

# DENTAL PRACTICE SALES CONSULTING AGREEMENT

DATE OF AGREEMENT: \_\_\_\_\_, 201\_\_

## I. PARTIES

A. ADS SOUTH, LLC as CONSULTANT and  
\_\_\_\_\_  
as SELLER and owner of the DENTAL PRACTICE offered for sale located at  
\_\_\_\_\_  
\_\_\_\_\_

## II. SERVICES

A. SELLER and CONSULTANT agree that CONSULTANT shall be engaged and paid for the sole purpose of providing a purchaser prospect which results in the sale of SELLER'S PRACTICE or soliciting an offer from a prospect which results in the sale of SELLER'S PRACTICE.

B. SELLER recognizes that CONSULTANT will function as a DISCLOSED TRANSACTIONAL AGENT in this transaction, and shall not serve in a fiduciary capacity to any party participating in the anticipated transaction.

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### III. TERM OF AGREEMENT

A. The **TERM** of this **AGREEMENT** shall begin on the above written date and shall continue until terminated by either party by giving ten days advance written notice. **SELLER** may cancel this **AGREEMENT** only after twelve months from the above date, except as provided below, and at anytime thereafter by giving ten days written notice to **CONSULTANT**. If written notice of cancellation is not received, this **AGREEMENT** shall continue until notice of termination is given or the **PRACTICE** is sold and all terms and conditions of this **AGREEMENT** are fulfilled. In contracting for this specified term, **SELLER** acknowledges that the sale of the **PRACTICE** will require sufficient time for **CONSULTANT** to perform the service of soliciting an offer, and that **SELLER** will enter into this **AGREEMENT** in good faith and is thus informed as to the realistic time period required to fulfill this service. Provided however should this **AGREEMENT** be signed prior to the receipt and approval by **SELLER** of the **PRACTICE** valuation provided by **CONSULTANT**. **SELLER** shall have the right to terminate this **AGREEMENT** within ten (10) days following the receipt by **SELLER** of such **PRACTICE** valuation.

B. In the event the **PRACTICE** is sold, leased, transferred, or in any way conveyed to any party within ninety days of withdrawal, then the withdrawal will be considered void and the **SELLER** will be obligated to pay **CONSULTANT** the commission as described in **SECTION VI. CONSULTANT FEES AND COMMISSION**.

C. In the event the **PRACTICE** is sold, leased, transferred, or in any way conveyed to any party contacted by **CONSULTANT** regarding **SELLER** within one year of withdrawal, then the withdrawal will be considered void and the **SELLER** will be obligated to pay **CONSULTANT** the commission as described in **SECTION VI. CONSULTANT FEES AND COMMISSION**.

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## IV. SELLER WARRANTIES

### A. SELLER warrants to CONSULTANT:

1. All representations of the **PRACTICE** made in writing by **SELLER** or its representatives, including but not limited to any and all tax returns, financial statements, information provided in the **CONSULTANT** provided **SELLER** application, existing or pending litigation, liens, or judgments, equipment lists, and so on that have been furnished to **CONSULTANT** by **SELLER** are true to the best of **SELLER'S** knowledge;
2. **SELLER** agrees to indemnify and hold **CONSULTANT** harmless and defend from any and all loss, damage, suits and claims, including reasonable attorney's fees and costs of defense incurred by **CONSULTANT** due to any written misrepresentation made by **SELLER** to **CONSULTANT** or to the purchaser of the **PRACTICE**;
3. **SELLER** warrants that it has legal authority and capacity to convey the **PRACTICE** assets being transferred in this sale;
4. Unless agreed to in writing between **SELLER** and **PURCHASER**, any and all defects, liens, judgments, or encumbrances shall be cured, paid, or removed, replaced, or repaired by **SELLER**, and all assets, including leased dental equipment, copiers, telephones, and so forth, shall be transferred with a free and clear title to **PURCHASER** at the time of sale.
5. **SELLER** agrees to allow **CONSULTANT** to use the **SELLER'S** name when necessary or desirable to market the **PRACTICE**. **SELLER** will make the **PRACTICE** available to show during reasonable hours to prospective Purchasers.

6. **SELLER** agrees to immediately refer all inquiries to **CONSULTANT**. This **AGREEMENT** constitutes an exclusive listing between **SELLER** and **CONSULTANT**. **SELLER** shall be responsible to **CONSULTANT** for fees as described in **SECTION VI. CONSULTANT FEES AND COMMISSION** in the event of any sale of **SELLER'S PRACTICE**.
7. **SELLER** recognizes that **CONSULTANT** has not represented any information provided by **SELLER** as being inspected or warranted by anyone other than **SELLER**.
8. **SELLER** agrees to provide **CONSULTANT** with requested required personal and **PRACTICE** data and financial information in order for **CONSULTANT** to perform the services contracted for herein.
9. **SELLER** recognizes that **CONSULTANT** is not representing itself to be legal or tax counsel to **SELLER**, although information for consideration may be offered by **CONSULTANT** to **SELLER** and **SELLER'S** representatives. It is the responsibility of **SELLER** to determine through proper legal, tax, and accounting counsel, the advisability and legality of executing any proposed tax or sales structure.

## **V. CONSULTANT SERVICES**

**A. CONSULTANT** agrees, in consideration of the fees described in **SECTION VI. CONSULTANT FEES AND COMMISSION**, to provide the following services for **SELLER**.

1. Provide consultation services for **SELLER** to determine whether or not **CONSULTANT** services are appropriate at the present time, and if so what alternatives may be most appropriate for **SELLER** to pursue;
2. Format and present financial, **PRACTICE**, and personal information required for the accurate evaluation of the professional **PRACTICE** under

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consideration and to perform a valuation of the **PRACTICE**, in context of the strategy anticipated for the transaction; and

3. Advertise the availability of the **PRACTICE** in the **CONSULTANT'S** internet site, professional journals and/or trade publications of **CONSULTANT'S** choice if deemed necessary by **CONSULTANT**, and to prospect for, and to qualify candidates and to protect as much as possible the identity of the **SELLER** from unqualified candidates.

## **VI. CONSULTANT FEES AND COMMISSIONS**

**A.** If **SELLER** should enter into this **DENTAL PRACTICE SALES CONSULTING AGREEMENT** at or before the time of delivery of the **PRACTICE** valuation, the fee for the **PRACTICE** valuation shall be **\$1,000.00**. Should **SELLER** cancel this agreement prior to the sale of **SELLER'S PRACTICE**, **SELLER** shall pay the additional sum of **\$1,950.00** for the total cost of an appraisal for a non-listed general practice of **\$2,500.00** for a non-listed specialty practice.

**B.** In consideration for the services listed performed by **CONSULTANT** on behalf of **SELLER**, in **SECTION II. SERVICES**, **SELLER** agrees to pay **CONSULTANT** at the time of closing, in immediately available funds, a commission in the amount of the greater of:

1. **TEN PERCENT (10%)** of the total actual **PRACTICE** sale price; or
2. **FIFTEEN THOUSAND AND 00/100 (\$15,000.00) DOLLARS** if the sale price is less than **ONE HUNDRED THOUSAND AND 00/100 (\$100,000.00) DOLLARS**; or
3. **TWENTY THOUSAND AND 00/100 (\$20,000.00) DOLLARS** if the sale price is between **ONE HUNDRED THOUSAND AND 00/100 (\$100,000.00) DOLLARS** and **TWO HUNDRED THOUSAND AND 00/100 (\$200,000.00) DOLLARS**.

The payment of these fees paid to **CONSULTANT** does not depend upon the collection of any amounts of moneys by **SELLER** at time of closing.

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C. If any or all of the **PRACTICE** or assets, other than real estate, should be transferred from **SELLER** in the form of a lease or other conveyance, then **SELLER** shall pay **CONSULTANT** at the time of closing, in immediately available funds, a commission based on the total net present value of **PRACTICE** asset leases regardless of the amounts of moneys collected by **SELLER**. There is no commission due **CONSULTANT** as the result of any sale or lease of any real estate.

D. In the event **SELLER** should enter into an associateship relationship with any prospect furnished by **CONSULTANT**, **SELLER** shall pay **CONSULTANT** upon the first day that the associate practices in the **PRACTICE** a commission in the amount of **SEVEN THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$7,500.00)**.

E. In the event that **SELLER** should sign a purchase agreement for the sale of its **PRACTICE** and **SELLER** should subsequently decide to cancel this **AGREEMENT**, **SELLER** shall pay a breakage fee of the greater of **FIVE PERCENT (5%)** of the agreed upon selling price or **TEN THOUSAND AND 00/100 (\$10,000.00) DOLLARS**.

## **VII. DEPOSITS**

A. **SELLER** authorizes **CONSULTANT** to accept, receipt for, and hold all money paid as deposit on its **PRACTICE**. If such deposit is forfeited by the prospective **PURCHASER**, **CONSULTANT** shall distribute one-half of the deposit to **SELLER** and **CONSULTANT** shall be entitled to retain one-half of the deposit.

## **VIII. NO VERBAL AGREEMENTS**

A. **SELLER** and **CONSULTANT** acknowledge that this **AGREEMENT** does not guarantee a sale and that there are no other agreements, promises or understandings either expressed or implied between them other than specifically set forth, herein, and that there can be

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no alterations or changes to this **AGREEMENT** except in writing and signed by both **CONSULTANT** and **SELLER**. **SELLER** warrants there are no prior agreements on this **PRACTICE**, listing, sale or otherwise, that have not been terminated.

## **IX. LEGAL MATTERS**

**A.** This is a legal contract binding on all parties hereto. If **SELLER** does not fully understand this **AGREEMENT** it should seek competent legal advice. In connection with any litigation arising out of the **AGREEMENT**, the prevailing party shall be entitled to recover all costs incurred, including reasonable attorney's fees.

## **X. NON-DISCLOSURE OF CONFIDENTIAL INFORMATION**

**A.** **SELLER** recognizes that any **CONFIDENTIAL INFORMATION** provided it by **CONSULTANT** or its representatives regarding purchaser prospects could, if disclosed, cause damage to the prospect and **CONSULTANT**.

**B.** **CONFIDENTIAL INFORMATION** shall include, but is not limited to, another person's intent to buy, associate, or terminate a **PRACTICE** or position, and any written or oral information, of any nature whatsoever, given by or about that person.

**C.** **SELLER** agrees that it will not divulge, communicate, or otherwise disclose any **CONFIDENTIAL INFORMATION** provided by any purchaser prospect, **CONSULTANT**, its representatives, or any other person conveying such information to **SELLER** regarding a purchaser prospect, to any other person, with the exception of its bona fide counsel. **SELLER** further agrees to ensure that any bona fide counsel having access to this material will maintain the confidentiality of the material as well.

## **XI. HIPAA COMPLIANCE**

**SELLER** has the responsibility for safeguarding Protected Health Information (referred to as "PHI") of its patients. PHI includes all medical records and health information of an individual in any form including paper, electronic and oral.

**CONSULTANT** agrees to not use or disclose PHI other than as permitted or required by this **AGREEMENT** or as required by law. **CONSULTANT** agrees to use appropriate safeguards to prevent use or disclosure of the PHI beyond the terms of this **AGREEMENT**.

**CONSULTANT** agrees to report to **SELLER** any use or disclosure of the PHI not covered by this **AGREEMENT** of which the **CONSULTANT** becomes aware.

**CONSULTANT** agrees to make PHI and related records obtained from **SELLER** available to **SELLER** and the Department of Health and Human Services to determine **SELLER'S** compliance with the Privacy Rule.

**SELLER** shall only disclose the minimum amount of PHI necessary for **CONSULTANT'S** purposes.

Upon termination of this **AGREEMENT**, **CONSULTANT** shall return or destroy all PHI received from **SELLER**. **CONSULTANT** shall retain no copies of the PHI.

The rights and obligations of **CONSULTANT** of this **AGREEMENT** shall survive the termination of this **AGREEMENT**. Any ambiguity in this **AGREEMENT** shall be resolved to permit **SELLER** to comply with the Privacy Rule.

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## XII. OTHER PROVISIONS

- A. Notice. All communications shall be sent to the respective parties at their addresses as set forth below or address as subsequently modified by written notice given in accordance with this Section:

*If to CONSULTANT:*

Earl M. Douglas, DDS, MBA

120 Istorla Drive

St. Augustine, FL 32095

Telephone: 770-664-1982

Fax : 678-965-1812

[earl@adssouth.com](mailto:earl@adssouth.com)

*If to SELLER:*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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

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

- B. Assignment. This **AGREEMENT** may not be assigned by either party.
- C. Integration; Amendment, Waiver. This **AGREEMENT** supersedes all prior negotiations, agreements and understandings between the parties and constitutes the entire agreement of the parties with respect to the subject matter hereof, and may not be altered or amended except in writing signed by the parties. The failure of any party at any time or times to require performance of any provision of this **AGREEMENT** will in no manner affect the right to enforce such provision, and no waiver by any party of any provision (or of a breach of any provision) of this **AGREEMENT**.

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D. Governing Law. This **AGREEMENT** shall be governed by, and shall be construed and enforced in accordance with, the laws of the State of Florida.

E. Severability. If any provision of this **AGREEMENT** is deemed invalid or unenforceable, the remainder of this **AGREEMENT** shall not be affected by such invalidity or unenforceability.

F. Counterparts. This **AGREEMENT** may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The parties acknowledge that delivery of executed copies of this **AGREEMENT** may be effected by facsimile, electronic mail or other comparable means, as well as by delivery of manually signed copies.

G. Other provisions: Notwithstanding any of the above, the following provisions shall prevail over any other term or provision that may conflict with the following. Write "NONE" on top line if there are no other provisions. Initial the end of each line where anything is added.

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**XIII. RECEIPT OF COPY**

A. By signing this **AGREEMENT**, **SELLER** agrees to the above written terms and conditions and acknowledges receipt of a copy of this **AGREEMENT**.

**Please sign your name:** \_\_\_\_\_

**Please print your name:** \_\_\_\_\_

**SELLER**

**DATED** \_\_\_\_\_, **201**\_\_

**Please write your corporate name:**\_\_\_\_\_

**By its President: please sign here:**\_\_\_\_\_

**SELLER**

**DATED** \_\_\_\_\_, **201**\_\_

**ADS SOUTH, LLC**

**BY:**\_\_\_\_\_

**CONSULTANT**

**DATED** \_\_\_\_\_, **201**\_\_