

**PROFESSIONAL PROVIDER SERVICES AGREEMENT**

**THIS AGREEMENT**, made effective this \_\_\_\_ day of \_\_\_\_\_, 2007, by and between **LIBERTY DENTAL PLAN New York, LLC** (“**LIBERTY**”), and its affiliates (collectively known as “**LIBERTY**”)

Provider: \_\_\_\_\_

Group Name (if applicable): \_\_\_\_\_

OfficeAddress: \_\_\_\_\_

Professional Designation:

Specialty: \_\_\_\_\_

Provider Must Attach the Following to This Agreement:

- Certificate of Insurance
- Documentation of License and Education

The terms and conditions of the agreement between Provider and LIBERTY are set forth below.

1. Preliminary Statement.

The Provider named above (“Provider”) and IPA (LIBERTY) have entered into this Agreement so that Provider may participate in managed-care, point-of-service and other arrangements with Plans that are negotiated by LIBERTY. This Agreement also states certain administrative and financial services that LIBERTY shall provide in support of Provider’s rendering Covered Services to Enrollees of such plans.

2. Definitions. For the purpose of this Agreement:

“Provider” means a dentist, other dental care professional, ancillary services provider, or health care facility engaged in the delivery of dental care services who/which is licensed and/or certified as required by applicable state or federal law and who/which has entered into an agreement with LIBERTY to provide Covered Services to Enrollees.

“Covered Services” mean all dental services and benefits to which Enrollees are entitled under each respective Network Services Agreement. The determination of whether a service is a Covered Service shall be made by the applicable Plan, which determination shall be final and binding upon Provider.

“Enrollees” mean all individuals enrolled in a Plan, except for individuals who are expressly excluded by the Network Services Agreement.

“Network Services Agreement” means an agreement between LIBERTY and a Plan, which sets forth the terms under which Provider (and other LIBERTY Providers) shall provide Covered Services to such Plan’s Enrollees.

“Payment System” means a fee schedule or other payment methodology arranged and negotiated by LIBERTY with each Plan, and which shall establish the method of payments to be made for Covered Services rendered to Enrollees.

“Plan” means a health maintenance organization, insurer, self-funded plan or other health-care-services program that has entered into a Network Services Agreement under which LIBERTY arranges for the provision of Covered Services to Enrollees.

“Emergency” means a medical condition, the onset of which is sudden, that manifests itself by acute symptoms of sufficient severity, which may include severe pain, that a prudent layperson, possessing an average knowledge of medicine and health, could reasonably expect the absence of immediate medical attention to result in: (i) placing the health of the person afflicted with such condition (or with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy; or (ii) serious impairment to such person’s bodily functions; or (iii) serious dysfunctions of any bodily organ or part of such person; or (iv) serious disfigurement of such person.

3 Provider Services to Enrollees

Provider hereby agrees to provide Covered Services, in accordance with his/her Professional Designation set forth in this Agreement, to Enrollees of all Plans, pursuant to the terms and conditions set forth in the respective Network Services Agreement, this Agreement, and LIBERTY’s and the respective Plan’s policies and procedures, including (but not limited to) the LIBERTY Provider Reference Guide, as amended from time to time.

Provider shall: Maintain patient-care, financial and administrative records relating to Covered Services provided to Enrollees in accordance with legal requirements and LIBERTY policies; assure privacy and confidentiality of Enrollee’s patient-care records and other Plan and LIBERTY information; cooperate with LIBERTY in complying with reporting requirements imposed by Plans and government regulators; provide services to all Enrollees with the same quality of care, and in the same manner, as Provider delivers service to any other patient; and at

reasonable times and to the extent permitted by state and federal law, make available for inspection and duplication of all records in the possession of Provider relating to Covered Services supplied to Enrollees, to Plans, to LIBERTY and to federal and state regulators, including the New York State Department of Health (NYS DOH).

Provider shall provide such information to LIBERTY, and Payor and regulatory authorities as may be necessary for compliance by such Payor or LIBERTY with applicable federal and state laws, including The New York Superintendent of Insurance, NYS DOH, The US Department of Health and Human Services, The Comptroller General of the United States or their duly authorized representatives to the extent required by law. In addition, appropriate governmental agencies shall have access to such information consistent with their lawful authority. Provider agrees that such records shall be retained by Provider for a minimum of six (6) years from the expiration or termination of this Agreement, and in the case of medical records seven (7) years from the date of service or seven (7) years from Enrollee's age of majority, whichever is later, or as long as required under applicable federal, state, or local law. If any litigation, claim or audit that is started before the expiration of the seven (7) year period, the records must be retained until all litigation, claims or audit findings involving the records have been resolved

In compliance with the requirements and standards of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Provider and LIBERTY each agree to preserve the confidentiality of, to provide or provide access to, and to disclose the information contained in all records required to be maintained pursuant to this paragraph in compliance with any applicable federal and state laws, rules and regulations regarding patient authorizations and the confidentiality of medical information and patient records.

At the time of Provider's initial dental office visit from Enrollees, Provider shall obtain Enrollee's authorizations for the appropriate release of records to the Plan, LIBERTY and government agencies.

Provider agrees that all of Provider's obligations under this Section 3.2 shall survive the termination or expiration of this Agreement, without regard to the cause of such termination.

Provider is, and at all times during this Agreement shall remain, duly licensed to practice his/her profession in each state in which professional services are rendered.

Provider shall render Covered Services to Enrollees in an economic and efficient manner consistent with professionally accepted standards. Provider shall assure that all services shall be rendered only by duly trained personnel who can work in harmony with LIBERTY and the Plans and who, in the case of professional personnel other than appropriately supervised interns, shall be duly licensed or otherwise certified in accordance with applicable laws and standards. Provider shall not discriminate in the treatment of Enrollees on the basis of race, age, religion, creed, color, gender, sexual preference, place of residence, disability, source of payment, or type of illness or condition, shall make his or her services available to Enrollees in the same manner as to non-Enrollees, and shall otherwise comply with all applicable federal, state and local civil rights and human rights laws with reference to employment opportunities an the provision of health care services. Any risk shifted to the Provider as a result of this Agreement shall not jeopardize access to care or appropriate service delivery to Enrollees.

Provider shall maintain appropriate coverage for his or her practice to assure appropriate provider availability to Enrollees on twenty-four (24) hours per day, seven (7) days per week basis, which may include referring the Enrollee to the LIBERTY Provider(s) with whom LIBERTY has contracted to provide twenty-four (24) hour triage services for Enrollees. If possible, the covering provider shall be a LIBERTY Provider. Provider shall be responsible for securing the agreement of any covering provider to provide Covered Services to Enrollees in accordance with the terms and conditions of this Agreement and for compensating the covering provider.

Provider acknowledges and agrees that at all times, Provider shall be solely responsible for his/ her professional judgments and actions. In the event that LIBERTY and/or any Plan renders a utilization management decision with which Provider disagrees, Provider understands that his/ her obligations shall be to provide services in accordance with Provider's own best professional judgment, while using the dispute resolution procedures set forth in Paragraph 11 to resolve any conflicts regarding payment for such services.

To the extent Provider renders treatment to Enrollees covered by any government health care program, Provider shall abide by any applicable special legal requirements of such program, including applicable provision of any program-participation contract between the government agency and the Plan.

Provider shall comply fully with and abide by the rules, policies and procedures that the applicable Payor has established or will establish and has provided to the Provider at least thirty (30) days in advance of implementation, including rules, policies and procedures pertaining to quality assurance/management, utilization management, including but not limited to pre-certification procedures, referral process or protocols, and reporting of clinical encounter data, member grievances, and provider credentialing.

#### 4 Authority of LIBERTY to Create and Manage Contracts.

LIBERTY shall negotiate Network Services Agreements (and amendments to such agreements) with Plans, in order to establish the terms and conditions under which Provider will provide Covered Services to Enrollees of each such Plan and which shall include LIBERTY's establishment of Payment System with each Plan. LIBERTY's existing Network Services Agreements and description of their Payment Systems are attached hereto as Attachment, and incorporated herein.

No Network Services Agreement (or material amendment of such agreement, including material changes in the applicable Payment Systems) entered into by LIBERTY pursuant to Paragraph 4.1, above, shall be binding on Provider unless (i) LIBERTY has given Provider written notice (the "Opt Out Notice") setting forth the material financial and non-financial terms of such agreement (or amendment) and (ii) Provider has not opted out of such agreement within fifteen (15) days after delivery of the Opt Out Notice. If Provider desires to opt out of any

such agreement or amended agreement, Provider shall deliver written notice thereof to LIBERTY within such fifteen (15) day period. If Provider is opting out of a material amendment to a Network Services Agreement in which Provider has previously participated, Provider shall continue to treat all Enrollees under its care until alternative arrangements for such Enrollees are made, which shall not be unreasonably delayed.

During the term of this Agreement, and for a period of one (1) year thereafter, Provider shall not, either directly or indirectly, enter or offer to enter into any other agreement for dental services with any Plan or other payor with which LIBERTY has Network Services Agreement.

Provider agrees that LIBERTY and Plans may use Provider's name, office address, telephone number and description of available services in any roster of LIBERTY providers to be distributed to Enrollees or potential Enrollees by Plan in its marketing literature. LIBERTY and Plans shall make no other use of Provider's name without Provider prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned.

#### 5 Compensation of Provider for Covered Services.

LIBERTY shall compensate Provider for the provision of Covered Services to Enrollees, in accordance with the Payment System for the respective Plan (see Attachment ). Provider shall accept such payments as complete and full discharge of the liability of LIBERTY with respect to payment for such Covered Services.

Provider agrees that in no event including, but not limited to, nonpayment by or insolvency of the Plan or LIBERTY, or breach of this Agreement, shall Provider bill, charge, collect a deposit from, seek compensation, remuneration or reimbursement from, or have any recourse against an Enrollee, or person (other than Plan or LIBERTY) acting on Enrollee's behalf, for Covered Services provided to Enrollees pursuant to this Agreement. The foregoing restriction notwithstanding, Provider shall be entitled to bill Enrollees (or other parties responsible for Enrollee's medical expenses) only for (i) services that are not covered by the Payor's Plan or that the Plan specifically allows to be directly billed to the patient, provided that Provider has advised the Enrollee that the service is uncovered and of the Enrollee's financial liability therefore prior to providing the service and the Enrollee requests in writing that Provider render the non-Covered Services, prior to Provider's rendition of such services (ii) co- payments and permitted deductibles specifically allowed for the applicable Plan and (iii) any applicable co- insurance. Provider shall be solely responsible for the billing and collection of any of the foregoing that may apply. In the event that Provider has not been given a list of covered services applicable to a particular Plan, and/or Provider is uncertain as to whether a service is a Covered Service for the applicable Plan, the Provider shall make reasonable efforts to contact LIBERTY, which shall obtain for the Provider a coverage determination prior to Provider's advising Enrollee as to coverage and liability for payment and prior to providing the service. This Paragraph will apply even after the termination or expiration of this Agreement regardless of the reason for termination, including insolvency of LIBERTY, and shall supercede any oral or written agreement now existing or hereafter entered into between Provider and any Enrollee or person acting on Enrollee's behalf. This provision shall be construed for the benefit of the Enrollees. Any modification of this Section (5) shall become effective on a date no earlier than thirty (30) days after any required notice to or approval by the appropriate federal and state regulatory authorities.

Provider shall maintain and make available to LIBERTY and the applicable Payor records reflecting collection of coordination-of benefits ("COB") proceeds by Provider and Enrollees, and the amounts thereof. Provider's right to retain COB proceeds shall be governed by the applicable Network Services Agreement.

Provider shall accept no payment, whether direct or indirect, which represents an inducement to reduce or limit the provision by the Provider of Covered Services to Enrollees in contravention of any applicable federal, state, or local laws or regulations.

No compensation paid under this Agreement, whether direct or indirect, nor any other provision of this Agreement shall be construed as LIBERTY or the applicable Payor inducing the Provider to reduce or limit Covered Services to an Enrollee, or shall be enforced in a manner that does so.

#### 6 Credentialing.

6.1 Provider acknowledges and agrees that notwithstanding Provider's participating in LIBERTY's network of Providers, Provider's ability to participate in any particular Plan shall, in addition to all applicable LIBERTY requirements, be subject to Provider's meeting and continuing to meet such Plan's credentialing protocols, policies, procedures and other requirements.

6.2 Provider represents and warrants that all information given by him/her to LIBERTY in his/her application or otherwise is true and complete. Provider authorizes LIBERTY to obtain from time to time as part of LIBERTY's and Plan's credentialing and quality assurance programs, Provider's credentialing and/or employment history from any hospital, facility or employer with which Provider has been affiliated during the ten (10) years preceding such verification, and any professional society, liability insurer, the National Practitioner Data Bank, and any other appropriate source. Provider also agrees to cooperate in the credentialing process of each Plan with LIBERTY contracts, and authorizes LIBERTY to provide credentialing information to any such Plan that requests such information as part of such Plan's credentialing process. Provider holds harmless LIBERTY, its officers, directors, the members of LIBERTY's Credentialing Committee and all Plans from any liability resulting from LIBERTY's good faith use of any such information.

6.2.1 Any reference to LIBERTY quality assurance activities within this Agreement is limited to LIBERTY's analysis of utilization patterns and quality of care on its own behalf and as a service to its contract providers.

6.3 Provider's credentials are subject to periodic review. Provider specifically agrees that he/she will bring no claims or actions against the LIBERTY or the Plan in the event the LIBERTY or the Plan restricts or terminates his/her/its privileges, provided that LIBERTY has materially complied with all laws and regulations applicable to the restriction or termination of such privileges.

6.4 Provider shall notify LIBERTY, and authorizes the LIBERTY to notify the Plan (which LIBERTY agrees to do), within five (5) calendar days of the occurrence of any of the following:

- 6.4.1 any action taken to surrender, restrict, suspend or revoke any license or certification of Provider including DEA status or disciplinary action initiated or taken against Provider by an employer, a government agency, health care facility, or review organization or professional society;
- 6.4.2 any suit or other legal or government proceeding (including arbitration or administrative action) brought against any Provider that pertains to Covered Services to Enrollees or that has the potential to impair the ability of the Provider to perform his/her/its obligations under this Agreement, and the final disposition of such action;
- 6.4.3 any event or situation that is reportable (under applicable laws or regulations) to a federal or state regulatory agency or the Medicaid or Medicare program or the exclusion of the Provider from participation in the Medicare or Medicaid program, exclusion from participation in a federal health care program under either Section 1128 or 1128A of the Social Security Act, or any other federal or state health or social service program;
- 6.4.4 any other situation which might adversely affect Provider's ability to properly carry out Provider's obligations under this Agreement;
- 6.4.5 any change in name, address, telephone number, license or DEA number, carrier (and policy limits) for professional liability insurance or other information set forth in the LIBERTY Application or otherwise submitted to LIBERTY by provider; or
- 6.4.6 any amendment or termination of an insurance policy which would result in the Provider's not having the insurance required under this Agreement.

7. Insurance

Provider shall maintain professional liability insurance with carriers authorized in the State (s) in which Provider practices his/her profession, or through an appropriately administered self-insurance program that is satisfactory in the reasonable judgment of LIBERTY, covering Provider for all professional activities while this Agreement is in effect, with limits not less than \$1-million per occurrence/ \$3-million annual aggregate. Provider shall at his/her own expense provide any necessary "tail coverage" in the event such policy of insurance terminates. Provider shall provide LIBERTY with certificates of insurance evidencing such insurance, which certificates shall require the carrier to give LIBERTY at least thirty (30) days' prior notice to the termination of or material change in such insurance coverage.

8. Encounter, Billing and Information

Provider shall deliver to LIBERTY or the respective Plan, as the case may be, reasonably requested billing and encounter information. Provider shall also advise LIBERTY or the respective Plan of any collections of co-insurance, co-payment, permitted deductibles and amounts payable by other sources through coordination of benefits, in accordance with Plan and LIBERTY policies applicable to the respective Network Services Agreement.

9. Utilization Management, Quality Improvement, and Other Policies and Procedures.

9.1 Provider hereby authorizes LIBERTY to implement systems for utilization and case management (including but not limited to procedures for required prior authorization of specified services; prospective, concurrent and retrospective reviews; and LIBERTY's administration of specialty care referrals), quality assurance and improvement, credentialing, provider grievances, information maintenance, reporting and the like that shall be generally applicable to all LIBERTY Providers. Provider agrees to cooperate fully with such LIBERTY programs. Provider agrees to abide by the policies and procedures of such programs, and further agrees that (subject solely to appeal through the internal grievance mechanism adopted by LIBERTY) the decisions of LIBERTY shall be final.

9.1.1 Provider agrees to cooperate fully with such LIBERTY programs and any such programs of or otherwise mandated by the Plans.

9.1.2. LIBERTY shall apprise Provider of such programs and systems through initial and ongoing orientation and in-service programs. Provider agrees to abide by the protocols of such programs, and further agrees (subject solely to appeal through the internal grievance mechanism adopted by LIBERTY or Plan, as the case may be) to the decisions of LIBERTY and Plan, respectively, in connection therewith.

9.1.3. In addition to the foregoing LIBERTY programs, Provider shall adhere to each Plan's managed-care policies and protocols with respect to all services rendered to each such Plans respective Enrollees.

9.2 Provider acknowledges that all referrals for Covered Services, except only in the case of Emergencies, require prior authorization in accordance with the policies and procedures for the applicable Network Services Agreement. In the case of an Emergency, Provider shall use his/her best efforts to refer the Enrollee to a LIBERTY Provider, subject to Enrollee's own choice and clinical needs.

## 10 Term and Termination

- 10.1 The initial term of this Agreement shall be for two (2) years, commencing on the date hereof (the "Effective Date"). The term of this Agreement shall be automatically renewed from year-to-year thereafter, except as otherwise provided herein.
- 10.2 Except as specifically limited by applicable law or regulation in the jurisdiction where Provider renders services pursuant to this Agreement, this Agreement may be terminated by either party, upon ninety (90) days prior written notice.
- 10.3 If LIBERTY believes that Provider is in the material breach of any provision of this Agreement, LIBERTY may deliver to the Provider a written notice of proposed contract termination (the "Termination Notice"). Such Termination Notice shall set forth the reason for the proposed action. This Agreement shall terminate on the thirtieth (30<sup>th</sup>) day following Provider's confirmed receipt of the Termination Notice, unless Provider has cured the default to the reasonable satisfaction of LIBERTY. The foregoing notwithstanding, any laws or regulations of the applicable jurisdiction that provides the Provider with specific notice, appeal or other rights in connection with such termination and hereby incorporated into this Agreement by reference, and LIBERTY agrees to comply with all such obligations.
- 10.4 This Agreement shall be terminated or suspended, in the sole discretion of LIBERTY, immediately in the event that Provider's professional license is surrendered, revoked, suspended or otherwise limited; Provider fails to maintain all policies of insurance (in amount and type) required by this Agreement; Provider is terminated or sanctioned for cause by any government program (e.g., Medicare, Medicaid, etc.), hospital professional staff, professional organization, or accreditation body; or provider is convicted of (or pleads no contest to) a crime.
- 10.5 This Agreement may be terminated by Provider upon thirty (30) days prior written notice, if LIBERTY is in material breach of any provision of this Agreement. This Agreement shall terminate on the thirtieth (30<sup>th</sup>) day following LIBERTY's confirmed receipt of the Termination Notice. Such notice of intended termination shall set forth the facts underlying the claim of material breach. This Agreement shall be terminated unless the LIBERTY has cured the breach within the thirty-day period.
- 10.6 This Agreement shall automatically terminate in the event that the other party shall commence a voluntary case or other proceeding, a case or proceeding is commenced against such other party, or an order is entered against such other party, seeking liquidation, reorganization or other relief with respect to such other party, or its debts under any bankruptcy, insolvency or other similar law; or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official for it or any substantial part of its property; or seeing the appointment of or taking possession by any such official in any case or other proceeding commenced against such other party; or seeking a general assignment for the benefit of its creditors; and any such case or processing or order shall remain undismissed and unstayed for a period of sixty (60) days.
- 10.7 If LIBERTY has contracted with more than one Plan, Provider agrees that termination of this Agreement for any reason shall simultaneously terminate all contracts between all Plans and the Provider that were created by LIBERTY. Provider agrees that upon termination of this Agreement, LIBERTY may cause each Plan to terminate its respective agreement with Provider under any agreement that LIBERTY has arranged.
- 10.8 Upon LIBERTY or Plan insolvency or the termination of this Agreement for any reason, Provider shall appropriately cooperate in the transfer of all Enrollees under Provider's care to other successor providers that the Enrollees select. Under no circumstances shall Provider abandon any Enrollee in contravention of Provider's legal or ethical obligations. This paragraph shall survive the termination of this Agreement for any reason.

## 11 Dispute Resolution

- 11.1 The parties will use their best efforts to mutually resolve any conflicts arising hereunder, and shall in the first instance submit to any internal grievance system established by LIBERTY or the Plan.
- 11.2 In the case of a dispute concerning LIBERTY's credentialing of Provider, or a dispute arising out of LIBERTY's implementation of any requirements imposed upon LIBERTY or Provider by a Plan, the decision of the respective internal grievance system shall be final and binding on Provider. Provider shall not maintain any action against LIBERTY, or its shareholders, officers, directors, agents or committee members, to appeal such final decision or to seek financial or other compensation for any damages allegedly arising there from.
- 11.3 In the case of any other dispute arising hereunder that cannot be resolved through the process described in Paragraph 11.1, the dispute shall be resolved by final and binding arbitration before a single arbitrator of the AHLA Alternative Dispute Resolution Service (Washington, DC) in accordance with such service's arbitration rules. The arbitration shall be held in the county in which the Provider's principal offices are located. Such arbitration shall be the exclusive remedy hereunder. The costs of such arbitration shall be borne equally by the several parties involved in the process, each Party bearing its own costs of representation therein. The Arbitrator may, in his/her discretion, award costs and legal fees to the prevailing party. The decision of the Arbitrator may, but need not, be entered as a judgment in any jurisdiction, in accordance with the provisions of the laws thereof. The decision of the Arbitrator may, but need not, be entered as judgment in accordance with the provisions of the laws of New York. The parties agree that the Commissioner of Health of the State of New York shall receive notice of all matters sent to arbitration, shall receive copies of all arbitration decisions, and shall not be bound by any arbitration held pursuant to this Agreement.

12 Compliance with Applicable Laws

12.1 General. The Provider shall comply with all applicable federal, state and local laws, statutes, ordinances, orders and regulations relating to Covered Services provided under this Agreement and all applicable federal, state and local licensing, zoning, building, health, fire and safety regulations or ordinances, as well as standards and criteria of pertinent federal and state authorities. Unless otherwise provided by law, Provider is not relieved of compliance while formally contesting the authority to require such statutes, regulations, ordinances, standards or criteria. The Provider shall comply with all applicable federal and state laws relating to Provider's communications with LIBERTY in the performance of its obligations under this Agreement, including, without limitation, the federal privacy, security, transaction and code set standards established under Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and any comparable state laws.

12.2 Nondiscrimination.

(a) The Provider shall comply with all federal and state laws relating to nondiscrimination and equal employment opportunity, including without limitation, the Americans with Disabilities Acts of 1990, 42 U.S.C. §12101 *et seq.*; 47 U.S.C. §225; 47 U.S.C. §611; Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e; Title VI of the Civil Rights Act, 42 U.S.C. 2000d *et seq.*; the Civil Rights Act of 1991; Section 504 of the Rehabilitation Act, 29 U.S.C. Section 794 *et seq.*; the Age Discrimination in Employment Act of 1967, 29 U.S.C. §§621-634; regulations issued pursuant to those Acts; and the provisions of Executive Order 11246 dated September 26, 1965 entitled "Equal Employment Opportunity" as amended by Federal Executive Order 11375, as supplemented in the United States Department of Labor Regulations (41 C.F.R. Part 60-1 *et seq.*, Obligations of Contractors and Subcontractors).

(b) The Provider agrees and warrants that in the performance of this Agreement the Provider will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, mental retardation or physical disability, including, without limitation, blindness, unless it is shown by the Provider that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State. The Provider further agrees to take affirmative action to insure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, mental retardation, or physical disability, including, without limitation, blindness, unless it is shown by the Provider that such disability prevents performance of the work involved. The Provider agrees, in all solicitations or advertisements for employees placed by or on behalf of it, to state that it is an "affirmative action-equal opportunity employer" in accordance with all State and Federal regulations.

12.3 Americans with Disabilities Act. During the term of this Agreement, the Provider represents that it is familiar with the terms of the Americans with Disabilities Act of 1990, 42 U.S.C. §§12101-12189 and 12201-12213, 47 U.S.C. §§225 and 611, and that it is in compliance with the Act. The Provider warrants that it will hold LIBERTY and the State harmless from any liability which may be imposed upon LIBERTY or the State as a result of any failure of the Provider to be in compliance with the Act. Where applicable, the Provider agrees to abide by the provisions of Section 504 of the Federal Rehabilitation Act of 1973, as amended, 29 U.S.C. §794, regarding access to programs and facilities by people with disabilities.

12.4 Nonsegregated Facilities. The Provider certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments; and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Provider agrees that a breach of this certification is a violation of Equal Opportunity in Federal employment. In addition, the Provider must comply with the Federal Executive Order 11246 entitled "Equal Employment Opportunity" as amended by Executive Order 11375 and as supplemented in the United States Department of Labor Regulations, 41 C.F.R. Part 30. As used in this certification, the term "segregated facilities" includes any waiting rooms, restaurants and other eating areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated on the basis of race, color, religion or national origin, because of habit, local custom, national origin or otherwise.

12.5 Client Abuse and Neglect. The Provider shall comply with all reporting requirements relative to client abuse and neglect.

13 Miscellaneous.

13.1 Proprietary Information. Provider agrees that at no time during or after the term of this Agreement, except as may be required to carry out his or her duties and obligations hereunder, shall Provider, or his or her officers, directors, agents, or employees, without the prior written consent of LIBERTY, whether directly or indirectly, or for competitive or other purposes, disclose or cause to be disclosed to a third party or make or cause any unauthorized use of (i) any LIBERTY policy manuals or other proprietary information of LIBERTY or (ii) any term or condition of this Agreement, its exhibits, attachments or schedules. The obligations of Provider under this paragraph shall not apply to information: (i) which is a matter of public knowledge or becomes a matter of public knowledge after the Effective Date; or (ii) was lawfully obtained by Provider on a non-confidential basis other than in the course of performance under this Agreement. This paragraph is not intended to restrict any communication between Provider and Provider's patients that Provider deems to be necessary or appropriate.

13.2 Entire Agreement. This Agreement is a complete statement of the entire understanding of the parties with respect to the subject matter hereof, and supersedes any previous agreement between the parties that relates to the subject matter covered by this Agreement. However, whenever any provision of this Agreement is inconsistent with any provisions of a Network Services Agreement that is created under pursuant to Article 4 hereof, the provisions of the Network Services Agreement shall prevail with respect to any Covered Services rendered to Enrollees of such Plan.

- 13.3 Notice. Any notice required under this Agreement will be given in writing and sent, postage prepaid, by certified or registered mail, return receipt requested, or by prepaid overnight courier providing proof of delivery, and will be deemed received three (3) days after deposited in the U.S. mails or one (1) day after deposited with an overnight courier service, as the case may be. If the notice is to LIBERTY, it will be sent to:

LIBERTY DENTAL PLAN New York, LLC  
110 Washington Avenue  
North Haven, CT 06473  
ATTN: Dr Amir Neshat CEO

If to Provider, notice will be sent to the last business address provided by Provider to LIBERTY at least thirty (30) days prior to the giving of such notice. Any changes of either party's address will be designated by notice given as aforesaid.

- 13.4 Modifications. LIBERTY may revise this Agreement (i) to make any amendments required by law, regulation or any Plan, (ii) to implement policies, procedures or programs adopted by LIBERTY's governing body, (iii) to revise Attachment 4.1 hereto (i.e., add, change or make current the payment methodology applicable to any Plan), (iv) to make any other change deemed appropriate by LIBERTY, or (v) to make this Agreement consistent with any Network Services Agreement duly adopted pursuant to Article 4 hereof, any of which revisions shall take effect upon three (3) day's prior notice to Provider. Any other change shall only be effective upon the written and duly executed agreement of both parties. This paragraph shall be subject to applicable regulatory requirements, if any.
- 13.5 Assignment. This Agreement may not be assigned, delegated, subcontracted or transferred, in whole or in part, by Provider, and any of such purported assignment of this Agreement shall be void.
- 13.6 Governing Law; Construction. This Agreement shall be construed in accordance with the law of the State of New York without giving effect to its conflict of laws provisions; provided, however, that the provision of clinical services to Enrollees shall be governed by the law of the jurisdiction in which such services are rendered, as well as any applicable federal laws and regulations. The parties to this Agreement agree to comply with all applicable provisions of the Americans with Disability Act. In any interpretation of the provisions of this Agreement, there shall be no presumption that any provisions hereof shall be more strictly construed against the party who prepared the Agreement.
- 13.7 Cooperation. Each party agrees to cooperate fully with the other party and to take such further actions and execute such other documents or instruments as necessary or appropriate to implement this Agreement.
- 13.8 Medicaid Contract. Provider agrees that all services provided pursuant to this Agreement shall be in accordance with the terms of the applicable Medicaid Contract, if any, and the Plan's Grievance Procedure. In the event that any term or condition of the applicable Medicaid Contract is inconsistent with any provision of this Agreement or the IPA Agreement, the terms of such Medicaid contract shall control over the conflicting provision of this Agreement or the IPA agreement.
- 13.8 Independent Contractors. The parties are separate and independent entities and no provision contained in this Agreement is intended to create any relationship between them other than that of independent contracting entities. Neither of the parties, nor any of their respective representatives, shall be construed to be the agent, employer or representative of the other party.
- 13.9 Severability. If any provisions of this Agreement are deemed to be unlawful or otherwise unenforceable, it shall be automatically stricken from this Agreement, and this Agreement shall otherwise remain in full force and effect, to be construed as closely as possible under the circumstances to effectuate the original intent of the parties hereto.
- 13.10 No Third Party Beneficiary. Nothing contained in this Agreement shall confer on any party the position of third party beneficiary of the obligation assumed by either party to this Agreement and no such individual shall have the right to enforce any such obligation.
- 13.11 Benefits. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and assigns.
- 13.12 Gender and Number. The use of the masculine, feminine or neuter gender and the use of the singular and plural shall not be given the effect of any exclusion or limitation in the Agreement; and the use of the word "person" or "party" means and includes any individual, trust, corporation, partnership or other entity.
- 13.13 Waiver. The failure of either party to insist at any time upon the strict observance or performance of any of the provisions of this Agreement shall not impair the right of such party to enforce the Agreement in the event of any future breach of the Agreement.
- 13.14 Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute a single instrument.
- 13.15 Section Headings. The captions of the various sections of this Agreement have been included for reference purposes only and shall not affect the meaning or interpretation of the Agreement.

13.16 Interpretation. In the event of a conflict between any provision of any schedule or exhibit hereto, and any provision contained in this Agreement, the provisions of the schedule or exhibit shall control.

The Parties hereby indicated their agreement to and acceptance of this Agreement by affixing their respective signature in the spaces provided below.

LIBERTY DENTAL PLAN New York, LLC

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

It's: \_\_\_\_\_

PROVIDER: \_\_\_\_\_  
Print

\_\_\_\_\_  
Provider's Signature Date