

## WELLNESS PROGRAM AGREEMENT

This Agreement, dated as of \_\_\_\_\_ (the "Effective Date"), is entered into by and between **VIRGINIA DENTAL SERVICES CORPORATION**, a corporation organized and existing under the laws of the Commonwealth of Virginia, whose principal place of business is 3460 Mayland Ct., Suite 110, Henrico, Virginia 23233 hereafter referred to as "**VDSC**" and **LICENSEE** a dental office organized and existing under the laws of the Commonwealth of Virginia, whose principal place of business is located at \_\_\_\_\_, hereafter referred to as "**Licensee**".

### RECITALS

- 1.1 VDSC owns and possesses a prominent identity, reputation and goodwill associated with its name (hereafter "Name"). The VDSC uses the VDA Services logos and trademarks (hereafter "Marks") which are owned by the Virginia Dental Association (hereafter "VDA") to market its products and services.
- 1.2 The VDSC produces a Wellness Program Discount program template (hereafter "template") that it makes available to Virginia Dental Association Members (hereafter "members") and dentists not members of the Virginia Dental Association (hereafter "non-members").
- 1.3 The VDSC acknowledges the regulatory agency rules and regulations regarding discount programs for dental offices are not well defined at this time and may provide updates and revisions to the template as regulations covering discount programs become more defined.
- 1.4 The VDSC incurred legal and other production expenses to produce the template, and will provide the template to members and non-members for a fee.
- 1.5 For offices that purchase the template, the VDSC will provide access to an online webcast to assist in the implementation of the program at no additional cost. In office training programs (at the request of participating offices) will incur an additional fee.
- 1.6 For terms of this agreement, the initial rollout of the program is August 1, 2015.
- 1.7 The template or any associated components are not directly, indirectly, or tangentially an insurance plan in any kind or form, and the VDSC does not advertise, represent or represent the template as such.
- 1.8 The VDSC and Licensee do not share, advise, or recommend dental office fees. Any fees that may be displayed or discussed in the template are for illustrative purposes only.

## **AGREEMENT**

### Conditions of Use

- 2.1 The VDSC will provide to Licensees a template. This template will include Sample Patient Membership Terms, Sample Patient Membership Brochures, a training program, and updates for a term up to two years from the initial rollout of the program.
- 2.2 The fee for the template described in Section 2.1 is \$250 for members and \$995 for non-members.
- 2.3 Each template purchased by the Licensee is for the sole use of the dental office(s) of the Licensee (hereafter "licensed dental office".) The template is the intellectual property of the VDSC; it may not be shared or used by another office, dentist, practitioner, employee, or entity outside of the licensed dental office.
- 2.4 The fee for the template program is not refundable once any component of the template is provided to the Licensee.
- 2.5 The Licensee responsibilities are:
- i. to adhere to the template as presented.
  - ii. to keep the Licensee's Wellness Program updated with updates revisions provided by the VDSC.
  - iii. to share with the VDSC any regulatory information learned by the Licensee.
  - iv. to immediately notify VDSC and keep VDSC fully informed if Licensee becomes aware of any claims made related to the template, or of any government or third party investigation relating to any component of template.
  - v. to abide by all regulations regarding privacy, advertising and promotion and to ensure that all promotions and communication to patients conform to the current American Dental Association (ADA) Principles of Ethics and Code of Professional Conduct.
- 2.6 The Licensee represents and warrants that:
- i. Licensee shall not directly, indirectly, or tangentially refer to, advertise, market or represent the template as an insurance plan of any kind or form.
  - ii. Licensee shall make no verbal, written, published or electronic reference to the Virginia Dental Association or the VDSC in the promotion of the Licensee's Wellness Plan except to state that the Licensee is a member of the Virginia Dental Association if accurate or to display the VDSC copyright mark.
  - iii. Licensee shall comply with all applicable laws and regulations.

### Indemnification

- 3.1 Licensee shall indemnify, defend and hold harmless VDSC and VDA, and shall be solely liable for, any and all claims, demands, losses, damages, expenses or causes of action of any kind (including reasonable attorney's fees relating to any claim, action, case, judgment or appeal) arising out of or relating to:
- i. any breach of this Agreement or failure to perform its obligations by Licensee;
  - ii. any negligent or wrongful act or omission caused or alleged to have been caused by Licensee or its officers, agents or employees;
  - iii. any unauthorized use of or infringement of any trademark, service mark, copyright, patent, process, method or device or other proprietary right by Licensee, in accordance with this Agreement;
  - iv. any false advertising, fraud, misrepresentation or other claims related to the template.
- 3.2 The VDSC and VDA expressly disclaim any and all liabilities, fines, and penalties incurred by the Licensee for any use of the template and the contents of the template or any of the associated template components. ANY WARRANTIES PROVIDED BY VDSC IN THIS AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, REGARDING THE QUALITY OR PERFORMANCE LEVEL OF SERVICES, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

### Miscellaneous

- 4.1 This Agreement is binding upon and shall inure solely to the benefit of the parties hereto, and no other person may have or shall acquire any right hereunder. This Agreement constitutes the entire agreement among the parties hereto. No prior or subsequent oral representations or agreements, correspondence or written notations shall have any meaning or effect. There are no representations, promises, agreements, warranties, covenants or understandings other than those contained herein. This Agreement, including any schedules made a part thereof, may only be amended in writing signed by the parties hereto. The parties waive any right to orally amend this Agreement.
- 4.2 This Agreement is personal to Licensee, and Licensee shall not sublicense any of its rights hereunder. Neither this Agreement nor any of Licensee's rights shall be sold, transferred or assigned by Licensee without VDSC's prior written approval, and no rights shall devolve by operation of law or otherwise upon any assignee, receiver, liquidator, trustee or other party. Subject to the foregoing, this Agreement shall be binding upon any approved assignee or successor of Licensee and shall inure to the benefit of VDSC, its successors and assigns.

- 4.3 No waiver of or failure to enforce any consideration, term or condition of this Agreement by a party shall be or serve as a continuing waiver.
- 4.4 This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute one agreement.
- 4.5 The parties agree that this Agreement is entered into in the County of Henrico, Virginia. Any action brought to enforce any provision hereof must be brought in the appropriate federal or state court located within the County of Henrico, Virginia. The parties agree that this Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.
- 4.6 The relationship between the parties hereto is solely that of licensee and licensor, and nothing herein shall be deemed or construed to create any franchise, joint venture, partnership or any relationship other than that of licensee and licensor. In all dealings with third parties, including without limitation, employers, suppliers and customers, Licensee shall disclose in an appropriate manner acceptable to VDSC, that Licensee is an independent entity licensed by VDSC. Nothing in this Agreement is intended by the parties hereto to create a fiduciary relationship between them, nor to constitute one party as agent, legal representative, subsidiary, franchise, joint venture, partner, employee or servant of another party for any purpose whatsoever. VDSC is not in any way a guarantor of the quality of any product produced or service provided by Licensee. Licensee is in no way authorized to make any contract, warranty or representation or to create any obligation on behalf of VDSC.
- 4.7 Licensee acknowledges that VDSC is engaged in various activities which are designed to promote and enhance VDA, VDA Services, VDSC and the goodwill of the Name and Marks, which activities involve relationships with numerous companies or organizations. Licensee agrees that in the event VDSC determines that Licensee's activities taken pursuant to this Agreement conflict with the interests or rights of other VDSC licensees, Licensee shall in good faith reasonably cooperate with VDSC in order to resolve the conflict.
- 4.8 Interpretation. No provision of this Agreement shall be construed against or interpreted to the disadvantage of any Party by any court or other governmental or judicial authority by reason of such party having or being deemed to have drafted, structured or dictated such provision. The section and paragraph headings and titles are for convenience only; they form no part of the terms and conditions of the agreement and will not affect the interpretation of this Agreement.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

Virginia Dental Services Corporation (“VDSC”)

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

Name: Dr. Stephen S. Radcliffe

Title: President

The Licensee Company (“Licensee”)

By: \_\_\_\_\_  
(please sign)

Name: \_\_\_\_\_  
(please print)

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

Contact Information for Licensee:

Main Contact Name: \_\_\_\_\_

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

City/State/Zip: \_\_\_\_\_

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

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

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