



## MEMBER TERMS AND CONDITIONS PROSMILE MEMBERSHIP

### 1. Plan Summary, Disclosures.

- a. ProSmile Membership (“Plan”) is a discount dental membership plan administered by Clerri LLC (“Company”). Membership in Plan entitles you, the member (referred to herein as “you” or “Member”) to discounts on certain identified dental services and/or products rendered by participating dental providers in accordance with the Plan’s fee schedule. Discounts may vary depending on the type of provider, the office location, and/or the service received. Members may login to Plan website at <https://prosmilemembership.com> or contact Company’s Member Support department to obtain additional information, including an up-to-date list of participating providers and a complete description of available discounts.

Mailing Address: P.O. Box 163990  
Austin, TX 78716-3990  
Attention: Member Support  
Toll-Free Telephone: (877) 545-4188 (7am-6pm CST, Monday-Friday)  
Email: [member@clerri.com](mailto:member@clerri.com)

- b. **Plan is NOT INSURANCE. Members are obligated to pay providers for all services and/or products provided in accordance with the Plan’s fee schedule. Company does not pay providers for services or products provided to Members.** Neither Company nor Plan are affiliated with or endorsed by any state insurance department. If you remain dissatisfied after completing the complaint procedure detailed in Section 9 below, you may contact your state insurance department.
- c. **Your Plan membership will automatically renew for an additional term at the end of each contract term, and payment for the renewal term shall automatically be charged to or drafted from your credit card or bank account using payment information on file with Company. You may toggle automatic renewal “on” or “off” for your account at any time by using self-service options on the Plan website or by contacting Member Support.**
- d. **You may cancel your membership at any time by contacting Member Support to request cancellation as fully set forth in Section 7 below. You will receive a full refund of Membership Fees paid to Company if (i) the cancellation request is received within the first thirty (30) days of the current annual contract term (the “Cancellation Window”), and (ii) no discounted dental services or products have been provided during the current term to any Member(s) enrolled in the Plan.** *Arkansas, Florida, Louisiana, and Washington residents may be entitled to a full refund of Membership Fees paid to Company if the cancellation request is received within the Cancellation Window, regardless of whether any discounted dental services or products have been provided to any Member(s) under the Plan during the current term. Residents of California, Florida, and Oklahoma who cancel outside of the Cancellation Window may be entitled to a pro-rata refund.* Please contact Member Support for details.
- e. *Massachusetts residents:* Plan does not meet the minimum creditable coverage requirements under M.G.L.c. 111m and 956 CMR 5.00.

### 2. Definitions.

- a. **Agreement:** The complete Plan membership contract between Company and the Member, consisting of (i) the enrollment application, (ii) the Member Terms, and (iii) the Fee Schedule.
- b. **Effective Date:** The date that the Member submits the completed enrollment application and full payment of applicable Membership Fees to Company for the initial term of service. Members shall be entitled to receive available discounts on dental services rendered by Providers as of the Effective Date.
- c. **Fee Schedule:** One or more schedule(s) of applicable fees to be charged to Members for dental services or products rendered under the Plan, as published on the Plan website. Specific Fee Schedules may apply to certain regions or dental practice locations. Fee Schedule(s) may be updated from time to time by placing an updated version of the Fee Schedule on the Plan website.
- d. **Member:** Any Primary Member or Additional Member enrolled in Plan. Plan shall only cover those individuals who are enrolled in the Plan at the time of service.
- e. **Member Terms:** These Member Terms and Conditions.
- f. **Membership Fees:** Fees payable to Company upon enrollment in Plan and upon each successive renewal of Plan term.
- g. **Primary Member:** The individual who completes the initial enrollment in Plan and is designated as the “primary member”.
- h. **Additional Member:** A Primary Member’s spouse, domestic partner, or dependent who has been enrolled in Plan under the Primary Member’s membership.
- i. **Provider:** A licensed dental services provider participating in Plan.
- j. **Practice Location:** A practice location with one or more Providers participating in the Plan.

### 3. Plan Description, Limitations, Exclusions & Exceptions.

- a. Plan is a discount dental membership plan administered by Company and offered in participating dental practices and online through Plan website. Company is not a licensed insurer, health maintenance organization, preferred provider organization, or underwriter of health care services. Company is not licensed to provide and does not provide dental



services, products, or other medical advice or otherwise engage in the practice of dentistry or medicine. Members are eligible to receive discounts on certain identified dental services and/or products in accordance with the applicable Fee Schedule from any Provider participating in Plan. Members are obligated to pay Providers for dental services or products at the time of service in accordance with the Provider's payment policies. No portion of any Provider's fees will be reimbursed or otherwise paid by Company. Because some savings are based on a percentage of the individual Provider's usual and customary rates normally charged to uninsured, self-pay patients, actual savings may vary. Plan may not be combined or used in conjunction with any other membership plan, discount health care program or third-party payor program, including government and private third-party payor programs (e.g., Medicaid, private insurance). All savings amounts listed on Fee Schedule are current savings offered by Providers and are subject to change. From time to time, Providers may, at their discretion, offer services or products to the general public at prices lower than the Fee Schedule prices available through Plan membership. Exact member savings and availability of certain procedures or products may vary by location. In addition, the Fee Schedule may be updated from time to time, which may affect the discount(s) being offered to you.

- b. Providers are solely responsible for the services and products received by Members, and Company disclaims any liability with respect to the provision of such services and products. Company cannot guarantee the continued participation of any Provider or Practice Location, and such participation may be terminated at any time without prior notice to Members.
- c. Membership Fees may vary from term to term; the Primary Member will be provided with notice of any changes to Membership Fees using contact information provided to Company. Membership Fees are paid in exchange for access to discounts offered through Plan and are not payment for dental services or products provided by Providers.

#### 4. Enrollment.

- a. Members enrolled in Plan are eligible to receive discounts on identified dental services and/or products in accordance with the applicable Fee Schedule from participating Provider(s). Members may obtain an updated list of Providers at any time by visiting Plan website or by contacting Member Support. If any Practice Location's participation in Plan is terminated, affected Members shall be given an opportunity to select a new Practice Location from the list of participating Practice Locations; if there are no other participating Practice Locations offering services in Primary Member's immediate area, Primary Member may request a membership cancellation and pro-rata refund of Membership Fees in accordance with Company's cancellation policy as set forth in Section 7 below. As used herein, "immediate area" means a driving distance of either 30 minutes or 15 miles from the Primary Member's residence or workplace.
- b. Individual Members are eligible to purchase additional memberships for up to nine (9) Additional Members at any given time under their own Plan membership by contacting Member Support or by using the self-service Member portal on Plan website. Company shall notify the Member at the time of purchase regarding any changes to Plan pricing and/or term renewal date that may result from the addition of new Additional Member(s) to an existing Plan membership.

#### 5. Payments.

- a. Company uses a third-party payment processor (the "Payment Processor") to process electronic payments of Membership Fees. Company is not responsible for any error by, or other acts or omissions of, the Payment Processor. By enrolling in a Plan or adding a new member to a Plan, you agree to pay Company, through the Payment Processor, the applicable Membership Fees and you authorize Company, through the Payment Processor, to charge your chosen payment provider (your "Payment Method"). You agree to make payment using that selected Payment Method. We reserve the right to correct any errors or mistakes that the Payment Processor makes even if it has already requested or received payment.
- b. YOU MUST PROVIDE CURRENT, COMPLETE AND ACCURATE INFORMATION FOR YOUR ACCOUNT. YOU MUST PROMPTLY UPDATE ALL INFORMATION TO KEEP YOUR ACCOUNT CURRENT, COMPLETE AND ACCURATE (SUCH AS A CHANGE IN BILLING ADDRESS, CREDIT CARD NUMBER, OR CREDIT CARD EXPIRATION DATE), AND YOU MUST PROMPTLY NOTIFY COMPANY OR THE PAYMENT PROCESSOR IF YOUR PAYMENT METHOD IS CANCELED (E.G., FOR LOSS OR THEFT) OR IF YOU BECOME AWARE OF A POTENTIAL BREACH OF SECURITY, SUCH AS THE UNAUTHORIZED DISCLOSURE OR USE OF YOUR USER NAME OR PASSWORD. IF YOU FAIL TO PROVIDE ANY OF THE FOREGOING INFORMATION, YOU AGREE THAT COMPANY MAY CONTINUE CHARGING YOU FOR MEMBERSHIP FEES UNTIL YOU HAVE CANCELLED YOUR PARTICIPATION IN A PLAN PURSUANT TO SECTION 7 OF THESE MEMBER TERMS.
- c. You may change your Payment Method at any time by contacting Member Support or by using the self-service member portal on Plan website.

#### 6. Contract Term/Renewal.

- a. All Plan memberships are annual contracts; your initial contract term will begin on the Effective Date and will continue for twelve (12) months thereafter. **Your Plan membership will automatically renew for an additional term at the end of each contract term, and payment of Membership Fees for the renewal term shall automatically be charged to or drafted from your credit card or bank account using payment information on file with Company.** Your Plan membership shall remain in effect until it is canceled in accordance with Section 7 below.
- b. By enrolling in Plan and providing your payment information to Company, you, the Member, are authorizing Company to bill your credit card or checking account for Membership Fees for the initial term and any renewal term(s) at the plan level rate that you have selected. Your non-cancellation of Plan membership reaffirms that Company is authorized to charge



your Payment Method for the aggregate amount of Membership Fees payable with respect to each renewal term. Company may submit those charges for payment and you will be responsible for such charges. For clarity, the amount of Membership Fees that you authorize Company to bill will be calculated based on the number of Members enrolled in Plan at the time of renewal.

- c. **You may toggle automatic renewal “on” or “off” for your account at any time by using self-service options in the member portal on the Plan website or by contacting Member Support for assistance.** If you have questions about automatic renewal, please contact Member Support.
- d. Company shall attempt to notify you approximately thirty (30) days prior to automatic renewal using the contact information on file with Company. You are responsible for ensuring that your contact information remains accurate and up-to-date.

#### 7. Cancellation Policy.

- a. Company reserves the right to immediately cancel your Plan membership without prior notice at any time and for any reason, including non-payment of Membership Fees. In the event that Company cancels your Plan membership for any reason other than non-payment of Membership Fees, you shall receive a pro-rata refund of Membership Fees paid to Company within thirty (30) calendar days after the effective date of cancellation.
- b. **If you wish to cancel your Plan membership, please send a cancellation notice with your name and Plan ID number to Member Support via mail or email to the address listed in Section 1 above, or call Member Support via telephone to request cancellation.**
- c. Members shall receive a full reimbursement of any Membership Fees that have been paid during the current term if (i) the cancellation request is received within the Cancellation Window, and (ii) no discounted dental services or products have been provided during the current term to any Member(s) enrolled in the Plan. Company reserves the right to contact Providers to determine whether dental services or products have been provided to the Member. Written notice of cancellation is deemed given when (i) sent via email to the correct address, or (ii) deposited in a mailbox, properly addressed, and postage prepaid to Company’s mailing address above. *Arkansas, Florida, Louisiana, and Washington residents may be entitled to a full refund of Membership Fees paid to Company if the cancellation request is received within the Cancellation Window, regardless of whether any discounted dental services or products have been provided to any Member(s) under the Plan during the current term. Residents of California, Florida, and Oklahoma who cancel outside of the Cancellation Window may be entitled to a pro-rata refund.* Please contact Member Support for details.

#### 8. Member Responsibilities.

- a. Members are required to make payment directly to Providers for all dental services provided hereunder in accordance with the Provider’s payment policies. **Plan savings and Providers are subject to change, and Members may be responsible for related additional services and charges, such as lab fees associated with dental services received. For an up-to-date list of participating Providers and Fee Schedule discounts, you may visit Plan website or contact Member Support at any time.**
- b. Member is responsible for verifying that his/her dental services provider is an active participant in Plan prior to receiving dental services. Providers are responsible for the provision of dental services and for informing Members of the Provider’s treatment policies.

#### 9. Complaint Procedure.

- a. Complaints regarding your Plan membership must be submitted in writing to Member Support via email or mail to the address listed in Section 1 above. Member Support shall review your complaint and contact you regarding a resolution within five (5) business days.
- b. If you are dissatisfied after completing the complaint procedure detailed above, you may contact your state insurance department. Member Support will provide contact information for your state insurance department upon request.

#### 10. Miscellaneous Terms.

- a. ***Warranty Disclaimer.*** Company and its partners, parents, subsidiaries, and affiliated entities, and each of their respective officers, directors, members, employees, consultants, contract employees, representatives and agents, and each of their respective successors and assigns (Company and all such parties together, the “Company Parties”) make no representations or warranties concerning the Plan, including without limitation the quality of services or products provided by Providers, and the Company Parties will not be responsible or liable for any claims, actions, suits, procedures, costs, expenses, damages or liabilities arising out of use of, or in any way related to your participation in, the Plan. **THE PLAN IS PROVIDED BY COMPANY ON AN “AS-IS” BASIS, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.**
- b. ***Limitation of Liability.*** TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY (INCLUDING, WITHOUT LIMITATION, TORT, CONTRACT, STRICT LIABILITY, OR OTHERWISE) SHALL ANY OF THE COMPANY PARTIES BE LIABLE TO YOU OR TO ANY OTHER PERSON FOR (A) ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, (B) ANY SUBSTITUTE SERVICES, (C) ANY AMOUNT, IN THE AGGREGATE, IN EXCESS OF THE GREATER OF THE AMOUNTS PAID AND/OR PAYABLE BY YOU TO COMPANY IN CONNECTION WITH THE PLAN IN THE TWELVE (12) MONTH PERIOD PRECEDING THE APPLICABLE CLAIM OR (D) ANY MATTER BEYOND COMPANY’S



REASONABLE CONTROL. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL OR CERTAIN OTHER DAMAGES, SO THE ABOVE LIMITATION AND EXCLUSIONS MAY NOT APPLY TO YOU.

- c. Assignment. You may not assign, delegate or transfer these Member Terms or your rights or obligations hereunder, or your Plan account without Company's prior written consent. Company may transfer, assign, or delegate these Member Terms and our rights and obligations without consent.
- d. Choice of Law. These Member Terms are governed by and will be construed under the Federal Arbitration Act, applicable federal law, and the laws of the State of Texas, without regard to the conflicts of laws provisions thereof.
- e. Arbitration Agreement. Please read the following Arbitration Agreement carefully because it requires you to arbitrate certain disputes and claims with Company and limits the manner in which you can seek relief from Company. Both you and Company acknowledge and agree that for the purposes of any dispute arising out of or relating to the subject matter of these Member Terms, Company's officers, directors, employees and independent contractors ("Personnel") are third-party beneficiaries of these Member Terms, and that upon your acceptance of these Member Terms, Personnel will have the right (and will be deemed to have accepted the right) to enforce these Member Terms against you as the third-party beneficiary hereof.
  - 1. Arbitration Rules; Applicability of Arbitration Agreement. The parties shall use their best efforts to settle any dispute, claim, question, or disagreement arising out of or relating to the subject matter of these Member Terms directly through good-faith negotiations, which shall be a precondition to either party initiating arbitration. If such negotiations do not resolve the dispute, it shall be finally settled by binding arbitration in Austin, Texas. The arbitration will proceed in the English language, in accordance with the JAMS Streamlined Arbitration Rules and Procedures (the "Rules") then in effect, by one commercial arbitrator with substantial experience in resolving intellectual property and commercial contract disputes. The arbitrator shall be selected from the appropriate list of JAMS arbitrators in accordance with such Rules. Judgment upon the award rendered by such arbitrator may be entered in any court of competent jurisdiction.
  - 2. Costs of Arbitration. The Rules will govern payment of all arbitration fees. Company will pay all arbitration fees for claims less than seventy-five thousand (\$75,000) dollars. Company will not seek its attorneys' fees and costs in arbitration unless the arbitrator determines that your claim is frivolous.
  - 3. Waiver of Jury Trial. YOU AND COMPANY WAIVE ANY CONSTITUTIONAL AND STATUTORY RIGHTS TO GO TO COURT AND HAVE A TRIAL IN FRONT OF A JUDGE OR JURY. You and Company are instead choosing to have claims and disputes resolved by arbitration. Arbitration procedures are typically more limited, more efficient, and less costly than rules applicable in court and are subject to very limited review by a court. In any litigation between you and Company over whether to vacate or enforce an arbitration award, YOU AND COMPANY WAIVE ALL RIGHTS TO A JURY TRIAL, and elect instead to have the dispute be resolved by a judge.
  - 4. Waiver of Class or Consolidated Actions. ALL CLAIMS AND DISPUTES WITHIN THE SCOPE OF THIS ARBITRATION AGREEMENT MUST BE ARBITRATED OR LITIGATED ON AN INDIVIDUAL BASIS AND NOT ON A CLASS BASIS. CLAIMS OF MORE THAN ONE CUSTOMER OR USER CANNOT BE ARBITRATED OR LITIGATED JOINTLY OR CONSOLIDATED WITH THOSE OF ANY OTHER CUSTOMER OR USER. If, however, this waiver of class or consolidated actions is deemed invalid or unenforceable, neither you nor Company is entitled to arbitration; instead, all claims and disputes will be resolved in a court as set forth in (6) below.
  - 5. Opt-out. You have the right to opt out of the provisions of this Section by sending written notice of your decision to opt out to the address set forth above, postmarked within thirty (30) days of first accepting these Member Terms. You must include (i) your name and residence address, (ii) the email address and/or telephone number associated with your account, and (iii) a clear statement that you want to opt out of this arbitration agreement.
  - 6. Exclusive Venue. If you send the opt-out notice in (5), and/or in any circumstances where the foregoing arbitration agreement permits either you or Company to litigate any dispute arising out of or relating to the subject matter of these Member Terms in court, then the foregoing arbitration agreement will not apply to either party, and both you and Company agree that any judicial proceeding (other than small claims actions) will be brought in the state or federal courts located in, respectively, Travis County, Texas or the federal district in which that county falls.
  - 7. Severability. If the prohibition against class actions and other claims brought on behalf of third parties contained above is found to be unenforceable, then all of the preceding language in this Arbitration Agreement section will be null and void. This arbitration agreement will survive the termination of your relationship with Company.

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