

DELTA DENTAL OF COLORADO BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT ("Agreement") is entered into effective _____ by and between Delta Dental of Colorado ("Business Associate"), and _____ ("Covered Entity").

I. Applicability; Conflicts

- a. This Agreement applies with respect to all contracts or other arrangements by and between DDCO and Covered Entity that involve the use or disclosure of Protected Health Information (PHI). This Agreement addresses the business associate requirements of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") as amended by the American Recovery and Reinvestment Act of 2009/HITECH Act (P.L. 111-005), HIPAA's implementing regulations (45 C.F.R. Parts 160 and 164), all as may be further amended from time to time. Capitalized terms used but not otherwise defined in this Agreement shall have the same meaning as those terms in 45 C.F.R. §§ 160.103, 164.103, 164.304 and 164.501, as amended from time to time. As used in this Agreement, all references to PHI shall refer to the PHI of Covered Entity unless stated otherwise. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits covered Entity to comply with HIPAA.

II. Obligations and Activities of DDCO

The parties agree and acknowledge that DDCO, in performing its services hereunder, may receive from Covered Entity Protected Health Information (PHI). DDCO agrees that it will:

- a. Not use or further disclose the information other than as permitted or required by the Agreement or required by law;
- b. Use appropriate safeguards to prevent use or disclosure of the information other than as provided for by this Agreement;
- c. Agree to mitigate, to the extent practicable, any harmful effect that is known to DDCO of a use or disclosure of PHI by DDCO in violation of the requirements of this Agreement;
- d. Agree to immediately report to Covered Entity any use or disclosure of the PHI not provided for by this Agreement of which it becomes aware;
- e. Agree to ensure that any subcontractors or agents to whom DDCO provides PHI received from Covered Entity, or created or received by DDCO on behalf of Covered Entity, agree to the same restrictions and conditions that apply to DDCO with respect to such information;
- f. Agree to provide access, at the request of Covered Entity, within 20 days, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR §164.524;
- g. Agree to make any amendment(s) to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of Covered Entity or an Individual, and to do so within 20 days;
- h. Make its internal practices, books, and records relating to the use and disclosure of PHI including policies and procedures and PHI received from, or created or received by DDCO on behalf of the Covered Entity, available to the Secretary of Health and Human Services (or any officer or employee to whom authority has been delegated) and to the Covered Entity for purposes of determining compliance with applicable federal law;
- i. Agree to document such disclosures of PHI 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 PHI in accordance with 45 CFR § 164.528;

- j. DDCO agrees to provide to Covered Entity or an Individual, within 20 days, information regarding the receipt of PHI by DDCO from Covered Entity on the Individual, in order to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528.

III. Compliance with ARRA/HITECH Act

- a. DDCO will comply with the security requirements referenced in Section 13401 of ARRA, including the requirements of 45 C.F.R. §§ 164.308, 164.310, 164.312, and 164.316.
- b. DDCO understands that it is now subject to the same federal penalties (ARRA Section 13401(b)) as Covered Entity for violation of the security requirements referenced therein. DDCO accepts full responsibility for any penalties incurred as a result of its own breaches or violations of Covered Entity's PHI.
- c. Business Associate will, following the discovery of a breach of "unsecured PHI", as defined in 45 C.F.R. § 164.402, notify Covered Entity of such breach within 10 days. The notice shall include (i) the identification of each individual whose unsecured PHI has been, or is reasonably believed by DDCO to have been, accessed, acquired, or disclosed, (ii) identify the nature of the breach, including the date of discovery and the date of the breach, (iii) identify the types of PHI used or disclosed, (iv) describe what DDCO is doing to investigate the breach, mitigate harm and protect against further breaches. A breach is discovered as of the first day on which such breach is known to DDCO or should have been reasonably known to DDCO.
- d. Once discovery of a breach of unsecured PHI by DDCO has been reported to Covered Entity, Covered Entity will provide notification to the member unless other arrangements have been made with DDCO.
- e. DDCO may use and disclose PHI only if such use or disclosure, respectively, is in compliance with each applicable requirement of 45 C.F.R. § 164.504(e) (Uses and disclosure: Organizational requirements: Business Associate contracts) and the privacy requirements referenced in Section 13404 of ARRA.
- f. DDCO will comply with any and all privacy and security regulations issued pursuant to ARRA/HITECH Act and applicable to DDCO as and when those regulations are effective.

IV. Permitted Uses and Disclosures by DDCO

- a. Except as otherwise limited in this Agreement, DDCO may use or disclose PHI to perform functions, activities or services for, or on behalf of, Covered Entity, pursuant to the Agreement between Covered Entity and DDCO, provided that such use or disclosure would not violate HIPAA if done by Covered Entity;
- b. Except as otherwise limited in this Agreement, DDCO may use PHI to provide Data Aggregation services to Covered Entity as permitted by 42 CFR §164.504(e)(2)(i)(B);
- c. DDCO may use PHI to report violations of law to appropriate Federal and State authorities, consistent with §164.502(j)(1).

V. Obligations of Covered Entity

- a. Covered Entity shall notify DDCO of any limitation(s) in its Notice of Privacy Practices of Covered Entity in accordance with 45 CFR §164.520, to the extent that such limitation may affect DDCO's use or disclosure of PHI;
- b. Covered Entity shall notify DDCO of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect DDCO's use or disclosure of PHI;
- c. Covered Entity shall notify DDCO of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect DDCO's use or disclosure of PHI.

- d. Covered Entity shall not request DDCO to use or disclose PHI in any manner that would not be permissible under HIPAA if done by Covered Entity.

VI. Standard Transactions

- a. If DDCO conducts a transaction on behalf of the Covered Entity that is covered under 45 CFR Part 162, DDCO and its agents and subcontractors will comply with the requirements of 45 CFR Part 162, to the extent applicable to the Covered Entity if the Covered Entity were conducting the transaction itself.

VII. Security of Electronic Protected Health Information (ePHI)

- a. DDCO shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the ePHI that it creates, receives, maintains, or transmits on behalf of the Covered Entity as required by the Security Rule;
- b. DDCO shall ensure that any agent to whom it provides ePHI, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect it;
- c. DDCO shall report to the Covered Entity any security incident of which it becomes aware that involved ePHI of the Covered Entity.

VIII. Term and Termination

- a. At termination of the contract or business arrangement, DDCO will, if feasible, return or destroy all PHI received from, or created or received by DDCO on behalf of Covered Entity that DDCO still maintains in any form. DDCO agrees it will retain no copies of such PHI or, if such return or destruction is not feasible, extend the protections of its contract to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.
- b. *Term.* This Agreement shall terminate when all of the PHI provided by Covered Entity to DDCO, or created or received by DDCO on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this section.
- c. *Termination for Cause.* Covered Entity may terminate its contract(s) or business association with DDCO if Covered Entity determines that DDCO has violated a material term of the contract, to include this Agreement.

IX. Effect of Termination

- a. Except as provided in subparagraph **VIII** (a) of this Agreement, upon termination of this Agreement, for any reason, DDCO shall return or destroy all PHI received from Covered Entity, or created or received by DDCO on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of DDCO. DDCO shall retain no copies of the PHI.
- b. If return or destruction of PHI is infeasible, DDCO shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon notification to Covered Entity that return or destruction of PHI is infeasible, DDCO shall extend the protections of this Agreement for so long as DDCO maintains such PHI.

X. Miscellaneous

- a. *Indemnification.* DDCO agrees to and shall indemnify and hold harmless Covered Entity, its Board of Trustees, officers, agents, employees and personnel against any and all claims, demands, suits, losses, causes of action, or liability which Covered Entity may sustain as a result of DDCO's material breach of its duties within the terms of this Agreement, or liability of Covered Entity for any act or conduct of DDCO adjudged to constitute fraud, misrepresentation, or violation of any law, including violation of any statute or regulation.
- b. *Policies and Procedures.* The parties acknowledge that the contract or business association is subject to all applicable bylaws, rules and regulations, and written or published policies and procedures of Covered Entity regarding privacy and information handling. DDCO agrees to be bound by such policies as may be in effect and changed from time to time as though they were a part of any

contract from and after the date hereof.

- c. *Legal Requirements.* The parties recognize that this Agreement is subject to and agree to comply with applicable local, state and federal statutes and rules and regulations, and orders of the courts. Any provision of applicable statutes, rules and regulations, or court orders, whether now existing or enacted or promulgated after the effective date of this Agreement, that invalidate any term of this Agreement, that are inconsistent with any term of it, or that would cause performance hereof by one or both of the parties hereto to be in violation of law shall be deemed to have superseded the terms of this Agreement and this Agreement shall be automatically amended to achieve compliance with applicable law provided, however, that if such amendment does not preserve in all material respects the underlying economic and financial arrangements between the parties, the contract may be terminated by written notice by either party.
- d. *Audit of Records.* Covered Entity's audit of DDCO's records, or any waiver of its right to do so, does not relieve DDCO of its responsibilities under this Agreement and any liability for violations of law or regulations.
- e. *Amendment.* The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of HIPAA requirements.
- f. *Survival.* The respective rights and obligations of DDCO under Section II of this Agreement shall survive the termination of this Agreement.
- g. *Interpretation.* Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with HIPAA requirements.
- h. *Assignment.* Nothing expressed or implied in this Agreement is intended to confer or assign any rights, remedies, obligations or liabilities upon any person or entity other than Covered Entity and DDCO and their respective successors and assigns.

In witness whereof, the undersigned acknowledge that they have read this Agreement and commit to be bound by its terms and conditions.

COVERED ENTITY

BUSINESS ASSOCIATE

Group Name

Delta Dental of Colorado



Signature of CE Representative

Signature of BA Representative

Printed Name of CE Representative

Barbara Springer, General Counsel, V.P. Administration
Printed Name of BA Representative

Date

Date