

## Producer Agreement

This agreement, effective the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ is between **WASHINGTON DENTAL SERVICE**, referred to as WDS in this agreement, and \_\_\_\_\_, referred to as "Producer" in this agreement. In consideration of the mutual promises contained herein and other good and valuable consideration, the parties hereto agree as follows:

### 1. Definitions

- 1.1. "Agreement" means this Producer Agreement.
- 1.2. "Group" means the employer group purchasing group dental benefits from WDS.
- 1.3. "WDS Product" means a group dental product offered by Washington Dental Service.

### 2. Duties and Authority of Producer

- 2.1. Producer shall sell, negotiate and solicit from groups on behalf of WDS applications for the products included in Addendum A (WDS Products), which are hereby made a part of this Agreement. Producer is only authorized to sell, negotiate and solicit business for, and this Agreement applies only to, the products included in Addendum A. Producer's authority under this Agreement is nonexclusive.
- 2.2. Producer agrees to secure and maintain such licenses and appointments by WDS as is necessary to transact business on behalf of WDS and as required by Washington state. Producer shall provide WDS copies of all required licenses. Producer further agrees to notify WDS immediately of any expiration, termination, suspension or other action by the Washington State Office of Insurance Commissioner or any other governmental agency affecting said license or appointment. Producer further agrees to notify WDS in writing immediately upon receiving notice of any misdemeanor or felony charges or any actions including, but not limited to, convictions by any governmental authority for commission of any act involving fraud, dishonesty, breach of trust, theft, misappropriation of money or breach of any fiduciary duty.
- 2.3. Producer agrees to comply with the rules of WDS relating to the completion and submission of applications, assist in the installation of WDS Products, and to make no representation with respect to the benefits of any benefit contract or policy offered by WDS not in conformity with the material prepared and furnished to Producer for that purpose by WDS.
- 2.4. Producer is not authorized to, and agrees not to, enter into, alter, deliver or terminate any benefit contract or policy on behalf of WDS, extend the time of payment of any charges or premiums, or bind WDS in any way without the prior written permission of WDS. Producer acknowledges and agrees that the Company reserves the right, in accordance with applicable law, to reject any and all applications submitted by Producer.

- 2.5. Producer is not authorized to receive any WDS funds except the initial premiums for WDS Products, and Producer is not authorized to deduct compensation, commissions, service fees or allowances from any initial premiums Producer may collect. Any funds that Producer does receive for or on behalf of WDS shall be received and held by Producer in a fiduciary capacity, shall be separately accounted for, shall not be commingled by Producer with personal funds of Producer or other business accounts managed or owned by Producer, and shall be remitted to WDS promptly, but in no event later than five (5) calendar days from the date of receipt.
- 2.6. Producer shall not broadcast, publish or distribute any advertisements or other material relating to WDS Products not originated by WDS, nor use the name, trademark or logo of WDS in any way or manner without WDS's prior written consent and then only as specifically authorized in writing by WDS. The restrictions on promotional and descriptive material includes, but is not limited to, enrollment materials, Internet communications or any other electronic transmissions representing WDS Products, brochures, advertisements (print or electronic) and Producer or agency company listings.
- 2.7. Producer agrees to maintain complete and separate records for WDS of all transactions pertaining to applications submitted to and accepted by WDS, and any other documents as may be required by Washington State's Office of Insurance Commissioner for a period of at least seven (7) years. Any and all records described above or as may otherwise relate to Producer's activities in connection with WDS business shall be accessible and available to representatives of WDS who may audit them from time to time while this Agreement is in effect or within seven (7) years after termination thereof.
- 2.8. Producer agrees to obtain and maintain Errors and Omissions Insurance coverage with minimum amounts of \$1,000,000 per incident and \$1,000,000 in aggregate or such higher amounts as may be required by law or as determined by WDS and from a carrier satisfactory to WDS. Producer shall provide to WDS upon request certificates of insurance evidencing such coverage. Producer agrees to make best efforts to provide WDS with thirty (30) days prior written notice, and in any event will provide notice as soon as reasonably practicable, of any modification, termination or cancellation of such coverage.
- 2.9. Producer is an independent contractor and shall have no claim to compensation except as provided in this Agreement and Producer shall not be entitled to reimbursement from WDS for any expenses incurred in performing this Agreement. Producer further agrees that to the extent of any indebtedness to WDS from Producer, WDS shall have a first lien against any commissions due Producer, and such indebtedness may be deducted at WDS's option from any commissions due Producer. Moreover, this Agreement does not give Producer any power of authority other than as expressly granted herein and no other or greater power shall be implied from the grant or denial of powers specifically mentioned herein.

2.10. Producer will treat as trade secrets any and all information concerning customers of WDS or its business, products, techniques, methods, systems, price-books, rating tools, plans or policies. Producer will not, during the term of this Agreement or at any time thereafter, disclose such information, in whole or in part, to any person, firm or corporation for any reason or purpose whatsoever, or use such information in any way or in any capacity other than as a sales producer of WDS in furtherance of WDS's interests. With respect to information concerning customers of Company, Producer will implement a comprehensive written information security program that includes administrative, technical and physical safeguards for protection of such information that are appropriate to Producer's size, complexity, nature and scope of activities and that are designed to:

2.10.1. Ensure the integrity and confidentiality of such information;

2.10.2. Protect against any anticipated threats or hazards to the security or integrity of such information; and

2.10.3. Protect against unauthorized access to, or use of, such information that could result in substantial harm or inconvenience to any customer of WDS.

2.11. With respect to information concerning customers of WDS, Producer agrees to:

2.11.1. Ensure that any agent, including a subcontractor, to whom it provides any such information received from, or created or received by Producer, agrees to the same restrictions and conditions that apply through this Agreement to Producer with respect to such information; and

2.11.2. In no event, without WDS's prior written approval, provide such information to any employee or agent, including a subcontractor, if such employee, agent or subcontractor receives, processes, or otherwise has access to such information outside of the United States.

2.12. Producer shall indemnify, defend and hold WDS harmless from and against any loss, damage or expense, including reasonable attorney's fees, caused by or arising from the negligence, misconduct or breach of this Agreement by Producer, or from the failure of Producer to comply with any federal or state laws, rules or regulations.

### **3. Term and Termination**

3.1. This Agreement shall be effective for an initial term of one (1) year from the Effective Date, and thereafter shall automatically renew for addition terms of one (1) year each, unless and until terminated in accordance with the provisions of this Agreement.

- 3.2. This Agreement may be terminated without cause at any time by Producer or WDS by either party giving thirty (30) days prior written notice thereof to the other party.
- 3.3. WDS may terminate this Agreement immediately upon written notice to Producer at any time upon material default or substantive breach by Producer of one or more of its obligations under this Agreement (including any amendments), or Producer's commission of fraud, dishonesty, breach of trust, theft, misappropriation of money or breach of any fiduciary duty. Producer's failure to comply with any provision of this Agreement shall be material if WDS determines that such failure affects Producer's ability to perform under this Agreement. Termination for cause shall not be WDS's exclusive remedy, but shall be cumulative with all other remedies available by law or in equity. A failure to terminate this Agreement for cause shall not be a waiver of the right to do so with respect to any past, current or future default.
- 3.4. This Agreement will automatically terminate (i) upon the death of Producer if Producer is an individual, or (ii) upon the dissolution of the corporation or partnership if Producer is a corporation or partnership.

#### **4. Commissions**

- 4.1. WDS shall pay Producer commissions on premium received from Groups purchasing WDS coverage from Producer.
- 4.2. No commission shall be paid to Producer for a Group unless such Group has designated Producer as its broker of record. Confirmation of this relationship shall be submitted by the Producer or Group to WDS before commissions are paid. Confirmation shall be recorded on the Group's letterhead, dated and signed by a person who has legal binding authority to enter into a contract on behalf of the Group.
- 4.3. Commissions payable under this Agreement shall terminate upon the occurrence of any of the following:
  - 4.3.1. The Group's coverage is terminated for any reason;
  - 4.3.2. This Agreement is terminated for any reason;
  - 4.3.3. The Producer is no longer the Group's broker of record; and/or
  - 4.3.4. The Producer's license or appointment expires or terminates with or without cause.

- 4.4. In the event the Producer's license or appointment expires or terminates for any reason, WDS reserves the right to discontinue payment of premiums until such time as the license and/or appointment are reinstated and are approved by Washington State. Back premiums shall not be paid as a result of license or appointment expiration or terminations.
- 4.5. In the event Group coverage is terminated and WDS issues a refund of prepaid premium for the Group, the commission applicable to the refunded premium shall be deducted from any amounts then or subsequently due from WDS to Producer. If such deductions do not result in recoupment of the amount due WDS, Producer shall refund any amount still owing within 90 days.

## **5. Settlement of Disputes**

- 5.1. Producer shall cooperate fully with WDS in any investigation or proceeding of any regulatory or governmental body, or court of competent jurisdiction, including, where required by law, making its books and records available to such entities for inspection if it is determined by WDS that the investigation or proceeding affects matters covered by, related to, or arising out of this Agreement.
- 5.2. Producer shall defend any act or alleged act of Producer or its employees at its own expense. Producer shall reimburse WDS for all costs, expenses or legal fees that WDS incurs for the defense of any administrative action in which WDS or Producer is named and which are determined by a court of competent jurisdiction or by an appointed arbitrator to be the consequence of any unauthorized act of Producer.
- 5.3. Any controversy or claim arising out of or relating to this Agreement or the breach, termination or validity thereof, except for temporary, preliminary or permanent injunctive relief or any other form of equitable relief, shall be settled by binding arbitration administered by the American Arbitration Association (AAA) and conducted by a sole arbitrator in accordance with the AAA's Commercial Arbitration Rules ("Rules"). The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. 1-16, to the exclusion of state law inconsistent therewith or that would produce a different result, and judgment on the award rendered by the arbitrator may be entered by any court having jurisdiction thereof. Except as may be required by law or to the extent necessary in connection with a judicial challenge, or enforcement of an award, neither party nor the arbitrator may disclose the existence, content, record or results of an arbitration. Fourteen (14) calendar days before the hearing, the parties will exchange and provide to the arbitrator (a) a list of witnesses they intend to call (including any experts) with a short description of the anticipated direct testimony of each witness and an estimate of the length thereof, and (b) pre-marked copies of all exhibits they intend to use at the hearing. Depositions for discovery purposes shall not be permitted. The arbitrator may award only monetary relief and is not empowered to award damages other than compensatory damages.

**6. Health Insurance Portability and Accountability Act (HIPAA) – Privacy and Security Rules**

In the event Producer obtains access to “protected health information” (PHI), within the meaning of 45 CFR Parts 160-164, concerning WDS’s members in the course of performing its duties under this Agreement, Producer shall be subject to the following terms:

- 6.1. Producer shall not disclose PHI for any purpose other than to perform its obligations under this Agreement or as required by law.
- 6.2. Producer may use PHI it received in its capacity as Producer as necessary for: (i) the proper management and administration of Producer or (ii) to carry out its legal responsibilities. Producer may disclose PHI it received in its capacity as Producer as necessary for the purposes described in the preceding sentence if: (i) the disclosure is required by law; or (ii) Producer obtains from the person to whom the PHI is disclosed a written agreement that (A) the PHI will be held confidentially and will not be used or further disclosed except as required by law or for the purpose for which it was disclosed and (B) the person to whom the PHI is disclosed will notify Producer (who will in turn promptly notify WDS) of any instances of which such person is aware in which the confidentiality of the PHI has been breached.
- 6.3. Producer shall use appropriate safeguards to prevent use or disclosure of PHI other than as permitted by this Agreement. Producer shall report to WDS any unauthorized use or disclosure of PHI by Producer or its work force or any of its agents/producers or subcontractors, of which it becomes aware. Producer shall mitigate, to the extent practicable, any harmful effect that is known to Producer of any use or disclosure of PHI by Producer or its work force or any of its agents/producers or subcontractors in violation of this Agreement.
- 6.4. Producer shall not provide any PHI to any of its agents/producers or subcontractors without first obtaining their agreement to the same restrictions and conditions that apply to Producer with respect to such information.
- 6.5. Producer shall afford WDS’s members (i) the right to access PHI in accordance with 45 CFR 164.524 and (ii) the right to amend PHI in accordance with 45 CFR 164.526.
- 6.6. Producer shall make its records available for the purposes of responding to member requests for an accounting in accordance with 45 CFR 164.528. In the event Producer makes any disclosures of PHI that are subject to the accounting requirements of 45 CFR 164.528, it shall promptly report such disclosures to WDS, including the date of the disclosure, the name and, if available, address of the recipient of the PHI, a brief statement of the PHI disclosed, and a brief description of the purpose of the disclosure that reasonably informs the individual of the basis of the disclosure. Producer should send such information to WDS at the following address or fax:

**Washington Dental Service**  
**Compliance Officer**  
**P.O. Box 75983**  
**Seattle, WA 98175-0983**  
**Fax: 206-985-4768**

- 6.7. With respect to “electronic protected health information” (within the meaning of 45 CFR Parts 160-164) (ePHI), Producer shall:
- 6.7.1. Implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the electronic PHI that it creates, receives, maintains or transmits on behalf of WDS;
  - 6.7.2. Ensure that any agent, including a subcontractor to whom it provides ePHI agrees to implement reasonable and appropriate safeguards to protect it; and
  - 6.7.3. In no event, without WDS’s prior written approval, provide ePHI received from, or created or received by Producer on behalf of WDS, to any employee or agent, including a subcontractor, if such employee, agent or subcontractor receives, processes, or otherwise has access to such ePHI outside of the United States; and
  - 6.7.4. Make policies and procedures relating to Producer’s safeguarding of ePHI available to WDS, or at the request of WDS to the Secretary of Health and Human Services (the “Secretary”), in a time and manner designated by WDS or the Secretary, for purposes of the Secretary determining WDS’s compliance with HIPAA;
  - 6.7.5. Report to WDS any security incident of which Producer become aware.

## **7. General Terms**

- 7.1. WDS and Producer shall comply with all applicable state and federal laws and regulations applicable to their business, their licenses and the transactions into which they enter, including but not limited to the Federal Communications Protection Act, where Producer engages in outbound telemarketing solicitation on behalf of WDS.
- 7.2. Producer agrees that in performing under this Agreement, Producer is acting in a fiduciary capacity to WDS. Producer shall act in the best interest of WDS. Producer shall not permit other interests, activities or responsibilities to interfere with Producer’s faithful performance under this Agreement.

- 7.3. Neither this Agreement nor the right to receive money hereunder may be assigned without the prior written consent of WDS, and any assignment made contrary to this provision shall be void as to WDS, provided, however, WDS may assign, delegate or transfer this Agreement in whole or in part to any affiliate, now or in the future, or to any entity which succeeds to the applicable portion of its business through a sale, merger or other transaction, provided that such other entity assumes the obligations of WDS hereunder. This Agreement is personal to Producer, and Producer's duties hereunder shall not be delegated or subcontracted by Producer. Producer shall not use subagents/subproducers.
- 7.4. Any notice required from WDS under this Agreement shall be deemed given on the day such notice is deposited in the United States mail with the first class postage pre-paid and addressed to Producer as the address of the Producer appearing on the records of WDS. Any notice required by Producer shall be deemed given on the day after such notice is deposited in the United States mail with first class postage pre-paid and addressed to WDS.
- 7.5. This Agreement (including any attached addendums or schedules) is the complete and sole contract between parties regarding the distribution of WDS Products by Producer subsequent to the Effective Date of this Agreement and supersedes any and all prior understandings or agreements between the parties whether oral or in writing on this subject matter.
- 7.6. In this Agreement the words "shall" and "will" are used in the mandatory sense. Unless the context otherwise clearly requires, any one gender includes all others, the singular includes the plural, and the plural includes the singular.
- 7.7. The fact that WDS may not have insisted upon strict compliance with this Agreement with respect to an act or transaction of Producer shall not relieve Producer from the obligation to perform strictly in accordance with the terms of this Agreement.
- 7.8. Producer shall be an independent contractor of WDS, and nothing herein shall be construed as creating a relationship of employer-employee, partner, joint venture, officer or agent of Company in any manner for any other purpose, other than as specifically provided in this Agreement.
- 7.9. This Agreement shall be governed by the laws of the state of Washington.
- 7.10. WDS's liability, if any, for damages to Producer for any cause whatsoever arising out of or related to this Agreement, and regardless of the form of the action, shall be limited to Producer's actual damages. WDS shall not be liable for any indirect, incidental, punitive, exemplary, special or consequential damages of any kind whatsoever sustained as a result of a breach of this Agreement or any action, inaction or alleged tortuous conduct or delay by WDS.

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**Washington Dental Service**

Washington Dental Service is a member of the Delta Dental Plans Association

- 7.11. In addition to those provisions which by their terms survive expiration or termination of this Agreement this section shall survive expiration or termination of this Agreement, regardless of the cause giving rise thereto.
  
- 7.12. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors or assigns of the parties, any rights, remedies, obligations or liabilities whatsoever.
  
- 7.13. WDS may modify this Agreement upon thirty (30) days prior written notice to Producer, including the producer commission schedules, but any such modification shall not reduce the rate or rates with respect to commission payments due Producer in connection with benefit contracts or policies produced by Producer and issued by WDS with effective dates prior to the effective date of such modification. Notwithstanding the foregoing, upon the enactment of any law or regulation, or any order or direction of any governmental agency affecting this Agreement, WDS may, by written notice to Producer, amend the Agreement in such a manner as WDS determines necessary to comply with such law or regulation, or any order or directive of any governmental agency. WDS may provide written notice pursuant to this paragraph by letter, newsletter, electronic mail or other media.

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Producer Signature \_\_\_\_\_ Date \_\_\_\_\_

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Washington Dental Service \_\_\_\_\_ Date \_\_\_\_\_

## **Addendum A – Product Authorization**

Producer is authorized to sell, negotiate and solicit dental insurance for Group Dental Products offered by WDS that are available and being offered in such market by WDS, as of the Effective Date of this Agreement, in the state of Washington for which Producer is properly licensed and appointed by WDS. WDS may at any time add to, delete from or otherwise alter the coverages, provisions or exclusions of any WDS Products without the consent of Producer.

## **Addendum B – Product Commission**

Commission schedules applicable to this Agreement are listed below and are incorporated by reference into this Addendum B. The commission schedules will be subject to change in accordance with this Agreement.

### **Community Pooled Groups**

Annual Dues - \$0.00 up to \$2,500,000 and over

First Year & Renewal – 5% Flat