

GROUP # 16067

THIS DELTA DENTAL PPO DENTAL SERVICE CONTRACT  
FOR EXPERIENCE RATED GROUPS

("Contract")

effective as of

January 1, 2019

by and between

MONTGOMERY COUNTY DENTAL PLAN

(hereafter called "Company")

and

DELTA DENTAL OF NEW YORK, INC.

575 Madison Avenue  
New York, NY 10022

a New York non-profit corporation (hereafter called "Delta Dental")

WITNESSETH THAT THE PARTIES AGREE AS FOLLOWS:

This Dental Service Contract affords national access to all Delta Dental Plans to all Enrollees.

MC-PPO-NY-08

DELTA DENTAL OF NEW YORK, INC.  
DELTA DENTAL PPO DENTAL SERVICE CONTRACT  
FOR EXPERIENCE RATED GROUPS

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## ARTICLE I. DEFINITIONS

Allowed Amount shall mean the lesser of the charged fee, the Maximum Plan Allowance, or the equivalent amount as stated in the National Provider File for Participating Dentists of other Delta Dental Plans on which program deductibles, maximums and copayments are based.

Attending Dentist Statement shall mean the written report of a series of procedures recommended for the treatment of a specific dental disease, defect or injury, prepared for an Enrollee by a Dentist as a result of an examination made by such Dentist.

Business Associate Addendum is a written contract between Company and Delta Dental, as a business associate of Company, that provides satisfactory assurances to Company that the release, disclosure, and/or use of Protected Health Information (PHI), shall be protected and conducted with appropriate safeguards in compliance with HIPAA.

Calendar Year means the twelve-month period commencing at 12:01 a.m. January 1<sup>st</sup> of every year and terminating at 12:00 midnight on December 31<sup>st</sup>.

Continuation Coverage shall mean identical coverage for the periods indicated for Employees and eligible Dependents at their own expense as follows:

1. Eighteen (18) months for Employees and their Dependents losing coverage through (a) termination (other than for gross misconduct), or (b) reduction in work hours; extended up to twenty-nine (29) months, if disabled, as that word is defined in Titles II and XVI of the Social Security Act.
2. Thirty-six (36) months for (a) surviving spouses and their dependent children; (b) divorced or legally separated spouses and their dependent children; (c) Medicare ineligible spouses and their dependent children of current Employee entitled to Medicare or of former Employee on Continuation Coverage entitled to Medicare; (d) dependent children losing coverage under the provisions of Article I.
3. Continuation Coverage shall terminate on the happening of one of the following events, whichever is sooner:
  - (a) The applicable period for Continuation Coverage ends;
  - (b) Thirty (30) days after the date of final determination that a person on extended coverage is no longer disabled;
  - (c) Enrollee subsequently becomes covered under another group dental plan having equivalent coverage which does not have exclusions or limitations for pre-existing conditions or becomes entitled to dental coverage from Medicare;
  - (d) Premium for Continuation Coverage is not paid on time.

4. Eligibility for Continuation Coverage shall be determined by Company. Notification of election of Continuation Coverage, changes in Continuation Coverage and termination of Continuation Coverage shall be in accordance with the procedure described in Article II, Paragraph D.
5. The provisions of Article IV, Section H concerning Limitation on Liability for Claims on Termination of the Contract or of Enrollees who have lost Eligibility, are expressly applicable to loss of eligibility on account of termination of Continuation Coverage.

Contract Term shall mean a period commencing at 12:01 a.m. on January 1, 2019, and terminating at 12:00 midnight on December 31, 2019.

Contract Year shall mean the twelve-month period commencing on the Effective Date and each yearly period thereafter.

Delta Dental Participating Plan Agreement shall mean the agreement with the Delta Dental Plans Association providing national access to Delta Dental's multi-state dental programs involving single-site processing with payment to local Participating Dentists at the local state's Allowed Amount.

Delta Dental Plans shall mean members of the Delta Dental Plans Association.

Delta Dental Plans Association shall mean the national organization of various Delta Dental Plans.

Delta Dental PPO shall mean a dental care program for Enrollees under which all fees paid or otherwise discharged by Delta Dental for Services provided by a PPO Dentist shall be the PPO Allowed Amount, subject to any applicable co-payments, deductibles and maximums. All fees paid or otherwise discharged by Delta Dental for Services provided by a Participating Dentist who is not a PPO Dentist or a Non-Participating Dentist under this Delta Dental PPO program shall be the Allowed Amount as defined in Article I, subject to any applicable co-payments, deductibles and maximums.

Delta Dental Premier<sup>®</sup> shall mean a dental care program for Enrollees under which all fees paid or otherwise discharged by Delta Dental for Services shall be the Allowed Amount, subject to any applicable co-payments, deductibles and maximums.

Dental Affairs Committee shall mean a duly appointed committee of the Board of Directors of Delta Dental.

Dental Consultants shall mean the Dentist employed or retained by Delta Dental to review claims assigned to them.

Dentist shall mean a person who has received a degree of doctor of dental surgery (DDS), doctor of dental medicine (DMD), other established dental degree, doctor of medicine or doctor of osteopathy, all of whom must be duly licensed to practice dentistry.

Dependents shall be defined within the following by Company:

1. The Primary Enrollee's spouse.
2. The Primary Enrollee's unmarried children until the end of the month of their 19th birthday. Such children include from birth (a) a blood descendant of the first degree, (b) a legally adopted child during and after the period of probation, (c) a child for whom the Primary Enrollee has legal guardianship and only when the child is chiefly dependent on the Primary Enrollee for support and maintenance, (d) a stepchild of the Primary Enrollee, (e) a child who is the subject of a Court Order of support directed to a Primary Enrollee, or (f) pursuant to a National Medical Support Notice. If such child is not one of those described in (a), (b) or (d), such child must be chiefly dependent on the Primary Enrollee for support and maintenance. Documentation of the above must be furnished as required by Delta Dental.
3. Unmarried children of a Primary Enrollee who are full-time students in a bona fide educational institution until the end of the month of their 25th birthday. Proof of continuing attendance therein must be furnished as required by Delta Dental. In the event such full-time student is required, because of illness, to take a medical leave of absence, and such full-time student presents to Delta Dental documentation in the form of a certification as to the medical necessity of the leave of absence by a medical practitioner licensed to practice in the state of New York, coverage shall extend for one year beyond the last day of attendance in school.
4. Unmarried children of a Primary Enrollee covered by the Contract prior to attainment of the age set forth above, and who are incapable of self-sustaining employment by reason of physical incapacity or mental illness, developmental disability or mental retardation as defined in the Mental Hygiene Law and who become incapable prior to the age set forth above, and who are chiefly dependent upon the Primary Enrollee for support and maintenance. Eligibility of these dependent children shall not terminate while the Contract remains in force and the dependent child remains in such condition. The dependent child is not required to reside with a parent or legal guardian who is a Primary Enrollee. Proof of physical or mental disability must be furnished as required by Delta Dental.
5. Newborn children of any Enrollee from birth to thirty-one (31) days. Thereafter Company will provide coverage to any dependent child upon notification for enrollment of such child. The Primary Enrollee if enrolled as a single person may change to Family in accordance with Article II, Paragraph E.

Effective Date of this Contract shall be 12:01 a.m. on January 1, 2019.

Employee shall mean an Employee of the Company who meets the eligibility requirements, accepted by Delta Dental, for enrollment under the Contract, and who is so specified for enrollment.

Enrollee shall mean, collectively, the Primary Enrollee and all enrolled Dependents, persons eligible for Continuation Coverage, or any of such persons, as designated by the Company.

ERISA shall mean the Employee Retirement Income Security Act of 1974.

Family shall mean the Primary Enrollee and all enrolled Dependents of the Primary Enrollee.

Health Insurance Portability and Accountability Act of 1996, (HIPAA) shall mean the statute located at 42 U.S.C. §1396 et seq., and the regulations codified at 45 C.F.R. Parts 160 and 164.

Loss of Eligibility Date. Eligibility of Employee shall terminate on the last day for which Premium is paid for them, or on n/a as specified by Company whichever occurs first. Eligibility of Dependents, including spouses, shall terminate at the same time or on the day they no longer qualify as a Dependent.

Maximum Plan Allowance shall mean the amount payable for Services of Participating and Non-Participating Dentists, calculated by Delta Dental, for use in payment by it and by its Enrollees from claim charges submitted, on a regional basis, for a given Service by Dentists of similar training within the same geographical area blended by Delta Dental with dentist fee information from a number of other sources, including dentist fee filings, using various factors, subject to regulatory limitations and adjustment for extreme difficulty or unusual circumstances. Any adjustments made for regulatory limitations or for extreme difficulty or unusual circumstances shall be made in favor of the enrollee.

National Provider File shall mean the file maintained by Delta Dental Plans Association listing maximum allowable amounts or equivalents per procedure, by product and network status used by Delta Dental Plans.

Non-Participating Dentist shall mean a Dentist who has not entered into a Participating Dentist Agreement which is currently in effect with Delta Dental or another Delta Dental Plan.

Participating Dentist shall mean a Dentist who has entered into a Participating Dentist Agreement which is currently in effect with Delta Dental or another Delta Dental Plan. A Participating Dentist agrees to abide by the terms and conditions of his/her Agreement and published Bylaws which provide that a Participating Dentist shall be subject to Dental Service Contracts under which an Enrollee is covered by Delta Dental insofar as they regulate the Services to be provided to Enrollees, the basis of payment therefor, and any other matter pertaining to the obligation of Delta Dental to Enrollees. The term "Member Dentist" is synonymous in this Agreement with the term "Participating Dentist".

Participating Dentist Agreement shall mean the contract between Delta Dental and the Participating Dentist who agrees to accept Delta Dental's Allowed Amount and certain other conditions when treating an Enrollee.

PPO Allowed Amount shall mean the lesser of the charged fee, the PPO Maximum Plan Allowance for Participating Dentists, or the equivalent amount as stated in the National Provider File for Participating Dentists of other Delta Dental Plans on which program deductibles, maximums and copayments are based.

PPO Dentist shall mean a Participating Dentist as defined in Article I, Paragraph X, who agrees to accept payment, as described in Article VI, Paragraph A, as full payment for Services, provided to Enrollees under this Contract.

PPO Maximum Plan Allowance shall mean an amount, determined by Delta Dental, usually less than its Maximum Plan Allowance for Delta Dental Premier programs, from claim charges submitted on a regional basis for a given Service by Dentists of similar training within the same geographical area blended by Delta Dental with dentist fee information from a number of other sources, including dentist fee filings, using various factors, subject to regulatory limitations and adjustment for extreme difficulty or unusual circumstances. Any adjustments made for regulatory limitations or for extreme difficulty or unusual circumstances shall be made in favor of the enrollee.

Premium shall mean the Premium or pre-fund payment detailed in separate agreement signed by Company and Delta Dental, as well as the Premium paid by, or on behalf of, an Enrollee for Continuation Coverage. Premiums for Continuation Coverage shall be payable to Company, and by Company to Delta Dental, in amounts allowable by law and based on the amounts detailed in separate communication signed by Company and Delta Dental.

Pre-Treatment Estimate shall mean the pre-treatment review by Delta Dental of an Attending Dentist Statement to determine the eligibility of the Enrollee and the benefits available for proposed procedures in accordance with Article IV, Paragraph C.

Primary Enrollee shall mean an Employee who is enrolled hereunder.

Prospective Rating Method shall mean the rating method where Delta Dental is at risk for claims cost versus premium.

Protected Health Information, (PHI) shall mean information related to an Enrollee's health status or Treatment received, that is individually identifiable by reference to the Enrollee.

Records shall mean the data collected by Delta Dental regarding claims administration.

Retention Rating Method shall mean the rating method where Delta Dental is at risk for losses, but surpluses are refunded to the purchaser.

Services shall mean the Treatments set forth in Schedule A and any applicable Riders to Schedule A, which Schedule and Riders are incorporated herein and made part hereof by reference, the provisions, conditions, limitations and exclusions contained in Schedule A, performed by a Dentist or under his/her supervision and direction and when necessary, customary and reasonable, as determined by Delta Dental, using standards of generally accepted dental practice.

Single Procedure shall mean a dental procedure to which a separate procedure number is assigned by Delta Dental.

Treatment shall mean a caring for or dealing with an oral condition.

ARTICLE II. ENROLLMENT

A. Enrollment of Enrollees. Company shall enroll Enrollees prior to the onset of the Contract and update such information monthly or more frequently if selected by Company thereafter during the Contract Term. This enrollment or update shall be accomplished by Company supplying to Delta Dental a listing of all Primary Enrollees, on enrollment cards furnished by Delta Dental, by entry on a returned billing statement, by magnetic tape, or in such other format selected by Company and approved by Delta Dental. Such listing or format shall include the full names and the Enrollee ID numbers of the Primary Enrollees and whether they are single or have Dependents if eligibility is extended to them under Paragraph B of this Article.

B. Eligibility. Persons eligible for enrollment as Enrollees shall be:

- Primary Enrollee Only
- Primary Enrollee and One Dependent
- Primary Enrollee and All Dependents
- Primary Enrollee and Specified Dependents
- Specified Dependent (only)
- (All) Dependents (only)

All members of a defined group must be enrolled by the Company as Enrollees. The minimum size of the defined group for purposes of Article X, Paragraph B, shall be 200 Primary Enrollees.

C. Change in Eligibility Status. If Dependents, as designated in Paragraph B of this Article, are eligible for enrollment and if an Enrollee is initially enrolled as a single person and the enrollment status changes to that of Family during the term of this Contract, such change must be indicated to Delta Dental in writing on enrollment cards furnished by Delta Dental, by entry on a returned billing statement, by magnetic tape or in such other format selected by Company and approved by Delta Dental, within thirty (30) days following such change. If a person is initially enrolled at a family rate and his/her status changes to that of single during the term of this Contract, such change must be reported to Delta Dental in writing as described within thirty (30) days following such change.

D. Loss of Eligibility. If an Enrollee who has been previously certified by Company as eligible loses his/her eligibility, Company shall immediately notify Delta Dental in writing by entry on returned billing statement or magnetic tape or on enrollment cards furnished by Delta Dental or in such other format selected by Company and approved by Delta Dental.

E. Eligibility of Newborn Children of Enrollees. In order for the coverage of newborn children of Enrollees to continue beyond the thirty-one (31) day period, Delta Dental must be notified of the birth of the newborn child, or notified of the enrollment of any dependent child in writing on enrollment cards furnished by Delta Dental, by entry on a returned billing statement or magnetic tape or in such other format selected by Company and approved by Delta Dental, and payment of the required Premium must be furnished to Delta Dental within thirty-one (31) days after birth or within thirty-one (31) days after



notification of the enrollment of the dependent child. If the parent was enrolled as a single person, his/her enrollment status change must also be reported to Delta Dental as described, with such family coverage effective on the date of the newborn child's birth or the date of the dependent child's enrollment.

### ARTICLE III. ENTITLEMENT TO SERVICES

In consideration of the payment of Premiums by the Company, each Enrollee is entitled to Services, as provided in Schedule A, under this Contract.

### ARTICLE IV. ADMINISTRATION OF CLAIMS FOR SERVICES

- A. Approval of Claims. Delta Dental shall administer all claims in accordance with the terms of this Contract. Payment shall be made only on approved claims.
- B. Notification of Dentist. The Enrollee shall notify the Dentist that he/she is an Enrollee under the Contract prior to Treatment and provide the Dentist with his/her Enrollee ID number and group number.
- C. Pre-Treatment Estimate of Benefits. If the charges for Services to be provided to an Enrollee exceed an amount which Delta Dental shall set and adjust periodically, an Enrollee may request the attending Dentist to submit his/her Attending Dentist Statement to Delta Dental for a Pre-Treatment Estimate of benefits before performing his/her procedures. Delta Dental shall notify the Dentist whether the procedures are within the Services covered by the Contract. The notification shall also state the amount which will be paid providing the Enrollee is eligible on the date when each respective procedure is commenced, the procedures are completed within a sixty (60) day period following the date of the Pre-Treatment Estimate notice and the claim is submitted within the period set forth in Article IV, Paragraph I, the benefits continue to be within applicable benefit maximums and frequency of procedure limitations. Subject to continuing eligibility of the Enrollee, applicable benefit maximums not being exhausted and continuing inapplicability of frequency or procedure limitations, Delta Dental will grant extensions of a benefit Pre-Treatment Estimate period upon request from the Dentist or the Enrollee.
- D. Supporting Material for Claims. Delta Dental shall be entitled to receive from any Dentist such information and records or copies of records relating to examinations, diagnosis, and Treatment performed for any Enrollee as may be required to determine eligibility of the Enrollee, Treatment coverage and fees payable under this Contract. All records of patients shall be confidential and nothing therein shall be made public except as provided in Article IX, Paragraph B.
- E. Denial of Claim. Delta Dental has installed an extensive internal appeals procedure sensitive to the rights of Enrollees. See Appendix A.

- F. Utilization Review for Quality Control. Delta Dental shall make periodic investigations of the quality of Services being provided under this Contract, and for such purposes Delta Dental may enlist the aid of local Dental Consultants. Company shall be provided with results of such investigation, subject to the provisions of Article IX, Paragraph B.
- G. Limitation on Initial Assumption of Liability for Claims. Unless and until the first Premium payment is received by Delta Dental from the Company, and unless and until the first enrollment lists and/or enrollment cards are received by Delta Dental from the Company, pursuant to Article II, at its administrative offices, Delta Dental shall have no obligation to process any claim under this Contract for Enrollees.
- H. Limitation on Liability for Claims on Termination of the Contract or of Enrollees who have lost Eligibility. In the event of termination of this Contract or the loss of eligibility of an Enrollee, Delta Dental shall not be obligated to offer Services beyond the termination date of the Contract or the Loss of Eligibility Date or to pay for Services beyond such dates except for Single Procedures commenced while the Contract was in effect or the Enrollee was eligible. Delta Dental shall extend benefits beyond the termination date of the Contract or the Loss of Eligibility Date and pay for Services beyond such dates for at least thirty (30) days or until such Services are complete for any Treatment commenced while the Contract was in effect or the Enrollee was eligible. If the Company does not inform Delta Dental of an individual's termination on a timely basis, i.e. with that or succeeding months' regular or additional eligibility provision to Delta Dental, and any claims are paid by Delta Dental on behalf of such ineligible person, then Company shall be responsible for payment of regular Premiums for such ineligible person for the month(s) until such notification was given Delta Dental, and such incorrect payments, if not recouped by Delta Dental, from the ineligible person will be included in the Company's claims experience. Notwithstanding, the other provisions of this Paragraph of this Article, if Delta Dental has received notice of Loss of Eligibility pursuant to Article II, Paragraph D and or termination of the Contract at the end of a term or early termination pursuant to Article X, Paragraph M, and pays a claim after the Loss of Eligibility Date or termination date which would otherwise be the obligation of the Company under this Paragraph of this Article, then such claims shall be the obligation of Delta Dental.
- I. Time Limitations on Payment of Claims. Delta Dental shall not be obligated to pay claims submitted more than twelve (12) months after the date of providing the Service. If a claim is denied due to a Participating Dentist's failure to make timely submission, the Enrollee shall not be liable to such Dentist for the amount which would have been payable by Delta Dental provided the Enrollee notified the Dentist of his/her eligibility at the time of Treatment. Failure to furnish proof of loss by the Enrollee within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible.

ARTICLE V. COORDINATION OF BENEFITS

- A. In the event that any Enrollee hereunder is entitled to benefits under another benefit program than that described in this Contract, the following Coordination of Benefits provision shall determine the sequence and the extent of payment of the expense for benefits provided under this Contract. Such other benefit program may include any Company-sponsored program including any group Blue Cross/Blue Shield plan, Delta Dental Program or other group prepayment program, group coverage through Health Maintenance Organization and other group practice and individual practice plans, or any Company-sponsored or association or other entity-sponsored insurance program in which the Enrollee is enrolled. Blanket student accident insurance shall not be coordinated. Health programs of any kind shall not be coordinated when the Employee or other individual pays the entire cost thereof or when the program provides any periodic payment or any other payment by the program to Enrollees which is not related to the value of the Service provided to each Enrollee on account of illness or injury.
- B. When a claimant is covered under another benefit program to which this Article applies, the first of the following rules which applies will be followed to establish the order of determining liability of this or any other programs:
1. The program covering the Enrollee as an Employee or member will be considered primary and will determine its benefits before the program which covers the Enrollee as a Dependent. The primary program may be any of the programs described as an "other benefit program" under Paragraph A of this Article.
  2. If the claimant is a covered dependent child of different persons called parents, the program covering the dependent child of the parent whose birthday falls earlier in the Calendar Year will be considered primary and will determine its benefits before the program covering the dependent child of the parent whose birthday falls later in the Calendar Year except for dependent children of separated or divorced parents to which the rules in Subparagraph 3 of this Paragraph apply. If both parents have the same birthday, the program covering the parent for the longest period will determine its benefits before the program covering the parent for the shorter period. If the other program does not have the rule described in this subparagraph, but instead has a rule based on gender of the Employee, the rule of the other plan will determine the order of benefits.
  3. When the claimant is a covered dependent child of divorced or separated parents, the program covering the parent having custody of the dependent child will be considered primary and will determine its benefits first; then the program of the spouse of the parent with custody of the dependent child, and finally, the program of the parent not having custody of the dependent child. However, if the specific terms of a court order state that one of the parents is responsible for the health care expenses of the dependent child, that program will be considered primary and its benefits will be determined first. The prior sentence shall not apply with respect to any period during which any benefits are actually paid or provided before a program has actual knowledge of the court order.

4. The program covering the Enrollee as an Employee or as a Dependent of an Employee will determine its benefits before one which covers the Enrollee as a laid-off or retired Employee or as the Dependent of such person. If the other plan does not have a rule concerning laid-off or retired Employee, and as a result each plan determines its benefits after the other, then the provisions of this subparagraph shall not apply.
  5. In situations not described in Subparagraphs 1, 2, 3 and 4 of this Paragraph, the program under which the Enrollee has been enrolled for the longest period of time will determine its benefits first.
  6. If the other program does not contain provisions establishing the same order of determining liability for benefits or is one which is "excess" or always "secondary", Delta Dental shall determine and pay its benefits in the following manner. If Delta Dental should be the first to determine its benefits, it shall pay without regard to coverage under the other program in accordance with Paragraph C of this Article. If Delta Dental should not have been the first to determine its benefits, it shall nevertheless, pay in accordance with Paragraph C of this Article but the amount of benefits payable shall be determined in accordance with Paragraph D of this Article as if Delta Dental were not the first to determine its benefits. If payment is to be made in accordance with Paragraph D of this Article, such payment shall be the limit of the liability of Delta Dental. If the other program does not provide the information needed by Delta Dental to determine its benefits within thirty (30) days after it is requested to do so, Delta Dental shall assume that the benefits of the other program are identical to its own, and shall pay its benefits accordingly. However, Delta Dental shall adjust any payments it makes based on such assumption whenever information becomes available as to actual benefits of the other plan.
- C. When Delta Dental is the first to determine its benefits, benefits hereunder will be paid without regard to coverage under any other program.
- D. When Delta Dental is not the first to determine its benefits, and there are remaining expenses of the type allowable hereunder, Delta Dental shall pay only the amount by which its benefits under this Contract exceed the amount of benefits payable under the other program or the amount of such remaining expenses, whichever is less. In no event, shall Delta Dental pay more than the remaining Dentist charges after the first plan pays which would be allowable for Maximum Plan Allowance calculations or the Allowed Amount whichever is less.
- E. For the purpose of determining the applicability and implementing the terms of this provision of this program or any provision of similar purpose of any other program, Delta Dental may, without the consent of or notice to any person, except for those situations where consent or notice is required by Article 25 of the New York General Business Law, release to or obtain from any insurance company or other organization or person any information, with respect to any person demand or make payment which it deems to be necessary for such purposes, and in so acting, Delta Dental shall be free from any liability that might arise in relation to such action. Any person claiming benefits under this program shall furnish to Delta Dental such information as may be necessary to

implement this provision. Notwithstanding the foregoing, to the extent that a HIPAA Business Associate Addendum between Delta Dental and Company is in effect, and applicable to the disclosure, any disclosure of information by Delta Dental shall be in accordance with that Business Associate Addendum.

#### ARTICLE VI. PAYMENT FOR COVERED SERVICES

- A. Fees of Participating Dentists Who are PPO Dentists. All fees paid or otherwise discharged by Delta Dental to Participating Dentists who are PPO Dentists for Services under this PPO program, provided to Enrollees under this Contract shall be the PPO Allowed Amount, except as constrained by Article VI, Paragraph D.

A Participating Dentist who is a PPO Dentist shall accept the PPO Allowed Amount as defined in Article I whether indicated to be paid by Delta Dental or Delta Dental and the Enrollee, as provided in Article VI, Paragraph D, as the total amount payable for the Services provided and shall not charge or accept an additional amount for such Services to or from either Enrollee or Delta Dental.

- B. Fees of Participating Dentists Who are not PPO Dentists. All fees paid or otherwise discharged by Delta Dental to Participating Dentists other than PPO Dentists for Services under this PPO program, provided to Enrollees under this Contract shall be the Allowed Amount as defined in Article I, except as constrained by Article VI, Paragraph D.

A Participating Dentist other than a PPO Dentist shall accept the Allowed Amount as defined in Article I as paid by Delta Dental and the Enrollee, in accordance with Article VI, Paragraph C, as the total amount payable for the Services provided and shall not charge or accept an additional amount for such Services.

- C. Fees of Non-Participating Dentists. Payments by Delta Dental for Services provided by Non-Participating Dentists to Enrollee under this Contract shall be the Allowed Amount, except as constrained by Article VI, Paragraph D.
- D. Payment of Fees. All payments for Services provided to Enrollees as calculated in accordance with this Article, shall be payable or otherwise discharged by Delta Dental unless constrained by deductibles, co-payments or maximums, as set forth in Schedule A, in which case fees shall be payable or otherwise discharged by Delta Dental and payable by the Enrollee in accordance with Schedule A.

## ARTICLE VII. EXCLUSIONS AND LIMITATIONS

The Services provided for Enrollees under this Contract shall be limited as specified in Articles of this Contract and in Schedule A.

## ARTICLE VIII. GENERAL PROVISIONS

- A. Limitation on Liability for Errors and Omissions. This Contract shall impose no liability whatsoever upon either the Company, Delta Dental, severally or jointly, for any act or omission, including but not limited to negligence, misfeasance, malfeasance, non-feasance or malpractice on the part of a Dentist, his/her employees or agents, in the performance of dental procedures for an Enrollee.
- B. Doctor-Patient Relationship. Nothing contained in this Contract and Schedule A shall be construed as meaning that the relationship between a Dentist and an Enrollee, who is his/her patient, is other than that of a generally accepted relationship of doctor and patient.
- C. Assignment. Neither party in this Contract may assign its interest herein without the written consent of the other party hereto. Delta Dental agrees that Delta Dental shall not assign, transfer, convey, subcontract or otherwise dispose of this contract or Delta Dental's responsibility to perform under this contract or Delta Dental's right, title or interest in and/or to the same, nor any part thereof, nor to any monies which are or will become due and payable to Delta Dental thereunder, nor the power to execute such contract to any other person, company or corporation without the prior express written consent of the Company.
- D. Binding Nature of Contract. This Contract and the Schedule attached to it shall be binding upon each party's respective successors and assigns.
- E. Independent Contractor Status of Dentists Providing Services. Any Dentist, or any Dentist or employee associated with or employed by them, providing Services to Enrollees enrolled in the Delta Dental PPO program, as with other Delta Dental programs, provide such Services as an independent contractor and shall be solely responsible for dental advice and for performance of Services, or lack thereof, to the Enrollee.
- F. Independent Contractor with Delta Dental: The Parties agree that Delta Dental is engaged as an independent contractor to the Company. Nothing contained in this Agreement will be construed to create the relationship of employer and employee, principal and agent, partnership, joint venture, or any other fiduciary relationship. Delta Dental is not, shall not, and has no authority to act as an agent or representative of the Company and has no authority to bind the Company in any manner. Delta Dental shall make no claim for, nor shall be entitled to, Workers' Compensation coverage, medical and unemployment benefits, Social Security or retirement membership benefits from the Company. Delta Dental further agrees that the Company shall not be liable for any payroll deductions, including but not limited to, U.S. Social Security taxes, Federal and/or State withholding taxes. Delta Dental agrees to accept exclusive liability for complying with all applicable

state and federal laws governing self-employed individuals including obligations such as payment of quarterly taxes, social security, disability and other contributions based on the fees paid to the Company under this Agreement. Delta Dental agrees to indemnify and hold the Company harmless to the extent that they become obligated to pay any of the above taxes or incurs any similar liabilities.

- G. Subrogation. Delta Dental shall notify the Company regarding any claims which, in the opinion of Delta Dental, may involve probable third-party liability, subrogation, or other litigation, and investigate or pursue such claims for recoveries. The Company shall be responsible for the investigation and prosecution of any subrogation recoveries it chooses to do beyond those deemed appropriate by Delta Dental.

In the event that an Enrollee suffers an injury or illness for which another party may be responsible, such as someone injuring the Enrollee in an accident, and Delta Dental pays benefits as a result of that injury or illness, Delta Dental shall be subrogated and succeed to the right of recovery against the party responsible for the Enrollee's illness or injury to the extent of the benefits Delta Dental has paid. This means that Delta Dental has the right independently of the Enrollee to proceed against the party responsible for the Enrollee's injury or illness to recover the benefits Delta Dental has paid.

Under certain circumstances, Delta Dental shall also be entitled to be reimbursed for benefits Delta Dental has paid from a settlement or a judgment the Enrollee received from the party responsible for the Enrollee's illness or injury. This and other penalties which apply under certain circumstances are:

1. The settlement or judgment the Enrollee receives from the party responsible for the Enrollee's illness or injury specifically identifies or allocates monetary sums directly attributable to expenses for which Delta Dental has paid benefits; or
2. The Enrollee fails to cooperate with Delta Dental in proceeding against the party responsible for the Enrollee's illness or injury to recover the benefits Delta Dental has paid. Delta Dental shall pay all expenses associated with a legal action instituted on Delta Dental's initiative.

Enrollee shall be responsible to repay Delta Dental the amount of benefits Delta Dental has paid if Enrollee fails to cooperate in accordance with Subparagraph 2 above. Delta Dental agrees to invoke Subparagraph 2 above only when a Enrollee's illness or injury caused by a third party results in expenditure by Delta Dental on a Enrollee's behalf of an amount exceeding \$500.00 under this coverage.

- G. Hold Harmless: Delta Dental shall indemnify, defend, and hold harmless the Company, its affiliates, agents, officers, directors, and employees from any and all claims, liability, demands, losses arising out of injury to property or persons, including death, any causes of action, damages, lawsuits judgments, and any claim based on any statute, law, ordinance, code, or regulation arising out of, relating to, or sustained in connection with Delta Dental's provision of services under this Agreement. This includes any and all attorneys' fees costs and expenses associated with the foregoing. Delta Dental agrees to accept exclusive responsibility and liability for complying with all applicable state and

federal laws, and all codes, regulations, statutes, and ordinances governing self-employed individuals including, without limitation, obligations regarding payment of quarterly taxes, social security, disability and any other contributions based on the fees paid to the Contractor under this Agreement. Delta Dental agrees to reimburse, indemnify, defend and hold harmless the Company to the extent that the Company becomes obligated to pay any of the above taxes, contributions, or payments, or to the extent the Company incurs any similar liabilities. Specifically Delta Dental agrees to defend, indemnify and hold harmless the Company against all claims that the Licensed Software furnished under this Agreement infringe a United States patent or copyright or misappropriate trade secrets protected under United States law.

Company shall indemnify, defend, and hold harmless Delta Dental, its affiliates, agents, officers, directors, and employees from any and all claims, liability, demands, losses arising out of injury to property or persons, including death, any causes of action, damages, lawsuits judgments, and any claim based on any statute, law, ordinance, code, or regulation arising out of, relating to, or sustained in connection with Company's provision of services under this Agreement. This includes any and all attorneys' fees costs and expenses associated with the foregoing. Company agrees to accept exclusive responsibility and liability for complying with all applicable state and federal laws, and all codes, regulations, statutes, and ordinances governing self-employed individuals including, without limitation, obligations regarding payment of quarterly taxes, social security, disability and any other contributions based on the fees paid to the Contractor under this Agreement. Company agrees to reimburse, indemnify, defend and hold harmless Delta Dental to the extent that Delta Dental becomes obligated to pay any of the above taxes, contributions, or payments, or to the extent Delta Dental incurs any similar liabilities. Specifically Company agrees to defend, indemnify and hold harmless Delta Dental against all claims that the Licensed Software furnished under this Agreement infringe a United States patent or copyright or misappropriate trade secrets protected under United States law.

- H. Liability: The Company shall not be liable to Delta Dental for any special, indirect, incidental, punitive, or consequential damages arising from or related to this Agreement, including bodily injury, death, loss of revenue, or profits or other benefits, and claims by any third party, even if Delta Dental has been advised of the possibility of such damages. The foregoing limitation applies to all causes of action in the aggregate, including, without limitation, breach of contract, breach of warranty, negligence, strict liability, and any and all other torts.
- I. Company Responsibilities. Company, as applicable, shall be solely responsible for its Group Health Plan's compliance with HIPAA's administrative requirements resulting from the Company's activities, including but not limited to, privacy officer designation, training, policies and procedures pursuant to 45 C.F.R. § 164.530 etc. Company policies and procedures regarding disclosure of PHI shall permit disclosure regarding Dependents only to those persons who qualify as parent or legal guardian/custodian as defined under applicable state law.
- J Statements Considered Representations. Absent fraud, each statement made by the Company or Enrollee is considered to be a representation and not a warranty.



- K. Notices. Communications intended for Delta Dental shall be addressed to One Delta Drive, Mechanicsburg, PA 17055. Company shall designate in writing the name and address of a representative to receive notices from Delta Dental to Company and notices, including HIPAA notices, to Enrollees under this Contract. Company may change their representatives at any time on thirty (30) days notice to Delta Dental. The Company representative shall disseminate notices to the Enrollees within thirty (30) days of receipt, unless otherwise agreed by Delta Dental and Company, and disseminate HIPAA notices to Enrollees upon enrollment by the Company.
- L. Force Majeure. Neither Delta Dental nor Company shall be liable to the other or be deemed to be in breach of this Contract for any failure or delay in performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes are strictly limited to include acts of God or of a public enemy, explosion, fires, unusually severe weather or labor disputes. Dates and times of performance shall be extended to the extent of the delays excused by this paragraph, provided that the party whose performance is affected notifies the other promptly of the existence and nature of the delay.
- M. Insurance: ~~The Contractor~~ Delta Dental agrees to obtain and maintain Workers Compensation and General Liability Insurance including Comprehensive Form, Premises-Operations and Broad Form Contractual with minimum limits of \$1,000,000 per incident. The required insurance policies must be endorsed to include the Company as an additional insured (General Liability only) on a primary non-contributory basis with a waiver of subrogation. The Certificate of Insurance Holder shall be:

Montgomery County  
20 Park St  
Fonda, NY 12068

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Also, Delta Dental will notify the Certificate of Insurance Holder by certified mail thirty (30) days prior to any change diminishing coverage, limits, cancellation or non-renewal of the insurance policies. For the duration of this contract, Delta Dental shall also notify the Certificate of Insurance Holder thirty days prior to the renewal of the policies. Upon any and all renewals of the subject insurances during the duration of this contract, a new Certificate of Insurance shall immediately be sent to the Company. If Delta Dental's insurance is claims made they must keep it in place for at least six years after the completion of the contract. If insurance is on a claims made basis Delta Dental shall provide proof of coverage through the termination of any applicable statute of limitations.

- O. Statutory Compliance: In acceptance of this Agreement, Delta Dental covenants and agrees to comply in all respects with all applicable Federal, State, and County laws, rules, regulations and ordinances which pertain hereto and to the performance hereof, including but not limited to those regarding services for municipalities including but not limited to Workers' Compensation and Employers' Liability Insurance, hours of employment, wages and human rights.

- P. Licenses and Permits: Delta Dental hereby agrees that Delta Dental will obtain at its own expense those licenses or permits for the work performed under this contract that are applicable to Delta Dental, if any are necessary, prior to the commencement of work.

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Q. Appropriations: It is understood by and between the parties hereto that this Agreement shall be deemed executory only to the extent of the monies appropriated and available for the purpose of this Agreement and no liability on account thereof shall be incurred by the Company beyond monies appropriated and available for the purpose thereof. In no instance will the Company be obligated to make payments that are not appropriated and budgeted. Notwithstanding anything contained herein to the contrary, no default shall be deemed to occur in the event no funds or insufficient funds are appropriated and budgeted by either the Company, or are otherwise unavailable to the Company for payment.

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R. Severability: If any term or provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and every other term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

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S. Conflict: In the event of any conflict between this Agreement and any other document, including exhibits, the terms of this Agreement shall prevail.

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T. Enforcement: A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise of that right, power or privilege or the exercise of any other right, power or privilege.

U. Venues and Disputes: The exclusive means of disposing of any dispute arising under this Agreement shall be decided in a New York State Court of competent jurisdiction located within Montgomery County, New York. There shall be no right to binding arbitration. Pending final resolution of a dispute, Delta Dental shall proceed diligently with performing the terms of this Agreement. Delta Dental waives any dispute or claim not made in writing and received by the Company within ninety (90) days of the occurrence giving rise to the dispute or claim. The claim must be in writing for a sum certain and any money requested must be fully supported by all cost and pricing information.

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V. Applicable Law: This Agreement shall be governed by the laws of the State of New York.

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W. Non-Discrimination: In accordance with Article 15 of the Executive Law (also known as the Human Rights Law), and all other State and Federal statutory and constitutional non-discrimination provisions, Delta Dental agrees that neither it nor its Company-approved subcontractors shall, by reason of age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, familial status, marital status or domestic violence victim status, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation in terms, conditions or privileges of employment or make any inquiry into prospective employment which expresses, indirectly or directly any limitation specification or discrimination based on the foregoing characteristics.

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X. Miscellaneous: This Agreement may be executed in one or more counterparts and each counterpart shall, for all purposes, be deemed an original, but all such counterparts shall together constitute but one and the same instrument. Section titles or captions contained

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herein are inserted only as a matter of convenience for reference and in no way define, limit, extend, or describe the scope hereof or the intent of any provision hereof. This Agreement, and any accompanying appendices, duplicates, or copies, constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement, and supersedes all prior negotiations, agreements, representations, and understandings of any kind, whether written or oral, between the Parties, preceding the date of this Agreement.

ARTICLE IX. REPORTS AND RECORDS AND INSPECTION THEREOF

- A. Employment Information. For purposes of enrollment of Enrollees under Article II, Company shall supply to Delta Dental such information as is required by the provisions of Article II at the expense of the Company. Such other employment information as Delta Dental may need from time to time for purposes of determining eligibility or preparing statistical reports shall be provided by Company to Delta Dental at the expense of Company.
- B. Records. Delta Dental shall maintain adequate records of Services provided under this Contract in order that statistical evaluations of the dental care program can be made. Such records shall be deemed the joint property of the Company and Delta Dental and neither party may release the contents of such records to third parties without the written consent of the other except as otherwise provided by law. Statistical aggregated findings based on such records may be published by Delta Dental without the consent of the Company or an Enrollee, but any such published findings will not disclose the name of the Company or Enrollee. The maintenance of all records shall comply with HIPAA and shall meet, to the extent applicable, the HIPAA identification standards in 45 C.F.R. § 164.514.
- C. Right to Audit. Notwithstanding any other provision of this Contract, provided that the standards of confidentiality set forth elsewhere in the Contract and the HIPAA Business Associate Addendum are observed, Company shall have the right to audit all of the records maintained by Delta Dental pertinent to the payment under this Contract during the normal business hours of Delta Dental after receipt by Delta Dental as of written notice of the date of the audit at least five (5) business days before the date, whether or not such information is ordinarily reported by Delta Dental to Company. Subject to the Business Associate Addendum, Company may select an independent auditor acceptable to Delta Dental (whose consent shall not be unreasonably withheld) to conduct or assist with any audit under this Contract. Company shall reimburse Delta Dental for any expense incurred by Delta Dental assisting Company in its audit.

ARTICLE X. CONTRACT RENEWAL, MODIFICATION AND TERMINATION

- A. Renewal, Modification and Termination. This Contract shall be automatically renewed for a 12-month term under the same terms and conditions including renewal, except that the appropriate change shall be automatically made in Article I, unless either party gives written notice to the other of its desire to modify, in accordance with Paragraphs I and J, of this Article or to terminate at least sixty (60) days prior to the end of the current term.
- B. Modification due to Reduction in Size of Group. If the Prospective Rating Method or the Retention Rating Method are used in calculating Premiums and if the number of Primary Enrollees reported by the Company to Delta Dental falls below the minimum number set in Article II, Paragraph B, for three (3) consecutive months, Delta Dental may propose to Company two or more alternate adjustments in rates, benefits or co-payments in order to remedy adverse group experience which may result from such variations. Within thirty (30) days after such a proposal has been sent to Company in writing, Company shall select one of the alternate adjustments by written notice to Delta Dental or, if Company fails to do so, Delta Dental may select one or more alternate adjustments in rates, benefits and/or co-payments by written notice to Company and the Contract shall thereby be modified on the date set forth in the notice.
- C. Termination on Failure to Pay Premiums. If Premiums, after notice and billing by Delta Dental, are not paid when due, Company shall be granted a grace period of thirty (30) days in which to remit the Premium. During the grace period, the Contract shall remain in-force. Company shall be liable for the Premium due for the grace period. Failure to remit the Premium will cause the Contract to terminate on the day following the end of the specified grace period (termination date). After the termination date, Delta Dental shall only be obligated to pay claims as stated in Paragraphs H and I of Article IV.
- D. Liability of Company on Failure to Pay Premiums. In the event of termination for failure of Company to pay Premiums, Company shall remain liable to Delta Dental for the full amount of all Dentist statements paid or otherwise discharged during the time this Contract was in effect and all immediately preceding contracts between Company and Delta Dental, plus n/a% of such amount to compensate Delta Dental for its administration of the Delta Dental program, less amounts actually paid by the Company to Delta Dental during the term of such contracts.
- E. Return of Premium on Termination. If, on termination of this Contract, Company has paid Premiums to Delta Dental applicable to a period of time after the termination date, Delta Dental shall, within thirty (30) days after termination, return any portion of the Premiums to Company, together with the amount due on claims, if any, less any amount due to Delta Dental pursuant to Paragraph D of this Article.
- F. Reinstatement. Acceptance by Delta Dental after the termination date of the proper amount of Premiums for the period prior to the termination date, shall reinstate the Contract as though it had never been terminated. Acceptance by Delta Dental of less than the proper amount of Premium shall reduce amount of Premium owed but not reinstate the Contract.

- G. COBRA Exception. Termination of Continuation Coverage for an Enrollee or his/her Dependents for failure to pay Premiums pursuant to Article I, shall not be a “Termination on Failure to Pay Premiums” under Paragraph C of this Article and Paragraphs C, D, E and F of this Article shall specifically not be applicable to termination of Continuation Coverage.
- H. Notification to Enrollees of Contract Termination. Any notification of contract termination to Enrollees required by the Employee Retirement Income Security Act of 1974 shall be the responsibility of Company. Any claims incurred by Enrollees after a termination date because of lack of notice of termination shall be handled in accordance with Article IV, Paragraph H.
- I. Company Proposed Changes. If Company wishes to make changes in the covered Services, exclusions or limitations in the Contract, it shall give written notice of such proposed changes to Delta Dental. Such changes, including any resulting Premium increases or decreases, shall then be proposed by Delta Dental in the form of Modification to the Contract, amendments to the Schedule or substitution of a new Schedule or Riders, approved as to form and content by the appropriate governmental authority. Such changes shall have an Effective Date agreed to by Company and Delta Dental. Timely payment of the Premium at the indicated rate for the period after the Effective Date by Company shall be deemed receipt of notice and acceptance by Company of the changes. If Company does not pay the indicated Premium for the changes, the Agreement shall continue as though changes had not been proposed.
- J. Delta Dental Proposed Changes. If Delta Dental determines that any changes in the provisions of the Contract, including the Schedule or Riders attached to it, are required or warranted, such changes shall be proposed to Company in the form and with an Effective Date, as described in Paragraph I of this Article, at least thirty (30) days prior to such change. The provisions of Paragraph I, concerning approval as to form and content by appropriate governmental authority, deemed receipt of notice and acceptance of changes or continuation of the Agreement, shall apply to changes proposed by Delta Dental under this Paragraph of this Article.
- K. Reduction or Elimination of Coverage. Notwithstanding anything to the contrary in Paragraphs I and J of this Article, any change in the provisions of the Contract reducing or eliminating coverage shall provide for signed acceptance of Company.
- L. HIPAA Provision Survival. Any and all obligations related to Records maintenance and compliance with HIPAA standards shall survive termination of this Contract.
- M. Termination by Company Prior to End of Contract Term. The provisions of this Article and Article I not withstanding, Company may terminate the Contract on a termination date at least thirty (30) days after receipt by Delta Dental of written notice of termination from Company. The obligations of Delta Dental to pay claims shall, as of the termination date, be governed by Paragraphs H and I of Article IV. If a question arises as to whether this Paragraph or Paragraph C of this Article apply, Paragraph C of this Article shall be applicable and not this Paragraph.

ARTICLE XI. EXTENT OF ENTIRE CONTRACT

The Contract between the parties consists of this printed document together with Schedule A.

ARTICLE XII. CANCELLATION OF EXISTING CONTRACTS

This Contract supersedes all prior contracts existing between the parties which are inconsistent herewith.


IN WITNESS HEREOF, the parties hereto have caused this Dental Service Contract to be executed at New York, New York.

MONTGOMERY COUNTY DENTAL PLAN  
(#16067)

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

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

DELTA DENTAL OF NEW YORK, INC.

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

Title: President & CEO

Contract term: January 1, 2019 to December 31, 2019