

## **HIPAA BUSINESS ASSOCIATE ADDENDUM:**

This HIPAA Business Associate Addendum ("Business Associate Addendum") supplements and is made a part of the Dental Service Contract ("Contract") by and between the entity identified on the signatory page ("Sponsor/Contractholder") on behalf of the group health plan identified in the Contract ("Group Health Plan") and Delta Dental of Delaware, Inc. ("Delta"). Unless specified otherwise, each provision of this Business Associate Addendum is effective on April 14, 2003, such other applicable compliance date, or Contract effective date whichever is later.

### **RECITALS**

Whereas, the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996 and related regulations require that contracts between covered entities and entities known as business associates comply with enumerated standards and requirements;

Whereas, the Sponsor/Contractholder executes this Business Associate Addendum on behalf of the Group Health Plan;

Whereas, Delta's administration of the Sponsor/Contractholder's group dental program makes Delta a business associate of the Group Health Plan as described or defined under HIPAA;

Whereas, the purpose of this Business Associate Addendum is to satisfy the HIPAA standards and requirements;

Now therefore, in consideration of the mutual promises below, the Sponsor/Contractholder, the Group Health Plan and Delta agree as follows:

### **SECTION 1 - DEFINITIONS**

1.1 "HIPAA" shall mean the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996 and related regulations, Title 45 Parts 160 and 164 of the Code of Federal Regulations, as amended from time to time.

1.2 "Protected Health Information" (PHI) shall have the same meaning as defined in HIPAA and shall apply to those individuals who are eligible and/or enrolled in the Group Health Plan's dental benefit program administered by Delta.

1.3 Terms used, but not otherwise defined, in this Business Associate Addendum shall have the same meaning as those terms have in HIPAA.

### **SECTION 2 - BUSINESS ASSOCIATE AGREEMENT**

2.1 The provisions of this Section 2 control over any provision in the Contract that conflicts with this Section 2.

#### **2.2 Permitted Uses and Disclosures.**

a. Delta shall use and/or disclose PHI received, created or maintained by Delta in accordance with the uses and disclosures described in Exhibit A.

b. Delta shall not use or further disclose PHI other than as permitted or required by this Business Associate Addendum, any law or regulation.

c. Except as otherwise limited by this Business Associate Addendum, Delta may use PHI for Delta's proper management and administration or to carry out Delta's legal responsibilities.

d. Except as otherwise limited by this Business Associate Addendum, Delta may disclose PHI for Delta's proper management and administration, provided that disclosures are Required By Law, or Delta obtains reasonable assurances from the person to whom the PHI is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies Delta of any instances of which it is aware in which the confidentiality of the PHI has been breached.

2.3 Appropriate Safeguards. Delta agrees to use appropriate safeguards to prevent its use or disclosure of PHI other than as provided for by this Business Associate Addendum.

2.4 Mitigation. Delta agrees to mitigate, to the extent practicable, any harmful effect that is known to Delta of a use or disclosure of PHI by Delta in violation of the requirements of this Business Associate Addendum.

2.5 Reporting of Disclosures of PHI. As soon as practical after discovery, Delta shall report to the Group Health Plan, or its designate, any use or disclosure of PHI by Delta not provided for in this Business Associate Addendum of which Delta becomes aware.

2.6 Agents and Contractors. Delta shall ensure that any Delta agent or subcontractor to whom Delta discloses PHI agrees, in writing, to be bound by the same restrictions and conditions that apply to Delta through this Business Associate Addendum.

2.7 Access to and Availability of PHI. Delta shall, in accordance with HIPAA and as appropriate:

a. Provide access to the requested PHI within Delta's or its agent's or subcontractor's possession. The Group Health Plan shall as soon as practicable forward to Delta any requests the Group Health Plan receives from the individual. Delta shall be responsible for responding to the Group Health Plan or individual who sent the request to Delta. If the response is to be sent to the Group Health Plan, Delta shall send the PHI to the Group Health Plan within fifteen (15) days of Delta's receipt of the request.

b. Amend, notify appropriate recipients of any amendment, and incorporate any amendment to the requested PHI within Delta's possession or its agent's or subcontractor's. The Group Health Plan shall as soon as practicable forward to Delta any requests the Group Health Plan receives from the individual. Delta shall be responsible for responding the Group Health Plan or individual who sent the request to Delta. If the response is to be sent to the Group Health Plan, Delta shall send the response to the Group Health Plan within forty-five (45) days of Delta's receipt of the request; and

c. Provide an accounting of disclosures of PHI as required by HIPAA. The Group Health Plan shall as soon as practicable forward to Delta any requests the Group Health Plan receives from the individual. Delta shall be responsible for responding to the Group Health Plan or individual who sent the request to Delta. Delta agrees to track, and request that its agents or subcontractors track, all such disclosures of PHI that would be required to respond to a request for accounting of disclosures of PHI as required by HIPAA. If the response is to be sent to the Group Health Plan, Delta shall send the accounting to the Group Health Plan within forty-five (45) days of Delta's receipt of the request.

2.8 Availability of Delta's Internal Practices, Books and Records. Delta agrees to make its internal practices, books and records, including policies and procedures and PHI, relating to its use and disclosure of PHI available to the Group Health Plan upon reasonable notice from the Group Health Plan, and the Secretary of Health and Human Services for purposes of determining Group Health Plan's and Delta's compliance with this Business Associate Addendum and the HIPAA privacy standards.

2.9 Sponsor/Contractholder Compliance. If the Sponsor/Contractholder and/or Group Health Plan receives non-enrollment PHI from Delta, then the Sponsor/Contractholder and/or Group Health Plan, as appropriate, shall be responsible for their compliance with HIPAA's administrative requirements resulting from the Sponsor/Contractholder's and/or Group Health Plan's activities, including but not limited to, privacy officer designation, training, etc.

2.10 Sponsor/Contractholder Responsibilities. Sponsor/Contractholder and/or Group Health Plan agree to timely:

a. Forward any request it receives to the appropriate party as set forth in Section 2.7 above;

b. Notify Delta of any restriction(s), or change thereto, to the use or disclosure of PHI that the Group Health Plan has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction(s) and/or change(s) may affect Delta's use or disclosure of PHI; and

c. Notify Delta of changes in, or withdrawal of, any authorizations provided to the Group Health Plan by the individual and forwarded by the Group Health Plan to Delta.

Unless otherwise specifically provided in this Business Associate Addendum, Delta shall only be responsible to comply with the authorizations and restrictions conveyed by the Sponsor/Contractholder in accordance with this Section 2.10.

2.11 Term and Termination of the Contract and this Business Associate Addendum.

a. Term. The term of this Business Associate Addendum shall be effective on the effective date of the Contract and shall continue until the Contract is terminated.

b. Termination for Cause. The Sponsor/Contractholder may terminate this Business Associate Addendum and the Contract upon the Sponsor/Contractholder's knowledge that Delta has materially breached this Business Associate Addendum if, within thirty (30) days after receipt of written notice of such material breach, Delta fails to take action to cure the breach or end the violation. Sponsor/Contractholder may immediately terminate this Business Associate Addendum and this Contract if Delta has breached a material term of this Business Associate Addendum and cure is not possible. If neither termination nor cure is feasible, Sponsor/Contractholder may report the violation to the Secretary of Health and Human Services.

c. In the event of any termination of this Business Associate Addendum, Delta shall return or destroy all PHI that Delta still maintains in any form and shall retain no copies. If return or destruction is not feasible because such PHI is necessary to fulfill Delta's legal responsibilities or other management and administrative purposes, Delta shall retain the PHI and shall continue to protect the confidentiality of PHI as required by this Business Associate Addendum. Delta shall limit any use or disclosure of PHI to those purposes that make the return or destruction of PHI infeasible. Delta agrees to require that any PHI in the possession of its agents or subcontractors be retained, returned or destroyed, as applicable.

d. The following Sections shall survive termination of this Business Associate Addendum: 2.7, 2.8, 2.10, 5.2, and 5.3.

2.12 Notice of Privacy Practices. Delta's notice of privacy practices will be provided to the primary enrollees covered under the group dental plan administered by Delta. However, Delta and the Sponsor/Contractholder agree that Delta will delegate the distribution of Delta's notice to the Sponsor/Contractholder, and the Sponsor/Contractholder agrees to distribute, at no cost to Delta, that privacy notice to the primary enrollees within the time frames required by HIPAA.

2.13 Security Rule Provisions. Delta will comply with the following provisions by April 21, 2005, or such other applicable compliance date. For purposes of this Section, "electronic protected health information" (ePHI) shall have the same meaning as defined in HIPAA and shall apply to those individuals who are eligible and/or enrolled in the Group Health Plan's dental benefit program administered by Delta.

a. Delta shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the ePHI that it creates, receives, maintains or transmits on behalf of the Group Health Plan.

b. Delta shall ensure that any agent, including a subcontractor, to whom Delta provides ePHI, agrees to implement reasonable and appropriate safeguards to protect ePHI.

c. As soon as practical after discovery, Delta shall report to the Group Health Plan any Security Incident of which Delta becomes aware.

d. Delta agrees to authorize termination of this Business Associate Addendum and the Contract as described in Section 2.11, above, by the Sponsor/Contractholder if the Sponsor/Contractholder has knowledge that Delta has violated a material term of this Business Associate Addendum.

### **SECTION 3 – DISCLOSURE TO PLAN SPONSOR/CONTRACTHOLDER**

This Section 3 applies if the Sponsor/Contractholder will receive non-enrollment PHI and if the Contract is the group health plan document that must be amended to permit disclosure of non-enrollment PHI to the Sponsor/Contractholder.

3.1 Amendment of the Contract. Delta and Sponsor/Contractholder agree to amend the Contract as set forth in this Section to allow the Group Health Plan and/or Delta to disclose non-enrollment PHI to the Sponsor/Contractholder.

3.2 Notice of Privacy Practices. Delta's notice of privacy practices will advise that Delta may disclose non-enrollment PHI to the Sponsor/Contractholder.

3.3 Disclosure of PHI to Plan Sponsor/Contractholder. The Sponsor/Contractholder represents and warrants that if the prior conditions in Sections 3.1 and 3.2 have been met, Delta may disclose non-enrollment PHI to the classes of employees and other persons identified by Sponsor/Contractholder to carry out the plan administration functions. Delta shall not disclose PHI to such persons for the purpose of employment-related actions or decisions or in connection with any other benefit plan of the Sponsor/Contractholder.

3.4 Identification of Employees and Other Persons. The Sponsor/Contractholder agrees that Delta may rely upon the most recent list of classes of employees (or update thereof) provided by the Sponsor/Contractholder.

3.5 Disclosure of Enrollment and Summary Health Information. Sections 3.1 and 3.2 do not apply to disclosures of enrollment information and summary information as defined in HIPAA. Delta may disclose to the Sponsor/Contractholder summary health information:

- a. To obtain premium bids for providing dental benefits coverage under the Group Health Plan;
- b. To modify, amend or terminate the Group Health Plan; or
- c. As otherwise permitted by HIPAA.

3.6 Amendment of the Contract as Group Health Plan Document. Sponsor/Contractholder and Delta acknowledge that the Contract constitutes the group health plan document for the dental program administered by Delta. This Section 3.6 shall serve as the amendment to the group health plan document as required by HIPAA to permit Delta to disclose non-enrollment PHI to the Sponsor/Contractholder. The provisions of this Section 3.6 control over any provision in the Contract that conflicts with this Section.

a. Sponsor/Contractholder Certification. The following terms of this Section incorporate the requirements of HIPAA to permit the Group Health Plan or Delta to lawfully disclose non-enrollment PHI to the Sponsor/Contractholder or its agents. This Section shall serve as the Sponsor/Contractholder's certification as required by HIPAA.

b. Permitted Uses and Disclosures.

i. Sponsor/Contractholder, its directors, officers, employees, contractors and agents shall use and/or disclose PHI received by Sponsor/Contractholder solely in accordance with the uses and disclosures described in Exhibit B which is attached to and made a part of this Business Associate Addendum.

ii. Sponsor/Contractholder shall not, and shall ensure that its directors, officers, employees contractors and agents do not, use or further disclose PHI in any manner except as permitted or required by this Business Associate Addendum or as required by law or regulation.

c. Agents and Subcontractors. Sponsor/Contractholder shall ensure that any agent or subcontractor that will have access to PHI from Sponsor/Contractholder agrees to be bound by the same restrictions, terms and conditions that apply to Sponsor/Contractholder pursuant to this Business Associate Addendum.

d. Employment-Related Actions and Decisions. The Sponsor/Contractholder shall not use or disclose PHI for employment-related actions or decisions or in connection with any other benefit plan of the Sponsor/Contractholder.

e. Reporting of Disclosures of PHI. Sponsor/Contractholder shall, as soon as possible after becoming aware of an actual or suspected disclosure of PHI in violation of this Business Associate Addendum by Sponsor/Contractholder, its officers, directors, employees, subcontractors or agents or by a third party to which Sponsor/Contractholder disclosed PHI pursuant to this Business Associate Addendum, report any such disclosure to the Group Health Plan.

f. Access to and Availability of PHI. Sponsor/Contractholder shall timely and in compliance with HIPAA requirements:

i. Make available to the Group Health Plan or Delta, as appropriate, the requested PHI to respond to an individual's request for access to PHI;

ii. Provide to the Group Health Plan or Delta, as appropriate, the requested PHI to respond to a request for amendment and shall incorporate any amendment received from the Group Health Plan or Delta; and

iii. Make available to the Group Health Plan or Delta, as appropriate, the requested PHI to respond to an individual's request for an accounting of disclosures of PHI. The Sponsor/Contractholder agrees to track all disclosures of PHI that would be required to respond to a request for accounting of disclosures of PHI as required by HIPAA.

g. Availability of Sponsor/Contractholder's Internal Practices, Books and Records. Sponsor/Contractholder agrees to make its internal practices, books and records relating to the use and disclosure of PHI received from the Group Health Plan or Delta available to the Secretary of Health and Human Services for purposes of determining the Group Health Plan's and Sponsor/Contractholder's compliance with the HIPAA privacy standards.

h. Return or Destruction of PHI. Sponsor/Contractholder shall return or destroy all PHI received from the Group Health Plan or its agent that the Sponsor/Contractholder maintains in any form and shall retain no copies when such PHI is no longer needed for the purpose for which the disclosure was made. If return or destruction is not feasible, Sponsor/Contractholder shall continue to protect the confidentiality of PHI as required by this Business Associate Addendum and limit any use or disclosure of PHI to those purposes that make the return or destruction of PHI infeasible.

i. Adequate Separation. Sponsor/Contractholder shall ensure adequate separation as required by HIPAA by doing the following:

i. Sponsor/Contractholder shall identify the Sponsor/Contractholder's classes of employees or other persons to whom the Group Health Plan, its agent, or Delta shall disclose PHI;

ii. Sponsor/Contractholder shall restrict access to PHI and use of PHI by such employees or other persons to the plan administration functions that Sponsor/Contractholder performs for the Group Health Plan; and

iii. Sponsor/Contractholder shall implement an effective mechanism for resolving any issues of noncompliance by such employees or other persons, and such mechanism shall be consistent with the terms of this Business Associate Addendum.

j. Security Rule Provisions. Sponsor/Contractholder will comply with the following provisions by April 21, 2005, or such other applicable compliance date. For purposes of this Section, "electronic protected health information" (ePHI) shall have the same meaning as defined in HIPAA and shall apply to those individuals who are eligible and/or enrolled in the Group Health Plan's dental benefit program administered by Delta.

i. Sponsor/Contractholder shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the ePHI that it creates, receives, maintains or transmits on behalf of the Group Health Plan.

ii. Sponsor/Contractholder shall ensure that any agent, including a subcontractor, to whom the Sponsor/Contractholder provides ePHI, agrees to implement reasonable and appropriate safeguards to protect ePHI.

iii. As soon as practical after discovery, Sponsor/Contractholder shall report to the Group Health Plan any Security Incident of which Sponsor/Contractholder becomes aware.

iv. Sponsor/Contractholder shall ensure adequate separation as required by HIPAA by complying with Section 3.6(i) above for the ePHI created and received by the Sponsor/Contractholder.

#### **SECTION 4 – DISCLOSURE TO BUSINESS ASSOCIATE**

4.1 The Sponsor/Contractholder represents and warrants that prior to requesting Delta to disclose PHI to the Group Health Plan's business associate(s), including but not limited to, a broker, consultant, TPA or auditor, the Group Health Plan, or the Sponsor/Contractholder on the Group Health Plan's behalf, shall have entered into a business associate contract or have other satisfactory arrangement with such business associate(s) that complies with the requirements of HIPAA. Sponsor/Contractholder and/or the Group Health Plan agree to provide Delta with documentation relating to the business associate's permission to receive PHI from Delta.

4.2 Disclosure to a business associate pursuant to this Section 4 shall not include a disclosure to the Sponsor/Contractholder nor to its identified employees.

#### **SECTION 5 – GENERAL**

5.1 Amendment to Business Associate Addendum. Sponsor/Contractholder and Delta agree to amend this Business Associate Addendum as necessary to comply with federal or state laws or regulations relating to the administrative simplification provisions of HIPAA.

5.2 Indemnification by Delta. Delta agrees to indemnify, defend and hold harmless the Group Health Plan, or the Sponsor/Contractholder on the Group Health Plan's behalf, and their employees, directors, officers, subcontractors, agents or other members of its workforce, each of the foregoing hereinafter referred to as "Indemnified Party," against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with Delta's breach of Sections 2 or 3 of this Business Associate Addendum. Accordingly, on demand, Delta shall reimburse any Indemnified Party for any and all actual and direct losses, liabilities, fines, penalties, costs or expenses (including reasonable attorneys' fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding or demand by any third party which results from Delta's breach hereunder. Delta's obligation to indemnify any Indemnified Party shall survive the expiration or termination of this Business Associate Addendum for any reason.

5.3 Indemnification by Group Health Plan or Sponsor/Contractholder. The Group Health Plan, or the Sponsor/Contractholder on the Group Health Plan's behalf, agrees to indemnify, defend and hold harmless Delta and its employees, directors, officers, subcontractors, agents or other members of its workforce, each of the foregoing hereinafter referred to as "Indemnified Party," against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with the Group Health Plan's or Sponsor/Contractholder's breach of Sections 2, 3 or 4 of this Business Associate Addendum. Accordingly, on demand, the Group Health Plan or Sponsor/Contractholder shall reimburse any Indemnified Party for any and all actual and direct losses, liabilities, fines, penalties, costs or expenses (including reasonable attorneys' fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding or demand by any third party which results from the Group Health Plan's or Sponsor/Contractholder's breach hereunder. The obligation to indemnify any Indemnified Party shall survive the expiration or termination of this Business Associate Addendum for any reason.

5.4 Interpretation. This Business Associate Addendum shall be interpreted to allow the parties to comply with HIPAA, provided, however, that nothing herein shall be construed to grant rights beyond those provided under HIPAA or applicable law.

5.5 No Third Party Beneficiary. Nothing express or implied in this Business Associate Addendum is intended to confer, nor shall anything in this Business Associate Addendum confer, upon any person other than the parties to this Business Associate Addendum and their respective successors and assigns, any rights, remedies, obligations or liabilities whatsoever.



## EXHIBIT A TO HIPAA BUSINESS ASSOCIATE ADDENDUM

### Delta's Permitted Uses and Disclosures:

Except as otherwise limited in this Business Associate Addendum, Delta shall use and disclose PHI:

- A. To perform the functions, activities, or services for, or on behalf of, the Group Health Plan as specified in the Contract, provided that such use or disclosure would not violate HIPAA if done by the Group Health Plan.
- B. For the Group Health Plan's treatment, payment and health care operations as defined and permitted under HIPAA with respect to Delta's administration of the dental benefits program for the Group Health Plan as described in the Contract.
- C. For Delta's treatment, payment and health care operations as defined and permitted under HIPAA with respect to Delta's administration of the dental benefits program for the Group Health Plan as described in the Contract.
- D. To Delta's agents or subcontractors as necessary for Delta to perform the services described in the Contract.
- E. To the Group Health Plan's or Sponsor/Contractholder's business associate, agent or subcontractor as requested by the Sponsor/Contractholder.
- F. To provide data aggregation services to the Group Health Plan if mutually agreed upon between Group Health Plan and Delta.
- G. To provide to or obtain de-identification services for the Group Health Plan if mutually agreed upon between Group Health Plan and Delta.
- H. As otherwise required or permitted by HIPAA or federal or state law.
- I. To report violations of law to appropriate federal or state authorities, consistent with 45 CFR §164.502 (j)(1).
- J. As otherwise requested by the Sponsor/Contractholder or the Group Health Plan that is not in violation of HIPAA.

## **EXHIBIT B TO HIPAA BUSINESS ASSOCIATE ADDENDUM**

### **Sponsor/Contractholder's Uses and Disclosures:**

Sponsor/Contractholder shall use and disclose PHI only in compliance with HIPAA and for the purpose of providing plan administration functions to the Group Health Plan. Plan administrative functions are defined as administration functions performed by the plan sponsor of a group health plan on behalf of the group health plan and excludes functions performed by the plan sponsor in connection with any other benefit or benefit plan of the plan sponsor.

IN WITNESS WHEREOF, Sponsor/Contractholder and Delta have duly executed this Business Associate Addendum as of the date listed below.

Sponsor/Contractholder represents and warrants that it is signing this Contract in its capacity as the sponsor of the Group Health Plan and not in a capacity of a business associate to the Group Health Plan.

**SPONSOR/CONTRACTHOLDER:**

\_\_\_\_\_  
(Print entity's name)


Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Date: \_\_\_\_\_

**DELTA DENTAL OF DELAWARE, INC**

Signature:  \_\_\_\_\_

Title: \_\_\_\_\_ President \_\_\_\_\_