



BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (this “Agreement” or this “BAA”) is made and entered into by and between **LIBERTY Dental Plan Corporation**, along with any of the LIBERTY Dental entities listed on Appendix B, attached hereto, which currently or in the future have a contract in place 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 _____ 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. The Parties agree that this Agreement replaces and supersedes any previous business associate agreement executed by the Parties.

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. 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;
- ix. Ensure that its employees and contractors store, receive, process, or otherwise access all LIBERTY PHI within only the United States of America; and
- x. Not store LIBERTY PHI in any data center without LIBERTY's prior written consent.

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 Business Associate and a LIBERTY Entity whereby Business Associate performs services for any LIBERTY Entity(ies).

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 may 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 seek 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. Business Associate's obligations under this Section 7 shall survive termination of this Agreement.

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 92602-1358

If to Business Associate:

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”):

LIBERTY DENTAL PLAN CORPORATION (“LIBERTY”),
on behalf of itself and the LIBERTY Entities listed on Appendix B

Authorized Signature

Authorized Signature

Print Name

John Carvelli

Print Name

Title

Executive Vice President

Title

Date

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

LIBERTY Dental Plan of California, Inc.

LIBERTY Benefits Administrators, Inc.

LIBERTY Dental Plan of Nevada, Inc.

LIBERTY Dental Plan of Oklahoma, Inc.

LIBERTY Dental Plan of the Southeast, Inc.

LIBERTY Dental Plan of Texas, Inc.

LIBERTY Dental, P.A.

LIBERTY Dental Plan of Florida, Inc.

LIBERTY Dental New York, Inc.

LIBERTY Dental and Vision, Inc.

LIBERTY Dental Plan of Missouri, Inc.

LIBERTY Dental Plan Reinsurance Company, Ltd.

LIBERTY Dental Plan of New Jersey, Inc.

LIBERTY Dental Plan Organization of New Jersey, Inc.

LIBERTY Dental Plan East, LLC

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

LIBERTY Dental Insurance Company

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