

**PENNSYLVANIA HEALTH INSURANCE EXCHANGE AUTHORITY  
NON-EXCHANGE ENTITY AGREEMENT**

THIS NON-EXCHANGE ENTITY AGREEMENT (hereinafter “Agreement”) is entered into between the Pennsylvania Health Insurance Exchange Authority d/b/a Pennie (hereinafter “PHIEA”), a state-affiliated entity established within the Commonwealth of Pennsylvania pursuant to Act 42 of 2019, 40 Pa.C.S. §§ 9301-9314, and the producer, assister, certified application counselor, individual, entity, or other approved person accessing the Exchange Platform and whose name appears in PHIEA’s registration system (hereinafter “Enrollment Assister”).

PHIEA is authorized under the Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152) (collectively known as “the Affordable Care Act” or “ACA”), and Act 42 of 2019, 40 Pa.C.S. §§ 9301-9314, to establish or operate in this Commonwealth a technical platform that facilitates or assists in facilitating enrollment of eligible individuals in Qualified Health Plans and Qualified Dental Plans.

In furtherance of its established purpose of benefiting the Pennsylvania health insurance market and those persons enrolling in health insurance policies, PHIEA must provide third party access to the Exchange Platform to assist customers. These Enrollment Assisters will assist qualified individuals to enroll in Qualified Health Plans and Qualified Dental Plans, applying for Advanced Premium Tax Credits, and Cost Sharing Reductions as applicable, to the extent that the Enrollment Assisters are permitted to do so by Federal and State Law.

The contractual relationship between PHIEA and the Enrollment Assister set forth in this Agreement is expected to involve the transmission of Personally Identifiable Information (“PII”) as that term is defined herein, for purposes authorized under the ACA, the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), and other applicable Federal and State Laws including, but not limited to, assisting customers with the application process for Qualified Health Plans and Qualified Dental Plans and determining eligibility for insurance affordability programs.

The Enrollment Assister’s access to PII submitted to PHIEA shall make the Enrollment Assister and/or the Entity a “Non-Exchange Entity” (as defined in Article 1). 45 CFR § 155.220(d) requires all persons enrolling qualified individuals in Qualified Health Plans and Qualified Dental Plans in a manner that constitutes enrollment through the Exchange Platform, or assisting qualified individuals in applying for insurance affordability programs, to comply with the terms of an agreement between the Enrollment Assister/Non-Exchange Entity and PHIEA. As such, PHIEA requires the acknowledgement, affirmation, and acceptance of this Agreement as a condition precedent to the Enrollment Assister’s application to become an Enrollment Assister with access to the Exchange Platform.

PHIEA and the Enrollment Assister each acknowledge and agree that they enter into this Agreement for the purposes, among others as may be detailed herein, of ensuring the confidentiality, privacy and security of data accessed by the Enrollment Assister or exchanged

between the parties under this Agreement, compliance with the requirements of the ACA, including 45 C.F.R. § 155.260(b)(2), and other applicable Federal and State Laws, regardless of whether otherwise applicable to the Enrollment Assister.

## Article 1 – General Contract Terms

### 1.1 Definitions.

- a. **Advance Premium Tax Credit (“APTC”)** means advanced payments of the premium tax credit authorized by 26 U.S.C. § 36B and otherwise defined as advanced payment of the premium tax credits in 45 C.F.R. § 155.20.
- b. **Applicant** has the same meaning as in 45 C.F.R. § 155.20.
- c. **Breach** has the same meaning as in OMB Memorandum M-17-12 (January 3, 2017), and means the loss of control, compromise, unauthorized disclosure, unauthorized acquisition, or any similar occurrence where (1) a person other than an authorized user accesses or potentially accesses PII, or (2) an authorized user accesses or potentially accesses PII for an other-than-authorized purpose. For purposes of this definition, unless otherwise inconsistent with OMB Memorandum M-17-12, a Breach shall also constitute a breach in accordance with the applicable provisions of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), including the Administrative Simplification Provisions of HIPAA, as codified at 42 U.S.C. § 1320d *et seq.*, and the Health Information Technology for Economic and Clinical Health Act of 2009 (“HITECH”).
- d. **Cost-Sharing Reductions (“CSRs”)** has the same meaning as in 45 C.F.R. § 155.20.
- e. **Customer** has the same meaning as Enrollee as defined in 45 C.F.R. § 155.20 who is enrolled in a Qualified Health Plan or Qualified Dental Plan offered through the Exchange Platform.
- f. **Enrollment Assister** means a producer, navigator, in-person assister, certified application counselor, other similar Non-Exchange Entities and their employees, or individuals or groups of individuals, certified by PHIEA, who may facilitate enrollment in Qualified Health Plans or Qualified Dental Plans offered through the Exchange Platform or perform similar consumer or small business assistance functions.
- g. **Entity** means any person, whether an individual or legal organization, whose business is directly related to enrollment through the Exchange Platform, or to assist Qualified Individuals in applying for APTC and/or CSRs, and in applying for and enrolling in Qualified Health Plans or Qualified Dental Plans in a manner that is considered to be through the Exchange Platform.

- h. **Exchange or Exchange Authority** means a health insurance exchange as contemplated by the ACA, established or operating in this Commonwealth, that facilitates or assists in facilitating enrollment in QHPs and QDPs. This definition includes the Pennsylvania Health Insurance Exchange Authority (PHIEA), which was created pursuant to Act 42 of 2019, 40 Pa.C.S. §§ 9301-9314, doing business as “Pennie,” and facilitates the sale of Qualified Health Plans and Qualified Dental Plans on the Exchange Platform.
- i. **Exchange Platform** means the technical platform which PHIEA makes available to health insurers to sell Qualified Health Plans and Qualified Dental Plans to Customers.
- j. **Federal and State Law(s)** means any and all applicable federal and state laws, rules, regulations, or guidance documents, as amended during the course of this Agreement, whether applicable singularly or in concert, that are not otherwise specified by name or legal citation, including, but not limited to Act 42 of 2019, 40 Pa.C.S. §§ 9301-9314; the Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152) and the regulations promulgated thereunder; the Health Insurance Portability and Accountability Act of 1996 (HIPAA, including the Administrative Simplification Provisions of HIPAA, as codified at 42 U.S.C. § 1320d *et seq.*), and the regulations promulgated thereunder, and the Health Information Technology for Economic and Clinical Health Act of 2009 (“HITECH”).
- k. **Health Insurance Portability and Accountability Act (“HIPAA”)** means the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, as amended, and its implementing regulations.
- l. **Incident, or Security Incident**, has the same meaning as in OMB Memoranda M-17-12 (January 3, 2017) and means an occurrence that (1) actually or imminently jeopardizes, without lawful authority, the integrity, confidentiality, or availability of information or an information system; or (2) constitutes a violation or imminent threat of violation of law, security policies, security procedures, or acceptable use policies. For purposes of this definition, an incident or security incident, where not inconsistent with OMB Memorandum M-17-12, shall also constitute an incident or security incident under the applicable provisions of HIPAA, including the Administrative Simplification Provisions of HIPAA, as codified at 42 U.S.C. § 1320d *et seq.*, and HITECH.
- m. **Non-Exchange Entity** has the meaning set forth in 45 C.F.R. § 155.260(b)(1).
- n. **Patient Protection and Affordable Care Act (“Affordable Care Act” or “ACA”)** means the Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), which are referred to collectively as the Affordable Care Act or the ACA.

- o. **Pennie** means the Pennsylvania Health Insurance Exchange Authority and its Exchange Platform.
  - p. **Personally Identifiable Information (PII)** has the same meaning as in OMB Memorandum M-17-12 (January 3, 2017), and refers to any information that identifies or describes an individual, including, but not limited to, his or her name, social security number, physical description, home address, home telephone number, education, financial matters, medical or employment history, and statements made by, or attributed to, the individual. It also includes any identifiable information collected from or about an individual for purposes of determining eligibility for enrollment in a Qualified Health Plan or Qualified Dental Plan, determining eligibility for other insurance affordability programs, determining eligibility for exemptions from the individual responsibility provisions, or any other use of such individual's identifiable information in connection with the Exchange Platform and PHIEA. For the purposes of this Agreement, PII includes Protected Health Information or Personal Health Information ("PHI") and has the same definition as it does in HIPAA, including individually identifiable health information that is transmitted or maintained in any form or medium (electronic, oral, or paper).
  - q. **Plan Year** has the meaning set forth in 45 C.F.R. § 155.20.
  - r. **Qualified Dental Plan ("QDP")** means a dental plan that has a certification that it meets the standards described in subpart C of part 156 of the United States Department of Health and Human Services' ("DHHS") regulations, 45 C.F.R. Part 156, Subpart C, issued or recognized by PHIEA to offer dental insurance plans on the Exchange Platform.
  - s. **Qualified Health Plan ("QHP")** has the meaning set forth in 45 C.F.R. § 155.20. For purposes of this Agreement, QHP shall also include QDPs certified to sell products on the Exchange Platform.
  - t. **Qualified Individual** has the meaning set forth in 45 C.F.R. § 155.20.
  - u. **State-based Exchange ("SBE")**, means an Exchange established by a State to offer individual market coverage utilizing a State Exchange platform to support select eligibility and enrollment functions as described under 45 C.F.R. § 155.106(a).
  - v. **Unsecured PII** shall include, but not be limited to, electronic PII that is not encrypted by use of an algorithmic process to transform data into a form in which there is a low probability of assigning meaning without use of a confidential process or key.
- 1.2 Effective Date. This Agreement shall be effective as of the date and time executed by Enrollment Assister in accordance with Section 5.17 hereof.

## **Article 2 – Duties and Obligations**

2.1 Obligations and Duties of the Enrollment Assister. Enrollment Assisters enrolling Applicants, Customers, or Qualified Individuals in QHPs in a manner that constitutes enrollment through the Exchange Platform or assisting Applicants, Customers, or Qualified Individuals in applying for APTC and/or CSRs, must comply with the terms of an agreement between the Enrollment Assister and PHIEA. *See* 45 C.F.R. § 155.220(d). In furtherance of this function and in acknowledgment of this Agreement, Enrollment Assister warrants and covenants that:

- a. Enrollment Assister will register with PHIEA and complete all certification requirements, including any required trainings, by such date as set by PHIEA, and in advance of assisting Customers or interacting with the Exchange Platform;
- b. Enrollment Assister will submit to training as required by PHIEA and Federal and State Law;
- c. Enrollment Assister will comply with the privacy and security standards promulgated by PHIEA pursuant to this Agreement, 45 C.F.R. § 155.260(b), and applicable Federal and State Law;
- d. Enrollment Assister will comply with any and all Federal and State Laws, PHIEA policies and procedures, and Pennsylvania Insurance Department regulations, policies, and procedures. This includes, but is not limited to, any required trainings and certifications applicable to the conduct of the activities and confidentiality requirements that are the subject of this Agreement; and
- e. Enrollment Assister agrees to provide the Exchange functions contemplated by this Agreement in a fair, accurate, impartial, and professional manner, consistent with industry standards. Enrollment Assister, its agents and employees, shall always be courteous and interact with PHIEA staff, Applicants, Customers, or Qualified Individuals in a professional and respectful manner by, at a minimum, refraining from those prohibited acts set forth in 40 P.S. § 310.11.

2.2 Permitted Uses and Disclosure of PII by the Enrollment Assister. Enrollment Assister may only use or disclose PII as necessary to perform the services contemplated in this Agreement or as required by Federal and State Law. Enrollment Assister agrees to make uses, disclosures, and requests for PII consistent with PHIEA's policies and procedures regarding minimum necessary use of PII. Enrollment Assister shall not use or disclose PII in a manner that would violate 45 C.F.R. § 155.260.

Except as otherwise limited in this Agreement, Enrollment Assister agrees to disclose PII for the proper management and administration of its enrollment functions, or legal

responsibilities of the Enrollment Assister, only when (i) such disclosures are required by law, or (ii) Enrollment Assister obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and be used or further disclosed only as required by Federal and State Law or for the purpose for which it was disclosed to the person, and the person notifies the Enrollment Assister of any instances of which they are aware the confidentiality of the information has been breached.

2.2.1 Enrollment Assister shall not:

- a. Directly or indirectly receive remuneration in exchange for any PII of an individual. For the avoidance of doubt, this provision shall not preclude Enrollment Assister from receiving payment for the provision of services that are required by Federal and State Law.
- b. Use or disclose PII for the purposes of marketing a product or service unless necessary to perform its exchange related functions or required by Federal and State Law. For the purposes of this provision, “marketing” shall mean a communication about a product or service that encourages recipients of the communication to purchase or use the product or service.

2.3 Duties of the Enrollment Assister Relative to PII. Enrollment Assister shall not use or disclose PII other than as permitted or required by this Agreement or as required by Federal or State Law.

2.3.1 Enrollment Assister shall use appropriate administrative, technical, and physical safeguards to protect the privacy of PII including, without limitation, by storing electronic PII in encrypted format.

2.3.2 Enrollment Assister shall use privacy and security standards at least as protective as PHIEA has established and implemented for itself. For example, and without limitation, Enrollment Assister shall comply with the standards, implementation specifications, operating rules, and code sets adopted in 45 C.F.R. Parts 160 and 162, regardless of whether they are otherwise made applicable to Enrollment Assister pursuant to 45 C.F.R. § 155.270(a), to provide for the secure transmission of PII and to prevent use or disclosure of PII other than as provided in this Agreement. Further, the Enrollment Assister shall:

- a. Implement administrative, physical, and technical safeguards to protect PII accessed pursuant to this Agreement from loss, theft, or inadvertent disclosure;
- b. Safeguard PII at all times, regardless of whether or not the Enrollment Assister’s employee, contractor, or agent is at his or her regular duty station;

- c. Ensure that laptops and other electronic devices/media containing PII are encrypted and password protected;
  - d. Send emails containing PII only if encrypted and being sent to, and being received by, email addresses of persons authorized or intended to receive such information;
  - e. Limit disclosure of the information and details relating to a PII loss only to those with a legal right to know or possess the information; and
  - f. Restrict access to PII to only those authorized employees, contractors, and agents who need such data to perform their official duties in connection with purposes identified in this Agreement; such restrictions shall include, at a minimum, role-based access that limits access to those individuals who need it to perform their official duties in connection with the uses of data authorized in this Agreement. Further, the Enrollment Assister shall advise all users who will have access to the data provided under this Agreement of the confidential nature of the data, the safeguards required to protect the data, and the civil and criminal sanctions for noncompliance contained in the applicable Federal and State Laws.
- 2.3.3 Enrollment Assister shall monitor, periodically assess, and update its security controls and related system risks, to ensure the continued effectiveness of those controls.
- 2.3.4 Enrollment Assister shall inform PHIEA of any change in its administrative, technical, or operational environments to the extent any are material to its performance under this Agreement. Matters material to Enrollment Assister's performance under this Agreement expressly includes staff and employment changes to the extent such former employee or agent had access to the Exchange Platform.
- 2.3.5 Enrollment Assister shall require any agents or downstream entities to which access to PII is granted in connection with this Agreement to adhere to privacy and security standards and obligations that are the same or at least as protective as those to which Enrollment Assister hereby agrees.
- 2.3.6 Enrollment Assister shall report to PHIEA any Breach of PII, including all suspected or confirmed Incidents involving loss or suspected loss of PII of which it becomes aware. Enrollment Assister further agrees to report to PHIEA any Incident of which it becomes aware without unreasonable delay, and in no case later than twenty-four (24) hours after discovery of the Incident.
- 2.3.7 If the use or disclosure amounts to a Breach of Unsecured PII, the Enrollment Assister shall ensure its report:

- a. Is made to PHIEA in accordance with Subsection 2.3.6, except where a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security. Enrollment Assister must notify PHIEA of an incident involving the acquisition, access, use, or disclosure of PII in a manner permitted under 45 C.F.R. § 155.260 or this Agreement within twenty-four (24) hours after discovery of an Incident even if Enrollment Assister has not conclusively determined within that time that the Incident constitutes a Breach as defined by this Agreement;
- b. Includes the names of the individuals whose unsecured PII has been, or are reasonably believed to have been, the subject of a Breach; and
- c. Includes a draft letter for PHIEA to review and approve prior to Enrollment Assister's notification to the affected individual(s) that their unsecured PII has been, or is reasonably believed to have been, the subject of a Breach. The notification must include, to the extent possible:
  - i. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach;
  - ii. The types of Unsecured PII that were involved in the Breach (such as full name, social security number, date of birth, home address, account number, or other types of information that were involved);
  - iii. Any steps the affected individuals should take to protect themselves from potential harm resulting from the Breach;
  - iv. The toll-free telephone numbers and addresses for the major consumer reporting agencies;
  - v. The toll-free telephone numbers, physical addresses and web site addresses for (1) the Federal Trade Commission; and (2) the Pennsylvania Office of the Attorney General;
  - vi. A brief description of what PHIEA and the Enrollment Assister are doing to investigate the Breach, to mitigate losses, and to protect against any further Breaches; and
  - vii. Contact procedures for the affected individuals to ask questions or learn additional information, which shall include a telephone number, toll-free telephone number if one is maintained and postal address and may include an email address and website address.



- 2.3.8 Enrollment Assister agrees to maintain adequate records of all PII disclosures in accordance with the retention requirements set forth in Article 3 of this Agreement and provide an accounting of all such disclosures to PHIEA within a reasonable period upon request and in the format requested by PHIEA.
- 2.3.9 Enrollment Assister agrees to make its internal practices, books, and records, including PII, available to PHIEA and/or the Secretary of the U.S. Department of Health and Human Services for purposes of determining compliance with the ACA's privacy and security regulations as well as privacy and security standards established and implemented by PHIEA pursuant to 45 C.F.R. § 155.260, as set forth in 45 C.F.R. § 155.280(a).
- 2.3.10 Enrollment Assister agrees to mitigate, to the extent practicable, any harmful effect known to the Enrollment Assister of a use or disclosure of PII by Enrollment Assister, its agents, downstream Entities, or employees in violation of the requirements of this Agreement.

### **Article 3 – Security and Privacy Standards**

- 3.1 **Customer Access to PII.** Enrollment Assister hereby acknowledges, agrees, and consents to abide by and be bound by the privacy and security standards adopted by PHIEA, as amended and updated from time to time, while engaging in any activity as a Non-Exchange Entity or an Enrollment Assister for purposes of facilitating enrollment and evaluating Customer, Applicants, or Qualified Individuals entitlement to APTC and/or CSRs through the Exchange Platform. Enrollment Assister shall be bound to and strictly adhere to the privacy and security standards, and to ensure that its agents, subcontractors, assignees, or any other person that creates, collects, accesses, stores, maintains, discloses, or uses PII in the Exchange Platform strictly adheres to the same.
- 3.2 Enrollment Assisters must meet the following privacy and security standards:
  - 3.2.1 In keeping with the standards and implementation specifications used by PHIEA, Enrollment Assisters that maintain and/or store PII must provide Customers, Applicants, and Qualified Individuals, or these individuals' legal representatives and authorized representatives, with a simple and timely means of appropriately accessing PII pertaining to them and/or the person they represent in a physical or electronic readable form and format. Persons legally authorized to act on behalf of Customers, Applicants, and Qualified Individuals regarding their PII, including individuals acting under an appropriate power of attorney that complies with applicable Federal and State Law, must be granted access in accordance with their legal authority. Such access would generally be expected to be coextensive with the degree of access available to the subject individual.
  - 3.2.2 Enrollment Assisters that maintain and/or store PII must implement policies and procedures that provide access to PII upon request. Access rights must apply to any

PII that is created, collected, disclosed, accessed, maintained, stored, and used by the Enrollment Assister in furtherance of the activities contemplated herein.

- 3.2.3 At the time the request is made, the Customer, Applicant, or Qualified Individual, or these individuals' legal representatives or authorized representatives, should generally be required to specify which PII they seek to access. The Enrollment Assister shall assist them in determining their information or data needs if such assistance is requested.
- 3.2.4 If the requested PII cannot be produced, the Enrollment Assister must provide an explanation for its denial of the notification or access request, and, if applicable, information regarding the availability of any appeal procedures, including the appropriate appeal authority's name, title, and contact information.

Enrollment Assister may deny access to PII that they maintain or store without providing an opportunity for review, if (i) the PII was obtained or created solely for use in legal proceedings; or (ii) the PII is contained in records that are subject to a law that either permits withholding the PII or bars the release of such PII.

- 3.3 Openness and Transparency. In keeping with the standards and implementation specifications used by PHIEA, Enrollment Assister must ensure openness and transparency about policies, procedures, and technologies that directly affect Customers, Applicants, and Qualified Individuals and their PII.
- 3.4 Privacy Notice Statement. Prior to collecting PII, the Enrollment Assister must provide a notice that is prominently and conspicuously displayed on a public facing website, if applicable, or on the electronic and/or paper form the Enrollment Assister will use to gather and/or request PII. The statement must be written in plain language and provided in a manner that is accessible and timely to people living with disabilities and with limited English proficiency.

3.4.1 The statement must contain, at a minimum, the following information:

- a. The legal authority to collect PII;
- b. The purpose of the information collection;
- c. To whom PII might be disclosed, and for what purposes;
- d. The authorized uses and disclosures of any collected information;
- e. Whether the request to collect PII is voluntary or mandatory under the applicable law; and
- f. The effects of non-disclosure if an individual chooses not to provide the requested information.

- 3.4.2 Enrollment Assister shall maintain its Privacy Notice Statement content by reviewing and revising it as necessary on an annual basis at a minimum, and before or as soon as possible after any change to its privacy policies and procedures.
- 3.4.3 If the Enrollment Assister operates a website, it shall ensure that descriptions of its privacy and security practices, and information on how to file complaints with PHIEA and the Enrollment Assister, are publicly available through its website.
- 3.5 Individual Choice. In keeping with the standards and implementation specifications used by PHIEA, Enrollment Assister must ensure that Customers, Applicants, and Qualified Individuals, or these individuals' legal representatives or authorized representatives, are provided a reasonable opportunity to make informed decisions about the creation, collection, disclosure, access, maintenance, storage, and use of their PII.
- 3.6 Informed Consent. Enrollment Assister may create, collect, disclose, access, maintain, store, and use PII from Customers, Applicants, and Qualified Individuals, or these individuals' legal representatives or authorized representatives, only for the functions and purposes listed in the Privacy Notice Statement and any relevant agreements in effect as of the time the information is collected, unless Enrollment Assister obtains informed consent from such individuals. Enrollment Assister must obtain informed consent from individuals for any use or disclosure of information that is not permissible within the scope of the Privacy Notice Statement and any relevant agreements that were in effect as of the time the PII was collected. Such consent must be subject to a right of revocation. Consent documents must be appropriately secured and retained in accordance with Federal and State Law.
  - 3.6.1 Any such consent that serves as the basis of a use or disclosure must:
    - a. Be provided in specific terms and in plain language;
    - b. Identify the entity collecting or using the PII, and/or making the disclosure;
    - c. Identify the specific collections, use(s), and disclosure(s) of specified PII with respect to a specific recipient(s); and
    - d. Provide notice of an individual's ability to revoke the consent at any time.
- 3.7 Creation, Collection, Disclosure, Access, Maintenance, Storage, and Use Limitations. Enrollment Assister must ensure that PII is only created, collected, disclosed, accessed, maintained, stored, and used to the extent necessary to accomplish the specified purpose contemplated herein. Such information shall never be used to discriminate against a Customer, Applicant, or Qualified Individual.

Other than in accordance with the consent procedures outlined above, Enrollment Assister shall only create, collect, disclose, access, maintain, store, and use PII:

- a. To the extent necessary to ensure the efficient operation of the Exchange Platform;
  - b. In accordance with its published Privacy Notice Statement and any applicable agreements that were in effect at the time the PII was collected, including the consent procedures outlined in Section 3.6 above; and/or
  - c. In accordance with the permissible functions outlined in federal and State Law and agreements between PHIEA and the Enrollment Assister.
- 3.8 Direct Source. Enrollment Assister must, to the greatest extent practicable, collect PII directly from the Customer, Applicant, or Qualified Individual when the information may result in adverse determinations about benefits.
- 3.9 Prohibited Uses and Disclosures of PII.
- 3.9.1 Enrollment Assister shall not request information regarding citizenship, status as a national, or immigration status for an individual who is not seeking coverage for himself or herself on any application.
  - 3.9.2 Enrollment Assister shall not require an individual who is not seeking coverage for himself or herself to provide a social security number (SSN), except if an Applicant's eligibility is reliant on a tax filer's tax return and their SSN is relevant to verification of household income and family size.
  - 3.9.3 Enrollment Assister shall not use PII to discriminate, including employing marketing practices or benefit designs that will have the effect of discouraging the enrollment in QHPs by individuals with significant health needs.
- 3.10 Data Quality and Integrity. Enrollment Assister must take reasonable steps to ensure that PII is complete, accurate, and up-to-date to the extent such data is necessary for Enrollment Assister's intended use of such data, and that such data has not been altered or destroyed in an unauthorized manner, thereby ensuring the confidentiality, integrity, and availability of PII.
- 3.11 Right to Amend, Correct, Substitute, or Delete PII. Enrollment Assister must offer Customers, Applicants, and Qualified Individuals, or these individuals' legal representatives or authorized representatives, an opportunity to request amendment, correction, substitution, or deletion of PII maintained and/or stored by Enrollment Assister if such individual believes that the PII is not accurate, timely, complete, relevant, or necessary to accomplish an Exchange-related function, except where the information questioned originated from other sources, in which case the individual should contact the originating source. Such individuals shall be provided with instructions as to how they should address their requests to Enrollment Assister's Designated Privacy Official as nominated in Section 3.14.1, in writing or

telephonically. They may also be offered an opportunity to meet with such individual or their delegate(s) in person.

- 3.11.1 Such individuals shall be instructed to specify, in each request, (1) the PII they wish to correct, amend, substitute, or delete and the reasons for requesting such correction, amendment, substitution, or deletion; and (2) any supporting justification or evidence.
  - 3.11.2 Such requests must be granted or denied within ten (10) business days of receipt.
  - 3.11.3 If Enrollment Assister (or its delegate) reviews these materials and ultimately agrees that the identified PII is not accurate, timely, complete, relevant, or necessary to accomplish the function for which the PII was obtained/provided, the PII should be corrected, amended, substituted, or deleted in accordance with applicable Federal and State Law.
  - 3.11.4 If Enrollment Assister (or its delegate) reviews these materials and ultimately does not agree that the PII should be corrected, amended, substituted, or deleted, the requestor shall be informed in writing of the denial. If available, the notification must identify the appropriate appeal authority including that authority's name, title, and contact information.
- 3.12 Verification of Identity for Requests to Amend, Correct, Substitute or Delete PII. Enrollment Assisters that maintain and/or store PII shall develop and implement policies and procedures to verify the identity of any person who requests access to, notification of, or modification, including amendment, correction, substitution, or deletion, of PII that is maintained by or for Enrollment Assister. This includes confirmation of an individual's legal or personal authority to access, receive notification of, or seek modification, including amendment, correction, substitution, or deletion, of a Customer's, Applicant's, or Qualified Individual's PII. Such policies and procedures shall be delivered to PHIEA upon request.
- 3.13 Accounting for Disclosures. Except for those disclosures made to Enrollment Assister's workforce who have a need for the record in the performance of their duties, and the disclosures that are necessary to carry out the required functions of Enrollment Assister, Enrollment Assister shall maintain an accounting of any and all disclosures of PII. The accounting shall contain the date, nature, and purpose of such disclosures, and the name and address of the person or agency to whom the disclosure is made. The accounting shall be retained for at least ten (10) years after the disclosure, or for the life of the record, whichever is longer. This accounting shall be available to Customers, Applicants, and Qualified Individuals, or these individuals' legal representatives or authorized representatives, on their request per the procedures outlined under the access standards in Article 3 of this Agreement.
- 3.14 Accountability. Enrollment Assister must adopt and implement the privacy and security standards and implementation specifications described in this Agreement that have been established by PHIEA pursuant to Federal and State Law in a manner that ensures appropriate monitoring and other means and methods to identify and report Incidents and/or Breaches.

- 3.14.1 Enrollment Assister must implement Breach and Incident handling procedures that are consistent with PHIEA's incident and breach notification procedures and memorialized in the Enrollment Assister's own written policies and procedures. At minimum, such policies and procedures must:
- a. Identify Enrollment Assister's Designated Privacy Official and/or identify other personnel authorized to access PII and responsible for reporting and managing Incidents or Breaches to PHIEA;
  - b. Provide details regarding the identification, response, recovery, and follow-up of Incidents and Breaches, which should include information regarding the potential need for PHIEA to immediately suspend or revoke access to the Exchange Platform for containment purposes; and
  - c. Require reporting any Incident or Breach of PII to the PHIEA Privacy Officer by email notification at [Privacy@pennie.com](mailto:Privacy@pennie.com) within twenty-four (24) hours of discovery.
- 3.15 Standard Operating Procedures. Enrollment Assister shall incorporate privacy and security standards and implementation specifications, where appropriate, in its standard operating procedures that are associated with functions involving the creation, collection, disclosure, access, maintenance, storage, or use of PII. The privacy and security standards and implementation specifications shall be written in plain language and shall be available to all of the Enrollment Assister's workforce members, subcontractors, and agents, whose responsibilities entail the creation, collection, maintenance, storage, access, or use of PII.
- 3.15.1 The aforementioned procedures shall ensure Enrollment Assister's cooperation with PHIEA in resolving any Incident or Breach, including (if requested by PHIEA) the return or destruction of any PII files it received under this Agreement; the provision of a formal response to an allegation of unauthorized PII use, reuse, or disclosure; and/or the submission of a corrective action plan with steps designed to prevent any future unauthorized uses, reuses, or disclosures.
- 3.15.2 The standard operating procedures must be designed and implemented to ensure the Enrollment Assister and its workforce, subcontractors, and agents comply with the standards and implementation specifications contained herein, and must be reasonably designed, taking into account the size and the type of activities that relate to PII undertaken by the Enrollment Assister, to ensure such compliance.
- 3.16 Training and Awareness. Enrollment Assister shall develop training and awareness programs for members of its workforce that create, collect, disclose, access, maintain, store, and use PII while carrying out any Exchange related functions. Enrollment Assister must require such individuals to successfully complete privacy and security training, as appropriate for their work duties and level of exposure to PII, prior to when they assume responsibility for/have access to PII.

- 3.17 Safeguarding PII. In keeping with the standards and implementation specifications used by PHIEA, Enrollment Assister must ensure that PII is protected with reasonable operational, administrative, technical, and physical safeguards to ensure its confidentiality, integrity, and availability and to prevent unauthorized or inappropriate access, use, or disclosure. The Enrollment Assister is required to establish and implement operational, technical, administrative, and physical safeguards that are consistent with any applicable laws that ensure:
- a. PII is only used by or disclosed to those authorized to receive or view it;
  - b. PII is protected against any reasonably anticipated threats or hazards to the confidentiality, integrity, and availability of such information;
  - c. PII is protected against any reasonably anticipated uses or disclosures of such information that are not permitted or required by Federal and State Law; and
  - d. PII is securely destroyed or disposed of in an appropriate and reasonable manner and in accordance with applicable retention schedules.
- 3.18 Required Monitoring of Security Controls. Enrollment Assister must monitor, periodically assess, and update its security controls and related system risks to ensure the continued effectiveness of those controls.

#### **Article 4 – Term, Termination; Remedies; Indemnification**

- 4.1 Term. The Term of this Agreement shall begin on the Effective Date as defined above and shall remain in effect until 11:59 PM, Eastern Standard Time, December 31, 20\_\_, unless otherwise terminated by either party prior thereto in accordance with this Article 4.
- 4.2 Termination for Cause. Upon PHIEA's knowledge of a material breach of this Agreement by the Enrollment Assister, PHIEA:
- 4.2.1 May provide an opportunity for Enrollment Assister to cure the Breach or otherwise end the violation and, if Enrollment Assister does not cure the Breach or end the violation within the time specified by PHIEA, may terminate this Agreement with no further notice to Enrollment Assister.
  - 4.2.2 Notwithstanding Section 4.2.1 of this Agreement, PHIEA may immediately terminate this Agreement if Enrollment Assister has breached a material term of this Agreement and PHIEA determines or reasonably believes that cure is not possible.
- 4.3 Compliance Measures. PHIEA may undertake compliance actions for improper use of Exchange Platform systems, unprofessional conduct, mishandling, misusing, or misreporting PII, or the improper use, management, or control of PII that poses a significant risk to PHIEA operations, including suspending access to the Exchange Platform, terminating this

Agreement; or suspending this Agreement pending submission of a mitigation plan by Enrollment Assister.

- 4.4 Termination without Cause. Either Party may terminate this Agreement without cause and for its convenience upon thirty (30) days' prior written notice to the other party. Consistent with 45 C.F.R. § 155.220(f), Enrollment Assister must include the intended date of termination in its notice. If a date is not specified, or the date is not acceptable to PHIEA, PHIEA may set a different termination date at its discretion.
- 4.5 Effect of Termination. Upon termination of this Agreement, for any reason, Enrollment Assister shall return or, if agreed to by PHIEA, destroy all PII received from PHIEA, or created, maintained, or received by Enrollment Assister on behalf of PHIEA, which Enrollment Assister maintains in any form. Enrollment Assister shall retain no copies of the PII. This provision shall apply to PII that is in the possession of subcontractors or agents of Enrollment Assister. Should Enrollment Assister make an intentional or grossly negligent Breach of PII in violation of this Agreement or Federal and State Law, PHIEA shall have the right to immediately terminate any contract then in force between the parties.
- 4.6 Appeal of Termination. The Parties agree that an appeal of PHIEA's termination of this agreement will be through PHIEA's administrative appeals process and be governed by the General Rules of Administrative Practice and Procedure, 1 Pa. Code § 31.1-35.251.
- 4.7 Remedies in the Event of Breach. Enrollment Assister hereby recognizes that irreparable harm will result to PHIEA, and to the business of PHIEA, in the event of a breach by Enrollment Assister of any of the covenants and assurances contained in this Agreement. As such, in the event of breach of any of the covenants and assurances contained herein, PHIEA shall be entitled to enjoin and restrain Enrollment Assister from any continued violation. Enrollment Assister shall reimburse and indemnify PHIEA from actual losses incurred as a result of Enrollment Assister's breach, including PHIEA's reasonable attorneys' fees, expenses, and costs that were reasonably incurred as a proximate result of Enrollment Assister's breach. The remedies contained in this Section shall be in addition to, not in lieu of, any action for damages and/or any other remedy PHIEA may have for breach of any part of this Agreement or which may be available to PHIEA at law or in equity.
- 4.8 Indemnification by Enrollment Assister. Enrollment Assister shall hold the Commonwealth and PHIEA harmless from and indemnify the Commonwealth and PHIEA against any and all third party claims, demands and actions based upon or arising out of any activities performed by Enrollment Assister and its employees and agents under this Agreement, provided the Commonwealth gives Enrollment Assister prompt notice of any such claim of which it learns. Pursuant to the Commonwealth Attorneys Act (71 P.S. § 732-101, *et seq.*), the Office of Attorney General (OAG) has the sole authority to represent the Commonwealth in actions brought against the Commonwealth. OAG may, however, in its sole discretion and under such terms as it deems appropriate, delegate its right of defense. If OAG delegates the defense to the Enrollment Assister, the Commonwealth will cooperate with all reasonable requests of Enrollment Assister made in the defense of such suits.



Notwithstanding the aforementioned, neither party shall enter into any settlement without the other party's written consent, which shall not be unreasonably withheld. The Commonwealth may, in its sole discretion, allow the Enrollment Assister to control the defense and any related settlement negotiations.

### **Article 5 - Miscellaneous**

5.1 **Consideration.** Enrollment Assister recognizes that the promises it has made in this Agreement shall, henceforth, be detrimentally relied upon by PHIEA in choosing to continue or commence a business relationship with Enrollment Assister.

5.2 **Agents and Subcontractors; Assignment.** Enrollment Assister shall ensure that any subcontractors or agents that create, receive, maintain, or transmit PII on behalf of Enrollment Assister agree to adhere to restrictions, conditions and requirements that are the same or at least as protective as the standards that apply to Enrollment Assister with respect to such information.

Enrollment Assister further shall not assign this Agreement or any of its rights or obligations hereunder without the express, prior written consent of PHIEA. If Enrollment Assister attempts to make an assignment, subcontract its service obligations, or otherwise delegate its obligations hereunder in violation of this provision, such assignment, or delegation shall be deemed void ab initio and of no force or effect, and Enrollment Assister shall remain legally bound hereto and responsible for all obligations under this Agreement. Enrollment Assister shall further be thereafter subject to such compliance actions as may otherwise be provided for under applicable Federal and State Law.

5.3 **Modification; Amendment.** This Agreement may only be modified or amended through a writing signed by the parties and, thus, no oral modification or amendment hereof shall be permitted. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for PHIEA to comply with the requirements of Federal and State Law.

5.4 **Interpretation of this Agreement in Relation to Other Agreements Between the Parties.** Should there be any conflict between the language of this Agreement and any other contract entered into between the parties (either previous or subsequent to the date of this Agreement), the language and provisions of this Agreement shall control and prevail unless the parties specifically refer in a subsequent written agreement to this Agreement by its title and date and specifically state that the provisions of the later written agreement shall control over this Agreement.

5.5 **Controlling Law and Consent to Jurisdiction.** This Agreement shall be interpreted in accordance with and governed by the laws of the Commonwealth of Pennsylvania, without giving effect to its conflicts of law provisions. PHIEA and Enrollment Assister agree that the courts of the Commonwealth of Pennsylvania and the federal courts of the Middle District of Pennsylvania shall have exclusive jurisdiction over disputes under this Agreement and the resolution thereof. Any legal action relating to this Agreement must be brought in the Commonwealth Court of Pennsylvania and, if otherwise determined inappropriate by the

Commonwealth Court, the Court of Common Pleas of Dauphin County, Pennsylvania. Furthermore, the parties agree that said courts will have personal jurisdiction over them and that the venue in such courts is appropriate. Additionally, PHIEA and Enrollment Assister agree that they consent to service of process in a manner authorized by Pennsylvania law upon the person identified in Section 5.8.1.

- 5.6 Ambiguity. Any ambiguity in this Agreement shall be resolved to permit PHIEA to comply with Federal and State Law with respect to the privacy and security of PII.
- 5.7 Regulatory References. A reference in this Agreement to a section of Federal or State Law, including any regulations promulgated thereto, means the section as in effect or as amended during the course of this Agreement.
- 5.8 Notice; Method of Notice. All notices specifically required under this Agreement shall be given in writing and delivered as set forth herein.
- 5.8.1 Notices shall be sufficient if made by email and acknowledged within twenty-four (24) hours by reply email, or delivered by a nationally recognized overnight carrier, or via U.S. Mail-Certified Delivery, Return Receipt Requested.

If to PHIEA:

Privacy Officer  
Pennsylvania Health Insurance Exchange Authority  
Strawberry Square  
312-218 Market Street, Bowman Tower, 3rd Fl  
Harrisburg, PA 17101

Chief Counsel  
Pennsylvania Health Insurance Exchange Authority  
Strawberry Square  
312-218 Market Street, Bowman Tower, 3rd Fl  
Harrisburg, PA 17101

Notices to the Enrollment Assister shall be sent to the email address provided to PHIEA upon registration.

- 5.9 Survival. Any provision of this Agreement which contemplates performance or observance regarding the use, disclosure, handling, or safeguarding of PII shall survive termination or expiration of this Agreement and continue in full force and effect until such time as all of the PII provided by PHIEA to Enrollment Assister, or the PII created or received by Enrollment Assister on behalf of PHIEA, is destroyed or returned to PHIEA, in accordance with the termination provisions set forth in Article 4, Section 4.5. If it is impossible to return or destroy any or all of the PII provided by PHIEA to Enrollment Assister, or the PII created or received by Enrollment Assister on behalf of PHIEA, Enrollment Assister's obligations under this Agreement shall be ongoing with respect to that information.

- 5.10 Severability. If any term contained in this Agreement is held or finally determined to be invalid, illegal, or unenforceable in any respect, in whole or in part, such term shall be severed from this Agreement, and the remaining terms contained herein shall continue in full force and effect, and shall in no way be affected, prejudiced, or disturbed thereby.
- 5.11 Final Agreement. All of the terms of this Agreement are contractual and not merely perfunctory, and none may be amended or modified except by a writing executed by all parties hereto. In the event of a conflict between the terms of this Agreement and any statutory, regulatory, or sub-regulatory guidance released by PHIEA, the requirement that constitutes the stricter, higher, or more stringent level of compliance shall control.
- 5.12 Priority. This Agreement supersedes and renders null and void any and all prior written or oral undertakings or agreements between the parties regarding the subject matter hereof.
- 5.13 Sovereign Immunity. Nothing in this Agreement shall constitute a waiver by the Commonwealth of Pennsylvania, Pennsylvania Health Insurance Exchange Authority, of sovereign immunity for itself or its Board of Directors, employees, assignees, or contractors.
- 5.14 Disclaimer of Joint Venture. Neither this Agreement nor the activities of Enrollment Assister contemplated by and under this Agreement shall be deemed or construed to create in any way any partnership, joint venture, or agency relationship between the parties. Neither party is, nor shall either party hold itself out to be, vested with any power or right to bind the other party contractually or to act on behalf of the other party, except to the extent expressly set forth in the ACA and the regulations codified thereunder, including as codified at 45 CFR Part 155.
- 5.15 Ambiguities Not Held Against the Drafter. This Agreement having been freely and voluntarily negotiated by all parties, the rule that ambiguous contractual provisions are construed against the drafter of the provision shall be inapplicable to this Agreement.
- 5.16 Clerical Error. No clerical error shall operate to defeat or alter any terms of this Agreement or defeat or alter any of the rights, privileges, or benefits of the parties.
- 5.17 Signatures; Electronic Consent.

**This Agreement has been approved as to form and content by the Commonwealth of Pennsylvania. No signatures by the Commonwealth shall be affixed to this agreement, nor shall any wet handwritten signature be required for this Agreement to be legally enforceable notwithstanding a contrary requirement in any law or regulation. By attesting in PHIEA’s training and registration system that you have read and accepted this Agreement, you are entering into a binding Agreement with PHIEA, the affirmation of which will be considered your electronic signature as to the date and time such affirmation was made. By selecting the “I Accept” button, you are signing this Agreement electronically. You agree your electronic signature is the legal equivalent of your wet signature on this Agreement. By selecting “I Accept” you**

**consent to be legally bound by this Agreement's terms and conditions. You further agree that your use of a keypad, mouse, or other device to select an item, button, icon or similar act/action, or to otherwise access or make any transaction regarding any agreement, acknowledgement, consent terms, disclosures or conditions constitutes your signature (hereafter referred to as "E-Signature"), acceptance and agreement as if actually signed by you in writing. You also agree that no certification authority or other third-party verification is necessary to validate your E-Signature and that the lack of such certification or third party verification will not in any way affect the enforceability of your E-Signature on this Agreement or any resulting contract between you and the Pennsylvania Health Insurance Exchange Authority. You also represent that you are authorized to enter into this Agreement for all persons who own or are authorized to access any of your accounts and that such persons will be bound by the terms of this Agreement. You further agree that each use of your E-Signature in accessing the Exchange Platform constitutes your agreement to be bound by the terms and conditions of this Agreement, any policies and procedures adopted by the Pennsylvania Health Insurance Exchange Authority, and Federal and State Law.**

**By accepting your affirmation and otherwise certifying you to operate on the Exchange Platform, PHIEA has electronically agreed to the terms of this Agreement. The promulgation of this Agreement shall constitute the necessary legal signatures on this Agreement.**

**The parties hereby agree not to contest the validity or enforceability of this Agreement executed electronically, or acknowledgment issued electronically, under the provisions of a statute of frauds or any other applicable law relating to whether certain agreements be in writing and signed by the party bound thereby. Any genuine agreement or acknowledgment executed or issued electronically, if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither party shall contest the admissibility of copies of a genuine agreement or acknowledgments under either the business records exception to the hearsay rule or the best evidence rule on the basis that the agreement or acknowledgment were not in writing or signed by the parties. An agreement or acknowledgment shall be deemed to be genuine for all purposes if it is transmitted to the location designated for such documents.**