

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, and DENTICARE, 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 a Dental Health Maintenance Organization (DHMO) plan administration and/or coverage for **CITY**’s employee plan participants, retirees and their 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 “**ELIGIBLE DEPENDENT**” is defined under the applicable **CITY** Plans. An eligible dependent of retiree is an eligible dependent if covered under the plan immediately prior to retiree status.
- 2.4 “**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.
- 2.5 “**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, LGC employees, and such other officials or provisional employees as the City Council shall determine and specify.
- 2.6 “**EXPERIENCE PERIOD**” is the Plan Year unless otherwise defined in this Agreement.
- 2.7 “**FISCAL YEAR**” means the City of San Antonio accounting year, October 1 through September 30.

- 2.8 “**PLAN DOCUMENTS**” means the documents setting forth the **VENDOR’s** Plans and any addendum which collectively provide and define coverage for plan participants attached and incorporated herein as Exhibit C.
- 2.9 “**PLAN PARTICIPANT**” means the Mayor and City Council Members, LGC employee, an eligible employee, an eligible dependent, and/or an eligible retiree.
- 2.10 “**PLAN SPONSOR**” means the City of San Antonio.
- 2.11 “**PLAN YEAR**” means the City of San Antonio benefit coverage period, January 1 through December 31.
- 2.12 “**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 – The **VENDOR** shall provide a plan design that retains or exceeds the same level of benefits as the current summary plan as outlined in the City’s RFP.
- 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, covered retirees 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 active 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 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.
- 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.

- 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 quarterly report documenting receipt, response and resolution of each complaint.
- 3.9. Provide the **CITY**'s Employee Benefits staff with the following:

Advanced copies of all general employee correspondence to include changes in services, and benefits, 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-today inquiries.
- 3.12. Prepare Plan Highlights Sheet, welcome kit, claim forms, and any other communication material provided 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. The **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. **VENDOR** will update any Provider changes weekly on vendor's website.
- 3.16. Provide portal access to employee benefits staff for manual enrollment.

ELIGIBILITY, BILLING, PAYMENT AND RECONCILIATION

- 3.17. The **CITY** shall remit payment for active employees 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. **VENDOR** shall handle billing and premium collection for retirees. **VENDOR** will be responsible for retiree billing and collection. The **CITY** does not make any employer contributions for dental coverage.

3.18 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 premium 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.

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

3.20 The **CITY** will remit ACH payment for active employee premium payments at a designated **VENDOR** account within 45 days from the first day of each month. A corresponding self-bill will be sent via email to **VENDOR** showing the total premium and eligibility counts for coverage tier. The **CITY** shall be deemed to have paid **VENDOR** in full for any given calendar quarter if the paid premium 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 **VENDOR**'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.

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

3.22 Within 45 days after the end of each calendar quarter, **VENDOR** shall 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.

PLAN PERFORMANCE, MONITORING AND RENEWAL

- 3.23 All reports, information and other data given to, prepared or assembled by **VENDOR** under this CONTRACT is the property of the **CITY** and not the **VENDOR's** property or any of the **VENDOR's** employees or subcontractors. The **VENDOR** shall ensure the confidentiality of all information contained in their files, including but not limited to, medical information.
- 3.24 **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**, upon request, agrees to attend periodic meetings with employee benefit sub-committees.
- 3.25 The **VENDOR** shall provide the **CITY** with specific comprehensive experience reports quarterly and summary reports annually. In addition to standard reports, **VENDOR** will provide additional reports for data analysis purposes.
- 3.26 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.
- 3.27 **VENDOR** shall conduct an annual member satisfaction survey.
- 3.28 Following is a list of reports required as part of the **VENDOR's** responsibility. Aggregate and individual plan reports sorted by Active Retiree and COBRA participant classifications should be provided on a quarterly basis for the following:

Quarterly Claims versus Premium Report for all groups for each type of plan administered;

Quarterly Report of Performance Guarantee Status

Quarterly Loss Ratio

Quarterly Dental Service Utilization Report

Separate quarterly 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.

SUBCONTRACTORS AND PROVIDERS

- 3.29 No subcontractors or other service providers will be hired by the **VENDOR** in relation to its contract with the **CITY**, without specific written approval of the **CITY**.
- 3.30 The **VENDOR** shall not add additional fees, charges or premiums in any amount to the actual cost for any subcontractors' services.
- 3.31 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.

IV. SERVICE/PERFORMANCE STANDARDS – GUARANTEES

- 4.1. The **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. The details of these guarantees will be negotiated during the finalist selection process. The **VENDOR** shall conduct regular internal audits and report the results to the **CITY** for use in enforcing performance guarantees.
- 4.2. The following requirements are areas where the **VENDOR** guarantees performance. Failure to meet the required standards will result in the penalties. 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 Service Contract. While performance is monitored monthly, penalties, if any, will be based on annual performance results and paid annually in the form of a check.

Account Management

SubCategory	Definition	Goal	Amount at Risk	Metric Reporting Type
Account Management	Provide for a clear and concise method of monthly communication between the City and the designated Account Representative for addressing day-to-day needs of the City.	Refer to definition	\$10,000	Client Specific

Communication	All communication materials must be reviewed and approved by the City prior to distribution to employees.	Refer to definition	\$10,000	Client Specific
Report Delivery	Delivery of utilization reports within 45 days for quarterly and semi-annual reports, and within 60 days for annual reports.	Refer to definition	\$10,000	Client Specific

Appeals

SubCategory	Definition	Goal	Amount at Risk	Metric Reporting Type
Appeals	95% of all enrollees/providers' appeals shall be resolved within 30 days of receipt.	95%	\$10,000	Client Specific

Claim Processing

SubCategory	Definition	Goal	Amount at Risk	Metric Reporting Type
Payment Accuracy Management	Humana agrees to a payment accuracy rate of 97%. Payment accuracy is defined as the percentage of claims paid correctly. It is calculated by dividing the total number of correctly paid claims by the total number of claims paid.	97%	\$10,000	Global

Customer Service

SubCategory	Definition	Goal	Amount at Risk	Metric Reporting Type
Telephone Response	Humana will agree to a Telephone response time of 70% in 30 seconds or less.	70% within 30 seconds	\$10,000	Global

Implementation

SubCategory	Definition	Goal	Amount at Risk	Metric Reporting Type
Eligibility File Data Load	Humana agrees that “clean” eligibility files will be loaded into our system within 3 business days. “Clean” eligibility file is defined as needing no additional information from the member or the group.	Within 3 business days	\$10,000	Client Specific
ID Cards	Humana will agree that 98% of open enrollment ID cards will be mailed prior to the member/ group’s effective date, contingent upon receiving “clean” enrollment data. “Clean” enrollment is defined as needing no additional information from the member or the group. The following requirements are necessary for this guarantee to be met: A) a test file must be received 90 days prior to the effective date and must be an approve eligibility file.; B) group set up information must be submitted 60 days prior to the effective date with no changes after that date; and C) the production file	98%	\$10,000	Client Specific

	must be received 25 days prior to the effective date.t			
ID Cards (Ongoing)	Humana will agree that 98% of ongoing ID cards will be mailed prior to the member contingent upon receiving “clean” enrollment data. “Clean” enrollment is defined as needing no additional information from the member or the group.	98%	\$10,000	Client Specific
Implementation Schedule	Humana agrees to meet the significant deadlines set forth in a mutually agreed upon Implementation Schedule; as long as all required deadlines are met by the client, all client deliverable are received timely and eligibility files are “clean”. Clean is defined as needing no additional information from the member or the group. This guarantee is effective for the 1/1/2023 plan year only and applies to only duties within the control of the account services team. While we do not anticipate any system issues or delays occurring, in the event this would occur, the team will regroup, communicate and reset appropriate expectations with no financial impact.	Implementation Timeline	\$10,000	Client Specific

Humana is willing to place a total of \$50,000 of funded premiums at risk for failure to meet the stated performance standard. Performance results will be reported based on results indicated above under metric reporting type. Payment of any penalties due to the client will be made following the end of the plan year based on annual results.

With respect to the financial and payment accuracy, data is obtained through ongoing random audits based on a statistically valid sampling of all claims represented for payment.

During implementation of significant changes to the Client’s Plan, or in the event a benefit change notification is not received from the Client on a timely basis, Humana will not be responsible for performance results or penalty amounts as described within this Agreement.

CONTRACT TERMINATION AND TRANSITION PLAN

- 4.3. Upon termination or cancellation of the contract, the **CITY** may commence audit in accordance with Section 4.4, below.
- 4.4. Within thirty (30) days after being notified by the **CITY** of the results of said audit, **VENDOR** 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.
- 4.5. In coordination with **CITY** staff, **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**.

ACCESS TO DENTISTS

- 4.6 The **VENDOR** agrees that the average waiting period for a routine appointment will not exceed four (4) weeks of calling provided the **CITY** plan participant does not restrict such appointment to a specific date and time. The **VENDOR** also agrees that emergency or urgent care will be provided to the **CITY**'s participants within twenty-four (24) hours, seven (7) days a week. Examples of emergency care include, but are not limited to, broken teeth, displaced fillings with crowns and abnormal pain and infections resulting from oral surgery.

SPECIALIST REFERRALS

The **VENDOR** agrees that, in the event that specialty care is deemed necessary, the average waiting period for routine specialty care will not exceed four (4) weeks, once the referral has been approved. The determination to approve such specialty care shall be given within ten (10) business days. The **VENDOR** also agrees that emergency specialty care will be made available at the first available appointment through the **VENDOR**'s specialist.

GRIEVANCE RESOLUTION

The **VENDOR** agrees that all grievances will be acknowledged to in writing within five (5) calendar days from receipt and resolved within 30 calendar days. 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

VENDOR will fulfill its obligations under this CONTRACT in such a manner as to obtain a minimum eighty-five percent (85%) favorable rating from Humana enrollees whose dental benefits are administered by the **VENDOR**. For purposes of this CONTRACT, a favorable rating means a rating of other than “somewhat dissatisfied” or “very dissatisfied.”

A determination as to whether the **VENDOR** has obtained a seventy-five percent (75%) favorable rating from Humana enrollees will be made each year through the use of **VENDOR**’s Standard Member Satisfaction Survey distributed to a random sampling of Humana enrollees.

- 4.7 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.
- 4.8 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.

V. GENERAL ASSURANCES

- 5.1 **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.
- 5.2 **VENDOR** agrees to assign a dedicated senior account manager who shall be responsible for the task administration and work performance for this **CONTRACT**.
- 5.3 **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.

VI. CONSIDERATION & BILLING

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

FULLY INSURED PREMIUM RATES FOR DENTAL DHMO – ACTIVE AND RETIRED EMPLOYEES:

Active employees	<u>Base Period</u> Jan 2023 - Dec 2025	<u>Renewal Period</u> Year 4	<u>Renewal Period</u> Year 5
Employee Only	\$12.61/monthly	\$12.61/monthly	\$12.61/monthly
Employee + Spouse/Domestic Partner	\$23.51/monthly	\$23.51/monthly	\$23.51/monthly
Employee + Child(ren)	\$23.51/monthly	\$23.51/monthly	\$23.51/monthly
Employee + Family	\$35.27/monthly	\$35.27/monthly	\$35.27/monthly

Retired employees	<u>Base Period</u> Jan 2023 - Dec 2025	<u>Renewal Period</u> Year 4	<u>Renewal Period</u> Year 5
Employee Only	\$12.61/monthly	\$12.61/monthly	\$12.61/monthly
Employee + Spouse/Domestic Partner	\$23.51/monthly	\$23.51/monthly	\$23.51/monthly
Employee + Child(ren)	\$23.51/monthly	\$23.51/monthly	\$23.51/monthly
Employee + Family	\$35.27/monthly	\$35.27/monthly	\$35.27/monthly

* Rates reflect 0% broker commission.

- 6.2 The fee above includes the following features and services:

- 6.2.1 ID card production and delivery
- 6.2.2 Expeditious claim adjudication
- 6.2.3 Assigned Client Service Representative

- 6.2.4 Access to Humana's Preferred Provider Organizations (where available) offering discounted fees.
- 6.2.5 Access to Humana's interactive website for DPO provider list.
- 6.2.6 Preparation of enrollment package.
- 6.2.7 Plan Highlights Sheet
- 6.2.8 On-site service support throughout all initial and subsequent annual open enrollment fairs with dedicated on-site service representative during fairs
- 6.2.9 Printing enrollment materials
- 6.2.10 Printing VENDOR's standard and special communication materials
- 6.2.11 Interactive website
- 6.2.12 Dedicated customer service line
- 6.3 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**.
- 6.4 **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.
- 6.5 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.
- 6.6 **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.

VII. TERM

- 7.1 This CONTRACT shall commence on January 1, 2023, and shall terminate on December 31, 2025. **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. 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.

VIII. OWNERSHIP OF PRODUCT

- 8.1 **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.

IX. RETENTION AND ACCESSIBILITY OF RECORDS

- 9.1 **VENDOR** shall maintain at its principal administrative office adequate books and records of all transactions in which **VENDOR** engages with **CITY**.
- 9.2 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.
- 9.3 **VENDOR** shall maintain the books and records in accordance with prudent standards of insurance recordkeeping and all requirements of federal or state law.
- 9.4 **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.
- 9.5 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**.
- 9.6 **CITY** is entitled to continuing access to these books and records.
- 9.7 **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.

X. HIPAA COMPLIANCE

- 10.1 **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.

- 10.2 **VENDOR** shall comply with the electronic transmission standards, and with all other regulations as might be adopted by HIPAA.

XI. PUBLICATION

- 11.1 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.

XII. NOTICE OF VENDOR’S CAPACITY

- 12.1 **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.

XIII. AMENDMENT

- 13.1 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.

XIV. ASSIGNING INTEREST

- 14.1 **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 initio*, 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.
- 14.2 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.

- 14.3 **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**.
- 14.4 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.
- 14.5 **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.

XV. INSURANCE AND BONDING

- 15.1 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 "*DentiCare, LLC. 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.
- 15.2 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. In no instance will **CITY** allow modification whereby **CITY** may incur increased risk.
- 15.3 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, in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
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: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$2,000,000 per occurrence; \$5,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
5. Professional Liability	\$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. Coverage to be maintained and in effect for no less than two years subsequent to the completion of the professional service.
6. Commercial Crime/Employee Dishonesty (or Fidelity Bond in same amount)	\$2,000,000 per occurrence

15.4. **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;

- General 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.
- 15.5 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.
- 15.6 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.
- 15.7 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.
- 15.8 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.
- 15.9 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..
- 15.10 **VENDOR** and any subcontractors are responsible for all damage to their own equipment and/or property.

XVI. INDEMNITY

- 16.1 **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 AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

- 16.2 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.

XVII. INDEPENDENT CONTRACTOR

- 17.1 **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**.

- 17.2 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**.
- 17.3 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**.

XVIII. NON-WAIVER

- 18.1 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**.

XIX. FRAUD AND ABUSE PREVENTION

- 19.1 **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.

XX. CONFLICT OF INTEREST

- 20.1 **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.

- 20.2 **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.
- 20.3 **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.
- 20.4 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.

XXI. TERMINATION

- 21.1 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.
- 21.2 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 sixty (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 sixty (60) calendar days after receipt of the notice by the other party.
- 21.3 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.
- 21.4 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.

- 21.5 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.
- 21.6 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.
- 21.7 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.
- 21.8 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:
- 21.8.1 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, 22.8.2 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.
- 21.8.2 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.
- 21.9 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.

XXII. COMPLIANCE WITH LAWS

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

XXIII. SUCCESSORS AND ASSIGNS

- 23.1 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.

XXIV. NOTICES

- 24.1 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
100 West Houston Street
San Antonio, TX 78205

VENDOR

DentiCare, Inc.
2929 Briarpark Drive Suite 31
Houston, Texas 77042

XXV. EXHIBITS

- 25.1 **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**

- 25.2 **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.
- 25.3 The terms of this CONTRACT shall be final and binding where there is any conflict between the terms of **VENDOR**'s Standard Group Contract For Prepaid Services, **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.

XXVI. LEGAL AUTHORITY

- 26.1 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.

XXVII. VENUE AND GOVERNING LAW

- 27.1 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.
- 27.2 The Parties hereto expressly agree that, in the event of litigation, each party hereby waives its right to payment of attorneys' fees.

XXVIII. GENDER

- 28.1 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.

XIX. CAPTIONS

- 29.1 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.

XXX. ENTIRE AGREEMENT

- 30.1 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.

XXXI. SEVERABILITY

- 31.1 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.

XXXII. NONDISCRIMINATION

- 32.1 As a party to this contract, CONSULTANT understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

XXXIII. ACKNOWLEDGMENT

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

EXECUTED this the _____ day of _____, 2022.

CITY OF SAN ANTONIO

DENTICARE, INC.

Erik Walsh
City Manager

_____

Susan D. Schick
Segment President, Group and
Military Business

APPROVED AS TO FORM:

Krista Cover
Assistant City Attorney