



NONDISCLOSURE 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. Further, Contractor and its Representatives shall not (nor allow any individual, entity, or facility to) receive, process, transfer, handle, store, maintain, create, or access (remotely or otherwise) any Confidential Information, by any means (physical or electronic) at any time, for any period of time, for any reason outside the borders of the United States.

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, Contractor shall at that time grant to LIBERTY a nonexclusive, royalty-free, irrevocable, perpetual, worldwide license (with rights to sublicense through multiple tiers of sublicensees) to make, have made, modify, use and sell such Prior Invention contained in the LIBERTY product. 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”):
(collectively with any affiliates, subsidiaries and parent corporations)

Authorized Signature

John Carvelli

Print Name

Executive Vice President

Title

Date