

BUSINESS ASSOCIATE ADDENDUM

THIS BUSINESS ASSOCIATE ADDENDUM (“the ADDENDUM”) is an addendum to the most recently executed Agreement between Delta Dental of Tennessee (“Business Associate”) and [INSERT Group Name] (“Plan Sponsor”). This Addendum is also entered into by and between Business Associate, the Plan Sponsor, and the [INSERT Plan Name from ERISA plan documents] (the “Plan”). Business Associate, the Plan Sponsor, and the Plan are sometimes collectively referred to herein as the “Parties.” This Addendum is effective [INSERT Contract Effective Date].

I. INTRODUCTION

- A. **WHEREAS**, pursuant to the terms and conditions set forth in the Agreement, Business Associate performs, for or on behalf of the Plan, certain services described in the Agreement (the “Services”); and
- B. **WHEREAS**, in performing the Services, Business Associate will receive, create, or access certain Protected Health Information of Participants or Beneficiaries covered under the Plan, and, accordingly, is a “Business Associate” as defined in the Privacy Rule; and
- C. **WHEREAS**, the Plan is a “Covered Entity” within the meaning of the Privacy Rule; and
- D. **WHEREAS**, the Parties desire to enter into this Addendum to comply with the provisions in the Privacy Rule requiring a Business Associate to provide adequate assurances to a Covered Entity with respect to the confidentiality of PHI.
- E. **NOW, THEREFORE**, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

II. DEFINITIONS

- A. “Beneficiary” means any Individual entitled to benefits under the Plan by virtue of being a covered dependent of a Participant.
- B. “Business Associate” shall have the same meaning as the term “business associate” in 45 CFR 160.103. Delta Dental is a Business Associate of the Plan.
- C. “Covered Entity” shall have the same meaning as the term “covered entity” in 45 CFR 160.103. The Plan is a Covered Entity.
- D. “Designated Record Set” shall have the same meaning as the term “designated record set” in 45 CFR 164.501 limited to a group of records maintained by or for the Plan that includes (a) enrollment, payment, and claims adjudication record of an Individual

maintained by or for the Plan, (b) other Protected Health Information used, in whole or in part, by or for the Plan to make coverage decisions about an Individual.

- E. “Electronic Protected Health Information” or “EPHI” shall have the same meaning as the term “electronic protected health information,” at 45 CFR 160.103, limited to the electronic protected health information that is created, received, maintained, or transmitted to or on behalf of the Plan.
- F. “ERISA” means the Employee Retirement Income Security Act of 1974, as amended.
- G. “HIPAA” means the Health Insurance Portability and Accountability Act of 1996, as amended.
- H. “HITECH Act” means the Health Information Technology for Economic and Clinical Health Act, found in the American Recovery and Reinvestment Act of 2009 at Division A, title XIII and Division B, Title IV.
- I. “Individual” shall have the same meaning as the term “individual” in 45 CFR 160.103, and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- J. “Minimum Necessary” shall have the meaning set forth in the Health Information Technology for Economic and Clinical Health Act, § 13405(b)
- K. “Participant” means any Individual who is an employee of the Plan Sponsor and is entitled to benefits under the Plan.
- L. “Plan” means the [INSERT Plan Name]. Whenever reference is made in this Addendum to actions or undertakings of the Plan, to reports or information provided by the Business Associate to the Plan or to instructions to the Business Associate from the Plan, the reference to the Plan shall be to the person or entity designated in the Plan documents as having responsibility for Plan administration, or, if no designation is made therein, the Plan Sponsor. In short, the reference is to a person or entity with authority to act or speak on behalf of the Plan.
- M. “Plan Sponsor” means [INSERT Group Name]. The Plan Sponsor is neither a Covered Entity nor a Business Associate.
- N. “Privacy Rule” means the “Standards for Privacy of Individually Identifiable Health Information,” at 45 CFR parts 160 and 164, subparts A and E, as promulgated pursuant to HIPAA.
- O. “Protected Health Information” or “PHI” shall have the same meaning as the term “protected health information” in 45 CFR 160.103, limited to the information created, received, or accessed by Business Associate from or on behalf of the Plan.

- P. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR 164.103.
- Q. "Secretary" shall mean the Secretary of the Department of Health and Human Services, or his designee.
- R. "Security Rule" means the "Standards for the Security of Electronic Protected Health Information," at 45 CFR parts 160, 162 and 164, as promulgated pursuant to HIPAA.

III. AGREEMENTS

A. Obligations of Business Associate.

1. **Application of Security Rule and Privacy Rule to Business Associate.** The administrative, physical and technical safeguards set forth in the HIPAA Security Rule at 45 CFR 164.308, 164.310, 164.312, and 164.316, shall apply to Business Associate in the same manner that such sections apply to a covered entity. The additional requirements of Subtitle D of the HITECH Act (Sections 13400 through 13411) that relate to privacy or security and that are made applicable with respect to covered entities shall also be applicable to Business Associate and are hereby incorporated into this Agreement.
2. **Uses and Disclosures.** Business Associate shall not use or further disclose PHI other than (a) as permitted or required by this Agreement and Addendum, (b) as permitted or required by the Plan documents, (c) as permitted or required by the Privacy Rule, (d) as Required by Law, (e) in a manner that would be permissible if used or disclosed by the Plan, or (f) in a manner that would not violate the Privacy Rule or other applicable federal or state law or regulation. Business Associate may use and disclose PHI that Business Associate obtains or creates only if such use or disclosure, respectively, is in compliance with each applicable requirement of 45 CFR 164.504(e).
3. **Minimum Necessary Standard.** Business Associate shall use and disclose PHI in a manner minimally necessary to accomplish the intended purpose of the use or disclosure. Business Associate shall be responsible for making minimum necessary determinations.
4. **Security.** Business Associate agrees to (a) implement safeguards in accordance with the Security Rule that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of the Plan, (b) ensure that any agent, including subcontractor, to whom Business Associate provides PHI agrees to implement reasonable and appropriate safeguards in accordance with the Security Rule to protect the PHI, and (c) report to the Plan any violation of the Security Rule of which it becomes aware.

5. **Notification of Unauthorized Access, Use or Disclosure of Unsecured PHI.** Business Associate shall notify Covered Entity in writing of any unauthorized access, use or disclosure of unsecured PHI as soon as reasonably possible but no later than five (5) days following the date of discovery. Such notice shall include:
- (a) a brief description of what happened, including the date of the breach and the date of the discovery,
 - (b) the name(s) of the individual(s) whose PHI was used or disclosed,
 - (c) the identity(ies) of the entity(ies)/person(s) to whom the use or disclosure was made,
 - (d) description of the types of unsecured PHI that were disclosed,
 - (e) the steps taken by Business Associate to discontinue and minimize the impact of any inappropriate use or disclosure.
6. **Reporting.** Business Associate shall report to the Plan any use or disclosure of PHI not provided for under Section III.A.2 of this Addendum of which Business Associate becomes aware. Additionally, Business Associate agrees that, to the extent practicable, it shall mitigate any harmful effect of a use or disclosure of PHI of which it becomes aware that is in violation of the requirements of Section III.A.2 of this Addendum.
7. **Mitigation of Unauthorized Access, Use or Disclosure of Unsecured PHI.** Business Associate agrees that, to the extent practicable, it shall mitigate any harmful effect resulting from any unauthorized acquisition, use or disclosure of unsecured PHI caused by Business Associate's violation of the requirements of this Agreement or its failure to properly secure PHI in accordance with the April 17, 2009 guidelines published by the Department of Health and Human Services.
8. **Agents and Subcontractors.** Business Associate shall ensure that any subcontractors or agents to whom it provides PHI that has been created or received by Business Associate from or on behalf of the Plan agrees to the same restrictions and conditions with respect to such PHI as are applicable to Business Associate as set forth herein. Should Business Associate, at its sole discretion, enter into a written contract with such subcontractors or agents to assure that such subcontractors or agents abide by the same restrictions and conditions that apply to Business Associate with regard to PHI, Business Associate shall, upon request, provide a copy of such contract(s) to the Plan.
9. **Requests for Information or Access.** Business Associate shall process any requests it receives from individuals seeking access to or copies of PHI maintained by Business Associate for or on behalf of the Plan. The Plan hereby expressly delegates its authority regarding requests for access to Business Associate and agrees to abide

by Business Associate's determinations to grant or deny access in accordance with the Privacy Rule.

10. **Requests to Amend.** Business Associate shall make any amendment(s) to PHI in a Designated Record Set that the Plan directs or agrees to pursuant to 45 CFR 164.526 at the request of the Plan or an Individual. The Business Associate shall make amendments as soon as administratively feasible.
11. Business Associate agrees to document disclosures of Protected Health Information, and information related to such disclosures, as would be required for Health Plan Sponsor to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528 and any additional regulations promulgated by the Secretary pursuant to HITECH Act § 13405(c). Business Associate agrees to implement an appropriate record keeping process that will track, at a minimum, the following information: (i) the date of the disclosure; (ii) the name of the entity or person who received the Protected Health Information, and if known, the address of such entity or person; (iii) a brief description of the Protected Health Information disclosed; and (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure.
12. **Requests for Accountings.** With respect to requests for an accounting, Business Associate shall notify the Plan in writing within twenty (20) business days of any requests received by Business Associate from individuals seeking an accounting of disclosures of PHI and respond to such requests only when and as directed by the Plan. Additionally, when and as directed by the Plan, Business Associate shall provide for an accounting to the Plan or the requesting individual (as directed) of any and all disclosures of PHI made by Business Associate on behalf of the Plan during the six years prior to the date of the request. Business Associate shall maintain and make available to the Plan, upon request, a record of all disclosures of PHI made by Business Associate, including, at a minimum, the date of the disclosure, the name and address of the recipient of the PHI, a description of the PHI disclosed, and the purpose of and basis for the disclosure. The accounting obligations of Business Associate hereunder shall not apply to (a) disclosures made for purposes of treatment, payment, or health care operations (as defined in the Privacy Rule), (b) disclosures made to the individual who is requesting the accounting, (c) disclosures made prior to April 14, 2003, (d) disclosures made to law enforcement officers, correctional institutions, or for national security purposes, (e) disclosures incidental to a use or disclosure otherwise permitted or required as provided in 45 CFR 164.502, (f) pursuant to an authorization as provided in 45 CFR 164.508, (g) as part of a limited data set in accordance with 45 CFR 164.514(e).
13. **Books and Records.** Business Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI received from the Plan, or created or received by Business Associate on behalf of the Plan, available to the Secretary and to the Plan for purposes of determining the Plan's compliance with HIPAA, the

Privacy Rule, and other applicable federal and/or state law. Business Associate shall notify the Plan immediately of any such requests and shall provide the Plan with a copy of the request and any documents or information provided in response to such requests.

14. **Termination.** Upon learning of any pattern of improper uses or disclosures by Business Associate that the Plan determines amounts to a material breach of Business Associate's obligations under this Addendum, the Plan shall promptly notify Business Associate in writing as to the nature and extent of such breach, and shall provide Business Associate a reasonable amount of time to cure such breach. A reasonable amount of time shall depend on the nature and extent of the breach, shall be clearly stated in the notice, but in no case shall the period for cure be less than 30 days. Notwithstanding the foregoing, should the Plan determine that the breach is incurable, or that Business Associate has repeatedly engaged in such impermissible uses or disclosures despite prior notice, the Plan may have the Plan Sponsor immediately terminate the Agreement to which this Addendum applies, upon written notice to Business Associate, without damages or liability to the Plan Sponsor or the Plan.

15. **Return of PHI Upon Termination.** At termination of the Agreement, Business Associate shall return or destroy all PHI received from the Plan, or created by Business Associate on behalf of the Plan, that Business Associate maintains in any form. Business Associate shall retain no copies of such PHI. Upon request of the Plan, Business Associate shall provide a written certification of the return and/or destruction of the PHI. If the parties agree that the return or destruction of such PHI by Business Associate is not feasible, then Business Associate shall continue to extend the protections required hereunder to the PHI for as long as it maintains the PHI. Further, Business Associate shall limit any further use or disclosure of the PHI to those purposes that make its return or destruction infeasible. This provision shall survive the termination of this Agreement.

16. **Prohibition against Sale or Marketing of PHI.** Except as otherwise provided in Section 13405 of the HITECH Act, Business Associate shall not (a) directly or indirectly receive remuneration in exchange for any PHI of an individual; or (b) use or disclose PHI for any purpose related directly or indirectly to any marketing or marketing communication.

B. **Additional Permissible Uses and Disclosures of PHI by Business Associate.** Subject to the foregoing provisions, and in addition to the use and disclosure by Business Associate of PHI authorized elsewhere in this Addendum, Business Associate may use and disclose PHI for the following additional purposes:

1. As necessary for data aggregation purposes relating to the health care operations of the Plan, but only as separately authorized by the Plan in writing,
2. As necessary for data aggregation purposes of Business Associate, but only if the PHI is de-identified pursuant to 45 CFR 164.514,

3. For the proper internal management and administration of Business Associate,
4. To carry out the legal responsibilities of Business Associate, and
5. To provide summary health information (as defined in 45 CFR 164.504) to the Plan Sponsor for the purposes of obtaining premium bids for other health insurance coverage or, if needed, to amend or terminate the Plan.

For purposes (3) and (4) above, Business Associate may use or disclose PHI to third parties only if the disclosure is Required by Law, Business Associate obtains reasonable assurances from the person to whom the PHI is disclosed that it will be held confidentially and used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the person, and the person to whom the disclosure is made is obligated to notify Business Associate of any instances of which that person is or becomes aware in which the confidentiality of the information has been breached.

C. Obligations of the Plan.

1. **Comply With the Privacy Rule.** The Plan shall comply with all the obligations imposed on Covered Entities under the Privacy Rule with respect to the permitted and required uses and disclosures of PHI.
2. **Notice of Privacy Practices.** The Plan shall provide Business Associate with a copy of its Notice of Privacy Practices, as well as any changes made to such Notice from time to time.
3. **Communicate Changes in Permitted Uses and Disclosures.** The Plan shall provide Business Associate with any changes in, or revocation of, permission by Participants or Beneficiaries to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures of PHI.
4. **Communication of Restrictions on Uses and Disclosures.** The Plan shall notify Business Associate of any restriction to the use or disclosure of PHI that the Plan has agreed to.
5. **Prohibition of Employment-Related Disclosures.** The Plan shall not use or disclose the PHI of any Participant or Beneficiary to the Plan Sponsor for any employment-related purposes, or in connection with any other benefit plan of the Plan Sponsor, nor shall it direct Business Associate to do so.
6. **Guarantee of Individual Rights.** The Plan shall ensure that Participants and Beneficiaries have the rights of access, amendment, and accounting with respect to their own PHI as set forth under the Privacy Rule.

7. **Limitation on Access for Administrative Purposes.** The Plan shall ensure that access to the PHI of Participants and Beneficiaries will be limited to those employees or agents of the Plan Sponsor designated in the Plan documents as being entitled to receive and use PHI in connection with the administration of the Plan, and will notify Business Associate in a timely fashion of the identity of such persons, any changes in the persons so designated, and a means for Business Associate to verify that it is in fact communicating with such persons.
8. **Safeguards.** The Plan shall establish or cause to be established adequate administrative, physical, and technical safeguards for protecting PHI and will provide Business Associate with sufficient information about such safeguards as will allow Business Associate to provide the Services while respecting and maintaining the safeguards.
9. **Sponsor Certification.** The Plan will require that the Plan Sponsor certify that it has agreed to the obligations set forth in Section III.D below and that the Plan documents have been amended to incorporate the conditions to which the Plan Sponsor has agreed.
10. **Limitation on Plan Requests of Business Associate.** Except to the extent permitted under Section III.B above, the Plan shall not ask Business Associate to use or disclose PHI in a manner that would not otherwise be permitted under the Privacy Rule if done by the Plan.

D. Obligations of the Plan Sponsor.

1. **Prohibition on Employment-Related Uses and Disclosures.** The Plan Sponsor shall not use or disclose the PHI of any Participant or Beneficiary for employment-related purposes or in connection with any other benefit plan of the Plan Sponsor.
2. **Permitted Uses and Disclosures.** The Plan Sponsor shall only use or disclose the PHI of any Participant or Beneficiary as permitted or required by the Plan documents, the Privacy Rule, this Addendum, or as Required by Law.
3. **Obligation to Report.** The Plan Sponsor shall report to the Plan and Business Associate any use or disclosure of PHI of which it becomes aware that is inconsistent with the uses and disclosures permitted under Section III.D.2 above.
4. **Cooperation for Plan Compliance.** The Plan Sponsor shall make its internal practices, books, and records relating to the use and disclosure of PHI received from Business Associate or the Plan available to the Secretary for determining the Plan's compliance with the Privacy Rule.
5. **Return of PHI.** The Plan Sponsor shall return, if feasible, all PHI received from the Plan or Business Associate when the PHI is no longer needed for the purpose(s) for which it was disclosed.

6. **Amend Plan Documents.** The Plan Sponsor shall amend or cause to be amended the Plan documents to (a) identify the permitted and required uses and disclosures of PHI by the Plan Sponsor, (b) identify those of its employees or classes of employees to whom PHI may be disclosed for purposes of payment and health care operations in the normal course of Plan operations, (c) restrict the Plan administrative functions performed by the Plan Sponsor to those employees and classes of employees identified in the Plan documents, and (d) establish an effective mechanism for resolving any instances of non-compliance with the permitted uses and disclosures by those employees and classes of employees identified in the Plan documents as being allowed to access PHI.
 7. **Individual Rights.** The Plan Sponsor shall ensure all Participants and Beneficiaries the right to access, request amendments, and receive accountings of disclosure of their own PHI maintained by the Plan.
 8. **Certification.** The Plan Sponsor will certify to the Plan and Business Associate that it has fulfilled all of the obligations set forth in Sections III.D.1-7 above.
- E. **Security.** The Parties shall work together in good faith to cooperate with each other's current and future security policies and procedures to ensure the integrity, confidentiality, and availability of PHI in a manner that complies with HIPAA and the Security Rule, as amended from time to time.
- F. **Record Keeping.** Business Associate agrees to implement an appropriate record keeping process to enable it to comply with the HIPAA requirements applicable to it under this Addendum and the Privacy Rule.
- G. **Confidential and Proprietary Information.** Business Associate may receive, create, or have access to confidential and/or proprietary information of the Plan Sponsor concerning its business affairs, property, products, operations, computer systems, and strategies. Business Associate agrees to hold such confidential and/or proprietary information in strict confidence, to maintain and safeguard the confidentiality of such information, and to use such information solely to perform the Services as required by this Agreement.
- Likewise, the Plan Sponsor or the Plan may receive, create, or have access to confidential and/or proprietary information of Business Associate concerning its business affairs, property, operations, computer systems, dentists, providers, and strategies. The Plan Sponsor and the Plan agree to hold such confidential and/or proprietary information in strict confidence, to maintain and safeguard the confidentiality of such information, and to use such information solely to perform their obligations as required by this Agreement.
- H. **Amendment.** Upon enactment of any law or regulation affecting the use or disclosure of PHI, or the publication of any decision of a court of the State or the United States relating to any such law, or the publication of any interpretative policy or opinion of any

government agency charged with the enforcement of any such law or regulation, Business Associate, by written notice to the Plan and the Plan Sponsor, may amend the Agreement and/or this Addendum in such manner as Business Associate determines necessary to comply with such law or regulation, and the Plan and the Plan Sponsor agree to be bound by such amendment, unless within thirty (30) days of the Plan's and the Plan Sponsor's receipt of notice of such amendment the Plan and the Plan Sponsor notify Business Associate that they reject such amendment. Upon receipt of such notice of rejection, Business Associate may terminate the Agreement immediately upon written notice to the Plan and the Plan Sponsor.

- I. **Binding Effect.** Except as otherwise provided herein, the terms and conditions of the Agreement shall remain in full force and effect. Additionally, the terms and conditions of this Addendum shall remain in full force and effect following termination of the Agreement.
- J. **Indemnification by Plan or Plan Sponsor.** The Plan and Plan Sponsor hereby agree to indemnify, defend, and hold harmless Business Associate, its board of directors, officers, members, agents, employees, subcontractors, and personnel from and against any and all claims, demands, suits, actions, losses, expenses, costs (including reasonable attorney fees), obligations, damages, deficiencies, causes of action, and liabilities (collectively, "Claims") incurred by Business Associate as a result of, or that are proximately caused by, (1) any act or omission of the Plan or Plan Sponsor, their employees, subcontractors, or agents, in carrying out the Plan's or Plan Sponsor's obligations under the Agreement, (2) any breach of the duties and obligations of the Plan Sponsor or the Plan hereunder, including, without limitation, any negligent or intentional acts, errors, or omissions by the Plan Sponsor or the Plan, their employees, subcontractors, or agents, and (3) any act or conduct of the Plan Sponsor and the Plan, their employees, subcontractors, or agents, adjudged to constitute fraud, misrepresentation, or violation of any law, including, without limitation, violation of any statute or regulation applicable to the Plan or Plan Sponsor pursuant to this Agreement.

Business Associate shall provide prompt written notice of relevant information concerning the Claims to the Plan and Plan Sponsor. The Plan and Plan Sponsor shall provide such reasonable assistance (at Plan Sponsor's expense) as may reasonably be requested by Business Associate in connection with the defense of any Claim. Notwithstanding the foregoing: (1) Business Associate shall not settle any such Claim without the consent of the Plan Sponsor or the Plan, which consent shall not be unreasonably withheld, and (2) the indemnification obligations of Plan Sponsor and the Plan hereunder shall not extend to Claims attributable solely to the gross negligence, intentional misconduct, or willful malfeasance of Business Associate.

- K. **Indemnification by Business Associate.** Business Associate hereby agrees to indemnify, defend, and hold harmless the Plan Sponsor or the Plan, their board of directors, officers, members, agents, employees, subcontractors, and personnel (the "Indemnities") from and against any and all claims, demands, suits, actions, losses, expenses, costs (including reasonable attorney fees), obligations, damages, deficiencies,

causes of action, and liabilities (collectively, "Claims") incurred by the Indemnities as a result of, or that are proximately caused by, the gross negligence, intentional misconduct, willful malfeasance, fraud, or misrepresentation of Business Associate, its employees, officers, subcontractors, and agents; provided, however, that nothing in this section shall purport to indemnify or hold harmless a Plan fiduciary for any breach of his or her fiduciary duties under ERISA.

The Plan Sponsor or the Plan shall provide prompt written notice of relevant information concerning the Claims to Business Associate. Business Associate shall provide such reasonable assistance (at Business Associate's expense), as may reasonably be requested by the Plan and Plan Sponsor, in connection with the defense of any Claim. Notwithstanding the foregoing: (1) neither the Plan nor the Plan Sponsor shall settle any such Claim without the consent of Business Associate, which consent shall not be unreasonably withheld, and (2) the indemnification obligations of Business Associate hereunder shall not extend to Claims attributable solely to the negligence, gross negligence, intentional misconduct, or willful malfeasance of the Plan or the Plan Sponsor.

L. **Injunction.** The Parties acknowledge and agree that in the event of a breach or threatened breach by Business Associate, the Plan Sponsor, or the Plan of their duties and obligations hereunder, each of the affected Parties shall be irreparably and substantially harmed, and that remedies at law will not be an adequate remedy for such breach. Accordingly, in such event, Business Associate, the Plan Sponsor, and the Plan shall be entitled to immediate injunctive relief against such breach or threatened breach. Such rights to injunctive relief shall be in addition to, and not in limitation of, any other legal and equitable relief available to Business Associate, the Plan Sponsor, or the Plan under applicable law.

M. **Counterparts.** This Agreement may be executed in the original or by facsimile or other electronic means in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have signed this Addendum effective as of the above date.

Business Associate

By: _____

Its: _____

Date: _____

Plan Sponsor

By: _____

Its: _____

Date:

Plan

By: _____

Its: _____ Fiduciary

Date: