



COMPLETE THE ATTACHED BROKER AGREEMENT AND RETURN **WITH FIRST GROUP SOLD.** INCLUDE THE W-9 & A CLEAN COPY OF YOUR FL DEPARTMENT OF FINANCIAL SERVICES LICENSE.

PLEASE PRINT CLEARLY.

AGENT NAME: _____

COMPANY: _____

ADDRESS: _____

COUNTY: _____ DATE OF BIRTH: _____

PHONE #: _____ FAX # _____

E-MAIL _____

DFS LICENSE # _____ CELLULAR # _____

SOCIAL SECURITY # (REQUIRED) _____

MAKE COMMISSION CHECK PAYABLE TO:

() BROKER PROVIDE SS # _____

() COMPANY PROVIDE TAX ID # _____

REQUIRED INFORMATION. APPOINTMENT MADE AT TIME OF FIRST SOLD GRO

NAME OF GROUP SOLD _____

EFFECTIVE DATE _____ GROUP # _____

**COMMERCIAL AGENT AGREEMENT
SOUTH FLORIDA
BY AND AMONG
VISTA HEALTHPLAN, INC.
VISTA INSURANCE PLAN, INC.
VISTA HEALTHPLAN OF SOUTH FLORIDA, INC.
AND**

This **COMMERCIAL AGENT AGREEMENT** (the “Agreement”) is made and entered into as of the ____ day of _____, 20__, (the “Effective Date”) by and among Vista Healthplan, Inc. (“VISTA”), Vista Insurance Plan, Inc. (“VIP”), Vista Healthplan of South Florida, Inc. (“VISTA-SF”; VISTA, VIP and VISTA-SF collectively referred to as the “Companies” and individually referred to as a “Company”), and _____ (“Agent”). If Agent employs, or is associated or contracts with individuals (collectively, “Staff”), all references to Agent herein, unless clearly inapplicable, shall apply to all Staff, and it shall be Agent's obligation to ensure such compliance. The Companies and Agent may be referred to individually as a “Party” and collectively as the “Parties”.

WITNESSETH

WHEREAS, Agent is licensed by the Florida Department of Insurance (the “Department”) pursuant to Chapter 626 of the Florida Statutes as a health insurance agent and engaged in the business of selling and marketing insurance policies; and

WHEREAS, VISTA is a Florida corporation licensed as a health maintenance organization (“HMO”) in accordance with Florida law; and

WHEREAS, VIP is a Florida corporation licensed as an insurance company in accordance with Florida law; and

WHEREAS, VISTA-SF is a Florida corporation licensed as a HMO in accordance with Florida law; and

WHEREAS, the Companies offer certain of the Products (as defined below) to individuals (“Individuals”) and both small and large employer groups with employees who live or work in (i) Miami-Dade, Broward Palm Beach, Martin, St. Lucie and Hendry Counties (“South Florida Groups”) or (ii) Alachua, Bradford, Calhoun, Columbia, Dixie, Escambia, Franklin, Gadsden, Gilchrist, Hamilton, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Marion, Santa Rosa, Suwannee, Union and Wakulla Counties (“North Florida Groups”; South Florida Groups and North Florida Groups shall be collectively referred to as “Groups”); and

WHEREAS, each Company desires to engage the services of Agent to assist the Companies in connection with the sales and marketing of the Products; and

WHEREAS, Agent desires to accept the engagement by each Company to provide such services in connection with the Products.

NOW, THEREFORE, for and in consideration of these premises and the mutual covenants and agreements set forth in this Agreement and other valuable consideration, the receipt and sufficiency of which are forever acknowledged, the Parties agree as follows:

DEFINITIONS

“Agent of Record” means a designation by each Group and Individual, at the Group’s and Individual’s sole and absolute discretion, of a particular agent(s) as the agent of record who is entitled to receive Commission (as defined below) with respect to such Group or Individual, as applicable.

“Contracts” means those contracts entered into between a Company and Groups and Individuals on or after the Effective Date, which are entered into at the Company’s sole and absolute discretion at such rates as solely determined by the Company, through the efforts of Agent pursuant to which such Company will provide health benefits to (i) Group employees and their eligible dependents who elect such coverage and whose applications are accepted by the Company (“Group Members”); and (ii) Individuals who elect such coverage and whose applications are accepted by the Company (“Individual Members”; Group Members and Individual Members are collectively referred to as “Members”).

“Products” means the various benefit plans offered by a Company to Groups and Individuals pursuant to which that Company will provide health care coverage to Members; provided, however, that such Company shall have the right, in its sole discretion to add, modify or discontinue any Product at any time.

I. APPOINTMENT.

- A. Appointment by Company.** Except as otherwise prohibited by the Department, the Companies shall appoint Agent to solicit purchasers for the Products and perform the duties set forth below with full authority to accomplish, effect and execute such duties upon the Companies’ receipt of (i) any and all information requested by the Companies in connection with Agent’s appointment, including, but not limited to verification of Agent’s licensure and any and all other information regarding Agent’s background, moral character, fitness and reputation and compliance with all Policies (as defined below) governing appointment; and (ii) the applicable appointment fee if so required by the Policies.
- B. Provision of Information by Agent.** Agent shall provide the Companies with any and all information requested by the Companies or otherwise required by applicable law or regulations in connection with Agent’s appointment, including, but not limited to that information set forth on Schedule I.B., attached hereto and incorporated herein.
- C. Notification of Certain Events.** Agent shall notify the Companies immediately upon pleading guilty or nolo contendere to or being found guilty of a felony after being appointed.
- D. Termination of Appointment.**

1. **Suspension, Revocation or Termination of License.** Agent's appointment shall immediately terminate upon the suspension, revocation or termination of Agent's license for any reason whatsoever.
2. **Without Cause.** The Companies may immediately terminate Agent's appointment at any time for any or no reason upon notice to Agent provided as required under Section IV.A.5 this Agreement.
3. **Termination of Agreement.** Agent's appointment as agent and binding authority granted under this Agreement shall automatically terminate upon termination of this Agreement for any reason whatsoever.
4. **Notice to Department.** In the event Agent terminates his/her appointment for any reason whatsoever, Agent shall notify the Department as required under applicable law.
5. **Termination by Department.** Agent's appointment hereunder shall terminate immediately upon order of the Department.

II. DUTIES OF AGENT.

A. **Authority.**

1. **Solicitation of Groups and Individuals.** The Companies hereby authorize Agent to represent the Companies for purposes of soliciting Groups and Individuals to purchase the Products. In representing a Company to potential Groups and Individuals, Agent shall use only sales materials authorized by that Company and shall comply with all applicable laws and regulations and the Policies.
2. **Limitation of Authority.** Agent shall in no way misrepresent the property of a Company, the Products, the nature or scope of benefits offered by the Companies or their health care delivery systems. Agent shall have no authority to (i) change, omit, add to or waive any questions, statements or answers contained in any of the Companies' enrollment forms; (ii) quote rates other than those established by a Company; (iii) make, alter, modify or discharge any benefits of a Company; (iv) extend the time for payments; (v) waive any forfeiture or incur any debts or expenses for which a Company may be liable; (vi) receive any money for the benefit of a Company, except as otherwise permitted herein; (vii) withhold or convert to his/her own use or for the benefit of others any monies, securities, policies or receipts belonging to a Company; (viii) fail to promptly submit to a Company any applications for membership; (ix) accept premium payments other than in current funds of the United States; or (x) endorse or present for collection any check, draft or other instrument made payable to a Company without the written consent of that Company. Upon Agent's violation of this Section II.A.2, a Company

may immediately terminate Agent's appointment and this Agreement.

3. **Servicing of Members.** Agent shall ensure that each Group and Individual purchasing a Product understands the terms of the Product and the Policies, including, but not limited to the benefits, exclusions, limitations, referral process, emergency procedures, grievance procedures and eligibility requirements. Agent shall deliver to applicants all required administrative forms and assist applicants in completing such forms; provided, however, that Agent shall not complete any part of such forms, unless the potential Member or Group authorizes the Agent to provide such assistance as indicated by the potential Member's or Group's signature in the Statement of Accountability section of the enrollment application. Agent shall obtain all appropriate signatures from applicants and return signed applications to the applicable Company in a timely manner. Agent shall report to the Company any unusual medical condition of an Individual Member, including disclosure of an Individual Member's incapacity in any form whatsoever, confinement to a wheelchair or bedridden state.
4. **Receipt of Prepayment Fees.** Agent is hereby authorized to collect the initial premium payment only for Members enrolling in a Product solicited by Agent. All checks for such premium payments must be made payable to the applicable Company. Any sums of money for premium payment or otherwise received by Agent from a Group or Member or potential Group or Member for the benefit of a Company, whether evidenced by cash, check or other form of payment, shall be deemed to be received by and/or held by Agent in a fiduciary capacity for the applicable Company, and shall be delivered immediately to the applicable Company by Agent. Agent shall not deduct or retain from any such payment Commission (as defined below) which may be payable to Agent under this Agreement.
5. **Training.** Agent shall attend Company training sessions at the Companies' offices at such dates and times as scheduled by the Companies.

B. Marketing.

1. **Products.** Agent shall market the Products to Groups and Individuals.
2. **Materials.** Any and all marketing materials, including solicitation letters, brochures, magazine or news articles or any and all material or information provided via the Internet concerning the Products or a Company prepared by Agent shall be approved in writing by the applicable Company before such materials are distributed or otherwise used in any manner. Unless otherwise agreed to by the Parties, the costs and expenses related to the preparation and distribution of such marketing materials shall be borne in full by the Party preparing them. Upon the Companies' provision of updated materials to Agent, Agent shall immediately (i) discard or return to the applicable Company all outdated materials and (ii) discontinue use of such outdated materials.

3. **Use of a Company's Name.** Agent shall not employ or make use of any advertisement or material in which a Company's name, logo and/or corporate symbols are contained without the prior express written consent of the applicable Company.
4. **Ownership of Material.** All printed materials, applications, sales literature and any other written material which a Company may furnish to Agent shall remain the property of such Company, subject at all times to such Company's control, and Agent shall promptly return all such materials to such Company immediately upon such Company's request.

C. **Licenses.**

1. **Current Requirements.** Agent shall obtain and maintain his/her Florida health insurance agent's license as required under Chapter 626 of the Florida Statutes throughout the Term (as defined below) of this Agreement. Agent shall notify the Companies immediately if he/she suffers termination, suspension, revocation or expiration of his/her license to engage in the health insurance business within the State of Florida.
2. **Future Requirements.** Agent represents and warrants that he/she currently has and shall in the future obtain and maintain any and all licenses required by federal, state or local laws or regulations required to perform the services contemplated by this Agreement.

D. **Records and Audits.**

1. **Maintenance.** Agent shall maintain all documents, records and other information concerning his/her arrangements with Groups and Members and any and all services provided under this Agreement in accordance with state and federal law and general standards for book and record keeping for a period of six (6) years from the effective date of expiration or termination of this Agreement or completion of an audit, whichever is later, unless otherwise required by state or federal law. All records shall be treated as confidential so as to comply with all state and federal laws regarding confidentiality of patient information.
2. **Access.** Agent shall make available to the Companies, the Department of Health and Human Services, the United States Comptroller General, the Florida Agency for Health Care Administration, the Department and/or their designees upon request, and permit such entities to audit, evaluate, inspect and copy all relevant files and business records in connection with this Agreement, the Products, and the sales activities undertaken by Agent pursuant to this Agreement. Agent shall pay all costs and expenses associated with copying.

3. **Survival.** This Section D shall survive the expiration or termination of this Agreement for any reason whatsoever.

E. **Representations and Covenants of Agent.** Agent represents and covenants as follows:

1. Agent shall:

- a. obtain and maintain his/her Florida health insurance agent's license as required under Chapter 626 of the Florida Statutes throughout the Term;
- b. notify the Companies immediately if he/she suffers termination, suspension, revocation or expiration of his/her license to engage in the health insurance business in the State of Florida;
- c. comply with the Companies' Policies and Procedures, as from time to time established and amended (the "Policies"). In the event Agent violates the Policies, Agent may be subject to disciplinary action, up to and including termination;
- d. obtain and comply with all continuing education credit requirements required for maintenance of his/her Florida health insurance license by the State of Florida; and
- e. comply with and continue to comply with all applicable statutory and regulatory requirements of the State of Florida and immediately notify the Companies of any criminal, civil, administrative or disciplinary action or proceeding involving Agent.

2. Agent shall not:

- a. make any representations with respect to the Products except as may be contained in the written materials approved by or prepared by the applicable Company, and shall make no oral or written alteration, modification or waiver of any term or condition applicable to the Products without the applicable Company's consent;
- b. rebate any portion of his/her Commission, except as otherwise permitted by applicable law and the applicable Company; or
- c. independently execute any letter, contract or document that attempts to bind a Company in any manner whatsoever. Agent shall be personally liable for any expenditures resulting from any such agreement.

3. Agent covenants that:

- a. there is no restriction or limitation, by reason of any law, regulation, contract, agreement or otherwise, upon Agent's right or ability to enter into this Agreement or to fulfill his/her obligations under this Agreement;
- b. agent has never suffered any loss, suspension or termination of any license, certificate or permit issued by a federal, state or local government authority in connection with the sale of any type of insurance;
- c. agent has never suffered suspension or termination of the right to represent an insurance company for cause other than normal expiration of an agreement; and
- d. the Companies shall not be liable for any compensation, expenses, costs or damages resulting from the failure or refusal of a Company to accept an applicant solicited by Agent, regardless of the reason or cause for such failure.

III. COMPENSATION.

- A. **Commission.** Except as otherwise set forth herein, the applicable Company shall pay Agent a commission payment for each (i) Group that enters into a Contract with a Company for health benefits other than a focus deductible coinsurance plan ("Traditional Group"); (ii) Group that enters into a Contract with a Company for health benefits under a focus deductible coinsurance plan ("FDCP Group"; Traditional Group and FDCP Group collectively referred to as a "Group"); and (iii) Individual that enters into a Contract with a Company, each through the efforts of Agent, as evidenced on the applicable enrollment application and by Agent's appointment as Agent of Record as set forth in Schedule III.A, attached hereto and incorporated herein ("Commission"); provided, however, that Company may amend such Commission amounts set forth in Schedule III.A at Company's sole discretion without Agent's consent upon thirty (30) days prior notice to Agent (the "Commission Modification Notice"). Notwithstanding Section IV.J hereof, in the event Agent objects to such Commission amendment, the Commission Modification Notice shall serve as the required thirty (30) day notice of termination of this Agreement in accordance herewith so that this Agreement shall terminate effective as of thirty (30) days from the date of the Commission Modification Notice or such other time as is set forth in the Commission Modification Notice. Agent's Commission shall be paid only against premiums actually received by the applicable Company.
- B. **Limitation on Commission.** The Company shall pay Agent Commission in accordance with Schedule III.A for Individuals Members for thirty-six (36) months following the effective date of the Contract. The Company shall have no obligation to pay and Agent shall have no right to any further Commission with respect to any

Contract for an Individual Member upon the thirty-sixth (36th) month following the effective date of such Contract.

- C. **Existing Business.** Any (i) payments due on business or contracts, which were effective prior to the Effective Date (“Existing Contracts”), shall be paid by the applicable Company in accordance with and (ii) renewal of an Existing Contract shall be governed by the terms and conditions of this Agreement.
- D. **Payment.** Except as otherwise determined by the Companies, the Companies shall pay Agent Commission due Agent by the applicable Company with respect to a particular Contract by the end of each month for the previous month’s Commission.
- E. **Disputes.** In the event that Agent disputes any Commission payment, such dispute must be set forth in writing to the applicable Company within sixty (60) days of the applicable Company’s payment or non-payment of the Commissions in dispute. If Agent fails to address a dispute in writing within such sixty (60) day time period, Agent shall no longer be entitled to and Company shall have no further obligation to pay any such Commissions.
- F. **Overpayments.** The Companies may audit and recover any and all overpayment of Commissions paid by a Company to Agent within twelve (12) months of the applicable Company’s payment of such Commission and recover those overpayments through debits against any future earned Commissions; provided, however, that any overpayments not recovered by the applicable Company within one hundred twenty (120) days of the Commission payment through debits against any future earned Commissions or Agent’s direct reimbursement to the applicable Company within one hundred twenty (120) days of the notification date of the overpayment, may be reimbursed by Agent over time, at the applicable Company’s sole discretion, and shall be carried forward into the next fiscal year and held as a debit against future earned Commissions of Agent. The Companies reserve the right to collect the unpaid balance of any overpayment via an interest bearing promissory note, or subject Agent to any and all available remedies, at both law and in equity, including, but not limited to a collection action. Agent shall be liable for any and all amounts incurred by the Companies in connection with collection of any overpayment, including court costs and attorney fees.
- G. **Waived or Refunded Premiums.** No Commission shall be payable by a Company to Agent on account of waived payments or payments refunded by a Company for any reason. In the event a Company waives or refunds any prepayment fees to a Group or Member, the applicable Company shall be entitled to recover from Agent any Commission payments paid to Agent with respect thereto. Agent shall make any such repayment of Commission to the applicable Company within fifteen (15) days of the Company’s request, or, at the Company’s discretion, such repayments may be deducted from future Commission due Agent by the Company.
- H. **Right of Offset.** The Companies shall have a first security interest and right of offset on all sums payable to Agent hereunder or any debt otherwise due Agent by

the Companies. Indebtedness of Agent to the Companies under this Agreement or under any other agreement between Agent and a Company shall constitute a general indebtedness that shall survive the termination of this Agreement. The Companies may at any time apply Commissions payable to Agent under this Agreement or by any company controlled by or under common control with a Company to reduce any such outstanding indebtedness.

- I. **Effect of Group's and/or Member's Termination.** In the event that a Group or Member's health coverage with a Company is terminated, in whole or in part, for any reason pursuant to the applicable Contract, no further Commissions shall be payable by Company, at the Company's sole discretion, to Agent under this Agreement with respect to such Contract which was terminated by the particular Group or Member, including any and all renewal payments associated with such Group or Member.
- J. **Chargeback of Commissions.** In the event an Individual Member terminates his/her Contract within one year (1) year of the effective date of the Contract, the Company may, at its sole discretion, chargeback any Commission payments made to Agent in connection with such Contract against any amounts otherwise due by the Company to Agent; provided, however, that if no monies are due by the Company to Agent, Agent shall reimburse the Company for all such amounts within thirty (30) days of the date the Company notifies Agent that such monies are due the Company.
- K. **Unauthorized Activities.** Agent shall earn no Commission as a result of any unauthorized activity, as determined by the Companies, in the Companies' sole discretion.
- L. **Underwriting.** The Companies shall have the right, in their sole discretion, to decline any application for coverage, refuse to renew any coverage, apply substandard ratings as permitted by the Department, withdraw any Product, or return directly to a Group, Member or applicant any payments submitted to a Company without any liability to Agent.
- M. **Agent of Record.** Agent is entitled to Commission in accordance with Section III.A hereof only if the Group or Individual Member designates Agent as the Agent of Record, as evidenced on the Group or Individual Member's application or an Agent of Record letter from the applicable Group. Agent shall immediately notify the applicable Company in the event a Group terminates Agent as Agent of Record. In the event that Agent is terminated as the Agent of Record, as determined by the Group, in the Group's sole and absolute discretion, Agent shall no longer be entitled to Commission in connection with such Group under Section III.A as of the effective date of termination of the Agent's appointment as Agent of Record.

IV. GENERAL PROVISIONS.

A. **Term and Termination.**

- 1. **Term.** The term of this Agreement shall be one (1) year, commencing on the

Effective Date and terminating on the first (1st) anniversary of the Effective Date (“Term”). Unless sooner terminated in accordance with the provisions set forth below, this Agreement shall automatically renew for successive one (1) year term(s).

2. Termination.

- a. ***Without cause.*** Except as otherwise permitted under this Agreement, (i) a Company may terminate this Agreement at any time without cause upon thirty (30) days prior written notice to Agent and (ii) Agent may terminate this Agreement at any time without cause upon thirty (30) days prior written notice to the applicable Company.
- b. ***Material Breach.*** Any Party (the “Non-Breaching Party”) may terminate this Agreement in the event of a material breach by another Party (the “Breaching Party”) upon written notice to the Breaching Party, which notice shall set forth the grounds for termination. This Agreement shall immediately terminate upon failure of the Breaching Party to undertake substantial efforts to remedy the breach within thirty (30) days after receipt of written notice of such breach, or such other longer period of time as in the opinion of the Non-Breaching Party shall be reasonable under the circumstances.
- c. ***Change in law.*** This Agreement is intended to comply with existing state and federal law. The Parties, however, acknowledge that the existing law and regulations may change and that the courts or state or federal agencies with appropriate jurisdiction may change their interpretation of existing law. Upon enactment or amendment of any state or federal law or regulation, or upon the issuance of any judicial or interpretive ruling of any existing state or federal law or regulation that renders this Agreement illegal or materially changes the obligations of the Parties, this Agreement shall be terminated or amended in accordance with Section IV.J as required by any such law or regulation.
- d. ***License.*** The Agreement shall automatically terminate upon suspension or revocation of Agent’s license.
- e. ***Appointment.*** This Agreement shall automatically terminate upon termination of Agent’s appointment as described in Section I hereof.
- f. ***Death.*** This Agreement shall automatically terminate upon Agent’s death.

3. Effect of Termination.

- a. ***Payment of Commissions.*** Upon termination of this Agreement for

any reason whatsoever, Agent shall have no right to and the applicable Company shall have no obligation to pay any and all Commissions due, accrued or not otherwise paid to Agent as of the effective date of termination of this Agreement, including but not limited to any renewal Commissions.

b. *Termination of a Company.* In the event this Agreement is terminated by a Company or by Agent with respect to one Company and not another, the termination of this Agreement with respect to the terminated Company shall have no effect on the continuation of this Agreement between Agent and the non-terminated Company. As such, this Agreement shall remain in full force and effect with respect to any Company not specifically terminating or terminated in accordance with the terms of this Agreement.

4. Notice to Department of Insurance. Within thirty (30) days of termination of Agent's appointment by a Company, including failure of a Company to renew or continue Agent's appointment, such Company shall file written notice of the termination of Agent's appointment with the Department together with a statement that such notice was given to Agent and shall file with the Department the reasons and facts involved in such termination as required under Section 626.511 of the Florida Statutes.

5. Notice to Agent. All notices of termination required to be provided by the Companies to Agent under this Agreement shall be made in writing and delivered by United States Mail, postage prepaid, addressed to the address set forth in Section IV.E. Notice so mailed shall be deemed given when deposited.

6. Survival. This Section IV.A shall survive the termination or expiration of this Agreement for any reason whatsoever.

B. Indemnification. Agent shall indemnify, defend and hold the Companies and their directors, officers, employees, representatives and affiliated companies and subsidiaries harmless from and against any and all claims, suits, demands, liabilities, costs, damages and expenses whatsoever, including reasonable attorneys' fees, arising from or related in any way to: (i) any and all services rendered pursuant to this Agreement by Agent, his/her officers, directors, employees, representatives or independent contractors, or any omission with respect to such services; (ii) any unauthorized warranties made by Agent, his/her officers, directors, employees, representatives, or independent contractors with respect to the Products, whether express or implied; (iii) any breach by Agent, his/her officers, directors, employees, representatives, or independent contractors of their agreements, obligations, representations or warranties under this Agreement; or (iv) any violation by Agent, his/her officers, directors, employees, representatives, or independent contractors of any federal, state or local laws or regulations or other requirements, including the Policies. This Section IV.B shall survive the termination or expiration of this

Agreement.

C. Intellectual Property.

1. **Use.** In no event shall Agent use the name, trademark, service mark, logo, symbol or other proprietary designation (“Intellectual Property”) of the Companies in any way without the prior written consent of the applicable Company.
2. **Approval.** Agent shall submit to the Companies, for the applicable Company’s written approval, all materials to be used in any way in connection with the subject matter of this Agreement that name or refer to a Company or the Products or use or make reference to a Company’s Intellectual Property.
3. **Termination of Use.** Upon termination of this Agreement, Agent shall cease using the Companies’ Intellectual Property in any way and shall promptly return to the applicable Company all originals and duplicates of all documents, materials and items furnished in connection with this Agreement or otherwise obtained, with the exception of records which must be maintained pursuant to law or regulation.

D. Confidentiality.

1. **Confidential Materials.** Agent acknowledges that as a result of this Agreement, Agent may become informed of, and have access to, valuable and confidential information of the Companies and their affiliates, parents and subsidiaries, including, without limitation, member/subscriber lists, policy and procedure manuals, financial records, trademarks, patents, copyrights, business and rate methodologies, any and all information set forth on the Companies’ web site and contracts, including, without limitation, the provisions of this Agreement, (the “Confidential Information”), and that the Confidential Information, even though it may be contributed, developed or acquired in whole or in part by Agent, shall remain the exclusive property of the applicable Company to be held by Agent in trust and solely for such Company’s benefit. Accordingly, except as required by law, Agent shall not, at any time, either during or subsequent to the Term, use, reveal, report, publish, copy, transcribe, transfer or otherwise disclose to any person, corporation or other entity, any of the Confidential Information without the prior written consent of the applicable Company, except to responsible officers and employees of the Company and other responsible persons who are in a contractual or fiduciary relationship with the Company and except for information which legally and legitimately is or becomes of general public knowledge from authorized sources other than Agent.
2. **Return of Confidential Information.** Upon termination of this Agreement, Agent shall promptly deliver to the applicable Company all deliverable

Confidential Information that is in Agent's possession or control.

3. **Confidential Operations Information.** Unless otherwise required by law, Agent shall not disclose information relating to the operations of the Companies to third parties without obtaining the prior written consent of the applicable Company.
4. **Confidentiality of Member/Subscriber Information.** Agent shall protect the confidentiality of member/subscriber information and records to the extent consistent with applicable law and shall comply with VISTA Policies on the release of information (whether written or oral) about members/subscribers and all applicable state and federal laws and regulations protecting the confidentiality of members'/subscribers' records and disclosure of mental health records, medical records and other health and Member information, including, but not limited to, (i) all applicable requirements of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended from time to time ("HIPAA"), and particularly Title II, Subtitle F (Administrative Simplification) thereof (42 U.S.C. §§ 1171 *et. seq.*) and (b) all applicable HIPAA regulations, as amended from time to time, as set forth in Schedule IV.D.4, attached hereto and incorporated herein.
5. **Ownership.** Ownership of and right of control over all Confidential Information shall vest exclusively in the Companies.
6. **Non-Solicitation of Members.** Agent recognizes and agrees that the Companies have a valuable business relationship with each of its Groups and Members and, further, that Agent stands in a position to influence Groups' and Members' decisions concerning insurers. In recognition of the Companies' valuable business relationships with its Groups and Members, Agent agrees that, during the Term, and upon termination of this Agreement for any reason whatsoever, Agent shall not solicit Groups or Members, directly or indirectly, to enroll in any other health insurance or health coverage or alternative health care delivery system. Agent's obligation not to solicit Groups or Members is a material inducement for Agent's engagement by the Companies pursuant to this Agreement. This Section, however, is not intended to interfere with a Group's or Member's right to freely select alternative health coverage.
7. **Enforcement.** Agent acknowledges that irreparable injury will result to the Companies in the event of Agent's breach of these covenants, that a material inducement for Agent's engagement by the Companies are the covenants set forth in this Section IV.D and that monetary damages in an action at law would not provide an adequate remedy in the event of a breach of this Section IV.D. Agent further acknowledges and agrees that the covenants contained in this Section IV.D are necessary for the protection of the Companies' legitimate business and professional duties, ethical obligations, and interests, and are reasonable in scope and content. Accordingly, in the

event of Agent's breach of this Section IV.D, this Section IV.D may be enforced by the obtaining of an injunction to restrain the violation thereof by Agent and all persons acting for or with Agent.

8. Survival. This Section IV.D shall survive the termination or expiration of this Agreement.

E. Notices. Except as otherwise specified in this Agreement, any notice to be given pursuant to the terms and provisions of this Agreement shall be deemed duly given if in writing and delivered by telecopy, overnight courier, registered or certified mail, return receipt requested or by hand delivery to the applicable Company or Agent at the addresses set forth below or to any other address of which notice of the change is given by the Parties:

to Companies: Vista Healthplan, Inc.
Vista Healthplan of South Florida, Inc.
Vista Insurance Plan, Inc.
1340 Concord Terrace
Sunrise, Florida 33323
Attn: Senior Vice President of Commercial Marketing

to Agent: _____

Attn: _____

Notice shall be effective in the case of telecopy, when sent; overnight courier service, on the next business day after the notice is sent; and registered or certified mail, three (3) days after the letter is deposited, postage prepaid, in a United States post office depository.

F. Compliance With Laws and Policies. Agent and the Companies shall comply with all federal, state and local laws and regulations applicable to their respective businesses. Agent shall comply with all of the Policies in performing his/her obligations under this Agreement.

G. Governing Law; Severability. This Agreement is made and delivered in and shall be governed by and construed and enforced in accordance with the applicable laws of the State of Florida. In the event that one or more of the provisions herein shall be determined to be invalid, illegal or unenforceable, in whole or in part, the validity, legality, and enforceability of the remaining terms of this Agreement shall not in any way be affected.

H. Binding; Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties, their respective heirs, legal representatives, successors and assigns. Agent shall not assign, delegate, subcontract, or otherwise transfer its rights, obligations and/or interests arising under this Agreement without the prior written consent of the Companies. The Companies may assign, delegate, subcontract, or

otherwise transfer their rights, obligations and/or interests under this Agreement to their successors in interest and to all affiliated or subsidiary companies without Agent's consent.

- I. Rights and Privileges.** Failure by any Party to exercise or delay in exercising any right, power or privilege provided under this Agreement shall not operate as a waiver of such right, power or privilege; nor shall any single or partial exercise of any right, power or privilege arising under this Agreement preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege.
- J. Entire Agreement; Modification.** This Agreement and all Schedules expressly incorporated into this Agreement by reference constitute the entire agreement and understanding between and among the Parties hereto relating to the subject matter of this Agreement and supersede all prior agreements and understandings, oral or written, by any Party relating to the subject matter of this Agreement, including but not limited to Existing Contracts. The Companies may modify or amend one or more provisions of this Agreement upon thirty (30) days notice to Agent. The failure of Agent to object to such modification during the thirty (30) day notice period shall constitute acceptance of such amendment or modification as of the effective date set forth in the notice. If Agent objects to such modification or amendment, the Companies may terminate this Agreement immediately upon their giving thirty (30) days prior notice to Agent, or on such other date as is set forth in the notice to Agent; provided, further, that this Agreement shall automatically be modified or amended to the extent necessary from time to time to comply with the requirements of state or federal laws or regulations.
- K. Relationship as Independent Contractors.**
1. It is understood and agreed that the Parties shall have no authority to make any representation, warranty or binding commitment on behalf of any other Party, except as expressly provided in this Agreement or as otherwise agreed to in writing by the Parties. The Companies and Agent are independent contractors and nothing contained in this Agreement shall be deemed or construed (i) to create a partnership or joint venture between or among the Parties or any affiliate, employee or agent of a Party or (ii) to constitute any Party or employee, agent or associate of a Party as an employee, agent or associate of any other Party. No Party shall represent to any third Party that it is an employee of any other Party. Agent shall be responsible and shall pay in a timely manner, all income, FICA and other taxes relating to payments made by the Companies to Agent in accordance with this Agreement.
 2. Agent acknowledges and agrees that the Companies shall have no responsibility for Agent's license, income, FICA, unemployment or any and all other taxes, fees or levies upon Agent. Agent shall and hereby does indemnify and save harmless the Companies and their directors, officers, employees, representatives and affiliated and subsidiary companies from and

against all liability for the same. This Section shall survive the termination or expiration of this Agreement.

- L. Insurance.** Agent shall maintain errors and omissions insurance which covers Agent for services provided under this Agreement and does not exclude coverage for any services provided to any Company (the “Policy”) during the Term in an amount reasonably required by the Companies, but in no event less than One Million Dollars (\$1,000,000) services provided under this Agreement Agent shall provide evidence to the Companies that the Policy is in full force and effect prior to the execution of this Agreement and from time to time thereafter upon the Companies’ request. Agent shall notify the Companies immediately upon his/her receipt of notice that the Policy is or will be reduced, modified, canceled, non-renewed or terminated. Agent shall ensure that the Companies are named as an additional insured on the Policy. Any reduction, modification, cancellation, termination or non-renewal of the Policy may be deemed a material breach of this Agreement at the Companies’ sole discretion.
- M. Headings.** The headings of sections contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
- N. Waiver.** A waiver by a Party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provision of this Agreement.
- O. Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute a single agreement.
- P. Construction; Acknowledgment.** This Agreement shall be construed and interpreted without regard to any presumption or other rule requiring construction against the Party causing this Agreement to be drafted. Agent has read this Agreement in its entirety, understands its contents and has had the advice of counsel as to the Agreement’s meaning and intent.
- Q. Jurisdiction; Venue; Inconvenient Forum.** Any suit, action or proceeding with respect to this Agreement shall be brought in federal or state court located in Broward County, Florida and the Parties accept the exclusive personal jurisdiction of those courts for the purpose of any suit, action or proceeding.
- R. Attorneys’ Fees.** In the event of any action, dispute, litigation or proceeding with respect to this Agreement, the prevailing Party or Parties in such action, dispute, litigation or other proceeding shall be entitled to recover from the non-prevailing Party or Parties all reasonable fees, costs and expenses of counsel incurred in connection with such proceedings, whether suit is instituted, and if instituted, at both trial and appellate levels.

- S. **Number; Gender.** When the context of this Agreement requires, the gender of all words shall include the masculine, feminine and neuter, and the number of all words shall include the singular and plural.
- T. **Cumulative Remedies.** Except as otherwise provided for to the contrary in this Agreement, remedies provided for in this Agreement shall be in addition to and not in lieu of any other remedies available to any Party and shall not be deemed a waiver or substitution for any action or remedy the Parties may have at law or in equity.
- U. **No Third Party Beneficiary.** Except as otherwise expressly provided herein, nothing in this Agreement is intended to, or shall be deemed or construed to create any rights or remedies in any third party, including but not limited to a Group or Member.
- V. **No Joint and Several Liability.** Each of VISTA, VIP and VISTA-SF shall be severally liable for its own actions or inactions arising under, relating to or resulting from this Agreement. There shall be no joint liability between or among any of VISTA, VIP or VISTA-SF.
- W. **Mediation; Arbitration.** The Parties hereby agree to submit any controversy, claim or dispute (“Dispute”) arising out of or relating to this Agreement to mediation in Broward County, Florida. The Parties must jointly appoint a mediator. If the Parties are unable to promptly agree upon the appointment of a mediator, the Parties shall submit the Dispute to the American Health Lawyer Association or, upon agreement to both Parties, the American Arbitration Association. In such event, the mediation shall be conducted under the then prevailing rules for mediation of the association where the mediation was submitted. If any Dispute is not resolved by mediation within a reasonable period of time, the Dispute shall be settled solely and exclusively by binding arbitration in Broward County, Florida. Such arbitration shall be conducted in accordance with the then prevailing commercial arbitration rules of the American Health Lawyers Association or, upon agreement of both Parties, the American Arbitration Association. The number of arbitrators shall be three (3), to be selected in accordance with the then prevailing arbitration rules. Each Party shall bear its own attorneys fees and expenses. The Parties agree to abide by all decisions and awards rendered in such proceedings. Such decisions and awards rendered by the arbitrators shall be final and conclusive. All such Disputes shall be settled in this manner in lieu of any action at law or equity; provided however, that nothing in this subsection shall be construed as precluding the bringing an action for injunctive relief or other equitable relief. The arbitrators shall not have the right to award punitive damages or speculative damages to either Party. The arbitrators shall be required to follow applicable Florida and Federal law. If for any reason this arbitration clause becomes not applicable, then each Party, to the fullest extent permitted by applicable law, hereby irrevocably waives all right to trial by jury as to any issue relating hereto in any action, proceeding, or counterclaim arising out of or relating to this agreement or any other matter involving the Parties hereto.
- X. **Execution by Authorized Representatives.** An authorized representative of each

Party shall execute this Agreement and an authorized representative of a Party shall execute any and all notices given by such Party hereunder. Agent represents and warrants that the individual executing this Agreement is authorized to bind Agent and all Staff to the rights, obligations, conditions and terms set forth in this Agreement.

Y. Captive General Agency Agreement. In the event that a Company enters into a Captive General Agency Agreement (“GA Agreement”) with a general agent with whom Agent has an arrangement (“Agent Agreement”) either prior or subsequent to the effective date of the GA Agreement, the GA Agreement shall control with respect to any and all terms of this Agreement which conflict with the GA Agreement and Article III of this Agreement shall be of no force or effect. Notwithstanding the foregoing, in the event of termination of the GA Agreement or Agent Agreement for any reason, all terms set forth in this Agreement shall be binding on the Companies and Agent.

Z. Recitals. The above recitals are true and correct and are incorporated in this Agreement by reference.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of this day __ of _____, 20__.

Vista Healthplan, Inc.

By: _____
Title: _____
Date: _____

Vista Insurance Plan, Inc.

By: _____
Title: _____
Date: _____

Vista Healthplan of South Florida, Inc.

By: _____
Title: _____
Its: _____

Agent

By: _____
Title: _____
Date: _____

**SCHEDULE I.B
APPOINTMENT**

Agent shall provide the following information to the Companies at such time and in such manner as the Companies may request:

1. Provide a copy of your Florida Department of Insurance License. (A clear photocopy of your insurance license must be submitted with this Agreement to be considered for approval. The Companies will file an appointment with the Department indicating your representation of the Companies.)
2. Initial all pages in this Agreement. Complete all sections, then sign and date the signature page.
3. Return two (2) signed **ORIGINALS** of this Agreement. One copy will be returned to you upon the Senior Vice President's (or his/her designee's) approval.

Send a clean copy of your Florida Insurance license and two original copies of this Agreement to:

**Vista Healthplan, Inc.
Vista Insurance Plan, Inc.
Vista Healthplan of South Florida, Inc.
Attn: Finance/Broker Commissions
1340 Concord Terrace
Sunrise, Florida 33323**

=====
Agent Information:
(All information required for Appointment and Commission Processing).

Agent Name: _____
Social Security #: _____ Date of Birth: _____
DFS Agent #: _____
Mailing Address: _____

Home Phone: _____ Business Phone: _____
Email Address: _____ Fax Number: _____

Florida Insurance License Type (Please Indicate Current Type):
HEALTH (240) _____ LIFE & HEALTH (218) _____ LIFE/HEALTH/ANNUITY (215) _____
HAS THE AGENT PLED GUILTY OR NOLO CONTENDERE TO, OR HAS HE/SHE BEEN FOUND GUILTY OF A FELONY OR A CRIME INVOLVING MORAL TURPITUDE SINCE QUALIFYING FOR THIS APPOINTMENT? (Please Circle) YES NO
If yes, attach a separate document listing the name and describing the circumstances related to this question.

**SCHEDULE III.A
COMMISSION**

I. INDIVIDUAL PRODUCT COMMISSION SCHEDULE.

A. Productivity Designation. Effective as of January 1st of each calendar year, the Companies, at their sole discretion, shall assess the number of Individual Contracts Agent is responsible for and determine Agent’s productivity designation, as set forth below.

1. Presidential Circle. Any Agent who is responsible for fifty (50) or more Contracts for Individual Members (“Individual Contract”), as evidenced on the applicable enrollment form, shall be deemed a member of the Presidential Circle in the month that such Agent attains the fifty-first (51st) Individual Contract.

2. Executive Circle. Any Agent who is responsible for less than fifty (50) Individual Contracts, as evidenced on the applicable enrollment form, shall be deemed a member of the Executive Circle.

B. Presidential Circle Commission Schedule. Agent shall be paid Commission payments in accordance with the Presidential Circle Commission Schedule, as set forth below, on Individual Contracts for which the Agent is responsible for which are effective after the month following the month in which the Agent was deemed a member of the Presidential Circle.

PAYMENT PERIOD	COMMISSION AMOUNT PER INDIVIDUAL MEMBER
First (1st) month following the effective date of the Individual Contract	240% of the 1 st monthly premium amount under the Individual Contract following the effective date of the Individual Contract paid in lump sum
Thirteenth (13 th) through the effective date of termination of the Individual Contract	5% of the monthly premium amount under the Individual Contract for each month from the 13 th through the effective date of termination of the Individual Contract paid on an as earned basis

C. Executive Circle Commission Schedule. Agent shall be paid Commission payments in accordance with the Executive Circle Commission Schedule, as set forth below, on Individual Contracts for which the Agent is responsible for which are effective prior to or in the month in which the Agent was deemed a member of the Executive Circle.

PAYMENT PERIOD	COMMISSION AMOUNT PER INDIVIDUAL MEMBER
First (1st) month through the twelfth (12 th) month following the effective date of the Individual Contract	20% of the monthly premium amount under the Individual Contract for each month from the 1 st through the 12 th month following the effective date of the Individual Contract paid on an as earned basis
Thirteenth (13 th) through the effective date of termination of the Individual Contract	5% of the monthly premium amount under the Individual Contract for each month from the 13 th through the effective date of termination of the Individual Contract paid on an as earned basis

D. Bonus and Incentive Programs. Agents shall be eligible to participate in any bonus and incentive programs implemented by the Companies, as determined by the Companies at the Companies' sole discretion.

II. SOUTH FLORIDA GROUP PRODUCT COMMISSION SCHEDULE. For all Contracts and Existing Contracts with South Florida Groups, the Companies shall pay Agent as indicated below an amount equal to the product of (i) the monthly premium amount paid by the South Florida Group, multiplied by (ii) the applicable percentage depending on the number of individuals employed with the South Florida Group who enroll in a Product during the particular month ("Subscribers"), as set forth below. Upon the first (1st) anniversary of the effective date of a Contract, the applicable Company shall apply the applicable percentage depending on the number of Subscribers, as set forth below, for the remainder of the term of the Contract in calculating Agent's Commission. Upon termination of a South Florida Group's Contract with a Company, in whole or in part, for any reason pursuant to the applicable Contract, no further Commissions shall be payable by Company, at the Company's sole discretion, to Agent under this Agreement with respect to such Contract. For purposes of this Agreement, "Small Group" shall be defined to mean all South Florida Groups with one to fifty (1 – 50) Subscribers and "Large Group" shall be defined to mean all South Florida Groups with fifty-one (51) or more Subscribers.

A. Traditional Groups:

Subscribers	Small Group Monthly Commission for 1st Year of Contract	Small Group Monthly Commission for all Renewal Years of Contract	Large Group Monthly Commission	Large Group Monthly Commission for all Renewal Years of Contract
1 – 3	1%	1%	N/A	N/A
4 – 50	8%	6%	N/A	N/A
51 – 200	N/A	N/A	6%	6%
201 and above	N/A	N/A	Case by Case	N/A

B. Focus Deductible Coinsurance Plan Group:

Subscribers	Small Group Monthly Commission for 1st Year of Contract	Small Group Monthly Commission for all Renewal Years of Contract	Large Group Monthly Commission	Large Group Monthly Commission for all Renewal Years of Contract
1 – 3	1%	1%	N/A	N/A
4 – 50	10%	10%	N/A	N/A
51 – 200	N/A	N/A	6%	6%
201 and above	N/A	N/A	Case by Case	N/A

C. Choice and Value Plan Groups:

Subscribers	Small Group Monthly Commission for 1st Year of Contract	Small Group Monthly Commission for all Renewal Years of Contract	Large Group Monthly Commission	Large Group Monthly Commission for all Renewal Years of Contract
1 – 3	1%	1%	N/A	N/A
4 – 50	8%	8%	N/A	N/A

**SCHEDULE IV.D.4
HIPAA**

In case of any conflict between the terms of this Agreement and this Schedule IV.D.4, the terms and provisions of this Schedule IV.D.4 shall prevail. For purposes of this Schedule IV.D.4, unless the context indicates otherwise, Agent shall be referred to as “Business Associate” and VISTA shall be referred to as “Covered Entity”, as such terms are defined under HIPAA and the regulations promulgated thereunder. Terms used, but not otherwise defined, in this Schedule IV.D.4 shall have the same meaning as those terms in HIPAA and the regulations promulgated thereunder.

I. PRIVACY.

A. Obligations of Business Associate.

- 1. Compliance with Privacy Standards and Confidential Communications.**
Business Associate shall comply with HIPAA, as amended from time to time, and all other State and Federal law and regulations, as well as with community and industry standards relating to privacy and confidentiality, as may be amended from time to time. Without limiting the generality of the foregoing, Business Associate shall ensure compliance with the HIPAA Standards for Privacy of Individually Identifiable Health Information that are applicable to Business Associates.

- 2. Use and Disclosure of Protected Health Information.**
 - a.** Business Associate shall not, and shall ensure that its directors, officers, employees, contractors and agents do not, use or further disclose Protected Health Information received from Covered Entity, except as permitted by HIPAA, Federal and State laws and this Agreement. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in this Agreement, provided that such use or disclosure would not violate HIPAA if done by Covered Entity or the minimum necessary policies and procedures of Covered Entity.

 - b.** Specific Use and Disclosure Provisions:
 - (i) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of Business Associate or to carry out Business Associate’s legal responsibilities.

 - (ii) Except as otherwise limited in this Agreement, Business

Associate may disclose Protected Health Information for the proper management and administration of Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose 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 is breached.

- c. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 42 C.F.R. §164.504(e)(2)(i)(B).
- d. Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 42 C.F.R. §164.502(j)(1).

- C. **Mitigation of Disclosures.** Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement or HIPAA.
- D. **Safeguards Against Misuse of Information.** Business Associate shall implement all appropriate safeguards to prevent the use or disclosure of Protected Health Information other than pursuant to the terms and conditions of this Agreement.
- E. **Reporting of Disclosures of Protected Health Information.** Business Associate shall, within five (5) days of becoming aware of any use or disclosure of Protected Health Information in violation of this Agreement by Business Associate, its officers, directors, employees, contractors, or agents, or by a third party to which Business Associate disclosed Protected Health Information pursuant to this Agreement, report any such disclosure to Covered Entity.
- F. **Agreements by Third Parties.** Business Associate shall enter into an agreement with any agent or subcontractor that will have access to Protected Health Information that is received from, or created or received by Business Associate on behalf of Covered Entity pursuant to which such agent or subcontractor agrees to be bound by the same restrictions, terms, and conditions that apply to Business Associate pursuant to this Agreement with respect to such Protected Health Information.
- G. **Access to Information.** Business Associate shall provide appropriate access to

Protected Health Information to meet the requirements of 45 C.F.R. §164.524. Within five (5) days of a request by Covered Entity for access to Protected Health Information about an Individual contained in a Designated Record Set (the “DRS”), Business Associate shall make available to Covered Entity such Protected Health Information for so long as such information is maintained in the DRS. In the event any Individual requests access to Protected Health Information directly from Business Associate, Business Associate shall within two (2) days forward such request to Covered Entity.

- H. Availability of Protected Health Information for Amendment.** Business Associate shall make any amendment(s) to Protected Health Information in a DRS (for so long as the Protected Health Information is maintained in the DRS) to which Covered Entity directs or agrees, pursuant to 45 C.F.R. §164.526, at the request of Covered Entity or an Individual, within ten (10) days of receipt of a request from Covered Entity for the amendment of an Individual’s Protected Health Information. Business Associate shall provide such information to Covered Entity for amendment and incorporate any such amendments in the Protected Health Information as required by 45 C.F.R. §164.526.
- I. Accounting of Disclosures.** Business Associate shall document such 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 C.F.R. §164.528. Within ten (10) days of notice by Covered Entity to Business Associate that Covered Entity received a request for an accounting of Protected Health Information disclosures regarding an Individual during the six (6) years prior to the date on which the accounting was requested, Business Associate shall make available to Covered Entity such information as is in Business Associate’s possession and is required for Covered Entity to make the accounting required by 45 C.F.R. §164.528. At a minimum, Business Associate shall provide Covered Entity with 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. In the event the request for an accounting is delivered directly to Business Associate, Business Associate shall within two (2) days forward such request to Covered Entity. Business Associate shall implement an appropriate record keeping process to enable it to comply with the requirements of this Section.
- J. Availability of Books and Records.** Business Associate shall make its internal practices, books, and records, including policies and procedures and Protected Health Information relating to the use and disclosure of Protected Health Information, received from, or created or received by Business Associate, on behalf of Covered

Entity, available to the Secretary within ten (10) days after Business Associate's notice of the Secretary's request and/or in the time and manner requested by the Secretary, for purposes of determining Covered Entity's and Business Associate's compliance with HIPAA.

II. SECURITY. Business Associate shall ensure compliance with the HIPAA Security Standards for the Protection of Electronic Protected Health Information, 45 C.F.R. Part 160 and Part 164, Subparts A and C, with respect to electronic protected health information covered by this Agreement effective on the compliance date for initial implementation of the security standards set forth in 45 C.F.R. § 164.318. Without limiting the generality of the foregoing, Business Associate agrees that it will, in accordance with HIPAA:

- A. Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of Covered Entity as required by 45 C.F.R. Part 164, Subpart C.
- B. Ensure that any agent, including a subcontractor, to whom it provides such information, agrees to implement reasonable and appropriate safeguards to protect it;
- C. Report to the covered entity any security incident of which it becomes aware;
- D. Ensure the confidentiality, integrity, and availability of all electronic protected health information it creates, receives, maintains, or transmits;
- E. Protect against any reasonably anticipated threats or hazards to the security or integrity of such information;
- F. Protect against any reasonably anticipated uses or disclosures of such information that are not permitted or required under HIPAA; and
- G. Ensure compliance with 45 C.F.R. Part 164, Subpart C (Security Standards for the Protection of Electronic Protected Health Information) by its workforce.

III. ELECTRONIC TRANSACTIONS AND CODE SETS. Business Associate shall comply with the HIPAA Standards For Electronic Transactions and Code Sets, 45 C.F.R. Parts 160 and 162, with respect to electronic protected health information covered by this Agreement. Without limiting the generality of the foregoing, Business Associate agrees that it will, in accordance with 45 C.F.R. § 162.923(c):

- A. Comply with all applicable requirements of 45 C.F.R. Part 162; and
- B. Require any agent or subcontractor to comply with all applicable requirements of 45 C.F.R. Part 162.

IV. TERMINATION.

- A. **Term.** This Schedule IV.D.4 shall be effective as of the Effective Date and shall terminate upon the later of such date when (i) all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with this Schedule IV.D.4 or (ii) the termination or expiration of this Agreement.
- B. **Termination.** Without limiting the rights and remedies of Covered Entity elsewhere set forth in this Agreement or available under applicable law, Covered Entity may terminate this Agreement without penalty or recourse to Covered Entity if Covered Entity determines that Business Associate violated a material term of the provisions of this Schedule IV.D.4.
- C. **Effect of Termination.**
1. Except as provided in paragraph (2) of this Section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of any of the Business Associate's subcontractors or agents, and Business Associate shall ensure that all of its subcontractors or agents comply with these termination provisions. Neither Business Associate nor any of its subcontractors or agents shall retain any copies of Protected Health Information upon termination of this Agreement.
 2. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity written notification of the conditions that make return or destruction infeasible ninety (90) days prior to the termination of this Agreement or within ten (10) days of Business Associate's notice of Covered Entity's knowledge of a material breach of this Agreement. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

V. **MISCELLANEOUS.**

- A. **Amendment.** Business Associate agrees that this Schedule IV.D.4 may be amended from time to time by Covered Entity to the extent required by the provisions of HIPAA in order to assure that this Agreement is consistent therewith.
- B. **Survival.** The obligations of Business Associate under this Schedule IV.D.4 shall survive the expiration or sooner termination of this Agreement.
- C. **Interpretation.** Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with HIPAA.
- D. **Compliance.** The Parties hereto agree to comply with the requirements set forth in this Schedule IV.D.4 within the time frames prescribed by HIPAA and the regulations promulgated thereunder.

Request for Taxpayer Identification Number and Certification

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

Print or type See Specific Instructions on page 2.	Name (as shown on your income tax return)	
	Business name, if different from above	
	Check appropriate box: <input type="checkbox"/> Individual/Sole proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶ <input type="checkbox"/> Exempt payee <input type="checkbox"/> Other (see instructions) ▶	
	Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
	City, state, and ZIP code	
	List account number(s) here (optional)	

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Social security number
or
Employer identification number

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

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.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

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 on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

- The U.S. grantor or other owner of a grantor trust and not the trust, and
- The U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a “saving clause.” Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the 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 not subject to backup withholding, give the requester the appropriate completed Form W-8.

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments. 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, 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 the instructions below and the separate Instructions for the Requester of Form W-9.

Also see *Special rules for partnerships* on page 1.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Name

If you are an individual, you must generally enter the name shown on your income tax return. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

Sole proprietor. Enter your individual name as shown on your income tax return on the “Name” line. You may enter your business, trade, or “doing business as (DBA)” name on the “Business name” line.

Limited liability company (LLC). Check the “Limited liability company” box only and enter the appropriate code for the tax classification (“D” for disregarded entity, “C” for corporation, “P” for partnership) in the space provided.

For a single-member LLC (including a foreign LLC with a domestic owner) that is disregarded as an entity separate from its owner under Regulations section 301.7701-3, enter the owner’s name on the “Name” line. Enter the LLC’s name on the “Business name” line.

For an LLC classified as a partnership or a corporation, enter the LLC’s name on the “Name” line and any business, trade, or DBA name on the “Business name” line.

Other entities. Enter your business name as shown on required federal tax documents on the “Name” line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the “Business name” line.

Note. You are requested to check the appropriate box for your status (individual/sole proprietor, corporation, etc.).

Exempt Payee

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

Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends.

Note. If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

The following payees are exempt from backup withholding:

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 possession of the United States, or any of their political subdivisions or instrumentalities,
4. A foreign government or any of its political subdivisions, agencies, or instrumentalities, or
5. An international organization or any of its agencies or instrumentalities.

Other payees that may be exempt from backup withholding include:

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

The chart below shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 15.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 9
Broker transactions	Exempt payees 1 through 13. Also, a person registered under the Investment Advisers Act of 1940 who regularly acts as a broker
Barter exchange transactions and patronage dividends	Exempt payees 1 through 5
Payments over \$600 required to be reported and direct sales over \$5,000 ¹	Generally, exempt payees 1 through 7

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

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

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 page 2), 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 Social Security Administration 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 www.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, 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 domestic 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, and 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). Exempt payees, see *Exempt Payee* on page 2.

Signature requirements. Complete the certification as indicated in 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 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.

Secure Your Tax Records from Identity Theft

Identity theft occurs when someone uses your personal information such as your name, social security number (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.

Call the IRS at 1-800-829-1040 if you think your identity has been used inappropriately for tax purposes.

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 personal property to the Treasury Inspector General for Tax Administration at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at: spam@uce.gov or contact them at www.consumer.gov/idtheft or 1-877-IDTHEFT(438-4338).

Visit the IRS website at www.irs.gov to learn more about identity theft and how to reduce your risk.

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)	The grantor-trustee ¹
b. So-called trust account that is not a legal or valid trust under state law	The actual owner ¹
5. Sole proprietorship or disregarded entity owned by an individual	The owner ³
For this type of account:	Give name and EIN of:
6. Disregarded entity not owned by an individual	The owner
7. A valid trust, estate, or pension trust	Legal entity ⁴
8. Corporate or LLC electing corporate status on Form 8832	The corporation
9. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
10. Partnership or multi-member LLC	The partnership
11. A broker or registered nominee	The broker or nominee
12. 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

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 second 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 1.

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.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons who must file information returns with the IRS to report interest, dividends, and certain other income paid to you, mortgage interest you paid, the acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA, or Archer MSA or HSA. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return. The IRS may also provide this information to the Department of Justice for civil and criminal litigation, and to cities, states, the District of Columbia, and U.S. possessions to carry out their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax 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. Payers must generally withhold 28% of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to a payer. Certain penalties may also apply.