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## AGENT AGREEMENT

This Agent Agreement, by and between Delta Dental Plan of New Mexico, Inc. ("Delta Dental") and \_\_\_\_\_ ("Agent"), is effective on \_\_\_\_\_.

WHEREAS, Delta Dental is a nonprofit healthcare corporation incorporated under the laws of New Mexico to market, underwrite and administer dental plans of New Mexico-domiciled entities including New Mexico-domiciled entities with multi-state operations and WHEREAS, Agent is licensed under the laws of New Mexico to act as such in connection with the solicitation and arrangement of the issuance of health insurance policies; and, WHEREAS, the parties want Agent to represent Delta Dental within a defined geographic region.

THEREFORE, based upon their mutual promises contained herein the parties agree as follows:

### SECTION 1: APPOINTMENT

- 1.1 Delta Dental appoints Agent as its nonexclusive Agent, and Agent accepts this appointment subject to the approval of the New Mexico Division of Insurance. Agent understands and agrees that his or her appointment shall be as an independent contractor to Delta Dental and not as an employee or in any other capacity.
- 1.2 Delta Dental shall file the appointment with the New Mexico Division of Insurance on behalf of Agent. Agent may be responsible for paying some fees associated with the initial appointment. Subsequent annual re-appointment fees for Agent may be paid by Delta Dental. Agent shall provide proof to Delta Dental that said license is active by submitting a copy of current license to Delta Dental upon request.

### SECTION 2: SALES TERRITORY

Agent's nonexclusive sales territory shall be in the State of New Mexico.

### SECTION 3: DUTIES

- 3.1 Agent shall use its best efforts to solicit applications for Delta Dental products and services; collect initial premiums and other charges; avoid conflicts of interest, and generally cooperate with and advance the interests of Delta Dental with its customers. Agent has no authority to bind coverage and all applications for coverage must be approved by Delta Dental in its sole discretion before the coverage goes into effect.
- 3.2 Delta Dental has the exclusive right to prescribe all contracts, forms, provisions, premium rates, service fees and any other charges for coverage or services, and the rules governing the binding, acceptance, renewal, rejection or cancellation of contract for coverage and/or services.
- 3.3 Agent shall not represent itself as having any powers except those specified in this Agent Agreement. Without limiting the foregoing, Agent shall not have authority to extend the time of payment of any premium or service fee; to alter, waive or forfeit any of Delta Dental's contractual rights, requirements or conditions; or otherwise obligate Delta Dental in any way except as stated in this Agreement or otherwise specifically authorized in writing by Delta Dental.
- 3.4 Delta Dental shall furnish Agent with manuals, quotations, forms, marketing support, promotional material, formal proposals, and any other materials or supplies that Delta Dental deems appropriate. All materials furnished by Delta Dental shall remain its property. Agent agrees that these materials as well as rate and benefit schedules, client lists, marketing or other business strategies, and other information furnished by Delta Dental is and shall remain proprietary to Delta Dental, and shall only be used by Agent in furtherance of its performance of this Agreement. Agent shall not use any of Delta Dental's proprietary information for Agent's own benefit or the benefit of a third party during the term of this Agreement or at any time thereafter.

- 3.5 All expenses incurred by Agent in its performance of this Agreement shall be borne exclusively by Agent and not by Delta Dental, except as is provided in section 1.2 and as is otherwise specifically agreed in writing by Delta Dental.
- 3.6 Delta Dental will advertise and provide promotional materials in its discretion. Agent will not use the Delta Dental name, logo or service marks in advertising, internet sites, trade shows, yellow pages listings, display advertising or customer promotional collateral without Delta Dental's prior written approval.
- 3.7 The undersigned at all times shall maintain in good standing its license to act as an agent authorized to sell dental insurance products in the State of New Mexico.
- 3.8 The undersigned shall comply with all applicable requirements of state and federal laws and regulations, including the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). For the purposes of carrying out certain activities of this Agreement that may require access to certain protected health information, Agent is considered a Business Associate under the definition within the Privacy Rule of HIPAA. As a Business Associate, Agent agrees to the provisions set forth in the Business Associate Addendum attached hereto and incorporated herein by reference.
- 3.9 Agent shall be reasonably knowledgeable about the general coverage offered by dental benefit organizations as well as the specific products offered by Delta Dental. Agent agrees to abide by Delta Dental's policies and procedures, and to attend training sessions or review such training materials on Delta Dental's products, policies and procedures as may reasonably be requested by Delta Dental.
- 3.10 Agent agrees not to write dental insurance coverage solely on or for its own organization or affiliates, or on or for individuals and family members of individuals who affiliated with such organization.
- 3.11 Agent agrees to give reasonable notice to Delta Dental of open enrollment meetings by any contracted or prospective Group represented by the Agent, and to allow a Delta Dental marketing representative to be present at all open enrollment meetings.
- 3.12 Agent shall be a fiduciary for all money received or held by it in its representation of Delta Dental. All such money is the absolute property of Delta Dental and Agent will be strictly responsible for this money until it is safely and fully received by Delta Dental. Any amount that the Agent owes to Delta Dental at any time is a first lien on any payment due or thereafter becoming due the Agent under this Agreement, and Delta Dental is authorized to deduct such indebtedness from any payment due the Agent from Delta Dental.

#### **SECTION 4: COMPENSATION**

- 4.1 Delta Dental shall pay commissions to Agent only on premiums paid to Delta Dental by Groups for which the undersigned is the Agent of Record as identified by the Group in writing. Commission payments will commence in the month of completion of all regulatory licensing, appointing and Delta Dental contracting requirements. If a Group changes its designated Agent of Record at any time, the new Agent will become the Agent of Record effective the month following Delta Dental's receipt of written documentation of the change, or such later date as the Group may specify in writing, whether or not the change occurs mid-year or on renewal.
- 4.2 Commissions shall be paid in accordance with the Table of Commission Rates (Exhibit A) and may be modified from time to time by Delta Dental on thirty days' notice for all new Groups and as of the annual anniversary date for any existing Group then enrolled with Delta Dental for which the undersigned is Agent of Record.
- 4.3 Commissions shall be deemed earned only when the premiums on which they are based are paid by the Group to Delta Dental. Commissions are payable only on adjusted premiums actually paid to Delta Dental during the Group's plan year.

- 4.4 Premiums for Groups represented by Agent are payable by the Group directly to Delta Dental. Agent is not authorized to receive any moneys due to Delta Dental without written authorization, signed by a Delta Dental officer and delivered to Agent. If any funds belonging or due to Delta Dental are authorized to be received by Agent, they shall be deposited by Agent in a separate trust account and remitted in full to Delta Dental within five (5) working days after receipt. Any funds not remitted to Delta Dental as provided herein shall bear interest at the rate of 8% per annum. In the event that suit is brought to collect moneys due thereunder, Delta Dental shall be entitled to collect its costs of suit and reasonable attorney fees.
- 4.5 Commissions due under this Agreement shall be paid by Delta Dental and not by the Group. Agent agrees that in no event will it seek recourse against the Group for sums due hereunder.
- 4.6 Commission shall be payable on the fifteenth day (15<sup>th</sup>) day of the month following the month Delta Dental deposits the Group's premium. If the fifteenth (15<sup>th</sup>) day of the month falls on a Saturday or Sunday, commission shall be payable on the Friday before the fifteenth (15<sup>th</sup>) of the month. The Group census at enrollment shall establish the group size and corresponding Agent fee percentage (listed in Exhibit B) for the initial contract period. Agent fee(s) for subsequent renewal(s) shall be calculated by using the group size and corresponding Agent fee as re-established at the time of each renewal.
- 4.7 No assignment, transfer or disposal of any interest that Agent may have on account of this Agreement shall be made at any time without written approval of Delta Dental.
- 4.8 No commission shall be due or payable by Delta Dental to the Agent on any Group whose account is turned over to a collection agency for the collection of delinquent premiums.

#### **SECTION 5: TERM, CHANGES AND/OR TERMINATION OF AGREEMENT**

- 5.1 Subject to Sections 5.2 and 5.3 of this Agreement, this Agent Agreement shall be continuous from its effective date shown on page 1.
- 5.2 Either party may terminate this Agent Agreement by giving written notice of at least thirty (30) days to the other party.
- 5.3 This agreement shall terminate automatically and without notice in the event the Agent's license terminates or expires without renewal, or is suspended, revoked or cancelled for any reason or if Delta Dental has reason to believe Agent has committed fraud or misrepresentation or breached any terms of the Agreement. No commissions will be paid for any activity performed while an Agent's license is suspended, revoked or cancelled. Agent shall notify Delta Dental immediately in the event any disciplinary or other action is taken against the Agent in its capacity as an Agent by a state or federal regulatory authority. Upon expiration or termination of this Agent Agreement, Agent will not act or represent itself in any way as an Agent of Delta Dental.
- 5.4 Within ten (10) days of the expiration or termination of this Agent Agreement, Agent will return to Delta Dental all property belonging to Delta Dental, including but not limited to all customer lists and other records of Delta Dental business.
- 5.5 Delta Dental reserves the right, with or without cause, to change, modify, or terminate this Agreement and its Exhibits upon written notice to the Agent's last known address; provided, however that no such change, modification or termination shall affect rights of Agent which have accrued prior to the effective date of such change, modification or termination.

#### **SECTION 6: MISCELLANEOUS**

- 6.1 If a liability is claimed against Delta Dental based wholly or in part upon the negligence, breach of contract, or comparative fault of the undersigned and/or its employees, Agent shall indemnify Delta Dental for that portion of Delta Dental's liability, established by settlement or judgment and that portion of Delta Dental's defense cost, including attorneys' fees, which are attributable solely to the percentage of fault of the Agent and/or its employees. If a liability is claimed against Agent based

wholly or in part upon the negligence, breach of contract, or comparative fault of Delta Dental and/or its employees, Delta Dental shall indemnify Agent for that portion of Agent's liability, established by settlement or judgment and that portion of Agent's defense cost, including attorneys' fees, which are attributable solely to the percentage of fault of the Delta Dental and/or its employees.

6.2 Neither party to this Agent Agreement may in any way sell, assign or pledge any interest, entitlement, payment or duty arising thereunder without the prior written consent of the other.

6.3 This Agent Agreement shall supersede all prior written and/or verbal agreement and representations and shall constitute the sole and entire agreement between Delta Dental and Agent. No change, alteration or modification of the terms of this Agent Agreement may be made except by agreement in writing signed by an authorized representative of Delta Dental.

6.4 This Agent Agreement shall be governed under the laws of the State of New Mexico.

6.5 Unless otherwise indicated by this Agent Agreement, any notice required to be given by one party to the other shall be in writing by registered mail.

(a) Notices to Delta Dental shall be sent to: Delta Dental Plan of New Mexico, Inc.  
Vice President, Sales and Marketing  
2500 Louisiana Blvd. NE; Suite 600  
Albuquerque, NM 87110

(b) Notice to Agent shall be sent to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(c) Commission Checks shall be payable to: \_\_\_\_\_  
Agent or Company (if Company, insert issued IRS name)

(d) Social Security Number if payable to individual Agent \_\_\_\_\_ or  
Tax Identification Number if payable to Company \_\_\_\_\_  
(IRS Form 1099 will be issued with this number)

6.6 This Agent Agreement is not intended to create any third party beneficiaries or to confer any rights on any person other than Delta Dental and Agent.

6.7 Neither Delta Dental nor Agent will have violated this Agent Agreement if it is prevented from performing any of its obligations for any reason beyond its control, including without limitation, acts of God, public enemy, flood, storm, strikes, or regulatory agencies.

IN WITNESS WHEREOF, the parties have caused this Agent Agreement to be executed as dated on page 1.

AGENT

DELTA DENTAL PLAN OF NEW MEXICO. INC.

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Vice President, Sales and Marketing

\_\_\_\_\_  
(Company Name)

**Exhibit A**

**AGENT STANDARD COMMISSION SCHEDULE**

The standard Agent commission for any Groups insured through Delta Dental Plan of New Mexico shall correspond to the following schedule based on the number of employees enrolled at the contract effective date or contract renewal date. Commission shall be the applicable percentage of the monthly premium collected.

<b><u># EMPLOYEES</u></b>	<b><u>COMMISSION %</u></b>
1 to 50	10.00
51 to 100	8.07
101 to 150	6.24
151 to 200	5.27
201 to 250	4.65
251 to 300	4.20
301 to 350	3.87
351 to 400	3.60
401 to 450	3.38
451 to 500	3.20
501 to 550	3.04
551 to 600	2.91
601 to 650	2.79
651 to 700	2.68
701 to 750	2.59
751 to 800	2.50
801 to 850	2.43
851 to 900	2.36
901 to 950	2.29
951 to 1000	2.23
1001 to 1100	2.15
1101 to 1200	2.05
1201 to 1300	1.97
1301 to 1400	1.90
1401 to 1500	1.83
1501 to 1600	1.77
1601 to 1700	1.71
1701 to 1800	1.66
1801 to 1900	1.62
1901 to 2000	1.58
2001 or more	1.53

Any variance in Agent commission from the above listed standard schedule shall be valid only if such variance is agreed to in writing by both Agent and Delta Dental Plan of New Mexico.