



Marketing Services Agreement

This MARKETING SERVICES AGREEMENT (“Agreement”) is made and entered into on _____, by and between the entities as set forth below:

DELTA DENTAL OF VIRGINIA, a Virginia corporation located at 5415 Airport Road, Roanoke, Virginia 24012 and **AGENT/AGENCY**;

STRYDEN, INC., a Virginia corporation located at 5415 Airport Road, Roanoke, Virginia 24012 and **AGENT/AGENCY**.

For the purposes of this Agreement, **AGENT/AGENCY** shall refer to:

_____, SSN/TAX ID _____

This Agreement constitutes two separate agreements: one Agreement between Delta Dental of Virginia and AGENT/AGENCY and one Agreement between Stryden, Inc. and AGENT/AGENCY. Each Agreement shall be considered separate and distinct among Delta Dental of Virginia and Stryden, Inc.; and neither Delta Dental of Virginia nor Stryden, Inc. will be jointly and severally liable under the Agreement of the other.

Delta Dental of Virginia and Stryden, Inc. are each referred to herein individually as “INSURER” within their respective Agreements. INSURER and AGENT/AGENCY may be referred to herein individually as a “Party” and collectively as the “Parties”.

In consideration of the mutual obligations set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, INSURER and AGENT/AGENCY agree to the terms and conditions that follow.

DELTA DENTAL OF VIRGINIA

STRYDEN, INC.

By: David Notari
Senior Vice President and COO

By: David Notari
Senior Vice President and COO

AGENT/AGENCY

By: _____

Agent/Agency Officer

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Terms and Conditions of Marketing Services Agreement

Definitions

Policyholder. As used herein, the term “Policyholder” refers to, with respect to employer-sponsored plans or other group plans, the plan itself and/or a representative authorized to act on behalf of the plan and, with respect to individual policies, the subscriber or individual policyholder.

Services Plan(s). As used herein, the term “Services Plan(s)” shall, in the case of AGENT/AGENCY’s Agreement with Delta Dental of Virginia, refer to employer-sponsored dental benefit plans and/or individual dental policies and, in the case of AGENT/AGENCY’s Agreement with Stryden, Inc., refer to employer - sponsored vision benefit plans and/or individual vision benefit policies, each as may be applicable and permitted by INSURER.

1. **Warranty.** AGENT/AGENCY warrants that it is duly licensed to market and sell Services Plans, as applicable and contemplated by this Agreement, in the Commonwealth of Virginia and that AGENT/AGENCY shall remain licensed to do so during the term of this Agreement.
2. **Term.** Unless terminated as hereinafter set forth, this Agreement shall remain in full force and effect from the date on which AGENT/AGENCY is appointed as INSURER’s agent in the manner provided in Section 3 of this Agreement until June 30 of the calendar year in which AGENT/AGENCY’s appointment is effective. Thereafter, the Agreement shall renew automatically for successive periods of one year each until such time as the Agreement is terminated in the manner set forth herein.
3. **Appointment.** INSURER may, at its sole discretion, appoint AGENT/AGENCY as its limited agent for the sole purpose of promoting, marketing, and selling INSURER’s Services Plans in accordance with the terms hereof. Applications or renewal applications to appoint AGENT/AGENCY shall be tendered to INSURER sufficiently far in advance of AGENT’S/AGENCY’s desired appointment date for INSURER to (a) review the information contained therein, (b) request and review any supplementary information that INSURER may determine is necessary to properly evaluate the application or renewal application, and (c) make an appointment in the manner provided for by state or other applicable law. Any costs or other expenses that AGENT/AGENCY may incur to complete the application or otherwise secure the appointment shall be at AGENT’S/AGENCY’s sole expense. INSURER’s appointment, if made, shall be evidenced by a copy of this Agreement that has been signed by a duly authorized officer of INSURER and returned to AGENT/AGENCY at the address and in the manner provided herein.
4. **Duties of Agent/Agency.**
 - a. AGENT/AGENCY shall devote its best efforts to promote, market, and sell INSURER’s Services Plans to employer groups and/or other groups or individuals identified as qualified groups or individuals by INSURER in accordance with the general solicitation policies promulgated, from time to time, by INSURER and furnished to AGENT/AGENCY by INSURER in writing.
 - b. AGENT/AGENCY shall conduct its business in strict accordance with federal, state and local laws and regulations and with the general policies established by INSURER for the promotion, marketing, and sale of INSURER’s Services Plans.

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- c. In promoting, marketing, and selling INSURER's Services Plans hereunder, AGENT/AGENCY shall:
 - i. Furnish, or cause to be furnished, to INSURER accurate census data, as may be applicable, for the preparation of eligibility lists, rate quotations, and financial or regulatory reports.
 - ii. Offer quotations or proposals prepared by INSURER for Services Plans underwritten or administered by INSURER.
 - iii. Ensure that all Services Plan contracts offered by INSURER are properly and promptly executed by the Policyholder's duly authorized representative, without change, and that an original signed contract is returned to INSURER.
 - iv. Assist, as directed by INSURER, in providing continuous, high-quality service to each Policyholder with respect to which AGENT/AGENCY serves as agent of record. To that end, INSURER expects that each of INSURER's agents will personally contact the Policyholder at least once each calendar or contract year.
- 5. **Compensation.** If INSURER appoints AGENT/AGENCY as INSURER's agent, INSURER shall compensate AGENT/AGENCY for the AGENT'S/AGENCY'S services under this Agreement in the manner set forth in this Section 5 and the applicable "Commission Addendum," which is attached to and made a part hereof.
 - a. Except as otherwise provided for herein or prohibited by law, as long as AGENT/AGENCY remains agent of record for a Policyholder that AGENT/AGENCY has enrolled with INSURER, INSURER shall pay the commission(s) set forth in the applicable "Commission Addendum" to AGENT/AGENCY for the Policyholder for periods beginning on or after the effective date of this Agreement. If (i) the AGENT/AGENCY ceases to be an enrolled Policyholder's agent of record, (ii) the enrolled Policyholder does not renew its contract with INSURER, or (iii) the enrolled Policyholder's Services Plan contract with INSURER terminates for any other reason, INSURER's obligation to pay commission(s) to AGENT/AGENCY for the Policyholder to which the action pertains will cease as of the effective date of the action. If this Agreement terminates, regardless of the reason, INSURER's obligation to pay all commission(s) to AGENT/AGENCY will cease as of the effective date of termination.
 - b. Commission(s) shall be paid in accordance with the terms of the Commission Addendum following INSURER's receipt of a properly executed Services Plan contract and the premium payment for the month with respect to which the Policyholder's Services Plan is in effect. For the purposes of determining whether commissions are payable to AGENT/AGENCY for any month, AGENT'S/AGENCY'S status is determined as of first day of the month. This means that, if AGENT/AGENCY is not a Policyholder's agent of record on the first day of any month, INSURER will not pay commission attributable to the Policyholder to AGENT/AGENCY. In addition, if the effective date of termination of this Agreement or the Policyholder's Services Plan contract is other than the last day of the month, AGENT'S/AGENCY'S commission shall be calculated pro rata as of the effective date of termination. If AGENT'S/AGENCY'S appointment has been terminated and INSURER does not re-appoint AGENT/AGENCY within 30 days thereafter, INSURER will not pay any commission for the period with respect to which AGENT/AGENCY is not INSURER's appointed agent or agency. Payment will be made to AGENT/AGENCY via Electronic Funds Transfer.

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- c. INSURER's payments under this Agreement shall be made without any deduction for federal, state or local taxes, FICA or Medicare benefits, or any other tax or benefit, except in circumstances in which INSURER is obligated to make the deduction or otherwise permitted by this Agreement to adjust a payment. INSURER shall report information about payments made hereunder to AGENT/AGENCY to federal, state and local governmental agencies in the manner required by law. AGENT/AGENCY shall be solely responsible for the payment of all taxes and other fees attributable to the commissions that INSURER pays to AGENT/AGENCY hereunder.
 - d. Commissions are paid only on premiums or other fees actually received by INSURER. If an adjustment is later made to the amount(s) paid under a Services Plan contract, a corresponding adjustment to the commission(s) payable hereunder shall be made to any subsequent payment(s) due from INSURER to AGENT/AGENCY. If there is not a subsequent payment due to AGENT/AGENCY or if INSURER determines that commissions otherwise payable to AGENT/AGENCY are insufficient to permit INSURER to recover any overpayment within a reasonable time after the notice of the premium adjustment, INSURER may bill AGENT/AGENCY for the amount of the adjustment and AGENT/AGENCY shall reimburse INSURER within 30 days of its receipt of the bill.
 - e. Renewals of Services Plan contracts shall not be deemed made by AGENT/AGENCY if the Policyholder notifies INSURER in writing on or before the renewal date of the Services Plan contract that the Policyholder wishes to deal directly with INSURER or with another agent.
6. **HIPAA Privacy Standards.** Standards promulgated under the Standards for Privacy of Individually Identifiable Health Information (at 45 C.F. R. Parts 160 and 164, subparts A and E) (the "Privacy Standards"), more commonly known as HIPAA, impose certain privacy requirements on the use and disclosure of "protected health information" by "covered entities" (as those terms are defined in the Privacy Standards). The Privacy Standards include a requirement that certain provisions must be included in contracts with business associates. AGENT/AGENCY and INSURER acknowledge and agree that the "Business Associate Agreement" attached hereto is made a part of this Agreement to satisfy the Privacy Standards.
7. **Termination.** Either Party may terminate this Agreement for cause if the Party seeking termination (a) provides the other Party with written notice specifying the nature of the defect giving rise to termination and (b) affords the other Party at least 30 days within which to cure the defect. If, in the judgment of the Party seeking termination, the defect cannot be cured within the 30-day period, the effective date of termination will be the date specified in the notice. Either Party may terminate this Agreement without cause upon at least 90 days' prior written notice to the other party. Furthermore and notwithstanding anything herein to the contrary, in the event (i) AGENT/AGENCY is not the agent of record for at least one (1) Policyholder with an active Services Plan with INSURER and (ii) such conditions as described under (i) remain for a period of twenty-four (24) continuous months, INSURER shall have the right to terminate this Agreement immediately upon notice to AGENT/AGENCY.
- Termination of this Agreement, regardless of the reason, shall terminate the AGENT/AGENCY's appointment hereunder, and INSURER shall notify the Virginia Bureau of Insurance of the termination in accordance with the Bureau's requirements for notice.

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8. **Notices.** All notices permitted or required under this Agreement shall be sufficient if given by US Postal Service at the following addresses:
 If notice to INSURER:
 Marketing Department – ATTN: Broker Coordinator
 5415 Airport Road
 Roanoke, VA 24012-1303
 Phone: 540-989-8000
 Email: brokerhelp@deltadentalva.com
 If notice to AGENT/AGENCY: to AGENT/AGENCY's address as set forth above.
9. **Assignment.** This Agreement may not be assigned by either party, except that INSURER may assign the Agreement to its successor in interest by merger or other combination or to another entity that INSURER controls, is controlled by INSURER, or is under common control with INSURER.
10. **Indemnification.** AGENT/AGENCY will indemnify and hold harmless INSURER, its directors, officers, employees, other agents and representatives from any and all claims, liabilities, losses, damages, costs, and expenses of any kind, including reasonable attorney's fees and other costs of litigation, incurred by reason of AGENT'S/AGENCY'S negligence, fraud, willful misconduct, violation of law, or acts or transactions that are not specifically authorized by this Agreement or authorized in writing in advance by INSURER.
11. **Professional Liability Insurance.** During the term of this Agreement, AGENT/AGENCY shall maintain commercially reasonable insurance coverages with adequate limits to cover its obligations and potential liabilities hereunder.
12. **Limit of Authority.** AGENT/AGENCY shall not have the authority to change, omit, waive, discharge, or add to any provision of any INSURER Services Plan contract, to extend the time for premium or other payments under an INSURER Services Plan contract, to quote a rate other than the rate provided by INSURER, or to bind INSURER in any way not specifically authorized by this Agreement or authorized in writing in advance by INSURER.
13. **Non-exclusive Agreement.** AGENT/AGENCY is not INSURER's exclusive agent for the promotion, marketing, and sale of Services Plans or for any other purpose. INSURER has entered into, and will in the future enter into, agreements with other agents and agencies in any territory in which INSURER may do business.
14. **Entire Agreement.** This Agreement, together with its addendums and amendments, constitutes the entire agreement between the Parties. No oral promises or representations are binding on either Party. Subject to Section 23 below, this Agreement shall not be modified nor any provision waived except by agreement in writing and signed by the Party against whom enforcement of any modification or waiver is sought. This Agreement supersedes all previous employment agreements, service contracts, sales agent agreements or understandings, written or oral, between AGENT/AGENCY and INSURER with respect to the subject matter hereof.
15. **Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Virginia.

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16. **Supervening Law.** If any legislation, regulation, rule, court decision, ruling or policy of any government agency (collectively "supervening law"), based upon the opinion of qualified legal counsel, materially increases the exposure of a party to legal liability, a governmental enforcement proceeding, or a default under any term or condition of a Party's agreement with a third party, or if such supervening law materially impairs the operation of this Agreement, then the parties shall attempt to amend this Agreement so as to avoid any such consequence. If the Parties, acting in good faith, are unable to amend this Agreement so as reasonably to avoid such consequence, this Agreement shall terminate upon 30 days' prior written notice from the terminating Party to the other Party.
17. **Waiver.** The waiver by either Party to this Agreement of any section, paragraph, or provision of the Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or a different section, paragraph, or provision by either Party hereto.
18. **Additional Actions.** The Parties shall take such actions and execute such documents and agreements as shall be necessary to give effect to the provisions of this Agreement.
19. **Independent Contractors.** Except as otherwise provided herein, each party performs services as an independent contractor of the other Party and not as an officer, employee or general agent of the other Party.
20. **Third-Party Beneficiaries.** This Agreement is entered into by and between the Parties hereto solely for their benefit. The Parties have not created or established any third-party beneficiary status or rights under this Agreement in any person or entity that is not a Party hereto including (without limitation) any Services Plan participant, provider, subcontractor, or other third party, and no such third party will have any right to enforce any right or enjoy any benefit created or established by this Agreement.
21. **Limitation of Actions.** Each Party must provide the other party at least 30 days' prior written notice before bringing any action at law or in equity against the other Party, its officers, employees, agents, or representatives. This notice must specify the cause(s) of action. No action or suit may be brought more than one year after the date on which the cause of action first arose. Damages available for any action or suit under this Agreement are limited to the claimant's actual damages. In no event are punitive damages, indirect damages, or damages for emotional distress or mental anguish available under this Agreement.
22. **Authority.** Each Party hereto acknowledges, agrees, and represents that it is specifically authorized to make the representations and covenants contained herein on its behalf, and that the other Parties are entitled to rely upon such representations.
23. **Amendment.** INSURER may amend this Agreement by providing AGENT/AGENCY at least sixty (60) days' prior written notice of such amendment. In the event AGENT/AGENCY is not in agreement with such amendment, AGENT/AGENCY may terminate this Agreement by providing at least thirty (30) days' prior written notice of AGENT/AGENCY's intent to terminate.

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**Commission Addendum to the Marketing Services Agreement
Between
AGENT/AGENCY and DELTA DENTAL OF VIRGINIA**

A. Small group business commissions are as follows:

Employer-paid plans	First year	Renewal
aXcess™	10%	7%
5-49 lives	10%	7%
50-99 lives	7%	5%
Voluntary plans	First year	Renewal
More than 50% employee participation	10%	7%
Less than 50% employee participation	7%	7%

- B. Commissions for groups or associations having 100 or more enrolled employees will be negotiated individually between DELTA DENTAL OF VIRGINIA and AGENT/AGENCY. DELTA DENTAL OF VIRGINIA’s standard commission for fully insured employer-paid groups having 100 or more enrolled employees is 3%. DELTA DENTAL OF VIRGINIA does not have a standard commission for self-insured groups; however, DELTA DENTAL OF VIRGINIA will agree to incorporate AGENT/AGENCY’s commission into its rating structure provided that AGENT’S/AGENCY’S request is received and approved by DELTA DENTAL OF VIRGINIA prior to preparing a proposal and/or quote for the prospective client.
- C. Commissions for Services Plan contracts issued to individuals is 10%.
- D. **Commission Payment Frequency.** Commissions for small group and large group Services Plans, subsections (A) and (B) herein, will be paid monthly on or about the third week of each month. Commissions for individual Services Plans will be paid quarterly on or about the third week following the quarter’s close.

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Commission Addendum to the Marketing Services Agreement
Between
AGENT/AGENCY and STRYDEN, INC.

A. Commissions are as follows:

Employer-paid plans	First year	Renewal
2-499 lives	10%	7%

B. Commissions for groups or associations having 500 or more enrolled employees will be negotiated between STRYDEN, INC. and AGENT/AGENCY on a case-by-case basis. STRYDEN, INC. does not have a standard commission for self-insured groups; however, STRYDEN, INC. will agree to incorporate AGENT/AGENCY commission into its rating structure provided that AGENT/AGENCY’S request is received and approved by STRYDEN, INC. prior to preparing a proposal and/or quote for the prospective client.

C. Commissions for Services Plan contracts issued to individuals is 10%.

D. **Commission Payment Frequency.** Commissions for small group and large group Services Plans, subsections (A) and (B) herein, will be paid monthly on or about the third week of each month. Commissions for individual Services Plans will be paid quarterly on or about the third week of the month following the quarter’s close.

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BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“BAA”) is entered into by and between INSURER (“Covered Entity”) and AGENT/AGENCY (“Business Associate”) (each, a “Party” and collectively, the “Parties”).

Recitals

WHEREAS, Business Associate provides certain functions, activities and/or services (the “Services”) for or on behalf of Covered Entity pursuant to an Agreement entered into by and between the Parties (the “Underlying Agreement”);

WHEREAS, Business Associate receives, has access to, or creates protected health information (“PHI”) (defined below) in order to provide the Services;

WHEREAS, Covered Entity and Business Associate intend to protect the privacy and security of the PHI received by Business Associate from, or created or received by Business Associate on behalf of, Covered Entity when providing the Services, in compliance with the applicable requirements of HIPAA, the HITECH Act, and their implementing regulations, including but not limited to the Privacy, Security, and Breach Notification Rules; and

WHEREAS, the Privacy and Security Rules require Covered Entity and Business Associate to enter into a written contract containing satisfactory assurances that the Business Associate will appropriately safeguard such PHI;

NOW THEREFORE, in consideration of the mutual promises set forth herein, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties hereby agree as follows.

1. Definitions

In addition to the definitions stated elsewhere in this BAA, the following terms shall have the meaning set forth below. Capitalized terms used but not otherwise defined in this BAA shall have the same meanings as those terms have in HIPAA, the HITECH Act and/or their implementing regulations.

- 1.1 Breach.** “Breach” has the same meaning as the term “breach” in 45 C.F.R. § 164.402.
- 1.2 Designated Record Set.** “Designated Record Set” has the same meaning as the term “designated record set” in 45 C.F.R. § 164.501.
- 1.3 Electronic Protected Health Information.** “Electronic Protected Health Information” or “Electronic PHI” means PHI (as defined below) that is transmitted by or maintained in electronic media.
- 1.4 HIPAA.** “HIPAA” means the Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191) and its implementing regulations at 45 C.F.R. Parts 160 through 164, as may be amended from time to time.
- 1.5 HITECH Act.** “HITECH Act” means the Health Information Technology for Economic and Clinical Health Act, Title XIII of Division A of the American Recovery and Reinvestment Act of 2009 (“ARRA”) (Pub. L. 111-5), as may be amended from time to time.
- 1.6 Individual.** “Individual” has the same meaning as the term “individual” in 45 C.F.R. § 160.103 and includes a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

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- 1.7 **Marketing.** “Marketing” has the same meaning as the term “marketing” in 45 C.F.R. § 164.501.
- 1.8 **Privacy Rule.** “Privacy Rule” means the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164, Subparts A and E, as may be amended from time to time.
- 1.9 **Protected Health Information.** “Protected Health Information” or “PHI” has the same meaning as the term “protected health information” in 45 C.F.R. § 160.103, provided that, for the purposes of this BAA, “PHI” is limited to information received by Business Associate from, or created or received by Business Associate on behalf of, Covered Entity, when providing the Services pursuant to the Underlying Agreement.
- 1.10 **Required by Law.** “Required by Law” has the same meaning as the term “required by law” in 45 C.F.R. § 164.103.
- 1.11 **Secretary.** “Secretary” means the Secretary of the Department of Health and Human Services (“HHS”) or her designee.
- 1.12 **Security Incident.** “Security Incident” has the same meaning as the term “security incident” in 45 C.F.R. § 164.304.
- 1.13 **Security Rule.** “Security Rule” means the Security Standards at 45 C.F.R. Parts 160 and 164, Subparts A and C, as may be amended from time to time.
- 1.14 **Transactions Rule.** “Transactions Rule” means the Standards for Electronic Transactions at 45 C.F.R. Parts 160 and 162, as may be amended from time to time.
- 1.15 **Unsecured PHI.** “Unsecured PHI” is Electronic PHI that is not encrypted. “Unsecured PHI” is also any PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in the guidance issued under § 13402(h)(2) of the HITECH Act.
- 2. **Obligations of Business Associate.**
 - 2.1 **Limitation on Use or Disclosure.** Business Associate shall not use or disclose PHI other than as permitted or required by this BAA or as Required by Law.
 - 2.2 **Appropriate Safeguards.**
 - a. **Safeguards for all PHI.** Business Associate shall develop, maintain and use reasonable and appropriate safeguards to prevent the use or disclosure of PHI other than as provided for by this BAA.
 - b. **Safeguards for Electronic PHI.** Business Associate shall comply with the Security Rule with respect to Electronic PHI.
 - 2.3 **Mitigation of Harmful Effects.** Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this BAA, including any harm to an Individual(s) as a result of a Breach of Unsecured PHI.

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- 2.4 Restriction Agreements and Confidential Communications.** Business Associate shall comply with any agreement that Covered Entity makes that either (i) restricts the use or disclosure of PHI pursuant to 45 C.F.R. § 164.522(a), or (ii) requires confidential communication about PHI pursuant to 45 C.F.R. § 164.522(b), provided that Covered Entity notifies Business Associate of the restriction or confidential communication obligations that Business Associate must follow.
- 2.5 Reports.**
- a. Breaches.** Business Associate shall report to Covered Entity any Breach of Unsecured PHI without unreasonable delay and in no event later than five calendar days after learning of the Breach. Business Associate shall provide to Covered Entity the information that Covered Entity is required to include in the notification to an Individual under 45 C.F.R. § 164.404(c), at the time of the initial notification to Covered Entity or promptly thereafter as information becomes available.
 - b. Non-Permitted Uses and Disclosures.** Business Associate shall report to Covered Entity any use, access, or disclosure of PHI not permitted by this BAA that does not constitute a “Breach.” Business Associate will make the report without unreasonable delay but in no event later than 30 days after Business Associate learns of such non-permitted use, access, or disclosure.
 - c. Security Incidents.**
 - i. Business Associate shall report to Covered Entity any successful Security Incident of which it becomes aware. Business Associate will make the report without unreasonable delay but in no event later than 10 days after Business Associate learns of the Security Incident.
 - ii. Business Associate shall report to Covered Entity, upon the Covered Entity’s request, the aggregate number of attempted but unsuccessful Security Incidents of which Business Associate becomes aware.
- 2.6 Subcontractors.** Business Associate shall require any Subcontractor to which it provides PHI to comply with the same restrictions and conditions that apply through this BAA to Business Associate with respect to such PHI. Business Associate shall require any Subcontractor to which it provides Electronic PHI to comply with the Security Rule.
- 2.7 Access to PHI.** To the extent that Business Associate maintains PHI in a Designated Record Set, Business Associate shall provide access, at the request of Covered Entity and in the time and manner reasonably specified by Covered Entity, to the PHI in such Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the access requirements under 45 C.F.R. § 164.524.
- 2.8 Amendments to PHI.** To the extent that Business Associate maintains PHI in a Designated Record Set, Business Associate shall make any amendment(s) to the PHI in such Designated Record Set that Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526, at the request of Covered Entity or an Individual, and in the time and manner reasonably specified by Covered Entity.
- 2.9 Availability of Books and Records.** Business Associate shall make its internal practices, books and records relating to the use and disclosure of PHI available for inspection and copying to Covered Entity and the Secretary, in a time and manner designated by Covered Entity or the Secretary (as applicable), for purposes of determining Covered Entity’s compliance with the Privacy Rule.

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- 2.10 Accounting of Disclosures.** Business Associate shall document such disclosures of PHI, and information related to such disclosures, and provide such information to Covered Entity or, as directed by Covered Entity, to an Individual, in the time and manner reasonably specified by Covered Entity, as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
- 2.11 Sale of PHI; Genetic Information.** Business Associate shall not, directly or indirectly, receive remuneration in exchange for the PHI of an Individual, except as authorized by the Individual. Business Associate shall not use or disclose Genetic Information (as that term is defined in 45 C.F.R. § 160.103) except as permitted by 45 C.F.R. § 164.502(a)(5)(i).
- 2.12 Marketing.** Business Associate shall not use or disclose PHI for Marketing except as authorized by an Individual or otherwise permitted under the Privacy Rule.
- 2.13 Transactions Rule Compliance.** If Business Associate electronically conducts in whole or part a transaction for which the Department of Health and Human Services has established a standard under 45 C.F.R. Part 162 for or on behalf of Covered Entity, Business Associate will comply, and will require any Subcontractor involved with the conduct of such Standard Transaction to comply, with each applicable requirement of 45 C.F.R. Part 162.
- 2.14 Delegation.** To the extent that Covered Entity delegates to Business Associate any obligation imposed on Covered Entity by the Privacy Rule, Business Associate shall comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such delegated obligation.
- 2.15 Encryption.** Business Associate shall encrypt Covered Entity's Electronic PHI prior to saving it on portable media. In other circumstances, Business Associate shall encrypt Covered Entity's Electronic PHI whenever reasonably practicable.
- 3. Permitted Uses and Disclosures by Business Associate.**
 - 3.1 General Use and Disclosure Provisions.**
 - a. Use and Disclosure for Services.** Except as otherwise limited in this BAA, Business Associate may use or disclose PHI to perform the Services for, or on behalf of, Covered Entity as specified in the Underlying Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.
 - b. Minimum Necessary.** Business Associate shall limit its uses and disclosures of PHI and its requests for PHI to the minimum amount of PHI necessary to accomplish the intended purpose of such use, disclosure or request. Business Associate shall comply with the minimum necessary policies and procedures of Covered Entity, provided that Business Associate is advised of such minimum necessary policies and procedures.
 - 3.2 Specific Use and Disclosure Provisions.**
 - a.** Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

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- b. Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the person will (i) keep the PHI confidential and use or further disclose the PHI only as Required by Law or for the purpose for which it was disclosed to the person, and (ii) notify the Business Associate of any instances of which the person is aware in which the confidentiality of the information has been breached.
- c. Business Associate may use PHI to report violations of law to appropriate federal and state authorities, consistent with 45 C.F.R. § 164.502(j)(1).

4. Obligations of Covered Entity.

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

- a. Covered Entity shall promptly notify Business Associate of any limitation(s) in its notice of privacy practices (published in accordance with 45 C.F.R. § 164.520) to the extent that such limitation(s) may affect Business Associate's use or disclosure of PHI.
- b. Covered Entity shall immediately notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- c. Covered Entity shall immediately notify Business Associate of any restriction on the use or disclosure of PHI to which Covered Entity has agreed in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

4.2 Permissible Requests by Covered Entity. Except as may be set forth in Section 3.2(c) above, Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule or the HITECH Act if done by Covered Entity.

4.3 Disclosures to Designated Employees and/or Other Representatives. Covered Entity shall identify for Business Associate, in writing in advance, certain employees or other representatives of Covered Entity who are authorized to discuss Protected Health Information with Business Associate. To the extent that Business Associate is contacted by any such employee or other representative in connection with the Services provided pursuant to the Underlying Agreement, and unless Business Associate has advance notice from Covered Entity to the contrary, Business Associate shall treat such inquiry as a permissible inquiry under the Privacy Rule and shall provide the information permitted by the Privacy Rule to the designated employee or other representative.

5. Term and Termination.

5.1 Term. The term of this BAA shall commence on the effective date of the Agreement, and, unless earlier terminated as provided herein, shall terminate when Business Associate has destroyed or returned to Covered Entity all PHI, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the provisions set forth in Section 5.3.

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- 5.2 Termination for Cause.** In the event of Business Associate's breach of a material term of this BAA, Covered Entity may either:
- a. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this BAA and the Underlying Agreement if the Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity; or
 - b. Immediately terminate this BAA and the Underlying Agreement.
- 5.3 Effect of Termination.**
- a. Except as provided in Section 5.3(b) of this BAA, upon termination of this BAA for any reason, Business Associate shall return to Covered Entity or destroy all PHI.
 - b. If Covered Entity determines that it is not feasible for Business Associate to return or destroy any or all PHI, Business Associate shall extend the protections of this BAA to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.
- 6. General Provisions.**
- 6.1 Regulatory References.** A reference in this BAA to a section in HIPAA, the HITECH Act or their implementing regulations means the section as may be amended from time to time.
- 6.2 Amendment.** The Parties shall take such action as is necessary to amend this BAA from time to time as necessary for each Party to comply with the requirements of HIPAA, the HITECH Act, and their implementing regulations, as they may be amended from time to time. Covered Entity may amend this BAA by giving 30 days' prior written notice to Business Associate of a proposed amendment. If Business Associate fails to object within the 30-day period, the amendment will become a part of this BAA. Any amendment proposed by Business Associate must be approved in writing by Covered Entity.
- 6.3 Survival.** The respective rights and obligations of the Parties under Sections 5.3 and 6.14 of this BAA shall survive the termination of this BAA.
- 6.4 Interpretation.** Any ambiguity in this BAA shall be resolved to permit the Parties to comply with HIPAA, the HITECH Act, and their implementing regulations. In the event of any inconsistency between this BAA and the Underlying Agreement regarding the use or disclosure of PHI or Electronic PHI, the provisions of this BAA shall control.
- 6.5 Assignment.** Neither Party may assign its rights or duties under this BAA without the prior written consent of the other Party.
- 6.6 No Third-Party Rights.** This BAA shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns; provided, however, that nothing in this BAA is intended, nor shall it be construed, to confer upon any person or entity other than the Parties hereto and their respective successors and assigns any rights, remedies, obligations or liabilities whatsoever.
- 6.7 Waiver.** Any waiver of any provision of this BAA shall be in writing and signed by the Party against whom it is sought to be enforced. Any such waiver shall not operate or be construed as a waiver of any other provision of this BAA or a future waiver of the same provision.

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- 6.8 Applicable Law.** The validity, enforceability and interpretation of BAA shall be governed by HIPAA, the HITECH Act and their implementing regulations, and the laws of the Commonwealth of Virginia, without giving effect to any conflict-of-laws principles.
- 6.9 Entire Agreement.** This BAA constitutes the entire agreement between the Parties with respect to use and disclosure of PHI pursuant to the Underlying Agreement and supersedes all other agreements, express or implied, oral or written, between the Parties related to this subject matter.
- 6.10 Headings.** The headings contained in this BAA are for reference purposes only and shall not affect in any way the meaning or interpretation of this BAA.
- 6.11 Severability.** The provisions of this BAA shall be severable, and if any provision shall be determined to be invalid, void or unenforceable, in whole or in part, by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.
- 6.12 Notice.** Any notices or other communications required to be given under this BAA shall be in writing and shall be sent by registered or certified mail, return receipt requested, postage prepaid, to the individuals at the addresses indicated in the Underlying Agreement or to such other person or address as a Party may designate by written notice to the other Party. Notice shall be deemed effective upon receipt.
- 6.13 Independent Contractors.** The Parties to this BAA are independent contractors. None of the provisions of this BAA are intended to create, nor shall they be interpreted or construed to create, any relationship between Covered Entity and Business Associate other than that of independent contractors. Except as otherwise expressly set forth herein, neither Party hereto, nor any of its representatives, shall be deemed to be the agent, employee or representative of the other Party.
- 6.14 Indemnification.** The Parties shall have the respective indemnification rights set forth in the Underlying Agreement.

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