

**AGENT BROKER GENERAL AGREEMENT  
FOR INDIVIDUAL MARKET FEDERALLY-FACILITATED EXCHANGES AND  
STATE-BASED EXCHANGES ON THE FEDERAL PLATFORM**

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**THIS AGENT BROKER GENERAL AGREEMENT (“Agreement”)** is entered into between the agent, broker, or entity who established this account and whose name appears on the Marketplace Learning Management System (“MLMS”) account (“ABE”) and the Centers for Medicare & Medicaid Services (“CMS”), the entity responsible for the management and oversight of the Federally-facilitated Exchanges\* (“FFE”) and the Federal eligibility and enrollment platform upon which certain State-based Exchanges rely for eligibility and enrollment functionality on the Federal Platform\*\* (“SBE-FPs”), pursuant to section 1312(e) of the Patient Protection and Affordable Care Act (“PPACA”) and the regulations promulgated thereunder, as codified in 45 CFR 155.220(d).

*\*References to the Federally-facilitated Exchanges equate to the Federally-facilitated Marketplaces.*

*\*\* References to the State-based Exchanges on the Federal Platform equate to the State-based Marketplaces on the Federal platform.*

**I. BACKGROUND**

Section 1312(e) of the PPACA provides that the Secretary of the U.S. Department of Health and Human Services (HHS) shall establish procedures under which Agents or Brokers may participate in an Exchange. 45 CFR 155.220 provides that Agents and Brokers may enroll individuals in a Qualified Health Plan (“QHP”) as soon as the QHP is offered through an Exchange in the State; and may also assist individuals in applying for enrollment in a QHP through the Exchange, Advance Payments of the Premium Tax Credit (“APTC”) and/or Cost-Sharing Reductions (“CSRs”), to the extent that Agents and Brokers are permitted to do so by the State in which they operate.

45 CFR 155.220(d) requires all Agents or Brokers enrolling Qualified Individuals in QHPs in a manner that constitutes enrollment through the Exchange, or assisting Qualified Individuals in applying for QHPs, APTC, and CSRs, to comply with the terms of an agreement between the Agent or Broker and the Exchange.

Pursuant to section 155.220(d) and subject to State law, this Agreement establishes the standards and requirements for ABE to: (a) assist Consumers, Applicants, Qualified Individuals, and Enrollees in applying for eligibility for QHPs, APTC, and/or CSRs; and (b) enroll Qualified Individuals in a QHP through the individual market FFEs and SBE-FPs in a manner that constitutes enrollment through an Exchange.

## II. DEFINITIONS

Terms in this paragraph are defined pursuant to federal regulations, and are subject to change through future rulemaking.

- a. *Agent or broker*: Has the meaning set forth in 45 CFR 155.20.
- b. *Advance Payments of the Premium Tax Credit (APTC)*: Has the meaning set forth in 45 CFR 155.20.
- c. *Applicant*: Has the meaning set forth in 45 CFR 155.20.
- d. *CMS Systems*: CMS systems that agents and brokers access when assisting Consumers, including but not limited to HealthCare.gov, the CMS Enterprise Portal, and (if applicable) the Direct Enrollment Pathways (Classic or Enhanced).
- e. *Cost-sharing Reductions (CSRs)*: Has the meaning set forth in 45 CFR 155.20.
- f. *Consumer*: A person who, for himself or herself, or on behalf of another individual, seeks information related to eligibility or coverage through a Qualified Health Plan (QHP) or other Insurance Affordability Program, or whom an agent or broker (including Web-brokers), Navigator, Issuer, Certified Application Counselor, or other entity assists in applying for coverage through a QHP, applying for APTC and CSRs, and/or completing enrollment in a QHP through its website for individual market coverage offered through an Exchange.
- g. *Enrollee*: As defined for the purposes of this Agreement, an individual enrolled in a QHP or other Insurance Affordability Program.
- h. *Federally-facilitated Exchange (FFE)*: As defined for the purposes of this Agreement, an Exchange established by HHS and operated by CMS under section 1321(c)(1) of the Patient Protection and Affordable Care Act for individual market coverage.
- i. *Insurance Affordability Program*: A program that is one of the following:
  - (1) A State Medicaid program under title XIX of the Social Security Act.
  - (2) A State children's health insurance program (CHIP) under title XXI of the Social Security Act.
  - (3) A State basic health program established under section 1331 of the Patient Protection and Affordable Care Act.
  - (4) A program that makes coverage in a Qualified Health Plan through the Exchange with Advance Payments of the Premium Tax Credit established under section 36B of the Internal Revenue Code available to Qualified Individuals.
  - (5) A program that makes available coverage in a Qualified Health Plan through the Exchange with Cost-sharing Reductions established under section 1402 of the Patient Protection and Affordable Care Act.
- j. *Personally Identifiable Information (PII)*: Has the meaning contained in the Glossary of Office of Management and Budget (OMB) Memorandum M-17-12 (January 3, 2017) and means information that can be used to distinguish or trace an individual's identity, either alone or when combined with other information that is linked or linkable to a specific individual.
- k. *Qualified Health Plan (QHP)*: Has the meaning set forth in 45 CFR 155.20.
- l. *Qualified Individual*: Has the meaning set forth in 45 CFR 155.20.

- m. *State-based Exchange on the Federal platform (SBE-FP)*: As defined for purpose of this Agreement, an Exchange established by a State that receives approval under 45 CFR 155.106(c) to utilize the Federal platform to support select eligibility and enrollment functions.

### **III. OBLIGATIONS AND CONDITIONS**

To enroll Qualified Individuals in a QHP in a manner that constitutes enrollment through the FFEs or SBE-FPs and to assist individuals in applying for APTC and CSRs, ABE hereby agrees to:

- a. Register with the FFEs in advance of assisting Consumers, Applicants, Qualified Individuals, and Enrollees, or enrolling Qualified Individuals in QHPs through an FFE or SBE-FP;
- b. Receive training in the range of QHP options and Insurance Affordability Programs offered through the FFEs or SBE-FPs;
- c. Comply with the privacy and security standards adopted by the FFEs as a condition of a separately executed agreement with CMS pursuant to 45 CFR 155.260(b);
- d. Comply with all applicable State law related to Agents and Brokers in each state in which ABE operates, including but not limited to State laws related to confidentiality and conflicts of interest; and State laws related to appointments, as a condition of enrolling Consumers, Applicants, Qualified Individuals, and Enrollees in QHPs through an FFE or SBE-FP;
- e. Maintain valid licensure in every state that ABE assists Consumers, Applicants, Qualified Individuals, and Enrollees in applying for or obtaining coverage in a QHP through an FFE or SBE-FP;
- f. Comply with the Patient Protection and Affordable Care Act and all applicable current and future regulations and guidance; and
- g. Comply with any and all other applicable laws, statutes, regulations, or ordinances of the United States of America, and any Federal Government agency, board, or court, that are applicable to the conduct of the activities that are the subject of this Agreement, including but not necessarily limited to the Health Insurance Portability and Accountability Act (HIPAA), section 6103(b)(2) of the Internal Revenue Code, any additional and applicable standards required by statute; and any regulations or policies implementing or interpreting such statutory provisions hereafter issued by CMS. In the event of a conflict between the terms of this Agreement and any statutory, regulatory, or sub-regulatory guidance released by CMS, the statutory, regulatory, or sub-regulatory guidance released by CMS shall control.

#### IV. MISCELLANEOUS

- a. Effective Date, Term and Renewal. This Agreement becomes effective on the date that ABE electronically executes this Agreement and ends on the day before the first day of the open enrollment period under 45 CFR 155.410(e)(2) for the benefit year beginning January 1, 2021. This Agreement is renewable for subsequent one (1)-year terms upon thirty (30) days' advance written notice to ABE at CMS's sole and absolute discretion.
- b. Termination and Reconsideration.
  - i. The termination of this Agreement and the reconsideration of any such termination shall be governed by the termination and reconsideration standards adopted by the FFEs under 45 CFR 155.220. Notwithstanding the foregoing, ABE shall be considered in "Habitual Default" of this Agreement in the event that it has been served with a non-compliance notice under 45 CFR 155.220(g) more than three (3) times in any calendar year, whereupon CMS may, in its sole discretion, immediately thereafter terminate this Agreement upon notice to ABE without any further opportunity to resolve the breach and/or non-compliance.
  - ii. Termination for Failure to Maintain Valid State Licensure. ABE acknowledges and agrees that valid State licensure in each State in which ABE assists Consumers, Applicants, Qualified Individuals, or Enrollees in applying for or obtaining coverage under a QHP through an FFE or SBE-FP is a precondition to ABE's authority under this Agreement. Accordingly, CMS may terminate this Agreement upon thirty (30) days' prior written notice if ABE fails to maintain valid licensure in at least one FFE or SBE-FP State and in each State that ABE facilitates enrollment in a QHP through an FFE or SBE-FP. Any such termination shall be governed by the termination and reconsideration standards adopted by the FFEs under 45 CFR 155.220(g). In addition:
    1. ABE acknowledges and agrees that CMS is entitled to, and must be able to, confirm that the ABE has and maintains valid state licensure in at least one FFE or SBE-FP state and in each state that ABE facilitates enrollment in a QHP through an FFE or SBE-FP.
    2. To facilitate CMS' confirmation of ABE's state licensure status, the ABE covenants and further agrees to maintain a correct and up-to-date MLMS<sup>1</sup> profile and a correct and up-to-date profile in the National Insurance Producer Registry (<https://www.nipr.com/>). These profiles shall include a correct and up-to-date National Producer Number (NPN), email address, and business street address.

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<sup>1</sup> The MLMS website may be accessed through the CMS Enterprise Portal (<https://portal.cms.gov/>) with an FFE user ID and password.

c. Proper Uses of CMS Systems by ABE.

- i. ABE acknowledges and agrees that proper use of CMS Systems consistent with this Agreement, CMS regulations, guidance, standards, and other applicable law is a condition of ABE's authority under this Agreement, and acknowledges and agrees that proper uses may include, but are not limited to, the following:
  - a. ABE may have only one CMS Enterprise Portal account.
  - b. Only ABE may use the log-in credentials ABE created to access the CMS Enterprise Portal. ABE agrees to safeguard ABE's log-in credentials and not allow any other person to use the ABE's log-in credentials.
  - c. ABE may only conduct a single log-in session into the ABE's CMS Enterprise Portal account to conduct person searches through the Direct Enrollment Pathways (Classic or Enhanced).
  - d. ABE may conduct only one person search per log-in session.
    - Use of scripts or automation tools to conduct person searches, complete applications, and submit enrollments on CMS Systems are not proper uses of CMS Systems and are strictly prohibited.
    - ABE acknowledges and agrees that conducting such automated activities may result in ABE's CMS Enterprise Portal account and access to CMS Systems being disabled immediately and without prior notice.
  - e. ABE may only conduct person searches for Consumers who have given the ABE consent to access and use their personally identifiable information for purposes of assisting the Consumer in applying for and enrolling in a QHP or other Insurance Affordability Program through an FFE or SBE-FP.
- ii. CMS may undertake compliance actions for improper use of CMS Systems, including suspending access to CMS Systems, terminating this Agreement upon thirty (30) days' prior written notice; or suspending this Agreement pending submission of a request for reconsideration to the CMS reconsideration entity within thirty (30) days' of the date of the written suspension notice.

- d. Notice. All notices specifically required under this Agreement shall be given in writing and shall be delivered as follows:

If to CMS:

Centers for Medicare & Medicaid Services (CMS)  
Center for Consumer Information & Insurance Oversight (CCIIO)  
Attn: Office of the Director  
Room 739H  
200 Independence Avenue, SW  
Washington, DC 20201  
[AgentBrokerCompliance@cms.hhs.gov](mailto:AgentBrokerCompliance@cms.hhs.gov)

If to ABE, to ABE's address, including email address, on record with the MLMS.

Notices sent by hand, by overnight courier service or via email, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by facsimile shall be deemed to have been given when the appropriate confirmation of receipt has been received; notices not given on a business day (*i.e.*, Monday – Friday excluding Federal holidays) between 9:00 a.m. and 5:00 p.m. local time where the recipient is located shall be deemed to have been given at 9:00 a.m. on the next business day for the recipient. CMS and ABE may change their contact information for notices and other communications by providing thirty (30) days' written notice of such change in accordance with this provision.

- e. Assignment and Subcontracting. ABE shall not assign this Agreement in whole or in part, whether by merger, acquisition, consolidation, reorganization, or otherwise, nor subcontract any portion of the services to be provided by ABE under this Agreement, nor otherwise delegate any of its obligations under this Agreement, without the express, prior written consent of CMS, which consent may be withheld, conditioned, granted, or denied in CMS's sole and absolute discretion. ABE further shall not assign this Agreement or any of its rights or obligations hereunder without the express, prior written consent of CMS. If ABE attempts to make an assignment, subcontract its service obligations, or otherwise delegate its obligations hereunder in violation of this provision, such assignment, subcontract, or delegation shall be deemed void *ab initio* and of no force or effect, and ABE shall remain legally bound hereto and responsible for all obligations under this Agreement. ABE shall further be thereafter subject to such compliance actions as may otherwise be provided for under applicable law.
- f. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement. In the event that any provision of this Agreement is determined to be invalid, unenforceable, or otherwise illegal, such provision shall be deemed restated, in accordance with applicable law, to reflect as nearly as possible the original intention of the parties, and the remainder of the Agreement shall be in full force and effect.
- g. Disclaimer of Joint Venture. Neither this Agreement nor the activities of ABE contemplated by and under this Agreement shall be deemed or construed to create in any way any partnership, joint venture, or agency relationship between CMS and ABE. Neither CMS or ABE is, nor shall either CMS or ABE hold itself out to be, vested with any power or right to bind the other contractually or to act on behalf of the other, except to the extent expressly set forth in the PPACA and the regulations codified thereunder, including as codified at 45 CFR part 155.
- h. Remedies Cumulative. No remedy herein conferred upon or reserved to CMS under this Agreement is intended to be exclusive of any other remedy or remedies available to CMS under operative law and regulation, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy now or hereafter existing at law or in equity or otherwise.

- i. Governing Law and Consent to Jurisdiction. This Agreement shall be governed by the laws and common law of the United States of America, including without limitation such regulations as may be promulgated from time to time by the HHS or any of its constituent agencies, without regard to any conflict of laws statutes or rules. ABE further agrees and consents to the jurisdiction of the Federal Courts located within the District of Columbia and the courts of appeal therefrom, and waives any claim of lack of jurisdiction or *forum non conveniens*.
- j. Amendment. ABE acknowledges that during the term of this Agreement, CMS may amend this Agreement to incorporate any additional standards required by statute, regulation, or policy implementing or interpreting such statutory or regulatory provisions. Notwithstanding the foregoing, should there be any conflict or inconsistency between the standards and obligations contained in this Agreement and any statutory, regulatory, or sub-regulatory guidance released by CMS, ABE must comply with the statutory, regulatory, and sub-regulatory standards released by CMS.