

**FIFTH MODIFICATION TO DENTAL HEALTH MAINTENANCE ORGANIZATION
PLAN ADMINISTRATION AND INSURANCE SERVICES CONTRACT**

THIS FIFTH MODIFICATION AGREEMENT is ~~made this 23rd of~~ ^{effective as of the} 23rd of September 2013 by and between United Concordia Dental Plans, Inc. (Contractor) and the State of Maryland, acting through the Department of Budget and Management.

WHEREAS, on January 17, 2013, the Department of Health and Human Services (“HHS”) issued a final rule that implemented a number of provisions of the Health Information Technology for Economic and Clinical Health (HITECH) Act, enacted as part of the American Recovery and Reinvestment Act of 2009, to strengthen the privacy and security protections for health information established under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Covered entities and business associates are required to comply with the applicable requirements of the final rule by September 23, 2013.

IN CONSIDERATION of the promises and the covenants herein contained, the parties agree to modify the Contract for Dental Health Maintenance Organization Plan Administration and Insurance Services dated March 18, 2009, as amended by a First Modification dated July 1, 2009, a Second Modification dated September 15, 2009, a Third Modification dated June 2, 2011, and a Fourth Modification dated March 18, 2013 between the Contractor and the State of Maryland, acting through the Department of Budget and Management, in compliance with the final rule, as follows:

1. Definitions

In this Modification, the following words have the meanings indicated:

- 1.1 “Contract” means the Contract for Dental Health Maintenance Organization Plan Administration and Insurance Services between the Contractor and the State of Maryland acting through the Department of Budget and Management dated March 18, 2009.
- 1.2 “Contractor” means United Concordia Dental Plans, Inc.
- 1.3 “Department” means the Maryland Department of Budget and Management.
- 1.4 “HIPAA” means the Health Insurance Portability and Accountability Act, enacted August 21, 1996 as amended from time to time and including changes made under the Health Information Technology for Economic and Clinical Health Act (HITECH).
- 1.5 “HITECH” means the Health Information Technology for Economic and Clinical Health Act, enacted under Title XIII of the American Recovery and Reinvestment Act of 2009 and as amended from time to time.
- 1.6 “Modification” means this Modification Agreement.
- 1.7 “PHI” means Protected Health Information, as the phrase is defined in 45 CFR §164.501,

- 1.8 "RFP" means the Request for Proposals for Dental Benefits Program, No. F10B82000014, dated April 14, 2008 and as amended through October 27, 2008.
- 1.9 "State" means the State of Maryland.
- 1.10 "Technical Proposal" means Contractor's Technical Proposal for Dental Health Maintenance Organization coverage dated June 17, 2008 as supplemented and revised by the Contractor's subsequent responses to questions, requests for cure, and Best and Final Offer (BAFO) submissions through January 14, 2009.

2. Scope of Modification

This Modification amends the Contract specifically as described herein. Except as specifically revised by the terms of this Modification, all of the terms of the Contract shall remain in full force and effect and shall apply to this Modification.

3. HIPAA Compliance

The Compliance Checklist (CC) of the Contract, included as Attachment L-6 in the Technical Proposal and RFP, is amended as follows to comply with changes to the privacy and security rules of HIPAA:

HIPAA

- **CC-35(d) is amended to now read:** In compliance with 45 CFR 164.308(b), the Contractor agrees to ensure, through written contract, that any agent, including a subcontractor, to whom the Contractor provides electronic PHI agrees to implement reasonable and appropriate safeguards.
- **CC-36(f) is amended to now read:** In compliance with 45 CFR § 164.504(e)(5), the Contractor shall ensure, through written contract, that any agent, including a subcontractor, to whom it provides PHI received from, created by, or received by the Contractor agrees to the same restrictions and conditions that apply to the Contractor with respect to such information. This obligation shall apply in connection with PHI created, retained, used, disclosed, or transmitted in connection with the plan(s) administered by the Contractor.
- **CC-39.1 (previous CC-39 deleted via Amendment # 5 to the RFP) is now added to read as follows:** The Contractor shall comply with the prohibitions against remuneration in exchange for PHI pursuant to 45 CFR 164.508(a)(4) and §13405(d)(1) and (2) of the HITECH Act as if it were a covered entity in connection with the benefit plan administered by the Contractor pursuant to this RFP and Contract. The Contractor shall prohibit its business associates, agents and subcontractors who receive, use, disclose,

create, retain, maintain, or transmit PHI from receiving remuneration in exchange for PHI on the same terms.

- **CC-39.2 is now added to read as follows:**

a.) A breach shall be treated as discovered in the terms described in 45 CFR §164.410.

b.) Notice to the Department

(1) The Contractor shall promptly notify the Department of a breach of unsecured PHI in its possession following the first day on which the Contractor (or Contractor's employee, officer, agent or subcontractor) knows of such breach or following the first day on which Contractor (or Contractor's employee, officer, agent or subcontractor) should have known of such breach. Such notice shall occur without unreasonable delay and in no event more than 30 days following discovery of the breach. Such notice shall occur even if the breach is not of a Member of the State's Plan.

(2) In the event that Contractor determines that there is a low probability that the unauthorized access, acquisition, use, or disclosure has compromised the security or privacy of the protected health information based on a risk assessment conducted pursuant 45 CFR §164.402(2), Contractor shall promptly notify the Department of the event and the basis for that determination. Such notice shall occur as soon as is reasonable but in no event more than 30 days following discovery of the unauthorized access, acquisition, use or disclosure of PHI of a Participant. Such determination shall be in writing and signed by an appropriate officer or employee of Contractor.

(3) Contractor's notice to the Department pursuant to this section concerning breaches shall include, at a minimum:

- (i) the number of individuals overall affected by the breach and the number of Participants in the State's Plan affected by the breach;
- (ii) if applicable, the identification of each State Plan Participant whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, used, disclosed, or otherwise the subject of the breach;
- (iii) a description of what happened, the date of the breach, if known, and the date of the discovery of the breach;
- (iv) a brief description of the types of unsecured PHI that were involved in the breach (such as name, social security number, date of birth, claims or health care services information, etc.);
- (v) identification of an individual who can provide additional information concerning the breach; and
- (vi) a brief description of the steps Contractor is taking to mitigate the breach, investigate the breach, and to protect against further breaches.

(4) Contractor's notice to the Department pursuant to this section may be provided on a rolling basis, with information provided to the Department as it becomes available.

c.) Notice to Participants.

(1) Contractor shall provide notice to affected members and to the media in the form, content, manner, method, and timing required to meet the requirements of §§13400-13402 of the HI TECH Act and 45 CFR §§164.404 and 164.406, applied as if Contractor were a covered entity in connection with the group plan(s) administered by Contractor pursuant to the Underlying Agreement.

(2) The notice(s) required by this section may not be issued until the Department has reviewed and approved the notice(s). Such approval may not be unreasonably delayed or withheld.

d.) Contractor may delay the notice(s) required pursuant to sections 164.404(b) and 164.406(b) only if permitted pursuant to 45 CFR §164.412.

e.) In the event of an unauthorized use or disclosure of PHI or a breach of Unsecured PHI, Contractor shall use reasonable efforts to mitigate any harmful effects of said disclosure that are known to it.

f.) Notices to DHHS.

(1) In the event of a breach described in 45 CFR §164.408(b), Contractor shall provide to Department all information required by that subsection to be submitted to the Secretary of DHHS. The information shall be provided without unreasonable delay and in no event more than 30 days following discovery of the breach. Upon request, Contractor shall submit the required breach notice to the Secretary of DHHS on behalf of the Department, the State, the group plan(s), and the Program.

(2) Contractor shall maintain a log of breaches described in 45 CFR §164.408(c) and that affect members and the group plan(s) administered by Contractor pursuant to the Underlying Agreement.

g.) In fulfilling its obligations pursuant under this Contract in connection with 45 CFR §164.530, Contractor shall address the provisions of 45 CFR Part 164, subpart D in the manner provided in 45 CFR §164.414, as if Contractor were a covered entity in connection with the benefits plan administered by the Contractor pursuant to this Contract and RFP.

h.) Contractor agrees to review any guidance from DHHS specifying the technologies and methodologies that render PHI unusable, unreadable, or indecipherable to unauthorized individuals. Contractor further agrees, to the extent practical, appropriate and reasonable, to incorporate such guidance into its administrative, physical, and technical safeguards to protect the confidentiality, integrity, and availability of PHI.

i.) Contractor agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by the Contractor, agrees to provide

notice of a breach and the information necessary for the Contractor to comply with its notice requirements in sections (a) through (h) above.

- **CC-40 (previous CC-40 deleted via Amendment # 5 to the RFP) is now added to read as follows:** The Contractor shall comply with the limitations on marketing and fundraising communications provided in 45 CFR 164.508(a)(3) and §13406 of the HITECH Act as if it were a covered entity in connection with the benefits plan.

IN WITNESS THEREOF, the parties have executed this Fifth Modification Agreement as of the date hereinabove set forth.

CONTRACTOR:
United Concordia Dental Plans, Inc.



By: _____

10/10/13
Date _____



Witness _____

STATE OF MARYLAND:
**DEPARTMENT OF BUDGET AND
MANAGEMENT**



By: T. Eloise Foster, Secretary

10/21/13
Date _____



Witness _____

APPROVED FOR FORM AND LEGAL SUFFICIENCY
THIS 17th DAY OF October, 2013.


ASSISTANT ATTORNEY GENERAL