DELTA DENTAL
Washington Dental Service
Washington Dental Service is a member of the Delta Dental Plans Association

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 [insert business associate name] (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 and has or will promulgate regulations implementing Subtitle D of the Health Information Technology for Economic and Clinical Health Act which is Title XIII of the American Recovery and Reinvestment Act of 2009 (Public Law 11-5) (the "HITECH Act");

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 Covered Entity or 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. Breach. "Breach" shall have the same meaning as the term "breach" in 45 C.F.R. §164.402.

   1.2. Business Associate. "Business Associate" shall mean [insert business associate name].

   1.3. C.F.R. "C.F.R." means the Code of Federal Regulations.

   1.4. Covered Entity. "Covered Entity" shall mean WDS.

   1.5. 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.

   1.6. Designated Record Set. "Designated Record Set" has the meaning assigned to such term in 45 C.F.R. §164.501.

1.7. 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).

1.8. 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.

1.9. 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.

1.10. Required By Law. "Required By Law" shall have the same meaning as the term "required by law" in 45 C.F.R. §164.103.

1.11. Secretary. "Secretary" shall mean the Secretary of HHS or his/her designee.

1.12. 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.

1.13. Capitalized 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 develop, implement, maintain, and use appropriate administrative, technical, and physical 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 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 are applicable to Business Associate under this Agreement.

2.5. 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.

2.6. Business Associate will, upon receipt of written notice from Covered Entity, promptly amend or permit Covered Entity access to amend any portion of Protected Health Information in a Designated Record Set in order to meet the requirements of 45 C.F.R. §164.526.

2.7. 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.

2.8. 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

2.9. 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 2.8 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 by recording information in accordance with this section ("Disclosure Information"). For non-repetitive disclosures by Business Associate of Protected Health Information, Business Associate will record: (i) the disclosure date; (ii) the name and (if known) address of the entity to which Business Associate made the disclosure; (iii) a brief description of the Protected Health Information disclosed; and (iv) a brief statement of the purpose of the disclosure. For repetitive disclosures of Protected Health Information that Business Associate makes for a single purpose to the same person or entity (including Covered Entity), the Business Associate will record either: (i) the same information for non-repetitive disclosures for each disclosure; or (ii) the same information for non-repetitive disclosures for the first such disclosure, the frequency, periodicity, or number of such repetitive disclosures, and the date of the last of the repetitive accountable disclosures. 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).

2.10. Business Associate will maintain the Disclosure Information prepared in accordance with Section 2.9 of this Agreement for at least 6 years following the date of the disclosure to which the Disclosure Information relates. Business Associate will provide the Disclosure Information to Covered Entity within 30 calendar days following Covered Entity's request for such Disclosure Information.

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. "minimum necessary" shall be interpreted in accordance with the HITECH Act and government guidance on the definition.

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 develop, implement, maintain, and use 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 and the HITECH ACT.

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 Rules.

2.17. Business Associate shall comply with all federal, state and local confidentiality privacy and security laws, specifically including but not limited to HIPAA and the HITECH Act.

2.18. As of the effective date specified by HHS in final regulations to be issued on this topic, Business Associate shall not directly or indirectly receive remuneration in exchange for any Individual's PHI

unless Covered Entity or the Business Associate obtained from the Individual, in accordance with 45 CFR § 164.508, a valid authorization that includes a specification of whether the PHI can be further exchanged for remuneration by the entity receiving the Individual's PHI, except as otherwise allowed under the HITECH Act.

2.19. Business Associate acknowledges that it is subject to civil and criminal enforcement for failure to comply with the Privacy Rule and Security Rule, as amended by the HITECH Act. Notwithstanding any other provision of this Agreement or the underlying 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 subcontractors' or agents' acts or omissions related to its HIPAA or HITECH Act obligations.

3. Privacy or Security Breach.

3.1. Business Associate will report to Covered Entity's Privacy Officer any use or disclosure of Protected Health Information not permitted by this Agreement and any suspected Breach of Unsecured Protected Health Information not more than 30 calendar days after the non-permitted use or disclosure or Breach is discovered. A suspected Breach shall be treated as discovered as of the first day on which such Breach is known or reasonably should have been known by Business Associate. If a delay is requested by a law enforcement official in accordance with 45 CFR §164.412, Business Associate may delay notifying Covered Entity for the applicable period of time. The report shall include:

3.1.1. The nature of the Breach or other non-permitted use or disclosure, including a brief description of what happened, the date of the non-permitted use or disclosure or Breach and the date of discovery;
3.1.2. A description of the Unsecured PHI that was subject to the non-permitted use or disclosure or Breach (such as whether full name, social security number, date of birth, home address, account number or other information were involved) on an individual basis;
3.1.3. The identity of the person who made the non-permitted use or disclosure and who received the non-permitted disclosure (if known);
3.1.4. The corrective or investigative action Business Associate took or will take to prevent further non-permitted uses or disclosures, to mitigate harmful effects, and to protect against future Breaches;
3.1.5. Any details necessary for Covered Entity to assess the risk of harm to Individuals whose PHI and the steps such Individuals should take to protect themselves; and
3.1.6. Such other information, including a written report, as Covered Entity may reasonably request.

3.2. Covered Entity, at its sole discretion, shall make the determination as to whether or not the non-permitted use or disclosure constitutes a Breach as that term is defined in 45 CFR §164.402 and will be responsible for providing notification to Individuals whose Unsecured PHI has been disclosed, as well as the Secretary of HHS and the media, as required by the HITECH Act. If Covered Entity determines the non-permitted use or disclosure qualifies as a Breach that triggers the HITECH Act breach notification requirements, then Business Associate will reimburse Covered Entity for all costs related to notifying Individuals of the Breach of Unsecured Protected Health Information maintained or otherwise held by Business Associate as well as any costs to mitigate the effects of the Breach.

3.3. Business Associate will report to Covered Entity any attempted or successful unauthorized access, use, disclosure, modification or destruction of Electronic Protected Health Information or interference with Business Associate's systems operations in Business Associate's information systems, of which Business Associate becomes aware. Business Associate shall make such reports annually except if such Security Incident results in a disclosure not permitted by this Agreement or Breach of Unsecured Protected Health Information, Business Associate will make a report as required by Section 3.1 of this Agreement.

4. Permitted Uses and Disclosures by Business Associate

4.1. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information that it creates or receives on behalf of Covered Entity or receives from Covered Entity (or another business associate of Covered Entity) and to request Protected Health Information on behalf of Covered Entity only as follows:

4.1.1. 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.

4.1.2. For the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that with respect to the disclosure of Protected Health Information the disclosure is Required by Law, or Business Associate obtains reasonable assurances from the person to whom the Protected Health 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 Protected Health Information has been breached.

4.1.3. To provide data aggregation services to Covered Entity as permitted by 42 CFR §164.504(e)(2)(i)(B).

4.1.4. To 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.

4.1.5. To 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.

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

5.1. 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 limitations may affect Business Associate's use or disclosure of Protected Health Information.

5.2. 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.

5.3. 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, to the extent such restriction may affect Business Associate's use or disclosure of Protected Health Information.

6. Term and Termination

6.1. Term. The term of this Agreement shall commence 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, in its sole discretion, 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 to Covered Entity or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity in whatever form or medium, including all copies thereof and all data, compilations, and other works derived therefrom that allow identification of any Individual who is the subject of the Protected Health Information. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of the Business Associate. Further, Business Associate shall require any such subcontractor or agent to certify to Business Associate that it returned to Business Associate (so that Business Associate could return to the Covered Entity) or destroyed all such information which could be returned or destroyed.

6.3.2. In the event that Business Associate determines that returning or destroying Protected Health Information, including any Protected Health Information disclosed to subcontractors or agents as permitted under this Agreement, is infeasible, Business Associate shall provide to the Covered Entity notification of the conditions that make it infeasible. Upon providing such notice to the Covered Entity that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to the Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

6.3.3. Business Associate's obligation to protect the privacy and safeguard the security of Protected Health Information as specified in this Agreement will be continuous and survive termination or other conclusion of this Agreement.

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 compliance date of any final regulation or amendment to final regulation promulgated by HHS that affects Business Associate's or Covered Entity's obligations under this Agreement, this Agreement will automatically amend such that the obligations imposed on Business Associate and Covered Entity remain in compliance with the final regulation or amendment. In addition, upon the publication of any decision of a court of the United States or any state relating to any such law affecting the use or disclosure of Protected Health Information 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. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits both parties to comply with the applicable requirements under HIPAA and the HITECH Act. 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.

7.4. 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).

7.5. 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.

7.6. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

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: