

# PRODUCER AGREEMENT

This PRODUCER AGREEMENT including the attached PRODUCER BUSINESS ASSOCIATE ADDENDUM (the "Agreement") is made effective the last date signed below, ("Effective Date") between Arizona Dental Insurance Service, Inc. d/b/a DELTA DENTAL OF ARIZONA ("Delta Dental") and Producer (as identified in the signature block below) (collectively, the "Parties"). The PRODUCER BUSINESS ASSOCIATE ADDENDUM is hereby incorporated into and made a part of this PRODUCER AGREEMENT. In consideration of the mutual covenants and agreements set forth herein, the Parties agree as follows:

## 1. Appointment

Delta Dental appoints Producer as a non-exclusive producer to represent Delta Dental to individuals and groups within the State of Arizona for the purposes of: (a) sale of Delta Dental's individual dental insurance policies and group dental benefit contracts; and (b) provision of support services incidental to those policies and contracts, all in accordance with the laws of the State of Arizona and the policies and procedures, rate structure and underwriting rules of Delta Dental.

Producer has no authority to bind Delta Dental to coverage either verbally or in writing, nor to alter, amend, change, delete or add to any provision of any policy or contract of coverage, unless expressly so authorized in writing by Delta Dental's President in advance and applicable only to the specific case or instance in such written authorization.

## 2. Compensation

### a. Commission Payment

Delta Dental will pay Producer commission at Delta Dental's standard commission rate applicable to the particular product unless a different rate is otherwise mutually agreed to in writing by the Parties. The commissions will be paid to Producer only if at all times: (a) Producer continues to be designated as the individual or company authorized to represent the insured in the purchase, servicing, and maintenance of insurance coverage with Delta Dental ("Producer of Record") for the group with respect to a group dental benefit contract and for the individual with respect to an individual insurance policy; (b) Producer is in compliance with all terms of this Agreement; and (c) the respective group dental benefit contract or the respective individual insurance policy remains in effect.

### b. Time of Payment; Adjustments

Commissions due Producer hereunder shall be payable within 30 days following the month in which Delta Dental collects payment under the applicable individual insurance policies or group dental benefit contracts to which the commission relates. However, Delta Dental reserves the right to accumulate commissions until commissions due Producer equal at least \$100. Should Delta Dental make any rate adjustment to the applicable individual insurance policy or group dental benefit contract for any prior period, then a corresponding retroactive adjustment, including any offset, shall be made in the commissions due Producer for that period. Producer shall submit any dispute about the amount of commissions received from Delta Dental in writing within 90 days of the date the commission payment was issued by Delta Dental. If a written dispute is not received within that time, Producer waives any future right to dispute the amount of commission payable.

### c. Changes in Producer of Record

If the holder of any individual insurance policy or group dental benefit contract provides written notice to Delta Dental that Producer is no longer the Producer of Record for the respective individual or group, Producer will continue to receive commissions for the month in which Delta Dental received such written notice but will not receive commissions for any subsequent months.

### d. Indebtedness

If Producer is or becomes indebted to Delta Dental for any amount whatsoever, Producer grants Delta Dental a security interest in any commissions then or thereafter becoming due to Producer and expressly authorizes Delta Dental to apply any commissions in satisfaction of the indebtedness.

## 3. Producer's Obligations

During the term of this Agreement, Producer will:

- a. Provide all support services required by the individual insurance policyholder or group contract holder sold by Producer, including but not limited to employee orientation, enrollment, and ongoing customer support.
- b. Adhere to and abide by Delta Dental's policies and procedures, rate structure and underwriting rules, and all state and federal laws and regulations governing the sale of insurance contracts.
- c. Comply with the terms of the Delta Dental Producer Business Associate Addendum. All references to Business Associate in the Producer Business Associate Addendum shall refer to Producer.
- d. Obtain and maintain all licenses required with the Arizona Department of Insurance, and provide a copy of current licenses to Delta Dental upon request.
- e. Immediately notify Delta Dental in writing of any termination, suspension or expiration of its producer license.

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- f. Immediately notify Delta Dental of any inquiries, subpoenas or other notifications from federal, state or local authorities regarding any Delta Dental insured, product or service or of any investigation into Producer that could result in misdemeanor or felony charges involving fraud, dishonestly, theft, or misappropriation of money.
- g. Provide written notification to Delta Dental in each case in which two or more Producers are due commissions from the business generated from the same individual insurance policy or group dental benefit contract, the notification of which will contain the agreed-upon commission split between or among the Producers.
- h. Keep such records and forms that may be reasonably required by Delta Dental or by applicable law but for no less than 6 years following termination of this Agreement. Producer grants Delta Dental the right to examine and obtain copies of such records upon reasonable request.
- i. Carry errors and omissions insurance with limits of no less than \$1 million/\$3 million, notify Delta Dental in writing of any modification, termination and/or cancellation of such insurance coverage within 10 days of such event and provide a certificate of such insurance to Delta Dental upon request.
- j. Comply with Delta Dental's brand guidelines in connection with any use of any of Delta Dental's names, logos, trademarks, service marks, trade names or other identifying indicia ("Trademarks"). Producer will submit any proposed use of the Trademarks to Delta Dental for approval prior to using the Trademarks. Delta Dental has the sole authority to determine whether Producer's use of the Trademarks is consistent with Delta Dental's brand guidelines.
- k. Return immediately any funds belonging or due to Delta Dental that are mistakenly received by Producer. Producer must remit the funds in full to Delta Dental within 3 business days. Any funds not remitted shall bear interest at the rate of 12% per annum, payable upon demand by Delta Dental and shall be subject to offset as set forth in Section 2.d. above.

#### 4. Delta Dental Obligations

During the term of this Agreement, Delta Dental will:

- a. Provide Producer with current information concerning its policies and procedures, rate structure and underwriting rules.
- b. Provide to Producer, upon request, promotional materials relating to individual insurance policies and group dental benefit contracts.
- c. Maintain in full force and effect its certificate of authority as a dental service corporation with the Arizona Department of Insurance.
- d. Provide Producer with guidelines regarding permitted use of its Trademarks as required.
- e. Pay commissions to Producers in accordance with this Agreement.

#### 5. Term and Termination

##### a. Term

This Agreement shall be effective as of the Effective Date, unless and until terminated as set forth herein.

##### b. Termination for Convenience

This Agreement may be terminated by either Party on 30 days' prior written notice.

##### c. Termination for Cause

In the event either Party commits a material breach of any of its obligations hereunder, the other Party may terminate this Agreement after giving 30 days written notice to the other Party setting forth in detail the breach giving rise to termination and an opportunity to cure. If the breach is not cured within the notice period, the non-breaching Party may terminate the Agreement upon written notice to breaching Party, which termination shall go into effect immediately upon receipt.

##### d. Immediate Termination

DDAZ may terminate this Agreement immediately in the event Producer becomes insolvent, fails to pay its bills when due, fails to maintain all licenses required with the Arizona Department of Insurance, makes an assignment for the benefit of creditors, goes out of business or ceases operating.

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### e. Termination for Breach of Producer Business Associate Addendum

In addition to all other rights of termination, upon Delta Dental's knowledge of a material breach by Producer under the Producer Business Associate Addendum, Delta Dental shall, upon written notice, either:

- i. Provide an opportunity for Producer to cure the breach. If the breach is not cured to Delta Dental's satisfaction in the time specified by Delta Dental in its notice, Delta Dental may terminate this Agreement; or
- ii. Immediately terminate this Agreement if Producer has breached a material term of the Producer Business Associate Addendum and Delta Dental determines that cure is not possible; or
- iii. Immediately terminate this Agreement if Delta Dental determines in its reasonable discretion that PHI is at unreasonable risk of a Breach.

### f. Effect of Termination

Upon termination of this Agreement for any reason, Producer will return to Delta Dental all PHI received from Delta Dental or created or received by Producer or its agents on behalf of Delta Dental, in any form. If Producer believes that the return of all PHI is not commercially feasible, Producer shall inform Delta Dental in writing of the reason thereof. If Delta Dental, in its sole discretion, agrees that return of PHI is not commercially feasible, Producer may retain the PHI but will extend this Agreement including the provisions of the Producer Business Associate Addendum to such PHI so long as Producer retains the PHI.

## 6. Limitation of Liability

- a. Delta Dental's liability to Producer under this Agreement is limited to Producer's actual damages but in no event more than the amount paid by Delta Dental to the Producer for the 12 months prior to the occurrence giving rise to liability.
- b. In no event will Delta Dental be liable to Producer or any third party in contract, tort or otherwise for indirect, incidental or consequential damages of any kind, including, without limitation, punitive or economic damages or lost profits, regardless of whether Delta Dental has been advised, has other reason to know, or in fact knows, of the possibility of such damages.

## 7. Indemnification

### a. Indemnification by Delta Dental

Subject to the provisions in Section 6 above, Delta Dental agrees to indemnify and hold harmless Producer from and against all claims, demands, liabilities, judgments or causes of action of any nature for any relief, elements of recovery or damages recognized by law (including, without limitation, attorney's fees, defense costs, and equitable relief), for any damage or loss incurred by Producer arising out of, resulting from, or attributable to any acts or omissions or other conduct of Delta Dental or its agents in connection with the performance of Delta Dental's or its agents' duties under this Agreement. This indemnity shall apply even if Producer is alleged to be solely or jointly negligent or otherwise solely or jointly at fault. Delta Dental shall be relieved of its indemnification obligation to the extent that a final adjudication determines that Producer was partially or wholly responsible for the loss and only to the extent of its responsibility. This indemnity shall not be construed to limit Delta Dental's rights, if any, to common law indemnity.

### b. Indemnification by Producer

Producer agrees to indemnify and hold harmless Delta Dental from and against all claims, demands, liabilities, judgments or causes of action of any nature for any relief, elements of recovery or damages recognized by law (including, without limitation, attorney's fees, defense costs, and equitable relief), for any damage or loss incurred by Delta Dental arising out of, resulting from, or attributable to any acts or omissions or other conduct of Producer or its agents in connection with the performance of Producer's or its agents' duties under this Agreement including the Producer Business Associate Addendum incorporated into this Agreement. This indemnity shall apply even if Delta Dental is alleged to be solely or jointly negligent or otherwise solely or jointly at fault. Producer shall be relieved of its indemnification obligation to the extent that a final adjudication determines that Delta Dental was partially or wholly responsible for the loss and only to the extent of its responsibility. This indemnity shall not be construed to limit Producer's rights, if any, to common law indemnity.

Delta Dental has the option, at its sole discretion, to employ attorneys selected by it to defend any such action, the costs and expenses of which shall be the responsibility of Producer. Each Party shall provide the other Party with timely written notice of the existence of such proceedings and such information, documents and other cooperation as reasonably necessary to assist the Parties in establishing a defense to such action.

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## 8. Confidentiality

In addition to the obligations contained in the Producer Business Associate Addendum incorporated into this Producer Agreement, for a period of two years following termination of this Agreement, Producer shall not disclose or use any confidential and/or proprietary information about the business of Delta Dental except in furtherance of Producer's obligations under this Agreement or as authorized by Delta Dental in writing. Confidential and/or proprietary information about the business of Delta Dental includes, but is not limited to, policies and procedures, rate structure and underwriting rules, client lists, and client-specific proposals. Delta Dental retains any and all rights and title to the proprietary information, confidential information, and PHI it provides to Producer and other information created or received by Producer or its agents on behalf of Delta Dental.

## 9. Dispute Resolution

- a. The Parties will attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. Either Party may give the other Party written notice of any dispute not resolved in the normal course of business. Within 15 days after delivery of the notice, the receiving Party shall submit to the other a written response. The notice and response shall include with reasonable particularity (a) a statement of each Party's position and a summary of arguments supporting that position, and (b) the name and title of the executive who will represent that Party and of any other person who will accompany the executive. Within 30 days after delivery of the notice, the executives of both Parties shall meet at a mutually acceptable time and place.
- b. Unless otherwise agreed in writing by the negotiating parties, the above-described negotiation shall end at the close of the first meeting of executives described above ("First Meeting"). Such closure shall not preclude continuing or later negotiations, if desired.
- c. All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the parties, their agents, employees, experts and attorneys are confidential, privileged and inadmissible for any purpose, including impeachment, in arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation.
- d. At no time prior to the First Meeting shall either side initiate an arbitration or litigation related to this Agreement except to pursue an equitable remedy that is authorized by law or by agreement of the Parties. However, this limitation is inapplicable to a Party if the other Party refuses to comply with the requirements of Section 9.a. above.
- e. All applicable statutes of limitation and defenses based upon the passage of time shall be tolled while the procedures specified in Section 9.a. and 9.b. above are pending and for 15 calendar days thereafter. The Parties will take such action, if any, required to effectuate such tolling.

## 10. General Provisions

### a. Assignment of Rights and Delegation of Duties

This Agreement is binding upon and inures to the benefit of the Parties hereto and their respective successors and permitted assigns. However, neither Party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Both Parties are responsible for the performance of any obligation it subcontracts to a third party and is responsible for any damage caused by such third party. Notwithstanding any provisions to the contrary, however, Delta Dental retains the right to assign or delegate any of its rights or obligations hereunder to any of its wholly-owned subsidiaries, affiliates or successor companies. Assignments made in violation of this provision are null and void.

### b. Attorney's Fees

The non-prevailing Party in any dispute under this Agreement shall pay all costs and expenses, including expert witness fees and attorneys' fees, incurred by the prevailing Party in resolving such dispute.

### c. Choice of Law and Venue

This Agreement shall be governed by and construed under the laws of the State of Arizona, without reference to any conflicts of law provisions. Each Party submits to the exclusive jurisdiction of the courts of the State of Arizona or United States District Court for the District of Arizona in any legal proceeding arising out of or relating to this Agreement and agrees to venue in Maricopa County, Arizona. Each party waives any right to object to lack of personal jurisdiction, venue, forum non-convenience or similar grounds.

### d. Compliance with Laws

Each Party shall comply with all applicable legal requirements governing the duties, obligations and business practices of that Party and shall obtain any permits or licenses necessary for its operations. Neither Party shall take any action in violation of any applicable legal requirement that could result in liability being imposed on the other Party.

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## e. Conflicts

The provisions of this Agreement including the Producer Business Associate Addendum will prevail over the provisions of any other agreement that exists between the Parties that may conflict with, or appear inconsistent with, any provision of this Agreement. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Delta Dental to comply with the HIPAA Rules (as defined in the Addendum) and any applicable state confidentiality laws. The provisions of the Producer Business Associate Addendum shall prevail over other provisions of this Agreement that may conflict with, or appear inconsistent with, any provision of the Addendum or the HIPAA Rules.

## f. Equitable Relief

Any unauthorized disclosure or misappropriation of PHI in violation of the Producer Business Associate Addendum will cause Delta Dental irreparable harm, the amount of which may be difficult to ascertain. Producer therefore agrees that Delta Dental shall have the right to specific performance and/or an order restraining and enjoining Producer from any disclosure or breach, and for such other relief as Delta Dental shall deem appropriate. Such rights are in addition to any other remedies available to Delta Dental at law or in equity. Producer expressly waives the defense that a remedy in damages will be adequate, and further waives any requirement in an action for specific performance or injunction for the posting of a bond by Delta Dental.

## g. Mitigation

If Producer breaches the Producer Business Associate Addendum, violates the HIPAA Rules, or causes other damage to Delta Dental in connection therewith, Producer will take all reasonable steps to mitigate any damage caused by such disclosure or breach.

## h. Cumulative Rights

Any specific right or remedy contained in this Agreement will not be exclusive but will be cumulative of all other rights and remedies.

## i. Entire Agreement

This Agreement including the Producer Business Associate Addendum constitutes the entire Agreement between the Parties hereto with respect to the subject matter hereof and supersedes all previous written or oral understandings, agreements, negotiations, commitments, and any other writing and communication by or between the Parties with respect to the subject matter hereof.

## j. Force Majeure

- i. Neither Party is liable to the other for any delay or failure to perform caused by the other Party's delay in supplying or failing to supply approvals, information, materials, or services called for under the terms of this Agreement if such delay is caused by circumstances beyond its control, including acts of civil or military authority, national emergencies, labor difficulties, fire, flood, or catastrophe, acts of God, insurrection, war or riots.
- ii. Each Party will exercise reasonable efforts to mitigate the extent of any excusable delay or failure under Section 10.j(i) and their adverse consequences; provided, however, that should any such delay or failure continue for more than sixty (60) days, the Agreement may be terminated by the non-delaying Party.

## k. Headings

The descriptive headings of the articles, sections, subsections, addendums, exhibits and appendices of this Agreement are inserted for convenience only, and shall not affect in any way the meaning or interpretation of this Agreement.

## l. Insurance

Each Party agrees to maintain insurance in commercially reasonable amounts calculated to protect itself and the other Party from any and all claims of any kind or nature for damage to property, personal injury, including death, made by anyone, that may arise from activities performed or facilitated by this Agreement including the Producer Business Associate Addendum incorporated herein, whether these activities are performed by the Party, its employees, agents or anyone directly or indirectly engaged or employed by the Party or its agents.

## m. Notices

Any notices pertaining to this Agreement shall be given in writing and shall be deemed duly given when personally delivered to a Party or a Party's authorized representative, sent by means of a reputable overnight carrier, or sent by means of certified mail, return receipt requested, postage prepaid. A notice sent by certified mail shall be deemed given on the date of receipt or refusal of receipt. Producer's address is the address of record submitted to Delta Dental by Producer. All notices to Delta Dental shall be addressed as follows:

Delta Dental of Arizona  
5656 W. Talavi Blvd.  
Glendale, AZ 85306  
Attn: Sales Department  
Phone Number: 602.938.3131

Notices pertaining to the Producer Business Associate Addendum shall be sent to the address noted above with an additional copy to Attn: Privacy Officer.

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**n. Relationship of the Parties**

Nothing in this Agreement shall be construed to create (i) a partnership, joint venture or other joint business relationship between the Parties or any of their affiliates, (ii) any fiduciary duty owed by one Party to another Party or any of its affiliates, or (iii) a relationship of employer and employee between the Parties.

**o. Severability**

If any provision of this Agreement is held or declared to be illegal, invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect as though such illegal, invalid or unenforceable provision had not been contained herein.

**p. Survival**

The respective rights and obligations of each Party under this Agreement that logically ought to survive the termination of this Agreement shall survive.

**q. Third Party Beneficiaries**

Nothing in this Agreement shall be considered or construed as conferring any right or benefit on a person or entity not party to this Agreement.

**r. Waiver**

Failure or delay on the part of either Party to exercise any right, power, privilege or remedy hereunder shall not constitute a waiver thereof. No provision of this Agreement may be waived by either Party except by a writing signed by an authorized representative of the Party making the waiver.

**s. Written Modification**

This Agreement may be amended only by a writing executed by authorized representatives of both Parties. The Parties however agree to amend this Agreement from time to time as necessary to comply with the requirements of the HIPAA Rules.

**THE PRODUCER BUSINESS ASSOCIATE ADDENDUM WHICH STARTS ON PAGE 7 HEREOF IS INCORPORATED INTO THIS PRODUCER AGREEMENT.**

IN WITNESS WHEREOF, the parties have executed this Producer Agreement including the Producer Business Associate Addendum incorporated herein, as of the Effective Date.

DELTA DENTAL OF ARIZONA

  
\_\_\_\_\_  
President

PRODUCER

\_\_\_\_\_

Printed Name
Title
Company Name
Address
Email
Phone



# PRODUCER BUSINESS ASSOCIATE ADDENDUM

For purposes of this Addendum, Producer shall be referred to as “Business Associate”.

Business Associate and Delta Dental, a covered entity (collectively the “Parties”), agree to comply with the privacy standards adopted by the U.S. Department of Health and Human Services 45 C.F.R. parts 160 and 164 (“the Privacy Rules”); the security standards adopted by the U.S. Department of Health and Human Services 45 C.F.R. parts 160, 162 and 164, subpart C (“the Security Rules”); the Health Information Technology for Economic and Clinical Health Act of 2009 (the “HITECH Act”); Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 and applicable regulations promulgated thereunder; and any applicable state confidentiality laws, all of which together are collectively referred to as the “HIPAA Rules.”

## A. Definitions

Terms used herein, but not otherwise defined, shall have meaning ascribed by the Privacy Rules and the Security Rules. Any citations in this Addendum to statutes, rules or regulations shall incorporate any amendments to such statutes, rules or regulations.

### 1. Breach

“Breach” means the unauthorized acquisition, access, use, or disclosure of Protected Health Information that compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information.

### 2. Business Associate

“Business Associate” means one who creates, receives, maintains or transmits PHI to perform certain functions or activities on behalf of a covered entity, and specifically hereunder refers to the Producer.

### 3. Covered Entity

“Covered Entity” means Delta Dental of Arizona.

### 4. Designated Record Set

“Designated Record Set” means a group of records maintained by or for Delta Dental that is: (i) the medical records and billing records about Individuals maintained by or for a covered health care provider; (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) used, in whole or in part, by or for Delta Dental to make decisions about Individuals. For purposes of this definition, the term “record” means any item, collection, or grouping of information that includes PHI and is maintained, collected, used, or disseminated by or for Delta Dental.

### 5. Individual

“Individual” means the person who is the subject of the Protected Health Information as defined below.

### 6. Protected Health Information (“PHI”)

“Protected Health Information” or “PHI” means individually identifiable health information that is transmitted or maintained in any form or medium.

### 7. Required by Law

“Required by Law” means a mandate prescribed by law that compels a use or disclosure of PHI.

### 8. Secretary

“Secretary” means the Secretary of the Department of Health and Human Services or his or her designee.

### 9. Unsecured PHI

“Unsecured PHI” means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in the guidance issued under section 13402(h)(2) of Public Law 111-5 or on the HHS Web site.

## B. Purposes for which PHI May Be Disclosed to Business Associate

Delta Dental may disclose PHI to Business Associate in connection with the services provided by Business Associate described in this Producer Agreement. Delta Dental will not require Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA rules if done by Delta Dental.

## C. Obligations of Delta Dental

Delta Dental shall:

1. Provide Business Associate a copy of its Notice of Privacy Practices (“Notice”) produced by Delta Dental in accordance with 45 C.F.R. 164.520 as well as any changes to such Notice;
2. Provide Business Associate with any changes in, or revocation of, authorizations by Individuals relating to the use and/or disclosure of PHI, of which it becomes aware if such changes affect Business Associate’s permitted or required uses and/or disclosures;

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3. Notify Business Associate of any restriction to the use and/or disclosure of PHI to which Delta Dental has agreed in accordance with 45 C.F.R. 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI;
4. Notify Business Associate of any amendment to PHI to which Delta Dental believes affects a Designated Record Set maintained by Business Associate;
5. Provide Business Associate with a copy of Delta Dental's policies and procedures related to an Individual's right to: access PHI; request an amendment to PHI; request confidential communications of PHI; or request an accounting of disclosures of PHI, if Business Associate maintains a Designated Record Set; and,
6. Notify Individuals of Breach of PHI reported to Delta Dental by Business Associate in accordance with HIPAA Rules and Delta Dental policies.

### D. Obligations of Business Associate.

Business Associate shall comply with the following obligations:

#### 1. Permitted Uses and Disclosures by Business Associate

- a) Review and understand the HIPAA Rules as they apply to Business Associate, and to comply with the applicable requirements of the HIPAA Rules, as well as any applicable amendments;
- b) Use or disclose PHI only to perform functions, activities, or services for, or on behalf of, Delta Dental as specified in this Producer Agreement, Producer Business Associate Addendum, in a related agreement, or as Required by Law. Upon written notice to Delta Dental, Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with the HIPAA Rules;
- c) Obtain reasonable assurances from the person or entity to whom the PHI is disclosed that: (a) the PHI will be held confidential and further used and disclosed only as Required by Law or for the purpose for which it was disclosed to the person or entity; and (b) the person or entity will notify Business Associate of any instances of which it is aware in which confidentiality of the PHI has been breached;
- d) Ensure that all uses and disclosures of PHI are subject to the principle of "minimum necessary use and disclosure" by disclosing only PHI that is the minimum necessary to accomplish the intended purpose of the use, disclosure, or request is used or disclosed; and, the use of limited data sets when possible;
- e) Warrant that it shall require any agent or subcontractor that may have access to PHI to agree to the same restrictions and conditions as apply to Business Associate under this Producer Business Associate Addendum. Business Associate shall ensure that any agent, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect the confidentiality, integrity, and availability of the paper or electronic PHI that it creates, receives, maintains, or transmits on behalf of the Delta Dental;
- f) Abide by the obligations contained in Delta Dental's Notice as may be amended; provided, however, that the amended Notice shall not affect permitted uses and disclosures on which Business Associate relied prior to receiving notice of such amended Notice.
- g) Make available to Delta Dental and the Secretary or his or her agents its internal practices, policies and procedures relating to the use and disclosure of PHI, received from or on behalf of Delta Dental for the purpose of determining Delta Dental's compliance with the HIPAA Rules, or any other health oversight agency.
- h) Designated Record Sets.
  - i. Individual Right to Copy or Inspection. If Business Associate maintains a Designated Record Set for Delta Dental that is not maintained by Delta Dental, it will permit an Individual to inspect or copy PHI about the Individual in that set as directed by Delta Dental to meet the requirements of 45 C.F.R. § 164.524. If the PHI is in electronic format, the Individual shall have a right to obtain a copy of such information in electronic format and, if the Individual chooses, to direct that an electronic copy be transmitted directly to an entity or person designated by the Individual in accordance with HITECH section 13405 (c). The information shall be provided in the form or format as requested by Individual or Delta Dental if it is readily producible in such form or format; or in summary, if the Individual has agreed in advance to accept the information in summary form. A reasonable, cost-based fee for copying health information may be charged.



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- ii. Individual Right to Amendment. Business Associate will, if it maintains PHI in a Designated Record Set, make amendments to PHI at the direction of Delta Dental pursuant to 45 C.F.R. 164.526. If Business Associate maintains a record in a Designated Record Set that is not also maintained by Delta Dental, Business Associate will accommodate an Individual's request to amend PHI upon Delta Dental's prior written approval.
- iii. Accounting of Disclosures. Business Associate will maintain documentation of the information required to provide an accounting of disclosures of PHI, whether PHI is in paper or electronic format, in accordance with 45 C.F.R. § 164.528 and HITECH Sub Title D Title VI Section 13405(c), and to make this information available to Delta Dental upon Delta Dental's request, in order to allow Delta Dental to respond to an Individual's request for accounting of disclosures. Such accounting must be provided without cost to the Individual or Delta Dental if it is the first accounting requested by an Individual within any 12 month period. A reasonable, cost-based fee may be charged for subsequent accountings if Business Associate informs the Individual in advance of the fee and the Individual is afforded an opportunity to withdraw or modify the request. Such accounting is limited to disclosures that were made in the 6 years prior to the request (not including disclosures prior to the compliance date of the Privacy Rule) and shall be provided for as long as Business Associate maintains the PHI.
- i) Withdrawal of Authorization. If the use or disclosure of PHI in this Producer Business Associate Addendum is based upon an Individual's specific authorization for the use or disclosure of his or her PHI, and the Individual revokes such authorization, the effective date of such authorization has expired, or such authorization is found to be defective in any manner that renders it invalid, Business Associate shall, if it has notice of such revocation, expiration, or invalidity, cease the use and disclosure of the Individual's PHI except to the extent it has relied on such use or disclosure, or if an exception under the Privacy Rule expressly applies.
- j) De-identified Information. Upon Delta Dental's prior written approval, Business Associate may use and disclose de-identified health information, and the PHI is de-identified in compliance with the HIPAA Rules.

### 2. Required Safeguards

- a) Business Associate shall maintain appropriate safeguards to ensure that PHI is not used or disclosed other than as provided by this Producer Business Associate Addendum or as Required by Law.
- b) Business Associate shall assure that all PHI is secured when accessed by Business Associate's employees, agents or subcontractors. Any access to PHI by Business Associate's employees, agents or subcontractors shall be limited to legitimate business needs while working with PHI.
- c) Business Associate shall provide information and training to members of its workforce that use or disclose PHI regarding the confidentiality requirements of the HIPAA Rules and this Producer Business Associate Addendum.
- d) Security and Privacy Provisions.
  - i. Business Associate will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the paper or electronic PHI that it creates, has access to, or transmits. Business Associate will also ensure that any agent, including a subcontractor, to whom it provides such information, agrees to implement reasonable and appropriate safeguards to protect such information. Business Associate will ensure that PHI contained in portable devices or removable media is encrypted.
  - ii. Business Associate will implement enhanced HIPAA privacy requirements including but not necessarily limited to accounting for certain PHI disclosures for treatment, restrictions on the sale of PHI, restrictions on marketing and fundraising communications, payment and health care operations contained Subtitle D of the HITECH Act.
  - iii. Application of Civil and Criminal Penalties. If Business Associate violates any security or privacy provision specified in subparagraphs i and ii above, sections 1176 and 1177 of the Social Security Act (42 U.S.C. 1320d-5, 1320d-5) shall apply to Business Associate with respect to such violation in the same manner that such sections apply to Delta Dental if it violates such provisions.

### 3. Breach

- a) Business Associate will notify Delta Dental's Privacy Officer of any instances of which it is aware or should reasonably be aware in which the PHI is used or disclosed for a purpose that is not otherwise provided for in this Producer Business Associate Addendum or for a purpose not expressly permitted by the HIPAA Rules.

## PRODUCER BUSINESS ASSOCIATE ADDENDUM

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- b) Information Breach Notification for PHI. Where Business Associate accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses or discloses Unsecured PHI (either paper or electronic), Business Associate within 3 business days following the discovery of a Breach of such information, shall notify Delta Dental of such Breach. Initial notification of the Breach does not need to be in compliance with Sub Title D Title IV Section 13402 of the HITECH Act; however, Business Associate must provide Delta Dental with all information necessary for Delta Dental to comply with Sub Title D Title IV Section 13402 of the HITECH Act without delay, and in no case later than 10 days following the discovery of the Breach. Business Associate shall be liable for the costs associated with such Breach.
- c) Business Associate will notify Delta Dental's Privacy Officer of any instances of which it is aware that an unauthorized third party has obtained access to PHI or the systems (whether physical or electronic) in which it is stored, whether such access is of PHI, Unsecured PHI or other information, within 3 business days of its discovery.
- d) Breach Notification to Individuals. Business Associate's duty to notify Delta Dental of any Breach does not permit Business Associate to notify those Individuals whose PHI has been breached by Business Associate without the express written permission of Delta Dental to do so. Any and all notification to those Individuals whose PHI has been breached shall be made under the direction, review and control of Delta Dental. The Business Associate will notify Delta Dental's Privacy Officer in writing to include; name of Individuals whose PHI was breached, information breached, date of Breach, form of Breach, etc. The cost of the notification will be paid by the Business Associate.
- e) Corrective Action. Within ten days of its notification of a Breach or other unauthorized access as set forth in Section D.3.c above, Business Associate shall provide Delta Dental with a written corrective action plan to address the deficiencies that caused either directly or indirectly the occurrence ("Corrective Action Plan"). If Delta Dental deems that the Corrective Action Plan is insufficient to address the deficiencies, Delta Dental, at its sole option, may either require Business Associate to provide another Corrective Action Plan within five days or Delta Dental may immediately terminate this Producer Agreement. Business Associate will provide to Delta Dental written updates of its progress on the Corrective Action Plan at least once every thirty days or as required by Delta Dental.

END OF ADDENDUM