



**DELTA DENTAL OF COLORADO
BROKER AGREEMENT**

This Broker Agreement, by and between Delta Dental of Colorado (“Delta Dental”) and (“Agency” or “Agent”, as applicable), is effective on _____, 2018.

WHEREAS, Delta Dental provides various dental benefits to individuals who have dental insurance coverage under one or more Delta Dental plans (“Products”); and,

WHEREAS, Agency or Agent is a fully licensed accident and health insurance agency and/or agent and promotes, markets, and sells various types of health care benefit plans; and,

WHEREAS, Delta Dental desires Agency or Agent to present proposals, solicit applications, sell Delta Dental’s Products, and facilitate the implementation, maintenance and successful retention of said Products within the State of Colorado.

THEREFORE, based upon their mutual promises contained herein, the parties agree as follows:

I. Appointment

Delta Dental appoints Agency or Agent as its nonexclusive dental benefit agent, and Agency or Agent accepts this appointment. Agency or Agent understands and agrees that its appointment shall be as an independent contractor to Delta Dental and not as an employee or in any other capacity. Delta Dental acknowledges that Agencies have the option of assigning specific agents to clients who purchase dental benefit plans from Delta Dental, provided, however, that the client has not specifically designated a particular agent within Agency as their designated agent with respect to such client, e.g. “Agent of Record”.

II. Notices

A. Any notice required or permitted under this Agreement shall be given in writing, to the other party, by hand, via facsimile, via certified mail, return receipt requested, postage prepaid, or via registered mail.

B Notices to Delta Dental shall be sent to:

Delta Dental of Colorado
Attn: General Counsel
4582 S. Ulster St., Suite 800
Denver, CO 80237

C. Notices to Agency or Agent shall be sent to (address, phone, and facsimile):

Address

Phone

Fax

Email

Website

D. Commission checks shall be payable to:

Company/Agency or Agent (fill in appropriate name)

E. Reporting: The IRS requires that income paid to Agency or Agent be reported under Agency's or Agent's correct name and Taxpayer Identification Number (TIN) or Social Security number. The attached Form W-9 Request for Taxpayer Identification Number and Certification must be completed, signed and returned to Delta Dental prior to processing any payments. Social Security number (if checks are payable to the individual Agent) or Tax Identification Number (if checks are payable to the Company/Agency):

TIN/ Social Security Number (1099 will be issued with this number)

III. **Sales Territory**

Agency's or Agent's nonexclusive sales territory shall be the State of Colorado.

IV. **Rights and Responsibilities**

- A. Agency or Agent shall, within its sales territory, use commercially reasonable efforts to solicit applications, enroll, and service clients for Delta Dental Products; collect initial subscription rates, service fees, and other charges; deliver contracts documents; assist Delta Dental customers and covered individuals; avoid conflicts of interest; and generally cooperate with and advance the interests of Delta Dental with its customers. However, Delta Dental may, at its option, be responsible for enrolling and servicing any client and Agency or Agent agrees to abide by the elected option of Delta Dental. In either event, Agency or Agent agrees to render satisfactory service as directed by Delta Dental. Agency or Agent has no authority to bind coverage, and all applications for coverage must be approved by Delta Dental in its sole discretion before the coverage goes into effect.
- B. Delta Dental shall furnish Agency or Agent manuals, forms, records, marketing support, promotional material, underwriting, actuarial services, formal proposals, client billings, and any other materials or supplies that Delta Dental deems appropriate. All materials furnished by Delta Dental shall remain its property. Agency or Agent shall not use or generate any materials in marketing Delta Dental's Products that have not been supplied in original form, created and approved by Delta Dental.
- C. All expenses incurred by Agency or Agent in its performance of this Agreement shall be borne exclusively by Agency or Agent and not by Delta Dental, except as is otherwise specifically agreed in writing by Delta Dental.
- D. Delta Dental will advertise and provide promotional materials to Agency or Agent in its discretion. Agency or Agent will not use any advertisements referring to Delta Dental without Delta Dental's specific prior approval in writing.
- E. In the event any funds belonging to or due to Delta Dental are received by Agency or Agent, then Agency or Agent shall be a fiduciary for all such money received or held by it in its representation of Delta Dental, and such money shall be deposited by Agency or Agent in a separate trust account. All such money is the absolute property of Delta Dental, and Agency or Agent will be strictly responsible for this money until it is safely and fully received by Delta Dental. Such money shall be remitted in full to Delta Dental within five working days after receipt, and if not remitted within this period, the

funds shall bear interest at the rate of 8 percent per annum. Furthermore, any amount that the Agency or Agent owes to Delta Dental at any time is a first lien on any payment due or thereafter becoming due the Agency or Agent under this Agreement, and Delta Dental is authorized to deduct such indebtedness from any payment due the Agency or Agent from Delta Dental. In the event that lawsuit is brought to collect monies due to Delta Dental, Delta Dental shall be entitled to collect its costs and reasonable attorney fees associated with the lawsuit.

- F. Delta Dental has exclusive right to prescribe all contracts, forms and provisions; subscription rates, service fees, and any other charges for coverage; and to prescribe the rules governing the binding, acceptance, renewal, rejection, or cancellation of coverage.
- G. Agency or Agent shall not represent itself as having any powers except those specified in this Agency/Agent Agreement. Without limiting the foregoing, Agency or Agent shall not have authority to extend the time of payment of any service fee; to alter, waive, or forfeit any of Delta Dental's contractual rights, requirements, or conditions; or otherwise obligate Delta Dental in any way except as stated in this Agreement or otherwise specifically authorized in writing by Delta Dental.
- H. Agency or Agent shall render accounts to Delta Dental detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by or owing to Agency or Agent.
- I. Agency or Agent shall remit all funds due under the terms of the contract to Delta Dental on at least a monthly basis, and the due date shall be fixed so that premiums or installments thereof collected shall be remitted no later than ninety days after the effective date of any policy placed with the controlled insurer under this contract.
- J. All funds collected for the controlled insurer's account shall be held by the controlling producer in a fiduciary capacity, in one or more appropriately identified bank accounts in banks that are members of the federal reserve system, in accordance with the provisions of the insurance law as applicable; and funds of a controlling producer not required to be licensed in this state shall be maintained in compliance with the requirements of the controlling producer's domiciliary state.
- K. The controlling producer shall maintain separately identifiable records of business written for the controlled insurer; and such records shall be retained for a period of five years commencing no later than the effective date of the last financial examination of the insurer.
- L. The controlled insurer shall provide the controlling producer with its underwriting standards, rules and procedures, manuals setting forth the rates to be charged, and the conditions for the acceptance or rejection of risks, which standards, rules, procedures, rates, and conditions shall be the same as those applicable to comparable business placed with the controlled insurer by a producer other than the controlling producer and to which standards, rules, procedures, rates, and conditions the controlling producer shall adhere.
- M. The rates and terms of the controlling producer's commissions, charges, or other fees and a definition of the purposes for those charges; and the rates of the commissions, charges, and other fees shall be no greater than those applicable to comparable business placed with the controlled insurer by producers other than controlling producers. For purposes of this paragraph (h) and paragraph (g) of this subsection (2), examples of "comparable business" include, without limitation, the same lines of insurance, same kinds of insurance, same kinds of risks, similar policy limits, and similar quality of business.

- N. If the contract provides that the controlling producer, on insurance business placed with the insurer, is to be compensated contingent upon the insurer's profits on that business, then such compensation shall not be determined and paid until at least five years after the premiums on liability insurance are earned and at least one year after the premiums are earned on any other insurance. In no event shall the commissions be paid until the adequacy of the controlled insurer's reserves on remaining claims has been independently verified pursuant to paragraph (a) of subsection (4) of this section.
- O. A limit on the controlling producer's writings in relation to the controlled insurer's surplus and total writings, which limit may be different for each line or sub-line of business. The controlled insurer shall notify the controlling producer when the applicable limit is approached and shall not accept business from the controlling producer if the limit is reached. The controlling producer shall not place business with the controlled insurer if it has been notified by the controlled insurer that the limit has been reached.
- P. The controlling producer may negotiate but shall not bind reinsurance on behalf of the controlled insurer on business the controlling producer places with the controlled insurer; except that the controlling producer may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the controlled insurer contains underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules.

V. Compensation

Agent shall be compensated for each Product sold in accordance with the commission or fee schedule set forth in Exhibit A – Broker Commission Schedule.

VI. Term and Termination

- A. Subject to Sections VI, B. and VII, C. of this Agreement, this Agency/Agent Agreement shall be continuous from its Effective Date shown on page 1; however, in the event Agency/Agent is not actively marketing and selling Delta Dental Products nor has any active business placed with Delta Dental, this Agreement may be terminated, and, where applicable, Delta Dental's appointment of Agency/Agent shall not be renewed.
- B. Either party may terminate this Agency/Agent Agreement by giving written notice of at least thirty (30) days to the other party.
- C. Upon expiration or termination of this Agency/Agent Agreement, Delta Dental shall suspend the authority of the controlling producer to write business during the pendency of any dispute regarding the cause for the termination, and Agency or Agent will not act or represent itself in any way as a dental benefit agent or representative of Delta Dental.
- D. Within ten (10) days of the expiration or termination of this Agency/Agent Agreement, Agency or Agent will return to Delta Dental all property belonging to Delta Dental, including, but not limited to, all customer lists and other records of Delta Dental business, as well as all Delta Dental confidential information.

VII. Representations, Appointment and Indemnification

- A. Agency or Agent represents that it is currently fully licensed in Colorado as an accident and health insurance agency or agent who is eligible to be an Agent. Agency or Agent shall provide Delta Dental proof that said license is active by submitting a copy of current license to Delta Dental at the time of application and thereafter at the request of Delta Dental.
- B. Before the effective date shown above, Delta Dental shall file an authorization for Agency or Agent to act as an Agent with Colorado Insurance Commissioner. Delta Dental shall also pay all required appointment fees for Agency/Agent at Delta Dental's sole option, or may charge such fees to Agency/Agent.
- C. Delta Dental may terminate this Agency/Agent Agreement immediately and without prior notice if Agency or Agent fails to maintain its licensure as an agency or health agent or if Agency or Agent violates any insurance or other law or regulation applicable to it as an insurance agency, insurance agent or agent.
- D. Agency/Agent represents and warrants that the use of Agency/Agent's content on any materials or electronic media or on a co-branded enrollment platform will not violate or infringe any copyright, trademark, patent, or proprietary right of any other party. Agency/Agent shall retain all right, title, and interest in Agency/Agent's name and website. Agency/Agent content (including, but not limited to, ownership of all copyrights and other intellectual property rights therein) and Agency/Agent marks, including any and all goodwill associated therewith, shall remain the property of Agency/Agent. Any other use of the Agency/Agent marks by Delta Dental shall require written consent of Agency/Agent. Delta Dental shall retain all right, title, and interest in the Delta Dental content and Delta Dental marks, including any and all goodwill associated therewith. Any other use of the Delta Dental marks by Agency/Agent shall require written consent of Delta Dental.
- E. Agency or Agent shall indemnify and hold Delta Dental, its directors, officers, employees, agents, and affiliated companies harmless from and against any and all claims, lawsuits, demands, liabilities, charges, judgments, settlements, costs, penalties, and expenses of whatever kind or nature that either may sustain or incur at any time and arising in any manner out of any wrongful act, error, or omission by the Agency or Agent. Agency or Agent shall also be liable for the costs and attorney's fees that Delta Dental actually incurs in defending itself against any such claims, demands, or lawsuits.

VIII. Business Associate Provisions

This Section VIII satisfies the parties' obligations with respect to Business Associate Agreements as set forth in 45 CFR 164.502(e) and 164.504(e) of HIPAA as well as Sections 13400 through 13411 of the HITECH Act. For purposes of this agreement and as required by HIPAA, Delta Dental is the Covered Entity and Agency or Agent is the Business Associate, as defined below.

A. Definitions

- 1) **"Business Associate"** shall have the same meaning as the term "business associate" as defined in 45 CFR 160.103.
- 2) **"CFR"** is the Code of Federal Regulations.

- 3) **“Covered Entity”** shall have the same meaning as the term "covered entity" as defined in 45 CFR 160.103.
- 4) **Electronic Protected Health Information** or **EPHI** shall have the same meaning as the term “electronic protected health information,” as defined in 45 CFR 160.103, limited to the electronic protected health information that is created, received, maintained, or transmitted to or on behalf of Covered Entity.
- 5) **“HIPAA”** is the Health Insurance Portability and Accountability Act of 1996.
- 6) **“HITECH Act”** means the Health Information Technology for Economic and Clinical Health Act, found in the American Recovery and Reinvestment Act of 2009 at Division A, title XIII and Division B, Title IV.
- 7) **“Individual”** shall have the same meaning as the term “individual” as defined in 45 CFR 160.103, and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- 8) **“Minimum Necessary”** shall have the meaning set forth in the Health Information Technology for Economic and Clinical Health Act, § 13405(b).
- 9) **“Privacy Rule”** means the “Standards for Privacy of Individually Identifiable Health Information” as found in 45 CFR parts 160 and 164, as promulgated pursuant to HIPAA.
- 10) **“Protected Health Information”** or **“PHI”** shall have the same meaning as the term "protected health information" as defined in 45 CFR 160.103, limited to the information created, received or accessed by Business Associate from or on behalf of Covered Entity.
- 11) **“Required By Law”** shall have the same meaning as the term “required by law” as defined in 45 CFR 164.103.
- 12) **“Secretary”** shall mean the Secretary of the U. S. Department of Health and Human Services, or his designee.
- 13) **“Security Incident”** has the meaning in 45 CFR § 164.304, which is the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations.
- 14) **“Security Rule”** means the “Standards for the Security of Electronic Protected Health Information” as found in 45 CFR parts 160, 162 and 164, as promulgated pursuant to HIPAA.
- 15) **“Unsecured PHI”** shall have the same meaning as the term ‘unsecured protected health information’ as defined in Section 13402 of the HITECH Act.

B. Agreements

- 1) **Obligations of Business Associate.** In performing its duties and obligations under the Agreement, Business Associate agrees as follows:
 - a. **Application of Security Rule and Privacy Rule to Business Associate.** The administrative, physical and technical safeguards set forth in the HIPAA Security Rule

at 45 CFR 164.308, 164.310, 164.312, and 164.316, shall apply to Business Associate in the same manner that such sections apply to Covered Entity. The additional requirements of Subtitle D of the HITECH Act (Sections 13400 through 13411) that relate to privacy or security and that are made applicable with respect to covered entities shall also be applicable to Business Associate and are hereby incorporated into this Agreement.

- b. **Security.** Business Associate agrees to (a) implement safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity and, upon request of Covered Entity from time to time, Business Associate shall promptly provide Covered Entity with information regarding such safeguards, (b) ensure that any agent, including subcontractors, to whom Business Associate provides PHI agrees to implement reasonable and appropriate safeguards to protect it, and (c) report to Covered Entity any violation of the Security Rule of which it becomes aware.
- c. **Disclosure.** Business Associate shall not use or further disclose PHI other than as permitted or required by this Agreement or as required by law. Business Associate may use and disclose PHI that Business Associate obtains or creates only if such use or disclosure, respectively, is in compliance with each applicable requirement of 45 CFR 164.504(e).

Business Associate shall not use or further disclose PHI in a manner that would be impermissible if used or disclosed by Covered Entity or in a manner that would violate the Privacy Rule or other applicable federal or state law or regulations.

- d. **Permissible Uses and Disclosures of PHI by Business Associate.** Subject to the foregoing provisions and in addition to the use and disclosure by Business Associate of PHI authorized elsewhere herein, Business Associate may use and disclose PHI for the following additional purposes if applicable:
 - i. As necessary for data aggregation purposes relating to the health care operations of Covered Entity, but only as separately authorized by Covered Entity in writing,
 - ii. For the proper internal management and administration of Business Associate, but only in connection with the direct performance by Business Associate (through its employees) of services for Covered Entity to the Agreement, and
 - iii. To carry out the legal responsibilities of Business Associate.

For purposes of (b) and (c) above, Business Associate may use or disclose PHI to third parties only if the disclosure is required by law, Business Associate obtains reasonable assurances from the person to whom the PHI is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

- e. **Minimum Necessary Standards.** For any disclosure or use of PHI, Business Associate

shall determine and use the minimum necessary information to accomplish the intended purpose of the use or disclosure.

- f. **Reporting Uses and Disclosures.** Business Associate shall report to Covered Entity any use or disclosure of PHI not provided for by this Agreement of which Business Associate becomes aware. Notice of such use or disclosure shall be provided to Covered Entity in writing as soon as possible, but in no event later than five (5) business days from the date on which Business Associate discovers said use or disclosure. The written notice to Covered Entity shall include the same information in notices sent under Section VIII.B.g of this Agreement.

- g. **Notification of Unauthorized Access, Use or Disclosure of Unsecured PHI.** Business Associate shall notify Covered Entity in writing of any unauthorized access, use or disclosure of unsecured PHI as soon as reasonably possible but no later than five (5) days following the date of discovery. Such notice shall include:
 - i. A brief description of what happened, including the date of the breach and the date of the discovery
 - ii. The name(s) of the individual(s) whose PHI was used or disclosed,
 - iii. The identity(ies) of the entity(ies)/person(s) to whom the use or disclosure was made,
 - iv. A description of the types of unsecured PHI that were disclosed, the steps taken by Business Associate to discontinue and minimize the impact of any inappropriate use or disclosure.

- h. **Reporting Security Incidents.** Business Associate shall report to Covered Entity any Security Incident of which it becomes aware, in the following time and manner:
 - i. Any actual, successful Security Incident will be reported to Covered Entity in writing, within five (5) business days of the date on which Business Associate becomes aware of such Security Incident
 - ii. Any attempted, unsuccessful Security Incident of which Business Associate becomes aware will be reported to Covered Entity in writing, on a reasonable basis, at the written request of Covered Entity. If the Security Rule is amended to remove the requirement to report unsuccessful attempts at unauthorized access, this subsection (ii) shall no longer apply as of the effective date of the amendment of the Security Rule.

- i. **Mitigation of Unauthorized Access, Use or Disclosure of Unsecured PHI.** Business Associate agrees that, to the extent practicable, it shall mitigate any harmful effect resulting from any unauthorized acquisition, use or disclosure of unsecured PHI caused by Business Associate's violation of the requirements of this Agreement

- j. **Agents, Contractors and Subcontractors.** Business Associate shall ensure that any agents, contractors or subcontractors to whom it provides PHI received from Covered Entity, or PHI that is created or received by Business Associate on behalf of Covered

Entity, agree to the same restrictions and conditions applicable to Business Associate as set forth herein with respect to PHI. Business Associate agrees to enter into a written contract with such agents, contractors or subcontractors to ensure that such contractors, subcontractors or agents abide by the same restrictions and conditions that apply to the Party when acting as a Business Associate with regard to PHI. Business Associate shall provide a copy of such contracts to Covered Entity upon request.

- k. **Books and Records.** Business Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, available to the Secretary and to Covered Entity for purposes of determining its compliance with HIPAA, the Privacy Rule, the Security Rule, and other applicable federal and/or state law or regulation. Business Associate shall notify Covered Entity immediately of any such requests and shall provide Covered Entity with a copy of the request and any documents or information provided in response to such requests.
- l. **Requests for Information or Access.** Business Associate shall notify Covered Entity in writing within five (5) business days of any requests from individuals seeking access to or copies of PHI maintained by Business Associate for or on behalf of Covered Entity, and respond to such requests when and as directed by Covered Entity.
- m. **Requests to Amend.** Business Associate shall notify Covered Entity in writing within five (5) business days of the receipt of any requests from individuals seeking to amend PHI maintained by Business Associate for or on behalf of Covered Entity, and respond to such requests when and as directed by Covered Entity. Additionally, when and as notified by Covered Entity, Business Associate shall incorporate any amendments, corrections and/or other documents or information to PHI maintained by Business Associate and shall notify its agents, contractors and subcontractors who receive PHI of any such amendments, corrections and/or other documents or information.
- n. **Request for Accounting.** Business Associate agrees to document disclosures of Protected Health Information, and information related to such disclosures, as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528 and any additional regulations promulgated by the Secretary pursuant to HITECH Act § 13405(c). Business Associate agrees to implement an appropriate record keeping process that will track, at a minimum, the following information: (i) the date of the disclosure; (ii) the name of the entity or person who received the Protected Health Information, and if known, the address of such entity or person; (iii) a brief description of the Protected Health Information disclosed; and (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure. Business Associate shall notify the Covered Entity in writing within five (5) business days of any requests made by an individual directly to Business Associate for an accounting of disclosures of PHI. If the request was made as a result of Covered Entity providing the individual with a list of business associates acting on behalf of Covered Entity under Section 13405 of the HITECH Act, Business Associate shall provide such accounting directly to the individual and shall provide Covered Entity with a copy of any such accounting in writing within five (5) business days of receiving the request.

Business Associate shall respond to all other requests for an accounting when and as directed by Covered Entity. Additionally, when and as directed by Covered Entity, Business Associate shall provide for an accounting of any and all disclosures of PHI made by or on behalf of Business Associate during the six years prior to the date of the request. The accounting obligations of Business Associate hereunder shall not apply to (a) disclosures made for purposes of treatment, payment, or health care operations (as defined in the Privacy Rule), (b) disclosures made to the individual who is requesting the accounting, (c) disclosures made prior to April 14, 2003, (d) disclosures made to law enforcement officers, correctional institutions, or for national security purposes, (e) disclosures incidental to a use or disclosure otherwise permitted or required by the Privacy Rule, as provided for in 45 CFR 164.502, (f) disclosures made pursuant to an authorization as provided in 45 CFR 164.508, (g) disclosures made as part of a limited data set in accordance with 45 CFR 164.514(e).

- o. **Prohibition Against Sale or Marketing of PHI.** Except as otherwise provided in Section 13405 of the HITECH Act, Business Associate shall not (a) directly or indirectly receive remuneration in exchange for any PHI of an individual; or (b) use or disclose PHI for any purpose related directly or indirectly to any marketing or marketing communication.
- p. In the event Business Associate receives a subpoena, court or administrative order or other discovery request or mandate for release of Protected Health Information, Business Associate will respond as permitted by 45 CFR § 164.512(e) and (f) following consultation with Covered Entity. Business Associate shall notify Covered Entity of the request as soon as reasonably practicable, but in any event within two (2) business days of receipt of such request.

2) **Violation of Business Associate Agreement Standards and Termination.** If either party knows or discovers a pattern of activity or practice of the other party that constitutes a material breach of the other party's obligations under this Agreement or under applicable federal standards, the discovering party agrees to immediately notify the other party in writing as to the nature and extent of such breach, and shall provide the other party a reasonable amount of time to cure such breach. A reasonable amount of time shall depend on the nature and extent of the breach, shall be clearly stated in the notice, but in no case shall the period for cure be less than five (5) business days. Notwithstanding the foregoing, should the discovering party determine that the breach is incurable, or that the other party has repeatedly engaged in such impermissible use or disclosure despite prior notice, the discovering party must terminate this Agreement, if feasible, upon written notice to the breaching party, without damages or liability thereto; or, if termination is not feasible, report the problem to the Secretary.

3) **Return of PHI upon Termination.** At termination of the Agreement, Business Associate shall return or destroy all PHI received from Covered Entity, or created by or received by Business Associate on behalf of Covered Entity, that Business Associate maintains in any form such that it shall retain no copies of such PHI. Upon request of Covered Entity, Business Associate shall provide a written certification of the return and/or destruction of PHI. If the Parties concur that the return or destruction of such PHI by Business Associate is not feasible, then Business Associate shall continue to extend the protections required hereunder to the PHI for as long as it maintains the PHI. Further, Business Associate shall limit any further use or disclosure of the PHI to those purposes that make its return or destruction unfeasible. This provision shall

survive the termination of this Agreement.

- 4) **Security.** The Parties shall work together in good faith to cooperate with each other's current and future security policies and procedures to ensure the integrity, confidentiality and availability of PHI in a manner that complies with HIPAA and the Security Rule, as amended from time to time.
- 5) **Electronic Transactions and Code Sets.** To the extent that the services performed by Business Associate pursuant to the Agreement involve transactions that are subject to the regulations governing electronic transactions and code sets issued pursuant to HIPAA, Business Associate shall conduct such transactions in conformance with such regulations, as amended from time to time.
- 6) **Record Keeping.** Business Associate agrees to implement an appropriate record keeping process to enable it to comply with the HIPAA requirements applicable to it under this Agreement and the Privacy and Security Rules.
- 7) **Confidential and Proprietary Information.** Business Associate may receive, create, or have access to confidential and/or proprietary information of Covered Entity concerning its business affairs, property, operations, computer systems, dentists and providers, and strategies. Business Associate agrees to hold such confidential and/or proprietary information in strict confidence, to maintain and safeguard the confidentiality of such information, and to use such information solely to perform services or provide goods to Covered Entity as required by this Agreement.
- 8) **Amendment.** Except as otherwise provided in this Section VIII.B.8, this Agreement may be amended, modified, or supplemented only by a written instrument executed by the Parties. Upon enactment of any law or regulation affecting the use or disclosure of PHI, or the publication of any decision of a court of the state or the United States relating to any such law, or the publication of any interpretative policy or opinion of any government agency charged with the enforcement of any such law or regulation, Covered Entity may amend the Agreement in such manner as it determines necessary to comply with such law or regulation, and Business Associate agrees to be bound by such amendment unless within thirty (30) days of its receipt of notice of such amendment, it notifies Covered Entity that it rejects such amendment. Upon receipt of such notice of rejection, Covered Entity may terminate the Agreement immediately upon written notice.
- 9) **Waiver.** No action taken pursuant to this Agreement, including, without limitation, any investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action in compliance with any representations, warranties, covenants, or agreements contained herein. The waiver by a party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach.
- 10) **Binding Effect.** Except as otherwise provided herein, the terms and conditions of this Agreement shall remain in full force and effect. Additionally, the terms and conditions of this Agreement shall remain in full force and effect following termination of the Agreement.
- 11) **Reimbursement of Costs.** Business Associate shall reimburse Covered Entity for any and all costs and expenses, whether direct or indirect, incurred by Covered Entity in providing any notice required by law or regulation as a result of any unauthorized acquisition, use or disclosure of unsecured PHI caused by Business Associate's breach of the terms of this

Agreement or its failure to secure PHI in accordance with the guidelines published by the Department of Health and Human Services.

- 12) **Indemnification by Business Associate.** Business Associate hereby agrees to indemnify, defend, and hold harmless Covered Entity, its board of directors, officers, members, agents, employees, subcontractors, and personnel (the "Indemnities") from and against any and all claims, demands, suits, actions, losses, expenses, costs (including reasonable attorney fees), obligations, damages, deficiencies, causes of action, and liabilities (collectively, "Claims") incurred by the Indemnities as a result of, or that are proximately caused by, (1) Business Associate's breach of this Agreement; or (2) Business Associate's violation of HIPAA or any amendments thereto.

Covered Entity shall provide prompt written notice of relevant information concerning such claims to Business Associate. Covered Entity shall provide such reasonable assistance (at Business Associate's expense), as may reasonably be requested by Business Associate, in connection with the defense of any Claim. Notwithstanding the foregoing: (1) Business Associate shall not settle any such Claim without the consent of Covered Entity, which consent shall not be unreasonably withheld, and (2) the indemnification obligations of Business Associate hereunder shall not extend to Claims attributable solely to the negligence, gross negligence, intentional misconduct, or willful malfeasance of Covered Entity.

- 13) **Indemnification by Covered Entity.** Covered Entity shall indemnify, defend, and hold harmless Business Associate, its board of directors, officers, members, agents, employees, subcontractors, and personnel from and against any and all claims, demands, suits, actions, losses, expenses, costs (including reasonable attorney fees), obligations, damages, deficiencies, causes of action, and liabilities (collectively, "Claims") incurred by Business Associate as a result of, or that are proximately caused by, (1) Covered Entity's breach of the terms of this agreement or; (2) Covered Entity's violation of HIPAA and any amendments thereto.

Business Associate shall provide prompt written notice of relevant information concerning the Claims to Covered Entity. Business Associate shall provide such reasonable assistance (at Covered Entity's expense) as may reasonably be requested by Covered Entity in connection with the defense of any Claim. Notwithstanding the foregoing: (1) Business Associate shall not settle any such Claim without the consent of Covered Entity, which consent shall not be unreasonably withheld, and (2) the indemnification obligations of Covered Entity hereunder shall not extend to Claims attributable solely to the gross negligence, intentional misconduct, or willful malfeasance of Business Associate.

- 14) **Injunction.** The Parties acknowledge and agree that in the event of a breach or threatened breach by Business Associate of its duties and obligations hereunder, Covered Entity shall be irreparably and substantially harmed, and remedies at law will not be an adequate remedy for such breach. Accordingly, in such event, the harmed Party shall be entitled to seek immediate injunctive relief against such breach or a threatened breach. Such rights to injunctive relief shall be in addition to, and not in limitation of, any other legal and equitable relief available to the harmed Party under applicable law.

- 15) **Assignment.** Business Associate may not sell, assign, transfer or otherwise convey any of its rights or delegate any of its duties under this Agreement without the prior written consent of Covered Entity.

- 16) **Successors.** This Agreement will be binding upon and will inure to the benefit of the Parties to this Agreement and their respective permitted successors and assigns, subject to the transfer restrictions and expiration or termination provisions set forth above.
- 17) **Severability.** The provisions of this Agreement are severable, and in the event any provision hereof is determined to be invalid or unenforceable, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining provisions hereof.
- 18) **Statutory and Regulatory References.** A reference in this Agreement to a section of any statute or regulation means the section as currently in effect or amended, and for which compliance is required.
- 19) **Headings.** The headings of the articles and several paragraphs of this Agreement are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement
- 20) **Governing Law.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Colorado without regard to conflict of law principles.
- 21) **Notices.** All notices, requests, demands and other communications which are required or may be given pursuant to the terms of this Section and Agreement shall be in written or electronic form and shall be deemed delivered (1) on the date of delivery when delivered by hand, (2) on the date of transmission when sent by facsimile transmission during normal business hours with written confirmation of receipt, (3) one day after dispatch when sent by overnight courier maintaining records of receipt, or (4) three days after dispatch when sent by certified mail, postage prepaid, return-receipt requested; provided that, in any such case, such communication is addressed to the Agency or Agent and Delta Dental at the addresses provided in Section II of the Agency/Agent Agreement.

IX. Exchange Products

Any Agency/Agent that is marketing, promoting and selling various types of Products in the State and/or Federally funded Exchange(s) will be subject to Exhibit B - Exchange Market Products Only, which may change from time to time as the requirements of the Exchange may change. The most recent Exhibit B shall be binding on all Agencies/Agents that sell any Delta Dental Exchange Products.

- A. Assignment.** Agency or Agent shall not in any way sell, assign, or pledge any interest, entitlement, payment, or duty arising under this Agency/Agent Agreement without the prior written consent of Delta Dental.
- B. Successors.** This Agreement shall be binding upon and will insure to the benefit of the parties to this Agreement and their respective permitted successors and assigns, subject to the transfer restrictions and expiration or termination provisions set forth above
- C. Entire Agreement.** This Agency/Agent Agreement shall supersede all prior written and/or verbal agreements and representations and shall constitute the sole and entire agreement between Delta Dental and Agency or Agent. No change, alteration, or modification of the terms of this Agency/Agent Agreement may be made except by agreement in writing signed by an authorized representative of Delta Dental.

- D. **Arbitration.** Delta Dental and Agency or Agent agree that any controversy arising out of or related to this Agreement, or to the alleged breach of this Agreement, shall be settled by arbitration in accordance with the commercial rules then pertaining of the American Arbitration Association, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.
- E. **Law Governing Agreement.** This Agreement is governed by and construed in accordance with the laws of the State of Colorado, and shall be interpreted in accordance with the laws of the State of Colorado, without regard to principles of conflicts of laws. Any cause of action that may arise with regard to this Agreement shall have venue in the State of Colorado.
- F. **Waiver.** Failure by Delta Dental to insist upon compliance with any provision of this Agency/Agent Agreement at any time or under any set of circumstances shall not operate to waive or modify the provisions or in any manner render it unenforceable as to any other time or as to any other occurrence, whether the circumstances are or are not the same, and no waiver of any terms or conditions of this Agency/Agent Agreement shall be valid or of any force or effect unless contained in a written memorandum specifically expressing such waiver and signed by a person duly authorized by Delta Dental to sign such waiver.
- G. **Third-Party Beneficiaries.** This Agency/Agent Agreement is not intended to create any third party beneficiaries or to confer any rights on any person other than Delta Dental and Agency or Agent.
- H. **Excuse of Non-Performance.** Neither Delta Dental nor Agency or Agent will have violated this Agency/Agent Agreement if it is prevented from performing any of its obligations for any reason beyond its control, including, without limitation, acts of God, acts of war or terrorism, acts of public enemy, flood, storm, strikes, or regulatory agencies.
- I. **Severability.** The provisions of this Agreement are severable, and in the event any provision hereof is determined to be invalid or unenforceable, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining provisions hereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as dated on page 1.

“AGENCY” or “AGENT”

By:
(Authorized signature)

Title:

DELTA DENTAL OF COLORADO

By: _____
(Authorized signature)

Title: Matthew Cassady, Director of Compliance

EXHIBIT A - BROKER COMMISSION SCHEDULE

Applicability. Subject to the conditions and requirements of this Exhibit A, this Broker Commission Schedule or any subsequently published Broker Commission Schedule, will apply to both original and renewal business as of the date published by Delta Dental, and in conjunction with the timeframe in which the commissions were earned by Agency/Agent.

Agent of Record. Provided that Agent (1) continues to be designated by a group as the Agency/Agent with respect to such group, e.g. “Agent of Record,” and (2) performs services related to such group in a manner satisfactory to Delta Dental, then for all new business and all business renewing, Delta Dental will pay Agency/Agent commissions at the times and in the amounts set forth on the then published Broker Commission Schedule. Commission for fully insured groups will be based on paid premium. Should Agency/Agent negotiate to be paid commissions for specific groups that deviate from the Broker Commission Schedule, the commission will be disclosed, and it will be acknowledged by Agency/Agent by virtue of Agency/Agent’s signature on the group’s Delta Dental Employer/Client Information Form and Agreement. In no event will Delta Dental pay Agency/Agent any commissions for any time period occurring after any expiration or termination of this Agreement. Notwithstanding any other provisions of this Agreement, no commission shall be paid to Agent for any group on or after the date the group withdraws its appointment of Agency/Agent as the group’s Agent of Record, whether by affirmative withdrawal or by appointment of another agency or agent as Agent of Record for such group. Delta Dental may report in accordance with applicable state and/or federal regulations to Agency’s or Agent’s designated groups all commissions paid to Agency/Agent for work performed on behalf of such groups. Agency or Agent shall disclose in writing to the client, in advance of the purchase of business, the nature of any compensation the Agency or Agent will or may receive or be eligible to receive from Delta Dental in connection with the placement or servicing of the client’s business, as well as the nature of any other material business relationship between the Agency or Agent and Delta Dental. This requirement is a condition to eligibility for receiving compensation under Delta Dental’s agency/agent compensation program as described in this Agreement. Delta Dental will report to Agency’s or Agent’s designated clients all commissions paid to Agency or Agent for work performed on behalf of such clients.

New and Renewal Business Commission Schedule

Type	Rate
Fully Insured Group Dental for 2-50 employers	10% or negotiable
Groups with 51-100 employees	5% or negotiable
Group of 101+	Fully negotiable
Patient Direct (2-100)	8%
Individual and family	8%
Patient Freedom (2-100)	10%
Patient Direct - Kaiser Permanente (2-100)	10%
SHOP	10%

Commission Payment. Subject to the conditions of this Agreement, Delta Dental will pay commissions monthly based upon applicable premiums or administrative fees or as negotiated, if any, paid in cash and received by Delta Dental in the previous month, provided this Agreement has not expired or terminated or the group has not withdrawn its appointment of Agent or appointed another agency or agent as its Agent of Record prior to the last day of the previous month. If the monthly Agent commission does not exceed twenty-five dollars (\$25.00), Delta Dental shall not be obligated to produce a commission check until the commission sum exceeds twenty-five dollars (\$25.00) or at a minimum, once per calendar year.

If any application is rejected or any Group Product is cancelled or defaulted on, in whole or in part, for any reason, before the expiration of the contract period, or if any overpayment is made to Agent, the pro rata compensation paid to the Agent on the value of the Group Product cancelled or defaulted on or the amount overpaid the Agent shall be charged to the Agent and shall constitute an indebtedness of the Agent to Delta Dental.

Overpayment. If any application is rejected or any client contract is cancelled or defaulted on, in whole or in part, for any reason, before the expiration of the contract period, or if any overpayment is made to Agency or Agent, the pro rata compensation paid to the Agency or Agent on the amount of the contract cancelled or defaulted on or the amount overpaid the Agency or Agent shall be charged to the Agency or Agent and shall constitute an indebtedness of the Agency or Agent to Delta Dental.

EXHIBIT B – EXCHANGE MARKET PRODUCTS ONLY

Any Agent that is marketing, promoting and selling various types of Products in the State and/or Federally funded Exchange(s) pursuant to the Patient Protection and Affordable Care Act (“PPACA”) will be subject to this Exhibit, which may change from time to time as the rules and requirements of the Exchange may change. The most recent version of this Exhibit shall be binding on all Agents that sell any Delta Dental Exchange Products.

Compliance. Agent warrants and represents that it is and shall remain in compliance with any and all Federal, State and local laws. To the extent that Agent is delegated any duties or administrative services by Delta Dental relating to Exchange business, Agent agrees to comply with the requirements and standards stated in the following provisions of Federal law to the extent they apply to the delegated duties:

CFR 156 subpart C;

CFR 155 subparts H and K and 45 CFR 155.705 regarding Exchange processes, procedures and standards;

CFR 155.220 regarding enrollment;

CFR 156.705 and 45 CFR 715 regarding maintenance of records and compliance reviews.

Pursuant to 45 CFR 156.340, Agent agrees to permit access to the Secretary of the Department of Health and Human Services (HHS) or the Office of Inspector General of the HHS, or its designees in connection with their right to evaluate through audit, inspection or other means, the Agent’s books, contracts, computers or other electronic means, including medical records and documentation related to a health plan issued through a Federally Facilitated Exchange until 10 years from the final date of the Agreement period.

Completion of Curriculum. Agent agrees that he or she has registered and completed the required Exchange training or curriculum and shall submit proof of completion to Delta Dental prior to any receipt of payment of commission from Delta Dental.

Commission. Agent commission shall be paid in accordance with Exhibit A.

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.	1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.	
	2 Business name/disregarded entity name, if different from above	
	3 Check appropriate box for federal tax classification; check only one of the following seven boxes: <input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____ Note. For a single-member LLC that is disregarded, do not check LLC; check the appropriate box in the line above for the tax classification of the single-member owner. <input type="checkbox"/> Other (see instructions) ▶ _____	
	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ <i>(Applies to accounts maintained outside the U.S.)</i>	
	5 Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
	6 City, state, and ZIP code	
	7 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 generally 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 instructions for line 1 and 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); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

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 3.

Sign Here	Signature of U.S. person ▶	Date ▶
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General Instructions

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

Future developments. Information about developments affecting Form W-9 (such as legislation enacted after we release it) is at www.irs.gov/fw9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)

- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding? on page 2.

By signing the filled-out form, you:

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, and
4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting?* on page 2 for further information.

Note. If you are a U.S. person and 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 under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 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 section 1446 withholding on your share of partnership income.

In the cases below, the following persons must give 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:

- In the case of a disregarded entity with a U.S. owner, the U.S. owner of the disregarded entity and not the entity;
- In the case of a grantor trust with a U.S. grantor or other U.S. owner, generally, the U.S. grantor or other U.S. owner of the grantor trust and not the trust; and
- In the case of a U.S. trust (other than a grantor trust), the U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person or the U.S. branch of a foreign bank that has elected to be treated as a U.S. person, do not use Form W-9. Instead, use the appropriate Form W-8 or Form 8233 (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, give the requester the appropriate completed Form W-8 or Form 8233.

Backup Withholding

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, payments made in settlement of payment card and third party network transactions, 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 *Exempt payee code* on page 3 and the separate Instructions for the Requester of Form W-9 for more information.

Also see *Special rules for partnerships* above.

What is FATCA reporting?

The Foreign Account Tax Compliance Act (FATCA) requires a participating foreign financial institution to report all United States account holders that are specified United States persons. Certain payees are exempt from FATCA reporting. See *Exemption from FATCA reporting code* on page 3 and the Instructions for the Requester of Form W-9 for more information.

Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account; for example, if the grantor of a grantor trust dies.

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

Line 1

You must enter one of the following on this line; **do not** leave this line blank. The name should match the name on your tax return.

If this Form W-9 is for a joint account, list first, and then circle, the name of the person or entity whose number you entered in Part I of Form W-9.

a. **Individual.** Generally, enter the name shown on your tax return. If you have changed your last name without informing the Social Security Administration (SSA) of the name change, enter your first name, the last name as shown on your social security card, and your new last name.

Note. ITIN applicant: Enter your individual name as it was entered on your Form W-7 application, line 1a. This should also be the same as the name you entered on the Form 1040/1040A/1040EZ you filed with your application.

b. **Sole proprietor or single-member LLC.** Enter your individual name as shown on your 1040/1040A/1040EZ on line 1. You may enter your business, trade, or "doing business as" (DBA) name on line 2.

c. **Partnership, LLC that is not a single-member LLC, C Corporation, or S Corporation.** Enter the entity's name as shown on the entity's tax return on line 1 and any business, trade, or DBA name on line 2.

d. **Other entities.** Enter your name as shown on required U.S. federal tax documents on line 1. 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 line 2.

e. **Disregarded entity.** For U.S. federal tax purposes, an entity that is disregarded as an entity separate from its owner is treated as a "disregarded entity." See Regulations section 301.7701-2(c)(2)(iii). Enter the owner's name on line 1. The name of the entity entered on line 1 should never be a disregarded entity. The name on line 1 should be the name shown on the income tax return on which the income should be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a single owner that is a U.S. person, the U.S. owner's name is required to be provided on line 1. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity's name on line 2, "Business name/disregarded entity name." If the owner of the disregarded entity is a foreign person, the owner must complete an appropriate Form W-8 instead of a Form W-9. This is the case even if the foreign person has a U.S. TIN.

Line 2

If you have a business name, trade name, DBA name, or disregarded entity name, you may enter it on line 2.

Line 3

Check the appropriate box in line 3 for the U.S. federal tax classification of the person whose name is entered on line 1. Check only one box in line 3.

Limited Liability Company (LLC). If the name on line 1 is an LLC treated as a partnership for U.S. federal tax purposes, check the "Limited Liability Company" box and enter "P" in the space provided. If the LLC has filed Form 8832 or 2553 to be taxed as a corporation, check the "Limited Liability Company" box and in the space provided enter "C" for C corporation or "S" for S corporation. If it is a single-member LLC that is a disregarded entity, do not check the "Limited Liability Company" box; instead check the first box in line 3 "Individual/sole proprietor or single-member LLC."

Line 4, Exemptions

If you are exempt from backup withholding and/or FATCA reporting, enter in the appropriate space in line 4 any code(s) that may apply to you.

Exempt payee code.

- Generally, individuals (including sole proprietors) are not exempt from backup withholding.
- Except as provided below, corporations are exempt from backup withholding for certain payments, including interest and dividends.
- Corporations are not exempt from backup withholding for payments made in settlement of payment card or third party network transactions.
- Corporations are not exempt from backup withholding with respect to attorneys' fees or gross proceeds paid to attorneys, and corporations that provide medical or health care services are not exempt with respect to payments reportable on Form 1099-MISC.

The following codes identify payees that are exempt from backup withholding. Enter the appropriate code in the space in line 4.

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

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 13.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 7
Broker transactions	Exempt payees 1 through 4 and 6 through 11 and all C corporations. S corporations must not enter an exempt payee code because they are exempt only for sales of noncovered securities acquired prior to 2012.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 4
Payments over \$600 required to be reported and direct sales over \$5,000 ¹	Generally, exempt payees 1 through 5 ²
Payments made in settlement of payment card or third party network transactions	Exempt payees 1 through 4

¹ See Form 1099-MISC, Miscellaneous Income, and its instructions.

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

Exemption from FATCA reporting code. The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements. A requester may indicate that a code is not required by providing you with a Form W-9 with "Not Applicable" (or any similar indication) written or printed on the line for a FATCA exemption code.

A—An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37)

B—The United States or any of its agencies or instrumentalities

C—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities

D—A corporation the stock of which is regularly traded on one or more established securities markets, as described in Regulations section 1.1472-1(c)(1)(i)

E—A corporation that is a member of the same expanded affiliated group as a corporation described in Regulations section 1.1472-1(c)(1)(i)

F—A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state

G—A real estate investment trust

H—A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940

I—A common trust fund as defined in section 584(a)

J—A bank as defined in section 581

K—A broker

L—A trust exempt from tax under section 664 or described in section 4947(a)(1)

M—A tax exempt trust under a section 403(b) plan or section 457(g) plan

Note. You may wish to consult with the financial institution requesting this form to determine whether the FATCA code and/or exempt payee code should be completed.

Line 5

Enter your address (number, street, and apartment or suite number). This is where the requester of this Form W-9 will mail your information returns.

Line 6

Enter your city, state, and ZIP code.

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 this page), 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 SSA office or get this form online at 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 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 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, apply for a TIN and 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 U.S. 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, or 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on line 1 must sign. Exempt payees, see *Exempt payee code* earlier.

Signature requirements. Complete the certification as indicated in items 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 made in settlement of payment card and third party network transactions, 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 ¹
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor ²
4. a. The usual revocable savings trust (grantor is also trustee) b. So-called trust account that is not a legal or valid trust under state law	The grantor-trustee ¹ The actual owner ¹
5. Sole proprietorship or disregarded entity owned by an individual	The owner ³
6. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulations section 1.671-4(b)(2)(i)(A))	The grantor*
For this type of account:	Give name and EIN of:
7. Disregarded entity not owned by an individual	The owner
8. A valid trust, estate, or pension trust	Legal entity ⁴
9. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
10. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
11. Partnership or multi-member LLC	The partnership
12. A broker or registered nominee	The broker or nominee
13. 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
14. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulations section 1.671-4(b)(2)(i)(B))	The trust

¹ 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.

² Circle the minor's name and furnish the minor's SSN.

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

⁴ 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 2.

*Note. Grantor also must provide a Form W-9 to trustee of trust.

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, 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.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Publication 4535, Identity Theft Prevention and Victim Assistance.

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. You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration (TIGTA) at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at: spam@uce.gov or contact them at www.ftc.gov/idtheft or 1-877-IDTHEFT (1-877-438-4338).

Visit 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 (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and 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. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.