SETTLEMENT AGREEMENT

dated as of
August ___, 2003
by and among
AETNA INC.,
THE REPRESENTATIVE PLAINTIFFS,
THE AMERICAN DENTAL ASSOCIATION,
AND CLASS COUNSEL
# SETTLEMENT AGREEMENT

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SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is made and entered into by and among the ADA, the Representative Plaintiffs (on behalf of themselves and each of the Class Members who have not validly and timely requested to Opt Out of this Agreement), by and through their counsel of record in American Dental Association, et al. v. Aetna Inc., et al., and Company (the ADA, the Representative Plaintiffs, the Class Members who have not validly and timely requested to Opt Out of this Agreement, and Company are herein collectively referred to as the “Parties”). The Parties intend this Agreement to resolve, discharge and settle the Released Claims, fully, finally and forever according to the terms and conditions set forth below.

W I T N E S S E T H:

WHEREAS, on August 15, 2001, the ADA and certain Representative Plaintiffs filed this action (the “Illinois Action”) in the United States District Court for the Northern District of Illinois;

WHEREAS, on October 1, 2001 the Judicial Panel on Multidistrict Litigation transferred the Illinois Action to the United States District Court for the Southern District of Florida;

WHEREAS, on June 6, 2003, the ADA and the Representative Plaintiffs filed an Amended Class Action Complaint (hereinafter the “Complaint”) as a class action against Company (the “Class Action”);

WHEREAS, Company denies the material factual allegations and legal claims asserted in the Complaint, including without limitation any and all charges of wrongdoing or liability arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Complaint, including without limitation the allegations that the Representative Plaintiffs and/or other Class Members have suffered damages; that Company improperly manipulated claim procedures; that Company improperly delayed, reduced or denied payment to Class Members, and that the Representative Plaintiffs and/or other Class Members were harmed by the conduct alleged in the Complaint;

WHEREAS, Company believes it could assert a number of defenses to the claims set forth in the Complaint which defenses Company believes are meritorious; nonetheless, Company has a desire to make more transparent, simplify and otherwise improve the system through which it conducts business with Class Members and has concluded that further conduct of the Class Action would be protracted and expensive and that it is desirable that the Class Action be fully and finally settled in the manner and upon the terms and conditions set forth in this Agreement;
WHEREAS, the ADA’s definition of UCR means “usual, customary, and reasonable,” and the ADA and the Representative Plaintiffs do not endorse the practices of Downcoding and Bundling, and believe that the claims asserted in the Complaint have substantial merit; provided that Class Counsel recognize and acknowledge the expense and length of continued proceedings that would be necessary to prosecute the Class Action against Company through trial and appeals; and

WHEREAS, Class Counsel also have taken into account the uncertain outcome and the risk of any class action, especially in complex actions such as the Class Action, as well as the difficulties and delays inherent in such Class Action, and counsel for the Representative Plaintiffs believe that the settlement set forth in this Agreement confers substantial benefits upon the Representative Plaintiffs and the other Class Members;

WHEREAS, based on their evaluation of all of these factors, and recognizing that Company’s compliance with the terms of this Agreement is beneficial to Class Members and that such compliance does not and shall not violate any legal right of Class Members, the ADA, the Representative Plaintiffs and their counsel have determined that this Agreement is in the best interests of themselves and the other Class Members;

WHEREAS, the Parties acknowledge that the implied duty of good faith and fair dealing is applicable to each Party’s obligations under this Agreement.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the ADA, the Representative Plaintiffs (for themselves and all Class Members who have not validly and timely requested to Opt Out of this Agreement), by and through their respective counsel or attorneys of record, and Company, that, subject to the approval of the Court, the Class Action and the Released Claims shall be finally and fully resolved, compromised, discharged and settled under the following terms and conditions:

1. **Definitions.**

   As used in this Agreement, the following terms have the meanings specified below:

   1.1. “**Action**” means American Dental Association, et al., v. Aetna, Inc., et al., Master File No. 00-1334-MD-MORENO (S.D. Fla.).

   1.2. “**Affiliate**” means with respect to any Person, any other Person controlling, controlled by or under common control with such first Person. The term “control” (including without limitation, with correlative meaning, the terms
“controlled by” “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and Policies of such Person, whether through the ownership of voting securities or otherwise.

1.3. “Agreement” shall have the meaning assigned to that term in the preamble of this Agreement.

1.4. “ADA” means the American Dental Association.

1.5. “Advisory Committee” shall have the meaning assigned to that term in § 7.5(a) of this Agreement.

1.6. “Attorneys’ Fees” means the funds for attorney’s fees and expenses that may be awarded by the Court to Class Counsel.

1.7. “Bundling” means the adjudication of claims in a manner that denies payment for one or more of multiple dental procedure codes unless expressly provided for in the Code.

1.8. “Business Day” means any day on which commercial banks are open for business in New York City.

1.9. “Certification” shall have the meaning assigned to that term in § 15(g) of this Agreement.

1.10. “Claims” shall have the meaning assigned to that term in § 13(a) of this Agreement.

1.11. “Claim Form” means a document in substantially the form attached hereto as Exhibit A.

1.12. “Class” means any and all Dentists and Dentist Groups who provided Covered Services to any Plan Member from August 15, 1995 through the Preliminary Approval Date.

1.13. “Class Action” means the allegations and claims for relief in the Complaint.


1.15. “Class Member” means any Person who is a member of the Class.
1.16. “**Clean Claim**” means a claim for Covered Services that (a) is timely received by Company, (b) has a corresponding referral (whether in paper or electronic format), if required for the applicable claim, (c) (i) when submitted via paper has all the elements of the standard ADA Dental Claim Form, Version 2002 (or successor ADA standard forms) or (ii) when submitted via an electronic transaction, uses only permitted standard code sets and has all the elements of the standard electronic formats, as required by applicable Federal authority (including but not limited to the Health Insurance Portability and Accountability Act (“HIPAA”)) and state regulatory authority (except where such state authority is preempted by applicable Federal authority), (d) is a claim for which Company is the primary payor or Company’s responsibility as a secondary payor has been established by agreement of Company or by order no longer subject to appeal or review (in the context of coordination of benefits), and (e) contains no defect or error.

1.17. “**Code**” means the *Code on Dental Procedures and Nomenclature*, published by the ADA. The current edition of the Code is published in the ADA publication entitled *Current Dental Terminology, Fourth Edition* (CDT-4). The Code contains a systematic listing and coding of procedures and services provided to patients by Dentists and non-Dentist health professionals. When used herein, the Code refers to the published version as it exists as of the date of this Agreement and as it may be amended, modified, or superseded thereafter during the term of this Agreement.

1.18. “**Company**” means Aetna Inc., a Pennsylvania corporation, and each of its Subsidiaries.

1.19. “**Complaint**” shall have the meaning assigned to that term in the recitals of this Agreement.

1.20. “**Compliance Dispute**” means any claim that Company has failed in any manner to carry out any of its obligations under § 7 of this Agreement.

1.21. “**Compliance Dispute Claim Form**” means a document in substantially the same form as Exhibit B.
1.22. “Compliance Dispute Facilitator” means the person who, pursuant to § 12.1(a) of this Agreement, shall first hear Compliance Disputes.

1.23. “Compliance Dispute Review Officer” means the person chosen pursuant to § 12 of this Agreement and charged with the administration of Certifications and Compliance Disputes under this Agreement.

1.24. “Conclusion Date” shall have the meaning assigned to that term in § 7 of this Agreement.

1.25. “Court” shall have the meaning assigned to that term in the recitals of this Agreement.

1.26. “Covered Services” means those dental services and supplies for which a Plan Member is entitled to receive coverage under the terms and conditions of his or her Plan.

1.27. “day” means a calendar day, unless otherwise noted herein.

1.28. “Delegated Entity” means an entity that is not an Affiliate of Company to the extent that such entity (i) maintains its own contracts with Dentists separate from any contracts between Company and Dentists, and, by agreement with Company, (ii)(A) agrees to provide Plan Members with access to such Dentists pursuant to the terms of such agreements; and (B) performs some or all of the functions with respect to plans which otherwise would be performed by Company, including without limitation claims adjudication, utilization review, utilization management, and Dentist credentialing.

1.29. “Dentist” means an individual duly licensed by a state licensing board to practice dentistry and shall include both Participating Dentists and Non-Participating Dentists.

1.30. “Dentist Group” means two or more Dentists who practice dentistry under a single taxpayer identification number.

1.31. “Dentist Services” means Covered Services that a Dentist provides to a Plan Member, as specified in applicable agreements with Company, or otherwise.
1.32. “Downcoding” means the adjudication of claims in a manner that reduces dental procedure codes to a less complex or lower-cost code unless expressly provided for in the Code.

1.33. “Effective Date” shall have the meaning assigned to that term in § 15 of this Agreement.

1.34. “Effective Period” shall have the meaning assigned to that term in § 7 of this Agreement.

1.35. “EOB” means Explanation of Benefits or any comparable form or statement communicating to Plan Members the results of Company’s adjudication of claim(s) submitted by, with respect to, or on behalf of, such Plan Members.

1.36. “EPP” means Explanation of Provider Payment or any comparable form or statement communicating to Dentists the results of Company’s adjudication of claim(s) submitted by Dentists.

1.37. “Execution Date” means the later of (i) the date on which the signature of Company has been delivered to Class Counsel; and (ii) the date on which the signatures of all Representative Plaintiffs, the American Dental Association, and Class Counsel have been delivered to Company.

1.38. “Final Order and Judgment” means the order and form of judgment approving this Agreement and dismissing Company without prejudice, in each case in the form attached hereto as Exhibit C.

1.39. “Foundation” means the ADA Foundation.

1.40. “Fully Insured Plan” means a Plan as to which Company assumes all or a majority of healthcare cost and/or utilization risk, depending on the product.

1.41. “Implementation Date” means the date of entry of the Final Order and Judgment approving this Agreement.

1.42. “Individually Negotiated Contract” means a contract pursuant to which the parties to the contract, as a result of negotiation, agreed to substantial modifications to the terms of Company’s standard form agreement to individually suit
the needs of a particular Participating Dentist or Dentist Group.

1.43. “Mailed Notice” means the form of notice attached hereto as Exhibit F.

1.44. “Non-Participating Dentist” means any Dentist other than a Participating Dentist.

1.45. “Notice Date” shall have the meaning assigned to that term in § 6.1 of this Agreement.

1.46. “Objection Date” shall have the meaning assigned to that term in § 6.1 of this Agreement.

1.47. “Opt-Out” shall have the meaning assigned to that term in § 6.1 of this Agreement.

1.48. “Opt-Out Deadline” shall have the meaning assigned to that term in § 6.1 of this Agreement.

1.49. “Participating Dentist” means any Dentist who has entered into and on and after the Implementation Date continues to have a valid written contract with Company, directly or indirectly through a Dentist Group or other entity authorized by such Dentist, to provide Covered Services to Plan Members and, where applicable, has been credentialed by Company or its designee pursuant to Company’s credentialing policies in effect at the time of such credentialing.

1.50. “Parties” shall have the meaning assigned to that term in the preamble of this Agreement.

1.51. “Person” and “Persons” means all persons and entities (including without limitation natural persons, firms, corporations, limited liability companies, joint ventures, joint stock companies, unincorporated organizations, agencies, bodies, governments, political subdivisions, governmental agencies and authorities, associations, partnerships, limited liability partnerships, trusts, and their predecessors, successors, administrators, executors, heirs and assigns).

1.52. “Petitioner” shall have the meaning assigned to that term in § 12.2 of this Agreement.
1.53. “Plan” means a Plan Member’s dental care benefits as set forth in the Plan Member’s Summary Plan Description, Certificate of Coverage or other applicable coverage document.

1.54. “Plan Member” means an individual enrolled in or covered by a Plan offered or administered by Company.

1.55. “Preliminary Approval Date” means the date the Preliminary Approval Order is entered by the Court.

1.56. “Preliminary Approval Order” means the preliminary approval order, in the form attached hereto as Exhibit E.

1.57. “Provider Website” means the secure (password protected) online resource for Participating Dentists to obtain information about Company, its products and policies and other information described in more detail in this Agreement, and which is currently located at www.aetna.com/providerhealthoffice/.

1.58. “Public Website” means the online resource for the public to obtain information about Company, its products and policies and other information and which is currently located at www.aetna.com.

1.59. “Published Notice” means the form of notice attached hereto as Exhibit G.

1.60. “Released Parties” shall have the meaning assigned to that term in § 13(a) of this Agreement.

1.61. “Released Rights” or “Released Claims” means any and all manner of claims, demands, actions, suits, and causes of action released under § 13(a) of this Agreement.

1.62. “Releasing Parties” shall have the meaning assigned to that term in § 13(a) of this Agreement.


1.64. “Self-Insured Plan” and “Self-Funded Plan” means any Plan other than a Fully Insured Plan.
1.65. “Senior Management” shall have the meaning assigned to that term in § 12.7 of this Agreement.

1.66. “Settlement Administrator” shall have the meaning assigned to that term in § 8.2 of this Agreement.

1.67. “Settlement Amount” shall have the meaning assigned to that term in § 8.1 of this Agreement.

1.68. “Settlement Fund” shall have the meaning assigned to that term in § 8.1 of this Agreement.

1.69. “Settlement Hearing” means the hearing at which the Court shall consider and determine whether to enter the Final Judgment and make such other orders as are contemplated by this Agreement.

1.70. “Settlement Hearing Date” shall have the meaning assigned to that term in § 6.2 of this Agreement.

1.71. “Subsidiary” means any entity of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are, as of the Implementation Date, directly or indirectly owned by Aetna Inc., but only so long as such securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are, directly or indirectly, held by Aetna Inc.

1.72. “Termination Date” shall have the meaning assigned to that term in § 15(g) of this Agreement.

1.73. “Usual and Customary Reimbursement” and “UCR” mean the amount Aetna determines Dentists in the requesting Dentist’s geographic area are typically paid for the service for which the requesting Dentist is seeking payment.

2. The Class Action and Class Covered by This Agreement.

This Agreement sets forth the terms of an agreement with respect to the Class Action between Company, the ADA, and all Class Members who have not validly and timely requested to Opt Out of this Agreement.
3. **Commitment to Support and Communications with Class Members.**

Representative Plaintiffs, the ADA, Class Counsel and Company agree to cooperate with each other and to take all actions reasonably necessary to obtain Court approval of this Agreement and entry of the orders of the Court that are required to implement its provisions. Such Parties also agree to support this Agreement in accordance with and subject to the provisions of this Agreement. Class Counsel shall make every reasonable effort to encourage Class Members to participate and not to Opt Out.

Representative Plaintiffs, the ADA, Class Counsel and Company agree that Company may communicate with Class Members regarding the provisions of this Agreement, so long as such communications are not inconsistent with the Mailed Notice or other communications concerning the Agreement to which the Parties have agreed.

4. **Preliminary Approval of Settlement.**

As soon as possible after the execution of this Agreement, Representative Plaintiffs, the ADA, Class Counsel and Company shall jointly submit this Agreement, including exhibits A through H, to the Court for its review and entry of the Preliminary Approval Order.

5. **Notice to Class Members; Notice to Parties Pursuant to This Agreement.**

After the Court has entered the Preliminary Approval Order and approved the Mailed Notice and the Published Notice, notice to Class Members shall be disseminated in such form as the Court shall direct; provided that the form of notice is substantially similar to the Mailed Notice and the Published Notice. The Mailed Notice shall request and require that any Class Member who has assigned a claim covered by this Agreement to another Person, in whole or in part, deliver the Mailed Notice to such Person. A copy of the Claim Form shall be included with the Mailed Notice that is disseminated to Class Members.

Class Counsel and Company shall be jointly responsible for identifying names and addresses of Class Members and shall cooperate with each other and the Settlement Administrator to make such identifications.

Company shall pay the reasonable cost of notice to Class Members, including without limitation first class mail costs for the mailing of the Mailed Notice. Payment by Company of the cost of the
Mailed Notice shall be non-refundable and shall be in addition to the other agreements made herein. Company shall pay for the cost to publish the Published Notice no more than three times in the legal notices section in the national editions of THE WALL STREET JOURNAL and USA TODAY. If publication in one or more of said publications on the foregoing schedule is determined not to be practicable, then either Class Counsel or Company may apply to the Court for alternative notice by publication. Company shall also publish the Published Notice on the Public Website, and, to the extent feasible, shall also publish notice in the *Journal of the American Dental Association*. Company shall maintain the Public Website notices at Company’s cost through at least the Objection Date.

All notices to any Party (including without limitation any designations made by Class Counsel pursuant to this Agreement) required under this Agreement shall be sent by first class U.S. Mail, by hand delivery, or by facsimile, to the recipients designated in this Agreement. Timeliness of all submissions and notices shall be measured by the date of receipt, unless the addressee refuses or delays receipt. The Persons designated to receive notices under this Agreement are as follows, unless notification of any change to such designation is given to each other Party hereto pursuant to this § 5:

**Representative Plaintiffs and the ADA:** Notice to be given to Class Counsel on behalf of Representative Plaintiffs and the ADA.

**Class Counsel:**

D. Brian Hufford  
Robert J. Axelrod  
Pomerantz Haudek Block Grossman & Gross LLP  
100 Park Avenue  
New York, NY 10017-5516  
Telephone: 212-661-1100  
Fax: 212-661-8665

With a copy to:

Peter M. Sfikas  
Chief Counsel and Associate Executive Director,  
Division of Legal Affairs  
American Dental Association  
211 East Chicago Avenue  
Chicago, IL 60611  
Telephone: 312-440-2500
Company:

Office of the General Counsel
Aetna Inc.
151 Farmington Avenue
Hartford, Connecticut 06156
Telephone: 860-273-0123
Facsimile: 860-273-8340

With a copy to:

Lewis B. Kaden
Davis Polk & Wardwell
450 Lexington Avenue
New York, New York 10017
Telephone: 212-450-4000
Facsimile: 212-450-4800

and

Hilarie Bass
Greenberg Traurig, P.A.
1221 Brickell Avenue
Miami, FL 33131
Telephone: 305-579-0500
Facsimile: 305-579-0717


Following the dissemination of notice as described in § 5, Representative Plaintiffs, the ADA, Class Counsel and Company shall seek the Court’s final approval of this Agreement. Class Members shall have until the Objection Date to file, in the manner specified in the Mailed Notice, any objection or other response to this Agreement. The Parties agree to urge the Court to set the Objection Date for the date that is 60 days after the Notice Date (the “Objection Date”).


The Parties will jointly request of the Court that the Mailed Notice and the Published Notice be disseminated no later than 30 days after the Preliminary Approval Date (the “Notice Date”).

The Mailed Notice and the Published Notice shall provide that Class Members may request exclusion from the Class by providing notice, in the manner specified in such Notice, on or
before a date set by the Court as the Opt-Out Deadline. Representative Plaintiffs, Class Counsel and Company agree to urge the Court to set the Opt-Out Deadline for the date that is 60 days after the Notice Date (the “Opt-Out Deadline”).

Class Members have the right to exclude themselves (“Opt-Out”) from this Agreement and from the Class by timely submitting to the Settlement Administrator a signed statement to that effect and otherwise complying with the agreed-upon Opt-Out procedure approved by the Court. Class Members who so timely Opt-Out shall be excluded from this Agreement and from the Class. Any Class Member who does not comply with the agreed-upon Opt-Out procedure approved by the Court shall be bound by the terms of this Agreement and the Order and Final Judgment. Any Class Member who does not Opt Out of this Agreement shall be deemed to have taken all actions necessary to withdraw and revoke the assignment to any Person of any claim against the Released Parties.

Any Class Member who timely and properly Opt-Out shall have until the Settlement Hearing to deliver to Class Counsel and the Settlement Administrator a written revocation of such Class Member’s Opt-Out. Class Counsel shall timely apprise the Court of such revocations.

Within ten (10) days after the Opt-Out Deadline, the Settlement Administrator shall furnish Class Counsel and Company with a complete list of all Opt-Outs filed by the Opt-Out Deadline and not timely revoked. Class Counsel and Company, respectively, shall pay costs of obtaining a copy of the Opt-Outs. Notwithstanding any other provisions in this Agreement, after reviewing said list and/or copies of Opt-Outs and revocations, Company reserves the right, in its sole and absolute discretion, to terminate this Agreement by delivering a notice of termination to Class Counsel, with a copy to the Court, prior to the commencement of the Settlement Hearing if Company determines that Opt-Outs have been filed relating to more than 5,000 Dentists.

6.2. Setting the Settlement Hearing Date and Settlement Hearing Proceedings.

Representative Plaintiffs, Class Counsel and Company agree to urge the Court to hold the Settlement Hearing on the date that is 105 days after the date the settlement is preliminarily approved (the “Settlement Hearing Date”) and to work together to identify and submit any evidence that may be required by the
Court to satisfy the burden of proof for obtaining approval of this Agreement and the orders of the Court that are necessary to effectuate the provisions of this Agreement, including without limitation the Final Order and Judgment and the orders contained therein. At the Settlement Hearing, the Parties shall present evidence necessary and appropriate to obtain the Court’s approval of this Agreement, the Final Order and Judgment and the orders contained therein and shall meet and confer prior to the Settlement Hearing to coordinate their presentation to the Court in support of Court approval thereof.

7. **Settlement Consideration: Business Practice Initiatives.**

The settlement consideration to the Class Members who have not validly and timely requested to Opt Out of this Agreement includes, among other things, initiatives and other commitments with respect to Company’s business practices. The Parties agree that the business practice initiatives and other commitments set forth below, which absent this Agreement Company would be under no obligation to undertake, constitute substantial value, and will enhance and facilitate the delivery of services by Class Members who have not validly and timely requested to Opt Out of the Agreement. Company investigated and began to implement certain of the business practice initiatives described in this § 7 while the Parties were engaged in discussions to resolve the Class Action. Such initial and partial implementation, which shows the Parties’ good faith desire to resolve the Class Action, were undertaken to form part of the consideration of the settlement. Company shall have the unilateral and unrestricted right to block access to and/or not apply any or all of the business practice initiatives set forth below to such Class Members, if any, who Opt Out. Without in any way qualifying or limiting the foregoing, Company (a) is informed that it is not uncommon for some members of a class action to opt out for a variety of reasons independent of, among other things, the substantive allegations in the complaint or the terms of a proposed settlement, and (b) states its present intention to exercise the right referred to in the immediately preceding sentence to Class Members who Opt Out.

Company covenants and agrees that, during the period from and after the Execution Date and until the Preliminary Approval Date, it shall not effect any material changes in the business practices that are the subject of the Complaint, except changes to such business practices that are contemplated by this Agreement.

Company shall be obligated to commence implementing each commitment set forth in this § 7 from and after the Implementation Date, except as otherwise provided herein. With respect to each commitment set
forth in this § 7, the “Effective Period” for such commitment shall be the period of time beginning on the Implementation Date (except for those commitments which as specifically set forth herein begin on a date other than the Implementation Date) and continuing until the four-year anniversary of the Preliminary Approval Date (the “Conclusion Date”). Notwithstanding anything to the contrary contained herein, with respect to each commitment set forth in this § 7, from and after the Conclusion Date for such commitment, Company shall be under no obligation whatsoever to continue to implement such commitment.

7.1. Automated Adjudication of Claims

Company shall make investments designed to facilitate the automated adjudication of claims submitted by Dentists, which is intended to reduce the average time taken by Company to pay Clean Claims for Covered Services. Company shall develop and implement plans and time lines reasonably calculated to increase the rate of auto-adjudication of claims submitted by Dentists by not less than 5 percentage points from the period beginning January 1, 2001 to December 31, 2004. Company shall include a description of the initiatives undertaken to effectuate this commitment and the results of such initiatives in the Certification to be filed annually and at the end of the Effective Period.

7.2. Website Disclosure Of Pre-Certification Requirements.

Not later than six (6) months after the Implementation Date, Company shall disclose on the Provider Website Company’s standard dental pre-certification list and shall update such list as needed. Company shall include the dates that it updates its standard dental pre-certification list in the Certification to be filed annually and at the end of the Effective Period.

7.3. Initiatives to Reduce Claims Resubmissions.

Company has begun implementation of a series of initiatives, which have increased the percentage of claim issues resolved on initial review and thereby reduced the percentage of resubmitted claims. Company agrees to continue these or comparable business practices during the Effective Period. Company shall include a description of the initiatives undertaken to effectuate this commitment and the results of such initiatives in the Certification to be filed annually and at the end of the Effective Period.
7.4. No Automatic Downcoding Or Bundling Of Dental Claims.

(a) Except as provided in this Agreement, as of the Implementation Date, Company shall not automatically Downcode or Bundle claims for Covered Services under any applicable dental benefits Plan.

(b) Nothing in this § 7.4 shall apply to Company’s adjudication of claims involving dental procedure codes if submitted for Covered Services under any applicable medical benefits plan.

(c) Notwithstanding anything contained in subsection 7.4(a), Company shall continue to have the right to deny or adjust claims for Covered Services in accordance with the terms of the applicable dental benefits Plan or Plans and to reduce the reimbursement for selected claims for Covered Services (or claims for Covered Services submitted by selected Dentists or Dentist Groups) based on a review of the information in the written dental record for particular claims, a review of information derived from Company’s fraud and abuse detection programs that creates a reasonable belief of fraudulent, abusive or other inappropriate billing practices, or other tools that reasonably identify inappropriate coding of services; provided that the decision to reduce is based in significant part on a review of the individual clinical record by a licensed dentist.

(d) Nothing in this § 7.4 shall be deemed to limit or restrict Company’s right to apply any rates that Company has negotiated with the Dentist for the services provided (e.g., case rates) or to apply the express terms of the Code in adjudicating claims for Covered Services under any applicable dental benefits Plan.

(e) Nothing contained in this § 7.4 shall be deemed to limit or restrict Company from requesting clinical information or records from Dentists for customary purposes such as disease management, patient management, quality review, quality management, claims payment, and audit purposes.
(f) Company, upon written request from a Participating Dentist, will provide the fee schedule applicable to such dentist.

(g) Company shall include the training and policy materials developed and implemented to effectuate this commitment in the Certification to be filed annually and at the end of the Effective Period.

7.5. Committee for Recommending Downcoding and Bundling Policies.

(a) Company agrees that within one (1) year following the Implementation Date, it shall take all reasonable actions necessary on its part to establish an advisory committee (the "Advisory Committee") to advise Company concerning Downcoding and Bundling policies, procedures and practices including, but not limited to, (i) the criteria by which dental procedure codes may be Downcoded or Bundled on an individual basis; (ii) the appropriate reimbursement methodology when two or more dental procedure codes are billed together, (iii) identification of any claims which may require submission of clinical records before payment, and (iv) disclosure requirements.

(b) The Advisory Committee shall meet at least once every six (6) months. The chair of the Committee shall designate the time and place of the meetings, and may direct that they be held telephonically. Company shall pay a reasonable per diem (not to exceed $500 per day) for attendance at meetings of the Advisory Committee, but shall not be obligated to pay travel or other expenses that may be incurred by Committee members.

(c) The Advisory Committee shall include nine members, one of whom shall be Company’s Chief Dental Officer, or his designee, who shall serve as chairperson of the Committee. Seven of the remaining members shall be Participating Dentists in active clinical practice, and the final member shall be a Non-Participating Dentist in active clinical practice. Company shall select two members in addition to its Chief Dental Officer not
later than 30 days after the Preliminary Approval Date; the ADA shall select three members not later than 30 days after the Preliminary Approval Date; and those six members shall select the remaining three members, including the Non-Participating member, not later than 90 days after the Preliminary Approval Date.

(d) The Advisory Committee may make recommendations to Company in accordance with § 7.5(a). All recommendations made by the Committee shall require a vote by a simple majority. Company agrees to consider, in good faith, whether the implementation of any recommendation of the Advisory Committee is commercially feasible and consistent with the best interests of Company’s Participating Dentists, Plan Members, shareholders and other constituents. If Company decides not to accept a recommendation of the Committee, Company will communicate that decision in writing to the Committee with an explanation of Company’s reasons. Any recommendations of the Advisory Committee will also be submitted to the ADA, which will be entitled to submit its own positions and recommendations for the Committee’s consideration.

(e) Company shall enable Participating Dentists to submit proposals to the Advisory Committee via the Provider Website. Company shall also post on its Public Website information sufficient to enable Non-Participating Dentists to contact the Committee in writing.

(f) If the Committee recommends any policy which otherwise would conflict with the terms of § 7.4 above, which recommendation Company elects to implement, Company conduct consistent with the Committee’s recommendation shall be deemed to comply with Company’s obligations under § 7.4 and may not be challenged, including, without limitation, as the subject of a Compliance Dispute hereunder.
(g) The composition of the Advisory Committee, the dates of any meetings, the substance of any final recommendations and the positions taken by Company shall be included in the Certification to be filed annually and at the end of the Effective Period.


(a) Company agrees that no later than one hundred and eighty (180) days after the Implementation Date it will disclose its claim reimbursement methods and rules concerning Downcoding and Bundling, together with supporting clinical justification and adjudication rules, by:

(i) posting such disclosure on the Provider Website and updating such disclosure, as necessary, at least once every one hundred and eighty (180) days;

(ii) indicating on every EPP sent to a Dentist which contains a denial or adjustment based upon Downcoding or Bundling of a dental procedure code that complete disclosure of Company’s claim reimbursement methods and rules is available via the Provider Website and is otherwise available to Dentists upon written request.

(iii) In addition, any Dentist who has applied to be a Participating Dentist may receive, upon written request and subject to the execution of all confidentiality agreements deemed appropriate in Company’s sole discretion, such payment methods and rules applicable to such Dentist.

(b) Company shall include the training and policy materials developed and implemented to effectuate this commitment in the Certification to be filed annually and at the end of the Effective Period.
7.7. Usual and Customary Reimbursement.

(a) Upon receipt of a written appeal by a Dentist appealing a reduction in requested payment based on Company’s determination that the requested payment exceeds UCR, Company shall undertake a case-by-case review of the appealed case. Such review shall consider the complexity of the applicable procedure, the provider’s geographic location and any other factors Company deems relevant.

(b) In conjunction with any appeal described in (a) above, Company shall identify any external database used in making the UCR determination, and shall provide to the Dentist a summary of the factors known by Company to have been utilized in the development of that database. Nothing herein shall require Company to provide proprietary or confidential information of a third party or in any way to warrant the performance by any third party with respect to any database referred to in the preceding sentence.

(c) Company shall give notice to dental enrollees and providers of the UCR appeal rights set forth in subsections (a) and (b) by disclosing such information on its Public Website.

(d) To the extent that UCR determinations are made using the PHCS/Ingenix database, Company shall acquire updated versions of such database not more than 12 months after the release of such updated versions.

(e) Upon written request by a Dental Plan Member or Non-Participating Dentist, accompanied by submission of documentation reasonably needed by Company to respond to such request, Company shall disclose in writing within 30 days, or as soon as reasonably practicable, to such Dental Plan Member or Non-Participating Dentist the amount that Company anticipates it would pay for a proposed out-of-network service upon confirmation that the requested service is a Covered Service and that the individual is an eligible Plan Member.
Company’s statement of the amount of anticipated payment shall not constitute a representation that the proposed service in fact is a Covered Service. In the event that the Dental Plan Member or Non-Participating Dentist, as applicable, submits less than the documentation reasonably needed by Company to respond, within 30 days of such request Company shall notify the requesting party of any further information required in order to review the request.

(f) Company shall include, in any EPP sent to a dental provider, the applicable dental procedure code(s) billed by the provider. The EPP will disclose any instances in which payment by Company is based on code(s) other than the submitted code(s), and will include notice of the provider’s appeals rights.

(g) Company shall include, in any EOB sent to a Plan Member that includes a UCR determination, an explanation in substantially the following form: “Your plan provides benefits for covered services at the prevailing charge level, as determined by Aetna pursuant to the terms of your contract. Aetna’s determination of the prevailing charge does not suggest that your provider’s fee is not reasonable or proper.”

(h) Company shall include the policy and training materials developed and implemented to effectuate this commitment in the Certification to be filed annually and at the end of the Effective Period.

7.8. Participating in Company’s Network.

Company agrees to include in its contracts with Dentists or Dentist Groups a provision permitting either party to terminate such contract without cause on not less than ninety (90) calendar days prior written notice. Company shall continue to have the right to negotiate and enter into contracts with Dentist Groups consisting of five or more Dentists allowing termination only for cause during the contract’s initial term.
7.9. Recognition of Assignments of Benefits by Plan Members.

Company shall recognize all valid assignments by Plan Members of Plan benefits to Dentists; provided that Company shall not be obligated to recognize such assignments in any market in which a competitor with substantial market share declines to recognize similar benefits assignments. Nothing in this § 7.9 is intended or shall be construed to limit Class Members’ right to challenge any such competitor’s non-acceptance of benefit assignments. Company shall include the policy and training materials developed and implemented to effectuate this commitment in the Certification to be filed annually and at the end of the Effective Period.


Except to the extent otherwise expressly specified by a Self-Funded Plan, Company shall not contest the timeliness of bills for Covered Services if such bills are received within 120 days after the later of: (i) the date of service and (ii) the date of the Dentist’s receipt of an EOB from the primary payor, when Company is the secondary payor. Company shall recommend to Self-Funded Plan sponsors that they adopt the 120-day time period referenced in the preceding sentence. Company shall waive the above requirement for a reasonable period in the event that Dentist provides notice to Company, along with appropriate evidence, of extraordinary circumstances that resulted in the delayed submission. Company shall determine “extraordinary circumstances” and the reasonableness of the submission date. Except to the extent expressly provided in the first sentence of this § 7.10, nothing herein shall limit Company’s ability to provide incentives for prompt submission of bills. Company shall include the policy and training materials developed and implemented to effectuate this commitment in the Certification to be filed annually and at the end of the Effective Period.

7.11. Timelines for Processing of Clean Claims.

Company shall direct the issuance of a check or electronic funds transfer in payment for Clean Claims for Covered Services within the following time periods, in each case measured from the later of Company’s receipt of such claim or the date on which Company is in receipt of all information needed and in a format required for such claim to constitute a Clean Claim, including without limitation all documentation reasonably needed by Company to determine that such claim does not contain any
material defect or error; provided that nothing contained herein is intended or shall be construed to alter Company’s ability to request supporting documentation as follows: 15 days for claims that Dentists submit electronically and 30 days for claims that Dentists submit on paper forms. Within six (6) months following the Implementation Date, Company shall cause to be incorporated into its interactive voice response telephone system sufficient functionality to permit a Dentist to determine the date on which a submitted claim was determined by Company to constitute a Clean Claim. Company shall date-stamp paper claims for Covered Services upon receipt in the mailroom and generate an electronic acknowledgment of receipt of electronic claims for Covered Services when received by applicable Company computer system. Commencing one year after the Implementation Date, for each Clean Claim with respect to which Company has directed the issuance of a check or electronic funds transfer later than the applicable period specified in the preceding sentence Company shall pay interest at the lesser of the prime rate and eight percent (8%) per annum on the balance due on each such claim from the end of the applicable specified period up to but excluding the date on which Company issues the check (or issues instructions for electronic funds transfer) for payment of such Clean Claim; provided that to the extent that payment is made later than the period specified by applicable law, Company shall pay interest at any rate specified by such law or regulation in lieu of the interest payment otherwise contemplated by this sentence. Notwithstanding the foregoing, Company shall have no obligation to make any interest payment (i) with respect to any Clean Claim if, within 30 days of the submission of an original claim, a duplicate claim is submitted while adjudication of the original claim is still in process; (ii) to any Dentist who balance bills a Plan Member in violation of such Dentist’s agreement(s) with Company; or (iii) with respect to any time period during which a Force Majeure, as defined in § 7.17 of this Agreement, prevents adjudication of claims. Company shall attempt to include in its contracts with each clearinghouse a requirement that each such clearinghouse transmit claims to Company within twenty four (24) hours after such clearinghouse’s receipt thereof. Company shall include the policy and training materials developed and implemented to effectuate this commitment in the Certification to be filed annually and at the end of the Effective Period.
7.12. Efforts to Improve Accuracy of Information About Eligibility of Plan Members.

Commencing with the Implementation Date, Company shall initiate or continue to take actions reasonably designed to reduce overpayments and claim denials resulting from inaccuracy of information about eligibility of Plan Members. Such actions may include, without limitation, the following:

(a) Working collaboratively with large third-party administrators who handle customer eligibility to develop systems for collecting and transmitting Plan Member eligibility information to Company on a timely and accurate basis.

(b) Developing scorecards for large third-party eligibility administrators to track the timeliness of the information they deliver to Company and the turnaround time for validating the termination of a Plan Member where the termination was implied by the removal of the Plan Member’s name from the most recent eligibility file.

(c) Working collaboratively with large third-party eligibility administrators to develop systems that extract Plan Member termination information directly from a customer’s payroll system to reduce the turnaround time for transmitting such information and the likelihood of errors.

(d) Working collaboratively with plan sponsors to (i) increase the percentage of customers transmitting eligibility information to Company in an electronic format and (ii) increase the frequency of the transmissions of eligibility files from the customer to Company.

(e) Developing employee metrics for Company’s internal eligibility personnel to measure performance and reward behaviors that reduce the impact of retroactive termination of Plan Members on claims payments. The performance measures may include, without limitation, such behaviors as: (i) the timely delivery of reports to third-party eligibility administrators/plan sponsors relating to terminated Plan Members; (ii) timely follow-up
with such third-party eligibility administrators/plan sponsors on such reports to verify the Plan Member’s termination; and (iii) timely error correction.

(f) Company shall include the policy and training materials developed and implemented to effectuate this commitment in the Certification to be filed annually and at the end of the Effective Period.


The Provider Website shall operate at times and with a degree of reliability comparable to that for Company’s other websites. If for any 30-day period during the Effective Period, the Provider Website is inoperable or lacks reliability comparable to that for Company’s other websites, Company shall take commercially reasonable measures to enhance the operability and reliability of the Provider Website. The Certification to be filed annually and at the end of the Effective Period must include the dates during the Effective Period in which the Provider Website has been substantially inoperable.


Information currently posted on the Public Website about individual Dentists is derived from data supplied by those Dentists and from applicable agreements between Company and that Dentist. Company shall take steps reasonably necessary to ensure that the Provider Website has the capacity to enable Participating Dentists to update their name, address, and telephone number. When Company is notified in writing by a Dentist that such Dentist is incorrectly listed on the Public Website as a Participating Dentist, Company shall delete any such erroneous reference within ten (10) Business Days after receipt of such notice and shall make corresponding changes in systems affecting the level of payments and generation of EOBs. Company shall include the policy and training materials developed and implemented to effectuate this commitment in the Certification to be filed annually and at the end of the Effective Period.

7.15. Miscellaneous.

(a) “Gag” Clauses.
Company shall omit from its contracts with Participating Dentists any provision limiting the free, open and unrestricted exchange of information between Participating Dentists and Plan Members regarding the nature of the Plan Member’s dental conditions or treatment and provider options and the relative risks and benefit of such options, whether or not such treatment is covered under the Plan Member’s Plan, and any right to appeal any adverse decision by Company regarding coverage of treatment that has been recommended or rendered. Company agrees not to penalize or sanction Participating Dentists in any way for engaging in any free, open and unrestricted communication with a Plan Member or for advocating for any service on behalf of a Plan Member. Company shall include the policy and training materials developed and implemented to effectuate this commitment in the Certification to be filed annually and at the end of the Effective Period.

(b) Ownership of Dental Records.

Company’s standard agreements shall confirm that, as between Company and Participating Dentists, Dentists own their dental records and that Company has a right to receive or review such records only as reasonably needed in the ordinary course for customary uses such as for disease management, patient management, quality review, quality management, claims payment and audit purposes; provided that nothing herein is intended or construed to convey to Dentists any property interest in Company’s data or intellectual property that incorporates any dental records or related data obtained by Company from such Dentist. Company shall include the policy and training materials developed and implemented to effectuate this commitment in the Certification to be filed annually and at the end of the Effective Period.

(c) Arbitration.

In any arbitration proceeding between Company and a Participating Dentist who practices individually or in a Dentist Group of less than five Dentists, the maximum fee payable by such Participating Dentist shall be the lesser of (i) fifty percent (50%) of the total fee or (ii) $1,000.
(d) Impact of this Agreement on Standard Agreements and Individually Negotiated Contracts.

Company’s standard agreements and/or ancillary documents (e.g., criteria schedule) shall incorporate or be consistent with the commitments and undertakings Company makes in this Agreement. To the extent that Company’s existing agreements with Participating Dentists contain provisions inconsistent with the terms hereof, Company shall administer such agreements consistent with the terms set forth in this Agreement; provided that where Company and a Participating Dentist or Dentist Group have an Individually Negotiated Contract, this Agreement shall not modify or nullify the individually negotiated terms of such Individually Negotiated Contracts unless the Participating Dentist or Dentist Group notifies Company in writing, specifically setting forth the negotiated terms it seeks to have modified or nullified by this Agreement. Furthermore, Company upon request by Participating Dentists or Dentist Groups may separately agree with individual Participating Dentists or Dentist Groups on customized rates and/or payment methodologies that deviate from the terms of its standard agreements. Company shall include the policy and training materials developed and implemented to effectuate this commitment in the Certification to be filed annually and at the end of the Effective Period.

(e) Impact of this Agreement on Covered Services

Notwithstanding anything to the contrary contained in this Agreement, nothing contained in this § 7 shall supersede or otherwise alter the scope of Covered Services of any Plan.

(f) Privacy of Records.

Company shall safeguard the confidentiality of Plan Member medical records in accordance with HIPAA, state and other federal law and any other applicable legal requirements. Company shall include the policy and training materials developed and implemented to effectuate this commitment in the Certification to be filed annually and at the end of the Effective Period.

(g) Scope of Company’s Responsibilities
The obligations undertaken by Company under § 7 of this Agreement shall be applicable only to those functions or activities performed directly by Company and its employees, or third parties (other than Delegated Entities) performing functions on Company’s behalf. To the extent it deems practicable, Company shall endeavor to include in contracts entered into with Delegated Entities subsequent to the Implementation Date terms that are substantially equivalent to the terms of this Agreement; provided that Company shall not be liable hereunder in the event any Delegated Entity acts in a manner inconsistent with the terms of this Agreement.

(h) Copies of Contract.

Company shall provide a copy of its contract with a particular Dentist, including without limitation contracts with a Dentist Group in which such Dentist participates, to such Dentist upon receipt by Company of a written request by such Dentist to provide such contract. Company will not require that a restriction as described in the previous sentence be included in its agreements with Dentist Groups. Company shall include the policy and training materials developed and implemented to effectuate this commitment in the Certification to be filed annually and at the end of the Effective Period.

(i) State and Federal Laws and Regulations.

Nothing contained in § 7 of this Agreement is intended to, or shall, in any way reduce, eliminate or supersede any Party’s existing obligation to comply with applicable provisions of relevant state and federal law and regulations, and Company shall comply with state and federal law and regulations.

(j) Ability of Company to Modify Means of Disclosure.

Company may alter the method or means by which it makes any disclosure or otherwise transmits information as described in, and required by, this Agreement, so long as Company reasonably believes, expects and intends that the newly-adopted means or method of disclosure or transmission is as effective or more effective than the means or method set forth in this Agreement.

The obligations undertaken in § 7 herein shall be fulfilled by Company to the extent permissible under applicable laws and current or future government contracts. If, and during such time as, Company is unable to fulfill its obligations under this Agreement to the extent contemplated by this Agreement because to do so would require state or federal regulatory approval or action, Company shall perform the obligation to the extent permissible by applicable law or by the terms of a government contract and shall continue to fulfill its other obligations under this Agreement, to the extent permitted by applicable law or by government contract. To the extent that any state or federal regulatory approval is required for any Party to implement any part of this Agreement, such Party shall make all reasonable efforts to obtain any necessary approvals of state or federal regulators as needed for the implementation of this Agreement. For any act required by this Agreement that cannot be undertaken without regulatory approval, the Implementation Date or Effective Date as to that act shall be delayed until such approval is granted.


Company shall not be liable for any delay or non-performance of its obligations under this § 7 arising from any act of God, governmental act, act of terrorism, war, fire, flood, explosion or civil commotion. The performance of Company’s obligations under this § 7, to the extent affected by the delay, shall be suspended for the period during which the cause persists.

8. Other Settlement Consideration.

In addition to the business initiatives set forth in § 7 of this Agreement, the settlement consideration shall include the establishment by Company of a settlement fund for payment of claims to Class Members, which will be established and operated in accordance with the provisions of § 8 of this Agreement.


By no later than the Implementation Date, Company shall cause to be established an account for the administration of settlement payments to Class Members (the ‘Settlement Fund”), which account shall be governed by the terms of an escrow agreement to be entered into between Company and the escrow
agent that shall be retained by Company to manage such account. Not later than five (5) Business Days after the Effective Date, Company shall cause to be contributed to the Settlement Fund the amount of $5 million (the "Settlement Amount"), by wire transfer in immediately available funds. Such payment shall be treated as a Qualified or Designated Settlement Fund under I.R.C. § 468B and the regulations or proposed regulations promulgated thereunder (including without limitation Treasury Reg. § 1.468B-1-5 or any successor regulation).

8.2. Responsibilities of the Settlement Administrator.

The Settlement Administrator shall be determined by agreement of Company and Class Counsel. The Settlement Administrator, under the joint supervision of Company and Class Counsel or their designees, and subject to the supervision, direction and approval of the Court, shall be responsible for the administration of the Settlement Fund. The responsibilities of the Settlement Administrator shall expressly include without limitation: (a) the determination of the eligibility of any Class Member to receive payment from the Settlement Fund and the amount of payment to be made to each Class Member, in accordance with the provisions of § 8.3 of this Agreement; (b) the determination as to whether the election of any Class Member to transfer a settlement payment to the Foundation has been authorized by such Class Member, in accordance with the provisions of § 8.3 of this Agreement; (c) the administration of an appropriate procedure for the adjudication of disputes that may arise with respect to the eligibility of a Class Member to receive a payment from the Settlement Fund or the amount of the payment authorized to be made by the Settlement Fund to any Class Member under the provisions of this Agreement; (d) the filing of any tax returns necessary to report any income earned by the Settlement Fund and the payment from the Settlement Fund, as and when legally required, of any tax payments (including interest and penalties) due on income earned by the Settlement Fund and to request refunds, when and if appropriate, with any such tax refunds that are issued to become part of the Settlement Fund; and (e) the compliance by the Settlement Fund with any other applicable law. The fees and expenses of the Settlement Administrator shall be paid by Company; provided that neither Company nor Class Counsel shall be responsible for any other costs, expenses or liabilities of the Settlement Fund.
8.3. Method of Distribution of the Settlement Fund; Contributions to the Foundation.

(a) Subject to § 8.4(b), the base amount of the settlement payment to (or on behalf of) each Class Member (the “Base Amount”) shall be equal to $4 million divided by the number of Class Members who receive a Mailed Notice.

(b) Each Class Member who retired from the practice of dentistry on or before the Preliminary Approval Date shall be entitled to elect either (i) to receive payment from the Settlement Fund in the amount of two times the Base Amount, or (ii) to direct the Settlement Fund to contribute an equivalent amount to the Foundation on his or her behalf.

(c) Each Class Member not described in § 8.3(b) shall be entitled to elect either (i) to receive payment from the Settlement Fund in the amount of the Base Amount; or (ii) to direct the Settlement Fund to contribute an equivalent amount to the Foundation on his or her behalf.

(d) Company, Class Counsel, and the ADA shall make every reasonable effort to encourage Class Members to elect in their Claim Form to contribute their portion of the Settlement Fund to the Foundation.

8.4. Payment of Authorized Claims by the Settlement Fund.

(a) Each Class Member must submit a Claim Form to the Settlement Administrator in accordance with the instructions included in the Mailed Notice and the Published Notice no later than the date that is 3 months after the Notice Date (the “Claim Deadline”) in order for such Class Member to have a valid right to receive payment from the Settlement Fund.

(b) Promptly after the Claim Deadline, the Settlement Administrator shall calculate the amount that is payable to (or on behalf of) each Class Member in accordance with § 8.3 of this Agreement. In the event that the Settlement Administrator determines that the Settlement Amount will not be adequate to make payments to (or on behalf of) each Class Member and the Foundation in accordance with § 8.3 and § 8.5, the Settlement
Administrator shall revise the Base Amount to ensure an equitable distribution of the Settlement Fund to (or on behalf of) all Class Members in accordance with the formulas set forth in § 8.3.

(c) No later than 60 days after the Effective Date, the Settlement Administrator shall cause the Settlement Fund to issue payments to (or on behalf of) Class Members who submitted timely Claim Forms in accordance with this § 8.

8.5. Contributions to the Foundation

(a) The ADA Foundation (the “Foundation”) is the charitable arm of the ADA and is America’s leading charitable organization dedicated to enhancing dentistry and, in turn, the oral health of the nation.

(b) No later than 90 days after the Effective Date, the Settlement Administrator shall remit $1 million of the Settlement Fund directly to the Foundation.

(c) As set forth in § 8.3, Class Members may elect to contribute their portion of the Settlement Amount to the Foundation, and the Settlement Administrator shall make such contributions in accordance with § 8.4. In addition, any amounts remaining in the Settlement Fund, including any interest accrued, after all payments to (or on behalf of) Class Members have been made in accordance with § 8.4, excluding taxes owed, shall be remitted by the Settlement Administrator to the Foundation no later than the Effective Date.

(d) The ADA, after consultation with Class Counsel and Company, agrees to use its best efforts to ensure that the funds contributed or otherwise remitted to the Foundation pursuant to this Agreement be used in accordance with Exhibit H. Company’s Chief Dental Officer or his designee may make recommendations regarding the use of such funds, but such recommendations shall not be binding on the ADA or the Foundation. The ADA agrees to communicate periodically with Company’s Chief Dental Officer or his designee concerning how such funds have been or will be used by the Foundation. The ADA and/or Class Counsel shall provide a report to Company no later than 90 days after the Effective Date,
and annually thereafter during the term of this Agreement, as to the uses to which the settlement funds are put by the Foundation.

9. Attorneys’ Fees, and Representative Plaintiffs’ Fees


Class Counsel intend to apply to the Court for an award of Attorneys’ Fees in an amount not to exceed $1.25 million, which application Company agrees not to oppose. Company shall pay such Attorneys’ Fees in the amount awarded by the Court up to but not exceeding such unopposed amount in accordance with § 9.3 of this Agreement. If the Court awards Attorneys’ Fees in excess of $1.25 million, Company shall have the right in its sole and absolute discretion to terminate this Agreement. The Attorneys’ Fees agreed to be paid pursuant to this provision are in addition to and separate from all other consideration and remedies paid to and available to the Class Members who have not validly and timely requested to Opt Out of this Agreement. Company shall not be obligated to pay any attorneys’ fees or expenses incurred by or on behalf of any Releasing Party in connection with the Action, other than the payment of Attorneys’ Fees in accordance with this § 9.1.


In addition to Attorney’s Fees, Class Counsel intend to apply to the Court for an award of fees for each Representative Plaintiff in the amount of $7,500, which application Company agrees not to oppose. Company shall pay such fees to Representative Plaintiffs in the amount awarded by the Court up to but not exceeding such unopposed amount in accordance with § 9.3. If the Court awards fees to Representative Plaintiffs in excess of $7,500 each, Company shall have the right in its sole and absolute discretion to terminate this Agreement. The fees to Representative Plaintiffs agreed to be paid pursuant to this § 9.2 are in addition to the other consideration afforded the Class Members who have not validly and timely requested to Opt-Out of this Agreement. Company shall support the award of fees to Representative Plaintiffs up to $7,500 as reasonable and appropriate and shall not to object to such request nor appeal an award up to the amounts specified above. Such amounts are the only consideration and fees that Released Parties shall be obligated to give Class Counsel or Representative Plaintiffs as a result of prosecuting and settling this Class Action, other than the additional express agreements made herein.
9.3. Timing of Fee Payments.

Attorneys’ Fees and Representative Plaintiffs’ fees shall be due and payable no later than five Business Days after the Effective Date. Attorneys’ Fees and Representative Plaintiffs’ fees shall not bear interest if paid as specified in the immediately preceding sentence. Payment of the Attorneys’ Fees and Representative Plaintiffs’ fees shall be in cash in immediately available funds, wired to one or more United States financial institutions as the Class Counsel may direct in writing ten (10) Business Days prior to the date that the payment is due. Past due amounts shall bear interest at the lesser of 8% or the Prime Rate. When and if Company transfers funds to the financial institution designated by Class Counsel in satisfaction of Attorneys’ Fees as set forth in this § 9.3 and said amount is actually received and collected in immediately available funds by such designated financial institution, then Company is relieved of its obligation regarding payment of that amount as among the Class Counsel.

10. Application to Fully Insured and Self-Funded Plans

This Agreement applies to Company’s conduct with respect to both Fully Insured Plans and Self-Funded Plans, except where otherwise specified or as provided by applicable law.

11. Limited Liability.

The Compliance Dispute Facilitator (and his agents, if any), the Internal Compliance Officer (and his agents, if any) and the Compliance Dispute Review Officer (and his agents, if any) do not owe a fiduciary duty to the Class Members, the ADA, the Representative Plaintiffs, or Company. The Parties shall ask the Court to grant the Compliance Dispute Facilitator (and his agents, if any), the Internal Compliance Officer (and his agents, if any) and the Compliance Dispute Review Officer (and his agents, if any) limited immunity from liability to the effect that the above-mentioned (and their members and agents, if any) shall be liable only for willful misconduct and gross negligence.

12. Compliance Disputes Arising Under This Agreement

12.1. Jurisdiction.

(a) Compliance Dispute Facilitator.

All Compliance Disputes shall be directed not to the Court nor to any other state court, federal court, arbitration
panel or any other binding or non-binding dispute resolution mechanism but to the Compliance Dispute Facilitator to be designated by Class Counsel. Company shall publish on the Public Website the name and address of the Compliance Dispute Facilitator. The proposed Order and Final Judgment shall provide that no state or federal court or dispute resolution body of any kind shall have jurisdiction over any enforcement of § 7 of this Agreement at any time, including without limitation through any form of review or appeal, except to the extent otherwise provided in this Agreement.

(b) Compliance Dispute Review Officer.

Pursuant to §§ 12.3 - 12.6, and subject to §§ 12.5, the Compliance Dispute Facilitator shall refer Compliance Disputes that satisfy the requirements of § 12.3(b) to the Compliance Dispute Review Officer for resolution. The Compliance Dispute Review Officer shall be agreed upon by Company and Class Counsel within 30 days of the Preliminary Approval Date. If the Compliance Dispute Review Officer is no longer able to serve in such role for any reason, then a replacement shall be chosen by mutual agreement of Class Counsel, or their designee, and Company. If Class Counsel, or their designee, and Company cannot mutually agree on such replacement Compliance Dispute Review Officer, such replacement Compliance Dispute Review Officer shall be a Person to be agreed upon by Company and Class Counsel prior to the Effective Date (the “First Alternate”). If the First Alternate is unable or unwilling to serve in such role for any reason, then such replacement Compliance Dispute Review Officer shall be a Person to be agreed upon by Company and Class Counsel prior to the Effective Date (the “Second Alternate”). If the Second Alternate is unable or unwilling to serve in such role for any reason, then such Compliance Dispute Review Officer shall be a Person to be agreed upon by Company and Class Counsel prior to the Effective Date.

(c) Company shall pay the fees and costs of the Compliance Dispute Facilitator and the Compliance Dispute Review Officer, which it shall fund yearly in amounts to be agreed upon prior to the Effective Date by Company and the Compliance Dispute Review Officer and the Compliance Dispute Facilitator, subject to review by Class Counsel. If these agreed-upon amounts shall be
exceeded in any year, Company and Class Counsel (or their
designee) shall meet and confer in good faith to determine
whether mutually acceptable additional funding amounts
can be agreed. If the parties are unable to reach agreement
following such good faith conferral, each party reserves the
right to apply to the Court for relief relating exclusively to
this § 12.1(c).

12.2. Who May Petition the Compliance Dispute Facilitator.

The ADA and any Class Member who has not validly and
timely requested to Opt Out of this Agreement and that, based on
particularized facts, contends that (i) Company has materially
failed to perform specific obligations under § 7 of this Agreement,
and (ii) the ADA or such Class Member is adversely affected by
Company’s failure to comply with such specific obligations under
§ 7, may petition the Compliance Dispute Facilitator for relief
consistent with § 12.6(f) herein.

12.3. Procedure for Submission, and Requirements, of
Compliance Disputes.

(a) Compliance Dispute Claim Form

Before the Compliance Dispute Facilitator may
consider a Compliance Dispute, a Petitioner must submit a
properly completed Compliance Dispute Claim Form,
attached hereto as Exhibit B and approved by the Court, to
the Compliance Dispute Facilitator. The Compliance
Dispute Claim Form may include supporting
documentation or affidavit testimony. The Compliance
Dispute Claim Form shall be made available by the
Compliance Dispute Facilitator to Class Members upon
request.

(b) Qualifying Submissions

When the Compliance Dispute Facilitator is
petitioned pursuant to § 12.2 of this Agreement, in order for
the Compliance Dispute Facilitator to refer the Compliance
Dispute to the Compliance Dispute Review Officer, the
Compliance Dispute Facilitator must determine that:

(i) the Petitioner has satisfied the requirements
of § 12.2;
(ii) the Petitioner has submitted a properly completed Submission not later than 30 days after such Compliance Dispute arose; and

(iii) in the Compliance Dispute Facilitator’s judgment, the Petitioner’s Compliance Dispute

(a) is not frivolous;

(b) sufficiently alleges adverse impact to the Petitioner resulting from the alleged material failure by Company to comply with an obligation under § 7 of this Agreement to the Petitioner, and

(c) cannot easily be resolved by the Compliance Dispute Facilitator without the intervention of the Compliance Dispute Review Officer.

12.4. Rejection of Frivolous Claims.

The Compliance Dispute Facilitator may reject as frivolous, and the Compliance Dispute Review Officer shall not hear, any Compliance Dispute that the Compliance Dispute Facilitator determines in his or her sole and absolute discretion to be frivolous, filed for nuisance purposes, or otherwise without merit on its face. The Compliance Dispute Facilitator may issue a written explanation or a written order of the grounds for denial of Petitioner’s Compliance Dispute. Petitioner shall have no right to appeal the Compliance Dispute Facilitator’s decision.

12.5. Dispute Resolution Without Referral to Compliance Dispute Review Officer.

If in the Compliance Dispute Facilitator’s judgment Petitioner’s Compliance Dispute can be resolved using available resources without the invocation of the Compliance Dispute Review Officer’s authority, the Compliance Dispute Facilitator shall refer the Petitioner to the appropriate resources or otherwise assist in the resolution of Petitioner’s Dispute. All Parties agree that dispute resolution without invocation of the Compliance Dispute Review Officer’s authority is preferable, and all Parties further agree to assist the Compliance Dispute Facilitator in these efforts.
12.6. Procedure for Compliance Dispute Review Officer
Determination of Compliance Disputes.

(a) Initial Negotiation.

In the event the Compliance Dispute Facilitator has determined pursuant to §§ 12.2 - 12.5 that the Compliance Dispute Review Officer should resolve a particular Compliance Dispute, the Compliance Dispute Facilitator shall notify the Compliance Dispute Review Officer, Petitioner and Company of such determination and the basis therefor. Unless the Petitioner specifies otherwise, the Compliance Dispute Facilitator shall serve as the Petitioner’s representative in the Compliance Dispute process thereafter with respect to such Compliance Dispute. The Compliance Dispute Review Officer shall then direct the Petitioner and Company to convene negotiations at a time and place agreeable to both so that they may reach agreement on whether a breach of Company’s obligations under § 7 of this Agreement has occurred and, if so, what remedy, if any, should be implemented. At these negotiations, the Compliance Dispute Review Officer shall, if requested by both Petitioner and Company, serve as a non-binding mediator. If the Petitioner and Company cannot resolve the Compliance Dispute within 90 days of the date of the determination and notification by the Compliance Dispute Facilitator that the Compliance Dispute Review Officer should resolve the Compliance Dispute, then they shall so inform the Compliance Dispute Review Officer.

(b) Memoranda to Compliance Dispute Review Officer.

If the Compliance Dispute Review Officer has been notified pursuant to § 12.6(a) that no agreement has been reached through negotiation, the Compliance Dispute Review Officer shall request written memoranda from the Petitioner and Company as to the merits of the Compliance Dispute and appropriate remedies for such Compliance Dispute. The Petitioner shall have 15 days from the date of the Compliance Dispute Review Officer’s request to submit its memorandum and appropriate supporting exhibits, and Company shall respond within 15 days after Company’s receipt of Petitioner’s memorandum and accompanying exhibits. Requests for extensions of time for the submission of such materials must be submitted to the
Compliance Dispute Review Officer no less than five (5) days before the date the memoranda and supporting exhibits in question are due.

(c) Oral Argument Concerning Compliance Dispute.

Petitioner or Company may, at the time of submission of the memoranda described in § 12.6(b), request oral argument before the Compliance Dispute Review Officer on the subject of the Compliance Dispute and appropriate remedies, if any. The Compliance Dispute Review Officer shall set the time and place of such argument, if any, and may direct that it be held telephonically.

(d) Decisions by the Compliance Dispute Review Officer.

In resolving a Compliance Dispute, the Compliance Dispute Review Officer shall decide, based on the written submissions, oral argument and any other information that the Compliance Dispute Review Officer in his or her sole discretion deems necessary, whether Company has failed to comply with its obligations under § 7 of this Agreement, and if so, direct what actions are to be taken by Company. In no event shall the Compliance Dispute Review Officer direct that Company spend amounts or take actions above or below Company’s obligations under § 7 of this Agreement. The Compliance Dispute Review Officer must, at the time he or she announces his or her decision, issue a written opinion setting forth the basis of the decision.

(e) Rehearing by the Compliance Dispute Review Officer.

After the Compliance Dispute Review Officer has issued a written opinion in accordance with § 12.6(d), the Petitioner or Company, or both, may petition the Compliance Dispute Review Officer within ten (10) days from receipt of the decision, in writing, for rehearing on the question of whether a § 7 violation has occurred and whether the remedies (if any) required by the Compliance Dispute Review Officer are appropriate. The Compliance Dispute Review Officer may deny the petition for rehearing
or issue a new written opinion after considering such a petition.

(f) Systemic Violations.

If the Compliance Dispute Review Officer determines that Company is engaged in a systemic violation of its obligations under § 7 of this Agreement, then the Compliance Dispute Review Officer shall notify the ADA in writing, and may order appropriate remedies to address such systemic violation.

(g) Finality of the Compliance Dispute Review Officer’s Decision.

Upon the issuance of the Compliance Dispute Review Officer’s decision after a rehearing, if any, the decision of the Compliance Dispute Review Officer shall be final unless appealed to the Court, and such decision shall not be appealed by Petitioner or Company to any other federal court, any state court, any Dental society, any arbitration panel or any other binding or non-binding dispute resolution mechanism. In the event that Petitioner or Company seeks review in the Court of a final decision of the Compliance Dispute Review Officer, the Court shall consider only whether the Compliance Dispute Review Officer’s final decision was “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” as defined by 5 U.S.C. § 706(2)(A), and whether the decision was contrary to or inconsistent with the second sentence of § 12.6(d) of this Agreement. If and only if the Court finds the final decision was “arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law”, or that the decision was contrary to or inconsistent with the second sentence of § 12.6(d) of this Agreement, the Court may remand the Dispute to the Compliance Dispute Review Officer for further proceedings.

(h) Enforcement by the Court.

If the Compliance Dispute Review Officer certifies that either Company or Petitioner is not in compliance with any decision issued or remedy ordered by the Compliance Dispute Review Officer, such Person shall have 30 days from the date of such certification to cure the non-compliance. If after such 30 day period, the Person is not
in compliance and the Compliance Dispute Review Officer certifies that the Person has failed to cure the non-compliance during such 30 day period, the other Person (Company or Petitioner, as the case may be) may petition the Court for enforcement.

12.7. Internal Compliance Officer.

In addition to and separate from the Compliance Dispute Review Officer and the Compliance Dispute Facilitator, Company shall designate an Internal Compliance Officer to generally monitor and facilitate Company’s compliance with the obligations set forth in this Agreement. The Internal Compliance Officer shall report to Company’s president, chief executive officer or general counsel (“Senior Management”) and shall take whatever steps and conduct whatever compliance checks and investigations as he and Senior Management deem reasonably necessary and appropriate to monitor Company’s compliance with this Agreement. Within 30 days after the end of each calendar year during the Effective Period, the Internal Compliance Officer shall file a written report with the Compliance Dispute Review Officer (and, upon written request, Class Counsel) summarizing the Internal Compliance Officer’s activities during the prior year and evaluating any problems or difficulties that Company encountered in complying with the terms of this Agreement, and shall simultaneously provide a copy of such report to the Advisory Committee.


Company may alter or modify the agreements and undertakings set forth in § 7 only to the extent provided in this § 12.8. Company may not revise any undertaking described in § 7 within the first 12 months after the Preliminary Approval Date. Thereafter, Company may modify any undertaking described in § 7 nationally or in particular geographic markets as reasonably needed to compete in the applicable marketplace. In that event, Company shall (i) file notice of any proposed modification with the Compliance Dispute Review Officer, the Advisory Committee and Class Counsel, or their designee, not less than 60 days prior to implementing any such change and (ii) concurrently therewith, give notice to Class Counsel (or their designee) of such filing and meet and confer with Class Counsel (or their designee) with respect thereto, if requested. If Class Counsel, with the concurrence of the Compliance Dispute Facilitator, reasonably
determines that such modification is not needed by Company for competitive reasons, then that determination shall be deemed to create a Compliance Dispute, and shall be referred to the Compliance Dispute Review Officer for resolution pursuant to § 12 hereof. Other than proposed modifications to § 7.4 and § 7.7, Company shall have the right to implement the proposed modification until any Compliance Dispute pursuant to § 12 is resolved. In the event that Company substantially modifies any provision of § 7 pursuant to this § 12.8, then the covenant not to sue that is set forth in § 13 herein shall be of no further force and effect with respect to the business practice that is the subject of such modification, to the extent of such modification.

13. **Release and Covenant Not to Sue**

(a) The ADA and all Class Members who have not validly and timely requested to Opt Out of this Agreement, and their respective heirs, executors, agents, legal representatives, professional corporations, partnerships, assigns, and successors to the extent that their Claims derive by operation of law or contract from the Claims of Class Members (collectively the “**Releasing Parties**”) hereby release and forever discharge Company and each of its present and former parents, present and former wholly-owned subsidiaries, present and former divisions and Affiliates, including without limitation Lion Connecticut Holdings, Inc. (formerly known as Aetna Inc., a Connecticut corporation) and each of its subsidiaries as of December 14, 2000, and each of their respective officers, directors, employees, and attorneys (and their predecessors, heirs, executors, administrators, legal representatives, successors and assigns), but excluding The Prudential Insurance Company of America (collectively the “**Released Parties**”), from any and all causes of action, judgments, liens, indebtedness, costs, damages, obligations, attorneys’ fees, losses, claims, liabilities, and demands of whatever kind or character that relate, arise from, or pertain to billing or payment for dental services (“**Claims**”) arising on or before the Preliminary Approval Date, including all Claims that were or could have been asserted in the Action (the “**Released Claims**”).

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(b) The Releasing Parties further agree to forever abandon and discharge any and all claims that exist now or that might arise in the future against any other persons or entities, which claims arise from, or are based on, conduct by any of the Released Parties that occurred on or before the Preliminary Approval Date and are, or could have been, alleged in the Complaint, whether any such claim was or could have been asserted by any Releasing Party on its own behalf or on behalf of others. Nothing in this Agreement is intended to relieve any person or entity that is not a Released Party from responsibility for its own conduct or conduct of others who are not Released Parties.

(c) Notwithstanding subparagraphs 13(a) and 13(b), the Releasing Parties are not releasing claims for payment for Covered Services that have not been finally adjudicated as of the Implementation Date (the “Retained Claims”), provided that each and every Retained Claim shall be considered a Released Claim 120 days after the Implementation Date unless the Dentist has initiated the appeal process described in § 7.7 of this Agreement.

(d) Upon the Implementation Date, the Releasing Parties shall be deemed to have covenanted and agreed not to sue with respect to, or assert, against any Released Party in any forum any Released Claim and any other Claim (other than a Retained Claim) that is based on any actions or omissions by Company that are consistent with Company’s practices and procedures as of the Execution Date, as modified by this Agreement; provided, however, that the Parties shall retain the rights to enforce this Agreement pursuant to the Compliance Dispute procedures set forth in § 12 herein; and further provided that this § 13(d) shall not apply to any Claim arising after the Termination Date that is based on any actions or omissions by Company that are alleged to be (i) inconsistent with Company’s practices and procedures as of the Execution Date, as modified by this Agreement, or (ii) not addressed in the Agreement.
(e) The Parties agree that Company shall suffer irreparable harm if a Releasing Party takes action inconsistent with § 13(d), and that in that event Company may seek an injunction from the Court as to such action without further showing of irreparable harm.

(f) Nothing contained in this Agreement is intended, or shall be construed, to preclude any Party from seeking legislative or regulatory changes as to matters addressed herein or from seeking to enforce any such changes using any available legal remedy.

14. California Civil Code § 1542

Each Class Member who has not validly and timely requested to Opt-Out of this Agreement and the ADA hereby expressly waives and releases, upon the entry of Final Order and Judgment, any and all provisions, rights and benefits conferred by California Civil Code § 1542, which reads:

“General Release; extent. A general release does not extend to claims which the creditor does not know or suspect to exist at the time of executing the release, which if known by him must have materially affected his settlement with the debtor”;

and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which are similar, comparable or equivalent to California Civil Code § 1542. Each Class Member who has not validly and timely requested to Opt-Out of this Agreement may hereafter discover facts other than or different from those which he, she or it knows or believes to be true with respect to the claims which are the subject matter of the provisions of § 13, but each such Class Member hereby expressly waives and fully, finally and forever settles and releases, upon the entry of Final Order and Judgment, any known or unknown, suspected or unsuspected, contingent or non-contingent claim with respect to the subject matter of the provisions of § 13, whether or not concealed or hidden, without regard to the discovery or existence of such different or additional facts.

15. Stay of Discovery, Termination, and Effective Date of Agreement.

(a) Until the Preliminary Approval Order has been entered, including the stay of discovery as to the Released Parties in the form contained therein, the Parties covenant and agree that
they shall not pursue discovery against any other Party and shall not in any way subsequently argue that any Party failed to comply with its discovery obligations in any respect.

(b) If the Court does not enter the Preliminary Approval Order and approve the Notices submitted to the Court pursuant to § 4 of this Agreement within 60 days of the execution of this Agreement, each of Class Counsel and Company shall have the right, in the sole and absolute discretion of such Party, to terminate this Agreement by delivering a notice of termination to the other, it being understood that, notwithstanding the foregoing, if the Court does not grant the stay of discovery in the form contained in the Preliminary Approval Order, Company may in its sole and absolute discretion terminate this Agreement by delivering a notice of termination to Class Counsel. In the event of any termination pursuant to the terms hereof, the Parties shall be restored to their original positions, except as expressly provided herein.

(c) If the Court has not entered the Final Order and Judgment substantially in the form attached hereto as Exhibit C by the date that is 180 calendar days after the Preliminary Approval Date, each of Class Counsel and Company may, in the sole and absolute discretion of such Party, terminate this Agreement by delivering a notice of termination to the other.

(d) If the Final Order and Judgment is entered by the Court and the time for appeal from all of such orders and judgment has elapsed (including without limitation any extension of time for the filing of any appeal that may result by operation of law or order of the Court) with no notice of appeal having been filed, the “Effective Date” shall be the 11th day after the last date on which notice of appeal could have been timely filed. If the Final Order and Judgment is entered and an appeal is filed as to any of them, the “Effective Date” shall be the 11th calendar day after the Final Order and Judgment is affirmed, all appeals are dismissed, and no further appeal to, or discretionary review in, any Court remains.

(e) From and after the Effective Date, the Releasing Parties and Class Counsel covenant and agree that the Releasing Parties and Class Counsel shall not pursue discovery against the Released Parties.

(f) Notwithstanding § 15(d), if one or more notices of appeal are filed from the Final Order and Judgment, Company shall have the right, in its sole and absolute discretion, to provide notice of the occurrence of the Effective Date and the Parties shall
thereafter be bound by this Agreement and shall perform their respective obligations as if the Final Order and Judgment had been affirmed. If the Final Order and Judgment are not affirmed in their entirety on any such appeal or discretionary review, any Party may, in its sole and absolute discretion, terminate this Agreement by delivering a notice of termination to all other Parties. If no Party elects to so terminate this Agreement, Company may provide notice of the occurrence of the Effective Date (if the Company has not already done so pursuant to the first sentence of this paragraph) and the Parties shall continue to be bound by this Agreement and shall perform their respective obligations hereunder as if the Final Order and Judgment had been affirmed in its entirety on such appeal or discretionary review.

(g) This Agreement shall terminate (the “Termination Date”) upon the earlier to occur of (i) termination of this Agreement by any Party pursuant to the terms hereof and (ii) the four-year anniversary of the Preliminary Approval Date. Effective on the Termination Date, the provisions of this Agreement shall immediately become void and of no further force and effect and there shall be no liability on the part of any of the Parties, except for willful or knowing breaches of this Agreement prior to the time of such termination; provided that in the event of a termination of this Agreement as contemplated by clause (ii) of this § 15(g), the provisions of §§ 13(d), 13(e) and §§ 17, 19 and 20 shall survive such termination. In the event of termination of this Agreement as contemplated by clause (ii) of this § 15(g), Company agrees to file annually and on the Termination Date a document (the “Certification”) with the Compliance Dispute Review Officer enumerating the items described elsewhere in this Agreement as required elements of such Certification. Company shall provide a copy of such Certification to the Advisory Committee. Upon the filing of the duly completed Certification by Company on the Termination Date, all of Company’s obligations under this Agreement shall be satisfied. No decision or ruling of the Compliance Dispute Review Officer, or the Court on any appeal therefrom, shall have any force on the Parties after the Termination Date and Company shall be under no obligation to continue performance of any kind under this Agreement. Company may, in its sole and absolute discretion, elect to continue after the Termination Date, the implementation of various business practices described in this Agreement; provided, however, that any disputes that are pending before the Compliance Dispute Review Officer at the time of termination of this Agreement shall survive
termination, and will be resolved according to the procedures set forth in this Agreement.

16. **Related Actions**

As to any action that is now pending or hereafter may be filed in any court that asserts any Claim against the Released Parties on behalf of any Class Member who has not timely Opted-Out, Representative Plaintiffs, the ADA, and Class Counsel agree that they will cooperate with Company, to the extent reasonably practicable, in such Released Party’s effort to seek relief from the Court or the forum court to obtain the interim stay and dismissal with prejudice of such action as to such Released Party to the extent necessary to effectuate the other provisions of this Agreement.

17. **Not Evidence; No Admission of Liability**

The Parties agree that in no event shall this Agreement, in whole or in part, whether effective, terminated, or otherwise, or any of its provisions or any negotiations, statements, or proceedings relating to it in any way be construed as, offered as, received as, used as or deemed to be evidence of any kind in the Class Action, in any other action, or in any judicial, administrative, regulatory or other proceeding, except in a proceeding to enforce this Agreement. Without limiting the foregoing, neither this Agreement nor any related negotiations, statements or proceedings shall be construed as, offered as, received as, used as or deemed to be evidence, or an admission or concession of liability or wrongdoing whatsoever or breach of any duty on the part of Company, the Released Parties or the Representative Plaintiffs, or as a waiver by Company, the Released Parties or the Representative Plaintiffs of any applicable defense. None of the Parties waives or intends to waive any applicable attorney-client privilege or work product protection for any negotiations, statements or proceedings relating to this Agreement. The Parties agree that this provision shall survive the termination of this Agreement pursuant to the terms hereof.

18. **Entire Agreement**

This Agreement, including its Exhibits, contains an entire, complete, and integrated statement of each and every term and provision agreed to by and among the Parties; it is not subject to any condition not provided for herein. This Agreement supersedes any prior agreements or understandings, whether written or oral, between and among Representative Plaintiffs, Class Members, Class Counsel and Company regarding the subject matter of the Class Action or this Agreement. This
Agreement shall not be modified in any respect except by a writing executed by all the Parties.

19. **No Presumption Against Drafter**

None of the Parties shall be considered to be the drafter of this Agreement or any provision hereof for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof. This Agreement was drafted with substantial input by all Parties and their counsel, and no reliance was placed on any representations other than those contained herein.

20. **Continuing Jurisdiction and Exclusive Venue**

20.1. **Continuing Jurisdiction.**

Except as otherwise provided in this Agreement, it is expressly agreed and stipulated that the United States District Court for the Southern District of Florida shall have exclusive jurisdiction and authority to consider, rule upon, and issue a final order with respect to suits, whether judicial, administrative or otherwise, which may be instituted by any Person, individually or derivatively, with respect to this Agreement. This reservation of jurisdiction does not limit any other reservation of jurisdiction in this Agreement nor do any other such reservations limit the reservation in this subsection.

Except as provided in § 12.1(a) and 12.6(g) or otherwise provided in this Agreement, Company, the ADA, and each Class Member who has not validly and timely requested to Opt Out of this Agreement hereby irrevocably submits to the exclusive jurisdiction and venue of the United States District Court for the Southern District of Florida for any suit, action, proceeding, case, controversy, or dispute relating to this Agreement and/or Exhibits hereto and negotiation, performance or breach of same.

20.2. **Parties Shall Not Contest Jurisdiction.**

In the event of a case, controversy, or dispute arising out of the negotiation of, approval of, performance of, or breach of this Agreement, the Parties hereby agree to pay, and the Court is authorized to award, attorneys’ fees and costs to the prevailing party. Solely for purposes for such suit, action or proceeding, to the fullest extent that they may effectively do so under applicable law, the Parties irrevocably waive and agree not to assert, by way
of motion, as a defense or otherwise, any claim or objection that they are not subject to the jurisdiction of such Court, or that such Court is in any way an improper venue or an inconvenient forum. Furthermore, the Parties shall jointly urge the Court to include the provisions of this § 20 in its order finally approving this Agreement.

21. Cooperation

Representative Plaintiffs, the ADA, Class Counsel and Company agree to move that the Court enter an order to the effect that should any Person desire any discovery incident to (or which the Person contends is necessary to) the approval of this Agreement, the Person must first obtain an order from the Court that permits such discovery.

22. Counterparts

This Agreement may be executed in counterparts, each of which shall constitute an original. Facsimile signatures shall be considered valid signatures as of the date hereof, although the original signature pages shall thereafter be appended to this Agreement.

23. Successors and Assigns

The provisions of this Agreement shall be binding upon and inure to the benefit of Company and its respective successors and assigns; provided that Company may not assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the consent of Class Counsel.

24. Governing Law

Company, Class Counsel and Representative Plaintiffs agree that, with respect to disputes arising between and among such Persons, this Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflicts of law rules of such state.
EXECUTED and DELIVERED on _____.

COMPANY:

Aetna Inc.

__________________________
Name:
Title:
REPRESENTATIVE PLAINTIFFS:

James B. Swanson, D.D.S.

Michael B. Dayoub, D.D.S.

John Milgram, D.D.S.
AMERICAN DENTAL ASSOCIATION:

AMERICAN DENTAL ASSOCIATION

Name:
Title:
CLASS COUNSEL:

Pomerantz Haudek Block Grossman & Gross LLP

Name: D. Brian Hufford, Esq.

Sills Cummis Radin Tischman Epstein & Gross P.A.

Name: Barry M. Epstein, Esq.