



## AGENT SERVICES AND COMMISSION AGREEMENT

THIS AGREEMENT is entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, between The Dental Care Plus Group (hereinafter referred to as "DCPG"), an Ohio for profit corporation, on behalf of itself, Dental Care Plus, Inc., an insurance company and a health insuring corporation ("DCP"), and Insurance Associates Plus, Inc., an insurance agency ("IAP") collectively referred to herein as DCPG, and \_\_\_\_\_ (hereinafter referred to as "Agent").

**WHEREAS**, in consideration of the mutual covenants and promises contained herein and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

### BACKGROUND

- A. DCPG is the parent corporation of DCP and IAP and is licensed as a third party administrator.
- B. DCP is an insurance company and a limited service dental health insuring corporation which offers benefit plans, and IAP is a licensed insurance agency which contracts with third parties to market health insurance products for groups domiciled in the States of Ohio, Kentucky and Indiana.
- C. Agent is a duly licensed insurance broker or agent in good standing qualified under the laws of the States of Ohio, Kentucky and/or Indiana to solicit enrollment of individuals in I benefit plans offered by DCPG.
- D. DCPG desires to engage Agent to solicit applications from eligible individuals to contract for benefit plans offered by DCPG and Agent desires and agrees to provide these services to DCPG.
- E. DCPG and Agent would like to provide a full statement of their agreement in connection with the provision of services by Agent to DCPG.

### AGREEMENT

The parties agree as follows:

#### 1. Duties and Responsibilities of Agent.

- a. Equal Presentation of DCPG Products. Agent shall offer DCPG products covered by this Agreement to each customer who is solicited by Agent or who requests information on benefit products from Agent on equal terms and in the same manner as products of other companies are offered.

- b. Scope of Authority. Agent is authorized by DCPG to solicit applications to contract with groups and individuals meeting eligibility requirements established by DCPG for forms of benefit plans actively offered by DCPG. , Agent may solicit applications only in those states where DCPG offers plans where Agent is appropriately licensed to sell such plans. Agent agrees to solicit offers to contract and to offer enrollment applications only to eligible groups and individuals for benefit plans and in the designated territory listed in Exhibit A.
- c. Limitation of Authority. Agent may not alter, amend, delete, vary or waive the terms or rates of any DCPG Evidence of Coverage ("Contract") or any application for enrollment or make any promise, statement, warranty, or representation, regarding contract terms including, but not limited to, eligibility criteria, or premium amounts, unless contained in such Contract or application. DCPG will collect all premiums on any Contracts solicited by Agent. Agent agrees to collect any premium payments authorized and requested by DCPG; provided, however that any amounts authorized by DCPG to be collected by Agent shall be payable by check to "The Dental Care Plus Group" and remitted to DCPG immediately without a written request.
- d. Application for Enrollment. Agent will assist individuals in completing and submitting applications for enrollment in accordance with DCPG policies and procedures. Agent will assure that all forms included in the application have been completed and are submitted with the application. Agent acknowledges that Agent has received and reviewed all of DCPG policies and procedures regarding enrollment in DCPG benefit plans, and Agent understands and agrees to be bound by such.
- e. Acceptance for Enrollment. DCPG may accept or reject any prospective individual application to contract for plan benefits submitted by Agent based on underwriting and enrollment policies of DCPG. No offer to contract made or received by Agent is binding until accepted by DCPG in the exercise of its sole discretion. In no event shall any prospective individual be eligible to receive benefits unless and until the offer to contract or application, as applicable, is accepted by DCPG with such effective date as determined by DCPG. Agent shall inform all individuals submitting applications to contract for benefit plans that all applications are conditional and subject to acceptance and approval in writing by DCPG. DCPG will notify Agent whether DCPG has denied a contract.
- f. Rate Quotes. Agent acknowledges that rate quotes are not binding on DCPG, and the actual rate on products issued by DCPG may differ from the shelf rate as a result of different information which is available to DCPG or changes in the DCPG policies or standards.
- g. Servicing of New Business. Agent will perform all reasonable duties and services required by DCPG to service the new business solicited by Agent as follows:
  - i. Procuring, soliciting, receiving and forwarding to DCPG applications for benefit plans and servicing existing DCPG benefit plan business; such procuring, soliciting, receiving, forwarding and servicing shall be in accordance with applicable statutes and governmental regulations pertaining to the conduct of the business covered hereby.

- ii. Reviewing all individual applications and enrollment documents to assure that they are fully completed and that all forms and documents requested by DCPG are included, and forwarding such applications to DCPG as soon as reasonable.
- h. Servicing of Groups and Members. Agent will perform all reasonable duties and services required by DCPG to service groups and members solicited by Agent and enrolled by DCPG. If requested by DCPG, such duties and services may include delivery and explanation of initial administrative forms and subsequent renewal forms.
- i. Marketing Materials. Agent will only use and distribute advertising and marketing materials provided and/or approved by DCPG when providing services under this Agreement. Agent will comply with all DCPG policies and procedures regarding the use of all such materials.
- j. Cancellation and Rescission of Individual Contracts; Review of Applications.
  - i. DCPG reserves the right to cancel the Contract of any enrolled individual solicited by Agent.
  - ii. Agent acknowledges and agrees that DCPG will monitor the number of enrolled individuals solicited by Agent that request or otherwise bring actions seeking the rescission of their respective Contract. A material number of such requests for rescission or actions to rescind Contracts may result in the immediate termination of this Agreement pursuant to Section 4(c) below.
  - iii. Agent acknowledges and agrees that DCPG will conduct random quality reviews of applications, enrollment documents, and any other materials submitted by Agent to ensure the accuracy of information disclosed on such applications, enrollment documents and/or materials. Alterations made by Agent or directed to be made by Agent, which distort the accuracy of the information disclosed on the applications, enrollment documents and/or materials submitted by Agent may result in the immediate termination of this Agreement pursuant to Section 4(c) below.

## 2. Representations and Warranties.

- a. Qualifications. Agent certifies that Agent is a duly licensed insurance agent in the States of where Agent will solicit applications, in good standing, and is qualified to solicit applications from individuals for benefit plans offered by DCPG. Agent has provided to DCPG a true and accurate copy of Agent's current insurance license in the States of licensure, and will, if requested by DCPG provide proof of renewal of such licenses. Agent further certifies to DCPG that Agent has fully disclosed all information requested and that all information disclosed is complete, true, and correct. If Agent's license is suspended or terminated, or if any response contained in Agent's application is or becomes inaccurate, misleading or false after being submitted to DCPG, Agent will provide written notice to DCPG within three (3) business days. Agent shall provide updated, accurate and complete information within such timeframe. In the event Agent learns that any adverse action will be taken against Agent by the Superintendent of Insurance of Ohio, Kentucky and Indiana or by any other state or federal regulator, then notice of such impending action,

whether such notice was received by Agent orally or in writing, shall be transmitted to DCPG within three (3) business days of receipt of notice, in writing, by Agent.

- b. Independent Contractor. At all times during the term of this Agreement, the relationship between DCPG and Agent shall be that of independent contractors. Nothing in this Agreement shall be construed or deemed to establish or create a relationship of employer and employee.
- c. Compliance with Laws and Policies. Agent agrees to comply fully and promptly with all laws, regulations, and DCPG policies and procedures applicable to the performance of duties, responsibilities and obligations hereunder.
- d. Insurance. Agent will maintain errors and omission insurance which covers Agent, at all times during the term of this Agreement or while eligible to receive commissions pursuant to this Agreement, whichever is longer. Upon request by DCPG, Agent will provide evidence of such insurance coverage to DCPG. Agent will notify DCPG in writing within five (5) days of any proposed cancellation or change in coverage of Agent's errors and omission insurance.
- e. Indemnification. Agent agrees to indemnify and hold harmless DCPG, its agents, officers, and employees from any and all losses, claims, actions, liability, costs, damages and expenses (including costs of judgments, settlements, court costs and attorneys' fees, regardless of the outcome of the claim or action) arising out of or related in any way to the performance or non-performance by Agent of any term, condition, or obligation under this Agreement. This obligation shall survive the termination of this Agreement.
- f. Cooperation. Agent will cooperate with DCPG and work collaboratively with DCPG, group's enrollees and regulators to resolve complaints and other matters. Agent will immediately report to DCPG any complaint received from a group, member, regulator or other person related in any manner to the DCPG business.

### 3. Payments by DCPG

- a. Payment of Commissions. Subject to the terms of this Section 3, DCPG agrees to pay to Agent a commission based on the total amount of premium paid by groups and individuals during the preceding month on Contracts which have been solicited by Agent and accepted by DCPG for enrollment, and for which Agent is the designated agent of record. To the extent the agent of record changes during a month, the agent with the longest period as agent of record during that month will be paid the commission. DCPG will pay a commission to Agent based on the Agent commission schedule attached as Exhibit B or as otherwise agreed to by the parties. Agent acknowledges and agrees that, consistent with Section 5(d) below, DCPG may change the current commission schedules on thirty (30) days written notice to Agent at anytime without obtaining the consent of Agent. Each revised commission schedule shall apply to all Contracts solicited by Agent and accepted by DCPG and/or any renewal(s) thereof after the date such new commission schedule becomes effective.

- b. Timing of Payments. Commissions will be paid to Agent on a monthly basis. Such amounts (if any) will be paid to Agent no later than sixty (60) days after the end of the month in which the premiums are collected, subject to the provisions of Section 3(d), below. In the event that Agent has a claim for additional commission(s), such claims shall be presented to DCPG within sixty (60) days of such commission being due Agent or such claim is hereby waived.
- c. Duration of Payments. During the term of this Agreement, commissions will be paid provided that: (i) Agent has not breached any term of this Agreement; (ii) the Contracts have not been terminated; and (iii) Agent was a licensed and appointed agent at the time such commissions were earned. If this Agreement is terminated without cause pursuant to Section 4(b) by Agent, or is terminated with cause pursuant to Section 4(c) by DCPG, or is terminated pursuant to Section 4(d), all commissions will cease upon the effective date of termination of this Agreement and Agent shall no longer be paid, receive, or have any claim for or right to commissions. If this Agreement is terminated without cause by DCPG pursuant to Section 4(a) and the requirements set forth in the first sentence of this paragraph continue to be met, DCPG will continue to pay commissions to Agent pursuant to the terms of this Agreement for the remainder of the term of each Contract for which Agent is entitled to payment of commissions pursuant to this Agreement, but in no event shall payments continue after the effective date of termination of this Agreement pursuant to 4(a) hereunder.
- d. Error in Payment. Within five (5) business days of discovery, Agent will notify DCPG of any commissions erroneously paid to Agent for any reason including, but not limited to, payment resulting from clerical error or payment resulting from a premium payment returned by DCPG. DCPG may collect any payments owed by Agent to DCPG by offsetting such amounts against commissions owed by DCPG to Agent.
- e. Cancellation of Contract. In the event that DCPG cancels a Contract solicited by Agent, commissions payable to Agent for such enrollees shall cease as of the effective date of termination of the Contract. DCPG may collect any overpayment of commissions owed by Agent to DCPG by offsetting such amounts against commissions owed by DCPG to Agent.

4. TERM AND TERMINATION. The term of this Agreement shall commence on the date first specified above and will continue in effect for a period of twelve (12) months, unless this Agreement is terminated pursuant to Section 4(a), 4(b), 4(c), or 4(e) below. Thereafter, this Agreement will automatically renew for successive additional twelve (12) month terms, unless one party notifies the other, in writing, at least ninety (90) days in advance of the end of the then current term of the party's intent to not renew this Agreement.

- a. Termination without Cause by DCPG. This Agreement may be terminated by DCPG without cause, upon no less than sixty (60) days written notice to Agent.
- b. Termination without Cause by Agent. This Agreement may be terminated by Agent without cause, upon no less than sixty (60) days written notice to DCPG. On the effective date of a voluntary termination of this Agreement by the Agent, the Agent thereafter will no longer be paid, receive, or have any claim for or right to commissions from DCPG.

- c. Termination with Cause. DCPG may terminate this Agreement for breach upon no less than fifteen (15) days written notice to Agent. Upon receipt of such notice, Agent will have fifteen (15) days to cure the breach; provided, however, that if the breach is not cured to the satisfaction of DCPG within the fifteen (15) day period, the Agreement shall terminate as provided in the notice.
- d. Immediate Termination. Notwithstanding the above, DCPG may terminate this Agreement immediately upon written notice to Agent in the event that (i) Agent's insurance license is suspended or terminated; (ii) Agent is disciplined or sanctioned, or an adverse action is taken, by any state or federal regulatory authority; (iii) Agent commits any act of fraud, misfeasance or malfeasance, as determined by DCPG in the exercise of its sole discretion including, but not limited to, alterations made by Agent or directed to be made by Agent, to the information disclosed on individual applications, enrollment documents or any other materials submitted by Agent; (iv) Any state or federal agency, court, administrative or regulatory body orders the termination of this Agreement or no longer permits the arrangements specified in this Agreement; (v) DCPG gives notice that it shall cease offering all of the benefit plans and/or DCPG gives notice that it shall cease doing business in the territory listed in Exhibit A; or (vi) Agent files a petition of insolvency under federal or state bankruptcy law or upon the appointment of a receiver to handle the affairs of Agent.
- e. Effect of Termination. Upon termination of this Agreement, the Agent shall be removed as agent of record on all contracts solicited by Agent.

## 5. MISCELLANEOUS.

- a. Confidentiality. Agent agrees that all information acquired during the term of this Agreement including, but not limited to, information regarding (i) pricing and rating, marketing plans, contract and business practices, and underwriting processes, (ii) employer groups or individuals, (iii) information or records containing identifiable medical record information, summaries of such medical records and compilations of medical records data, and (iv) any other information that is proprietary or represents a competitive advantage obtained during the term of this Agreement is confidential and shall be the sole property of DCPG. Such confidential and proprietary information shall not be disclosed to any other party without the prior written consent of DCPG. Upon notice of the termination of this Agreement, Agent shall return all such materials, including all copies thereof, whether or not authorized, to DCPG.
- b. Arbitration. Any dispute arising under this Agreement including, but not limited to, indemnification and hold harmless obligations of Agent shall be referred for decision by arbitration by an arbitrator selected by the parties who is familiar with managed dental care. The preceding shall be governed by the rules of the American Arbitration Association ("AAA") then in effect or such rules last in effect (in the event that the AAA is no longer in existence). If the parties are unable to agree upon such arbitrator within thirty (30) days after either party has given the other party written notice of its desire to submit the dispute, controversy or question for decision, then either party may apply to the AAA for the appointment of an arbitrator, or if the AAA is not in existence or does not desire to act in the matter, each party shall appoint an arbitrator of its

choice. The appointed arbitrators shall select a third arbitrator to hear the parties and settle the dispute, controversy or question. Arbitration shall take place in Cincinnati, Ohio.

- c. Notice. Any notice required by this Agreement shall be effective on the date personally delivered or mailed by certified mail, postage prepaid, to the party at the address set forth below or any such other address in writing:

Agent: (Address)

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The Dental Care Plus Group

Attention: Sales and Established Business Department

100 Crowne Point Place

Cincinnati, OH 45241

- d. Entire Agreement; Modification. This Agreement contains the entire understanding of the parties and can be modified only by a written document signed by each party. Notwithstanding the preceding sentence, DCPG reserves the right to modify unilaterally Exhibits A or B upon thirty (30) days prior written notice. In addition, this Agreement shall automatically be amended to comply with any applicable federal, state, or local law, regulation, order or directive of any governmental agency. Neither party to this Agreement has made any representation or warranty relating to this Agreement or the subject matter of this Agreement except those specifically contained in writing in this Agreement.
- e. Waiver. The waiver by DCPG or Agent of a breach of this Agreement will not operate as a waiver of any subsequent breach. No delay in acting with regard to any breach of this Agreement will be construed to be a waiver of the breach.
- f. Time is of the Essence. Each condition, obligation, or requirement of this Agreement must be satisfied within the time specified in this Agreement. Time is of the essence with regard to each such condition.
- g. Severability. In the event that any term or condition of this Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction, such term or condition shall be severed from this Agreement and the remaining terms and conditions shall be given their full force and effect.
- h. Jurisdiction. This Agreement shall be construed in accordance with the laws

of the States of Ohio, Kentucky and Indiana.

IN WITNESS WHEREOF, Agent and DCPG executed this Agreement on the day and year set forth at the beginning of this Agreement.

\_\_\_\_\_  
Agent Signature

By: \_\_\_\_\_

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

\_\_\_\_\_  
The Dental Care Plus Group

By: \_\_\_\_\_

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



## **EXHIBIT A**

### **DCPG AGENT TERRITORY DESIGNATION**

**Agent is authorized to solicit applications from groups and individuals in the DCPG territory, provided Agent is licensed to sell the product in the state where the group or individual is located. The DCPG territory includes Ohio, Kentucky and Indiana.**

## EXHIBIT B

### THE DENTAL CARE PLUS GROUP

#### AGENT/BROKER COMPENSATION SCHEDULE

##### A. Group Dental Commission

Commission payments are calculated based upon administrative fees or premiums paid by group clients during the previous month. An itemized statement of Commissions by group name will be provided with monthly Commission checks. Commissions will be calculated based on the type of business sold as set forth below.

##### 1. **Fully Insured Group Business (groups with 10 or more enrolled employees).**

Unless otherwise agreed to by the parties, Commission on new and renewal sales of fully insured group products to groups with ten (10) or more *enrolled* employees is calculated in accordance with the following schedule. "Annual Premium" means the total amount of Premium collected during the policy year. Monthly Commission payments shall be calculated by multiplying the amount of Premium collected from a group during the previous month by the Commission Schedule Multiplier. The Commission Schedule Multiplier applied each month will be based on the cumulative amount of Annual Premium paid to date during the policy year by the group.

<u>Annual Premium</u>	<u>Commission Schedule Multiplier</u>
Up to \$1,000	12.500%
\$1,001 to \$5,000	11.000%
\$5,001 to \$10,000	7.500%
\$10,001 to \$20,000	4.500%
\$20,001 to \$30,000	4.000%
\$30,001 to \$50,000	3.500%
\$50,001 to \$100,000	3.000%
\$100,001 to \$250,000	1.175%
\$250,001 to \$500,000	.600%
\$500,001 to \$2,500,000	.500%
\$2,500,001 and over	.125%

##### 2. **Small Group Business (groups with 2 to 9 enrolled employees).**

A Commission of 5.00% is payable on new and renewal sales of fully insured group products to groups with less than ten (10) *enrolled* employees. Monthly Commission payments shall be calculated by multiplying the premium collected from each group during the previous month by 5.00%.

### 3. Self-insured Products

Commission on sales of self-insured products is payable on sales and renewals of self-insured products. The Commission will be established by DCPG on a case by case basis, based on the size of the group, the administrative fee paid by the group, and other factors as determined by DCPG.

#### B. Group Dental Override Commission

Unless otherwise agreed to by the parties, Override Commissions are calculated based on a calendar year, as opposed to a policy year, and are paid annually within 120 days after the end of the calendar year. Override Commissions may be earned on all Eligible Sales with effective or renewal dates during the calendar year. To qualify for an Override Commission each calendar year, a minimum of five (5) Qualified Sales to new groups with an aggregate of at least fifty (50) *enrolled* employees must be sold by the Agent with an effective date during the calendar year ("Qualifying Minimum").

For purposes of determining whether the Qualifying Minimum has been met, "Qualified Sale" means a sale which meets all of the following criteria:

- The group must be a new sale with an effective date during the calendar year. Renewals are not Qualified Sales.
- Each new group must have a minimum of at least ten (10) *enrolled* employees.
- The group must be one on which Commission is paid. Sales on which no Commission is paid are not Qualified Sales.
- Groups that have purchased or renewed a DentaSpan exchange product are not Qualified Sales.

**NOTE: Groups with less than 10 enrolled employees do not qualify for Override Commission. Groups with less than 10 enrolled employees are not included in the Qualifying Minimum, and Premium paid by groups with less than 10 enrolled employees is not included in the calculation of Override Commission.**

If the Qualifying Minimum has been met, an Agent is eligible to receive an Override Commission. Override Commission is calculated based on the schedule set forth below. Both requirements (number of Eligible Groups sold and amount of Premium collected) must be met at each level to qualify for the compensation applicable to that level.

For purposes of calculating Override Commission, the following definitions apply:

"Eligible Group" means a new or renewal group for which the agent has Agent of Record, provided the group is i) a group on which Commission is paid, ii) has at least ten (10) *enrolled* employees, iii) was active as of the last day of the calendar year, and iv) did not purchase a DentaSpan exchange product.

"Premium" means the aggregate of the amount of premium paid during the calendar year by all fully insured Eligible Groups and the amount of administrative fees paid during the calendar year by all self-insured Eligible Groups.

Override Commissions are paid based on an annual Override Commission budget established by DCPG. DCPG has the sole discretion to establish the Override Commission budget. If the total of all Override Commissions payable to all DCPG agents in any calendar year is equal to or less than the Override Commission budget, Agent shall be paid the Override Commission calculated according to the schedule set forth above. If the total of all Override Commissions payable to all DCPG agents in any calendar year is greater than the Override Commission budget, Agent's

Override Commission shall be reduced and the Agent shall be paid a pro rata share of the Override Commission budget.

<u>Level</u>	<u>Number of Eligible Groups and Premium</u>	<u>Compensation</u>
I	5 Eligible Sales & \$40,000 of Premium	1.25% of Premium up to \$75,000
II	10 Eligible Groups & \$75,000 of Premium	In addition to Level I compensation, 1.65% of Premium in excess of \$75,000 and up to \$100,000
III	12 Eligible Groups & \$100,000 of Premium	In addition to the Level I and Level II Compensation, 2.25% of all Premiums in excess of \$100,000 and up to \$200,000
IV	\$200,000 of Premium (regardless of Eligible Groups)	In addition to the Level I, II and III Compensation, 1.15% of all Premium in excess of \$200,000

**C. Individual Products**

Commission payments are calculated based upon premiums paid by clients during the previous month. An itemized statement of Commissions will be provided with monthly Commission checks. A Commission of 10% is payable on new and renewal sales.

**D. DentaTrust and DentaSpan Exchange Products**

Commission payments are calculated based upon premiums paid by clients during the previous month. An itemized statement of Commissions will be provided with monthly Commission checks. A Commission of 5% is payable on new and renewal sales.

**E. Group Vision Products**

Commission payments are calculated based upon premiums paid by clients during the previous month. An itemized statement of Commissions will be provided with monthly Commission checks. A Commission of 10% is payable on new and renewal sales.

## **Addendum #1**

### **Business Associate Amendment**

This Business Associate Agreement ("Agreement") is entered into by **Dental Care Plus, Inc. and DCP Holding Company**, as applicable (collectively "DCP") located at **100 Crowne Point Place, Cincinnati, Ohio 45241** and \_\_\_\_\_ ("Business Associate") located at \_\_\_\_\_. This Agreement is effective on \_\_\_\_\_ ("Effective Date").

WHEREAS, Dental Care Plus, Inc. is licensed as an insurance company and health insuring corporation/HMO and issues fully insured dental benefits products, and is therefore a covered entity under the Health Insurance Portability and Accountability Act of 1996 and subsequent amendments thereto, and

WHEREAS, Dental Care Plus, Inc. and DCP Holding Company also provide administrative services to self-insured dental benefits plans, and in this role act as a business associate of such self-insured dental benefits plans; and

WHEREAS, DCP has contracted with Business Associate to provide services to DCP which may relate to fully insured dental benefits products or to the administration of self-insured dental benefits plans; and

WHEREAS, in the course of providing such services, Business Associate will create, receive, and/or maintain Protected Health Information; and

WHEREAS, the Privacy and Security Regulations require that covered entities enter into a written agreement with all organizations which create, receive, and/or maintain protected health information from or on behalf of the covered entity; and

WHEREAS, the amendments enacted as part of the American Reinvestment and Recovery Act of 2009 require business associates to enter into written agreements which meet the requirements of a business associate agreement with their subcontractors and agents who receive, create or maintain Protected Health Information; and

NOW, THEREFORE, in consideration of the mutual promises and agreements made herein, DCP and Business Associate agree as follows:

#### **I. Definitions**

Capitalized terms used in this Agreement shall be defined as set forth below. To the extent not otherwise defined in this Agreement, terms shall have the same meaning as in HIPAA and the Privacy and Security Regulations, as they may be periodically revised and amended subsequent to the Effective Date of this Agreement.

- A. **Breach** means the acquisition, access, use, or disclosure of PHI in a manner not permitted under subpart E of 45 CFR Part 164 which compromises the security or privacy of the PHI. Unless an exception applies, an acquisition, access, use, or disclosure of PHI in a manner not permitted under subpart E of 45 CFR Part 164 is presumed to be a breach unless a covered entity or a business associate, as applicable, demonstrates that there is a low probability that the PHI has been

compromised based on a risk assessment including the factors set forth in 45 CFR 164.402.

Breach does not include the following:

- A. Any unintentional acquisition, access, or use of Protected Health Information by an employee, officer, or contractor working for Business Associate, if such acquisition, access, or use was made in good faith and within the scope of authority of such employee, officer, or contractor working for Business Associate, and does not result in further use and disclosure of the Protected Health Information.
- B. Any inadvertent disclosure by an employee, officer, or contractor who is otherwise authorized to access Protected Health Information by Business Associate when the inadvertent disclosure is to another similarly situated employee, officer, or contractor of Business Associate; and the Protected Health Information received as a result of such disclosure is not further used or disclosed.
- C. A disclosure of Protected Health Information where Business Associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

**Disclose or Disclosure** means the release, transfer, provision of access to, or divulging in any other manner of Protected Health Information outside of Business Associate's operations, or to a person who is not an employee or officer of Business Associate. Disclosure includes both intentional and inadvertent or accidental disclosures.

**Electronic Protected Health Information** means Protected Health Information that is transmitted by electronic media or maintained in electronic form.

**HIPAA** means the Health Insurance Portability and Accountability Act of 1996, as amended by the Stimulus Act; and regulations adopted pursuant thereto, including but not limited to 45 C.F.R. Parts 160 and 164.

**Individual** means a person whose Protected Health Information is created, accessed, used, held or maintained by Business Associate on behalf of DCP.

**Individual Right** means the right of an Individual to access or amend their Protected Health Information, to request an accounting of uses and disclosures of their Protected Health Information, to request restrictions on the use and disclosure of their Protected Health Information, to request confidential communications, and any similar right of an Individual with respect to Protected Health Information which arises out of HIPAA or the Privacy and Security Regulations.

**Limited Data Set** means Protected Health Information from which the following identifiers of the Individual, or of relatives, employers, or household members of the Individual, have been removed: (i) names; (ii) postal address information, other than town or city, state, and zip code; (iii) telephone numbers; (iv) fax numbers; (v) electronic mail addresses; (vi) social security numbers; (vii) medical record numbers; (viii) health plan beneficiary numbers; (ix) account numbers; (x)

certificate/license numbers; (xi) vehicle identifiers and serial numbers, including license plate numbers; (xii) device identifiers and serial numbers; (xiii) web Universal Resource Locators (URLs); (xiv) Internet Protocol (IP) address numbers; (xv) biometric identifiers, including finger and voice prints; and (xvi) full face photographic images and any comparable images. A Limited Data Set may include the following identifiable information: (i) admission, discharge, and service dates; (ii) date of birth and date of death; (iii) age (including age ninety (90) or over); and (iv) five-digit zip code.

**Plan** includes Dental Care Plus, Inc. and fully insured dental benefits products issued by Dental Care Plus, Inc., and self-insured dental benefits plans administered by DCP.

**Privacy and Security Regulations** means the regulations promulgated by HHS pursuant to HIPAA to address the privacy and security of Protected Health Information, which currently are codified at 45 C.F.R. 160 and 164, as now in effect or as amended, expanded or recodified from time to time subsequent to the Effective Date of this Agreement. Privacy and Security Regulations also include without limitation any regulations adopted under the amendments to HIPAA enacted in the Stimulus Act.

**Protected Health Information** means information that is received from, or created or received on behalf of DCP, and is information i) about an Individual which relates to the past, present or future physical or mental health or 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 ii) which either identifies the Individual or includes information which can reasonably be used to identify the Individual. Protected Health Information pertains to both living and deceased Individuals.

**Security Incident** means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system, as such definition may be amended from time to time by HIPAA or the Privacy and Security Regulations.

**Security Requirements** means 45 C.F.R. Sections 164.308, 164.310, 164.312, and 164.316, as now in effect or as subsequently amended. Security Requirements also consist of any law or regulation promulgated after the Effective Date to address the requirements imposed on a covered entity or a business associate of a covered entity under HIPAA.

**Stimulus Act** means the American Recovery and Reinvestment Act of 2009.

**Underlying Agreement** means all applicable agreements between DCP and Business Associate, as such may be renewed and amended from time to time.

**Use** means the sharing, employment, application, utilization, examination or analysis of Protected Health Information by an employee or officer of Business Associate within Business Associate's operations.

## II. **Restrictions on Use and Disclosure of Protected Health Information**

- A. Except as otherwise provided herein, Business Associate may Use or Disclose Protected Health Information only as necessary to perform Business Associate's obligations under the Underlying Agreement, subject to the conditions and restrictions set forth below.
- B. Business Associate shall require that its subcontractors, that create, receive, maintain or transmit PHI on behalf of Business Associate, agree to the same restrictions and conditions that apply to Business Associates with respect to such information and to comply with the applicable security standards in 45 CFR Part 164, Subpart C, by entering into a business associate agreement with all subcontractor business associates as provided in 45 C.F.R. 164.308(b)(2).
- C. Unless otherwise limited by this Agreement, Business Associate may Use Protected Health Information in its possession for the proper management and administration of Business Associate or to carry out its legal responsibilities.
- D. Unless otherwise limited by this Agreement, Business Associate may Disclose Protected Health Information in its possession for the proper management and administration of Business Associate or to carry out its legal responsibilities only if such Disclosure is required by law or is addressed in this Agreement.
- E. The parties acknowledge that Business associate is required to disclose Protected Health Information when required by HHS under the provisions of HIPAA to investigate or determine Business Associate's compliance with HIPAA.
- F. Business Associate shall, in all cases, limit any Use or Disclosure of Protected Health Information to the Limited Data Set, if practicable, or if needed by the Business Associate, the minimum amount of Protected Health Information necessary to perform the task or accomplish the purpose of the Use or Disclosure. Upon issuance of guidance by the Secretary on what constitutes the minimum amount of Protected Health Information necessary, Business Associate shall limit the amount of Protected Health Information Used or Disclosed by Business Associate in accordance with such guidance.
- G. Business Associate may not Use or Disclose Protected Health Information in any manner that would constitute a violation of HIPAA, including without limitation the Privacy and Security Regulations, if Used or Disclosed by DCP.
- H. Business Associate may not de-identify Protected Health Information created, received or maintained by Business Associate under this Agreement, except as requested by DCP. Protected Health Information created, received or maintained by Business Associate under this Agreement which has been de-identified at the request of DCP may not be Used by Business Associate for any purpose not expressly approved by DCP.



- I. Except as expressly approved by DCP, Business Associate may not aggregate Protected Health Information created, received or maintained by Business Associate under this Agreement, whether de-identified or not, with any other Protected Health Information, including without limitation Protected Health Information of Business Associate's other customers.
- J. Business Associate agrees to not Use or further Disclose Protected Health Information other than as authorized by this Agreement, as requested by DCP, or as required by law.
- K. Business Associate shall implement and use reasonable and appropriate administrative, technical and physical safeguards which will protect the confidentiality, integrity, and availability, and prevent uses or disclosures of Protected Health Information other than as provided for by this Agreement.
- L. If Business Associate becomes aware of any Use or Disclosure of Protected Health Information not permitted under this Agreement, it shall report such Use or Disclosure to DCP within one (1) business day of gaining such knowledge. Business Associate shall also use its best efforts to mitigate the effect of such unauthorized Use or Disclosure, and shall implement or modify practices or take other reasonable action to prevent further unauthorized Uses or Disclosures.

### **III. Obligations of Business Associate**

- A. Business Associate acknowledges that Business Associate is subject to those provisions of HIPAA made directly applicable to business associates by the Stimulus Act, and Business Associate certifies that Business Associate has implemented policies and procedures and take such other action as is necessary to comply with those provisions of HIPAA which are directly applicable to the Business Associate by the effective date provided in this Agreement or by law. Business Associate shall comply with the requirements of HIPAA adopted under the Stimulus Act, and if necessary shall execute additional amendments to this Agreement as required to maintain compliance.
- B. Business Associate shall cooperate with DCP in the administration of Individual Rights, and shall provide DCP promptly upon request with the information in the possession of Business Associate or a subcontractor or agent of Business Associate which DCP deems necessary for DCP to respond to a request from an individual to exercise one or more Individual Rights. Upon the instruction of DCP, Business Associate will amend any Protected Health Information in the possession of Business Associate or a subcontractor or agent of Business Associate, and will implement restrictions on the Use and Disclosure of Protected Health Information in the possession of Business Associate or a subcontractor or agent of Business Associate, will disclose Protected Health Information to DCP to allow DCP to meet its requirement to satisfy an individual's request for an

electronic copy of Protected Health Information, and will employ procedures to assure confidential communications of Protected Health Information in the possession of Business Associate or a subcontractor or agent of Business Associate as directed by DCP. Business Associate will notify, and will require its subcontractors and agents to notify DCP promptly, but in no event later than five (5) days after receipt of a request from an Individual to exercise one or more Individual Rights. All requests from an Individual to exercise an Individual Right will be processed and handled by DCP.

- C. Business Associate shall maintain a record of all Disclosures of Protected Health Information as necessary to provide an Accounting of such Disclosures upon request. All Disclosures except the following shall be recorded for purposes of providing information for an Accounting;
  - i. Disclosures made pursuant to a authorization signed by the Individual or the Individual's personal representative;
  - ii. Disclosures made directly to the requesting Individual or the Individual's personal representative;
  - iii. Disclosures for national security or intelligence purposes;
  - iv. Disclosures in the form of de-identified information or information contained in a Limited Data Set;
  - v. Disclosures to correctional institutions or law enforcement officials about inmates or others in custody.
  - vi. Disclosures for treatment, payment for treatment and the health care operations of a Plan.
- D. Business Associate shall make its internal practices, books and records relating to Uses and Disclosures of Protected Health Information available to DCP, to the Secretary of the U.S. Department of Health and Human Services or designee, or to any other official or agency with enforcement authority under HIPAA, for purposes of determining the DCP's and Business Associate's compliance with HIPAA.
- E. Upon the termination of the Underlying Agreement, Business Associate shall return or destroy all Protected Health Information and will retain no copies of such information. If such return or destruction of Protected Health Information is not feasible, as approved by DCP, Business Associate agrees that the provisions of this Agreement are extended beyond termination of the Underlying Agreement to the Protected Health Information still in the possession of Business Associate or a subcontractor or agent of Business Associate, and Business Associate shall limit all further uses and disclosures to those purposes that make the return or destruction of the Protected Health Information infeasible. If Business Associate elects to destroy the Protected Health Information, it shall certify to DCP that the information has been destroyed. If the

Business Associate is to destroy the Protected Health Information as provided by this Agreement, then Business Associate shall (1) destroy Protected Health Information on paper, film, or other hard copy media by shredding or destroying such media so that the Protected Health Information cannot be read or otherwise cannot be reconstructed and (2) destroy electronic Protected Health Information by clearing, purging, or destroying electronic media consistent with "NIST Special Publication 800-88, Guidelines for Media Sanitization," such that the electronic Protected Health Information cannot be retrieved.

- F. Business Associate shall, within one (1) day of discovery, report to DCP any Security Incident relating to Electronic Protected Health Information of which it becomes aware.
- G. Business Associate shall require all employees, officers, and contractors working for Business Associate to report immediately to Business Associate, no later than 24 hours after discovery, any occurrence, event, or fact that could reasonably be considered an indication that a Breach of an Individual's Protected Health Information has occurred. Upon receipt of a report, Business Associate shall immediately i) notify DCP of the occurrence, event, or fact, including the date and time of the discovery and as much information regarding the suspected Breach as is available; and ii) undertake an investigation of whether a Breach did occur, and apprise DCP of the results of the investigation on an ongoing and current basis.

Notification shall be provided by Business Associate to DCP. Business Associate shall, and shall require its employees, officers, and contractors to, cooperate fully with DCP in providing any additional information requested by DCP in connection with the Breach. If DCP determines that a Breach has occurred, which shall be determined in DCP's sole discretion, Business Associate shall, at Business Associate's cost, take all action, which is reasonably requested by DCP to mitigate the Breach and to prevent further Breaches. Business Associate shall bear all costs incurred by DCP to investigate and make required notifications of any Breach by Business Associate.

- H. Business Associate acknowledges and agrees that the Protected Health Information of DCP will be subject to and Business Associate shall comply with the Security Requirements. Business Associate certifies that Business Associate has adopted written policies and procedures consistent with the Security Requirements, and take such other action as appropriate to comply with the Security Requirements.
- I. Business Associate shall not directly or indirectly receive remuneration in exchange for any Protected Health Information of an Individual unless a valid authorization from each Individual whose information is the subject of the remuneration transaction has been obtained, and unless DCP has approved such remuneration transaction in writing. Approval of DCP must be obtained before Business Associate solicits Individuals for authorization.

#### **IV. Termination and Survival**

- A. This Agreement may not be terminated so long as the Underlying Agreement remains in effect. To the extent the Underlying Agreement is terminated for any reason whatsoever, and Protected Health Information remains in the possession of Business Associate or an agent or subcontractor of Business Associate, this Agreement shall continue in full force and effect until all Protected Health Information in the possession of Business Associate or an agent or subcontractor of Business Associate has been returned to DCP or destroyed.
- B. Notwithstanding any other provision of the Agreement, DCP may immediately terminate the Underlying Agreement, if Business Associate has materially violated its responsibilities regarding Protected Health Information under this Agreement and has failed to provide satisfactory assurances to DCP within ten (10) days of notice of such material violation that the violation has been cured and steps taken to prevent its recurrence.
- C. The responsibilities of Business Associate under this Agreement shall survive termination of the Underlying Agreement indefinitely, until all Protected Health Information in the possession of Business Associate or an agent or subcontractor of Business Associate has been destroyed or returned to DCP.

#### **V. Indemnification**

Business Associate shall indemnify to the fullest extent possible DCP and its Board members, employees and agents for any loss, liability, damage, settlement, cost, expenses or other obligation, including without limitation reasonable attorney fees and defense costs, incurred by DCP or a Board member, employee or agent of DCP, as a result of Business Associate's breach of any obligation under this Agreement, or Business Associate's negligence in performing its obligations under this Agreement. This provision shall not inhibit DCP's ability to seek relief from Business Associate for any claim of negligence caused in whole or part by Business Associate or any other action at law or in equity.

#### **VI. Amendment**

- A. This Agreement may be amended only in writing signed by both parties.
- B. If this Agreement, or any part hereof, is found not to be in compliance with any pertinent federal or state statute or regulation, then the parties shall renegotiate the Agreement for the sole purpose of correcting the non-compliance.
- C. In the event that a change in HIPAA or the Privacy and Security Regulations causes a provision of this Agreement to become invalid or requires additional safeguards for the protection of Protected Health Information, Business Associate agrees to execute such amendments or

additional agreements as may be required, in good faith and within thirty (30) days of such event, in order to comply with such changes.

- D. If this Agreement, or any part hereof, is found not to be in compliance with HIPAA or the regulations promulgated thereunder, DCP may amend the Agreement to bring it into compliance with HIPAA and the regulation promulgated thereunder by notice to Business Associate without Business Associate's signature; provided, however, that if HIPAA or the regulations promulgated thereunder requires Business Associate's signature on such amendment, Business Associate agrees to promptly sign the amendment to bring the agreement into compliance with HIPAA and the regulations promulgated thereunder.
- E. Except as otherwise set forth below, the provisions of this Agreement are effective as of the Effective Date. To the extent the effective date under the Stimulus Act of a requirement set forth in this Agreement is later than the Effective Date, or to the extent the effective date of a requirement set forth in this Agreement is extended by law or by regulations adopted by the Secretary of the U.S. Department of Health and Human Services to a date later than the Effective Date, the later or extended effective date shall apply.

#### VII. **Governing Law**

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Ohio without regard to its choice of law rules, and by HIPAA. All actions regarding this Agreement shall be filed and venued in a court of competent subject matter jurisdiction in Hamilton County, Ohio. The parties hereby consent to the jurisdiction and venue of such courts and waive any right to assert forum non conveniens.

#### VIII. **Assignment**

- A. Business Associate may not assign this Agreement, or any of the obligations of Business Associate hereunder without the written approval of DCP.
- B. In accordance with the above prohibition on assignments, this Agreement shall be binding upon and inure to the benefits of the heirs, successors, and assigns of the parties hereto.

#### IX. **Notices**

Except as provided expressly in this Agreement, all notices required under this Agreement shall be in writing and, unless hand delivered, sent by certified mail or other method whereby receipt is evidenced in writing, addressed as follows:

If to DCP:

**Privacy Officer  
Dental Care Plus, Inc.  
100 Crown Point Place**

**Cincinnati, Ohio 45241**

If to Business Associate:

**Company Name:** \_\_\_\_\_  
**Company Address:** \_\_\_\_\_  
**City, State Zip:** \_\_\_\_\_

**X. Waiver of Breach**

- A. The waiver by either party of a breach or a violation of this Agreement shall not operate as, or be construed to be a waiver of any subsequent breach of any term or condition hereto.
- B. No waiver shall be effective against any party hereto unless in writing signed by that party.

**XI. Severability**

If any provision of this Agreement shall be declared invalid, illegal, or unenforceable by a court of competent jurisdiction, the remaining provisions hereof shall not in any way be affected or impaired thereby.

**XII. General Provisions**

- A. The parties acknowledge that Business Associate is an independent contractor providing services to DCP, and no provision of this Agreement is intended to create or shall be construed to create any employment relationship, partnership, joint venture, or agency relationship between DCP and Business Associate, or DCP and Business Associate.
- B. This Agreement and the Underlying Agreement contain the entire Agreement of the parties hereto, and supersede all prior agreements, representations and understandings, whether written or oral, between the parties relating to the specific subject matter stated herein.
- C. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original.
- D. Each party warrants that it has full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party certifies that such person has been properly authorized and empowered to enter into this Agreement on behalf of such party.
- E. This Agreement shall be construed liberally and in a manner consistent with the intent and purpose of HIPAA and the Privacy and Security Regulations, and any ambiguity shall be resolved in a manner consistent with HIPAA and the Privacy and Security Regulations.

- F. The headings of the various sections of this Agreement are inserted for convenience only and do not, expressly or by implication, limit, define, or extend the specific terms of the sections so designated.