

Membership Terms and Conditions

This Membership Agreement (“Agreement”) is entered by and between Building Everyone’s Success Together for Dentistry, LLC (“BEST”), having offices at 7232 CR 134, Celina, Texas 75009 and the party signatory hereto (“Member”).

WHEREAS, BEST is a group purchasing organization operating in accordance with 42 C.F.R. § 1001.952(j) that is developing a contract portfolio of negotiated agreements and will continue to develop and enter into agreements (“BEST Vendor Agreements”) with manufacturers, vendors, wholesalers and distributors (collectively, “Vendors”) for Products and Services (as defined below). As used in this Agreement, “Products and Services” means the goods and services available for purchase by Member under the BEST Vendor Agreements; and

WHEREAS, the Member is an approved dental provider that furnishes goods or services for which payment may be made in whole or in part under the Federal health care programs and Member is neither wholly-owned by BEST nor a subsidiary of a parent corporation that wholly owns BEST (either directly or through another wholly-owned entity).

NOW, THEREFORE, in consideration of the promises of the parties hereto contained herein, it is hereby agreed as follows:

1. BEST is authorized to act as Member’s purchasing agent and will negotiate BEST Vendor Agreements to permit, subject to the terms herein and therein, purchases by Member in accordance with terms of such agreements. Member authorizes Best to execute agreements between Member and other group purchasing organizations on Member’s behalf.
2. During the term, provided Member complies with the terms and conditions of this Agreement, Member may have access to the BEST Vendor Agreements. Pursuant to the BEST Vendor Agreements, however, the Vendor is permitted to make the final determination whether or not Member is eligible to participate in BEST Vendor Agreements and access the BEST contract prices available thereunder. BEST will provide to Vendors all relevant information received from Member to establish Member’s qualifications to participate in the BEST Vendor Agreements, but BEST does not guarantee Member’s acceptance in any BEST Vendor Agreement.
3. In consideration of BEST’s membership services, Member agrees to pay to BEST, upon enrollment and thereafter on an annual basis, the applicable membership fee as set forth in the Membership Services and Fee Schedule, attached hereto as Exhibit A and incorporated by reference herein.
4. Member agrees to hold harmless BEST for any losses resulting from any purchases made by Member; Member’s failure to receive any discounted pricing; Member’s receiving any mislabeled or misformulated Products and Services purchased under any BEST Vendor Agreement; and/or Member’s use, misuse or dispensing of Products and Services.
5. Member acknowledges and agrees that the contract prices made available through BEST Vendor Agreements are only to be accessed by Member for its own use. Member shall not sell, wholesale or otherwise transfer any Products and Services purchased under BEST Vendor Agreements to any person or other entity, except as provided herein and permitted by law. Member acknowledges full understanding of and shall comply with all applicable laws and requirements as set forth under the BEST Vendor Agreements.
6. Member hereby authorizes Vendors to provide BEST with any and all data regarding Member’s purchases and use of Products and Services and the provision of services under the BEST Vendor Agreements (collectively, “Data”). BEST may utilize and present such Data to the Vendors in order to substantiate (for purposes of calculating Administrative Fees and rebates due thereunder), any Member purchases made in connection with, or services provided under, the BEST Vendor Agreements. The use and disclosure of data, including the Data, by the parties hereunder shall comply with all Applicable Laws (defined below), including all federal and state patient privacy, confidentiality and security laws, including, without limitation, the Health Insurance Portability and Accountability Act of 1996 and the HiTech Act of 2009 and regulations promulgated pursuant thereto, and the parties shall, as applicable, execute a Business Associate Agreement, a form of which is attached hereto as Exhibit B and incorporated by reference herein. Member shall support and assist, to the extent reasonably requested by BEST, BEST’s efforts in (i) collecting Administrative Fees and credits from Vendors; and (ii) assuring proper credit to BEST for Member purchases of Products and Services under BEST Vendor Agreements. Member hereby designates BEST as Member’s primary contracting source. Accordingly, BEST Vendor Agreements shall be utilized for purchases by Member whenever the BEST contract price is equal to or better than any other contract price then available to Member.
7. Member acknowledges that this Agreement pertains to all dental practices and facilities owned, operated or controlled by, or under common control with, Member, including all facilities owned, operated or controlled by, or under common control with, any Person which is owned, operated or controlled by, or under common control with, Member (collectively, “Controlled Affiliates”). An initial list of the Controlled Affiliates is set forth on Exhibit C attached hereto and incorporated by reference herein. Prior to any additional Controlled Affiliate becoming a member of BEST hereunder, however, Member shall notify BEST of such Controlled Affiliate through the timely completion and submission of an “Additional Location Form/Joinder”, a copy of which is attached hereto as Exhibit C and incorporated by reference herein, under which such Controlled Affiliate shall agree to be subject to and bound by the same rights and obligations of Member hereunder. Member agrees to and shall keep BEST advised, in writing, of any material change pertaining to any change in ownership of Member; any change in wholesaler/distributor used by Member; any change in contact name for each department using the BEST Vendor Agreements; any change in address of Member; and any change in DEA number.
8. Member and BEST shall each perform its duties and responsibilities hereunder in compliance with all applicable federal, state and local laws and regulations (collectively, “Applicable Laws”). It is the parties’ intent that this arrangement comply with all Applicable Laws, including without limitation, the federal Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b) and the statutory exceptions applicable to GPO and discount arrangements and, further, that this arrangement satisfy each of the discounts safe harbor regulation at 42 C.F.R. § 1001.952(h) (“Discounts Safe Harbor”) and the group purchasing organizations safe harbor regulation at 42 C.F.R. § 1001.952(j) (“GPO Safe Harbor”). Such obligations include Member disclosing discount information and reports to the appropriate state agency and the Department of Health and Human Services (“HHS”), as necessary to comply with Applicable Laws. Member acknowledges that nothing herein or in any agreement between BEST and a Vendor shall be interpreted to obligate BEST to make reports required of Member under the Applicable Laws, it being understood that such reporting obligations apply to Member and that Member shall be solely and exclusively responsible for making such reports. Member and BEST acknowledge and agree that the administrative fee earned by BEST under the BEST Vendor Agreements constitutes an amount paid by a vendor of goods and services to a purchasing agent of a group of entities within the meaning of 42 U.S.C. § 1320a-7b(b)(3)(C) and the GPO Safe Harbor and comparable state laws and regulations. Member acknowledges that BEST does receive from certain Vendors administrative fees of up to 3% of the purchase price of Products and Services purchased by Member under the BEST Vendor Agreements. In the event that BEST receives an administrative fee from a Vendor that exceeds 3% of the purchase price of the Products and Services purchased by Member, BEST shall on a schedule attached hereto or a schedule identified on a secure company website (which schedule shall become a part of this Agreement), specify the amount or if not known the maximum amount, BEST will be paid by such Vendor for such Member’s purchases. Such amount may be a fixed sum or a fixed percentage of the value of purchases made from the Vendor by the Member. At least annually to Member and to the Secretary of HHS upon request, BEST will provide a report of administrative fees received from each Vendor for Member’s purchases.
9. Member agrees that it shall keep all information that it receives, in any form, from BEST regarding contract prices, programs, price lists, financial data, customer and supplier information, product development, business and marketing plans, and information contained in catalogs and other non-public, proprietary and confidential information of BEST (“Confidential Information”), strictly confidential and shall not directly or indirectly use (except pursuant to this Agreement) and/or reveal, report, publish, disclose or transfer to any party the Confidential Information for any purpose.

Member shall return to BEST all of the Confidential Information received in connection with Member’s participation from BEST within ten (10) business days of the termination of this Agreement.
10. Member shall not, directly or indirectly, during the term of this Agreement and for a period of one (1) year following the termination or expiration of this Agreement (the “Restrictive Period”), do any of the following without the prior written consent of BEST, in its sole discretion:
 - a) engage or participate, directly or indirectly, in any business activity competitive with the business conducted by BEST; or
 - b) become interested (as owner, stockholder, lender, partner, co-venturer, director, officer, employee, agent, consultant or otherwise) in any person, firm, corporation, association or other entity engaged in any business that is competitive with BEST. Notwithstanding the foregoing, Member may hold not more than one percent (1%) of the outstanding securities of any class of any publicly traded securities of a company that is so engaged.
11. During the Restrictive Period, Member shall not, directly or indirectly:
 - a) contract with, market to, advertise to, or solicit in any way BEST’s members for the purpose of providing, or arranging for the provision of, services to such members which services are competitive with BEST’s business. Further, Member shall not in any way interfere with the relationship of BEST and its members, customers and Vendors; or

- b) solicit employees or contractors of BEST for the purposes of enticing them to sever their relationship with BEST; or employ or retain, or arrange to have any other person or entity employ or retain, any person who has been employed or retained by BEST as an employee, consultant, agent, Vendor or otherwise during the twelve-month period immediately preceding the effective date of termination or expiration.
12. Except as set forth on Exhibit E, during the term of this Agreement, Member shall not, without the prior written consent of BEST, in its sole discretion, form any affiliation with or join any other third party providing services competitive with BEST.
13. The parties hereby acknowledge and agree that the covenants contained in Sections 9 through 12, inclusive, are reasonable and necessary covenants for the protection of BEST, and its business under the circumstances, and further agrees that if, in the opinion of any court of competent jurisdiction, such covenants are not reasonable in any respect, such court shall have the right, power and authority to excise or modify such provision or provisions of these covenants as to the court shall appear not reasonable and to enforce the remainder of these covenants as so amended. Member agrees that its breach of the covenants contained in Sections 9 through 12, inclusive, would irreparably injure BEST and that there is no adequate remedy at law for any such breach and, accordingly, BEST, in addition to pursuing any other remedies it may have in law or in equity, may obtain injunctive relief in any court, foreign or domestic, having the capacity to grant such relief, to restrain any such breach by Member, and to enforce the provisions of Sections 9 through 12, inclusive.
14. In the event BEST receives a rebate from a Vendor rightfully belonging to Member, BEST will remit such rebate to the Member.
15. This Agreement shall remain effective for an initial term of two (2) years and shall renew for successive one year periods, unless this Agreement is terminated by either party as follows:
- a) Member or BEST may terminate this Agreement at the end of the initial term or any renewal term by providing the other party with written notice of its intent to terminate at least ninety (90) days prior to the end of such initial or renewal term;
- b) Either party may terminate this Agreement without cause upon thirty (30) days prior notice to the other party; or
- c) In the event that either party ("Defaulting Party") shall be in default ("Default") in the performance of any of its material obligations under this Agreement, and such Default is not cured within thirty (30) days after notice of such Default from the non-defaulting party to the Defaulting Party, the non-defaulting party may, at its option, terminate this Agreement, provided, that in the event that such Default is not capable of cure within such thirty (30) day period, and the Defaulting Party has properly commenced and pursues with diligence such cure, the Defaulting Party shall be granted such additional time as may be reasonably necessary to effect such cure, provided the non-defaulting party is not materially adversely affected.
- Upon termination of this Agreement, BEST shall have no further obligations under this Agreement to Member, and this Agreement shall be null and void, except for the provisions of Sections 4, 6, 8, 9, 12, 19 and this Section 15(c) of this Agreement which shall survive termination.
16. Member has full power and authority to enter into this Agreement on behalf of itself and the Controlled Affiliates and to carry out the transactions contemplated hereby. Member, by all requisite action (whether corporate or otherwise), has duly authorized the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, and no other proceedings, corporate or otherwise, on the part of Member are necessary to authorize this Agreement, which, when executed, will constitute the valid and binding agreement of Member and Controlled Affiliates, enforceable in accordance with its terms. Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will constitute a violation or breach of (i) the certificate of incorporation or bylaws or other organizational documents of Member or any Controlled Affiliate; (ii) any provision of any contract or other instrument to which Member or any Controlled Affiliate is a party or by which Member or any Controlled Affiliate, its businesses, assets or properties may be affected or secured; (iii) any order, writ, injunction or decree applicable to Member or any Controlled Affiliate; or (iv) to the knowledge of Member, any statute, rule or regulation. No consent, approval, order or authorization of, or registration, declaration or filing with any governmental or other third party, domestic or foreign, is required by or with respect to Member (or any Controlled Affiliate) in connection with Member's execution and delivery of this Agreement, or the consummation of the transactions contemplated hereby. Member has not (1) been served with a notice of proposed exclusion, or committed any acts which are cause for exclusion from participation in or had any sanctions or civil or criminal penalties imposed upon it under, any federal or state health care program, including, but not limited to, Medicare or Medicaid, or (2) been convicted under federal or state law (including, without limitation, a plea of *nolo contendere* or participation in a first offender deterred adjudication or other arrangement whereby a judgment of conviction has been withheld), of a criminal offense related to (a) fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct in connection with the delivery of a health care item or service or with respect to any act or omission in any health care program operated or financed in whole or in part by any federal, state or local government agency, or (b) the unlawful manufacture, distribution, prescription or dispensing of a controlled substance. Member further agrees to notify BEST immediately after Member becomes aware that any of the foregoing representations and warranties may be inaccurate or may become incorrect.
17. Any notice required to be given pursuant to this Agreement shall be in writing and sent by certified mail, return receipt requested, or overnight delivery service such as Federal Express, Airborne or UPS or verifiable telephonic facsimile.
18. This Agreement shall be governed and interpreted under the laws of the State of Texas without regard to conflict of law principles.
19. EXCEPT FOR THE EXPRESS WARRANTIES MADE OR REFERENCED HEREIN, BEST MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, REPRESENTATIONS AND WARRANTIES RELATED TO THE PRODUCTS AND SERVICES MADE AVAILABLE UNDER THE BEST VENDOR AGREEMENTS AND ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
20. EXCEPT WITH RESPECT TO BREACHES OF CONFIDENTIALITY, NEITHER PARTY HAS LIABILITY TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THESE DAMAGES. THIS LIMITATION APPLIES DESPITE THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. BEST'S AGGREGATE LIABILITY UNDER THIS AGREEMENT DOES NOT EXCEED \$10,000.00 EXCEPT IN THE EVENT OF BEST'S INTENTIONAL MISCONDUCT.
21. This Agreement may not be assigned by either party except that each party may assign this Agreement in connection with a change of control of such party. Additionally, the relationship between BEST and Members is one of an independent contractor only and nothing in this Agreement shall be construed to create a principal/agent, employer/employee or master/servant or fiduciary relationship between BEST and Member unless otherwise expressly specified herein.
22. This Agreement may be amended or modified only by a written agreement executed by all of the parties hereto.

MEMBER

Authorized Signature

DATE

Membership Terms and Conditions

EXHIBIT A

MEMBERSHIP SERVICES AND FEE SCHEDULE

BEST MEMBERSHIP TIER	COST	BENEFITS
Standard	Free	<ul style="list-style-type: none"> • Basic onboarding services, including the provision of initial consultation with a BEST representative and assistance with membership access set-up • Access to STANDARD BEST vendor contracts*
Premium	\$79.99 / Month \$879.89 for Annual Subscription, 12 Months for the price of 11	All the benefits of a Standard Membership <u>PLUS</u> <ul style="list-style-type: none"> • Designated BEST Representative for individualized consultative services to optimize cost savings • Analysis of purchase history and current data to identify targeted participation with vendor contracts • Access to PREMIUM BEST vendor lab and dental supply contracts*

*BEST Vendor lists are subject to change. A current list of vendors is available through the BEST GPO Membership Portal.