DELTA DENTAL OF WISCONSIN, INC.

THIRD-PARTY ADMINISTRATIVE AGREEMENT

FOR

SCHOOL DIST OF SPRING VALLEY

96511
THIRD-PARTY ADMINISTRATIVE AGREEMENT

THIS AGREEMENT is made between DELTA DENTAL OF WISCONSIN, INC., (“Delta Dental”), a Wisconsin insurance corporation with its corporate offices located in Stevens Point, Wisconsin, and SCHOOL DIST OF SPRING VALLEY, (“Plan Sponsor”) with its corporate offices located in Spring Valley, Wisconsin.

RECITALS

WHEREAS, Delta Dental is a Wisconsin insurance corporation that provides third-party administrative services to insured and self-insured dental plans.

WHEREAS, School Dist of Spring Valley has established a self-funded Health and Welfare Benefit Plan, including dental benefits for its employees known as the School Dist of Spring Valley (the “Plan”).

WHEREAS, the Plan desires that Delta Dental provide certain third-party administrative services in connection with its self-funded dental benefits and Delta Dental desires to provide such third-party administrative services, as more fully described herein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants, agreements, terms and provisions contained herein, the Plan and Delta Dental agree as follows:

ARTICLE I: APPOINTMENT AND SCOPE OF RELATIONSHIP

1.1 Appointment. Plan Sponsor appoints Delta Dental as the Plan's third-party administrator and Delta Dental agrees to act as the Plan's third-party administrator and to perform the services and administer the Plan's dental benefits pursuant to the terms of the Plan and the provisions of this Third-Party Administrative Agreement (the “Agreement”). Notwithstanding the authority granted to Delta Dental herein, the parties agree that the Plan Sponsor will retain the authority to manage and supervise all aspects of the Plan and will have the full and final authority on interpreting Plan provisions. Delta Dental agrees that it will neither interfere with nor be responsible for either the delivery of dental care services or the duty of care to eligible employees enrolled in the Plan (“Plan Participants”). All duties of the Plan not delegated to Delta Dental by this Agreement are the responsibility of the Plan Sponsor. Delta Dental may subcontract its duties under this Agreement in order to discharge its responsibilities for the Plan.

1.2 Independent Contractors. Nothing contained in this Agreement shall be construed to create any relationship other than independent contractor between Delta Dental and Plan Sponsor, including those of joint venture, partnership or association. Neither Delta Dental nor Plan Sponsor may act on behalf of the other and neither may bind or execute a release on behalf of the other except as authorized in writing by the granting party. Neither party shall be responsible to perform any regulatory or contractual obligation on behalf of the other.
1.3 **Services Only Contract.** Plan Sponsor understands that this is not an insurance policy or an indemnity agreement. It is the intent of both parties that this Agreement is a contract for third-party administrative services only.

1.4 **Not a Fiduciary.** It is understood and agreed that Delta Dental is not and will not be deemed to be a fiduciary with respect to the Plan, except to the extent provided for in the Department of Labor regulations 29 CFR Part 2560, nor will Delta Dental be named or considered to be the Plan Sponsor for purposes of the Employee Retirement Income Security Act of 1974 (ERISA), as amended. Delta Dental is retained under this Agreement to perform ministerial functions, not discretionary functions as clarified in the Department of Labor regulations under ERISA at 29 CFR § 2509.75-8, D(2).

1.5 **Liability for Benefits.** It is understood and agreed that liability for payment of dental benefits under the Plan belongs to the Plan Sponsor and that Delta Dental will not have any duty to use any of its funds for the payment of such benefits. Delta Dental will have no obligation whatsoever to arrange for payment of dental benefits under the Plan if the Plan Sponsor has not made the requisite funds available to Delta Dental in accordance with this Agreement.

**ARTICLE II: DUTIES AND RESPONSIBILITIES**

2.1 **Delta Dental’s Duties and Responsibilities:** Delta Dental’s duties and responsibilities will be:

(a) To assist the Plan Sponsor, if requested, in adopting such rules and regulations as are necessary to administer the terms and conditions of the dental benefits under the Plan. Plan Sponsor understands that ERISA requires employee benefit plans to be established and maintained pursuant to a written document called a Summary Plan Description ("SPD"). Delta Dental will have no responsibility in the preparation of such document except at the request of Plan Sponsor. However, Plan’s SPD must include language that is compatible with Delta Dental’s administrative protocol and the use of its network. Delta Dental will provide Plan with the components that are critical to its administration. Plan Sponsor agrees that these components will be included in Plan’s SPD and that any conflicting language will be deleted from Plan’s SPD. Compliance with applicable laws and regulations is the ultimate responsibility of the Plan Sponsor.

(b) To carry out the terms of this Agreement under the direction and authority of the Plan Sponsor. All services provided by Delta Dental hereunder will be performed in accordance with the provisions of the Plan Sponsor’s SPD as provided to Delta Dental at the time such services are performed.

(c) To enroll Plan Participants pursuant to Article III hereof.
(d) To provide claim services pursuant to Article IV hereof.

(e) To provide such information to the Plan Sponsor as Delta Dental has in its records for the Plan and as the Plan Sponsor and Delta Dental mutually determine is reasonably necessary to comply with applicable state or federal government requirements.

(f) To provide monthly reports to the Plan Sponsor as the Plan Sponsor and Delta Dental mutually determine are reasonably necessary. Such monthly reports will list the disbursements made by Delta Dental under the Plan.

(g) To keep and maintain such accounts and records of the third-party administrative services provided to the Plan under this Agreement as are required under applicable state and federal law.

(h) To timely respond to inquiries from Plan Participants about dental benefits under the Plan in accordance with the rules and procedures established by the Plan Sponsor.

(i) To conduct “standard transactions” electronically on behalf of the Plan in accordance with the privacy requirements of 45 CFR Part 162 and require its subcontractors and agents to comply with the requirements of this regulation.

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

(a) The Plan Sponsor will establish, maintain and appropriately fund the Plan and will be solely responsible for the operation and administration of the Plan, except as expressly delegated to Delta Dental in this Agreement. The Plan Sponsor has absolute authority with respect to the control, management, funding, disposition and utilization of Plan assets.

(b) To provide Delta Dental with a complete list of all Plan Participants on the Effective Date of this Agreement and to update such list monthly in accordance with Article III hereof. Plan Sponsor has the responsibility to cooperate, and to cause all third parties assisting Plan Sponsor to cooperate, with Delta Dental in assuring that the Plan enrollment data provided to Delta Dental under Article III of this Agreement is consistent with the Plan enrollment data held by Plan Sponsor.

(c) To collect all Plan Participant contributions and maintain an appropriate record of such contributions. The Plan Sponsor will be solely responsible for trust instrument requirements, if any.
(d) To assist Delta Dental in the enrollment of Plan Participants; cooperate with and assist Delta Dental in the proper settlement of claims and promptly submit any inquiries pertaining to dental benefits under the Plan to Delta Dental.

(e) To maintain and provide Delta Dental with dental benefit enrollment forms, claims forms, and such other forms and documents as Delta Dental deems necessary to carry out its duties and responsibilities under this Agreement.

(f) To distribute an SPD to all Plan Participants and such other information as is required by ERISA. Delta Dental will assist in the development of the SPD at Plan Sponsor’s request. It is understood, however, that compliance with applicable laws and regulations is the ultimate responsibility of the Plan Sponsor.

(g) To comply with all reporting requirements under ERISA, including but not limited to providing the information necessary for the annual filing of IRS Form 5500, Form 5500C/R, Schedule A or C, or Summary Annual Reports (“SAR”), to Plan Participants, or any other forms as may be required by law. Any penalty imposed on Plan Sponsor for failing to timely and accurately file such forms will be the sole responsibility of Plan Sponsor.

(h) To comply with all requirements of the Health Insurance Portability and Accountability Act of 1996 and the Health Information Technology for Economic and Clinical Health Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act that apply to covered entities as that term is defined in such acts, including but not limited to, delivering privacy notices and amending the SPD to define the Plan’s uses of Protected Health Information.

(i) To at all times maintain sufficient funds in an account in accordance with Article V in order to pay all Plan claims and Delta Dental’s third-party Administrative Fee under Article VI.

(j) Any record keeping, reporting, or payment responsibilities set forth under any state’s unclaimed property law will be those of the Plan Sponsor. In no event will Delta Dental become a “holder” of unclaimed property, as defined in any applicable unclaimed property law, due to the failure of a Plan Participant to negotiate any check issued from the account.

(k) The Plan Sponsor is ultimately responsible for maintaining compliance with all applicable federal and state laws and regulations governing the Plan. In the event that the Plan Sponsor fails to comply with any federal or state law, as applicable, Delta Dental will not be liable in any action brought with regard to such failure.
The Plan Sponsor will be the final decision maker as to the interpretation of the Plan and as to the payment of benefits thereunder, except to the extent specifically delegated to Delta Dental in this Agreement. In the event the Plan Sponsor directs Delta Dental to make an exception to the Plan Sponsor’s SPD, the Plan Sponsor is responsible for meeting the Department of Labor’s claims consistency regulations and other applicable regulations. Delta Dental will not be liable when following directions from the Plan Sponsor, its employees or agents.

To take any and all actions necessary to give Delta Dental the authority as appropriate and necessary to provide the third-party administrative services under this Agreement.

ARTICLE III: PLAN ENROLLMENT

3.1 **Enrollment.** Delta Dental will provide enrollment services in accordance with Plan specifications. Plan Sponsor will forward to Delta Dental, within the first ten (10) business days of the month for which the information is provided, a listing of new Plan Participants and their employment dates and a listing of terminated Plan Participants and their termination dates.

3.2 **Maintenance of Plan Participant List.** Delta Dental will maintain and update Plan Participant lists based on the information provided by Plan Sponsor, and will provide the Plan Sponsor with monthly reports showing enrollment. Delta Dental may rely on the most current Plan Participant list, and may pay the claims of Plan Participants included on the list until Delta Dental receives notification from Plan Sponsor that a Plan Participant has terminated and the date of such termination. Delta Dental will not be responsible for any claims paid by it for services provided to a terminated Plan Participant prior to the time Delta Dental receives notification of the Plan Participant’s termination.

3.3 **Communications.** Delta Dental will be entitled to rely, without question, upon any written or oral communication from the Plan Sponsor, its designated employees, agents or authorized representatives. Delta Dental will assign a contact person to work directly with the Plan Sponsor on issues related to the Plan and this Agreement. The Plan Sponsor will designate a contact person or persons with whom Delta Dental can work on issues related to the administration of the Plan and this Agreement. Both parties agree to notify the other party as soon as possible following a change in contact persons, but no later than ten (10) business days from the date of the change.

3.4 **Issuance of ID Cards.** At Plan Sponsor’s request Delta Dental will issue Plan identification cards for all Plan Participants within ten (10) business days of receipt of the necessary Plan Participant information from Plan Sponsor.
3.5 **Enrollment Records.** Delta Dental will maintain enrollment information and records that will, at a minimum, contain such information as the parties mutually agree is necessary to comply with any federal or state law, rule or regulation applicable to the Plan. Delta Dental will provide the information to Plan Sponsor, upon request, but not more frequently than monthly.

**ARTICLE IV: CLAIMS SERVICES**

4.1 **Claim for Dental Benefits.** Plan Participants or beneficiaries will make claim for dental benefits under the Plan on forms acceptable to Delta Dental. Delta Dental will not be responsible for adjudication of any claim for dental benefits until it receives complete and accurate claim information. Delta Dental will correspond with the Plan Participant and his or her dental provider if additional information is deemed necessary by Delta Dental to process the claims.

4.2 **Claims Screening.** Delta Dental will screen and process all claims against eligibility verification, other party liability, Plan limits, benefits payable, provider, patient, diagnosis, and Plan dental management procedures, if any.

4.3 **Claims Investigation.** Delta Dental will conduct the necessary investigations and, if the facts as stated in the claim or as determined upon such investigation entitle the Plan Participant or beneficiary to receive payment of dental benefits, Delta Dental will make payment according to the Plan provisions. If Delta Dental finds that the Plan Participant or beneficiary is not entitled to dental benefits under the Plan, the claim for dental benefits will be denied with Delta Dental's reasons for denial.

4.4 **Claims Appeals Process.** Plan Sponsor will provide its claims appeals process in writing. Delta Dental will conduct all claims appeals in accordance with such appeals process. Plan Sponsor will have full and final authority on all claim denial disputes.

4.5 **Settlement and Defense.** At the request and with the cooperation of Plan Sponsor, Delta Dental will settle and defend any claim for dental benefits that has been denied. At Delta Dental's request, Plan Sponsor will assist in such settlement and defense, including, but not limited to, attending hearings and trials, assisting in securing and giving evidence, and obtaining the attendance of witnesses. If any suit is brought with respect to any claim for dental benefits, Delta Dental will retain and consult with legal counsel to defend the Plan in such suit as is necessary and appropriate, at the Plan's expense and after consulting with the Plan Sponsor.

4.6 **Offsets, Subrogation and Coordination of Benefits.** Delta Dental will determine appropriate offsets for payments to providers in the event such providers receive any overpayments. Delta Dental will have no further obligation with respect to any such payment or overpayment. Delta Dental will pursue subrogation and coordination of benefits ("COB") in accordance with Plan provisions. At Plan Sponsor’s request Delta Dental will retain legal counsel on behalf of the Plan and at the Plan's expense to seek
recoveries and payments under such provisions. Delta Dental does not represent or guarantee that it will discover each such subrogation claim or potential COB recovery, but only that it will diligently pursue those that are discovered and that are economically feasible to pursue. All subrogated and COB amounts collected will be deposited into the Plan's account as provided in Article V.

4.7 **Payment of Dental Benefits.** Delta Dental will pay all benefits payable from the Designated Account established by Plan Sponsor for the purpose under Article V.

4.8 **Retention of Claims Records.** Delta Dental may retain copies of all claims information and payment records as it deems necessary or advisable pursuant to any applicable state or federal laws.

4.9 **Reports.** Delta Dental will provide a monthly report of claim information by Plan Participant within the first ten (10) business days of the month following the month for which the information is provided (“Account Reconciliation”).

**ARTICLE V: CLAIMS PAYMENT**

5.1 **Payment by Plan Sponsor.** Plan Sponsor agrees to deposit and maintain in a bank account designated by the Plan (the “Designated Account”) sufficient funds for the weekly payment of all dental benefits under the Plan and the monthly payment of Administrative Fees owed to Delta Dental under Article VI. On the first business day of each week during which this Agreement is in effect, Delta Dental will send Plan Sponsor a weekly report in electronic format of the dental benefits paid by Delta Dental under the Plan during the prior week. The weekly report of dental benefits paid during the last week of each month will include an accounting of Delta Dental’s monthly Administrative Fees under Article VI. Plan Sponsor will deposit sufficient funds in the Designated Account to reimburse Delta Dental for the full amount of weekly dental benefits payments and the monthly Administrative Fees within forty-eight (48) hours of receiving each report of dental benefits paid and Administrative Fees charged. Delta Dental, its employees and agents will be given the necessary authority to request Automated Clearing House (“ACH”) transfers of funds from the Designated Account for reimbursement of dental benefits paid and payment of Administrative Fees. The Plan will bear the cost of all fees for the ACH transfers.

5.2 **Indemnification of Delta Dental.** Delta Dental will have no obligation to arrange for the payment of dental benefits or for any other payment for which the Plan is responsible under this Agreement if the Plan Sponsor has not made the requisite funds available to Delta Dental in accordance with this Article V. It is understood and agreed that the Plan Sponsor’s duty to reimburse Delta Dental for dental benefits paid under this Article V and for Delta Dental’s Administrative Fees under Article VI will survive the termination of this Agreement.
ARTICLE VI: ADMINISTRATIVE FEES

6.1 Administrative Fee.  Plan Sponsor will pay Delta Dental a fee for its services to the Plan under this Agreement (“Administrative Fee”). The initial Administrative Fee is set forth in Schedule A, “Schedule of Administrative Fees,” attached to and made a part of this Agreement. Plan Sponsor will pay the Administrative Fee to Delta Dental in the manner specified in Section 5.1 of this Agreement.

6.2 Adjustment of Administrative Fee.  Delta Dental retains the right to review and adjust the Administrative Fee for the Plan once per year on the anniversary date of this Agreement. However, if the Plan has an agreement with Delta Dental for special pricing because of membership in an association or alliance that has an agreement with Delta Dental, and the Plan’s membership in the association or alliance is terminated or the agreement between the association or alliance and Delta Dental is terminated, Delta Dental reserves the right to adjust the Administrative Fee for the Plan within ten (10) days following such termination.

ARTICLE VII: REPORTS AND RECORDS

7.1 No Guarantee.  It is understood and agreed that to the extent the reports required hereunder are based on information provided by Plan Sponsor or any third party, Delta Dental does not guarantee, warrant, or represent the timeliness or accuracy of such reports.

7.2 Ownership of Records.  All business documents and records relating to dental benefits under the Plan, including but not limited to all historical data, books of account, enrollment records, general administrative records, patient records and benefits payment information, are the sole property of the Plan. Delta Dental will have the right to make and retain copies of such records as it deems necessary or advisable. Delta Dental also will have the right to use and disclose de-identified patient records and medical information for research purposes only. Such use and disclosure will not include any records or information containing Personal Health Information as defined in Section 12.1(l) of this Agreement. All records and information maintained by Delta Dental under this Agreement will be made available to Plan Sponsor during Delta Dental’s regular business hours for review by Plan Sponsor, its agents, accountants, or attorneys upon reasonable prior notice during the term of this Agreement.

7.3 Disposition of Records Upon Termination.  All records and information maintained by Delta Dental pursuant to this Agreement, except records and information that has been de-identified for use in research, will be returned to Plan Sponsor, in electronic format, within six (6) months following termination of this Agreement, if so requested and at Plan Sponsor’s sole expense, if any. Delta Dental maintains the right to copy and retain any or all such records as it deems necessary or advisable. After the return of such records or information to Plan Sponsor, Delta Dental will have no further liability or responsibility to Plan Sponsor or any other person with respect to any such records or
information, except as may be required by law. If Plan Sponsor does not request the return of the records within six (6) months following termination of this Agreement, Delta Dental may retain the records or destroy such records or information, at its option, in accordance with its current or future records retention policies and any applicable federal law.

7.4 Access and Audit.

(a) Plan Sponsor may perform (or have performed at its expense), an audit of Delta Dental’s records pertaining to the administrative services provided under this Agreement.

(b) Delta Dental may perform (or have performed at its expense), an audit of the Plan Sponsor’s records pertaining to eligibility of Plan Participants. At Delta Dental’s discretion, an audit of Plan Sponsor may extend to any vendor who contracted with Plan Sponsor during the term of this Agreement to provide eligibility-related services to Plan Sponsor. The Plan Sponsor is responsible for amending vendor contracts, if necessary, to include Delta Dental’s right to audit.

(c) To commence an audit, either under paragraph (a) or (b), in this Section 7.4, Plan Sponsor or Delta Dental, as the case may be, must give at least thirty (30) days’ advance written notice to the other, which notice will inform Plan Sponsor or Delta Dental that the audit is requested, the time period covered by the audit (not less than six (6) months but not to exceed twelve (12) months), the audit sample size, and how the data is to be provided for the audit. Such audit will be limited to the services provided under this Agreement, and may encompass any relevant information that Plan Sponsor or Delta Dental requires, consistent with professional auditing practices and procedures applicable to the type of service subject to the audit as mutually agreed upon by Delta Dental, and Plan Sponsor, or Delta Dental and a vendor of Plan Sponsor, if requested by Delta Dental. The requested records will be selected and supplied by Plan Sponsor or Delta Dental in the manner agreed to by both parties, including, but not limited to, a computer-selected random sampling, if applicable, or specific types of records or information through random selection or by stated dollar amount or range, if applicable, provided that the audit must encompass a statistically valid random sample.

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

8.1 **Term.** The “Effective Date” of this Agreement is September 1, 2011. This Agreement will renew automatically on an annual basis on the anniversary of the Effective Date unless mutually terminated by written agreement of the parties or in accordance with Section 8.2, of this Agreement.

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

(a) Automatically, if Plan Sponsor fails to make sufficient funds available on a timely basis to Delta Dental to pay Plan benefits and Administrative Fees in accordance with this Agreement. If Plan Sponsor fails to make sufficient funds available under Section 5.1 of this Agreement, Delta Dental will have the right to immediately and without notice, cease paying claims on behalf of Plan Participants.

(b) By either the Plan Sponsor or Delta Dental by written notice to the other. The termination shall be effective as of the date set forth in the written notice, which date shall not be less than thirty (30) days from the date of such notice.

(c) Automatically, if either party (i) is rendered or becomes insolvent, (ii) is unable to pay debts as they become due, (iii) is adjudicated bankrupt, or files, or becomes subject to a petition under any insolvency, creditors or bankruptcy law, or (iv) has a receiver, liquidator or trustee of substantially all its assets appointed by a court of competent jurisdiction.

(d) Except as provided for in Section 8.2(a), if either party fails to keep, observe, or perform any material covenant, obligation, agreement, term, or provision of this Agreement and failure continues for a period of thirty (30) days after written notice by the other party, the non-defaulting party may terminate this Agreement upon an additional ten (10) days’ prior written notice to the defaulting party.

(e) By Plan Sponsor in accordance with Section 12.6(b) of this Agreement.

8.3 **Termination of Duties and Responsibilities.** All duties and responsibilities of Delta Dental will cease on the date of termination, regardless of whether the Plan continues. On and after the termination date, Delta Dental will have no obligation to administer or to pay any claims for dental benefits on behalf of Plan Participants including claims that were incurred at any time prior to the termination date.

8.4 **Final Accounting.** Within sixty (60) days after the date of termination, Delta Dental will prepare and deliver to Plan Sponsor a complete and final accounting as of the date of termination. Payment of any amounts owed to Delta Dental under this Agreement must be made within ten (10) days of Plan Sponsor’s receipt of the final accounting.
ARTICLE IX: INDEMNIFICATION

9.1 Limitation of Delta Dental’s Liability.

(a) Delta Dental’s liability under this Agreement is limited to the provision of the services enumerated herein. In no event will Delta Dental be liable in its own funds for the payment of benefits under the Plan or for any other payment not expressly provided for in this Agreement.

(b) In no event will Delta Dental be liable or provide indemnity to Plan Sponsor where any damage or loss is caused directly or indirectly by information provided by Plan Sponsor or any third party under the direction or at the request of Plan Sponsor.

9.2 Indemnification by Delta Dental. Delta Dental will be liable for and will protect, save harmless and indemnify Plan Sponsor, its agents and employees from and against all liabilities, obligations, losses, damages, injuries, claims, demands, penalties, actions, costs and expenses (including reasonable attorneys' fees) of whatsoever kind and nature (together “Plan Losses”) to the extent that such Plan Losses arise out of or are based on Delta Dental’s, or any agent or employee of Delta Dental’s, intentional, willful, reckless or negligent acts or omissions in the performance of its duties under this Agreement, except to the extent Delta Dental's actions are taken at the specific direction of, are based on information provided by, or are under the control of Plan Sponsor.

9.3 Indemnification by Plan Sponsor. Plan Sponsor will be liable for and will protect, save harmless and indemnify Delta Dental, its agents and employees, from and against any and all liabilities, obligations, losses, damages, injuries, claims, demands, penalties, actions, costs and expenses (including reasonable attorneys' fees) of whatsoever kind and nature (together “Delta Dental Losses”), arising out of:

(a) The entry, use, access or reliance upon the integrity of data contained in or processed through Delta Dental’s computerized systems if such data is supplied to Delta Dental by Plan Sponsor or any third party under the direction or at the request of Plan Sponsor.

(b) Actions taken with respect to the payment or provision of or failure to pay or provide for any dental services or supplies at the direction of Plan Sponsor.

(c) Actions that result in failure to comply with any governmental or regulatory requirement, including ERISA and the Privacy Standards (defined in Article XII below), applicable to the Plan if such action was taken at the direction of Plan Sponsor.
(d) The intentional, willful, reckless or negligent acts or omissions in the performance of Plan Sponsor’s duties under this Agreement, whether performed by Plan Sponsor or any agent or employee of the Plan or any other third party acting under contract with or on behalf of the Plan.

**ARTICLE X: CONFIDENTIALITY**

10.1 **Confidential Information.** Delta Dental and Plan Sponsor agree that in the performance of Delta Dental’s duties under this Agreement, each party may have access to the other party's confidential information. “Confidential Information” includes but is not limited to the pricing, methods, processes, financial data, provider or customer lists, statistics, software, systems or equipment, programs, research, development, strategic plans, operating data, or related information of each of the parties and/or its or their clients and suppliers, concerning past, present, or future business activities of said entities. Confidential Information includes all such information disclosed by either party to the other prior to the execution of this Agreement.

10.2 **Confidentiality.** Except as otherwise provided in this Agreement, the parties agree that Confidential Information of the other party will be maintained in strict confidence; will be used only for purposes of this Agreement; and will not be disclosed by the recipient party, its agents, or employees except with the prior written consent of the other party. Each party agrees to take all reasonable precautions to prevent the disclosure of Confidential Information.

10.3 **Permissive Disclosure.** Nothing contained in this Agreement may be construed as prohibiting either party’s disclosure of Confidential Information (other than to known actual competitors of the other party) to

(a) its employees or employees of its parent company and subsidiaries and affiliates on a need-to-know basis;

(b) employees, agents, or representatives of the other party; or

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

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

(a) Neither party has any obligation or liability with respect to the other’s information to the extent that such information:

(i) is already rightfully known by the receiving party at the time it is obtained by such party, free from any obligation to keep such information confidential;

(ii) is or becomes publicly known through no wrongful act of the receiving party;

(iii) is rightfully received by the receiving party from a third party without restriction and without breach of this Agreement; or

(iv) must be disclosed pursuant to a court order or as required by any governmental or administrative authority or authorized regulatory agency.

(b) A party required by law to disclose the other party’s Confidential Information will notify the other party in advance of any such disclosure.

(c) Information developed independently by either party without use of any of the other’s Confidential Information is not considered confidential for purposes of this Article X.

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

**ARTICLE XI: DISPUTE RESOLUTION**

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

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

11.3 **Arbitration.** Except as provided in Section 11.4 below, any dispute, claim or controversy arising out of or in connection with this Agreement which has not been settled as provided in Section 11.2 will be settled through binding arbitration. Such arbitration will be before one disinterested arbitrator if one can be agreed upon, and otherwise before an arbitrator or arbitrators chosen in accordance with the then existing rules of the American Arbitration Association, which rules will also be followed in the determination of the controversy. The decision of the arbitrators will be binding and conclusive and enforceable by any court exercising jurisdiction over the parties.

11.4 **Disputes Regarding Nonpayment of Administrative Fees.** Notwithstanding any other provision in this Article XI, if any dispute arises with regard to the nonpayment of the Administrative Fees by Plan Sponsor, Delta Dental may, in its sole discretion, seek any available remedy at law or in equity from a court of competent jurisdiction immediately following the transmittal of a ten (10) day final written notice for demand of payment to Plan Sponsor.

11.5 **Disputes Regarding Confidential Information.** Notwithstanding any other provision in this Article XI, if any dispute arises with regard to the unauthorized use or infringement of Confidential Information, the party whose Confidential Information has been used or disclosed may seek any available remedy at law or in equity from a court of competent jurisdiction.

**ARTICLE XII: PROTECTION OF HEALTH INFORMATION**

12.1 **Definitions.** Terms used but not otherwise defined in this Article XII shall be defined as set forth in 45 CFR Part 160 and Part 164, Subparts A, C and E. The definitions below have been derived from Health Insurance Portability and Accountability Act of 1996 (HIPAA) or the Health Information Technology for Economic and Clinical Health Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (the HITECH Act).

(a) **“Breach”** has the meaning given to such term under the HITECH Act (42 U.S.C. § 17921). The HITECH Act defines Breach as the unauthorized acquisition, access, use, or disclosure of unsecured Protected Health Information which compromises the security, privacy or integrity of Protected Health Information maintained by or on behalf of a person. Such term does not include any
unintentional acquisition, access, use or disclosure of such information by an
employee or agent of Plan Sponsor or Delta Dental if such acquisition, access, use
or disclosure was made in good faith and within the course and scope of the
employment or other contractual relationship of such employee or agent with Plan
Sponsor or Delta Dental and if such information is not further acquired, accessed,
used or disclosed by such employee or agent.

(b) “Business Associate” has the meaning as given under the Privacy Rule, the
Security Rule and the HITECH Act, including, but not limited to, 42 USC §
17938 and 45 CFR § 160.103, and in this Article XII means Delta Dental.

c) “Data Aggregation” has the meaning given to such term under the Privacy Rule,
including, but not limited to, 45 CFR § 164.501.

d) “Designated Record Set” has the meaning given to such term under the Privacy
Rule, including, but not limited to, 45 CFR § 164.501.

e) “Effective Date” has the meaning given to such term in Section 8.1 of this
Agreement.

(f) “Electronic Media” has the meaning given to such term in 45 CFR § 160.103.

g) “Electronic Protected Health Information” or “Electronic PHI” has the
meaning given to such term in 45 CFR § 160.103.

(h) “Individual” has the meaning given to such term in 45 CFR § 164.501 and
includes a person who qualifies as a personal representative in accordance with 45
CFR § 160.103.

(i) “Health Care Operations” has the meaning given to such term in 45 CFR §
164.501.

(j) “Minimum Necessary” means the least amount of Protected Health Information
necessary to accomplish the intended purpose of the use, disclosure or request.
The parties understand that the definition of “Minimum Necessary” may change
from time to time and agree to keep themselves informed of guidance issued by
the Secretary with respect to what constitutes “Minimum Necessary.”

(k) “Privacy Rule” means the Standards for Privacy of Individually Identifiable
Health Information in 45 CFR Part 160 and Part 164, subparts A and E.

(l) “Protected Health Information” or “PHI” means any information, whether oral
or recorded in any form or medium: (i) that relates to the past, present or future
physical or mental condition of an Individual; the provision of health care to an
Individual; or the past, present or future payment for the provision of health care
to an Individual; and (ii) that identifies the Individual or with respect to which
there is a reasonable basis to believe the information can be used to identify the Individual, and has the same meaning given such term in 45 CFR § 164.501. Protected Health Information includes Electronic Protected Health Information.

(m) “Required by Law” has the meaning given such term in 45 CFR § 164.501.

(n) “Security” or “Security Measures” encompass all of the administrative, physical, and technical safeguards in an information system specified in 45 CFR § 164.304.

(o) “Security Incident” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system (45 CFR § 164.304).


(q) “Secretary” means the Secretary of the Department of Health and Human Services or his/her designee.

(r) “Unsecured Protected Health Information” or “Unsecured PHI” has the meaning given such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. § 17932(h).

12.2 Permitted Uses and disclosures by Delta Dental as Business Associate. Delta Dental is permitted or required to use or disclose PHI it creates for or receives from Plan Sponsor only as outlined below.

(a) Functions and Activities on Plan Sponsor’s Behalf. Except as otherwise limited in this Article XII, Delta Dental may use or disclose PHI it creates for or receives from Plan Sponsor to perform the services that it is obligated to perform under this Agreement, provided that such use or disclosure is either required or permitted by law if done by Plan Sponsor and does not violate the Minimum Necessary requirements under the Privacy Rule.

(b) Delta Dental’s Management and Administration. Delta Dental may use or disclose only the Minimum Necessary PHI for the proper management and administration of Delta Dental and to carry out its legal responsibilities. If Delta Dental discloses PHI to a third party, it must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such PHI will be held confidential as provided pursuant to this Article XII and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify Delta Dental of any Breach of confidentiality of the PHI, to the extent it has obtained knowledge of such Breach.
(c) **Data Aggregation.** Delta Dental may aggregate the PHI created or received for or from Plan Sponsor with such information of other covered entities, as defined in 45 CFR § 160.103, which Delta Dental has received or created in its capacity as a Business Associate of such other covered entities, provided that the purpose of the aggregation is to provide Plan Sponsor with data analysis relating to its health care operations.

(d) **De-identification of Protected Health Information.** To the extent permitted by law and by this Agreement, Delta Dental may disclose de-identified PHI provided it satisfies the provisions of 45 CFR § 164.514(b). Any such de-identified information shall not constitute PHI and shall not be subject to the terms of this Article XII.

12.3 **Obligations and Duties of Delta Dental as Business Associate.**

(a) **Prohibited Uses and Disclosures.** Delta Dental agrees not to use or disclose PHI other than as permitted or required by this Agreement or as required by law.

(b) **Appropriate Safeguards.** Delta Dental agrees to implement appropriate safeguards as are necessary to prevent the use or disclosure of PHI otherwise than as permitted by this Agreement, including, but not limited to, administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of Electronic Protected Health Information, in accordance with 45 CFR §§ 164.308, 164.310, 164.312, 164.314 and 164.504. Delta Dental agrees to comply with the policies and procedures and documentation requirements of the HIPAA Security Rule, including, but not limited to, 45 CFR § 164.316.

(c) **Delta Dental’s Agents.** Delta Dental, as Plan Sponsor’s Business Associate, agrees to ensure that any agents, including subcontractors (if any), to whom it provides PHI, agree in writing to the same restrictions and conditions that apply to Delta Dental with respect to such PHI and implement the safeguards required by Section 12.3(b) above with respect to Electronic PHI. Delta Dental agrees to implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation.

(d) **Access to Protected Health Information.** If Delta Dental maintains a designated record set on behalf of Plan Sponsor, Delta Dental will make PHI that it maintains or that is maintained by its agents or subcontractors (if any) in Designated Record Sets available to Plan Sponsor for inspection and copying within five (5) days of a request by Plan Sponsor to enable Plan Sponsor to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.524.
(e) **Amendment of Protected Health Information.** If Delta Dental maintains a Designated Record Set on behalf of Plan Sponsor, Delta Dental or its agents or subcontractors agree, within five (5) days of receipt of a request from Plan Sponsor for an amendment of PHI or a record about an Individual contained in a Designated Record Set, to make such PHI available to Plan Sponsor for amendment and incorporate any such amendment to enable Plan Sponsor to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.526. If any Individual requests an amendment of PHI directly from Delta Dental or its agents or subcontractors (if any), Delta Dental agrees to notify Plan Sponsor in writing within five (5) days of the request. Any approval or denial of amendment of PHI maintained by Delta Dental or its agents or subcontractors (if any) shall be the responsibility of Plan Sponsor.

(f) **Accounting Rights.** Within five (5) days of notice by Plan Sponsor of a request for an accounting of disclosures of PHI for which Plan Sponsor is required to account to an Individual, Delta Dental and its agents or subcontractors (if any) agree to make available to Plan Sponsor the information required to provide an accounting of disclosures to enable Plan Sponsor to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.528, and the HITECH Act, as determined by Plan Sponsor. Delta Dental agrees to implement a process that allows for an accounting to be collected and maintained by it and its agents or subcontractors (if any) for at least six (6) years prior to the request. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received the PHI and, if known, the address of the entity or person; (iii) a brief description of PHI disclosed; and (iv) a brief statement of the purpose of the disclosure that reasonably informs the Individual of the basis for the disclosure, or a copy of the Individual’s authorization, or a copy of the written request for disclosure. In the event that the request for an accounting is delivered directly to Delta Dental or its agents or subcontractors, Delta Dental shall within five (5) days of a request forward it to Plan Sponsor in writing. It shall be Plan Sponsor’s responsibility to prepare and deliver any such accounting requested. The provisions of this Section 12.3(f) will survive the termination of this Agreement.

(g) **Governmental Access to Records.** Delta Dental agrees to make its internal practices, books and records relating to the use and disclosure of PHI available to Plan Sponsor and to the Secretary for purposes of determining Delta Dental’s compliance with the Privacy Rule and the Security Rule. Delta Dental will provide Plan Sponsor with a copy of any PHI that it provides to the Secretary concurrently with providing such PHI to the Secretary.
Minimum Necessary. Delta Dental and its agents or subcontractors agree to request, use and disclose only the Minimum Necessary amount of PHI to accomplish the purpose of the request, use or disclosure. Delta Dental understands and agrees that the definition of “Minimum Necessary” may change from time to time and agrees to keep itself informed of guidance issued by the Secretary with respect to what constitutes “Minimum Necessary.”

Data Ownership. Delta Dental acknowledges that it has no ownership rights with respect to the PHI.

Audits, Inspection and Enforcement. Within ten (10) days of a written request from Plan Sponsor, Delta Dental and its agents or subcontractors (if any) shall allow Plan Sponsor to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of PHI pursuant to this Article XII for the purpose of determining whether Delta Dental has complied with this Article XII; provided, however, that (i) Delta Dental and Plan Sponsor shall mutually agree in advance on the scope, timing and location of such an inspection, and (ii) Plan Sponsor will protect the confidentiality of all confidential and proprietary information of Delta Dental to which Plan Sponsor has access during the course of such inspection and execute a nondisclosure agreement on terms mutually agreed upon by the parties if requested by Delta Dental. Delta Dental shall notify Plan Sponsor within ten (10) days of learning that Delta Dental has become the subject of an audit, compliance review, or complaint investigation by the Office for Civil Rights.

Delta Dental’s Agents and Subcontractors. Delta Dental agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Delta Dental on behalf of Plan Sponsor agrees to the same restrictions and conditions that apply through this Article XII to Delta Dental as Business Associate with respect to such information.

Application of Privacy Rule and Security Rule Provisions to Delta Dental as Business Associate.

Application of Security Measures. Sections 164.308, 164.310, 164.312 and 164.316 of Title 45 of the Code of Federal Regulations dealing with the administrative, physical and technical safeguards as well as policies, procedures and documentation requirements that apply to Plan Sponsor also apply in the same manner to Delta Dental as Business Associate. Any additional security requirements contained in Subtitle D of Title IV, Health Information Technology, of the HITECH Act that apply to Plan Sponsor also apply to Delta Dental as Business Associate. Pursuant to the foregoing requirements in this section, Delta Dental will implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates or has access to and
demonstrate to Plan Sponsor that it is in compliance with these requirements. When Delta Dental receives, maintains or transmits Electronic PHI on behalf of Plan Sponsor, it will demonstrate and ensure the confidentiality and mode of security as appropriate to protect such information to Plan Sponsor. Delta Dental will also ensure that any agent and subcontractor to whom it provides such Electronic PHI also agrees to implement reasonable and appropriate safeguards to protect such information.

(b) **Application of Civil and Criminal Penalties.** If Delta Dental violates any security provision specified in Paragraph (a) above, 42 USC §§ 1320d-5 and 1320d-6 will apply to it with respect to such violation in the same manner that such sections apply to Plan Sponsor if it violates such security provision.

(c) **Annual Guidance.** Delta Dental agrees, at its own cost and effort, to monitor and comply with the guidance issued by the Secretary on the most effective and appropriate technical safeguards for compliance with Subpart C of part 164 of Title 45, Code of Federal Regulations.

12.5 **Breach Notification Requirements.**

(a) **Notification of Breach.** Delta Dental expressly recognizes that Plan Sponsor has certain reporting and disclosure obligations to the Secretary and to the Individual(s) whose information has been accessed without authorization. Delta Dental agrees to report to Plan Sponsor in writing any access, use or disclosure of PHI not permitted by this Agreement, any Security Incident and any Breach of Unsecured PHI of which it becomes aware without unreasonable delay and in no case later than fifteen (15) days after discovery. Delta Dental will include the following in its Breach notification to Plan Sponsor:

(i) Identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Delta Dental to have been, accessed, acquired, or disclosed during such Breach.

(ii) A brief description of the circumstances of the Breach, including the date of the Breach and the date of the discovery of the Breach.

(iii) A description of the types of Unsecured PHI involved in the Breach (such as full name, Social Security number, date of birth, home address, account number, or disability code).

(b) **Breach Pattern or Practice by Delta Dental.** Pursuant to 42 USC § 17934(b), if Delta Dental as Business Associate knows of a pattern of activity or practice of Plan Sponsor that constitutes a material Breach or violation of Plan Sponsor’s obligations under this Agreement or other arrangement, Delta Dental must take reasonable steps to cure the Breach or end the violation. If the steps are unsuccessful, Delta Dental must terminate this Agreement or other arrangement if
feasible, or if termination is not feasible, report the problem to the Secretary. Delta Dental agrees to provide written notice to Plan Sponsor of any pattern of activity or practice of Plan Sponsor that Delta Dental as Business Associate believes constitutes a material Breach or violation of Plan Sponsor’s obligations under this Agreement or other arrangement within five (5) days of discovery and will meet with Plan Sponsor to discuss and attempt to resolve the problem as one of the reasonable steps to cure the Breach or end the violation.

12.6 **Term and Termination.**

(a) **Term.** The Effective Date of this Article XII is the Effective Date of this Agreement. This Article XII will survive until all of the PHI provided by Plan Sponsor to Delta Dental, or created or received by Delta Dental on behalf of Plan Sponsor, is destroyed or returned to Plan Sponsor, or, if it is infeasible to return or destroy PHI, Delta Dental extends protections to such information in accordance with the termination provisions in this Section 12.6.

(b) **Termination for Cause.** Upon Plan Sponsor’s knowledge of a material Breach by Delta Dental of this Article XII, Plan Sponsor may, in its sole discretion, either (i) provide Delta Dental with an opportunity to cure the Breach and then terminate this Agreement if Delta Dental does not cure the Breach within the time period specified by Plan Sponsor, or (ii) terminate this Agreement. Any termination will be effective immediately or at such other date specified in Plan Sponsor’s notice of termination.

(c) **Effect of Termination.**

(i) **Return or Destruction.** Upon termination, cancellation, expiration or other conclusion of this Agreement, Delta Dental will, if feasible, return to Plan Sponsor or destroy all PHI, in whatever form or medium (including in any electronic medium under Delta Dental’s custody or control), that Delta Dental created or received for or from Plan Sponsor, including all copies of and any data or compilations derived from and allowing identification of any Individual who is a subject of the PHI. Delta Dental will complete such return or destruction as promptly as possible, but not later than thirty (30) days after the effective date of the termination, cancellation, expiration or other conclusion of this Agreement. Delta Dental will identify any PHI that it created or received for or from Plan Sponsor that cannot feasibly be returned to Plan Sponsor or destroyed, and will limit its further use or disclosure of that PHI to those purposes that make return or destruction of that PHI infeasible. Within such thirty (30) days, Delta Dental will certify on oath in writing to Plan Sponsor that such return or destruction has been completed, will deliver to Plan Sponsor the identification of any PHI for which return or destruction is infeasible and, for that PHI, will certify that it will only use or disclose such PHI for those purposes that make return or destruction infeasible.
(ii) **Continuing Privacy Obligation.** Delta Dental’s obligation to protect the privacy of the PHI it created or received for or from Plan Sponsor will be continuous and survive termination, cancellation, expiration or other conclusion of this Agreement.

### 12.7 Miscellaneous.

(a) **Amendment to Agreement.** The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of this Agreement may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, The Security Rule and other applicable laws relating to the security or confidentiality of PHI. The parties understand and agree that Plan Sponsor must receive satisfactory written assurance from Delta Dental that it will adequately safeguard all PHI. Plan Sponsor may terminate this Agreement upon thirty (30) days written notice in the event (i) Delta Dental does not promptly enter into negotiations to amend this Agreement when requested by Plan Sponsor pursuant to this paragraph or (ii) Delta Dental does not enter into an amendment to this Agreement providing assurances regarding the safeguarding of PHI that Plan Sponsor, in its sole discretion, deems sufficient to satisfy the standards and requirements of applicable laws.

(b) **Interpretation.** Any ambiguity in this Article XII shall be resolved in favor of a meaning that permits Plan Sponsor to comply with the HIPAA, the HITECH Act, the Privacy Rule and the Security Rule.

(c) **Assistance in Litigation or Administrative Proceedings.** Delta Dental shall make itself, and any agents, subcontractors and employees assisting it in the performance of its obligations under this Agreement available to Plan Sponsor, at no cost to Plan Sponsor, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Plan Sponsor, its directors, officers or employees based on a claimed violation of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule, or other laws relating to security and privacy, except where Delta Dental or its agent, subcontractor or employee is a named adverse party.

(d) **No Third-Party Beneficiaries.** Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Plan Sponsor, Delta Dental and their respective successors and assigns, any rights, remedies, obligations or liabilities whatsoever.
ARTICLE XIII: MISCELLANEOUS PROVISIONS

13.1 **Assessment of Tax, Fee or Penalty.** If the Federal Government, the government of any state or political subdivision, or any instrumentality of any of the above, will assess any tax or fee or penalty against Delta Dental arising out of the administration of dental benefits under the Plan, other than income tax assessed against Delta Dental on the income earned by it under this Agreement, and Delta Dental is required to pay such tax, fee or penalty, Delta Dental will report such payment to Plan Sponsor and will make a charge against the Plan for such tax, fee or penalty. This provision will not apply if the tax, fee or penalty is assessed because of Delta Dental’s noncompliance with the law or negligence in the performance of its duties under this Agreement.

13.2 **Force Majeure.**

(a) Neither party is liable to the other for any delay or failure to perform caused by the other party’s delay in supplying or failing to supply approvals, information, materials, or services called for under the terms of this Agreement if such delay is caused by circumstances beyond its control, including acts of civil or military authority, national emergencies, labor difficulties, fire, flood, or catastrophe, acts of God, insurrection, war, riots.

(b) Each party will exercise its best efforts to mitigate the extent of any excusable delay or failure under Paragraph 13.2(a) and their adverse consequences; provided, however, that should any such delay or failure continue for more than sixty (60) days, the Agreement may be terminated by the non-delaying party.

13.3 **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Wisconsin, excluding its principles of conflicts of laws.

13.4 **Assignment.** Neither party may assign this Agreement, or any of its rights or obligations whether by operation of law or other without the prior written consent of the other party, which the other party may grant or withhold in its sole discretion; provided, however, that a successor in interest by merger, operation of law, assignment, purchase or otherwise of all or substantially all of the business of either party will acquire all rights and obligations of such party hereunder. In the event of a permitted assignment by a party, this Agreement will inure to the benefit of such party, its successors and assigns; otherwise, any other assignment or purported assignment by such party will be null and void.

13.5 **Amendment.** Except as expressly provided herein, modifications, amendments, supplements to, or waivers of this Agreement will be in writing and be duly executed by the parties hereto.

13.6 **No Waiver.** A failure or delay of either party to this Agreement to enforce at any time any of the provisions of this Agreement or to exercise any of its options may in no way be construed to be a waiver of such provisions.
13.7 **Severability.** In the event that any of the provisions of this Agreement is declared or held invalid, illegal, or unenforceable, the unaffected portions of this Agreement will be unimpaired and remain in full force and effect. The parties will negotiate in good faith to substitute for such invalid, illegal, or unenforceable provisions a mutually acceptable provision consistent with the original intent of the parties, which is not so affected.

13.8 **Schedules.** The terms and conditions of any and all Schedules to this Agreement, as amended from time to time, are incorporated into the Agreement by this reference and constitute a part of this Agreement as if fully set forth.

13.9 **Notice.** Any notices or other communications required or permitted to be given or delivered under this Agreement will be in writing and will be sufficiently given if sent by first-class certified, or overnight delivery mail, postage prepaid, or by fax, to:

If to Plan: School Dist of Spring Valley  
David Wellington  
Po Box 249  
Spring Valley, WI 54767  
Telephone: 715-778-5551  
Fax: 715-778-4761

If to Company: Delta Dental of Wisconsin, Inc.  
Attn: Contract & Compliance Coordinator  
2801 Hoover Road  
P.O. Box 828  
Stevens Point, WI 54481  
Telephone: 715-344-6087  
Fax: 715-344-9058

or to such other address or addresses as either party may from time to time designate to the other by written notice. Any such notice or communication is deemed given upon receipt.

13.10 **Entire Agreement.** This Agreement, together with all Schedules, constitutes the entire agreement of the parties and supersedes all previous agreements, promises, representations, understandings, and negotiations between the parties, whether written or oral, with respect to the subject matter hereof.

13.11 **No Benefit to Third Parties.** This Agreement is only for the benefit of Delta Dental and the Plan and does not confer any right, benefit, or privilege upon any person or entity not a party to this Agreement.
13.12 **Invalidity.** If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. Neither party shall be deemed to have been the drafter of this Agreement.

**IN WITNESS WHEREOF,** the Plan Sponsor and Delta Dental have executed this Agreement.

**DELTA DENTAL OF WISCONSIN, INC.**

August 22, 2011

Date

By:  

Name:  Dennis L. Brown

Title:  President
SCHEDULE A

SCHEDULE OF ADMINISTRATIVE FEES

IT IS HEREBY AGREED, that the Administrative Fees, payable on a monthly basis from School Dist of Spring Valley to Delta Dental of Wisconsin, shall be the following, and shall be valid as of September 1, 2011 and ending on August 31, 2014.

Monthly Administrative Fee Per Employee                      $4.05
As a service to you, Delta Dental has calculated rates that can be used for your Plan’s Consolidated Omnibus Budget Reconciliation Act (COBRA) enrollees.

These rates reflect only the anticipated claims expenses for those enrollees and Delta Dental’s administrative fees. No other administrative fees have been included.

Single Coverage (employee, 1 Party) - $34.39
Family Coverage (employee and spouse, 2 Party) - $101.50
Family Coverage (employee and child(ren)) - $101.50
Family Coverage (full family, 3+ Party) - $101.50