

# AMBETTER OF PEACH STATE, INC PRODUCER APPOINTMENT AGREEMENT

This Agreement is executed **02/22/2016**

between AMBETTER OF PEACH STATE, INC (AMBETTER), of

ATLANTA, GEORGIA and **Laurie Upchurch** of **Georgia** (the PRODUCER”).

In this Agreement, the Producer will also be referred to as “you,” “your,” “yourself,” and AMBETTER will also be referred to as “we,” “ours,” and “us.” AMBETTER and the Producer mutually agrees upon the following term and conditions:

1. **Appointment and Relationship.** AMBETTER appoints you to solicit applications for insurance either personally or through Sub-Producers(s) under you in those states where you are appointed and where you and AMBETTER are both licensed and where your Sub-Producers are appointed with AMBETTER (see Paragraph 2 below); however, it should be understood that this Agreement does not create the relationship of employer and employee between AMBETTER and you, but that of an independent contractor.
2. **Sub-Producers.** You may procure Sub-Producers (any licensed Producer appointed by; contracted by or under you, and working under you and subject to your general direction and supervision, whether referred to as a “broker,” “Sub-Producer,” or other like term). The number and selection of Sub-Producers appointed under this agreement will be at a mutually agreed upon level and evaluated for alignment with AMBETTER goals. All Sub-Producers must be licensed in the state in which they are authorized to write business, have contracted with you, and have been appointed by AMBETTER (in the states necessary) prior to soliciting applications for insurance with AMBETTER. AMBETTER reserves the right to refuse to appoint a Sub-Producer, or once approved, to terminate a Sub-Producer with or without cause.
3. **Limits of Authority.** Neither you nor your Sub-Producers are authorized or have the authority to:
  - (a) make, alter, or discharge any contract for or on behalf of AMBETTER;
  - (b) endorse any check or draft payable to AMBETTER;
  - (c) accept any premium after the initial premium payment;
  - (d) waive or modify any provision, condition, or obligation of any Policy or Certificate application or sales material;
  - (e) extend the time for payment of any premium or accept any past due premium;
  - (f) approve evidence of insurability;
  - (g) bind coverage or otherwise commit AMBETTER to any risk;
  - (h) deliver any Policy or Certificate where you have reason to believe that the information on the application of the insured at the time of delivery is other than stated in the application for insurance;
  - (i) deliver any Policy or Certificate unless and until the first premium has been fully paid;
  - (j) Represent or hold yourself out as a spokesman for AMBETTER in any administrative or judicial proceeding or inquiry by the insurance department or any regulatory, judicial, or governmental agency of any state, commonwealth, or territory.
4. **Duties.** You shall make every reasonable effort to ensure that all Applications and Enrollment Forms are complete and accurate. You shall immediately send to AMBETTER, at the address shown on the Application, all completed Applications, Enrollment Forms, and the initial premium payment. You will immediately notify AMBETTER if you or your Sub-Producer(s) become aware of any errors or omissions on an Application or enrollment form or of any change in the information of any person to be insured under the Policies.

The payment of premiums under the Policies or Certificate shall be made payable directly to AMBETTER by insured persons. You or your Sub-Producer(s) are not to collect premiums or handle funds arising out of the sale of coverage under the Policies, except the initial premium payment. If you or your Sub-Producer(s) receive any such premium payments, you shall immediately forward them to AMBETTER, at the address shown on the Policy or Certificate.

Any funds for any Policy or Certificate related to this Agreement received by you or your Sub-Producer(s) are received in a fiduciary capacity and shall not be commingled with other moneys or used by you or your Sub-Producer(s) for any personal use or other purpose. Any such funds shall be paid over to AMBETTER as mentioned above. Any receipt of funds by you will not extend any grace period or satisfy the premium due dates set out in the Policies.

You hereby agree that all business that may be procured by yourself or your Sub-Producer(s) shall be the sole property of AMBETTER and that your sole right in exchange for producing the business shall be paid commissions as provided in this Agreement. You hereby agree to conduct business under this Agreement in a manner that promotes the keeping in force of all insurance affected under this Agreement and further agree to promote the best interest of AMBETTER as contemplated by this Agreement. You shall not conduct yourself so as to adversely affect the business, good standing, or reputation of yourself or AMBETTER.

You hereby agree to keep correct records and books of account of all transactions under this and all previous contracts with AMBETTER. You shall hold any records and other property of AMBETTER, relating to transactions by or for AMBETTER, which at any time shall come into your possession or control and shall surrender them to AMBETTER on demand. You shall, as often as requested, exhibit to a designated representative of AMBETTER, all such books and records for such examination as the designated representative may desire to make, and shall in all ways cooperate and assist in such examination.

You agree to obtain and maintain all certifications, registrations and approvals and enter into all agreements with each Exchange that are required in order to enable you to sell the products AMBETTER offers on an Exchange in a state where you are appointed, enroll individuals into an Exchange product, or apply for advance payments of the premium tax credit or cost-sharing reductions for such individual available through the Exchange.

You agree to comply with all applicable laws that govern AMBETTER’s products, and to cooperate and comply with any and all policies, procedures, instructions and directives, oral or written, that Producer and/or AMBETTER may require to ensure compliance with such laws.

You represent, as of date of hereof and that you (i) have not been convicted of or charged with any violation of laws, including any legal requirement related to Medicare, Medicaid, a Federal Health Care Program (as that term is defined in Section 1128B(f) of the Social Security Act, 42 U.S.C. §1320a-7b(f)), or any other federal, state or local reimbursement or governmental health program (“Governmental Programs”), (ii) have not been convicted of any violation of any health care related law, including, but not limited to, the Federal Anti-Kickback Statute (42 U.S.C. §

1320a-7b(b)), the False Claims Act (31 U.S.C. §§ 3729 et seq.), the Anti-Inducement Law (42 U.S.C. § 1320a-7a(a)(5)), the civil False Claims Act (31 U.S.C. § 3729 et seq.), the administrative False Claims Law (42 U.S.C. § 1320a-7b(a)), the Exclusion Laws (42 U.S.C. § 1320a-7), the Civil Monetary Penalties Laws (42 U.S.C. § 1320a-7a), the Stark Laws (42 U.S.C. § 1395nn), the Patient Protection and Affordable Care Act (Public Law 111 - 148, 124 Stat. 119), as amended, and laws imposed or enforced by the U.S. Department of Health and Human Services, (iii) are not excluded, suspended, or debarred from participation, or has received a written notice of their exclusion, suspension, or debarment from participation, in Medicare, Medicaid or any other Governmental Program, (iv) have not been convicted of any criminal offense relating to the delivery of any item or service under a Federal Health Care Program, or had a civil monetary penalty assessed against them under Section 1128A of the Social Security Act or any regulations promulgated thereunder, (v) are not excluded, debarred, suspended, or otherwise disqualified or declared ineligible from receiving federal contracts, certain subcontracts, and certain federal assistance and benefits by the U.S. General Services Administration pursuant to the provisions of 31 U.S.C. 6101, E.O. 12549, E.O. 12689, 48 C.F.R. Section 9.404, and each agency's codification of the Common Rule for Nonprocurement suspension and debarment, (vi) have not been designated a Specially Designated National or Blocked Person by the Office of Foreign Asset Control of the U.S. Department of Treasury, and (vii) are licensed to sell AMBETTER's insurance products and will maintain appropriate licenses at all times. Continued solicitation is contingent upon your continuing qualification by possession of the required licenses, appointments, and certifications. This is an ongoing warranty and representation, and you agree to immediately notify AMBETTER of change hereto.

You also hereby agree to immediately notify AMBETTER of any disciplinary action against you by any regulatory agency, the subject of which involves you producer license, a violation of law, fraud, misappropriation, conversion, misrepresentation or insurance. Such notice must include details of all incidents and the disposition, regardless of whether any penalty was imposed.

5. **Indebtedness.** Any indebtedness by you or your Sub-Producer(s) to us will be a first lien on any commissions due or to become due under this or any previous Agreement. Such commissions will continue to be forfeited to AMBETTER until yours or any Sub-Producers' debt is liquidated. Upon written notice, you must pay to AMBETTER any indebtedness owed even though there may be future commissions payable under this Agreement. If the debt has been satisfied, all renewal commissions due you thereafter will be paid if you are currently producing new business for us and total commissions payable to you exceeds the dollar amount set forth in Paragraph 12.

Neither you nor your Sub-Producer(s) may incur any indebtedness in AMBETTER name or for which AMBETTER would have any liability.

6. **Commission Schedule.** We will pay you, as full compensation for your services and expenses, the commissions shown on the attached Commission Schedule. The distribution of these commissions will be made as outlined in the Commission Schedule. Payment of all or part of these commissions by us to a Producer or Producers, under the terms of this Agreement, will discharge AMBETTER to the extent of the payment. We reserve the right to change the Commission Schedule with thirty (30) days advance notice to you.

7. **Assignment.** You may not assign, transfer, or dispose of any interest that you may have in this Agreement or in any business you may have written under this Agreement at any time without AMBETTER written consent.

8. **Advertising and Printed Material.** You will not use AMBETTER trademark, service mark, name or symbols, either presently or hereafter, without the express written permission of a duly authorized representative of AMBETTER, and will cease any and all such use immediately upon the termination of this Agreement or withdrawal by AMBETTER of such permission. You agree not to use, share, host, post, publish or distribute any printed matter, including but not limited to circulars and advertisements, or any electronic media, including but not limited to Internet web pages or links thereto, referring to AMBETTER without our prior written approval. Any printed material and supplies we may furnish are our property and must be promptly returned to us upon request. All electronic media must be promptly removed or shut down upon request.

9. **Refunds.** We reserve the right at all times to reject an application for insurance with or without cause, and to cancel, refuse to renew, or modify any Policy, Plan or Certificate, pursuant to all applicable laws, where such right to do so exists in the Policy, Plan or Certificate. We reserve the right to refund premium and recover any commissions paid to the Producer. We reserve the right to collect debit balances at any time.

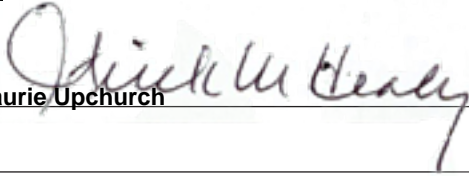
10. **Disputes.** It is AMBETTER policy to resolve all disputes between Producers and insureds in a prompt and equitable method. AMBETTER reserves the right to arbitrate and compromise any disputes (i.e. alleged misrepresentation) which may arise between you and your Sub-Producer(s) and/or insureds. In all such cases, the decision shall be binding and conclusive. We reserve the right to refund premium and recover any commissions paid to you or your Sub-Producer(s) as set forth in Paragraph 11.

11. **Vesting.** Renewal commissions are vested so long as total commissions payable by us to you on all cases amount to at least \$25.00 and you remain the producer of record. Subject to state law, subject to the minimum payment provided herein and subject to the Termination provision, we will pay commissions to you or, after your death, to your estate or legal heir.

**12. Termination.**

- (a) This Agreement will continue until terminated by either party. You or we may terminate this Agreement at any time by giving thirty (30) days written notice to the other party of the termination, deposited in the United States mail addressed to you at your last known address or to us at the address shown on the Application. This Agreement will automatically terminate upon your death.
- (b) AMBETTER reserves the right to terminate this Agreement for cause. Such termination will be delivered to you in writing, and is effective immediately upon dispatch. Cause includes, without limitation, your failure to comply with any provision of this Agreement, whether material or immaterial. This Agreement will terminate automatically upon termination of your employment or engagement with Producer or termination of Producer's agreement with AMBETTER.
- (c) AMBETTER reserves the right to call this Agreement for review with identification of any material deviation in alignment with AMBETTER's target consumer (those at less than 400% FPL). Identification of such deviation will require immediate review and discussion, including both parties, to determine resolution, up to and including the termination of this Agreement
- (d) Your right to the payment of any commissions, including those commissions that would be otherwise vested, under this or any other Agreement or contract you have with AMBETTER will terminate if:
- (1) Your license to sell insurance is revoked, suspended, or canceled by the issuing state;
  - (2) You violate any provision of Paragraph 3 or 4 of this Agreement; or
  - (3) You commit any dishonest or fraudulent act, including but not limited to:
    - I. the wrongful conversion or withholding of funds belonging to AMBETTER, to any applicant for insurance with AMBETTER, or to any AMBETTER Policyholder, Planholder, or Certificate-holder; or
    - II. the submission of an application for insurance containing a material misrepresentation, which is known to you; or
    - III. your conviction for violation of the Insurance Code or Regulations.
- (d) On termination of this Agreement, all books, supplies, maps, surveys, and documents containing the records of the business of AMBETTER shall be the property of AMBETTER and shall be promptly delivered, destroyed or recycled at the direction of AMBETTER.

13. **Indemnification.** You shall indemnify and hold AMBETTER harmless from all losses, expenses, costs, damages and liability resulting from your or any Sub-Producers' misrepresentations, negligence, omissions, and unauthorized acts or transactions. You shall indemnify and hold AMBETTER harmless from all losses, expenses, costs, damages and liability resulting from any disputes between you and your Sub-Producers. Indemnification shall not be the exclusive remedy as AMBETTER shall be entitled to any other remedy, whether at law or in equity, for such disputes, misrepresentations, in-action's, and unauthorized acts or transactions.
14. **Sole Agreement.** This Agreement terminates and supersedes any and all prior Agreements between AMBETTER and you relating to the solicitation of insurance. Any commissions due or to become due under any previous Agreement will not be affected and any indebtedness and any liens will continue in full force.
15. **Amendment.** No amendment or modification of this Agreement shall be valid unless made in writing by AMBETTER.
16. **Severability.** The provisions of this Agreement are severable and in the event any provision or clause herein shall be invalid or unenforceable under the laws of the State of **GEORGIA** or in any state wherein action is commenced on this Agreement, the subject provision or clause shall be disregarded and have no force or effect upon the validity and enforceability of the remaining clauses and provisions herein AMBETTER failure to insist upon strict compliance with any of the provisions of this Agreement or with AMBETTER rules shall not be construed as a waiver of any such provisions or rules, and they shall continue in full force and effect.
17. **Governing Law.** This Agreement is made and entered into in the State of **GEORGIA** and its validity and construction shall be governed by the laws of the State of **GEORGIA**.
18. **Notice.** Any notice required by this agreement shall be proper and effective, if given in writing as follows:
  - (a) If by AMBETTER to the producer, by delivery to the producer personally, by facsimile transmission, by electronic mail, or by the United States mail addressed to the producer at the producer's mailing address;
  - (b) If by the producer to AMBETTER, by delivery to the home office of AMBETTER, or by United States mail addressed to AMBETTER at its home office mailing address.
19. **Business Associate.** The parties agree that this Agreement and all information relating to membership and individual members and prospective members shall be considered confidential and shall be treated as such. You acknowledge agree that Producer has signed a Business Associate Agreement with AMBETTER as required by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), and that you are bound to and shall comply with the terms of that Business Associate Agreement. This provision shall survive the termination of this Agreement.
20. **Arbitration.** The parties agree that any controversy or claim arising out of or relating to this Agreement, or breach thereof, whether involving a claim in tort, contract or otherwise, shall be settled by final and binding arbitration in accordance with the Federal Arbitration Act.
21. **Waiver.** Waiver of a breach of this Agreement at any time by AMBETTER shall not be deemed to be a waiver of any other breach or of the same breach at a later time.

Producer Signature:  Date: **10/05/2015**  
 Agreement accepted by: \_\_\_\_\_ Date: **02/22/2016**

on behalf of AMBETTER OF PEACH STATE, INC.  
**Patrick Healy**  
**President and CEO**