

**STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER**

In the Matter of

**YOURPEOPLE, INC. DBA
ZENEFITS FTW INSURANCE
SERVICES,**

Licensee.

Order No. 16-0219

WAOIC No. 859923

FEIN No. 46-0645293

CONSENT ORDER

This Consent Order ("Order") is entered into by the Insurance Commissioner of the state of Washington ("Insurance Commissioner"), acting under the authority set forth in RCW 34.05.060, RCW 48.02.060, RCW 48.17.530, and RCW 48.17.560, and Licensee YourPeople, Inc. DBA Zenefits FTW Insurance Services ("the Licensee" or "Zenefits"). This Order is a public record and will be disseminated pursuant to Title 48 RCW and the Insurance Commissioner's policies and procedures.

BASIS:

1. Zenefits is a nonresident insurance producer that has been licensed in Washington since May 2014. Zenefits has a subsidiary named PayYourPeople, LLC.

2. The Insurance Commissioner commenced an investigation into Zenefits' conduct, described herein, on February 23, 2015. At the conclusion of that investigation, the Insurance Commissioner found that Zenefits offered and gave Washington residents free access to valuable software functions.

3. The Insurance Commissioner, through his investigation, specifically found as follows:

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- a. Zenefits offers an online, cloud-based, software-as-a-service platform¹ that integrates the administration of human resources, payroll, and employee benefits. Zenefits refers to the software functions as applications (or "apps").
- b. Zenefits offers the core HR apps of this platform free of charge to the public. Zenefits does not require anyone to become an insurance client to use the core HR apps, which include hiring and terminating employees, managing employee information, tracking employee paid time off, generating Affordable Care Act filings, helping to ensure ACA compliance, and generating various employer reports.
- c. Zenefits also offers certain premium, non-insurance apps for a fee. Zenefits offers the non-insurance apps for the same price regardless of whether the customer designates Zenefits as its insurance broker of record. Examples of these non-insurance premium features that require a fee include commuter benefits, time-and-attendance tracking, and Zenefits payroll.
- d. Zenefits also integrates non-insurance third-party apps into its system, allowing the client to manage certain HR aspects of the third-party app with Zenefits. Examples include apps that manage provisioning upon hire and de-provisioning upon termination, applicant tracking systems, office productivity suites, and payroll accounting software. Zenefits does not charge for the integration of the third-party apps. Zenefits may or may not receive a commission or fee from the provider of the third-party apps for the integration of their apps into Zenefits' system.
- e. For certain insurance-related features centered on insurance enrollment and administration, Zenefits requires a client to designate Zenefits as its broker of record. Once designated as broker of record, Zenefits imports the insurance information into its system and collects the insurance commissions related to those insurance products. At least 25 Washington businesses selected Zenefits to be their insurance producer after Zenefits gave them a demonstration of the free software

¹ The descriptor "software-as-a-service" denotes a software industry term of art and is not dispositive of whether the software offered by Zenefits constitutes a service or a good under RCW 48.30.150.

platform. As of August 27, 2015, about 31 percent of Washington accounts on the Zenefits free software platform designated Zenefits as their broker of record.

4. RCW 48.30.140 provides that, except to the extent provided for in an applicable filing with the Commissioner then in effect, no insurance producer shall, as an inducement to insurance, or after insurance has been effected, directly or indirectly, offer, promise, allow, give, set off, or pay to the insured or to any employee of the insured, any rebate, discount, abatement, or reduction of premium or any part thereof named in any insurance contract, or any commission thereon, or earnings, profits, dividends, or other benefit, or any other valuable consideration or inducement whatsoever which is not expressly provided for in the policy.

5. RCW 48.30.150(1)(c) provides that no insurance producer shall, as an inducement to insurance, or in connection with any insurance transaction, provide in any policy for, or offer, or sell, buy, or offer or promise to buy or give, or promise, or allow to, or on behalf of, the insured or prospective insured in any manner whatsoever any prizes, goods, wares, gift cards, gift certificates, or merchandise of an aggregate value in excess of one hundred dollars per person in the aggregate in any consecutive twelve-month period.

6. The Insurance Commissioner hereby finds and concludes that RCW 48.30.140 and RCW 48.30.150 prohibit a licensee like Zenefits, acting directly or through affiliates, from offering valuable software functions or other valuable benefits for free or at less than fair market value to the public. Accordingly Zenefits and its affiliates are prohibited from offering its software for free or at less than market value to the public.

CONSENT TO ORDER:

The Insurance Commissioner of the state of Washington and the Licensee agree the best interest of the public will be served by entering into this Order. NOW, THEREFORE, the Insurance Commissioner and the Licensee consent to settle this matter upon such terms and conditions as are set forth below:

1. The Licensee acknowledges its duty to comply fully with the applicable laws of the state of Washington.

2. The Licensee consents to the entry of this Order in lieu of entry of a cease and desist order and acknowledges that the factual representations contained in paragraphs 1, 2, and 3 in the

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Basis section of this Order are accurate as of October 1, 2016. This factual acknowledgment does not constrain the ability of Licensee to introduce additional facts or evidence in any subsequent administrative or judicial proceeding.

3. This Consent Order does not constitute an admission of any liability by Zenefits. Zenefits does not admit, and retains and intends to exercise its right to controvert in any subsequent proceeding, the validity of the allegations or legal interpretations contained in this Consent Order.

4. The Licensee expressly preserves the right it has to challenge the Insurance Commissioner's findings and interpretation of RCW 48.30.140 and RCW 48.30.150 through the administrative process, state courts, and legislative channels. The parties agree that there is a present and existing dispute with respect to the Insurance Commissioner's findings and interpretations of RWC 48.30.140 and RCW 48.30.150. that those findings and interpretations constitute an adverse agency action and are ripe for review and justiciable, and that the Licensee has suffered harm and has standing to challenge those findings and interpretations. The Insurance Commissioner acknowledges and agrees that Licensee shall have the right to challenge the Insurance Commissioner's findings and legal interpretations set forth in this Consent Order in an adjudicative proceeding pursuant to the Washington Administrative Procedure Act within 90 days of Licensee's receipt of this fully executed Consent Order. If an administrative hearings officer, administrative law judge or court finds that this dispute is not justiciable, for any reason, this Consent Order shall be null and void.

5. By agreement of the parties, the Licensee will not: (1) provide free use of its online, cloud-based, software platform that integrates the administration of human resources, payroll, and employee benefits; or (2) otherwise engage in conduct that violates RCW 48.30.140 or RCW 48.30.150 or both. From and after January 1, 2017, Licensee will begin to charge all Washington customers for the previously free apps and functionality of its software platform by offering it as part of a paid service sold at fair market value.

6. The Licensee will continue to charge for the previously free apps and functionality of its software platform until the earlier of: (1) the entry of a final, unappealed administrative or judicial order rejecting the Insurance Commissioner's findings, conclusions, or legal interpretations set forth in paragraphs 4-6 of the foregoing factual Basis; or (2) a legislative act clarifying that the Insurance Code allows the Licensee to stop charging for the previously free

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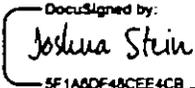
functionality of its software platform. Upon the occurrence of either event, this Consent Order shall be null and void.

7. The Licensee understands and agrees that any further failure to comply with the statutes and/or regulations that are the subject of this Order, as interpreted herein, constitutes grounds for further penalties, which may be imposed in direct response to further violations.

8. The facts of this Order, and any provision, finding, or conclusion contained herein does not, and is not intended to, have any preclusive or collateral estoppel effects in any lawsuit by any party other than the Insurance Commissioner.

EXECUTED this 21st day of November, 2016.

**YOURPEOPLE, INC. DBA ZENEFITS FTW
INSURANCE SERVICES**

By:  _____
SF1A8DF48CEE4CB

Printed Name: Joshua Stein

Printed Corporate Title: General Counsel & Secretary

AGREED ORDER:

Pursuant to the foregoing factual Basis and Consent to Order, the Insurance Commissioner of the state of Washington hereby Orders as follows:

1. The Licensee will not: (1) provide free use of its online, cloud-based, software-as-a-service platform that integrates the administration of human resources, payroll, and employee benefits; or (2) engage in conduct that violates RCW 48.30.140 or RCW 48.30.150 or both. From and after January 1, 2017, Licensee will begin to charge all Washington customers for the previously free apps and functionality of its software platform by offering it as part of a paid service sold at fair market value. The Licensee will continue to charge for the previously free apps

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and functionality of its software platform until the earlier of: (1) the entry of a final, unappealed administrative or judicial order rejecting the Insurance Commissioner's findings, conclusions, or legal interpretations set forth in paragraphs 4-6 of the foregoing factual Basis; or (2) a legislative act clarifying that the Insurance Code allows the Licensee to stop charging for the previously free functionality of its software platform. Upon the occurrence of either event, this Consent Order shall be null and void.

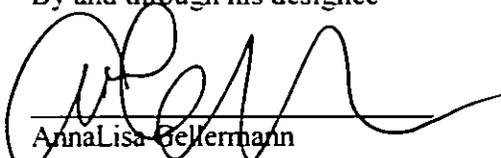
2. The facts of this Order, and any provision, finding, or conclusion contained herein does not, and is not intended to, determine any factual or legal issue or have any preclusive or collateral estoppel effects in any lawsuit by any party other than the Insurance Commissioner.

Entered at Tumwater, Washington, this 23rd day of November 2016.



MIKE KREIDLER
Insurance Commissioner

By and through his designee



AnnaLisa Gellermann
Deputy Insurance Commissioner
Legal Affairs Division

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