



Delta Dental Patient Direct® Program Agreement

This Program Agreement (“Program Agreement”) is between Arizona Dental Insurance Service, Inc. d/b/a Delta Dental of Arizona (“Delta Dental”) and the Dental Entity listed on Exhibit A including all of the Dentists providing services at any Dental Entity Location (defined below). This Program Agreement addresses Dental Entity and its Dentists participation in the Delta Dental Patient Direct network and program (“Patient Direct Program”), a non-insurance discount program available only to Delta Dental Patient Direct participants (the “Patient Direct Participant”). In consideration of the mutual promises contained in this Program Agreement, the parties agree as follows:

1. DEFINITIONS

- a. “Dental Entity” means a validly licensed sole practitioner or registered business entity offering dental services in accordance with Arizona Revised Statutes (ARS), Chapter 32.
- b. “Dental Entity Location” means the locations from which Dental Entity provides dental services as set forth on Exhibit A hereto, as such may be amended from time to time with 30 days’ prior written notice to Delta Dental.
- c. “Dentist” means a dentist providing dental services at any Dental Entity Location, whether employed by Dental Entity or an independent contractor engaged by Dental Entity.
- d. “Prevailing Rate” means the full fee for a dental procedure that the Dental Entity Location or Dentist submits to Delta Dental for a particular CDT Code under a claim for payment for providing the dental service to Delta Dental members. If no claims for such dental service have been submitted to Delta Dental within the most recent 12 months, then the average of the full fee for such dental services submitted by dental entities and dentists in the Patient Direct Program within the same geographical area within the past 12 months.

2. DENTAL ENTITY OBLIGATIONS

With respect to the Dental Entity and each and every Dentist that is providing dental services at the Dental Entity Locations, Dental Entity represents and warrants that:

- a. Dental Entity has all the necessary contractual and/or legal authority to enter into this Program Agreement and to require and enforce the provisions of this Program Agreement with respect to the obligations and requirements of Dental Entity Location and Dentist.
- b. All Dentists providing dental services at Dental Entity Locations must be Delta Dental Patient Direct Program dentists unless Delta Dental waives this requirement in writing.
- c. Each Dentist is duly licensed to practice dentistry in the State of Arizona, in good standing, and without pending disciplinary proceedings.
- d. Each Dentist shall, at all times during participation in the Patient Direct Program, be a member in good standing in the Delta Dental PPO or Premier network and in compliance

with all requirements of the Participating Dentist Agreement with Delta Dental including but not limited to all credentialing standards and requirements.

- e. Dental Entity and Dentist will comply with all applicable federal, state, and local laws, rules, regulations, and ordinances. Dental Entity and Dentist will comply with all Delta Dental requirements related to the Patient Direct Program. Any dental service rendered to Patient Direct Participants at any Dental Entity Location shall be in accordance with all of the above.
- f. The Patient Direct Participant and Dentist shall have complete discretion in choosing the treatment plan that both deem to be in the Patient Direct Participant's best interest, and Delta Dental disclaims any liability with respect to such matters. Dental Entity and Dentist acknowledge that in choosing a treatment plan, it and Dentist will not discriminate on the basis of race, religion, gender, age, national origin or disability.
- g. Dental Entity and Dentist must provide treatment to all Patient Direct Participants requesting service at the same level of service and appointment availability as Dental Entity and Dentist provides to non-Patient Direct Participants. Dental Entity and Dentist agrees to accept new Patient Direct Participants as patients on the same basis that Dental Entity and Dentist is accepting new non-Patient Direct Participants.
- h. Neither the Dental Entity nor any Dentist has been convicted or pleaded nolo contendere to a felony or misdemeanor involving moral turpitude, or a violation of ARS § 44-1797 et seq.
- i. Neither the Dental Entity nor any Dentist has been held liable in a civil action, either by final judgment or entry of a stipulated judgment, if the civil action alleged fraud, embezzlement, racketeering, fraudulent conversion or misappropriation of property or a violation of ARS § 44-1797 et seq., or the use of untrue or misleading representations in an attempt to sell or dispose of real or personal property or the use of unfair, unlawful or deceptive business practices.
- j. Neither the Dental Entity nor any Dentist is subject to any currently effective injunction or restrictive order relating to business activity as a result of an action brought by a public agency or department including an action affecting any vocational license.

3. PAYMENT FOR SERVICES

- a. With respect to Patient Direct Participants, Dental Entity agrees that it, and Dentists at every Dental Entity Location, will apply a **discount of no less than twenty percent (20%) to the Prevailing Rate ("Patient Direct Discount")** for the dental services offered by the Dental Entity or Dentists, applied as follows:
 - i. The Patient Direct Discount applies to all dental services offered by Dental Entity or Dentist for which a CDT Code exists including cosmetic, orthodontic, restorative, and preventive.
 - ii. The Patient Direct Discount must be applied to the lower of the Dental Entity Location Prevailing Rate or Dentist Prevailing Rate, if such Prevailing Rates differ.
 - iii. Dental services included under a particular CDT Code must be consistent with industry standards for such CDT Code. For example, lab fees associated with a

dental service must be included in the Prevailing Rate for the applicable CDT Code dental service.

- b. Dental Entity agrees that it and each of its Dentists will not, directly or indirectly, charge a Patient Direct Participant any amount that is in excess of the discounted charges or contrary to this Program Agreement.
- c. In the event of an audit or customer complaint or dispute, Delta Dental will validate the discounted Prevailing Rate for Patient Direct Participants based on Delta Dental claim submissions made by Dental Entity Location and Dentist within the last 12 months. Failure to discount from the Prevailing Rate constitutes a breach of this agreement and could result in termination of this Program Agreement and termination from Delta Dental's PPO and/or Premier networks.
- d. The Dentist and/or Dental Entity will identify eligible Patient Direct Participants under the Program and will use reasonable means to verify their identity.
- e. The patient will pay the Dental Entity or Dentist directly. Dental Entity agrees on behalf of itself and each of its Dentists, that the Patient Direct Program is a discount plan and not an insurance or benefit plan. Subject to Section 3(c) below, no claims will be submitted to Delta Dental, and Dentist and Dental Entity will not seek payment from Delta Dental for any services rendered to a Patient Direct Participant under the Patient Direct Program. The Dental Entity or Dentist may setup a payment plan for patients at their own discretion and assumes all risk of collection from each Patient Direct Participant.
- f. Notwithstanding Section 3(e) hereof, if the Patient Direct Participant is also a Delta Dental member (covered by a dental benefits plan issued or administered by Delta Dental), Dental Entity agrees that it and Dentist will submit claims for all services to Delta Dental under the member's dental benefits plan in accordance with Dentist's Participating Dentist Agreement with Delta Dental. In such cases, based on the member's Explanation of Benefit:
 - i. The Patient Direct Discount must be applied to all dental services for which Delta Dental does not provide the member with any discount from the billed charge as a result of member's benefit plan.
 - ii. The Patient Direct Discount is not required to be applied to any dental service eligible for discount under member's plan regardless of whether Delta Dental made any payment for the service as a result of frequency, deductible, copayment, annual maximums, or other benefit plan limitations or exclusions.

4. TERM AND TERMINATION

- a. Any party may terminate this Program Agreement without cause upon 30 days' prior written notice to the other, provided, however, that this Program Agreement shall be binding upon all parties in regard to any and all services to any patient eligible under the Patient Direct Program for services rendered or commenced during the period this Program Agreement was in effect.
- b. Delta Dental of Arizona may immediately terminate this Program Agreement and/or remove Dental Entity and/or Dentist from the PPO or Premier network upon Dentist or Dental Entity's breach of any provision of this Program Agreement.

5. INFORMATION SHARING

- a. By entering into this Program Agreement, Dental Entity authorizes Delta Dental, on behalf of itself and Dentists, to include certain information, including name, office address, telephone number, rating information, and type of practice in Delta Dental's listing of participating Patient Direct Program providers. Delta Dental may distribute these listings (without limitation) on our website, to patients, groups, other Delta Dental member companies, participating dentists, and regulatory agencies. Dental Entity authorizes Delta Dental, on behalf of itself and Dentist, to release other identifying information about the Dental Entity and Dentist that is required by federal or state law or by covered groups subject to applicable confidentiality provisions or that is reasonably necessary for the operation of the Patient Direct Program.
- b. Delta Dental and its affiliates, subcontractors and agents, may use and disclose among themselves information about the Patient Direct Program, including but not limited to, information regarding treatment, quality of care, utilization and necessity of procedures compliance with contractual and legal requirements; sanctions, reports, actions and investigations of licensing agencies, governmental authorities, peer review societies or committees; (collectively, the "Program Dentist Information"), for purposes of administering the Patient Direct Program.
- c. Dental Entity for itself and on behalf of each Dentist provides an absolute, unconditional, and unqualified release and discharge of Delta Dental from all past, current or future actions, liabilities, causes of action, suits, damages, claims and demands whatsoever, in law or in equity, relating to the use and disclosure by Delta Dental of the Program Dentist information, and further agrees that Delta Dental shall have the full benefit of this absolute release and discharge, along with any and all other protections, privileges and immunities afforded under law.

6. GENERAL PROVISIONS

- a. **Assignment of Rights and Delegation of Duties.** This Program Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors and permitted assigns. However, this Program Agreement may not be assigned by the Dentist or Dental Entity without the prior written consent of Delta Dental, which consent may be withheld or granted in Delta Dental's sole discretion. Dental Entity is responsible for the performance of this Program Agreement by each Dental Entity Location and each of the Dentists. Both parties are responsible for the performance of any obligation it subcontracts to a subcontractor and is responsible for any damage caused by such subcontractor. Notwithstanding any provisions to the contrary, however, Delta Dental retains the right to assign or delegate any of its rights or obligations hereunder to any of its wholly-owned subsidiaries, affiliates or successor companies. Assignments made in violation of this provision are null and void.
- b. **Attorney's Fees.** The non-prevailing party in any dispute under this Program Agreement shall pay all costs and expenses, including expert witness fees and attorneys' fees, incurred by the prevailing party in resolving such dispute.
- c. **Choice of Law and Venue.** This Program Agreement shall be governed by and construed under the laws of the State of Arizona, without reference to any conflicts of law provisions. Each Party submits to the exclusive jurisdiction of the courts of the State of

Arizona or United States District Court for the District of Arizona in any legal proceeding arising out of or relating to this Program Agreement and agrees to venue in Maricopa County, Arizona. Each Party waives any right to object to lack of personal jurisdiction, venue, forum non-convenience or similar grounds.

- d. **Compliance with Laws.** Each party shall comply with all applicable legal requirements governing the duties, obligations and business practices of that party and shall obtain any permits or licenses necessary for its operations and the performance of this Program Agreement. Neither party shall take any action in violation of any applicable legal requirement or this Program Agreement that could result in liability being imposed on the other party.
- e. **Conflicts with Participating Dentist Agreement.** The provisions of this Program Agreement will prevail over the provisions of any other agreement that exists between the parties that may conflict with, or appear inconsistent with, any provision of this Program Agreement, with respect to Patient Direct Participants receiving services and/or products under the Patient Direct Program. The Participating Dentist Agreement will prevail over the provisions of this Program Agreement with respect to covered services provided to a member under a Delta Dental benefits plan.
- f. **Cumulative Rights.** Any specific right or remedy contained in this Program Agreement will not be exclusive but will be cumulative of all other rights and remedies.
- g. **Entire Agreement.** This Program Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all previous written or oral understandings, agreements, negotiations, commitments, and any other writing and communication by or between the parties with respect to the subject matter hereof.
- h. **Force Majeure.**
 - i. Neither party is liable to the other for any delay or failure to perform caused by the other party's delay in supplying or failing to supply approvals, information, materials, or services called for under the terms of this Program Agreement if such delay is caused by circumstances beyond its reasonable control, including acts of civil or military authority, national emergencies, labor difficulties, fire, flood, or catastrophe, acts of God, insurrection, war, riots.
 - ii. Each party will exercise reasonable efforts to mitigate the extent of any excusable delay or failure under Section 6.h.i and their adverse consequences; provided, however, that should any such delay or failure continue for more than sixty (60) days, this Program Agreement may be terminated by the non-delaying party.
- i. **Headings.** The descriptive headings of the articles, sections, subsections, exhibits and appendices of this Program Agreement are inserted for convenience only, and shall not affect in any way the meaning or interpretation of this Program Agreement.
- j. **Notices.** Any notices pertaining to this Program Agreement shall be given in writing and shall be deemed duly given upon receipt, when personally delivered or sent by facsimile to a party or a party's authorized representative, or three (3) days after deposited in U.S. mail, postage prepaid. All notices to the Dentist or Dental Entity shall be to the address in Exhibit A. All notices to Delta Dental shall be as follows:

Delta Dental of Arizona
14850 N. Scottsdale Rd., Suite 400
Scottsdale, AZ 85254
Attn: Patient Direct Program Manager
Phone Number: 602.938.3131

- k. **Relationship of the Parties.** Nothing in this Program Agreement shall be construed to create (i) a partnership, joint venture or other joint business relationship between the parties or any of their affiliates, (ii) any fiduciary duty owed by one party to another party or any of its affiliates, or (iii) a relationship of employer and employee between the parties.
- l. **Severability.** If any provision of this Program Agreement are held or declared to be illegal, invalid or unenforceable, the remainder of this Program Agreement shall continue in full force and effect as though such illegal, invalid or unenforceable provision had not been contained herein.
- m. **Survival.** The respective rights and obligations of each party under this Program Agreement that logically ought to survive the termination of this Program Agreement shall survive.
- n. **Third Party Beneficiaries.** Nothing in this Program Agreement shall be considered or construed as conferring any right or benefit on a person or entity not party to this Program Agreement.
- o. **Waiver.** Failure or delay on the part of either Party to exercise any right, power, privilege or remedy hereunder shall not constitute a waiver thereof. No provision of this Program Agreement may be waived by either party except by a writing signed by an authorized representative of the party making the waiver.
- p. **Written Modification.** Delta Dental may, in its sole discretion, amend this Program Agreement from time to time by giving Dentist and Dental Entity thirty days' advance written notice of the Amendment. The Amendment shall become effective upon the expiration of thirty days from its receipt unless Dentist and/or Dental Entity submits a notice of termination of the Program Agreement prior to the expiration of the thirty-day period.

7. AUTHORIZATION

By signing below, the signer acknowledges and agrees that s/he has the authority to bind the Dental Entity on behalf of itself, its Dental Entity Locations, and all of its Dentists, to the terms of this Program Agreement.

Authorized Signatory for Dental Entity and
Dental Entity Locations listed on Exhibit A

Printed Name and Title

Date Signed (MM/DD/YYYY)

Delta Dental of Arizona

Printed Name and Title

Date Signed (MM/DD/YYYY)

Delta Dental Patient Direct® Program Agreement

EXHIBIT A

Dental Entity Corporate Name:	
Corporate Address:	
City, State, Zip:	
Dental Entity Location – Practice Name (dba):	
Tax ID Number:	
Dental Practice Location Address:	
City:	
State:	
Zip:	
Contact Person:	
Email:	
Phone:	
Fax:	