

SOLICITOR AGREEMENT

This Solicitor Agreement is between **First Dental Health**, a California corporation (“**FDH**”), and _____, a (“**Solicitor**”), and has an effective date of _____ (the “**Agreement**”).

RECITALS

A. FDH has established a “discount fee dental plan” called the New Dental Choice Plan (“**NDC Plan**” or “**Plan**”) to provide to individuals or families who subscribe to the Plan (“**Subscribers**”) access to a network of dental care providers for designated discount dental care services. The Plan is described in detail in the Individual and Group Agreements attached hereto at Exhibit “**B**”.

B. FDH has contracted with thousands of general and specialist dentists in many areas of California and other states to constitute this provider network. The NDC Plan ensures to its members discounted fees for the services of these providers for specified dental care services.

C. FDH desires to retain the services of Solicitor for purposes of promoting and selling memberships in the Plan to individuals and to groups on behalf of their employees and members, pursuant to the provisions of this Agreement.

D. Solicitor desires to provide such services to FDH, pursuant to the provisions of this Agreement.

E. Definitions of capitalized terms not otherwise defined herein may be found in the agreements in Exhibit “**B**.”

SECTION 1 – SOLICITOR RELATIONSHIP

1.1 Relationship

Solicitor is an independent contractor and not an employee of FDH. These limitations apply also to any Sub-solicitors with whom Solicitor may contract pursuant to Section 2.1 below.

1.2 Responsibilities

Solicitor shall perform the activities and follow the procedures described in Section 2 hereof and those contained in Exhibit “**A**” to this Agreement, which Exhibit is incorporated herein by this reference.

SECTION 2 -RESPONSIBILITIES AND OBLIGATIONS OF SOLICITOR

2.1 Use of Sub-solicitors

- (a) Solicitor may sub-contract with sub-solicitors (“Subs”) for purposes of carrying out Solicitor’s responsibilities and obligations pursuant to this Agreement. Solicitor shall, and FDH may, verify that any and all such Subs are licensed with all state and other governmental agencies to the extent required by law and shall provide such proof of licensing and compliance with the law as required by FDH. Solicitor shall immediately notify FDH in the event that Solicitor or any of its Subs lose any such required licenses or are subjected to other disciplinary regulatory action.
- (b) Solicitor shall ensure that each of its Subs are properly screened and trained in all facets of the NDC Plan. Solicitor shall submit to FDH for its prior approval in advance of their usage all contracts or agreements, which shall be in writing, with its intended Subs. Such contracts shall provide clearly that the Sub is a representative of Solicitor and not of FDH.

2.2 Obligations of Solicitor

Solicitor shall:

- (a) Agree to complete and comply, and require its Subs to complete and comply, with all training provided by FDH that is designed to ensure contractual and regulatory compliance when representing and selling the NDC Plan.
- (b) Identify, and request its Subs to identify, groups and potential individual subscribers (together, “Prospects”) to whom the Plan may be offered.
- (c) (1) Contact, and request its Subs to contact, Prospects on FDH’s behalf and fully and fairly explain the NDC Plan to the Prospects; (2) to the extent applicable, encourage employer and group representatives to introduce and offer the NDC Plan to their employees; (3) instruct Groups to execute the Group Agreement; (4) disseminate or cause to be disseminated to prospective individual members the Individual and Family Combined Membership Agreement and Description of Services and Disclosure Form and the benefits matrix for their review prior to enrolling, and disseminate or cause to be disseminated the Group Evidence of Coverage and Disclosure Form to all prospective group employees prior to enrolling; and (5) ensure either directly or through Group that potential Subscribers complete an NDC enrollment form, advising the potential Subscriber that the form does not bind FDH unless and until FDH formally approves the application and issues a Membership Agreement to the potential Subscriber, and the applicant shall have paid the required Membership Fee and signed the NDC Agreement and returned it to FDH.

- (d) Secure prior written approval from FDH for any written materials, including telephonic, radio, television and website and e-mail scripts that Solicitor or its Subs intend to use in the discharge of its or their obligations and responsibilities hereunder. Solicitor shall submit any such advertising material it intends to use to FDH at least forty-five (45) days prior to the date it desires to use the material since FDH must itself secure from the California Department of Managed Health Care prior approval for advertising material proposed to be used to promote the Plan and its offerings.
- (e) Solicitor shall ensure that all descriptions of the NDC Plan used by Solicitor or its Subs, whether written or oral, are true, accurate and devoid of misleading statements or implications.
- (f) Submit such reports to FDH, or to appropriate public regulatory agencies, as may from time to time be requested.
- (g) In the discharge of all the above responsibilities, comply, and ensure compliance by its Subs, with applicable provisions of California or other applicable state law and any applicable regulations promulgated hereunder

2.3 Nondiscrimination

Solicitor agrees to use, and to require its Subs to use, their best efforts not to discriminate against the NDC Plan when offering other plans of a similar nature.

2.4 No Interference with FDH's Rights and Obligations

Solicitor agrees that FDH shall retain all rights and obligations contained within the Group Agreements or the Membership Agreement issued to Groups or Subscribers and Solicitor will take no action nor permit Subs to take any action that interferes with or limits those rights and obligations.

2.5 Performance of Agents

Solicitor, as the one recommending the Sub and delegating responsibilities hereunder to Sub, shall make all reasonable efforts to ensure that the Sub complies with all applicable laws, regulations and industry standards and with the Sub's agreement with Solicitor and to ensure proper and effective performance by the Sub.

2.6 Assignment and/or Delegation Prohibited

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

2.7 Commission Fees

- (a) FDH will pay Solicitor a Commission Fee ("Commission") of a percentage of all

paid Plan Membership Fees resulting from sales directly attributable to Solicitor's or Solicitor's Subs' efforts, as stated in Exhibit "A" hereto, which Exhibit is incorporated herein by this reference. Membership Fees current as of the effective date of this Agreement are listed in Exhibit "C" hereto. Membership Fees are subject to change with thirty (30) days written notice being given to Solicitor. A sale is considered "accepted" by FDH when the proper and completed paperwork has been received by FDH and the Initial Membership Fee payment has been deposited by FDH.

- (b) By their respective initialing below, FDH and Solicitor agree to the stated mechanism whereby Solicitor's Subs will be compensated. Within thirty (30) days of receipt of group or individual membership fees payment,

Mechanism 1:

Solicitor

FDH

Commissions due to Solicitor and those due to Solicitor's Subs will be distributed to Solicitor by FDH. Solicitor shall be solely responsible for distributing all Commissions due and owing to Solicitor's Subs. Solicitor shall ensure in its agreement with its Subs that the Sub shall have no recourse against FDH with respect to Commissions paid by FDH to Solicitor in connection with Plan Membership sales effected by the Sub.

Mechanism 2:

Solicitor

FDH

FDH will distribute directly to each the Commissions due to Solicitor and those due to Solicitor's Subs.

- (c) In the event that FDH finds it necessary to cancel with refund a Membership transaction, Solicitor agrees to refund any monies already paid to Solicitor by FDH, whether for sales effected by Solicitor or by one of Solicitor's Subs. FDH shall fully inform Solicitor of the causes for such a cancellation with refund, to the extent permitted under applicable law.
- (d) Commissions will be renewable each year, provided that the applicable Subscriber submits his or her Membership Fee(s) payment in a timely manner. If a Subscriber is more than sixty (60) days delinquent in submitting his or her monthly or annual Membership Fee payment, FDH will consider the underlying Membership Agreement to be null and void and no further Commissions attributable to the specific Membership will be due to Solicitor.
- (e) Any and all monies owed by Solicitor to its vendors, employees, independent

contractors and other persons and entities are the sole responsibility of Solicitor and not of FDH.

2.8 Books and Records

Solicitor 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. Solicitor 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 Solicitor and its Subs to the extent that such books and records pertain to the services furnished or obligated hereunder or the cost thereof. Solicitor shall permit, and shall require its Subs to permit, any authorized government regulatory agencies to inspect and copy such books and records upon request.

SECTION 3 – FISCAL RELATIONSHIPS


FDH shall have the responsibility for preparing and mailing billing statements for Membership Fees with respect to all potential or current Subscribers whose applications were received from Solicitor or its Subs and approved by FDH. Solicitor and Subs may collect Membership Fees from Subscribers, provided that such Membership Fee payments are in the form of a credit card authorization or check made payable to First Dental Health. All billings will direct the Subscriber, or the group administering such payments on behalf of its employees or members, to remit the amount due to FDH. Solicitor will perform its responsibilities in a fiduciary capacity as trustee under applicable California law and in accordance with the terms of this Agreement. Should any potential or current Subscriber remit payment to Solicitor or to a Sub in other than credit card authorization or check form made payable to First Dental Health, Solicitor shall promptly notify both FDH and the remitter and shall immediately forward to FDH any such payments or instruments of payment received in error.

Dated: _____) Corp Of

First Dental Health, a California corporation:

By:
Its:

SOLICITOR

_____ 

By:
Its: Sole Proprietor
Phone Number: _____

E-mail Address: _____

EXHIBIT “A”

SOLICITOR COMMISSION

The Commission Fee due to Solicitor and due to Solicitor’s Subs under the Solicitor Agreement, dated _____ to which this is an Exhibit incorporated by reference in Paragraph 2.8(a) thereof, shall be **30** % of all paid Plan Membership Fees resulting from sales directly attributable to Solicitor’s or Solicitor’s Subs’ 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

<u>Membership Type</u>	<u>Membership Fees</u>
Individual	\$8.00 per month ¹ or \$96.00 per year ²
Family ³	\$10.00 per month ¹ or \$120.00 per year ²
Group ⁴	
Employee Only	\$6.50 per month
Employee Plus Dependents	\$8.50 per month

¹ Plus a one-time \$25 enrollment fee for members paying monthly

² Plus a one-time \$10 enrollment fee for members paying yearly

³ Includes all eligible dependents

⁴ Employer paid or collected by payroll deduction includes a \$10 per month group billing fee

Effective January 1, 2010