Dental Services Agreement

This Dental Services Agreement ("Agreement") is made this 1st day of July, 2020 ("Effective Date"), between Louisiana Medicaid Dental IPA, Inc., a Louisiana non-profit corporation ("IPA"), and ___________________ ("Provider") (IPA and Provider are collectively referred to herein jointly as the “Parties”).

BACKGROUND

WHEREAS, pursuant to La. R.S. § 36:251, et seq., the Louisiana Department of Health ("LDH") is responsible for the Medical Assistance Program, Title XIX of the Social Security Act, including the administration of state and federal funds in furtherance of the Medical Assistance Program ("Medicaid Program");

WHEREAS, effective July 1, 2014 LDH implemented a managed Dental Benefits Program (“DBP”) for Louisiana Children’s Health Insurance Program Affordable Plan, Medicaid Children and the Medicaid Adult populations (“Medicaid Enrollees”) through its contract with the dental Medicaid Managed Care Organization ("MCO," which term shall include all MCOs currently contracting with LDH for dental services), currently MCNA Insurance Company d/b/a MCNA Dental Plans (“MCNA”);

WHEREAS, effective February 21, 2017, CMS approved Louisiana State Plan Amendment #17-0011 (the “SPA”) which authorized, among other provisions, supplemental Medicaid payments for dentists “employed by, or under contract to provide services in affiliation with … LSU School of Dentistry” (“LSUSD”);

WHEREAS, LDH has begun the implementation of a change to the Medicaid Program payment methodology to ensure consistent pricing for various services included in the Medicaid Program, and this change will result in a PMPM increase over the base rate paid to MCNA, designated by LDH as “dental funds” for reimbursement to dentists for provider services (the “FMP Program”);

WHEREAS, in order to fulfill the goals of the FMP Program and its contractual obligations to the State, MCNA and University of Louisiana ("UL") will enter into an agreement, (the “MCNA Agreement”) whereby MCNA and the UL will work together to optimize and enhance the services available for Medicaid Enrollees as specified therein;

WHEREAS, in order to assist in fulfilling certain obligations under the MCNA Agreement, UL will enter into an agreement with the IPA and LSUSD to delegate certain functions to the IPA and LSUSD;

WHEREAS, pursuant to that agreement, LSUSD will authorize IPA exclusively to affiliate dentists with LSUSD, as set forth in the SPA, to assist LSUSD in meeting its obligations under its agreement with UL;

WHEREAS, IPA desires to contract with dentists who are licensed by the State of Louisiana and enrolled as a Louisiana Medicaid provider to assist LSUSD and UL in meeting
certain obligations under its agreement with MCNA, including increasing access to oral health care;

WHEREAS, the FMP consists of a limited pool of funds, as budgeted by the State that must be distributed to dentists;

WHEREAS, in order to fulfill the goals of the FMP Program and the direct and indirect contractual obligations to the State, IPA will calculate proposed FMP payments to Provider and other dentists contracting with the IPA, as herein described.

WHEREAS, Provider desires to participate in the FMP Program and warrants that it is eligible for FMP supplemental payments;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the Parties hereby agree as follows:

1. Obligations of Provider

1.1 The Parties agree that the payment of FMP by the IPA to Provider is only in relation to provider services provided to the MCO’s Medicaid Enrollees for which Provider is eligible to receive reimbursement. The applicable MCOs are listed in Exhibit 1.1 attached hereto and may be amended in the future as hereinafter provided.

1.2 Provider will continue to provide dental services to MCO enrollees (“Dental Services”) and, in the process, will make commercially reasonable efforts to assist IPA in its efforts to achieve the goals listed in Exhibit 1.2 attached to this Agreement in order to increase dental services and to improve overall oral health in the State. Provider authorizes IPA to work with LSUSD, UL, MCNA, and LDH to set or modify the goals set forth in Exhibit 1.2.

1.3 Provider shall promptly cooperate with all reasonable requests from the MCO and IPA for information and data needed to perform the services to be provided by IPA under this Agreement and, as provided in section 4.2, has authorized the release of such data.

1.4 Provider shall promptly comply with all other reasonable requests of IPA related to the services to be provided by IPA under this Agreement.

1.5 Provider has completed Exhibit 1.5 hereto, which contains information including the primary billing number, the primary billing entity/individual and, if applicable, the names of each associated or affiliated dental services provider billing under said primary billing number. In the event multiple dental service providers are included on Exhibit 1.5, FMP Payments as described below will be paid to only the primary billing number, which payment shall be payment in full for all amounts due hereunder.

2. FMP Supplemental Payments

2.1 FMP Payments. In order to achieve the goals listed in Exhibit 1.2, IPA shall periodically establish supplemental payment methodologies for Dental Services ("Payment Enhancement Protocols" or "PEP"). These Payment Enhancement Protocols will be designed to encourage participating providers to contribute to achieving the goals by providing supplemental payments for the desired services. The initial PEPs are contained in Exhibit 2.1.
The IPA shall update these PEPs no more often than annually, unless required to do so by the MCO, and shall provide notice to participating providers at least ninety (90) days prior to becoming effective. Each set of PEPs shall remain in effect until modified as described above. Payments made by the IPA to participating providers pursuant to the PEPs are hereinafter referred to as “FMP Payments”.

2.2 FMP Payments paid to Provider by the IPA shall not replace or supplant any other amounts paid or payable to Provider by the MCO pursuant to a network provider agreement between Provider and MCO, or paid by MCO to Provider that is an out of network provider. Nothing in this Agreement is intended to modify, enlarge or supplant any existing obligations between Provider and the MCO under other agreements between the MCO and Provider. The FMP Payments are different in character than the payments for services to MCO’s Medicaid Enrollees, as set forth in participating provider agreements. No rights or obligations pertaining to the provision of, or payment for, services to MCO’s Medicaid Enrollees shall be applicable to Provider’s FMP Payments unless otherwise specifically agreed to, and any section of any participating provider agreement establishing any dispute resolution right or procedure shall not be applicable to any claim or dispute relating to FMP Payments.

2.3 Amount, Form and Timing of FMP Payments.

2.3.1 Amount to be Distributed. Quarterly, the IPA shall determine the funding available for distribution to participating providers (“Quarterly Distribution”). That amount shall be the net amount received by the IPA from UL pursuant to the agreement, plus any recoupments, interest, and other revenue, less a reasonable reserve and operating costs, fees and expenses.

2.3.2 Participating Provider Allocation Determination. Working with the MCO, the IPA will compile claims data for services rendered in each quarter by each participating provider. Using that data, the IPA will calculate (a) total MCO claims payments relevant to each Payment Enhancement Protocol, (b) the MCO claims payment of each participating provider related to that PEP, and (c) each participating provider’s portion of the total payments related to each PEP.

2.3.3 Allocation of Quarterly Distribution (FMP Payments) Each Quarterly Distribution will be applied first to unpaid amounts, if any, due to a participating provider from previous quarters. The balance will be allocated to each Payment Enhancement Protocol as provided in Exhibit 2.1, and each participating provider shall be paid the percentage of that allocation calculated as described in 2.2.2, above.

2.3.4 Reconciliation of Prior Quarters. In the event that IPA is informed by the MCO of payments made following the last FMP Payment calculation which would have been eligible to be included in that FMP Payment, the IPA shall calculate the amount that would have been paid and shall first use the Quarterly Distribution to make said payment. Conversely, in the event that the IPA is informed by the MCO of recoupments made following the last FMP Payment calculation which would have reduced the FMP Payment amount that the participating provider would have received, the IPA shall calculate the amount
that would not have been paid and shall deduct that amount from the next FMP Payment due to that provider.

2.3.5 Release of Claims Relating to Quarterly Distributions. IPA shall base its FMP Payment calculations solely on data provided by the MCO. Provider hereby waives, forgives, and releases any right or claim it may have, now or in the future, against IPA and its officers, directors, employees, agents, members, and managers, based on or related to, directly or indirectly, the data provided by the MCO and the IPA’s reliance thereon, the establishment of Payment Enhancement Protocols, the determination of the amount of the Quarterly Distribution, and the calculation of the FMP Payments, to the extent that said actions are materially consistent with the terms of this Agreement.

2.3.6 No Claim Against MCO. During the term of Agreement, Provider shall not seek payment directly from the MCO for FMP Payments.

2.3.7 IPA FMP Payments Conditional. The IPA payment of FMP Payments is expressly conditioned on the receipt of FMP Program funding by IPA from UL, and Provider hereby acknowledges and agrees that the IPA shall not be liable for payment in excess of the Quarterly Distribution described above.

2.3.8 Survival of Payment Obligation. Subject to the terms of this Agreement, the payment obligations under this Section 2 shall survive any termination of this Agreement.

2.3.9 Payment. The IPA shall provide FMP Payments to the address for notice as designated below by the Provider, unless the parties have executed an electronic funds transfer agreement. Provider shall provide such information and documentation as IPA may reasonably require for processing of FMP Payments, including, but not limited to, a current W-9 attached as Exhibit 2.3.9. Provider hereby authorizes IPA to execute, on its behalf and as its agent, any and all additional documentation consistent with the foregoing that is necessary to facilitate payment to Provider.

3. Additional IPA Services to Provider

3.1 Pursuant to the IPA’s contract with LSUSD, by entering into this Agreement with the IPA Provider becomes and is an affiliate of LSUSD within the meaning of Louisiana State Plan Amendment #17-0011. IPA and Provider acknowledge and agree that the Dental Services provided by Provider pursuant to this Agreement are provided as an affiliate of LSUSD.

3.2 In addition to the services described in Article 2, above related to the FMP Payments, IPA shall arrange for, or provide to, Provider the services, if any, described in Exhibit 3.2.

4. Representations, Warranties, and Authorizations

4.1 For each period for which FMP Payments are made under the terms of this Agreement, Provider hereby represents and warrants to IPA the following:
4.1.1 Provider is eligible to receive FMP Payments;

5.1.2 Provider has provided services for each such period for which it is eligible;

4.1.3 Provider has materially complied with all federal and state laws, rules, regulations, and guidance related to the Medicaid Program, and Provider shall promptly inform IPA of any known instances of material regulatory non-conformity related to the FMP Payments or this Agreement. Provider shall notify IPA immediately if, but in no event more than three (3) business days after, any governmental agency issues any law, rule, regulation, criteria or guidance that affects Provider’s status as an eligible Provider, or Provider’s right to FMP Payments, or any regulatory non-compliance related to the FMP Program or this Agreement.

4.1.4 Provider will (a) maintain in good standing all applicable licenses, certifications, and registrations required to furnish services hereunder; and (b) be a certified Medicaid provider; and (c) maintain a National Provider Identification Number (“NPI”) if required for Provider by applicable law.

4.1.5 Each of Provider’s employees is duly licensed, certified, or registered, as required by applicable law and standards of professional ethics and practice.

4.1.6. Provider has a process in place to screen Provider’s employees on a regular basis to ensure that such employees are not excluded, debarred, or otherwise ineligible to participate in the Federal health care programs, including without limitation Medicare and Medicaid programs.

4.1.7. Provider will notify IPA of Provider’s receipt of any notice of any restrictions, including but not limited to, any suspension or loss of any such licensure, certification, registration, or accreditation, as applicable, or of learning that Provider or Provider’s employees have been excluded, debarred, or otherwise ineligible to participate in the Federal health care programs. 4.1.8. Provider has not been notified by any federal or state authority that it may not claim or accept FMP Payments and has no knowledge of any legal impediment to the claim for or payment of FMP Payments.

4.1.9 Provider shall (a) abide by the federal Civil Rights Act of 1964, the Federal Rehabilitation Act of 1973, and all other applicable statutes, rules, or regulations and orders (including, without limitation, Executive Orders 11246 and 11375, “Equal Employment Opportunities”) as amended, and any and all successor statutes, rules, or regulations and related orders (collectively, “Federal Protections”); (b) not exclude any person to whom the Federal Protections apply (“Covered Person”) from participation in any aid, care, service, or other benefit or deny any Covered Person such services on the grounds of race, color, national origin, sex, age, disability, political beliefs, or religion; and (c) not subject any Covered Person to discrimination due to such Covered Person’s status as a program contract beneficiary.
4.1.10 Provider shall not employ or subcontract any responsibilities hereunder to any individual who has been excluded, debarred, or otherwise ineligible to participate in any federal or state health benefits program, including, without limitation, the Medicaid or Medicare programs.

4.1.11 Provider has, to the extent required by law, written procedures for the provision of language interpretation and translation services to patients who require such services including, but not limited to, patients with limited English proficiency. Provider shall furnish a copy of such procedures to IPA upon request and shall take adequate steps to ensure, to the extent required by law, that persons with limited English skills receive, free of charge, the language assistance necessary to afford them meaningful and equal access to the benefits and services reimbursed under this Agreement.

4.1.12 No part of the FMP Payment received by Provider under this Agreement shall be paid directly, indirectly, or through a parent organization, subsidiary, or an affiliated organization to any state or federal officer or employee of the State of Louisiana or any immediate family member of a state or federal officer or employee of the State of Louisiana as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor, or consultant to the Provider in connection with any work contemplated or performed relative to this Agreement unless disclosed to LDH. For purposes of this Section, “immediate family member” shall mean a spouse or minor child(ren) living in the household.

4.2 Provider hereby authorizes LDH and the MCO to provide Provider’s data to UL and IPA when and to the extent reasonably necessary, in the determination of IPA, for the implementation and operation of the FMP Program. Provider further authorizes UL and IPA to release any such information as it reasonably deems appropriate to any state or federal agency (including contractors of such agencies) when required for the implementation and operation of the FMP Program.

5. Separate Agreement.

5.1 This Agreement is not intended to modify, enlarge or supplant any existing obligations between MCO and Provider under any network provider or similar agreement between MCO and Provider. The Parties agree that the FMP Payments are different in character than the payments for services as set forth in any network provider agreement. The terms and conditions of this Agreement control the rights and obligations of the Parties concerning FMP Payments.


6.1 Of IPA

6.1.1 IN EXCHANGE FOR THE FMP PAYMENTS MADE IN ACCORDANCE WITH THE TERMS HEREOF AND NOT WITHSTANDING ANYTHING HEREIN OR IN THE AGREEMENT, PROVIDER IRREVOCABLY AND UNCONDITIONALLY RELEASES, ACQUITS AND FOREVER DISCHARGES, WITHOUT ANY ADDITIONAL

Dental Services Agreement 6
CONSIDERATION OR THE NEED FOR ADDITIONAL DOCUMENTATION, IPA AND EACH OF ITS SUCCESSORS, AFFILIATES, ASSIGNS, OWNERS, AGENTS, DIRECTORS, OFFICERS, EMPLOYEES, CONSULTANTS, REPRESENTATIVES AND ATTORNEYS (COLLECTIVELY, THE “IPA RELEASED PARTIES”) FROM ANY AND ALL CHARGES, COMPLAINTS, CLAIMS, JUDGMENTS, DEMANDS, ACTIONS, OBLIGATIONS OR LIABILITIES, DAMAGES, RIGHTS, COSTS, AND EXPENSES (INCLUDING ATTORNEYS’ FEES AND COSTS ACTUALLY INCURRED), OF ANY NATURE WHATSOEVER, KNOWN, UNKNOWN OR PRESENTLY UNKNOWABLE, CONTINGENT OR ABSOLUTE, WHETHER ASSERTED OR NOT, NOW EXISTING OR WHICH MAY SUBSEQUENTLY ACCRUE TO IPA OR PROVIDER IN THE FUTURE, EMANATING FROM OR ARISING OUT OF FMP PAYMENTS UNDER THIS AGREEMENT, MADE OR NOT MADE HEREUNDER OR THE ADEQUACY OF ANY FMP PAYMENTS MADE TO PROVIDER, OTHER THAN IPA’S BREACH OF THIS AGREEMENT.

6.1.2 Except for IPA’s intentional or grossly negligent breach of this Agreement, Provider agrees that it shall not institute, pursue, solicit, encourage or assist any proceedings or claims against or adverse to the IPA Released Parties arising from or attributable to IPA in connection with the foregoing.

6.1.3 Provider hereby agrees to protect, indemnify and hold harmless, IPA and its IPA Released Parties, from and against any and all liability, loss, damage, expense or claims of any nature whatsoever, including defense costs and legal fees, incurred in connection with, arising from or as a result of (i) Provider’s breach of any representation and warranty made by Provider in this Agreement, and (ii) Provider’s negligence, fault or intentional misconduct or its failure to comply with the obligations under this Agreement.

6.2 Repayment. Provider shall notify IPA in the event of any action or event that affects Provider’s status to receive FMP Payments. To the extent Provider receives any FMP Payments that are attributable to services for which it receives reimbursement during a period when Provider was not eligible for such payment, Provider agrees to return the total FMP Payments amount received during such ineligibility period to the IPA within ten (10) days of (i) discovering that Provider was not eligible for such payment or (ii) receipt of written demand to return the FMP Payments from IPA, whichever is sooner. Provider recognizes that IPA shall be entitled to offset and/or recoup against future FMP payments to Provider for any overpayments of FMP to Provider by the IPA.

7. Term and Termination

7.1 Term. This Agreement shall have an initial term of two (2) years beginning on the Effective Date and shall automatically renew for successive one (1) year terms, unless terminated as provided herein (“Term”).

7.2 Termination. Except as otherwise provided in Sections 7.3, either party may terminate this Agreement without cause upon one hundred twenty (120) days advance written
notice to the other. Additionally, in the event either party defaults in its obligations under this Agreement, and fails to remedy the default within fifteen (15) days of receipt of written notice thereof, the non-defaulting party may terminate this Agreement at any time following the end of the cure period.

7.3 Change in Law. Notwithstanding the foregoing, either party shall have the right to terminate this Agreement immediately in order to comply with any legal order issued by a federal or state department, agency or commission, or any provision of law that invalidates or is inconsistent with the terms of this Agreement or that would cause one of the Parties to be in violation of the law. In such event, the Parties agree to discuss in good faith a resolution, amendment or termination of this Agreement.

7.4 Survival. Subject to the provisions of this Agreement, the payment obligations under Section 2 shall survive any termination of this Agreement for those FMP Payments attributable to services rendered in any period prior to such termination.

8. Miscellaneous

8.1 Authorization. In addition to other authority granted to IPA herein, Provider hereby authorizes IPA to complete, execute and deliver to MCO or its agents, on behalf of Provider, electronic funds transfer agreements, IRS Form W-9, and other administrative documents necessary to facilitate FMP Payments, provided that (a) IPA completes such documents consistent with the information provided by Provider on Exhibit 2.2.8a and b, and (b) IPA provides a copy to Provider simultaneously with said delivery.

8.3 Waiver. No waiver by either party of any breach or violation of any provision of this Agreement shall operate as, or be construed to be, a waiver of any subsequent breach of the same or any other provisions.

8.4 Notices. Any notice, demand, or communication required, permitted, or desired to be given shall be deemed effectively given when personally delivered or sent by fax with a copy sent by overnight courier, addressed as follows:

If to Provider: [see notice information on signature page]

If to IPA: A.J. Herbert
Taggart Morton, L.L.C.
110 Poydras Street
Suite 2100
New Orleans, Louisiana 70163
Fax: 504-599-8501

and

Emily Black Grey
Breazeale, Sachse & Wilson, LLP
One American Place
301 Main Street, Suite 2300
Baton Rouge, LA 70801
or to such other address, and to the attention of such other person or officer as either party may designate in writing.

8.5 **Invalid.** In the event any portion of this Agreement is found to be void, illegal, or unenforceable, the validity or enforceability of any other portion shall not be affected.

8.6 **Third-Party Rights.** This Agreement is entered into by and between the Parties and for their benefit. There is no intent by either party to create or establish a third-party beneficiary status or rights in a third party to this Agreement.

8.7 **Entire Agreement.** This Agreement supersedes any prior agreements, promises, negotiations, or representations, either oral or written, relating to the subject matter of this Agreement. It may not be amended or otherwise modified except in writing signed by both parties.

8.8 **Dispute Resolution.** Any disputes arising under this Agreement shall be resolved through arbitration administered by the American Health Lawyers Association (“AHLA”) Dispute Resolution Service and conducted pursuant to AHLA Rules of Procedure for Arbitration, using expedited procedures. Judgment on the award may be entered and enforced in any court having jurisdiction. The Parties agree to disclose the existence of this arbitration, the award, or information about the outcome of this arbitration, only as needed to: (a) present claims and defenses in arbitration; (b) pursue or oppose legal remedies in court pertaining to this arbitration, including enforcement of an award; (c) comply in good faith with applicable laws, rules, regulations, court orders, or other legal requirements; or (d) comply with the award. In all other respects, the Parties agree to keep this arbitration strictly confidential. The Parties reserve the right to enter into or request from the arbitrator a more detailed confidentiality agreement or protective order.

8.9 **Assignment.** The rights and obligations of either party under this Agreement may not be transferred or assigned to a third party without the express written consent of the other party.

8.10 **Amendment.** Provider acknowledges that on the Effective Date of this Agreement, the FMP Program is still in development, and that the final agreements among the IPA, LDH, MCO, LSUSD, UL, and other providers may require revision to the provisions of this Agreement. In that event, IPA will provide written notice to Provider of any such amendment, including the terms thereof, and Provider shall have fifteen (15) days to object to the amendment. If no objection is received by the IPA within fifteen (15) days, the amendment shall become part of this Agreement, effective on the date of the IPA notice. Each such amendment shall be attached hereto in Exhibit 8.10. If Provider objects to an amendment within fifteen days of notice, this Agreement shall be terminated, effective on the date of IPA’s notice of the amendment.

*(The remainder of this page has been intentionally left blank.)*
IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below:

IPA
By: ____________________________
Printed Name: ____________________________
Title: ____________________________
Date of Signature: ______________

PROVIDER
By: ____________________________
Printed Name: ____________________________
Title: ____________________________
Date of Signature: ______________
Address for notice: ____________________________

____________________________________
____________________________________
____________________________________
EXHIBIT 1.1

Dental MCOs

MCNA Dental
EXHIBIT 1.2

Dental Service Goals

a. Increase the percentage of Medicaid beneficiary-patients who receive preventative care.
b. Increase the number of Medicaid beneficiary-children who receive care.
c. Increase the number of Medicaid beneficiary-children receiving care in Dental Care Health Professional Shortage Areas.
EXHIBIT 1.5

For questions about this form, contact Emily Grey at 225-381-8011 or Emily.grey@bswlp.com

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EXHIBIT 2.1

Payment Enhancement Protocols
Effective January 1, 2020

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<th>a. Increase the percentage of Medicaid beneficiary-patients who receive preventative care</th>
<th>30% of available funding will be distributed to participating dentists, pro rata, in proportion to the total payments made by the MCO for preventative care to Medicaid beneficiaries</th>
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<td>b. Increase the number of Medicaid beneficiary-children who receive care</td>
<td>40% of available funding will be distributed to participating dentists, pro rata, in proportion to the total payments made by the MCO for services to Medicaid beneficiary-children</td>
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<td>c. Increase the number of Medicaid beneficiary-children receiving care in Dental Care Health Professional Shortage Areas</td>
<td>30% of available funding will be distributed to participating dentists, pro rata, in proportion to the total payments made by the MCO for services to Medicaid beneficiaries provided in Dental Care Health Professional Shortage Areas</td>
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All supplemental payments will be cumulative. Therefore, preventative care services provided to Medicaid beneficiary-children in Dental Care Health Professional Shortage Area shall be entitled to supplemental payments in all three categories.
EXHIBIT 2.3.9

Provider’s W-9 Attached
EXHIBIT 3.2

Additional Services Provided by IPA

1) Coordinating with LDH, the Louisiana Dental Association, the MCOs including MCNA, UL and LSUSD with matters related to the FMP Program and this Dental Services Agreement.
EXHIBIT 8.10

Amendments