

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (the "AGREEMENT") is entered into this _____ (the "Effective Date"), between Delta Dental of Tennessee ("Covered Entity") and _____ ("Business Associate") (collectively the "Parties"). This Agreement satisfies the Parties' obligations with respect to business associate agreements as set forth in 45 CFR 164.502(e) and 164.504(e) of HIPAA as well as Sections 13400 through 13411 of the HITECH Act.

The Parties agree as follows:

I. DEFINITIONS

- A. **"Business Associate"** shall have the same meaning as the term "business associate" as defined in 45 CFR 160.103.
- B. **"CFR"** is the Code of Federal Regulations.
- C. **"Covered Entity"** shall have the same meaning as the term "covered entity" as defined in 45 CFR 160.103.
- D. **Electronic Protected Health Information** or **EPHI** shall have the same meaning as the term "electronic protected health information," as defined in 45 CFR 160.103, limited to the electronic protected health information that is created, received, maintained, or transmitted to or on behalf of Covered Entity.
- E. **"HIPAA"** is the Health Insurance Portability and Accountability Act of 1996.
- F. **"HITECH Act"** means the Health Information Technology for Economic and Clinical Health Act, found in the American Recovery and Reinvestment Act of 2009 at Division A, title XIII and Division B, Title IV.
- G. **"Individual"** shall have the same meaning as the term "individual" as defined in 45 CFR 160.103, and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- H. **"Minimum Necessary"** shall have the meaning set forth in the Health Information Technology for Economic and Clinical Health Act, § 13405(b)
- I. **"Privacy Rule"** means the "Standards for Privacy of Individually Identifiable Health Information" as found in 45 CFR parts 160 and 164, as promulgated pursuant to HIPAA.

- J. **“Protected Health Information”** or **“PHI”** shall have the same meaning as the term “protected health information” as defined in 45 CFR 160.103, limited to the information created, received or accessed by Business Associate from or on behalf of Covered Entity .
- K. **“Required By Law”** shall have the same meaning as the term “required by law” as defined in 45 CFR 164.103.
- L. **“Secretary”** shall mean the Secretary of the U. S. Department of Health and Human Services, or his designee.
- M. **“Security Incident”** has the meaning in 45 CFR § 164.304, which is the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations
- N. **“Security Rule”** means the “Standards for the Security of Electronic Protected Health Information” as found in 45 CFR parts 160, 162 and 164, as promulgated pursuant to HIPAA.
- O. **“Unsecured PHI”** shall have the same meaning as the term ‘unsecured protected health information’ as defined in Section 13402 of the HITECH Act.

II. AGREEMENTS

- A. **Obligations of Business Associate:** In performing its duties and obligations under the Agreement, Business Associate agrees as follows:
 - 1. **Application of Security Rule and Privacy Rule to Business Associate.** The administrative, physical and technical safeguards set forth in the HIPAA Security Rule at 45 CFR 164.308, 164.310, 164.312, and 164.316, shall apply to Business Associate in the same manner that such sections apply to Covered Entity. The additional requirements of Subtitle D of the HITECH Act (Sections 13400 through 13411) that relate to privacy or security and that are made applicable with respect to covered entities shall also be applicable to Business Associate and are hereby incorporated into this Agreement.
 - 2. **Disclosure.** Business Associate shall not use or further disclose PHI other than as permitted or required by this Agreement or as required by law. Business Associate may use and disclose PHI that Business Associate obtains or creates only if such use or disclosure, respectively, is in compliance with each applicable requirement of 45 CFR 164.504(e).
 - 3. **Notification of Unauthorized Access, Use or Disclosure of Unsecured PHI.**

Business Associate shall notify Covered Entity in writing of any unauthorized access, use or disclosure of unsecured PHI as soon as reasonably possible but no later than five (5) days following the date of discovery. Such notice shall include:

- (a) a brief description of what happened, including the date of the breach and the date of the discovery,
 - (b) the name(s) of the individual(s) whose PHI was used or disclosed,
 - (c) the identity(ies) of the entity(ies)/person(s) to whom the use or disclosure was made,
 - (d) description of the types of unsecured PHI that were disclosed,
 - (e) the steps taken by Business Associate to discontinue and minimize the impact of any inappropriate use or disclosure.
4. **Other Law.** Subject to Section II.A.2 of this Agreement, Business Associate shall not use or further disclose PHI in a manner that would be impermissible if used or disclosed by Covered Entity or in a manner that would violate the Privacy Rule or other applicable federal or state law or regulations.
 5. **Minimum Necessary Standards.** For any disclosure or use of PHI, Business Associate shall determine and use the minimum necessary information to accomplish the intended purpose of the use or disclosure.
 6. **Security.** Business Associate agrees to (a) implement safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity and, upon request of Covered Entity from time to time, Business Associate shall promptly provide Covered Entity with information regarding such safeguards, (b) ensure that any agent, including subcontractors, to whom Business Associate provides PHI agrees to implement reasonable and appropriate safeguards to protect it, and (c) report to Covered Entity any violation of the Security Rule of which it becomes aware.
 7. **Reporting Uses and Disclosures.** Business Associate shall report to Covered Entity any use or disclosure of PHI not provided for by this Agreement of which Business Associate becomes aware. Notice of such use or disclosure shall be provided to Covered Entity in writing as soon as possible, but in no event later than five (5) business days from the date on which Business

Associate discovers said use or disclosure. The written notice to Covered Entity shall include the same information in notices sent under Section A.3 of this Agreement.

8. **Mitigation of Unauthorized Access, Use or Disclosure of Unsecured PHI.** Business Associate agrees that, to the extent practicable, it shall mitigate any harmful effect resulting from any unauthorized acquisition, use or disclosure of unsecured PHI caused by Business Associate's violation of the requirements of this Agreement or its failure to properly secure PHI in accordance with the April 17, 2009 guidelines published by the Department of Health and Human Services.
9. **Reporting Security Incidents.** Business Associate shall report to Covered Entity any Security Incident of which it becomes aware, in the following time and manner:
 - (a) Any actual, successful Security Incident will be reported to Covered Entity in writing, within five (5) business days of the date on which Business Associate becomes aware of such Security Incident
 - (b) Any attempted, unsuccessful Security Incident of which Business Associate becomes aware will be reported to Covered Entity in writing, on a reasonable basis, at the written request of Covered Entity. If the Security Rule is amended to remove the requirement to report unsuccessful attempts at unauthorized access, this subsection (ii) shall no longer apply as of the effective date of the amendment of the Security Rule.
10. **Agents, Contractors and Subcontractors.** Business Associate shall ensure that any agents, contractors or subcontractors to whom it provides PHI received from Covered Entity, or PHI that is created or received by Business Associate on behalf of Covered Entity, agree to the same restrictions and conditions applicable to Business Associate as set forth herein with respect to PHI. Business Associate agrees to enter into a written contract with such agents, contractors or subcontractors to ensure that such contractors, subcontractors or agents abide by the same restrictions and conditions that apply to the Party when acting as a Business Associate with regard to PHI. Business Associate shall provide a copy of such contracts to Covered Entity upon request.
11. **Requests for Information or Access.** Business Associate shall notify Covered Entity in writing within five (5) business days of any requests from individuals seeking access to or copies of PHI maintained by Business Associate for or on behalf of Covered Entity, and respond to such requests when and as directed

by Covered Entity.

12. **Books and Records.** Business Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, available to the Secretary and to Covered Entity for purposes of determining its compliance with HIPAA, the Privacy Rule, the Security Rule, and other applicable federal and/or state law or regulation. Business Associate shall notify Covered Entity immediately of any such requests and shall provide Covered Entity with a copy of the request and any documents or information provided in response to such requests.
13. **Requests to Amend.** Business Associate shall notify Covered Entity in writing within five (5) business days of the receipt of any requests from individuals seeking to amend PHI maintained by Business Associate for or on behalf of Covered Entity, and respond to such requests when and as directed by Covered Entity. Additionally, when and as notified by Covered Entity, Business Associate shall incorporate any amendments, corrections and/or other documents or information to PHI maintained by Business Associate and shall notify its agents, contractors and subcontractors who receive PHI of any such amendments, corrections and/or other documents or information.
14. Business Associate agrees to document disclosures of Protected Health Information, and information related to such disclosures, as would be required for Health Plan Sponsor to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528 and any additional regulations promulgated by the Secretary pursuant to HITECH Act § 13405(c). Business Associate agrees to implement an appropriate record keeping process that will track, at a minimum, 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.
15. **Accountings.** Business Associate shall notify the Covered Entity in writing within five (5) business days of any requests made by an individual directly to Business Associate for an accounting of disclosures of PHI. If the request was made as a result of Covered Entity providing the individual with a list of business associates acting on behalf of Covered Entity under Section 13405 of the HITECH Act, Business Associate shall provide such accounting directly to the individual and shall provide Covered Entity with a copy of any such

accounting in writing within five (5) business days of receiving the request. Business Associate shall respond to all other requests for an accounting when and as directed by Covered Entity. Additionally, when and as directed by Covered Entity, Business Associate shall provide for an accounting of any and all disclosures of PHI made by or on behalf of Business Associate during the six years prior to the date of the request. The accounting obligations of Business Associate hereunder shall not apply to (a) disclosures made for purposes of treatment, payment, or health care operations (as defined in the Privacy Rule), (b) disclosures made to the individual who is requesting the accounting, (c) disclosures made prior to April 14, 2003, (d) disclosures made to law enforcement officers, correctional institutions, or for national security purposes, (e) disclosures incidental to a use or disclosure otherwise permitted or required by the Privacy Rule, as provided for in 45 CFR 164.502, (f) disclosures made pursuant to an authorization as provided in 45 CFR 164.508, (g) disclosures made as part of a limited data set in accordance with 45 CFR 164.514(e).

16. **Permissible Uses and Disclosures of PHI by Business Associate.** Subject to the foregoing provisions and in addition to the use and disclosure by Business Associate of PHI authorized elsewhere herein, Business Associate may use and disclose PHI for the following additional purposes if applicable:

- (a) as necessary for data aggregation purposes relating to the health care operations of Covered Entity, but only as separately authorized by Covered Entity in writing,
- (b) for the proper internal management and administration of Business Associate, but only in connection with the direct performance by Business Associate (through its employees) of services for Covered Entity to the Agreement, and
- (c) to carry out the legal responsibilities of Business Associate.

For purposes of (b) and (c) above, Business Associate may use or disclose PHI to third parties only if the disclosure is required by law, Business Associate obtains reasonable assurances from the person to whom the PHI is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes 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 has been breached.

17. **Prohibition against Sale or Marketing of PHI.** Except as otherwise provided in Section 13405 of the HITECH Act, Business Associate shall not (a)

directly or indirectly receive remuneration in exchange for any PHI of an individual; or (b) use or disclose PHI for any purpose related directly or indirectly to any marketing or marketing communication.

18. In the event Business Associate receives a subpoena, court or administrative order or other discovery request or mandate for release of Protected Health Information, Business Associate will respond as permitted by 45 CFR § 164.512(e) and (f) following consultation with Health Plan Sponsor. Business Associate shall notify Health Plan Sponsor of the request as soon as reasonably practicable, but in any event within two (2) business days of receipt of such request.
- B. Violation of Business Associate Agreement Standards and Termination.** If either party knows or discovers a pattern of activity or practice of the other party that constitutes a material breach of the other party's obligations under this Agreement or under applicable federal standards, the discovering party agrees to immediately notify the other party in writing as to the nature and extent of such breach, and shall provide the other party a reasonable amount of time to cure such breach. A reasonable amount of time shall depend on the nature and extent of the breach, shall be clearly stated in the notice, but in no case shall the period for cure be less than five (5) business days. Notwithstanding the foregoing, should the discovering party determine that the breach is incurable, or that the other party has repeatedly engaged in such impermissible use or disclosure despite prior notice, the discovering party must terminate this Agreement, if feasible, upon written notice to the breaching party, without damages or liability thereto; or, if termination is not feasible, report the problem to the Secretary.
- C. Return of PHI upon Termination.** At termination of the Agreement, Business Associate shall return or destroy all PHI received from Covered Entity, or created by or received by Business Associate on behalf of Covered Entity, that Business Associate maintains in any form such that it shall retain no copies of such PHI. Upon request of Covered Entity, Business Associate shall provide a written certification of the return and/or destruction of PHI. If the Parties concur that the return or destruction of such PHI by Business Associate is not feasible, then Business Associate shall continue to extend the protections required hereunder to the PHI for as long as it maintains the PHI. Further, Business Associate shall limit any further use or disclosure of the PHI to those purposes that make its return or destruction unfeasible. This provision shall survive the termination of this Agreement.

- D. **Security.** The Parties shall work together in good faith to cooperate with each other's current and future security policies and procedures to ensure the integrity, confidentiality and availability of PHI in a manner that complies with HIPAA and the Security Rule, as amended from time to time.
- E. **Electronic Transactions and Code Sets.** To the extent that the services performed by Business Associate pursuant to the Agreement involve transactions that are subject to the regulations governing electronic transactions and code sets issued pursuant to HIPAA, Business Associate shall conduct such transactions in conformance with such regulations, as amended from time to time.
- F. **Record Keeping.** Business Associate agrees to implement an appropriate record keeping process to enable it to comply with the HIPAA requirements applicable to it under this Agreement and the Privacy and Security Rules.
- G. **Confidential and Proprietary Information.** Business Associate may receive, create, or have access to confidential and/or proprietary information of Covered Entity concerning its business affairs, property, operations, computer systems, dentists and providers, and strategies. Business Associate agrees to hold such confidential and/or proprietary information in strict confidence, to maintain and safeguard the confidentiality of such information, and to use such information solely to perform services or provide goods to Covered Entity as required by this Agreement.
- H. **Amendment.** Except as otherwise provided in this Section II.H, this Agreement may be amended, modified, or supplemented only by a written instrument executed by the Parties. Upon enactment of any law or regulation affecting the use or disclosure of PHI, or the publication of any decision of a court of the state or the United States relating to any such law, or the publication of any interpretative policy or opinion of any government agency charged with the enforcement of any such law or regulation, Covered Entity may amend the Agreement in such manner as it determines necessary to comply with such law or regulation, and Business Associate agrees to be bound by such amendment unless within thirty (30) days of its receipt of notice of such amendment, it notifies Covered Entity that it rejects such amendment. Upon receipt of such notice of rejection, Covered Entity may terminate the Agreement immediately upon written notice.
- I. **Waiver.** No action taken pursuant to this Agreement, including, without limitation, any investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action in compliance with any

representations, warranties, covenants, or agreements contained herein. The waiver by a party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

- J. **Third Party Beneficiaries.** Except as provided in Section II.A.10 nothing expressed or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors and permitted assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.
- K. **Binding Effect.** Except as otherwise provided herein, the terms and conditions of this Agreement shall remain in full force and effect. Additionally, the terms and conditions of this Agreement shall remain in full force and effect following termination of the Agreement.
- L. **Reimbursement of Costs.** Business Associate shall reimburse Covered Entity for any and all costs and expenses, whether direct or indirect, incurred by Covered Entity in providing any notice required by law or regulation as a result of any unauthorized acquisition, use or disclosure of unsecured PHI caused by Business Associate's breach of the terms of this Agreement or its failure to secure PHI in accordance with the April 17, 2009 guidelines published by the Department of Health and Human Services.
- M. **Indemnification.** Business Associate hereby agrees to indemnify, defend and hold harmless Covered Entity, its board of directors, officers, members, agents, employees, contractors, and personnel from and against any and all claims, demands, suits, actions, losses, expenses, costs (including reasonable attorney fees), obligations, damages, deficiencies, causes of action, and liabilities (collectively, "Claims") incurred by Covered Entity as a result of, or that are proximately caused by, (1) any breach of the duties and obligations of a Business Associate hereunder, including, without limitation, any negligence, intentional acts, errors or omissions by Business Associate, its employees, subcontractors or agents, and (2) any act or conduct of Business Associate, its employees, subcontractors or agents, adjudged to constitute fraud, misrepresentation, or violation of any law, including, without limitation, violation of any statute or regulation applicable to Business Associate pursuant to this Agreement. Covered Entity shall provide prompt written notice of relevant information and reasonable assistance (at the expense of Business Associate) as may reasonably be requested by Business Associate in connection with the defense of any Claim. Notwithstanding the foregoing: (i) Business Associate shall not settle any such Claim without the consent of Covered Entity, which consent shall not be unreasonably withheld, and (ii) the indemnification obligations of Business

Associate hereunder shall not extend to Claims attributable solely to the negligence of Covered Entity.

- N. **Injunction.** The Parties acknowledge and agree that in the event of a breach or threatened breach by Business Associate of its duties and obligations hereunder, Covered Entity shall be irreparably and substantially harmed, and remedies at law will not be an adequate remedy for such breach. Accordingly, in such event, the harmed Party shall be entitled to immediate injunctive relief against such breach or a threatened breach. Such rights to injunctive relief shall be in addition to, and not in limitation of, any other legal and equitable relief available to the harmed Party under applicable law.
- O. **Assignment.** Business Associate may not sell, assign, transfer or otherwise convey any of its rights or delegate any of its duties under this Agreement without the prior written consent of Covered Entity.
- P. **Successors.** This Agreement will be binding upon and will inure to the benefit of the Parties to this Agreement and their respective permitted successors and assigns, subject to the transfer restrictions and expiration or termination provisions set forth above.
- Q. **Severability.** The provisions of this Agreement are severable, and in the event any provision hereof is determined to be invalid or unenforceable, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining provisions hereof.
- R. **Statutory and Regulatory References.** A reference in this Agreement to a section of any statute or regulation means the section as currently in effect or amended, and for which compliance is required.
- S. **Headings.** The headings of the articles and several paragraphs of this Agreement are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.
- T. **Governing Law.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Tennessee without regard to conflict of law principles.
- U. **Notices.** All notices, requests, demands and other communications which are required or may be given pursuant to the terms of this Agreement shall be in written or electronic form and shall be deemed delivered (1) on the date of delivery when delivered by hand, (2) on the date of transmission when sent by



facsimile transmission during normal business hours with written confirmation of receipt, (3) one day after dispatch when sent by overnight courier maintaining records of receipt, or (4) three days after dispatch when sent by certified mail, postage prepaid, return-receipt requested; provided that, in any such case, such communication is addressed as follows:

If to Covered Entity, then to:
Delta Dental of Tennessee
Attn: Privacy Officer
240 Venture Circle
Nashville, TN 37228
Phone: 615-255-3175
Fax: 615-244-8108

If to Business Associate, then to:
Attn: _____
Address: _____
City, ST Zip: _____
Phone: _____
Tax ID: _____

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed in its name and on its behalf as of the Effective Date set forth above.

Delta Dental of Tennessee

Business Associate:

By: _____
[NAME]

By: _____
[NAME]

Title: _____

Title: _____

Date: _____

Date: _____