



# Delta Dental Service Contract For City of Durham

This Service Contract ("Contract") is entered into by and between City of Durham (the "Contractor") and Delta Dental of North Carolina, a North Carolina non-profit corporation ("Delta Dental"). Delta Dental agrees to perform claims administration services for the Contractor's self-funded dental benefit plan. Contractor and Delta Dental may be singularly referred to herein as "Party" and collectively referred to herein as the "Parties."

This is a legally binding contract between the Contractor and Delta Dental and is effective on September 1, 2015, the ("Effective Date").

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## ***SECTION I - DECLARATIONS***

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The benefits afforded are only with respect to such benefits as are indicated in this Contract, including the Summary of Dental Plan Benefits. Delta Dental's liability is limited to the benefits stated herein; subject to all the terms of this Contract having reference thereto. This Declarations Section and the Summary of Dental Plan Benefits supersedes any contrary provision of the subsequent sections of this Contract.

- A. **Effective Date:** 12:01 A.M. Standard Time, September 1, 2015
- B. **First Renewal Date:** September 1, 2018
- C. **Client Number:** 1024 – sub group structure to be determined
- D. **Rate(s):** See Addendum
- E. **Performance Guarantee(s):** See Addendum

### **DELTA DENTAL OF NORTH CAROLINA**

### **CONTRACTOR**

**BY:** \_\_\_\_\_  
President and CEO

**BY:** \_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Title)

**BY:** \_\_\_\_\_  
(Witnessed By)

\_\_\_\_\_  
(Title)

**DATE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

# ADDENDUM

City of Durham  
1024-sub group structure to be determined  
September 1, 2015

## **D. Rate(s):**

**Administrative Service Fee:**  
**September 1, 2015 through August 31, 2018**  
Composite - \$3.31 per month per Subscriber

This rate is contingent upon the enrollment of a minimum of 90 percent of the eligible members of the defined group and their eligible dependents with 50 percent of the cost paid by the Contractor. In addition to the Administrative Service Fee, Delta Dental shall invoice Contractor for Cost of Claims for the preceding week every Tuesday. Payment shall be due via Electronic Funds Transfer on or before Friday of that week.

Rates do not include any applicable claims taxes.

These rates assume that claims from nonparticipating dentists will be paid using our national Table 90.

## **E. Performance Guarantee(s):**

Performance Guarantees

The following Performance Guarantees have been agreed to by both parties.

In the event this Agreement is terminated by either party before its First Renewal Date, these Performance Guarantees are null and void. These Performance Guarantees will only be tracked, reported, and paid on a calendar-year basis for each full calendar year that this Agreement is in effect. In addition, if Delta Dental's performance meets or exceeds the guaranteed performance for three consecutive years, Delta Dental will have no further liability for tracking, reporting, or refunding administration costs for Performance Guarantees.

The total refund in any calendar year will not exceed 50 percent of Contractor's total annual administration costs. Total annual administration costs equal the annual exposure multiplied by the per Subscriber administration cost, excluding commissions, if payable.

### **1. Turnaround Time Guarantee**

Delta Dental guarantees to process 85 percent of all dental claims for all Contractors within ten business days (measured from the date a completed claim is received to the date it is adjudicated in the claim system or denied).

If Delta Dental does not meet this guarantee each calendar year, Delta Dental will refund one percent of the Contractor's total annual administration costs for each one percent below the 85 percent goal.

### **2. No Balance Billing Guarantee**

When Dentists sign contracts to participate with Delta Dental, they agree to accept Delta Dental's determination of payment as the full fee for covered services. If a Participating Dentist's Submitted Fee is higher than the amount that Delta Dental's approves, they agree not to charge the difference to Subscribers (or "balance bill" Subscribers). Delta Dental guarantees Subscribers will never have to pay that difference.

If a Subscriber is balance billed by a Participating Dentist, Delta Dental guarantees to investigate each occurrence and, when appropriate, to make the Subscriber whole.

3. Smooth Conversion Guarantee

Delta Dental guarantees to implement the Contractor's Delta Dental plan within a mutually agreed-upon schedule and to the Contractor's satisfaction.

If the agreed-upon schedule is not strictly adhered to and the Contractor is not completely satisfied with Delta Dental's implementation, as indicated by a grade of B or above on Delta Dental's implementation report card, Delta Dental will waive one month's administration cost for the month following the month in which the grade is received. This guarantee is only applicable to the first year of the contract.

4. Telephone Average Speed of Answer Guarantee

Delta Dental guarantees that the annual average speed of answer of all calls to Delta Dental's customer service department will be 25 seconds or less.

If Delta Dental does not meet this guarantee each calendar year, Delta Dental will refund one percent of the Contractor's total annual administration costs for each second above 25 seconds.

5. Telephone Abandonment Rate Guarantee

Delta Dental guarantees that the annual call abandonment rate for Delta Dental's customer service department (or the rate of callers who hang up before their call is answered) will be five percent or less.

If Delta Dental does not meet this guarantee each calendar year, Delta Dental will refund one percent of the Contractor's total annual administration costs for each one percent that the call abandonment rate exceeds the five percent goal.

6. Claims Financial Accuracy Guarantee

Delta Dental guarantees that the financial accuracy rate, measured as the total claim dollars paid correctly divided by the total claim dollars audited in a statistically valid sample from all claims paid from all groups, with errors including the absolute value of all overpayments and underpayments, will be at least 99 percent.

If Delta Dental does not meet this guarantee each calendar year, Delta Dental will refund one percent of the Contractor's total annual administration costs for each one percent of claims paid below the 99 percent goal.

7. Claims Payment Accuracy Guarantee

Delta Dental guarantees that the payment accuracy rate, measured as the number of claims paid correctly divided by the number of claims audited in a statistically valid sample from all claims paid from all groups, with errors including all overpayments, underpayments, and dollars paid to the wrong payee, will be at least 97 percent.

If Delta Dental does not meet this guarantee each calendar year, Delta Dental will refund one percent of the Contractor's total annual administration costs for each one percent of claims paid below the 97 percent goal.

8. Claims Processing Accuracy Guarantee

Delta Dental guarantees that the processing accuracy rate, measured as the number of correctly processed paid claims divided by the total number of claims audited in a statistically valid sample from all claims paid from all groups, will be at least 95 percent. The processing accuracy rate measures all types of errors, not just financial errors.

If Delta Dental does not meet this guarantee each calendar year, Delta Dental will refund one percent of the Contractor's total annual administration costs for each one percent of claims paid below the 95 percent goal.

9. Satisfactory Account Management Guarantee

Delta Dental guarantees that the Contractor will be satisfied with the management of the account.

If the Contractor is not completely satisfied with its account management each calendar year as indicated by a grade of B or above on Delta Dental's annual account management report card, Delta Dental will refund five percent of the Contractor's total annual administration costs.

10. Panel Savings Guarantee

Delta Dental guarantees that the Contractor's annual savings from fee and policy reductions, as reported on the Contractor's annual Treatment Savings report, will be at least 12 percent.

This percentage will be calculated by dividing (a) the sum of Fees not Allowed Due to Processing Policies, Fee Reduction (both Member and Non-member Dentists), and Savings from Dental Consultant Review by (b) total charges less Invalid Claims and All Other Savings.

If Delta Dental does not meet this guarantee each calendar year, Delta Dental will refund any deficit where the Contractor's actual annual percentage as defined above is not at least 12 percent, up to a maximum of 25 percent of the Contractor's total annual administration costs.

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## ***SECTION II - DEFINITIONS***

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The following words and terms have the following meanings unless the context or use clearly indicates another meaning or intent. Capitalized words and terms not defined below are defined in the Certificate.

**ADMINISTRATIVE SERVICE FEE** means the fee charged by Delta Dental for the administrative services performed under this Contract.

**BENEFITS** means payment for Covered Services that have been selected by the Contractor's Dental Plan.

**BENEFIT MANAGER TOOLKIT** means Delta Dental's online portal used for eligibility updates and Dental Plan information.

**CERTIFICATE** means the accompanying Certificate and Summary of Dental Plan Benefits, which explain the Benefits of the Contractor's self-funded plan, and which are hereby incorporated by reference.

**CLAIM** means a request for payment for a Covered Service under the Certificate for Subscriber or Eligible Dependent during the term of this Contract.

**COBRA** means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

**CONTRACT** means this document and any addendums and exhibits attached hereto, the amendments, the applicable Certificate and endorsements thereto and the materials submitted by the Contractor in applying for coverage, which are hereby incorporated by reference.

**COST OF CLAIMS** means the total amount of Claims paid by Delta Dental and charged to the Contractor.

**COVERED SERVICE** means a service or supply covered under Contractor's Dental Plan as set forth in the Certificate.

**DENTAL PLAN** means the group dental plan established by Contractor.

**ERISA** means the Employee Retirement Income Security Act of 1974, as amended.

**PLAN PARTICIPANT** means any Subscriber or Eligible Dependents enrolled in the Dental Plan.

**SUMMARY OF DENTAL PLAN BENEFITS** means a description of the specific provisions of your group dental coverage. The Summary of Dental Plan Benefits is and should be read as a part of the Certificate, and supersedes any contrary provision of the Certificate.

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## ***SECTION III - ERISA***

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Contractor, or a person designated by Contractor (other than Delta Dental), shall be the Named Fiduciary of the Contractor's Dental Plan as that term is defined by ERISA §402(a)(2). To the extent Contractor has delegated to Delta Dental the responsibility and discretionary authority to make final claims determinations, Delta Dental shall be the named fiduciary with respect to such determinations. Any determination or interpretation made by Delta Dental pursuant to this authority is binding on the Plan Participant and the Contractor unless it is demonstrated that the determination was arbitrary and capricious. In the event final claims determinations are made by any other entity, Delta Dental shall not be a fiduciary with respect to such determinations. Except as otherwise stated herein, Delta Dental shall not have any further discretionary authority or control respecting the management of the Dental Plan or the Dental Plan's assets, if any, and the Contractor retains all responsibility and authority, including all other fiduciary responsibilities, as defined in ERISA, for operation of the Dental Plan.

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## ***SECTION IV - PATIENT PROTECTION AND AFFORDABLE CARE ACT***

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To the extent the Dental Plan is subject to Patient Protection and Affordable Care Act (“PPACA”), the Parties shall mutually agree upon their respective obligations.

Contractor shall be solely responsible for determining and notifying Delta Dental of PPACA’s applicability. Contractor shall hold Delta Dental harmless for any failure to comply with Contractor’s obligations under this Section.

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## ***SECTION V - ELIGIBILITY AND ENROLLMENT***

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- A. Contractor shall have sole responsibility for determining the eligibility of, and shall manage the enrollment, disenrollment, and contribution obligations of all Plan Participants.
- B. As a condition of enrollment, the Contractor shall require all Plan Participants to provide Delta Dental with all information needed to process claims and administer Benefits. Such information may include, but not be limited to, the Plan Participant’s dental records. In the event a Plan Participant fails and/or refuses to provide Delta Dental with requested information, Delta Dental may place the Plan Participant’s coverage on hold.
- C. Contractor shall provide Delta Dental with an initial eligibility upload of all Plan Participants. Such eligibility upload shall be in a form and format acceptable to Delta Dental. Thereafter, Contractor shall provide Delta Dental with eligibility updates on an as needed basis, which in no event shall be less than monthly. Contractor shall promptly respond to any requests for information made by Delta Dental concerning the eligibility of a Plan Participant.
- D. Contractor shall be solely responsible for the accuracy and delivery of all eligibility information submitted to Delta Dental. Delta Dental shall not be liable for any losses or damages resulting from eligibility information provided by Contractor and/or any other third party.
- E. No retroactive eligibility updates will be accepted for an effective date more than 90 days from the date of notification. If the Contractor requests that a Subscriber’s eligibility be terminated retroactively and a claim was incurred for that Subscriber or that Subscriber’s Eligible Dependent after the requested termination date, the Subscriber’s eligibility will continue until the end of the month in which the claim occurred.
- F. Upon reasonable prior written notice, Delta Dental shall have the right to audit the accuracy of Contractor’s eligibility information. Contractor’s refusal to permit such audit shall be deemed a material breach of this Contract.
- G. Contractor shall be solely responsible for identifying Plan Participants entitled to COBRA continuation benefits. Contractor shall provide all required notices, collect all necessary payments, and otherwise administer all facets of its COBRA program. In the event that Contractor continues to provide eligibility information to Delta Dental for a Plan Participant during the COBRA election period, as opposed to terminating coverage and then retroactively reinstating a Plan Participant upon the Plan Participant’s election of COBRA coverage, Contractor shall be liable for any Claim paid during that period if the Plan Participant ultimately does not elect COBRA coverage.

Not all employers are subject to the continuation coverage requirements contained in COBRA. For those that are not, this Section does not apply. Contractor should consult with their legal counsel to determine how and when the law applies.

- H. In the event that a Plan Participant undergoes a change in eligibility, Contractor must notify Delta Dental of such change. Any failure by Contractor to provide timely notice of eligibility changes may result in Benefits being improperly administered. Contractor shall be solely responsible for such failures. Contractor must notify Delta Dental immediately for any change in a Plan Participant's eligibility. In the event Contractor does not notify Delta Dental immediately, Contractor shall be responsible for any paid Claims.
- I. If the Contractor elects to transmit eligibility information via the Benefit Manager Toolkit, Contractor shall execute all proper authorization forms prior to accessing Delta Dental's systems.
- J. Delta Dental will deliver to the Contractor a Certificate for each Subscriber, unless otherwise agreed to in writing by the Parties.
- K. The Contractor will timely distribute to each of its Subscribers the Certificates and other information provided by Delta Dental regarding the Benefits available under this Contract, unless otherwise agreed to in writing by the Parties.
- L. Delta Dental shall furnish the Contractor with enrollment forms and related informational materials necessary and appropriate to enroll the Contractor's Plan Participants. Delta Dental shall provide reasonable assistance to Contractor on an as needed basis during the enrollment process.
- M. In the event of any material changes in enrollment or composition of Plan Participants or if invoices are not paid as billed, unless otherwise agreed to in writing, Delta Dental shall have the right in its sole discretion to either:
  - 1. Propose an adjustment to the Administrative Service Fee; or
  - 2. Terminate this Contract pursuant to Section X. If the proposed adjustment to the Administrative Service Fee is not accepted by Contractor within 30 days of receipt of the proposed adjustment, Delta Dental reserves the right to terminate this Contract.

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## ***SECTION VI - BENEFITS***

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- A. Delta Dental shall administer and make payment for Benefits in accordance with this Contract and the Certificate attached hereto. Contractor may request changes to the Benefits available to Plan Participants by submitting the request in writing to Delta Dental. Changes to Benefits are subject to Delta Dental's approval and may cause an increase to the Administrative Service Fee. Any changes to Benefits must be agreed to in writing by Delta Dental prior to implementation.

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## ***SECTION VII - DELTA DENTAL NETWORK***

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- A. Delta Dental shall provide Plan Participants with an established network of dentists ("Participating Dentists") who have agreed to accept Delta Dental's Maximum Approved Fees for Covered Services. With exception of Copayments and Deductibles, Participating Dentists shall not charge Plan Participants for any amounts that exceed the Maximum Approved Fee. Delta Dental has complete discretion when setting the Maximum Approved Fees.
- B. Delta Dental shall ensure that there are an adequate number of qualified and credentialed Participating Dentists. All Participating Dentists are required to adhere to Delta Dental credentialing, quality assurance and claims processing policies.
- C. Delta Dental is under no obligation to contract with any particular dentist and/or maintain any particular Participating Dentist in its network. In addition, Delta Dental is under no obligation to recommend or refer any dentist to a Plan Participant.

- D. Contractor acknowledges and agrees that:
1. Delta Dental does not provide, direct, or control the provision of dental services to Plan Participants.
  2. All decisions regarding dental services are made solely by the Plan Participant and his or her dentist; and
  3. Delta Dental does not guarantee that the dental services received by a Plan Participant from his or her dentist will be rendered in accordance with generally accepted standards or procedures.

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## ***SECTION VIII - CLAIMS AND APPEALS***

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- A. Delta Dental will adjudicate and process all clean Claims submitted for Contractor's Dental Plan, in accordance with this Contract, the Certificate and Delta Dental's standard operating procedures.
- B. Subject to the terms of this Contract, Delta Dental has complete discretion to process Claims received under Contractor's Dental Plan. As such, Delta Dental shall, without limitation, make determinations regarding:
1. Coordination of benefits.
  2. The applicability of Benefit waiting periods, limitations and exclusions.
  3. The quality of care provided to Plan Participants by a treating dentist; and
  4. The appropriateness and/or necessity of services performed by a treating dentist.
- C. Delta Dental shall provide Pre-Treatment Estimates to Plan Participants and Participating Dentists upon request as set forth in the Certificate. A Pre-Treatment Estimate is a voluntary and optional process where Delta Dental issues a written estimate of Benefits that may be available under the Dental Plan. A Pre-Treatment Estimate is not a prerequisite or condition for approval of future Benefits payment. Receipt of a Pre-Treatment Estimate does not guarantee payment or coverage, and is not a formal adjudication of a Claim. Pre-Treatment Estimates do not assess whether a Plan Participant is specifically eligible for a Covered Service or whether he or she has reached any applicable annual or lifetime maximum payments under the Dental Plan.
- D. Delta Dental will follow established procedures for resolving all adverse Claims determination questions asserted by a dentist, Contractor, or Plan Participant as set forth in the Certificate ("Claims Appeal Procedure"). The Claims Appeal Procedure shall contain processes for appealing initial adverse determinations made by Delta Dental. To the extent the Dental Plan is governed by ERISA, Delta Dental's procedures shall comply with ERISA and any regulations or guidelines thereunder. All determinations made according to the Claims Appeal Procedure will be final and binding on the Participating Dentist, the Contractor, and the Plan Participant; provided, however, that the Plan Participant may exercise any additional legal rights he or she may have.
- E. Payments made directly to a Plan Participant as reimbursement for Covered Services under the Dental Plan are for the personal benefit of such Plan Participant and cannot be transferred or assigned. Delta Dental shall not honor attempts to assign Benefits unless required to by law.
- F. Delta Dental shall use reasonable efforts to recover any overpayments on Contractor's behalf. Delta Dental is under no obligation to engage in litigation in an attempt to recover such payments. Any funds recovered by Delta Dental will be properly credited to Contractor.
- G. Delta Dental does not insure or underwrite risk for Claims submitted on behalf of Plan Participants. The Contractor retains sole responsibility for all Claims paid.

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## ***SECTION IX - PAYMENT***

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- A. The Contractor agrees to reimburse Delta Dental for the actual Cost of Claims and the invoiced Administrative Service Fee as set forth in the Declarations Section of this Contract. Delta Dental shall not be obligated to accept partial or late payments and acceptance of a partial or late payment will not waive Delta Dental's remedies under this Contract, or otherwise modify the terms herein.
- B. The Contractor shall maintain funds necessary to satisfy its obligations under this Contract.
- C. Payment for Administrative Service Fees shall be due on the fifth of each month. An invoice for the current month's Administrative Service Fees shall be sent on or about the third week of the preceding month.
- D. The Contractor is responsible for the full amount of all invoices regardless of any contribution owed by the Plan Participants to the Contractor. Delta Dental shall not be responsible for collecting any contributions from Plan Participants.
- E. If required by Delta Dental, Contractor shall deposit an amount specified in the Declarations Section of this Contract ("Prefund") with Delta Dental. The Prefund shall serve as a deposit to offset against any untimely or partial payments from Contractor. In the event Delta Dental uses any of the Prefund to offset untimely or partial payments, Delta Dental shall submit an invoice to the Contractor in the amount necessary to replenish the Prefund. If the Contractor fails to timely replenish the Prefund, Delta Dental shall be entitled to all remedies set forth in Section XII.

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## ***SECTION X - TERM AND TERMINATION***

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- A. The term of this Contract shall be as specified in the Declarations Section. Upon completion of the initial term or any subsequent renewal term, Delta Dental shall submit a renewal letter to the Contractor. Such renewal letter shall contain the new term of the Contract as well as any proposed modifications to the terms and conditions contained herein. Execution of the letter or payment to Delta Dental shall constitute acceptance of the renewal terms.
- B. In the event of a Party's material breach, either Party may terminate this Contract following 30 days' advance written notice and opportunity to cure.
- C. This Contract may be terminated by either Party without cause upon 90 days' written notice to the other Party.
- D. There shall be a six month run-out period for all Claims incurred prior to the termination date, except in cases where Delta Dental has terminated this Contract for cause. All Claims paid by Delta Dental during this run-out period shall be invoiced to the Contractor in accordance with Section IX of this Contract. Any Claims for services rendered after the termination date shall be denied. After the conclusion of the six month run out period, Claims shall be denied and Delta Dental shall not have any further obligations to the Contractor.
- E. Following the Claims run-out period, Delta Dental shall prepare a final settlement statement and invoice for Contractor. Such settlement statement and invoice shall detail the final amounts due and owing between the Parties including, to the extent applicable, any remaining Prefund deposited by the Contractor, all outstanding Administrative Service Fees and all remaining Claims payments made during the run-out period.
- F. Any false or misleading statements made by Contractor shall be considered a material breach of this Contract.

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## ***SECTION XI - CONFIDENTIALITY AND DISCLOSURE***

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- A. The Parties have entered into a Business Associate Agreement regarding the permissible use and disclosure of Plan Participant's protected health information as that term is defined by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and all subsequent amendments thereto. The Business Associate Agreement is attached as an Addendum hereto.
- B. The Parties acknowledge that in the course of performing under this Contract each Party may be provided with or given access to information, in oral, recorded or written form, that is proprietary and confidential to the other Party (collectively referred to as the "Confidential Information"). Such Confidential Information includes, but is not limited to: information regarding the other Party's management, business, organizational structure, policies, procedures, business relationships, intellectual property, copyrights, patents, trademarks, software, data, databases, system designs, specifications, documentation, code, architecture, structure, algorithms, techniques, processes, protocols, product materials, notes, slides and ideas.
- C. Confidential Information shall not include any information that:
1. Is already known to the Party at the time of the disclosure (as evidenced by written documentation existing at that time).
  2. Is generally available to the public or becomes publicly known through no wrongful act of a Party; or
  3. Is received by a Party from a third-party who had a legal right to provide it.
- D. The Parties each will make all reasonable, necessary and appropriate efforts to safeguard each other's Confidential Information. Each Party will safeguard the other's Confidential Information to the same extent that it safeguards information relating to its own business, which in no event will be less than the safeguards that a reasonably prudent business would exercise under similar circumstances.
- E. The Parties each agree not to use, distribute or exploit each other's Confidential Information, in whole or in part, for its own benefit or that of any third party and will not disclose such Confidential Information to any other person, firm or entity without each other's prior written consent. A Party shall be responsible for any breach of this Contract by its employees or authorized subcontractors.
- F. Notwithstanding anything to the contrary in this Section, the Parties shall be permitted to disclose Confidential Information as required by order of a court of law, administrative agency, or other governmental body; provided, however, the Party shall provide reasonable advance written notice to the other Party in order to allow that Party the opportunity to seek a protective order or otherwise limit such disclosure, and the disclosing Party shall reasonably cooperate with the other Party to limit any such disclosure or to seek a protective order.

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## ***SECTION XII - RIGHTS AND REMEDIES***

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- A. In addition to the right of termination described in Section X, Delta Dental shall have the following rights and remedies in the event Contractor fails to timely pay in full any invoice from Delta Dental:
1. Delta Dental may immediately suspend payment of all Claims.
  2. Delta Dental may retroactively terminate coverage to the date it last received payment.
  3. Delta Dental may retroactively terminate this Contract to the date it last received payment; and
  4. Delta Dental may initiate proceedings to recover and collect all payments due and owing, as well as all costs associated with the collection proceedings including, but not limited to, attorneys' fees.

- B. Neither Party shall bring an action, claim or lawsuit against the other without first providing 30 days written notification and an opportunity to cure. In addition, no claim, lawsuit or action, may be brought more than three years after the claim first arose.
- C. Delta Dental's failure to exercise any right or remedy contained herein shall not constitute a waiver of any future rights or remedies available to Delta Dental.

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### ***SECTION XIII - GENERAL PROVISIONS***

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- A. **Subrogation.** The Contractor shall retain all subrogation rights resulting from Claims paid by Delta Dental. In the event the Contractor elects to pursue a subrogation matter, Delta Dental shall provide reasonable assistance to the Contractor. Such assistance shall be limited to providing the Contractor with documents, records and demand letters.
- B. **Right to Review Published Materials.** No materials will be published or distributed by the Contractor concerning this Contract until Delta Dental reviews and approves the materials.
- C. **Cooperation.** The Contractor shall provide Delta Dental with any information it may reasonably require to administer the Dental Plan or otherwise discharge its duties under this Contract.
- D. **Indemnification.**
  - 1. Each Party agrees to defend, indemnify, and hold harmless the other Party and its directors, officers, affiliates, agents, and employees (who are acting in the course of their employment, but not as claimants) from any loss, cost, or expense (including reasonable attorney fees and court costs) ("Losses") resulting from or arising out of or in connection with the indemnifying Party's breach of this Contract, or any negligent act or omission of any of the indemnifying Party's directors, officers, agents or employees, unless liability for such act or omission is expressly assigned elsewhere in this Contract.
  - 2. The indemnifying Party shall provide prompt written notice of relevant information concerning any Losses to the other Party. Reasonable assistance (at the indemnifying Party's expense) may be requested by the other Party in connection with the defense of any Losses. Notwithstanding the foregoing:
    - a. The other Party shall not settle any Losses without the consent of indemnifying Party, which consent shall not be unreasonably withheld, and
    - b. The indemnification obligations of indemnifying Party hereunder shall not extend to Losses attributable solely to the gross negligence, intentional misconduct, or willful malfeasance of the other Party.
- E. **Notice.** Any notice required or permitted to be given under this Contract will be considered given if in writing and personally delivered, or if in writing and deposited in the United States mail with postage prepaid, addressed to the other Party at its last address of record.
- F. **Survival.** The following Sections shall survive expiration or early termination of this Contract: Section IX. Payment; Section XI. Confidentiality & Disclosure; Section XII. Rights and Remedies; and Section XIII. General Provisions.
- G. **Internal Policies and Procedures.** Delta Dental has the right to amend its internal policies and procedures periodically and without notice to the Contractor to the extent the amendment does not affect the delivery of benefits to Plan Participants. Delta Dental will provide advance written notice, to the extent possible, to Contractor of any amendment to Delta Dental's policies or procedures that affect the delivery of benefits to Plan Participants; if advance notice is not possible, Delta Dental will provide written notice as soon as possible after the amendment is adopted.

- H. **Third Party Beneficiaries.** This Contract will not confer any rights or remedies on any third-party, other than the Parties to this Contract and their respective successors and permitted assigns.
- I. **Assignment and Subcontracting.** Unless it has first obtained the written consent of the other Party, neither Party may assign this Contract or any of its rights or obligations under this Contract to any other person, except that Delta Dental may make assignments to its subsidiaries and affiliates without the prior written consent of the Contractor.
- J. **Integration.** This Contract constitutes the entire understanding between the Parties with respect to the subject matter of this Contract and supersedes any prior discussions, negotiations, agreements and understandings.
- K. **Force Majeure.** Neither Delta Dental (including its agents, directors, officers, and employees) nor Contractor shall be liable for delays in performance due to circumstances beyond their reasonable control. Each Party shall be excused from performance under this Contract and shall have no liability to the other Party for any period during which it is prevented from performing any of its obligations (other than payment obligations), in whole or in part, as a result of delays caused by the other Party or by an act of God, war, terrorism, civil unrest, civil disturbance, court order, labor dispute, or other cause beyond its reasonable control, including failures or fluctuations in electrical power, heat, light, or telecommunications, and such nonperformance shall not be a default under or grounds for termination of this Contract. In the event Contractor is unable to make payment due to circumstances beyond its reasonable control as identified in this Force Majeure section, Delta Dental will accept delayed payment from Contractor within a reasonable period of time. A reasonable period of time shall not exceed 30 days.
- L. **Applicable Law.** This Contract and the obligations of the Parties under this Contract will be governed by and construed in accordance with ERISA to the extent applicable. If it is determined by a court of competent jurisdiction that ERISA does not apply, the law of the State of North Carolina will control.
- M. **Venue.** The Parties submit to the jurisdiction and venue of the courts of the State of North Carolina.
- N. **Severability.** If any part of this Contract or an amendment of it is found by an arbitrator, court, or other authority to be illegal, void or not enforceable, all other portions of this Contract shall remain in full force and effect.
- O. **Counterparts.** This Contract may be executed in one or more counterparts, each of which will be deemed an original agreement, but all of which will be considered one instrument and will become a binding agreement when one or more counterparts have been signed by each of the Parties and delivered to the other.
- P. **Audits.** To allow the Contractor the right to audit its files, books, and records (both paper and electronic) pertaining to services provided. The Contractor will bear the entire cost of any such audits. The Contractor may assign this right to audit to an agent, provided the agent is a licensed firm and the audit is led by an individual who holds a nationally recognized audit accreditation. Delta Dental will allow the Contractor or the Contractor's agent to audit the work areas at which services under this Contract are performed, within 14 business days of receipt of a fully-signed Authorization, Hold Harmless and Indemnification Agreement. Where applicable, Delta Dental agrees to segregate the Contractor's records from third-party records in order to allow accurate assessment of Contractor-specific processes. Such audits will take place no more than once in a 12-month period, unless both the Contractor and Delta Dental mutually agree that there is reasonable cause to conduct an audit more frequently, in which case the Contractor will give 14 business days' written notice before such audit. During the audit, if claims samples are selected using a financially stratified methodology, the results will be extrapolated to the entire population of claims during the audit period using a weighted average method for each category.



## Delta Dental PPO plus Premier Summary of Dental Plan Benefits For Group# 1024 City of Durham

This Summary of Dental Plan Benefits should be read along with your Certificate. Your Certificate provides additional information about your Delta Dental plan, including information about plan exclusions and limitations. If a statement in this Summary conflicts with a statement in the Certificate, the statement in this Summary applies to you and you should ignore the conflicting statement in the Certificate. The percentages below are applied to Delta Dental's allowance for each service and it may vary due to the dentist's network participation.\*

**Control Plan** – Delta Dental of North Carolina

**Benefit Year** – September 1 through August 31

**Covered Services** –

	Delta Dental PPO Dentist Plan Pays	Delta Dental Premier Dentist Plan Pays	Nonparticipating Dentist Plan Pays*
<b>Diagnostic &amp; Preventive</b>			
<b>Diagnostic and Preventive Services</b> – exams, cleanings, and fluoride	100%	100%	100%
<b>Emergency Palliative Treatment</b> – to temporarily relieve pain	100%	100%	100%
<b>Sealants</b> – to prevent decay of permanent teeth	100%	100%	100%
<b>Brush Biopsy</b> – to detect oral cancer	100%	100%	100%
<b>Radiographs</b> – X-rays	100%	100%	100%
<b>Basic Services</b>			
<b>Space Maintainers</b> – appliances to prevent tooth movement	80%	80%	80%
<b>Minor Restorative Services</b> – fillings	80%	80%	80%
<b>Endodontic Services</b> – root canals	80%	80%	80%
<b>Oral Surgery Services</b> – extractions and dental surgery	80%	80%	80%
<b>Other Basic Services</b> – misc. services	80%	80%	80%
<b>Relines and Repairs</b> – to bridges, implants, and dentures	80%	80%	80%
<b>Major Services</b>			
<b>Periodontic Services</b> – to treat gum disease	50%	50%	50%
<b>Major Restorative Services</b> – crowns	50%	50%	50%
<b>Prosthodontic Services</b> – bridges, implants, and dentures	50%	50%	50%
<b>Orthodontic Services</b>			
<b>Orthodontic Services</b> – braces	50%	50%	50%
<b>Orthodontic Age Limit</b> –	Up to age 19	Up to age 19	Up to age 19

\* When you receive services from a Nonparticipating Dentist, the percentages in this column indicate the portion of Delta Dental's Nonparticipating Dentist Fee that will be paid for those services. The Nonparticipating Dentist Fee may be less than what your dentist charges and you are responsible for that difference.

- Oral exams (including evaluations by a specialist) are payable twice per benefit year.
- Prophylaxes (cleanings) are payable twice per benefit year.
- People with specific at-risk health conditions may be eligible for additional prophylaxes (cleanings) or fluoride treatment. The patient should talk with his or her dentist about treatment.
- Fluoride treatments are payable twice per benefit year for people up to age 19.

- Space maintainers are payable once per area per lifetime for people up to age 14.
- Bitewing X-rays are payable twice per benefit year and full mouth X-rays (which include bitewing X-rays) are payable twice in any five-year period.
- Sealants are payable once per tooth per lifetime for the occlusal surface of first and second permanent molars up to age 16. The surface must be free from decay and restorations.
- Composite resin (white) restorations are covered on posterior teeth.
- Porcelain and resin facings on crowns are optional treatment on posterior teeth.
- Implants and implant related services are payable once per tooth in any five-year period.

Having Delta Dental coverage makes it easy for you to get dental care almost everywhere in the world! You can now receive expert dental care when you are outside of the United States through our Passport Dental program. This program gives you access to a worldwide network of dentists and dental clinics. English-speaking operators are available around the clock to answer questions and help you schedule care. For more information, check our Web site or contact your benefits representative to get a copy of our Passport Dental information sheet.

**Maximum Payment** – \$3,000 per person total per Benefit Year on all services except orthodontics. \$1,500 per person total per lifetime on orthodontic services.

**Deductible** – \$50 Deductible per person total per Benefit Year limited to a maximum Deductible of \$150 per family per Benefit Year. The Deductible does not apply to diagnostic and preventive services, emergency palliative treatment, X-rays, sealants, brush biopsy and orthodontic services.

**Waiting Period** – Employees who are eligible for dental benefits are covered as defined by the Contractor.

**Eligible People** – All eligible employees who have met the eligibility requirements as established by the Contractor who choose the dental plan. The Contractor and Subscriber share the cost of this plan.

Also eligible are your legal spouse and your children to age 26, including your children who are married, who no longer live with you, who are not your dependents for Federal income tax purposes, and/or who are not permanently disabled. You and your eligible dependents must enroll for a minimum of 12 months. If coverage is terminated after 12 months, you may not re-enroll prior to the open enrollment that occurs at least 12 months from the date of termination. Your dependents may only enroll if you are enrolled (except under COBRA) and must be enrolled in the same plan as you. Plan changes are only allowed during open enrollment periods, except that an election may be revoked or changed at any time if the change is the result of a qualifying event as defined under Internal Revenue Code Section 125.

If you and your spouse are both eligible for coverage under this Contract, you may be enrolled together on one application or separately on individual applications, but not both. Your dependent children may only be enrolled on one application. Delta Dental will not coordinate benefits if you and your spouse are both covered under this Contract.

Benefits will cease on the last day of the month in which the employee is terminated.



# Delta Dental PPO<sup>SM</sup>

Our national PPO program

## Welcome!

Your dental program is administered by Delta Dental of North Carolina, a North Carolina nonprofit health service plan corporation. Delta Dental of North Carolina is the state’s dental benefits specialist. Good oral health is a vital part of good general health, and your Delta Dental program is designed to promote regular dental visits. We encourage you to take advantage of this program by calling your Dentist today for an appointment.

This Certificate, along with your Summary of Dental Plan Benefits, describes the specific benefits of your Delta Dental program and how to use them. If you have any questions about this program, please call our Customer Service department at (800) 662-8856 or access our website at [www.deltadentalnc.com](http://www.deltadentalnc.com).

You can easily verify your own benefit, claims and eligibility information online 24 hours a day, seven days a week by visiting [www.deltadentalnc.com](http://www.deltadentalnc.com) and selecting the link for our Consumer Toolkit. The Consumer Toolkit will also allow you to print claim forms and ID cards, select paperless Explanation of Benefits statements (EOBs), search our Dentist directories, and read oral health tips.

We look forward to serving you!

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**Note:** Please read this Certificate together with the Summary of Dental Plan Benefits. The Summary of Dental Plan Benefits lists the specific provisions of your group dental plan. If a statement in the Summary conflicts with a statement in this Certificate, the statement in the Summary applies to This Plan and you should ignore the conflicting statement in this Certificate.



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## I. Delta Dental PPO Certificate

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Delta Dental of North Carolina, referred to herein as Delta Dental, issues this Certificate to you, the Subscriber. The Certificate is a summary of your dental benefits coverage. It reflects and is subject to a contract between Delta Dental and your employer or organization.

The Benefits provided under This Plan may change if any state or federal laws change.

Delta Dental agrees to provide Benefits as described in this Certificate and the Summary of Dental Plan Benefits.

All the provisions in the following pages form a part of this document as fully as if they were stated over the signature below.

IN WITNESS WHEREOF, this Certificate is executed at Delta Dental's home office by an authorized officer.



Curtis R. Ladig, CPA  
President and CEO  
Delta Dental of North Carolina

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## II. Definitions

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### Adverse Benefit Determination

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Any denial, reduction or termination of the benefits for which you filed a claim. Or a failure to provide or to make payment (in whole or in part) of the benefits you sought, including any such determination based on eligibility, application of any utilization review criteria, or a determination that the item or service for which benefits are otherwise provided was experimental or investigational, or was not medically necessary or appropriate.

### Benefit Year

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The calendar year, unless your employer or organization elects a different period to serve as the

Benefit Year. (See the Summary of Dental Plan Benefits for your Benefit Year.)

### Benefits

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Payment for the Covered Services that have been selected under This Plan.

### Certificate

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This document. Delta Dental will provide Benefits as described in this Certificate. Any changes in this Certificate will be based on changes to the contract between Delta Dental and your employer or organization.

### Children or Child

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Your natural Children, stepchildren, adopted Children, foster Children, Children by virtue of legal guardianship, or Children who are residing with you during the waiting period for adoption or legal guardianship.

### Completion Dates

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The date that treatment is complete. Some procedures may require more than one appointment before they can be completed. Treatment is complete:

- ◆ For dentures and partial dentures, on the delivery dates;

- ◆ For crowns and bridgework, on the permanent cementation date;
- ◆ For root canals and periodontal treatment, on the date of the final procedure that completes treatment.

### Control Plan (Delta Dental)

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Delta Dental acts as the Control Plan for your contract. The Control Plan will provide all claims processing, service, and administration for your group. The Control Plan is referred to as Delta Dental in this document.

### Copayment

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The percentage of the charge, if any, that you must pay for Covered Services.

### Covered Services

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The unique dental services selected for coverage as described in the Summary of Dental Plan Benefits and subject to the terms of this Certificate.

### Deductible

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The amount a person and/or a family must pay toward Covered Services before Delta Dental begins paying for those services under this Certificate. The Summary of Dental Plan Benefits lists the Deductible that applies to you, if any.

### Delta Dental

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Delta Dental of North Carolina, a nonprofit health service plan corporation providing dental benefits. Delta Dental is not an insurance company.

### Delta Dental Plan

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An individual dental benefit plan that is a member of the Delta Dental Plans Association, the nation's largest, most experienced system of dental health plans.

### Delta Dental PPO

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Delta Dental's national preferred provider organization program that can reduce your out-of-pocket expenses if you receive care from a Delta Dental PPO Dentist.

### Delta Dental Premier®

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Delta Dental's national managed fee-for-service dental benefits program.

### Dentist

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A person licensed to practice dentistry in the state or jurisdiction in which dental services are performed.

- ◆ **Delta Dental PPO Dentist ("PPO Dentist")** – a Dentist who has signed an agreement with the Delta Dental Plan in his or her state to participate in Delta Dental PPO.
- ◆ **Delta Dental Premier Dentist ("Premier Dentist")** – a Dentist who has signed an agreement with the Delta Dental Plan in his or her state to participate in Delta Dental Premier.
- ◆ **Nonparticipating Dentist** – a Dentist who has not signed an agreement with any Delta Dental Plan to participate in Delta Dental PPO or Delta Dental Premier.
- ◆ **Out-of-Country Dentist** – A Dentist whose office is located outside the United States and its territories. Out-

of-Country Dentists are not eligible to sign participating agreements with Delta Dental.

PPO Dentists and Premier Dentists are sometimes collectively referred to herein as **“Participating Dentists.”** Wherever a definition or provision of this Certificate differs from another state’s Delta Dental Plan and its agreement with Participating Dentists, the agreement in that state with that Dentist will be controlling.

Premier Dentists, Nonparticipating Dentists, and Out-of-Country Dentists are sometimes collectively referred to herein as **“Non-PPO Dentists.”**

#### Eligible Dependent(s)

The Summary of Dental Plan Benefits will have specific information about This Plan’s rules for dependent eligibility, but generally, your Eligible Dependents are:

- ◆ Your legal spouse;
- ◆ Your unmarried Children who have not yet reached the dependent age limit stated in the Summary of Dental Plan Benefits;
- ◆ Your unmarried Children who have reached the dependent age limit stated in the Summary of Dental Plan Benefits, but are eligible to be claimed by you as dependents under the U.S. Internal Revenue Code during the current calendar year;
- ◆ Any unmarried Children for whom you or your legal spouse are financially responsible for the medical, health, or dental care under the terms of a court decree or who have been named as alternate recipients under a qualified medical child support order; and
- ◆ Your Children who have reached the dependent age limit stated in the Summary of Dental Plan Benefits, but who were at that time (and continue to be) totally and permanently disabled by a physical or mental condition. Those Children must also be eligible to be claimed by you or your legal spouse as dependents under the U. S. Internal Revenue Code during the current calendar year. If Delta Dental asks you to do so, you must submit medical reports confirming the Child’s initial or continuing total disability.

#### Eligible Person(s)

Any Subscriber or Eligible Dependent with coverage under This Plan.

#### Maximum Approved Fee

A system used by Delta Dental to determine the approved fee for a given procedure for a given Participating Dentist. A fee meets Maximum Approved Fee requirements if it is the lowest of:

- ◆ The Submitted Amount
- ◆ The lowest fee regularly charged, offered, or received by an individual Dentist for a dental service or supply, irrespective of the Dentist’s contractual agreement with another dental benefits organization.
- ◆ The maximum fee that the local Delta Dental Plan approves for a given procedure in a given region and/or specialty, under normal circumstances, based upon applicable Participating Dentist schedules and internal procedures.

Delta Dental may also approve a fee under unusual circumstances.

Participating Dentists agree not to charge Delta Dental patients more than the Maximum Approved Fee for a Covered Service. In all cases, Delta Dental will make the final determination regarding the Maximum Approved Fee for a Covered Service.

#### Maximum Payment

The maximum dollar amount Delta Dental will pay in any Benefit Year or lifetime for Covered Services. (See the Summary of Dental Plan Benefits.)

#### Nonparticipating Dentist Fee

The maximum fee allowed per procedure for services rendered by a Nonparticipating Dentist as determined by Delta Dental.

#### Open Enrollment Period

The period of time, as determined by your employer or organization, during which an Eligible Person may enroll or be enrolled for Benefits.

#### Out-of-Country Dentist Fee

The maximum fee allowed per procedure for services rendered by an Out-of-Country Dentist as determined by Delta Dental.

#### Post-Service Claims

Claims for Benefits that are not conditioned on your seeking advance approval, certification, or authorization to receive the full amount for any Covered Services. In other words, Post-Service Claims arise when you receive the dental service or treatment before you file a claim for Benefits.

#### PPO Dentist Schedule

The maximum fee allowed per procedure for services rendered by a PPO Dentist as determined by that Dentist’s local Delta Dental Plan.

#### Premier Dentist Schedule

The maximum fee allowed per procedure for services rendered by a Premier Dentist as determined by that Dentist’s local Delta Dental Plan.

#### Pre-Treatment Estimate

A voluntary and optional process where Delta Dental issues a written estimate of dental benefits that may be available under your coverage for your proposed dental treatment. Your Dentist submits the proposed dental treatment to Delta Dental in advance of providing the treatment.

A Pre-Treatment Estimate is for informational purposes only and is not required before you receive any dental care. It is not a prerequisite or condition for approval of future dental benefits payment. You will receive the same Benefits under This Plan whether or not a Pre-Treatment Estimate is requested. The Benefits estimate provided on a Pre-Treatment Estimate notice is based on Benefits available on the date the notice is issued. It is not a guarantee of future dental benefits or payment.

Availability of dental benefits at the time your treatment is completed depends on several factors. These factors include, but are not limited to, your continued eligibility for benefits, your available annual or lifetime Maximum Payments, any

coordination of benefits, the status of your Dentist, This Plan's limitations and any other provisions, together with any additional information or changes to your dental treatment. A request for a Pre-Treatment Estimate is not a claim for Benefits or a preauthorization, precertification or other reservation of future Benefits.

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#### Processing Policies

Delta Dental's policies and guidelines used for Pre-Treatment Estimate and payment of claims. The Processing Policies may be amended from time to time.

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#### Submitted Amount

The amount a Dentist bills to Delta Dental for a specific treatment or service. A Participating Dentist cannot charge you or your Eligible Dependents for the difference between this amount and the amount Delta Dental approves for the treatment.

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#### Subscriber

You, when your employer or organization notifies Delta Dental that you are eligible to receive Benefits under This Plan.

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#### Summary of Dental Plan Benefits

A description of the specific provisions of your group dental coverage. The Summary of Dental Plan Benefits is and should be read as a part of this Certificate, and supersedes any contrary provision of this Certificate.

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#### This Plan

The dental coverage established for Eligible Persons pursuant to this Certificate.

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### III. Selecting a Dentist

You may choose any Dentist. Your out-of-pocket costs are likely to be less if you go to a Delta Dental Participating Dentist.

To verify that a Dentist is a Participating Dentist, you can use Delta Dental's online Dentist Directory at [www.deltadentalnc.com](http://www.deltadentalnc.com) or call (800) 662-8856.

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### IV. Accessing Your Benefits

To utilize your dental benefits, follow these steps:

1. Please read this Certificate and the Summary of Dental Plan Benefits carefully so you are familiar with your benefits, payment methods, and terms of This Plan.
2. Make an appointment with your Dentist and tell him or her that you have dental benefits with Delta Dental. If your Dentist is not familiar with This Plan or has any questions, have him or her contact Delta Dental by writing to Delta Dental, Attention: Customer Service, P.O. Box 9089, Farmington Hills, Michigan 48333-9089, or calling the toll-free number at (800) 662-8856.
3. After you receive your dental treatment, you or the dental office staff will file a claim form, completing the information portion with:
  - a. The Subscriber's full name and address
  - b. The Subscriber's Member ID number
  - c. The name and date of birth of the person receiving dental care
  - d. The group's name and number

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### Notice of Claim Forms

Delta Dental does not require special claim forms. However, most dental offices have claim forms available. Participating Dentists will fill out and submit your dental claims for you.

Mail claims and completed information requests to:

**Delta Dental**  
**P.O. Box 9085**  
**Farmington Hills, Michigan 48333-9085**

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### Pre-Treatment Estimate

A Pre-Treatment Estimate is not required to receive payment, but it allows claims to be processed more efficiently and allows you to know what services may be covered before your Dentist provides them. You and your Dentist should review your Pre-Treatment Estimate Notice before treatment. Once treatment is complete, the dental office will submit a claim to Delta Dental for payment.

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### Written Notice of Claim and Time of Payment

Because the amount of your Benefits is not conditioned on a Pre-Treatment Estimate decision by Delta Dental, all claims under This Plan are Post-Service Claims. All claims for Benefits must be filed with Delta Dental within one year of the date the services were completed. Once a claim is filed, Delta Dental will decide it within 30 days of receiving it. If there is not enough information to decide your claim, Delta Dental will notify you or your Dentist within 30 days. The notice will (a) describe the information needed, (b) explain why it is needed, (c) request an extension of time in which to decide the claim, and (d) inform you or your Dentist that the information must be received within 45 days or your claim will be denied. You will receive a copy of any notice sent to your Dentist. Once Delta Dental receives the requested information, it has 15 days to decide your claim. If you or your Dentist does not supply the requested information, Delta Dental will have no choice but to deny your claim. Once Delta Dental decides your claim, it will notify you within five days.

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### Authorized Representative

You may also appoint an authorized representative to deal with Delta Dental on your behalf with respect to any benefit claim you file or any review of a denied claim you wish to pursue (see the Claims Appeal Procedure section). You should contact your Human Resources department, call Delta Dental's Customer Service department, toll-free, at (800) 662-8856, or write them at P.O. Box 9089, Farmington Hills, Michigan, 48333-9089, to request a form to designate the person you wish to appoint as your representative. While in some circumstances your Dentist is treated as your authorized representative, generally Delta Dental only recognizes the person whom you have authorized on the last dated form filed with Delta Dental. Once you have appointed an authorized representative, Delta Dental will communicate directly with your representative and will not inform you of the status of your claim. You will have to get that information from your representative. If you have not designated a representative, Delta Dental will communicate directly with you.

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### Questions and Assistance

Questions regarding your coverage should be directed to your Human Resources department or call Delta Dental's

Customer Service department, toll-free, at (800) 662-8856. You may also write to Delta Dental's Customer Service department at P.O. Box 9089, Farmington Hills, Michigan, 48333-9089. When writing to Delta Dental, please include your name, the group's name and number, the Subscriber's Member ID number, and your daytime telephone number.

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## **V. How Payment is Made**

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Delta Dental shall make payments for covered services in accordance with the plan selected by your employer or organization. Your Plan will be identified on your Summary of Dental Plan Benefits.

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### **Delta Dental PPO plus Premier**

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If your Dentist is a Participating Dentist, Delta Dental will base payment on the Maximum Approved Fee for Covered Services.

Delta Dental will send payment directly to Participating Dentists and you will be responsible for any applicable Copayments or Deductibles. Unless prohibited by state law, you will be responsible for the Maximum Approved Fee for most commonly performed non-covered services. For other non-covered services, you will be responsible for the Dentist's Submitted Amount.

If your Dentist is a Nonparticipating Dentist, Delta Dental will base payment on the Nonparticipating Dentist Fee for Covered Services.

If your Dentist is an Out-of-Country Dentist, Delta Dental will base payment on the Out-of-Country Dentist Fee for Covered Services.

For Covered Services rendered by a Nonparticipating Dentist or Out-of-Country Dentist, Delta Dental will usually send payment to you, and you will be responsible for making full payment to the Dentist. You will be responsible for any difference between Delta Dental's payment and the Dentist's Submitted Amount.

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### **Delta Dental PPO (Standard)**

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Whether your Dentist is a PPO Dentist or not, Delta Dental will base its payment on the lesser of the Submitted Amount or the PPO Dentist Schedule.

Delta Dental will send payment directly to Participating Dentists and you will be responsible for any applicable Copayments or Deductibles. If your Dentist is not a PPO Dentist, but is a Premier Dentist, you will also be responsible for any difference between the PPO Dentist Schedule and the Premier Dentist Schedule for Covered Services, in addition to Copayments or Deductibles. Unless prohibited by state law, you will be responsible for the Maximum Approved Fee for most commonly performed non-covered services. For other non-covered services, you will be responsible for the Dentist's Submitted Amount.

For Covered Services rendered by a Nonparticipating Dentist or Out-of-Country Dentist, Delta Dental will usually send payment to you, and you will be responsible for making full payment to the Dentist. You will be responsible for any difference between Delta Dental's payment and the Dentist's Submitted Amount.

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## **VI. Benefit Categories**

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### ***Important***

A description of various dental services that can be selected for dental benefits is included below. **ONLY the dental services listed in your Summary of Dental Plan Benefits are covered by**

**This Plan.** Covered Services are also subject to exclusions and limitations. You will want to review this section of this Certificate carefully.

### ***Diagnostic and Preventive Services***

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#### **Diagnostic and Preventive Services**

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Services and procedures to determine your dental health or to prevent or reduce dental disease.

These services include examinations, evaluations, prophylaxes (cleanings), space maintainers, and fluoride treatments.

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#### **Brush Biopsy**

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Oral brush biopsy procedure and laboratory analysis used to detect oral cancer.

Using this diagnostic procedure, Dentists can identify and treat abnormal cells that could become cancerous, or they can detect the disease in its earliest and most treatable stage.

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#### **Radiographs**

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X-rays as required for routine care or as needed to diagnose the condition of your teeth.

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#### **Emergency Palliative Treatment**

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Emergency treatment to temporarily relieve pain.

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#### **Sealants**

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A resinous material applied to the occlusal surface of posterior teeth to prevent decay.

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#### **Basic Services**

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#### **Oral Surgery Services**

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Extractions and dental surgery, including pre-operative and post-operative care.

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#### **Endodontic Services**

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The treatment of teeth with diseased or damaged nerves (for example, root canals).

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#### **Periodontic Services**

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The treatment of diseases of the gums and supporting structures of the teeth, including periodontal maintenance following periodontal therapy (periodontal cleanings).

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#### **Restorative Services**

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Services to rebuild and repair your teeth damaged by disease, decay, fracture, or injury. Restorative services include:

- ◆ Minor restorative services, such as amalgam (silver) fillings and composite resin (white) fillings.
- ◆ Major restorative services, such as crowns, used when teeth cannot be restored with another filling material.

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#### **Major Services**

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#### **Relines and Repairs**

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Relines and repairs to partial and complete dentures, and repairs to bridges.

## Prosthodontic Services

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Services and appliances that replace missing natural teeth (such as bridges, endosteal implants, partial dentures, and complete dentures).

### Orthodontic Services

Services, treatment, and procedures to correct malposed or misaligned teeth (such as braces).

### Other Benefits

The Summary of Dental Plan Benefits lists any other Benefits that may have been selected.

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## VII. Exclusions and Limitations

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### Exclusions

**Delta Dental will make no payment for the following services or supplies, unless otherwise specified in the Summary of Dental Plan Benefits. All charges for the same will be your responsibility (though your payment obligation may be satisfied by insurance or some other arrangement for which you are eligible):**

1. Services or supplies for the treatment of an occupational injury or sickness which are paid under the North Carolina Worker's Compensation Act only to the extent such services or supplies are the liability of the employee, employer or workers' compensation insurance carrier according to a final adjudication under the North Carolina Workers' Compensation Act or an order of the North Carolina Industrial Commission approving a settlement agreement under the North Carolina Workers' Compensation Act.
2. Services received from any government agency, political subdivision, community agency, foundation, or similar entity.  
  
NOTE: This provision does not apply to any programs provided under Title XIX of the Social Security Act; that is, Medicaid.
3. Services or supplies, as determined by Delta Dental, for correction of congenital or developmental malformations, except that when a child covered from the moment of birth or placement in the adoptive home requires dental care associated with congenital defects and anomalies, congenital defects will be covered to the same extent an otherwise Covered Service is provided by the Plan.
4. Cosmetic surgery or dentistry for aesthetic reasons, as determined by Delta Dental, except that when a Child covered from the moment of birth or placement in the adoptive home requires dental care associated with congenital defects and anomalies, congenital defects will be covered to the same extent an otherwise Covered Service is provided by the Plan.
5. Services started or appliances started before a person became eligible under This Plan. This exclusion does not apply to orthodontic treatment in progress (if a Covered Service).
6. Prescription drugs (except intramuscular injectable antibiotics), premedication, medicaments/ solutions, and relative analgesia.
7. General anesthesia and intravenous sedation for (a) surgical procedures, unless medically necessary, or (b) restorative dentistry.
8. Charges for hospitalization, laboratory tests, and histopathological examinations.
9. Charges for failure to keep a scheduled visit with the Dentist.
10. Services or supplies, as determined by Delta Dental, for which no valid dental need can be demonstrated.
11. Services or supplies, as determined by Delta Dental, that are investigational in nature, including services or supplies required to treat complications from investigational procedures.
12. Services or supplies, as determined by Delta Dental, which are specialized techniques.
13. Services or supplies, as determined by Delta Dental, which are not provided in accordance with generally accepted standards of dental practice.
14. Treatment by other than a Dentist, except for services performed by a licensed dental hygienist or other dental professional, as determined by Delta Dental, under the scope of his or her license as permitted by applicable state law.
15. Services or supplies excluded by the policies and procedures of Delta Dental, including the Processing Policies.
16. Services or supplies for which no charge is made, for which the patient is not legally obligated to pay, or for which no charge would be made in the absence of Delta Dental coverage.
17. Services or supplies received due to an act of war, declared or undeclared.
18. Services or supplies covered under a hospital, surgical/medical, or prescription drug program.
19. Services or supplies that are not within the categories of Benefits selected by your employer or organization and that are not covered under the terms of this Certificate.
20. Fluoride rinses, self-applied fluorides, or desensitizing medicaments.
21. Preventive control programs (including oral hygiene instruction, caries susceptibility tests, dietary control, tobacco counseling, home care medicaments, etc.).
22. Space maintainers for maintaining space due to premature loss of anterior primary teeth.
23. Lost, missing, or stolen appliances of any type and replacement or repair of orthodontic appliances or space maintainers.
24. Veneers.
25. Prefabricated crowns used as final restorations on permanent teeth.
26. Appliances, surgical procedures, and restorations for increasing vertical dimension; for altering, restoring, or maintaining occlusion; for replacing tooth structure loss resulting from attrition, abrasion, abfraction, or erosion; or for periodontal splinting. If Orthodontic Services are Covered Services, this exclusion will not apply to Orthodontic Services as limited by the terms and

conditions of the contract between Delta Dental and your employer or organization.

27. Paste-type root canal fillings on permanent teeth.
28. Replacement, repair, relines, or adjustments of occlusal guards.
29. Chemical curettage.
30. Services associated with overdentures.
31. Metal bases on removable prostheses.
32. The replacement of teeth beyond the normal complement of teeth.
33. Personalization or characterization of any service or appliance.
34. Temporary crowns used for temporization during crown or bridge fabrication.
35. Posterior bridges in conjunction with partial dentures in the same arch.
36. Precision attachments and stress breakers.
37. Bone replacement grafts and specialized implant surgical techniques, including radiographic/surgical implant index.
38. Appliances, restorations, or services for the diagnosis or treatment of disturbances of the temporomandibular joint (TMJ).
39. Diagnostic photographs and cephalometric films, unless done for orthodontics and orthodontics are a Covered Service.
40. Myofunctional therapy.
41. Mounted case analyses.

**Delta Dental will make no payment for the following services or supplies. Participating Dentists may not charge Eligible Persons for these services or supplies. All charges from Nonparticipating Dentists for the following are your responsibility:**

1. The completion of forms or submission of claims.
2. Consultations, patient screening, or patient assessment when performed in conjunction with examinations or evaluations.
3. Local anesthesia.
4. Acid etching, cement bases, cavity liners, and bases or temporary fillings.
5. Infection control.
6. Temporary, interim, or provisional crowns.
7. Gingivectomy as an aid to the placement of a restoration.
8. The correction of occlusion, when performed with prosthetics and restorations involving occlusal surfaces.
9. Diagnostic casts, when performed in conjunction with restorative or prosthodontic procedures.
10. Palliative treatment, when any other service is provided on the same date except X-rays and tests necessary to diagnose the emergency condition.
11. Post-operative X-rays, when done following any completed service or procedure.
12. Periodontal charting.

13. Pins and preformed posts, when done with core buildups for crowns, onlays, or inlays.
14. A pulp cap, when done with a sedative filling or any other restoration. A sedative or temporary filling, when done with pulpal debridement for the relief of acute pain prior to conventional root canal therapy or another endodontic procedure. The opening and drainage of a tooth or palliative treatment, when done by the same Dentist or dental office on the same day as completed root canal treatment.
15. A pulpotomy on a permanent tooth, except on a tooth with an open apex.
16. A therapeutic apical closure on a permanent tooth, except on a tooth where the root is not fully formed.
17. Retreatment of a root canal by the same Dentist or dental office within two years of the original root canal treatment.
18. A prophylaxis or full mouth debridement, when done on the same day as periodontal maintenance or scaling and root planing.
19. An occlusal adjustment, when performed on the same day as the delivery of an occlusal guard.
20. Reline, rebase, or any adjustment or repair within six months of the delivery of a partial denture.
21. Tissue conditioning, when performed on the same day as the delivery of a denture or the reline or rebase of a denture.

### **Limitations**

**The Benefits for the following services or supplies are limited as follows, unless otherwise specified in the Summary of Dental Plan Benefits. All charges for services or supplies that exceed these limitations will be your responsibility. All time limitations are measured from the applicable prior dates of services in our records with any Delta Dental Plan or, at the request of your group, any dental plan:**

1. Bitewing X-rays are payable once per calendar year. Panoramic or full mouth X-rays (which include bitewing X-rays) are payable once in any five-year period.
2. Any combination of teeth cleanings (prophylaxes and periodontal maintenance procedures) are payable twice per calendar year. Full mouth debridement is payable only once in a lifetime.
3. Oral examinations and evaluations are only payable twice per calendar year, regardless of the Dentist's specialty.
4. Patient screening is payable once per calendar year.
5. Preventive fluoride treatments are payable twice per calendar year for people under age 19.
6. Space maintainers are payable for people under age 14.
7. Sealants are payable once per tooth per lifetime for the occlusal surface of first and second permanent molars for people under age 16. The surface must be free from decay and restorations.

8. Cast restorations (including jackets, crowns and onlays) and associated procedures (such as core buildups and post substructures) are payable once in any five-year period per tooth.
  9. Crowns or onlays are payable only for extensive loss of tooth structure due to caries (decay) or fracture.
  10. Individual crowns over implants are payable at the prosthodontic benefit level.
  11. Substructures, porcelain, porcelain substrate, and cast restorations are not payable for people under age 12.
  12. An occlusal guard is payable once in a lifetime.
  13. An interim partial denture is payable only for the replacement of permanent anterior teeth for people under age 17 or during the healing period for people age 17 and over.
  14. Prosthodontic Services limitations:
    - a. One complete upper and one complete lower denture are payable once in any five-year period.
    - b. A removable partial denture, implant, or fixed bridge is payable once in any five-year period unless the loss of additional teeth requires the construction of a new appliance.
    - c. Fixed bridges and removable partial dentures are not payable for people under age 16.
    - d. A relines or the complete replacement of denture base material is payable once in any two-year period per appliance.
    - e. Implant removal is payable once per lifetime per tooth or area.
    - f. Implant maintenance is payable once per calendar year.
  15. Orthodontic Services limitations:
    - a. Orthodontic Services are payable for Eligible Persons under age 19.
    - b. If the treatment plan terminates before completion for any reason, Delta Dental's obligation for payment ends on the last day of the month in which the patient was last treated.
    - c. Upon written notification to Delta Dental and to the patient, a Dentist may terminate treatment for lack of patient interest and cooperation. In those cases, Delta Dental's obligation for payment ends on the last day of the month in which the patient was last treated.
  16. Delta Dental's obligation for payment of Benefits ends on the last day of coverage. However, Delta Dental will make payment for Covered Services provided on or before the last day of coverage, as long as Delta Dental receives a claim for those services within one year of the date of service.
  17. When services in progress are interrupted and completed later by another Dentist, Delta Dental will review the claim to determine the amount of payment, if any, to each Dentist.
  18. Care terminated due to the death of an Eligible Person will be paid to the limit of Delta Dental's liability for the services completed or in progress.
  19. Optional treatment: If you select a more expensive service than is customarily provided, Delta Dental may make an allowance for certain services based on the fee for the customarily provided service. You are responsible for the difference in cost. In all cases, Delta Dental will make the final determination regarding optional treatment and any available allowance.  
Listed below are services for which Delta Dental will provide an allowance for optional treatment. Remember, you are responsible for the difference in cost for any optional treatment.
    - a. Overdentures – Delta Dental will pay only the amount that it would pay for a conventional denture.
    - b. Inlays, regardless of the material used – Delta Dental will pay only the amount that it would pay for an amalgam or composite resin restoration.
    - c. All-porcelain/ceramic bridges – Delta Dental will pay only the amount that it would pay for a conventional fixed bridge.
    - d. Implant/abutment supported complete or partial dentures – Delta Dental will pay only the amount that it would pay for a conventional denture.
    - e. Gold foil restorations – Delta Dental will pay only the amount that it would pay for an amalgam or composite restoration.
  20. Maximum Payment:
    - a. The maximum Benefits payable in any one Benefit Year will be limited to the Maximum Payment stated in the Summary of Dental Plan Benefits.
    - b. Delta Dental's payment for Orthodontic Services will be limited to the annual or lifetime Maximum Payment stated in the Summary of Dental Plan Benefits.
  21. If a Deductible amount is stated in the Summary of Dental Plan Benefits, Delta Dental will not pay for any services or supplies, in whole or in part, to which the Deductible applies until the Deductible amount is met.
  22. Processing Policies may limit Delta Dental's payment for services or supplies.
- Delta Dental will make no payment for services or supplies that exceed the following limitations. All charges are your responsibility. However, Participating Dentists may not charge Eligible Persons for these services or supplies when performed by the same Dentist or dental office. All time limitations are measured from the applicable prior dates of services in our records with any Delta Dental Plan or, at the request of your group, any dental plan:**
1. Amalgam and composite resin restorations are payable once in any two-year period, regardless of the number or combination of restorations placed on a surface.
  2. Core buildups and other substructures are payable only when needed to retain a crown on a tooth with excessive breakdown due to caries (decay) and/or fractures.
  3. Recementation of a crown, onlay, inlay, space maintainer, or bridge within six months of the seating date.

4. Retention pins are payable once in any two-year period. Only one substructure per tooth is a Covered Service.
5. Root planing is payable once in any two-year period.
6. Periodontal surgery is payable once in any three-year period.
7. A complete occlusal adjustment is payable once in any five-year period. The fee for a complete occlusal adjustment includes all adjustments that are necessary for a five-year period. A limited occlusal adjustment is not payable more than three times in any five-year period. The fee for a limited occlusal adjustment includes all adjustments that are necessary for a six-month period.
8. Tissue conditioning is payable twice per arch in any three-year period.
9. The allowance for a denture repair (including relining or rebase) will not exceed half the fee for a new denture.
10. Services or supplies, as determined by Delta Dental, which are not provided in accordance with generally accepted standards of dental practice.
11. Processing Policies may limit Delta Dental's payment for services or supplies.

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## **VIII. Coordination of Benefits**

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Coordination of Benefits ("COB") applies to This Plan when an Eligible Person has dental benefits under more than one plan. The objective of COB is to make sure the combined payments of the plans are no more than your actual dental bills. COB rules establish whether This Plan's Benefits are determined before or after another plan's benefits.

You must submit your bills to the primary plan first. The primary plan must pay its full benefits as if you had no other coverage. If the primary plan denies your claim or does not pay the full bill, you may then submit the remainder of the bill to the secondary plan.

### **Which Plan is Primary?**

To decide which plan is primary, Delta Dental will consider both the COB provisions of the other plan and the relationship of the Eligible Person to This Plan's Subscriber, as well as other factors. The primary plan is determined by the first of the following rules that applies:

#### **1. Non-coordinating Plan**

If you have another plan that does not coordinate benefits, it will always be primary.

#### **2. Employee or Subscriber**

The plan that covers the Eligible Person other than as an Eligible Dependent. For example, the plan that covers you as the employee, neither laid off nor retired, or Subscriber is usually primary. However, if the Eligible Person is a Medicare beneficiary, federal law may reverse this order.

#### **3. Children (Parents Divorced or Separated)**

If a court decree makes one parent responsible for health care expenses, that parent's plan is primary.

If a court decree states that the parents have joint custody without stating that one of the parents is responsible for the Child's health care expenses, Delta Dental follows the birthday rule (see rule 4 below).

If neither of these rules applies, the order will be determined as follows:

- a. First, the plan of the parent with custody of the Child;
- b. Then, the plan of the spouse of the parent with custody of the Child;
- c. Next, the plan of the parent without custody of the Child; and
- d. Last, the plan of the spouse of the parent without custody of the Child.

#### **4. Children and the Birthday Rule**

The plan of the parent whose birthday is earliest in the calendar year is always primary for Children. For example, if your birthday is in January and your spouse's birthday is in March, your plan will be primary for all of your Children. If both parents have the same birthday, the plan that has covered the parent for the longer period will be primary.

#### **5. Laid Off or Retired Employees**

The plan that covers the Eligible Person as a laid off or retired employee or as a dependent of a laid off or retired employee.

#### **6. COBRA Coverage**

The plan that is provided under a right of continuation pursuant to federal law or a similar state law (that is, COBRA).

#### **7. Other Plans**

If none of the rules above determines the order of benefits, the plan that has covered the Eligible Person for the longer period will be primary.

If the other plan does not have rule 5 and/or rule 6 (above) and decides the order of benefits differently from This Plan, This Plan may ignore either of those rules.

In the event that these rules do not determine how Delta Dental should coordinate benefits with another plan, Delta Dental will follow its internal policies and procedures, unless prohibited by applicable law.

#### **How Delta Dental Pays as Primary Plan**

When Delta Dental is the primary plan, it will pay for Covered Services as if you had no other coverage.

#### **How Delta Dental Pays as Secondary Plan**

When Delta Dental is the secondary plan, it will pay for Covered Services based on the amount left after the primary plan has paid. It will not pay more than that amount, and it will not pay more than it would have paid as the primary plan. However, Delta Dental may pay less than it would have paid as the primary plan.

When Benefits are reduced as described above, each Benefit is reduced in proportion. Benefits are then charged against any applicable benefit limit of This Plan.

#### **Right to Receive and Release Needed Information**

Delta Dental needs certain facts to apply these COB rules, and it has the right to decide which facts it needs. It may get

needed facts from or give them to any other organization or person. Delta Dental need not tell or get the consent of any person to do this. Each person claiming Benefits under This Plan must give Delta Dental any facts it needs to pay the claim.

### **Facility of Payment**

A payment made under another plan may include an amount that should have been paid under This Plan. If it does, Delta Dental may pay that amount to the organization that made the payment.

That amount will then be treated as though it were a Benefit paid under This Plan, and Delta Dental will not have to pay that amount again. The term "payment made" includes providing benefits in the form of services, in which case "payment made" means reasonable cash value of the benefits provided in the form of services.

### **Right of Recovery**

If Delta Dental pays more than it should have paid under this COB provision, it may recover the excess from one or more of:

1. The people it has paid or for whom it has paid;
2. Insurance companies; or
3. Other organizations.

Payment includes the reasonable cash value of any benefits provided in the form of services.

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## **IX. Claims Appeal Procedure**

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If you receive notice of an Adverse Benefit Determination and you think that Delta Dental incorrectly denied all or part of your claim, you or your Dentist should contact Delta Dental's Customer Service department and ask them to check the claim to make sure it was processed correctly. You may do this by calling the toll-free number, (800) 662-8856, and speaking to a telephone advisor. You may also mail your inquiry to the Customer Service Department at P.O. Box 9089, Farmington Hills, Michigan, 48333-9089.

When writing, please enclose a copy of your explanation of benefits and describe the problem. Be sure to include your name, telephone number, the date, and any information you would like considered about your claim. This inquiry is not required and should not be considered a formal request for review of a denied claim. Delta Dental provides this opportunity for you to describe problems, or submit an explanation or additional information that might indicate your claim was improperly denied, and allow Delta Dental to correct any errors quickly and immediately.

Whether or not you have asked Delta Dental informally to recheck its initial determination, you can request a formal review using the Formal Claims Appeal Procedure described below.

### **Formal Claims Appeal Procedure**

If you receive notice of an Adverse Benefit Determination, you, or your authorized representative, should seek a review as soon as possible, but **you must file your request for review within 180 days** of the date that you received that Adverse Benefit Determination.

To request a formal review of your claim, send your request in writing to:

**Dental Director  
Delta Dental  
P.O. Box 30416  
Lansing, Michigan 48909-7916**

Please include your name and address, the Subscriber's Member ID, the reason why you believe your claim was wrongly denied, and any other information you believe supports your claim. You also have the right to review the contract between Delta Dental and your employer or organization and any documents related to it. If you would like a record of your request and proof that Delta Dental received it, mail your request certified mail, return receipt requested.

The Dental Director or any person reviewing your claim will not be the same as, nor subordinate to, the person(s) who initially decided your claim. The reviewer will grant no deference to the prior decision about your claim. The reviewer will assess the information, including any additional information that you have provided, as if he or she were deciding the claim for the first time. The reviewer's decision will take into account all comments, documents, records and other information relating to your claim even if the information was not available when your claim was initially decided.

If the decision is based, in whole or in part, on a dental or medical judgment (including determinations with respect to whether a particular treatment, drug, or other item is experimental, investigational, or not medically necessary or appropriate), the reviewer will consult a dental health care professional with appropriate training and experience, if necessary. The dental health care professional will not be the same individual or that person's subordinate consulted during the initial determination.

The reviewer will make a determination within 60 days of receipt of your request. If your claim is denied on review (in whole or in part), you will be notified in writing. The notice of an Adverse Benefit Determination during the Formal Claims Appeal Procedure will meet the requirements described below.

### **Manner and Content of Notice**

Your notice of an Adverse Benefit Determination will inform you of the specific reasons(s) for the denial, the pertinent plan provisions(s) on which the denial is based, the applicable review procedures for dental claims, including time limits and that, upon request, you are entitled to access all documents, records and other information relevant to your claim free of charge. This notice will also contain a description of any additional materials necessary to complete your claim, an explanation of why such materials are necessary, and a statement that you have a right to bring a civil action in court if you receive an Adverse Benefit Determination after your claim has been completely reviewed according to this Formal Claims Appeal Procedure. The notice will also reference any internal rule, guideline, protocol, or similar document or criteria relied on in making the Adverse Benefit Determination, and will include a statement that a copy of such rule, guideline or protocol may be obtained upon request at no charge. If the Adverse Benefit Determination is based on a matter of medical judgment or medical necessity, the notice will also contain an explanation of the scientific or clinical judgment on which the determination was based, or a statement that a copy of the basis for the scientific or clinical judgment can be obtained upon request at no charge.

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**X. Termination of Coverage**

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Your Delta Dental coverage may automatically terminate:

- ◆ When your employer or organization advises Delta Dental to terminate your coverage.
- ◆ On the first day of the month for which your employer or organization has failed to pay Delta Dental.
- ◆ For fraud or misrepresentation in the submission of any claim.
- ◆ For your Children, when they no longer qualify as an Eligible Dependent.
- ◆ For any other reason stated in the contract between Delta Dental and your employer or organization.

Delta Dental will not continue eligibility for any person covered under This Plan beyond the termination date requested by your employer or organization. A person whose eligibility is terminated may not continue group coverage under this Certificate, except as required by the continuation coverage provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985 or comparable, non-preempted state law (“COBRA”).

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**XI. Continuation of Coverage**

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If your employer or organization is required to comply with COBRA and the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and your dental coverage would otherwise end, you and your Eligible Dependents may have the right to continue that coverage at your expense.

**When is Plan Continuation Coverage Available?**

Continuation coverage is available if your coverage or a covered Eligible Dependent’s coverage would end because:

1. Your employment ends for any reason other than your gross misconduct.
2. Your hours of work are reduced so that you are no longer a full-time employee.
3. You are divorced or legally separated.
4. You die.
5. Your Child is no longer an Eligible Dependent (for example, because he or she turns 19).
6. You become enrolled in Medicare (if applicable).
7. You are called to active duty in the armed forces of the United States.

If you believe you are entitled to continuation coverage, you should contact your employer or organization to receive the appropriate documentation required under the Employee Retirement Income Security Act of 1974 (“ERISA”).

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**XII. General Conditions**

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**Assignment**

Services and Benefits are for the personal benefit of Eligible Persons and cannot be transferred or assigned, other than to pay Participating Dentists directly.

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**Subrogation and Right of Reimbursement**

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If Delta Dental provides Benefits under this Certificate and you have a right to recover damages from another, Delta Dental is subrogated to that right.

To the extent that This Plan provides or pays Benefits for Covered Services, Delta Dental is subrogated to any right you or your Eligible Dependent has to recover from another, his or her insurer, or under his or her “Medical Payments” coverage or any “Uninsured Motorist,” “Underinsured Motorist,” or other similar coverage provisions. You or your legal representative must do whatever is necessary to enable Delta Dental to exercise its rights and do nothing to prejudice them.

If you or your Eligible Dependent recovers damages from any party or through any coverage named above, you must reimburse Delta Dental from that recovery to the extent of payments made under This Plan.

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**Obligation to Assist in Delta Dental’s Reimbursement Activities**

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If you are involved in an automobile accident or require Covered Services that may entitle you to recover from a third party and Delta Dental advances payment to prevent any financial hardship to you or your family, you and your Eligible Dependents have an obligation to help Delta Dental obtain reimbursement for the amount of the payments advanced for which another source was also responsible for making payment. You and your Eligible Dependents are required to provide Delta Dental with any information about any other insurance coverage (including, but not limited to, automobile, home, and other liability insurance coverage, and coverage under another group health plan), and the identity of any other person or entity, and his or her insurers (if known), that may be obligated to provide payments or benefits for the same Covered Services that Delta Dental already paid.

Eligible Persons must:

1. Cooperate fully in Delta Dental’s exercise of its right to subrogation and reimbursement,
2. Not do anything to prejudice those rights (such as settling a claim against another party without notifying Delta Dental, or not including Delta Dental as a co-payee of any settlement amount),
3. Sign any document that Delta Dental determines is relevant to protect Delta Dental’s subrogation and reimbursement rights, and
4. Provide relevant information when requested.

The term “information” includes any documents, insurance policies, and police or other investigative reports, as well as any other facts that may reasonably be requested to help Delta Dental enforce its rights. Failure by an Eligible Person to cooperate with Delta Dental may result, at the discretion of Delta Dental, in a reduction of future benefit payments available to that person under This Plan of an amount up to the aggregate amount paid by Delta Dental that was subject to Delta Dental’s equitable lien, but for which Delta Dental was not reimbursed.

## Obtaining and Releasing Information

While you are an Eligible Person, you agree to provide Delta Dental with any information it needs to process your claims and administer your Benefits. This includes allowing Delta Dental access to your dental records.

## Dentist-Patient Relationship

Eligible Persons are free to choose any Dentist. Each Dentist maintains the dentist-patient relationship and is solely responsible to the patient for dental advice and treatment and any resulting liability.

## Loss of Eligibility During Treatment

If an Eligible Person loses eligibility while receiving dental treatment, only Covered Services received while that person was covered under This Plan will be payable.

Certain services begun before the loss of eligibility may be covered if they are completed within 60 days from the date of termination. In those cases, Delta Dental evaluates those services in progress to determine what portion may be paid by Delta Dental. The difference between Delta Dental's payment and the total fee for those services is your responsibility.

## Late Claims Submission

Delta Dental will make no payment for services or supplies if a claim for such has not been received by Delta Dental within one year following the date the services or supplies were completed.

## Change of Certificate or Contract

No agent has the authority to change any provisions in this Certificate or the provisions of the contract on which it is based. No changes to this Certificate or the underlying contract are valid unless Delta Dental approves them in writing.

## Actions

No action on a legal claim arising out of or related to this Certificate will be brought within 60 days after notice of the legal claim has been given to Delta Dental, unless prohibited by applicable state law. In addition, no action can be brought more than three years after the legal claim first arose or after expiration of the applicable statute of limitations, if longer. Any person seeking to do so will be deemed to have waived his or her right to bring suit on such legal claim. Except as set forth above, this provision does not preclude you from seeking a judicial decision or pursuing other available legal remedies.

## Governing Law

This Certificate and the underlying group contract will be governed by and interpreted under the laws of the state of North Carolina.

## Legally Mandated Benefits

If any applicable law requires broader coverage or more favorable treatment for you or your Eligible Dependents than is provided by this Certificate, that law shall control over the language of this Certificate.

## Change of Status

You must notify Delta Dental, through your employer or organization, of any event that changes the status of an Eligible Dependent. Events that can affect the status of an Eligible

Dependent include, but are not limited to, marriage, birth, death, divorce, and entrance into military service.

## Right of Recovery Due to Fraud

If Delta Dental pays for services that were sought or received under fraudulent, false, or misleading pretenses or circumstances, pays a claim that contains false or misrepresented information, or pays a claim that is determined to be fraudulent due to your acts or acts of your Eligible Dependents, it may recover that payment from you or your Eligible Dependents. You and your Eligible Dependents authorize Delta Dental to recover any payment determined to be based on false, fraudulent, misleading, or misrepresented information by deducting that amount from any payments properly due to you or your Eligible Dependents. Delta Dental will provide an explanation of the payment recovery at the time the deduction is made.

Any person intending to deceive an insurer, who knowingly submits an application or files a claim containing a false or misleading statement, is guilty of insurance fraud.

Insurance fraud significantly increases the cost of health care. If you are aware of any false information submitted to Delta Dental, please call our toll-free hotline. We only accept anti-fraud calls at this number.

ANTI-FRAUD TOLL-FREE HOTLINE:

**(800) 524-0147**

## BUSINESS ASSOCIATE ADDENDUM

**THIS BUSINESS ASSOCIATE ADDENDUM (“the ADDENDUM”)** is an addendum to the most recently executed Agreement between Delta Dental Plan of North Carolina (“Business Associate”) and Contractor (“Covered Entity”). Business Associate and Covered Entity are sometimes collectively referred to herein as the “Parties.”

### I. INTRODUCTION

- A. **WHEREAS**, pursuant to the terms and conditions set forth in the Agreement, Business Associate performs, for or on behalf of Covered Entity, certain services described in the Agreement (the “Services”); and
- B. **WHEREAS**, in performing the Services, Business Associate will receive, create, or access certain Protected Health Information of Participants in Covered Entity’s dental plan, and, accordingly, is a business associate as that term is defined in 45 CFR 160.103; and
- C. **WHEREAS**, Covered Entity is a covered entity as that term is defined in 45 CFR 160.103; and
- D. **WHEREAS**, the Parties desire to enter into this Addendum to comply with the provisions in the Privacy Rule requiring a business associate to provide adequate assurances to a covered entity with respect to the confidentiality of PHI.
- E. **NOW, THEREFORE**, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

### II. DEFINITIONS

- A. “Designated Record Set” shall have the same meaning as the term “designated record set” in 45 CFR 164.501 and is limited to a group of records maintained by or for Covered Entity that includes: (a) enrollment, payment, and claims adjudication records of an Individual maintained by or for Covered Entity; or (b) other Protected Health Information used, in whole or in part, by or for Covered Entity to make coverage decisions about an Individual.
- B. “Electronic Protected Health Information” or “EPHI” shall have the same meaning as the term “electronic protected health information,” at 45 CFR 160.103, and is limited to the electronic protected health information that is created, received, maintained, or transmitted to or on behalf of Covered Entity.
- C. “ERISA” means the Employee Retirement Income Security Act of 1974, as amended.
- D. “HIPAA” means the Health Insurance Portability and Accountability Act of 1996, as amended.
- E. “HITECH Act” means the Health Information Technology for Economic and Clinical Health Act, found in the American Recovery and Reinvestment Act of 2009 at Division A, Title XIII and Division B, Title IV.
- F. “Individual” shall have the same meaning as the term “individual” in 45 CFR 160.103, and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- G. “Minimum Necessary” shall have the meaning set forth in the Health Information Technology for Economic and Clinical Health Act, § 13405(b).
- H. “Participant” means any Individual who is eligible for benefits under Covered Entity’s dental plan.
- I. “Privacy Rule” means the “Standards for Privacy of Individually Identifiable Health Information,” at 45 CFR parts 160 and 164, subparts A and E, as promulgated pursuant to HIPAA.

- J. "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 CFR 160.103, and is limited to the information created, received, or accessed by Business Associate from or on behalf of Covered Entity.
- K. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR 164.103.
- L. "Secretary" shall mean the Secretary of the Department of Health and Human Services, or his designee.
- M. "Security Rule" means the "Standards for the Security of Electronic Protected Health Information," at 45 CFR parts 160, 162 and 164, as promulgated pursuant to HIPAA.

### III. AGREEMENTS

#### A. Obligations of Business Associate.

1. **Application of Security Rule and Privacy Rule to Business Associate.** The administrative, physical and technical safeguards set forth in the HIPAA Security Rule at 45 CFR 164.308, 164.310, 164.312, and 164.316, shall apply to Business Associate in the same manner that such sections apply to a covered entity. The additional requirements of Subtitle D of the HITECH Act (Sections 13400 through 13411) that relate to privacy or security and that are made applicable with respect to covered entities shall also be applicable to Business Associate and are hereby incorporated into this Agreement.
2. **Uses and Disclosures.** Business Associate shall not use or further disclose PHI other than (a) as permitted or required by this Agreement and Addendum, (b) as permitted or required by Covered Entity, (c) as permitted or required by the Privacy Rule, (d) as Required by Law, (e) in a manner that would be permissible if used or disclosed by Covered Entity, or (f) in a manner that would not violate the Privacy Rule or other applicable federal or state law or regulation. Business Associate may use and disclose PHI that Business Associate obtains or creates only if such use or disclosure, respectively, is in compliance with each applicable requirement of 45 CFR 164.504(e).
3. **Minimum Necessary Standard.** Business Associate shall use and disclose PHI in a manner minimally necessary to accomplish the intended purpose of the use or disclosure.
4. **Security.** Business Associate agrees to: (a) implement safeguards in accordance with the Security Rule that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity; (b) ensure that any agents, including subcontractors, to whom Business Associate provides PHI agree to implement reasonable and appropriate safeguards in accordance with the Security Rule to protect the PHI; and (c) report to Covered Entity any violation of the Security Rule of which it becomes aware.
5. **Reporting and Mitigation of Unauthorized Access, Use or Disclosure of PHI.** Business Associate shall report to Covered Entity any use or disclosure of PHI not provided for under Section III.A.2 of this Addendum of which Business Associate becomes aware. Additionally, Business Associate agrees that, to the extent practicable, it shall mitigate any harmful effect of a use or disclosure of PHI of which it becomes aware that is in violation of the requirements of Section III.A.2 of this Addendum.
6. **Written Notification of Unauthorized Access, Use or Disclosure of Unsecured PHI.** Business Associate shall notify Covered Entity in writing of any unauthorized access, use or disclosure of unsecured PHI as soon as reasonably possible but no later than five (5) days following the date of discovery. Such notice shall include:
  - (a) a brief description of what happened, including the date of the breach and the date of the discovery,
  - (b) the name(s) of the Participant(s) whose PHI was used or disclosed,
  - (c) the identity(ies) of the entity(ies)/person(s) to whom the use or disclosure was made,

- (d) description of the types of unsecured PHI that were disclosed,
  - (e) the steps taken by Business Associate to discontinue and minimize the impact of any inappropriate use or disclosure.
7. **Agents and Subcontractors.** Business Associate shall ensure that any subcontractors or agents to whom it provides PHI that has been created or received by Business Associate from or on behalf of Covered Entity agree to the same restrictions and conditions with respect to such PHI as are applicable to Business Associate as set forth herein.
  8. **Requests for Information or Access.** Business Associate shall process any requests it receives from Individuals seeking access to or copies of PHI maintained by Business Associate for or on behalf of Covered Entity. Covered Entity hereby expressly delegates its authority regarding requests for access to Business Associate and agrees to abide by Business Associate's determinations to grant or deny access in accordance with the Privacy Rule.
  9. **Requests to Amend.** Business Associate shall make any amendment(s) to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR 164.526 at the request of Covered Entity or an Individual. The Business Associate shall make amendments as soon as administratively feasible.
  10. **Requests for Accounting.** Business Associate agrees to document disclosures of Protected Health Information, and information related to such disclosures, as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528 and any additional regulations promulgated by the Secretary pursuant to HITECH Act § 13405(c). Business Associate agrees to implement an appropriate record keeping process that will track, at a minimum, the following information: (i) the date of the disclosure; (ii) the name of the entity or person who received the Protected Health Information, and if known, the address of such entity or person; (iii) a brief description of the Protected Health Information disclosed; and (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure.
  11. **Books and Records.** Business Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, available to the Secretary for purposes of determining Covered Entity's compliance with HIPAA, the Privacy Rule, and other applicable federal and/or state law. Business Associate shall notify Covered Entity of any such requests and shall provide Covered Entity with a copy of the request and any documents or information provided in response to such requests.
  12. **Termination.** If either party knows or discovers a pattern of activity or practice of the other party that constitutes a material breach of the other party's obligations under this Agreement or under applicable federal standards, the discovering party agrees to immediately notify the other party in writing as to the nature and extent of such breach, and shall provide the other party a reasonable amount of time to cure such breach. A reasonable amount of time shall depend on the nature and extent of the breach, shall be clearly stated in the notice, but in no case shall the period for cure be less than five (5) business days. Notwithstanding the foregoing, should the discovering party determine that the breach is incurable, or that the other party has repeatedly engaged in such impermissible use or disclosure despite prior notice, the discovering party must terminate this Agreement, if feasible, upon written notice to the breaching party, without damages or liability thereto; or, if termination is not feasible, report the problem to the Secretary.
  13. **Return of PHI Upon Termination.** At termination of the Agreement, Business Associate shall return or destroy all PHI received from Covered Entity, or created by Business Associate on behalf of Covered Entity, that Business Associate maintains in any form. In the event the return or destruction of such PHI is infeasible, then Business Associate shall continue to extend the protections required hereunder to the PHI for as long as it maintains the PHI. Further, Business Associate shall limit any

further use or disclosure of the PHI to those purposes that make its return or destruction infeasible. This provision shall survive the termination of this Agreement.

14. **Prohibition against Sale or Marketing of PHI.** Except as otherwise provided in Section 13405 of the HITECH Act, Business Associate shall not (a) directly or indirectly receive remuneration in exchange for any PHI of a Participant; or (b) use or disclose PHI for any purpose related directly or indirectly to any marketing or marketing communication.

B. **Additional Permissible Uses and Disclosures of PHI by Business Associate.** Subject to the foregoing provisions, and in addition to the use and disclosure by Business Associate of PHI authorized elsewhere in this Addendum, Business Associate may use and disclose PHI for the following additional purposes:

1. As necessary for data aggregation purposes relating to the health care operations of Covered Entity;
2. As necessary for data aggregation purposes of Business Associate, but only if the PHI is de-identified pursuant to 45 CFR 164.514;
3. For the proper internal management and administration of Business Associate;
4. To carry out the legal responsibilities of Business Associate; and
5. To provide summary health information (as defined in 45 CFR 164.504) to Covered Entity for the purposes of administering its dental plan.

For purposes (3) and (4) above, Business Associate may disclose PHI to third parties only if the disclosure is either: (a) Required by Law; or (b) Business Associate obtains reasonable assurances from the person to whom the PHI is disclosed that such PHI will be held confidentially and used or further disclosed only for the purposes for which it was disclosed to the person and that any instances in which the confidentiality of such PHI is breached are immediately reported to the Business Associate.

C. **Obligations of the Covered Entity.**

1. **Communicate Changes in Permitted Uses and Disclosures.** Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by Individuals to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures of PHI.
2. **Communication of Restrictions on Uses and Disclosures.** Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to.
3. **Prohibition of Employment-Related Disclosures.** Covered Entity shall not use or disclose the PHI of any Participant for any employment-related purposes, nor shall it direct Business Associate to do so.
4. **Limitation on Requests.** Covered Entity shall not ask Business Associate to use or disclose PHI in a manner that would not otherwise be permitted under the Privacy Rule if done by Covered Entity.

D. **Record Keeping.** Business Associate agrees to implement an appropriate record keeping process to enable it to comply with the HIPAA requirements applicable to it under this Addendum and the Privacy Rule.

E. **Confidential and Proprietary Information.** Business Associate may receive, create, or have access to confidential and/or proprietary information of Covered Entity concerning its business affairs, property, products, operations, computer systems, and strategies. Business Associate agrees to hold such confidential and/or proprietary information in strict confidence, to maintain and safeguard the confidentiality of such information, and to use such information solely to perform the Services as required by this Agreement.

Likewise, Covered Entity may receive, create, or have access to confidential and/or proprietary information of Business Associate concerning its business affairs, property, operations, computer systems, dentists, providers, and strategies. Covered Entity agrees to hold such confidential and/or proprietary information in

strict confidence, to maintain and safeguard the confidentiality of such information, and to use such information solely to perform its obligations as required by this Agreement.

- F. **Amendment.** Upon enactment of any law or regulation affecting the use or disclosure of PHI, or the publication of any decision of a court of the State or the United States relating to any such law, or the publication of any interpretative policy or opinion of any government agency charged with the enforcement of any such law or regulation, Business Associate, may send written notice to Covered Entity requesting that this Addendum be amended as necessary to comply with such law or regulation. If, within thirty (30) days from the date of such notice, the Parties are unable to reach an agreement amending this Addendum, either Party may terminate the Agreement immediately upon written notice to the other Party.
- G. **Binding Effect.** Except as otherwise provided herein, the terms and conditions of the Agreement shall remain in full force and effect. Additionally, the terms and conditions of this Addendum shall remain in full force and effect following termination of the Agreement.
- H. **Indemnification by Covered Entity.** Covered Entity shall indemnify, defend, and hold harmless Business Associate, its board of directors, officers, members, agents, employees, subcontractors, and personnel from and against any and all claims, demands, suits, actions, losses, expenses, costs (including reasonable attorney fees), obligations, damages, deficiencies, causes of action, and liabilities (collectively, "Claims") incurred by Business Associate as a result of, or that are proximately caused by, (1) Covered Entity's breach of the terms of this agreement or; (2) Covered Entity's violation of HIPAA and any amendments thereto.

Business Associate shall provide prompt written notice of relevant information concerning the Claims to Covered Entity. Business Associate shall provide such reasonable assistance (at Covered Entity's expense) as may reasonably be requested by Covered Entity in connection with the defense of any Claim. Notwithstanding the foregoing: (1) Business Associate shall not settle any such Claim without the consent of Covered Entity, which consent shall not be unreasonably withheld, and (2) the indemnification obligations of Covered Entity hereunder shall not extend to Claims attributable solely to the gross negligence, intentional misconduct, or willful malfeasance of Business Associate.

- I. **Indemnification by Business Associate.** Business Associate hereby agrees to indemnify, defend, and hold harmless Covered Entity, its board of directors, officers, members, agents, employees, subcontractors, and personnel (the "Indemnities") from and against any and all claims, demands, suits, actions, losses, expenses, costs (including reasonable attorney fees), obligations, damages, deficiencies, causes of action, and liabilities (collectively, "Claims") incurred by the Indemnities as a result of, or that are proximately caused by, (1) Business Associate's breach of this Agreement; or (2) Business Associate's violation of HIPAA or any amendments thereto.

Covered Entity shall provide prompt written notice of relevant information concerning the Claims to Business Associate. Covered Entity shall provide such reasonable assistance (at Business Associate's expense), as may reasonably be requested by Business Associate, in connection with the defense of any Claim. Notwithstanding the foregoing: (1) Business Associate shall not settle any such Claim without the consent of Covered Entity, which consent shall not be unreasonably withheld, and (2) the indemnification obligations of Business Associate hereunder shall not extend to Claims attributable solely to the negligence, gross negligence, intentional misconduct, or willful malfeasance of Covered Entity.

- J. **Injunction.** The Parties acknowledge and agree that in the event of a breach or threatened breach by either Party, the non-breaching Party shall be irreparably and substantially harmed, and that remedies at law will not be an adequate remedy for such breach. Accordingly, in such event, non-breaching Party shall be entitled to seek injunctive relief against such breach or threatened breach. Such rights to injunctive relief shall be in addition to, and not in limitation of, any other legal and equitable relief available to either Party under applicable law.
- K. **Counterparts.** This Agreement may be executed in the original or by facsimile or other electronic means in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.