

# LIBERTY DENTAL PLAN Producer Agreement

THIS PRODUCER AGREEMENT (“Agreement”) is entered into by and between LIBERTY Dental Plan Corporation (collectively with any affiliates, subsidiaries and parent corporations, and hereafter referred to as “LIBERTY”), and \_\_\_\_\_ (“Producer”), effective as of the date specified by LIBERTY on the signature page (the “Effective Date”). LIBERTY and Producer may each be referred to individually as a “Party” and collectively as the “Parties.”

WHEREAS, LIBERTY offers a variety of dental insurance products; and

WHEREAS, Producer desires to enter into this Agreement, whereby, among other things, Producer shall sell and market LIBERTY’s dental insurance products to individuals and groups in the jurisdictions listed in attached **Exhibit A** (the “States”), which is hereby incorporated into the terms of this Agreement by reference.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

## **ARTICLE 1**

### **Appointment of Producer; Relationship Between Parties**

1.1 **Appointment.** Subject to the terms and conditions contained in this Agreement, LIBERTY hereby appoints Producer to act on its behalf and represent it to solicit, negotiate and sell to individuals and groups dental insurance products issued by LIBERTY in the States (collectively, “Products”). Producer is only authorized to solicit, negotiate and sell, and this Agreement only applies to, the Products. Producer’s authority under this Agreement is non-exclusive.

1.2 **Independent Contractor.** Representative (as defined in Section 3.3 below) and Producer are each an independent contractor with respect to LIBERTY, and nothing contained herein shall create or be construed to create the relationship of employer and employee between LIBERTY and Producer or between LIBERTY and any Representative. Producer shall be responsible for the reporting and payment of any and all taxes related to Producer’s receipt of compensation and performance of services under this Agreement.

## **ARTICLE 2**

### **Producer Obligations**

2.1 **Grants of Authority.**

(a) Producer is authorized to solicit and produce applications for Products in person.

(b) Producer is not authorized to collect the initial payment for benefit contracts and policies issued to individuals and groups (collectively, the “Insureds”) upon applications for Products solicited by Producer. Any such payments received by Producer shall be held by Producer in a fiduciary capacity for LIBERTY and shall not be used by Producer in any way. In the event that Producer does receive such payments, Producer shall remit any and all payments or premiums to LIBERTY promptly, but in no event later than five (5) calendar days from the date of receipt.

(c) Producer is authorized to deliver benefit contracts and policies of coverage to Insureds upon applications for Products solicited by Producer and to service contracts that it has issued.

(d) Producer shall be responsible for obtaining complete and accurate enrollment applications for Products and shall be responsible for communicating with the applicant throughout the application process on behalf of LIBERTY.

(e) Upon enrollment approval, either Producer or LIBERTY will communicate any modified offers to the Insured.

2.2 Limitations on Authority. Producer shall have no authority to do any of the following:

(a) Commit to a premium of more than the maximum premium set by LIBERTY;

(b) Make, alter, modify, change, discharge, waive any forfeiture of, or waive performance of, any of the terms, rates or conditions of LIBERTY's applications, benefit contracts or policies, or waive or extend the time for payment of premiums or other monies due to LIBERTY;

(c) Make representations not strictly in accordance with the terms and provisions of the benefit contracts and policies issued by LIBERTY or accept any premium past due;

(d) Make a settlement or agreement in writing or otherwise regarding the settlement of any claim or claims being made against LIBERTY, unless specifically authorized in writing by LIBERTY to do so;

(e) Incur any expense or obligation of any kind or nature in the name of or on behalf of LIBERTY without first obtaining the express written authority of LIBERTY in each case;

(f) Bind or obligate LIBERTY, or subject LIBERTY to any liability, except as expressly provided herein;

(g) Act as a spokesperson or public representative for LIBERTY in any proceeding before or any inquiry made by any governmental or regulatory authority having jurisdiction;

(h) Receive any money for LIBERTY except as may be expressly provided for herein;

(i) Withhold or convert to Producer's own use or for the benefit of others any monies, securities, policies or receipts belonging to LIBERTY or fail to submit promptly to LIBERTY any applications for Products, or accept payments other than in current funds of the United States;

(j) Endorse or present for collection any check, draft or other instrument made payable to LIBERTY

(k) Excuse any indebtedness owed to LIBERTY; or

(l) Do or perform any other act or thing not expressly authorized herein.

2.3 Acknowledgement of LIBERTY's Rights. Producer acknowledges and agrees that, consistent with applicable Laws (as defined below): (a) LIBERTY shall have sole discretion to (i) discontinue and withdraw from distribution any Product in the State, (ii) modify or amend any benefit contract or policy, (iii) establish, modify or change the premium rate charged by LIBERTY for any Product, (iv) determine all terms, conditions and limitations of any benefit contract or policy, (v) modify or change the terms and conditions pursuant to which any Product is authorized to be sold, (vi) decline any application for coverage, (vii) refuse to renew any coverage, (viii) withdraw any policy or contract form, (ix) cease doing business in the State, or (x) to return directly to Insureds or applicants for insurance ("Applicants") any payments submitted to LIBERTY without liability to Producer, and (b) LIBERTY may provide quotes or issue coverage with different premium levels or

amounts to different agents, individuals, or entities for the same policy based on the information provided to LIBERTY, Producer's status with LIBERTY and any other factors LIBERTY deems relevant.

2.4 Compliance with Laws. Producer shall conduct all activities authorized under this Agreement in compliance with all applicable federal, state and local laws, rules, regulations, orders, directives and ordinances including, but not limited to, laws and regulations governing insurance companies (collectively, "Laws"), the policies and procedures of LIBERTY and any Product- or State-specific addenda attached hereto as **Exhibit 2.4** and incorporated herein by this reference. All addenda included in Exhibit 2.4 shall be considered part of this Agreement and shall be effective as of the Effective Date. To the extent that any provision within an addendum conflicts with any provision within this Agreement, the provision of the addendum shall control with respect to the Producer's services in the State.

2.5 Support for Litigation or Administrative Proceedings. Producer and Representatives shall be made available to LIBERTY, at no cost to LIBERTY, to testify as witnesses, or otherwise, in the event of demands, claims, litigation or administrative proceedings being made against LIBERTY, its directors, officers, employees, or agents that involve Producer or any Representative.

2.6 Complaints. Producer shall promptly report to LIBERTY any complaints or inquiries, by any governmental agency or otherwise, of which it becomes aware of regarding Producer, Representatives or LIBERTY. Producer shall cooperate with LIBERTY in the investigation of any such complaints and in the implementation of any corrective action plans developed to respond to any such complaints. LIBERTY shall be solely responsible for responding to all complaints or inquiries received by Producer related to Products.

2.7 Training. Producer and Representatives shall complete all applicable training and certifications required by LIBERTY and by applicable Laws to perform Producer's duties under this Agreement prior to undertaking any actions related to soliciting, negotiating or selling Products offered by or through LIBERTY. LIBERTY shall not be required to compensate Producer, and Producer shall not be able to accept compensation, until all required trainings and certifications are completed by Producer and its Representatives and certification thereof is received by LIBERTY.

2.8 Fiduciary. Producer agrees that in performing under this Agreement, Producer shall be acting in a fiduciary capacity to LIBERTY. Producer shall act in the best interest of LIBERTY and shall not permit other interests, activities or responsibilities to interfere with Producer's faithful performance under this Agreement.

2.9 Violent Crime Control and Law Enforcement Act. By executing this Agreement, Producer represents and warrants that neither it nor any Representative is prevented from engaging in the business of insurance under the Violent Crime Control and Law Enforcement Act (18 U.S.C. § 1033 et seq.) or any other applicable Law and that Producer and Representatives are in compliance with such Act. The Violent Crime Control and Law Enforcement Act makes it a crime for individuals convicted of certain felonies and offenses to willfully engage in the business of insurance. LIBERTY recommends that Producer contact the Department of Insurance in the state or county Producer is licensed if Producer has any concerns about its ability to engage in the business of insurance. Producer shall notify LIBERTY in writing within thirty (30) days if Producer or any Representative is convicted of a felony at any time in which this Agreement is effective.

2.10 Insurance. Producer shall obtain and maintain errors and omissions insurance coverage with minimum amounts of \$1,000,000 per incident and \$1,000,000 in aggregate, or such higher amounts as may be required by applicable Law or as determined by LIBERTY, from a carrier satisfactory to LIBERTY which insurance shall include coverage for the costs and fees associated with any security incidents or data breach by Producer or its Representatives. Producer shall provide to LIBERTY, upon request, certificates of insurance evidencing such

coverage. Producer shall provide LIBERTY with notice as soon as reasonably practicable, but in no event more than ten (10) days after, any modification, termination or cancellation of such coverage.

### **ARTICLE 3** **Producer Licensing**

3.1 **Licensing.** Producer represents that it is appropriately licensed and certified to solicit, negotiate and sell Products in the States. Producer represents that the attached **Exhibit A** contains a full and accurate list of the licenses that it holds in the States and that are required for it to solicit, negotiate and sell Products under this Agreement. Producer agrees that it shall remain appropriately licensed throughout the duration of this Agreement. Upon commencement of this Agreement and at any time upon the request of LIBERTY, Producer shall provide to LIBERTY true and correct copies of Producer's licenses and certifications necessary to perform services under this Agreement.

3.2 **Expenses; Taxes; Fees.** Producer shall obtain and bear the expense for all licenses and certifications necessary to engage in the duties required hereunder. Producer shall pay all state and local fees, taxes (other than premium taxes), appointment fees and other charges required.

3.3 **Representatives.** To the extent Producer is an entity rather than an individual, Producer may further employ or otherwise engage individuals to assist Producer in the proper performance of its duties hereunder (individually, a "Representative," and collectively, the "Representatives"). Each Representative shall be appropriately licensed and certified in one or more of the States to the extent such licensure is necessary for Representative's duties and obligations. All expenses and costs of such Representatives shall be borne solely by Producer. Producer shall cause the Representatives to comply with all the duties, obligations and restrictions imposed on Producer as set forth herein including, but not limited to, the duties, obligations and restrictions of Producer as set forth in Article 2.

3.4 **Notices.** Producer shall notify LIBERTY immediately in writing (a) of any expiration, termination, suspension or other action by the State Department of Insurance or any other governmental agency affecting Producer's and/or a Representative's license or appointment, and (b) upon receiving notice of any misdemeanor or felony charges or any actions taken against Producer and/or a Representative including, but not limited to, convictions by any governmental authority for commission of any act involving fraud, dishonesty, breach of trust, theft, and misappropriation of money or breach of any fiduciary duty.

### **ARTICLE 4** **Compensation**

LIBERTY shall compensate Producer in accordance the commission fee schedule and terms and conditions set forth in **Exhibit 4**, attached hereto and incorporated herein by this reference ("Commission Fee Schedule").

### **ARTICLE 5** **Term and Termination**

5.1 **Term.** Unless earlier terminated in accordance with this Article 5, this Agreement shall be for an initial term of one (1) year ("Initial Term"). Thereafter, this Agreement shall automatically renew for successive one year periods unless sooner terminated (each a "Renewal Term"). The Initial Term and any and all Renewal Terms herein referred to as the "Term."

5.2 **Termination without cause.** This Agreement may be terminated without cause by either party upon at least ninety (90) days' prior written notice to the other party.

5.3 Termination with cause. This Agreement may be terminated for cause by LIBERTY upon written notice to Producer in the event of occurrence of any of the following:

(a) Commission of a fraudulent, illegal, or dishonest act or material breach of this Agreement by Producer or material misrepresentation or omission in the Agreement by Producer;

(b) Violation of any provision hereunder regarding making available books, accounts, and records of the Producer for audit and review;

(c) Violation of the laws, regulations, or rules of any jurisdiction by Producer in which Producer operates, or of any governmental authority exercising jurisdiction over Producer.

(d) Producer's insolvency, bankruptcy, or reorganization, or the institution of such or similar proceedings by or against Producer, which proceeding, if filed against Producer, has not been dismissed within sixty (60) days of such filing;

(e) Producer's criminal conduct (including being charged with a felony) or exclusion from the Medicare Program or any other federal or state health benefit program;

(f) Producer's license being suspended, revoked or not renewed in any state in which Producer is performing services under this Agreement on behalf of LIBERTY; or

(g) Upon LIBERTY's determination, in its sole discretion, that Producer has acted in a manner that is materially detrimental to LIBERTY.

5.4 Regulatory Compliance.

(a) In the event of termination by LIBERTY without cause pursuant to Section 5.2: (i) LIBERTY shall also provide prior written notice of termination to the Department of Insurance or other regulatory agency responsible for regulation of insurance producers in the states or other jurisdictions listed in Exhibit A (the "Producer Regulatory Agencies"), to the extent required by the law of those states or jurisdictions; and (ii) Producer may not solicit, sell or otherwise initiate any new business for LIBERTY during the notice period.

(b) In the event of termination by LIBERTY pursuant to Section 5.3, LIBERTY shall also provide notification of the reason for termination to the Producer Regulatory Agencies as required by applicable law.

## **ARTICLE 6** **Confidential Information and HIPAA**

6.1 Confidential Information. Producer shall maintain the confidentiality of all information that it or its Representatives receives from LIBERTY or from Applicants or Insureds as part of its activities under this Agreement in accordance with the terms of the Non-Disclosure Agreement between the Parties, which is attached hereto as **Exhibit 6.1** and incorporated herein by this reference.

6.2 HIPAA. Producer acknowledges and agrees that under this Agreement Producer (a) shall have access to individually identifiable health information (as defined by HIPAA) in connection with its provision of services under this Agreement, and (b) is a "business associate" of LIBERTY as defined in the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA"). Accordingly, Producer shall comply with the obligations of a business associate as required by HIPAA, all other applicable privacy and security Laws and the terms set forth in the Business Associate Exhibit, attached hereto as **Exhibit 6.2** and incorporated herein by this reference.

**ARTICLE 7**  
**Advertising, Forms, Other Materials**

No training, circulars, printed forms, booklets, pamphlets, advertising or other printed material, including without limitation, web pages and internet sites, about LIBERTY, the Products and/or this Agreement ("Collateral Material") shall be used, issued or circulated by Producer, unless approved in writing and specifically authorized by LIBERTY. LIBERTY shall approve and authorize, disapprove or advise Producer of required changes within a reasonable time after Producer submits Collateral Material to LIBERTY. If approved, Producer may not alter the Collateral Material in any way except as approved in advance in writing by LIBERTY. LIBERTY may, in its sole discretion, change or discontinue any Collateral Material, in which case LIBERTY shall give Producer notice consistent with such action or requirement.

**ARTICLE 8**  
**Miscellaneous Provisions**

8.1 Governing Law. The parties hereto understand and agree that this Agreement shall be governed by the laws of the State of California, both as to interpretation and performance.

8.2 Indemnity. Producer shall defend, hold harmless and indemnify LIBERTY from and against any and all claims, liabilities, losses, damages, costs, and other expenses (including court costs and attorneys' fees) that LIBERTY may suffer based on any claim, demand, action, suit or cause of action against LIBERTY by reason of any wrongful or negligent act or omission by Producer or Representatives or a breach of this Agreement by Producer or Representatives.

8.3 Notices. Any notice required or permitted to be given hereunder by one party to the other shall be in writing and shall be deemed to have been given at the time when personally delivered, received by certified mail, return receipt requested, or received by overnight courier addressed as set forth hereinafter.

8.4 Assignments. No assignment, transfer or delegation of the duties, responsibilities, obligations or interests herein of either of the parties, whether by means of a sale, assignment, bulk reinsurance or otherwise, shall be valid unless authorized in writing by the other party. Notwithstanding the foregoing, LIBERTY may assign this Agreement to any of its affiliates, including wholly owned subsidiaries. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, guardians, administrators, legal representatives, successors and assigns.

8.5 Amendment. This Agreement may be amended at any time by written notice from a duly authorized officer of LIBERTY to Producer, or by a written agreement signed by authorized representatives of Producer and LIBERTY.

8.6 Remedies and Waiver. All remedies of any Party are cumulative. Failure of the parties hereto to insist upon strict compliance with any of the terms, provisions or conditions of this Agreement, or any part of the Agreement or the obligations of the other party hereunder shall not constitute a waiver of such terms, provisions, and conditions or obligations, nor shall the failure of either of the parties to exercise any right, power, remedy or privilege contained herein or hereafter existing under controlling law be construed to be a waiver of such right, power, remedy or privilege or to preclude further exercise thereof.

8.7 Severability and Validity. In the event that any court of competent jurisdiction declares invalid any term or provision of this Agreement, such invalidity shall have no effect on the other terms or provisions hereof, which shall remain valid and binding and in full force and effect, and to that end the terms and provisions of this Agreement shall be considered severable.

8.8 Exhibits. All Exhibits referred to in this Agreement, including any Addenda listed thereunder, are an integral part of this Agreement and are incorporated herein for all purposes.

8.9 Entire Agreement. This Agreement (including all Exhibits and Addenda attached hereto) is the final expression of, and contains the entire agreement between, the parties with respect to the subject matter hereof and supersedes all prior understandings with respect thereto.

8.10 Counterparts. For the convenience of the parties, this Agreement may be executed in any number of counterparts, each such executed counterpart shall be deemed an original and all such counterparts together shall constitute one and the same instrument. Facsimile or electronic mail transmission of any signed original counterpart transmission shall be deemed the same as the delivery of an original.

8.11 Books and Records. Producer shall maintain complete and separate records for LIBERTY for a period of at least ten (10) years of all transactions pertaining to applications submitted to and accepted by LIBERTY, and any other documents as may be required by the State Department of Insurance or other governmental agency. Any and all records described above or as may otherwise relate to Producer's activities in connection with LIBERTY business shall be accessible and available within five (5) days of request to representatives of LIBERTY, and to federal, state and local governmental authorities having jurisdiction over LIBERTY, or their respective designees, each of whom may audit such records at any time upon reasonable prior notice while this Agreement is in effect or within ten (10) years after termination thereof.

8.12 Nondiscrimination. Producer shall not discriminate against an individual on the basis of race, color, national origin, sex, age, or disability.

8.13 Survival. The provisions in the following Sections shall survive the expiration or termination of this Agreement: 1.2, 2.2, 2.3, 2.5, 2.6, 3.2, 6.1, 6.2, 7, 8.2, 8.4, 8.6, 8.11.

IN WITNESS WHEREOF, this Agreement has been executed as of the day and year first written above.

**LIBERTY Dental Plan Corporation ("LIBERTY")**

**Producer**

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

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

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

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

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

Address: \_\_\_\_\_

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

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

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

SSN TIN: \_\_\_\_\_



**EXHIBIT A**

**PRODUCER JURISDICTIONS AND LICENSURE**

**Please provide license numbers for the state(s) the producer intends to market LIBERTY's products.**

<u>State or Jurisdiction</u>	<u>License Number</u>	<u>Name of Licensed Entity</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

<u>State or Jurisdiction</u>	<u>LIBERTY Broker ID #</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

**EXHIBIT 2.4**

**PRODUCT- AND STATE-SPECIFIC ADDENDA**

1. Addendum #1: Requirements to Participate in FFM in Missouri.
2. Addendum #2: Missouri Producer Addendum

**ADDENDUM #1**  
**REQUIREMENTS TO PARTICIPATE IN FFM IN MISSOURI**

This Addendum (the "Addendum") is intended to supplement the Producer Agreement entered into by and between LIBERTY and Producer. This Addendum sets forth the requirements governing the relationship between the Parties with respect to the provision of soliciting, negotiating and selling Qualified Health Plans (as defined below). All provisions of the Producer Agreement and the Addendum are cumulative. All provisions shall be given effect when possible.

1. For purposes of this Exhibit, the following definitions apply:
  - a. Federally-Facilitated Marketplace ("FFM"): An organized marketplace for health insurance plans operated by the U.S. Department of Health and Human Services ("HHS") that includes both the Federally-Facilitated Individual Marketplace (as defined below), as well as small group market employers and employees in the Small Business Health Options Program Marketplace (as defined below).
  - b. Qualified Health Plan ("QHP"): A health insurance plan that meets certain requirements and, on the basis of meeting those requirements, is certified to be sold through the FFM.
  - c. Federally-Facilitated Individual Marketplace ("Individual-FFM"): A type of FFM through which qualified individuals obtain individual health coverage in QHPs.
  - d. Qualified Individual: An individual who has been determined eligible to enroll through the Exchange in a QHP in the Individual-FFM.
  - e. Small Business Health Options Program ("SHOP") Marketplace: A type of FFM through which small employers of 50 or fewer full-time equivalent employees elect to offer their full-time employees health coverage in QHPs.
2. As of the Effective Date, Missouri does not operate a state-based health benefit exchange and instead participates in the FFM.
3. Notwithstanding anything in the Agreement to the contrary, the services performed by Producer and Representative in connection with QHPs shall be limited to:
  - a. Comparing, selecting, and enrolling individuals, employers, and employees in QHPs through the Individual-FFM or SHOP Marketplace;
  - b. Assisting qualified individuals in completing the eligibility verification and enrollment applications, as well as applying for premium tax credits and cost-sharing reductions for QHPs;
  - c. Assisting employers in determining their eligibility for SHOP coverage and/or small tax credits; and
  - d. Communicating with qualified individuals after they have enrolled in a QHP through the FFMs to the extent that such communications comply with applicable state laws and regulations.

4. In advance of assisting qualified individuals to enroll in QHPs through the FFM or performing other services in concert with this Addendum, Producer and Representatives shall complete the registration process for the FFM and SHOP as set forth in 45 CFR § 155.220 and §155.260, as amended. Specifically, Producer and Representative shall register on the Marketplace Learning Management System, complete both the required and strongly encouraged training and execute all applicable agreements with HHS including, without limitation, the Individual Marketplace General Agreement, the Privacy and Security Agreements, and the SHOP Marketplace Agreement (collectively, "Exchange Agreements"). Producer must provide LIBERTY with a copy of its FFM UserID and training completion certificates, which may be required to be updated on a yearly basis. In the event that Producer registered with the FFM in a previous plan year, the Producer must complete the FFM registration renewal process.
5. In connection with performing services in concert with this Addendum, Producer and Representative shall also:
  - a. Comply with applicable state privacy and security standards, as well as the federal privacy and security standards required by 45 C.F.R. §155.260. Producer must continue to maintain the confidentiality of personally identifiable information after the termination of Producer's Agreements with HHS in accordance with the requirements under 45 C.F.R. §155.260.
  - b. Provide LIBERTY with Producer's National Producer Number from the National Insurance Producer Registry.
  - c. Comply with applicable state marketing laws and regulations. Producer shall refrain from utilizing any marketing methods that discourage individuals with significant health needs from enrolling in QHPs. LIBERTY reserves the right to monitor marketing materials used by Producer that specifically relate to LIBERTY QHPs to ensure that they comply with LIBERTY's agreement with the FFM.
  - d. Comply with the standards of conduct and the requirements for enrolling qualified individuals through the Exchange or Producer's website as set forth in 45 CFR § 155.220.
  - e. Refer any individuals that have been identified by the Marketplace as being eligible for Medicaid or Children's Health Insurance Program to the appropriate state agency.
  - f. Comply with all applicable laws governing the Individual-FFM and SHOP Marketplace and State Laws related to producers including, without limitation, applicable State Laws related to confidentiality and conflicts of interests.
6. Producer acknowledges and agrees that commission payments offered by LIBERTY under this Agreement shall provide the same amount of compensation for QHPs sold on the FFM as offered for plans sold outside of the FFM.
7. Producer shall notify LIBERTY, in writing, at least thirty (30) days in advance of Producer's termination of any of its Exchange Agreements with HHS. Producer shall notify LIBERTY, in writing, within three (3) calendar days if any of Producer's Exchange Agreements with HHS is terminated by HHS.
8. Producer shall notify LIBERTY, in writing, within three (3) calendar days if any of Producer's Exchange Agreements with HHS is suspended.

**ADDENDUM #2**  
**MISSOURI PRODUCER ADDENDUM**

**THIS MISSOURI PRODUCER ADDENDUM** (the "Addendum") supplements the Producer Agreement (the "Agreement") entered into by and between LIBERTY Dental Plan of Missouri, Inc. ("LIBERTY") and the legal entity or individual qualified and licensed as an Insurance Producer in the State of Missouri, as defined in the Agreement and as specified on the signature page of this Addendum ("Producer") (together, the "Parties"). Except as expressly modified by this Addendum, the Agreement remains in full force and effect and all capitalized terms in this Addendum (which are not otherwise defined) shall have the meaning ascribed to them in the Agreement. This Addendum shall become effective as of the Effective Date of the Agreement. All provisions of the Agreement and the Addendum are cumulative.

1. Definitions.

- a. "Appointment" means the first instance of any of the following actions by Producer or LIBERTY:
  - i. Distribution to an applicant for insurance ("Applicant") of any insurance application form or other document related to a LIBERTY insurance product, which form instructs the applicant to submit a premium or other fee to Producer as part of his or her application;
  - ii. Acceptance by Producer of any premium or other fee from an Applicant on behalf of LIBERTY or a LIBERTY-administered insurance product ("Product");
  - iii. Acceptance by Producer of any insurance application or underwriting paperwork on behalf of LIBERTY or a Product;
  - iv. Execution of the Agreement by Producer and LIBERTY; or
  - v. Any other grant of authority, written or oral, implicit or explicit, by LIBERTY to Producer that empowers Producer to write any binding insurance contract on behalf of LIBERTY or a Product.
- b. "Incidental Fees" means fees charged to an Applicant or an Insured in order to cover the cost of providing a service or activity that is incidental to the writing or issuing of an insurance policy and that are not otherwise covered by the receipt of premium from an Insured or an Applicant.

2. Appointment and Termination.

- a. Appointment by LIBERTY of Producer as a designated insurance producer includes appointment of all Representatives of Producer, as that term is defined in Section 3.3 of the Agreement, to act on behalf of LIBERTY and its Products in all lines in which such Representatives are licensed and for which Producer has been appointed by LIBERTY, including Representatives of Producer who become licensed insurance producers during Producer's appointment by LIBERTY.
- b. LIBERTY's appointment of Producer as a designated insurance producer shall automatically terminate upon termination of the Agreement for any reason. The appointment of any Representative under the terms of Section 2(a) of this Addendum shall automatically terminate upon (i) that Representative's termination or resignation from Producer for any reason; (ii) the

nonrenewal, suspension, revocation, or surrender of that Representative's license as an insurance producer in the state of Missouri; or (iii) termination of the Agreement for any reason.

- c. For all Products that qualify as prepaid dental contracts under State law, Producer represents and warrants that all Representatives responsible for solicitation and production of such Products will be licensed accident and health insurance producers in the State of Missouri.

3. Limitation on Compensation.

- a. Producer and LIBERTY both acknowledge that LIBERTY shall not pay, and Producer shall have no right to, any commissions, fees, or other forms of compensation other than what is explicitly included in the Fee Schedule attached the Agreement as Exhibit 4.
- b. Producer agrees that it shall not, in connection with the negotiation, procurement, issuance, delivery or transfer any insurance contract made or negotiated in Missouri, directly or indirectly, charge or receive from an Applicant or an Insured any amount that is greater than the stated premium for such contract.
- c. Producer acknowledges that LIBERTY shall remain solely responsible for payment of claims under all insurance contracts written by Producer, and that no part of Producer's compensation will be dependent upon LIBERTY's claims experience on those contracts unless otherwise specified in the Agreement.
- d. All compensation received by Producer or retained by Producer from a payment made by an Applicant or an Insured shall be documented in a Missouri Producer Service Agreement in accordance with Mo. Rev. Stat. § 375.116(3) and Mo. Code Regs. tit. 20 § 700-1.100, which shall be executed both by Producer and by the Applicant or Insured. Copies of all such agreements shall be maintained by Producer and made available to LIBERTY as described in the terms of the Agreement.

4. Incidental Fees. Incidental Fees charged to an Applicant or Insured shall be limited to a charge for premium installments, late payments, policy reinstatements or other similar services as described in Mo. Code Regs. tit. 20 § 700-1.150(3). Producer shall not charge any Incidental Fee for a service that it has not provided to the Insured or Applicant. Any fee charged by the Producer for permitting Insureds or Applicants to make a premium payment by credit card shall be limited to the amount charged to the Producer by the Insured's or Applicant's credit card company. All Incidental Fees charged by the LIBERTY or Producer shall be disclosed in writing to the Insured or the Applicant at or before the time the fee is charged, and Producer shall post a conspicuous notice of all Incidental Fees that it charges at every location from which it conducts business in Missouri.

5. Commissions Payable Upon Termination of License. In any situation in which Producer's license is terminated before it has received from LIBERTY the full amount of compensation earned on policies written during Producer's period of licensure and Appointment, LIBERTY shall pay out the remaining amount of compensation earned while Producer was licensed under the terms of the Agreement.

## EXHIBIT 4

### COMMISSION FEE SCHEDULE

During the Term of this Agreement and provided that Producer is in compliance with the terms of this Agreement, as compensation for Producer's services under this Agreement, LIBERTY shall pay to Producer a commission based on of premiums collected by LIBERTY for Products [sold by Producer] after the Effective Date of this Agreement, including sales made on applications dated and received by LIBERTY prior to the end of the Initial or any Renewal Term of this Agreement but for which benefit contracts or policies are not issued until after the effective date of termination of this Agreement.

Such commission shall be equal to:

- Eight percent (8%) of premiums collected by LIBERTY for Products sold by Producer through a Health Insurance Marketplace that is operated by U.S. Department of Health and Human Services ("HHS") or by one of the States ("Exchange Products"); or
- For Products sold by Producer other than Exchange Products ("Commercial Products"), the greater of ten percent (10%) of premiums collected by LIBERTY or an amount that is negotiated between Producer and LIBERTY and reflected in a writing ("the Proposal").

No commissions shall be paid by or on behalf of LIBERTY unless Producer is designated in writing by the applicable Insured as the Producer of Record. LIBERTY's obligation to pay commissions under this Agreement on premiums produced in connection with a particular Insured shall terminate in the event Producer is replaced by another producer as Producer of Record for that Insured.

Any commissions accruing hereunder shall be payable in the month following the month of receipt of premiums by LIBERTY. In the event of termination of coverage by LIBERTY or the Insured, Producer shall refund paid commissions to LIBERTY in the same proportion that the LIBERTY refunds the Insured's premiums to the terminated Insured. If any benefit contract or policy issued by LIBERTY and sold by Producer is terminated by either LIBERTY or the Insured, all rights to commissions that might otherwise have accrued hereunder on such benefit contract or policy shall cease. All expenses incurred by Producer in performing the services under this Agreement shall be borne solely by the Producer and Producer shall not charge or otherwise collect a fee from an Insured for such services.

Notwithstanding anything in the Agreement to the contrary, no commissions shall be payable under this Agreement (a) on any premium charges waived under the terms of any benefit contract or policy for any reason, (b) on any interest on due and unpaid premium charges, or (c) if LIBERTY does not extend coverage under a Product. Producer shall look solely to LIBERTY for the payment of any and all commissions owed to Producer under this Agreement.

Notwithstanding anything in the Agreement to the contrary, LIBERTY may modify or replace this Commission Fee Schedule upon thirty (30) days' prior written notice to Producer, and such modified or replacement schedule shall apply to all Products sold that become effective following the effective date of such modification or replacement.

## EXHIBIT 6.1

### NON-DISCLOSURE AGREEMENT

**THIS NONDISCLOSURE AGREEMENT** (the "Agreement") is made and entered into by and between LIBERTY Dental Plan Corporation (collectively with any affiliates, subsidiaries and parent corporations, "LIBERTY") and \_\_\_\_\_ ("Contractor") (each individually a "Party" and together, the "Parties"), effective as of the earlier of \_\_\_\_\_, or the date Contractor first received Confidential Information or Third Party Information (the "Effective Date").

#### RECITALS

**WHEREAS**, in the course of the provision of services by Contractor to LIBERTY as may be set forth in a separate agreement between LIBERTY and Contractor (the "Services") or in connection with the exploration or negotiation of services to be provided by Contractor to LIBERTY (the "Prospective Services"), certain confidential and proprietary information belonging to LIBERTY (or to third parties to whom LIBERTY has confidentiality obligations) may be disclosed to, accessible to or learned by Contractor;

**WHEREAS**, the Parties desire to establish the terms under which Contractor shall maintain all such confidential and proprietary information in strictest confidence;

**NOW, THEREFORE**, in consideration of LIBERTY's agreement to provide confidential and proprietary information to Contractor as needed, in consideration of the covenants and agreements contained herein, and for all other good and valuable consideration had and received, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:.

#### **1. Confidential Information.**

a) *Definition.* The term "Confidential Information" is defined as any LIBERTY data, trade secrets, know-how, inventions (whether or not patentable), formulas, processes, methods, techniques, algorithms, technology, designs, sketches, drawings, flowcharts, outlines, models, notes, reports, research, correspondence, plans, strategies, analyses, documents, databases, records and any other confidential and/or proprietary information regardless of form, which is/are: disclosed or otherwise conveyed to Contractor; accessed by, or accessible to, Contractor; or learned, generated or created by Contractor, whether alone or jointly with others. Such information constitutes Confidential Information whether such information is conveyed to, or obtained by, Contractor in written, electronic, oral or any other form, including by inspection of tangible objects. Confidential Information includes but is not limited to the following types of LIBERTY information:

- i. *Financial Information:* Unpublished financial statements and reports, budgets, forecasts, and all other unpublished financial information and records;
- ii. *Marketing and Business Information:* Provider lists and information, member/enrollee lists and information, client/customer lists and information, vendor lists and information, fee schedules, pricing lists and data, underwriting data and information, compensation and reimbursement models, business plans and strategies, and all other information related to LIBERTY's marketing, operations, business or business development;



- iii. *Corporate Information:* Unpublished information and records related to the corporate structure and governance of LIBERTY, to LIBERTY investors and shareholders, and to LIBERTY's licenses and certifications;
  - iv. *Technical Information:* Technological and security design and infrastructure, hardware configuration, source code, and all other information related to LIBERTY computer systems, technology and security; and
  - v. *Employee Information:* All employee and independent Contractor lists and directories, employee manuals and agreements, employment policies, and personnel files;
- b) *Exclusions.* Notwithstanding Section 1(a) above, Confidential Information does not include:
- i. any information that is publicly known and generally available through no act or omission by Contractor or by any individual or entity under confidentiality obligations toward LIBERTY; or
  - ii. any information that, as demonstrated by reasonable proof, was developed by Contractor independent of, and without using, Confidential Information.

**2. Third Party Information.** Contractor understands and acknowledges that LIBERTY has received, and in the future will receive, from third parties confidential and/or proprietary information belonging to those third parties ("Third Party Information"), subject to a duty on LIBERTY to maintain the confidentiality of Third Party Information and use such information for only certain limited purposes. All obligations of Contractor set forth in this Agreement with respect to Confidential Information apply with equal force with respect to Third Party Information, as further described below.

**3. Term and Termination.** This Agreement commences on the Effective Date and will continue until terminated by LIBERTY (the "Term"). LIBERTY may terminate this Agreement at any time with or without cause and without any particular amount of notice. The Parties acknowledge and agree that all of Contractor's confidentiality obligations under this Agreement shall survive termination of this Agreement and shall continue in full force and effect.

**4. Contractor's Representatives.** If Contractor is an individual, Contractor shall limit access to Confidential Information and Third Party Information to himself/herself, except as otherwise expressly permitted under this Agreement. If Contractor is an entity, Contractor shall limit access to Confidential Information and Third Party Information to only those of its officers, directors, and employees (collectively, "Representatives") for which such access is absolutely necessary for Contractor to perform any Services or to explore the Prospective Services, except as otherwise expressly permitted under this Agreement. Contractor shall inform all Representatives with access to Confidential Information or Third Party Information of the confidential nature of such information and shall direct Representatives to comply with all of the terms and conditions of this Agreement. In addition, Contractor shall obtain from each such Representative a signed, written nondisclosure agreement in which the Representative agrees to be bound by all of the confidentiality obligations set forth in this Agreement; Contractor shall provide a copy of any such Representative agreement to LIBERTY. Contractor shall ensure Representatives comply fully with all of the terms and conditions of this Agreement, and Contractor is and will be responsible for any violation of this Agreement by a Representative.

**5. Use and Disclosure.** Contractor shall maintain Confidential Information and Third Party Information in strictest confidence. In addition, Contractor has the following obligations:

a) *Use.* Contractor shall not use or copy (or authorize or permit the use or copying of) any Confidential Information or Third Party Information, whether in part or in whole, except as necessary to perform any Services or explore the Prospective Services, unless (and only to the extent) expressly authorized in writing by LIBERTY.

b) *Disclosure.* Contractor shall not disclose (or authorize or permit the disclosure of) any Confidential Information or Third Party Information, whether in part or in whole, except as necessary to perform any Services or explore the Prospective Services, unless (and only to the extent) expressly authorized in writing by LIBERTY. If such disclosure is necessary to perform any Services or explore the Prospective Services, Contractor shall disclose Confidential Information or Third Party Information only to those Representatives or LIBERTY employees who have a need to know such information.

c) *Extent of Use or Disclosure.* In the event Contractor's use, copying or disclosure is authorized by Sections 5(a) or 5(b) above, Contractor shall restrict his/her/its use, copying or disclosure to the minimum extent necessary to perform any Services or explore the Prospective Services.

d) *Continuing Obligations.* Following the Term of this Agreement, Contractor shall not in any way use or disclose (or authorize or permit the use or disclosure of) any Confidential Information or Third Party Information, whether in part or in whole, unless (and only to the extent) expressly authorized in writing by LIBERTY. If such post-termination use and/or disclosure is expressly authorized in writing by LIBERTY, Contractor shall continue to be bound by all of the confidentiality obligations of this Agreement (including but not limited to the provisions of Sections 5(a)-(c) above) with respect to such authorized use and/or disclosure.

**6. Required Disclosure.** In the event that Contractor is requested or required by subpoena, by court order, or by other legal or governmental process or inquiry to disclose any Confidential Information or Third Party Information, Contractor shall immediately provide notice of such request(s) to LIBERTY and shall use reasonable efforts to resist disclosure until an appropriate protective order may be sought by, or a waiver of compliance with the terms of this Agreement has been granted by, LIBERTY (or by the applicable third party to which such Third Party Information, if any, belongs). In the absence of a protective order or receipt of a waiver hereunder, if Contractor is nonetheless, in the written opinion of his/her/its counsel, legally required to disclose Confidential Information, then Contractor may disclose such information, provided that LIBERTY has been given a reasonable opportunity to review the text of such disclosure before it is made and that disclosure is limited to only the Confidential Information specifically required to be disclosed.

**7. Compliance; Security.** Contractor shall comply fully with all applicable federal and state laws and regulations, including but not limited to the Health Insurance Portability and Accountability Act (HIPAA). In addition, Contractor shall comply fully with any separate Business Associate Agreement (BAA) to be executed between LIBERTY and Contractor, as well as all security standards and requirements as may be issued from time to time by LIBERTY. To ensure compliance (including but not limited to compliance with HIPAA, this Agreement, the BAA and any subsequent standards or policies as may be issued from time to time by LIBERTY), Contractor shall, anytime upon LIBERTY's request, submit to an audit by LIBERTY (or a duly authorized independent auditor of LIBERTY) during business hours and upon reasonable notice

**8. No Ownership or Other Rights Granted.** All right, title and interest in and to Confidential Information is, and will remain, the property of LIBERTY. Similarly, all right, title and interest in and to Third Party Information is, and will remain, the property of that third party to which such Third Party Information belongs. Nothing in this Agreement may be construed to grant Contractor any right or license to the Confidential Information, to the Third Party Information or under any related patent, patent application, trademark, copyright or other

intellectual property of LIBERTY. LIBERTY shall remain the sole and exclusive owner of its registered and unregistered trademarks (including but not limited to LIBERTY's company name), service marks and logos (collectively, "Marks"), and Contractor shall not acquire an ownership interest in, any intellectual property right in, or any license to any of LIBERTY's Marks. Contractor shall not, without prior written consent from an authorized officer of LIBERTY, (i) use, reproduce or display LIBERTY's Marks for any purpose whatsoever; or (ii) alter or modify LIBERTY's Marks. In addition, Contractor agrees and acknowledges that all Work Product (as defined herein) is, and shall be considered, Works Made for Hire (as such are defined under the U.S. copyright laws) and that LIBERTY is, and will be, the author and sole owner and proprietor of such Work Product, including any copyrights, trademarks, patents, or other intellectual property rights pertaining thereto. For purposes of this Agreement, "Work Product" means any information or material produced or generated by Contractor in performing services for LIBERTY, including but not limited to all deliverables and all intermediate and partial versions thereof, and all documentation, analyses, flowcharts, notes, reports, outlines, models, formulas, processes, methods, algorithms, ideas, inventions, know-how or techniques. If it is determined that any Work Product does not qualify as a Work Made for Hire, Contractor hereby assigns (or for any future right, title or interest acquired during the Term, agrees to assign) to Company all of Contractor's right, title, and interest, including all rights of copyright, trademark, patent, and other intellectual property rights to or in such Work Product.

**9. Return of Confidential Information.** Upon termination of this Agreement or upon request by LIBERTY at any time, Contractor shall return to LIBERTY all Confidential Information, Third Party Information and LIBERTY property in his/her/its possession, including without limitation: all originals, copies, reproductions, translations, summaries, notes, derivations of or any other form of Confidential Information or Third Party Information whatsoever, without retaining any copy or duplicates thereof and without recreating or delivering to any third party such Confidential Information or Third Party Information. At such time, Contractor shall also promptly delete or destroy any and all written, printed, electronic or other material or information derived from Confidential Information or Third Party Information.

**10. Prior Inventions.** If, in the course of performing any Services, Contractor incorporates a Prior Invention (as defined herein) into a LIBERTY product, process, method or other work, Contractor shall at that time grant to LIBERTY a nonexclusive, royalty-free, irrevocable, perpetual, worldwide license (with rights to sublicense through multiple tiers of sub-licensees) to make, have made, modify, use and sell such Prior Invention. For purposes of this Agreement, "Prior Invention" is defined as any prior invention, discovery, improvement or work of authorship that Contractor conceived, developed or reduced to practice prior to the commencement of Contractor's engagement by LIBERTY and which Contractor considers to be Contractor's property or the property of a third party. Notwithstanding the foregoing, Contractor shall not incorporate, or permit to be incorporated, Prior Inventions in any LIBERTY products, processes, methods or works without LIBERTY's prior written consent.

**11. Contractor Warranties.** Contractor makes the following material representations and warranties to LIBERTY in order to induce LIBERTY to enter into this Agreement, and Contractor acknowledges that LIBERTY has reasonably relied upon each of these representations and warranties and that but for each and every one of these representations and warranties, LIBERTY would not enter into this Agreement.

a) *Qualifications.* Contractor represents and warrants that he/she/it has the qualifications, licenses (if any are required by applicable laws or regulations or are otherwise necessary to perform Services) and ability to perform any Services to be performed by Contractor in a professional manner, without the advice, control or supervision of LIBERTY.

b) *No Conflicting Commitments.* Contractor represents and warrants that he/she/it is free to enter into this Agreement and is not bound by any employment agreement, services agreement, nondisclosure or confidentiality agreement, non-competition agreement or any other agreement, document or obligation that may infringe upon or limit Contractor's ability to perform, or in any manner prevent Contractor from performing, any of his/her/its obligations under this Agreement or that may result in liability to LIBERTY in any manner, action, suit or other proceeding concerning Contractor's employment with a current or former employer (or the termination thereof), Contractor's engagement by any other company (or the termination thereof), or any other relationship between Contractor and another party. Contractor represents and warrants that there are no other agreements, relationships or commitments to any other person or entity that conflict with Contractor's obligations to LIBERTY under this Agreement.

c) *No Improper Use or Disclosure.* Contractor represents and warrants that he/she/it does not possess any property or materials containing confidential and/or proprietary information belonging to any current or former employer of Contractor, to any other company which engages or has engaged Contractor or to any third party with which LIBERTY does not already have an agreement authorizing LIBERTY to possess and use such information ("Other Party"), unless Contractor's possession and use of such Other Party property or materials is expressly permitted by an agreement between Contractor and that Other Party. Notwithstanding the above, Contractor shall not disclose to LIBERTY, use in the performance of any Services, use on behalf of LIBERTY or induce LIBERTY to use any confidential and/or proprietary information belonging to any Other Party. In addition, Contractor represents and warrants that he/she/it has the right to disclose and use all ideas, processes, techniques, property and other information, if any, that he/she/it will disclose or has disclosed to LIBERTY, or will use in the performance of any Services, without liability to any third party.

d) *Rights and Licensing.* Contractor represents and warrants that he/she/it has not granted any rights or licenses to any works, technology or other intellectual property that would or may conflict with LIBERTY's rights or Contractor's obligations under this Agreement. Contractor further represents and warrants that he/she/it will not infringe upon or misappropriate any copyright, patent, trade secret or other property right of any third party in the course of performing any Services.

**12. Indemnification.** Contractor shall indemnify, defend and hold harmless LIBERTY (and LIBERTY's officers, directors, shareholders, managers, members and employees) from and against any and all losses, costs, damages, obligations, liabilities, awards and expenses (including, without limitation: defense costs; reasonable attorney's fees; court costs; all damages, including but not limited to compensatory, consequential and punitive damages; penalties and fines; and interest), which arise out of or are in any way related to: (i) any act or omission by Contractor or its Representatives; (ii) Contractor's, or its Representatives', breach of this Agreement; or (iii) the representations, warranties, covenants, agreements, obligations, acknowledgments or assignments of Contractor or its Representatives as set forth in this Agreement.

**13. No Representations by LIBERTY.** Contractor understands and agrees that LIBERTY makes no representations or warranties, express or implied, with respect to any of the Confidential Information or Third Party Information or with respect to the accuracy, completeness or fitness for a particular purpose of any such information. Contractor further understands and agrees that LIBERTY will have no liability to Contractor or Contractor's Representatives resulting from the use of or reliance upon any Confidential Information or Third Party Information by Contractor or its Representatives.

**14. Remedies.** Contractor acknowledges and agrees that a breach of his/her/its obligations under this Agreement will cause LIBERTY (or its clients, partners or vendors) irreparable harm for which monetary damages would not provide an adequate remedy. In the event of a violation of this Agreement, Contractor

acknowledges and agrees that, in addition to all other remedies available at equity or at law, LIBERTY is entitled to seek and obtain injunctive (temporary or permanent) relief to the extent a court of competent jurisdiction finds such relief appropriate under the circumstances, and Contractor hereby consents to the grant of such relief. Contractor shall waive any requirement for the securing or posting of any bond in connection with such remedy.

## 15. Miscellaneous.

a) *Applicable Law; Venue.* This Agreement and the rights and obligations of the parties hereto shall be interpreted, construed and enforced in accordance with the laws of the State of California, without reference to conflict of laws principles. Any litigation under this Agreement shall be filed and pursued in a court of proper venue in Orange County, California.

b) *Waiver.* No failure or delay by LIBERTY or any representative of LIBERTY in exercising any right, power, or privilege hereunder shall operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof of the exercise of any other right, power, or privilege hereunder. In addition, the waiver by LIBERTY of a breach of any provision of this Agreement by Contractor shall not operate as or be construed as a waiver of any subsequent breach by Contractor.

c) *Entire Agreement.* This Agreement (including all attachments and exhibits attached hereto) is the final expression of, and contains the entire agreement between, the parties with respect to the subject matter hereof and supersedes all prior communications or understandings with respect thereto.

d) *Severability.* If any provision, term, covenant or condition contained in this Agreement is held by any court of competent jurisdiction to be invalid, unenforceable or void, such invalidity or unenforceability shall not affect the validity and enforceability of the remainder of the Agreement and all other provisions, terms, covenants and conditions contained in the Agreement shall remain in full force and effect. In addition, any invalid, unenforceable, or void provision, term, covenant or condition of this Agreement shall be replaced with a valid and enforceable one that will achieve, to the extent possible, the economic, business, and other purposes of the invalid, unenforceable, or void provision, term, covenant or condition.

e) *Amendments.* This Agreement may not be amended, modified, changed, or supplemented in any way except by written instrument signed by an authorized signatory of each Party.

f) *Agreement Assignment.* This Agreement may not be assigned by Contractor except by written instrument signed by an authorized signatory of each Party. Notwithstanding the foregoing, this Agreement shall be binding upon, inure to the benefit of and be enforceable by the successors, assigns, heirs, executors and administrators of the Parties.

g) *Survival.* All of Parties' continuing rights and obligations under this Agreement, including the following provisions, survive termination of this Agreement: Sections 3, 4, 5(d), 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15.

h) *Headings.* The headings of the sections of this Agreement are for convenience only and may not in any way affect the meaning or interpretation of this Agreement.

i) *Signatory Authority.* Each of the Parties, by signing below, represents and warrants to the other Party that he/she/it has the authority to bind the named person or entity to this Agreement.

j) *Counterparts*. This Agreement may be executed in several counterparts (including by facsimile or by an electronic scan delivered by electronic mail) that together shall constitute a single agreement.

**IN WITNESS WHEREOF**, this Agreement has been executed as of the Effective Date:

\_\_\_\_\_ (“**CONTRACTOR**”):

\_\_\_\_\_  
*Authorized Signature*

\_\_\_\_\_  
*Print Name*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Date*

**LIBERTY DENTAL PLAN CORPORATION (“LIBERTY”):**

\_\_\_\_\_  
*Authorized Signature*

John J. Carvelli

\_\_\_\_\_  
*Print Name*

Executive Vice President

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Date*

## EXHIBIT 6.2

### **BUSINESS ASSOCIATE AGREEMENT**

**THIS BUSINESS ASSOCIATE AGREEMENT** (the "Agreement" or the "BAA") is made and entered into by and between and any of the Liberty Dental entities listed on Appendix B, attached hereto, which currently, or in the future, have a contract with Business Associate (collectively "LIBERTY" and individually, each a "LIBERTY ENTITY") and \_\_\_\_\_ (collectively with any affiliates, subsidiaries and parent corporations, "Business Associate") (each individually a "Party" and together, the "Parties"), effective as of the earlier of May 20, 2016 or the date Business Associate first received (or will have received) from LIBERTY any information covered by the terms and conditions of this Agreement (the "Effective Date").

#### RECITALS

**WHEREAS**, the purpose of this BAA is to comply with (1) the "business associate" requirements of the privacy regulations, the "business associate" requirements of the security regulations and the electronic data transaction and code sets requirements promulgated by the United States Department of Health and Human Services ("DHHS") pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") ("Privacy Regulations," "Security Regulations," and "EDI Standards," respectively), (2) the requirements of subtitle D of the Health Information Technology for Economic and Clinical Health Act and any regulations thereunder promulgated by DHHS ("HITECH Act"); and (3) the requirements of any applicable state privacy and security laws.

**WHEREAS**, Business Associate is providing, or may provide, certain services (collectively, along with any exploration and/or negotiation of prospective services, the "Services") from time to time for or on behalf of LIBERTY that may involve the use, disclosure and/or creation of or exposure and/or accessibility to certain Protected Health Information belonging to LIBERTY, to other health plans with whom LIBERTY contracts, or to any entity for whom LIBERTY itself serves as a business associate (collectively, "LIBERTY PHI");

**WHEREAS**, the Parties desire to enter into this BAA to prescribe the manner in which LIBERTY PHI shall be handled by Business Associate, including but not limited to Business Associate's employees, contractors and agents;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein, and for all other good and valuable consideration had and received, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**1. Definitions; General Terms.** Capitalized terms used in this BAA shall have the meaning ascribed to them in this BAA and in Appendix A, attached hereto and incorporated herein by this reference, provided that if any definition in this BAA or in Appendix A conflicts with the respective definition of such term in HIPAA, the Privacy Regulations, Security Regulations or the HITECH Act, the definition in HIPAA, the Privacy Regulations, Security Regulations or the HITECH Act shall control.

**2. Permitted Uses and Disclosures of LIBERTY PHI.** Except as otherwise limited in this BAA, Business Associate may use and disclose LIBERTY PHI as necessary to perform the Services for, or on behalf of, LIBERTY as specified in this BAA, provided that such use or disclosure would not constitute a violation of the Privacy Regulations or the HITECH Act if so used or disclosed by LIBERTY. Notwithstanding any of the provisions herein, unless specifically authorized by the applicable Liberty Entity, Business Associate is not permitted to

disclose information received from, or created for, one Liberty Entity to another Liberty Entity. Unless otherwise limited herein, Business Associate may:

- a. Use LIBERTY PHI only as necessary for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate;
- b. Disclose LIBERTY PHI to third parties not employed by Business Associate as necessary for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate if (i) the disclosure is required by law, or (ii) Business Associate obtains reasonable assurances from the recipient of LIBERTY PHI that: (A) LIBERTY PHI shall be held confidential and shall 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 shall notify Business Associate of any instances of which it is aware of a breach of confidentiality of LIBERTY PHI; and

Upon the written request of LIBERTY, provide data aggregation services related to the health care operations of LIBERTY.

**3. Obligations of Business Associate.** With regard to the use and disclosure of LIBERTY PHI, Business Associate hereby agrees as follows:

- a. *Use and Disclosure.* Business Associate shall neither use nor disclose LIBERTY PHI other than as permitted or required by the BAA or as required by law. Without limiting the generality of the foregoing, Business Associate shall not develop, request, use or disclose any list, description or other grouping of individuals using, or derived from, PHI received from or on behalf of LIBERTY, except as explicitly permitted in writing by LIBERTY and as permitted by the BAA.
- b. *Safeguards.* Business Associate shall implement and use all appropriate safeguards to protect the privacy of LIBERTY PHI and to prevent any use or disclosure of LIBERTY PHI other than as permitted by the terms of this BAA. Business Associate shall implement, maintain, and use an information security program that contains administrative, technical, and physical safeguards that, in light of Business Associate's size and complexity, allow Business Associate to achieve the safeguarding objectives detailed under HIPAA, the HITECH Act, and accompanying regulations and those prescribed by the Health Information Trust Alliance ("HITRUST") and the National Institute of Standards and Technology ("NIST"). Business Associate shall:
  - i. Maintain comprehensive written privacy policies and procedures; such policies shall include technology policies and procedures that ensure the protection of LIBERTY PHI on hardware and software utilized by Business Associate and shall identify an officer of the organization who is responsible for enforcement of privacy and security requirements;
  - ii. Ensure that any subcontractor or other third party with which Business Associate contracts, or upon which Business Associate relies, for the provision of services to LIBERTY also maintains a framework for compliance with HIPAA and the HITECH Act that is consistent with HITRUST and NIST standards and guidelines;
  - iii. Implement a contingency plan for responding to emergencies and/or disruptions in Business Associate's business to ensure that services provided to LIBERTY are not interrupted and that the integrity and safety of all PHI is maintained;



- iv. Establish and implement a data backup program that ensures Business Associate's ability to provide LIBERTY with retrievable, exact copies of PHI, upon LIBERTY's request;
- v. Maintain and exercise an audit plan to respond to internal and external threats and violations that is consistent with HITRUST and NIST standards and guidelines, and documents the scope, procedures, and frequency of audits;
- vi. Ensure software it develops on behalf of LIBERTY, including code, adheres to the System Development Life Cycle (SDLC) methodology;
- vii. Maintain all PHI received or created in paper form in a secure location with restricted access;
- viii. Utilize encryption for the electronic transmission of PHI to LIBERTY and/or to any third party.

Business Associate shall be solely responsible for all costs and expenses related to implementing and maintaining the aforementioned safeguards. Business Associate shall promptly provide LIBERTY with information concerning these safeguards and/or other information security practices as they pertain to the protection of LIBERTY PHI, as LIBERTY may from time to time request.

c. *Reporting.* Business Associate shall report to the Privacy Officer of LIBERTY, within one (1) business day of becoming aware of, any use or disclosure of LIBERTY PHI not permitted under the terms of this BAA and the remedial action taken or proposed to be taken with respect to such use or disclosure.

d. *Representatives.*

- i. Representatives' Compliance. Business Associate shall ensure all of its officers, directors, employees, contractors, subcontractors, and agents (collectively, Representatives") comply fully with all of the terms and conditions of this Agreement, and Business Associate is, and shall, be solely responsible for any violation of this Agreement by a Representative. In addition, Business Associate shall enter into written agreements with all agents and subcontractors to whom Business Associate provides LIBERTY PHI requiring the agents and subcontractors to agree to the same restrictions, requirements, and conditions that apply under this BAA to Business Associate with respect to LIBERTY PHI, including but not limited to the administrative, physical, and technical safeguards required under this BAA.
- ii. Training and Disciplinary Action. Business Associate shall provide appropriate training to its workforce (including both employees and contractors) regarding such workers' obligations to protect and safeguard PHI in accordance with the terms of this BAA; such training shall include training on security best practices and incident response procedures and shall be provided to each member of the workforce on at least an annual basis. In addition, Business Associate shall take appropriate disciplinary action against any member of its workforce who uses or discloses PHI in violation of, or who otherwise fails to comply with, this BAA.

e. *Mitigation.* Business Associate shall take any and all actions necessary to promptly mitigate any harmful effect known to Business Associate resulting from an unauthorized use or disclosure of LIBERTY PHI by Business Associate or any of its Representatives. In addition, Business Associate shall

reimburse LIBERTY for any expenses LIBERTY incurs to mitigate a Breach or unauthorized use or disclosure of LIBERTY PHI by Business Associate or any of its Representatives.

f. *Access to LIBERTY PHI.* To enable LIBERTY to comply with an individual's request to access the individual's PHI maintained in a Designated Record Set, Business Associate shall make the requested PHI maintained by Business Associate in a Designated Record Set available to LIBERTY for inspection and copying within five (5) business days of receipt of LIBERTY's request for access to enable LIBERTY to fulfill its obligations under the Privacy Regulations. If Business Associate uses or maintains an Electronic Health Record with respect to PHI of an individual, Business Associate shall provide such information in electronic format to enable LIBERTY to fulfill its obligations under the HITECH Act including, without limitation, 42 U.S.C. § 17935(e).

g. *Amendment of LIBERTY PHI.* To enable LIBERTY to respond to an individual's request for amendment of the individual's PHI maintained in a Designated Record Set, Business Associate shall make the requested LIBERTY PHI maintained by Business Associate in a Designated Record Set available to LIBERTY, within ten (10) business days of receiving a request from LIBERTY, for amendment and incorporate any such amendment to enable LIBERTY to fulfill its obligations under the Privacy Regulations.

h. *Accounting of Disclosures.* To enable LIBERTY to respond to an individual's request for an accounting of disclosures of the individual's PHI, Business Associate shall (i) document all disclosures of LIBERTY PHI by Business Associate as would be required for LIBERTY to respond to an accounting request in accordance with 45 CFR § 164.528 and, when effective, 42 U.S.C. § 17935(c) of the HITECH Act and any regulations promulgated thereunder, and (ii) within three (3) business days of receiving a request for an accounting from LIBERTY, make available to LIBERTY the following information concerning such disclosures: (A) the date of disclosure, (B) the name of the recipient and, if known, the recipient's address, (C) a brief description of LIBERTY PHI disclosed, and (D) a brief statement of the purpose of the disclosure. Business Associate shall provide to LIBERTY any additional information required by the HITECH Act or any regulations promulgated thereunder.

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 and/or Business Associate's compliance with the Privacy Regulations or the Security Regulations, and (ii) provide LIBERTY with a copy (or a listing, if requested by LIBERTY) of the documents made available to the Secretary of DHHS within five (5) business days of providing such documents to DHHS.

j. *Compliance with EDI Standards.* If Business Associate conducts electronically any of the health care transactions identified as "standard transactions" in the EDI Standards for or on behalf of LIBERTY, Business Associate shall comply with all applicable requirements of the EDI Standards when conducting standard transactions for or on behalf of LIBERTY.

k. *Compliance with Security Regulations.* If Business Associate creates, receives, maintains or transmits Electronic PHI for or on behalf of LIBERTY ("LIBERTY Electronic PHI"), Business Associate shall (i) implement and utilize administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of LIBERTY Electronic PHI that Business Associate receives, creates, maintains or transmits for or on behalf of LIBERTY, (ii) report to the Privacy Officer of LIBERTY in writing any security incident, as defined in 45 CFR § 164.304, within one (1) business day of becoming aware of such security incident; provided, however, unsuccessful attempts shall be reported only upon written request by LIBERTY, and (iii) ensure that any agents,

including subcontractors, to whom Business Associate provides LIBERTY PHI implement the safeguards required by subsection (i) above. Business Associate shall comply with the policies and procedures and documentation requirements of the Security Regulations including, but not limited to, 45 CFR § 164.316.

l. *Remuneration in Exchange for LIBERTY PHI.* Business Associate shall not, directly or indirectly, receive remuneration in exchange for any LIBERTY PHI of an individual unless (i) LIBERTY obtained from the individual in accordance with the Privacy Regulations a valid authorization that includes a specification of whether PHI can be further exchanged for remuneration by the entity receiving PHI of that individual, or (ii) the purpose of the exchange is for one of the purposes provided under 42 U.S.C. § 17935(d)(2) of the HITECH Act and in any accompanying regulations. This prohibition shall not affect payment by LIBERTY to Business Associate for services provided pursuant to the BAA and shall only apply to exchanges occurring on or after the date that is six months after the date of the promulgation of final regulations implementing 42 U.S.C. § 17935(d) of the HITECH Act.

m. *Restrictions on Certain Disclosures.* If an individual who is the subject of LIBERTY PHI has requested a disclosure restriction under 45 CFR § 164.522(a)(1)(i)(A), notwithstanding 45 CFR § 164.522(a)(1)(ii), Business Associate shall comply with any such requested disclosure restriction, as conveyed to Business Associate by LIBERTY, except as otherwise required by law.

n. *Minimum Necessary.* In any instance where Business Associate uses, requests, or discloses PHI, Business Associate shall utilize a Limited Data Set, as defined under HIPAA. Otherwise, Business Associate shall request, use and disclose only the minimum amount of LIBERTY PHI necessary to accomplish the purpose of the request, use or disclosure.

o. *Standard Transactions.* If, on behalf of LIBERTY, Business Associate conducts, in whole or in part, any "Standard Transactions," as defined under HIPAA, Business Associate shall comply with each applicable requirement of the Transaction Rule, 45 C.F.R. Part 162. Business Associate shall permit LIBERTY to test the Transactions and content requirements in order to verify Business Associate's compliance. Business Associate shall not enter into any trading partner agreement in connection with the conduct of Standard Transactions for or on behalf of LIBERTY that:

- i. Changes the definition, data condition, or use of a data element or segment in a Standard Transaction;
- ii. Adds any data elements or segments to the maximum defined data set;
- iii. Uses any code or data elements that are either marked "not used" in the Standard Transaction's Implementation Specification(s) or are not in the Standard Transaction's Implementation Specifications(s); or
- iv. Changes the meaning or intent of the Standard Transaction's Implementations Specification(s).

Business Associate agrees and understands that there exists the possibility that LIBERTY or others may request from DHHS an exception from the uses of a Standard in the DHHS Transaction Standards. If such request is granted by DHHS, Business Associate shall participate in such test modification. Business Associate further agrees and understands that from time to time, DHHS may modify and set compliance dates for the Transaction Standards, and that any such modifications or changes shall be incorporated by reference into this BAA.

p. *Breach of Unsecured PHI.* Business Associate shall, following the discovery of an actual or suspected Breach of Unsecured Protected Health Information, provide written notice of the Breach ("BA Notice") to the applicable LIBERTY ENTITY(IES) within one (1) business day of discovering the Breach. A Breach shall be treated as discovered by Business Associate as of the first day on which such Breach is known to Business Associate or, by exercising reasonable due diligence, would have been known to Business Associate. Business Associate shall be deemed to have knowledge of a Breach if the Breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the Breach, who is a Representative of Business Associate. The BA Notice shall include the following information: (i) the identification of each individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used or disclosed during the Breach, (ii) a brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, who or what caused the Breach, and who received the PHI, (iii) a description of the types of Unsecured Protected Health Information involved in the Breach, (iv) a description of the action Business Associate took and/or will take to mitigate any deleterious effect of the Breach and a description of the corrective action Business Associate took and/or will take to prevent further Breaches; and (v) any other relevant information. Business Associate shall further provide to LIBERTY any other available information that LIBERTY requests. Upon providing the BA Notice to LIBERTY, Business Associate shall fully cooperate with LIBERTY to enable LIBERTY to confirm whether a Breach occurred and to conduct a risk assessment. If it is determined that a Breach occurred, Business Associate shall fully cooperate with LIBERTY with respect to providing any notification of the Breach as required by the HITECH Act and taking all additional actions as may be required to comply with the HITECH Act. Business Associate shall maintain any and all documentation related to the Breach including, without limitation, any documentation necessary to demonstrate that all notifications were made as required by 45 CFR § 164.410 or that the use or disclosure did not constitute a Breach.

q. *Compliance with the HITECH Act.* Notwithstanding any other provision of this BAA, Business Associate shall (i) comply with 45 CFR §§ 164.308, 164.301, 164.312 and 164.316 of the Security Regulations and all requirements of the HITECH Act that relate to security and are applicable to covered entities, and (ii) comply with all requirements of the HITECH Act that relate to privacy and are applicable to covered entities.

r. *Compliance with State Law.* Notwithstanding any other provision of this BAA, Business Associate shall, subject to the state law preemption provisions contained in the Privacy Regulations, comply with (i) applicable state data breach laws, and (ii) all other applicable state law requirements concerning the use or disclosure of PHI.

s. *Medicare Vendor Reporting Requirements.* To the extent that Business Associate is subject to any Center for Medicare and Medicaid ("CMS") incident reporting requirements, including but not limited to applicable time frames for such reporting, Business Associate shall comply with all such requirements, in addition to any reporting requirements contained in this BAA.

t. *Records and Rights of Inspection.*

i. Record Retention. Notwithstanding any other provision of this BAA, Business Associate shall retain all documentation pertaining to LIBERTY PHI for at least ten (10) years; provided, however, Business Associate shall retain such documentation for longer than ten (10) years if required by the Privacy Regulations or other applicable laws.

ii. LIBERTY's Rights of Access and Inspection. From time to time upon reasonable notice, or upon a determination by LIBERTY that Business Associate has breached or violated this Agreement, LIBERTY may access and inspect the facilities, systems, books and records of Business Associate to monitor compliance with this Agreement. The fact that LIBERTY inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems and procedures does not relieve Business Associate of its responsibility to comply with this Agreement, nor does LIBERTY's failure to detect or detection of, but failure to notify Business Associate or require Business Associate's remediation of, any unsatisfactory practices constitute acceptance of such practice or a waiver of LIBERTY's enforcement or termination rights under this Agreement.

**4. Responsibilities of LIBERTY.** With regard to the use and/or disclosure of LIBERTY PHI by Business Associate, LIBERTY hereby agrees as follows:

a. LIBERTY shall 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. LIBERTY shall inform Business Associate in writing of any changes in, or revocation of, a consent or authorization provided to LIBERTY by an individual to the extent that such change or revocation would impact Business Associate's right to use and/or disclose LIBERTY PHI pursuant to this BAA.

c. LIBERTY shall timely notify Business Associate, in writing, of any restrictions on the use and/or disclosure of LIBERTY PHI to which LIBERTY has agreed in accordance with the Privacy Regulations and/or the HITECH Act to the extent that such restriction would impact Business Associate's right to use and/or disclose LIBERTY PHI pursuant to this BAA.

**5. Term and Termination.**

a. *Term.* This BAA becomes effective on the Effective Date and will continue until terminated in accordance with the terms herein.

b. *Termination.* This BAA may be terminated as follows:

i. Upon mutual written agreement of the Parties; or

ii. If LIBERTY determines that Business Associate has materially breached any provision of this BAA, LIBERTY may immediately terminate this BAA and any other agreement between the Parties whereby Business Associate performs services for LIBERTY.

iii. Upon a Liberty Entity's knowledge of a material breach by Business Associate, such Liberty Entity shall inform the other Liberty Entities of the breach and, thereafter, of the action the Liberty Entity took pursuant to Section 5(b) in relation to such breach. If the Liberty Entity took action pursuant to Section 5(b), each Liberty Entity shall have the independent right to, at their sole discretion, immediately terminate: (i) this Addendum with respect to themselves; (ii) all of the provisions of their respective Services Agreement that involve the use or disclosure of Protected Health Information; and (iii) such other provisions, if any, of the applicable Services Agreement, as each Liberty Entity designates in its sole discretion.

c. *Effect of Termination.* Upon termination of this BAA, Business Associate shall (i) return LIBERTY PHI in Business Associate's possession to LIBERTY, and (ii) retain no copies or back-up records of such LIBERTY PHI. If such return or destruction is infeasible, as determined by LIBERTY, (A) the obligations

set forth in this BAA with respect to LIBERTY PHI shall survive termination and shall continue until Business Associate no longer retains any PHI in its possession, and (B) 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.

**6. Remedies.** If LIBERTY, in its sole discretion, determines that Business Associate has breached or violated a material term of this Agreement, LIBERTY may, at its option, pursue any and all of the following remedies:

- a. LIBERTY may exercise any of its rights of access and inspection under Section 3(t)(ii) of this Agreement;
- b. LIBERTY may require Business Associate to submit to a plan of monitoring and reporting as deemed appropriate by LIBERTY in its sole discretion, and LIBERTY shall have the right to report to the Secretary of DHHS any failure by Business Associate to comply with such monitoring and reporting;
- c. LIBERTY may take any other reasonable steps that it, in its sole discretion, deems necessary to cure such breach or end such violation; and/or
- d. LIBERTY may terminate this Agreement immediately in accordance with Section 5(b)(ii) and/or, at LIBERTY's election, report the breach or violation to DHHS.

The foregoing remedies are cumulative and in addition to any other remedies available to LIBERTY at law or in equity. Business Associate acknowledges and agrees that a breach by it of its obligations under this Agreement will cause irreparable harm to LIBERTY and that the remedy or remedies at law for any such breach will be inadequate. Business Associate further agrees that, in the event of any such breach, in addition to all other available remedies, LIBERTY shall be entitled to an injunction restraining any breach and requiring immediate and specific performance of such obligations without the necessity of showing economic loss or the posting of any bond.

**7. Indemnification.** Business Associate shall indemnify, defend and hold harmless LIBERTY (and LIBERTY's officers, directors, shareholders, managers, members and employees) from and against any and all losses, costs, damages, obligations, liabilities, awards and expenses (including, without limitation: defense costs; reasonable attorney's fees; court costs; exemplary damages, including but not are not limited to compensatory, consequential and punitive damages; penalties and fines; and interest), which arise out of or are in any way related to: (i) any act or omission by Business Associate or Business Associate's Representative(s) (including but not limited to any negligence or wrongful misconduct by Business Associate or Business Associate's Representative(s)); (ii) breach of this Agreement by Business Associate or Business Associate's Representative(s), or (iii) the representations, warranties, covenants, agreements, obligations or acknowledgments of Business Associate set forth in this Agreement. Business Associate shall obtain and maintain at its sole expense, and in amounts consistent with industry standards, insurance coverage sufficient to support its indemnification obligations. Business Associate shall provide to LIBERTY a certificate of insurance evidencing such coverage upon LIBERTY's request.

**8. Independent Contractors.** LIBERTY and Business Associate shall be independent contractors and nothing in this BAA is intended nor shall be construed to create an agency, partnership, employer-employee or joint venture relationship between them.

**9. Amendments.** This BAA may be modified or amended only upon mutual written consent of the Parties. Notwithstanding the foregoing, this BAA shall be automatically amended (without requiring Business

Associate's consent) upon written notice of the amendment by LIBERTY to Business Associate, if LIBERTY determines that such amendment is required in order for LIBERTY to comply with the Privacy Regulations, Security Regulations or the HITECH Act.

**10. Entire Agreement; Assignment.** This BAA constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all other agreements, communications or understandings either oral or in writing, between the Parties to this BAA with respect to the subject matter hereof. Business Associate may not assign its rights and obligations under this BAA without the prior written consent of LIBERTY. Notwithstanding the foregoing, this Agreement shall be binding upon, inure to the benefit of and be enforceable by the successors, assigns, heirs, executors and administrators of the Parties.

**11. Notices.** Any notices to be given hereunder shall be deemed effectively given when personally delivered one (1) business day after being sent to the recipient by electronic means (including facsimile) or overnight courier, or four (4) business 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 LIBERTY:*

Attn: Executive Vice President  
LIBERTY Dental Plan  
340 Commerce, Suite 100  
Irvine, California 92602

*If to Business Associate:*

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
ADDRESS (LINE1)

\_\_\_\_\_  
ADDRESS (LINE 2)

\_\_\_\_\_  
CITY

STATE

\_\_\_\_\_  
ZIP

**12. No Third Party Beneficiaries.** Nothing expressed or implied in this BAA is intended to confer, nor anything herein shall confer, upon any person other than the Parties hereto any rights, remedies, obligations or liabilities whatsoever.

**13. Waiver.** No failure or delay by LIBERTY or any representative of LIBERTY in exercising any right, power, or privilege hereunder shall operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof of the exercise of any other right, power, or privilege hereunder. In addition, the waiver by LIBERTY of a breach of any provision of this Agreement by Contractor shall not operate as or be construed as a waiver of any subsequent breach by Contractor.

**14. Counterparts.** This BAA may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall be deemed one and the same instrument. This BAA may be executed by facsimile or PDF signature and any such signature shall be deemed an original.

**15. Conflicts and Severability.** The terms and conditions of this BAA shall override and control any conflicting terms or conditions of any other agreement executed between LIBERTY and Business Associate to the extent such conflict involves an issue related to HIPAA, the Privacy Regulations, the Security Regulations, the EDI Standards and/or the HITECH Act. All non-conflicting terms and conditions of any other agreement executed between LIBERTY and Business Associate remain in full force and effect. If any provision(s) of this BAA shall be held to be invalid, illegal or unenforceable, the same shall be deemed to be severable and deleted from this BAA, and the remaining provisions construed so as to most nearly effectuate the original intention of the Parties and HIPAA, the Privacy Regulations, the Security Regulations, the EDI Standards and the HITECH Act.

**16. Scope.** This BAA 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 BAA 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 of the undersigned has caused this BAA to be duly executed in its name and on its behalf, effective as of the Effective Date.

\_\_\_\_\_ (**"BUSINESS ASSOCIATE"**):

\_\_\_\_\_  
*Authorized Signature*

\_\_\_\_\_  
*Print Name*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Date*

**LIBERTY (ON BEHALF OF THE LIBERTY ENTITIES LISTED APPENDIX B):**

\_\_\_\_\_  
*Authorized Signature*

John J. Carvelli

\_\_\_\_\_  
*Print Name*

Executive Vice President

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Date*



## APPENDIX A

**“Breach”** means the acquisition, access, use or disclosure of PHI in a manner not permitted under the Privacy Regulations which compromises the security or privacy of PHI, provided that the following shall not constitute a Breach: (A) any unintentional acquisition, access or use of PHI by a workforce member or person acting under the authority of Business Associate, if such acquisition, access or use was made in good faith and within the scope of such individual’s authority and does not result in further use or disclosure of PHI in a manner not permitted under the Privacy Regulations, (B) any inadvertent disclosure of PHI by a person authorized to access PHI within the Business Associate organization to another person authorized to access PHI within the same Business Associate organization, provided the PHI is not further used or disclosed in a manner not permitted under the Privacy Regulations, and (C) a disclosure of PHI in which Business Associate has a good faith belief that the unauthorized person to whom the disclosure was made would not reasonably have been able to retain such PHI.

**“Designated Record Set”** means a group of records maintained by or for LIBERTY that is (A) the medical records and billing records about individuals maintained by or for a covered health care plan, (B) the enrollment, payment, claims adjudication and case or medical management record systems maintained by or for a health plan, or (C) used, in whole or in part, by or for the plan to make decisions about individuals. For purposes of this definition, the term “record” means any item, collection or grouping of information that includes PHI and is maintained, collected, used or disseminated by or for LIBERTY.

**“Electronic Health Record”** means an electronic record of health-related information on an individual that is created, gathered, managed and consulted by authorized health care clinicians and staff.

**“Electronic Protected Health Information”** or **“Electronic PHI”** means PHI which is transmitted by or maintained in electronic media.

**Individually Identifiable Health Information”** or **“IIHI”** means information, including demographic information, that:

1. Is created or received by a health care provider, health plan, employer or health care clearinghouse;
2. Relates to the past, present or future physical or mental condition of an individual, the provision of health care to an individual or the past, present or future payment for the provision of health care to an individual; and
3. Identifies the individual (or with respect to which there is a reasonable basis to believe the information can be used to identify the individual).

**“Privacy Officer”** means a person designated by LIBERTY to be responsible for the development and implementation of the privacy policies and procedures of LIBERTY.

**“Protected Health Information”** or **“PHI”** means Individually Identifiable Health Information that is transmitted by or maintained in electronic media, or transmitted or maintained in any other form or medium, with the exception of IIHI in employer employment records held by LIBERTY in its role as employer.

**“Unsecured Protected Health Information”** means PHI that is not rendered unusable, unreadable or indecipherable to unauthorized individuals through the use of a technology or methodology specified in guidance issued by DHHS.

## **APPENDIX B**

LIBERTY Dental Plan Corporation, a Nevada corporation

LIBERTY Dental Plan of California, Inc., a California corporation

LIBERTY Benefits Administrators, Inc., a California corporation

LIBERTY Dental Plan of Nevada, Inc., a Nevada corporation

LIBERTY Dental Plan of the Southeast, Inc., a Nevada corporation

LIBERTY Dental Plan of Texas, Inc., a Nevada corporation

LIBERTY Dental, P.A., a Texas Professional Association

LIBERTY Dental Plan of Florida, Inc., a Florida corporation

LIBERTY Dental New York, Inc., a New York corporation

LIBERTY Dental and Vision, Inc., a Nevada corporation

LIBERTY Dental Plan of Missouri, Inc., a Missouri corporation

LIBERTY Dental Plan Reinsurance Company, Ltd.

LIBERTY Dental Plan of New Jersey, Inc., a New Jersey corporation

LIBERTY Dental Plan East, LLC, a New Jersey limited liability company

LIBERTY Dental New York, LLC (LIBERTY Dental New York IPA, LLC in NJ and NY)

Liberty reserves the right to modify the foregoing list of entities in this Appendix B upon written notification to the Business Associate.