

26770

APPENDIX D

GLOBAL ELIGIBILITY MAINTENANCE AGREEMENT (GEM)

Group Number: 3712

Effective: March 15, 2006

This Appendix D , the Global Eligibility Maintenance Agreement ("Agreement") is effective as set forth in Section II. A. below by and between City of Long Beach ("Contractholder") and Delta Dental of California ("Delta").

RECITALS

WHEREAS, Contractholder and Delta have entered into a Contract whereby Delta provides group dental benefit services to Contractholder; and

WHEREAS, Contractholder and Delta desire that Contract eligibility information be provided by Contractholder to Delta through Delta's website.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

I. INTERACTION WITH CONTRACT

- A. This Agreement supplements the Contract and does not supersede any provision of the Contract.
- B. All terms, conditions and definitions of the Contract apply to this Agreement.

II. ELIGIBILITY UPDATE THROUGH DELTA'S WEBSITE

- A. Once Delta receives this Agreement executed by Contractholder, Delta will issue Contractholder's designated employee(s) the logon id(s) and password(s) necessary for Contractholder to access the eligibility update section of Delta's website. The date of issuance of the logon id(s) and password(s) shall be the effective date of this Agreement ("Effective Date") and shall be noted above. Delta will provide Contractholder with a copy of the fully executed Agreement.

- B. Once Contractholder receives the logon id(s) and password(s), and, unless agreed to in writing or facsimile by Delta, Contractholder shall use only Delta's website to update Contract eligibility and shall use no other methods, including but not limited to, hard copy lists, batch updates or electronic mail. Notwithstanding the previous sentence, Delta will provide an electronic mail link and accompanying form to Contractholder only for submission of items listed on the form (changes to the original effective date, changes to the type of coverage, and adjustments to retroactive lapses for Enrollees).
- C. Contractholder shall compile and furnish eligibility information pursuant to Articles 2 and 10 of the Contract by transmitting and updating all Enrollee information as requested by the eligibility update section of Delta's website.
- D. Once Contractholder transmits the Enrollee information through Delta's website, the information for each Enrollee shall remain effective from the effective date of the information until the earlier of the termination of the Enrollee's coverage or the expiration of the Contract Term. Once each Enrollee is enrolled, the Enrollee shall remain enrolled until the Contractholder notifies Delta of the termination of the Enrollee's coverage. Contractholder shall review and update as necessary all Enrollee information for the next renewal of the Contract Term. Such Enrollee information shall remain effective until the earlier of the termination of the Enrollee's coverage or each renewal of the Contract Term. If the Primary Enrollee makes any change that affects an Enrollee's eligibility, Contractholder shall promptly transmit such change to Delta via the website. Such revised information shall remain effective until the earlier of the termination of the Enrollee's coverage or the next renewal update by Contractholder.

III. CONTRACTHOLDER RESPONSIBILITIES

- A. Contractholder is responsible for the delivery and accuracy of all Enrollee eligibility that it, or its employee(s), provide(s) to Delta pursuant to this Agreement. Any errors or delays shall be adjusted as set forth in Article 3 of the Contract. Contractholder is responsible for any and all hardware, software, or any other equipment, application or transmission capability to access the Delta website. Contractholder shall be responsible for the selection of its Internet access provider (IAP) or Internet service provider (ISP) and shall hold Delta, and its computer processing subsidiary, Deltanet, Inc. (Deltanet), harmless for any and all transmission or update delays, failures or errors caused by Contractholder's acts or omissions or caused by the ISP's acts or omissions.

- B. Contractholder agrees, and shall require its employees to agree, to strictly maintain the confidentiality of the logon id(s) and password(s) and to provide them only to those employees who will transmit or update Enrollee eligibility pursuant to this Agreement. Delta will provide a logon id and password that is specific to each Contractholder employee who will be permitted to update eligibility through this web access. Contractholder and each such employee may not transfer a logon id or password to another employee. Contractholder agrees to hold Delta and Deltanet, harmless for any and all potential breaches of confidentiality resulting from or arising out of the transmission or update of Enrollee eligibility information through Internet connections. Contractholder explicitly agrees that the Contractholder is assuming any and all risks that may accompany data transfer over the Internet and that the Contractholder shall indemnify Delta and Deltanet from and against any liability or loss Delta or Deltanet may incur by reason of any covenant, condition or warranty contained in the Contract relating to confidentiality or the interception of transmission over the Internet by unknown third parties except for any such breach caused by Delta's or Deltanet's error or omission.
- C. The audit and inspection rights granted to Delta or its representative pursuant to Article 2 of the Contract shall apply to verification of the accuracy of all Enrollee eligibility data submitted by Contractholder to Delta pursuant to this Agreement.
- D. Contractholder agrees to install and implement any desktop upgrades and/or configuration changes necessary to continue to update Enrollee eligibility information pursuant to this Agreement.

IV. DELTA RESPONSIBILITIES

- A. Upon receipt of the Executed Agreement, Delta will provide the logon id(s) and password(s) necessary for Contractholder to access the eligibility update section of Delta's website.
- B. Delta will provide Contractholder with a description of a standard desktop configuration that Contractholder must utilize to access, transmit and update eligibility information to Delta through Delta's website. In no event shall Delta be responsible to provide Contractholder with any hardware, software, ISP or any other equipment, application or transmission capability.

- C. Delta shall not be liable to Contractholder for any indirect, special, incidental, exemplary or consequential damages (including, without limitation, lost profits) related to this Agreement or resulting from Contractholder's access to or inability to access Delta's website, or the eligibility update section of the website, arising from any cause of action whatsoever, including contract, tort, warranty, strict liability, or negligence, even if Delta has been notified of the possibility of such damages.
- D. Delta will provide telephone support during the hours of 8:30 AM to 4:30 PM PST each workday, excluding Delta holidays.

V. THIRD PARTY TRANSMISSION OF INFORMATION

- A. This Section V. shall apply only in the event that Contractholder's Enrollee eligibility information is provided to Delta through a broker, third party administrator or other representative (Contractholder's Representative). Contractholder's Representative, Contractholder and Delta shall execute the attached Contractholder's Representative Addendum.
- B. In the event that this Section V. applies, Contractholder's Representative agrees to be bound by the provisions of Sections II, III, and IV of this Agreement.

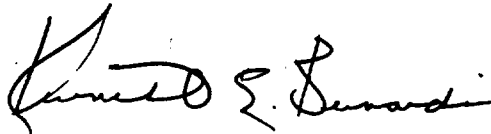
VI. TERMINATION OF THIS AGREEMENT

- A. This Agreement shall commence on the Effective Date and shall continue until the next Contract renewal date. Thereafter, this Agreement shall annually renew on the renewal date of the Contract unless terminated pursuant to this Section VI.
- B. This Agreement shall terminate:
 - 1. On the effective date of termination of the Contract;
 - 2. Upon thirty (30) days notice by Delta if Delta determines to terminate because Contractholder, or Contractholder's Representative, has failed to cure a default under this Section VI. B. 2. A default under this Section VI. B. 2. is the continual transmission of inaccurate or delayed Enrollee eligibility information. Prior to such termination, Delta will provide Contractholder with written notice of this default, and Contractholder will be given thirty (30) days to cure this default; or
 - 3. Upon sixty (60) days notice by Contractholder or Delta.

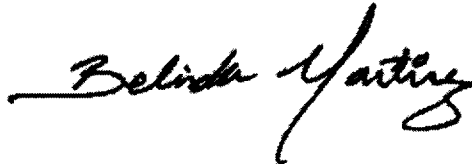
- C. Delta reserves the right at any time to discontinue transmission or update of Enrollee eligibility information through its website, and Delta will provide notice of termination of this Agreement as set forth in Section 6.2 (c) above.
- D. Any notice under this Agreement shall be provided as set forth in the Contract.

IN WITNESS WHEREOF the parties have hereto executed this Agreement on the date indicated below.

Delta Dental of California



Kenneth E. Bernardi
Vice President
Marketing, Underwriting and Actuarial



Belinda Martinez
Senior Vice President
Sales/Marketing

CITY OF LONG BEACH



Name

City Manager

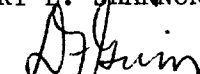
Title

4.7.06

Date

APPROVED AS TO FORM

4/3, 2006
ROBERT E. SHANNON, CITY ATTORNEY

BY 
SENIOR DEPUTY CITY ATTORNEY