

Thank you for your interest in partnering with LIBERTY Dental Plan. We look forward to working with you to provide quality dental benefits to your clients.

Important

- To proceed with contracting, our standard broker documents must be accepted as is.
- Please leave the effective date fields blank. Your contract effective date will be determined by LIBERTY upon receipt and approval of all required documents.
- Paperwork approved by the 20th of the month will be effective the 1st of the following month. Once approved, you will receive executed copies of all signed documents and your assigned Broker/Agent number.
- Commission payments will begin following your contract effective date and are released on the 28th of the month. Commissions are not retro-paid.
- The contracting entity is the legal name that is indicated in the W-9 Form. If commissions are to be paid to the agency, all documents should reflect the Agency's information.
- To ensure timely processing, the following documents must be included with your submission:
 - o Completed Broker Appointment Form
 - o CA Insurance License

The Broker Appointment Form will include the following documents. Send completed form and your CA Insurance License to clientservices@libertydentalplan.com, for processing.

- IRS W-9 Form
- Business Associate Agreement (BAA)
- Marketing Service Agreement (MSA)
 - o The Agent/Broker section should reflect the contracting entity NPN, license #, and TIN # (Agency) /SSN (Individual).
 - o The address must match the address that's noted in the W-9.
- Non-disclosure Agreement (NDA)

By signing the filled-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting*, later, for further information.

Note: If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien;
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States;
- An estate (other than a foreign estate); or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

In the cases below, the following person must give Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States.

- In the case of a disregarded entity with a U.S. owner, the U.S. owner of the disregarded entity and not the entity;
- In the case of a grantor trust with a U.S. grantor or other U.S. owner, generally, the U.S. grantor or other U.S. owner of the grantor trust and not the trust; and
- In the case of a U.S. trust (other than a grantor trust), the U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person or the U.S. branch of a foreign bank that has elected to be treated as a U.S. person, do not use Form W-9. Instead, use the appropriate Form W-8 or Form 8233 (see Pub. 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items.

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity, give the requester the appropriate completed Form W-8 or Form 8233.

Backup Withholding

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, payments made in settlement of payment card and third party network transactions, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the instructions for Part II for details),
3. The IRS tells the requester that you furnished an incorrect TIN,
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See *Exempt payee code*, later, and the separate Instructions for the Requester of Form W-9 for more information.

Also see *Special rules for partnerships*, earlier.

What is FATCA Reporting?

The Foreign Account Tax Compliance Act (FATCA) requires a participating foreign financial institution to report all United States account holders that are specified United States persons. Certain payees are exempt from FATCA reporting. See *Exemption from FATCA reporting code*, later, and the Instructions for the Requester of Form W-9 for more information.

Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account; for example, if the grantor of a grantor trust dies.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Line 1

You must enter one of the following on this line; **do not** leave this line blank. The name should match the name on your tax return.

If this Form W-9 is for a joint account (other than an account maintained by a foreign financial institution (FFI)), list first, and then circle, the name of the person or entity whose number you entered in Part I of Form W-9. If you are providing Form W-9 to an FFI to document a joint account, each holder of the account that is a U.S. person must provide a Form W-9.

a. **Individual.** Generally, enter the name shown on your tax return. If you have changed your last name without informing the Social Security Administration (SSA) of the name change, enter your first name, the last name as shown on your social security card, and your new last name.

Note: ITIN applicant: Enter your individual name as it was entered on your Form W-7 application, line 1a. This should also be the same as the name you entered on the Form 1040/1040A/1040EZ you filed with your application.

b. **Sole proprietor or single-member LLC.** Enter your individual name as shown on your 1040/1040A/1040EZ on line 1. You may enter your business, trade, or “doing business as” (DBA) name on line 2.

c. **Partnership, LLC that is not a single-member LLC, C corporation, or S corporation.** Enter the entity’s name as shown on the entity’s tax return on line 1 and any business, trade, or DBA name on line 2.

d. **Other entities.** Enter your name as shown on required U.S. federal tax documents on line 1. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on line 2.

e. **Disregarded entity.** For U.S. federal tax purposes, an entity that is disregarded as an entity separate from its owner is treated as a “disregarded entity.” See Regulations section 301.7701-2(c)(2)(iii). Enter the owner’s name on line 1. The name of the entity entered on line 1 should never be a disregarded entity. The name on line 1 should be the name shown on the income tax return on which the income should be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a single owner that is a U.S. person, the U.S. owner’s name is required to be provided on line 1. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity’s name on line 2, “Business name/disregarded entity name.” If the owner of the disregarded entity is a foreign person, the owner must complete an appropriate Form W-8 instead of a Form W-9. This is the case even if the foreign person has a U.S. TIN.

Line 2

If you have a business name, trade name, DBA name, or disregarded entity name, you may enter it on line 2.

Line 3

Check the appropriate box on line 3 for the U.S. federal tax classification of the person whose name is entered on line 1. Check only one box on line 3.

IF the entity/person on line 1 is a(n) . . .	THEN check the box for . . .
• Corporation	Corporation
• Individual • Sole proprietorship, or • Single-member limited liability company (LLC) owned by an individual and disregarded for U.S. federal tax purposes.	Individual/sole proprietor or single-member LLC
• LLC treated as a partnership for U.S. federal tax purposes, • LLC that has filed Form 8832 or 2553 to be taxed as a corporation, or • LLC that is disregarded as an entity separate from its owner but the owner is another LLC that is not disregarded for U.S. federal tax purposes.	Limited liability company and enter the appropriate tax classification. (P= Partnership; C= C corporation; or S= S corporation)
• Partnership	Partnership
• Trust/estate	Trust/estate

Line 4, Exemptions

If you are exempt from backup withholding and/or FATCA reporting, enter in the appropriate space on line 4 any code(s) that may apply to you.

Exempt payee code.

- Generally, individuals (including sole proprietors) are not exempt from backup withholding.
- Except as provided below, corporations are exempt from backup withholding for certain payments, including interest and dividends.
- Corporations are not exempt from backup withholding for payments made in settlement of payment card or third party network transactions.
- Corporations are not exempt from backup withholding with respect to attorneys’ fees or gross proceeds paid to attorneys, and corporations that provide medical or health care services are not exempt with respect to payments reportable on Form 1099-MISC.

The following codes identify payees that are exempt from backup withholding. Enter the appropriate code in the space in line 4.

- 1—An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2)
- 2—The United States or any of its agencies or instrumentalities
- 3—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities
- 4—A foreign government or any of its political subdivisions, agencies, or instrumentalities
- 5—A corporation
- 6—A dealer in securities or commodities required to register in the United States, the District of Columbia, or a U.S. commonwealth or possession
- 7—A futures commission merchant registered with the Commodity Futures Trading Commission
- 8—A real estate investment trust
- 9—An entity registered at all times during the tax year under the Investment Company Act of 1940
- 10—A common trust fund operated by a bank under section 584(a)
- 11—A financial institution
- 12—A middleman known in the investment community as a nominee or custodian
- 13—A trust exempt from tax under section 664 or described in section 4947

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 13.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 7
Broker transactions	Exempt payees 1 through 4 and 6 through 11 and all C corporations. S corporations must not enter an exempt payee code because they are exempt only for sales of noncovered securities acquired prior to 2012.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 4
Payments over \$600 required to be reported and direct sales over \$5,000 ¹	Generally, exempt payees 1 through 5 ²
Payments made in settlement of payment card or third party network transactions	Exempt payees 1 through 4

¹ See Form 1099-MISC, Miscellaneous Income, and its instructions.

² However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney reportable under section 6045(f), and payments for services paid by a federal executive agency.

Exemption from FATCA reporting code. The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements. A requester may indicate that a code is not required by providing you with a Form W-9 with "Not Applicable" (or any similar indication) written or printed on the line for a FATCA exemption code.

A—An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37)

B—The United States or any of its agencies or instrumentalities

C—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities

D—A corporation the stock of which is regularly traded on one or more established securities markets, as described in Regulations section 1.1472-1(c)(1)(i)

E—A corporation that is a member of the same expanded affiliated group as a corporation described in Regulations section 1.1472-1(c)(1)(i)

F—A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state

G—A real estate investment trust

H—A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940

I—A common trust fund as defined in section 584(a)

J—A bank as defined in section 581

K—A broker

L—A trust exempt from tax under section 664 or described in section 4947(a)(1)

M—A tax exempt trust under a section 403(b) plan or section 457(g) plan

Note: You may wish to consult with the financial institution requesting this form to determine whether the FATCA code and/or exempt payee code should be completed.

Line 5

Enter your address (number, street, and apartment or suite number). This is where the requester of this Form W-9 will mail your information returns. If this address differs from the one the requester already has on file, write NEW at the top. If a new address is provided, there is still a chance the old address will be used until the payor changes your address in their records.

Line 6

Enter your city, state, and ZIP code.

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN.

If you are a single-member LLC that is disregarded as an entity separate from its owner, enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

Note: See *What Name and Number To Give the Requester*, later, for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local SSA office or get this form online at www.SSA.gov. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at www.irs.gov/Businesses and clicking on Employer Identification Number (EIN) under Starting a Business. Go to www.irs.gov/Forms to view, download, or print Form W-7 and/or Form SS-4. Or, you can go to www.irs.gov/OrderForms to place an order and have Form W-7 and/or SS-4 mailed to you within 10 business days.

If you are asked to complete Form W-9 but do not have a TIN, apply for a TIN and write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note: Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

Caution: A disregarded U.S. entity that has a foreign owner must use the appropriate Form W-8.

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if item 1, 4, or 5 below indicates otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on line 1 must sign. Exempt payees, see *Exempt payee code*, earlier.

Signature requirements. Complete the certification as indicated in items 1 through 5 below.

1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.

You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983.

You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. Real estate transactions.

You must sign the certification. You may cross out item 2 of the certification.

4. Other payments. You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments made in settlement of payment card and third party network transactions, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), ABLE accounts (under section 529A), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions. You must give your correct TIN, but you do not have to sign the certification.

What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account) other than an account maintained by an FFI	The actual owner of the account or, if combined funds, the first individual on the account ¹
3. Two or more U.S. persons (joint account maintained by an FFI)	Each holder of the account
4. Custodial account of a minor (Uniform Gift to Minors Act)	The minor ²
5. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee ¹
b. So-called trust account that is not a legal or valid trust under state law	The actual owner ¹
6. Sole proprietorship or disregarded entity owned by an individual	The owner ³
7. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulations section 1.671-4(b)(2)(i)(A))	The grantor*
For this type of account:	Give name and EIN of:
8. Disregarded entity not owned by an individual	The owner
9. A valid trust, estate, or pension trust	Legal entity ⁴
10. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
11. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
12. Partnership or multi-member LLC	The partnership
13. A broker or registered nominee	The broker or nominee

For this type of account:	Give name and EIN of:
14. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
15. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulations section 1.671-4(b)(2)(i)(B))	The trust

¹ List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

² Circle the minor's name and furnish the minor's SSN.

³ You must show your individual name and you may also enter your business or DBA name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

⁴ List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships*, earlier.

***Note:** The grantor also must provide a Form W-9 to trustee of trust.

Note: If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

Secure Your Tax Records From Identity Theft

Identity theft occurs when someone uses your personal information such as your name, SSN, or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Pub. 5027, Identity Theft Information for Taxpayers.

Victims of identity theft who are experiencing economic harm or a systemic problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

Protect yourself from suspicious emails or phishing schemes.

Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to phishing@irs.gov. You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration (TIGTA) at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at spam@uce.gov or report them at www.ftc.gov/complaint. You can contact the FTC at www.ftc.gov/idtheft or 877-IDTHEFT (877-438-4338). If you have been the victim of identity theft, see www.IdentityTheft.gov and Pub. 5027.

Visit www.irs.gov/IdentityTheft to learn more about identity theft and how to reduce your risk.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.



BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (this "Agreement" or this "BAA") is made and entered into by and between LIBERTY Dental Plan Corporation, along with any of the LIBERTY Dental entities listed on Appendix B, attached hereto, which currently or in the future have a contract in place with Business Associate (collectively, "LIBERTY" and individually, each a "LIBERTY Entity"), and _____, (collectively with any affiliates, subsidiaries and parent corporations, "Business Associate") (each individually a "Party" and together, the "Parties"), effective as of the earlier of _____ or the date Business Associate first received (or will have received) from LIBERTY any information covered by the terms and conditions of this Agreement (the "Effective Date").

RECITALS

WHEREAS, the purpose of this BAA is to comply with (1) the "business associate" requirements of the privacy regulations, the "business associate" requirements of the security regulations and the electronic data transaction and code sets requirements promulgated by the United States Department of Health and Human Services ("DHHS") pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") ("Privacy Regulations," "Security Regulations," and "EDI Standards," respectively), (2) the requirements of subtitle D of the Health Information Technology for Economic and Clinical Health Act and any regulations thereunder promulgated by DHHS ("HITECH Act"); and (3) the requirements of any applicable state privacy and security laws.

WHEREAS, Business Associate is providing, or may provide, certain services (collectively, along with any exploration and/or negotiation of prospective services, the "Services") from time to time for or on behalf of LIBERTY that may involve the use, disclosure and/or creation of or exposure and/or accessibility to certain Protected Health Information belonging to LIBERTY, to other health plans with whom LIBERTY contracts, or to any entity for whom LIBERTY itself serves as a business associate (collectively, "LIBERTY PHI");

WHEREAS, the Parties desire to enter into this BAA to prescribe the manner in which LIBERTY PHI shall be handled by Business Associate, including but not limited to Business Associate's employees, contractors and agents;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for all other good and valuable consideration had and received, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions; General Terms. Capitalized terms used in this BAA shall have the meaning ascribed to them in this BAA and in Appendix A, attached hereto and incorporated herein by this reference, provided that if any definition in this BAA or in Appendix A conflicts with the respective definition of such term in HIPAA, the Privacy Regulations, Security Regulations or the HITECH Act, the definition in HIPAA, the Privacy Regulations, Security Regulations or the HITECH Act shall control. The Parties agree that this Agreement replaces and supersedes any previous business associate agreement executed by the Parties.
2. Permitted Uses and Disclosures of LIBERTY PHI. Except as otherwise limited in this BAA, Business Associate may use and disclose LIBERTY PHI as necessary to perform the Services for, or on behalf of, LIBERTY as specified in this BAA, provided that such use or disclosure would not constitute a violation of the Privacy Regulations or the HITECH Act if so used or disclosed by LIBERTY. Unless otherwise limited herein, Business Associate may:
 - a. Use LIBERTY PHI only as necessary for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate;
 - b. Disclose LIBERTY PHI to third parties not employed by Business Associate as necessary for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate if (i) the disclosure is required by law, or (ii) Business Associate obtains reasonable assurances from the recipient of LIBERTY PHI that: (A) LIBERTY PHI shall be held confidential and shall be used or further disclosed only as required by law or for the purpose for which it was disclosed to the recipient, and (B) the recipient shall notify Business Associate of any instances of which it is aware of a breach of confidentiality of LIBERTY PHI; and

Upon the written request of LIBERTY, provide data aggregation services related to the health care operations of LIBERTY.

3. Obligations of Business Associate. With regard to the use and disclosure of LIBERTY PHI, Business Associate hereby agrees as follows:

a. *Use and Disclosure.* Business Associate shall neither use nor disclose LIBERTY PHI other than as permitted or required by the BAA or as required by law. Without limiting the generality of the foregoing, Business Associate shall not develop, request, use or disclose any list, description or other grouping of individuals using, or derived from, PHI received from or on behalf of LIBERTY, except as explicitly permitted in writing by LIBERTY and as permitted by the BAA.

b. *Safeguards.* Business Associate shall implement and use all appropriate safeguards to protect the privacy of LIBERTY PHI and to prevent any use or disclosure of LIBERTY PHI other than as permitted by the terms of this BAA. Business Associate shall implement, maintain, and use an information security program that contains administrative, technical, and physical safeguards that, in light of Business Associate's size and complexity, allow Business Associate to achieve the safeguarding objectives detailed under HIPAA, the HITECH Act, and accompanying regulations and those prescribed by the Health Information Trust Alliance ("HITRUST") and the National Institute of Standards and Technology ("NIST"). Business Associate shall:

- i. Maintain comprehensive written privacy policies and procedures; such policies shall include technology policies and procedures that ensure the protection of LIBERTY PHI on hardware and software utilized by Business Associate and shall identify an officer of the organization who is responsible for enforcement of privacy and security requirements;
- ii. Ensure that any subcontractor or other third party with which Business Associate contracts, or upon which Business Associate relies, for the provision of services to LIBERTY also maintains a framework for compliance with HIPAA and the HITECH Act that is consistent with HITRUST and NIST standards and guidelines;
- iii. Implement a contingency plan for responding to emergencies and/or disruptions in Business Associate's business to ensure that services provided to LIBERTY are not interrupted and that the integrity and safety of all PHI is maintained;
- iv. Establish and implement a data backup program that ensures Business Associate's ability to provide LIBERTY with retrievable, exact copies of PHI, upon LIBERTY's request;
- v. Maintain and exercise an audit plan to respond to internal and external threats and violations that is consistent with HITRUST and NIST standards and guidelines, and documents the scope, procedures, and frequency of audits;
- vi. Ensure software it develops on behalf of LIBERTY, including code, adheres to the System Development Life Cycle (SDLC) methodology;
- vii. Maintain all PHI received or created in paper form in a secure location with restricted access;
- viii. Utilize encryption for the electronic transmission of PHI to LIBERTY and/or to any third party;
- ix. Ensure that its employees and contractors store, receive, process, or otherwise access all LIBERTY PHI within only the United States of America; and
- x. Not store LIBERTY PHI in any data center without LIBERTY's prior written consent.

Business Associate shall be solely responsible for all costs and expenses related to implementing and maintaining the aforementioned safeguards. Business Associate shall promptly provide LIBERTY with information concerning these safeguards and/or other information security practices as they pertain to the protection of LIBERTY PHI, as LIBERTY may from time to time request.

c. *Reporting.* Business Associate shall report to the Privacy Officer of LIBERTY, within one (1) business day of becoming aware of, any use or disclosure of LIBERTY PHI not permitted under the terms of this BAA and the remedial action taken or proposed to be taken with respect to such use or disclosure.

d. *Representatives.*

- i. Representatives' Compliance. Business Associate shall ensure all of its officers, directors, employees, contractors, subcontractors, and agents (collectively, Representatives") comply fully with all of the terms and

conditions of this Agreement, and Business Associate is, and shall, be solely responsible for any violation of this Agreement by a Representative. In addition, Business Associate shall enter into written agreements with all agents and subcontractors to whom Business Associate provides LIBERTY PHI requiring the agents and subcontractors to agree to the same restrictions, requirements, and conditions that apply under this BAA to Business Associate with respect to LIBERTY PHI, including but not limited to the administrative, physical, and technical safeguards required under this BAA.

- ii. Training and Disciplinary Action. Business Associate shall provide appropriate training to its workforce (including both employees and contractors) regarding such workers' obligations to protect and safeguard PHI in accordance with the terms of this BAA; such training shall include training on security best practices and incident response procedures and shall be provided to each member of the workforce on at least an annual basis. In addition, Business Associate shall take appropriate disciplinary action against any member of its workforce who uses or discloses PHI in violation of, or who otherwise fails to comply with, this BAA.
- e. *Mitigation.* Business Associate shall take any and all actions necessary to promptly mitigate any harmful effect known to Business Associate resulting from an unauthorized use or disclosure of LIBERTY PHI by Business Associate or any of its Representatives. In addition, Business Associate shall reimburse LIBERTY for any expenses LIBERTY incurs to mitigate a Breach or unauthorized use or disclosure of LIBERTY PHI by Business Associate or any of its Representatives.
- f. *Access to LIBERTY PHI.* To enable LIBERTY to comply with an individual's request to access the individual's PHI maintained in a Designated Record Set, Business Associate shall make the requested PHI maintained by Business Associate in a Designated Record Set available to LIBERTY for inspection and copying within five (5) business days of receipt of LIBERTY's request for access to enable LIBERTY to fulfill its obligations under the Privacy Regulations. If Business Associate uses or maintains an Electronic Health Record with respect to PHI of an individual, Business Associate shall provide such information in electronic format to enable LIBERTY to fulfill its obligations under the HITECH Act including, without limitation, 42 U.S.C. § 17935(e).
- g. *Amendment of LIBERTY PHI.* To enable LIBERTY to respond to an individual's request for amendment of the individual's PHI maintained in a Designated Record Set, Business Associate shall make the requested LIBERTY PHI maintained by Business Associate in a Designated Record Set available to LIBERTY, within ten (10) business days of receiving a request from LIBERTY, for amendment and incorporate any such amendment to enable LIBERTY to fulfill its obligations under the Privacy Regulations.
- h. *Accounting of Disclosures.* To enable LIBERTY to respond to an individual's request for an accounting of disclosures of the individual's PHI, Business Associate shall (i) document all disclosures of LIBERTY PHI by Business Associate as would be required for LIBERTY to respond to an accounting request in accordance with 45 CFR § 164.528 and, when effective, 42 U.S.C. § 17935(c) of the HITECH Act and any regulations promulgated thereunder, and (ii) within three (3) business days of receiving a request for an accounting from LIBERTY, make available to LIBERTY the following information concerning such disclosures: (A) the date of disclosure, (B) the name of the recipient and, if known, the recipient's address, (C) a brief description of LIBERTY PHI disclosed, and (D) a brief statement of the purpose of the disclosure. Business Associate shall provide to LIBERTY any additional information required by the HITECH Act or any regulations promulgated thereunder.
- i. *Disclosures to Secretary of DHHS.* Business Associate shall (i) make all internal practices, books and records relating to the use and disclosure of LIBERTY PHI received or created by Business Associate on behalf of LIBERTY available to the Secretary of DHHS for the purpose of determining LIBERTY's and/or Business Associate's compliance with the Privacy Regulations or the Security Regulations, and (ii) provide LIBERTY with a copy (or a listing, if requested by LIBERTY) of the documents made available to the Secretary of DHHS within five (5) business days of providing such documents to DHHS.
- j. *Compliance with EDI Standards.* If Business Associate conducts electronically any of the health care transactions identified as "standard transactions" in the EDI Standards for or on behalf of LIBERTY, Business Associate shall comply with all applicable requirements of the EDI Standards when conducting standard transactions for or on behalf of LIBERTY.
- k. *Compliance with Security Regulations.* If Business Associate creates, receives, maintains or transmits Electronic PHI for or on behalf of LIBERTY ("LIBERTY Electronic PHI"), Business Associate shall (i) implement and utilize administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of LIBERTY Electronic PHI that Business Associate receives, creates, maintains or transmits for or on behalf of LIBERTY, (ii) report to the Privacy Officer of LIBERTY in writing any security incident, as defined in 45 CFR § 164.304,

within one (1) business day of becoming aware of such security incident; provided, however, unsuccessful attempts shall be reported only upon written request by LIBERTY, and (iii) ensure that any agents, including subcontractors, to whom Business Associate provides LIBERTY PHI implement the safeguards required by subsection (i) above. Business Associate shall comply with the policies and procedures and documentation requirements of the Security Regulations including, but not limited to, 45 CFR § 164.316.

l. *Remuneration in Exchange for LIBERTY PHI.* Business Associate shall not, directly or indirectly, receive remuneration in exchange for any LIBERTY PHI of an individual unless (i) LIBERTY obtained from the individual in accordance with the Privacy Regulations a valid authorization that includes a specification of whether PHI can be further exchanged for remuneration by the entity receiving PHI of that individual, or (ii) the purpose of the exchange is for one of the purposes provided under 42 U.S.C. § 17935(d)(2) of the HITECH Act and in any accompanying regulations. This prohibition shall not affect payment by LIBERTY to Business Associate for services provided pursuant to the BAA and shall only apply to exchanges occurring on or after the date that is six months after the date of the promulgation of final regulations implementing 42 U.S.C. § 17935(d) of the HITECH Act.

m. *Restrictions on Certain Disclosures.* If an individual who is the subject of LIBERTY PHI has requested a disclosure restriction under 45 CFR § 164.522(a)(1)(i)(A), notwithstanding 45 CFR § 164.522(a)(1)(ii), Business Associate shall comply with any such requested disclosure restriction, as conveyed to Business Associate by LIBERTY, except as otherwise required by law.

n. *Minimum Necessary.* In any instance where Business Associate uses, requests, or discloses PHI, Business Associate shall utilize a Limited Data Set, as defined under HIPAA. Otherwise, Business Associate shall request, use and disclose only the minimum amount of LIBERTY PHI necessary to accomplish the purpose of the request, use or disclosure.

o. *Standard Transactions.* If, on behalf of LIBERTY, Business Associate conducts, in whole or in part, any "Standard Transactions," as defined under HIPAA, Business Associate shall comply with each applicable requirement of the Transaction Rule, 45 C.F.R. Part 162. Business Associate shall permit LIBERTY to test the Transactions and content requirements in order to verify Business Associate's compliance. Business Associate shall not enter into any trading partner agreement in connection with the conduct of Standard Transactions for or on behalf of LIBERTY that:

- i. Changes the definition, data condition, or use of a data element or segment in a Standard Transaction;
- ii. Adds any data elements or segments to the maximum defined data set;
- iii. Uses any code or data elements that are either marked "not used" in the Standard Transaction's Implementation Specification(s) or are not in the Standard Transaction's Implementation Specifications(s); or
- iv. Changes the meaning or intent of the Standard Transaction's Implementations Specification(s).

Business Associate agrees and understands that there exists the possibility that LIBERTY or others may request from DHHS an exception from the uses of a Standard in the DHHS Transaction Standards. If such request is granted by DHHS, Business Associate shall participate in such test modification. Business Associate further agrees and understands that from time to time, DHHS may modify and set compliance dates for the Transaction Standards, and that any such modifications or changes shall be incorporated by reference into this BAA.

p. *Breach of Unsecured PHI.* Business Associate shall, following the discovery of an actual or suspected Breach of Unsecured Protected Health Information, provide written notice of the Breach ("BA Notice") to the applicable LIBERTY Entity(ies) within one (1) business day of discovering the Breach. A Breach shall be treated as discovered by Business Associate as of the first day on which such Breach is known to Business Associate or, by exercising reasonable due diligence, would have been known to Business Associate. Business Associate shall be deemed to have knowledge of a Breach if the Breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the Breach, who is a Representative of Business Associate. The BA Notice shall include the following information: (i) the identification of each individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used or disclosed during the Breach, (ii) a brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, who or what caused the Breach, and who received the PHI, (iii) a description of the types of Unsecured Protected Health Information involved in the Breach, (iv) a description of the action Business Associate took and/or will take to mitigate any deleterious effect of the Breach and a description of the corrective action Business Associate took and/or will take to prevent further Breaches; and (v) any other relevant information. Business Associate shall further provide to LIBERTY any other available information that LIBERTY

requests. Upon providing the BA Notice to LIBERTY, Business Associate shall fully cooperate with LIBERTY to enable LIBERTY to confirm whether a Breach occurred and to conduct a risk assessment. If it is determined that a Breach occurred, Business Associate shall fully cooperate with LIBERTY with respect to providing any notification of the Breach as required by the HITECH Act and taking all additional actions as may be required to comply with the HITECH Act. Business Associate shall maintain any and all documentation related to the Breach including, without limitation, any documentation necessary to demonstrate that all notifications were made as required by 45 CFR § 164.410 or that the use or disclosure did not constitute a Breach.

q. *Compliance with the HITECH Act.* Notwithstanding any other provision of this BAA, Business Associate shall (i) comply with 45 CFR §§ 164.308, 164.301, 164.312 and 164.316 of the Security Regulations and all requirements of the HITECH Act that relate to security and are applicable to covered entities, and (ii) comply with all requirements of the HITECH Act that relate to privacy and are applicable to covered entities.

r. *Compliance with State Law.* Notwithstanding any other provision of this BAA, Business Associate shall, subject to the state law preemption provisions contained in the Privacy Regulations, comply with (i) applicable state data breach laws, and (ii) all other applicable state law requirements concerning the use or disclosure of PHI.

s. *Medicare Vendor Reporting Requirements.* To the extent that Business Associate is subject to any Center for Medicare and Medicaid ("CMS") incident reporting requirements, including but not limited to applicable time frames for such reporting, Business Associate shall comply with all such requirements, in addition to any reporting requirements contained in this BAA.

t. *Records and Rights of Inspection.*

i. Record Retention. Notwithstanding any other provision of this BAA, Business Associate shall retain all documentation pertaining to LIBERTY PHI for at least ten (10) years; provided, however, Business Associate shall retain such documentation for longer than ten (10) years if required by the Privacy Regulations or other applicable laws.

ii. LIBERTY's Rights of Access and Inspection. From time to time upon reasonable notice, or upon a determination by LIBERTY that Business Associate has breached or violated this Agreement, LIBERTY may access and inspect the facilities, systems, books and records of Business Associate to monitor compliance with this Agreement. The fact that LIBERTY inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems and procedures does not relieve Business Associate of its responsibility to comply with this Agreement, nor does LIBERTY's failure to detect or detection of, but failure to notify Business Associate or require Business Associate's remediation of, any unsatisfactory practices constitute acceptance of such practice or a waiver of LIBERTY's enforcement or termination rights under this Agreement.

4. Responsibilities of LIBERTY. With regard to the use and/or disclosure of LIBERTY PHI by Business Associate, LIBERTY hereby agrees as follows:

a. LIBERTY shall notify Business Associate of any limitation(s) in its notice of privacy practices to the extent that such limitation(s) would impact Business Associate's use or disclosure of LIBERTY PHI.

b. LIBERTY shall inform Business Associate in writing of any changes in, or revocation of, a consent or authorization provided to LIBERTY by an individual to the extent that such change or revocation would impact Business Associate's right to use and/or disclose LIBERTY PHI pursuant to this BAA.

c. LIBERTY shall timely notify Business Associate, in writing, of any restrictions on the use and/or disclosure of LIBERTY PHI to which LIBERTY has agreed in accordance with the Privacy Regulations and/or the HITECH Act to the extent that such restriction would impact Business Associate's right to use and/or disclose LIBERTY PHI pursuant to this BAA.

5. Term and Termination.

a. *Term.* This BAA becomes effective on the Effective Date and will continue until terminated in accordance with the terms herein.

b. *Termination.* This BAA may be terminated as follows:

i. Upon mutual written agreement of the Parties; or

ii. If LIBERTY determines that Business Associate has materially breached any provision of this BAA, LIBERTY may immediately terminate this BAA and any other agreement between Business Associate and a LIBERTY Entity whereby Business Associate performs services for any LIBERTY Entity(ies).

c. *Effect of Termination.* Upon termination of this BAA, Business Associate shall (i) return LIBERTY PHI in Business Associate's possession to LIBERTY, and (ii) retain no copies or back-up records of such LIBERTY PHI. If such return or destruction is infeasible, as determined by LIBERTY, (A) the obligations set forth in this BAA with respect to LIBERTY PHI shall survive termination and shall continue until Business Associate no longer retains any PHI in its possession, and (B) Business Associate shall limit any further use and disclosure of LIBERTY PHI to the purposes that make the return or destruction of LIBERTY PHI infeasible.

6. Remedies. If LIBERTY, in its sole discretion, determines that Business Associate has breached or violated a material term of this Agreement, LIBERTY may, at its option, pursue any and all of the following remedies:

- a. LIBERTY may exercise any of its rights of access and inspection under Section 3(t)(ii) of this Agreement;
- b. LIBERTY may require Business Associate to submit to a plan of monitoring and reporting as deemed appropriate by LIBERTY in its sole discretion, and LIBERTY shall have the right to report to the Secretary of DHHS any failure by Business Associate to comply with such monitoring and reporting;
- c. LIBERTY may take any other reasonable steps that it, in its sole discretion, deems necessary to cure such breach or end such violation; and/or
- d. LIBERTY may terminate this Agreement immediately in accordance with Section 5(b)(ii) and/or, at LIBERTY's election, report the breach or violation to DHHS.

The foregoing remedies are cumulative and in addition to any other remedies available to LIBERTY at law or in equity. Business Associate acknowledges and agrees that a breach by it of its obligations under this Agreement may cause irreparable harm to LIBERTY and that the remedy or remedies at law for any such breach will be inadequate. Business Associate further agrees that, in the event of any such breach, in addition to all other available remedies, LIBERTY shall be entitled to seek an injunction restraining any breach and requiring immediate and specific performance of such obligations without the necessity of showing economic loss or the posting of any bond.

7. Indemnification. Business Associate shall indemnify, defend and hold harmless LIBERTY (and LIBERTY's officers, directors, shareholders, managers, members and employees) from and against any and all losses, costs, damages, obligations, liabilities, awards and expenses (including, without limitation: defense costs; reasonable attorney's fees; court costs; exemplary damages, including but not are not limited to compensatory, consequential and punitive damages; penalties and fines; and interest), which arise out of or are in any way related to: (i) any act or omission by Business Associate or Business Associate's Representative(s) (including but not limited to any negligence or wrongful misconduct by Business Associate or Business Associate's Representative(s)); (ii) breach of this Agreement by Business Associate or Business Associate's Representative(s), or (iii) the representations, warranties, covenants, agreements, obligations or acknowledgments of Business Associate set forth in this Agreement. Business Associate shall obtain and maintain at its sole expense, and in amounts consistent with industry standards, insurance coverage sufficient to support its indemnification obligations. Business Associate shall provide to LIBERTY a certificate of insurance evidencing such coverage upon LIBERTY's request. Business Associate's obligations under this Section 7 shall survive termination of this Agreement.

8. Independent Contractors. LIBERTY and Business Associate shall be independent contractors and nothing in this BAA is intended nor shall be construed to create an agency, partnership, employer-employee or joint venture relationship between them.

9. Amendments. This BAA may be modified or amended only upon mutual written consent of the Parties. Notwithstanding the foregoing, this BAA shall be automatically amended (without requiring Business Associate's consent) upon written notice of the amendment by LIBERTY to Business Associate, if LIBERTY determines that such amendment is required in order for LIBERTY to comply with the Privacy Regulations, Security Regulations or the HITECH Act.

10. Entire Agreement; Assignment. This BAA constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all other agreements, communications or understandings either oral or in writing, between the Parties to this BAA with respect to the subject matter hereof. Business Associate may not assign its rights and obligations under this

BAA without the prior written consent of LIBERTY. Notwithstanding the foregoing, this Agreement shall be binding upon, inure to the benefit of and be enforceable by the successors, assigns, heirs, executors and administrators of the Parties.

11. Notices. Any notices to be given hereunder shall be deemed effectively given when personally delivered one (1) business day after being sent to the recipient by electronic means (including facsimile) or overnight courier, or four (4) business days after being deposited in the United States mail, with postage prepaid thereon, certified or registered mail, return receipt requested, addressed as follows:

If to LIBERTY:

If to Business Associate:

LIBERTY Dental Plan
ATTN: Privacy Officer
1730 Flight Way, Suite 125
Tustin, CA 92682
Cc: legal@libertydentalplan.com &
privacy@libertydentalplan.com

12. No Third-Party Beneficiaries. Nothing expressed or implied in this BAA is intended to confer, nor anything herein shall confer, upon any person other than the Parties hereto any rights, remedies, obligations or liabilities whatsoever.

13. Waiver. No failure or delay by LIBERTY or any representative of LIBERTY in exercising any right, power, or privilege hereunder shall operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof of the exercise of any other right, power, or privilege hereunder. In addition, the waiver by LIBERTY of a breach of any provision of this Agreement by Contractor shall not operate as or be construed as a waiver of any subsequent breach by Contractor.

14. Counterparts. This BAA may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall be deemed one and the same instrument. This BAA may be executed by facsimile or PDF signature and any such signature shall be deemed an original.

15. Conflicts and Severability. The terms and conditions of this BAA shall override and control any conflicting terms or conditions of any other agreement executed between LIBERTY and Business Associate to the extent such conflict involves an issue related to HIPAA, the Privacy Regulations, the Security Regulations, the EDI Standards and/or the HITECH Act. All non-conflicting terms and conditions of any other agreement executed between LIBERTY and Business Associate remain in full force and effect. If any provision(s) of this BAA shall be held to be invalid, illegal or unenforceable, the same shall be deemed to be severable and deleted from this BAA, and the remaining provisions construed so as to most nearly effectuate the original intention of the Parties and HIPAA, the Privacy Regulations, the Security Regulations, the EDI Standards and the HITECH Act.

16. Scope. This BAA applies to all present and future agreements and relationships, whether written, oral or implied, between LIBERTY and Business Associate, pursuant to which LIBERTY provides LIBERTY PHI to Business Associate in any form or medium whatsoever. This BAA shall automatically be incorporated into all subsequent agreements between LIBERTY and Business Associate involving the use or disclosure of LIBERTY PHI, whether or not expressly referenced therein.

IN WITNESS WHEREOF, each of the undersigned has caused this BAA to be duly executed in its name and on its behalf, effective as of the Effective Date.

("BUSINESS ASSOCIATE"):

LIBERTY DENTAL PLAN CORPORATION ("LIBERTY"),
on behalf of itself and the LIBERTY Entities listed on Appendix B

Authorized Signature

Authorized Signature

Print Name

Print Name

Title

Title

Date

Date

APPENDIX A

“Breach” means the acquisition, access, use or disclosure of PHI in a manner not permitted under the Privacy Regulations which compromises the security or privacy of PHI, provided that the following shall not constitute a Breach: (A) any unintentional acquisition, access or use of PHI by a workforce member or person acting under the authority of Business Associate, if such acquisition, access or use was made in good faith and within the scope of such individual's authority and does not result in further use or disclosure of PHI in a manner not permitted under the Privacy Regulations, (B) any inadvertent disclosure of PHI by a person authorized to access PHI within the Business Associate organization to another person authorized to access PHI within the same Business Associate organization, provided the PHI is not further used or disclosed in a manner not permitted under the Privacy Regulations, and (C) a disclosure of PHI in which Business Associate has a good faith belief that the unauthorized person to whom the disclosure was made would not reasonably have been able to retain such PHI.

“Designated Record Set” means a group of records maintained by or for LIBERTY that is (A) the medical records and billing records about individuals maintained by or for a covered health care plan, (B) the enrollment, payment, claims adjudication and case or medical management record systems maintained by or for a health plan, or (C) used, in whole or in part, by or for the plan 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 LIBERTY.

“Electronic Health Record” means an electronic record of health-related information on an individual that is created, gathered, managed and consulted by authorized health care clinicians and staff.

“Electronic Protected Health Information” or “Electronic PHI” means PHI which is transmitted by or maintained in electronic media.

“Individually Identifiable Health Information” or “IIHI” means information, including demographic information, that:

1. Is created or received by a health care provider, health plan, employer or health care clearinghouse;
2. Relates to the past, present or future physical or mental condition of an individual, the provision of health care to an individual or the past, present or future payment for the provision of health care to an individual; and
3. Identifies the individual (or with respect to which there is a reasonable basis to believe the information can be used to identify the individual).

“Privacy Officer” means a person designated by LIBERTY to be responsible for the development and implementation of the privacy policies and procedures of LIBERTY.

“Protected Health Information” or “PHI” means Individually Identifiable Health Information that is transmitted by or maintained in electronic media, or transmitted or maintained in any other form or medium, with the exception of IIHI in employer employment records held by LIBERTY in its role as employer.

“Unsecured Protected Health Information” means PHI that is not rendered unusable, unreadable or indecipherable to unauthorized individuals through the use of a technology or methodology specified in guidance issued by DHHS.

APPENDIX B

LIBERTY Dental Plan Corporation

LIBERTY Dental Plan of California, Inc.

LIBERTY Benefits Administrators, Inc.

LIBERTY Dental Plan of Nevada, Inc.

LIBERTY Dental Plan of Oklahoma, Inc.

LIBERTY Dental Plan of the Southeast, Inc.

LIBERTY Dental Plan of Texas, Inc.

LIBERTY Dental, P.A.

LIBERTY Dental Plan of Florida, Inc.

LIBERTY Dental New York, Inc.

LIBERTY Dental and Vision, Inc.

LIBERTY Dental Plan of Missouri, Inc.

LIBERTY Dental Plan Reinsurance Company, Ltd.

LIBERTY Dental Plan of New Jersey, Inc.

LIBERTY Dental Plan Organization of New Jersey, Inc.

LIBERTY Dental Plan East, LLC

LIBERTY Dental New York, LLC (LIBERTY Dental New York IPA, LLC in NJ and NY)

LIBERTY Dental Plan of Maryland, Inc.

LIBERTY Dental Plan of Virginia, Inc.

LIBERTY reserves the right to modify the foregoing list of entities in this Appendix B upon written notice to Business Associate.

LIBERTY Dental Plan of California, Inc.
MARKETING SERVICE AGREEMENT

THIS AGREEMENT is made and entered into by and between LIBERTY Dental Plan of California, Inc. (hereafter referred to as the Company) and the Agent/Broker indicated on the signature line of this agreement.

The Company is a California corporation that operates a specialized health care service plan and is licensed and regulated by the Department of Managed Health Care under the provisions of the Knox-Keene Health Care Service Plan Act of 1975.

The Agent/Broker is an independent contractor and not an employee of LIBERTY Dental Plan of California, Inc.

The parties agree to the following:

1. The Agent/Broker will act as a marketing agent for the Company's products and services to groups and individuals within the Company's service area. The Agent/Broker will also provide reasonable group enrollment support, as needed to complete the marketing process.

To the extent reasonably necessary to enable the Agent/Broker to perform his or her duties hereunder, the Agent/Broker shall be authorized to engage the services of any agents, solicitors, service representatives, or assistants that may be deemed proper. The Agent/Broker may further employ, engage, or retain the services of such other persons or corporations to aid or assist in the proper performance of his duties. The cost of such to be borne solely by the Agent/Broker.

2. On all programs effected through the Agent/Broker, the Company will pay to the Agent/Broker as full compensation thereon, the commission percentages, provided in the commission schedule and which is part of this contract.
3. Any commissions accruing hereunder shall be payable in the month following the month of receipt of premium by the Company. In the event of a termination of coverage by the Company or by group or subscriber, the Agent/Broker shall refund paid commissions to the Company in the same proportion that the Company refunds subscriber's premiums to the terminated subscriber.
4. If any contract shall be terminated by either the Company or the contract-holder for any reason or cause, all rights to commissions that might otherwise have accrued hereunder on such contract shall cease.
5. No rights or interest arising hereunder shall be subject to assignment except with written consent of the Company, such consent not to be withheld unreasonably. Any indebtedness of the Agent/Broker to the Company arising at any time shall constitute a first lien upon any commissions or allowances due or to become due hereunder.
6. The Agent/Broker has no authority to alter or discharge any contract or to extend the time of premium payment or to waive or extend any contract provisions or conditions. The Agent/Broker has no authority to alter, amend, or change any promotional brochures without the prior written approval of the Company. All printed matter, applications and sales literature which the Company may furnish the Agent/Broker shall remain the property of the Company.
7. The Agent/Broker shall be responsible for all monies due to the Company for premiums paid on any contract and received by the Agent/Broker or by his appointees or employees. All such monies shall be promptly paid to the Company within five (5) days. Any failure of the Agent/Broker to pay said monies as provided herein or comply with any of the provisions hereof shall effect immediate

termination of this agreement and a forfeiture of all rights of the Agent/Broker hereunder and all commissions and allowances to the Agent/Broker provided for herein.

The Agent/Broker is not authorized to collect any funds on behalf of the Company; however, in the event the Agent/Broker collects such funds, the following provisions shall apply:

- a) All funds received by the solicitor firm for the account of the Company shall at all times be segregated from the assets of the solicitor firms and shall be promptly deposited to a trust account in a state or federal bank authorized to do business in this state and insured by an appropriate federal insuring agency. "Promptly deposited" means deposited no later than the business day following receipt by the solicitor firm.
- b) All funds received by the solicitor firm for the account of the Company shall be transmitted to the Company within five (5) business days.
8. This Agreement shall remain in effect until either party elects to terminate this agreement by giving a written one hundred twenty (120) day notification. Notice of such termination shall be delivered in person, or by mail, certified, return receipt requested.

The following are examples of cause for termination of this Agreement:

- * Fraud, Embezzlement, etc.

In the event of termination for cause, all rights to fees and other forms of compensation shall cease, and no right to damages resulting from such termination shall arise.

9. All records, books, and papers of a management company, solicitor firm, and any provider or subcontractor providing services to the Company shall be open to inspection during normal business hours by the Director of the Department of Managed Health Care. The Agent/Broker shall preserve for a period of not less than five years, the books of account and other records required under the provisions of, and for the purposes of the Act.
10. The Plan shall have the right to reject applications for membership. The Plan is responsible to return premium in the event of such election. The Plan shall have the right to approve all marketing, membership, educational, and informational materials developed by the Agent/Broker before said materials are used in any manner whatsoever.
11. Both parties shall comply and shall cause their respective principal persons and employees to comply with all aspects of the Knox-Keene Act and regulations relevant to the marketing and solicitation of health care service plans.

The Agent/Broker, at all times, shall be licensed by the California Insurance Commissioner as a Life Agent and shall comply with the Knox-Keene Health Care Service Plan of 1975 and its amendments and all rules, regulations, and directive promulgated by the Director of the Department of Managed Health Care. Should disciplinary proceedings occur against the Agent/Broker or against any principal persons or employees relating to any license issued to such person(s) by the California Insurance Commissioner, notice of such proceeding must be reported to the Company within five (5) days of the proceedings commencement.

12. This Agreement constitutes the entire contract between the parties hereto. Any amendments to the Agreement shall be prepared in written form by the Company and delivered by mail to the Agent/Broker at his last known address.

IN WITNESS THEREOF this agreement has been executed in duplicate by the undersigned parties to take effect on _____.

LIBERTY Dental Plan of California, Inc.

X
SIGNATURE _____

NAME _____

TITLE _____

DATE _____

AGENT/BROKER (PLEASE PRINT)

NAME _____

COMPANY NAME _____

"PAY TO THE ORDER OF" ON COMMISSION CHECK _____

STREET ADDRESS _____

CITY, STATE, ZIP _____

CALIFORNIA STATE LICENSE # _____

NPN _____

TELEPHONE NUMBER _____

FAX NUMBER _____

SSN or TIN _____

EMAIL ADDRESS _____

X
SIGNATURE _____

DATE _____

Standard Commission 10%

AGENT/BROKER ID NUMBER
(Assigned by LIBERTY Dental Plan)



NONDISCLOSURE AGREEMENT

THIS NONDISCLOSURE AGREEMENT (the “Agreement”) is made and entered into by and between **LIBERTY Dental Plan Corporation** (collectively with any affiliates, subsidiaries and parent corporations, “LIBERTY”) and _____ (“Contractor”) (each individually a “Party” and together, the “Parties”), effective as of the earlier of _____, or the date Contractor first received Confidential Information or Third-Party Information (the “Effective Date”).

RECITALS

WHEREAS, in the course of the provision of services by Contractor to LIBERTY as may be set forth in a separate agreement between LIBERTY and Contractor (the “Services”) or in connection with the exploration or negotiation of services to be provided by Contractor to LIBERTY (the “Prospective Services”), certain confidential and proprietary information belonging to LIBERTY (or to third parties to whom LIBERTY has confidentiality obligations) may be disclosed to, accessible to or learned by Contractor;

WHEREAS, the Parties desire to establish the terms under which Contractor shall maintain all such confidential and proprietary information in strictest confidence;

NOW, THEREFORE, in consideration of LIBERTY’s agreement to provide confidential and proprietary information to Contractor as needed, in consideration of the covenants and agreements contained herein, and for all other good and valuable consideration had and received, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Confidential Information.

a) *Definition.* The term “Confidential Information” is defined as any LIBERTY data, trade secrets, know-how, inventions (whether or not patentable), formulas, processes, methods, techniques, algorithms, technology, designs, sketches, drawings, flowcharts, outlines, models, notes, reports, research, correspondence, plans, strategies, analyses, documents, databases, records and any other confidential and/or proprietary information regardless of form, which is/are: disclosed or otherwise conveyed to Contractor; accessed by, or accessible to, Contractor; or learned, generated or created by Contractor, whether alone or jointly with others. Such information constitutes Confidential Information whether such information is conveyed to, or obtained by, Contractor in written, electronic, oral or any other form, including by inspection of tangible objects. Confidential Information includes but is not limited to the following types of LIBERTY information:

- i. *Financial Information:* Unpublished financial statements and reports, budgets, forecasts, and all other unpublished financial information and records;
- ii. *Marketing and Business Information:* Provider lists and information, member/enrollee lists and information, client/customer lists and information, vendor lists and information, fee schedules, pricing lists and data, underwriting data and information, compensation and reimbursement models, business plans and strategies, and all other information related to LIBERTY’s marketing, operations, business or business development;
- iii. *Corporate Information:* Unpublished information and records related to the corporate structure and governance of LIBERTY, to LIBERTY investors and shareholders, and to LIBERTY’s licenses and certifications;
- iv. *Technical Information:* Technological and security design and infrastructure, hardware configuration, source code, and all other information related to LIBERTY computer systems, technology and security; and
- v. *Employee Information:* All employee and independent Contractor lists and directories, employee manuals and agreements, employment policies, and personnel files;

b) *Exclusions.* Notwithstanding Section 1(a) above, Confidential Information does not include:

- i. any information that is publicly known and generally available through no act or omission by Contractor or by any individual or entity under confidentiality obligations toward LIBERTY; or
- ii. any information that, as demonstrated by reasonable proof, was developed by Contractor independent of, and without using, Confidential Information.

2. Third-Party Information. Contractor understands and acknowledges that LIBERTY has received, and in the future will receive, from third parties confidential and/or proprietary information belonging to those third parties (“Third-Party Information”), subject to a duty on LIBERTY to maintain the confidentiality of Third-Party Information and use such information for only certain limited purposes. All obligations of Contractor set forth in this Agreement with respect to Confidential Information apply with equal force with respect to Third-Party Information, as further described below.

3. Term and Termination. This Agreement commences on the Effective Date and will continue until terminated by LIBERTY (the “Term”). LIBERTY may terminate this Agreement at any time with or without cause and without any particular amount of notice. The Parties acknowledge and agree that all of Contractor’s confidentiality obligations under this Agreement shall survive termination of this Agreement and shall continue in full force and effect.

4. Contractor’s Representatives. If Contractor is an individual, Contractor shall limit access to Confidential Information and Third-Party Information to himself/herself, except as otherwise expressly permitted under this Agreement. If Contractor is an entity, Contractor shall limit access to Confidential Information and Third-Party Information to only those of its officers, directors, and employees (collectively, “Representatives”) for which such access is absolutely necessary for Contractor to perform any Services or to explore the Prospective Services, except as otherwise expressly permitted under this Agreement. Contractor shall inform all Representatives with access to Confidential Information or Third-Party Information of the confidential nature of such information and shall direct Representatives to comply with all of the terms and conditions of this Agreement. In addition, Contractor shall obtain from each such Representative a signed, written nondisclosure agreement in which the Representative agrees to be bound by all of the confidentiality obligations set forth in this Agreement; Contractor shall provide a copy of any such Representative agreement to LIBERTY. Contractor shall ensure Representatives comply fully with all of the terms and conditions of this Agreement, and Contractor is and will be responsible for any violation of this Agreement by a Representative.

5. Use and Disclosure. Contractor shall maintain Confidential Information and Third-Party Information in strictest confidence. In addition, Contractor has the following obligations:

a) *Use.* Contractor shall not use or copy (or authorize or permit the use or copying of) any Confidential Information or Third-Party Information, whether in part or in whole, except as necessary to perform any Services or explore the Prospective Services, unless (and only to the extent) expressly authorized in writing by LIBERTY. Further, Contractor and its Representatives shall not (nor allow any individual, entity, or facility to) receive, process, transfer, handle, store, maintain, create, or access (remotely or otherwise) any Confidential Information, by any means (physical or electronic) at any time, for any period of time, for any reason outside the borders of the United States.

b) *Disclosure.* Contractor shall not disclose (or authorize or permit the disclosure of) any Confidential Information or Third-Party Information, whether in part or in whole, except as necessary to perform any Services or explore the Prospective Services, unless (and only to the extent) expressly authorized in writing by LIBERTY. If such disclosure is necessary to perform any Services or explore the Prospective Services, Contractor shall disclose Confidential Information or Third-Party Information only to those Representatives or LIBERTY employees who have a need to know such information.

c) *Extent of Use or Disclosure.* In the event Contractor’s use, copying or disclosure is authorized by Sections 5(a) or 5(b) above, Contractor shall restrict his/her/its use, copying or disclosure to the minimum extent necessary to perform any Services or explore the Prospective Services.

d) *Continuing Obligations.* Following the Term of this Agreement, Contractor shall not in any way use or disclose (or authorize or permit the use or disclosure of) any Confidential Information or Third-Party Information, whether in part or in whole, unless (and only to the extent) expressly authorized in writing by LIBERTY. If such post-termination use and/or disclosure is expressly authorized in writing by LIBERTY, Contractor shall continue to be bound by all of the confidentiality obligations of this Agreement (including but not limited to the provisions of Sections 5(a)-(c) above) with respect to such authorized use and/or disclosure.

6. Required Disclosure. In the event that Contractor is requested or required by subpoena, by court order, or by other legal or governmental process or inquiry to disclose any Confidential Information or Third-Party Information, Contractor shall immediately provide notice of such request(s) to LIBERTY and shall use reasonable efforts to resist disclosure until an appropriate protective order may be sought by, or a waiver of compliance with the terms of this Agreement has been granted by, LIBERTY (or by the applicable third party to which such Third-Party Information, if any, belongs). In the absence of a protective order or receipt of a waiver hereunder, if Contractor is nonetheless, in the written opinion of his/her/its counsel, legally required to disclose Confidential Information, then Contractor may disclose such information, provided that LIBERTY has been given a reasonable opportunity to review the text of such disclosure before it is made and that disclosure is limited to only the Confidential Information specifically required to be disclosed.

7. Compliance; Security. Contractor shall comply fully with all applicable federal and state laws and regulations, including but not limited to the Health Insurance Portability and Accountability Act (HIPAA). In addition, Contractor shall comply fully with any separate Business Associate Agreement (BAA) to be executed between LIBERTY and Contractor, as well as all security standards and requirements as may be issued from time to time by LIBERTY. To ensure compliance (including but not limited to compliance with HIPAA, this Agreement, the BAA and any subsequent standards or policies as may be issued from time to time by LIBERTY), Contractor shall, anytime upon LIBERTY's request, submit to an audit by LIBERTY (or a duly authorized independent auditor of LIBERTY) during business hours and upon reasonable notice.

8. No Ownership or Other Rights Granted. All right, title and interest in and to Confidential Information is, and will remain, the property of LIBERTY. Similarly, all right, title and interest in and to Third-Party Information is, and will remain, the property of that third party to which such Third-Party Information belongs. Nothing in this Agreement may be construed to grant Contractor any right or license to the Confidential Information, to the Third-Party Information or under any related patent, patent application, trademark, copyright or other intellectual property of LIBERTY. LIBERTY shall remain the sole and exclusive owner of its registered and unregistered trademarks (including but not limited to LIBERTY's company name), service marks and logos (collectively, "Marks"), and Contractor shall not acquire an ownership interest in, any intellectual property right in, or any license to any of LIBERTY's Marks. Contractor shall not, without prior written consent from an authorized officer of LIBERTY, (i) use, reproduce or display LIBERTY's Marks for any purpose whatsoever; or (ii) alter or modify LIBERTY's Marks. In addition, Contractor agrees and acknowledges that all Work Product (as defined herein) is, and shall be considered, Works Made for Hire (as such are defined under the U.S. copyright laws) and that LIBERTY is, and will be, the author and sole owner and proprietor of such Work Product, including any copyrights, trademarks, patents, or other intellectual property rights pertaining thereto. For purposes of this Agreement, "Work Product" means any information or material produced or generated by Contractor in performing services for LIBERTY, including but not limited to all deliverables and all intermediate and partial versions thereof, and all documentation, analyses, flowcharts, notes, reports, outlines, models, formulas, processes, methods, algorithms, ideas, inventions, know-how or techniques. If it is determined that any Work Product does not qualify as a Work Made for Hire, Contractor hereby assigns (or for any future right, title or interest acquired during the Term, agrees to assign) to Company all of Contractor's right, title, and interest, including all rights of copyright, trademark, patent, and other intellectual property rights to or in such Work Product.

9. Return of Confidential Information. Upon termination of this Agreement or upon request by LIBERTY at any time, Contractor shall return to LIBERTY all Confidential Information, Third-Party Information and LIBERTY property in his/her/its possession, including without limitation: all originals, copies, reproductions, translations, summaries, notes, derivations of or any other form of Confidential Information or Third-Party Information whatsoever, without retaining any copy or duplicates thereof and without recreating or delivering to any third party such Confidential Information or Third-Party Information. At such time, Contractor shall also promptly delete or destroy any and all written, printed, electronic or other material or information derived from Confidential Information or Third-Party Information.

10. Prior Inventions. If, in the course of performing any Services, Contractor incorporates a Prior Invention (as defined herein) into a LIBERTY product, Contractor shall at that time grant to LIBERTY a nonexclusive, royalty-free, irrevocable, perpetual, worldwide license (with rights to sublicense through multiple tiers of sublicensees) to make, have made, modify, use and sell such Prior Invention contained in the LIBERTY product. For purposes of this Agreement, "Prior Invention" is defined as any prior invention, discovery, improvement or work of authorship that Contractor conceived, developed or reduced to practice prior to the commencement of Contractor's engagement by LIBERTY and which Contractor considers to be Contractor's property or the property of a third party. Notwithstanding the foregoing, Contractor shall not incorporate, or permit to be incorporated, Prior Inventions in any LIBERTY products, processes, methods or works without LIBERTY's prior written consent.

11. Contractor Warranties. Contractor makes the following material representations and warranties to LIBERTY in order to induce LIBERTY to enter into this Agreement, and Contractor acknowledges that LIBERTY has reasonably relied upon each of these representations and warranties and that but for each and every one of these representations and warranties, LIBERTY would not enter into this Agreement.

a) *Qualifications.* Contractor represents and warrants that he/she/it has the qualifications, licenses (if any are required by applicable laws or regulations or are otherwise necessary to perform Services) and ability to perform any Services to be performed by Contractor in a professional manner, without the advice, control or supervision of LIBERTY.

b) *No Conflicting Commitments.* Contractor represents and warrants that he/she/it is free to enter into this Agreement and is not bound by any employment agreement, services agreement, nondisclosure or confidentiality agreement, non-competition agreement or any other agreement, document or obligation that may infringe upon or limit Contractor's ability to perform, or in any manner prevent Contractor from performing, any of his/her/its obligations under this Agreement or that may result in liability to LIBERTY in any manner, action, suit or other proceeding concerning Contractor's employment with a current or former employer (or the termination thereof), Contractor's engagement by any other company (or the termination thereof, or any other relationship between Contractor and another party. Contractor represents and warrants that there are no other

agreements, relationships or commitments to any other person or entity that conflict with Contractor's obligations to LIBERTY under this Agreement.

c) *No Improper Use or Disclosure.* Contractor represents and warrants that he/she/it does not possess any property or materials containing confidential and/or proprietary information belonging to any current or former employer of Contractor, to any other company which engages or has engaged Contractor or to any third party with which LIBERTY does not already have an agreement authorizing LIBERTY to possess and use such information ("Other Party"), unless Contractor's possession and use of such Other Party property or materials is expressly permitted by an agreement between Contractor and that Other Party. Notwithstanding the above, Contractor shall not disclose to LIBERTY, use in the performance of any Services, use on behalf of LIBERTY or induce LIBERTY to use any confidential and/or proprietary information belonging to any Other Party. In addition, Contractor represents and warrants that he/she/it has the right to disclose and use all ideas, processes, techniques, property and other information, if any, that he/she/it will disclose or has disclosed to LIBERTY, or will use in the performance of any Services, without liability to any third party.

d) *Rights and Licensing.* Contractor represents and warrants that he/she/it has not granted any rights or licenses to any works, technology or other intellectual property that would or may conflict with LIBERTY's rights or Contractor's obligations under this Agreement. Contractor further represents and warrants that he/she/it will not infringe upon or misappropriate any copyright, patent, trade secret or other property right of any third party in the course of performing any Services.

12. Indemnification. Contractor shall indemnify, defend and hold harmless LIBERTY (and LIBERTY's officers, directors, shareholders, managers, members and employees) from and against any and all losses, costs, damages, obligations, liabilities, awards and expenses (including, without limitation: defense costs; reasonable attorney's fees; court costs; all damages, including but not limited to compensatory, consequential and punitive damages; penalties and fines; and interest), which arise out of or are in any way related to: (i) any act or omission by Contractor or its Representatives; (ii) Contractor's, or its Representatives', breach of this Agreement; or (iii) the representations, warranties, covenants, agreements, obligations, acknowledgments or assignments of Contractor or its Representatives as set forth in this Agreement.

13. No Representations by LIBERTY. Contractor understands and agrees that LIBERTY makes no representations or warranties, express or implied, with respect to any of the Confidential Information or Third-Party Information or with respect to the accuracy, completeness or fitness for a particular purpose of any such information. Contractor further understands and agrees that LIBERTY will have no liability to Contractor or Contractor's Representatives resulting from the use of or reliance upon any Confidential Information or Third-Party Information by Contractor or its Representatives.

14. Remedies. Contractor acknowledges and agrees that a breach of his/her/its obligations under this Agreement will cause LIBERTY (or its clients, partners or vendors) irreparable harm for which monetary damages would not provide an adequate remedy. In the event of a violation of this Agreement, Contractor acknowledges and agrees that, in addition to all other remedies available at equity or at law, LIBERTY is entitled to seek and obtain injunctive (temporary or permanent) relief to the extent a court of competent jurisdiction finds such relief appropriate under the circumstances, and Contractor hereby consents to the grant of such relief. Contractor shall waive any requirement for the securing or posting of any bond in connection with such remedy.

15. Miscellaneous.

a) *Applicable Law; Venue.* This Agreement and the rights and obligations of the parties hereto shall be interpreted, construed and enforced in accordance with the laws of the State of California, without reference to conflict of laws principles. Any litigation under this Agreement shall be filed and pursued in a court of proper venue in Orange County, California.

b) *Waiver.* No failure or delay by LIBERTY or any representative of LIBERTY in exercising any right, power, or privilege hereunder shall operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof of the exercise of any other right, power, or privilege hereunder. In addition, the waiver by LIBERTY of a breach of any provision of this Agreement by Contractor shall not operate as or be construed as a waiver of any subsequent breach by Contractor.

c) *Entire Agreement.* This Agreement (including all attachments and exhibits attached hereto) is the final expression of, and contains the entire agreement between, the parties with respect to the subject matter hereof and supersedes all prior communications or understandings with respect thereto.

d) *Severability.* If any provision, term, covenant or condition contained in this Agreement is held by any court of competent jurisdiction to be invalid, unenforceable or void, such invalidity or unenforceability shall not affect the validity and enforceability of the remainder of the Agreement and all other provisions, terms, covenants and conditions contained in the Agreement shall remain in full force and effect. In addition, any invalid, unenforceable, or void provision, term, covenant or

condition of this Agreement shall be replaced with a valid and enforceable one that will achieve, to the extent possible, the economic, business, and other purposes of the invalid, unenforceable, or void provision, term, covenant or condition.

e) *Amendments.* This Agreement may not be amended, modified, changed, or supplemented in any way except by written instrument signed by an authorized signatory of each Party.

f) *Agreement Assignment.* This Agreement may not be assigned by Contractor except by written instrument signed by an authorized signatory of each Party. Notwithstanding the foregoing, this Agreement shall be binding upon, inure to the benefit of and be enforceable by the successors, assigns, heirs, executors and administrators of the Parties.

g) *Survival.* All of Parties' continuing rights and obligations under this Agreement, including the following provisions, survive termination of this Agreement: Sections 3, 4, 5(d), 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15.

h) *Headings.* The headings of the sections of this Agreement are for convenience only and may not in any way affect the meaning or interpretation of this Agreement.

i) *Signatory Authority.* Each of the Parties, by signing below, represents and warrants to the other Party that he/she/it has the authority to bind the named person or entity to this Agreement.

j) *Counterparts.* This Agreement may be executed in several counterparts (including by facsimile or by an electronic scan delivered by electronic mail) that together shall constitute a single agreement.

IN WITNESS WHEREOF, this Agreement has been executed as of the Effective Date:

_____ (**"CONTRACTOR"**):

Authorized Signature

Print Name

Title

Date

LIBERTY DENTAL PLAN CORPORATION ("LIBERTY"):
(collectively with any affiliates, subsidiaries and parent corporations)

Authorized Signature

Print Name

Title

Date

Please check the following prior to submission

Is your CA Insurance License ready to submit with the Broker Appointment Documents?

Does the name on each document match the Legal name on line one of the W9 form?

LIBERTY Dental Plan ("LIBERTY") requires its Agents/Brokers who may provide services for LIBERTY, have access to members' Protected Health Information (PHI) to execute a Business Associate Agreement (BAA) and any updates thereto. The Business Associate Agreement sets forth all applicable privacy and security requirements under the Health Insurance Portability and Accountability Act of 1996 ("HIPPA") and Health Information for Economic and Clinical Health Act ("HITECH Act"). In addition, LIBERTY requires its Agents/Brokers who may have access to its (or its clients') confidential information to execute a Nondisclosure Agreement (NDA) and any updates thereto.

If you have any questions regarding this process, please contact our Client Services Department at clientservices@libertydentalplan.com.