

**ADDENDUM
TO
ADMINISTRATIVE SERVICES AGREEMENT
FOR HIPAA PRIVACY/SECURITY RULES**

This Addendum is entered into effective as of _____, by and among Delta Dental of Virginia ("Business Associate"), and _____ ("Covered Entity" or "Applicant," "Contractor," or "Group" in the underlying Agreement). In this Addendum, the written agreement is referred to as the "Agreement." Terms defined in the Agreement have the same meanings in this Addendum. To the extent that the terms and conditions in this Addendum may differ from the terms and conditions in the Agreement with respect to the subject matter hereof, the terms and conditions of this Addendum control.

RECITALS

WHEREAS Covered Entity must comply with the applicable provisions of the federal "Privacy Rule" (as hereinafter defined);

WHEREAS Covered Entity must comply with the applicable provisions of the federal "Security Rule" (as hereinafter defined);

WHEREAS the Privacy Rule and Security Rule require that Covered Entity enter into a "business associate contract" with each independent contractor who may use or disclose Covered Entity's enrollees' "Protected Health Information" (as hereinafter defined);

WHEREAS Business Associate is an independent contractor who may use or disclose Covered Entity's enrollees' Protected Health Information;

NOW THEREFORE, in consideration of the mutual promises and covenants contained in the Agreement, Covered Entity and Business Associate agree that the following Sections 1 through 7 are added to and amend the Agreement:

1. DEFINITIONS

Terms used, but not otherwise defined, in this Addendum have the same meaning as those terms in 45 Code of Federal Regulations ("CFR") §§ 160.103 and 164.501. In this Addendum:

- a. "Designated Record Set" means:
 - i) A group of records maintained by or for Covered Entity that is:
 - (1) The enrollment, payment, claims adjudication, and case or medical management systems maintained by or for Covered Entity or one or more of Covered Entity's health plans; or
 - (2) Used, in whole or in part, by or for Covered Entity to make decision about Individuals.

- ii) For the purposes of this definition, the term “records” means any item, collection, or grouping of information that is Protected Health Information and is maintained, collected, used, or disseminated by or for Covered Entity.
- b. “Electronic Protected Health Information” means individually identifiable health information that is transmitted by electronic media or maintained in electronic media;
- c. “Individual” means the person who is the subject of Protected Health Information. For the purposes of the Privacy Rule, the term “Individual” includes a parent, guardian, or other person who qualifies as the individual’s personal representative under 45 CFR § 164.502 (g).
- d. “Privacy Rule” means the federal Standards for Privacy of Individually Identifiable Health Information, which can be found in 45 CFR part 160 and part 164, subparts A and E.
- e. “Protected Health Information” means individually identifiable health information transmitted or maintained in any form or medium and created or received by Business Associate from or on behalf of Covered Entity. A more complete definition of “Protected Health Information” is in 45 CFR § 164.501.
- f. “Required by Law” means a mandate contained in law that compels a covered entity to make a use or disclosure of Protected Health Information and that is enforceable in a court of law.
- g. “Security Rule” means the federal Standards for the Security of Electronic Protected Health Information, which can be found in 45 CFR § 164.302 et seq. Parts 160, 162, and 164.
- h. “Secretary” means the Secretary of the U. S. Department of Health and Human Services or his designee.

2. PRIVACY OF PROTECTED HEALTH INFORMATION

- a. Business Associate agrees not to use or further disclose Protected Health Information other than as permitted or required by this Addendum or Required by Law.
- b. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of Protected Health Information other than as provided for by this Addendum.
- c. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information in violation of the requirements of this Addendum.
- d. Business Associate agrees to report to Covered Entity any use or disclosure of Protected Health Information, of which it becomes aware, that is not provided for in this Addendum.
- e. Business Associate will require that any subcontractor or agent to whom Business Associate provides Protected Health Information, which is received from or created or received by Business Associate on behalf of Covered Entity, agree to the same restrictions and conditions that apply through this Addendum to Business Associate with respect to Protected Health Information.
- f. Business Associate agrees to provide access, at the time and in the manner reasonably requested by Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity or to an Individual in order to meet the requirements of 45 CFR § 164.524 “Access of individuals to protected health information.”
- g. Business Associate agrees to make Protected Health Information in a Designated Record Set available for amendment and to amend the information pursuant to 45 CFR § 164.526

“Amendment of protected health information” in the time and manner reasonably requested by Covered Entity or the Individual.

- h. Business Associate agrees to make its internal practices, books, and records (including its policies and procedures and the Protected Health Information) relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to Covered Entity, or at the request of Covered Entity, to the Secretary, in a time and manner reasonably requested by Covered Entity or designated by the Secretary, for the purpose of the Secretary’s determining Covered Entity’s compliance with the Privacy Rule.
- i. Business Associate agrees to document those disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528 “Accounting for disclosures of protected health information.”
- j. Business Associate agrees to provide to Covered Entity or the Individual, in the time and manner reasonably requested by Covered Entity, information collected in accordance with the preceding Section 2. i. of this Addendum, to permit Covered Entity to respond to a request by the Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528 “Accounting for disclosures of protected health information.”

3. SECURITY OF PROTECTED HEALTH INFORMATION

- a. Business Associate agrees to implement the administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that it creates, receives, maintains, or transmits on Covered Entity’s behalf;
- b. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides such information agrees to implement reasonable and appropriate standards to protect the information;
- c. Business Associate agrees to report to Covered Entity any security incident of which it becomes aware that involves the information; and
- d. Business Associate agrees that that the obligations set forth in Sections 3(a) through 3(c) above shall be implemented by the final compliance date for the Security Rule to the extent required by law.

4. BUSINESS ASSOCIATE’S PERMITTED USES AND DISCLOSURES

- a. Except as otherwise limited in this Addendum, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of Covered Entity, provided that Business Associate is advised of and has agreed to comply with Covered Entity’s minimum necessary policies and procedures in writing in advance.
- b. Except as otherwise limited in this Addendum, Business Associate may use Protected Health Information for Business Associate’s proper management and administration or to carry out Business Associate’s legal responsibilities provided that any such use is permitted under applicable law.

- c. Business Associate may disclose Protected Health Information to a third party for Business Associate's proper management and administration or to carry out the legal responsibilities of Business Associate, provided that (1) the disclosure is Required by Law; or (2) Business Associate obtains reasonable assurances from the third party to whom the information is disclosed that (i) the information will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the third party, and (ii) the third party will notify Business Associate of any instances of which the third party is aware in which the confidentiality of the information has been breached.
- d. At Covered Entity's request, Business Associate may aggregate Protected Health Information with other information that Business Associate has received or created in its capacity as other covered entities' business associate, provided that the purpose of the aggregation is to provide data analyses relating to Covered Entity's health care operations. Business Associate may also de-identify Protected Health Information, provided that Business Associate (1) satisfies the applicable provisions for de-identification under the Privacy Rule, (2) provides Covered Entity with written documentation required by these provisions, and (3) if specified by Covered Entity, provides a certification of compliance with the Privacy Rule. Any such de-identified information shall not constitute Protected Health Information and shall not be subject to the terms and conditions of this Addendum regarding Protected Health Information.
- e. Business Associate may use Protected Health Information to report violations of law to appropriate federal and state authorities consistent with 42 CFR § 164.502(j)(1) "Disclosures by whistleblowers" and § 164.502(j)(2) "Disclosures by whistleblowers and workforce members who are victims of a crime victims."

5. COVERED ENTITY'S OBLIGATIONS

- a. Covered Entity will notify Business Associate in writing in advance of any limitation(s) in its notice of privacy practices in accordance with 45 CFR § 164.520 "Notice of privacy practices for protected health information" to the extent that the limitation(s) may affect Business Associate's use or disclosure of Protected Health Information.
- b. Covered Entity will notify Business Associate in writing and in advance of any changes in, or revocation of, any prior consent or authorization provided to Covered Entity by an Individual to use or disclose Protected Health Information to the extent that these changes may affect Business Associate's use or disclosure of Protected Health Information. Business Associate shall not be required to implement any such change or revocation until a reasonable period after its receipt of notice of the same.
- c. Covered Entity will notify Business Associate in advance of any proposed restriction on the use or disclosure of Protected Health Information to which Covered Entity may agree in accordance with 45 CFR § 164.522 "Rights to request privacy protection for protected health information" to the extent that the restriction may affect Business Associate's use or disclosure of Protected Health Information. Neither Covered Entity nor Business Associate shall be required to agree to the restriction, provided that Business Associate will accommodate Covered Entity's or an Individual's reasonable request to receive communications of Protected Health Information from Business Associate by alternative means or at alternative locations if the Individual clearly states in writing that the disclosure of all or part of that information could endanger the Individual.
- d. Covered Entity will not request that Business Associate use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done

by Covered Entity, except to the extent that Business Associate may use or disclose Protected Health Information for data aggregation or Business Associate's management and administration.

6. TERM AND TERMINATION OF ADDENDUM

- a. **Term.** This Addendum will be effective as the date set forth above and will terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or if it is not feasible to return or destroy the Protected Health Information, protections are extended to that information in accordance with the termination provisions of this Section 6.
- b. **Termination for Cause.** When Covered Entity becomes aware of a material breach by Business Associate of a term or condition of this Addendum, Covered Entity will provide an opportunity for Business Associate to cure the breach or end the violations. Covered Entity may terminate the Agreement in accordance with the terms of the Agreement if Business Associate does not cure the breach or end the violation within the time period specified by Covered Entity. Covered Entity may terminate the Agreement immediately if Business Associate has breached a material term of this Addendum and Covered Entity has determined that Business Associate cannot cure the breach within the required time period.
- c. **Effect of Termination.**
 - i) Except as provided in paragraph (ii) of this subsection, upon termination of the Agreement for any reason, Business Associate will return or destroy all Protected Health Information received from Covered Entity or created or received by Business Associate on behalf of Covered Entity. This provision applies to Protected Health Information that is in the possession of Business Associate's subcontractors or agents. Business Associate will not retain any copies of Protected Health Information.
 - ii) In the event that Business Associate determines that returning or destroying Protected Health Information is not feasible, Business Associate will provide Covered Entity with notification of the conditions that do not make return or destruction feasible. If Covered Entity agrees that return or destruction of Protected Health Information is not feasible, Business Associate will extend the protections of this Addendum to that Protected Health Information and limit further uses and disclosures of the Protected Health Information to those purposes that do not make return or destruction feasible, for as long as Business Associate maintains the Protected Health Information.

7. MISCELLANEOUS PROVISIONS

- a. **Regulatory References.** A reference in this Addendum to a section in the Privacy Rule or Security Rule means the section as in effect or as amended.
- b. **Amendment.** The parties to the Agreement agree to take the actions that are necessary to amend this Agreement from time to time so that Covered Entity may comply with the requirements of the Privacy Rule, the Security Rule, and the Health Insurance Portability and Accountability Act, Public Law 104-191.
- c. **Survival.** The rights and obligations of Business Associate under Section 7(c) of this Addendum will survive the termination of the Agreement.

- d. **Interpretation.** Any ambiguity in this Addendum or the Agreement will be resolved to permit Covered Entity to comply with the Privacy Rule and the Security Rule.
- e. **No Third Party Beneficiaries.** This Addendum is entered into by and among the parties hereto solely for their benefit. Except as specifically provided herein to the contrary, the parties have not created or established any third party beneficiary status or rights in any person or entity not a party hereto including, but not limited to, any plan participant, provider, subcontractor, or other third party, and no such third party will have any right to enforce any right or enjoy any benefit created or established under this Addendum.

IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed this Addendum as of the effective date set forth in Section 6. a. of the Addendum.

Delta Dental of Virginia *****
 (“Business Associate”)

 (“Covered Entity”)

By: _____

By: _____

Its: _____

Its: _____