth of Massachusetts under the Affordable Care Act. (Mass. Gen. Laws c. 176Q §3(u)).

Under the Patient Protection and Affordable Care Act (ACA)-compliant operating model, a number of business processes and functions must be performed by the Health Connector. To fulfill its statutory responsibilities, the Health Connector is required to perform a series of policy and programmatic functions, which include, but are not limited to: certification, recertification, and decertification of Qualified Health Plans (QHPs); real-time Eligibility Determination for Exchange participation and insurance affordability programs; Enrollment of eligible Exchange populations in QHPs; and customer service, quality rating, reporting, and oversight, among other areas.

1.2 Defined Terms

Capitalized terms not defined herein shall have the meanings assigned in the Form of Contract attached as Attachment A hereto unless the context clearly indicates otherwise.

1.3 Issuing Officer

The Health Connector is issuing this RFP. The Issuing Officer for this RFP is:

Jason Lefferts
Director of Communications and Marketing
Commonwealth Health Insurance Connector Authority
100 City Hall Plaza
Boston, MA 02108
617-933-3141
Email: Jason.w.lefferts@state.ma.us

Interested parties may submit questions only in accordance with Section 6.2 below. No other contact with a Connector employee and/or Board member with respect to this RFP is permitted from the date of release of this RFP until a final agreement is executed, unless otherwise directed by the issuing officer.

1.4 Terms of this RFP

The required services are set forth in Sections 2.0 and 3.0 below. Bidders may submit a response to provide services as detailed in Section 2.0 or 3.0, or for both sections. Any organization that submits a response (“Bidder”) must be ready to provide services in accordance with those requirements.

All bids must be valid for 90 days following the submission date. The terms of this RFP and all commitments stated in a Bidder's response or its addenda, if that response is accepted by the Health Connector, will become binding between the Bidder and the Health Connector.

The successful Bidder must execute an agreement in substantially the terms of the Form of Agreement, attached as Attachment A hereto. Any modifications to the Form of Agreement a Bidder deems necessary must be proposed for the Health Connector's consideration at the time the proposal is submitted in response to this RFP. The Health Connector will not enter into negotiation over, or enter into an agreement without, any term that is not identified in the Bidder's response to the RFP as a requested modification. A Bidder's response to the Form of Agreement will be taken into consideration by the Health Connector in determining the responsiveness of the Bidder's proposal, as set forth in Section 4.0 below.

This RFP is not an offer to enter into an agreement with any party. It is a request to receive responses from Bidders interested in providing the services specified herein. Nothing in this RFP or in the Health Connector's acceptance of any proposal, in whole or in part, shall obligate the Health Connector to complete negotiations with the Bidder. Acceptance by the Health Connector of any proposal shall be subject to the condition subsequent that the Health Connector and the Bidder execute a contract. The Health Connector reserves the right to negotiate with selected Bidders a change in any element of performance or cost identified in the RFP or in the selected Bidder's response. The Health Connector reserves the right to end negotiations with a Bidder, without cause, at any time up to the execution of the agreement arising from this RFP. Should the Health Connector and any selected Bidder fail to reach an agreement on contract terms, the Health Connector may, in its sole discretion, negotiate with and award an agreement to any other Bidder it selects.

The Health Connector reserves the right to modify the terms of this RFP at any time prior to the execution of a final agreement with a successful Bidder. Any such modifications will be posted on COMMBUYS and interested parties are encouraged to check COMMBUYS regularly for information regarding this procurement.

1.5. Term of Contract

The term of the contract resulting from this RFP shall commence on July 1, 2016, and will end on June 30, 2019. The Health Connector may, at its sole discretion, seek to extend the contract for three additional one-year terms. In the event that additional services are agreed upon in addition to those deliverables described in Section 2 of this RFP, the additional services will be the subject of work orders under the contract between the Health Connector and the successful Bidder.

2 Scope of Services – Outreach and Education

2.1. General Scope of Services

The scope of services identified below are specific to the Scope of the RFP and encompass all predicted outreach and marketing service needs. However, each service may or may not be required on an annual basis, depending on the Health Connector's specific needs and outreach strategy. Core services include creative, production and paid-media space purchasing.

2.1.1 Audience Research

The Bidder will conduct research, via focus groups and/or public opinion survey, to assess the mindset of the uninsured and current members; uncover awareness, knowledge, and perceptions of the Health Connector; explore messages and motivators; inform creative materials development; and support paid media messaging strategies.

2.1.2 Outreach and Marketing Campaign

The Bidder will develop an outreach and marketing campaign to build awareness and drive enrollment, focusing on core audiences, including current members and non-members, defined in collaboration with the Health Connector. Potential platforms include television, radio, print, out-of-home, digital and other outlets. The campaign will support Health Connector grassroots and community efforts throughout the Commonwealth. The campaign will support the annual Open Enrollment period. The Bidder will do the following items to prepare for the campaign launch:

1. Develop campaign strategy with input from the Health Connector on advertising tone/direction and key messages.
2. Develop a creative brief for Health Connector review and approval from which the creative team will develop three to five campaign concepts.
3. Prepare and execute a media-buy plan recommendation for the campaign.
4. As applicable, work with the research team on advertising research including message and creative stimulus development, and refinement of creative based on research.
5. Create and implement a production schedule.

2.1.3 Corporate Partnerships

To expand message visibility and outreach beyond traditional media platforms, the Bidder will identify and engage corporate partners to design and implement programs that will create awareness about new opportunities through the Health Connector.

2.1.4 Social Media Support

The Bidder will work with the Health Connector to identify opportunities for member engagement and content development, and provide counsel on the Health Connector's social media efforts.

2.1.5 Strategic Counsel

The Bidder will provide strategic communications counsel throughout the contract as necessary, including but not limited to participating in regular team meetings and calls, offering ideas and tactics to promote the Health Connector's objectives and identifying and responding to trends or issues that impact the Health Connector.

2.1.6 Small-Business Platform Awareness and Messaging

The Bidder will develop an outreach and awareness campaign to highlight the Health Connector's small-business platform (SHOP). Activities under this initiative include:

1. Developing campaign strategy with input from client on tone/direction and key messages.
2. Developing a creative brief for client review and approval from which the creative team will develop three to five campaign concepts.
3. Preparing and executing a media-buy plan recommendation for the campaign.
4. Production schedule planning and estimating.

2.1.7 Specific Deliverables

Audience Research

- Scheduling dates/times and locations of focus groups
- Participant recruitment
- Provide moderator
- Schedule and implement public-opinion survey
- Generate report detailing findings and offering recommendations

Outreach and Messaging Campaign/Small-Business Platform Awareness and Messaging

- Main messaging themes and script/copy development
- Design and produce messaging elements
- Create and implement a media-buy plan

Corporate Partnerships

- Identify and conduct outreach to potential corporate partners
- Schedule and participate in meetings to discuss potential activities
- Liaise with partners and manage activities

Social Media

- Identify member outreach opportunities
- Develop content
- Provide messaging and direction counsel

2.2 Timeline and General Approach of Engagement

The selected vendor will be responsible for producing the deliverables outlined in Section 2.2 during the term of the contract, and consistent with a timeframe that reasonably allows the Health Connector to succeed within its timelines.

The vendor is expected to work closely with the Health Connector throughout the engagement, with weekly (or otherwise defined periodic) communication on progress and expectations and thorough sharing of draft deliverables. If the winning bidders for Section 2 and 3 are different, the winning bidder of Section 2 will be considered the lead contractor in terms of message and language development and creative development. The winner of Section 2 should work closely with the winner of Section 3 to ensure message consistency and a coordinated campaign.

The Health Connector must review and approve any change in scope, deliverables, or due dates.

2.3 Additional Services

In addition to completing the deliverables outlined in Section 2.1.7, the Health Connector may request additional related services, including without limitation further analysis and investigation, and assistance with implementation.

3 Scope of Services – Ethnic Media Outreach and Education

3.1 General Scope of Services

The scope of services identified below is specific to the Scope of the RFP and encompasses all predicted ethnic outreach and marketing service needs. However, each service may or may not be required on an annual basis, depending on the Health Connector’s specific needs and outreach strategy. Core services include creative, production and paid-media space purchasing. Key communities and languages include Spanish, Portuguese, Chinese, Vietnamese, Haitian and Cambodian.

3.2 Outreach and Education Campaign

The Bidder will develop an outreach and marketing campaign built exclusively through local and statewide ethnic media platforms, and local community organizations, consistent with messaging developed through Section 2. If the winning bidder of Section 2 is different from the winning bidder of Section 3, the winning bidder of Section 3 will closely coordinate the campaign based off of messaging and creative elements created by the winning bidder of Section 2. This campaign will drive awareness and enrollment, focusing on core audiences, including current members and potential members, defined in collaboration with the Health Connector. Potential platforms include television, radio, print, out-of-home, digital and other outlets. The campaign will support Health Connector grassroots and community efforts throughout the Commonwealth. The campaign will support the annual Open Enrollment period. The Bidder will do the following items to prepare for the campaign launch:

1. Prepare and execute a media-buy plan recommendation for the campaign, consisting exclusively of ethnic media outlets.
2. Maintain message consistency with overall outreach and education campaign.
3. As necessary, oversee and manage production schedules with outlets.
4. Identify and support additional benefits via paid campaigns, including special events and earned media opportunities.
5. Strengthen existing relationships and create new opportunities with community organizations.

3.3 Specific Deliverables

Outreach and Education Campaign

- Create and execute a media-buy plan that includes all key languages and communities
- Create and execute production and editing schedules with outlets
- Identify and support special event and earned-media opportunities

Community Outreach

- Identify key community-based organizations and special events for participation
- As necessary, support event participation through advance planning and on-site participation

3.4 Timeline and General Approach of Engagement

The selected vendor will be responsible for producing the deliverables outlined in Section 3.3 during the term of the contract, and consistent with a timeframe that reasonably allows the Health Connector to succeed within its timelines.

The vendor is expected to work closely with the Health Connector throughout the engagement, with weekly (or otherwise defined periodic) communication on progress and expectations and thorough sharing of draft deliverables.

The Health Connector must review and approve any change in scope, deliverables, or due dates.

3.5 Additional Services

In addition to completing the deliverables outlined in Section 3.3, the Health Connector may request additional related services, including without limitation further analysis and investigation, and assistance with implementation.

4.0 Proposal Format and Submission Deadline

4.1 Proposal Submission Process and Deadline

Two original, unbound proposals (signed in ink) and five copies must reach the Health Connector offices no later than 5:00 p.m. EDT on April 22, 2016, at the address below:

Commonwealth Health Insurance Connector Authority
100 City Hall Plaza, 6th floor
Boston, Massachusetts 02108
Attn: Jason Lefferts

An electronic submission is also requested by the above date and time. Electronic submissions may be delivered to jason.w.lefferts@state.ma.us. Proposals should be prepared in as concise a manner as possible, delineating the capabilities of the entity submitting the response (the “Bidder”) to satisfy the requirements of this RFP. Proposals should include each of the components outlined in Sections 4.2, 4.3, 4.4, 4.5, and 4.6.

4.2 Transmittal Letter

A signed transmittal letter, no longer than one page, shall accompany each proposal. The transmittal letter shall be executed by an individual authorized to bind the Bidder contractually. The transmittal letter shall, at a minimum, (a) confirm the Bidder’s willingness to be bound by, and ability to perform fully in accordance with, the terms and conditions of the Form of Agreement, attached to this RFP, subject only to such exceptions or modifications as are deemed necessary by the Bidder and referenced broadly in the transmittal letter and detailed in the body

of the response or an attachment thereto, and (b) state that the Bidder has not colluded with anyone in the preparation of the response. The proposal should provide the name, title, and contact information for the individual responsible for the response who will be available to respond to Health Connector requests for additional information, if necessary.

4.3 Description of Proposed Response

The Description of the Proposed Response should include the following:

- Explanation of the Bidder's capacity and approach for addressing each of the deliverables listed in Section 2 and/or Section 3, particularly in developing an Open Enrollment outreach and marketing campaign that creatively and effectively delivers value and impact to the Health Connector and its targeted audiences through a variety of media platforms as well as achieves the Health Connector's marketing, outreach and education goals. Explain the general background, experience, and qualifications of the firm, including: (a) experience the firm may have with Affordable Care Act-enabled exchanges or health care; and (b) experience with purchasing media space in both traditional and ethnic media throughout Massachusetts. Also, responses should detail how a bidder measures success (recommended metrics for monitoring results and quantifying success).
- Provide a description of the firm's approach to the project, including a straightforward, concise description of the firm's ability to satisfy the requirements of the Scope of Work, a detailed plan for completing the project, including the number of hours by category of work and by personnel that the firm anticipates will be required. Holistic considerations related to the project's scope should also factor into the firm's strategy relative to identifying – and overcoming – potential challenges/obstacles. Responses should also consider that the Health Connector develops insurance products targeted to individuals needing insurance and businesses. Many uninsured individuals are young men, and many of the targeted businesses are small. Responses should detail the best platforms for accessing these populations.
- Potential bidders are allowed to bid on the scope of services described in Sections 2 and 3 by using subcontractors. If a Bidder plans on submitting a bid with subcontractor(s), the Health Connector requires that the Bidder provide all of the same required documentation for the subcontractor(s) as well including, but not limited to, summary of experience and qualifications and references. Financial proposals shall include the cost of all subcontractor(s) as well.

4.4 Summary of Experience and Qualifications

The firm should identify a project team, including capabilities and depth of resources that would be available for the project, and each team member's resume and time dedicated to the project. The firm should also identify the partner(s) – where applicable – who will be responsible for the work required by this Scope of Work, including the partner's name, title, corporate address, email, telephone, and facsimile number. In addition, the firm should identify the individual by name, title, corporate address, email, telephone, and facsimile number who will serve as the point-of-contact at the firm and as project manager for the contract awarded as a result of this Scope of Work, if different from the individual identified above. Furthermore, the firm should

submit resumes or curriculum vitae setting forth the qualifications of the firm's management, professional, and technical personnel who will work on this Scope of Work, if the project is awarded to the firm. This section applies to all subcontractor(s) as well.

4.5 References

Bidders and their subcontractor(s) should provide three references. The references should be previous clients for whom the Bidder served for engagements, which have provided the experience requested under Section 4.4. Please provide telephone numbers and the names of contact persons.

4.6 Financial Proposal

Please provide a proposed budget for each phase of the proposed scope of work described in Section 2 and/or 3. The budget for each phase of work must detail the staff (inclusive of subcontractors), estimated hours and rate, and any anticipated extra charges or expenses used to determine the financial proposal.

Finally, the Bidder should provide a rate table that may apply for any additional services outside of the scope of services specified in Section 2 and/or 3 including – but not limited to – further analysis and investigation, as well as assistance with implementation.

5 Criteria for Evaluating Proposals

Once a Bidder has been deemed to be compliant with the response submission instructions stated in this RFP, the Bidder will be evaluated based on its written response, reference checks, and any other information available to the Health Connector.

The Health Connector will convene a procurement management team (PMT) comprised of staff members of the Health Connector. The PMT shall recommend selection by the Health Connector of a Bidder, whose proposal, in the aggregate, provides the best value. Each Response will be evaluated in accordance with the following criteria:

- Comprehensiveness and soundness of the content provided by the Bidder in the Description of Proposed Response;
- Responsiveness of the Bidder's Description of Proposed Response to the requirements and expectations set forth in this RFP, including the form of Agreement;
- Qualifications, experience, and demonstrated performance in the areas described in Section 4.4.
- Potential success in achieving the Health Connector's marketing, outreach and education goals, including:
 - Reducing the state's uninsured rate
 - Increasing Health Connector enrollment and maintaining a high annual retention rate

- Improving the Health Connector’s brand position, in member and thought-leader populations
- Creating a marketing calendar that continues to focus on Open Enrollment but expands public exposure to the Health Connector brand
- Increase awareness of key Health Connector programs and benefits
- Expand the Health Connector’s visibility and awareness in priority communities
- Strengthen the Health Connector’s relationships with community organizations in communities with higher uninsured rates.

The Health Connector will also review financial proposals for their reasonableness, competitiveness, and value. Cost will be one factor, but not the sole factor, in consideration. The Health Connector is not required to choose the Bidder that proposes the lowest cost.

6 General Conditions

6.1 Additional Information / Best and Final Offer

It may be necessary for the Health Connector to request additional information from one or more Bidders and the Health Connector reserves the right to do so. The Health Connector may ask certain Bidders to make oral presentations. The Health Connector, at its sole discretion, will determine which Bidders will do so.

The Health Connector reserves the right, at its sole discretion, to request, at any time following submission of responses and prior to the final selection of Bidders for contract negotiation and execution, that all or some Bidders submit a best and final financial offer and/or clarify any given aspect of their response.

6.2 Questions

Questions regarding this solicitation or requests for additional information should be directed to Connector.RFP.Questions@state.ma.us. All requests for additional general information should be received by 5:00 p.m. EDT on April 8, 2016. Written responses to such questions will be provided to all eligible Bidders by 5:00 p.m. EDT on April 15, 2016. The Health Connector will not respond to any requests for information from potential Bidders about this procurement other than those submitted in writing in accordance with this section. Potential Bidders are requested not to contact Health Connector employees or board members for information about this procurement other than as set forth in this section.

6.3 Reimbursement

The Health Connector will not reimburse Bidders for any costs associated with the preparation or submission of any proposal or for any travel and/or per diem expenses incurred in any presentations of such proposals.

6.4 Health Connector Rights

The Health Connector reserves the right to reject any and all proposals, to waive any minor irregularities in a proposal, to request clarification of information from any Bidder, and to effect any agreement deemed by it to be in its best interest with any of the Bidders.

Issuance of this RFP is not a guarantee that a contract will be awarded. The Health Connector may at any time prior to the execution of a final agreement for the services covered by this RFP, for any reason and without penalty, notify Bidders of the cancellation of the procurement.

6.5 Applicable Laws

The Bidder shall be responsible for compliance with provisions of federal, state and local laws applicable to the development and submission of any proposal received in response hereto. By submitting a proposal, the Bidder agrees that Commonwealth laws shall govern any and all claims and disputes that may arise between parties.

6.6 Public Records

All responses and related documents submitted or presented to the Health Connector as part of this RFP shall become its property. They may be subject to disclosure upon request under M.G.L. c. 66, § 10, and c. 4, § 7, cl. 26. The Health Connector is under no obligation to return any responses or materials submitted by a Bidder in response to this RFP, including Bidder “trade secrets” and financial information (which are not exemptions in the public records laws). The foregoing applies even if the Bidder has submitted a non-disclosure or other statement asking the Health Connector to retain the security or confidentiality of the trade secret and/or financial information.

6.7 Ownership of Materials and Data

All material and data produced for the Authority under a Contract resulting from this RFP are the exclusive property of the Authority. Any information provided by the Authority cannot be used for any purpose other than the functions described in a contract without the express written consent of the Authority.

6.8 Health Connector Liability

The Health Connector shall have no liability whatsoever to any Bidder or subcontractor of a Bidder for any financial losses or expenses incurred by such entity or entities in response to this proposal or in connection with a contract or the services of such there under except as expressly set forth in a contract.

7 Timeline for Review

7.1 Timeline

It is the Health Connector’s intent to accept proposals on or before April 22, 2016 with the requirement that the accepted Bidder be prepared to execute a contract by June 20, 2016 and commence work on July 1, 2016. The Health Connector reserves the right to modify such dates at its discretion.

The following estimated timeline, although subject to change, indicates the Health Connector's intentions regarding the RFP:

	Deadline Date
RFP Issued	April 4, 2016
Bidder's Questions Due	April 11, 2016
CCA Responses Due	April 15, 2016
Proposal Due	April 22, 2016
Oral Presentations from Finalists (if necessary)	Week of May 16, 2016
Award Notification	Week of May 30, 2016
Contract Negotiation	Week of June 6, 2016
Contract Signed	Week of June 20, 2016
Commencement of Contract	July 1, 2016

FORM OF AGREEMENT

EXHIBIT A TO THE RFP

COMMONWEALTH HEALTH INSURANCE CONNECTOR AUTHORITY

**100 CITY HALL PLAZA
BOSTON, MASSACHUSETTS 02108**

MASTER SERVICES AGREEMENT

This Agreement for Consultant Services (as may be amended from time to time, the “Agreement”) is made and entered into as of the latter date on which it is executed below (the “Effective Date”) by and between the Commonwealth Health Insurance Connector Authority (the “Authority” or the “Connector”), an independent public authority of the Commonwealth of Massachusetts with a principal office and place of business at 100 City Hall Plaza, Boston, Massachusetts, and _____ with a principal place of business at _____ (“Contractor”) (each a “Party” and collectively the “Parties”).

Whereas, the Authority desires to retain Contractor to render certain services to the Authority and Contractor desires to be so retained by the Authority and to perform the services specified herein, all in accordance with the terms and conditions of this Agreement.

Now, therefore, in consideration of the premises, mutual covenants and representations set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Certain Definitions:** The following capitalized terms have the following meanings for purposes of this Agreement:
 - a) “Commonwealth” means the Commonwealth of Massachusetts (and its political subdivisions or agents where the context so requires).
 - b) “General Counsel” means the Authority's General Counsel, or, in the event that no Person holds such title at the time in question, such other legal counsel to Authority as Authority's Executive Director may designate.
 - c) “Governmental Authority” means any national or federal government, any state or other political subdivision thereof, and any other Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

- d) “Authority” or “Connector” means the Commonwealth Health Insurance Connector Authority and any of its subsidiaries, subdivisions or affiliates, and the successors or assigns thereof.
- e) “Person” means any individual, partnership, corporation, limited liability company, joint venture, trust, unincorporated organization, Governmental Authority or any other entity.
- f) “Federal Awarding Agency” means the U.S. Department of Health and Human Services, Office of Consumer Information and Insurance Oversight (“CCIIO”) and any other agency of the United States government that provides federal grant funding to the Authority or the Commonwealth of Massachusetts that is used to fund the provision of Services, including Additional Services, under this Agreement.

2. **Scope of Services:** The Authority hereby retains Contractor to provide the services set forth in the work order attached as Attachment A hereto, as it may be amended from time to time. In the event that the Authority wishes Contractor to perform additional services, such services will be reflected in additional work orders, in the form of Attachment A, which shall be signed and incorporated herein. No work order shall be effective unless executed by both Parties. All services set forth in Work Orders shall be performed in accordance with the terms of this Agreement. In the event of any conflict between the terms of this Agreement and the terms of a Work Order, then the terms of the Work Order shall control. No services shall be performed unless they are set forth in a work order mutually agreed upon and executed by the Parties.

The Authority shall have the option at its sole discretion to modify, increase or terminate any activity related to this Agreement or any Work Order whenever, in the judgment of the Authority, its goals have been modified or altered in any way that necessitates such changes. The Authority additionally reserves the right, at its sole discretion and at any time during the Agreement term, to amend the Agreement and any Work Order in order to implement federal or state statutory or regulatory requirements, judicial orders, settlement agreements, or any state or federal initiatives or changes affecting the Authority or the Agreement. The Parties shall negotiate in good faith to implement any such initiatives proposed by the Authority. The Contractor’s responsibilities are subject to change due to implementation of such initiatives. In the event of a termination or reduction in the scope of work for any Work Order, the Authority will provide written notice to the Contractor. In the event of a change in the scope of work of any Work Order or portions thereof, the Authority will initiate negotiations with the Contractor about the terms, including compensation, thereof.

3. **Payment:** The Authority shall compensate Contractor in accordance with the payment provisions set forth in Attachment A and in any subsequent Work Order executed by the Parties. In the event that the payment terms in a Work Order call for the payment of hourly labor rates, then, during the term of this Agreement, the hourly labor rates set forth in any Work Order shall not exceed the hourly labor rates set forth in Appendix 1 to this Agreement. If in response to a Work Order request, the Contractor proposes personnel whose positions or titles do not match those listed in Appendix 1, the Authority shall determine the most analogous positions or titles listed in Appendix 1 for such personnel and apply the corresponding maximum hourly labor rate to such personnel.

4. **Term of the Agreement:** This Agreement shall take effect as of the Effective Date set forth in the first paragraph of this Agreement, and shall remain in effect until June 30, 2019, unless terminated sooner under the provisions of **Section 6(a)**. The Parties may extend this term by written agreement.
5. **Timely Performance:** Contractor acknowledges that timely completion of Contractor's services is of the utmost importance to the Authority and that Contractor will diligently and continuously perform the Services during the term of this Agreement.
6. **Termination or Suspension:**
 - a) This Agreement shall terminate on the date specified in **Section 4**, unless amended in accordance with **Section 18** to extend the term hereof, or unless earlier terminated or suspended as provided in this **Section 6(a)**. The Authority may terminate this Agreement or any portion thereof without cause and without penalty at any time without notice, upon determination that the Contractor has violated any state or federal law, including without limitation any law regarding the confidentiality and security of data. The Authority may terminate this Agreement without cause and without penalty at any time upon provision of thirty (30) days advance written notice to the Contractor in the event that, because of a change of law or loss of funding, the Authority no longer needs the Services and/or can no longer pay for the Services. Either Party may terminate or suspend this Agreement for cause in the event of a breach of a material term of this Agreement, provided that the Party seeking to terminate provides written notice thirty (30) days prior to the date of termination, stating the nature of the breach and the desired cure. If the breaching Party fails to cure the breach to the non-breaching Party's reasonable satisfaction within the 30 day notice period, the non-breaching Party may terminate or suspend the Agreement.
 - b) Obligations in Event of Termination; Survival: Upon termination of this Agreement, the parties shall have the following obligations:
 - i) *Deliverables:* Contractor shall deliver to the Authority all work papers and all written or other tangible work product created by Contractor in performance of the Services through the effective date of termination, for which, if due, payment has been made, and all other property of the Authority, and all copies thereof in the direct or indirect possession or control of Contractor.
 - ii) *Payment:* Contractor shall be paid for all requested and authorized services and deliverables described in the applicable work order(s) and satisfactorily performed and/or delivered up to and including the date of termination.
 - iii) Sections 7 through 22 of this Agreement shall survive termination of this Agreement.
7. **Notices:** Unless otherwise specified in an attachment hereto, any notice hereunder shall be in writing and shall be sent either (i) by facsimile or telecopier, (ii) by courier, or (iii) by first class mail, postage, prepaid, addressed to the Project Personnel listed in the applicable work order at the addresses of such Persons indicated in the first paragraph of this Agreement (or to such other address as a Party may provide by notice to the Party pursuant to this **Section 7**), and shall be effective (i) if dispatched by facsimile or telecopier and delivery is electronically confirmed by said media, the day such electronic

confirmation is received, (ii) if sent by courier, one business day after written confirmation by said courier of delivery, (iii) if sent by first class mail, two business days after its date of posting. A copy of each notice required to be sent pursuant to this Agreement shall also be sent to the General Counsel.

8. **Contractor's Representations, Warranties and Certifications:** As of the date of this Agreement, Contractor hereby represents as follows:
- a.) Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in rendering the Services under this Agreement by any federal department or agency.
 - b.) Contractor warrants that, as required by 45 C.F.R. § 93.100, no funds received under this Agreement have been or will be used to pay any person or influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant loan, or cooperative agreement. Pursuant to 45 C.F.R. § 93.110(d)(2), Contractor agrees to file a certification and disclosure form, if required, as provided in Appendix B to 45 C.F.R. Part 93-Disclosure Form to Report Lobbying.
 - c.) Contractor is duly authorized to enter into this Agreement, and the execution, delivery and performance of this Agreement will not conflict with any other agreement or instrument to which it is a party or by which it is bound and will not violate any law, regulation, order or other legal requirement by which Contractor or any of its assets is bound.
 - d.) Contractor shall perform the services required hereunder in a professional and work-personlike manner.
 - e.) Contractor is and will remain in compliance with, and will not take any actions contrary to the provisions of, any laws, rules, regulations, ordinances, orders or requirements of the Commonwealth and other Governmental Authorities applicable or implicated by the subject matter of this Agreement, including, without limitation, the statutes referenced in this Agreement.
 - f.) Contractor is an independent contractor of the Authority, and not an employee, partner or joint-venturer of the Authority.
 - g.) Contractor shall not discriminate against any qualified employee or applicant for employment because of race, color, national origin, ancestry, age, sex, religion, physical or mental handicap, or sexual orientation. Contractor agrees to comply with all applicable Federal and State statutes, rules, and regulations prohibiting discrimination in employment, including but not limited to: Title VII of the Civil Rights Act of 1964; the Age Discrimination in Employment Act of 1967; Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; and M.G.L. c.151B.

9. **Indemnification:**

To the full extent allowed by law, the Contractor shall defend, indemnify and hold harmless the Authority, including its employees, agents, officers and directors (the “Covered Persons”) from and against any and all liability, loss, claims, damages, fines, penalties, costs and expenses (including legal fees and costs), judgments and awards (collectively, “Damages”) sustained, incurred, or suffered by or imposed upon any Covered Person resulting from: (i) any breach of this Agreement or false representation of Contractor under this Agreement, (ii) any negligent acts or omissions or reckless or intentional misconduct of Contractor or any of Contractor’s agents, officers, directors, employees or subcontractors, or (iii) any actual or threatened claims that the services or any work product or deliverables produced as a result thereof contain or constitute slander, libel, defamation, disparagement, piracy, invasion of privacy or publicity, unauthorized use of name or likeness of any person, plagiarism, misappropriation, or infringement of United States statutory or common law copyright, trademark, trade secret, patent or other proprietary right, except to the extent based on materials, information or statements provided in writing or approved in writing by the Authority for publication. Without limiting the foregoing, Contractor shall defend, indemnify and hold harmless each Covered Person against any and all Damages that may directly or indirectly arise out of or may be imposed because of the failure to comply with the provisions of applicable law by Contractor or any of its agents, officers, directors, employees, or subcontractors.

10. **Ownership of Property:**

a.) Intellectual Property. Unless provided otherwise by law, ownership and possession of all information, data, reports, computer programs, drawings, documents, designs, models, inventions, equipment, and any other documentation, work product or product of tangible materials authored or prepared, in whole or in part, or purchased, obtained, created by Contractor pursuant to this Agreement or otherwise arising out of the performance of the Services required hereunder (collectively, the “Materials”), other than Contractor’s administrative communications, records, and files relating to this Agreement, are the sole property of, and shall vest in, the Authority as “works made for hire” or otherwise. The Authority will own the exclusive rights, worldwide and royalty-free, to and in all Materials prepared and produced by Contractor pursuant to this Agreement, including, but not limited to, United States and International patents, copyrights, trade secrets, know-how and any other intellectual property rights, and the Authority will have the exclusive, unlimited and unrestricted right, worldwide and royalty-free, to publish, reproduce, distribute, transmit and publicly display all Materials prepared by Contractor. The Authority shall retain exclusive intellectual property rights in all graphics and text provided to Contractor by the Authority for incorporation into final Materials prepared by Contractor. Contractor shall use graphics and text provided by the Authority for the sole purpose of fulfilling contractual obligations created by this Agreement. Contractor hereby irrevocably assigns to the Authority all of Contractor’s right, title and interest in and to the Materials. Contractor agrees that it shall execute all instruments and documents and take all other actions that may be reasonably necessary to protect the rights of the Authority as set forth in this Section and vest in the Authority ownership of the Materials.

The Federal Awarding Agency will retain a royalty-free, nonexclusive, irrevocable license to reproduce, publish or otherwise use and authorize others to use, for Federal Government purposes, the copyright in any work developed in connection with Services under this Agreement that were funded through a federal grant award to the Authority, or a subgrant or subcontract thereof, and in any rights to a copyright purchased under this Agreement with funds received by the Authority through a federal grant award.

- b.) **Furnishings and Equipment.** Unless otherwise provided by law or a federal grant award, title to all furnishing and equipment provided by the Authority under the terms of this Agreement, and paid for with public funds, shall vest in and be retained by the Authority. Any Contractor who is in possession of furnishing or equipment to which the Authority has title shall maintain and keep on file a written inventory of all such property. The inventory shall contain but not be limited to the description and location of each item. Upon completion of performance hereunder, the Contractor shall return such furnishing and equipment, in its possession, in the same condition as at the commencement of this Agreement, wear and tear only excepted.
11. **Assignment by Contractor; Subcontracting:** The Authority may assign its rights and obligations under this Agreement to any Person who succeeds to all or any portion of the Authority's business, and all covenants and agreements hereunder shall inure to the benefit of and be enforceable by said successors or assigns. Contractor shall not assign or in any way transfer any interest in, or any of Contractor's rights or obligations under this Agreement, including by operation of law, without the prior written consent of the Authority. The Contractor shall not subcontract any services to anyone without the prior written consent of the Authority, and any such subcontracts shall be consistent with and subject to the provisions of this Agreement. Subcontracts will not relieve or discharge the Contractor from any duty, obligation, responsibility or liability arising under this Agreement. The Contractor shall provide the Authority with copies of all subcontracts.
12. **Conflicts of Interest:** Contractor acknowledges the application of the Massachusetts Conflict of Interest Law (M.G.L. c.268A) to the subject matter of this Agreement and that Contractor and its subcontractors if any may be considered "special state employees" and thus subject to the provisions of such law. Contractor agrees that, for the duration of the term of this Agreement, it and its subcontractors, if any, shall remain in full compliance with the Massachusetts Conflict of Interest Law. Contractor further agrees to provide the Authority with the information listed in Exhibit 1 hereto and to disclose all financial interests in the subject matter of this Agreement held by Contractor. Contractor and its subcontractors, if any, shall not take any action which it knows or has a reasonable basis to believe would cause any officer or employee of the Authority to participate in any decision relating to this Agreement which affects his/her personal interest or any corporation, partnership, or association in which (s)he is directly or indirectly interested or to have any interest, direct or indirect, in this Agreement or the proceeds thereof.
13. **Record Keeping, Audit, and Inspection of Records:** Contractor shall maintain books, records and other compilations of data pertaining to its activities under this Agreement to the extent and in such detail as shall properly substantiate claims for payment and Contractor's performance of its duties under the Agreement. All such records shall be

kept for a period of not less than seven (7) years or for such longer period as is specified by the Authority (the "Retention Period"). The Retention Period starts on the first day after final payment under this Agreement is made. If any litigation, claim, negotiation, audit or other action involving the records is commenced prior to the expiration of the Retention Period, all records shall be retained until completion of the action and resolution of all issues resulting therefrom, or until the end of the Retention Period, whichever is later. The Authority, or its designees, shall have the right at reasonable times and upon reasonable notice, to examine and copy the books, records, and other compilations of data of Contractor which pertain to the provisions and requirements of the Agreement. Such access shall include on-site audits, reviews, and copying of records. If such audit reveals that any portion of the fees was utilized for purposes not permitted under this Agreement, then Contractor shall refund to the Authority the amount determined by such audit within thirty (30) days of Contractor's receipt of such audit and demand. Pursuant to 45 C.F.R. § 93.36(i)(10), Contractor must provide access by the Federal Grantor Agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers and records of the Contractor examination, excerpts, and transcriptions.

14. **Data Privacy and Security:**

- a.) Contractor shall execute and comply with the provisions in the Business Associates' Agreement attached as Exhibit 2 hereto.
- b.) Contractor hereby agrees to protect the physical security and restrict access to all data compiled for, used by, or otherwise in the possession of Contractor in performance of the services hereunder in accordance with Contractor's reasonable business practices and as otherwise provided in this Agreement. Contractor shall comply with all applicable laws and regulations relating to confidentiality and privacy, including, without limitation, all requirements of M.G.L. c.66A implicated by the subject matter of this Agreement. Contractor shall comply with the Authority's data privacy and security policies and requirements.
- c.) Contractor shall provide prompt notice to the Authority if it learns of a breach of Contractor's security under M.G.L. c. 93H, which is the unauthorized acquisition or use of unencrypted data that includes personal information that creates a substantial risk of identity theft or fraud. In addition to any rights the Authority may have under the indemnification provisions of this agreement, the Contractor shall indemnify the Authority for the reasonable and out-of-pocket cost of providing any notices required by M.G.L. c. 93H in connection with such breach of security.

15. **Confidentiality/Publicity**

- a.) Contractor shall not disclose any data or information received pursuant to this Agreement provided to Contractor by the Authority if said data or information is identified as confidential or proprietary at or prior to disclosure, or if not so identified, would appear to a reasonably prudent person to be non-public, confidential or proprietary in nature ("Confidential Information"), unless it has received the prior written approval of the Authority. Contractor shall not use the Confidential Information received from the Authority for any purposes other than the Services and in accordance with the reasonable directions of the Authority. Contractor shall not remove any data of the Authority from the premises of the Authority without the

approval of the Authority. Upon request of the Authority, the Contractor shall return all Confidential Information received pursuant to this Agreement. Notwithstanding anything to the contrary in the foregoing but subject to the terms of this section, Contractor, subject to its confidentiality obligations under this Agreement, may (i) retain copies of Confidential Information that it is required to retain by law or regulation, (ii) retain copies of its work product that contain Confidential Information for archival purposes or to defend its work product and (iii) in accordance with legal, disaster recovery and records retention requirements, store such copies and derivative works in an archival format (e.g. tape backups), which may not be returned or destroyed upon request of Authority. Contractor shall provide prompt notice to the Authority if it learns of any use or disclosure of Confidential Information received pursuant to this Agreement, when such use or disclosure was not permitted by this Agreement. Further, Contractor shall make commercially reasonable efforts to promptly retrieve such Confidential Information and to take other commercially reasonable actions to mitigate harmful consequences to the extent that such consequences are known and mitigation is practicable.

- b.) Confidentiality obligations under **Section 15(a)** of this Agreement shall not apply to information (i) that is publicly available (not as a result of a breach by the receiving Party); (ii) already known to the receiving Party; (iii) disclosed by a third party with a right to disclose; (iv) independently developed by the receiving Party without reference to the other Party's confidential information; or (v) required by law or court order. The receiving Party will, unless prohibited by law, give prompt notice to the disclosing Party of any disclosure required by law so that the disclosing Party may seek a protective order.
- c.) Contractor shall collaborate with the Authority to prepare any public statement or announcement relating to or bearing on the work performed or data collected under this Agreement or to prepare any press release or for any news conference in which the Authority is concerned or discussed. Contractor shall not release, make or issue any such public statement or announcement relating to or arising from the Services or this Agreement without the prior written consent of the Authority.

16. Public Records:

- a) As a public entity, the Authority is subject to the Massachusetts Public Records Law (M.G.L. c.66 and 66A) and thus certain documents and other materials made or received by the Authority are subject to public disclosure unless they are specifically exempted. Contractor specifically acknowledges that it bears the risk that any material submitted by Contractor to the Authority pursuant to this Agreement may be deemed not to qualify for a public records exemption.
- b) Furthermore, it is the intention of the parties that the Authority will continue to exercise custody of records received or produced under the Agreement. Requests for access to said records shall be forwarded immediately to the Authority for response. Contractor shall not release information except as authorized to deliver services under this Agreement.

- 17. Choice of Law:** This Agreement and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the Commonwealth,

without giving effect to the conflict of laws principles thereof. All legal actions arising out of or relating to this Agreement shall be commenced and maintained in a state or federal court sitting in the Commonwealth. By execution and delivery of this Agreement, each of the parties accepts for such Party, generally, exclusively and unconditionally, the jurisdiction of said courts. This **Section 17** shall not be construed to limit any other legal rights of the parties. Contractor acknowledges and agrees that any breach or threatened breach of this Agreement by Contractor will result in substantial, continuing and irreparable damage to the Authority. Therefore, in addition to any other remedy that may be available to the Authority, the Authority will be entitled to injunctive or other equitable relief by a court of appropriate jurisdiction in the event of any breach or threatened breach by Contractor of the terms of this Agreement.

18. **Amendments and Waivers:** No amendment to or modification of this Agreement (including any work order), and no waiver of any provision hereof shall be effective unless the same shall be in writing and shall be signed by each of the parties hereto. Any waiver by the Authority of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of such provision or any other provision of this Agreement. Forbearance or indulgence in any form or manner by a Party shall not be construed as a waiver, nor in any way limit the remedies available to that Party.
19. **Severability:** Each provision of this Agreement shall be treated as a separate and independent clause and any decision from a court of competent jurisdiction to the effect that any clause or provision of this Agreement is null or unenforceable shall in no way impair the validity, power or enforceability of any other clause or provision of this Agreement.
20. **Binding Effect; Benefit; Entire Agreement and Attachments:** This Agreement shall be binding on the parties hereto and their respective successors and permitted assigns and shall inure to the benefit of the parties and their respective successors and permitted assigns. Except as provided in the immediately preceding sentence, nothing in this Agreement shall be construed to create any rights or obligations except between the parties hereto, and no Person shall be regarded as a third party beneficiary of this Agreement. This Agreement embodies the entire understanding and agreement between the parties hereto with respect to the subject matter of this Agreement and supersedes all prior oral or written agreements and understandings relating to such subject matter. No statement, representation, warranty, covenant or agreement of any kind not set forth in this Agreement will affect, or be used to interpret, change or restrict, the express terms and provisions of this Agreement.
21. **Headings:** The headings and captions of the various subdivisions of this Agreement are for convenience of reference only and will in no way modify or affect the meaning or construction of any of the terms or provisions hereof.

22. **Counterparts:** This Agreement may be executed in two or more counterparts, and by different parties hereto on separate counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.
23. **Federal Awarding Agency Reporting Requirements:** The Federal Awarding Agency will require regular reporting in connection with Services that are funded by federal grant money awarded to the Authority. Contractor will comply with any reporting requirements applicable to it and will cooperate with the Authority in meeting all such reporting.
24. **Remedies for Poor Performance.** The Authority may seek remedies for poor performance on the part of the Contractor under this Agreement. If the Contractor fails to perform in a manner that is satisfactory to the Authority, the Authority may take one or more of the following actions:
1. Require the Contractor to develop and submit a corrective action plan for the Authority's review and approval. Such correction action plan must be submitted within five business days of the Authority's request, unless a longer time is agreed to by the Parties. Under any correction action plan, the Authority may require the Contractor to (a) subcontract with a material subcontractor deemed satisfactory by the Authority to perform any responsibilities under this Agreement or a Work Order; (b) otherwise alter the manner or method in which the Contractor performs any such responsibilities; and/or (c) implement any such other action that the Authority reasonably deems appropriate.
 2. Provide or procure the services reasonably necessary to cure any default by the Contractor if, in the Authority's reasonable judgment: (a) the Contractor's default is not so substantial as to require termination of this Agreement; (b) reasonable efforts to induce the Contractor to cure are unavailing; and (c) the default can be covered by the Authority or another resource without unduly interfering with the Contractor's continued performance. If the Authority finds it necessary to cover the default under these circumstances, the Contractor shall reimburse the Authority for the reasonable cost of cover.
 3. Suspend or recover payments from the Contractor; or
 4. Terminate the Contract.
25. **Anti-Boycott Covenant.** During the time that this Agreement is in effect, neither the Contractor nor any affiliated company, as hereafter defined, shall participate in or cooperate with an international boycott, as defined in Section 999(b)(3) and (4) of the Internal Revenue Code of 1954, as amended, or engage in conduct declared to be unlawful by Mass. Gen. Laws ch. 151E, § 2. Without limiting such other rights as it may have, the Authority shall be entitled to rescind this Agreement in the event of non-compliance with this section. As used herein, an affiliated company shall be any business entity directly or indirectly owning at least 51 percent of the ownership interests of the Contractor.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as a document under seal as of the Effective Date set forth in the first paragraph hereof.

Commonwealth Health Insurance Connector Authority Contractor

By: _____

By: _____

Name: Louis Gutierrez

Name: _____

Title: Executive Director

Title: _____

Date: _____

Date: _____

**ATTACHMENT A
WORK ORDER 01**

This Work Order is subject to the terms and conditions of the Master Services Agreement (as may be amended from time to time, (the "Agreement") dated ____ between the Commonwealth Health Insurance Connector Authority (the "Authority") and ____ (the "Contractor").

EXHIBIT 1

CONSULTANT/CONTRACTOR MANDATORY DISCLOSURE FORM

Additional Income Disclosure. Please identify any contracts or grants with (or other income received from) the Commonwealth, including any political subdivision or public authority, in effect as of the date of execution of this Agreement. Enter N/A if none. Attach additional sheets as necessary.

Disclosure of Persons with Financial Interest. The following individuals have a financial interest in the Agreement and/or more than a one percent (1%) equity interest in the Consultant/Contractor. Enter N/A if none. Attach additional sheets as necessary.

Conflict of Interest. Consultant/Contractor acknowledges that the individuals performing services under this Agreement may be considered “special state employees” subject to the provisions of the Massachusetts Conflict of Interest Law, M.G.L. c.268A, and certifies that these individuals are familiar with the restrictions imposed thereon.

The information submitted herein is certified by Consultant/Contractor to be accurate and signed under the penalty of perjury.

Name of Consultant/Contractor: _____

Signature: _____

Name: _____

Title: _____

Date: _____

EXHIBIT 2

BUSINESS ASSOCIATES AGREEMENT

Whereas the Commonwealth Health Insurance Connector Authority (the “Connector” or “Authority”), an independent public authority of the Commonwealth of Massachusetts with a principal office and place of business at 100 City Hall Plaza , Boston, Massachusetts, and _____ with an office at _____, (“Contractor”), have entered into a Master Services Agreement dated XXX (“Services Agreement”); and

Whereas, under the Services Agreement, Contractor will perform certain services (“Services”) for the Authority; and

Whereas, in order to perform the services, Contractor may be required to see or use information about identifiable individuals who are applicants to or members of a program run by the Authority or by the Executive Office of Health and Human Services or both; and

Whereas, the Authority and the Contractor (collectively, “Parties”) desire that the disclosure and use of this information be accomplished in a way that complies with relevant laws and safeguards the privacy of the individuals whose information is involved;

Now therefore, Contractor and Authority enter into this Business Associate Agreement, effective July 1, 2016 (“Effective Date”), which shall define the obligations of each party with respect to such information.

SECTION 1. DATA MANAGEMENT AND CONFIDENTIALITY

Section 1.1 Definitions

Business Associate. “*Business Associate*” shall have the same meaning as the term “business associate” at 45 CFR 160.103.

Business Associate Services. “*Business Associate Services*” or “*Services*” shall mean the functions, activities, or services to be provided by the Contractor for or on behalf of the Commonwealth Entities pursuant to the Services Agreement or this Business Associate Agreement.

Commonwealth Security Information. “*Commonwealth Security Information*” shall mean all data that pertains to the security of the Commonwealth’s information technology, specifically, information pertaining to the manner in which the Commonwealth protects its information technology systems against unauthorized access to or modification of information, whether in storage, processing or transit, and against the denial of service to authorized users, or the provision of service to authorized users, including those measures necessary to detect, document and counter such threats, where a Party gains access to such data in connection with performing its obligations under this Agreement or any Separate Agreement.

Data Matching Agreement. “*Data Matching Agreement*” shall mean any agreement between one or more of the Commonwealth Entities and another state or federal agency related to the Commonwealth’s receipt of data necessary to perform eligibility determinations or otherwise administer the Programs.

Individual. “*Individual*” shall mean the person to whom the PI refers and shall include a person who qualifies as a personal representative in accord with 45 CFR § 164.502 (g).

Privacy Rule. “*Privacy Rule*” shall mean the Standards of Privacy of Individually Identifiable Health Information, at 45 CFR Parts 160 and 164.

Protected Information (PI). “*Protected Information*” or “*PI*” shall mean any “personal data” as defined in Mass. Gen. Laws c. 66A; any “personal information” as defined in Mass. Gen. Laws c. 93H; any “patient identifying information” as defined in 42 CFR Part 2; any “protected health information” as defined in the Privacy Rule; any “personally identifiable information” as defined in 45 CFR § 155.260, and any other confidential individually identifiable information under any federal and state law (including for example any state and federal tax return information). Information, including aggregate information, is considered PI if it is not fully de-identified in accord with 45 CFR 164.514 (a), (b), and (c). PI relating to an applicant or beneficiary includes PI relating to a non-applicant, as defined in 42 CFR §435.4. PI relating to an applicant or beneficiary includes PI relating to a non-applicant, as defined in 42 CFR §435.4.

Required By Law. “*Required By Law*” shall have the same meaning as used in the Privacy Rule.

Secretary. “*Secretary*” shall mean the Secretary of the US Department of Health and Human Services or his or her designee.

Security Incident. “*Security Incident*” shall have the same meaning as used in the Security Rule.

Security Rule. “*Security Rule*” shall mean the Security Standards for the Protection of Electronic Protected Health Information, at 45 CFR Parts 160 and 164.

All terms used but not otherwise defined in this Business Associates Agreement shall be construed in a manner consistent with the Privacy and Security Rules and all other applicable state or federal privacy or security laws.

Section 1.2 Obligations of the Parties

Section 1.2.1 Mass. Gen. Laws c. 66A and other Privacy and Security Obligations

The Contractor acknowledges that in the performance of Services it will receive “Personal Data” from, and/or create, receive, maintain, use or transmit Personal Data for or on behalf of the Commonwealth Entities, and that in so doing, it becomes a “Holder” of Personal Data, as such terms are used within Mass. Gen. Laws c. 66A. The Contractor agrees that, in a manner consistent with the Privacy and Security Rules, it shall comply with Mass. Gen. Laws c. 66A, and any other applicable privacy or security law (state or federal) governing the Contractor’s use, disclosure, and maintenance of any such Personal Data or other PPI, including but not limited to 42 CFR Part 431, Subpart F; Mass. Gen. Laws c. 93H; 801 CMR § 3.00; 201 CMR 17; and Executive Order 504.

The Contractor further agrees that it shall comply (and shall cause its Representatives to comply) with any other privacy and security obligation that is applicable to any PI as the result of the Commonwealth Entities having entered into a Data Matching Agreement or other agreement with a third party (such as but not limited to the Social Security Administration or the Massachusetts Department of Revenue) to obtain or to access the data, including by way of illustration and not limitation, signing any written compliance acknowledgment or confidentiality agreement or complying with any other privacy and security obligation required by the third party for access to data received by such Commonwealth Entity from the third party or for access to any system or database containing any such data or through which such data could be accessed.

Section 1.2.2 Business Associate

The Contractor acknowledges that in the performance of Services, it is the Business Associate of the Authority. The Contractor further acknowledges that Title XIII (the “HITECH Act”) of the American Recovery and Reinvestment Act of 2009 and related modifications to the Privacy and Security Rules issued by the US Department of Health and Human Services on January 25, 2013, at 78 FR 5566 through 5702, with effective date of March 26, 2013, increased the privacy and security obligations of, and imposed certain civil and criminal penalties upon, a Business Associate under the Health Insurance Portability and Accountability Act and the Privacy and Security Rules. Further, the HITECH Act and related modifications to the Privacy and Security Rules imposed direct responsibility upon the Business Associate as if the Business Associate were a Covered Entity, as that term is used in the Privacy and Security Rules, for certain obligations.

Section 1.2.3 Agents and Subcontractors

The Contractor shall not engage any agent or subcontractor to perform any activity of the Contractor under the Services Agreement or this Business Associate Agreement, unless

the Contractor has received prior consent from the Authority, consistent with the Services Agreement.

If the Authority grants consent for the engagement of an agent or subcontractor, the Contractor shall ensure that the agent or subcontractor agrees in writing to the same restrictions and conditions that apply to the Contractor under this Business Associate Agreement, including, but not limited to, implementing reasonable safeguards to protect such information. The Contractor must ensure that any required written agreement for permitted agents and subcontractors meets all requirements of a Business Associate agreement, as required for agents and subcontractors of a Business Associate, under the Privacy and Security Rules, including but not limited to 45 CFR §155.260, 45 CFR §160.103; 45 CFR §164.502(e)(1)(ii) and (2); and 45 CFR §164.504(e).

The Contractor shall ensure that its agents or subcontractors who (i) have access to Personal Information as defined in Mass. Gen. Law c. 93H, and Personal Data, as defined in Mass. Gen. Laws c. 66A, that the Contractor uses, maintains, receives, creates or otherwise obtains under this Agreement or any Separate Agreement, or (ii) have access to the Contractor's systems, applications or databases containing such information or data, sign written certification containing all applicable data security obligations as required by Executive Order 504. Upon request, the Contractor shall provide the Authority with a listing of its agents or subcontractors who have such access and copies of these certifications.

The Contractor is solely responsible for its agents' and subcontractors' compliance with this provision and all requirements in this Business Associate Agreement, and shall not be relieved of any obligation because the data was in the hands of its agents or subcontractors.

Section 1.2.4 Data Security

(i) Administrative, Physical, and Technical Safeguards

In addition to any other requirement in the Services Agreement or this Business Associate Agreement, the Contractor shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of PI and that prevent use or disclosure of such data other than as provided for by the Services Agreement or this Business Associate Agreement. All such safeguards must meet, at a minimum, all standards set forth in the Privacy and Security Rules, as applicable to a Business Associate, and all standards set for at 45 CFR 155.260, and must comply with all Commonwealth security and information technology resource policies, processes, and mechanisms established for access to PI, including any applicable data security policies and procedures established by the Commonwealth. As one of its safeguards, the Parties shall not transmit PI in non-secure transmissions over the Internet or in non-secure transmissions over any wireless communication device. The Contractor shall protect from inappropriate use or disclosure any password,

user ID, or other mechanism or code permitting access to any database containing PI.

In the event the Contractor (or a Representative of the Contractor) is granted direct access into any systems, databases, or other information technology resources owned or operated by the Authority or by EOHHS or by both, the Contractor shall comply with all security mechanisms and processes established for such access established by EOHHS or the Authority or both, as applicable, and any Commonwealth requirements established by Executive Order 504, applicable Commonwealth policies and procedures, and the Information Technology Division. Each Party shall protect from inappropriate use or disclosure any password, user ID, or other mechanism or code permitting access to any such systems, databases, or information technology resources, and shall give the Authority prior notice of any change in personnel or other Representatives whenever the change requires a termination or modification of any such password, user ID, or other security mechanism or code, to maintain the integrity of the system, database, or information technology resource. Except as agreed to by the Authority (and subject to any conditions to such agreement), the Contractor may not permit any of its Representatives to access such systems, databases, or information technology resources with any personal mobile devices.

The Contractor agrees to allow the Authority and Representatives of the Authority access to its premises where PI is kept for the purpose of inspecting privacy and physical security arrangements that have been implemented to protect such data.

Upon request, the Contractor shall provide the Authority with copies of all written policies, procedures, standards and guidelines related to the protection, security, use and disclosure of PI, Commonwealth Security Information, or other confidential information and the security and integrity of its technology resources.

(ii) Commonwealth Security Information

If through the Services Agreement or this Business Associate Agreement the Contractor obtains access to any Commonwealth Security Information, the Contractor may only use such information for the purposes for which it obtained access and is prohibited from making any disclosures of or about such information, unless in accord with the Authority's express written instructions. In using the information for such permitted purposes, the Contractor shall limit access to the information only to staff or agents necessary to perform the permitted purposes. While in possession of such information, the Contractor shall apply all privacy and security requirements set forth herein, as applicable to maintain the confidentiality, security, integrity, and availability of such information. Notwithstanding any other provision in the Services Agreement or this Business Associate Agreement, the Contractor shall report any non-permitted use or disclosure of such information to the Authority immediately within twenty-four hours. The Contractor shall immediately take all reasonable and legal

actions to retrieve such information if disclosed to any non-permitted individual or entity; shall include a summary of such retrieval actions in its required report of the non-permitted disclosure; and shall take such further retrieval action as the Authority shall require. Notwithstanding any other provision in this Agreement or any Separate Agreement regarding termination, the Contractor may not retain any Commonwealth Security Information upon termination of this Agreement or applicable Separate Agreement, unless such information is expressly identified in any retention permission granted in accord with **Section 3.4.3**. If retention is expressly permitted, all data protections stated herein survive termination of the Services Agreement or this Business Associate Agreement and shall apply for as long as the Contractor retains the information.

Section 1.2.5 Non-Permitted Use or Disclosure of PI

As used in this **Section 1.2.5**, the term “*Event*” refers to the following, either individually or collectively: (1) any use or disclosure of PI by the Contractor, its subcontractors or agents, not permitted under the Services Agreement or this Business Associate Agreement, (2) any Security Incident involving PI by the same, (3) any event involving PI that would trigger consumer or oversight agency notification obligations under the Privacy Rule, including a Breach as defined by 45 CFR 164.402, Mass. Gen. Laws 93H, or other similar federal or state data privacy or security laws, or (4) any event involving PI that would trigger notification obligations under a Data Matching Agreement.

(i) Generally

Upon the Contractor discovering an Event, the Contractor shall: (a) immediately take all appropriate lawful action necessary to retrieve, to the extent practicable, any PI involved in the Event and to mitigate, to the extent practicable, any known harmful effect of the Event; and (b) as soon as possible verbally report the Event to the Authority, *provided, that* the Contractor shall verbally report any Event that requires or may reasonably require reporting by the Authority to a third party under a Data Matching Agreement immediately to the Contracting Party upon becoming aware of such Event.

In the case of an Event, as soon as possible (and no more than two business days after the Contractor becomes aware of the Event), the Contractor shall provide the Authority with a written report outlining the Event with the following details (or, if unavailable at such time, as many of the following details as possible along with an explanation of the cause of the delay and the actions the Contractor will take to further gather and confirm facts surrounding the Event):

- (i) the date of the Event or, if unknown, the estimated date;
- (ii) the date of the discovery of the Event;
- (iii) the nature of the Event (e.g., cause, contributing factors, chronology of events) and the nature of the PI involved (e.g., types of identifiers such as name, address, age, social security numbers or account numbers; or medical or financial or other types of information);

- (iv) the number of Individuals involved or, if unknown, a reasonable estimate (categorized by the type of PI involved, if applicable) with a description of how the exact or estimated number of Individuals was determined;
- (v) the nature and scope of the Contractor's investigation; and
- (vi) the harmful effects of the Event known to the Contractor, and all of Contractor's taken or planned mitigation actions and their results.

In the case of an Event, the Contractor shall also, at the Authority's request: (a) take such other actions as identified by the Authority to provide further information or clarification regarding the Event; (b) provide the Authority with a written review of, and description of any plans to implement changes to, the Contractor's policies and procedures, including staff training, to prevent a similar event in the future; (c) take such actions as may be required by any applicable state or federal law concerning the privacy and security of any PI involved in the Event; and (d) take such other actions as identified by the Authority to further mitigate, to the extent practicable, any harmful effect of the Event. Any actions to mitigate harmful effects of such privacy or security violations undertaken by the Contractor on its own initiative or pursuant to the Authority's request under this paragraph shall not relieve the Contractor of its obligations to report such violations under this paragraph or any other provisions of the Services Agreement or this Business Associate Agreement.

(ii) Consumer Reporting Obligations

In the event that the consumer notification provisions of 45 CFR §164.400 through 164.410, Mass. Gen. Laws c. 93H, or similar notification requirements in other state or federal laws are triggered by an Event, the Contractor shall promptly comply with its obligations under such laws. If the Authority determines, in its sole discretion, that it is required to give such notifications, the Contractor shall, at Authority's request, assist the Authority in undertaking all actions necessary to meet consumer notification requirements and in drafting the consumer notices and any related required notices to state or federal agencies for the Authority's review and approval, but in no event shall the Contractor have the authority to give these notifications on the Authority's behalf. The Contractor shall reimburse the Authority for reasonable costs incurred by the Authority associated with such notification, but only to the extent that such costs are due to: (i) the Contractor's failure to meet its responsibilities under, or in violation of, any provision of the Services Agreement or this Business Associate Agreement, (ii) the Contractor's violation of law, (iii) the Contractor's negligence, (iv) the Contractor's failure to protect data under its control with encryption or other security measures that constitute an explicit safe-harbor or exception to any requirement to give notice under such laws, or (v) any activity or omission of the Contractor's Representatives resulting in or contributing to the Event.

Section 1.2.6 Prohibition on Sale of Electronic Health Records or PI Obtained from Electronic Health Records

Except as provided in Section 13405(d)(2) of the HITECH Act, Contractor will not directly or indirectly receive remuneration in exchange for any PI of an Individual unless the Authority has obtained from the Individual, in accordance with 45 C.F.R. § 164.508, a valid authorization that includes, in accordance with each section, a specification of whether the PI can be further exchanged for remuneration by the entity receiving PI of that Individual. Nothing in this Section shall be construed to allow Contractor to disclose PI except as provided in other provisions of the Services Agreement or this Business Associate Agreement.

Section 1.2.7 Response to Legal Process

The Contractor shall report to the Authority, both verbally and in writing, any instance where PI, Commonwealth Security Information or any other data obtained from the Authority under this Agreement or any Separate Agreement is subpoenaed or becomes the subject of a court or administrative order or other legal process. The Contractor shall, if directed by the Authority to respond, take all necessary legal steps, including objecting to the request when appropriate, to comply with Mass. Gen. Laws c. 66A, 42 CFR 431.306(f), 42 CFR Part 2, and any other applicable federal and state law. If the Authority determines that it shall respond directly, the Contractor shall fully cooperate and assist the Authority in its response. In no event shall the Contractor's reporting obligations under this paragraph be delayed beyond two (2) business days preceding the return date in the subpoena or legal process, or two (2) business days from obtaining such request for data, whichever is shorter.

Section 1.2.8 Individual's Privacy Rule Rights

The Contractor, with respect to any PI in its possession: (a) shall take such action(s) in sufficient time and manner as may be requested by the Authority that are necessary to meet the Authority's obligations under 45 CFR §§ 164.522, 164.524, 164.526, and 164.528; and (b) if an Individual contacts the Contractor with respect to exercising any rights the Individual may have under 45 CFR §§ 164.522, 164.524, 164.526, and 164.528 with respect to such PI, shall notify the Authority within two (2) business days of the Individual's request and cooperate with the Authority to meet any of its obligations with respect to such request.

With respect to an Individual's right to an accounting under 45 CFR § 164.528, the Contractor shall document all disclosures of PI and other data access activities as would be necessary for the Authority to respond to a request by an Individual for an accounting in accord with 45 CFR § 164.528.

Section 1.2.9 Individual's Direct Authorization to Disclose PI to Third Party

In the event the Contractor receives a request from an Individual or from a third party to release PI to a third party pursuant to a consent, authorization, or other written document, the Contractor shall, within three (3) business days of receipt of such consent, authorization, or other written document, notify the Authority and shall cooperate with the Authority in confirming the validity and sufficiency of such document before releasing any PI to the third party.

Section 1.2.10 Compliance Access for Secretary

The Contractor shall make its internal practices, books, and records, including policies and procedures relating to the use and disclosure of PI pursuant to the Services Agreement or this Business Associate Agreement, available to the Authority or, upon the Authority's written request, to the Secretary, in a time and manner designated by the Authority or the Secretary for purposes of the Secretary determining the Contractor's compliance with the Privacy and Security Rules. Further, the Contractor must comply with any direct obligation that it may have under the Privacy and Security Rules to comply with any request from the Secretary with respect to its direct obligations under, and its compliance with, such rules.

Section 1.2.11 Data Privacy and Security Custodian

The Contractor shall provide the Authority with the name of one or more individual(s) who shall act as Privacy and Security Officer(s) and be responsible for compliance with this Business Associate Agreement. The Contractor shall also notify the Authority in writing of any transfer of such duties to other persons within its organization.

Section 1.2.12 Access to Systems, Databases and Resources

In connection with the Contractor's performance of its obligations under the Services Agreement or this Business Associate Agreement, it may be necessary for the Contractor and its Representatives to access systems, databases, or other information technology resources owned and/or operated by the Authority or by EOHHS or by both.

The Contractor agrees that it shall restrict access to such systems, databases, or other information technology resources to only those authorized Representatives of the Contractor who need such data to perform their official duties in connection with the Contractor's performance under the Services Agreement or this Business Associate Agreement.

The Contractor further agrees that it shall ensure that any Representative of the Contractor that is granted access any such system, application or information technology resource: (i) uses such system, application or resource (and any PI accessible within or through it) solely to perform the authorized purpose(s) for which such Representative was granted such access; and (ii) does not access or use PI available through such system, application or resource except as necessary to perform such authorized purpose(s).

To the extent that any PI or other data received from a third party under or in connection with a Data Matching Agreement is accessible within or through a system, database, or other information technology resource owned and/or operated by the Authority, the Contractor agrees that it shall ensure that when it accesses any such system, application or information technology resource for any reason, it has satisfied all applicable requirements of the applicable Data Matching Agreement(s) prior to accessing the system, application or resource, and continues to satisfy such requirements for so long as such access is continued. Each time a Party requests and/or grants (as applicable) a Representative of such Party access to any such system, application or resource, such Party shall be deemed to represent and warrant to the Authority that the Representative has satisfied all requirements of any applicable Data Matching Agreement(s) that may be applicable to such access.

Section 1.2.13 Disclosure of Reports and Other Deliverables

The Contractor shall not disseminate, reproduce, display or publish any draft or final report or other deliverable prepared for the Authority under the Services Agreement or this Business Associate Agreement without the prior written consent of the Authority.

Section 1.3 Permitted Uses and Disclosures by the Contractor

Except as otherwise limited in the Services Agreement or this Business Associate Agreement, the Contractor may use or disclose PI only as follows:

Section 1.3.1 Agreement Functions and Services

Except as otherwise limited in the Services Agreement or this Business Associate Agreement, the Contractor may use or disclose PI to perform Services for, or on behalf of, the Commonwealth Entities as specified in the Services Agreement or this Business Associate Agreement, *provided, that* such use or disclosure would not: (1) violate the Privacy Rule or other applicable laws such as 42 CFR Part 431, Subpart F; 42 CFR Part 2; 45 CFR 155.260; and Mass. Gen. Laws c. 66A if done by the Authority; (2) violate the minimum necessary policies and procedures of the Commonwealth Entities; or (3) conflict with statements in the Commonwealth Entities' notice of privacy practices. In performing functions, activities, or services under the Services Agreement or this Business Associate Agreement, the Contractor represents that it shall seek from the Commonwealth Entities only the amount of PI that is minimally necessary to perform the particular function, activity, or service. To the extent the Services Agreement or this Business Associate Agreement permits the Contractor to request, on the Commonwealth Entities' behalf, PI from other covered entities under the Privacy Rule, the Contractor shall only request an amount of PI that is reasonably limited to the minimal necessary to perform the intended function, activity, or service.

Section 1.3.2 Required by Law

The Contractor may use or disclose PI as Required by Law, consistent with the restrictions of 42 CFR 431.306 (f), Mass. Gen. Laws c. 66A, and the restrictions in any

other applicable privacy or security law (state or federal) governing the Contractor's use, disclosure, and maintenance of any PI under the Services Agreement or this Business Associate Agreement.

Section 1.3.3 Restriction on Contacting the Individual

The Contractor agrees that it may not use PI to attempt to contact an Individual, unless such contact is otherwise specified in the Services Agreement or this Business Associate Agreement as necessary to perform functions, activities, or services for the Authority under the Services Agreement or this Business Associate Agreement, or unless instructed in writing to do so by the Authority.

Section 1.3.4 Publication Restriction

The Contractor shall not use PI for any publication, statistical tabulation, research, or similar purpose, even if PI has been transformed into de-identified data in accord with the standards set forth in 45 CFR §164.514(a), (b), and (c).

Section 1.3.5 Use and Disclosure for a Party's Management and Administration

The Contractor may use and disclose PI for the Contractor's proper management and administration, provided:

1. Such management and administrative activities are directly related to its performance under the Services Agreement or this Business Associate Agreement;
2. Are undertaken with de-identified PI if reasonably possible;
3. The use and disclosure of PI for such activities is necessary and complies with minimally necessary principles;
4. The Contractor does not attempt to contact the Individual for such purposes; and
5. With respect to disclosures for management and administrative purposes, the Contractor may only make such disclosures if one of the two following conditions is met:
 - a. The disclosure is Required By Law; or
 - b. The Contractor (i) obtains reasonable assurances from the person to whom the PI is disclosed that the PI will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person; and (ii) the person to whom the PI is disclosed notifies the Contractor of any instances of which it is aware in which the confidentiality of the PI has been breached.

Upon request, the Contractor shall provide the Authority with a summary of such management and administrative uses and disclosures in sufficient detail to inform the Authority of their nature and general frequency.

Section 1.3.6 Use or Disclosure to Meet Legal Obligations

The Contractor may use and disclose PI to carry out its legal obligations, provided:

1. Such obligations directly related to its performance under the Services Agreement or this Business Associate Agreement;
2. Are undertaken with de-identified PI if reasonably possible;
3. The use and disclosure of PI for such activities is necessary and complies with minimally necessary principles;
4. The Contractor does not attempt to contact the Individual for such purposes; and
5. With respect to disclosures to carry out legal obligations, the Contractor may only make such disclosures if one of the two following conditions is met:
 - a. The disclosure is Required By Law; or
 - b. The Contractor (i) obtains reasonable assurances from the person to whom the PI is disclosed that the PI will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person; and (ii) the person to whom the PI is disclosed notifies the Contractor of any instances of which it is aware in which the confidentiality of the PI has been breached.

Upon request, the Contractor shall provide the Authority with a summary of such uses and disclosures in sufficient detail to inform the Authority of their nature and general frequency.

Section 1.4 Authority Obligations

Section 1.4.1 Changes in Notice of Privacy Practices

The Authority shall notify the Contractor in writing of any changes in its notice of privacy practices issued in accord with 45 CFR § 155.260, to the extent that such change may affect the Contractor's use or disclosure of PI. The Authority shall provide the Contractor with a new copy of its notice of privacy practices each time such notice is modified or amended.

Section 1.4.2 Notification of Changes in Authorizations to Disclose

The Authority shall notify the Contractor in writing of any changes in, or revocation of, permission by an Individual to use or disclose PI, to the extent that such changes may affect the Contractor's use or disclosure of PI.

Section 1.4.3 Notification of Restrictions

The Authority shall notify the Contractor in writing of any restriction to the use or disclosure of PI that it has agreed to in accord with 45 CFR § 155.260, to the extent that such restriction may affect the Contractor's use or disclosure of PI.

Section 1.5 Miscellaneous Provisions

Section 1.5.1 Regulatory References

Any reference in this Agreement to a section in the Privacy or Security Rules and 45 CFR § 155.260 or other regulation or law refers to that section as in effect or as amended.

Section 1.5.2 Amendment

The Contractor agrees to take such action as is necessary to amend the Services Agreement or this Business Associate Agreement in order for the Authority to comply with any requirements of the Privacy and Security Rules, the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (HIPAA), and any other applicable state or federal law pertaining to the privacy, confidentiality, or security of PI. Upon the Authority's written request, the Contractor agrees to enter promptly into negotiations for any amendment as the Authority, in its sole discretion, deems necessary for the Authority's compliance with any such laws. The Contractor agrees that, notwithstanding any other provision in the Services Agreement or this Business Associate Agreement, the Authority may terminate this Business Associate Agreement immediately upon written notice, in the event the Contractor fails to enter into negotiations for, and to execute, any such amendment.

Section 1.5.3 Waiver

The Authority's exercise or non-exercise of any authority under the Services Agreement or this Business Associate Agreement, or the exercise or non-exercise of inspection or approval of privacy or security practices or approval of subcontractors, shall not relieve the Contractor of any obligations set forth herein or therein, nor be construed as a waiver of any of such the Contractor's obligations or as an acceptance of any unsatisfactory practices or privacy or security failures or breaches by the Contractor.

Section 1.5.4 Interpretation

Any ambiguity in the Services Agreement or this Business Associate Agreement shall be resolved to permit each Party to comply with the Privacy and Security Rules, 45 C.F.R. § 155.260, HIPAA, Mass. Gen. Laws c. 66A, Mass. Gen. Laws c. 93H, and any other applicable law or regulation pertaining to the privacy, confidentiality, or security of PI.

Section 1.5.5 Indemnification and Insurance

To the full extent allowed by law, the Contractor shall indemnify and hold harmless the Authority, including its employees, agents, officers and directors (the “Covered Persons”) from and against any and all liability, loss, claims, damages, fines, penalties, costs and expenses (including legal fees and costs), judgments and awards (collectively, “Damages”) sustained, incurred, suffered by or imposed upon any Covered Person resulting from, arising from or related to any third party claim based upon any negligent acts or omissions or reckless or intentional misconduct of Contractor or any of its subcontractors or any of Contractor’s or any of its subcontractor’s respective agents, officers, directors or employees that constitute a breach of any provision of this Business Associate Agreement. Without limiting the foregoing, Contractor shall defend, indemnify and hold harmless each Covered Person against any and all Damages that directly or indirectly arise out of or are imposed because of the failure to comply with the provisions of applicable law by Contractor, any of its subcontractors or any of their respective agents, officers, directors, employees or subcontractors. Notwithstanding anything to the contrary in the Services Agreement, the limitations of liability in the Services Agreement shall not apply to indemnification obligations under this provision.

SECTION 2. PERIOD OF PERFORMANCE

The period of performance for this Business Associate Agreement shall begin on the Effective Date, and shall continue through the term of the Services Agreement, provided that the Parties may earlier terminate this Business Associate Agreement or any part thereof in accordance with **Section 3**.

SECTION 3. TERMINATION

Section 3.1 Term

This Business Associate Agreement will terminate on the date specified in **Section 2** unless renewed as allowed by applicable regulation or policy or earlier terminated upon any of the events or conditions set forth in this **Section 3**.

Section 3.2 Termination for Cause

Section 3.2.1 Termination for Cause

If, in the opinion of the Authority, the Contractor fails to fulfill an obligation under this Business Associate Agreement, the Authority may terminate this Agreement or any portion thereof by giving written notice to the Contractor at least thirty (30) days before the effective date of termination stated in the notice. The notice shall state the

circumstances of the alleged breach or conflict and may state a reasonable period, not less than thirty (30) days, during which the alleged breach may be cured.

Section 3.2.2 Termination for Privacy or Security Violation

Notwithstanding any other provision in this Agreement to the contrary, the Authority may terminate this Agreement, immediately upon written notice to the Contractor, if the Authority determines, in its sole discretion, that the Contractor has breached any of its obligations set forth in **Section 1** of this Agreement.

Prior to terminating this Agreement as permitted above, the Authority, in its sole discretion, may provide an opportunity for the Contractor to cure the breach or end the violation. If such an opportunity is provided, but cure is not feasible, or the Contractor fails to cure the breach or end the violation within a time period set by the Authority, the Authority may terminate the Agreement immediately upon written notice.

In the event that termination of this Agreement for a breach of any obligation regarding PI is not feasible, or if cure is not feasible, the Authority may report such breach or violation to the Secretary, if such breach and termination pertains to Services performed by the Contractor under the Services Agreement or this Business Associate Agreement.

Section 3.3 Termination with Notice

In addition to the termination provisions set forth in **Section 3.2**, the Authority may terminate this Agreement for any reason by giving written notice to the Contractor at least sixty (60) days before the effective date of the termination stated in such notice.

Section 3.4 Effect of Termination

Section 3.4.1 Return Materials

Upon termination of this Agreement for any reason (including expiration) and at the Authority's request, the Contractor shall promptly provide the Authority a copy of all manuals, reports, documentation and methodologies that were created by the Contractor in performance under the Services Agreement or this Business Associate Agreement in whatever form, including computer disc, tape or hard copy, that these items have been prepared or retained collected by the Contractor, and otherwise comply with **Sections 3.4.2** through **3.4.4** below.

Section 3.4.2 Return or Destroy Data and Other Materials

Except as provided immediately below, upon termination of this Agreement for any reason (including expiration), the Contractor shall, at the Authority's option, either return or destroy all PI obtained or created in any form under the Services Agreement or this Business Associate Agreement, and the Contractor shall not retain any copies of such data in any form. In no event shall the Contractor destroy any PI without first obtaining the Authority's approval. In the event destruction is permitted, the Contractor shall

destroy PI in accord with standards set forth in NIST Special Publication 800-88, Guidelines for Media Sanitization, all applicable state retention laws, all applicable state and federal security laws (including the HITECH Act), and all state data security policies including policies issued by the Commonwealth Entities and the Information Technology Division. The Contractor must shred all paper copies of PI or otherwise destroy such copies to a degree that will render the copies unreadable, un-useable, and indecipherable without the possibility of reconstruction. Within five (5) days of any permitted destruction, the Contractor shall provide the Authority with a written certification that destruction has been completed in accord with the required standards and that the Contractor and its subcontractors and agents no longer retain such data or copies of such data. This provision shall apply to all PI in the possession of the Contractor's subcontractors or agents, and the Contractor shall ensure that all such data in the possession of its subcontractors or agents has been returned or destroyed and that no subcontractor or agent retains any copies of such data in any form, in accord with the Authority's instructions, consistent with applicable federal and state retention law.

Section 3.4.3 Retain Data

If the Contractor determines that returning or destroying PPI is not feasible, the Contractor shall provide the Authority with written notification of the conditions that make return or destruction not feasible. If based on the Contractor's representations, the Authority concurs that return or destruction is not feasible, the Contractor shall extend all protections set forth in this section to all such PI and shall limit further uses and disclosures of such data to those purposes that make the return or destruction of such data not feasible, for as long as the Contractor maintains the data.

Section 3.4.4 Survival

Notwithstanding any other provision concerning the term of this Agreement, the obligations of each Party under this **Section 3.4**, **Section 1** of this Business Associate Agreement and any other provision of the Services Agreement or this Business Associate Agreement relating to the use and protection of PI shall survive the termination of this the Services Agreement or this Business Associate Agreement and shall continue to apply to the Contractor until such time as all such PI or other data obtained or created by the Contractor is returned to the Authority or destroyed, or until any period of storage following the termination of this Agreement is ended, or if return or destruction is not feasible, protections are applied to such data in accord with **Section 3.4.3** immediately above.

SECTION 4. ADDITIONAL PROVISIONS

Section 4.1 Record Retention and Access to Records

Section 4.1.1 Record Retention

The Contractor shall maintain books, records, files and other compilations of data pertaining to the Contractor's performance of the provisions and requirements of the

Services Agreement or this Business Associate Agreement to the extent and in such detail as shall properly substantiate claims under the Services Agreement or this Business Associate Agreement. All such records shall be kept for a period of seven (7) years or for such a longer period as specified herein. All retention periods start on the first day after the final payment under the Services Agreement or this Business Associate Agreement. If any litigation, claim, negotiation, audit or other action involving the records is commenced prior to the expiration of the applicable retention period, all records shall be retained under completion of the action and resolution of all issues resulting there from, or until the end of the application retention period, whichever is later. The Authority shall have access to the books, records, files and other compilations maintained by the Contractor during the Contractor's regular business hours and upon reasonable prior notice. Such access shall include, but not be limited to, on-site reviews, and reproduction of such records at reasonable expense.

Section 4.2.2 Access to Records

The Contractor shall maintain all pertinent records in a cost-effective and easily retrievable format and in storage area that meets recognized industry standards for physical and environmental security (provided, that, all records containing PI shall also meet all applicable requirements of **Section 1**).

The Contractor agrees to allow auditors from EOHHS and CMS or other appropriate oversight agencies access to all records pertaining to services, revenue and expenditures specific to projects outlined in this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Business Associate Agreement to be executed as a document under seal as of the Effective Date set forth in the first paragraph hereof.

**Commonwealth Health Insurance Connector
Authority:**

Contractor:

By: _____

By: _____

Name: Louis Gutierrez

Name: _____

Title: Executive Director

Title: _____

Date: _____

Date: _____

CERTIFICATIONS AND ASSURANCE

By signing this Certification, the authorized official of _____ (the “Certifying Organization”) hereby certifies to the best of its knowledge and belief that:

A. Certification Regarding Lobbying

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of Certifying Organization, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into or any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or intending to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the Certifying Organization shall disclose this fact to the Commonwealth Health Insurance Connector Authority “Authority”) and shall file any required disclosure form.
3. The Certifying Organization shall require that the language of this certification be included in any subcontracts or subgrants issued under its contract with the Authority and that all subcontractors or subgrantees shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code.

B. Debarment, Suspension, and Other Responsibility Matters

Certifying Organization certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency.

Signed and executed this ____ day of _____, 2014:

CERTIFYING ORGANIZATION

Organization Name

By: _____

Signature

Printed Name

Title