

**Business Associate Agreement
Health Insurance Portability and Accountability Act (HIPAA)**

This Business Associate Agreement (the “Agreement”) is made and entered into by and between **Washington Dental Service (WDS)** (hereinafter “Covered Entity”), and [_____] (hereinafter “Business Associate”). WDS and Business Associate may be referred to individually as “Party” and, collectively, “Parties.”

Recitals

WHEREAS, the Department of Health and Human Services (“HHS”) has promulgated regulations at 45 C.F.R. Parts 160 and 164 implementing the privacy requirements (“Privacy Rules”) and regulations at 45 C.F.R. Parts 160, 162 and 164 implementing the security requirements (“Security Rules”) set forth in the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191;

WHEREAS, the Privacy Rules provide, among other things, that a covered entity is permitted to disclose Protected Health Information (as defined below) to a business associate and allow the business associate to obtain and receive Protected Health Information if the covered entity obtains satisfactory assurances in the form of a written contract that the business associate will appropriately safeguard the Protected Health Information;

WHEREAS, Business Associate will have access to, create and/or receive certain Protected Health Information in conjunction with the services being provided by Business Associate to Covered Entity, thus necessitating a written agreement that meets the applicable requirements of the Privacy Rules;

WHEREAS, Business Associate may receive Protected Health Information from Covered Entity, or may create or obtain Protected Health Information from other parties for use on behalf of Covered Entity, that is in electronic form, which information must be handled in accordance with the Security Rules;

WHEREAS, Both parties have mutually agreed to satisfy the foregoing regulatory requirements through this Agreement;

NOW THEREFORE, Covered Entity and Business Associate agree as follows:

1. Definitions. The following terms shall have the meaning set forth below:
 - 1.1. Business Associate. “Business Associate” shall have the same meaning as the term “Business Associate” in 45 CFR 160.103.
 - 1.2. C.F.R.. “C.F.R.” means the Code of Federal Regulations.
 - 1.3. Covered Entity. “Covered Entity” shall have the same meaning as the term “Covered Entity” in 45 C.F.R. 160.103.
 - 1.4. De-identify or De-identified. “De-identify” or “De-identified” means to remove, encode, encrypt or otherwise eliminate or conceal data that identifies an Individual, or modify information so that there is no reasonable basis to believe that the information can be used to identify an Individual.
 - 1.5. Designated Record Set. “Designated Record Set” has the meaning assigned to such term in 45 C.F.R. 164.501.

- 1.6. Individual. "Individual" shall have the same meaning as the term "individual" in 45 C.F.R. 160.103 and shall include a person who qualifies as the Individual's personal representative in accordance with 45 C.F.R. 164.502 (g).
- 1.7. Privacy Rule. "Privacy Rule" shall mean the standards of privacy of individually identifiable health information at 45 CFR Part 160 and Part 164, subparts A and E.
- 1.8. Protected Health Information. "Protected Health Information" shall have the same meaning as the term "Protected Health Information", as defined by 45 C.F.R. 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- 1.9. Required By Law. "Required By Law" shall have the same meaning as the term "required by law" in 45 C.F.R. 164.103.
- 1.10. Secretary. "Secretary" shall mean the Secretary of HHS or his/her designee.
- 1.11. Security Rule. "Security Rule" shall mean the Security Standards and Implementation Specifications at 45 CFR Part 160 and Part 164, Subpart C, as such standards may be amended or supplemented from time to time.
- 1.12. Terms used but not otherwise defined in this Agreement shall have the same meaning as those terms in 45 C.F.R. Parts 160, 162 and 164.

2. Obligations and Activities of Business Associate

- 2.1. Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by this Agreement or as Required By Law.
- 2.2. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- 2.3. 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 by Business Associate in violation of the requirements of this Agreement.
- 2.4. Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.
- 2.5. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- 2.6. Business Associate agrees to provide access to Protected Health Information 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 C.F.R. 164.524.
- 2.7. Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set pursuant to 45 C.F.R. 164.526 at the request of Covered Entity or an Individual, and in the time and manner Required by Law.
- 2.8. Business Associate agrees to make internal practices, books, and records 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 the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.

- 2.9. Business Associate agrees to document such 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 C.F.R. 164.528.
- 2.10. Business Associate agrees to provide to Covered Entity, upon request, an accounting of disclosures of an individual's Protected Health Information, collected in accordance with Section 2.9 of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. 164.528. If Covered Entity requests an accounting of an Individual's Protected Health Information more than once in any twelve (12) month period, Business Associate may impose a reasonable fee for such accounting in accordance with 45 C.F.R. 164.528(c).
- 2.11. Business Associate acknowledges that it shall request from the Covered Entity and so disclose to its affiliates, subsidiaries, agents and subcontractors or other third parties, only the minimum Protected Health Information necessary to perform or fulfill a specific function required or permitted hereunder.
- 2.12. Business Associate shall maintain the security of the Protected Health Information and prevent unauthorized uses or disclosures of such Protected Health Information.
- 2.13. If Business Associate conducts any Standard Transactions on behalf of Covered Entity, Business Associate shall comply with the applicable requirements of 45 C.F.R. Part 162.
- 2.14. Business Associate shall implement administrative, technical and physical safeguards necessary to reasonably and appropriately protect the confidentiality, integrity and availability of Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of the Covered Entity, in compliance with Security Rules.
- 2.15. Business Associate agrees to ensure that access to Electronic Protected Health Information related to the Covered Entity is limited to those workforce members who require such access because of their role or function.
- 2.16. Business Associate agrees to implement safeguards to prevent its workforce members who are not authorized to have access to such Electronic Protected Health Information from obtaining access and to otherwise ensure compliance by its workforce with the Security Rule.
- 2.17. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Electronic Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- 2.18. Business Associate agrees to report to Covered Entity, in writing, any security incident of which it becomes aware. For purposes of this Agreement, security incident shall mean successful unauthorized access to, disclosure, modification or destruction of, or interference with, the Electronic Protected Health Information by a third party.
- 2.19. Upon request from Covered Entity, Business Associate agrees to provide information to Covered Entity on unsuccessful unauthorized access, use, disclosure, modification or destruction of the Electronic Protected Health Information to the extent such information is available to Business Associate.

3. Permitted Uses and Disclosures by Business Associate

3.1. General Use and Disclosure

Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform its obligations and services to Covered Entity, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.

3.2. Specific Use and Disclosure Provisions

- 3.2.1. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- 3.2.2. Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- 3.2.3. Business Associate may use Protected Health Information to provide data aggregation services to Covered Entity.
- 3.2.4. Business Associate may share Protected Health Information with Covered Entity as permitted by the Privacy Rule, including but not limited to disclosure to Covered Entity of claims, appeals, participation and enrollment/disenrollment information, in addition to De-identified and summary health information.
- 3.2.5. Business Associate may De-identify any and all Protected Health Information created or received by Business Associate from Covered Entity; provided, however, that the De-identification conforms to the requirements of the Privacy Rule. Such resulting De-identified information would not be subject to the terms of this agreement.
- 3.2.6. Business Associate may create a Limited Data Set as defined in the Privacy Rule, and use such Limited Data Set pursuant to a data use agreement that meets the requirements of the Privacy Rule.

4. Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions

- 4.1. Covered Entity shall notify Business Associate of any limitations in its notice of privacy practices that Covered Entity produces in accordance with 45 C.F.R. § 164.520, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.
- 4.2. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.
- 4.3. Covered Entity shall notify Business Associate, in writing, of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522.

5. Impact of ARRA

Business Associate acknowledges that Subtitle D of Title XIII of the American Recovery and Reinvestment Act of 2009, known as the Health Information Technology for Economic and Clinical Health (HITECH) Act, codified at 42 U.S.C. 17921-17954 imposes direct obligations on Business Associate under the Privacy Rules and Security Rules. Requirements applicable to Business Associate under the HITECH Act, including but not limited to administrative, physical and technical safeguards, policy, procedure and documentation

requirements, breach notification requirements, and provisions that would govern the Covered Entity's action if the Business Associate undertakes that action on behalf of the Covered Entity, are hereby incorporated by reference into this Agreement to be effective as of the applicable effective date under the HITECH Act

Notwithstanding any other provision of the Agreement or underlying services contract(s) between the parties, Business Associate agrees to pay all penalties and reasonable expenses, including those incurred for reasonable remediation, as a result of Business Associate's (or its agent's) acts or omissions related to its HIPAA obligations or through contractual agreement between the Business Associate and Plan.

6. Term and Termination

6.1. Term. The provisions of this Agreement replace an existing Business Associate Agreement between Covered Entity and Business Associate and shall take effect as of date that Business Associate executes this Agreement, and shall 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 infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the provisions in this Section.

6.2. Termination for Cause. If Covered Entity determines that there has been a material breach of this Agreement by Business Associate which does not arise from a breach by Covered Entity, Covered Entity shall either (i) provide an opportunity for Business Associate to cure the breach or end the violation or (ii) terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, or (iii) immediately terminate this Agreement if cure of such breach is not possible.

6.3. Effect of Termination.

6.3.1. Except as provided in paragraph (b) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. Business Associate shall request, in writing, Protected Health Information that is in the possession of subcontractors or agents of Business Associate.

6.3.2. The parties mutually agree that it is essential for Protected Health Information to be maintained after the expiration of this Agreement for regulatory and other business reasons. The parties further agree that it would be infeasible for the Covered Entity to maintain such records because they lack the necessary system and system expertise. Accordingly, Covered Entity hereby appoints Business Associate as their custodian for the safe keeping of any record containing Protected Health Information that Business Associate may determine it is appropriate to retain. Notwithstanding the expiration or termination of this Agreement, Business Associate shall extend the protections of this Agreement to such Protected Health Information, and limit further use or disclosure of the Protected Health Information to those purposes that make the return or destruction of the Protected Health Information infeasible.

7. Miscellaneous

7.1. Regulatory References. A reference in this Agreement to a section in the Privacy Rule or Security Rule means the section as in effect or as amended, and for which compliance is required.

7.2. Amendment. Upon the enactment of any law or regulation affecting the use or disclosure of Protected Health Information, or the publication of any decision of a court of the United States or any state relating to any such law or the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of any such law or regulation, either party may, by written notice to the other party, and by mutual agreement, amend the Agreement in such manner as such party determines necessary to comply with such law or regulation. If the other party disagrees with

such amendment, it shall so notify the first party in writing within thirty (30) days of the notice. If the parties are unable to agree on an amendment within thirty (30) days thereafter, then either of the parties may terminate the Agreement on thirty (30) days written notice to the other party.

- 7.3. Survival. The obligations of Business Associate under section 6.3.1 of this Agreement shall survive the termination of this Agreement.
- 7.4. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits both parties to comply with the Privacy Rule. In the event of any inconsistency or conflict between this Agreement and any other agreement between the parties, the terms, provisions and conditions of this Agreement shall govern and control.
- 7.5. Indemnification. Business Associate shall indemnify, defend and hold harmless Covered Entity (including without limitation, their employees, officers, directors, agents, successors and assigns) from and against any and all claims, causes of action, liabilities, damages, costs, or expenses (including without limitation, attorneys' fees, court costs, costs of administrative or other proceedings, and costs of investigation) arising out of or related to any breach of any of the terms and provisions of this Agreement by Business Associate or any party acting by or through Business Associate (including without limitation its employees, agents, representatives, contractors or subcontractors).
- 7.6. No third party beneficiary. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors or assigns of the parties, any rights, remedies, obligations, or liabilities whatsoever.
- 7.7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

For Washington Dental Service

For Business Associate

Signature:

Signature:



Name: Sheri L. Rees
Title: Compliance Officer

Print Name:

Title:

Company Name:

Date: