



DELTA DENTAL OF ARIZONA

5656 West Talavi Boulevard

Glendale, AZ 85306

(602) 938-3131

An Arizona Not For Profit Dental Service Plan

THIRD-PARTY ADMINISTRATIVE AGREEMENT

The completion of the Master Application and administrative fee payment made by I.B.E.W. Local No. 640 and Arizona Chapter N.E.C.A. Health and Welfare Trust Fund (**Retirees**) is the consideration that binds the parties. I.B.E.W. Local No. 640 and Arizona Chapter N.E.C.A. Health and Welfare Trust Fund (**Retirees**) will be called Plan Sponsor in this Group Dental Contract. The Group Dental Contract, henceforth in this document, will be referred to as This Contract. Delta Dental of Arizona will be referred to as DDAZ in This Contract. The Master Application is a part of This Contract and binds the parties.

This Contract:

- A. Is issued for the Initial Rate Guarantee Period outlined below; and
- B. May be renewed for successive renewal periods by the payment of administrative fees set by DDAZ on each renewal date and by a signed contract amendment indicating the renewal effective date, and any applicable changes to this contract.

The length of each renewal period will be set by DDAZ, but will not be less than twelve – (12) months, except for the initial change of a contract term.

Entire Contract and Contract Amendments:

This Contract with all Appendices and the Master Application of the Plan Sponsor constitute the Entire Contract between the parties.

This Contract may be changed in whole or in part. No change in This Contract will be valid unless it is approved in writing by DDAZ's Chief Executive Officer and given to the Plan Sponsor for attachment to This Contract. No agent has the authority to change This Contract or to waive any of its provisions.

Employer Group Number:	4957
Original Effective Date:	January 1, 2004
Rewrite Effective Date:	<u>January 1, 2017</u>
Initial Coverage Period:	January 1, 2017 through December 31, 2017

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Group Dental Contract

This Contract includes the following Appendices:

Appendix A: Summary of Benefits
Appendix B: Schedule of Administrative Fees
Appendix C: Contractual Components


DDAZ and the Plan Sponsor agree to comply with all provisions set forth in This Contract.

AUTHORIZED SIGNATURES

I.B.E.W. Local No. 640 and Arizona Chapter
N.E.C.A. Health and Welfare Trust Fund (**Retirees**)

Delta Dental of Arizona

BY: _____

BY: 
R. Allan Allford

TITLE: _____

TITLE: President/CEO

DATE: _____

DATE: December 8, 2016

ARTICLE I: APPOINTMENT AND SCOPE OF RELATIONSHIP

- 1.1 **Appointment.** Plan Sponsor appoints DDAZ as the Plan's third-party administrator and DDAZ agrees to act as the Plan's third-party administrator and to perform the services and administer the Plan's dental benefits pursuant to the terms of the Plan and the provisions of this Third-Party Administrative Agreement (the "Agreement"). Notwithstanding the authority granted to DDAZ herein, the parties agree that the Plan Sponsor will retain the authority to manage and supervise all aspects of the Plan and will have the full and final authority on interpreting Plan provisions. DDAZ agrees that it will neither interfere with nor be responsible for either the delivery of dental care services or the duty of care to eligible employees enrolled in the Plan ("Plan Participants"). All duties of the Plan not delegated to DDAZ by this Agreement are the responsibility of the Plan Sponsor. DDAZ may subcontract its duties under this Agreement in order to discharge its responsibilities for the Plan.
- 1.2 **Independent Contractors.** Nothing contained in this Agreement shall be construed to create any relationship other than independent contractor between DDAZ and Plan Sponsor, including those of joint venture, partnership or association. Neither DDAZ nor Plan Sponsor may act on behalf of the other and neither may bind or execute a release on behalf of the other except as authorized in writing by the granting party. Neither party shall be responsible to perform any regulatory or contractual obligation on behalf of the other.
- 1.3 **Services Only Contract.** Plan Sponsor understands that this is not an insurance policy or an indemnity agreement. It is the intent of both parties that this Agreement is a contract for third-party administrative services only.
- 1.4 **Not a Fiduciary.** It is understood and agreed that DDAZ is not and will not be deemed to be a fiduciary with respect to the Plan, except as required by law. DDAZ is retained under this Agreement to perform ministerial functions, not discretionary functions.
- 1.5 **Liability for Benefits.** It is understood and agreed that liability for payment of dental benefits under the Plan belongs to the Plan Sponsor and that DDAZ will not have any duty to use any of its funds for the payment of such benefits. DDAZ will have no obligation whatsoever to arrange for payment of dental benefits under the Plan if the Plan Sponsor has not made the requisite funds available to DDAZ in accordance with this Agreement.

ARTICLE II: DUTIES AND RESPONSIBILITIES

- 2.1 **DDAZ's Duties and Responsibilities:** DDAZ's duties and responsibilities will be:
- (a) To assist the Plan Sponsor, if requested, in adopting such rules and regulations as are necessary to administer the terms and conditions of the dental benefits under the Plan. Plan Sponsor may desire to establish and maintain a written summary of its plan (Summary Plan Description or "SPD"). DDAZ will have no responsibility in the preparation of such document except at the request of Plan Sponsor. However, Plan's SPD must include language that is compatible with DDAZ's administrative protocol and the use of its network. DDAZ will provide Plan with the components that are critical to its administration. Plan Sponsor agrees that these components will be included in Plan's SPD and that any conflicting language will be deleted from Plan's SPD. Compliance with applicable laws and regulations is the ultimate responsibility of the Plan Sponsor.
 - (b) To carry out the terms of this Agreement under the direction and authority of the Plan Sponsor. All services provided by DDAZ hereunder will be performed in accordance with the provisions of the Plan Sponsor's SPD as provided to DDAZ at the time such services are performed.
 - (c) To enroll Plan Participants pursuant to Article III hereof.
 - (d) To provide claim services pursuant to Article IV hereof.

- (e) To provide such information to the Plan Sponsor as DDAZ has in its records for the Plan and as the Plan Sponsor and DDAZ mutually determine is reasonably necessary to comply with applicable state or federal government requirements.
- (f) To provide monthly reports to the Plan Sponsor as the Plan Sponsor and DDAZ mutually determine are reasonably necessary. Such monthly reports will list the disbursements made by DDAZ under the Plan.
- (g) To keep and maintain such accounts and records of the third-party administrative services provided to the Plan under this Agreement as are required under applicable state and federal law.
- (h) To timely respond to inquiries from Plan Participants about dental benefits under the Plan in accordance with the rules and procedures established by the Plan Sponsor.
- (i) To conduct “standard transactions” electronically on behalf of the Plan in accordance with the privacy requirements of 45 CFR Part 162 and require its subcontractors and agents to comply with the requirements of this regulation.

2.2 **Plan Sponsor's Duties and Responsibilities:** The Plan Sponsor's duties and responsibilities will be:

- (a) The Plan Sponsor will establish, maintain and appropriately fund the Plan and will be solely responsible for the operation and administration of the Plan, except as expressly delegated to DDAZ in this Agreement. The Plan Sponsor has absolute authority with respect to the control, management, funding, disposition and utilization of Plan assets.
- (b) To provide DDAZ with a complete list of all Plan Participants on the Effective Date of this Agreement and to update such list monthly in accordance with hereof. Plan Sponsor has the responsibility to cooperate, and to cause all third parties assisting Plan Sponsor to cooperate, with DDAZ in assuring that the Plan enrollment data provided to DDAZ under Article III of this Agreement is consistent with the Plan enrollment data held by Plan Sponsor.
- (c) To collect all Plan Participant contributions and maintain an appropriate record of such contributions. The Plan Sponsor will be solely responsible for trust instrument requirements, if any.
- (d) To assist DDAZ in the enrollment of Plan Participants; cooperate with and assist DDAZ in the proper settlement of claims and promptly submit any inquiries pertaining to dental benefits under the Plan to DDAZ.
- (e) To maintain and provide DDAZ with dental benefit enrollment forms, claims forms, and such other forms and documents as DDAZ deems necessary to carry out its duties and responsibilities under this Agreement.
- (f) DDAZ will assist in the development of the SPD at Plan Sponsor’s request. It is understood, however, that compliance with applicable laws and regulations is the ultimate responsibility of the Plan Sponsor.
- (g) To comply with all reporting requirements as required by law. Any penalty imposed on Plan Sponsor for failing to timely and accurately file any legally required forms with respect to the Plan will be the sole responsibility of Plan Sponsor.
- (h) To comply with all requirements under the Privacy Standards (defined in Section 12.1 below), applicable to health plans, including but not limited to, delivering privacy notices.
- (i) To at all times maintain sufficient funds in an account in accordance with Article V in order to pay all Plan claims and DDAZ’s third-party Administrative Fee under Article VI.

- (j) Any record keeping, reporting, or payment responsibilities set forth under any state's unclaimed property law will be those of the Plan Sponsor. In no event will DDAZ become a "holder" of unclaimed property, as defined in any applicable unclaimed property law, due to the failure of a Plan Participant to negotiate any check issued from the account.
- (k) The Plan Sponsor is ultimately responsible for maintaining compliance with all applicable federal and state laws and regulations governing the Plan. In the event that the Plan Sponsor fails to comply with any federal or state law, as applicable, DDAZ will not be liable in any action brought with regard to such failure.
- (l) The Plan Sponsor will be the final decision maker as to the interpretation of the Plan and as to the payment of benefits thereunder, except to the extent specifically delegated to DDAZ in this Agreement. DDAZ will not be liable when following directions from the Plan Sponsor its employees or agents.
- (m) To take any and all actions necessary to give DDAZ the authority as appropriate and necessary to provide the third-party administrative services under this Agreement.

ARTICLE III: PLAN ENROLLMENT

- 3.1 **Enrollment.** DDAZ will provide enrollment services in accordance with Plan specifications. Plan Sponsor will forward to DDAZ, a listing of new Plan Participants and their employment dates and a listing of terminated Plan Participants and their termination dates.
- 3.2 **Maintenance of Plan Participant List.** DDAZ will maintain and update Plan Participant lists based on the information provided by Plan Sponsor, and will provide the Plan Sponsor with monthly reports showing enrollment. DDAZ may rely on the most current Plan Participant list, and may pay the claims of Plan Participants included on the list until DDAZ receives notification from Plan Sponsor that a Plan Participant has terminated and the date of such termination. DDAZ will not be responsible for any claims paid by it for services provided to a terminated Plan Participant prior to the time DDAZ receives notification of the Plan Participant's termination.
- 3.3 **Communications.** DDAZ will be entitled to rely, without question, upon any written or oral communication from the Plan Sponsor, its designated employees, agents or authorized representative. DDAZ will assign a contact person to work directly with the Plan Sponsor on issues related to the Plan and this Agreement. The Plan Sponsor will designate a contact person or persons that DDAZ can work with on issues related to the administration of the Plan and this Agreement. Both parties agree to notify the other party as soon as possible following a change in contact persons, but no later than ten (10) business days from the date of the change.
- 3.4 **Issuance of ID Cards.** At Plan Sponsor's request DDAZ will issue Plan identification cards for all Plan Participants within ten (10) business days of receipt of the necessary Plan Participant information from Plan Sponsor.
- 3.5 **Enrollment Records.** DDAZ will maintain enrollment information and records that will, at a minimum, contain such information as the parties mutually agree is necessary to comply with any federal or state law, rule or regulation applicable to the Plan. DDAZ will provide the information to Plan Sponsor, upon request, but not more frequently than monthly.

ARTICLE IV: CLAIMS SERVICES

- 4.1 **Claim for Dental Benefits.** Plan Participants or beneficiaries will make claim for dental benefits under the Plan on forms acceptable to DDAZ. DDAZ will not be responsible for adjudication of any claim for dental benefits until it receives complete and accurate claim information. DDAZ will correspond with the Plan

Participant and his or her dental provider if additional information is deemed necessary by DDAZ to process the claims.

- 4.2 **Claims Screening.** DDAZ will screen and process all claims against eligibility verification, other party liability, Plan limits, benefits payable, provider, patient, diagnosis, and Plan dental management procedures, if any.
- 4.3 **Claims Investigation.** DDAZ will conduct the necessary investigations and, if the facts as stated in the claim or as determined upon such investigation entitle the Plan Participant or beneficiary to receive payment of dental benefits, DDAZ will make payment according to the Plan provisions. If DDAZ finds that the Plan Participant or beneficiary is not entitled to dental benefits under the Plan, the claim for dental benefits will be denied with DDAZ's reasons for denial.
- 4.4 **Claims Appeals Process.** DDAZ will conduct all claims appeals in accordance with Plan Sponsor's appeals process. Plan Sponsor will have full and final authority on all claim denial disputes.
- 4.5 **Settlement and Defense.** At the request and with the cooperation of Plan Sponsor, DDAZ will settle and defend any claim for dental benefits that has been denied. At DDAZ's request, Plan Sponsor will assist in such settlement and defense, including, but not limited to, attending hearings and trials, assisting in securing and giving evidence, and obtaining the attendance of witnesses. If any suit is brought with respect to any claim for dental benefits, DDAZ will retain and consult with legal counsel to defend the Plan in such suit as is necessary and appropriate, at the Plan's expense and after consulting with the Plan Sponsor.
- 4.6 **Offsets, Subrogation and Coordination of Benefits.** DDAZ will determine appropriate offsets for payments to providers in the event such providers receive any overpayments. DDAZ will have no further obligation with respect to any such payment or overpayment. DDAZ will pursue subrogation and coordination of benefits ("COB") in accordance with Plan provisions. At Plan Sponsor's request DDAZ will retain legal counsel on behalf of the Plan and at the Plan's expense to seek recoveries and payments under such provisions. DDAZ does not represent or guarantee that it will discover each such subrogation claim or potential COB recovery, but only that it will diligently pursue those that are discovered and that are economically feasible to pursue. All subrogated and COB amounts collected will be deposited into the Plan's account as provided in Article V.
- 4.7 **Payment of Dental Benefits.** DDAZ will pay all benefits payable from the Designated Account established by Plan Sponsor for the purpose under Article V.
- 4.8 **Retention of Claims Records.** DDAZ may retain copies of all claims information and payment records as it deems necessary or advisable pursuant to any applicable state or federal laws.
- 4.9 **Reports.** DDAZ will provide a monthly report of claim information by Plan Participant within the first ten (10) business days of the month following the month for which the information is provided ("Account Reconciliation").

ARTICLE V: CLAIMS PAYMENT

- 5.1 **Payment by Plan Sponsor.** Plan Sponsor agrees to reimburse DDAZ for all dental benefits paid under the Plan on a monthly basis.
- 5.2 **Indemnification of DDAZ.** DDAZ will have no obligation to arrange for the payment of dental benefits or for any other payment for which the Plan is responsible under this Agreement if the Plan Sponsor has not made the requisite funds available to DDAZ in accordance with this Article V. It is understood and agreed that the Plan Sponsor's duty to reimburse DDAZ for dental benefits paid under this Article V and for DDAZ's Administrative Fees under Article VI will survive the termination of this Agreement.

ARTICLE VI: ADMINISTRATIVE FEES

- 6.1 **Administrative Fee.** Plan Sponsor will pay DDAZ a fee for its services to the Plan under this Agreement (“Administrative Fee”) on a monthly basis. The initial Administrative Fee is set forth in Appendix B, “Schedule of Administrative Fees,” attached to and made a part of this Agreement. Payment of the Administrative Fee for each month will be due by the first of each month.
- 6.2 **Adjustment of Administrative Fee.** DDAZ retains the right to review and adjust the Administrative Fee for the Plan once per year on the anniversary date of this Agreement unless a longer Administrative Fee guarantee is offered by DDAZ and noted in Appendix B.

ARTICLE VII: REPORTS AND RECORDS

- 7.1 **No Guarantee.** It is understood and agreed that to the extent the reports required hereunder are based on information provided by Plan Sponsor or any third party, DDAZ does not guarantee, warrant, or represent the timeliness or accuracy of such reports.
- 7.2 **Ownership of Records.** All business documents and records relating to dental benefits under the Plan, including but not limited to all historical data, books of account, enrollment records, general administrative records, patient records and benefits payment information, are the sole property of the Plan. DDAZ will have the right to make and retain copies of such records as it deems necessary or advisable. All records and information maintained by DDAZ under this Agreement will be made available to Plan Sponsor during DDAZ’s regular business hours for review by Plan Sponsor, its agents, accountants, or attorneys upon reasonable prior notice during the term of this Agreement.
- 7.3 **Disposition of Records Upon Termination.** All records and information maintained by DDAZ pursuant to this Agreement will be returned to Plan Sponsor, in electronic format, within six (6) months following termination of this Agreement, if so requested and at Plan Sponsor’s sole expense, if any. DDAZ maintains the right to copy and retain any or all such records as it deems necessary or advisable. After the return of such records or information to Plan Sponsor, DDAZ will have no further liability or responsibility to Plan Sponsor or any other person with respect to any such records or information, except as may be required by law. If Plan Sponsor does not request the return of the records within six (6) months following termination of this Agreement, DDAZ may retain the records or destroy such records or information, at its option, in accordance with its current or future records retention policies and any applicable federal law.
- 7.4 **Access and Audit.**
- (a) Plan Sponsor may perform (or have performed at its expense), an audit of DDAZ’s records pertaining to the administrative services provided under this Agreement.
 - (b) DDAZ may perform (or have performed at its expense), an audit of the Plan Sponsor’s records pertaining to eligibility of Plan Participants. At DDAZ’s discretion, an audit of Plan Sponsor may extend to any vendor who contracted with Plan Sponsor during the term of this Agreement to provide eligibility-related services to Plan Sponsor. The Plan Sponsor is responsible for amending vendor contracts, if necessary, to include DDAZ’s right to audit.
 - (c) To commence an audit, either under paragraph (a) or (b), in this Section 7.4, Plan Sponsor or DDAZ, as the case may be, must give at least thirty (30) days’ advance written notice to the other, which notice will inform Plan Sponsor or DDAZ that the audit is requested, the time period covered by the audit (not less than six (6) months but not to exceed twelve (12) months), the audit sample size, and how the data is to be provided for the audit. Such audit will be limited to the services provided under this Agreement, and may encompass any relevant information that Plan Sponsor or DDAZ requires, consistent with professional auditing practices and procedures applicable to the type of service subject to the audit as mutually agreed upon by DDAZ, and Plan Sponsor, or DDAZ and a vendor of Plan Sponsor, if requested by DDAZ. The requested records will be selected and supplied by Plan Sponsor or DDAZ in the manner agreed to by both parties,

including, but not limited to, a computer-selected random sampling, if applicable, or specific types of records or information through random selection or by stated dollar amount or range, if applicable, provided that the audit must encompass a statistically valid random sample.

- (d) DDAZ and Plan Sponsor will arrange for meetings or conference calls for the purpose of reviewing and discussing performance and any proposed changes to the methods or procedures for providing services under this Agreement and the impact, if any, such changes will have on DDAZ's ability to meet the requirements of this Agreement. In the event such meetings lead to any mutually agreed upon recommendations for modification of a performance standard, DDAZ will reduce the recommendation to writing and present it to Plan Sponsor as an amendment to this Agreement.

ARTICLE VIII: TERM AND TERMINATION

8.1 **Term.** This Agreement will renew on an annual basis on the anniversary of the Effective Date unless mutually terminated by written agreement of the parties or in accordance with Section 8.2, of this Agreement.

8.2 **Termination.** This Agreement will terminate:

- (a) Automatically, if Plan Sponsor fails to make sufficient funds available on a timely basis to DDAZ to pay Plan benefits and Administrative Fees in accordance with this Agreement. If Plan Sponsor fails to make sufficient funds available under Section 5.1 of this Agreement, DDAZ will have the right to immediately and without notice, cease paying claims on behalf of Plan Participants.
- (b) By either the Plan Sponsor or DDAZ by written notice to the other. The termination shall be effective as of the date set forth in the written notice, which date shall not be less than sixty (60) days from the date of such notice.
- (c) Automatically, if either party (i) is rendered or becomes insolvent, (ii) is unable to pay debts as they become due, (iii) is adjudicated a bankrupt, or files, or becomes subject to a petition under any insolvency, creditors or bankruptcy law, or (iv) has a receiver, liquidator or trustee of substantially all its assets appointed by a court of competent jurisdiction.
- (d) Except as provided for in Section 8.2(a), if either party fails to keep, observe, or perform any material covenant, obligation, agreement, term, or provision of this Agreement and failure continues for a period of thirty (30) days after written notice by the other party, the non-defaulting party may terminate this Agreement upon an additional ten (10) days' prior written notice to the defaulting party.

8.3 **Termination of Duties and Responsibilities.** All duties and responsibilities of DDAZ under this TPA agreement will cease on the effective date of termination regardless of whether the Plan continues. At Plan Sponsor's request, DDAZ will continue to pay claims for dental benefits that were incurred prior to the termination date for a period not to exceed three (3) months; or as noted in Appendix C of This Agreement.

ARTICLE IX: INDEMNIFICATION

9.1 **Limitation of DDAZ's Liability.**

- (a) DDAZ's liability under this Agreement is limited to the provision of the services enumerated herein. In no event will DDAZ be liable in its own funds for the payment of benefits under the Plan or for any other payment not expressly provided for in this Agreement.
- (b) In no event will DDAZ be liable or provide indemnity to Plan Sponsor where any damage or loss is caused directly or indirectly by information provided by Plan Sponsor or any third party under

the direction or at the request of Plan Sponsor.

- 9.2 **Indemnification by DDAZ.** DDAZ will be liable for and will protect, save harmless and indemnify Plan Sponsor, its agents and employees from and against all liabilities, obligations, losses, damages, injuries, claims, demands, penalties, actions, costs and expenses (including reasonable attorneys' fees) of whatsoever kind and nature (together "Plan Losses") to the extent that such Plan Losses arise out of or are based on DDAZ's, or any agent or employee of DDAZ's, intentional, willful, reckless or negligent acts or omissions in the performance of its duties under this Agreement, except to the extent DDAZ's actions are taken at the specific direction of, or are based on information provided by Plan Sponsor.
- 9.3 **Indemnification by Plan Sponsor.** Plan Sponsor will be liable for and will protect, save harmless and indemnify DDAZ, its agents and employees, from and against any and all liabilities, obligations, losses, damages, injuries, claims, demands, penalties, actions, costs and expenses (including reasonable attorneys' fees) of whatsoever kind and nature (together "DDAZ Losses"), arising out of:
- (a) The entry, use, access or reliance upon the integrity of data contained in or processed through DDAZ's computerized systems if such data is supplied to DDAZ by Plan Sponsor or any third party under the direction or at the request of Plan Sponsor.
 - (b) Actions taken with respect to the payment or provision of or failure to pay or provide for any dental services or supplies at the direction of Plan Sponsor.
 - (c) Actions that result in failure to comply with any governmental or regulatory requirement, including Privacy Standards (defined in Section 12.1 below), applicable to the Plan if such action was taken at the direction of Plan Sponsor.
 - (d) The intentional, willful, reckless or negligent acts or omissions in the performance of Plan Sponsor's duties under this Agreement, whether performed by Plan Sponsor or any agent or employee of the Plan or any other third party acting under contract with or on behalf of the Plan.

ARTICLE X: CONFIDENTIALITY

- 10.1 **Confidential Information.** DDAZ and Plan Sponsor agree that in the performance of DDAZ's duties under this Agreement, each party may have access to the other party's confidential information. "Confidential Information" includes but is not limited to the pricing, methods, processes, financial data, provider or customer lists, statistics, software, systems or equipment, programs, research, development, strategic plans, operating data, or related information of each of the parties and/or its or their clients and suppliers, concerning past, present, or future business activities of said entities. Confidential Information includes all such information disclosed by either party to the other prior to the execution of this Agreement.
- 10.2 **Confidentiality.** Except as otherwise provided in this Agreement, the parties agree that Confidential Information of the other party will be maintained in strict confidence; will be used only for purposes of this Agreement; and will not be disclosed by the recipient party, its agents, or employees except when part of or subject to public government proceedings or with the prior written consent of the other party. Each party agrees to take all reasonable precautions to prevent the disclosure of Confidential Information.
- 10.3 **Permissive Disclosure.** Nothing contained in this Agreement may be construed as prohibiting either party's disclosure of Confidential Information (other than to known actual competitors of the other party) to
- (a) its employees or employees of its parent company and subsidiaries and affiliates on a need-to-know basis;
 - (b) employees, agents, or representatives of the other party; or

- (c) other persons (including consultants) in need of access to such information for purposes specifically related to either party's responsibilities under this Agreement.

10.4 **Return Upon Request.** The parties agree that upon the request of the party having proprietary rights to Confidential Information, and subject to any statutory or regulatory record-keeping requirements, the party in possession of such information will promptly return it (including any copies, extracts, and summaries) to the requesting party or, with the other party's written consent, will promptly destroy it (and any copies, extracts, and summaries thereof) and will provide the other party with written certification of same.

10.5 **Information Rightfully Received.**

- (a) Neither party has any obligation or liability with respect to the other's information to the extent that such information:
 - (i) is already rightfully known by the receiving party at the time it is obtained by such party, free from any obligation to keep such information confidential;
 - (ii) is or becomes publicly known through no wrongful act of the receiving party;
 - (iii) is rightfully received by the receiving party from a third party without restriction and without breach of this Agreement; or
 - (iv) must be disclosed pursuant to a court order or as required by any governmental or administrative authority or authorized regulatory agency.
- (b) A party required by law to disclose the other party's Confidential Information will notify the other party in advance of any such disclosure.
- (c) Information developed independently by either party without use of any of the other's Confidential Information is not considered confidential for purposes of this Article X.

10.6 **Irreparable Harm.** The parties acknowledge that any disclosure or misappropriation of Confidential Information in violation of this Agreement could cause irreparable harm, the amount of which may be extremely difficult to estimate, thus making any remedy at law or in damages inadequate. Each party, therefore, agrees that the other party has the right to apply to any court of competent jurisdiction for an order restraining any breach or threatened breach of this Article X and for any other relief as such other party deems appropriate. This right is in addition to any other remedy available in law or equity.

ARTICLE XI: DISPUTE RESOLUTION

11.1 **Good Faith Attempt to Resolve.** The parties will endeavor to resolve all disputes arising out of this Agreement in an amicable manner, in accordance with Section 11.2 prior to any action or available remedy. All material disputes between the parties arising out of or resulting from this Agreement will be resolved as provided in this Article XI.

11.2 **Negotiations by Executives.** The parties will attempt in good faith to resolve any dispute arising out of the making or performance of or otherwise relating to this Agreement promptly by negotiations between executives who have authority to settle the controversy. Any party may give the other party written notice of any dispute not resolved in the normal course of business. Within twenty (20) days after delivery of said notice, executives of both parties will meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within sixty (60) days of the disputing party's notice, or if the parties fail to meet within twenty (20) days of such notice, either party may initiate arbitration of the controversy or claim pursuant to Section 11.3. If either party intends to be accompanied at a meeting by an attorney, the other party will be given at least seven (7) days' notice of such intention and may also be accompanied

by an attorney. All negotiations pursuant to this clause are confidential and will be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence or any comparable state provision.

- 11.3 **Arbitration.** Except as provided in Section 11.4 below, any dispute, claim or controversy arising out of or in connection with this Agreement which has not been settled as provided in Section 11.2 will be settled through binding arbitration. Such arbitration will be before one disinterested arbitrator if one can be agreed upon, and otherwise before an arbitrator or arbitrators chosen in accordance with the then existing rules of the American Arbitration Association, which rules will also be followed in the determination of the controversy. The decision of the arbitrators will be binding and conclusive and enforceable by any court exercising jurisdiction over the parties.
- 11.4 **Disputes Regarding Nonpayment of Administrative Fees.** Notwithstanding any other provision in this Article XI, if any dispute arises with regard to the nonpayment of the Administrative Fees by Plan Sponsor, DDAZ may, in its sole discretion, seek any available remedy at law or in equity from a court of competent jurisdiction immediately following the transmittal of a ten (10) day final written notice for demand of payment to Plan Sponsor.
- 11.5 **Disputes Regarding Confidential Information.** Notwithstanding any other provision in this Article XI, if any dispute arises with regard to the unauthorized use or infringement of Confidential Information, the party whose Confidential Information has been used or disclosed may seek any available remedy at law or in equity from a court of competent jurisdiction.

ARTICLE XII: PROTECTION OF HEALTH INFORMATION

- 12.1 **Protection of Health Information.** The parties agree that the following provisions will apply with respect to all Protected Health Information (defined below) under the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (45 C.F.R. PART 160-164) (“HIPAA Privacy Regulation” and/or “HIPAA Security Regulation”).
- 12.2 **Definitions.**
- (a) “Designated Record Set” means a group of Records maintained by or for the Plan Sponsor that is (A) the dental Records and billing Records about individuals maintained by or for the Plan Sponsor, (B) the enrollment, payment, claims adjudication, and case or dental management Record systems maintained by or for a health plan; or (C) used, in whole or in part, by or for the Plan Sponsor to make decisions about individuals. As used in this Section 12.1, the term “Record” means any item, collection, or grouping of information that includes Protected Health Information and is maintained, collected, used, or disseminated by or for the Plan Sponsor.
 - (b) “Electronic Media” means the mode of electronic transmissions. It includes the Internet, extranet (using Internet technology to link a business with information only accessible to collaborating parties), leased lines, dial-up lines, private networks, and those transmissions that are physically moved from one location to another using magnetic tape, disk, or compact disk media.
 - (c) “Individually Identifiable Health Information” means information, including demographic information collected from an individual, that (A) is created or received by a health care provider, health plan, employer, plan sponsor or health care clearinghouse; and (B) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (C) identifies the individual, or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
 - (d) “Privacy Standards” means the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Parts 160 and 164.

- (e) “Protected Health Information” will mean Individually Identifiable Health Information that is (A) transmitted by Electronic Media, (B) maintained in any medium constituting Electronic Media; or (C) transmitted or maintained in any other form or medium. “Protected Health Information” will not include (A) education records covered by the Family Educational Right and Privacy Act, as amended, 20 U.S.C. § 1232g; (B) records described in 20 U.S.C. § 1232g(a)(4)(B)(iv) and (C) employment records held by a covered entity in its role as employer or plan sponsor.
- (f) “Required by Law” means a mandate contained in law that compels an entity to make a use or disclosure of Protected Health Information and that is enforceable in a court of law.
- (g) “Security Incident” shall have the same meaning as the term “Security Incident” in 45 C.F.R. § 164.304.

- 12.3 **Use of Protected Health Information.** DDAZ may use Protected Health Information to accomplish DDAZ’s duties expressly set forth in this Agreement. Except as set forth in Paragraph 12.14 below, DDAZ will not, and will ensure that its directors, officers, employees, contractors and agents do not, use Protected Health Information received from the Plan Sponsor or from dentists or created by DDAZ in any manner that would constitute a violation of the Privacy Standards if done by the Plan Sponsor.
- 12.4 **Disclosure of Protected Health Information.** DDAZ may disclose Protected Health Information to accomplish DDAZ’s duties expressly set forth in this Agreement. Except as set forth in Paragraph 12.14 below, DDAZ will not, and will ensure that its directors, officers, employees, contractors and agents do not, disclose Protected Health Information received from the Plan Sponsor in any manner that would constitute a violation of the Privacy Standards if disclosed by the Plan Sponsor, except that DDAZ may disclose Protected Health Information in a manner permitted pursuant to this Agreement or as Required by Law.
- 12.5 **Safeguards Against Misuse of Information.** DDAZ agrees that it will create and implement all appropriate safeguards to prevent the use or disclosure of Protected Health Information other than pursuant to the terms and conditions of this Article XII.
- 12.6 **Security Requirements.** DDAZ will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Protected Health Information that it creates, receives, maintains, or transmits on behalf of Plan Sponsor as required by 45 C.F.R. Part 164, subpart C. DDAZ will document and keep these safeguards current in accordance with industry standards, including standards established under HIPAA security regulations. DDAZ will report to Plan Sponsor any Security Incident within forty-eight (48) hours of becoming aware of such Security Incident.
- 12.7 **Reporting of Disclosures of Protected Health Information.** DDAZ will, within five (5) days of becoming aware of a use or disclosure of Protected Health Information in violation of this Article XII by DDAZ, its officers, directors, employees, contractors or agents or by a third party to which DDAZ disclosed Protected Health Information pursuant to this Article XII, report any such disclosure to the Plan Sponsor, such report to include a description of the circumstances surrounding the unauthorized use or disclosure and a description of the Protected Health Information used or disclosed in violation of this Article XII.
- 12.8 **Agreements by Third Parties.** DDAZ will enter into an agreement with any agent, subcontractor, or any other third party to which DDAZ will either disclose or permit access to Protected Health Information that is received from, or is created or received by DDAZ on behalf of the Plan Sponsor. That agreement will require such agent, subcontractor or other third party to agree to be bound by the same restrictions, terms, conditions, and required disclosures that apply to DDAZ pursuant to this Agreement with respect to such Protected Health Information.

- 12.9 **Access to Information.** Within thirty (30) business days of a request by the Plan Sponsor for access to Protected Health Information about an individual contained in a Designated Record Set, DDAZ will make available to the Plan Sponsor such Protected Health Information for so long as such information is maintained in the Designated Record Set. In the event an individual or their designated representative requests access to their Protected Health Information contained in a Designated Record Set directly from DDAZ, within thirty days DDAZ will make available to the individual or their designated representative such Protected Health Information for so long as such information is maintained in the Designated Record Set.
- 12.10 **Availability of Protected Health Information for Amendment.** Within thirty (30) days of receipt of a request from the Plan Sponsor for the amendment of an individual's Protected Health Information or a Record regarding an individual contained in a Designated Record Set (for so long as the Protected Health Information is maintained in the Designated Record Set), DDAZ will provide such information to the Plan Sponsor for amendment and incorporate any such amendments in the Protected Health Information as required by 45 C.F.R. § 164.526. In the event an individual requests directly to DDAZ that Protected Health Information be amended, DDAZ will take no direct action on the request and will forward such request to the Plan Sponsor within three (3) business days of DDAZ's receipt of such request, unless the Plan Sponsor directs DDAZ otherwise.
- 12.11 **Accounting of Disclosures.** Within sixty (60) days of a request by the Plan Sponsor to DDAZ for an accounting of disclosures of Protected Health Information made by DDAZ regarding an individual during the six (6) years prior to the date on which the accounting was requested, DDAZ will make available to the Plan Sponsor such information as is in DDAZ's possession and is required for the Plan Sponsor to make the accounting required by 45 C.F.R. § 164.528. At a minimum, DDAZ will provide the Plan Sponsor with the following information: (A) the date of the disclosure, (B) the name of the entity or person who received the Protected Health Information, and if known, the address of such entity or person, (C) a brief description of the Protected Health Information disclosed, and (D) a brief statement of the purpose of such disclosure that includes an explanation of the basis for such disclosure. In the event the request for an accounting is delivered directly to DDAZ, DDAZ will take no direct action on the request and will within three (3) business days of receipt forward such request to the Plan Sponsor. It will be the Plan Sponsor's responsibility to prepare and deliver any such accounting requested. DDAZ will implement an appropriate record-keeping process to enable it to comply with the requirements of this Article XII and to assist the Plan Sponsor in responding to requests for an accounting.
- 12.12 **Availability of Books and Records.** DDAZ will make its internal practices, books and records relating to the use and disclosure of Protected Health Information received from, or created or received by DDAZ on behalf of, the Plan Sponsor available to the Secretary of Health and Human Services or any other officer or employee of the Department of Health and Human Services to whom authority has been delegated for purposes of determining the Plan Sponsor's and DDAZ's compliance with the Privacy Standards.
- 12.13 **Termination for Breach or Violation of this Section.** Consistent with Paragraph 8.2(d) of this Agreement, the Plan Sponsor may terminate this Agreement upon thirty (30) days' written notice to DDAZ if the Plan Sponsor determines that DDAZ has breached a material term of this Article XII and if DDAZ is unable to cure the breach and correct its procedures within said thirty (30) days as necessary to prevent further breach. Upon termination under this paragraph or upon termination or expiration under any other provision of this Agreement, DDAZ will, if feasible, return or destroy all Protected Health Information received from, or created or received by DDAZ on behalf of the Plan Sponsor. DDAZ will retain no copies of such Protected Health Information. If the return or destruction of such Protected Health Information is not feasible, DDAZ will: (i) inform the Plan Sponsor that the return or destruction is not feasible; (ii) limit any further use or disclosure; and (iii) otherwise extend the provisions of this paragraph for so long as DDAZ maintains the Protected Health Information.

- 12.14 **Additional Permitted Uses and Disclosures.** DDAZ will take all reasonable precautions to prevent disclosure or use of Protected Health Information that it receives pertaining to the administrative services to be performed under this Agreement for purposes other than administration of claims, except as follows:
- (a) In response to a court order;
 - (b) For an audit or investigation conducted by any governmental authority; or
 - (c) With the written consent of the identified person or his/her legal representative.

DDAZ will obtain reasonable assurances from any person or entity to which Protected Health Information is disclosed under this Section 12.14 that such Protected Health Information will be held confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person or entity. DDAZ will obligate such person or entity to notify DDAZ of any instances in which the confidentiality of the Protected Health Information has been breached.

- 12.15 **Amendment to Agreement.** Upon the effective date of any final regulation or amendment to final regulations promulgated by the U.S. Department of Health and Human Services with respect to Protected Health Information, this Agreement will automatically amend such that the obligations they impose on DDAZ remain in compliance with these regulations.
- 12.16 **Conflicts.** The terms and conditions of this Article XII will override and control any conflicting term or condition of Agreement. All nonconflicting terms and conditions of Agreement remain in full force and effect.

ARTICLE XIII: MISCELLANEOUS PROVISIONS

- 13.1 **Assessment of Tax, Fee or Penalty.** If the Federal Government, the government of any state or political subdivision, or any instrumentality of any of the above, will assess any tax or fee or penalty against DDAZ arising out of the administration of dental benefits under the Plan, other than income tax assessed against DDAZ on the income earned by it under this Agreement, and DDAZ is required to pay such tax, fee or penalty, DDAZ will report such payment to Plan Sponsor and will make a charge against the Plan for such tax, fee or penalty. This provision will not apply if the tax, fee or penalty is assessed because of DDAZ's noncompliance with the law or negligence in the performance of its duties under this Agreement.
- 13.2 **Force Majeure.**
- (a) Neither party is liable to the other for any delay or failure to perform caused by the other party's delay in supplying or failing to supply approvals, information, materials, or services called for under the terms of this Agreement if such delay is caused by circumstances beyond its control, including acts of civil or military authority, national emergencies, labor difficulties, fire, flood, or catastrophe, acts of God, insurrection, war, riots.
 - (b) Each party will exercise its best efforts to mitigate the extent of any excusable delay or failure under Paragraph 13.2(a) and their adverse consequences; provided, however, that should any such delay or failure continue for more than sixty (60) days, the Agreement may be terminated by the non-delaying party.
- 13.3 **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Arizona, excluding its principles of conflicts of laws.
- 13.4 **Assignment.** Neither party may assign this Agreement, or any of its rights or obligations whether by operation of law or other without the prior written consent of the other party, which the other party may grant or withhold in its sole discretion; provided, however, that a successor in interest by merger, operation of law, assignment, purchase or otherwise of all or substantially all of the business of either party will acquire all rights and obligations of such party hereunder. In the event of a permitted assignment by a

party, this Agreement will inure to the benefit of such party, its successors and assigns; otherwise, any other assignment or purported assignment by such party will be null and void.

- 13.5 **Amendment.** Except as expressly provided herein, modifications, amendments, supplements to, or waivers of this Agreement will be in writing and be duly executed by the parties hereto.
- 13.6 **No Waiver.** A failure or delay of either party to this Agreement to enforce at any time any of the provisions of this Agreement or to exercise any of its options may in no way be construed to be a waiver of such provisions.
- 13.7 **Severability.** In the event that any of the provisions of this Agreement is declared or held invalid, illegal, or unenforceable, the unaffected portions of this Agreement will be unimpaired and remain in full force and effect. The parties will negotiate in good faith to substitute for such invalid, illegal, or unenforceable provisions a mutually acceptable provision consistent with the original intent of the parties, which is not so affected.
- 13.8 **Appendix.** The terms and conditions of any and all Appendices to this Agreement, as amended from time to time, are incorporated into the Agreement by this reference and constitute a part of this Agreement as if fully set forth.
- 13.9 **Notice.** Any notices or other communications to DDAZ from the Plan Sponsor must be in writing, served or delivered to the address listed on the signature page. The parties may change the address of record by notifying the other party of the new address. Notice to the Broker/Agent/Consultant designated by the Plan Sponsor will constitute notice to the Plan Sponsor. Any such notice or communication is deemed given upon receipt.
- 13.10 **Entire Agreement.** This Agreement, together with all Appendices, constitutes the entire agreement of the parties and supersedes all previous agreements, promises, representations, understandings, and negotiations between the parties, whether written or oral, with respect to the subject matter hereof.
- 13.11 **No Benefit to Third Parties.** This Agreement is only for the benefit of DDAZ and the Plan and does not confer any right, benefit, or privilege upon any person or entity not a party to this Agreement.
- 13.12 **Invalidity.** If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

APPENDIX A Delta Dental PPO plus Premier

DELTA DENTAL OF ARIZONA Group Dental Contract

GROUP NAME: I.B.E.W. Local No. 640 and Arizona Chapter N.E.C.A. Health and Welfare Trust Fund (**Retirees**)

GROUP NUMBER: 4957

SUMMARY OF BENEFITS

BENEFIT YEAR: January 1 through December 31

Benefit Year means the annual period specified in the Group Dental Contract for calculation of benefits, co-payment, and deductibles under This Contract.

CONTRACT YEAR: January 1 through December 31

This is the twelve (12) month period for which these Contract benefits apply.

DEDUCTIBLE: \$25 per Person

CALENDAR YEAR BENEFIT MAXIMUM: \$200 per Person, per Benefit Year

REFER TO THE DENTAL BENEFITS BOOKLET DESCRIPTION OF SERVICES FOR A MORE DETAILED DESCRIPTION INCLUDING LIMITATIONS AND EXCLUSIONS. BENEFITS SUBJECT TO ALL PROVISIONS, TERMS, & CONDITIONS OF THE GROUP DENTAL CONTRACT.

ROUTINE SERVICES (Deductible does not apply to these services)

80%

Diagnostic

- Exams, evaluations, or consultations (Twice in a Benefit Year).
- X-rays: Full Mouth/Panorex, or vertical bitewings (Once in a three (3) year period) Bitewing (Twice in a Benefit Year).

Preventive

- Topical Application of Fluoride (children to the age of eighteen (18) - twice in a benefit year).
- Routine Cleanings (limited to twice in a benefit year), or one (1) difficult cleaning may be exchanged for one (1) routine cleaning, however, the difficult cleaning is limited to not more than once in a five (5) year period.
- Space Maintainers (For missing posterior primary (baby) teeth) up to age fourteen (14).

BASIC SERVICES (Deductible does apply to these services)

80%

Restorative

- Fillings consisting of silver amalgam; and in the case of front teeth only, composite tooth color fillings – (Once per tooth surface in a two (2) year period).
- Sealants for children (Once in a three (3) year period for permanent molars and bicuspid up to age nineteen (19)).
- Stainless Steel Crowns

Oral Surgery

- Extractions and Surgical Procedures including pre and post treatment care
- General Anesthesia and Intravenous Sedation/Analgesia - As stated in the Covered Dental Services section of this benefit booklet.

Periodontics

- Treatment of Gum Disease (Non-surgical-once every two (2) years/Surgical once every three (3) years).

Endodontics

- Additional endodontic procedures, such as retreatment, (limited to once in a three (3) year period).
- Root Canal Treatment (Permanent Teeth); Pulpotomy (Primary (baby) Teeth) once per tooth per lifetime.

Emergency (Palliative Treatment)

- Emergency treatment for the relief of pain.

MAJOR SERVICES (Deductible does apply to these services)

80%

Restorative

- Cast Crowns - Onlays (five (5) year waiting period for replacement last performed).

Prosthodontics

- Bridges -Does not provide for lost, misplaced, or stolen bridges or dentures. (Five (5) year waiting period for replacement last performed).
- Complete Dentures - Does not provide for lost, misplaced, or stolen bridges or dentures. (Five (5) year waiting period for replacement last performed).
- Implants are only a benefit to replace a single missing tooth, bounded by teeth on each side. Limited to \$1,000 per tooth, per lifetime and is applied to the patient's benefit year maximum.
- Partial Dentures - Does not provide for lost, misplaced, or stolen bridges or dentures. (Five (5) year waiting period for replacement last performed).

Bridge and Denture Repair

- Repair of such appliances to their original condition including relining of dentures.

Predetermination recommended for services over \$250

ORTHODONTIC SERVICES – Not Covered

APPENDIX B
SCHEDULE OF ADMINISTRATIVE FEES

Group Name: I.B.E.W. Local No. 640 and Arizona Chapter N.E.C.A. Health and Welfare Trust Fund (**Retirees**)

Group Number: 4957

Monthly Administrative Fees – Retirees Only

Administrative fees for the period of January 1, 2017 through December 31, 2017 will be:

Employee Only	\$3.09
Employee and Spouse	\$3.09
Employee and Child(ren)	\$3.09
Employee and Family	\$3.09

APPENDIX C
CONTRACTUAL COMPONENTS

Group Name: I.B.E.W. Local No. 640 and Arizona Chapter N.E.C.A. Health and Welfare Trust Fund (**Retirees**)

Group Number: 4957

Plan Type: Delta Dental PPO plus Premier

Employer Contribution Amount: Employee: 100% Dependent: 0%

Participation Requirement: Employee: 100% of all eligible employees

Eligible Employees Definition: As defined by Employer Group

Eligibility Waiting Period: As defined by Employer Group

Dependent Age Limits: Children to age: 26

Renewal Notification: 90 days prior to renewal effective date

Termination of Coverage: Coverage ends at the end of the month that the Subscriber and/or dependent is no longer eligible.

Contract Funding: Administrative Services Only

The Plan Sponsor assumes full financial responsibility for the Dental Plan and by This Employer Group Dental Contract agrees to purchase claims processing and network services from DDAZ. The Plan Sponsor is the fiduciary and plan administrator with regard to the administration of This Contract.

Upon termination of This Contract, DDAZ will continue to receive payments from The Plan Sponsor to fund claims paid after This Contract terminates through the end of the run out period. The run out period for this Employer Group is indicated below.

Run Out Period: Three (3) months