



# Marketer Agreement

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First Dental Health, a California corporation (“FDH”), and \_\_\_\_\_,  
a (“Marketer”) hereby mutually agree as follows:

## **RECITALS**

- A.** FDH has established a “discount fee medical plan” called New Dental Choice (“Plan”) to provide individuals, families, and groups who subscribe to the Plan (“Members”) access to a network of healthcare providers for designated discount services and products. The Plan is described in detail in the Individual and Group Agreements attached hereto as Exhibit “B”.
- B.** FDH has contracted with thousands of healthcare providers throughout the United States that constitute this provider network. The Plan makes available to its Members discounted fees for the services of these providers for specified medical products and services.
- C.** FDH desires to retain the services of Marketer for purposes of promoting and selling Plan memberships to individuals, families and to groups on behalf of their employees and members, pursuant to the provisions of this agreement.
- D.** Marketer desires to provide such services to FDH, pursuant to the provisions of this Agreement.

## **GENERAL COVENANTS:**

1. Marketer is an independent contractor not an employee of FDH.
2. Marketer shall agree to comply with all training provided by FDH that is designed to ensure contractual and regulatory compliance when representing and selling the Plan.
3. Marketer shall use only materials or supplies, rates, or other printed and electronic material furnished by FDH and/or approved by FDH prior to anticipated use.
4. Marketer may sub-contract with sub-marketers (“Subs”) for purposes of carrying out Marketer’s responsibilities and obligations pursuant to this agreement. Marketer shall ensure to the best of their ability that each of its Subs are properly screened and trained in all facets of the Plan and that Subs comply with all applicable laws, regulations and industry standards.
5. Marketer shall ensure that all descriptions of the Plan used by Marketer or its Subs, whether written or oral, are true, accurate and devoid of misleading statements or implications.

6. Marketer shall fully and fairly explain the Plan to prospects and disseminate or cause to be disseminated to prospective individual members the Individual and Family combined Membership Agreement as well as the Group Agreement for review prior to Individual, Family, and Group Enrollments as requested.
7. FDH shall have the responsibility for preparing and mailing billing statements for Membership Fees with respect to all potential or current Members whose applications were received from Marketer or its Subs and approved by FDH. Marketer and Subs may collect Membership Fees from Members, provided that such Membership Fee payments are in the form of a credit card authorization or check made payable to New Dental Choice. All billings will direct the Member or Group Administrator to remit amount due to New Dental Choice.
8. Marketer and Subs, agrees to cooperate and fully comply with the Payment Card Industry (PCI) Data Security Standards (DSS) as set forth in Exhibit "D".
9. Marketer shall submit reports to FDH, or to appropriate public regulatory agencies, as may from time to time be requested.

### **COMMISSION FEES**

1. FDH will pay Marketer a Commission Fee ("Commission") as stated in Exhibit "A" hereto for all paid Plan Memberships resulting from sales directly attributable to Marketer's efforts. Membership Fees current as of the effective date of the Agreement are listed in Exhibit "C" hereto. Membership Fees are subject to change upon a 30-day written notice being given to Marketer. A sale is considered accepted by FDH when the proper and completed paperwork has been received by FDH and Initial Membership Fee has been deposited by FDH. Payment will be made in accordance with information provided on the Marketer's W-9 Form submitted with this Agreement.
2. Marketer will be paid a commission based on revenues from sales of Plan, excluding the one-time activation fee, per the schedule outlined in Exhibit "C". If the customer cancels and receives a refund we will deduct the pro-rated commissions.

### **WEBSITE RESTRICTIONS:**

In the event Marketer desires to promote or market New Dental Choice through its own web site as opposed to New Dental Choice's corporate website ([www.newdentalchoice.com](http://www.newdentalchoice.com)), marketer shall fully comply with the following policies and limitations. These policies and limitations have been created to promote the integrity, security, reliability and privacy of the New Dental Choice Site. Any violation of these policies and limitations shall give New Dental Choice the right to immediately terminate this Agreement and Marketer's right to market New Dental Choice.

A website link ("Link") refers to when you are on a Web page and you see the blue, often underlined, text that makes the cursor from your mouse change shape. If you click on a Link it will take you to another page or another site.

1. Under no circumstances shall a Marketer's Website:

- a. Mislead others
  - b. Operate or utilize a website, email campaign, or website Link(s) to websites that contain or promote the following types of content: libelous, defamatory, obscene, abusive, violent, bigoted, hate-oriented, illegal, cracking, hacking or warez, or offer illegal goods or services, or Link to a websites that do
  - c. Engage in spamming, indiscriminate advertising or unsolicited commercial email
  - d. Place Links to the New Dental Choice website or content in newsgroups, message boards, unsolicited email and other types of spam, banner networks, counters, chatrooms, guestbooks, IRC channels or through similar Internet resources
  - e. Place Links to the New Dental Choice website in a manner that it will likely mislead the website visitor
  - f. Cause or enable any sale to be made that is not in good faith, including, but not limited to, by means of any device, program, robot, Iframes, hidden frames, and redirects
  - g. Establish or cause to be established any promotion that provides any rewards, points or compensation for membership sales, or that allows third parties to place Links to New Dental Choice's website or website content, without New Dental Choice's prior written permission
2. Under no circumstances shall an Marketer's website use:
- a. A URL that is the same as or similar to any URL of New Dental Choice
  - b. Any derivation of the name "New Dental Choice" or similar spelling or sounding word in its URL
  - c. "New Dental Choice" in Title Tag, Meta Tags, Meta Description
  - d. Keywords: new dental choice and newdentalchoice.com
  - e. A combination with promotion, coupon, promotion code, coupon code, coupons, promotions
  - f. Associations with New Dental Choice with the words "Coupons" or "Promotions" in header or copy on page

**TERMINATION:**

1. FDH shall be entitled to terminate this Agreement for cause upon notice to the Marketer effective immediately upon receipt if any of the following events occur:
  - a. Breach any provision of this Agreement
  - b. Violation of any applicable state or federal law or regulation
2. Upon termination of this Agreement the earned commission account outstanding credit balance shall be paid by FDH to Marketer. FDH reserves the right to delay final payment for 90 days following termination of this Agreement to account for any newly earned commissions from new memberships and to make adjustments for pro-rated refunds.

**Books and Records:**

Marketer shall maintain, and shall require its Subs to maintain, accurate, clear and current books and records relating to the performance of the obligations under this Agreement. Marketer shall retain, and shall require its Subs to retain, such books and records for a period of at least five (5) years and this obligation shall not terminate upon termination of this Agreement. FDH reserves the right to inspect the books and records of Marketer and its Subs to the extent that such books and records pertain to the services furnished or obligated hereunder or the cost thereof. Marketer shall permit, and shall require its Subs to permit, any authorized government regulatory agencies to inspect and copy such books and records upon request.

**MUTUAL HOLD HARMLESS PROVISION:**

FDH and Marketer shall mutually hold harmless from and against any and all claims, suits, actions, damages, costs, charges or expenses (including attorney's fees and costs), including but not limited to damages for injury or death of a person or persons that either party may incur, and which results by reason of the acts or omissions of FDH/Marketer, its officers, agents, employees and servants. Both parties shall reserve the right to, at its option, assume and direct the defense of any claim or actions for which FDH/Marketer is seeking indemnification. Both parties shall cooperate fully in the defense of any claim or action for which FDH/Marketer seeks indemnification. This paragraph shall not be construed to, and FDH/Marketer expressly disclaims liability for, malpractice, negligence or the intentional wrongful act of a network provider.

**VENUE AND LAW GOVERNING AGREEMENT:**

This agreement shall be governed by and construed in accordance with the laws and of the State of California.

**ATTORNEY'S FEES AND COSTS:**

If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which it may be entitled.

**ASSIGNMENT**

Marketer shall make no general assignment or delegation of its responsibilities and obligations hereunder without prior written consent of FDH.

**NOTICES:**

Any and all notices, consents, approvals, requests, and other written communications given or required under this Agreement shall be deemed to have been duly given and served when sent by first class mail, postage pre-paid and addressed: New Dental Choice, P.O. Box 919029, San Diego, CA 92191.

This Agreement will take effect as of the date indicated. No change will be binding unless executed in writing and *signed by both parties* and made part of this agreement.

Marketer Name: \_\_\_\_\_

TPID # or SS#: \_\_\_\_\_ Contact Name: \_\_\_\_\_

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

City: \_\_\_\_\_ ST: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_ Cell Phone: \_\_\_\_\_

Website (if any): \_\_\_\_\_

By: \_\_\_\_\_  
Signature Date

The Company: First Dental Health, Inc.

Name: \_\_\_\_\_

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

By: \_\_\_\_\_  
Signature Date

Exhibit "A"

**Percentage Commission**

The Commission Fee due to a Marketer under this Agreement, dated \_\_\_\_\_, 20\_\_\_\_, to which this is an Exhibit incorporated by reference under Commission Fees thereof, shall be 30% of all paid Plan Membership Fees (excluding one-time activation fee), flat and renewable, resulting from sales directly attributable to Marketer's efforts.

Exhibit "B"

**FDH Group Agreement and Individual Agreement / Description of Services and Disclosure Form**

Exhibit "C"

**MEMBERSHIP FEES CURRENT AND EFFECTIVE AS OF DATE SPECIFIED**

<b>Membership Type</b>	<b>Membership Fees</b>
<b>Individual</b>	<b>\$8.00 per month* or \$96.00 per year**</b>
<b>Family***</b>	<b>\$10.00 per month* or \$120.00 per year**</b>
<b>Group****</b>	
<b>Employee Only</b>	<b>\$6.50 per month</b>
<b>Employee plus Dependents</b>	<b>\$8.50 per month</b>

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\*Plus a one-time \$25.00 activation fee for members paying monthly

\*\*Plus a one-time \$10.00 activation fee for members enrolling yearly

\*\*\*Includes all eligible dependents

\*\*\*\*Employer paid or collected payroll deduction includes, for the employer only, a \$10 per month group billing fee



Exhibit "D"

**RESTRICT PHYSICAL ACCESS TO CARDHOLDER DATA QUESTIONNAIRE**

**Question Response: Check One: Yes / No / Special\* (If "Special" use space provided to explain)**

Question	Yes	No	Special*
1. Are all paper and electronic media that contain cardholder data physically secure?			
2. Is strict control maintained over the internal or external distribution of any kind of media that contains cardholder data?			
3. Do controls include the following:  1. Is the media classified so it can be identified as confidential?  2. Is the media sent by secured courier or other delivery method that can be accurately tracked?			
4. Are processes and procedures in place to ensure management approval is obtained prior to moving any and all media containing cardholder data from a secured area (especially when media is distributed to individuals)?			
5. Is strict control maintained over the storage and accessibility of media that contains cardholder data?			
6. Is media containing cardholder data destroyed when it is no longer needed for business or legal reasons?			
7. Destruction should be as follows: a. Are hardcopy materials shredded, incinerated, or pulped so that cardholder data cannot be reconstructed?			

## Request for Taxpayer Identification Number and Certification

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

Print or type See Specific Instructions on page 2	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"/> Other ▶ .....	
	<input type="checkbox"/> Exempt from backup withholding	
	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. person (including a U.S. resident alien).

**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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### 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.

**U.S. person.** 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.

In 3 above, 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.

For federal tax purposes, you are considered a person if you are:

- An individual who is a citizen or resident of the United States,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States, or
- Any estate (other than a foreign estate) or trust. See Regulations sections 301.7701-6(a) and 7(a) for additional information.

**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 recipient 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 (after December 31, 2002). This is called "backup withholding." Payments that may be subject to backup withholding include 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 4 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 regarding 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).** If you are a single-member LLC (including a foreign LLC with a domestic owner) that is disregarded as an entity separate from its owner under Treasury regulations section 301.7701-3, enter the owner's name on the "Name" line. Enter the LLC's name on the "Business name" line. Check the appropriate box for your filing status (sole proprietor, corporation, etc.), then check the box for "Other" and enter "LLC" in the space provided.

**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 From Backup Withholding

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