

## PROFESSIONAL SERVICES CONTRACT

This CONTRACT is entered into by and between the **CITY OF SAN ANTONIO** (hereinafter referred to as "**CITY**"), a Texas municipal corporation, acting by and through its City Manager pursuant to Ordinance No. \_\_\_\_\_ passed and approved on \_\_\_\_\_, 2017, and Delta Dental Insurance Company/Alpha Dental Programs, Inc., a Texas corporation (hereinafter referred to as "**VENDOR**").

### I. PURPOSE

The purpose of this CONTRACT is to state the terms and conditions under which the **VENDOR** will provide administration of the **CITY**'s dental Benefit Plan (DPO) for its employee Plan Participants, retirees and dependents.

### II. DEFINITIONS

- 2.1 "**ADJUDICATION**" is defined as when the (1) claim is completely processed and awaiting the next check cycle; (2) the claim is denied; or (3) the claim is pending in the system.
- 2.2 "**AGGREGATE SERVICE FEE**" means the total annual fee paid to **VENDOR** for services under this contract for any one Plan Year.
- 2.3 "**CITY PLANS**" means any and/or all of the following plans:
  - a. the City of San Antonio Dental Insurance Program;
  - b. the City of San Antonio Non-Uniformed Plan Document;
  - c. the City of San Antonio Flexible Benefits Plan.
- 2.4 "**ELIGIBLE DEPENDENT**" is defined under the applicable **CITY** Plans.
- 2.5 "**ELIGIBLE EMPLOYEE**" means a full time **CITY** employee (authorized full time equivalent) eligible to participate in one or more of the **CITY** Plans on the date his/her employment begins. Eligible retiree means an employee who retires from the City after 20 years of continuous service or age 60 with at least 5 years of service.
- 2.6 "**EMPLOYEE**" means a person who is directly employed by the City of San Antonio and is regularly scheduled for a full shift or scheduled in like manner as other similarly situated workers in the department or division on a permanent basis. "Employee" shall also include employees on Worker's Compensation, Disability, or Non-Paid status, Police Cadets, Firefighter trainees, the Mayor and City Council members, and such other officials or provisional employees as the City Council shall determine and specify.
- 2.7 "**EXPERIENCE PERIOD**" is the Plan Year unless otherwise defined in this agreement.

- 2.8 "FISCAL YEAR" means the City of San Antonio accounting year, October 1 through September 30.
- 2.9 "PLAN DOCUMENTS" means the documents setting forth the VENDOR's Plans and any addendum which collectively provide and define coverage for plan participants, attached hereto and incorporated herein as Exhibit C.
- 2.10 "PLAN PARTICIPANT" means the Mayor and City Council Members, an eligible employee, an eligible dependent, and/or an eligible retiree.
- 2.11 "PLAN SPONSOR" means the City of San Antonio.
- 2.12 "PLAN YEAR" means the City of San Antonio benefit coverage period, January 1 through December 31.
- 2.13 "TOTAL ANNUAL FEE" means the Aggregate Service Fee as defined in this agreement.

### **III. SCOPE OF SERVICES**

The **CITY** shall require that the **VENDOR** provide all necessary services, including but not limited to the following:

#### **PLAN DESIGN**

- 3.1 **COMPARABLE BENEFITS** – **VENDOR** shall provide a plan design that retains the same level of benefits as outlined in the City's RFP. Benefits that exceed the current level will be acceptable as long as there is a no loss provision.
- 3.2 **NO LOSS** - All pre-existing condition limitations, actively-at-work and non-confinement provisions must be expressly waived for the initial enrollment for covered employees and covered dependents that have already satisfied the limitations under the current plan.
- 3.3 **ACTIVELY AT WORK WAIVER** - The "actively at work" requirement shall be waived for employees (and dependents) not performing normal work activities on the effective date.
- 3.4 **ANNUAL OPEN ENROLLMENT** – All employees and retirees are to have the opportunity to enroll in the **CITY** sponsored group dental benefit DPO plan during an open enrollment period on a guarantee issue basis. **Vendor** shall contact retirees directly regarding dental plan options available for enrollment and collect and process enrollment forms. **City** will provide list of retirees to be included in the Annual Enrollment.

## **PLAN ADMINISTRATION, CLAIMS PAYMENT AND CUSTOMER SERVICE**

- 3.5 Maintain a fully automated claims adjudication system in compliance with electronic transmission standards and security requirements and all other regulations as required by HIPAA and offer integration of systems and provide web access to Plan Participants that allows for claim status, provides account balances and accumulators.
- 3.6 Maintain both a customer call center and web-based customer portal offered in both English and Spanish to include bi-lingual customer service staff and voice command prompts. Additionally, all printed plan material (standard benefit summaries and open enrollment materials) must be provided in both English and Spanish.
- 3.7 Ability to download eligibility information from the **CITY** via electronic transfer using secure FTP data transmission via HIPAA compliant transfer method.
- 3.8 Log and maintain all **CITY** employee complaints and provide a monthly report documenting receipt, response and resolution of each complaint, subject to applicable HIPAA regulations and other regulatory provisions.
- 3.9 Provide the **CITY**'s Employee Benefits staff with advance copies of all general employee and retiree correspondence to include changes in services, benefits and providers, subject to applicable HIPAA regulations and other regulatory provisions;
- 3.10 The **VENDOR** must provide a single point-of-contact senior account manager with a direct telephone number.
- 3.11 Provide timely response to inquiries from Plan participants and providers regarding eligibility and status of claim, correspondence, payment and any other information requested by such parties in a manner that will limit the **CITY**'s involvement in day-to-day inquiries.
- 3.12 Prepare Plan Highlights Sheet, welcome kit, claim forms, and any other necessary communication materials to Plan Participants.
- 3.13 Print and mail identification cards to the participant's home address within 10 business days of receipt of file.
- 3.14 Attend monthly meetings when deemed necessary by the **CITY** and make presentations as requested by the **CITY**.
- 3.15 Agree that 9 out of 10 employees and families will have the ability to retain their existing providers.
- 3.16 **VENDOR** shall provide and maintain networks of qualified providers that provide quality services on a cost-effective basis during the term of the contract. **VENDOR** shall ensure that the providers continue to meet licensing, selection, and screening criteria and that

required liability insurance is maintained. Provider changes are updated weekly on **VENDOR'S** website.

- 3.17 Provide portal access to employee benefits staff for manual enrollment.

#### **ELIGIBILITY, BILLING, PAYMENT AND RECONCILIATION**

- 3.18 The **CITY** shall remit payment for active employees, retirees, and dependents based on the monthly enrollment in accordance with the four tiered rate structure. Payment is remitted within 15 days of the end of the month based upon enrollment as of the first of the same month. The **CITY** does not make any employer contributions for dental coverage for active and retired Plan Participants. **VENDOR** shall handle billing and premium collection for retirees.

- 3.19 The **CITY** considers premiums due as follows:

Premium is paid on an employee for that month only if the employee is enrolled on the first of that month.

For new hires and life events, effective dates of coverage are based on the dates of the event, while premiums will be paid based on the first of the following month (if the event did not fall on the first of the month.)

Coverage terminates on the last day of the month the employee works for the **CITY**.

In all cases, **VENDOR** is expected to extend coverage through the period for which premium is paid based on the above termination rules even though the employee and/or dependent may not otherwise be eligible for coverage.

- 3.20 The **CITY** shall provide a full file for eligibility via EFT on a bi-weekly basis.

- 3.21 The **CITY** shall remit ACH payment for active employee premium payments at a designated **VENDOR** account within 45 days from the first of each month. A corresponding self-bill will be sent via email to **VENDOR** showing the eligibility counts for coverage tier. The **CITY** shall be deemed to have paid **VENDOR** in full for any given calendar quarter if the paid fee equals that due for the employee enrollee count calculated by the **CITY** for such plan for such quarter, provided such count is within three percent variance (higher or lower) of the employee enrollee count the carrier's records reflect for such plan for such quarter. In any month **VENDOR** believes the variance exceeds the 3% threshold, a discrepancy report should be provided to the **CITY** within 15 days of receipt of the **CITY**'s payment that month. The **CITY** shall have 15 days from the date of receipt to evaluate and respond to the discrepancy report.

- 3.22 To allow for potential computer, mail, or other system malfunctions, **VENDOR** must grant the **CITY** a ten (10) day grace period beyond the fifteen (15) working days to submit payment.

3.23 Within 45 days after the end of each calendar quarter, **VENDOR** must provide the **CITY** with a Consolidated Account Summary Statement showing the status of the **CITY** account as Paid in Full, Overpaid or Underpaid. Statements, which are not deemed Paid in Full, should be accompanied by a detailed discrepancy report.

#### **IV. PLAN PERFORMANCE, MONITORING AND RENEWAL**

4.1 All reports, information and other data given to, prepared or assembled by the **VENDOR** under this contract is the property of the **CITY** and not the **VENDOR**'s property or any of the selected **VENDOR**'s employees or subcontractors. **VENDOR** shall ensure the confidentiality of all information contained in their files, including but not limited to, medical information.

4.2 **VENDOR** agrees to attend monthly update and quarterly review meetings as well as new employee orientation meetings, health and wellness meetings, and all open enrollment meetings at the **CITY**'s desired location in San Antonio, Texas. **VENDOR** may also be required to attend periodic meetings with employee benefit sub-committees.

4.3 **VENDOR** shall provide the **CITY** with specific comprehensive experience reports quarterly and summary reports annually. In addition to standard reports, carriers will provide additional reports for data analysis purposes.

4.4 All management reports shall track claims data by employee sub-totals, COBRA sub-totals, Retiree subtotals, and grand totals for each plan/product offered. There shall also be no charge to the **CITY** for any standard management report or performance guarantee report.

4.5 **VENDOR** shall conduct an annual member satisfaction survey.

4.6 The **CITY**, at their option, will have the right to have a claims audit performed annually or on an "as needed" basis if circumstances warrant, including but not limited to:

Compliance with contractual obligations; or  
Accuracy of computer reports, claims payments and records.

**CITY** shall give **VENDOR** written notice within a reasonable time before the audit date. The audit will be performed during regular business hours.

4.7 Following is a list of reports required as part of the **VENDOR**'s responsibility. Aggregate and individual plan reports sorted by Active and COBRA participant classifications should be provided on a monthly and quarterly basis for the following:

Dollar amount of claims paid by group and summary of all groups will be required for each type of plan administered.

Quarterly Claims vs. premium by group and summary of all groups will be required for each type of plan administered.

Separate monthly COBRA participants listing with effective date, level of coverage (employee only, employee + spouse/domestic partner, children, or family coverage), by employee group, premium amount billed and paid, coverage type, termination date, and paid through date for each type of plan administered.

Separate monthly Retiree participants listing with effective date, level of coverage (employee only, employee + spouse/domestic partner, children, or family coverage), by employee group, premium amount billed and paid, coverage type, termination date, and paid through date for each type of plan administered.

Quarterly report of status of performance guarantees

Quarterly Loss ratios

Quarterly Dental Service Utilization report

## **V. SUBCONTRACTORS AND PROVIDERS**

- 5.1 No subcontractors or other service providers will be hired by **VENDOR** in relation to its contract with the **CITY**, without specific written approval of the **CITY**.
- 5.2 **VENDOR** shall not add additional fees, charges or premiums in any amount to the actual cost for any subcontractors' services.
- 5.3 Despite **CITY** approval of a subcontract, the **CITY** shall in no event be obligated to any third party, including any subcontractor of the selected **VENDOR** for performance of work or service.

## **VI. SERVICE/PERFORMANCE STANDARDS – GUARANTEES**

- 6.1 **VENDOR** agrees to performance guarantees in connection with the implementation of services and for those services that are to be provided on an ongoing basis. **VENDOR** shall be expected to conduct regular internal audits and report the results to the **CITY** for use in enforcing performance guarantees.
- 6.2 The following requirements are areas where the **VENDOR** guarantees performance. Failure to meet the required standards will result in the penalties listed. Prompt resolution of problems or issues is expected but will not reduce or eliminate any penalties imposed due to failure to meet the performance standards outlined below. Performance Reports will be no later than forty-five days after the end of the quarter.

**VENDOR** agrees to provide the following levels of service in the performance of its obligations under this Contract with City. Should the following levels of service not be

met, a penalty up to 25% of the premium<sup>1</sup> will be assessed and paid. While performance is monitored monthly, penalties, if any, will be based on annual performance results and paid annually in the form of a check.

Service Category	Expected Standards/Results	Percent of Administration at Risk <sup>1</sup>
<b>Implementation</b>	<p>VENDOR will successfully implement CITY within a mutually agreed upon timeframe. CITY will monitor Implementation performance and provide feedback via VENDOR'S Implementation Satisfaction Survey.</p> <p>CITY'S satisfaction for each of the criteria above will be deemed as being met given a rating of Good, Very Good or Excellent.</p> <p>This guarantee is only effective for the first 12 months of the contract.</p>	5%
<b>Account Management</b>	<p>VENDOR will assign an Account Manager to partner with CITY to meet your dental benefit objectives, advise CITY and work on CITY'S behalf to optimize service. Standards of service include:</p> <p>Account Manager will provide comprehensive service to CITY in support of our objective of top- tier customer service. (Client Satisfaction Survey item #7)</p> <p>Account Manager will provide timely response and follow-up on phone calls and e-mails from CITY. (Client Satisfaction Survey item #8).</p> <p>Account Manager will meet with CITY'S benefit staff as needed to meet CITY objectives and oversee the annual open enrollment process and participation in employee informational meetings. (Client Satisfaction Survey item #10).</p> <p>Account Manager will provide ongoing assistance with any issues escalated by designated benefits contacts. (Client Satisfaction Survey Item #11).</p> <p>CITY will monitor Account Management performance and provide annual feedback via our Client Satisfaction Survey. Pertinent questions for this guarantee are in the Account Management section of the survey, as noted above. Client satisfaction for each of the criteria above will be deemed as being met given a rating of Good, Very Good or Excellent.</p>	1% 1% 1% 1%
<b>Eligibility</b>	<p>95% of electronic eligibility will be loaded within three (3) business days from receipt of data.</p> <p><i>Guarantee is contingent upon receipt of data in a mutually agreed upon format.</i></p> <p>Measurement will be on a global basis and reported annually.</p>	0.5%

Service Category	Expected Standards/Results	Percent of Administration at Risk <sup>1</sup>
	<p>Eligibility updates will be completed on average within five (5) business days from receipt of data.</p> <p><i>Guarantee is contingent upon receipt of data in a mutually agreed upon format.</i></p> <p>Measurement will be on a global basis and reported annually.</p>	0.5%
	<p>Eligibility updates will be guaranteed with 98% accuracy.</p> <p><i>Guarantee is contingent upon receipt of data in a mutually agreed upon format.</i></p>	0.5%
	<p>Measurement will be on a global basis and reported annually.</p>	
Claims Turnaround	<p>85% of specialty claims received will be processed within 15 calendar days.</p> <p><i>Claims turnaround is measured from the date of the initial receipt of the claim with complete information to the date the claim is processed.</i></p>	1.5%
Overall Claims Accuracy	<p>100% financial (dollar) accuracy.</p> <p><i>Financial (dollar) accuracy is calculated from a random sample and defined as the total dollar amount paid correctly in the sample divided by the total dollar amount that should have been paid in the sample.</i></p>	1.5%
	<p>Measurement will be on a global basis and reported annually.</p> <p>100% payment accuracy.</p> <p><i>Payment accuracy is calculated from a random sample and defined as the number of claims in the sample without payment errors divided by the total number of claims in the sample.</i></p>	1.5%
	<p>Measurement will be on a global basis and reported annually.</p> <p>95% processing accuracy.</p> <p><i>Processing accuracy is calculated from a random sample and defined as the number of claims in the sample without payment or nonpayment errors divided by the total number of claims in the sample.</i></p>	1.5%
Customer Service	<p>85% of all customer calls to the Contact Center will be answered within 12 seconds.</p> <p>Measurement will be on a global basis and reported annually.</p>	1.5%

Service Category	Expected Standards/Results	Percent of Administration at Risk <sup>1</sup>
	99% of Customer Service phone inquiries will be resolved within one (1) business day.  Measurement will be on a global basis and reported annually. We will respond to written inquiries in an average of seven (7) calendar days of receipt.	1.5%
	Measurement will be on a global basis and reported annually. Call abandonment rate will be 5% or less.	1.5%
	Measurement will be on a global basis and reported annually.	
	Measurement will be on a global basis and reported annually.	
Enrollee Satisfaction	94% of participants that respond to the Enrollee Satisfaction Survey will rate VENDOR overall as Good, Very Good or Excellent. Overall customer satisfaction is measured by a survey distributed to a random sampling of enrollees.  Measurement will be on a global basis and reported annually.	1%
Client Reporting	Client-specific financial and utilization reports will be provided within 60 business days from the close of the established reporting period.	1.5%
<b>TOTAL ADMINISTRATION AT RISK</b>		<b>25%</b>

Measurements of performance guarantees will not begin until the month after all aspects of the implementation process have been completed including:

- 1) a completed and signed client application
- 2) receipt of all eligibility specifications for reformatting (if reformatting is necessary)
- 3) receipt of full file history tape prior to processing of claims (if history load is required)

- <sup>1</sup>Excludes premium tax and commission, if applicable. The amount at risk is reduced to 20% after the first 12 months of the contract.
- VENDOR will not incur penalties for failure to meet the terms of these guarantees if this failure is caused by fires, acts of public enemies, acts of God, civil disturbances, labor disputes or by any similar act or event beyond our reasonable control.

#### **CONTRACT TERMINATION AND TRANSITION PLAN**

- 6.3 Upon termination or cancellation of the contract, the CITY may immediately commence an audit in accordance with Section 24.6 below.
- 6.4 Within thirty (30) days after being notified by the CITY of the results of said audit, the selected VENDOR(s) shall pay the CITY any amount shown by said audit to be owed the CITY or its employees. No waiver of existing default shall be deemed to waive any subsequent default.

- 6.5 In coordination with **CITY** staff, the selected **VENDOR** shall develop and oversee a detailed transition plan to be used at commencement of the contract. Said plan shall be provided at no additional cost to the **CITY**.
- 6.6 The **VENDOR** acknowledges and agrees that the **VENDOR** shall provide services under this CONTRACT with a certain degree of accuracy and timeliness. Therefore, as part of this CONTRACT with the **CITY**, the **VENDOR** agrees to the following performance standards:

#### **ACCESS TO DENTISTS**

**VENDOR**'s DPO plans do not require participants to select a primary care dentist.

#### **GRIEVANCE RESOLUTION**

The **VENDOR** agrees that all grievances will be resolved in writing within thirty (30) calendar days from receipt. The **VENDOR** agrees to fully investigate and to facilitate resolution of any and all complaints received from **CITY** plan participants with regard to services resulting from this CONTRACT, subject to applicable HIPAA regulations and other regulatory provisions. **CITY** plan participants have the right to appeal any such resolution.

The **VENDOR** agrees to maintain a written log and to maintain all **CITY** plan participant's complaints. The **VENDOR** further agrees to make available to the **CITY** the **VENDOR**'s Grievance Report, inclusive of the resolution to each complaint.

#### **CUSTOMER SATISFACTION SURVEY**

Ninety-four (94) % of enrollees who respond to Delta Dental's Enrollee Satisfaction Survey and will rate Delta Dental overall as Good, Very Good, or Excellent. Overall customer satisfaction is measured by a standard survey distributed to a random sampling of Delta Dental enrollees. Survey is conducted on an annual basis and will be based only on **CITY**'s plan participants.

- 6.7 Performance compliance audits may be conducted at the discretion of the **CITY** using an independent auditor of their choice and are limited to one (1) per year. If the **CITY** conducts a performance audit, either party to this CONTRACT may conduct a second audit, at its own expense, by the same or another independent auditor using a different claim sample of at least equal size. The definition of an error in these audits is subject to a good faith review by the parties to this CONTRACT. The cost of the first independent audit in any year will be paid by the **CITY**. Should the **VENDOR** fail to meet any performance expectations, the **VENDOR** will pay the cost of all subsequent audits until it is meeting expected performance levels.

If the **CITY** waives its rights to an independent audit in any plan year, the **CITY** retains the right to audit in all subsequent years.

## VII. GENERAL ASSURANCES

7.1 **VENDOR** covenants and agrees to perform all services described in this CONTRACT in a workmanlike manner with a high degree of care to ensure accuracy and timeliness. **VENDOR** shall perform its services in accordance with the ordinary, reasonable standard of care and diligence normally practiced by recognized professional firms in performing services of a similar nature, in the San Antonio, Texas area, under similar circumstances. This includes the knowledge and experience ordinarily required of a member of that profession, and includes performing the skills necessary to adequately cope with problems that arise in performing its services, which skills are not possessed by ordinary laymen.

7.2 **VENDOR** agrees to employ, at its own expense, all personnel required to perform the services described in this CONTRACT. Personnel employed by **VENDOR** shall neither be employees of nor have any contractual relationship with **CITY**. All **VENDOR** personnel engaged in providing services under this CONTRACT shall be fully qualified and shall be authorized or licensed to perform such work as required.

## VIII. CONSIDERATION & BILLING

8.1 In consideration of **VENDOR**'s performance hereunder, **CITY** shall pay to **VENDOR** a flat fee as follows:

<u>PPO Plan</u>	Employee	EE+Spouse/Domestic	EE + Child(ren)	EE + Family
Dental PPO 1/1/2018 to 12/31/2020	\$33.00	Partner \$49.00	\$49.00	\$73.00
Renewal year 1 1/1/21 to 12/31/21 *NTE	\$35.31	\$52.43	\$52.43	\$78.11
Renewal year 2 1/1/22 to 12/31/22 *NTE	\$37.78	\$56.10	\$56.10	\$83.58

<u>PPO Plan</u>	Retiree	Retiree+Spouse/Domestic	Retiree + Child(ren)	Retiree + Family
Dental PPO 1/1/2018 to 12/31/2020	\$37.90	Partner \$62.80	\$62.80	\$97.40
Renewal year 1 1/1/21 to 12/31/21 *NTE	\$40.55	\$67.20	\$67.20	\$104.22

Renewal year 2 1/1/22 to 12/31/22 *NTE	\$43.39	\$71.90	\$71.90	\$111.52
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\*The above rates include 0% broker commission.

\* Rates indicated as NTE are not-to-exceed the value provided in the row for this year.

8.2 The fee above includes the following features and services:

- 8.2.1 ID cards
- 8.2.2 Expedited claim adjudication
- 8.2.3 Assigned Client Service Representative
- 8.2.4 Access to Delta Dental's Preferred Provider Organizations (where available) offering discounted fees. Includes the Delta Dental DPO and Dental Delta Premier Network.
- 8.2.5 Access to Delta Dental's website for DPO provider list.
- 8.2.6 Preparation of enrollment package
- 8.2.7 Plan Highlights Sheet
- 8.2.8 On-site service support throughout all initial and subsequent annual open enrollment fairs with dedicated on-site service representative during fairs
- 8.2.9 Printing enrollment materials
- 8.2.10 Printing VENDOR's standard communication materials
- 8.2.11 Interactive website
- 8.2.12 Dedicated customer service line

8.3 All services shall be performed to **CITY**'s satisfaction, and **CITY** shall not be liable for any payment under this CONTRACT for services which are unsatisfactory, as may be reasonably determined, and which have not been approved by **CITY**. The final payment due herein will not be paid until the reports, data, and documents required under this CONTRACT have been received and approved by the **CITY**. No additional fee or charge will be assessed against the **CITY** for late payment of any amount due to the **VENDOR** under this CONTRACT.

- 8.4 **CITY** shall not be liable to **VENDOR** for costs incurred or performances rendered by **VENDOR** prior to the commencement of this CONTRACT or after its termination, except for claims incurred prior to the termination date.
- 8.5 The **CITY** requires the **VENDOR** to adhere to the following billing practices and cycles:
  - a) Retroactive self-credit for termination due to non-payment, member withdrawal, death, etc.
  - b) Quarterly statements which reflect balances due.
- 8.6 **CITY** shall not be obligated or liable under this CONTRACT to any party, other than **VENDOR**, for payment of any monies or provision for any goods or services.

#### **IX. TERM**

- 9.1 This CONTRACT shall commence on January 1, 2018, and shall terminate on December 31, 2020. The **CITY** may, at its sole option and through appropriate action of **CITY** Human Resources Director, have the right to extend the term of this CONTRACT, under the same terms and conditions, for up to two (2) one (1) year extensions, with each one (1) year extension subject to the same notice requirement and appropriate action of its **CITY** Human Resources Director and without the need for further City Council action. However, **CITY** may terminate this CONTRACT at any time if funds are restricted, withdrawn, not approved or service is unsatisfactory; it being understood that funds for each calendar year covered by any resulting contract will be requested and, if approved, will be provided as part of **CITY**'S budget for each fiscal year.

#### **X. OWNERSHIP OF PRODUCT**

- 10.1 **VENDOR** recognizes that **CITY** shall own exclusively any and all information in whatsoever form and character produced and/or maintained in accordance with this CONTRACT and shall be used as **CITY** desires without restriction. **VENDOR** may utilize the information produced as a result of this CONTRACT for statistical purposes only as allowed by federal or state law.

#### **XI. RETENTION AND ACCESSIBILITY OF RECORDS**

- 11.1 **VENDOR** shall maintain at its principal administrative office adequate books and records of all transactions in which **VENDOR** engages with **CITY**.
- 11.2 The books and records must be maintained for the term of this CONTRACT to which they relate and for the five (5) year period following the end of this CONTRACT'S term.
- 11.3 **VENDOR** shall maintain the books and records in accordance with prudent standards of insurance recordkeeping and all requirements of federal or state law.

- 11.4 **CITY**, the Texas Department of Insurance (TDI) Commissioner, the United States Department of Health and Human Services, and their designated agents shall be given prompt access to those books and records for the purpose of either examination, audit, or inspection as permitted by federal or state law.
- 11.5 Trade secrets, including the identity and address of policyholders and certificate holders, are confidential, except that the TDI Commissioner may use such information in proceedings instituted against the **VENDOR**.
- 11.6 **CITY** is entitled to continuing access to these books and records.
- 11.7 **VENDOR** may, at **CITY**'s option, fulfill the requirements of this Section of this CONTRACT by delivering to **CITY**, the books and records and by giving written notice to the TDI Commissioner of the location of the books and records.

## **XII. HIPAA COMPLIANCE**

- 12.1 **VENDOR** will maintain the confidentiality of all dental, prescription and other patient-identifiable health information specifically relating to Plan Participants ("Patient Health Information") in accordance with all applicable federal and state laws and regulations, including the Privacy Rule and the Security Rule of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as may be amended from time to time.
- 12.2 **VENDOR** shall comply with the electronic transmission standards, and with all other regulations as might be adopted by HIPAA.
- 12.3 The parties acknowledge that they are "Business Associates" as defined in Title 45, Section 160.103, of the Code of Federal Regulations. **VENDOR** shall abide by the terms of the Business Associate Agreement executed by the parties, attached hereto as Exhibit D and incorporated herein by reference.

## **XIII. PUBLICATION**

- 13.1 In order to use any advertising relating to business underwritten and/or developed for **CITY**, **VENDOR** must obtain approval by **CITY** at least ten (10) business days prior to such use.

## **XIV. NOTICE OF VENDOR'S CAPACITY**

- 14.1 **VENDOR** shall give notice to Plan Participants of the identity of **VENDOR** and the relationship between **VENDOR** and **CITY** and the plan participant. The notice must be approved by **CITY** at least ten (10) business days prior to such distribution.

## XV. AMENDMENT

15.1 This CONTRACT, together with its authorizing ordinance and its exhibits, constitutes the entire agreement between the parties. No amendment, modification or alteration of the terms of this CONTRACT shall be binding unless the same is in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

## XVI. ASSIGNING INTEREST

16.1 **VENDOR** shall not assign, sell, pledge, transfer or convey any interest in this CONTRACT, nor delegate the performance of any duties hereunder, by transfer, by subcontracting, or by any other means, to any other party without prior written consent of **CITY**, evidenced by passage of an ordinance to that effect by the San Antonio **CITY** Council. Any such attempt at an assignment will be void *ab inito*, and shall confer no rights on the purported assignee. Should **VENDOR** assign, transfer, convey, delegate or otherwise dispose of any part of, or all of, its right, title or interest in this CONTRACT, the **CITY** may, at its option, cancel this CONTRACT and all rights, titles and interest of **VENDOR** shall thereupon cease and terminate, notwithstanding any other remedy available to **CITY** under this CONTRACT. The violation of this provision by **VENDOR** shall in no event release **VENDOR** from any obligation under the terms of this CONTRACT, nor shall it relieve or release **VENDOR** from the payment of any damages to **CITY** which **CITY** sustains as a result of such violation.

16.2 If approved, **VENDOR**'s subcontractors may not voluntarily assign, transfer, subcontract or pledge, in whole or in part, any contract with **VENDOR** arising from or in relation to this CONTRACT, nor shall any involuntary transfer or assignment result in a transfer of any rights conferred by this CONTRACT. **VENDOR** shall indicate this limitation in all contracts with approved subcontractors.

16.3 **VENDOR** agrees to notify **CITY** of any changes in **VENDOR**'s ownership interest greater than ten percent (10%), or control of its business entity, not less than sixty (60) days in advance of the effective date of such change. Notwithstanding any other remedies that are available to **CITY** under this CONTRACT, any such change of ownership interest or control of its business entity may be grounds for termination of this CONTRACT at the sole discretion of the **CITY**.

16.4 In no event shall such written consent for a change of subcontractor if obtained, relieve **VENDOR** from any and all obligations hereunder or change the terms of this CONTRACT.

16.5 **CITY** must approve all substitutions of subcontractors to determine if the disadvantaged business enterprise goal will be decreased by substitution of a disadvantaged subcontractor with a non-disadvantaged subcontractor.

## XVII. INSURANCE AND BONDING

17.1 Prior to the commencement of any work under this Agreement, **VENDOR** shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Human Resource Department, which shall be clearly labeled "*Delta Dental Contract*" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The **CITY** will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier, and list the agent's signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the **CITY**. The **CITY** shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Risk Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

17.2 The **CITY** reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will **CITY** allow modification whereby **CITY** may incur increased risk.

17.3 A Vendor's financial integrity is of interest to the City; therefore, subject to **VENDOR**'s right to maintain reasonable deductibles in such amounts as are approved by the **CITY**, **VENDOR** shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at **VENDOR**'s sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation*	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following:	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$2,000,000 per occurrence;
a. Premises/Operations b. Products/Completed Operations	\$5,000,000 General Aggregate, or its

c. Personal/Advertising Injury	equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability <ul style="list-style-type: none"> <li>a. Owned/leased vehicles</li> <li>b. Non-owned vehicles</li> <li>c. Hired Vehicles</li> </ul>	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence
5. Professional Liability (Claims-made basis) <p>To be maintained and in effect for no less than two years subsequent to the completion of the professional service.</p>	\$5,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.
6. Commercial Crime/Employee Dishonesty (or Fidelity Bond in same amount)	\$2,000,000 per occurrence

17.4 **VENDOR** agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of **VENDOR** herein, and provide a certificate of insurance and endorsement that names the **VENDOR** and the **CITY** as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of **VENDOR**. **VENDOR** shall provide the **CITY** with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

17.5 As they apply to the limits required by the **CITY**, the **CITY** shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. **VENDOR** shall be required to comply with any such requests and shall submit requested documents to **CITY** at the address provided below within 10 days. **VENDOR** shall pay any costs incurred resulting from provision of said documents.

City of San Antonio  
 Attn: Human Resources Department  
 Benefits Division  
 P.O. Box 839966  
 San Antonio, Texas 78283-3966

17.6 **VENDOR** agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the **CITY**, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the **CITY** is an additional insured shown on the policy;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the **CITY**.
- Provide advance written notice directly to **CITY** of any suspension or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

17.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, **VENDOR** shall provide a replacement Certificate of Insurance and applicable endorsements to **CITY**. **CITY** shall have the option to suspend **VENDOR**'s performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

17.8 In addition to any other remedies the **CITY** may have upon **VENDOR**'s failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the **CITY** shall have the right to order **VENDOR** to stop work hereunder, and/or withhold any payment(s) which become due to **VENDOR** hereunder until **VENDOR** demonstrates compliance with the requirements hereof.

17.9 Nothing herein contained shall be construed as limiting in any way the extent to which **VENDOR** may be held responsible for payments of damages to persons or property resulting from **VENDOR**'s or its subcontractors' performance of the work covered under this Agreement.

17.10 It is agreed that **VENDOR**'s insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

17.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the **CITY** shall be limited to insurance coverage provided..

17.12 VENDOR and any Subcontractors are responsible for all damage to their own equipment and/or property.

### VIII. INDEMNITY

18.1 VENDOR COVENANTS AND AGREES TO FULLY INDEMNIFY, DEFEND, AND HOLD HARMLESS, THE CITY AND THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS AND REPRESENTATIVES OF THE CITY, INDIVIDUALLY AND COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL OR BODILY INJURY, DEATH AND PROPERTY DAMAGE, MADE UPON THE CITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO VENDOR' S ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY ACTS OR OMISSIONS OF VENDOR, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, VENDOR OR SUBCONTRACTOR OF VENDOR, AND THEIR RESPECTIVE OFFICERS, AGENTS EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OF THE RIGHTS OR PERFORMANCE OF THE DUTIES UNDER THIS AGREEMENT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE NEGLIGENCE OF CITY, ITS OFFICERS OR EMPLOYEES, IN INSTANCES WHERE SUCH NEGLIGENCE CAUSES PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE. IN THE EVENT VENDOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAIABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

18.2 THE PROVISIONS OF THIS INDEMNITY ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. VENDOR SHALL ADVISE THE CITY IN WRITING WITHIN TWENTY-FOUR HOURS OF ANY CLAIM OR DEMAND AGAINST CITY OR VENDOR KNOWN TO VENDOR RELATED TO OR ARISING OUT OF VENDOR'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT VENDOR'S COST. CITY SHALL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING VENDOR OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.

## XIX. INDEPENDENT CONTRACTOR

- 19.1 **VENDOR** covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of **CITY**; that **VENDOR** shall have exclusive right to control the details of the work performed hereunder and all person performing the same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of *respondeat superior* shall not apply as between **CITY** and **VENDOR**, its officers, agents, employees, contractors and subcontractors, and nothing herein shall be construed as creating a partnership or joint enterprise between **CITY** and **VENDOR**.
- 19.2 Any and all of the employees of the **VENDOR**, wherever located, while engaged in the performance of any work under this **CONTRACT** shall be considered employees of the **VENDOR** only, and not of the **CITY**, and any and all claims that may arise from the Workers' Compensation Act on behalf of said employees while so engaged shall be the sole obligation and responsibility of the **VENDOR**.
- 19.3 No Third Party Beneficiaries: For purposes of this **CONTRACT**, including its intended operation and effect, the Parties specifically agree and contract that (1) this **CONTRACT** only affects matters/disputes between the Parties to this **CONTRACT** and is in no way intended by the Parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entity may benefit incidentally by this **CONTRACT**; and (2) the terms of this **CONTRACT** are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either **CITY** or **VENDOR**.

## XX. NON-WAIVER

- 20.1 The granting or acceptance of extensions of time to complete the work or furnish the materials or reports required hereunder will not operate as a release to **VENDOR** from any other covenants and conditions required in this **CONTRACT**.

## XXI. FRAUD AND ABUSE PREVENTION

- 21.1 **VENDOR** shall establish, maintain and utilize internal management procedures sufficient to protect against fraud, abuse or misappropriation of funds while in performance of obligations and duties under this **CONTRACT**. Any suspected fraud, abuse or misappropriation of funds shall be investigated promptly at the sole expense of **VENDOR**. Any funds that are found to be misappropriated shall be repaid to **CITY** by **VENDOR** within thirty (30) days of such finding.
- 21.2 **VENDOR** agrees to repay **CITY** for overpayments to service providers resulting from **VENDOR**'S claims system's or processors' errors within thirty (30) days of verification of overpayments.

## XXII. CONFLICT OF INTEREST

- 22.1 **VENDOR** acknowledges that it is informed that the Charter of the **CITY** of San Antonio and its Ethics Code prohibit a **CITY** officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with the **CITY** or any **CITY** agency such as **CITY**-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the **CITY** or in the sale to the **CITY** of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a **CITY** officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten percent (10%) or more of the voting stock or shares of the business entity, or ten percent (10%) or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a **CITY** contract, a partner or a parent or subsidiary business entity.
- 22.2 **VENDOR** warrants and certifies, and this CONTRACT is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the **CITY**. **VENDOR** further warrants and certifies that it has tendered to the **CITY** a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.
- 22.3 **VENDOR** warrants that no person or selling agency has been employed or retained to solicit or secure this CONTRACT upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by **VENDOR** for the purpose of securing business. For breach or violation of this warranty, **CITY** shall have the right to rescind this CONTRACT without liability or, at its discretion, to deduct from the CONTRACT price or consideration or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.
- 22.4 If at any time it shall be found that the person, firm or corporation to whom a CONTRACT has been awarded has, in presenting any proposal, colluded with any other party or parties, then the contract so awarded shall be voidable at **CITY**'s option, and **VENDOR** shall be liable to **CITY** for all loss or damage that **CITY** may suffer thereby.

## XXIII. TERMINATION

- 23.1 For purposes of this CONTRACT, "termination" of this CONTRACT shall mean termination by expiration of the CONTRACT term or earlier termination pursuant to any of the provisions hereof.
- 23.2 Termination by Notice. This CONTRACT may be canceled by either party upon written notice, provided such notice specifies an effective date of termination, which shall be not less than thirty (60) calendar days nor more than ninety (90) calendar days after the date of receipt of the notice by the other party. If the notice does not specify a date of termination, the effective date of termination shall be thirty (30) calendar days after receipt of the notice by the other party.

23.3 Termination for Cause. Should either party default in the performance of any of the terms or conditions of this CONTRACT, the other party shall deliver to the defaulting party written notice thereof specifying the matters in default. The defaulting party shall have ten (10) calendar days after its receipt of the written notice to cure such default. If the defaulting party fails to cure the default within such ten (10) day period, this CONTRACT shall terminate at 11:59:59 p.m., Central Standard Time, on the tenth (10th) day after the receipt of the notice by the defaulting party.

23.4 Termination by Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein or, if any law is interpreted to prohibit such performance, this CONTRACT shall automatically terminate as of the effective date of such prohibition.

23.5 Effect of Termination. The period between notice of termination and the effective date of termination shall be used to affect an orderly transfer of records and funds, if any, from **VENDOR** to **CITY** or to such person(s) or firm(s) as the **CITY** may designate. Any records transfer shall be completed within fifteen (15) calendar days of the termination date. Any such transfer of records or funds shall be completed at **VENDOR**'s sole cost and expense. All files are the property of the **CITY** and, at the **CITY**'S request, will be delivered at no cost to the **CITY** or its designated recipient on the effective date of termination. Any **CITY** funds held in any escrow account(s) shall be returned to the **CITY** within thirty (30) calendar days after the effective termination date.

23.6 Upon termination or cancellation of this CONTRACT, **CITY** may immediately commence audit of **VENDOR**'s books, accounts, and records. Within 30 calendar days after being notified by **CITY** of the results of said audit, **VENDOR** shall pay **CITY** any amount shown by said audit to be owed **CITY** or its employees. No waiver of existing default shall be deemed to waive any subsequent default.

23.7 If **CITY** conducts an audit, either party to this CONTRACT may conduct a second audit, at their own expense, by the same or another independent auditor. If the results from the second audit are different, a third audit may be conducted with the costs of said audit to be shared equally between **VENDOR** and **CITY**. The results from said third audit shall be final.

23.8 Upon termination of this CONTRACT, in whole or in part, and/or its nonrenewal, in entirety or of any major operating subsidiary, entity or portion thereof, **CITY** shall have the option to:

23.8.1 Assume all open claims pending for the terminated or non-renewed portion of the CONTRACT, as of the effective date of termination or non-renewal, provided however, that **VENDOR** shall be entitled to receive its full fee for all claims processed to completion into its data files prior to the effective date of termination or non-renewal; or,

23.8.2 Upon agreement of a rate of compensation by both parties, **CITY** requires **VENDOR** to continue administration, to conclusion, all incurred claims associated with that portion of the services terminated or non-renewed.

23.8.3 In the event **CITY** requests **VENDOR** to provide post-termination or non-renewal claims administration, upon agreement of a rate of compensation by both parties, **CITY** may continue to purchase on-line data services. Such rate of compensation shall thereafter be reviewed by the parties on an annual basis and continued on-line data services shall be the subject of a written agreement between the parties, subject to funding and approval of the **CITY** Council.

23.9 Within thirty (30) calendar days of the effective date of termination or cancellation, **VENDOR** shall submit to **CITY** its claims, in detail, for the monies owed by **CITY** for services performed under this CONTRACT through the effective date of termination, except for monies owed for processing of claims incurred prior to the termination date and submitted for processing after the termination date.

#### **XXIV. COMPLIANCE WITH LAWS**

24.1 **VENDOR** hereby agrees to provide services hereunder in compliance with all applicable Federal, State and local laws, regulations, policies and procedures.

#### **XXV. SUCCESSORS AND ASSIGNS**

25.1 This CONTRACT shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, except as otherwise expressly provided for herein.

#### **XXVI. NOTICES**

26.1 Any notice required or permitted to be given under this CONTRACT shall be sufficient if given in writing and sent by certified mail, return receipt requested, postage prepaid to **CITY**, or to **VENDOR** at the addresses set forth below or to any other address of which written notice of change is given:

#### **CITY**

City of San Antonio  
Human Resources Department  
Employee Benefits Division  
111 Soledad, Suite 200  
San Antonio, TX 78205

## **VENDOR**

Delta Dental Insurance Company/Alpha Dental Programs, Inc.  
1701 Shoal Creek, Suite 240  
Highland Village, Texas 75077  
ATTN: Contracts Department

## **XXVII. EXHIBITS**

27.1 **VENDOR** understands and agrees that all exhibits referred to in this CONTRACT are intended to be and hereby are, specifically made a part of this CONTRACT. Said exhibits are as follows:

**City's Request for Proposal Exhibit A**  
**Vendor's Proposal Exhibit B**  
**Plan Documents Exhibit C**  
**HIPAA Business Associate Agreement Exhibit D**

27.2 **VENDOR** understands and agrees that Exhibits A, B, C, and D are a part of this CONTRACT, as though fully set out herein, and that all obligations, conditions, tasks, products, and representations set forth in said documents are required to be fulfilled by **VENDOR** as completely and fully as are the obligations, conditions, tasks, products and representations imposed by this CONTRACT.

27.3 The terms of this CONTRACT shall be final and binding where there is any conflict between the terms of **CITY**'s Request for Proposal, **VENDOR**'s Proposal and the terms of this CONTRACT; **CITY**'s Request for Proposal shall control where it conflicts with **VENDOR**'s Proposal.

## **XXVIII. LEGAL AUTHORITY**

28.1 The signer of this CONTRACT for **VENDOR** represents, warrants, assures and guarantees full legal authority to execute this CONTRACT on behalf of **VENDOR** and to bind **VENDOR** to all of the terms, conditions, provisions and obligations herein contained.

## **XXIX. VENUE AND GOVERNING LAW**

29.1 Venue of any court action brought directly or indirectly by reason of this CONTRACT shall be in Bexar County, Texas. This CONTRACT shall be construed under and in accordance with the laws of the State of Texas and all obligations of the parties created hereunder are to be performed in Bexar County, Texas.

29.2 The Parties hereto expressly agree that, in the event of litigation, each party hereby waives its right to payment of attorneys' fees.

### **XXX. GENDER**

30.1 Words of any gender used in this CONTRACT shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

### **XXXI. CAPTIONS**

31.1 The captions contained in this CONTRACT are for convenience or reference purposes only and shall in no way limit, enlarge or alter the terms and/or conditions of this CONTRACT.

### **XXXII. ENTIRE AGREEMENT**

32.1 This CONTRACT, its exhibits and the authorizing ordinance constitute the final and entire agreement between the parties hereto, superseding all verbal or written agreements, previous and/or contemporaneous agreements between the parties and relating to matters in this CONTRACT. No other agreements, oral or otherwise, regarding the matters of this CONTRACT shall be deemed to exist or to bind the parties hereto unless same is in writing, dated subsequent to the date hereto, and duly executed by the parties hereto.

### **XXXIII. SEVERABILITY**

33.1 If any clause or provision of this CONTRACT is illegal, invalid or unenforceable under present or future federal, state or local laws, including, but not limited to the City Charter, City Code or Ordinances of the City of San Antonio, Texas, then, and in that event, it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this CONTRACT shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein. It is also the intention of the parties to this CONTRACT that, in lieu of each clause or provision of this CONTRACT that is illegal, invalid or unenforceable, there be added as part of this CONTRACT a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

### **XXXIV. ACKNOWLEDGMENT**

34.1 Each of the parties acknowledges that it has read this CONTRACT, understands its contents and executes this CONTRACT voluntarily.

EXECUTED this the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**CITY OF SAN ANTONIO**

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Sheryl Sculley  
City Manager

**APPROVED AS TO FORM:**

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Krista Cover  
Assistant City Attorney

**DELTA DENTAL INSURANCE  
COMPANY/ALPHA DENTAL  
PROGRAMS INC.**

Belinda Martinez

Belinda Martinez  
President

**APPROVED AS TO FORM:**

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Krista Cover  
Assistant City Attorney