

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

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 on the Federal Platform rely for eligibility and enrollment functions** (“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; enroll Qualified Individuals in a QHP in a manner that constitutes enrollment through the Exchange; and assist individuals in applying for 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 APTC and/or CSRs for QHPs, 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 general standards and requirements for ABE to: (a) assist Consumers, Applicants, Qualified Individuals, and Enrollees in applying for APTC, and/or CSRs for QHPs; 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

Capitalized terms in this Agreement are defined pursuant to federal regulations, unless stated otherwise, and are subject to change through future rulemaking.

- a. *Agent or Broker*: Has the meaning set forth in 45 CFR 155.20.
- b. *ABE*: As defined for the purposes of this Agreement, ABE is a collective term for Agents, Brokers, and Agent or Broker Entities that have entered into this Agreement with CMS.
- c. *Advance Payments of the Premium Tax Credit (APTC)*: Has the meaning set forth in 45 CFR 155.20.
- d. *Applicant*: Has the meaning set forth in 45 CFR 155.20.
- e. *Classic Direct Enrollment (Classic DE)*: As defined for the purposes of this Agreement, the original version of Direct Enrollment, which utilizes a double redirect from a Direct Enrollment (DE) Entity's website to HealthCare.gov where the eligibility application is submitted and an eligibility determination is received, and back to the DE Entity's website for QHP shopping and plan selection consistent with applicable requirements in 45 CFR 155.220(c)(3)(i), 155.221, 156.265 and/or 156.1230(b).
- f. *Classic Direct Enrollment Pathway (Classic DE Pathway)*: As defined for the purposes of this Agreement, the application and enrollment process used by Direct Enrollment (DE) Entities for Classic DE.
- g. *CMS Systems*: As defined for the purposes of this Agreement, 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.
- h. *Cost-sharing Reductions (CSRs)*: Has the meaning set forth in 45 CFR 155.20.
- i. *Consumer*: As defined for the purposes of this Agreement, 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) offered through an Exchange or an 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/or CSRs, and/or completing enrollment in a QHP through its website for individual health insurance coverage offered through an Exchange.
- j. *Direct Enrollment (DE)*: As defined for the purposes of this Agreement, the process by which a Direct Enrollment (DE) Entity may assist an Applicant or Enrollee with enrolling in a QHP in a manner that is considered through the Exchange consistent with applicable requirements in 45 CFR 155.220(c), 155.221, 156.265, and/or 156.1230. Direct Enrollment is the collective term used when referring to both Classic Direct Enrollment and Enhanced Direct Enrollment.
- k. *Direct Enrollment (DE) Entity*: Has the meaning set forth in 45 CFR 155.20.
- l. *Direct Enrollment (DE) Pathways*: As defined for the purposes of this Agreement, Direct Enrollment Pathways is the collective term for the Classic DE Pathway and the Enhanced Direct Enrollment (EDE) Pathway.

- m. *Entity*: As defined for the purposes of this Agreement, an Entity means a legal organization whose business is directly related to enrollment through the Exchange, or to assisting Qualified Individuals in applying for APTC and/or CSRs, and applying for and enrolling in QHPs in a manner that is considered through the Exchange.
- n. *Enhanced Direct Enrollment (EDE)*: As defined for purposes of this Agreement, Enhanced Direct Enrollment (EDE) is the version of Direct Enrollment which allows Consumers to complete all steps in the application, eligibility and enrollment processes on an EDE Entity's website consistent with applicable requirements in 45 CFR 155.220(c)(3)(ii), 155.221, 156.265 and/or 156.1230(b) using application programming interfaces (APIs) as provided, owned, and maintained by CMS to transfer data between the Exchange and the EDE Entity's website.
- o. *Enhanced Direct Enrollment (EDE) Entity*: A DE Entity that has been approved by CMS to use the Enhanced Direct Enrollment (EDE) Pathway.
- p. *Enhanced Direct Enrollment (EDE) Pathway*: As defined for purposes of this Agreement, the application, eligibility and enrollment processes used by Enhanced Direct Enrollment (EDE) Entities for Enhanced Direct Enrollment.
- q. *Enrollee*: As defined for the purposes of this Agreement, an individual enrolled in a QHP or Insurance Affordability Program.
- r. *Exchange*: Has the meaning set forth in 45 CFR 155.20.
- s. *Federally-facilitated Exchange (FFE)*: As defined for the purposes of this Agreement, an Exchange for individual health insurance coverage established by HHS and operated by CMS under section 1321(c)(1) of the PPACA.
- t. *Insurance Affordability Program*: Has the meaning set forth in 45 CFR 155.300(a).
- u. *Person Search*: As defined for the purposes of this Agreement, means use of an ABE's CMS Enterprise Portal Account and/or the Direct Enrollment Pathways to seek information from CMS Systems about an Applicant's or existing Enrollee's Exchange application or plan, where the Applicant or Consumer has given the ABE consent to work with them for purposes of applying for and enrolling in a QHP or applying for APTC and/or CSRs.
- v. *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.
- w. *Qualified Health Plan (QHP)*: Has the meaning set forth in 45 CFR 155.20.
- x. *Qualified Health Plan Issuer (QHP Issuer)*: Has the meaning set forth in 45 CFR 155.20.
- y. *Qualified Individual*: Has the meaning set forth in 45 CFR 155.20.
- z. *State-based Exchange on the Federal platform (SBE-FP)*: As defined for the purposes of this Agreement, an Exchange established by a State for individual health insurance coverage that receives approval under 45 CFR 155.106(c) to utilize the Federal platform to support select eligibility and enrollment functions.
- aa. *Web-broker*: Has the meaning set forth in 45 CFR 155.20.

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/or CSRs, ABE hereby agrees to:

- a. Register with the FFEs or SBE-FPs 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 or SBE-FPs 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 assisting Consumers, Applicants, Qualified Individuals, and Enrollees, or enrolling Qualified Individuals in QHPs through an FFE or SBE-FP;
- e. Maintain valid licensure in every state in which ABE assists Consumers, Applicants, Qualified Individuals, and Enrollees, or enrolls Qualified Individuals in QHPs through an FFE or SBE-FP;
- f. Comply with the PPACA and all applicable 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, 2022. 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 or SBE-FPs 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, or enrolls Qualified Individuals in QHPs through an FFE or SBE-FP is a precondition to ABE's authority under this Agreement. Accordingly, CMS may terminate this Agreement 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 or SBE-FPs under 45 CFR 155.220(g)(3)(ii) and (h). 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 assists with 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 MLMS¹ 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, phone number, and business street address.
- 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:
 1. ABE may have only one CMS Enterprise Portal account.
 2. 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, including but not limited to administrative assistants or other employees, to use ABE's log-in credentials.
 - a) Where an Entity has registered with the FFE or SBE-FP, only a licensed Agent or Broker associated with the Entity may use the log-in credentials for that Entity to access the CMS Enterprise Portal, provided that the MLMS profile of the Entity must indicate

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

the NPN of the Agent or Broker using the Entity's log-in credentials.

3. ABE may only conduct a single log-in session into ABE's CMS Enterprise Portal Account to conduct Person Searches and any other electronic searches through the Direct Enrollment Pathways.
 4. Scripting and other automation of interactions with CMS Systems or the Direct Enrollment Pathways are strictly prohibited, unless approved in advance in writing by CMS. ABE acknowledges and agrees that conducting such prohibited automated activities may result in ABE's CMS Enterprise Portal Account and access to CMS Systems and the Direct Enrollment Pathways being disabled immediately and without prior notice.
 5. ABE may conduct only one Person Search at a time during the log-in session, consistent with the general prohibition under this Agreement against use of scripting and other automated interactions with CMS Systems or the Direct Enrollment Pathways.
 6. ABE may only conduct Person Searches for Consumers who have given ABE consent to access and use their PII for purposes of assisting the Consumer in applying for and enrolling in a QHP through an FFE or SBE-FP or coverage in an Insurance Affordability Program.
- ii. CMS may undertake compliance actions for improper use of CMS Systems or the Direct Enrollment Pathways that pose a significant risk to CMS operations, including suspending access to CMS Systems and the Direct Enrollment Pathways, 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
FFMProducer-AssisterHelpDesk@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.