



This Business Associate Agreement (“Agreement”) is entered into by and between _____ (“Business Associate”) and **LIBERTY Dental Plan Corporation** on its own behalf and on behalf of all of its present and future affiliates and subsidiaries (collectively, “LIBERTY”), effective as of the ____ of _____, 20__ (“Effective Date”).

RECITALS

WHEREAS, under the privacy regulations (“Privacy Regulations”) and security regulations (“Security Regulations”) promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as amended, and the Health Information Technology for Economic and Clinical Health Act of 2009 and the regulations promulgated thereunder, as amended, (collectively, “HITECH Act”), LIBERTY is required to enter into agreements with LIBERTY’s business associates to assure that LIBERTY’s business associates appropriately safeguard protected health information.

WHEREAS, Business Associate provides certain services (“Services”) for or on behalf of LIBERTY pursuant to the terms of an agreement between the parties (“Service Agreement”) and in connection with providing the Services, may access, create, maintain or transmit certain Protected Health Information belonging to current, former or prospective members of LIBERTY or of any other payor or plan for which LIBERTY provides administrative services (collectively, “LIBERTY PHI”).

WHEREAS, the parties desire to enter into this Agreement to protect the privacy and security of LIBERTY PHI in compliance with the Privacy Regulations, the Security Regulations and the HITECH Act.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Definitions.** All terms used in this Agreement and defined in the Privacy Regulations, Security Regulations or HITECH Act shall have the meaning ascribed to them in the Privacy Regulations, Security Regulations or HITECH Act, as applicable.
2. **Rights of Business Associate.** Business Associate is permitted to use and disclose LIBERTY PHI as necessary to perform Services for or on behalf of LIBERTY, subject to the terms of this Agreement.
3. **Obligations of Business Associate.** With regard to the use and disclosure of LIBERTY PHI, Business Associate agrees as follows:
 - (a) **Use and Disclosure of LIBERTY PHI.** In providing Services, Business Associate shall use and disclose LIBERTY PHI only as permitted by the terms of this Agreement or required by law and only to the extent that such use and disclosure would not violate the Privacy Regulations, Security Regulations or HITECH Act if performed by LIBERTY. Notwithstanding the foregoing, Business Associate may use and disclose LIBERTY PHI received in its capacity as a Business Associate if necessary for the proper management and administration of the Business Associate, provided that Business Associate may disclose LIBERTY PHI to third parties not employed by Business Associate only if (i) the disclosure is required by law, or (ii) Business Associate obtains reasonable assurances from the recipient that (A) the LIBERTY PHI will remain confidential and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to the recipient, and (B) the recipient will notify Business Associate of any breach of confidentiality of LIBERTY PHI. Upon prior written request of LIBERTY, Business Associate may use LIBERTY PHI to provide data aggregation services related to the healthcare operations of the LIBERTY. Notwithstanding anything herein to the contrary, Business Associate may not de-identify LIBERTY PHI unless Business Associate obtains the prior written consent of LIBERTY and then such de-identification must be consistent with the de-identification requirements of the Privacy

Regulations, and any use or disclosure of the de-identified information may only be for purposes approved in writing by LIBERTY.

- (b) **Safeguards.** Business Associate shall implement and at all times use all appropriate safeguards and shall comply with the Security Regulations with respect to electronic PHI to prevent any use or disclosure of LIBERTY PHI not authorized under this Agreement.
- (c) **Reporting.** Business Associate shall report in writing to Privacy Officer of LIBERTY, no later than one (1) day after the incident, any use or disclosure of LIBERTY PHI not permitted under the terms of this Agreement of which Business Associate becomes aware, including, without limitation, any Breach of Unsecured Protected Health Information and any Security Incident, it being agreed that unsuccessful attempts of unauthorized access, use, disclosure, modification or destruction of electronic PHI or unsuccessful attempts at interference with systems operations in an information system containing electronic PHI shall be reported by Business Associate to LIBERTY only upon LIBERTY's request for such information. With respect to any improper uses and disclosures of LIBERTY PHI that constitute or may constitute a Breach of Unsecured PHI, or a data breach under applicable state law, Business Associate's report shall include: (i) a brief description of the incident, including the date of the incident, the date of the discovery of the incident and identification of each patient whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, improperly accessed, acquired, used or disclosed, (ii) a description of the types of Unsecured PHI involved in the incident, (iii) any steps the patient should take to protect himself or herself from harm resulting from the incident, (iv) a brief description of what Business Associate is doing to investigate the incident, to mitigate the harm to the patient and to protect against future occurrences; and (v) any other relevant information. If it is determined by LIBERTY that the incident resulted in a Breach of Unsecured PHI or a data breach under applicable state law, Business Associate shall fully cooperate with LIBERTY and assist LIBERTY in taking all actions required to comply with the HITECH Act and any applicable state law. If LIBERTY requests in writing that Business Associate send notification letters to the affected individuals or any other party regarding such incident as required under the HITECH Act or applicable state law, Business Associate shall (A) promptly send such notification letters at Business Associate's sole expense, (B) comply with the HITECH Act and applicable state law with respect to the timing, content and other requirements pertaining to such letters, and (C) obtain LIBERTY's written approval of such letters prior to sending such letters to the affected individuals or any other party. Business Associate shall not provide any notification to any party regarding such incident without obtaining prior written consent of LIBERTY. Notwithstanding any provision of the Service Agreement, Business Associate shall promptly reimburse LIBERTY for all documented costs incurred by LIBERTY in connection with such incident, including, without limitation, the cost of providing required notifications, legal fees, fees related to credit monitoring services for the affected individuals, as well as for the amount of any monetary fines or penalties imposed on LIBERTY by the DHHS, any State Attorney General, any other governmental authority or a court of law in connection with such incident. Business Associate shall maintain documentation of such incident as required by the HITECH Act and any applicable state law, including all information that will need to be reported to DHHS or other governmental authorities in connection with such incident. The provisions of this Section shall survive termination of this Agreement for any reason.
- (d) **Subcontractors.** Business Associate shall enter into a written agreement with all subcontractors that create, receive, maintain or transmit LIBERTY PHI on behalf of Business Associate which agreement shall require such subcontractors to agree to the same restrictions and conditions that apply under this Agreement to Business Associate with respect to LIBERTY PHI. Business Associate shall ensure that all of its employees, contractors, subcontractors, and all other agents and representatives (collectively, "Representatives") comply with all of the restrictions and obligations set forth in this Agreement, and Business Associate acknowledges and agrees that it is solely responsible for all its Representatives' acts, omissions, and compliance with the terms of this Agreement.

- (e) **Mitigation.** Business Associate shall take any and all actions necessary to promptly mitigate any harmful effects known to Business Associate to result from an unauthorized use or disclosure of LIBERTY PHI by Business Associate or its subcontractors.
- (f) **Access to PHI.** To enable LIBERTY to respond to a patient's request to access the patient's PHI, Business Associate shall make the patient's PHI maintained by Business Associate in a Designated Record Set available to LIBERTY for inspection and copying within two (2) business days of receiving LIBERTY's request for access. If Business Associate uses or maintains an electronic health record with respect to LIBERTY PHI, Business Associate shall provide such PHI in electronic format, if requested, to enable LIBERTY to fulfill its obligations under the HITECH Act and the Privacy Regulations.
- (g) **Amendment of PHI.** To enable LIBERTY to respond to a patient's request to amend the patient's PHI, Business Associate shall make the requested PHI maintained by Business Associate in a Designated Record Set available to LIBERTY within two (2) business days of receiving a request from LIBERTY and incorporate any necessary amendment into the patient's PHI as directed by LIBERTY.
- (h) **Accounting of Disclosures.** To enable LIBERTY to respond to a patient's request for accounting of disclosures of the patient's PHI, Business Associate shall (i) document all disclosures of LIBERTY PHI by Business Associate which LIBERTY would be required to include in its response to an accounting request as required by the Privacy Regulations and the HITECH Act, and (ii) within two (2) business days of receiving a request for accounting from LIBERTY, make available to LIBERTY the following information concerning such disclosures: the date of disclosure; the name of the recipient and, if known, the recipient's address; a brief description of the PHI disclosed; and a brief statement of the purpose of the disclosure.
- (i) **Disclosures to Secretary of DHHS.** Business Associate shall (i) make all internal practices, books and records relating to the use and disclosure of LIBERTY PHI received or created by Business Associate on behalf of LIBERTY available to the Secretary of DHHS for the purpose of determining LIBERTY's or Business Associate's compliance with the Privacy Regulations or the Security Regulations, and (ii) provide LIBERTY with a copy of all documents made available to the Secretary of DHHS within two (2) days of providing such documents to DHHS.
- (j) **Minimum Necessary.** In using or disclosing LIBERTY PHI and requesting PHI from LIBERTY or other third parties, Business Associate shall use, disclose or request only the minimum amount of PHI necessary to accomplish the intended purpose of the use, disclosure or request.
- (k) **Compliance.** Business Associate shall (i) comply with the requirements of the Security Regulations, (ii) comply with the requirements of the Privacy Regulations and the HITECH Act applicable to Business Associate, (iii) maintain and transmit all LIBERTY PHI in a form which complies with DHHS issued guidance regarding securing PHI, and (iv) comply with applicable state data breach laws and other laws concerning use or disclosure of PHI, provided that any patient and other notifications required under such laws shall be made only consistent with the requirements specified in Section 3(c) above. To the extent Business Associate is to carry out a LIBERTY's obligation under the Privacy Regulations, Business Associate shall comply with the requirements of the Privacy Regulations that apply to LIBERTY in the performance of such obligation.
- (l) **Compliance With Electronic Transactions and Code Sets Standards.** If Business Associate conducts electronically any of the administrative or financial healthcare transactions identified as "standard transactions" under HIPAA for or on behalf of LIBERTY, Business Associate shall comply with all applicable requirements of the Electronic Transactions and Code Sets Standards promulgated under HIPAA when conducting such standard transactions for or on behalf of LIBERTY.
- (m) **Record Retention.** Business Associate shall retain all HIPAA and HITECH Act related documentation pertaining to LIBERTY PHI for at least six (6) years, as required by the Privacy

Regulations and other applicable laws. The provisions of this Section shall survive termination of this Agreement for any reason.

4. **Obligations of LIBERTY.** With respect to the use and disclosure of LIBERTY PHI by Business Associate, LIBERTY shall:

- (a) Notify Business Associate of any limitation(s) in its notice of privacy practices, to the extent that such limitation(s) would impact Business Associate's use or disclosure of LIBERTY PHI,
- (b) Inform Business Associate of any changes in, or revocation of, a patient's authorization to use or disclose the patient's PHI if such action would impact Business Associate's use or disclosure of LIBERTY PHI;
- (c) Notify Business Associate of any restrictions on the use and/or disclosure of LIBERTY PHI to which LIBERTY has agreed if such restriction would impact Business Associate's use or disclosure of LIBERTY PHI; and
- (d) Not request Business Associate to use or disclose LIBERTY PHI in any manner that would not be permissible under the Privacy Regulations if done by LIBERTY, subject to the provisions of Section 3(a) of this Agreement.

5. **Term and Termination.**

- (a) **Term.** Unless earlier terminated pursuant to this Agreement, this Agreement shall be effective on the Effective Date and shall continue in effect until Business Associate no longer provides services to LIBERTY involving access, creation, maintenance or transmission of LIBERTY PHI.
- (b) **Termination by LIBERTY.** Notwithstanding any contrary provisions regarding termination of the Service Agreement contained in the Service Agreement, if LIBERTY determines that Business Associate breached any provision of this Agreement, LIBERTY shall have the right, without incurring liability for damages or penalties as a result of termination of the Service Agreement, to either (i) immediately terminate this Agreement and the Service Agreement, without providing Business Associate an opportunity to cure the breach, upon providing written notice of termination of this Agreement and the Service Agreement to Business Associate, or (ii) provide Business Associate with a written notice of breach and terminate this Agreement and the Service Agreement if Business Associate does not cure the breach to the satisfaction of LIBERTY within fifteen (15) calendar days of receiving such notice.
- (c) **Termination by Business Associate.** If Business Associate determines, after consultation with LIBERTY, that LIBERTY breached any obligation of LIBERTY under Section 4 of this Agreement, Business Associate shall provide to LIBERTY a written notice of the breach which notice shall include a detailed explanation of the breach. If LIBERTY does not cure such breach within fifteen (15) calendar days of receiving such notice, Business Associate shall have the right to terminate this Agreement and the Service Agreement upon providing written notice of termination of this Agreement and the Service Agreement to LIBERTY.
- (d) **Effect of Termination.** Upon termination of this Agreement, Business Associate shall immediately return to LIBERTY or destroy, if requested by LIBERTY, LIBERTY PHI possessed by Business Associate or its subcontractors and retain no copies or back-up records of LIBERTY PHI in any form or medium. If such return or destruction is infeasible, Business Associate shall promptly notify LIBERTY in writing of such information and the reasons making the return or destruction of LIBERTY PHI infeasible. To the extent, upon termination of this Agreement, Business Associate does not return to LIBERTY or destroy LIBERTY PHI as required herein, all of Business Associate's obligations set forth in this Agreement related to LIBERTY PHI shall survive termination of the Agreement and Business Associate shall limit any further use and disclosure of LIBERTY PHI to the purposes that make the return or destruction of LIBERTY PHI infeasible. The provisions of this Section shall survive termination of this Agreement for any reason.

6. **Indemnification.** Notwithstanding any limitation of liability or any other provision of the Service Agreement, Business Associate shall indemnify, defend and hold harmless LIBERTY and its affiliates, shareholders, directors, officers, members, employees and agents against any and all losses, liabilities, damages, judgments, suits, penalties, fines, claims and demands of any kind, awards and fees, including, without limitation, attorney fees, arising out of or in any way related to any act or omission by Business Associate or its Representatives, a breach of PHI received by Business Associate under this Agreement, or a breach of this Agreement by Business Associate or its Representatives. The provisions of this Section shall survive termination of this Agreement for any reason.
7. **Independent Contractors.** LIBERTY and Business Associate shall be independent contractors and nothing in this Agreement is intended nor shall be construed to create an agency, partnership, employer-employee, or joint venture relationship between them.
8. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto relating to the subject matter hereof and supersedes any prior or contemporaneous verbal or written agreements, communications and representations relating to the subject matter hereof. Notwithstanding any provision in the Service Agreement indicating that it is the sole agreement governing the relationship between the parties, including a provision that the Service Agreement shall constitute the entire agreement between the parties thereof, the terms of this Agreement shall be effective and shall govern the relationship between the parties with respect to the subject matter hereof. In the event of any inconsistency between the terms of this Agreement and the terms of the Service Agreement, the terms of this Agreement shall prevail with respect to the subject matter hereof notwithstanding any contrary provision in the Service Agreement.
9. **Amendment/Assignment.** This Agreement may be modified or amended only upon mutual written consent of the parties. Notwithstanding the foregoing or any contrary provisions regarding amendment contained in the Service Agreement, the parties agree that this Agreement shall be automatically amended upon written notice of the amendment by LIBERTY to Business Associate, if LIBERTY determines that such amendment becomes required in order for LIBERTY to comply with the Privacy Regulations, Security Regulations, the HITECH Act or any state law. Business Associate may not assign its rights and obligations under this Agreement without the prior written consent of LIBERTY. LIBERTY may assign its rights and obligations under this Agreement upon providing notice of assignment to Business Associate.
10. **Notices.** Any notices to be given hereunder shall be deemed effectively given when personally delivered, received by electronic means (including facsimile, pdf or e-mail) or overnight courier, or three (3) calendar days after being deposited in the United States mail, with postage prepaid thereon, certified or registered mail, return receipt requested, addressed as follows:

If to Business Associate:

 PRINT NAME

 ADDRESS (LINE1)

 ADDRESS (LINE 2)

 CITY STATE ZIP

If to LIBERTY:

LIBERTY Dental Plan
 Attn: Executive Vice President
 [With a copy to: General Counsel]
 340 Commerce, Suite 100
 Irvine, California 92602

- 11. **No Third Party Beneficiaries.** The terms of this Agreement are not intended and shall not be construed to confer upon any person other than the parties hereto any rights, remedies, obligations or liabilities whatsoever.
- 12. **Waiver.** A waiver by either party of a breach or failure to perform under this Agreement shall not constitute a waiver of any subsequent breach or failure.
- 13. **Counterparts/Electronic Signatures.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same document. A copy of the Agreement bearing a signature transmitted via facsimile or other electronic means shall be deemed to be an original.
- 14. **Governing Law.** This Agreement shall be governed by, construed, interpreted and enforced under the laws of the state of Nevada.
- 15. **Service Agreement.** In the event the parties have not entered into a Service Agreement, this Agreement shall be interpreted as though the Agreement does not contain any references to a Service Agreement.
- 16. **Scope.** This Agreement applies to all present and future agreements and relationships, whether written, oral or implied, between LIBERTY and Business Associate, pursuant to which LIBERTY provides LIBERTY PHI to Business Associate in any form or medium whatsoever. This Agreement shall automatically be incorporated into all subsequent agreements between LIBERTY and Business Associate involving the use or disclosure of LIBERTY PHI, whether or not expressly referenced therein.

IN WITNESS WHEREOF, each party has caused this Business Associate Agreement to be duly executed in its name and on its behalf effective as of the Effective Date.

 (“**Business Associate**”)

LIBERTY Dental Plan Corporation
 (“**LIBERTY**”)

Signature: _____
 Name: _____
 Title: _____

Signature: _____
 Name: _____
 Title: _____