

## **BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (the “BAA”) is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between Delta Dental of New York, Inc. (the “Covered Entity”) and \_\_\_\_\_ (the “Business Associate”).

### **Definitions:**

Business Associate – “Business Associate” shall have the same meaning as the term “business associate” at 45 CFR §160.103, and in reference to the party to this agreement, shall be the party designated as a Business Associate in the first paragraph of this agreement.

Covered Entity – “Covered Entity” shall have the same meaning as the term “covered entity” at 45 CFR §160.103, and in reference to the party to this agreement, shall be the party designated as a Covered Entity in the first paragraph of this agreement.

Terms capitalized and used herein but not otherwise defined in this Business Associate Agreement (“BAA”) shall have the same meaning as those terms are defined in the Health Insurance Portability and Accountability Act and related regulations found at 45 CFR Part 160 and Part 164, and the HITECH Act of 2009 (Health Information Technology for Economic and Clinical Health) as amended, revised or updated from time to time.

### **I. Obligations and Activities of Business Associate.**

- A. Business Associate may use or disclose Protected Health Information (“PHI”) as follows:
  - 1. as reasonably necessary to provide the services described in the separate primary agreement with Covered Entity (“Agreement”), and to undertake other activities of Business Associate permitted or required to satisfy its obligations under such Agreement;
  - 2. as Required by Law;
  - 3. for the proper management and administration of Business Associate, provided, that such use or disclosure is Required by Law;
  - 4. to carry out the legal and compliance responsibilities of Business Associate; and
  - 5. to report violations of law to appropriate Federal and State authorities.
  
- B. Business Associate will:
  - 1. use reasonable and appropriate safeguards to prevent use or disclosure of PHI other than as provided for by the Agreement;

2. conduct a risk assessment and implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of PHI, which it creates, receives, maintains or transmits on behalf of Covered Entity. Business Associate acknowledges that the applicable provisions of the HIPAA Security Rule set forth at 45 C.F.R. §§ 164.308, 164.310, 164.312 and 164.316 are applicable to Business Associate;
  3. agree to cooperate in a timely manner with the Covered Entity to make any amendments of PHI in its possession; and
  4. will use reasonable efforts to limit PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request.
- C. Business Associate shall take reasonable measures to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate or its agents or subcontractors in violation herein.
- D. Business Associate will ensure through a separate, written Business Associate Agreement that any agent, including a subcontractor, to whom it provides or transmits PHI, including electronic PHI, agrees to restrictions and conditions that apply herein to Business Associate with respect to such information.
- E. Business Associate shall promptly report to Covered Entity: (i) any use, disclosure or compromise of PHI not provided for herein, and (ii) any Security Incident.
- F. Business Associate shall report to Covered Entity any Breach (or potential Breach) of Unsecured PHI as soon as possible without unreasonable delay but in no case later than thirty (30) calendar days after discovery of the Breach (except where a law enforcement official determines that such reporting would impede an investigation or cause damage to national security). Covered Entity shall have final determination as to whether a Breach has actually occurred. Where the Business Associate is also the Covered Entity, the Business Associate may issue the notification. The reporting required under this section shall include, to the extent practicable:
1. information that identifies the Individual(s) whose Unsecured PHI has been or is reasonably believed by Business Associate to have been accessed, acquired, used or disclosed during the Breach;
  2. a brief description of what happened;
  3. a description of the Unsecured PHI involved in the Breach;

4. steps that the Individual(s) could take to protect him/herself from potential harm; and
  5. a brief description of steps taken by Business Associate to investigate, mitigate or protect against the Breach.
- G. To the extent applicable, Business Associate shall provide PHI contained in a Designated Record Set held by Business Associate (that is not duplicative of PHI in possession of Covered Entity) to Covered Entity in order for Covered Entity to meet the requirements under 45 CFR §164.524 or 45 CFR §164.526, as applicable. If any Individual requests access to his or her PHI directly from Business Associate, Business Associate shall forward such request to Covered Entity so that Covered Entity can comply with the request. Any disclosure of, or decision not to disclose, the PHI requested by an Individual or a personal representative and compliance with the requirements applicable to an Individual's right to obtain access to PHI shall be the sole responsibility of the Covered Entity. If the PHI that is requested is maintained electronically and the Individual requests an electronic copy of such information, Business Associate will provide access to the information in an electronic format that complies with 45 CFR § 164.524(c)(2)(ii).
- H. Business Associate shall document disclosures of PHI 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 PHI in accordance with 45 CFR § 164.528. Business Associate shall provide to Covered Entity, within a timeframe mutually agreed to by Covered Entity and Business Associate, information collected in accordance with this Section, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. If any Individual requests access to the foregoing information directly from Business Associate, Business Associate shall forward such request to Covered Entity so that Covered Entity can comply with the request.
- I. Business Associate agrees to make its internal practices, books and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity available to the Secretary of Health and Human Services (HHS), in a time and manner designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- J. Business Associate acknowledges that the additional requirements of the HITECH Act (Health Information Technology for Economic and Clinical Health Act enacted as part of the American Recovery and Reinvestment Act of 2009) and

the Final Rule (also known as Omnibus Rule) issued by HHS on January 25, 2013 are applicable to Business Associate as described therein. Business Associate further acknowledges restrictions on the sales and marketing of PHI without the explicit authorization of the Individual.

- K. In the event the Business Associate independently is also a Covered Entity under HIPAA, the Business Associate may respond directly to an Individual's request for purposes of complying with applicable sections herein.
- L. Any costs associated with Breach notifications, including mitigation costs, shall be the responsibility of the party causing the Breach.

## **II. Obligations of Covered Entity.**

- A. Covered Entity shall not request Business Associate use or disclose PHI in any manner that would not be permissible under HIPAA if done by the Covered Entity.
- B. Covered Entity shall:
  - 1. notify Business Associate of any limitations in Covered Entity's Notice of Privacy Practices in accordance with 45 CFR § 164.520, if such limitations may affect Business Associate's use or disclosure of PHI;
  - 2. provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes may affect Business Associate's use or disclosure of PHI, upon Covered Entity becoming aware of such changes;
  - 3. immediately notify Business Associate of any restriction to the use or disclosure of PHI agreed to by Covered Entity in accordance with 45 CFR § 164.522, to the extent such restriction may affect Business Associate's use or disclosure of PHI;
  - 4. provide written authorization to the Business Associate prior to requesting that the Business Associate disclose, transfer or provide PHI to a third party; and
  - 5. where applicable, rely on the plan sponsor's representations certifying amendments to their plan documents with appropriate restrictions covering their use and disclosure of PHI.

## **III. Term and Termination.**

- A. The term of the BAA shall commence on the Effective Date and shall continue in full force and effect until it expires or is terminated as set forth herein.

- B. This BAA may be terminated by Covered Entity if Business Associate materially breaches these terms or its Agreement and fails to cure such breach within fifteen (15) business days after receipt of written notice of the breach. This BAA will automatically terminate upon the expiration or termination of the Agreement (or such portion of the Agreement which gave rise to the requirement for this Business Associate Agreement). If, in its reasonable discretion following consultation with the other party, that neither termination of this BAA nor a cure is feasible; the non-breaching party may report the breach to the Secretary.
- C. Upon expiration or termination of this BAA for any reason, Business Associate will return or destroy all PHI to Covered Entity. Business Associate shall not retain any copies of the PHI. However, to the extent that Business Associate determines that it is infeasible to return or destroy Covered Entity's PHI, Business Associate shall notify Covered Entity in writing of the conditions that make return or destruction infeasible. For any PHI for which return or destruction is infeasible, Business Associate will continue to extend the protections of this Addendum to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. If Business Associate elects to destroy all PHI, it shall, if requested in writing by Covered Entity, certify in writing to Covered Entity that such PHI has been destroyed.

The terms of this section shall survive the expiration or termination of this BAA.

#### **IV. Confidential Information**

- A. "Confidential Information" means any information disclosed by or on behalf of a Party ("Disclosing Party") to the other Party ("Receiving Party") whether provided orally or in writing and on whatever medium, concerning the Disclosing Party's business and/or operations and includes without limitation any materials, trade secrets, know-how, formulas, processes, policies and procedures, training materials, IT security, algorithms, ideas, strategies, inventions, data, designs, flow charts, drawings, proprietary information, business and marketing plans, financial and operational information, and all other non-public information, material or data relating to the current and/or future business and operations of the Disclosing Party.
- B. Confidential Information shall not include any information that:
  - 1. is already in the public domain at the time of disclosure or later becomes available to the public through no breach of this Agreement by the Receiving Party or its employees;

2. is lawfully in the Receiving Party's possession, without an obligation of confidentiality, prior to receipt hereunder;
3. is received independently by the Receiving Party from a third party who was free to lawfully disclose such information to the Receiving Party; or
4. is independently developed by the Receiving Party without the use of Confidential Information as evidenced by the Receiving Party's business records.

C. The Receiving Party agrees to use at least the same degree of care, and no less than reasonable care, to avoid disclosure of such Confidential Information as the Receiving Party uses with respect to its own proprietary or Confidential Information of like importance.

#### **V. Amendment to Comply with Law.**

The parties agree to take such action as is necessary to comply with and implement the standards and requirements of HIPAA (including, without limitation, the prompt amendment of this BAA). Notwithstanding the foregoing, if Covered Entity and Business Associate have not amended this Agreement to address a law or final regulation that becomes effective after the Effective Date and that is applicable to this Agreement, then upon the effective date of such law or regulation (or any portion thereof) this Agreement shall be amended automatically and deemed to incorporate such new or revised provisions as are necessary for this Agreement to be consistent with such law or regulation and for Covered Entity and Business Associate to be and remain in compliance with all applicable laws and regulations.

#### **VI. Interpretation.**

If a term in Agreement conflicts or is otherwise inconsistent with a term in this BAA, the provisions of this BAA will prevail with respect to the subject matter hereof. This BAA and the Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA.

#### **VII. Indemnification.**

The Parties agree that the indemnification provision contained in the Agreement between the Business Associate and the Covered Entity shall apply to each party's performance and that of their respective agents or subcontractors under this BAA.

**Covered Entity:**

Signature:



Printed Name: Robert Budd

Title: Vice President Sales

Organization: Delta Dental of New York, Inc.

**Business Associate:**

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

Organization: \_\_\_\_\_

Date: \_\_\_\_\_