

Memorandum



Date: October 6, 2020

Agenda Item No. 8(F)(16)

To: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

A handwritten signature in blue ink, appearing to read "Carlos A. Gimenez", written over the name in the "From:" field.

Subject: Recommendation for Approval to Award RFP-01418 – Employee Voluntary Group
Vision Insurance Program

Recommendation

It is recommended that the Board of County Commissioners (Board) approve a competitive contract award, *Contract No. RFP-01418, Employee Voluntary Group Vision Insurance Program*, for the Human Resources Department. This contract will replace a competitively solicited contract, *RFP-00020, Employee Voluntary Group Vision Insurance Program*, which was awarded under Resolution No. R-658-14 for a two-year term, with two, two-year options to renew.

The contract provides a fully-funded, Employee Voluntary Group Vision Insurance Program (Program) and related services for the County employees and covered groups. Covered groups include Miami-Dade County active employees, retirees currently enrolled in retiree medical benefits, Consolidated Omnibus Budget Reconciliation Act (COBRA) participants and their eligible dependents, in addition to both the Housing Finance and Industrial Development Authorities. Currently, the County employs approximately 26,000 individuals eligible for benefits in South Florida, although the Program covers 53,000 lives. Other governmental entities under agreement with the County may have access to services provided under this Program. The contract also allows for the addition of Jackson Health System and the International Association of Fire Fighters to the County's Program at any time during the term of the contract.

Miami-Dade County provides a comprehensive and competitive benefits package that supports County employees and their families. The Employee Voluntary Group Vision Insurance Plan is available to all employees eligible for medical and dental coverage, regardless of union affiliation. The plan offers employees and employees' enrolled dependents annual comprehensive vision care, including eye exams, frames and contact lenses, among other benefits. This voluntary program is 100 percent employee-funded. Employees elect whether or not to participate during the County's annual benefits "Open Enrollment" period, or at their initial eligibility date. The premium for this program is deducted by the County from participating employees' paychecks, and electronically remitted on bi-weekly basis to the Program provider for the prior pay period.

A Request for Proposals was issued under full and open competition on December 3, 2019. Five proposals were received in response to the solicitation, including one "No Bid." Award is recommended to the highest ranked proposer, who has a local address.

Scope

The scope of this item is countywide in nature.

Fiscal Impact/Funding Source

The fiscal impact for the initial three-year term is \$12,424,000. Should the County choose to exercise, at its sole discretion, the one, two-year option, the estimated cumulative value will be \$21,338,000. The current contract, *RFP-00020*, is valued at \$9,183,000 for a five-year and six-month term and expires on December 31, 2020. The allocation under the new contract is higher than the previous contract due to higher vision insurance premium rates, based on past utilization.

The incumbent vendor, Metropolitan Life Insurance Company, proposed premium rates that would have resulted in overall contract price of \$18,427,000 for the initial three years. The top ranked vendor, Humana Insurance Company, initially proposed a lower overall rate of \$14,933,000. Through rounds of extensive negotiations with Humana, the County's negotiation team was able to achieve additional cost savings of \$2,509,000.

Department	Allocation	Funding Source	Contract Manager
Human Resources	\$12,424,000	Employee Funded	Helena Denham-Carter
Total:	\$12,424,000		

Track Record/Monitor

Pearl Bethel of the Internal Services Department is the Procurement Contracting Manager.

Delegated Authority

If this item is approved, the County Mayor or County Mayor's designee will have the authority to exercise all provisions of the contract, including any cancellation, renewal, or extension provisions, pursuant to Section 2-8.1 of the County Code and Implementing Order 3-38.

Vendor(s) Recommended for Award

A Request for Proposals was issued under full and open competition on December 3, 2019. Five proposals were received in response to the solicitation, including one "No Bid." One of five proposals was found to be non-responsive due to material deviation as it relates to providing guaranteed rates.

Vendor	Principal Address	Local Address*	Number of Employee Residents	Principal
			1) Miami-Dade 2) Percentage*	
Humana Insurance Company	500 West Main Street Louisville, KY	6101 Blue Lagoon Drive, Suite 200 Miami, FL	1,988	Bruce D. Broussard
			2.7%	

*Provided pursuant to Resolution No. R-1011-15. Percentage of employee residents is the percentage of vendor's employees who reside in Miami-Dade County as compared to the vendor's total workforce.

Vendor(s) Not Recommended for Award

Vendor	Local Address	Reason for Not Recommending
Metropolitan Life Insurance Company	No	Evaluation Scores/Ranking
UnitedHealthcare Insurance Company	Yes	
Davis Vision, Inc.	No	Deemed non-responsive by the County Attorney's Office (opinion attached)
The Standard	Yes	No Bid*

*A "No Bid" means the vendor responded indicating that it will not be providing an offer.

Due Diligence

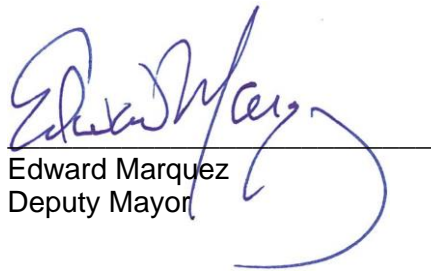
Pursuant to Resolution No. R-187-12, due diligence was conducted in accordance with the Internal Services Department's Procurement Guidelines to determine vendor responsibility, including verifying corporate status and that there are no performance and compliance issues. The lists that were referenced included convicted vendors, debarred vendors, delinquent contractors, suspended vendors, and federal excluded parties. There were no adverse findings relating to vendor responsibility.

Pursuant to Resolution No. R-140-15, prior to re-procurement, a full review of the scope of services was conducted to ensure the replacement contract reflects the County's current needs. The review included conducting market research, posting a draft solicitation for industry comment, and holding meetings and drafting sessions with the user department.

Applicable Ordinances and Contract Measures

- The two percent User Access Program provision does not apply.
- The Small Business Enterprise Selection Factor and Local Preference do not apply.
- The Living Wage does not apply.

Attachment



Edward Marquez
Deputy Mayor

Memorandum



Date: March 4, 2020

To: Natalya Vasilyeva
Procurement Contracting Officer
Internal Services Department

From: Oren Rosenthal
Assistant County Attorney

Subject: RFP No. 01418 – Employee Voluntary Group Vision Insurance Program

You have asked this office if the proposals submitted Davis Vision, Inc. (“Davis”), UnitedHealthcare Insurance Company, Humana Insurance Company (“United”), Humana Insurance Company (“Humana”), and Metropolitan Life Company (“MetLife”) may be considered responsive to the above Solicitation because of various identified defects in their respective responses. For the reasons set forth below, United, Human, and MetLife may be considered responsive to the Solicitation but Davis’ proposal is non-responsive and may not be considered.

FACTS

We rely on the information provided in your memoranda dated February 26, 2020 (attached hereto), the terms of the Solicitation itself, the proposals submitted by Davis, United, Humana, and MetLife, and information conveyed during our discussion of this matter. The purpose of the Solicitation is to establish a single firm to provide voluntary group vision insurance services to Miami-Dade County.

For Davis your memorandum states that rather than providing the price proposal as requested for a single plan, Davis amended the price proposal Form 1 and provided a two plan option, a “Low Plan” and a “Match/High Plan” and arbitrarily assigned a portion of the covered group to each plan for pricing purposes. You also note that Davis conditioned its bid on a group size assumption of 35,950 eligible employees. Finally, you note that sections of the Davis proposal has been marked as confidential, proprietary or “not for distribution” although you also note that Davis executed the County’s acknowledgement of waiver of confidentiality and trade secret treatment of proposal on the Submittal Form.¹

¹ The executed “WAIVER OF CONFIDENTIALITY AND TRADE SECRET TREATMENT OF PROPOSAL” provision of all proposals contains the following language:

By submitting a proposal pursuant to this Solicitation, Proposer agrees that all such materials may be considered to be public records. The Proposer shall not submit any information in response to this Solicitation which the Proposer considers to be a trade secret, proprietary or confidential.

In the event that the Proposal contains a claim that all or a portion of the Proposal submitted contains confidential, proprietary or trade secret information, the Proposer, by signing below, knowingly and expressly waives all claims made that the proposal, or any part thereof no matter how indicated, is confidential, proprietary or a trade secret and authorizes the County to release such information to the public for any reason.

(emphasis in original).

For United you note that the Certificate of Authority to provide insurance services submitted with the proposal was in the name of UnitedHealthcare of Florida, Inc. and not the name of the proposer, UnitedHealthcare Insurance Company. You also note that sections of the proposal were marked as " ... copying and distribution without the express written permission of UnitedHealthcare is prohibited," but that United also executed the County's acknowledgement of waiver of confidentiality and trade secret treatment of proposal on the Submittal Form.

For Humana, you note that certain sections of the proposal were marked confidential and proprietary but that Humana also executed the County's acknowledgement of waiver of confidentiality and trade secret treatment of proposal on the Submittal Form.

Finally, for MetLife, you note that the Certificate of Authority submitted with the proposal was in the name of Safeguard Health Plans, Inc. and not MetLife. You also note that certain sections of the proposal were marked confidential and proprietary but that MetLife also executed the County's acknowledgement of waiver of confidentiality and trade secret treatment of proposal on the Submittal Form.

DISCUSSION

A. Davis' Alteration of Form 1 and Non-Conforming Proposal

Davis' alteration of the Form 1 price proposal in order to provide multiple Form 1s to offer a non-conforming "Low Plan" and "Match/High Plan" option rather than a single plan at a single price renders their proposal non-responsive.² In general, a proposal may be rejected or disregarded if there is a material variance between the proposal and the advertisement. A minor variance, however, will not invalidate the proposal. *See Robinson Elec. Co. v. Dade County*, 417 So. 2d 1032, 1034 (Fla. 3d DCA 1982). The determination of whether a variance or irregularity is minor is fact specific and may differ from proposal to proposal. Florida courts have used a two part test to determine if a specific noncompliance in a bid would constitute a substantial and, thus, nonwaivable issue: (1) whether the effect of the waiver would be to deprive the County of the assurance that the contract would be entered into, performed and guaranteed according to its specific requirements; and (2) whether it would adversely affect competitive bidding by placing a proposer in a position of advantage over other proposers. *See Glatstien v. City of Miami*, 399 So. 2d 1005 (Fla. 3d DCA 1981).

Here, Davis' alteration of the Form 1 and proposal of multiple option plans places Davis in a material different position than the other proposers who provided a response consistent with the County's request. Davis has essentially proposed on a service that was not requested by the County and that would preclude a selection committee from performing an apples to apples comparison of Davis' proposal against the other vendors. Such a variance is neither waivable nor curable after the submittal deadline. As such Davis' proposal may not be evaluated.

B. United and MetLife's Failure to Submit Certificates of Authority

² Although not identified, it appears that Davis has also incorrectly filled out the multiple Form 1s provided to offer a "Low Plan" and a "Match/High Plan." While it appears the first Form 1 provided was for the offer of the "Low Plan" the notation on the 2023 Plan year identify a "Match/High Plan" at a price consistent with the other plan year "Low Plan" offerings. The second Form 1 offering for the "Match/High Plan" again purports to offer a "Match/High Plan" for the 2023 Plan year at a significantly higher price.

Section 2.3 of the Solicitation requires, in accordance with Florida law, that a “proposer shall be licensed by the State of Florida, Office of Insurance Regulation, to provide the plan services for which the proposal is being submitted...” The fact that both United and MetLife failed to submit the appropriate proof of such license at the time of proposal submittal is not fatal to their proposals. The relevant inquiry is not whether the correct license was submitted at the time of proposal, but rather whether United or MetLife was appropriately licensed at the time of submittal. The County may, upon reasonable inquiry of the State’s Office of Insurance Regulation or of the United and MetLife determine whether these proposers were appropriately licensed. If, after reasonable inquiry, it is determined that wither of these proposers are not licensed to provide these services, rather than the fact that they did not provide proof with their proposals, a supplemental request may be issued and they will be found not responsive. If, however, either proposer possessed the legal authority to propose and provide the insurances requested in this Solicitation, they are responsive and may be evaluated.

C. All Proposers Notation of Confidentiality While Executing the County’s Confidentiality Waiver

All proposers clear and express waiver of confidential and trade secret treatment of their proposals by execution of the County’s “WAIVER OF CONFIDENTIALITY AND TRADE SECRET TREATMENT OF PROPOSAL” renders the totality of the proposal public and subject to disclosure under Florida’s Public Records Laws and capable of public evaluation under Florida’s Government in the Sunshine Laws.³ For a documents to be exempt from Florida’s Public Records Laws such documents must be a “Trade Secret” as defined by Florida Statute § 822.02. Section 822.02 requires, among other things, that any entity seeking trade secret protection must properly indicate that such documents are trade secrets and must use “efforts that are reasonable under the circumstances to maintain its secrecy.” Fla. Stat. § 822.02(b); *see also Cubic Transportation Systems, Inc. v. Miami-Dade County*, 899 So.2d 453 (Fla. 3d DCA 2005) (finding documents not labeled as trade secrets or confidential waive the privilege); *M.C. Dean v. City of Miami Beach*, 199 F. Supp. 3d 1349 (S.D. Fla. 2016) (finding that submittal of information to government subject to Florida Public Records Laws waives any claim to trade secret treatment).

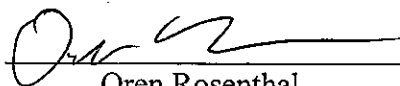
Here, Davis, United, Humana, and MetLife’s execution of the waiver contained in the Submittal Form, by its express terms, “knowingly and expressly waives all claims made that the proposal, or any part thereof no matter how indicated, is confidential, proprietary or a trade secret and authorizes the County to release such information to the public for any reason.” Even if such express waiver is ineffective on its own, the signing of the waiver, along with the clear statement that all documents will be made “public for any reason” fails to show the required efforts to maintain the secrecy of the documents as required under Florida law.

Accordingly, Davis, United, Humana, and MetLife requests for confidentiality contained within their proposals are waived and their proposal are responsive on this issue.

³ We note that opinions of this office issued prior to the inclusion of confidentiality and trade secret waiver language concluded that such proposals were non-responsive. Critical to our prior analysis of this issue was the inconsistency in Florida Law between the Public Records Laws and the Government in the Sunshine Laws. While Trade Secrets are exempt from the requirements of the former, they are not exempt from the requirements of the Government in the Sunshine Laws. This placed the County in the untenable position of being both required to keep trade secrets submitted in proposals confidential while at the same time publicly evaluating those trade secrets at open meetings. Requiring proposers to expressly waive trade secret protection no matter how indicated during the submittal of the proposals removes this issue for the County’s evaluation of proposals which intentionally or unintentionally also request trade secret protection. For the reasons expressed in this opinion, the execution of the express waiver renders the proposals both responsive and public.

CONCLUSION

For the reasons stated above and based on the information you provided, Davis' proposal which provides a non-conforming vision insurance plan is not responsive. United and MetLife's proposals are responsive provided it can be confirmed that these proposers were appropriately licensed to provide these services at the time of proposal submittal. Humana's proposal is responsive.



Oren Rosenthal

Date: 02/26/2020

To: Hugo Benitez
Assistant County Attorney
County Attorney's Office

From: Natalya Vasilyeva *NV*
Procurement Contracting Officer
Internal Services Department

Subject: Request for Responsiveness Determination
RFP No. 01418 – Employee Voluntary Group Vision Insurance Program

On January 29, 2020, proposals were received for the subject solicitation and subsequently reviewed for responsiveness. Following issues were noted:

Davis Vision, Inc:

1. Proposer submitted two versions of Form 1, Price Proposal Schedule: first named "Low Plan" and another "Match/High Plan".
2. Proposer changed numbers under the "Estimated Employee Enrollment" column on the Form 1, Price Proposal Schedule.
3. Proposer stated "The proposed rates herein are based on the following assumptions: size of group: 35,950 eligible employees"; also "All rates....are based on date submitted in the request for proposal". When Form 1, Price Proposal Schedule note#4 reads: Any price proposal that is conditioned may be deemed non-responsive pursuant to section 1.3.
4. Certain sections of the proposal were marked confidential, proprietary, or "not for distribution outside of Davis Vision and group/broker/consultant relationship". However, the Proposer provided an Acknowledgement of Waiver of Confidentiality and Trade Secret Treatment of Proposal on the Submittal Form.

UnitedHealthcare Insurance Company:

1. Minimum qualification requirement of RFP-01418 requests that the Proposer shall be licensed by the State of Florida, Office Insurance Regulation, to provide the plan services for which the proposal is being submitted for. The Proposal Submittal Form was signed and submitted by **UnitedHealthcare Insurance Company**, FEIN 36-2739571. Certificate of Authority submitted was issued to the name of **UnitedHealthcare of Florida, Inc.**
2. Certain sections of the proposal were marked as "...copying and distribution without the express written permission of UnitedHealthcare is prohibited". However, the Proposer provided an Acknowledgement of Waiver of Confidentiality and Trade Secret Treatment of Proposal on the Submittal Form.

Humana Insurance Company:

1. Certain sections of the proposal were marked confidential and proprietary. However, the Proposer provided an Acknowledgement of Waiver of Confidentiality and Trade Secret Treatment of Proposal on the Submittal Form.

Metropolitan Life Insurance Company, dba MetLife:

1. Minimum qualification requirement of RFP-01418 requests that the Proposer shall be licensed by the State of Florida, Office Insurance Regulation, to provide the plan services for which the proposal is being submitted for. The Proposal Submittal Form was signed and submitted by **Metropolitan Life Insurance Company, dba MetLife**, FEIN 13-5581829. Certificate of Authority submitted was issued to the name of **Safeguard Health Plans, Inc.**
2. Certain sections of the proposal were marked confidential and proprietary. However, the Proposer provided an Acknowledgement of Waiver of Confidentiality and Trade Secret Treatment of Proposal on the Submittal Form.

The total value of this award is estimated at \$7,900,000.00

If you have any questions, please contact me at (305) 375-4725. Thank you for your attention to this matter.

Attachments:

Solicitation RFP-01418

Davis Vision, Inc. proposal

UnitedHealthcare Insurance Company proposal

Humana Insurance Company proposal

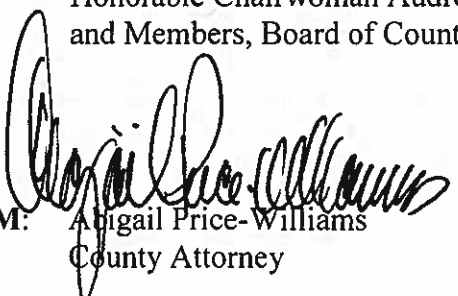
Metropolitan Life Insurance Company, dba MetLife proposal



MEMORANDUM (Revised)

TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

DATE: October 6, 2020

FROM: 
Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 8(F)(16)

Please note any items checked.

- ☐ "3-Day Rule" for committees applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Statement of social equity required
- ☐ Ordinance creating a new board requires detailed County Mayor's report for public hearing
- ☒ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____) to approve
- ☒ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(F)(16)
10-6-20

RESOLUTION NO. _____

RESOLUTION APPROVING AWARD OF CONTRACT NO. RFP-01418 TO HUMANA INSURANCE COMPANY FOR THE PURCHASE OF EMPLOYEE VOLUNTARY GROUP VISION INSURANCE PROGRAM FOR THE HUMAN RESOURCES DEPARTMENT IN A TOTAL AMOUNT NOT TO EXCEED \$21,338,000.00 OVER THE INITIAL THREE-YEAR TERM AND ONE, TWO-YEAR OPTIONS TO RENEW TERM; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE SAME FOR AND ON BEHALF OF MIAMI-DADE COUNTY AND TO EXERCISE ALL PROVISIONS OF THE CONTRACT, INCLUDING ANY CANCELLATION, RENEWAL AND EXTENSION PROVISIONS, PURSUANT TO SECTION 2-8.1 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA AND IMPLEMENTING ORDER 3-38

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves award of Contract No. RFP-01418 to Humana Insurance Company for the purchase of Employee Voluntary Group Vision Insurance Program for the Human Resources Department, in substantially the form attached and made a part hereof, in a total amount not to exceed \$21,338,000.00 over the initial three-year term and one, two-year options to renew term, and authorizes the County Mayor or County Mayor's designee to execute same for and on behalf of Miami-Dade County and to exercise all provisions of the contract, including any cancellation, renewal and extension provisions pursuant to 2-8.1 of the Code of Miami-Dade County and Implementing Order 3-38.

The foregoing resolution was offered by Commissioner ,
who moved its adoption. The motion was seconded by Commissioner
and upon being put to a vote, the vote was as follows:

Audrey M. Edmonson, Chairwoman

Rebeca Sosa, Vice Chairwoman

Esteban L. Bovo, Jr.

Jose "Pepe" Diaz

Eileen Higgins

Joe A. Martinez

Dennis C. Moss

Xavier L. Suarez

Daniella Levine Cava

Sally A. Heyman

Barbara J. Jordan

Jean Monestime

Sen. Javier D. Souto

The Chairperson thereupon declared this resolution duly passed and adopted this 6th day of October, 2020. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

HG /

Hugo Benitez

Employee Voluntary Group Vision Insurance Program
Contract No. RFP 01418

THIS AGREEMENT made and entered into as of this _____ day of _____ by and between Humana Insurance Company, a corporation organized and existing under the laws of the Commonwealth of Kentucky, having its principal office at 1100 Employers Boulevard, De Pere, WI 54115 (hereinafter referred to as the "Contractor"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 N.W. 1st Street, Miami, Florida 33128 (hereinafter referred to as the "County"),

WITNESSETH:

WHEREAS, the Contractor has offered to provide an Employee Voluntary Group Vision Insurance Program , on a non-exclusive basis, that shall conform to the Scope of Services (Appendix A); Miami-Dade County's Request for Proposals (RFP) No. 01418 and all associated addenda and attachments, incorporated herein by reference; and the requirements of this Agreement; and,

WHEREAS, the Contractor has submitted a written proposal dated Jan 29, 2020, hereinafter referred to as the "Contractor's Proposal" which is incorporated herein by reference; and,

WHEREAS, the County desires to procure from the Contractor such voluntary group vision insurance program for the County, in accordance with the terms and conditions of this Agreement;

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

ARTICLE 1. DEFINITIONS

The following words and expressions used in this Agreement shall be construed as follows, except when it is clear from the context that another meaning is intended:

- a) The words "Contract" or "Agreement" to mean collectively these terms and conditions, the Scope of Services (Appendix A), all other appendices and attachments hereto, all amendments issued hereto, RFP No.01418 and all associated addenda, and the Contractor's Proposal.
- b) The words "Contract Date" to mean the date on which this Agreement is effective.

- c) The words "Contract Manager" to mean Miami-Dade County's Director, Internal Services Department, or the duly authorized representative designated to manage the Contract.
- d) The word "Contractor" to mean Humana Insurance Company and its permitted successors.
- e) The word "Days" to mean Calendar Days.
- f) The word "Deliverables" to mean all documentation and any items of any nature submitted by the Contractor to the County's Project Manager for review and approval pursuant to the terms of this Agreement.
- g) The words "directed", "required", "permitted", "ordered", "designated", "selected", "prescribed" or words of like import to mean respectively, the direction, requirement, permission, order, designation, selection or prescription of the County's Project Manager; and similarly the words "approved", "acceptable", "satisfactory", "equal", "necessary", or words of like import to mean respectively, approved by, or acceptable or satisfactory to, equal or necessary in the opinion of the County's Project Manager.
- h) The words "Extra Work" or "Additional Work" to mean additions or deletions or modifications to the amount, type or value of the Work and Services as required in this Contract, as directed and/or approved by the County.
- i) The words "Fully Insured Plan" to mean a benefits plan where the employer (County) contracts with another organization to assume financial responsibility for the Members' claims and for all incurred administrative costs.
- j) The words "Group Policy" shall mean the group vision insurance contract (including the application, insurance certificate, amendments and or endorsements) issued by Contractor or an affiliate of Contractor prior to the effective date of coverage and approved by the County.
- k) The words "Member" or "Subscriber" to mean all employees and their dependents enrolled in Vision Program.
- l) The words "Plan Year" to mean calendar year, January 1 through December 31.
- m) The words "Project Manager" to mean the County Mayor or the duly authorized representative designated to manage the Project.
- n) The word "Provider" to mean vision professional rendering services under the Program.
- o) The words "Scope of Services" to mean the document appended hereto as Appendix A, which details the work to be performed by the Contractor.
- p) The word "subcontractor" or "subconsultant" to mean any person, entity, firm or corporation, other than the employees of the Contractor, who furnishes labor and/or materials, in connection with the Work, whether directly or indirectly, on behalf and/or under the direction of the Contractor and whether or not in privity of Contract with the Contractor.
- q) The words "Work", "Services" "Program", or "Project" to mean all matters and things required to be done by the Contractor in accordance with the provisions of this Contract.

ARTICLE 2. ORDER OF PRECEDENCE

If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: 1) these terms and conditions, 2) the Scope of Services (Appendix A), Price Schedule (Appendix B) and Business Associate Addendum (Appendix C) and Performance Guarantee Standard Provisions (Appendix D), 3) the Miami-Dade County's RFP No. 01418 and any associated addenda and attachments thereof, and 4) the Contractor's Proposal and Group Policy.

ARTICLE 3. RULES OF INTERPRETATION

- a) References to a specified Article, section or schedule shall be construed as reference to that specified Article, or section of, or schedule to this Agreement unless otherwise indicated.
- b) Reference to any agreement or other instrument shall be deemed to include such agreement or other instrument as such agreement or other instrument may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.
- c) The terms "hereof", "herein", "hereinafter", "hereby", "herewith", "hereto", and "hereunder" shall be deemed to refer to this Agreement.
- d) The titles, headings, captions and arrangements used in these Terms and Conditions are for convenience only and shall not be deemed to limit, amplify or modify the terms of this Contract, nor affect the meaning thereof.

ARTICLE 4. NATURE OF THE AGREEMENT

- a) This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in this Agreement. The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this Agreement, and that this Agreement contains the entire agreement between the parties as to all matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Agreement shall be of no force or effect, and that this Agreement may be modified, altered or amended only by a written amendment duly executed by both parties hereto or their authorized representatives.
- b) The Contractor shall provide the services set forth in the Scope of Services, and render full and prompt cooperation with the County in all aspects of the Services performed hereunder.
- c) The Contractor acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all Work and Services under this Contract. All things not expressly mentioned in this Agreement but necessary to carrying out its intent are required by this Agreement, and the Contractor shall perform the same as though they were specifically mentioned, described and delineated.
- d) The Contractor shall furnish all labor, materials, tools, supplies, and other items required to perform the Work and Services that are necessary for the completion of this Contract. All Work and Services shall be accomplished at the direction of and to the satisfaction of

the County's Project Manager.

- e) The Contractor acknowledges that the County shall be responsible for making all policy decisions regarding the Scope of Services. The Contractor agrees to provide input on policy issues in the form of recommendations. The Contractor agrees to implement any and all changes in providing Services hereunder as a result of a policy change implemented by the County. The Contractor agrees to act in an expeditious and fiscally sound manner in providing the County with input regarding the time and cost to implement said changes and in executing the activities required to implement said changes.

ARTICLE 5. CONTRACT TERM

The Contract shall become effective on the date stipulated on the front page and shall continue through December 31, 2023. The County, at its sole discretion, reserves the right to exercise the option to renew this Contract for one (1) additional two-year optional renewal period. The County reserves the right to exercise its option to extend this Contract for up to one hundred-eighty (180) calendar days beyond the current Contract period and will notify the Contractor in writing of the extension. This Contract may be extended beyond the initial one hundred-eighty (180) calendar day extension period by mutual agreement between the County and the Contractor, upon approval by the Board of County Commissioners.

ARTICLE 6. NOTICE REQUIREMENTS

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if delivered by Registered or Certified Mail, with return receipt requested; or delivered personally; or delivered via e-mail (if provided below) and followed with delivery of hard copy; and in any case addressed as follows:

(1) to the County

- a) to the Project Manager:

Miami-Dade County
Human Resource Department
Attention: Benefits Division Director, Human Resources
Phone: (305)-375-1074
E-mail: Helena.Denham-Carter@miamidade.gov

and,

- b) to the Contract Manager:

Miami-Dade County
Internal Services Department, Strategic Procurement Division
Attention: Chief Procurement Officer
111 N.W. 1st Street, Suite 1375
Miami, FL 33128-1974
Phone: (305) 375-4900
E-mail: Namita.Uppal@miamidade.gov

(2) To the Contractor

Humana Insurance Company
6101 Blue Lagoon Drive, Suite 200,

Miami, FL, 33126

Attention: Laura Nolan

Phone: 502.476.7176

E-mail: LNolan@humana.com

Either party may at any time designate a different address and/or contact person by giving notice as provided above to the other party. Such notices shall be deemed given upon receipt by the addressee.

ARTICLE 7. PAYMENT FOR SERVICES/AMOUNT OBLIGATED

The Contractor warrants that it has reviewed the County's requirements and has asked such questions and conducted such other inquiries as the Contractor deemed necessary in order to determine the price the Contractor will charge to provide the Work and Services to be performed under this Contract. The compensation for all Work and Services performed under this Contract, including all costs associated with such Work and Services, shall be stipulated in the Price Schedule (Appendix B). The County shall have no obligation to pay the Contractor any additional sum in excess of this amount, except for a change and/or modification to the Contract, which is approved and executed in writing by the County and the Contractor.

All Services undertaken by the Contractor before County's approval of this Contract shall be at the Contractor's risk and expense.

ARTICLE 8. PRICING

Prices shall remain firm and fixed for the first three insurance Plan Years (January 1, 2021-December 31, 2023). However, the Contractor may offer incentive discounts to the County at any time during the Contract term, including any renewal or extension thereof. Prices for the subsequent Plan Years shall be negotiated as specified in the Price Schedule (Appendix B).

ARTICLE 9. METHOD AND TIMES OF PAYMENT

The County will remit applicable premiums to the Contractor on a bi-weekly basis for the prior pay period, accompanied by an electronic file of employee deductions after the County either deducts the employee contributions through its payroll process or receives payment from employees on an unpaid leave of absence. The County retains the right, at all times, to self-bill. The County will remit premium payments based on its records.

ARTICLE 10. INDEMNIFICATION AND INSURANCE

The Contractor shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Contractor or its employees, agents, servants, partners principals or subcontractors. The Contractor shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

Upon County's notification, the Contractor shall furnish to the Internal Services Department,

Strategic Procurement Division, Certificates of Insurance that indicate that insurance coverage has been obtained, which meets the requirements as outlined below:

- A. Worker's Compensation Insurance for all employees of the Contractor as required by Florida Statute 440.
- B. Commercial General Liability, in an amount not less than \$1,000,000 per occurrence \$2,000,000 in the aggregate **Miami-Dade County must be shown as an additional insured with respect to this coverage.**
- C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles in an amount not less than \$1,000,000 combined single limit
- D. Managed Care Professional Liability in an amount not less than \$2,000,000

The company must be rated no less than "A-" as to management, and no less than "Class VII" as to financial strength by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

OR

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida", issued by the State of Florida Department of Financial Services and are members of the Florida Guaranty Fund.

The mailing address of Miami-Dade County as the certificate holder must appear on the certificate of insurance as follows:

**Miami-Dade County
111 N.W. 1st Street
Suite 1300
Miami, Florida 33128-1974**

Compliance with the foregoing requirements shall not relieve the Contractor of this liability and obligation under this section or under any other section in this Agreement.

Award of this Contract is contingent upon the receipt of the insurance documents, as required, within ten (10) business days. If the insurance certificate is received within the specified timeframe but not in the manner prescribed in this Agreement, the Contractor shall have an additional five (5) business days to submit a corrected certificate to the County. If the Contractor fails to submit the required insurance documents in the manner prescribed in this Agreement within fifteen (15) business days, the Contractor shall be in default of the contractual terms and conditions and award of the Contract may be rescinded, unless such timeframe for submission has been extended by the County.

The Contractor shall assure that the Certificates of Insurance required in conjunction with this Section remain in full force for the term of the Contract, including any renewal or extension periods that may be exercised by the County. If the Certificate(s) of Insurance is scheduled to expire during the term of the Contract, the Contractor shall submit new or renewed Certificate(s) of Insurance to the County a minimum of ten (10) calendar days before such expiration. In the event that expired Certificates of Insurance are not replaced or renewed to cover the Contract period,

the County may suspend the Contract until the new or renewed certificates are received by the County in the manner prescribed herein. If such suspension exceeds thirty (30) calendar days, the County may, at its sole discretion, terminate the Contract for cause and the Contractor shall be responsible for all direct and indirect costs associated with such termination.

ARTICLE 11. MANNER OF PERFORMANCE

- a) The Contractor shall provide the Services described herein in a competent and professional manner satisfactory to the County in accordance with the terms and conditions of this Agreement. The County shall be entitled to a satisfactory performance of all Services described herein and to full and prompt cooperation by the Contractor in all aspects of the Services. At the request of the County, the Contractor shall promptly remove from the project any Contractor's employee, subcontractor, or any other person performing Services hereunder. The Contractor agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Contractor.
- b) The Contractor agrees to defend, hold harmless and indemnify the County and shall be liable and responsible for any and all claims, suits, actions, damages and costs (including attorney's fees and court costs) made against the County, occurring on account of, arising from or in connection with the removal and replacement of any Contractor's personnel performing services hereunder at the behest of the County. Removal and replacement of any Contractor's personnel as used in this Article shall not require the termination and or demotion of such Contractor's personnel.
- c) The Contractor agrees that at all times it will employ, maintain and assign to the performance of the Services a sufficient number of competent and qualified professionals and other personnel to meet the requirements to which reference is hereinafter made. The Contractor agrees to adjust its personnel staffing levels or to replace any its personnel if so directed upon reasonable request from the County, should the County make a determination, in its sole discretion, that said personnel staffing is inappropriate or that any individual is not performing in a manner consistent with the requirements for such a position.
- d) The Contractor warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses as necessary to perform the Services described herein, in a competent and professional manner.
- e) The Contractor shall at all times cooperate with the County and coordinate its respective work efforts to most effectively and efficiently maintain the progress in performing the Services.
- f) The Contractor shall comply with all provisions of all federal, state and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.

ARTICLE 12. EMPLOYEES OF THE CONTRACTOR

All employees of the Contractor shall be considered to be, at all times, employees of the Contractor under its sole direction and not employees or agents of the County. The Contractor shall supply competent employees. Miami-Dade County may require the Contractor to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose continued employment on County property is not in the best interest of the County. Each

employee shall have and wear proper identification.

ARTICLE 13. INDEPENDENT CONTRACTOR RELATIONSHIP

The Contractor is, and shall be, in the performance of all work services and activities under this Agreement, an independent contractor, and not an employee, agent or servant of the County. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Contractor's sole direction, supervision and control. The Contractor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Contractor's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees and agents of the County.

The Contractor does not have the power or authority to bind the County in any promise, agreement or representation other than specifically provided for in this Agreement.

ARTICLE 14. AUTHORITY OF THE COUNTY'S PROJECT MANAGER

- a) The Contractor hereby acknowledges that the County's Project Manager will determine in the first instance all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Agreement including without limitations: questions as to the value, acceptability and fitness of the Services; questions as to either party's fulfillment of its obligations under the Contract; negligence, fraud or misrepresentation before or subsequent to acceptance of the Contractor's Proposal; questions as to the interpretation of the Scope of Services; and claims for damages, compensation and losses.
- b) The Contractor shall be bound by all determinations or orders and shall promptly comply with every order of the Project Manager, including the withdrawal or modification of any previous order and regardless of whether the Contractor agrees with the Project Manager's determination or order. Where orders are given orally, they will be issued in writing by the Project Manager as soon thereafter as is practicable.
- c) The Contractor must, in the final instance, seek to resolve every difference concerning the Agreement with the Project Manager. In the event that the Contractor and the Project Manager are unable to resolve their difference, the Contractor may initiate a dispute in accordance with the procedures set forth in this Article. Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.
- d) In the event of such dispute, the parties to this Agreement authorize the County Mayor or designee, who may not be the Project Manager or anyone associated with this Project, acting personally, to decide all questions arising out of, under, or in connection with, or in any way related to or on account of the Agreement (including but not limited to claims in the nature of breach of contract, fraud or misrepresentation arising either before or subsequent to execution hereof) and the decision of each with respect to matters within the County Mayor's purview as set forth above shall be conclusive, final and binding on parties. Any such dispute shall be brought, if at all, before the County Mayor within 10 days of the occurrence, event or act out of which the dispute arises.
- e) The County Mayor may base this decision on such assistance as may be desirable, including advice of experts, but in any event shall base the decision on an independent and objective determination of whether Contractor's performance or any Deliverable meets the requirements of this Agreement and any specifications with respect thereto set

forth herein. The effect of any decision shall not be impaired or waived by any negotiations or settlements or offers made in connection with the dispute, whether or not the County Mayor participated therein, or by any prior decision of others, which prior decision shall be deemed subject to review, or by any termination or cancellation of the Agreement. All such disputes shall be submitted in writing by the Contractor to the County Mayor for a decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be made. Whenever the County Mayor is entitled to exercise discretion or judgement or to make a determination or form an opinion pursuant to the provisions of this Article, such action shall be fair and impartial when exercised or taken. The County Mayor, as appropriate, shall render a decision in writing and deliver a copy of the same to the Contractor. Except as such remedies may be limited or waived elsewhere in the Agreement, Contractor reserves the right to pursue any remedies available under law after exhausting the provisions of this Article.

ARTICLE 15. MUTUAL OBLIGATIONS

- a) This Agreement, including attachments and appendices to the Agreement, shall constitute the entire Agreement between the parties with respect hereto and supersedes all previous communications and representations or agreements, whether written or oral, with respect to the subject matter hereto unless acknowledged in writing by the duly authorized representatives of both parties.
- b) Nothing in this Agreement shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.
- c) In those situations where this Agreement imposes an indemnity obligation on the Contractor, the County may, at its expense, elect to participate in the defense if the County should so choose. Furthermore, the County may at its own expense defend or settle any such claims if the Contractor fails to diligently defend such claims, and thereafter seek indemnity for costs from the Contractor.

ARTICLE 16. QUALITY ASSURANCE/QUALITY ASSURANCE RECORD KEEPING

The Contractor shall maintain, and shall require that its subcontractors and suppliers maintain, complete and accurate records to substantiate compliance with the requirements set forth in the Scope of Services. The Contractor and its subcontractors and suppliers, shall retain such records, and all other documents relevant to the Services furnished under this Agreement for a period of three (3) years from the expiration date of this Agreement and any extension thereof.

ARTICLE 17. AUDITS

The County, or its duly authorized representatives and governmental agencies, shall until the expiration of three (3) years after the expiration of this Agreement and any extension thereof, have access to and the right to examine and reproduce any of the Contractor's books, documents, papers and records and of its subcontractors and suppliers which apply to all matters of the County. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, as applicable, and shall only address those transactions related to this Agreement.

Pursuant to Section 2-481 of the Code of Miami-Dade County, the Contractor will grant access to the Commission Auditor to all financial and performance related records, property, and equipment purchased in whole or in part with government funds. The Contractor agrees to maintain an accounting system that provides accounting records that are supported with adequate

documentation, and adequate procedures for determining the allowability and allocability of costs.

ARTICLE 18. SUBSTITUTION OF PERSONNEL

In the event the Contractor wishes to substitute personnel for the key personnel identified by the Contractor's Proposal, the Contractor must notify the County in writing and request written approval for the substitution at least ten (10) business days prior to effecting such substitution.

ARTICLE 19. CONSENT OF THE COUNTY REQUIRED FOR ASSIGNMENT

The Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement, including its rights, title or interest in or to the same or any part thereof without the prior written consent of the County.

ARTICLE 20. SUBCONTRACTUAL RELATIONS

- a) If the Contractor will cause any part of this Agreement to be performed by a Subcontractor, the provisions of this Contract will apply to such Subcontractor and its officers, agents and employees in all respects as if it and they were employees of the Contractor; and the Contractor will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts and negligence of the Subcontractor, its officers, agents, and employees, as if they were employees of the Contractor. The services performed by the Subcontractor will be subject to the provisions hereof as if performed directly by the Contractor.
- b) The Contractor, before making any subcontract for any portion of the services, will state in writing to the County the name of the proposed Subcontractor, the portion of the Services which the Subcontractor is to do, the place of business of such Subcontractor, and such other information as the County may require. The County will have the right to require the Contractor not to award any subcontract to a person, firm or corporation disapproved by the County.
- c) Before entering into any subcontract hereunder, the Contractor will inform the Subcontractor fully and completely of all provisions and requirements of this Agreement relating either directly or indirectly to the Services to be performed. Such Services performed by such Subcontractor will strictly comply with the requirements of this Contract.
- d) In order to qualify as a Subcontractor satisfactory to the County, in addition to the other requirements herein provided, the Subcontractor must be prepared to prove to the satisfaction of the County that it has the necessary facilities, skill and experience, and ample financial resources to perform the Services in a satisfactory manner. To be considered skilled and experienced, the Subcontractor must show to the satisfaction of the County that it has satisfactorily performed services of the same general type which is required to be performed under this Agreement.
- e) The County shall have the right to withdraw its consent to a subcontract if it appears to the County that the subcontract will delay, prevent, or otherwise impair the performance of the Contractor's obligations under this Agreement. All Subcontractors are required to protect the confidentiality of the County's and County's proprietary and confidential information. Contractor shall furnish to the County copies of all subcontracts between Contractor and Subcontractors and suppliers hereunder. Within each such subcontract, there shall be a clause for the benefit of the County in the event the County finds the Contractor in breach of this Contract, permitting the County to request completion by the

Subcontractor of its performance obligations under the subcontract. The clause shall include an option for the County to pay the Subcontractor directly for the performance by such Subcontractor. Notwithstanding, the foregoing shall neither convey nor imply any obligation or liability on the part of the County to any subcontractor hereunder as more fully described herein.

ARTICLE 21. ASSUMPTION, PARAMETERS, PROJECTIONS, ESTIMATES AND EXPLANATIONS

The Contractor understands and agrees that any assumptions, parameters, projections, estimates and explanations presented by the County were provided to the Contractor for evaluation purposes only. However, since these assumptions, parameters, projections, estimates and explanations represent predictions of future events the County makes no representations or guarantees; and the County shall not be responsible for the accuracy of the assumptions presented; and the County shall not be responsible for conclusions to be drawn therefrom; and any assumptions, parameters, projections, estimates and explanations shall not form the basis of any claim by the Contractor. The Contractor accepts all risk associated with using this information.

ARTICLE 22. SEVERABILITY

If this Agreement contains any provision found to be unlawful, the same shall be deemed to be of no effect and shall be deemed stricken from this Agreement without affecting the binding force of this Agreement as it shall remain after omitting such provision.

ARTICLE 23. TERMINATION AND SUSPENSION OF WORK

- a) The County may terminate this Agreement if an individual or corporation or other entity attempts to meet its contractual obligation with the County through fraud, misrepresentation or material misstatement.
- b) The County may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or other entity has with the County and that such individual, corporation or other entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees.
- c) The foregoing notwithstanding, any individual, corporation or other entity which attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be debarred from County contracting for up to five (5) years in accordance with the County debarment procedures. The Contractor may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the Code of Miami-Dade County.
- d) In addition to cancellation or termination as otherwise provided in this Agreement, the County may at any time, in its sole discretion, with or without cause, terminate this Agreement by written notice to the Contractor.
- e) In the event that the County exercises its right to terminate this Agreement, the Contractor shall, upon receipt of such notice, unless otherwise directed by the County:
 - i. stop work on the date specified in the notice ("the Effective Termination Date");
 - ii. take such action as may be necessary for the protection and preservation of the

- County's materials and property;
- iii. cancel orders;
 - iv. assign to the County and deliver to any location designated by the County any non-cancelable orders for Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement and not incorporated in the Services;
 - v. take no action which will increase the amounts payable by the County under this Agreement; and
- f) In the event that the County exercises its right to terminate this Agreement, the Contractor will be compensated as stated in the payment Articles herein for the:
- i. portion of the Services completed in accordance with the Agreement up to the Effective Termination Date; and
 - ii. non-cancelable Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement, but not incorporated in the Services.
- g) All compensation pursuant to this Article are subject to audit.

ARTICLE 24. EVENT OF DEFAULT

- a) An Event of Default shall mean a breach of this Agreement by the Contractor. Without limiting the generality of the foregoing, and in addition to those instances referred to herein as a breach, an Event of Default shall include the following:
- i. the Contractor has not delivered Deliverables on a timely basis;
 - ii. the Contractor has refused or failed to supply enough properly skilled staff personnel;
 - iii. the Contractor has failed to make prompt payment to subcontractors or suppliers for any Services;
 - iv. the Contractor has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or debtor/creditor law or if the Contractor's affairs have been put in the hands of a receiver;
 - v. the Contractor has failed to obtain the approval of the County where required by this Agreement;
 - vi. the Contractor has failed to provide "adequate assurances" as required under subsection b below;
 - vii. the Contractor has failed in the representation of any warranties stated herein.
- b) When, in the opinion of the County, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Services or any portion thereof, the County may

request that the Contractor, within the timeframe set forth in the County's request, provide adequate assurances to the County, in writing, of the Contractor's ability to perform in accordance with the terms of this Agreement. Until the County receives such assurances, the County may request an adjustment to the compensation received by the Contractor for portions of the Services which the Contractor has not performed. In the event that the Contractor fails to provide to the County the requested assurances within the prescribed timeframe, the County may:

- i. treat such failure as a repudiation of this Agreement; and
- ii. resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Services or any part thereof either by itself or through others.
- c) In the event the County shall terminate this Agreement for default, the County or its designated representatives may immediately take possession of all applicable equipment, materials, products, documentation, reports and data.

ARTICLE 25. NOTICE OF DEFAULT - OPPORTUNITY TO CURE

If an Event of Default occurs in the determination of the County, the County may so notify the Contractor ("Default Notice"), specifying the basis for such default, and advising the Contractor that such default must be cured immediately or this Agreement with the County may be terminated. Notwithstanding, the County may, in its sole discretion, allow the Contractor to rectify the default to the County's reasonable satisfaction within a thirty (30) day period. The County may grant an additional period of such duration as the County shall deem appropriate without waiver of any of the County's rights hereunder, so long as the Contractor has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) day period or any other period which the County prescribes. The default notice shall specify the date the Contractor shall discontinue the Services upon the Termination Date.

ARTICLE 26. REMEDIES IN THE EVENT OF DEFAULT

If an Event of Default occurs, the Contractor shall be liable for all damages resulting from the default, including but not limited to:

- a) lost revenues;
- b) the difference between the cost associated with procuring Services hereunder and the amount actually expended by the County for re-procurement of Services, including procurement and administrative costs; and
- c) such other direct damages.

The Contractor shall also remain liable for any liabilities and claims related to the Contractor's default. The County may also bring any suit or proceeding for specific performance or for an injunction.

ARTICLE 27. PATENT AND COPYRIGHT INDEMNIFICATION

- a) The Contractor shall not infringe on any copyrights, trademarks, service marks, trade secrets, patent rights, other intellectual property rights or any other third party proprietary rights in the performance of the Work.

- b) The Contractor warrants that all Deliverables furnished hereunder, including but not limited to: equipment, programs, documentation, software, analyses, applications, methods, ways, processes, and the like, do not infringe upon or violate any copyrights, trademarks, service marks, trade secrets, patent rights, other intellectual property rights or any other third party proprietary rights.
- c) The Contractor shall be liable and responsible for any and all claims made against the County for infringement of patents, copyrights, service marks, trade secrets or any other third party proprietary rights, by the use or supplying of any programs, documentation, software, analyses, applications, methods, ways, processes, and the like, in the course of performance or completion of, or in any way connected with, the Work, or the County's continued use of the Deliverables furnished hereunder. Accordingly, the Contractor at its own expense, including the payment of attorney's fees, shall indemnify, and hold harmless the County and defend any action brought against the County with respect to any claim, demand, cause of action, debt, or liability.
- d) In the event any Deliverable or anything provided to the County hereunder, or portion thereof is held to constitute an infringement and its use is or may be enjoined, the Contractor shall have the obligation to, at the County's option to (i) modify, or require that the applicable subcontractor or supplier modify, the alleged infringing item(s) at its own expense, without impairing in any respect the functionality or performance of the item(s), or (ii) procure for the County, at the Contractor's expense, the rights provided under this Agreement to use the item(s).
- e) The Contractor shall be solely responsible for determining and informing the County whether a prospective supplier or subcontractor is a party to any litigation involving patent or copyright infringement, service mark, trademark, violation, or proprietary rights claims or is subject to any injunction which may prohibit it from providing any Deliverable hereunder. The Contractor shall enter into agreements with all suppliers and subcontractors at the Contractor's own risk. The County may reject any Deliverable that it believes to be the subject of any such litigation or injunction, or if, in the County's judgment, use thereof would delay the Work or be unlawful.

ARTICLE 28. CONFIDENTIALITY

- a) All Developed Works and other materials, data, transactions of all forms, financial information, documentation, inventions, designs and methods obtained from the County in connection with the Services performed under this Agreement, made or developed by the Contractor or its subcontractors in the course of the performance of such Services, or the results of such Services, or which the County holds the proprietary rights, constitute Confidential Information and may not, without the prior written consent of the County, be used by the Contractor or its employees, agents, subcontractors or suppliers for any purpose other than for the benefit of the County, unless required by law. In addition to the foregoing, all County employee information and County financial information shall be considered Confidential Information and shall be subject to all the requirements stated herein. Neither the Contractor nor its employees, agents, subcontractors or suppliers may sell, transfer, publish, disclose, display, license or otherwise make available to others any part of such Confidential Information without the prior written consent of the County. Additionally, the Contractor expressly agrees to be bound by and to defend, indemnify and hold harmless the County, and their officers and employees from the breach of any federal, state or local law in regard to the privacy of individuals.
- b) The Contractor shall advise each of its employees, agents, subcontractors and suppliers

who may be exposed to such Confidential Information of their obligation to keep such information confidential and shall promptly advise the County in writing if it learns of any unauthorized use or disclosure of the Confidential Information by any of its employees or agents, or subcontractor's or supplier's employees, present or former. In addition, the Contractor agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of the Confidential Information.

- c) It is understood and agreed that in the event of a breach of this Article damages may not be an adequate remedy and the County shall be entitled to injunctive relief to restrain any such breach or threatened breach. Unless otherwise requested by the County, upon the completion of the Services performed hereunder, the Contractor shall immediately turn over to the County all such Confidential Information existing in tangible form, and no copies thereof shall be retained by the Contractor or its employees, agents, subcontractors or suppliers without the prior written consent of the County. A certificate evidencing compliance with this provision and signed by an officer of the Contractor shall accompany such materials.

ARTICLE 29. PROPRIETARY INFORMATION

As a political subdivision of the State of Florida, Miami-Dade County is subject to the stipulations of Florida's Public Records Law.

The Contractor acknowledges that all computer software in the County's possession may constitute or contain information or materials which the County has agreed to protect as proprietary information from disclosure or unauthorized use and may also constitute or contain information or materials which the County has developed at its own expense, the disclosure of which could harm the County's proprietary interest therein.

During the term of the contract, the Contractor will not use directly or indirectly for itself or for others, or publish or disclose to any third party, or remove from the County's property, any computer programs, data compilations, or other software which the County has developed, has used or is using, is holding for use, or which are otherwise in the possession of the County (hereinafter "Computer Software"). All third-party license agreements must also be honored by the contractors and their employees, except as authorized by the County and, if the Computer Software has been leased or purchased by the County, all hired party license agreements must also be honored by the contractors' employees with the approval of the lessor or Contractors thereof. This includes mainframe, minis, telecommunications, personal computers and any and all information technology software.

The Contractor will report to the County any information discovered or which is disclosed to the Contractor which may relate to the improper use, publication, disclosure or removal from the County's property of any information technology software and hardware and will take such steps as are within the Contractor's authority to prevent improper use, disclosure or removal.

ARTICLE 30. PROPRIETARY RIGHTS

- a) The Contractor hereby acknowledges and agrees that the County retains all rights, title and interests in and to all materials, data, documentation and copies thereof furnished by the County to the Contractor hereunder or furnished by the Contractor to the County and/or created by the Contractor for delivery to the County, even if unfinished or in process, as a result of the Services the Contractor performs in connection with this Agreement, including

all copyright and other proprietary rights therein, which the Contractor as well as its employees, agents, subcontractors and suppliers may use only in connection with the performance of Services under this Agreement. The Contractor shall not, without the prior written consent of the County, use such documentation on any other project in which the Contractor or its employees, agents, subcontractors or suppliers are or may become engaged. Submission or distribution by the Contractor to meet official regulatory requirements or for other purposes in connection with the performance of Services under this Agreement shall not be construed as publication in derogation of the County's copyrights or other proprietary rights.

- b) All rights, title and interest in and to certain inventions, ideas, designs and methods, specifications and other documentation related thereto developed by the Contractor and its subcontractors specifically for the County, hereinafter referred to as "Developed Works" shall become the property of the County.
- c) Accordingly, neither the Contractor nor its employees, agents, subcontractors or suppliers shall have any proprietary interest in such Developed Works. The Developed Works may not be utilized, reproduced or distributed by or on behalf of the Contractor, or any employee, agent, subcontractor or supplier thereof, without the prior written consent of the County, except as required for the Contractor's performance hereunder.
- d) Except as otherwise provided in subsections a, b, and c above, or elsewhere herein, the Contractor and its subcontractors and suppliers hereunder shall retain all proprietary rights in and to all Licensed Software provided hereunder, that have not been customized to satisfy the performance criteria set forth in the Scope of Services. Notwithstanding the foregoing, the Contractor hereby grants, and shall require that its subcontractors and suppliers grant, if the County so desires, a perpetual, irrevocable and unrestricted right and license to use, duplicate, disclose and/or permit any other person(s) or entity(ies) to use all such Licensed Software and the associated specifications, technical data and other Documentation for the operations of the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. Such license specifically includes, but is not limited to, the right of the County to use and/or disclose, in whole or in part, the technical documentation and Licensed Software, including source code provided hereunder, to any person or entity outside the County for such person's or entity's use in furnishing any and/or all of the Deliverables provided hereunder exclusively for the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. No such License Software, specifications, data, documentation or related information shall be deemed to have been given in confidence and any statement or legend to the contrary shall be void and of no effect.

ARTICLE 31. VENDOR REGISTRATION/CONFLICT OF INTEREST

a) Vendor Registration

The Contractor shall be a registered vendor with the County – Internal Services Department, Strategic Procurement Division, for the duration of this Agreement. In becoming a registered vendor with Miami-Dade County, the Contractor confirms its knowledge of and commitment to comply with the following:

1. ***Miami-Dade County Ownership Disclosure Affidavit***
(Section 2-8.1 of the Code of Miami-Dade County)

2. ***Miami-Dade County Employment Disclosure Affidavit***
(Section 2.8.1(d)(2) of the Code of Miami-Dade County)

3. **Miami-Dade County Employment Drug-free Workplace Certification**
(Section 2-8.1.2(b) of the Code of Miami-Dade County)
4. **Miami-Dade County Disability and Nondiscrimination Affidavit**
(Section 2-8.1.5 of the Code of Miami-Dade County)
5. **Miami-Dade County Debarment Disclosure Affidavit**
(Section 10.38 of the Code of Miami-Dade County)
6. **Miami-Dade County Vendor Obligation to County Affidavit**
(Section 2-8.1 of the Code of Miami-Dade County)
7. **Miami-Dade County Code of Business Ethics Affidavit**
(Sections 2-8.1(i), 2-11.1(b)(1) through (6) and (9), and 2-11.1(c) of the Code of Miami-Dade County)
8. **Miami-Dade County Family Leave Affidavit**
(Article V of Chapter 11 of the Code of Miami-Dade County)
9. **Miami-Dade County Living Wage Affidavit**
(Section 2-8.9 of the Code of Miami-Dade County)
10. **Miami-Dade County Domestic Leave and Reporting Affidavit** (Article VIII, Section 11A-60 - 11A-67 of the Code of Miami-Dade County)
11. **Miami-Dade County E-Verify Affidavit**
(Executive Order 11-116)
12. **Miami-Dade County Pay Parity Affidavit**
(Resolution R-1072-17)
13. **Miami-Dade County Suspected Workers' Compensation Fraud Affidavit**
(Resolution R-919-18)
14. **Subcontracting Practices**
(Section 2-8.8 of the Code of Miami-Dade County)
15. **Subcontractor/Supplier Listing**
(Section 2-8.1 of the Code of Miami-Dade County)
16. **Form W-9 and 147c Letter**
(as required by the Internal Revenue Service)
17. **FEIN Number or Social Security Number**
In order to establish a file, the Contractor's Federal Employer Identification Number (FEIN) must be provided. If no FEIN exists, the Social Security Number of the owner or individual must be provided. This number becomes Contractor's "County Vendor Number". To comply with Section 119.071(5) of the Florida Statutes relating to the collection of an individual's Social Security Number, be aware that the County requests the Social Security Number for the following purposes:
 - Identification of individual account records
 - To make payments to individual/Contractor for goods and services provided to Miami-Dade County
 - Tax reporting purposes
 - To provide a unique identifier in the vendor database that may be used for searching and sorting departmental records
18. **Office of the Inspector General**
(Section 2-1076 of the Code of Miami-Dade County)
19. **Small Business Enterprises**
The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.1.1.1.1, 2-8.1.1.1.2 and 2-8.2.2 of the Code of Miami-Dade County and Title 49 of the Code of Federal Regulations.
20. **Antitrust Laws**
By acceptance of any contract, the Contractor agrees to comply with all antitrust laws of the United States and the State of Florida.

b) Conflict of Interest and Code of Ethics

Section 2-11.1(d) of the Code of Miami-Dade County requires that any County employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County, competing or applying for a contract, must first request a conflict of interest opinion from the County's Ethics Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County. Any such contract or business engagement entered in violation of this subsection, as amended, shall be rendered voidable. All autonomous personnel, quasi-judicial personnel, advisory personnel, and employees wishing to do business with the County are hereby advised they must comply with the applicable provisions of Section 2-11.1 of the Code of Miami-Dade County relating to Conflict of Interest and Code of Ethics. In accordance with Section 2-11.1 (y), the Miami-Dade County Commission on Ethics and Public Trust (Ethics Commission) shall be empowered to review, interpret, render advisory opinions and letters of instruction and enforce the Conflict of Interest and Code of Ethics Ordinance.

ARTICLE 32. INSPECTOR GENERAL REVIEWS**Independent Private Sector Inspector General Reviews**

Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Contractor shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Contractor's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision apply to the Contractor, its officers, agents, employees, subcontractors and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of the Contractor in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Contractor or any third party.

Miami-Dade County Inspector General Review

According to Section 2-1076 of the Code of Miami-Dade County, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts. The cost of the audit for this Contract shall be one quarter (1/4) of one (1) percent of the total contract amount which cost shall be included in the total contract amount. The audit cost will be deducted by the County from progress payments to the Contractor. The audit cost shall also be included in all change orders and all contract renewals and extensions.

Exception: The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; **(g) insurance contracts;** (h) revenue-generating contracts; (i) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Implementing Order 3-38; (m) federal, state and local government-funded grants; and (n) interlocal agreements. ***Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter (1/4) of one percent in any exempted contract at the time of award.***

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Contract. The Inspector General shall have the power to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Contractor, its officers, agents and employees, lobbyists, County staff and elected officials

to ensure compliance with contract specifications and to detect fraud and corruption.

Upon written notice to the Contractor from the Inspector General or IPSIG retained by the Inspector General, the Contractor shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in the Contractor's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

ARTICLE 33. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS

Contractor agrees to comply, subject to applicable professional standards, with the provisions of any and all applicable Federal, State and the County orders, statutes, ordinances, rules and regulations which may pertain to the Services required under this Agreement, including, but not limited to:

- a) Equal Employment Opportunity (EEO), in compliance with Executive Order 11246 as amended and applicable to this Contract.
- b) Miami-Dade County Small Business Enterprises Development Participation Provisions, as applicable to this Contract.
- c) Environmental Protection Agency (EPA), as applicable to this Contract.
- d) Section 2-11.1 of the Code of Miami-Dade County, "Conflict of Interest and Code of Ethics."
- e) Section 10-38 of the Code of Miami-Dade County, "Debarment of Contractors from County Work."
- f) Section 11A-60 - 11A-67 of the Code of Miami-Dade County, "Domestic Leave."
- g) Section 21-255 of the Code of Miami-Dade County, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.
- h) The Equal Pay Act of 1963, as amended (29 U.S.C. 206(d)).
- i) Section 448.07 of the Florida Statutes "Wage Rate Discrimination Based on Sex Prohibited."
- j) Chapter 11A of the Code of Miami-Dade County (§ 11A-1 et seq.) "Discrimination."
- k) Chapter 22 of the Code of Miami-Dade County (§ 22-1 et seq.) "Wage Theft."
- l) Chapter 8A, Article XIX, of the Code of Miami-Dade County (§ 8A-400 et seq.) "Business Regulations."

- m) Any other laws prohibiting wage rate discrimination based on sex.

Pursuant to Resolution R-1072-17, by entering into this Contract, the Contractor is certifying that the Contractor is in compliance with, and will continue to comply with, the provisions of items “h” through “m” above.

The Contractor shall hold all licenses and/or certifications, obtain and pay for all permits and/or inspections, and comply with all laws, ordinances, regulations and building code requirements applicable to the work required herein. Damages, penalties, and/or fines imposed on the County or Contractor for failure to obtain and maintain required licenses, certifications, permits and/or inspections shall be borne by the Contractor. The Project Manager shall verify the certification(s), license(s), permit(s), etc. for the Contractor prior to authorizing work and as needed.

Notwithstanding any other provision of this Agreement, Contractor shall not be required pursuant to this Agreement to take any action or abstain from taking any action if such action or abstention would, in the good faith determination of the Contractor, constitute a violation of any law or regulation to which Contractor is subject, including but not limited to laws and regulations requiring that Contractor conduct its operations in a safe and sound manner.

ARTICLE 34. NONDISCRIMINATION

During the performance of this Contract, Contractor agrees to not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, gender identity or gender expression, status as victim of domestic violence, dating violence or stalking, or veteran status, and on housing related contracts the source of income, and will take affirmative action to ensure that employees and applicants are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

By entering into this Contract, the Contractor attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts) or Miami-Dade County Resolution No. R-385-95. If the Contractor or any owner, subsidiary or other firm affiliated with or related to the Contractor is found by the responsible enforcement agency or the County to be in violation of the Act or the Resolution, such violation shall render this Contract void. This Contract shall be void if the Contractor submits a false affidavit pursuant to this Resolution or the Contractor violates the Act or the Resolution during the term of this Contract, even if the Contractor was not in violation at the time it submitted its affidavit.

ARTICLE 35. CONFLICT OF INTEREST

The Contractor represents that:

- a) No officer, director, employee, agent, or other consultant of the County or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the award of this Agreement.
- b) There are no undisclosed persons or entities interested with the Contractor in this Agreement. This Agreement is entered into by the Contractor without any connection with any other entity or person making a proposal for the same purpose, and without collusion,

fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the County, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:

- i) is interested on behalf of or through the Contractor directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or work, to which this Agreement relates or in any portion of the revenues; or
 - ii) is an employee, agent, advisor, or consultant to the Contractor or to the best of the Contractor's knowledge any subcontractor or supplier to the Contractor.
- c) Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligation under this Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Contractor provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.
- d) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.
- e) In the event Contractor has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Contractor shall promptly bring such information to the attention of the County's Project Manager. Contractor shall thereafter cooperate with the County's review and investigation of such information, and comply with the instructions Contractor receives from the Project Manager in regard to remedying the situation.

ARTICLE 36. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION

Under no circumstances shall the Contractor without the express written consent of the County:

- a) Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the County, or the Work being performed hereunder, unless the Contractor first obtains the written approval of the County. Such approval may be withheld if for any reason the County believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and
- b) Communicate in any way with any contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the County; and
- c) Except as may be required by law, the Contractor and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Contractor or such parties has been approved or endorsed by the County.

ARTICLE 37. BANKRUPTCY

The County reserves the right to terminate this contract, if, during the term of any contract the Contractor has with the County, the Contractor becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution, or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of the Contractor under federal bankruptcy law or any state insolvency law.

ARTICLE 38. GOVERNING LAW

This Contract, including appendices, and all matters relating to this Contract (whether in contract, statute, tort (such as negligence), or otherwise) shall be governed by, and construed in accordance with, the laws of the State of Florida. Venue shall be Miami-Dade County.

ARTICLE 39. COUNTY USER ACCESS PROGRAM (UAP)

County User Access Program is not applicable to this Contract.

ARTICLE 40. FIRST SOURCE HIRING REFERRAL PROGRAM

Pursuant to Section 2-2113 of the Code of Miami-Dade County, for all contracts for goods and services, the Contractor, prior to hiring to fill each vacancy arising under a County contract shall (1) first notify the South Florida Workforce Investment Board ("SFWIB"), the designated Referral Agency, of the vacancy and list the vacancy with SFWIB according to the Code, and (2) make good faith efforts as determined by the County to fill a minimum of fifty percent (50%) of its employment needs under the County contract through the SFWIB. If no suitable candidates can be employed after a Referral Period of three to five days, the Contractor is free to fill its vacancies from other sources. Contractor will be required to provide quarterly reports to the SFWIB indicating the name and number of employees hired in the previous quarter, or why referred candidates were rejected. Sanctions for non-compliance shall include, but not be limited to: (i) suspension of contract until Contractor performs obligations, if appropriate; (ii) default and/or termination; and (iii) payment of \$1,500/employee, or the value of the wages that would have been earned given the noncompliance, whichever is less. Registration procedures and additional information regarding the FSHRP are available at <https://iapps.careersourcesfl.com/firstsource/>.

ARTICLE 41. PUBLIC RECORDS AND CONTRACTS FOR SERVICES PERFORMED ON BEHALF OF MIAMI-DADE COUNTY

The Contractor shall comply with the Public Records Laws of the State of Florida, including by not limited to, (1) keeping and maintaining all public records that ordinarily and necessarily would be required by the County in order to perform the service; (2) providing the public with access to public records on the same terms and conditions that the County would provide the records and at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law; (3) ensuring that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (4) meeting all requirements for retaining public records and transferring, at no cost, to the County all public records in possession of the Contractor upon termination of the contract and destroying any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements upon such transfer. In addition, all records stored electronically must be provided to the County in a format that is compatible with the information technology systems of the County. Failure to meet any of these provisions or to comply with Florida's Public Records Laws as applicable shall be a material breach of this Agreement and shall be enforced in accordance with the terms and conditions of the Agreement.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (305) 375-5773, ISD-VSS@MIAMIDADE.GOV, 111 NW 1st STREET, SUITE 1300, MIAMI, FLORIDA 33128

ARTICLE 42. SURVIVAL

The parties acknowledge that any of the obligations in this Agreement will survive the term, termination and cancellation hereof. Accordingly, the respective obligations of the Contractor and the County under this Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof.

ARTICLE 43. INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION and/or PROTECTED HEALTH INFORMATION

Any person or entity that performs or assists Miami-Dade County with a function or activity involving the use or disclosure of "Individually Identifiable Health Information (IIHI) and/or Protected Health Information (PHI) shall comply with the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the Miami-Dade County Privacy Standards Administrative Order. HIPAA mandates for privacy, security and electronic transfer standards, include but are not limited to:

1. Use of information only for performing services required by the contract or as required by law;
2. Use of appropriate safeguards to prevent non-permitted disclosures;
3. Reporting to Miami-Dade County of any non-permitted use or disclosure;
4. Assurances that any agents and subcontractors agree to the same restrictions and conditions that apply to the Contractor and reasonable assurances that IIHI/PHI will be held confidential;
5. Making Protected Health Information (PHI) available to the customer;
6. Making PHI available to the customer for review and amendment; and incorporating any amendments requested by the customer;
7. Making PHI available to Miami-Dade County for an accounting of disclosures; and
8. Making internal practices, books and records related to PHI available to Miami-Dade County for compliance audits.

PHI shall maintain its protected status regardless of the form and method of transmission (paper records, and/or electronic transfer of data). The Contractor must give its customers written notice of its privacy information practices including specifically, a description of the types of uses and disclosures that would be made with protected health information.

(Signatures on Following Page)

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the contract date herein above set forth.

Humana Insurance Company

Miami-Dade County

By:



Name: Richard D. Remmers

Title: SVP, Employer Group Sales

Date: August 26, 2020

Attest: Rebecca K. French

Corporate Secretary/Notary
Public

By:

Name: Carlos A. Gimenez

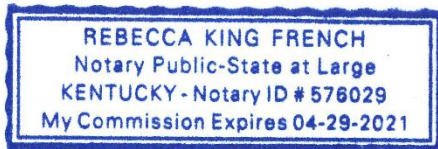
Title: Mayor

Date:

Attest:

Clerk of the Board

Corporate Seal/Notary Seal



Approved as to form
and legal sufficiency

Assistant County Attorney

ATTACHMENT A SCOPE OF SERVICES

1. Introduction/Background

Miami-Dade County, hereinafter referred to as the County, as represented by the Miami-Dade County Human Resources Department, is contracting for a comprehensive Voluntary Group Vision Insurance Program (Program) and related services for the benefit of County and covered groups. Covered groups include Miami-Dade County active employees, retirees (Medicare and Non-Medicare Eligible), Consolidated Omnibus Budget Reconciliation Act (COBRA) participants and their eligible dependents, in addition to both the Housing Finance and Industrial Development Authorities. Jackson Health System (JHS) was previously a part of the covered group within the County's Program but will not participate as a part of the covered group in the County's future program.

The County reserves the right to, at any time during the term of this Contract, allow either JHS and/or the International Association of Fire Fighters (IAFF) group to participate in the County's Program. The IAFF group continue to participate in the County's existing dental and vision programs.

The County prefers for the Contractor to have and maintain the following qualifications:

- a) Have a minimum "A- Rating" from A.M. Best and a Financial Classification of "VII" or higher as of their firm's most recent rating.
- b) Possess a minimum of five (5) years of experience providing similar services to those requested herein for groups of 5,000 employees or greater.

2. Minimum Qualification Requirement.

The minimum qualification requirement for this Contract is that the Contractor shall be licensed by the State of Florida, Office of Insurance Regulation, to provide the plan services for which the proposal is being submitted for, as of proposal due date.

Note: The above requirement is a continuing condition of award, as the Contractor must maintain this minimum qualification throughout the duration of the contract.

3. Program Overview and Plan Benefits.

Contractor shall provide the vision plan design for the contracted Program as indicated on **Attachment H, Vision Plan Design Chart**

4. General Information.

- a) New full-time employees are eligible for benefits coverage on the first day of the month following (or coincident with) 60 days of employment. Any part-time non-temporary status employee, who consistently works at least 60 hours bi-weekly and has completed 60 continuous days of employment is eligible for coverage. If an election is made, coverage is effective the first day of the month following completion of the eligibility period without any actively-at-work exclusion. Eligibility for part-

time employees is subject to change and will coincide with the eligibility for healthcare benefits for "variable hour" employees as defined by the Affordable Care Act. Executives, as identified by the County, are eligible for coverage on their first day of employment.

Dependent eligibility is defined as follows:

- 1) Spouse or Domestic Partner (unless an eligible County employee).
 - 2) Married or unmarried natural children (whether or not they live with the employee), children of a domestic partner, adopted children, stepchildren or a child for whom the employee has been appointed a legal guardian pursuant to a valid court order to the end of the calendar year in which the child turns 26 (providing not offered coverage at work). The Contractor will require proof of eligibility if the child's last name differs from the employee's.
 - 3) Coverage for an unmarried dependent child may be continued beyond age 26 if the child is mentally or physically disabled. Proof of disability may be required.
- b) All underwriting requirements shall conform to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), where applicable (see **Appendix C**).
- 1) Employees who do not enroll within their initial benefits eligibility period, and do not satisfy a HIPAA special enrollment qualifying event, may not enroll until the following annual open enrollment period with a January 1 effective date.
 - 2) All employees and dependents enrolled as of December 31, 2020 are eligible for coverage with no actively at work exclusion.
- c) The following rules apply for adding dependents:
- 1) New Dependents - A dependent of an insured may be added to the Program by submitting an application within 45 days (60 days for newborns) of acquiring the dependent status. The employee must enroll the dependent within 45 days after the marriage, registration of Domestic Partnership or birth/adoption of a child (60 days for newborns). Coverage for a new spouse or Domestic Partner is effective the first day of the month following receipt of the application. Coverage for a newborn, child placed for adoption, or adopted is effective as of the date of birth or the earlier of 1) placement for adoption, or 2) adoption date. The change in rate, if applicable, is effective the first day of the month following the birth or the earlier of 1) placement for adoption or, 2) adoption date.
 - 2) If eligible employees have declined coverage for themselves or their dependents because of other insurance coverage and the other coverage ends, they may request enrollment within 45 days after the other coverage ends.
 - 3) In accordance with Florida Statute 641.31(9)a: Payroll changes for the purpose of adding a newborn are processed as follows: if a Change in Status (CIS) Form is received by the County

within the first 31 days from birth, the rate is waived for the first 31 days. If the CIS Form is received after the first 31 days, but within 60 days of the birth, the new rate will be charged retroactive to the date of birth. The same applies when adding an adopted child or child placed for adoption. The rate is waived if the CIS Form is received by the County within the first 31 days from the earlier of: 1) adoption, or 2) placement for adoption. If the CIS Form is received after the first 31 days, but within 45 days of the event, the new rate will be charged retroactive to the earlier of: 1) adoption or 2) placement for adoption. Payroll changes to delete a dependent, other than those events specified in this paragraph, become effective the first day of the pay period following receipt by the County.

- d) Employee membership terminates on the last day of the pay period for which applicable payroll deductions are made after the date the employee ceases active work for any reason other than an approved leave of absence.

5. Administrative and Related Services.

The Contractor shall:

- a) Consent to the County's self-billing process as the Vision Plan shall be administered on a self-billing rate/premium remittance basis.
- b) Consent to the County's bi-weekly electronic transfers of rate/premium payments which will be remitted for the prior pay period based on the payroll deduction register. In addition, payments for retirees, leave of absence and judges will be remitted.
- c) Administer appropriate procedures to carefully monitor the status of over-age unmarried dependent children and dependent children of Domestic Partner (up to 26 years old) to ensure satisfactory proof of eligibility is obtained and that coverage complies with Federal and State regulations, including COBRA status. Dependent children and dependent children of Domestic Partner losing group coverage due to age or loss of dependent status must be notified of their coverage continuation rights. The Contractor shall notify the County within 60 days after the open enrollment effective date (January 1st of each year) of any discrepancies in eligibility including employee name, dependent to be deleted and any change in coverage level.
- d) Provide all COBRA administration, including mailing of the initial COBRA notification after receiving communication of a qualifying event from the County. Required services include billing of beneficiaries and collection of appropriate premiums.
- e) Issue HIPAA Notices of Privacy Practices to all new enrollees.
- f) Provide HIPAA certificates of coverage within 30 days of coverage termination.
- g) Verify all dependent eligibility at initial enrollment. Additionally, over-age dependents and dependents with different last names other than the Members', shall be verified at each subsequent Plan Year's open enrollment. The Contractor shall verify eligibility for new hires, new enrollees and their dependents within 30 days and notify the County of any discrepancies in eligibility within 60 days.
- h) Perform a bi-weekly reconciliation of accounts based on bi-weekly eligibility tapes provided by the County. The Contractor shall notify the County in writing within 10 days of any discrepancies, to

include Member name, identification number, name of ineligible Subscriber and change in coverage level, found in its reconciliation efforts, if any.

- i) Implement a Quality Control/Assurance Program that provides for continual monitoring of the services provided to the County and incorporates a self-inspection system. The Quality Control/Assurance Program shall also include methods for monitoring, identifying, and correcting deficiencies in the quality of service provided to the County and reporting the results of the findings annually to the County's Project Manager, or upon request by the County.
- j) Apprise the County on process and proficiency utilized in measuring general satisfaction amongst existing Members through sourcing mechanisms. The County anticipates receiving an annual report from the Contractor detailing the results and findings of satisfaction analysis.
- k) Provide a local account representative who shall be physically located in the Miami-Dade/Broward County area and have full account management capabilities. The account representative shall assist the County in facilitating all vision plan matters and related Services listed herein.
- l) Provide an Account Executive/Manager and account management team who shall:
 - 1) Devote the essential time to manage the County's account and be responsive to needs pertaining to this Scope of Services (inclusive of being readily available for frequent telephone calls and on-site consultations with County staff located in Miami, FL);
 - 2) Provide the County with the mobile phone numbers and email addresses of all key account management personnel to facilitate access and communication;
 - 3) Be thoroughly familiar with all of the Contractor's operational and administrative functions that relate to the County's account; and,
 - 4) Serve as an advocate for the County to effectively advance action items through the Contractor's organizational approval structure.
- m) Provide a toll-free customer service line with representatives who speak English, Spanish and Creole during the County's normal business hours (Monday – Friday, 8:00 a.m. to 5:00 p.m. Eastern Standard Time). The Contractor shall also provide an Automated Call Intake/Response System that has a "call distribution" feature with message acceptance capabilities for calls received after normal business hours. The Contractor shall complete a return call to Members/Subscribers within 24 hours of receipt of message by automated system.
- n) Provide a customized benefits website for the use of County employees, retirees and dependents. Website shall be available throughout the term of the contract resulting from this Solicitation – and shall exclusively include the County's vision program's summary of plan benefit materials and a listing of all network Providers, claims and reimbursement forms and any other documents which should be easily accessible to all members/subscribers. Contractor shall also provide all claim forms and informational documents in electronic format to the County for posting on its intranet and internet website portals.
- o) Implement the Miami-Dade County Employee Voluntary Group Vision Insurance Program in a timely fashion for a January 1, 2021 plan effective date, with open enrollment scheduled for October/November of 2020. Contractor shall include coordination of data processing systems and

an outline of delivery time for printed materials, including ID cards, claim forms, etc. to be presented to the County within 30 days from contract effective date.

- p) Formulate operational Performance Guarantee Standard Provisions (refer to **Attachment D, Performance Guarantee Standard Provisions**) which shall include the Contractor's implementation work plan and will put a certain portion of penalty amount at risk for completion of such tasks.
- 1) Implementation;
 - 2) Setting up eligibility data (i.e., Members/Subscribers, Dependents effective dates, etc.);
 - 3) Claims turnaround time;
 - 4) Claims process, payment and financial accuracy;
 - 5) Production of accurate Member/Subscriber correspondence, including but not limited to, ID Cards, Summary Plan Design and reports; and,
 - 6) Customer service.

Contractor's compliance with Performance Guarantee Standard Provisions shall be measured annually at the end of each Plan Year and shall remain in effect for the duration of any contract issued, and renewal options exercised, as a result of this Solicitation. Any non-compliance shall be assessed as liquidated damages.

- q) Ensure that the claims processing system is fully integrated with the County's eligibility system. The Contractor shall maintain and verify eligibility for coverage of all benefits.
- r) Allow the County, or its representative, in addition to the rights contained herein, the right to perform an annual audit of all claims, utilization management files, financial data and other information relevant to the County's account, with reasonable notice. The results of this independent audit may determine liquidated damages at risk for any non-compliance with the Performance Guarantee Standard Provisions.
- s) Provide an Annual Premiums versus Claims Utilization Report to the County within 45 days of the end of each Plan Year. The County reserves the right to request additional reports on an as-needed basis, in addition to, a yearly Survey Results Report to determine Member satisfaction.
- t) Prepare any and all reports which may, initially or at any future date, be required by the Internal Revenue Service, Department of Labor, and/or any other governmental agency.
- u) Provide a minimum of 24 months of historical data reporting within 15 days of contract termination.

6. Enrollment/Communications Provisions.

The Contractor shall:

- a) Provide promotional enrollment materials to the County at least 45 days prior to the start of the County's annual open enrollment period, anticipated to be late October/early November 2020. Enrollment materials shall be provided in printed format in an adequate amount, at the County's discretion. The County may also require the Contractor to provide enrollment materials in alternate formats (i.e., Braille, large print and/or audio compact disk). Printing and production of material costs are the sole responsibility of the Contractor.

- b) Draft materials, primarily including, but not limited to, the Summary Plan Description (SPD), at least 45 days prior to the Plan Year effective date, January 1st. The Contractor shall print and mail the SPD directly to Members' homes at no additional cost to the County, with additional supplies made available to the County, as deemed necessary by the County.
- c) Mail identification (ID) card to each enrolled Member within 5 business days from the date of receipt of each eligibility tape, excluding weekends and holidays. Temporary ID printing capability shall be available at the Contractor's website, for the purpose of facilitating:
 - 1) Change in coverage option;
 - 2) Change in coverage tier; and/or
 - 3) Replacement/duplicate card is requested.
- d) Identify Members by Social Security number **and/or** employer ID number, as required by the County. The confidentiality of Member Social Security numbers is of the utmost importance to the County. The Contractor shall bear the responsibility of protecting the privacy and legal rights of all Members/Subscribers.
- e) Distribute all communication materials to the various County locations no later than 2 weeks prior to the start of the County's open enrollment period. The Contractor shall receive written approval from the County on all booklets, and any and all other employee communications, prior to their printing. Additionally, the County retains the right to prohibit distribution of any materials that create false or misleading statements, reference any plan other than the Contractor's plan, or any other materials or "giveaways" which the County deems to be inappropriate.
- f) Review its plan-specific information listed in the County's Employee Benefits Enrollment Guide (refer to **Attachment E of the solicitation RFP-01418, Miami-Dade County's 2019 Benefits Enrollment Guide**) for accuracy and provide any updates to the County annually, no later than September 1st for the upcoming Plan Year. The County will finalize and publish the Benefits Enrollment Guide. The County shall retain final approval authority over all communication material.
- g) Consent to the use of the County's on-line enrollment process. The County currently uses web enrollment for the annual open enrollment and anticipates continued use of web enrollment for ongoing enrollments.
- h) Provide sufficient personnel to attend all program implementation meetings to be held by the County, and subsequent open enrollment regional meetings (approximately 45) on a schedule set by the County. Contractor's personnel shall have access to County employees on County premises, as determined by the County. Contractor's personnel (i.e., Account Executive/Manager/Representative, etc.) shall attend periodic meetings throughout the Plan Year, scheduled by the County, with reasonable notice given.
- i) Consent to **no minimum participation requirement levels**, nor corresponding adjustments of rates or premiums, due to changes in participation levels as a result of the Solicitation or during the term of the contract, including any renewals any extensions thereof.

- j) Consent to receiving eligibility data, in an electronic format, or in hard copy paper form, as deemed appropriate by the County.
- k) Update Member/Subscriber eligibility data within 2 business days from the date of file receipt from the County. The Contractor shall notify the County of any issues delaying the update of information, within 2 business days from the data upload.
- l) Provide a single point of contact for the purpose of facilitating County submission requests regarding eligibility, enrollment information, and coordinating any internal distribution of such information through the Contractor's organization, as well as, expediting any necessary transfer of data to third party administrators.

7. Fiduciary Protection.

In addition to the other insurance requirements stated in the contract (refer to the Agreement, Article 10 "Indemnification and Insurance" attached hereto), the Contractor shall provide indemnification and liability protection for the clinical and non-clinical administration components of this Program. The Contractor shall indemnify and hold the County harmless from any clinical, professional, or administrative decisions made by the Contractor rendering services, including the administration of the appeals process.

**ATTACHMENT B
PRICE SCHEDULE**

The rates shown below are the not-to-exceed rates for the Contractor to provide the Voluntary Vision Group Insurance Program Services, as stated in Appendix A, Scope of Services, during the term of the contract, and the options to renew periods.

RATE STRUCTURE

2021 Plan Year (1/1/2021 – 12/31/2021)		
	Low Plan	High Plan
Coverage Level	Monthly Rate Per Employee	Monthly Rate Per Employee
Employee Only	\$7.36	\$9.08
Employee + One Dependent	\$14.72	\$18.15
Employee + Family	\$26.44	\$33.38

2022 Plan Year (1/1/2022 – 12/31/2022)		
	Low Plan	High Plan
Coverage Level	Monthly Rate Per Employee	Monthly Rate Per Employee
Employee Only	\$7.36	\$9.08
Employee + One Dependent	\$14.72	\$18.15
Employee + Family	\$26.44	\$33.38

2023 Plan Year (1/1/2023 – 12/31/2023)		
	Low Plan	High Plan
Coverage Level	Monthly Rate Per Employee	Monthly Rate Per Employee
Employee Only	\$7.36	\$9.08
Employee + One Dependent	\$14.72	\$18.15
Employee + Family	\$26.44	\$33.38

Notes:

1. Monthly Rate per Employee shall be guaranteed for the initial contract term covering three (3) Plan Years, January 1, 2021 through December 31, 2023. Rates shall not be contingent upon minimum participation requirements.
2. The Contractor shall provide to the County's Project Manager the renewal rates for the two-year option period by June 1st 2023. Renewal rates shall be provided along with a justification of the Contractor's underwriting/actuarial methodology used to determine the new rates, if any. Supporting claims experience and utilization data shall be provided for the initial three plan years to facilitate the County's renewal process. If no recommended increase is received by the set date, the rates shall remain the same for the two-year option period (through December 31, 2025). Humana is offering a 5% rate cap for year 4 and a 5% cap for year 5. **For the 1/1/2024 renewal rates will not increase more than 5% and for the 1/1/2025 renewal rates will not increase by more than 5%.** The renewal rates are subject to negotiations and acceptance by the County.
3. Rates shall not be adjusted at any time during the Plan Year unless the County requests and agrees to contractual changes.
4. There shall be no additional costs to the County for all Services listed in Appendix A, Scope of Services, including reports as stated in Section 5, Administrative and Related Services of the Scope of Services.

5. Any extensions pursuant to Article 5 of the Agreement will be at the then current rates, unless the County approves an increase in the rates.

APPENDIX C - HIPAA BUSINESS ASSOCIATE ADDENDUM

This HIPAA Business Associate Addendum ("Addendum") supplements and is made a part of the Agreement by and between the Miami-Dade County, Florida ("County"), and Humana Insurance Company, Business Associate ("Associate").

RECITALS

- A. As part of the Agreement, it is necessary for the County to disclose certain information ("Information") to Associate pursuant to the terms of the Agreement, some of which may constitute Protected Health Information ("PHI").
- B. County and Associate intend to protect the privacy and provide for the security of PHI, including but not limited to, PHI, disclosed to Associate pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws.
- C. The purpose of this Addendum is to satisfy certain standards and requirements of HIPAA and the HIPAA Regulations, including, but not limited to, Title 45, Sections 164.308(b), 164.314(a), 164.502(e) and 164.504(e) of the Code of Federal Regulations ("CFR"), as the same may be amended from time to time.

In consideration of the mutual promises below and the exchange of information pursuant to the Agreement, the parties agree as follows:

1. Definitions. Terms used, but not otherwise defined, shall have the same meaning as those terms in 45 CFR Sections 160.103, 164.304 and 164.501.

a. "Business Associate" shall have the meaning given to such term under the HIPAA Regulations, including, but not limited to, 45 CFR Section 160.103.

b. "Covered Entity" shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including, but not limited to, 45 CFR Section 160.103.

c. "Protected Health Information" or "PHI" means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual, the provision of health care to an individual, or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including, but not limited to 45 CFR Section 1103. [45 CFR Parts 160, 162 and 164]

d. "Electronic Protected Health Information" or "ePHI" means any information that is transmitted or maintained in electronic media: (i) that relates to the past, present or future physical or mental condition of an individual, the provision of health care to an individual, or the past, present or future payment for the provision of health care to an individual. and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including, but

not limited to 45 CFR Section 160.103. [45 CFR Parts 160, 162 and 164]

e. “Electronic Media” shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including but not limited to, 45 CFR Section 160.103.

f. “Security incident” shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including but not limited to, 45 CFR Section 164.304.

2. Obligations of Associate.

a. Permitted Uses and Disclosures. Associate may use and/or disclose PHI received by Associate pursuant to the Agreement ("County's PHI") solely in accordance with the specifications set forth in the Scope of Services, Appendix A. In the event of any conflict between this Addendum and Appendix A, this Addendum shall control. [45 CFR § 164.504(e)(2)(i)]

b. Nondisclosure. Associate shall not use or further disclose County's PHI other than as permitted or required by law. [45 CFR § 164.504(e)(2)(ii)(A)]

c. Safeguards. Associate shall use appropriate safeguards to prevent use or disclosure of County's PHI in a manner other than as provided in this Addendum. [45 CFR § 164.504(e)(2)(ii)(B)] Associate shall maintain a comprehensive written information security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Associate's operations and the nature and scope of its activities. Appropriate safeguards used by Associate shall protect the confidentiality, integrity, and availability of the PHI and ePHI that is created, received, maintained, or transmitted on behalf of the County. [45 CFR § 164.314(a)(2)(i)(A)] County has at its sole discretion, the option to audit and inspect, the Associate's safeguards at any time during the life of the Agreement, upon reasonable notice being given to Associate for production of documents and coordination of inspection(s).

d. Reporting of Disclosures. Associate shall report to the County's Project Manager, any use or disclosure of the County's PHI in a manner other than as provided in this Addendum. [45 CFR § 164.504(e)(2)(ii)(c)] Associate shall report to the County through the County's Project Manager, any security incident of which it becomes aware within five (5) business days of discovery of the incident. [45 CFR § 164.314(a)(2)(i)(C)]

e. Associate's Agents. Associate agrees and shall ensure that any agents, including subcontractors, to whom it provides PHI received from (or created or received by Associate on behalf of) the County, agrees in writing to the same restrictions and conditions that apply to Associate with respect to such PHI and that such agents conduct their operations within the United States. Associate agrees and shall ensure that any agents, including subcontractors, to whom it provides ePHI received, created, maintained, or transmitted on behalf of the County, agrees in writing to implement reasonable and appropriate safeguards to protect the confidentiality, integrity, and availability of that ePHI. [45 CFR § 164.314(a)(2)(i)(B)] In no case may Associate's Agents reside and operate outside of the United States.

f. Documentation of Disclosures. Associate agrees to document disclosures of the County's PHI and information related to such disclosures as would be required for the County to respond to a request by an individual for an accounting of disclosures of PHI. Associate agrees to provide the County or an individual, in a time and manner designated by the County, information collected in accordance with the Agreement, to permit the County to respond to such a request for an accounting. [45 CFR § 164.528]

g. Availability of Information to County. Associate shall make available to the County such information as the County may require to fulfill the County's obligations to provide access to, provide a copy of, and account for, disclosures of PHI pursuant to HIPAA and the HIPAA Regulations, including, but not limited to, 45 CFR Sections 164.524 and 164.528. [45 CFR § 164.504(e)(2)(ii)(E) and (G)]

h. Amendment of PHI. Associate shall make the County's PHI available to the County as may be required to fulfill the County's obligations to amend PHI pursuant to HIPAA and the HIPAA Regulations, including, but not limited to, 45 CFR Section 164.526 and Associate shall, as directed by the County, incorporate any amendments to the County's PHI into copies of such PHI maintained by Associate, and in the time and manner designated by the County. [45 CFR § 164.504(e)(2)(ii)(F)]

i. Internal Practices. Associate shall make its internal practices, books and records relating to the use and disclosure of the County's PHI (or PHI created or received by Associate on behalf of the County) available to the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by the Secretary for purposes of determining Associate's compliance with HIPAA and the HIPAA Regulations. [45 CFR § 164.504(e)(2)(ii)(H) and 45 CFR Part 64, Subpart C.]

j. Mitigation. Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Associate of a use or disclosure of the County's PHI by Associate in violation of the requirements of this Addendum.

k. Associate's Insurance. Associate agrees to maintain the insurance coverage provided in the Agreement.

l. Notification of Breach. Associate shall notify and provide written notification to the County within five (5) business days of any suspected or actual breach of security, intrusion or unauthorized disclosure of PHI and/or any actual or suspected disclosure of data in violation of any applicable federal or state laws or regulations. Associate shall take (i) prompt corrective action to cure any such deficiencies, and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.

m. Expenses. Any and all expenses incurred by Associate in compliance with the terms of this Addendum or in compliance with the HIPAA Regulations shall be borne by Associate.

n. No Third Party Beneficiary. The provisions and covenants set forth in this Agreement are expressly entered into only by and between Associate and the County and are intended only for their benefit. Neither Associate nor the County intends to create or establish any third party beneficiary status or right (or the equivalent thereof) in any other third party nor shall any other third party have any right to enforce or enjoy any benefit created or established by the provisions and covenants in this Agreement.

3. Audits, Inspection and Enforcement. During the term of this Agreement, not more frequently than annually or in the event of a Security Breach, the County may ask Associate to complete a security/privacy survey and/or attestation document designed to assist County in understanding and documenting Associate's privacy and security procedures in compliance with the requirements contained herein. Associate shall promptly remedy any violation of this Addendum and shall certify the same to the County in writing. Failure for County to request a security/privacy survey and/or attestation document does not relieve Associate of its responsibility to comply with this Addendum, nor does the County's (i) failure to detect or (ii) detection, but failure to notify Associate or require Associate to remedy such breach, constitute acceptance of such practice or a waiver of the County's enforcement rights under this Addendum.

4. Termination.

a. Material Breach. A breach by Associate of any provision of this Addendum, shall constitute a material breach of the Agreement and shall provide grounds for immediate termination of the Agreement by the County. [45 CFR § 164.504(e)(3) and 45 CFR § 164.314(a)(2)(i)(D)]

b. Termination for Cause - Reasonable Steps to Cure Breach. If the County recognizes a pattern of activity or practice of Associate that constitutes a material breach or violation of the Associate's obligations under the provisions of this Addendum and does not terminate the Agreement pursuant to Section 4a, above, the County may provide an opportunity for Associate to end the violation or cure the breach within five (5) days, or other cure period as may be specified in the Agreement. If Associate does not cure the breach or end the violation within the time period provided, the County may immediately terminate the Agreement.

c. Judicial or Administrative Proceedings. The County may terminate the Agreement, effective immediately, if (i) Associate is named as a defendant in a criminal or administrative proceeding for a violation of HIPAA, or (ii) a finding or stipulation that Associate has violated any standard or requirement of the HIPAA Regulations (or other security or privacy law) is made in any administrative or civil proceeding.

d. Effect of Termination. Upon termination of the Agreement for any reason, Associate shall return or destroy as directed by the County all PHI, including but not limited to ePHI, received from the County (or created or received by Associate on behalf of the County) that Associate still maintains in any form. This provision shall also apply to County PHI that is in the possession of subcontractors or agents of Associate. Associate shall retain no copies of such PHI or, if return or destruction is not feasible, Associate shall provide to the County notification of the conditions that make return or destruction infeasible, and shall continue to extend the protections of this Addendum to such information, and limit further use or disclosure of such PHI to those purposes that make the return or destruction of such PHI infeasible. [45 CFR § 164.504(e)(2)(ii)(I)]

5. Indemnification. Associate shall indemnify and hold harmless the County and its officers, employees, trustees, agents, and instrumentalities (the indemnified parties) from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, trustees, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to, or resulting from the performance of this Addendum by Associate or its employees, agents, servants, partners, principals, or subcontractors. Associate shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits, or actions of any kind or nature in the name of any of the indemnified parties, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Both parties expressly understand and agree that any insurance protection required by this Addendum, or otherwise provided by either party, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the indemnified parties as herein provided. This paragraph shall survive the termination of the Agreement.

6. Limitation of Liability. Nothing in this Addendum shall be construed to affect or limit the County's sovereign immunity as set forth in Florida Statutes, Section 768.28.

7. Amendment.

a. Amendment to Comply with Law. The parties acknowledge that state and federal laws relating to the security and privacy of PHI, including electronic data, are rapidly evolving and that amendment of this Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HIPAA Regulations and other applicable laws relating to the security or confidentiality of PHI. The parties understand and agree that the County must receive satisfactory written assurance from Associate that Associate will adequately safeguard all PHI that it receives or creates pursuant to this Agreement. Upon the County's request, Associate agrees to promptly enter into an amendment to the Agreement embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA Regulations or other applicable laws. The County, in addition to any other remedies including specific performance, may terminate the Agreement upon five [5] days' written notice in the event Associate does not enter into said amendment to the Agreement providing assurances regarding the safeguarding of PHI that the County, in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the HIPAA Regulations. Notwithstanding Associate's failure to enter into an amendment, Associate shall comply with all provisions of the HIPAA laws.

b. Amendment of Appendix C. In addition to amendments described in 7a above, Appendix C may otherwise be modified or amended by written mutual agreement of the parties without amendment of the remainder of this Agreement."

8. Assistance in Litigation or Administrative Proceedings. Associate shall cooperate reasonably with County, in the event of litigation or administrative proceedings being commenced against the County, its trustees, officers, agents or employees based upon claimed violation of HIPAA, the HIPAA Regulations or other laws relating to security and privacy of this Agreement, except where Associate or its subcontractor, employee or agent is a named adverse party.

9. Effect on Agreement. Except as specifically required to implement the purposes of this Addendum, or to the extent inconsistent with this Addendum, all other terms of the Agreement shall remain in force and effect. In the event of any conflict between this Addendum and Agreement, this Addendum shall control.

10. Interpretation. This Addendum and the Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HIPAA Regulations and applicable Florida laws. The parties agree that any ambiguity in this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the HIPAA Regulations.

11. Jurisdiction. Any litigation between the parties regarding the terms of this Addendum shall take place in Miami-Dade County, Florida.

Note: The Contractor is Fully Insured, to include Protected Health Information.

Attachment D
Performance Guarantee Standard Provisions

Category	Standard	Measurement	Amount at Risk
Claims Financial Accuracy	99% payment accuracy ratio	Total dollars paid correctly (total dollars actually paid minus the absolute value of overpayments and underpayments) divided by total dollars that should have been paid for the audited sample.	.333% of annual premium
Claim Payment Accuracy	95% coding accuracy ratio	Total number of claims correctly processed divided by the total number of claims audited.	.333% of annual premium
Claims Turnaround	90% within 10 business days;	Time from the date a claim is received to the date it is processed (i.e., paid, pending or denied) excluding weekends and holidays (clean claims only).	.333% of annual premium
Telephone Response Time (with a live person)	90% within 30 seconds	Telephone system should provide statistics regarding time from call connecting to the 800# to the time it is answered by a live person.	.333% of annual premium
ID Cards	98% mailed within 5 business days	Time from the date of receipt of each eligibility tape to the date the ID card is mailed excluding weekends and holidays.	.333% of annual premium
Responsiveness to Written Correspondence	100% acknowledged within 7 business days; 95% resolved within 30 business days	Time from the date the correspondence is received to the date an acknowledgement/resolution of the inquiry is mailed.	.333% of annual premium
Turnaround	Eligibility electronic files/tapes updated daily	Time from date of receipt of eligibility file to date update completed.	.333% of annual premium

Category	Standard	Measurement	Amount at Risk
Accuracy	98% of all eligibility records complete and accurate	Total number of records complete and accurate divided by the total number of records audited.	.333% of annual premium
Miami-Dade County Satisfaction	100% satisfaction with the implementation process and its corresponding activities	Measurement will be based entirely on Miami-Dade County's overall satisfaction with the implementation process. Miami-Dade County will notify the Contractor immediately if there are any issues or areas of improvements that must be addressed. Miami-Dade County must have allowed a reasonable time, dependent of urgency in area of concern, for the Contractor to address and improve issues or concerns previously identified.	.333% of annual premium

ATTACHMENT E

(Intentionally Omitted)

**ATTACHMENT F
PROVIDER RECRUITMENT GUARANTEE**

Top 100 providers displayed in the disruption report, and the employee census provided by the County, shows that the Humana Vision network is currently larger than the RFP-00020 incumbent provider. Based on the benchmark of two providers within 10 miles, there are more than 1,600 providers at over 450 locations matching the Miami-Dade census footprint. This includes 31 LensCrafters and 12 Target Optical locations.

There are 17 locations that are in the current network that are not in the Humana network; of those, 12 are VisionWorks or Costco locations.

There are five independent providers Humana (Contractor) can commit to contacting for recruitment to join the Humana network.

Humana agrees to initiate recruitment efforts for these five providers who are not currently participating with Humana. Failure to reach out and attempt to recruit those providers by December 31, 2020 will result in a \$10,000 penalty payable to the County.

Humana representative Signature/Date

Miami-Dade County representative Signature/Date

In order for this agreement to be binding, signatures are required from both the County and Humana representative. This signed exhibit must be returned to Humana's Performance Guarantee Consultant for tracking purposes no later than 30 days post contract effective date.

ATTACHMENT G

(Intentionally Omitted)

ATTACHMENT H - VISION PLAN DESIGN CHART

Below listing reflects the minimum plan benefits required by the County. The County has incorporated two benefit enhancements in the areas of lenses and frames (see below). In considering these enhancements, the Proposer shall provide a plan design which matches the County's Plan Design Benefits, in addition to also stipulating the cost of incorporating the enhancements to the County's current vision plan design. The County, at its sole discretion, may select the plan benefits that are most beneficial to County employees.

		Humana Proposed BASE Option Benefits		Humana Proposed HIGH Option Benefits	
		In-Network	Out of Network Reimbursement	In-Network	Out of Network Reimbursement
Plan Frequencies	Exam	Once every Plan Year	12	Once every Plan Year	12
	Lenses	Once every Plan Year	12	Once every Plan Year	12
	Frames	Once every OTHER Plan Year	24	Once every Plan Year	12
(Co-payments)	Exam	\$0	Up to \$45 allowance	\$0	Up to \$45 allowance
	Retinal Imaging	Covered Person's Co-payment will never exceed \$39.	Applied to the allowance for the eye examination	Covered Person's Co-payment will never exceed \$39.	Applied to the allowance for the eye examination
	Lenses and/or Frames	\$10	See Below	\$10	See Below
Covered Lens Options	Transition/Photochromic	Paid in full	Paid in Full, up to \$38	Paid in full	Paid in Full, up to \$75
	Polycarbonate	Paid in full- children up to age 26/ \$40 charge for adults	Applied to the allowance for the applicable corrective lens	Paid in full	Applied to the allowance for the applicable corrective lens
	Progressive Standard/Premium Progressive	Paid in full	\$50	Paid in full	\$50
	Ultra Violet Coating	Paid in full	Applied to the allowance for the applicable corrective lens	Paid in full	Applied to the allowance for the applicable corrective lens
	Scratch Resistant Coating	\$15 copay	N/A	\$15 copay	N/A
Eye Exam		Paid in full	\$45	Paid in full	\$45
Lenses (per pair)	Single	Paid in full	\$40	Paid in full	\$40
	Bifocal	Paid in full	\$60	Paid in full	\$60
	Trifocal	Paid in full	\$80	Paid in full	\$80
	Lenticular	Paid in full	\$100	Paid in full	\$100
Contact Lenses (1)	Medically necessary	Paid in full	up to \$175	Paid in full	up to \$175
	Elective	up to \$120 (2)	up to \$120	up to \$120 (2)	up to \$120
	Contact lens Fitting Fee	Standard up to \$40 copay; Premium 10% off	Applied to allowance for contact lenses	Standard and premium covered in full after material copayment (2)	Applied to allowance for contact lenses
	Mail Order Contact	Online, in network provides an additional \$20 to the allowances at Contactsdirect.com	Allowed up to the allowances	Online, in network provides an additional \$20 to the allowances at contactsdirect.com	Allowed up to the allowances

Frame		\$160 allowance/ 20% off balance over \$160	\$50 allowance	\$160 allowance/ 20% off balance over \$160	\$50 allowance
Lasik Surgery		Discounts averaging 15-20% off the regular price or 5% off a promotional offer for laser surgery including PRK, LASIK, and Custom LASIK. Discounts only available from Humana participating facilities.	N/A	Discounts averaging 15-20% off the regular price or 5% off a promotional offer for laser surgery including PRK, LASIK, and Custom LASIK. Discounts only available from Humana participating facilities.	NA
ADDITIONAL DISCOUNTS ON NON-PRESCRIPTION GLASSES AND NON-PRESCRIPTION SUNGLASSES (9)		20% Discount off additional complete pairs of non-prescription glasses and non-prescription sunglasses Including lens options.		20% Discount off additional complete pairs of non-prescription glasses and non-prescription sunglasses Including lens options.	
ADDITIONAL DISCOUNTS ON PRESCRIPTION GLASSES AND PRESCRIPTION SUNGLASSES (8)		40% Discount off additional complete pairs of prescription glasses and prescription sunglasses Including lens options.		40% Discount off additional complete pairs of prescription glasses and prescription sunglasses Including lens options.	
Calendar Year Deductible		None, after plan co-payments		None, after plan co-payments	
Calendar Year Maximum Benefit		Up to plan limits		Up to plan limits	
Lifetime Maximum Benefit		Unlimited		Unlimited	
Waiting Periods		None		None	

Optional Services

Identify Proposer's In-Network co-payments for below Optional Services. The Optional Services are not covered Out-of-Network. The listed benefits represent the most frequently utilized procedures.

	Humana BASE Option		Humana HIGH Option	
Non-Standard Lens Types	Executive Bif	Paid in full	Executive Bif	Paid in full
	Blended Bif	Paid in full	Blended Bif	Paid in full
Other Progressive Lenses (3)	Varilux Ellipse	Paid in full	Varilux Ellipse	Paid in full
	Varilux Physio	Paid in full	Varilux Physio	Paid in full
	Varilux Physio 360	Paid in full	Varilux Physio 360	Paid in full
	Kodak Unique	Paid in full	Kodak Unique	Paid in full
High Index Lenses (3)	Single Vision	20% discount	Single Vision	20% discount
	Varilux Comfort 1.60	\$0 + 20% off high index add on	Varilux Comfort 1.60	\$0 + 20% off high index add on
	Varilux Comfort 1.67	\$0 + 20% off high index add on	Varilux Comfort 1.67	\$0 + 20% off high index add on
	Varilux Panamic 1.60	\$0 + 20% off high index add on	Varilux Panamic 1.60	\$0 + 20% off high index add on
	Varilux Ellipse 1.67	\$0 + 20% off high index add on	Varilux Ellipse 1.67	\$0 + 20% off high index add on
	Varilux Physio 1.67	\$0 + 20% off high index add on	Varilux Physio 1.67	\$0 + 20% off high index add on

	Varilux Physio 360 1.67	\$0 + 20% off high index add on	Varilux Physio 360 1.67	\$0 + 20% off high index add on
	Kodak Unique 1.60	\$0 + 20% off high index add on	Kodak Unique 1.60	\$0 + 20% off high index add on
Polycarbonate Lenses for Adults (3)	Single Vision	\$40	Single Vision	Paid in full
	Kodak Concise	\$40	Kodak Concise	Paid in full
	Kodak Precise	\$40	Kodak Precise	Paid in full
	Kodak Precise Short	\$40	Kodak Precise Short	Paid in full
	Varilux Comfort	\$40	Varilux Comfort	Paid in full
	Varilux Panamic	\$40	Varilux Panamic	Paid in full
	Varilux Ellipse	\$40	Varilux Ellipse	Paid in full
	Varilux Physio	\$40	Varilux Physio	Paid in full
	Varilux Physio 360	\$40	Varilux Physio 360	Paid in full
	Kodak Unique	\$40	Kodak Unique	Paid in full
Glass Lenses Clear	RD. Seg	Paid in full	RD. Seg	Paid in full
	Flat Top 35	Paid in full	Flat Top 35	Paid in full
	Ultex	Paid in full	Ultex	Paid in full
	Executive	Paid in full	Executive	Paid in full
	Trifocal 7x35	Paid in full	Trifocal 7x35	Paid in full
Glass PGX Lenses	Single Vision	Paid in full	Single Vision	Paid in full
	Varilux Comfort	Paid in full	Varilux Comfort	Paid in full
Anti-Reflective Coatings	AR Coating (1 year warranty)	\$45	AR Coating(1 year warranty)	\$45
	Tinting (Color Lenses)	\$15	Tinting (Color Lenses)	\$15
	Crizal AR Coating	\$57	Crizal AR Coating	\$57
	Crizal Alize' AR Coating	\$68	Crizal Alize' AR Coating	\$68
	Crizal Alize' w/Clear Guard	\$68	Crizal Alize' w/Clear Guard	\$68
	Kodak Clear AR	\$57	Kodak Clear AR	\$57
Polarized Lenses	Single Vision	20% off retail	Single Vision	20% off retail
	Flat Top 28	20% off retail	Flat Top 28	20% off retail
	Varilux Comfort	Paid in full	Varilux Comfort	Paid in full

NOTES:

- (1) The proposed Humana program covers contact lenses in lieu of glasses lenses only. Members may use their frame benefit in the same benefit period.
- (2) Contact lens fit and up to 2 follow ups are covered in full for all standard/premium contact lenses, we do not limit to a select group. The entire \$120 allowance is available to purchase contact lens materials.
- (3) Per the RFP – all progressive lenses are covered in full. For high index, the member is only responsible for the high index retail cost less 20% discount. Polycarbonate progressive lenses would all be covered in full on the high option.
- (4) Additional \$25 off when using your vision insurance at Target Optical
- (5) \$25 towards a complete pair of glasses or Rx sunglasses at Pearle Vision. Can be combined with vision insurance benefits
- (6) \$20 off any purchase or \$50 off purchase of \$200 or more at Sunglass Hut
- (7) \$20 off at ContactsDirect.com
- (8) 40% off additional pairs of prescription glasses
- (9) 20% off additional pair of non-prescription glasses