



Commonwealth Health Connector Authority

**Health Connector for Business Outreach and Marketing Campaign
Request for Proposals**

Issued March 7, 2022

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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 Massachusetts small business owners, employees, and insurance brokers. Small businesses are those with 50 or fewer employees. 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 digital and

other media to reach out to small businesses and brokers. 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 for Business enrollment and maintaining a high annual retention rate
- Improving the Health Connector for Business brand position, in member and thought-leader populations
- Creating a marketing calendar that maximizes visibility and campaign value
- Enhancing awareness of Health Connector for Business among business owners of color and small businesses in communities of color as part of the Health Connector's effort to address racial inequities in health coverage
- Strengthening Health Connector for Business relationships with business organizations that support small businesses in Massachusetts and brokers.

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 Section 2.0. 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. 1.5. Term of Contract

The term of the contract resulting from this RFP shall commence on July 1, 2022, and will end on June 30, 2025. The Health Connector may, at its sole discretion, seek to extend the contract for two 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, including potentially via focus groups and/or public opinion survey, to assess the mindset of small businesses and employees, and brokers; uncover awareness, knowledge, and perceptions of the Health Connector; explore messages and motivators; explore approaches that may be uniquely effective in reaching small businesses in communities of color; 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 by small businesses. Potential platforms include television, radio, print, out-of-home, digital and other outlets. 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 and Organizational Partnerships

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

2.1.4. Broker Outreach

The bidder will identify and engage in activities that expand Health Connector for Business visibility with brokers licensed in the Commonwealth, increasing broker participation on the Health Connector for Business platform.

2.1.5. Social Media Support

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

2.1.6. 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 Health Connector for Business objectives, and identifying and responding to trends or issues that impact Health Connector for Business.

2.1.7. Specific Deliverables

Audience Research

- Compile data regarding small business and health insurance sources, and marketplace status
- Compile data regarding brokers and business practices regarding Health Connector for Business
- If focus groups or public-opinion surveys are agreed as an activity, Bidder shall be responsible for:
 - Scheduling dates/times and locations of focus groups
 - Participant recruitment
 - Providing moderator
 - Scheduling and implementing public-opinion survey
 - Generating report detailing findings and offering recommendations

Corporate and Organizational Partnerships

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

Social Media

- Identify outreach opportunities
- Develop content as necessary, coordinated with ongoing Health Connector and Health Connector for Business social media campaigns
- 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.

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. Proposal Format and Submission Deadline

3.1. 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 4, 2022, 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@mass.gov. 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.

3.2. 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 transmittal letter should reference and be submitted with completed copies of the Mandatory Forms and Certifications Schedules found at Appendix B. The transmittal letter 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.

3.3. 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, particularly in developing an outreach and marketing campaign that creatively and effectively delivers value and impact to Health Connector for Business 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 marketing to small businesses, particularly health care; and (b) experience with purchasing media space 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 Health Connector for Business is designed for small businesses with 50 and fewer employees, and increasing broker usage of the platform is a priority. Responses should detail the best platforms for accessing these populations.
- Potential bidders are allowed to bid on the scope of services described in Section 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.

3.4. *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.

3.5. 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.

3.6. 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 (including rates for creative development, production costs for various media types, and media buy rates), and any anticipated extra charges or expenses used to determine the financial proposal. Historically, the annual budget for Health Connector for Business marketing and advertising has been approximately \$1.2 million.

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 including – but not limited to – further analysis and investigation, as well as assistance with implementation.

4. 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:
 - Increasing Health Connector for Business enrollment and maintaining a high annual retention rate

- Improving the Health Connector's brand position with small businesses and licensed brokers, in member and thought-leader populations
- Creating a marketing calendar that continues to focus key enrollment dates but expands public exposure to the Health Connector brand
- Increase awareness of key Health Connector for Business programs and benefits
- Strengthen the Health Connector for Business relationships with business organizations.

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.

5. General Conditions

5.1. 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.

5.2. 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 March 14, 2022. Written responses to such questions will be provided to all eligible Bidders by 5:00 p.m. EDT on March 18, 2022. 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.

5.3. 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.

5.4. 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.

5.5. 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.

5.6. 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.

5.7. 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.

5.8. 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.

6. Timeline for Review

6.1. Timeline

It is the Health Connector's intent to accept proposals on or before April 4, 2022 with the requirement that the accepted Bidder be prepared to execute a contract by June 20, 2022 and commence work on July 1, 2022. 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	March 7, 2022
Bidder's Questions Due	March 14, 2022
CCA Responses Due	March 18, 2022
Proposal Due	April 4, 2022
Oral Presentations from Finalists (if necessary)	Week of May 2, 2022
Award Notification	Week of May 16, 2022
Contract Negotiation	Week of May 23, 2022
Contract Signed	Week of June 20, 2022
Commencement of Contract	July 1, 2022

Appendix A

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 of 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, 2025, 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 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 Data Management and Confidentiality 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:_____

Name: Louis Gutierrez

Title: Executive Director

Date: _____

By:_____

Name:_____

Title:_____

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 2

DATA MANAGEMENT AND CONFIDENTIALITY 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; 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 Data Management and Confidentiality Agreement (“DMCA”), effective as of the latter date on which it is executed below (“Effective Date”), which shall define the obligations of each party with respect to such information.

1.1 Definitions

For purposes of DMCA, the following terms shall have the assigned meanings. All other terms used but not otherwise defined in the Agreement shall be construed in a manner consistent with 45 C.F.R. § 155.260 and other applicable state or federal

confidentiality or data security laws, as defined below, and with the defined terms set forth in the Agreement.

- 1.1.1** “Agreement” is the entire agreement between the parties regarding the Services. The Agreement is comprised of multiple documents, of which this DMCA is but one. The DMCA’s place in the order of precedence of the Agreement is set forth in the terms and conditions of the MSA.
- 1.1.2** “Agreement Services” shall mean the activities, services and goods to be performed or provided by Contractor pursuant to the Agreement,
- 1.1.3** “Applicable Law” shall mean the Fair Information Practices Act and the regulations promulgated thereunder (MGL ch. 66A, 950 CMR 33.00 and 801 CMR 3.00, Privacy and Confidentiality), MGL ch. 93H and the regulations promulgated thereunder (201 CMR 16.00, Placing, Lifting and Removal of Security Freezes; 201 CMR 17.00, Standards for the Protection of Personal Information of Residents of the Commonwealth, SPR Bulletin 01-08, Security Breach Protections), MGL ch. 93I, 801 CMR 3.00, the HIPAA Rules, the Affordable Care Act rule regarding the privacy and security of personally identifiable information (45 C.F.R. § 155.260), MARS-E V. 2.0, and any other applicable federal or state law or regulation pertaining to the use, disclosure, maintenance, privacy or security of PII or Commonwealth Security Information. Although the Connector is not subject to HIPAA, the Contractor shall interpret the Agreement as if the Connector were so subject.
- 1.1.4** “Breach” shall mean “Breach” as such term is defined in 45 C.F.R. § 164.402, substituting “protected health information” with “PII,” and Breach of Security as defined in MGL ch. 93H.
- 1.1.5** “Breach Notification Rule” shall mean the HIPAA Breach Notification Rule at 45 C.F.R. Part 164 Subpart D, and MGL Ch. 93H.
- 1.1.6** “Business Associate” shall mean “business associate” as such term is defined in 45 C.F.R. § 160.103. Although the Connector is not subject by law to HIPAA, for purposes of this DMCA the Contractor shall have all of the obligations of a Business Associate. In addition, for purposes of some Agreements, the Connector is a Business Associate of a HIPAA-covered entity, and under the terms of those agreements, as a subcontractor to the Connector, Contractor is a Business Associate.
- 1.1.7** “CMS” shall mean the Centers for Medicare and Medicaid Services.
- 1.1.8** “CMS Agreements” shall mean the Master Interconnection Security Agreement between CMS and the Parties executed by the Parties on November 9, 2017, the Computer Matching Agreement among CMS, the Connector and EOHHS executed by the Connector and EOHHS on April 2, 2016, and the Information Exchange Agreement between CMS and the Connector dated November 15, 2016, attached to this DMCA as Exhibits A through C hereto, as such agreements and any other

documents, plans and artifacts may be amended, restated or superseded from time to time.

- 1.1.9** “Commonwealth Security Information” shall mean all data that pertains to the security of the Commonwealth’s IT, specifically, information pertaining to the manner in which the Commonwealth protects its IT 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 unauthorized users, including those measures necessary to detect, document and counter such threats.
- 1.1.10** “Connector” shall mean the Commonwealth Health Insurance Connector Authority.
- 1.1.11** “Electronic Health Record” has the meaning set forth in Section 13400(5) of the HITECH Act.
- 1.1.12** “Electronic PII” shall mean PII that is transmitted or maintained by electronic media as in 45 C.F.R. § 160.103. For purposes of the Agreement, Electronic PII shall be limited to Electronic PII received or created by Contractor from or on behalf of the Connector.
- 1.1.13** “EOHHS” shall mean the Commonwealth’s Executive Office of Health and Human Services.
- 1.1.14** “EOTSS” shall mean the Commonwealth’s Executive Office of Technology Services and Security.
- 1.1.15** “Event” shall mean the following, either individually or collectively: 1) any use or disclosure of PII by the Contractor or its subcontractors not permitted under this DMCA; 2) any Security Incident by the same; or 3) any event by the same that would trigger notification obligations under the Breach Notification Rule, MGL 93H or other similar Applicable Law.
- 1.1.16** “HIPAA” shall mean the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 and any regulations promulgated thereunder, as amended by the HITECH Act.
- 1.1.17** “HIPAA Rules” shall mean the Privacy, Security, and Breach Notification Rules at 45 C.F.R. Parts 160 and 164.
- 1.1.18** “HIPAA Rules Terms”. When used in this DMCA, the following terms shall have the same meaning as those terms when used in the HIPAA Rules (as defined herein): Business Associate, Covered Entity, Data Aggregation, Minimum Necessary, Protected Health Information, Secretary and Security Incident.
- 1.1.19** “HITECH Act” shall mean Subtitle D (Privacy) of Title XIII of Division A and Section 4104(b) of Title IV of Division B of the American Recovery and Reinvestment Act of 2009.
- 1.1.20** “Individual” shall mean the person who is the subject of Personally Identifiable Information, as set forth in 45 C.F.R. § 164.501, and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g); a data subject as defined by MGL ch. 66A; a person as defined by MGL ch. 93H, s. 1; a data subject

as defined by MGL ch. 93I; and any cognate terms under other Applicable Law.

- 1.1.21** “IT” shall mean information technology.
- 1.1.22** “Non-Exchange Entity” shall have the same meaning as used in 45 C.F.R. § 155.260(b).
- 1.1.23** “Privacy Rule” shall mean the regulations at 45 C.F.R. Part 160 and Part 164, Subparts A and E.
- 1.1.24** “Personally Identifiable Information” or “Personal Information” or “PII” shall mean any information obtained in the course of performance of Agreement Services concerning an Individual, including demographic information collected from an Individual and which identifies the Individual or with respect to which there is a reasonable basis to believe it can be used to identify the Individual. This term shall include without limitation personal data as that term is defined in MGL ch. 66A, §1; any “personal information” as defined in MGL ch. 93H; any “patent identifying information” as defined in 42 C.F.R. Part 2; any “protected health information” as defined in the Privacy Rule; any “personally identifiable information” as defined in 45 C.F.R. § 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 PII if it is not fully de-identified in accordance with 45 C.F.R. § 164.514 (a), (b), and (c).
- 1.1.25** “Required By Law” shall have the same meaning as used in 45 C.F.R. § 164.103, substituting “protected health information” with “PII.”
- 1.1.26** “Third Party Data” shall mean any PII the Connector receives through an agreement from a third party.
- 1.1.27** “Third Party System” shall mean any IT system not owned or controlled by the Connector that contains Third Party Data.
- 1.1.28** “Security Incident” shall mean the attempted or successful unauthorized access, use, disclosure, modification or destruction of information or interference with systems operations in an information system.
- 1.1.29** “Security Breach” shall mean the unauthorized acquisition or unauthorized use of unencrypted data, or encrypted electronic data and the confidential process or key, that is capable of compromising the security, confidentiality or integrity of PII maintained by the Connector.
- 1.1.30** “Secretary” shall mean the Secretary of the US Department of Health and Human Services or the Secretary’s designee.

1.2 Contractor Obligations

1.2.1 Acknowledgments.

The Contractor acknowledges that in performing the Agreement, it or its subcontractor may create, receive, use, disclose, maintain, transmit

or otherwise obtain: (a) “personal data,” as that term is used within MGL ch. 66A and that in so doing, it will become a “holder” of personal data, as that term is used therein, and that to the extent that it receives such data, it will comply with the terms of MGL ch. 66A and the regulations promulgated thereunder, and (b) “personal information” as that term is used in MGL ch. 93H and 93I, and that to the extent that it receives such data it will comply with the terms of those laws and the regulations promulgated thereunder; and (c) “personally identifiable information” as that term is used in 45 C.F.R. § 155.260 and MARS-E Version 2, and in so doing it may become Non-Exchange Entity, as that term is defined in 45 C.F.R. § 155.260(b), and, if it does, Contractor agrees to implement privacy and security standards that are consistent with the principles listed in 45 C.F.R. § 155.260(a)(1)-(6) and are at least as protective as the standards in MARS-E Version 2.0.

The Contractor also acknowledges and agrees that in its performance of the Agreement Activities, to the extent that it (or its subcontractor) receives, creates, maintains or transmits PII relating to any Individual, Contractor shall comply with all requirements of the HIPAA Rules applicable to a Business Associate as if the Contractor were a Business Associate of the Connector. In addition, the Contractor acknowledges that under some circumstances the Connector is a Business Associate of a HIPAA covered entity and, where it subcontracts its obligations under such agreements to Contractor, Contractor will in fact be a Business Associate.

- 1.2.2** The Contractor shall protect the physical security and restrict any access to PII or other Connector data in the Contractor's possession, or used by the Contractor in the performance of a Contract, which shall include, but is not limited to the Connector's records, documents, files, software, equipment or systems.
- 1.2.3** The Contractor certifies that all steps will be taken to ensure the security and confidentiality of all PII for which the Contractor becomes a holder, either as part of performance or inadvertently during performance, with special attention to restricting access, use and disbursement of PII under

Applicable Law. Contractor shall comply with MGL ch. 93I for the proper disposal of all paper and electronic media, backups or systems containing personal data and information. Contractor shall ensure that any PII or information transmitted electronically or through a portable device be properly encrypted. The Contractor shall immediately notify the Connector in the event of any Security Breach including the unauthorized access, disbursement, use or disposal of PII, and in the event of a Security Breach, the Contractor shall cooperate fully with the Connector and provide access to any information necessary for the Commonwealth to respond to the Security Breach and shall be fully responsible for any damages associated with the Contractor's breach including but not limited to those to which an Individual may be entitled under MGL ch. 214, s. 3B.

1.2.4 In providing Agreement Services, Contractor shall comply with the Connector's Privacy Policy and Procedures, Website Privacy Policy, Security Management Policy, and Incident Response Policy & Procedures, copies of which are attached hereto as Exhibits D-1 through D-4 hereto.

1.2.5 The Contractor shall implement reasonable safeguards to protect PII under this DMCA. All safeguards implemented by the Contractor must meet, at a minimum, all standards set forth in the Security Rule, as applicable to a Business Associate; the standards set forth in National Institute of Standards and Technology standard: NIST 800-53-information Security, moderate standard, 45 C.F.R. § 155.260, and MARSE Version 2.0.

1.2.6 Recognition of the Connector's Rights.

At all times, the Contractor shall recognize the Connector's right to control access, use, disclosure and disposition of all PII created, obtained, received, used, maintained or disclosed during the performance of services under the Agreement.

1.2.7 The Contractor shall create, use or disclose PII only to the extent such creation, use or disclosure is necessary to carry out the Agreement Services. The Contractor may not create, use or disclose PII in the performance of the Agreement Services unless such creation, use or disclosure is consistent with the requirements of this DMCA, as Required by Law or as required by law.

1.2.8 Agents or Subcontractors

The Contractor shall not engage any agent or subcontractor to perform any activity of the Contractor under the Agreement or this DMCA, unless the Contractor has received prior consent from the Connector. The Contractor shall ensure that any agents or subcontractors that use, maintain, disclose, receive, create or otherwise obtain PII on behalf of the Connector in connection with the Agreement agree in writing to the same restrictions and conditions that apply to the Contractor under this DMCA with respect to such information, including, but not limited to, implementing reasonable safeguards to protect such information. The Contractor is solely responsible for its agents' and subcontractors' compliance with all provisions of this DMCA. The Contractor is not relieved of any obligation under the Agreement because PII or other data was in the hands of its agent or subcontractor or because its agent or subcontractor failed to fulfill any reporting obligation to it necessary for the Contractor to fulfill its reporting obligations hereunder. The Contractor shall ensure that all subcontractors enter into a data management and confidentiality agreement with the Contractor containing the terms of this DMCA; provided that the Connector may authorize the Contractor to enter into a modified version of the DMCA as appropriate to reflect the particular activities or circumstances of the subcontractor with the written consent of the Connector. The Contractor must ensure that any required written agreement for permitted subcontractors meets all requirements of an agreement with a Non-Exchange Entity under 45 C.F.R. § 155.260, and 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 C.F.R. § 160.103; 45 C.F.R. § 164.502 (e)(1)(ii) and (2); and 45 C.F.R. § 164.504 (e).

1.2.9 Administrative, Physical, and Technical Safeguards.

In addition to any other requirement in the Agreement or this DMCA, the Contractor shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of PII and that prevent use or disclosure of such data other than as provided for by the Agreement or this DMCA. All such safeguards must meet, at a minimum, all standards set forth in MGL ch. 66A; MGL ch. 93I; the Privacy and Security Rules, as applicable to a Business Associate; 45 C.F.R. § 155.260; and the Third-Party Agreements.

For Electronic PII, the Contractor's safeguards must include a prohibition restricting all employees and agents from transmitting PII in non-secure transmissions over the Internet or any wireless communication device, including electronic PII transmitted between the Parties, which must be encrypted by a process that renders the Electronic PII unusable, unreadable, or indecipherable to unauthorized individuals within the meaning of section 133402 of the HITECH Act and any implementing guidance, including but not limited to 45 C.F.R. § 164.402. The Contractor shall protect from inappropriate use or disclosure any password, user ID, or other mechanism or code permitting access to any database containing PII.

Upon reasonable request by the Connector, the Contractor agrees that it shall make available qualified individuals and/or a member of senior management responsible for security and data protection, for the purposes of discussing relevant IT controls, including those policies, procedures, and controls relevant to the provision of services and security obligations under this DMCA and applicable laws. The Contractor will make every reasonable effort to be responsive to such inquiries, but reserves the right to limit disclosure of details, if it determines, in its sole judgment, that such disclosure would put at risk the confidentiality, availability, or integrity of its own or its other clients' data.

For any systems containing PII under the Agreement, the Contractor shall comply with the Massachusetts Standards for the Protection of Personal Information of Residents of the Commonwealth found at 201 C.M.R. 17.00, including securing user authentication protocols by controlling user IDs and other identifies, utilizing a reasonably secure method of assigning and selecting passwords or use of other technologies such as biometrics or token devices, controlling data security passwords to ensure passwords are kept in locations and formats that do not compromise the security of the data they protect, restricting access to active users and active user accounts only and blocking access to user identification after multiple unsuccessful attempts to gain access or the limitation placed on access for the particular system. Additionally, the Contractor shall restrict access to records and files containing PII to those who need such information to perform or support Agreement Services, assign unique identifications and non-default passwords designed to maintain the integrity of the security of the access controls, encrypt transmitted records and files containing personal information, reasonably monitor systems for unauthorized use or access of PII, encrypt all PII stored on laptops or other portable devices in the US (and refrain from storing PII on laptops or other portable devices to the extent that the Agreement permits the Contractor to perform all or part of the services outside the US), maintain a reasonably up to date firewall protection and

operating system security patches of all files containing PII on a system connected to the Internet, maintain reasonably up to date versions of system security agent software including malware protection and reasonably up to date patches and virus definitions or a version of such software than can be supported with up to date patches and virus definitions which is set to receive the most current security updates on a regular basis and education and train employees on the proper use of the computer security system and the importance of PII security. Upon the Connector's request, the Contractor shall permit representatives of the Connector access to premises where PII is maintained, created, used, or disclosed for the purpose of inspecting privacy and security arrangements; provided, however, that (i) Contractor and Connector mutually agree in advance upon the scope, location and timing of such an inspection; and (ii) Connector shall protect the confidentiality of all confidential and proprietary information of Contractor to which the Connector as authorized by Contractor has access during the course of such inspection.

1.2.10 Mitigation and Reporting.

Promptly upon becoming aware of, but in any event, no more than one (1) Business Day after, any use or disclosure of PII not permitted under the Agreement or this DMCA or of any Security Incident or Security Breach, the Contractor shall take all appropriate action necessary to: 1) retrieve, to the extent practicable, any PII used or disclosed in the non-permitted manner or involved in the Security Incident or Security Breach, 2) mitigate, to the extent reasonably practicable, any harmful effect of the non-permitted use or disclosure of the PII or of the Security Incident or Security Breach known to the Contractor and 3) take such further action as may be required by any applicable state or federal law concerning the privacy and security of such PII. Including the above requirement and consistent with 17 C.M.R. 201, the Contractor shall complete a written information security program and will provide a copy of that program to the Connector upon request. The Contractor shall report to the Connector, orally and/or in writing, the nature of the non-permitted use or disclosure or Security Incident or Security Breach, the harmful effects known to the Contractor, all actions it has taken or plans to take in accord with this paragraph and the results of all mitigation actions already taken by it under this paragraph.

In the case of an Event, as soon as possible (and no more than two (2) business days after the Contractor becomes aware of the Event), the Contractor shall provide the Connector 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 PII 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 PII 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 Connector's request: (a) take such other reasonable actions as identified by the Connector to provide further information or clarification regarding the Event; (b) provide the Connector 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 PII involved in the Event; and (d) take such other reasonable actions as identified by the Connector 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 Connector'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 Agreement or this DMCA.

Any actions to mitigate harmful effects of privacy or security violations undertaken by the Contractor on its own initiative or pursuant to the Connector's request under this paragraph shall not relieve the Contractor of its obligations to report such violations as set forth in other provisions of the Agreement.

1.2.11 Subpoenas or other Legal Process.

The Contractor shall, as legally permissible, promptly report to the Connector, both orally and in writing, but in any event not more than three (3) Business Days after becoming aware of any instance where PII or any other data obtained under the Agreement is requested, subpoenaed, or becomes the subject of a court or administrative order or other legal process. If the Connector directs the Contractor to respond to such requests, the Contractor shall take all necessary steps as directed by the Connector to comply with any applicable federal and state law. To the extent the Connector determines that it shall respond or challenge such requests directly, the Contractor shall fully cooperate and assist the Connector in its response or challenge.

1.2.12 Access.

Upon the Connector's Request, the Contractor shall cooperate with the Connector to provide to an Individual the individual's PII that Contractor maintains through simple and timely means that allow the Individual to access and obtain their PII in a readable form and format, and:

- 1.2.12.1** The Contractor, with respect to any PII in its possession: (a) shall take such action(s) in sufficient time and manner as may be requested by the Connector that are necessary to meet the Authority's obligations under 45 C.F.R. §§ 164.522, 164.524, 164.526, 164.528, and 155.260; and (b) if an Individual contacts the Contractor with respect to exercising any rights the Individual may have under 45 C.F.R. §§ 164.522, 164.524, 164.526 164.528, and 155.260 with respect to such PII, shall notify the Connector within two (2) business days of the Individual's request and cooperate with the Connector to meet any of its obligations with respect to such request.
- 1.2.12.2** With respect to an Individual's right to an accounting under 45 C.F.R. §§ 164.528 or 155.260, the Contractor shall document all disclosures of PII and other data access activities as would be necessary for the Connector to respond to a request by an Individual for an accounting in accord with 45 C.F.R. §§ 164.528 or 155.260.
- 1.2.12.3** Corrections.

Upon the Connector's request, the Contractor shall take reasonable steps to cooperate with the Connector to provide Individuals with a final means to dispute the accuracy or integrity of any of their PII maintained by the Contractor and to have erroneous information corrected or to have a dispute documented if their requests are denied. Such corrections shall be made promptly in a manner specified in, and in accord with any time requirement under, 45 C.F.R. §§ 164.526 or 155.260(a)(iii) and MGL ch. 66A s. 2. In the event the Contractor receives a request for amendment directly from the Individual, the Contractor shall, within two (2) Business Days of receipt of such request, notify the Connector, and shall only make any amendment in accord with the Connector's instructions.

1.2.12.4 Documentation of Disclosures.

The Contractor shall document all disclosures of PII, and required information related to such disclosures, as would be necessary for the Connector to respond to a request by an Individual for an accounting of disclosures of PII. In the event the Contractor receives a request for an accounting directly from an Individual, the Contractor shall, within three (3) Business Days of receipt of such request, notify the Connector and proceed in accord with this paragraph. Within ten (10) Business Days of the Connector's request, the Contractor shall make a listing of such disclosures and related information available to the Connector or, upon the Connector's direction, to the Individual.

1.2.12.5 Compliance with Notification of Restrictions.

Upon Contractor's receipt of a notification of a restriction on the use of disclosure of PII from the Connector under section 1.4.4 below, Contractor will promptly (a) cease the use and disclosure of any such Individual's PII as specified in the notice; (b) comply with the limitations specified in the notice; and/or (c) comply with the restrictions specified in the notice, as applicable.

1.2.13 Individual's Direct Authorization to Disclose PII to Third Party

In the event the Contractor receives a request from an Individual or from a third party to release PII 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 Connector and shall cooperate with the Connector in confirming the validity and sufficiency of such document before releasing any PII to the third party. Contractor shall not make a disclosure pursuant to such a request without the express written consent of the Connector.

1.2.14 Prohibition on Sale of Electronic Health Records or PII 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 PII of an Individual unless the Connector 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 PII can be further exchanged for remuneration by the entity receiving PII of that Individual. Nothing in this DMCA shall be construed to allow Contractor to disclose PII except as provided in other provisions of the Agreement or this DMCA.

1.2.15 Consumer Reporting Obligations.

In the event that the consumer notification provisions of 45 C.F.R. §§ 164.400 through 164.410, MGL ch. 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 Connector determines, in its sole discretion, that it is required to give such notifications, the Contractor shall, at the Connector's request, assist the Connector in undertaking all actions reasonably necessary to meet consumer notification requirements and in drafting the consumer notices and any related required notices to state or federal agencies for the Connector's review and approval, but in no event shall the Contractor have the authority to give these notifications on the Connector's behalf. In addition to the Contractor's other indemnification rights under the Agreement, the Contractor shall indemnify the Connector for the costs associated with such notification.

1.2.16 Third Party Agreements.

The Contractor shall comply with (and shall cause its employees, agents, and subcontractors to comply with) any privacy and security obligation that is required

as the result of the Connector having entered into any other agreement with a third party to obtain or to access any Third-Party Data or to access any Third Party System. Any such agreement is referred to herein as a “Third Party Agreement.” Obligations that may be applicable to the Party under a Third-Party Agreement include, by way of illustration and not limitation, signing a written compliance acknowledgment or confidentiality agreement, undergoing a background check, or completing training.

1.2.17 Third Party Data.

Third Party Data includes, without limitation, all data that the Connector receives or obtains from the Massachusetts Department of Revenue, the Social Security Administration, the Internal Revenue Service, and the Department of Homeland Security, or through the Federal Data Services Hub. Notwithstanding anything herein to the contrary, Contractor may not access any Third Party Data unless disclosure of Third Party Data to the Contractor is permitted under the applicable CMS Agreement(s) and/or Third Party Agreement(s), all conditions for disclosure under such respective agreement(s) have been satisfied, and the access otherwise complies with the terms and conditions of the respective agreement(s). Without limiting the generality of the foregoing paragraphs, the Contractor acknowledges and agrees that it cannot use or disclose PII except as specifically permitted under Permitted Uses and Disclosures of PII by the Contractor, Section 1.3, of this DMCA.

1.2.18 CMS Agreements.

The Contractor agrees that in its performance of the Agreement Services it shall comply with (and shall cause its employees, agents, and subcontractors to comply with) the terms of the CMS Agreements, if it obtains access to the data governed by those CMS Agreements, copies of which are attached hereto as Exhibits A through C.

1.2.19 Commonwealth Security Information.

If, in connection with the Agreement Services, the Contractor obtains access to any Commonwealth Security Information, it may only use such information for the purposes for which it obtained access. In using the information for such permitted purposes, the Contractor shall limit access to the information only to its employees and other representatives as necessary to perform the permitted purposes. Other than in the foregoing circumstances, the Contractor shall not release or disclose such information except in accord with the Connector's express written instructions, unless such disclosure is Required by Law and then only in accordance with this DMCA. While in possession of such information, the Contractor shall apply all applicable privacy and security requirements set forth in this DMCA to maintain the confidentiality, security, integrity and availability of such information. Notwithstanding any other provision in this DMCA, the Contractor shall report any non-permitted use or disclosure of Commonwealth Security Information to the Connector within twenty-four (24) hours following the date upon which the Contractor becomes aware of the use or disclosure (or such earlier time as may be required under a CMS Agreement or other Third-Party Agreement). 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 commercially reasonable retrieval action as the Connector may require (or as may be required under a Third Party Agreement). Notwithstanding the foregoing, the Contractor may use and/or disclose Commonwealth Security Information to the extent required by CMS in performing Agreement Services.

1.2.20 Minimum Necessary.

As described in 45 C.F.R. § 164.502(b)(1), when using or disclosing PII or when requesting PII from the Connector (except for the uses and disclosures described in 45 C.F.R. § 164.502(b)(2), Contractor will make reasonable efforts to limit PII to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request.

1.2.21 Access to Systems, Databases and Resources

- 1.2.21.1** In connection with the Contractor's performance of its obligations under the Agreement or this DMCA, it

may be necessary for the Contractor and its representatives to access systems, databases, or other IT resources owned and/or operated by the Connector or by EOHHS or by both.

1.2.21.2 The Contractor agrees that it shall restrict access to such systems, databases, or other IT 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 Agreement or this DMCA.

1.2.21.3 The Contractor further agrees that it shall ensure that any representative of the Contractor that is granted access any such system, application or IT resource: (i) uses such system, application or resource (and any PII 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 PII available through such system, application or IT resource except as necessary to perform such authorized purpose(s).

1.2.21.4 To the extent that any Third Party Data or other data received from a third party under or in connection with a Third Party Agreement is accessible within or through a system, database, or other IT resource owned and/or operated by the Connector or by EOHHS or by both, the Contractor agrees that it shall ensure that any of its representatives accessing any such system, application or IT resource for any reason, has satisfied all applicable requirements of the applicable Third Party Agreement prior to accessing the system, application or IT resource, and continues to satisfy such requirements for so long as such access is continued. Each time the Contractor requests for one of its representatives to access any such system, application or IT resource, the Contractor shall be deemed to represent and warrant to the Connector that the representative has satisfied all requirements of any Third-Party Agreement that may be applicable to such access.

1.2.22 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 Connector under the Agreement or this DMCA without the prior written consent of the Connector.

1.3 Permitted Uses and Disclosures by the Contractor

- 1.3.1** Except as otherwise provided in the Agreement, the Contractor may use or disclose PII to perform functions, activities, or services for, or on behalf of, as specified in the Agreement to the Connector, provided such use or disclosure would not violate 45 C.F.R. § 155.260 if done by the Connector, except as otherwise specifically permitted in the Agreement.
- 1.3.2** Except as otherwise provided in the Agreement, the Contractor may use PII for the proper management and administration of the Contractor or to carry out the legal responsibilities of the Contractor.
- 1.3.3** The Contractor may use and disclose PII to report violations of law to appropriate federal and state authorities consistent with 45 C.F.R. § 164.502(j)(1).
- 1.3.4** Except as otherwise limited in the Agreement, Contractor may use PII to provide Data Aggregation services to the Connector as permitted by 45 C.F.R. § 155.260.

1.4 Obligations of the Connector

1.4.1 Privacy Policy and Procedures, Website Privacy Policy, Security Management Policy, and Incident Response Policy & Procedures, and Changes thereto.

The Connector's Privacy Policy and Procedures, Website Privacy Policy, Security Management Policy, and Incident Response Policy & Procedures are attached hereto as Exhibits D-1 through D-4 hereto. The Connector shall notify Contractor in writing of any changes in such documents to the extent that such change may affect Contractor's use or disclosure of PII in its performance of this DMCA and shall provide Contractor with a new copy of such documents as modified or amended.

1.4.2 Requests to Use or Disclose PII.

The Connector shall not request Contractor to use or disclose PII in any manner that would not be permissible under Applicable Law if done by

the Connector or that is not otherwise expressly permitted under this DMCA.

1.4.3 Notification of Changes in Authorizations to Disclose.

The Connector shall notify the Contractor in writing of any changes in, or revocation of, permission by an Individual to use or disclose PII that are known to the Connector, to the extent that such changes may affect the Contractor's use or disclosure of PII in its performance of this DMCA or any other vendor's use or disclosure of PII under this DMCA.

1.4.4 Notification of Restrictions.

The Connector shall notify the Contractor in writing of any restriction to the use or disclosure of PII that it has agreed to in accord with 45 C.F.R. § 164.522 or 45 C.F.R. § 155.260 or any other Applicable Law, to the extent that such restriction may affect the Contractor's use or disclosure of PII in its performance of this DMCA.

1.4.5 Consents, Authorizations and Permissions.

The Connector agrees to obtain and maintain such consents, authorizations and/or permissions, if any, as may be necessary or required under federal or state laws or regulations or Connector policy to permit the Connector to disclose PII to Contractor in order for Contractor to use and disclose PII as required or permitted under the Agreement. The Connector agrees to promptly inform Contractor in writing as soon as the Connector becomes aware of any modifications to, restrictions on, defects in, or revocation or other termination of effectiveness of, any such consent, authorization or permission, to the extent any such modifications, restrictions, defects, revocations or terminations affect Contractor's permitted or required uses and disclosures of PII specified in the Agreement or this DMCA.

1.4.6 Minimum PII.

The Connector shall provide to, or request from, Contractor, only the minimum PII necessary for Contractor to perform or fulfill a specific function required or permitted hereunder.

1.4.7 Confidentiality and Data Security Agreements.

If Contractor is required in order to perform its obligations in the Agreement or this DMCA, or if Contractor is otherwise instructed by the Connector, to disclose PII to other vendors of the Connector or to any other entities or persons when it is required by law to refrain from such disclosing PII to such Business Associates, entities or persons, the Connector will be responsible for obtaining any confidentiality and data security agreements with other vendors, entities or persons as may be required by law.

1.5 Effect of Termination

1.5.1 Except as provided immediately below in subsection 1.5.2, upon termination of the Agreement for any reason whatsoever, this DMCA shall terminate, and the Contractor shall, at the Connector's option, either return or destroy all PII and the Contractor shall not retain any copies of all such PII and data in any form. This provision shall apply to all PII and other data in the possession of the Contractor's subcontractors or agents, and the Contractor shall ensure that all such PII and data derived or extracted from such PII in the possession of its subcontractors or agents has been returned or destroyed and that no subcontractor or agent retains any copies of such PII and data derived or extracted from such PII in any form. In no event shall the Contractor destroy any PII or other data without first obtaining the Connector's approval.

1.5.2 Notwithstanding the foregoing, in the event that the Contractor determines that returning or destroying the PII is not feasible, the Contractor shall provide the Connector with written notification of the conditions that make return or destruction not feasible. Upon mutual agreement of the Parties that return or destruction of PII is not feasible, the Contractor shall extend the protections of the Agreement to such PII and limit further uses and disclosures of such data to those purposes that

make the return or destruction not feasible, for as long as the Contractor maintains the PII and other data.

- 1.5.3** Notwithstanding any other provision of the Agreement all privacy and security protections pertaining to any PII shall continue to apply until such time as all such PII and data is returned to the Connector, or destroyed, or if returned or destruction is not feasible, protections are applied to such PII and data in accord with this DMCA.

1.6 Miscellaneous Provisions

1.6.1 Regulatory References.

A reference in this DMCA to 45 C.F.R. § 155.260 or other regulation or law refers to that section as in effect or as amended.

1.6.2 Amendment.

The Contractor agrees to take such action as is necessary to amend this DMCA in order for the Connector and Contractor to comply with any requirements of 45 C.F.R. § 155.260, and any other Applicable Law pertaining to the privacy, confidentiality, or security of PII or other data. In the event that any law or regulation, court decision, or interpretive policy affecting the use or disclosure of PII is enacted or promulgated, the parties will negotiate in good faith to amend this DMCA in such manner necessary to comply with such law, regulation, court decision, or interpretive guideline or policy.

1.6.3 Survival.

The Contractor's obligations under this DMCA shall survive the termination of the Agreement.

1.6.4 Waiver.

Nothing in this DMCA shall be construed to waive or limit any of the Connector's legal rights or remedies which may arise from the Contractor's unauthorized use or disclosure of any PII received or

created by it under the Agreement. The Connector's exercise or non-exercise of any authority under this DMCA, including, for example, any rights of inspection or approval of privacy or security practices or approval of subcontractors, shall not relieve the Contractor of any obligations set forth herein, nor be construed as a waiver of any of the Contractor's obligations or as an acceptance of any unsatisfactory practices or privacy or security failures or breaches by the Contractor.

1.6.5 Interpretation.

Any ambiguity in the data sharing provisions of this DMCA shall be resolved to permit the Connector to comply with 45 C.F.R. § 155.260 and any other Applicable Law or applicable law pertaining to the privacy, confidentiality, or security of PII.

IN WITNESS WHEREOF, the Parties have caused this Data Management and Confidentiality 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:** _____

EXHIBIT A

Master Interconnection Security Agreement between CMS and the Parties executed on November 9, 2017



MA Signed
ISA_11092017 (1).pdf

EXHIBIT B

**The Computer Matching Agreement among CMS, the Connector and EOHHS executed by the
Connector and EOHHS on April 2, 2016**



MA Computer
Matching Agreemen

EXHIBIT C

The Information Exchange Agreement between CMS and the Connector

dated November 15, 2016



Information Exchange
Agreement.pdf

EXHIBIT D-1

The Connector's Privacy Policy and Procedures



CCA Privacy Policy
and Procedures.pdf

EXHIBIT D-2

Connector Website Privacy Policy

Website Privacy Policy

Last modified April 11, 2018

- Welcome to the Massachusetts Health Connector website. Your privacy is one of our top priorities. The following policy applies only to the use of this website. As you navigate this website, you may see links that will take you to websites external to the Massachusetts Health Connector. We strongly suggest that you read the privacy policies for each website that you visit, and any external site that you visit through a link appearing at this site.

Contents:

- A Privacy Partnership
- Personally Identifiable Information
- IRS Authorization
- Information Voluntarily Provided by You
- Survey and E-mail
- Information Automatically Collected and Stored by this Site

A Privacy Partnership

- Your privacy with respect to the use of this site results from a partnership between the Massachusetts Health Connector and you, the user. At this website, we attempt to protect your privacy to the maximum extent possible. However, because some of the information that we receive through this website is subject to the [Public Records Law, Massachusetts General Laws Chapter 66, Section 10](#), and other federal laws we cannot ensure absolute privacy. Information that you provide to us through this site may be made available to members of the public under that law. This page informs you of the information that we collect from you at this site, what we do with it, to whom it may be disseminated, and how you can access it. Based on this information, you can make an informed decision about your use of this site. You can maximize the benefits of your privacy partnership with the Commonwealth by making informed decisions about whether to share personally identifiable information with us through this site. Please review the information on this page about how the Health Connector collects your

personal information, and please review the Health Connector’s Notice of Privacy Practices, which describes how we use and disclose that information.

Personally Identifiable Information (PII)

- We use the term “personally identifiable information” to mean any information that could reasonably be used to identify you, including your name, address, telephone number, e-mail address, Social Security number, birth date, bank account information, credit card information, or any combination of information that could be used to identify you.

IRS Authorization

- By requesting financial assistance to help pay for health insurance—such as Advance Premium Tax Credits (APTC), ConnectorCare, or MassHealth—you have authorized the Health Connector to use tax return information from the Internal Revenue Service (IRS) to determine your eligibility for financial assistance in future years. If you do not want the Health Connector to use your tax return information to complete your eligibility determinations in future years, you can cancel that authorization at any time. However, doing so will mean that you and the people on your application will not be eligible for financial assistance and will have to pay full price for any insurance you receive through the Health Connector. [Click here to learn more and to request cancellation of IRS authorization.](#)

Information Voluntarily Provided by You

- This site collects voluntary information from you through surveys and e-mails.

Survey and E-mail

- This site collects voluntary information from you through surveys posted at this website and through any e-mail messages you choose to send to the Massachusetts Health Connector. Surveys may collect personally identifiable information you voluntarily submit, such as name, e-mail address or phone number, so that we may contact you for follow-up to your question, concern or recommendation. Any e-mail messages sent by you to this site will contain personally identifiable information such as your e-mail address and any other information you choose to give us to help us answer your inquiry.

Information Automatically Collected and Stored by this Site

- This website does not use permanent “cookies”. However, the site uses temporary “session cookies” to allow visitors to interact with the Massachusetts Health Connector and to use online applications. “Session cookies” do not allow us to personally identify a visitor. These cookies are stored only in memory and are deleted when the user’s browser is shut down.
- This site does collect and store your “Internet Protocol (“IP”) address,” (which does not identify you as an individual) indefinitely, as well as information about the date and time of your visit, whether a file you have requested exists, and how many “bytes” of information were transmitted to you over the Web from this site. We use your IP address to access the frequency of visits to this site and the

popularity of its various pages and functions. We will not attempt to match any personally identifiable information that you provide to us with your IP address, unless there are reasonable grounds to believe that doing so would provide information that is relevant and material to a criminal investigation.

Public Records Law and the Dissemination of Your Personally Identifiable Information

- We do not sell any personally identifiable information collected through this website or submitted to the Commonwealth in conjunction with using functions on the website, and there is no direct or online public access to the information. However, once you voluntarily submit personally identifiable information to us related to your use of the Portal, its dissemination is governed by the [“Public Records Law,”](#) the [“Fair Information Practices Act \(Massachusetts General Laws Chapter 66A\),”](#) [“Executive Order 504,”](#) and other applicable laws and regulations. For this reason, part or all of the information you send us may be provided to a member of the public in response to a public records request. There are pieces of information, such as credit card numbers, TIN, username, or password that are not considered public for the purposes of a public records request. For more information on types of data exempted from disclosure under the Public Records Law, please read the [Secretary of the Commonwealth’s Public Records Law.](#)

Security

- Because e-mail sent to the Commonwealth is not encrypted, you should not send messages containing information that you consider highly sensitive to this website. We use standard security measures to ensure that information provided by you, including your personally identifiable information, is not lost, misused, altered, or unintentionally destroyed. We also use software to monitor network traffic to identify unauthorized attempts to upload or change information, or otherwise cause damage. Except for authorized law enforcement investigations, no attempts are made to identify individual users or their usage habits.

Policy changes

- We will post substantive changes to this policy at least 30 days before they take effect. Any information we collect under the current privacy policy will remain subject to the terms of this policy. After any changes take effect, all new information we collect, if any, will be subject to the new policy.

Contact Information

- For questions about your privacy while using this website please contact the Health Connector’s privacy and security officer at ConnectorPrivacy@state.ma.us.

Definitions:

- **Cookies** are files that a website can place on your computer. A cookie file contains unique information that a website can use to track such things as your password, lists of Web pages you have visited, and the date when you last looked at a specific Web page, or to identify your

session at a particular website. A cookie file allows the website to recognize you as you click through pages on the site and when you later revisit the site. A website can use cookies to “remember” your preferences, and to record your browsing behavior on the Web. Although you can prevent websites from placing cookies on your computer by using your browser’s preference menu, disabling cookies may affect your ability to view or interact with some websites.

- **An “Internet Protocol Address” or “IP Address”** is a series of numbers that identifies each computer and machine connected to the Internet. An IP address enables a server on a computer network to send you the file that you have requested on the Internet. The IP address disclosed to us may identify the computer from which you are accessing the Internet, or a server owned by your Internet Service Provider. Because it is machine-specific, rather than person-specific, an IP address is not, in and of itself, personally identifiable information.

EXHIBIT D-3

Connector Security Management Policy



CCA Security
Management Policy 8

EXHIBIT D-4

Connector Incident Response Policy & Procedures



CCA Security
Incident Response Po

Appendix B to the RFP

MANDATORY FORMS AND CERTIFICATIONS

Schedule 1: Certification of Bidder's Qualifications and Contract Readiness

Name of Bidder: _____

Certification:

The undersigned certifies that the Bidder will be ready to begin performance of responsibilities described in this RFR by the date listed in Section 5.1 therein, and that the Bidder is able to perform all services and responsibilities at the cost stated in the Bidder's cost response and by the dates specified herein.

The undersigned certifies that no Bidder interest will conflict in any manner or degree with the performance of services required under the Agreement.

Signature

Printed Name of Signatory

Title

Date

Schedule 2: Certification of Key Personnel

Name of Bidder: _____

Certification:

The undersigned certifies that the Key Personnel identified in the Bidder's response are employees, consultants or under obligation to the Bidder such that they will be available to work on this project according to the proposed project plan, and that they shall not be reassigned during the term of the agreement without the prior written approval of the Health Connector.

Signature

Printed Name of Signatory

Title

Date

Schedule 3: Certification with Regard to Subcontractors

Name of Bidder: _____

Certification:

The undersigned acknowledges its understanding that it will not be relieved of any legal obligations under any Agreement resulting from this RFR as a result of any contracts with subcontractors, that it shall be fully responsible for the partner's or subcontractor's performance, and that all partnership agreements, subcontracts and other agreements or arrangements for reimbursement will be in writing, will contain terms consistent with all terms and conditions of the Agreement, and must be reviewed and approved (with the exception of financial terms, which may be withheld) prior to execution.

Signature

Printed Name of Signatory

Title

Date

Schedule 4: Certification with Regard to Financial Condition

Name of Bidder: _____

Certification:

A check in the box to the right of each item indicates an affirmative response to the certification.

1. The undersigned certifies that the Bidder is in sound financial condition.	<input type="checkbox"/>
2. The undersigned certifies that the Bidder has no outstanding overdue tax liabilities to the Commonwealth Department of Revenue or the Internal Revenue Service.	<input type="checkbox"/>

If one or more of the above boxes are not checked, please explain in the space provided below or attach a clearly labeled separate sheet.

Signature

Printed Name of Signatory

Title

Date

Schedule 5: Request for Taxpayer Identification Number and Certification (W-9)



newmass-w9-1.pdf

Schedule 6: Certification Regarding Debarment and Suspension

Name of Bidder: _____ hereby certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this or any other transaction by any federal department or agency, or any department or agency of any state of the United States.

Signed and executed this _____ day of _____, 2018:

CERTIFYING ORGANIZATION

Organization Name

By: _____

Signature

Printed Name

Title

