

# PRODUCER AGREEMENT

## Dental Health Services

This Agreement is entered into this \_\_\_\_\_, by and between DENTAL HEALTH SERVICES, INC., (“DHS”) a California Corporation and \_\_\_\_\_ (“Producer”).

### RECITALS:

- A. DHS is licensed by the State of California as a Knox-Keene Health Care Service Plan offering a dental health care service.
- B. DHS has developed, and continues to develop, various dental plans (“Dental Plans”) for groups and individuals.
- C. Producer is a general agent or a Producer licensed as such by the California Department of Insurance.
- D. Producer desires to market Dental Plans to groups and individuals in accordance with the provisions of this Agreement. Reference herein to “Dental Contract” shall include both group and individual dental services contracts.
- E. The parties understand and acknowledge that the arrangement created by this Agreement shall be carried out in full compliance with all applicable laws of the United States and of the State of California as they may from time to time exist and all regulations of administrative agencies regulating health care plans and the practice of dentistry.

### AGREEMENT:

#### 1. Terms.

- 1.1 Producer agrees to solicit individuals and groups for DHS Dental Plans on a non-exclusive basis in accordance with the terms of this Agreement.
- 1.2 Producer agrees to familiarize himself/herself, his associates, and employees with the terms and provisions of the Knox-Keene Health Care Service Act of 1975, as amended (the “Act”), and the rules promulgated thereunder (the “Rules”), and shall comply, and shall cause its principal persons and employees to comply, with all applicable provisions of the Act and the Rules.
- 1.3 Producer agrees to use only those marketing and advertising materials designed or authorized by DHS and approved by the California Department of Managed Health

Care for solicitation. Producer shall not modify any Dental Plans or Dental Contract, nor make any representations except by use of approved marketing and advertising materials.

- 1.4 For each Dental Contract which DHS enters into which is procured by Producer, Producer shall be entitled to a commission, based on a percentage of premiums collected by DHS. Premiums and commissions for the various Dental Plans to be marketed under this Agreement are set forth in Exhibit A attached, as the same may be amended by the parties from time to time.
- 1.5 Producer shall maintain full, true and complete financial records in connection with the Agreement, and shall maintain and provide such additional records and information to DHS and/or to the California Department of Managed Health Care as may be necessary for compliance by DHS with the provisions of the Act and the Rules. Such records shall be retained for at least five (5) years. Producer further agrees that this obligation is not terminated upon the termination of this Agreement, whether by rescission or otherwise. DHS shall have access at all reasonable times, upon demand, to account records, and financial and other books, records and papers of Producer relating to this Agreement and the Dental Contracts entered into by DHS which have been procured by Producer. Payment of commissions to Producer shall be made on the 15th of each month based on premiums received by DHS during the immediately preceding calendar month.
- 1.6 Dental Plans are to be offered only in service areas covered by DHS. DHS shall specify premium rates for each Dental Plan. DHS retains the right to revise Dental Plans and the premium rates for Dental Plans.
- 1.7 Producer shall not have authority to enter into Dental Contracts on behalf of DHS. Dental Contracts procured by Producer shall be prepared by DHS and shall be effective only upon written approval or acceptance by DHS. Producer's authority is limited to accepting applications for Dental Contracts.
- 1.8 For all clients that Producer enrolls into DHS, Producer shall not accept any checks made out personally to the Producer. If Producer receives such payment, this money should be returned to the client and the client should be directed to make payment payable directly to DHS. Producer shall remit all payments to DHS by the close of the business day following receipt.

**2. Relationship.** Producer is an independent contractor and is not an employee or agent of DHS.

**3. Term and Conditions.**

- 3.1. The term of this Agreement shall be at the will of each party. It shall continue until either party delivers one hundred twenty (120) days' notice of termination to the other. Termination of this Agreement shall not affect Dental Contracts made hereunder prior to notice of termination. Either party may terminate the Agreement in the event of a material breach of the Agreement by the other party, or for cause, by giving notice to the other party. Termination in such event shall be effective immediately upon notice. Cause shall include but is not limited to:

- Termination of the other party's business;

- Bankruptcy, receivership or insolvency of the other party;
- Revocation, suspension, or termination of any required license held by the other party, or failure of the other party to comply with applicable California or federal laws. Termination shall be without prejudice to any cause of action occurring prior to the effective date of termination. Termination shall not affect any provision of this Agreement which by its terms would survive such termination.

3.2. In the event of termination for any reason, Producer shall be entitled to compensation (if any) for any outstanding Dental Contract(s) procured by Producer.

3.3. Producer shall be entitled to compensation hereunder only in accordance with the schedule attached as Exhibit A, as the same may be revised by the parties from time to time.

3.4. Producer shall promptly notify DHS of the institution of any disciplinary proceedings against it or against any of its employees relating to any license issued to any such person by the California Insurance Commissioner.

**4. Liability-Insurance.** Each party shall be responsible for its own acts or omissions and any and all claims, liabilities, injuries, suits, demands and expenses of all kinds which may result or arise out of any alleged malfeasance or neglect caused or alleged to have been caused by such party, in the performance or omission of any act or responsibility of such party under this agreement. In the event that a claim is made against both parties, it is the intent of both parties to cooperate in the defense of said claim and to cause their insurers to do likewise. However, each party shall have the right to take any and all actions it believes necessary to protect its interests.

## **5. Miscellaneous.**

5.1 Amendment. This Agreement may be modified or amended only by written document executed by both parties, provided, however, this Agreement shall be deemed automatically amended, without necessity of such written document, to the extent required by the California Department of Managed Health Care.

5.2 Captions. The captions contained herein are for convenience only and should not be considered or referred to in resolving questions or interpretations or construction.

5.3 No Waiver. The waiver of any provision of this Agreement by either party, or the failure of either party to claim a breach of any provision of this agreement, shall not be, or be held to be, a waiver of any subsequent breach, or affecting in any way the effectiveness of such provision.

5.4 California Contract. This Agreement shall be interpreted, governed and construed according to the laws of the State of California.

5.5 Entire Agreement. This Agreement, and any attached Addenda, reflect the entire agreement of the parties as to the subject matter hereof. Promises or representations not embodied in these documents shall have no force or effect.

- 5.6 Attorney's Fees. In the event of arbitration or litigation between the parties arising from any breach of this Agreement, the prevailing party shall be reimbursed for all reasonable expenses incurred in resolving such dispute, including reasonable attorneys' fees exclusive of such amount of attorneys' fees as shall be premium for result or for risk of loss under a contingency fee arrangement.
- 5.7 Arbitration. Claims by Producer relating to this agreement shall first be submitted to DHS for resolution and shall be directed to DHS' Professional Services Manager at 3833 Atlantic Avenue, Long Beach, CA 90807, Telephone (562) 595-6000. Any controversy or claim arising out of or relating to this contract not resolved between the parties shall be settled by arbitration in accordance with the commercial arbitration rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. At the request of any party, the arbitrators, attorneys, and parties to the arbitration, witnesses, experts court reporters, or other persons present at the arbitration shall agree in writing to maintain the strict confidentiality of the arbitration proceedings. Arbitration shall be conducted by a single, neutral arbitrator, or, at the election of any party, three neutral arbitrators, appointed in accordance with the arbitral rules identified above. The award of the arbitrator(s) shall be enforceable according to the applicable provisions of the California Code of Civil Procedure. The arbitrator(s) may award damages and/or permanent injunctive relief, but in no event shall the arbitrator(s) have the authority to award punitive or exemplary damages. Notwithstanding the foregoing, a party may apply to a court of competent jurisdiction for relief in the form of a temporary restraining order or preliminary injunction, or other provisional remedy pending final determination of a claim through arbitration in accordance with this paragraph. If proper notice of any hearing has been given, the arbitrator(s) will have full power to proceed to take evidence or to perform any other acts necessary to arbitrate the matter in the absence of any party who fails to appear.
- 5.8 Notices. Any notice, demand, request, consent, approval or communication that either party desires, or is required to give to the other party or any other person, shall be in writing and either served personally or sent by registered or certified United States mail, or by courier mail (i.e., Federal Express, United Parcel Service, etc.). Any notice, demand, request, consent, approval or communication that either party desires, or is required to give to the address appearing on the signature page of this agreement. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within three(3) business days from the time of deposit in the United States mail if mailed as provided in this section, or upon delivery, if delivered personally or by courier mail.
- 5.9 Notwithstanding the provisions of Paragraph 5.8, the parties specifically authorize the use of, reliance upon, and introduction into evidence of documents and signatures transmitted electronically through any facsimile device, which generates a proof of valid transmission. The party transmitting any such original document or signature agrees to maintain the original and will, upon request, provide the original document and proof of transmission to any other party.
- 5.10 As used herein, the singular shall include the plural and vice versa, and the masculine, feminine and neuter shall each include the other, as the context may require.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION, WHICH MAY BE ENFORCED BY THE PARTIES.

DENTAL HEALTH SERVICES

By:  \_\_\_\_\_

“DHS”

Address:  
3833 Atlantic Avenue  
Long Beach, CA 90807  
Telephone: (562) 595-6000  
Facsimile: (562) 427-0601

By: \_\_\_\_\_

“Producer”

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Email: \_\_\_\_\_

Federal Tax ID Number (EIN or SSN):  
\_\_\_\_\_

National Producer Number (NPN):  
\_\_\_\_\_

## EXHIBIT A

### DENTAL HEALTH SERVICES

3833 Atlantic Avenue  
Long Beach, CA 90807  
(562) 595-6000  
Fax (562) 427-0601

Dental Health Services will directly pay the following commission to Producer appointed by DHS dental plan membership submitted by Producer.

**Individual Plan Product (DHMO only)**

**Producer Commission**

20%

**Group Product (DHMO, Reimbursement, PPO products)**

**Producer Commission**

10% Prepaid

8% PPO/Reimbursement

**Covered California Products (DHMO only)**

**Producer Commission**

10%

**Commission is payable on a monthly basis or upon renewal for annual members.**

Any Producer Commission levels differing from the above percentages may be negotiated on a case by case basis. Such change **must** however, be negotiated prior to the effective date of the Group.

Payment of these services is subject to the conditions as outlined in the Producer Commission Agreement. Commissions shall be equal to the applicable percentage of the adjustable prepayment fees or premium, minus any refunds due to cancellations or administrative fees charged by Dental Health Services, Inc.

This Schedule is subject to change from time to time without notice, but no such change shall affect compensation on contracts issued prior to the effective date of such change, except by mutual agreement.

Note: Producer Commissions will accrue until at least \$25.00 is owed by DHS to Producer.



## Dental Health Services

### **Health Insurance Portability and Accountability Act (HIPAA) Business Associate Agreement**

This HIPAA Business Associate Agreement is made between Dental Health Services of America, a California Corporation (Dental Health Services), on behalf of its affiliate companies, including Dental Health Services Inc. and Dental Health Services dba Dental Health Services, Your Dental Plan, and \_\_\_\_\_ and is effective as of \_\_\_\_\_.

#### RECITALS:

- A. Dental Health Services has engaged you, as a Business Associate, to provide certain services on behalf of Dental Health Services.
- B. Your performance of the Service Agreement involves the use or disclosure of information, some of which may constitute Protected Health Information (PHI) defined below.
- C. As a Business Associate of Dental Health Services, you agree to protect the privacy and provide for the security of PHI disclosed to you in compliance with the Privacy Rule, Security Rule, EDI Rule (as such rules may be amended) as well as the, Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA), the Health and Information Technology for Economic and Clinical Health Act, Public Law 111-005 (“the HITECH Act”) and the American Recovery and Reinvestment Act of 2009 and the rules promulgated thereunder, as may be amended from time to time (collectively, “ARRA”) applicable to Business Associates as a “business associate” within the meaning of 45 CFR Section 160.103.
- D. As part of the HIPAA Regulations, the Privacy Rule (defined below) requires Dental Health Services, as a Covered Entity to have contractual arrangements with Business Associates of Dental Health Services, containing specific requirements prior to the disclosure of PHI as outlined in, but not limited to, Title 45, Sections 164.314 (a), 164.502(e) and 164.504(e) of the Code of Federal Regulations (“CFR”) and those contained in this Agreement.
- E. To the extent that the Business Associate is to carry out a Covered Entity’s obligation under the Privacy Rule, Business Associates are to comply with the requirements of the Privacy Rule that apply to the Covered Entity in the performance of such obligation, as required under the HIPAA Omnibus Final Rule Summary.

AGREEMENT:

1. Definitions.

Catch-all Definition:

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Protected Health Information, Required by Law, Secretary, Subcontractor, Unsecured Protected Health Information, and Use.

Specific Definitions:

- a. “Business Associate” is a person or organization that performs a function or activity on behalf of a covered entity, but is not part of the covered entity’s workforce. A business associate can also be a covered entity in its own right. See, 45 CFR Section 160.103).
- b. “Covered Entity” Under HIPAA, this is a health plan, a health care clearinghouse, or a health care provider who transmits any health information in electronic form in connection with a HIPAA transaction. See 45 CFR Section 160.103.
- c. “Privacy Rule” the standards for Privacy of Individually Identifiable Health Information (45CFR Section 160 and 164).
- d. “Protected Health Information” or “PHI” any information whether oral or recorded, in any form or medium, created or received by a Business Associate from or on behalf of Dental Health Services: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual (ii) the past, present or future payment for the provision of health care to an individual. If this information identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. Protected Health Information includes Electronic Protected Health Information. See 45 CFR Section 164.501 & 160.103.
- e. “Security Rule” shall mean the HIPPA Regulation that is codified at CFR Section 160 and 164, Subparts A and C.

*Terms used, but not otherwise defined in this Agreement, shall have the same meaning as those terms contained in the Privacy Rule.*



2. Obligations of Business Associate.

- a. Permitted Uses and Disclosures of PHI. You agree to not use or further disclose PHI other than as permitted or required by the Service Agreement or as Required by Law. Except as otherwise limited in this Agreement, you may only use or disclose PHI to perform functions, activities or services for, or on behalf of, Dental Health Services as specified in the Service Agreement, and for any proper management and administration, or to carry out its legal responsibilities, provided that such uses or disclosure would not violate the Privacy Rule or the HITECH Act if performed by Dental Health Services. You may further use PHI to report violations of law appropriate to Federal and State authorities, consistent with 45CFR Section 164.502(j) and (i). However, you may disclose protected information for the proper management and administration, to carry out legal responsibilities, as required by law, or for data aggregation purposes for health care operations. If you disclose PHI to a third party, you must first obtain reasonable written assurance from the third party that provided protected information will be held confidential pursuant to this agreement and only disclosed as required by law or for the purposes for which it was disclosed to such third party and a written agreement from such third party is in place which requires immediate notification to you, the Business Associate, of any breaches of confidentiality of the Protected Information, to the extent it has gained knowledge of such breach. See 42 U.S.C. Section 17932; 45 CFR Sections 164.504 (e) 2(i), 164.504 (e) 2(i)(b), 164.504 (e) 2(ii) (A), 164.504 (e) 4(ii).
- b. Appropriate Safeguards. You will use and implement appropriate, necessary safeguards to prevent the use or disclosure of PHI as required by this Agreement. You will appoint a security official, develop written HIPAA policies and procedures and train your workforce on HIPAA and how to protect PHI,
- c. Associate's Agents, Subcontractors or employees. You will ensure any agents, Subcontractors or employees, to whom you provide PHI will agree in writing to the same conditions and restrictions that apply to you through this Agreement with respect to such PHI.
- c. Minimum Necessary. You and your agents or subcontractors shall only request, use and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure.
- d. Notification of Breach or improper Use or Disclosure. During the term of this Agreement, You shall notify Dental Health Services promptly upon discovery of any "breach" or potential "breach" of any unsecured protected health information, as such terms are defined by ARRA (and of breach or potential breach of personal information, including any such breach by or caused by you or your Agents, Subcontractors or employees) within five (5) days of becoming aware of such breach, improper use or disclosure. Such notice shall include the information required to be provided by you to Dental Health Services under ARRA and other applicable law, and such other information reasonably requested by the Dental Health Services with respect to the breach. You shall not: 1) Contact plan participant, spouse, dependent or beneficiary of the plan participant in regards to the breach. 2) Report any breach

of information to any media outlet or otherwise notify the public of any such breach without the written consent of Dental Health Services. Dental Health Services will work with you and/or your associate agents to notify individuals whenever there is a reasonable belief or actual knowledge of a breach of the privacy of an individual's PHI. Any breach which occurs involving more than 500 individuals is required to be reported to Health and Human Services "HHS". Any breach involving 500 or fewer individuals must be maintained in a log format, and submitted annually. A breach affecting more than 500 individuals living in the same geographic area must be reported to the local media.

- e. Access to Protected Information. You will make PHI that you, your agents or subcontractors maintain in Designated Record Sets available to Dental Health Services or as directed by Dental Health Services for inspection and copying within ten (10) days of a request by Dental Health Services in order to meet the requirements under the Privacy Rule, including, but not limited to, 45 CFR Section 164.524, which provides for an Individual's right of access to his/her PHI.
- f. Amendment of PHI. Within ten (10) days of receipt of a request from Dental Health Services for an amendment of PHI or a record about an Individual contained in a Designated Record Set, you or your agents or subcontractors will make such PHI available to Dental Health Services for amendment and incorporate any such amendment to enable Dental Health Services to fulfill its obligations under the Privacy Rule, or Security Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 or the HITECH Act from the American Recovery and Reinvestment Act of 2009 and its associated regulations.
- g. Accounting Rights. Within ten (10) days of notice by Dental Health Services of a request for an accounting of disclosures of PHI, you and your agents or subcontractors provide an accounting of disclosures to enable Dental Health Services to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR Section 164.528. You agree to implement a process that allows for an accounting to be collected and maintained by you and your agents or subcontractors for at least six (6) years prior to the request. At a minimum, such information shall include: (i) the date of disclosure; (ii) the name of the entity or person who received PHI and the address of the entity or person; (iii) a brief description of PHI disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the Individual of the basis for the disclosure, or a copy of the Individual's authorization, or a copy of the written request for disclosure.
- h. Governmental Access to Records. You will make internal practices, including policies and procedures, books and records relating to the use and disclosure of PHI available to the Secretary for purposes of determining Dental Health Services' compliance with the Privacy Rule and concurrently provide Dental Health Services a copy of any PHI that you provide to the Secretary.

- i. Minimum Necessary. You and your agents or subcontractors shall only request, use and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure.
- j. Retention of PHI. Notwithstanding Section 4(c) of this Agreement, Business Associate and its subcontractors or agents shall retain the information required under Section 2(h) of this Agreement for a period of six (6) years.

3. Obligations of Dental Health Services

- a. Changes in Privacy Notice. Dental Health Services will notify you of any limitation in its privacy practices in accordance with 45 CFR Section 164.520, to the extent that such limitations may affect use or disclosure of PHI.
- b. Changes in Permission. Dental Health Services will notify you of any changes in, or revocation of, permission by Individual to use or disclose PHI to the extent that such changes may affect your use and disclosure of PHI.
- c. Agreed Upon Changes. Dental Health Services will notify you of any restriction to the use or disclosure of PHI that Dental Health Services has agreed to in accordance with 45 CFR Section 164.522, to the extent that such restriction may affect your use or disclosure of PHI.
- d. Permissible Requests. Dental Health Services will not request you to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if performed by Dental Health Services except as permitted in paragraph 2a.

4. Term and Termination

- a. Term. This Agreement is effective as of, \_\_\_\_\_ and shall terminate when all of the PHI provided by Dental Health Services to you, or created or received by you on behalf of Dental Health Services, is destroyed or returned to Dental Health Services, or, if it is infeasible to return or destroy PHI, protections are extended to such information in accordance with the termination provisions in this Section.
- b. Termination for Cause. Upon Dental Health Services' knowledge of a material breach by you, Dental Health Services shall either (i) provide an opportunity for Associate to cure the breach or end the violation and terminate this Agreement and the Service Agreement if you do not cure the breach or end the violation within the time specified by Dental Health Services; or (ii) immediately terminate this Agreement and the Service Agreement if you have breached a material term of this Agreement and cure is not possible.

- c. Effect of Termination. Upon termination of this Agreement for any reason, you will return or destroy all PHI that you or your agents or subcontractors still maintain in any form, and shall retain no copies of such PHI. If the parties jointly determine that return or destruction is not feasible, you will continue to extend the protections of this Agreement to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. Your respective rights and obligations under this paragraph (4c) shall survive termination of this Agreement.
5. Amendment. Dental Services and Business Associate (Parties) acknowledge that state and federal laws relating to data security and privacy are evolving and that amendment of this Agreement may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as necessary to implement the standards and requirements of HIPAA, the Privacy Rule and other applicable laws relating to the security or confidentiality of PHI. The parties understand and agree that Dental Health Services must receive satisfactory written assurance from Business Associates that adequately safeguard all PHI. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Agreement embodying written assurances consistent with the standards and requirements of HIPAA, the Privacy Rule or other applicable laws. Dental Health Services may terminate this Agreement upon thirty (30) days written notice in the event (i) you do not promptly enter into negotiations to amend this Agreement when requested by Dental Health Services pursuant to this Section or (ii) you do not enter into an amendment to this Agreement providing assurances regarding the safeguarding of PHI that Dental Health Services in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the Privacy Rules.
6. Assistance in Litigation or Administrative Proceedings. You shall make yourself, and any subcontractors, employees or agents assisting you in the performance of your obligations under this Agreement, available to Dental Health Services, at no cost to Dental Health Services, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Dental Health Services, its directors, officers or employees based upon a claimed violation of HIPAA, the Privacy Rule, Security Rule, EDI Rule, ARRA and/or other laws relating to security and privacy, except where you or your subcontractor, employee or agent is a named adverse party.
7. Hold Harmless. You shall hold harmless Dental Health Services, agents and/or subcontractors from and against any claims, losses, liabilities, costs and other expenses incurred as a result of or in connection either directly or indirectly with any disclosure of Protected Health Information and/or Personal Information in violation of this Agreement, any breach of unsecured Protected Health Information and/or breach of Personal Information, and or any other violation of the Privacy Rule, Security Rule, EDI Rule, ARRA

and/or any other applicable law, by or caused by Business Associate or any Contractor, employee, agent, or under the Business Associate's control .

8. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer upon any person or entity other than Dental Health Services, yourself and your respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
  
9. Interpretation. The provisions of this Agreement shall prevail over any provisions in the Service Agreement that may conflict or appear inconsistent with any provision in this Agreement. This Agreement (and any Addendum) shall be interpreted as broadly as necessary to implement and comply with HIPAA and the Privacy Rule. The parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the Privacy Rule.
  
10. Miscellaneous
  - a. This Agreement and the Service Agreement, as well as the documents referred to in this Agreement constitute the entire Agreement between the parties with regard to the subject matter hereof and thereof. There are no agreements, representations, or warranties between or among the parties other than those set forth in the Agreement, the Service Agreement, or the documents referred to in this Agreement.
  - b. Wherever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine, or neuter forms, and the singular form of nouns or pronouns shall include the plural and vice versa.
  - c. Time is of the essence in respect to all provisions of this Agreement in which definite time for performance is specified.
  - d. The Parties shall, at their own cost and expense, execute and deliver such further documents and instruments and shall take such other actions as maybe reasonably required or appropriate to carryout the intent and purposes of the Agreement.
  - e. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement shall not be effective until the execution and delivery between the parties of at least on set of counterparts.
  - f. If either party to this Agreement shall bring any action, suit arbitration, or mediation for any relief against the other, declaratory or otherwise, to enforce the terms hereof or to declare rights hereunder (collectively, an action), the losing party shall pay to the prevailing party a reasonable sum for attorney's fees and judgment, order, ruling

or award and shall be paid whether or not such Action is prosecuted to a decision. The court or arbitrator may fix the amount of reasonable attorneys' fees and costs on the request of either party. "Prevailing party" within the meaning of this paragraph includes, without limitation, a party who agrees to dismiss an Action on the other party's payment of the sums allegedly due or performance of the covenants allegedly breached, or who obtains substantially the relief sought by it.

- g. The waiver of any provision of this Agreement by either party, or the failure of either party to claim a breach of any provision this agreement, shall not be, or be held to be, a waiver of any subsequent breach, or affecting in any way the effectiveness of such provision.
- h. This Agreement shall be interpreted, governed and construed according to the internal laws of the State of California.
- i. Any notice, demand, request, consent, approval or communication that either party desires, or is required to give to the other party or any other person, shall be in writing and either served personally or sent by registered or certified United States mail, or by courier mail. Any notice, demand, request, consent, approval or communication that either party desires, or is required to give, shall be to the address appearing on the signature page of this agreement. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within three business days from the time of deposit in the United States mail or upon delivery, if delivered personally or by courier mail.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Effective Date.

DENTAL HEALTH SERVICES, INC.

COMPANY

By:  \_\_\_\_\_

By: \_\_\_\_\_

Title: Privacy Officer \_\_\_\_\_

Title: \_\_\_\_\_

Dental Health Services  
3833 Atlantic Ave  
Long Beach, California 90807-3505

Company:  
Address Line 1:  
Address Line 2:  
City, State Zip:

## Request for Taxpayer Identification Number and Certification

**Give form to the  
requester. Do not  
send to the IRS.**

<b>Print or type See Specific Instructions on page 2.</b>	Name (as shown on your income tax return)	
	Business name, if different from above	
	Check appropriate box: <input type="checkbox"/> Individual/Sole proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶ ..... <input type="checkbox"/> Exempt payee <input type="checkbox"/> Other (see instructions) ▶	
	Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
	City, state, and ZIP code	
	List account number(s) here (optional)	

### Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Social security number
or
Employer identification number

**Note.** If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

### Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

<b>Sign Here</b>	Signature of U.S. person ▶	Date ▶
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## General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

### Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

**Note.** If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

- The U.S. grantor or other owner of a grantor trust and not the trust, and
- The U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

**Foreign person.** If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

**Nonresident alien who becomes a resident alien.** Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a “saving clause.” Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

**Example.** Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity not subject to backup withholding, give the requester the appropriate completed Form W-8.

**What is backup withholding?** Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments. This is called “backup withholding.” Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

**Payments you receive will be subject to backup withholding if:**

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 3 for details),
3. The IRS tells the requester that you furnished an incorrect TIN,

4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or

5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the instructions below and the separate Instructions for the Requester of Form W-9.

Also see *Special rules for partnerships* on page 1.

## Penalties

**Failure to furnish TIN.** If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

**Civil penalty for false information with respect to withholding.** If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

**Criminal penalty for falsifying information.** Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

**Misuse of TINs.** If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

## Specific Instructions

### Name

If you are an individual, you must generally enter the name shown on your income tax return. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

**Sole proprietor.** Enter your individual name as shown on your income tax return on the “Name” line. You may enter your business, trade, or “doing business as (DBA)” name on the “Business name” line.

**Limited liability company (LLC).** Check the “Limited liability company” box only and enter the appropriate code for the tax classification (“D” for disregarded entity, “C” for corporation, “P” for partnership) in the space provided.

For a single-member LLC (including a foreign LLC with a domestic owner) that is disregarded as an entity separate from its owner under Regulations section 301.7701-3, enter the owner’s name on the “Name” line. Enter the LLC’s name on the “Business name” line.

For an LLC classified as a partnership or a corporation, enter the LLC’s name on the “Name” line and any business, trade, or DBA name on the “Business name” line.

**Other entities.** Enter your business name as shown on required federal tax documents on the “Name” line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the “Business name” line.

**Note.** You are requested to check the appropriate box for your status (individual/sole proprietor, corporation, etc.).

### Exempt Payee

If you are exempt from backup withholding, enter your name as described above and check the appropriate box for your status, then check the “Exempt payee” box in the line following the business name, sign and date the form.



Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends.

**Note.** If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

The following payees are exempt from backup withholding:

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2),
2. The United States or any of its agencies or instrumentalities,
3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities,
4. A foreign government or any of its political subdivisions, agencies, or instrumentalities, or
5. An international organization or any of its agencies or instrumentalities.

Other payees that may be exempt from backup withholding include:

6. A corporation,
7. A foreign central bank of issue,
8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States,
9. A futures commission merchant registered with the Commodity Futures Trading Commission,
10. A real estate investment trust,
11. An entity registered at all times during the tax year under the Investment Company Act of 1940,
12. A common trust fund operated by a bank under section 584(a),
13. A financial institution,
14. A middleman known in the investment community as a nominee or custodian, or
15. A trust exempt from tax under section 664 or described in section 4947.

The chart below shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 15.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 9
Broker transactions	Exempt payees 1 through 13. Also, a person registered under the Investment Advisers Act of 1940 who regularly acts as a broker
Barter exchange transactions and patronage dividends	Exempt payees 1 through 5
Payments over \$600 required to be reported and direct sales over \$5,000 <sup>1</sup>	Generally, exempt payees 1 through 7

<sup>1</sup> See Form 1099-MISC, Miscellaneous Income, and its instructions.

<sup>2</sup> However, the following payments made to a corporation (including gross proceeds paid to an attorney under section 6045(f), even if the attorney is a corporation) and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, and payments for services paid by a federal executive agency.

## Part I. Taxpayer Identification Number (TIN)

**Enter your TIN in the appropriate box.** If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-member LLC that is disregarded as an entity separate from its owner (see *Limited liability company (LLC)* on page 2), enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

**Note.** See the chart on page 4 for further clarification of name and TIN combinations.

**How to get a TIN.** If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office or get this form online at [www.ssa.gov](http://www.ssa.gov). You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at [www.irs.gov/businesses](http://www.irs.gov/businesses) and clicking on Employer Identification Number (EIN) under Starting a Business. You can get Forms W-7 and SS-4 from the IRS by visiting [www.irs.gov](http://www.irs.gov) or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

**Note.** Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

**Caution:** A disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.

## Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if items 1, 4, and 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). Exempt payees, see *Exempt Payee* on page 2.

**Signature requirements.** Complete the certification as indicated in 1 through 5 below.

**1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.** You must give your correct TIN, but you do not have to sign the certification.

**2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983.** You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

**3. Real estate transactions.** You must sign the certification. You may cross out item 2 of the certification.

**4. Other payments.** You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

**5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions.** You must give your correct TIN, but you do not have to sign the certification.

### What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account <sup>1</sup>
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor <sup>2</sup>
4. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee <sup>1</sup>
b. So-called trust account that is not a legal or valid trust under state law	The actual owner <sup>1</sup>
5. Sole proprietorship or disregarded entity owned by an individual	The owner <sup>3</sup>
For this type of account:	Give name and EIN of:
6. Disregarded entity not owned by an individual	The owner
7. A valid trust, estate, or pension trust	Legal entity <sup>4</sup>
8. Corporate or LLC electing corporate status on Form 8832	The corporation
9. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
10. Partnership or multi-member LLC	The partnership
11. A broker or registered nominee	The broker or nominee
12. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity

<sup>1</sup> List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

<sup>2</sup> Circle the minor's name and furnish the minor's SSN.

<sup>3</sup> You must show your individual name and you may also enter your business or "DBA" name on the second name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

<sup>4</sup> List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships* on page 1.

**Note.** If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

## Secure Your Tax Records from Identity Theft

Identity theft occurs when someone uses your personal information such as your name, social security number (SSN), or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

Call the IRS at 1-800-829-1040 if you think your identity has been used inappropriately for tax purposes.

Victims of identity theft who are experiencing economic harm or a system problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

### Protect yourself from suspicious emails or phishing schemes.

Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to [phishing@irs.gov](mailto:phishing@irs.gov). You may also report misuse of the IRS name, logo, or other IRS personal property to the Treasury Inspector General for Tax Administration at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at: [spam@uce.gov](mailto:spam@uce.gov) or contact them at [www.consumer.gov/idtheft](http://www.consumer.gov/idtheft) or 1-877-IDTHEFT(438-4338).

Visit the IRS website at [www.irs.gov](http://www.irs.gov) to learn more about identity theft and how to reduce your risk.

## Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons who must file information returns with the IRS to report interest, dividends, and certain other income paid to you, mortgage interest you paid, the acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA, or Archer MSA or HSA. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return. The IRS may also provide this information to the Department of Justice for civil and criminal litigation, and to cities, states, the District of Columbia, and U.S. possessions to carry out their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

You must provide your TIN whether or not you are required to file a tax return. Payers must generally withhold 28% of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to a payer. Certain penalties may also apply.