

**ARLINGTON COUNTY, VIRGINIA
OFFICE OF THE PURCHASING AGENT
2100 CLARENDON BOULEVARD, SUITE 500
ARLINGTON, VIRGINIA 22201**

CONTRACT AWARD COVERPAGE

TO: Delta Dental of Virginia 4818 Starkey Road Roanoke, Virginia 24018	DATE ISSUED: CONTRACT NO: CONTRACT TITLE:	<u>July 1, 2022</u> <u>22-HRD-RFP-338-1</u> <u>Comprehensive Dental Benefits for County Employees</u>
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THIS IS A NOTICE OF AWARD OF CONTRACT AND NOT AN ORDER. NO WORK IS AUTHORIZED UNTIL THE VENDOR RECEIVES A VALID COUNTY PURCHASE ORDER ENCUMBERING CONTRACT FUNDS.

The contract documents consist of the terms and conditions of AGREEMENT No.21-HRD-SFA-599 including any attachments or amendments thereto.

EFFECTIVE DATE: July 1, 2022

EXPIRES: June 30, 2025

RENEWALS: THIS IS THE FIRST YEAR AWARD NOTICE OF A POSSIBLE NINE- YEAR CONTRACT THRU JUNE 30, 2031.

COMMODITY CODE(S): 95300

LIVING WAGE: N

ATTACHMENTS:

AGREEMENT No. 22-HRD-RFP-338-1

EMPLOYEES NOT TO BENEFIT:

NO COUNTY EMPLOYEE SHALL RECEIVE ANY SHARE OR BENEFIT OF THIS CONTRACT NOT AVAILABLE TO THE GENERAL PUBLIC.

VENDOR CONTACT: ANNE BRUNST

VENDOR TEL. NO.:

(703) 729-6420

EMAIL ADDRESS: ANNE.BRUNST@DELTADENTALVA.COM

COUNTY CONTACT: KRISTIN YOUNG (HRD)

COUNTY TEL. NO.:

(703) 228-3485

COUNTY CONTACT EMAIL: KLYOUNG@ARLINGTONVA.US

PURCHASING DIVISION AUTHORIZATION

Dr. Sharon T. Lewis Title: Purchasing Agent Date: July 1, 2022

**ARLINGTON COUNTY, VIRGINIA
OFFICE OF THE PURCHASING AGENT
2100 CLARENDON BOULEVARD, SUITE 500
ARLINGTON, VA 22201**

AGREEMENT NO. 22-HRD-RFP-338-1

THIS AGREEMENT is made, on July 1, 2022, between Delta Dental of Virginia, 4818 Starkey Road, Roanoke, VA (“Contractor”), a Virginia not-for-profit dental services plan authorized to do business in the Commonwealth of Virginia, and the County Board of Arlington County, Virginia. The County and the Contractor, for the consideration hereinafter specified, agree as follows:

1. CONTRACT DOCUMENTS

The “Contract Documents” consist of:

- This Agreement
- Exhibit A - Scope of Work
- Exhibit A-1 - Plan Benefits Summaries
- Exhibit B - Contract Pricing, Payments and Guarantees
- Exhibit C - Business Associate Agreement

Where the terms and provisions of this Agreement vary from the terms and provisions of the other Contract Documents, the terms and provisions of this Agreement will prevail over the other Contract Documents, and the remaining Contract Documents will be complementary to each other. If there are any conflicts, the most stringent terms or provisions will prevail.

The Contract Documents set forth the entire agreement between the County and the Contractor. The County and the Contractor agree that no representative or agent of either party has made any representation or promise with respect to the parties’ agreement that is not contained in the Contract Documents. The Contract Documents may be referred to below as the “Contract” or the “Agreement”.

2. SCOPE OF WORK

The Contractor agrees to perform the services described in the Contract Documents (the “Work”). As detailed in the “Scope of Work” (Exhibit A), the primary purpose of the Work is Comprehensive Dental Benefits for County employees. It will be the Contractor's responsibility, at its sole cost, to provide the specific services set forth in the Contract Documents and sufficient services to fulfill the purposes of the Work.

3. PROJECT OFFICER

The performance of the Contractor is subject to the review and approval of the County Project Officer, who will be appointed by the Director of the Arlington County department or agency requesting the Work under this Contract.

4. CONTRACT TERM AND RATE GUARANTEE

A four-year fixed price Administrative Services Only (ASO) initial contract term with the option to extend up to six (6) additional years. The Per Employee Per Month ASO fee shall be subject to a price cap(in the

form of a percentage) for all subsequent renewal years.

The term of the contract(s) shall begin on July 1, 2022, and end on June 30, 2025. The County's plan year is from July 1 to June 30.

Upon satisfactory performance by the Contractor the County may, through issuance of a unilateral Notice of Award, authorize continuation of the Agreement for not more than six additional 12-month periods, from July 1, 2025, to June 30, 2031 (each a "Subsequent Contract Term"). The Initial Contract Term and any Subsequent Contract Term(s) are together the "Contract Term".

The Contractor is responsible for processing all run out claims (claims with dates of service during the contract period but submitted after the contract has terminated) for twelve months following the end of the Contract.

5. PAYMENT

The Contractor must submit invoices to the County's Project Officer, who will either approve the invoice or require corrections. Each invoice must certify that the invoice submitted is a true and accurate accounting of the work performed and goods and/or services provided and must be signed and attested to by the Contractor or authorized designee. The County will pay the Contractor within forty-five (45) days after receipt of an invoice for completed work that is reasonable and allocable to the Contract and that has been performed to the satisfaction of the Project Officer. The number of the County Purchase Order pursuant to which goods or services have been delivered or performed must appear on all invoices.

6. REIMBURSABLE EXPENSES

The County will not reimburse the Contractor for any expenses under this Contract. The amount in Exhibit B includes all costs and expenses of providing the services described in this Contract.

7. * PAYMENT OF SUBCONTRACTORS

The Contractor is obligated to take one of the two following actions within seven days after receipt of payment by the County for work performed by any subcontractor under this Contract:

- a. Pay the subcontractor for the proportionate share of the total payment received from the County attributable to the work performed by the subcontractor under this Contract; or
- b. Notify the County and the subcontractor, in writing, of the Contractor's intention to withhold all or a part of the subcontractor's payment, with the reason for nonpayment.

The Contractor is obligated to pay interest to the subcontractor on all amounts owed by the Contractor to the subcontractor that remain unpaid after seven days following receipt by the Contractor of payment from the County for work performed by the subcontractor under this Contract, except for amounts withheld as allowed in subsection b., above. Unless otherwise provided under the terms of this Contract, interest will accrue at the rate of 1% per month.

The Contractor must include in each of its subcontracts, if any are permitted, a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

The Contractor's obligation to pay an interest charge to a subcontractor pursuant to this section may not be construed to be an obligation of the County. A Contract modification may not be made for the purpose

of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

8. NO WAIVER OF RIGHTS

The County's approval or acceptance of or payment for any goods or services under this Contract will not waive any rights or causes of action arising out of the Contract.

9. * NON-APPROPRIATION

All payments by the County to the Contractor pursuant to this Contract are subject to the availability of an annual appropriation for this purpose by the County Board of Arlington County, Virginia ("Board"). In the event that the Board does not appropriate funds for the goods or services provided under this Contract, the County will terminate the Contract, without termination charge or other liability to the County, on the last day of the fiscal year or when the previous appropriation has been spent, whichever event occurs first.

10. ESTIMATED QUANTITIES/NON-EXCLUSIVITY OF CONTRACTOR

This Contract does not obligate the County to purchase a specific quantity of items or services during the Contract Term. Any quantities that are included in the Contract Documents are the present expectations of the County for the period of the Contract; and the County is under no obligation to buy that or any amount as a result of having provided this estimate or of having had any normal or otherwise measurable requirement in the past. The County may require more goods and/or services than the estimated annual quantities, and any such additional quantities will not give rise to any claim for compensation other than at the unit prices and/or rates in the Contract.

The County does not guarantee that the Contractor will be the exclusive provider of the goods or services covered by this Contract. The items or services covered by this Contract may be or become available under other County contract(s), and the County may determine that it is in its best interest to procure the items or services through those contract(s).

11. * COUNTY PURCHASE ORDER REQUIREMENT

County purchases are authorized only if the County issues a Purchase Order in advance of the transaction, indicating that the ordering County agency has sufficient funds available to pay for the purchase. If the Contractor provides goods or services without a signed County Purchase Order, it does so at its own risk and expense. The County will not be liable for payment for any purchases made by its employees that are not authorized by the County Purchasing Agent.

12. BACKGROUND CHECK

All employees or subcontractors whom the Contractor assigns to work on this Contract for the on-site clinic must pass the County's standard background check. The background check will include fingerprinting by the County Sheriff's Office.

13. REPLACEMENT OF PERSONNEL AND SUBCONTRACTORS

The County has the right reasonably to reject staff or subcontractors whom the Contractor assigns to the project. The Contractor must then provide replacement staff or subcontractors satisfactory to the County in a timely manner and at no additional cost to the County. The day-to-day supervision and control of the Contractor's and its subcontractors' employees is the sole responsibility of the Contractor.

The Contractor may not replace key personnel or subcontractors identified in its proposal, including the approved Project Manager, without the County's written approval. The Contractor must submit any

request to remove or replace key personnel or subcontractors to the County Project Officer at least 15 calendar days in advance of the proposed action. The request must contain a detailed justification, including identification of the proposed replacement and his or her qualifications.

If the approved Project Manager must be absent for an extended period, the Contractor must provide an interim Project Manager, subject to the County's written approval.

If the approved Project Manager resigns or is terminated by the Contractor, the Contractor will replace the Project Manager with an individual with similar qualifications and experience, subject to the County's written approval.

14. * EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED

During the performance of its work pursuant to this Contract:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, or disability or on any other basis prohibited by state law. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- B. Notices, advertisements, and solicitations placed in accordance with federal law, rule or regulation will be deemed sufficient for meeting the requirements of this section.
- C. The Contractor will state in all solicitations or advertisements for employees that it places or causes to be placed that such Contractor is an Equal Opportunity Employer.
- D. The Contractor will comply with the provisions of the Americans with Disabilities Act of 1990 ("ADA"), which prohibits discrimination against individuals with disabilities in employment and mandates that disabled individuals be provided access to publicly and privately provided services and activities.
- E. The Contractor must include the provisions of the foregoing paragraphs in every subcontract or purchase order of more than \$10,000.00 relating to this Contract so that the provisions will be binding upon each subcontractor or vendor.

15. * EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED

In accordance with §2.2-4311.1 of the Code of Virginia, as amended, the Contractor must not during the performance of this Contract knowingly employ an unauthorized alien, as that term is defined in the federal Immigration Reform and Control Act of 1986.

16. * DRUG-FREE WORKPLACE TO BE MAINTAINED BY CONTRACTOR

During the performance of this Contract, the Contractor must: (i) provide a drug-free workplace for its employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violating such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every

subcontract or purchase order of more than \$10,000.00 relating to this Contract so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "workplace" means the site(s) for the performance of the work required by this Contract.

17. COVID-19 VACCINATION POLICY FOR CONTRACTORS

Due to the ongoing COVID-19 pandemic, the County has taken various steps to protect the welfare, health, safety, and comfort of the workforce and public at large. As part of these steps, the County has implemented various requirements with respect to health and safety including policies with respect to social distancing, the use of face-coverings and vaccine mandates. To protect the County's workforce and the public at large, all employees and subcontractors of the Contractor who are assigned to this Contract, should be fully vaccinated against COVID-19. Any contractor employee or subcontractor who is not fully vaccinated should be following a weekly testing protocol as established by the Contractor, unless exempt pursuant to a valid reasonable accommodation under state or federal law.

18. *SEXUAL HARASSMENT POLICY

If the Contractor employs more than five employees, the Contractor shall (i) provide annual training on the Contractor's sexual harassment policy to all supervisors and employees providing services in the Commonwealth, except such supervisors or employees that are required to complete sexual harassment training provided by the Department of Human Resource Management, and (ii) post the Contractor's sexual harassment policy in (a) a conspicuous public place in each building located in the Commonwealth that the Contractor owns or leases for business purposes and (b) the Contractor's employee handbook.

19. SAFETY

The Contractor must ensure that it and its employees and subcontractors comply with all applicable local, state and federal policies, regulations and standards relating to safety and health, including the standards of the Virginia Occupational Safety and Health program of the Department of Labor and Industry for General Industry and for the Construction Industry and the applicable Federal Environmental Protection Agency and Virginia Department of Environmental Quality standards.

20. TERMINATION

The County may terminate this Contract at any time as follows: (1) for cause, if, as determined by the County, the Contractor is in breach or default or has failed to perform the Work satisfactorily; or (2) for the convenience of the County.

Upon receipt of a notice of termination, the Contractor must not place any further orders or subcontracts for materials, services or facilities; must terminate all vendors and subcontracts, except as are necessary for the completion of any portion of the Work that the County did not terminate; and must immediately deliver all documents related to the terminated Work to the County.

Any purchases that the Contractor makes after the notice of termination will be the sole responsibility of the Contractor unless the County has approved the purchases in writing as necessary for completion of any portion of the Work that the County did not terminate.

If any court of competent jurisdiction finds a termination for cause by the County to be improper, then the termination will be deemed a termination for convenience.

A. TERMINATION FOR CAUSE, INCLUDING BREACH AND DEFAULT; CURE

1. Termination for Unsatisfactory Performance. If the County determines that the Contractor has failed to perform satisfactorily, then the County will give the Contractor written notice of such failure(s) and the opportunity to cure them within 15 days or any other period specified by the County ("Cure Period"). If the Contractor fails to cure within the Cure Period, the County may terminate the Contract for failure to provide satisfactory performance by providing written notice with a termination date. The Contractor must submit any request for termination costs, with all supporting documentation, to the County Project Officer within 30 days after the expiration of the Cure Period. The County may accept or reject the request for termination costs, in whole or in part, and may notify the Contractor of its decision within a reasonable time.

In the event of termination by the County for failure to perform satisfactorily, the Contractor must continue to provide its services as previously scheduled through the termination date, and the County must continue to pay all fees and charges incurred through the termination date.

2. Termination for Breach or Default. If the County terminates the Contract for default or breach of any Contract provision or condition, then the termination will be immediate after notice of termination to the Contractor (unless the County provides for an opportunity to cure), and the Contractor will not be permitted to seek termination costs.

Upon any termination pursuant to this section, the Contractor will be liable to the County for costs that the County must expend to complete the Work, including costs resulting from any related delays and from unsatisfactory or non-compliant work performed by the Contractor or its subcontractors. The County will deduct such costs from any amount due to the Contractor; or if the County does not owe the Contractor, the Contractor must promptly pay the costs within 15 days of a demand by the County. This section does not limit the County's recovery of any other damages to which it is entitled by law.

Except as otherwise directed by the County, the Contractor must stop work on the date of receipt the notice of the termination.

B. TERMINATION FOR THE CONVENIENCE OF THE COUNTY

The County may terminate this Contract in whole or in part whenever the Purchasing Agent determines that termination is in the County's best interest. The County will give the Contractor at least 15 days' notice in writing. The notice must specify the extent to which the Contract is terminated and the effective termination date. The Contractor will be entitled to termination costs, plus any other reasonable amounts that the parties might negotiate; but no amount will be allowed for anticipatory profits.

Except as otherwise directed by the County, the Contractor must stop work on the date of receipt of the notice of the termination.

C. TERMINATION BY THE CONTRACTOR

The Contractor may terminate this Agreement upon the County's non-payment of undisputed fees owed to the Contractor. The Contractor will provide the County with written notice of the breach, after which the County will have 30 days to pay the undisputed fees. If the undisputed fees are not paid within this 30-day period, the Agreement will terminate at that time without further action by

either party.

21. INDEMNIFICATION

The Contractor covenants for itself, its employees and its subcontractors to save, defend, hold harmless and indemnify the County and all of its elected and appointed officials, officers, current and former employees, agents, departments, agencies, boards and commissions (collectively the "County Indemnitees") from and against any and all claims made by third parties for any and all losses, damages, injuries, fines, penalties, costs (including court costs and attorneys' fees), charges, liability, demands or exposure resulting from, arising out of or in any way connected with the Contractor's negligent or intentionally wrongful acts or omissions, including the negligent or intentionally wrongful acts or omissions of its employees and/or subcontractors, in performance or nonperformance of the Contract. This duty to save, defend, hold harmless and indemnify will survive the termination of this Contract. If the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor must reimburse the County for any and all resulting payments and expenses, including reasonable attorneys' fees. The Contractor must pay such expenses upon demand by the County, and failure to do so may result in the County withholding such amounts from any payments to the Contractor under this Contract.

The Contractor agrees to defend, indemnify, and hold harmless County from any and all damages, costs, claims, expenses, suits, losses, liabilities, or obligations of any kind including without limitation, environmental assessments, evaluations, remediations, fines, penalties, and clean-up costs which may be asserted against or imposed upon, or incurred by County arising from Contractor's discharge or disposal of any hazardous or toxic materials, trash, debris, refuse, waste or other materials ("Materials") related in any way to contractor's operations herein.

22. INTELLECTUAL PROPERTY INDEMNIFICATION

The Contractor warrants and guarantees that in providing services under this Contract neither the Contractor nor any subcontractor is infringing on the intellectual property rights (including, but not limited to, copyright, patent, mask, and trademark) of third parties.

If the Contractor or any of its employees or subcontractors uses any design, device, work, or material that is covered by patent or copyright, it is understood that the Contract Amount includes all royalties, licensing fees, and any other costs arising from such use in connection with the Work under this Contract.

The Contractor covenants for itself, its employees and its subcontractors to save, defend, hold harmless, and indemnify the County Indemnitees, as defined above, from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorneys' fees), charges, liability or exposure for infringement of or on account of any trademark, copyright, patented or unpatented invention, process or article manufactured or used in the performance of this Contract. This duty to save, defend, hold harmless and indemnify will survive the termination of this Contract. If the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor must reimburse the County for any and all resulting payments and expenses, including reasonable attorneys' fees. The Contractor must pay such expenses upon demand by the County, and failure to do so may result in the County withholding such amounts from any payments to the Contractor under this Contract.

23. COPYRIGHT

By this Contract, the Contractor irrevocably transfers, assigns, sets over and conveys to the County all rights, title, and interest, including the sole exclusive and complete copyright interest, in any and all copyrightable works created for the County pursuant to this Contract. The Contractor will execute any

documents that the County requests to formalize such transfer or assignment.

The rights granted to the County by this section are irrevocable and may not be rescinded or modified, including in connection with or as a result of the termination of or a dispute concerning this Contract.

The Contractor may not use subcontractors or third parties to develop or provide input into any copyrightable materials produced for the County pursuant to this Contract without the County's advance written approval and unless the Contractor includes this Copyright provision in any contract or agreement with such subcontractors or third parties related to this Contract.

24. OWNERSHIP OF WORK PRODUCT

This Contract does not confer on the Contractor any ownership rights or rights to use or disclose the County's data or inputs, except as necessary to perform Contractor's obligations and duties hereunder.

All work product, in any form, that results from this Contract is the property of the County and must be provided or returned to the County upon completion, termination, or cancellation of this Contract. The Contractor will not use or allow others to use the work product for any purpose other than performance of this Contract without the written consent of the County.

The work product is confidential, and the Contractor may neither release the work product nor share its contents. The Contractor will refer all inquiries regarding the status of any work product to the Project Officer or to his or her designee. At the County's request, the Contractor will deliver all work product, including hard copies of electronic files, to the Project Officer and will destroy all electronic files.

The Contractor must include the provisions of this section as part of any contract or agreement related to this Contract into which it enters with subcontractors or other third parties.

The provisions of this section will survive any termination or cancellation of this Contract.

25. DATA SECURITY AND PROTECTION

The Contractor will hold County Information, as defined below, in the strictest confidence and will comply with all applicable County security and network resources policies, as well as all local, state, and federal laws and regulatory requirements concerning data privacy and security. The Contractor must develop, implement, maintain, continually monitor and use appropriate administrative, technical and physical security measures to control access to and to preserve the confidentiality, privacy, integrity and availability of all electronically maintained or transmitted information received from or created or maintained on behalf of the County. For purposes of this provision, and as more fully described in this Contract and in the County's Non-Disclosure and Data Security Agreement (NDA), "County Information" includes, but is not limited to, electronic information; documents; data; images; financial records; personally identifiable information; protected health information (PHI); personnel, educational, voting, registration, tax and assessment records; information related to public safety; County networked resources; and County databases, software and security measures that are created, maintained, transmitted or accessed to perform the Work under this Contract.

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- (a) **Use of Data.** The Contractor will ensure against any unauthorized use, distribution, or disclosure of or access to County Information and County networked resources by itself or its Designees. Use of County Information other than as specifically outlined in the Contract

Documents is strictly prohibited. The Contractor will be solely responsible for any unauthorized use, reuse, distribution, transmission, manipulation, copying, modification, access to or disclosure of County Information and for any non-compliance with this provision by itself or by its Designees.

- (b) **Data Protection.** The Contractor will protect the County's Information according to standards established by the National Institute of Standards and Technology, including 201 CMR 17.00, Standards for the Protection of Personal Information of Residents of the Commonwealth and the Payment Card Industry Data Security Standard (PCI DSS), as applicable, and no less rigorously than it protects its own data and proprietary or confidential information. The Contractor must provide to the County a copy of its data security policy and procedures for securing County Information and a copy of its disaster recovery plan(s). If requested by the County, the Contractor must also provide annually the results of an internal Information Security Risk Assessment provided by an outside firm.
- (c) **Security Requirements.** The Contractor must maintain the most up-to-date anti-virus programs, industry-accepted firewalls and other protections on its systems and networking equipment. The Contractor certifies that all systems and networking equipment that support, interact with or store County Information meet the above standards and industry best practices for physical, network and system security requirements. Printers, copiers, or fax machines that store County Data into hard drives must provide data-at-rest encryption. The County's Chief Information Security Officer or designee must approve any deviation from these standards. The downloading of County information onto laptops, other portable storage media or services such as personal e-mail, Dropbox etc. is prohibited without the written authorization of the County's Chief Information Security Officer or designee.
- (d) **Conclusion of Contract.** Within 30 days after the termination, cancellation, expiration or other conclusion of the Contract, the Contractor must, at no cost to the County, return all County Information to the County in a format defined by the County Project Officer, as feasible. The County may request that the Information be destroyed. The Contractor is responsible for ensuring the return and/or destruction of all Information that is in the possession of its subcontractors or agents. The Contractor must certify completion of this task in writing to the County Project Officer.
- (e) **Notification of Security Incidents.** The Contractor must notify the County Chief Information Officer and County Project Officer within 24 hours of the discovery of any unintended access to or use or disclosure of County Information.
- (f) **Subcontractors.** If subcontractors are permitted under this Contract, the requirements of this entire section must be incorporated into any agreement between the Contractor and the subcontractor. If the subcontractor will have access to County Information, each subcontractor must provide to the Contractor a copy of its data security policy and procedures for securing County Information and a copy of its disaster recovery plan(s).

26. * ETHICS IN PUBLIC CONTRACTING

This Contract incorporates by reference Article 9 of the Arlington County Purchasing Resolution, as well as all state and federal laws related to ethics, conflicts of interest or bribery, including the State and Local

Government Conflict of Interests Act (Code of Virginia § 2.2-3100 et seq.), the Virginia Governmental Frauds Act (Code of Virginia § 18.2-498.1 et seq.) and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia, as amended (§ 18.2-438 et seq.). The Contractor certifies that its proposal was made without collusion or fraud; that it has not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor; and that it has not conferred on any public employee having official responsibility for this procurement any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

27. * COUNTY EMPLOYEES

No Arlington County employee may share in any part of this Contract or receive any benefit from the Contract that is not available to the general public.

28. FORCE MAJEURE

Neither party will be held responsible for failure to perform the duties and responsibilities imposed by this Contract if such failure is due to a fire, riot, rebellion, natural disaster, war, act of terrorism or act of God that is beyond the control of the party and that makes performance impossible or illegal, unless otherwise specified in the Contract.

29. * AUTHORITY TO TRANSACT BUSINESS

The Contractor must, pursuant to Code of Virginia § 2.2-4311.2, be and remain authorized to transact business in the Commonwealth of Virginia during the entire term of this Contract. Otherwise, the Contract is voidable at the sole option of and with no expense to the County.

30. * RELATION TO COUNTY

The Contractor is an independent contractor, and neither the Contractor nor its employees or subcontractors will be considered employees, servants, or agents of the County. The County will not be responsible for any negligence or other wrongdoing by the Contractor or its employees, servants, or agents. The County will not withhold payments to the Contractor for any federal or state unemployment taxes, federal or state income taxes or Social Security tax or for any other benefits. The County will not provide to the Contractor any insurance coverage or other benefits, including workers' compensation.

31. ANTITRUST

The Contractor conveys, sells, assigns, and transfers to the County all rights, title, and interest in and to all causes of action under state or federal antitrust laws that the Contractor may have relating to this Contract.

32. REPORT STANDARDS

The Contractor must submit all written reports required by this Contract for advance review in a format approved by the Project Officer. Reports must be accurate and grammatically correct and should not contain spelling errors. The Contractor will bear the cost of correcting grammatical or spelling errors and inaccurate report data and of other revisions that are required to bring the report(s) into compliance with this section.

Whenever possible, reports must comply with the following guidelines:

- printed double-sided on at least 30% recycled-content and/or tree-free paper
- recyclable and/or easily removable covers or binders made from recycled materials

(proposals with glued bindings that meet all other requirements are acceptable)

- avoid use of plastic covers or dividers
- avoid unnecessary attachments or documents or superfluous use of paper (e.g., separate title sheets or chapter dividers)

33. AUDIT

The Contractor must retain all books, records and other documents related to this Contract for at least five years, or such period of time required by the County's funding partner(s), if any, whichever is greater, after the final payment and must allow the County or its authorized agents to examine the documents during this period and during the Contract Term. The Contractor must provide any requested documents to the County for examination within 15 days of the request, at the Contractor's expense. Should the County's examination reveal any overcharging by the Contractor, the Contractor must, within 30 days of County's request, reimburse the County for the overcharges and for the reasonable costs of the County's examination, including, but not limited to, the services of external audit firm and attorney's fees; or the County may deduct the overcharges and examination costs from any amount that the County owes to the Contractor. If the Contractor wishes to destroy or dispose of any records related to this Contract (including confidential records to which the County does not have ready access) within five years after the final payment, or such period of time required by the County's funding partner(s), if any, whichever is greater, the Contractor must give the County at least 30 days' notice and must not dispose of the documents if the County objects.

The Purchasing Agent may require the Contractor to demonstrate that it has the necessary facilities, ability, and financial resources to comply with the Contract and furnish the service, material or goods specified herein in a satisfactory manner at any time during the term of this Contract.

34. ASSIGNMENT

The Contractor may not assign, transfer, convey or otherwise dispose of any award or any of its rights, obligations, or interests under this Contract without the prior written consent of the County.

35. AMENDMENTS

This Contract may not be modified except by written amendment executed by persons duly authorized to bind the Contractor and the County.

36. * ARLINGTON COUNTY PURCHASING RESOLUTION AND COUNTY POLICIES

Nothing in this Contract waives any provision of the Arlington County Purchasing Resolution, which is incorporated herein by reference, or any applicable County policy.

37. * DISPUTE RESOLUTION

All disputes arising under this Agreement or concerning its interpretation, whether involving law or fact and including but not limited to claims for additional work, compensation or time, and all claims for alleged breach of contract must be submitted in writing to the Project Officer as soon as the basis for the claim arises. In accordance with the Arlington County Purchasing Resolution, claims denied by the Project Officer may be submitted to the County Manager in writing no later than 60 days after the final payment. The time limit for a final written decision by the County Manager is 30 days. Procedures concerning contractual claims, disputes, administrative appeals, and protests are contained in the Arlington County Purchasing Resolution. The Contractor must continue to work as scheduled pending a decision of the Project Officer, County Manager, County Board, or a court of law.

38. * APPLICABLE LAW, FORUM, VENUE AND JURISDICTION

This Contract is governed in all respects by the laws of the Commonwealth of Virginia; and the jurisdiction, forum and venue for any litigation concerning the Contract or the Work is in the Circuit Court for Arlington County, Virginia, and in no other court.

39. ARBITRATION

No claim arising under or related to this Contract may be subject to arbitration.

40. NONEXCLUSIVITY OF REMEDIES

All remedies available to the County under this Contract are cumulative, and no remedy will be exclusive of any other at law or in equity.

41. NO WAIVER

The failure to exercise a right provided for in this Contract will not be a subsequent waiver of the same right or of any other right.

42. SEVERABILITY

The sections, paragraphs, clauses, sentences, and phrases of this Contract are severable; and if any section, paragraph, clause, sentence or phrase of this Contract is declared invalid by a court of competent jurisdiction, the rest of the Contract will remain in effect.

43. * ATTORNEY'S FEES

In the event that the County prevails in any legal action or proceeding brought by the County to enforce any provision of this Contract, the Contractor will pay the County's reasonable attorney's fees and expenses.

44. SURVIVAL OF TERMS

In addition to any statement that a specific term or paragraph survives the expiration or termination of this Contract, the following sections also survive: INDEMNIFICATION; INTELLECTUAL PROPERTY INDEMNIFICATION; RELATION TO COUNTY; OWNERSHIP OF WORK PRODUCT; AUDIT; COPYRIGHT; DISPUTE RESOLUTION; APPLICABLE LAW AND JURISDICTION; ATTORNEY'S FEES, AND DATA SECURITY AND PROTECTION.

45. HEADINGS

The section headings in this Contract are inserted only for convenience and do not affect the substance of the Contract or limit the sections' scope.

46. AMBIGUITIES

The parties and their counsel have participated fully in the drafting of this Agreement; and any rule that ambiguities are to be resolved against the drafting party does not apply. The language in this Agreement is to be interpreted as to its plain meaning and not strictly for or against any party.

47. NOTICES

Unless otherwise provided in writing, all legal notices and other communications required by this Contract are deemed to have been given when either (a) delivered in person; (b) delivered by an agent, such as a delivery service; or (c) deposited in the United States mail, postage prepaid, certified or registered and addressed as follows:

TO THE CONTRACTOR:

David Notari
Senior Vice President, Chief Operating Officer
4818 Starkey Road
Roanoke, VA 24018
Phone: (540) 776-8112
Email: david.notari@deltadentalva.com

TO THE COUNTY:

Kristin L. Young, Project Officer
Human Resources – Employee Services Division Chief
2100 Clarendon Blvd, Ste. 511
Arlington, VA 22201
Phone: (703) 228-3485
Email: klyoung@arlingtonva.us

AND

Dr. Sharon T. Lewis, LL.M, MPS, VCO, CPPB
Purchasing Agent
Arlington County, Virginia
2100 Clarendon Boulevard, Suite 500
Arlington, Virginia 22201
Phone: (703) 228-3294
Email: slewis1@arlingtonva.us

Jack Belcher
County Chief Information Officer
DTS Department of Technologies
2100 Clarendon Boulevard, Suite 600
Arlington, Virginia 22201
Phone: (703) 228-3220
Email: jbelcher@arlingtonva.us

TO COUNTY MANAGER'S OFFICE (FOR PROJECT CLAIMS):

Mark Schwartz, County Manager
Arlington County, Virginia
2100 Clarendon Boulevard, Suite 318
Arlington, Virginia 22201

48. ARLINGTON COUNTY BUSINESS LICENSES

The Contractor must comply with the provisions of Chapter 11 ("Licenses") of the Arlington County Code, if applicable. For information on the provisions of that Chapter and its applicability to this Contract, the Contractor must contact the Arlington County Business License Division, Office of the Commissioner of the Revenue, 2100 Clarendon Blvd., Suite 200, Arlington, Virginia, 22201, telephone number (703) 228-3060.

49. * NON-DISCRIMINATION NOTICE

Arlington County does not discriminate against faith-based organizations.

50. LIMITED ENGLISH PROFICIENCY

The Contractor must comply with Executive Order 13166, Title VI of the Civil Rights Act of 1964 and make reasonable efforts to ensure that as part of the services that it provides, adequate communication services, including interpretation and translation, are available to persons who have limited English proficiency. If such services are not included in the Contract's scope of services and pricing, the Contractor will use a County-contracted service provider, and the County will pay the fees.

51. HIPAA COMPLIANCE

The Contractor must comply with the privacy, security and electronic transaction components of the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA"). Pursuant to 45 C.F.R. §164.502(e) and §164.504(e), the Contractor is designated a Business Associate for purposes of this Contract and must execute the attached Arlington County Business Associate Agreement (Exhibit C). Pursuant to 45 C.F.R. § 164.308(b)(1) and the Health Information Technology for Economic and Clinic Health Act ("HITECH"), § 13401, the Contractor must also enter into an agreement with any subcontractors that requires the subcontractor to protect PHI to the same extent as the Arlington County Business Associate Agreement. The Contractor must ensure that its subcontractors notify the Contractor immediately of any breaches in security regarding PHI. Software and platforms used in performance of this Contract must be HIPAA compliant.

The Contractor takes full responsibility for HIPAA compliance, for any failure to execute the appropriate agreements with its subcontractors and for any failure of its subcontractors to comply with the existing or future regulations of HIPAA and/or HITECH. The Contractor will indemnify the County for any and all losses, fines, damages, liability, exposure, or costs that arise from any failure to comply with this paragraph.

52. ADA COMPLIANCE

The Contractor is solely responsible for its compliance with the ADA and must defend and hold the County harmless from any expense or liability arising from the Contractor's non-compliance. The Contractor also must respond promptly to and cooperate fully with all inquiries from the U.S. Department of Labor.

The Contractor's responsibilities related to ADA compliance include, but are not limited to, the following:

- a. Access to Programs, Services and Facilities: The Contractor must ensure that its programs, services, and facilities are accessible to persons with disabilities. If a particular facility or program is not accessible, the Contractor must provide equivalent services in an accessible alternate location or manner.
- b. Effective Communication: Upon request, the Contractor, must provide appropriate communication aids and services so that qualified persons with disabilities can participate equally in the Contractor's programs, services, and activities. Communication aids and services can include, but are not limited to, qualified sign language interpreters, Braille documents and other means of facilitating communications with people who have speech, hearing or vision impairments.

- c. Modifications to Policies and Procedures: The Contractor must modify its policies and procedures as necessary to ensure that people with disabilities have an equal opportunity to enjoy the Contractor's programs, services, and activities. For example, individuals' service animals must be allowed in the Contractor's offices or facilities, even if pets are generally prohibited.
- d. No Extra Charges: The Contractor may not charge a person with a disability or any group of individuals with disabilities to cover the cost of providing aids or services or of reasonable modifications to policies and procedures.

53. INSURANCE REQUIREMENTS

Before beginning work under the Contract or any extension, the Contractor must provide to the County Purchasing Agent a Certificate of Insurance indicating that the Contractor has in force at a minimum the coverage below. The Contractor must maintain this coverage until the completion of the Contract or as otherwise stated in the Contract Documents. All required insurance coverage must be acquired from insurers that are authorized to do business in the Commonwealth of Virginia, with a rating of "A-" or better and a financial size of "Class VII" or better in the latest edition of the A.M. Best Co. Guides.

- a. Workers Compensation - Virginia statutory workers compensation (W/C) coverage, including Virginia benefits and employer's liability with limits of \$100,000/100,000/500,000. The County will not accept W/C coverage issued by the Injured Worker's Insurance Fund, Towson, MD.
- b. Commercial General Liability - \$1,000,000 per occurrence, with \$2,000,000 annual aggregate covering all premises and operations and including personal injury, completed operations, contractual liability, independent contractors, and products liability. The general aggregate limit must apply to this Contract. Evidence of contractual liability coverage must be typed on the certificate.
- c. Business Automobile Liability - \$1,000,000 combined single-limit (owned, non-owned and hired).
- d. Cyber Liability - \$1,000,000 per occurrence.
- e. Medical Malpractice – (onsite clinic only) current minimum Statutory limits.
- f. Errors and Omissions - \$2,000,000 per occurrence.
- d. Additional Insured – The County and its officers, elected and appointed officials, employees and agents must be named as additional insureds on all policies except workers compensation and automotive and professional liability; and the additional insured endorsement must be typed on the certificate.
- e. Cancellation - If there is a material change or reduction in or cancellation of any of the above coverages during the Contract Term, the Contractor must notify the Purchasing Agent immediately and must, with no lapse in coverage, obtain replacement coverage that is consistent with the terms of this Contract. Not having the required insurance throughout the Contract Term is grounds for termination of the Contract.
- f. Claims-Made Coverage - Any "claims made" policy must remain in force, or the Contractor must obtain an extended reporting endorsement, until the applicable statute of limitations for any

claims has expired.

- g. Contract Identification - All insurance certificates must state this Contract's number and title.
- h. Environmental Impairment Liability (Onsite Clinic Only) including coverage of insureds' on-site clean up, with the following minimum limits of liability (Onsite Clinic Only):

Bodily Injury and Property	2,000,000 each occurrence	Damage Liability
	4,000,000 annual aggregate	
- i. Should any of the Work hereunder involve the cleanup, remediation and/or removal of bio-solids, bio-hazards waste, or any hazardous or toxic materials, trash, debris, refuse, or waste, the Contractor shall provide, or shall require its subcontractor performing the work to provide, the following coverage in addition to the above requirements:
 - a) Environmental Liability and Cleanup Coverage – with limits of not less than \$2,000,000 per occurrence.
 - b) Business Automobile Liability – for transportation or regulated and/or hazardous waste, products, or materials with limits of not less than \$1,000,000, per occurrence. Said coverage shall include County as an additional insured and shall include both the MCS-90 and CA 9948 (or equivalent) endorsements, which shall be specifically referenced on the certificate of insurance.

The Contractor must disclose to the County the amount of any deductible or self-insurance component of any of the required policies. With the County's approval, the Contractor may satisfy its obligations under this section by self-insurance for all or any part of the insurance required, provided that the Contractor can demonstrate sufficient financial capacity. In order to do so, the Contractor must provide the County with its most recent actuarial report and a copy of its self-insurance resolution.

The County may request additional information to determine if the Contractor has the financial capacity to meet its obligations under a deductible and may require a lower deductible; that funds equal to the deductible be placed in escrow; a certificate of self-insurance; collateral; or another mechanism to guarantee the amount of the deductible and ensure protection for the County.

The County's acceptance or approval of any insurance will not relieve the Contractor from any liability or obligation imposed by the Contract Documents.

The Contractor is responsible for the Work and for all materials, tools, equipment, appliances, and property used in connection with the Work. The Contractor assumes all risks for direct and indirect damage or injury to the property used or persons employed in connection with the Work and for of all damage or injury to any person or property, wherever located, resulting from any action, omission, commission or operation under the Contract or in connection in any way whatsoever with the Work. The Contractor's insurance shall be the primary non-contributory insurance for any work performed under this Contract.

The Contractor is as fully responsible to the County for the acts and omissions of its subcontractors and of persons employed by them as it is for acts and omissions of persons whom the Contractor employs directly.

54. COUNTERPARTS

This Agreement may be executed in one or more counterparts and all of such counterparts shall together constitute one and the same instrument. Original signatures transmitted and received via facsimile or other electronic transmission, (e.g., PDF or similar format) are true and valid signatures for all purposes hereunder and shall be effective as delivery of a manually executed original counterpart.

WITNESS these signatures:

THE COUNTY BOARD OF ARLINGTON
COUNTY, VIRGINIA

DELTA DENTAL OF VIRGINIA

AUTHORIZED SIGNATURE: DocuSigned by:
Dr. Sharon T. Lewis
89B86B1AD301462...

AUTHORIZED SIGNATURE: DocuSigned by:
David Notari
799EE57E6AF84D7...

NAME: DR. SHARON T. LEWIS

NAME: DAVID NOTARI

TITLE: PURCHASING AGENT

TITLE: SENIOR VICE PRESIDENT, COO

DATE: 7/28/2022

DATE: 7/26/2022

EXHIBIT A
SCOPE OF WORK

The Contractor will be responsible for providing comprehensive dental services as a third-party administrator (TPA) for the County's self-insured dental plan, provided on a group basis in the continental United States, Alaska, Hawaii, Puerto Rico and the US Virgin Islands, to Arlington County Government's active employees, retirees, and all eligible dependents as determined by the County.

In addition to providing dental plan group coverage, the Contractor will be responsible for the following tasks:

Task 1: Account and Data Management

- Provide an employer website that enables on-line access to subscriber data, eligibility, and enrollment information.
- Ensure compliance with HIPAA and the Affordable Care Act
- Provide Claim Representatives and Enrollment Representatives.
- Management Information and Analysis
 - Provide timely federal and state legislative updates of changes impacting County self-insured plans.
 - Provide analysis of new/changed legislation and regulations impacting dental care industry.
 - Provide information and recommendations concerning plan management options resulting from changes in healthcare opportunities and potential plan design options.
 - Conduct reviews and analysis of program utilization and costs; provide recommendations to improve plan effectiveness; provide comparisons to previous years' data.
 - Analyze and report on the County's plan performance and provide actionable recommendations for plan design and dental benefit management options.
- Eligibility and Enrollment
 - Receive and process annual enrollment file and demographic data in early June for a July 1 plan-year start date.
 - Receive and process weekly electronic eligibility and enrollment files.
 - Provide on-demand, real-time, online eligibility reports for designated County HR staff.
 - Provide on-demand, real-time, online eligibility maintenance ability for designated County HR staff.
 - Provide on-demand, real-time, online enrollment capabilities for designated County HR staff.
 - Provide ability to create and maintain branches/grouping for various classes of employee subscribers and dependents (e.g., Retirees over 65) .
 - Track children turning age 26; report eligibility age-outs to the County on a monthly basis
- Financial Services
 - Provide banking setups for the County's funding of claims on a monthly basis.
 - Administer and track escrow/ imprest funding account for the County.
 - Pay provider claims accurately and timely.
 - Provide accounting reports, including backup details for monthly claims funding.
 - Provide on-demand reporting for monthly and annual claims/costs by plan and branch.
 - Provide accurate and efficient billing system for monthly claims and administrative services fees.
- Financial Analysis
 - Upon request from the County, project claims cost for future years.
 - Upon request from the County, project cost impact for benefit design changes.
 - Upon request from the County, project conventional premium equivalent rates.
 - Upon request from the County, analyze utilization information for current fiscal year impact.
 - Provide IBNR reserve estimates within 21 calendar days of the completion of each plan year.
- Internal Controls and Audits
 - Monitor performance accuracy and operational controls at an enterprise level to ensure efficiency, accuracy, effectiveness.

Task 2: Network Access, Management and Administrative Activities

- Network Development, Administration, and Maintenance
 - Maintain a national network(s) of providers in the continental United States, Alaska, and Hawaii, and Puerto Rico and the US Virgin Islands.
 - Perform network provider credentialing, recredentialing, quality monitoring, participant satisfaction, and grievance resolution.
 - Maintain a current directory of network providers that is available to members via website and mobile app.

Task 3: Reporting/Analysis

- Provide access to an on-line reporting system provides, at minimum, the following reports:
 - Monthly and annual claims costs by plan and branch, including lag reports
 - Enrollment and cancellation
 - Dependent age-out
 - Financial and accounting reports for check registers and refunds
 - Ad hoc reporting, if requested by the County
 - Contractor will provide electronic version of its annual Service Organization Controls (SOC) report to the County.
 - The Contractor will provide the County with access to ACT program reporting and analysis.

Task4: Claims Review and Processing

- Claims Processing
 - Review, process, validate, and adjudicate 100% of claims.
 - Determine the reasonableness, appropriateness, and accuracy of all provider claims.
 - Administer coordination of benefits and support the County's pursuit of third-party subrogation claims.
 - Provide electronic and hard copy Explanation of Benefit ("EOB") statements to members.
 - Notify claimants of denied claims and the reason for the denial.
 - Administer an appeals process for denied claims.
 - Provide timely investigation and response for claim disputes and/or appeals.
 - Administer claims run-out process for twelve months after termination of the contract.

Task 5: Customer Services

- Maintain Member Services Call Center that provides:
 - Toll-free access to customer service call center
 - TTD or TTY services for hearing impaired
 - Full services to callers whose primary language is not English
- Electronic Member Services and Mobile Capability
 - Establish a secure website to view plan details, find providers, print temporary cards, claims and explanation of benefits, access wellness and educational materials and services.
 - Provide online tools to enable cost comparisons among providers for various procedures.
 - Provide a mobile app or mobile-optimized website that allows members to perform the functions above on mobile devices.
 - Provide secure email option to discuss and share information.
- Member Education and Information materials
 - Provide communication and educational materials electronically in English and Spanish.
 - Provide electronic Plan Summary for each Plan Year.
- Provide Member Identification Cards, including but not limited to the following information:
 - Group Name and Number
 - Subscriber Name and ID Number
 - Effective Date
 - Plan Name

- Member Services Phone Number(s)
- Member Services Web Address
- Claim submission Address and Electronic claims payor ID (or equivalent)
- Upon request from the County, provide onsite customer service representatives a minimum of four days each month to provide consumer education, respond to member questions and address claims issues.
- For each plan year, attend a minimum of five annual Open Enrollment meetings (onsite or virtual, as needed) and up to two periodic Benefit Fair events.

Task 6. One-Time Mailing

Contractor agrees to create, print, and mail a postcard mailing to the County's "No-Visit" population of dental participants. The Contractor will complete this task by December 31, 2022.

Exhibit A-1
Plan Design for Dental Services

Schedule of Benefits for Standard and Premium Plans:

Standard Plan - Delta Dental PPO Plus Premier™	Delta Dental PPO™	Delta Dental Premier [®]	Out-of-Network
Diagnostic and Preventive <ul style="list-style-type: none"> • Oral exams and teeth cleanings, twice each calendar year • Periodontal maintenance cleanings four times per calendar year less thenumber of regular cleanings • Fluoride applications, twice each calendar year for enrollees under age 19 • X-rays – bitewings, twice each calendar year; limited to four films in one visit • Full-mouth and panelipse allowed once every three years • Space maintainers for enrollees under age 14, one quadrant per arch per lifetime • Sealants for enrollees under age 16, one application per tooth; limited to non-carious, non-restored first and second permanent molars • Consultations-one per consultant (other than the attending physician) percalendar year • <i>Healthy Smile, Healthy You</i>® Benefits • Prevention First Benefit 	100% PPO Allowance	100% Premier Allowance	100% Premier Allowance
Basic <ul style="list-style-type: none"> • Routine restorative – amalgam, composite (anterior and posterior), stainlesssteel crowns • Oral surgery • Endodontics • Denture repair and recementation • Injectable antibiotics 	80% PPO Allowance	80% Premier Allowance	80% Premier Allowance
Major <ul style="list-style-type: none"> • Crown coverage, once per tooth every five years • Prosthetic coverage, once every five years • Implant coverage, once per tooth in a lifetime • Periodontics 	50% PPO Allowance	50% Premier Allowance	50% Premier Allowance
Orthodontics – Dependent children to age 19	50% PPO Allowance	50% Premier Allowance	50% Premier Allowance
Deductible – Applies to Basic and Major services only Per patient per calendar year/two times maximum per family	\$55/\$110	\$55/\$110	\$55/\$110
Maximum Benefit – Per member Calendar Year Maximum – All services except Diagnostic & Preventive and Orthodontics Lifetime Orthodontics Maximum	\$1,500 \$1,250	\$1,500 \$1,250	\$1,500 \$1,250
Deductibles and maximums listed are a combined total of PPO, Premier, and OON			

Premium Plan - Delta Dental PPO Plus Premier™	Delta Dental PPO™	Delta Dental Premier®	Out-of-Network
Diagnostic and Preventive <ul style="list-style-type: none"> Oral exams and teeth cleanings, twice each calendar year Periodontal maintenance cleanings four times per calendar year less thenumber of regular cleanings Fluoride applications, twice each calendar year for enrollees under age 19 X-rays – bitewings, twice each calendar year; limited to four films in one visit Full-mouth and panelipse allowed once every three years Space maintainers for enrollees under age 14, one quadrant per arch per lifetime Sealants for enrollees under age 16, one application per tooth; limited to non-carious, non-restored first and second permanent molars Consultations-one per consultant (other than the attending physician) percalendar year <i>Healthy Smile, Healthy You</i>® Benefits Prevention First Benefit 	100% PPO Allowance	100% Premier Allowance	100% Premier Allowance
Basic <ul style="list-style-type: none"> Routine restorative – amalgam, composite (anterior and posterior), stainlesssteel crowns Oral surgery Periodontics Endodontics Denture repair and recementation Occlusal guard for bruxism, once every five years Injectable antibiotics TMJ services, once per covered person in a lifetime 	90% PPO Allowance	90% Premier Allowance	90% Premier Allowance
Major <ul style="list-style-type: none"> Crown coverage, once per tooth every five years Prosthetic coverage, once every five years Implant coverage, once per tooth in a lifetime 	60% PPO Allowance	60% Premier Allowance	60% Premier Allowance
Orthodontics – Adults and dependent children to age 19	50% PPO Allowance	50% Premier Allowance	50% Premier Allowance
Deductible – Applies to Basic and Major services only Per patient per calendar year/two times maximum per family	\$55/\$110	\$55/\$110	\$55/\$110
Maximum Benefit – Per member Calendar Year Maximum – All services except Diagnostic & Preventive and Orthodontics Lifetime Orthodontics Maximum Deductibles and maximums listed are a combined total of PPO, Premier, and OON	\$2,500 \$2,500	\$2,500 \$2,500	\$2,500 \$2,500

Exclusions:

Services or supplies that are not Dental Services; also services not specifically listed as covered in the Schedule of Benefits.

- Services or treatment provided by someone other than a licensed Dentist or a qualified licensed dental hygienist working under the supervision of a Dentist.
- A Dental Service that Delta Dental, in its sole discretion (subject to any and all internal and external appeals available to you), determines is not necessary or customary for the diagnosis or treatment of your condition. In making this determination, Delta Dental will take into account generally accepted dental practice standards based on the Dental Services provided. In addition, each Covered Benefit must demonstrate Dental Necessity. Dental Necessity is determined in accordance with generally accepted standards of dentistry.
- Dental Services for injuries or conditions that may be covered under workers compensation, similar employer liability laws or other medical plan coverage; also benefits or services that are available under any federal or state government program (subject to the rules and regulations of those programs) or from any charitable foundation or similar entity.
- Dental Services for the diagnosis or treatment for illnesses, injuries or other conditions you are eligible for coverage under your hospital, medical/surgical, or major medical plan.
- Dental Services started or rendered before the date enrolled under the plan documents. Also, except as otherwise provided in the plan documents, benefits for a course of treatment that began before you are enrolled under the plan documents.

- Except as otherwise provided for in the plan documents, Dental Services provided after the date you are no longer enrolled or eligible for coverage under the plan documents.
- Except as otherwise provided for in the plan documents, prescription and non-prescription drugs; premedications; preventive control programs, oral hygiene instructions, and relative analgesia.
- General anesthesia when less than three (3) teeth will be routinely extracted during the same office visit.
- Splinting or devices used to support, protect, or immobilize oral structures that have loosened or been reimplanted, fractured or traumatized.
- Charges for inpatient or outpatient hospital services; any additional fee that the Dentist may charge for treating a patient in a hospital, nursing home or similar facility.
- Charges to complete a claim form, copy records, or respond to Delta Dental's requests for information.
- Charges for failure to keep a scheduled appointment.
- Charges for consultations in person, by phone or by other electronic means.
- Charges for x-ray interpretation.
- Dental Services to the extent that benefits are available or would have been available if you had enrolled, applied for, or maintained eligibility under Title XVIII of the Social Security Act (Medicare), including any amendments or other changes to that Act.
- Complimentary services or Dental Services for which you would not be obligated to pay in the absence of the coverage under the plan documents or any similar coverage.
- Services or treatment provided to an immediate family member by the treating Dentist. This would include a Dentist's parent, spouse or child.
- Dental Services and supplies for the replacement device or repeat treatment of lost, misplaced or stolen prosthetic devices including space maintainers, bridges and dentures (among other devices).
- Experimental or investigative dental procedures, services, supplies as well as services and/or procedures due to complications thereof. Experimental or investigative procedures, services or supplies are those which, in the judgment of the Delta Dental: (a) are in a trial stage; (b) are not in accordance with generally accepted standards of dental practice, or (c) have not yet been shown to be consistently effective for the diagnosis or treatment of the Enrollee's condition.
- Dental Services for restoring tooth structure lost from wear (abrasion, erosion, attrition, or abfraction), for rebuilding or maintaining chewing surfaces due to teeth out of alignment or occlusion, or for stabilizing the teeth. Such services include but are not limited to equilibration and periodontal splinting.
- Except as otherwise provided for in the plan documents, Dental Services, procedures and supplies needed because of harmful habits. An example of a harmful habit includes clenching or grinding of the teeth.
- Services billed under multiple Dental Service procedure codes which Delta Dental, in its sole discretion (subject to any and all internal and external appeals available to you), determines should have been billed under a single, more comprehensive Dental Service procedure code. Delta Dental bases its payment on the Plan Allowance for the more comprehensive code, not on the Plan Allowance for the underlying component codes.
- Services billed under a Dental Service procedure code that Delta Dental, in its sole discretion (subject to any and all internal and external appeals available to you), determines should have been billed under a code that more accurately describes the Dental Service. Delta Dental bases its payment on its determination of the more accurate Dental Service code.
- Amounts assessed on dental services and/or supplies by state or local regulation.
- Amounts that exceed the Plan Allowance as agreed to by the Dentist for Covered Benefits

EXHIBIT B

CONTRACT PRICING, PAYMENTS, GUARANTEES, and ALLOWANCES

1. Administrative Service Only (ASO) fees

	Year 1	Year 2	Year 3	Year 4	Renewal Years 5 through 10: Rate Increase Cap
Per Employee Per Month Fee	\$3.59	\$3.59	\$3.59	\$3.69	At each renewal, the PEPM ASO fee will not increase more than the change in CPI-W US City Average plus 1%. CPI-W percent used will be the most recently reported at the time of renewal processing (typically May or June).
The ASO fee includes administration of the Prevention First program and the Healthy Smile/Healthy You program.					

Rate Assumptions:

- Based on approximately 6,500 eligible full-time and part-time County employees and retirees located primarily in VA.
- County contribution required, no minimum amount. Minimum participation is 80% for eligible employees.
- If the eligible enrollment varies by 15% or more, or if the other underwriting requirements cannot be met, Contractor reserves the right to propose alternative rates or benefits.
- These proposed rates assume the Contractor will be the sole employer-sponsored dental plan offered to the Arlington County Government employees.
- Employees may choose either the Standard Plan or Premium Plan when eligible or annually on the group's anniversary date only. No program changes are allowed mid-year from one plan to the other except for qualifying life events (birth, death, divorce, etc.).
- There will be one open enrollment period annually.
- Multi-year rates and rate caps assume there are no plan or eligibility changes and may be subject to adjustment due to changes in the applicable ACA assessment fee.

The Contractor shall invoice the County on a monthly basis for ASO fees and include a report(s) that the County may use to verify or reconcile the amount charged.

Administration of Run-Out Claims Payments after Contract Termination: The Contractor shall process and administer run-out claims (i.e., claims incurred during the contract period but reported/submitted after contract termination) for twelve (12) months following the termination of the contract. No ASO fee or any flat amount for this service shall be charged by the Contractor during the run-out claims period.

2. Claims Payments and Prefunding

The Contractor shall issue invoices for the payment of benefit claims to the County on monthly basis. The invoice shall include a report(s) that the County may use to verify or reconcile the amount charged. The County will review and process benefit claims payments within seven (7) business days through its accounts payable process.

The County will provide prefunding for benefit claims, to be held in escrow by the Contractor. The escrowed prefunding amount will be calculated at the time of renewal processing as one month of projected trended

claims for the renewal contract period, rounded to the nearest \$1,000. The County will pay the prefunding amount to the Contractor no later than 30 days prior to the effective date of renewal for the next contract year. Any unused prefunding may roll over from one contract year to the next. The Contractor shall invoice the County for any additional prefunding amounts required.

At the end of the final plan year of the final contract term, the County may, at its sole discretion, use the balance of the prefunding toward the payment of runout benefit claims. The Contractor must return any remaining balance of the escrowed prefunding to the County no later than ninety (90) days following the end of the final plan year.

Run-Out Claims Payments after Contract Termination: After the balance of escrowed prefunding has been returned to the County, for the remainder of the 12-month claims run-out period, the Contractor shall issue weekly invoices for benefit claims to the County, which the County shall review and process within seven (7) business days.

3. Performance and Network Guarantees

Network savings guarantee for July 1, 2022 – June 30, 2023:

The Contractor guarantees that the network savings will be at least 31% of total allowed charges for the Delta Dental PPO plus Premier product offering.

If the target is not met, the Contractor will refund the difference to County up to 20% of the Contractor's net administrative fees, not to exceed \$40,000. The Contractor will calculate the network savings for the County using the Contractor's standard Cost Containment Report* within sixty days of the end of the plan year. The Contractor reserves the right to revise this guarantee if the group demographics or geographic locations change materially from the current population.

*From the Cost Containment Report, allowed charges will be calculated as Total Plan Paid plus Total Administrative Limitations (i.e. Deductible, Patient Responsibility, and Maximum Exceeded) plus Network Savings.

Performance Guarantees

Performance Requirement	Description	Guarantee	Penalties
Customer Service			
Phone Access	Speed of human response to all Customer Service calls	All Customer Service calls answered in less than 25 seconds	2% of fees
Abandonment Rate	Number of Customer Servicecalls abandoned	Less than 2% lost call rate	2% of fees
Written Inquiries	Speed of resolution to written inquiries on post service claims	Written inquiries not requiring additional information answered in less than 7 business days	2% of fees
Claims Administration			
Claim Accuracy	Claims with no data entry or payment errors	97% processing accuracy; 99% financial accuracy	2% of fees
Claim Turnaround Time	Speed of claim processing	90% of all claims processed within 15 calendar days; 99% within 30 days	2% of fees

Eligibility/ID Cards

Eligibility Data	Speed of eligibility data entry and corrections (requires electronic eligibility process)	Electronic files loaded and available within 2 business days of receipt of clean data	2% of fees
Mailing ID Cards	Speed of printing and mailing ID cards	ID cards will be mailed within 7 business days after eligibility data loaded into system	2% of fees

Data Reporting

Reporting	Standard and Custom reports	Standard reports sent within 30 days of due dates; Custom reports sent on mutually-agreed schedule	2% of fees
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Account Management

Implementation	Satisfactory completion of the implementation process	Delta Dental responsibilities on implementation schedule completed on time	N/A Incumbent
Account Management	Satisfactory ongoing account management	Measurement to be jointly determined	2% of fees

Satisfaction

Customer Satisfaction Survey	Percentage of employees surveyed who are satisfied or very satisfied	90% of all satisfaction survey responses will be positive	2% of fees
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*All performance guarantees will be reported on a quarterly basis as a quarterly average. If a guarantee is not met for the quarter, a penalty will apply for each month in that quarter for a guarantee that was not met. The maximum will be 20% of all administrative fees. Customer Service, Satisfaction, and Claims Accuracy guarantees will be measured using Delta Dental of Virginia's complete book of business; all others will be client specific. The administrative fee will be based on net ASO fee.

4. Allowances

The Contractor will provide a one-time allowance of \$10,000 to be used at the County's discretion for wellness, communications, or an audit. Funds shall be provided to the County by July 31, 2022.

EXHIBIT C
BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement is hereby entered into between Delta Dental of Virginia (hereafter referred to as "Business Associate") and the County Board of Arlington County, Virginia (hereafter referred to as "Covered Entity" or "County") (collectively "the parties") and is hereby made a part of any Underlying Agreement for goods or services entered into between the parties.

Recitals

The County provides services to its residents and employees which may cause it or others under its direction or control to serve as covered entities for purposes of the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

The County, in its capacity as a covered entity, may provide Business Associate with certain information that may include Protected Health Information (PHI), so that Business Associate may perform its responsibilities pursuant to its Underlying Agreement(s) with and on behalf of County.

Covered Entity and Business Associate intend to protect the privacy of PHI and provide for the security of any electronic PHI received by Business Associate from Covered Entity, or created or received by Business Associate on behalf of Covered Entity in compliance with HIPAA; in compliance with regulations promulgated pursuant to HIPAA, at 45 CFR Parts 160 and Part 164; and in compliance with applicable provisions of the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 (the "HITECH Act") and any applicable regulations and/or guidance issued by the U.S. Department of Health and Human Services ("DHHS") with respect to the HITECH Act (collectively "federal law").

WHEREAS, federal law and the specific regulations promulgated pursuant to HIPAA at 45 CFR § 164.314, 45 CFR § 164-502(e) and 45 CFR § 164.504(e) require a Covered Entity to enter into written agreements with all Business Associates (hereinafter "Business Associate Agreement");

WHEREAS, the parties desire to comply with HIPAA and desire to secure and protect such PHI from unauthorized disclosure;

THEREFORE, **Business Associate** and **Covered Entity**, intending to be legally bound, agree as follows. The obligations, responsibilities and definitions may be changed from time to time as determined by federal law and such changes are incorporated herein as if set forth in full text:

1) Definitions

The capitalized terms used in this Business Associate Agreement shall have the meaning set out below:

- a) **Accounting**. "Accounting" means a record of disclosures of protected health information made by the Business Associate.
- b) **Breach**. "Breach" has the same meaning as defined in 45 CFR 164.402.

- c) **Business Associate**. "Business Associate" means a person who creates, receives, maintains, or transmits protected health information on behalf of a Covered Entity to accomplish a task regulated by HIPAA and not as a member of the Covered Entity's workforce. A Business Associate shall include, but is not limited to, a non-workforce person/entity who performs data processing/analysis/transmission, billing, benefit management, quality assurance, legal, actuarial, accounting, administrative and/or financial services on behalf of the Covered Entity involving protected health information. A Business Associate also includes a subcontractor.
- d) **Covered Entity**. "Covered Entity" means a health plan, a health care clearinghouse, and/or a health care provider who transmits any health information in electronic form in connection with an activity regulated by HIPAA.
- e) **Data Aggregation**. "Data Aggregation" means, with respect to PHI created or received by Business Associate in its capacity as the Business Associate of Covered Entity, the combining of such PHI by the Business Associate with the PHI received by the Business Associate in its capacity as a Business Associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.
- f) **Designated Record Set**. "Designated Record Set" means all records, including medical, enrollment, billing, payment, claims, and/or case management maintained by and/or for a Covered Entity.
- g) **Discovery**. "Discovery" shall mean the first day an unauthorized use or disclosure is known or reasonably should have been known by Business Associate, including when it is or should have been known by any person other than the person who engaged in the unauthorized use/disclosure who is an employee, officer, or agent of Business Associate.
- h) **Electronic Protected Health Information**. "Electronic Protected Health Information" means individually identifiable health information that is transmitted by or maintained in electronic media.
- i) **HIPAA**. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996 as in effect and/or as amended.
- j) **HITECH Act**. "HITECH Act" means the portions of the Health Information Technology for Economic and Clinical Health Act which serve as amendments to HIPAA. HITECH is included within the definition of HIPAA unless stated separately.
- k) **Individual**. "Individual" means the person who is the subject of protected health information and/or a person who would qualify as a personal representative of the person who is the subject of protected health information.
- l) **Protected Health Information**. "Protected Health Information" or "PHI" means individually identifiable health information transmitted and/or maintained in any form.
- m) **Remuneration**. "Remuneration" means direct or indirect payment from or on behalf of a third party.

- n) **Required By Law.** “Required By Law” means an activity which Business Associate is required to do or perform based on the provisions of state and/or federal law.
- o) **Secretary.** “Secretary” means the Secretary of the Department of Health and Human Services or the Secretary’s designee.
- p) **Security Incident.** “Security Incident” means the suspected or confirmed unauthorized access, use, disclosure, modification, or destruction of information or interference with the system operations in an information system.
- q) **Underlying Agreement.** “Underlying Agreement” means the County contract for goods or services made through the County’s procurement office which the parties have entered into and which the County has determined requires the execution of this Business Associate Agreement.
- r) **Unsecured Protected Health Information.** “Unsecured Protected Health Information” means protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology approved by the Secretary.

2) **Obligations and Activities of Business Associate**

- a) Business Associate acknowledges and agrees that it is obligated by law (or upon the effective date of any portion thereof shall be obligated) to meet the applicable provisions of HIPAA and such provisions are incorporated herein and made a part of this Business Associate Agreement. Covered Entity and Business Associate agree that any regulations and/or guidance issued by DHHS with respect to HIPAA that relate to the obligations of business associates shall be deemed incorporated into and made a part of this Business Associate Agreement.
- b) In accordance with 45 CFR §164.502(a)(3), Business Associate agrees not to use or disclose PHI other than as permitted or required by this Business Associate Agreement or as Required by Law.
- c) Business Associate agrees to develop, implement, maintain and use appropriate administrative, technical, and physical safeguards that reasonably prevent the use or disclosure of PHI other than as provided for by this Business Associate Agreement, in accordance with 45 CFR §§164.306, 310 and 312. Business Associate agrees to develop, implement, maintain, and use administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic PHI, in accordance with 45 CFR §§164.306, 308, 310, and 312. In accordance with 45 CFR §164.316, Business Associate shall also develop and implement policies and procedures and meet the documentation requirements as and at such time as may be required by HIPAA.
- d) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate, of a use or disclosure of PHI by Business Associate in violation of the requirements of this Business Associate Agreement.
- e) In accordance with 45 CFR §§164.308, 314 and 502, Business Associate will ensure that any workforce member or agent, including a vendor or subcontractor, whom Business Associate engages to create, receive, maintain, or transmit PHI on Business Associate’s behalf, agrees to the same restrictions and conditions that apply through this Business Associate Agreement to

Business Associate with respect to such information, including minimum necessary limitations. Business Associate will ensure that any workforce member or agent, including a vendor or subcontractor, whom Business Associate engages to create, receive, maintain, or transmit PHI on Business Associate's behalf, agrees to implement reasonable and appropriate safeguards to ensure the confidentiality, integrity, and availability of the PHI.

- f) At the request of Covered Entity, Business Associate will provide Covered Entity, or as directed by Covered Entity, an Individual, access to PHI maintained in a Designated Record Set in a time and manner that is sufficient to meet the requirements of 45 CFR § 164.524, and, where required by HIPAA, shall make such information available in an electronic format where directed by the Covered Entity.
- g) At the written request of Covered Entity, (or if so directed by Covered Entity, at the written request of an Individual), Business Associate agrees to make any amendment to PHI in a Designated Record Set, in a time and manner that is sufficient to meet the requirements of 45 CFR § 164.526.
- h) In accordance with 45 CFR §164.504(e)(2), Business Associate agrees to make its internal practices, books, and records, including policies and procedures, and any PHI, relating to the use and disclosure of PHI, available to Covered Entity or to the Secretary for purposes of determining compliance with applicable law. To the extent permitted by law, said disclosures shall be held in strictest confidence by the Covered Entity. Business Associate will provide such access in a time and manner that is sufficient to meet any applicable requirements of applicable law.
- i) Business Associate agrees to document and maintain a record of disclosures of PHI and information related to such disclosures, including the date, recipient and purpose of such disclosures, in a manner that is sufficient for Covered Entity or Business Associate to respond to a request by Covered Entity or an Individual for an Accounting of disclosures of PHI and in accordance with 45 CFR § 164.528. Business Associate further shall provide any additional information where required by HIPAA and any implementing regulations. Unless otherwise provided under HIPAA, Business Associate will maintain the Accounting with respect to each disclosure for at least six years following the date of the disclosure.

Business Associate agrees to provide to Covered Entity upon written request, or, as directed by Covered Entity, to an Individual, an Accounting of disclosures in a time and manner that is sufficient to meet the requirements of HIPAA, in accordance with 45 CFR §164.528. In addition, where Business Associate is contacted directly by an Individual based upon information provided to the Individual by Covered Entity and where so required by HIPAA and/or any implementing regulations, Business Associate shall make such Accounting available directly to the Individual.

- j) In accordance with 45 CFR §164.502(b), Business Associate agrees to make reasonable efforts to limit use, disclosure, and/or requests for PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request. Where required by HIPAA, Business Associate shall determine (in its reasonable judgment) what constitutes the minimum necessary to accomplish the intended purpose of a disclosure.
- k) In accordance with 45 CFR §502(a)(5), Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI of an Individual, except with the express written pre-

approval of Covered Entity.

- l) To the extent Business Associate is to carry out one or more obligation(s) of the Covered Entity's under Subpart E of 45 CFR Part 164, Business Associate shall comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s).
- m) In accordance with 45 CFR §164.314(a)(2)(i)(C), Business Associate agrees to report within five (5) business days or less to Covered Entity any Security Incident of which Business Associate becomes aware.
- n) In accordance with 45 CFR §164.410 and the provisions of this Business Associate Agreement, Business Associate will report to Covered Entity, following Discovery and without unreasonable delay, but in no event within five (5) business days or less following Discovery, any Breach of Unsecured Protected Health Information. Business Associate shall cooperate with Covered Entity in investigating the Breach and in meeting Covered Entity's obligations under HIPAA and any other applicable security breach notification laws, including, but not limited to, providing Covered Entity with such information in addition to Business Associate's report as Covered Entity may reasonably request, e.g., for purposes of Covered Entity making an assessment as to whether/what Breach Notification is required.

Business Associate's report under this subsection shall, to the extent available at the time the initial report is required, or as promptly thereafter as such information becomes available but no later than 30 days from discovery, include:

- 1. The identification (if known) of each Individual whose Unsecured Protected Health Information has been or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such Breach.
 - 2. A description of the nature of the unauthorized acquisition, access, use, or disclosure, including the date of the Breach and the date of discovery of the Breach;
 - 3. A description of the type of Unsecured PHI acquired, accessed, used, or disclosed in the Breach (e.g., full name, Social Security number, date of birth, etc.).
 - 4. The identity of the individual(s) who made and who received the unauthorized acquisition, access, use or disclosure;
 - 5. A description of what Business Associate is doing to investigate the Breach, to mitigate losses, and to protect against any further breaches; and
 - 6. Contact information for Business Associate's representatives knowledgeable about the Breach.
- o) Business Associate shall maintain for a period of six years all information required to be reported under paragraph "n". This records retention requirement does not in any manner change the obligation to timely disclose all required information relating to a non-permitted acquisition, access, use or disclosure of Protected Health Information to the County Privacy Officer and the County Project Officer or designee five business days following Discovery.

3) Permitted Uses and Disclosures by Business Associate

Except as otherwise limited in this Business Associate Agreement, Business Associate may use or disclose PHI, consistent with HIPAA, as follows:

- a) Business Associate may use or disclose PHI as necessary to perform functions, activities, or services to or on behalf of Covered Entity under any service agreement(s) with Covered Entity, including Data Aggregation services related to the health care operations of Covered Entity, if called for in the Underlying Agreement, if Business Associate's use or disclosure of PHI would not violate HIPAA if done by Covered Entity.
- b) Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.
- c) Business Associate may disclose PHI for the proper management and administration of Business Associate if:
 - 1. Disclosure is Required by Law;
 - 2. Business Associate obtains reasonable assurances from the person to whom the PHI is disclosed that the PHI will remain confidential, and will be used or further disclosed only as Required By Law or for the purpose for which it was disclosed, and the person agrees to promptly notify Business Associate of any known breaches of the PHI's confidentiality; or
 - 3. Disclosure is pursuant to an order of a Court or Agency having jurisdiction over said information.
- d) Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR § 164.502(j)(1).

4) Obligations of Covered Entity

- a) Covered Entity will notify Business Associate of any limitations on uses or disclosures described in its Notice of Privacy Practices (NOPP).
- b) Covered Entity will notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes or revocation may affect Business Associate's use or disclosure of PHI.
- c) Covered Entity will notify Business Associate of any restriction of the use or disclosure of PHI, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- d) Covered Entity will notify Business Associate of any alternative means or locations for receipt of communications by an Individual which must be accommodated or permitted by Covered Entity, to the extent that such alternative means or locations may affect Business Associate's use or disclosure of PHI.
- e) Except as otherwise provided in this Business Associate Agreement, Covered Entity will not ask Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA if such use and/or disclosure was made by Covered Entity.

5) Term, Termination and Breach

- a) This Business Associate Agreement is effective when fully executed and will terminate when all of the PHI provided by Covered Entity to Business Associate or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, including any material provided to subcontractors. If it is infeasible to return or destroy all PHI, protections are extended to such information, in accordance with the Section 5(d) and 5(e) below.

- b) Upon Covered Entity's determination that Business Associate has committed a violation or material breach of this Business Associate Agreement, and in Covered Entity's sole discretion, Covered Entity may take any one or more of the following steps:
 - 1. Provide an opportunity for Business Associate to cure the breach or end the violation, and if Business Associate does not cure the Breach or end the violation within a reasonable time specified by Covered Entity, terminate this Business Associate Agreement;

 - 2. Immediately terminate this Business Associate Agreement if Business Associate has committed a material breach of this Business Associate Agreement and cure of the material breach is not feasible; or,

 - 3. If neither termination nor cure is feasible, elect to continue this Business Associate Agreement and report the violation or material breach to the Secretary.

- c) If Business Associate believes Covered Entity has failed to fulfill any of its duties under this Business Associate Agreement, Business Associate will promptly notify Covered Entity as to same and Covered Entity shall promptly address the matter with Business Associate.

Except as provided in Section 5(e) upon termination of this Business Associate Agreement for any reason, Business Associate will return or destroy, at the discretion of Covered Entity, all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity. This provision will also apply to PHI that is in the possession of workforce members, subcontractors, or agents of Business Associate. Neither Business Associate, nor any workforce member, subcontractor, or agent of Business Associate, will retain copies of the PHI.

- d) If Business Associate determines that returning or destroying all or part of the PHI received or created by and/or on behalf of Covered Entity is not feasible, Business Associate will notify Covered Entity of the circumstances making return or destruction infeasible. If Covered Entity agrees that return or destruction is infeasible, then Business Associate will extend the protections of this Business Associate Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. Business Associate further agrees to retain the minimum necessary PHI to accomplish those tasks/responsibilities which make return and/or destruction infeasible.

6) Miscellaneous

- a) Covered Entity and Business Associate agree to take any action necessary to amend this Business Associate Agreement from time to time as may be necessary for Covered Entity or Business Associate to comply with the requirements of HIPAA, and/or any other implementing regulations or guidance.

- b) Notwithstanding the expiration or termination of this Business Associate Agreement or any Underlying Agreement, it is acknowledged and agreed that those rights and obligations of Business Associate which by their nature are intended to survive such expiration or termination shall survive, including, but not limited to, Sections 5(d) and 5(e) herein.
- c) In the event the terms of this Business Associate Agreement conflict with the terms of any other agreement between Covered Entity and Business Associate or the Underlying Agreement, then the terms of this Business Associate Agreement shall control.
- d) Notices and requests provided for under this Business Associate Agreement will be made in writing to Covered Entity, delivered by hand-delivery, overnight mail or first-class mail, postage prepaid at:

(1) Marcy Foster,
Arlington County Privacy Officer
2100 Clarendon Blvd., Suite 511
Arlington, Virginia 22201

(2) MinhChau Corr
County Attorney
2100 Clarendon Blvd., Suite 511
Arlington, Virginia 22201

(3) County Project Officer
Kristin L. Young
Human Resources - Employee Services Division Chief
2100 Clarendon Blvd., Suite 511
Arlington, Virginia 22201

Notice and requests provided for under this Business Associate Agreement will be made in writing in the manner described above to Business Associate at:

Delta Dental of Virginia
Attn: Dawn McCray
Privacy Officer
4818 Starkey Road
Roanoke, VA 24014

- e) Covered Entity will have the right to inspect any records of Business Associate or to audit Business Associate to determine whether Business Associate is in compliance with the terms of this Business Associate Agreement. However, this provision does not create any obligation on the part of Covered Entity to conduct any inspection or audit.
- f) Nothing in this Business Associate Agreement shall be construed to create a partnership, joint venture, or other joint business relationship between the parties or any of their affiliates, or a relationship of employer and employee between the parties. Rather, it is the intention of the parties that Business Associate shall be an independent contractor.

- g) Nothing in this Business Associate Agreement provides or is intended to provide any benefit to any third party.
- h) The Business Associate will indemnify and hold harmless Arlington County, its elected officials, officers, directors, employees and/or agents from and against any employee, federal administrative action or third party claim or liability, including attorneys' fees and costs, arising out of or in connection with the Business Associate's violation (or alleged violation) and/or any violation and/or alleged violation by Business Associate's workforce, agent/s, or subcontractor/s of the terms of this Business Associate Agreement, federal law, HIPAA, the HITECH Act, and/or other implementing regulations or guidance or any associated audit or investigation.

The obligation to provide indemnification under this Business Associate Agreement shall be contingent upon the party seeking indemnification providing the indemnifying party with written notice of any claim for which indemnification is sought. Any limitation of liability provisions contained in the Underlying Agreement do not supersede, pre-empt, or nullify this provision or the Business Associate Agreement generally.

This indemnification shall survive the expiration or termination of this Business Associate Agreement or the Underlying Agreement.

- i) Any ambiguity in this Business Associate Agreement shall be resolved to permit the parties to comply with HIPAA, its implementing regulations, and associated guidance. The sections, paragraphs, sentences, clauses, and phrases of this Business Associate agreement are severable. If any phrase, clause, sentence, paragraph, or section of this Business Associate Agreement is declared invalid by a court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, and sections of this Business Associate Agreement.

If any dispute or claim arises between the parties with respect to this Business Associate Agreement, the parties will make a good faith effort to resolve such matters informally, it being the intention of the parties to reasonably cooperate with each other in the performance of the obligations set forth in this Business Associate Agreement. The Dispute Resolution clause of the Underlying Agreement ultimately governs if good faith efforts are unsuccessful.

- j) A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any other right or remedy as to any subsequent events.
- k) Neither party may assign any of its rights or obligations under this Business Associate Agreement without the prior written consent of the other party.
- l) This Business Associate Agreement and the rights and obligations of the parties hereunder shall be construed, interpreted, and enforced with, and shall be governed by, the laws of the Commonwealth of Virginia and the United States of America.
- m) This Business Associate Agreement shall remain in effect for the duration of the Underlying Agreement between the parties, any renewals, extension or continuations thereof, and until such time as all PHI in the possession or control of the Business Associate has been returned to the Covered Entity and/or destroyed. If such return or destruction is not feasible, the Business Associate shall use such PHI only for such limited purposes that make such return or destruction not feasible, and the provision of this Business Associate Agreement shall survive with respect to

such PHI.

- n) The Business Associate shall be deemed to be in violation of this Business Associate Agreement if it knew of, or with the exercise of reasonable diligence or oversight should have known of, a pattern of activity or practice of any subcontractor, subsidiary, affiliate, agent or workforce member that constitutes a material violation of that entity's obligations in regard to PHI unless the Business Associate took prompt and reasonable steps to cure the breach or end the violation, as applicable, and if such steps were unsuccessful, terminated the contract or arrangement with such entity, if feasible.
- o) Upon the enactment of any law or regulation affecting the use or disclosure of PHI, or any change in applicable federal law including revisions to HIPAA; upon publication of any decision of a court of the United States or of the Commonwealth of Virginia, relating to PHI or applicable federal law; upon the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of PHI disclosures or applicable federal law, the County reserves the right, upon written notice to the Business Associate, to amend this Business Associate Agreement as the County determines is necessary to comply with such change, law or regulation. If the Business Associate disagrees with any such amendment, it shall so notify the County in writing within thirty (30) days of the County's notice. In case of disagreement, the parties agree to negotiate in good faith the appropriate amendment(s) to give effect to such revised obligation. In the County's discretion, the failure to enter into an amendment shall be deemed to be a default and good cause for termination of the Underlying Agreement.
- p) The County makes no warranty or representation that compliance by the Business Associate with this Business Associate Agreement, HIPAA, the HITECH Act, federal law or the regulations promulgated thereunder will be adequate or satisfactory for the Business Associate's own purposes or to ensure its compliance with the above. The Business Associate is solely responsible for all decisions made by it, its workforce members, agents, employees, subsidiaries, and subcontractors regarding the safeguarding of PHI and compliance with federal law.
- q) The Business Associate agrees that its workforce members, agents, employees, subsidiaries, and subcontractors shall be bound by the confidentiality requirements herein and the provisions of this Business Associate Agreement shall be incorporated into any training or contracts with the same.
- r) This Business Associate Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.
- s) This Business Associate Agreement shall replace and supersede any prior Business Associate Agreement entered between the parties.

IN WITNESS WHEREOF, each party hereto has executed this Business Associate Agreement in duplicate originals on the date below written:

Arlington County, Virginia

DocuSigned by:
By: Marcy Foster
A528BF7BB3DD483...
(Signature)

Name: Marcy Foster

Title: County Privacy Officer

Date: 7/26/2022

Business Associate

DocuSigned by:
By: David Notari
709555786AF04D7...
(Signature)

Name: David Notari

Title: Senior Vice President, COO

Date: 7/26/2022