EXHIBIT A
DRAFT CONTRACT

CONTRACT FOR PROFESSIONAL SERVICES
FOR
GROUP VISION INSURANCE

Between
THE COUNTY OF VOLUSIA
AND
TBD

County of Volusia
Purchasing & Contracts Division
123 West Indiana Avenue, Suite 302
DeLand, Florida 32720-4608
386-736-5935
CONTRACT FOR PROFESSIONAL SERVICES

This Contract For Professional Services (hereinafter “Contract”) made and entered by and between ________________, duly authorized to conduct business in the State of Florida, whose principal place of business is located at __________________ (hereinafter the “Contractor”) and County of Volusia, a body corporate and politic and a subdivision of the State of Florida, whose address is County of Volusia, 123 West Indiana Avenue, DeLand, Florida 32720 (hereinafter the “County”).

RECITALS:

Whereas, the County desires to retain the services of a competent and qualified Contractor to provide___________________________________; and

Whereas, the County has issued Request for Proposal 15-P-47BB (the “RFP”) seeking a qualified firm to provide Group Vision Insurance, and has received responses from various potential vendors; and

Whereas, the County has determined that the Contractor is fully qualified to render the required service; and

Whereas, it has been determined that the execution of this Contract is beneficial to the people of County of Volusia, Florida.

NOW, THEREFORE, in consideration of the foregoing recitals which are incorporated herein by reference, and other specific consideration set forth in this Contract, the receipt and sufficiency of which is acknowledged by the Contractor and County, the parties agree and stipulate as follows:

1 DEFINITIONS

For this Contract and any incorporated exhibits, certain terms, phrases, words and their respective derivations shall have the meaning set forth and defined therein and shall be applicable in both. Definition of terms in the Contract shall first be governed by this Contract, second by the incorporated SCOPE OF SERVICES/WORK (Exhibit A), and third by the incorporated Fee Schedule (Exhibit B). In the event of any conflict among the foregoing, the conflict shall be resolved in the order of priority set forth in the preceding sentence. If there is no applicable definition as described above, the terms, phrases, and words, and their respective derivations when used in this Contract and the Scope of Service, shall have the meanings ascribed to them in Webster's New Collegiate Dictionary (G & C Merriam Co., 11th ed., July 2006, or any subsequent edition).

1.1 ACA: Affordable Care Act of 2010, as amended.

1.2 Amendment: An amendment to this Contract in writing by the County, approved by the Director of Purchasing and Contracts, and signed by the County authorizing an addition, deletion, or revision in the Scope of Services, or an adjustment in this Contract or a statement of work, Contract price, or extension of the Contract.
1.3 **COBRA:** Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

1.4 **Compensation:** The amount paid by the County to Contractor for services regardless of whether stated as compensation or stated as hourly rates, overhead rates, or other figures or formulas from which compensation can be calculated which includes the total monies payable to the Contractor which includes all services, labor, materials, supplies, travel, training, profit, overhead, costs, expenses, and any other costs necessary to complete Work under the Scope of Services/Work.

1.5 **Contractor:** The person or entity qualified to perform work under this Contract.

1.6 **Contractor’s services:** Those services within the Scope of Services/Work of this Contract or any exhibit, attachment or addendum thereto which relates to the General Scope of Services/Work in Section 4.1 to be performed by Contractor in connection with Contractor’s employment or practice.

1.7 **County:** The County of Volusia, Florida, and shall be synonymous with the term “County.”

1.8 **County Data:** Data collected to assist with the purchase or administration of a benefit administered by the County. Data includes, but is not limited to, member ID, date of birth, gender, zip code, relationship, employee status, type of benefit plan, and plan tier.

1.9 **County Project Manager:** Also known as the person designated by the County to review, approve and make decisions regarding the Scope of Services/Work in this Contract.

1.10 **Contract Administrator:** The Director of Purchasing and Contracts or his/her designee responsible for addressing any concerns within this Contract.

1.11 **Deliverable:** The result(s) or end products or services that meet the requirements and functional parameters articulated in the Scope of Services/Work for this Contract including, but not limited to, services, reports, written documentation, training, systems or processes.

1.12 **Effective Date:** January 1, 2016.

1.13 **Eligible Dependents:** Includes legally married spouse, children up to twenty-six (26) years of age, overage dependents twenty-seven through thirty (27-30) years of age.

1.14 **ERISA:** Employee Retirement and Income Security Act of 1974, as amended.

1.15 **HIPAA:** Internal Revenue Code and the Health Insurance Portability and Accountability Act, as amended.

1.16 **Members:** All County employees, retirees, eligible dependents (including legally married spouse, children up to twenty-six (26) years of age, overage dependents twenty-seven through thirty (27-30) years of age) and COBRA participants that are enrolled in the County’s Group Vision Insurance.
1.17 **Network:** The Contractor’s participating providers for covered services in Volusia, Flagler, Seminole, Orange, Osceola and Lake Counties and includes providers for covered services on a statewide and national basis.

1.18 **Person or Persons:** An individual, firm, partnership, corporation, association, executor, administrator, trustee or other legal entity, whether singular or plural, masculine or feminine, as the context may require.

1.19 **Plan:** Volusia County’s group vision plan

1.20 **Project Manager:** An employee of a party who is assigned to the Contract and is responsible for the day-to-day administration and coordination of the Contract for the party.

1.21 **RFP:** Solicitation No. 15-P-47BB

1.22 **Scope of Services/Work:** The services/work, herein defined in this Contract under the Scope of Services/Work (e.g., Exhibit A) that is agreed to by the parties in writing, which includes responsibility for performing and complying with all incidental matters pertaining thereto.

1.23 **Services:** Those services defined in the Scope of Services/Work to be performed by the Contractor pursuant to this Contract and its attached exhibits, including: the work, duties and obligations to be carried out and performed by Contractor under the Contract and pursuant to Exhibits A - C, attached hereto and made a part of this Contract.

1.24 **State:** State of Florida.

1.25 **Subcontractor:** A person other than a materialman or laborer who enters into an agreement with a Contractor for the performance of any part of the Contract.

1.26 **Work:** Any and all obligations, Services, duties and responsibilities necessary to the successful completion of the Scope of Services/Work assigned to or undertaken by Contractor under the Contract, including the furnishing of all labor, materials, equipment and other incidentals.

2 **EXHIBITS**

2.1 The exhibits listed below are incorporated into and made a part of this Contract.

2.1.1 Exhibit A, Scope of Services/Work,

2.1.2 Exhibit B, Fee Schedule

2.1.3 Exhibit C, Business Associate Agreement

2.1.4 Exhibit D, RFP
2.1.5 Exhibit E, Respondent’s Proposal

3 ORDER OF PRECEDENCE

3.1 If Contractor finds a conflict, error or discrepancy in the Contract, it shall call it to the County Project Manager’s attention, in writing and request the County Project Manager’s interpretation and direction before proceeding with the Work affected thereby. Such notice shall be provided by the Contractor to the County’s Project Manager in a timely fashion so as not to cause additional costs due to delay. In resolving such conflicts, errors and discrepancies, the documents shall be given precedence in the following order:

3.1.1 In the event of any conflicts or inconsistencies between provisions of the exhibits or attachments to this Contract, the following order of precedence shall govern.

This Contract with its exhibits and attachments in the following order:

3.1.1.1 First: The terms and conditions in the main body of this Contract.
3.1.1.2 Second: Exhibit A – SCOPE OF SERVICES/WORK
3.1.1.3 Third: Exhibit B – Fee Schedule
3.1.1.4 Fourth: Exhibit E – Respondent’s Proposal
3.1.1.5 Fifth: Exhibit D – RFP
3.1.1.6 Sixth: Exhibit C – Business Associate Agreement

4 SCOPE OF SERVICES/WORK. The Contractor shall provide services under this Contract in accordance to the Scope of Services/Work as specifically set forth in this Contract and its exhibits.

4.1 Contractor shall provide group vision insurance in accordance with the Scope of Services/Work attached as Exhibit A.

4.2 Performance Criteria:

4.2.1 All Work or Services shall be performed in accordance with the Contract.

4.2.2 All labor necessary to complete the Scope of Work shall be performed in a good and competent workmanlike manner to the satisfaction of the County.

4.2.3 The County may order changes in the Scope of Services consisting of additions, deletions, or other revisions within the general terms of the Scope of Services. All such changes to the Scope of Services shall be made by written amendment to this Contract duly executed by both parties. No work shall be commenced until both parties have fully executed a written amendment. If a party believes any particular work to be changed is not within the Scope of Service/Work, is a material change to the Scope of Services/Work, or will otherwise require more or less compensation to the Contractor and/or the parties cannot agree on compensation, then that party shall promptly notify the other party in writing and the parties shall negotiate any proposed change in compensation in accordance with Article
13 Dispute Resolution. Any claim by the Contractor for an adjustment under this section shall be asserted immediately in writing to Project Manager. No claims made by the Contractor for a change in the amount of its compensation or adjustment to the Scope of Services/Work will be addressed by the County, unless such change or adjustment has been made by written amendment or change order to this Contract and approved in accordance with the Purchasing and Contracts Division policies and procedures. Except as otherwise provided in this Contract, no charge for any extra work shall be allowed or approved by the County.

4.3 County and Contractor shall resolve issues, including but not limited to, the Dispute Resolution procedures in Section 13 of this Contract before any action is taken to declare the County or Contractor in default of this Contract.

4.4 The parties acknowledge that Exhibit A may not delineate every detail and minor work task required to be performed by Contractor to complete its Services and provide the Deliverables. If, during the course of the performance of the Services, Contractor and County determine that additional work should be performed which, in Contractor’s opinion, is outside the level of effort originally anticipated in Exhibit A, whether or not Exhibit A identifies the work items, Contractor shall notify the Contract Administrator in writing in a timely manner, with such notification being made pursuant to Section 14.3 and serving as Contractor’s request for a Contract Amendment pursuant to 4.2.3. If Contractor proceeds with said work without notifying the Contract Administrator, said work shall be deemed to be within the original level of effort, whether or not specifically addressed in Exhibit A. Notice for such additional work that is inconsistent with Section 4.2.3 to the Contract Administrator by Contractor shall not constitute authorization or approval by County to perform said work. Accordingly, performance of work by Contractor outside the originally anticipated level of effort without prior written County approval is at Contractor’s sole risk and County shall not be liable for payment of said additional work.

4.5 County’s Purchasing and Contracts Director or such other proper authority, pursuant to County policies and procedures, shall have the authority to approve, award, and execute all documents or other instruments required to effectuate changes, modifications, or additional service, so long as the then cumulative financial obligation of County for such additional items does not exceed the Director of Purchasing and Contracts’ authority under the County Code of Ordinances or policies and procedures. Any change, modification or additional service that causes the cumulative financial obligation of County for such additional items to exceed the Purchasing Director’s authority under the Procurement Code shall be presented to the Volusia County Council for approval.

5 RESPONSIBILITY OF CONTRACTOR

5.1 Contractor shall be a duly licensed under the laws of the State of Florida.

5.2 Contractor’s performance of Work or Services shall be in accordance with the terms and conditions of this Contract. The Contractor’s performance of Work or Services shall be to carry out the activities of the Scope of Work or Services under the
direction of the County’s Project Manager.

5.3 Contractor shall perform Work or Services required under this Contract, including but not limited to reports, studies, schedules, estimates or other documentation pertaining to the Scope of Services/Work.

5.3.1 Contractor covenants and agrees that there are no obligations, commitments, or impediments of any kind that shall limit or prevent Contractor’s performance of the Work or Services.

5.3.2 The Contractor covenants and agrees that it will not contract for or accept employment for the performance of any Work or Service with any individual, business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this Contract with the County.

5.3.3 Contractor covenants and agrees that all of the Work or Services to be furnished by Contractor shall be in accordance with the most current specifications or technology at the time this Contract is fully executed and as of the time Contractor delivers to County the specifications and/or Deliverables.

5.3.4 Contractor covenants and agrees as follows:

5.3.4.1 That Contractor recognizes that its special talent, training, and experience caused the County to select Contractor to be the awarded Contractor for these Services;

5.3.4.2 That Contractor comprehends the specifications and requirements of the Scope of Work or Services and the use of the same in their entirety to provide Deliverables;

5.3.4.3 That Contractor shall adhere to the standard of care applicable to a contractor with the degree of skills and diligence normally employed by a licensed professional in his field or practice performing the same or similar Services or Work in compliance with all applicable federal, state, and municipal laws, regulations, codes, and ordinances.

5.3.5 Contractor covenants and agrees that any data, reports, studies, and requirements prepared by Contractor or its agents or Subcontractors shall be completed in a competent and workmanlike manner.

5.3.6 Contractor covenants and agrees to provide Deliverables made in a competent and workmanlike manner.

5.3.7 Contractor covenants and agrees that Contractor and all Subcontractors shall maintain registration and be duly licensed in the state of Florida.
5.3.8 Contractor covenants and agrees that it shall be liable for all errors or omissions proximately caused by Contractor, if any, in judgment relative to the Work or Services under which Contractor provides Work or Services.

5.3.9 Contractor covenants and agrees to call to County's attention anything of any nature in its Service, Work, or in any reports, studies, schedules, documentation, requirements or instructions prepared by Contractor or data supplied to Contractor by the County or any other party that Contractor regards in Contractor's professional opinion as unsuitable, improper, or inaccurate in connection with the purposes for which such data is furnished in the Contract.

5.3.10 The Contractor shall direct and supervise competent and qualified personnel and shall devote time and attention to the direction of the operation to insure performance of obligations and duties as set forth herein. The Contractor shall hire, compensate, supervise, and terminate members of its work force, and the Contractor shall direct and control the manner in which work is performed, including conditions under which individuals shall be assigned duties, how individuals shall report, and the hours individuals shall perform.

5.4 **Assurance.** Contractor gives County its assurance that all Work or Services performed under this Contract shall be timely performed in a competent and workmanlike manner and in accordance with the specifications and requirements of the Contract and any approvals required under the Contract. All Work not conforming to the specifications and requirements of the Scope of Services/Work shall be considered materially defective and constitute a breach of this Contract.

5.5 The Contractor shall be responsible for the professional and technical accuracy and the coordination of all Work or Services it performs, data, reports and any other service furnished by the Contractor under this Contract. The Contractor shall, without additional cost to the County, correct or revise any errors or deficiencies in its Work or Service for which it is responsible.

5.6 All Work performed by Contractor including amendments to the Contract, shall comply with the Scope of Services/Work and all applicable local laws, codes, ordinances and statutes.

5.7 **Subcontractors.**

5.7.1 Contractor shall not employ any Subcontractor, or sub-subcontractor other person or organization of against whom the County may have reasonable objection, nor shall Contractor be required to employ any Subcontractor or sub-subcontractor against whom it has reasonable objection. Contractor shall not make any substitution for any Subcontractor or sub-subcontractor who has been accepted by the County without the County's approval.

5.7.2 County's disapproval or requirement of removal or replacement of Contractor's employee or Subcontractor or sub-subcontractor shall be deemed for lawful reasons if in County's reasonable judgment, such
Contractor’s employee or Subcontractor or sub-subcontractor poses a threat or causes harm to the health, welfare, or safety, or morale of the County or its agencies, personnel or property or who fails any drug test administered in connection with this Contract, or who has been convicted of a felony or a misdemeanor involving “moral turpitude”.

5.7.3 Contractor shall be fully responsible for all negligent acts and omissions of its subcontractor or sub-subcontractor and of persons directly or indirectly employed by them and of persons for whose negligent acts any of them may be liable to the same extent that it is responsible for the negligent acts and omissions of persons directly employed by it. Nothing in the Contract shall create any contractual relationship between any Subcontractor or sub-subcontractor and the County or any obligation on the part of the County to pay or to see to the payment of any moneys due any Subcontractor or sub-subcontractor, except as may otherwise be required by law. County may furnish to any Subcontractor or sub-subcontractor to the extent practicable, evidence of amounts paid to Contractor on account of specific work done in accordance with the schedule of values.

5.7.4 The Contractor shall require all Subcontractors or sub-subcontractors or outside associates employed in connection with the performance of this Contract to comply fully with the terms and conditions of this Contract between the County and the Contractor.

5.7.5 Any Subcontractors or sub-subcontractors and/or outside associates required by the Contractor in connection with the services covered by the Contract will be limited to such individuals or firms as are specifically identified and assigned under this Contract. Any substitution of such subconsultants, sub-subconsultants or associates will be subject to the prior written approval of the County Project Manager.

6 TERM OF CONTRACT

6.1 The Term of this Contract shall commence on the Effective Date of this Contract and shall terminate five years from the Effective Date, with renewals of up to five years permissible, not to exceed a total term of ten (10) years, upon mutual written agreement and Volusia County Council approval.

7 CONTRACT PRICE AND COMPENSATION

7.1 The Contractor shall be paid Compensation for all Work or Services. Total Compensation for this Contract shall be comprised of the total cost of all materials, equipment, labor, expenses, all mark-ups for overhead and profit more particularly described in Exhibit “B” – Fee Schedule attached hereto and incorporated herein. The County agrees to pay the Contractor in current funds, as compensation for its services.
7.2 Subject to the limitations in this Article 7 – Contract Price and Compensation, the Contractor shall be paid Compensation for all Work or Services, including labor and materials, performed under this Contract.

7.3 Compensation shall not be adjusted because of errors or omissions which are not the fault of the County.

7.4 **Reimbursable Expenses.** There are no reimbursable expenses for this Contract.

7.5 **Payments.** Any payments shall be made in accordance with Exhibit B – Fee Schedule.

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 salary deductions after the County either deducts the employee contributions through its payroll process or receives payment from employees on an unpaid leave of absence within forty-five (45) days. The County retains the right, at all time, to self-bill. The County will remit premium payments based on its records.

7.5.1 **Approval of Payment.** If, on the basis of the County Project Manager’s observation and review of Contractor’s Work or Services and, the County Project Manager’s satisfaction that the work has been completed and Contractor has fulfilled all of its obligations under the Contract, then the County shall approve payment for such Work or Services.

7.5.2 The County will remit applicable premiums to the Contractor on a bi-weekly basis for the prior pay period, subject to Florida Prompt Payment Law. Premiums will be accompanied by an electronic file of employee salary 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 time, to self-bill. The County will remit premium payments based on its records.

7.5.3 The County may withhold payment of any specific charges that it disputes in good faith and pay all undisputed charges on the invoice.

7.5.4 **Taxes.** County is a tax exempt entity and shall not be charged or invoiced for the payment of taxes for Work or Services performed under this Contract.

7.6 **Contractor’s Continuing Obligations.** Contractor’s obligation to perform Work or Services in accordance with the Contract shall be absolute. Neither approval of any progress nor final payment to Contractor nor documentation confirming acceptance of the Work or Services by the County, nor any payment by County to Contractor under the Contract nor any act of acceptance by the County nor any failure to do so, nor any correction of defective work by County shall constitute an acceptance of Work or Services not in accordance with the Contract.
8 PAYMENT OF SUBCONTRACTORS

8.1 Contractor shall pay its Subcontractors and suppliers, within thirty (30) days following receipt of payment from the County for such subcontracted work or supplies. Contractor agrees that if it withholds an amount as retainage from such subcontractors or suppliers, that it shall release such retainage and pay same within thirty (30) days following receipt of payment of retained amounts from County.

8.2 Contractor shall save and hold the County harmless from any and all claims and actions from Contractor’s Subcontractors for payment for Services and Deliverables provided by Subcontractors for Contractor under this Contract.

8.3 Nothing in this Contract shall create any obligation on the part of the County to pay directly to any Subcontractor or sub-subcontractor of Subcontractor any monies due to such Subcontractor, or claims of a Subcontractor or sub-subcontractor of Subcontractor for amounts owed by Contractor to Subcontractor or Subcontractor to sub-subcontractor for Work performed under this Contract.

9 LIMITATION OF LIABILITY AND INDEMNIFICATION OF COUNTY

9.1 General Indemnification. The Contractor shall, at its own expense, indemnify, defend, and hold harmless the County and its public officials (elected and appointed), successors and assigns, agents, officers, and employees, from and against all claims of every kind and nature (including losses incurred or suffered in consequences either of bodily injury to a person or damage to property), damages, losses and expenses, including, but not limited to attorney’s fees, arising out of or resulting from the performance of this Contract provided that the claim, damage, loss and expense is caused by any negligent act or omission of the Contractor, or anyone directly or indirectly employed by Contractor, except that the Contractor will not be required to indemnify, defend and hold harmless the County if such claim, damage, loss and expense is the result of the sole negligence of the County, or of anyone directly or indirectly employed by the County or anyone for whose acts the County may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Contract.

9.2 Infringement Claim.

9.2.1 For all Contractor’s or its Subcontractor’s software used by County under this Contract, Contractor agrees to protect, defend, indemnify, and hold harmless County, its agents, elected officials and employees of County from and against any and all claims, demands, actions, and causes or action which may arise asserting that all or any part of Contractor’s or its Subcontractor’s software or applications that are owned and licensed by Contractor to County for use thereof by County, infringes or misappropriates any third party’s valid state patent, copyright, trademark, or any trade secret protected under United States law.

Contractor’s indemnification obligations under this Article 9.2.1 are subject to County or the indemnified party giving Contractor (a) prompt written notice of
any Indemnifiable Claim; (b) reasonable assistance in Contractor’s defense of the Indemnifiable Claim; and (c) sole authority to defend or settle the Indemnifiable Claim, provided that County or the indemnified party shall have the right to approve any settlement of an indemnifiable claim to the extent such settlement imposes any obligations on County or the indemnified party. County, or the indemnified party, may retain its own legal counsel at its own expense to monitor such litigation.

9.2.2 In the event of an infringement claim, Contractor shall have the option: (i) to procure for County the right to continue using any product or service found to be infringing; (ii) to replace any such infringing product or service with a non-infringing product or service; (iii) to modify such infringing product or service to make it non-infringing; or (iv) if the preceding options are not commercially reasonable, to remove the infringing material and refund any fees which the County may have paid for it. Contractor shall have no obligation under this Article if the Infringement Claim is based upon the use of the System in combination with other hardware or software applications not furnished by Contractor, or if such a claim arises from County’s modification of the System without the authorization of Contractor.

9.3 **Sovereign Immunity.** County expressly retains all rights, benefits and immunities of sovereign immunity in accordance with section 768.28, Florida Statutes (as amended). Notwithstanding anything set forth in any section of this Contract to the contrary, nothing in this Contract shall be deemed as a waiver of immunity or limits of liability of the County beyond any statutory limited waiver of immunity or limits of liability which may have been or may be adopted by the Florida Legislature and the cap on the amount and liability of the County for damages, regardless of the number or nature of claims in tort, equity, or contract, shall not exceed the dollar amount set by the legislature for tort. Nothing in this Contract shall inure to the benefit of any third party for the purpose of allowing any claim against the County, which claim would otherwise be barred under the doctrine of sovereign immunity or by operation of law.

10 **CONFIDENTIAL INFORMATION**

10.1 Both parties hereby acknowledge that each may be exposed to confidential and proprietary information of the other and providers of software and confidential and proprietary information, business information, and information that may be exempted from disclosure or prevented from being disclosed by reason of law. If Contractor intends to designate certain information provided to County as Confidential, then such information must be expressly identified in writing by the Contractor and Contractor must provide the County with a completed non-disclosure form provided by the County.

10.2 Confidential information shall constitute information which is exempt from disclosure pursuant to Chapter 119, Public Records Law, Florida Statutes (2013), and Article I, Section 24 of the Florida Constitution (“Florida Public Records Law”), and Chapter 812 of the Florida Statutes (2013) (hereinafter “Confidential Information”). In addition and for the purposes of this Contract and any future statement of work, Confidential Information shall include Confidential Information and/or trade secret information.
disclosed by Contractor to County that is expressly identified in writing by Contractor and Contractor’s subcontractors. As such, any Confidential Information as defined herein that is provided by Contractor to County must be expressly identified in a fully completed and executed Nondisclosure Agreement for Confidential Materials which Contractor may obtain from the County’s Purchasing and Contracts Division.

Confidential Information and/or trade secrets do not include the following:

10.2.1 Information already known to or independently developed by the recipient;

10.2.2 Information in the public domain through no wrongful act of the recipient;

10.2.3 Information received by the party in possession from a third party the recipient;

10.2.4 Information regularly disclosed by the owner of the information to third parties without restriction on disclosure; or

10.2.5 Information required to be disclosed by law or an order of court, provided that a party required to make disclosure of the other party’s Confidential Information shall first notify the other party of such requirement and permit the party to obtain a protective order or other similar relief.

10.2.6 With respect to the Confidential Information, both parties hereby agree that during the term of this Contract and at all times thereafter, neither shall use, commercialize or disclose such Confidential Information obtained from the other to any person or entity, except to such other parties as the party claiming confidentiality may approve in writing and under such conditions as such claiming party may impose in writing.

10.2.7 **Restrictions upon Disclosure of Information.** Each party agrees subject to the conditions and obligations of this Article 10 Confidential Information.

10.2.8 To treat the other’s Confidential Information as proprietary to the other;

10.2.9 To not knowingly disclose to any person, other than its employees, consultants, or agents or the employees, consultants and agents of the other party (as directed by the other party), any Confidential Information belonging to the other party;

10.2.10 To inform its employees, consultants and agents of the confidential nature of the others information and of the requirement of nondisclosure; and

10.2.11 In the event either party has actual knowledge of a breach of the nondisclosure requirements of this Article 10 Confidential Information, the party acquiring such knowledge shall promptly inform the other party and assist that party in curing the disclosure, where possible, and preventing future disclosures.
10.2.12 Where County receives a request by a third party for disclosure of (i) the Confidential Information or (ii) other information that County believes to be Confidential Information and/or a trade secret of Contractor, County shall, in either instance, give written notice to Contractor and Contractor shall take immediate action to notify County in writing whether Contractor agrees to the disclosure or whether Contractor opposes disclosure and shall take legal action to prevent such disclosure.

10.2.13 Where Contractor receives a request by a third party for disclosure of information that Contractor believes to be Confidential Information and/or a trade secret of County, Contractor shall give written notice to County and County shall take immediate action to notify Contractor in writing whether County agrees to the disclosure or whether County opposes disclosure and shall take legal action to prevent such disclosure.

10.2.14 In the event a third party makes a public records request to the County for disclosure of the Contractor’s documents or software using County data or any item which has been marked by Contractor as confidential or a trade secret, the County has refused disclosure and the third party files suit to require disclosure, Contractor recognizes the County is required to submit any requested item to the court for inspection in camera as set forth in Section 119.07(1) (e), Florida Statutes (2013). Contractor further acknowledges that Section 119.12, Florida Statutes (2013), states:

If a civil action is filed against an agency to enforce the provisions of this chapter and if the court determines that such agency unlawfully refused to permit a public record to be inspected or copied, the court shall assess and award, against the agency responsible, the reasonable costs of enforcement including reasonable attorneys' fees.

10.2.15 Should a court, based upon Section 119.12, Florida Statutes (2013), or its successor, assess and award costs of enforcement against the County arising from any obligation of the County under this Article, Contractor agrees at its expense to indemnify, and hold harmless the County and its elected officials, appointed officials, officers, agents and employees.

10.2.16 Contractor acknowledges and agrees that the County is the owner and custodian of its information and data, whether or not such is electronically retained and regardless of the retention media and that the use of such information and data (input or derived) using Contractor's or its Subcontractor's software. Such information or data does not in any way restrict the rights or obligations of County regarding disclosure of their data and information, provided that the foregoing shall not be construed to permit County to disclose any Contractor confidential information, including without limitation the Contractor's software or documentation) in contravention of County’s obligations hereunder.
10.2.17 Except to the extent authorized in this Contract, both parties hereby agree that during the term of this Contract and at all times thereafter, neither shall use, commercialize or disclose such confidential information and/or trade secret obtained from the other to any person or entity, except to such other parties as the party claiming confidentiality may approve in writing and under such conditions as such claiming party may impose in writing.

10.2.18 Notwithstanding the foregoing provisions, disclosure of a purported trade secret or Confidential Information shall not be precluded if:

10.2.18.1 Such disclosure is in response to a valid order of a court or other governmental body of the United States or any political subdivision thereof; or

10.2.18.2 Such disclosure is necessary to establish rights or enforce obligations under this Contract and the Scope of Services, but only to the extent that any such disclosure is necessary for such purpose; or

10.2.18.3 The County received the prior written consent to such disclosure from Contractor, but only to the extent permitted in such consent; or

10.2.18.4 Disclosure is required by Florida law including but not limited to Chapter 119, Florida Statutes; or

10.2.18.5 Disclosure is not exempted by Florida law including but not limited to Chapter 119, Florida Statutes; or

10.2.18.6 Disclosure is required by Federal law which is preemptive of Florida law.

10.2.19 In the event of an intended or required disclosure described in Section 10, the party intending or being required to disclose the other party’s Confidential Information shall provide the other party with reasonable advance notice in order to permit the other party the opportunity to seek a protective order or other appropriate relief. Notwithstanding Sections 10.2.18.2 and 10.2.18.3 above, County shall first comply with its obligations under this Contract, subject to Chapter 119, Florida Statutes (2013) or applicable law that permit Contractor to object to such disclosures.

10.2.20 Notwithstanding anything to the contrary contained above or elsewhere in this Contract, County shall have the right to use the Contractor’s software to access the Contractor’s database(s), (includes files or information derived or generated from the use of the Contractor’s software) to generate reports.

10.2.21 County Data Confidentiality and Use Restrictions

10.2.21.1 Contractor agrees and understands that all files and other information and data created in connection with this Contract
constitute a public record, except to the extent it is exempt or proprietary under Florida Law, including but not limited to Chapter 119 of the Florida Statutes, from disclosure. Contractor agrees to maintain for public record access such files and to maintain for public access such files after termination of this Contract to the extent required by the laws of the State of Florida.

10.2.21.2 The parties agree that Chapter 119, F.S. articulates the data and written and oral information is exempt or confidential under Florida law. As such, and pursuant to Chapter 119, F.S., County claims such exemption or confidentiality to include but not be limited to social security numbers, Medicare policy numbers, medical information, pending law enforcement investigations, and any information which reveals the home address or telephone number of a law enforcement officer. All such information or data that is supplied by County or any third party pursuant to this Contract shall be kept confidential and shall not be used or disclosed to any other party, directly or indirectly, without County’s prior written consent unless required by an order issued by a court of lawful jurisdiction. All data provided by County or its agents under this Contract and all results derived therefrom through the use of the System shall be and remain the County’s property, and may be reproduced and reused solely at the discretion of the County.

10.2.22 Upon any termination or expiration of this Contract, Contractor, upon County’s written request, shall promptly deliver, but not more than thirty (30) days after County’s request, to County an extract of County’s data hosted in the System in XML format or such other format as mutually agreed upon by County and Contractor.

10.3 Medical and Other Related Information. Contractor shall provide County with Member’s medical and other related information only to the extent that such information is necessary for County to make benefit or claim determinations in accordance with the terms and conditions of the Plan. County agrees to use such information only for benefit and claim determinations, and shall not release such information to any party without prior written authorization from Members in accordance with state and federal law.

10.4 Contractor shall use medical and other related information only for benefit and claim determinations, and shall not release such information to any party without prior written authorization from Members in accordance with state and federal law.

10.5 Medical records are of a confidential nature. The Contractor shall agree to establish those procedures necessary to maintain the confidentiality of medical records, as required by HIPAA and all applicable laws.

10.6 To the extent Contractor will have access to Medical information of an Eligible Employee or Dependent, Contractor shall abide by the terms and conditions of the Business Associate Agreement; attached hereto as Exhibit C.
10.7 THE ABOVE DUTIES AND OBLIGATIONS SHALL SURVIVE THE CANCELLATION OR TERMINATION OF THIS CONTRACT.

11 INSURANCE

11.1 Required Types of Insurance

11.1.1 The Contractor shall purchase and maintain at its own expense, during the term of this Contract the following types and amounts of insurance with limits no less than those shown below, in the form and from companies satisfactory to the County:

**SCHEDULE** | **LIMITS**
--- | ---
Workers’ Compensation | Florida Statutory Coverage (or statutory coverage for whichever state in which they are located)
Commercial General Liability | $2,000,000. General Aggregate $1,000,000. Each Occurrence
Auto Liability | $1,000,000. CSL All autos-owned, hired or no-owned (Symbol 1 Coverage)
Professional Liability | $3,000,000.
Fidelity/Crime Bond | $5,000,000
Cyber Liability | $5,000,000

(The County of Volusia shall be named as an additional insured under all of the above Commercial General Liability and Professional Liability coverage.)

11.1.2 Minimum underlying coverages shall include all policies listed above. Under policies where the County is required to be listed as additional insured the coverage will be that listed above or Respondent’s actual limits, whichever is higher, and shall be primary and non-contributory (Umbrella liability limit will not be required to be carried by Subcontractors.)

11.1.3 Umbrella or Excess Liability policies may be used to obtain the total limits of liability required to meet the required limits of coverage stated above. Evidence of such coverage should clearly demonstrate the underlying coverages/policies that are included.

11.1.4 Workers’ Compensation Insurance. Per Section 3.23, A, Workers’ Compensation insurance is required for all employees of the Contractor, employed or hired to perform or provide work or services under this
Contract or that is in any way connected with work or services performed under this Contract, without exclusion for any class of employee, and shall comply fully with the Florida Workers’ Compensation Law (Chapter 440, Florida Statutes, Workers’ Compensation Insurance) and include Employers’ Liability Insurance with limits no less than the statutory amount shown above per occurrence.

11.1.4.1 Contractor and its Subcontractors, or any associated or subsidiary company doing work on County property or under this Contract must be named in the Workers’ Compensation coverage or provide proof of their own Workers’ Compensation coverage, without exclusion of any class of employee, and with a minimum of the statutory limits per occurrence for Employer’s liability coverage. Further, if the Contractor's Subcontractors fail to obtain Workers’ Compensation insurance and a claim is made against the County by the uncovered employee of said Subcontractor of the Contractor, the Contractor shall indemnify, defend, and hold harmless the County from all claims for all costs including attorney’s fees and costs arising under said employee(s) Workers’ Compensation insurance claim(s).

11.1.5 Commercial General Liability Insurance. Per Section 3.23, A, Commercial General Liability insurance, with a limit of not less than the amounts shown above with an aggregate limit and per occurrence basis, including coverage for the Contractor's operations, independent Contractors, Subcontractors and "broad form" property damage coverages protecting itself, its employees, agents, Contractors or subsidiaries, and their employees or agents for claims for damages caused by bodily injury, property damage, or personal or advertising injury, products liability/completed operations including what is commonly known as groups A, B, and C (libel, false arrest, slander). Such policies shall include coverage for claims by any person as a result of actions directly or indirectly related to the employment of such person or entity by the Contractor or by any of its Subcontractors arising from work or services performed under this Contract. Public liability coverage shall include either blanket contractual insurance or a designated Contract contractual liability coverage endorsement, indicating expressly the Contractor's contract to indemnify, defend, and hold harmless the County as provided in this Contract. The commercial general liability policy shall be endorsed to include the County as an additional insured.

11.1.6 Motor Vehicle Liability. Per Section 3.23, A, the Contractor shall secure and maintain during the term of this Contract, motor vehicle coverage in the split limit amounts of no less than the amounts shown above per person, per occurrence for bodily injury and for property damage or a combined single limit of the amount shown above with “Any Auto”, Coverage Symbol 1, providing coverage for all autos operated regardless of ownership, and protecting itself, its employees, agents or lessees, or subsidiaries and their employees or agents against claims arising from the ownership, maintenance, or use of a motor vehicle.
11.1.7 Professional Liability. Per Section 3.23, A, the Contractor shall ensure that it secures and maintains, during the term of this Contract, Professional Liability insurance with limits of no less than the amount shown above. Such policy shall cover all the Contractor’s or its Subcontractor’s professional liabilities whether occasioned by the Contractor or its Subcontractors, or their agents or employees.

11.1.7.1 If the Contractor fails to secure and maintain the professional liability insurance coverage required herein, the Contractor shall be liable to the County and agrees to indemnify, defend, and hold harmless the County against all claims, actions, losses or damages that would have been covered by such insurance.

11.1.7.2 The Contractor must maintain a retroactive date prior to or equal to the effective date of this Contract. The Contractor shall purchase a Supplemental Extended Reporting Period (“SERP”) with a minimum reporting period of not less than three (3) years in the event a Subcontractor’s policy is canceled, not renewed, switched to occurrence form, or any other event which requires a purchase of SERP to cover a gap in insurance for claims which may arise under or related to this Contract. The Contractor’s purchase of the SERP shall not relieve the Contractor of the obligation to provide replacement coverage. In addition, the Contractor shall require that the Subcontractor’s carrier immediately inform the Contractor, the County of Volusia’s Risk Management Division, and the Purchasing and Contracts Division of any contractual obligations that may alter its professional liability coverage under this Contract.

11.1.8 Crime Insurance Policy. Per Section 3.23, A, the Contractor shall provide a crime insurance policy for a minimum amount of fifty-thousand dollars ($50,000.00) during the term of the Contract. This policy shall cover any incident involving the Contractor’s personnel assigned to work in the County for the same limits. The policy shall be for both crime and dishonesty exposures. A copy of the actual policy is required as verification, and shall be filed with the Purchasing and Contracts Office upon award of a Contract, and shall be subject to approval before work can commence under the Contract. The policy shall name the County as joint loss payable.

11.1.9 Cyber Insurance. Per Section 3.23, A, the Contractor shall secure and maintain during the term of the Contract data privacy and network security liability insurance, with a limit of not less than the amounts shown above with an aggregate limit and per occurrence basis, with coverage for (a) data breaches by the Contractor or anyone causing the loss of use of electronic data; loss of personally identifiable information or County confidential information; violations of privacy regulations associated with the control and use of personally identifiable financial, medical or other sensitive information including but not limited to HITECH; HIPPA; Gramm-Leach Bliley Act of 1999; Florida Breach of Security Act (Section 817.5681, Florida Statutes (2012); the Federal Trade Commission Act (15 U.S.C. 45(a));
violations of the identity Red Flags under the Fair and Accurate Credit Transactions Act of 2003; (c) violations of any state, federal or foreign identity theft or privacy protection, notification and credit monitoring statutes (including any amendments thereto); (d) online defamation, advertising, libel, and slander-related exposures as well as emerging Web 2.0 liabilities created by casual users of third parties accessing Contractor’s web site(s) or computer systems through eMedia and the Internet; (e) network security breaches for failure of security measures to prevent a denial of service, unauthorized access, theft of electronic data, and inadvertent transmission of a virus or other malicious code; (f) infringement of intellectual property rights (e.g., patent, copyright, or trademark) in any telecommunications medium (e.g., cell phones, modems, text, videos, images, blogs, etc.) which result in a loss of County revenue or expense to the County due to a covered network outage or computer system loss; (f) cyber investigation expense incurred to investigate a data privacy or network security wrongful act; and, (g) cyber extortion for expenses incurred in the event of an extortion threat to cause a data privacy or network security wrongful act.

11.1.10 **Primary and Excess Coverage.** Any insurance required may be provided by primary and excess insurance policies.

11.2 Insurance Requirements

11.2.1 General Insurance Requirements:

11.2.1.1 All insurance policies shall be issued by insurers licensed and/or duly authorized under Florida Law to do business in the State of Florida and all insuring companies are required to have a minimum rating of **A-** in the "Best Key Rating Guide" published by A.M. Best & Company, Inc.

11.2.1.2 Approval by County of any policy of insurance shall not relieve Contractor from its responsibility to maintain the insurance coverage required herein for the performance of Work or Services by the Contractor or its Subcontractors for the entire term of this Contract and for such longer periods of time as may be required under other clauses of this Contract.

11.2.1.3 **Waiver of Subrogation.** The Contractor hereby waives all rights against the County and its Subcontractors to the extent of the risk coverage by any insurance policy required hereunder for damages by reason of any claim, demand, suit, or settlement (including workers’ compensation) for any claim for injuries or illness of anyone, or perils arising out of this Contract. The Contractor shall require similar waivers from all its Subcontractors. This provision applies to all policies of insurance required under this Contract (including Workers’ Compensation, and general liability).

11.2.1.4 **County Not Liable for Paying Deductibles.** For all insurance required by Contractor, the County shall not be responsible or
liable for paying deductibles for any claim arising out of or related to the Contractor’s business or any Subcontractor performing Work or Services on behalf of the Contractor or for the Contractor’s benefit under this Contract.

11.2.1.5 Cancellation Notices. During the term of this Contract, Contractor shall be responsible for promptly advising and providing County of Volusia’s Risk Management Division and the Purchasing and Contracts Division with copies of notices of cancellation or any other changes in the terms and conditions of the original insurance policies approved by the County under this Contract within two (2) business days of receipt of such notice or change.

11.2.1.6 For any on-site Work performed by or on behalf of Contractor on County property, the County shall be named as an additional insured or additional named insured subject to review and determination by County’s Risk Manager on all policies required under this Contract except professional liability and workers compensation.

11.2.1.7 Deductibles. For purposes of this Contract, Contractor shall not obtain an insurance policy with a deductible or self-insurance provision, unless and only if the Contractor acquires and maintains an irrevocable letter of credit, issued by an organization and in a format acceptable to the County, for the amount(s) of any such deductible(s). Any such letter of credit issued hereunder shall remain effective until the Contract terminates or expires.

11.2.1.8 Settlements. To the extent the County is represented in a claim by a third party or insurer pursuant to any policy under this Contract, a resolutions settlement is subject to Volusia County Council approval pursuant to County policies and procedures.

11.3 Proof of Insurance

11.3.1 The Contractor shall be required to furnish evidence of all required insurance in the form of certificates of insurance which shall clearly outline all hazards covered as itemized herein, the amounts of insurance applicable to each hazard, and the expiration dates.

11.3.2 The Contractor shall furnish proof of insurance acceptable to the County prior to or at the time of execution of this Contract and the Contractor shall not commence Work or provide any Service until the Contractor has obtained all the insurance required under this Contract and such insurance has been filed with and approved by the County. Upon request from the County, the Contractor shall furnish copies of the following types of insurance policies and any changes or amendments thereto, immediately, to the County and County’s Risk Management and Purchasing and Contracts Divisions prior to the commencement of any contractual obligations. This Contract may be terminated by the County, without penalty or expense to County if at any time
during the term of this Contract proof of any insurance required hereunder is not provided to the County.

11.3.3 All certificates of insurance shall clearly indicate that the Contractor has obtained insurance of the type, amount and classification required by this Article. No Work or Services by Contractor or its Subcontractors shall be commenced until County has approved these policies or certificates of insurance. Further, the Contractor agrees that the County shall make no payments pursuant to the terms of this Contract until all required proof or evidence of insurance has been provided to the County. This Contractor may be terminated by the County, without penalty or expense, if proof of any insurance required hereunder is not provided to the County.

11.3.4 The Contractor shall file replacement certificates with the County at the time of expiration or termination of the required insurance occurring during the term of this Contract. In the event such insurance lapse, the County expressly reserves the right to renew the insurance policies at the Contractor’s expense or terminate this Contract but County has no obligation to renew any policies.

11.4 The provisions of this Article 11 shall survive the cancellation or termination of this Contract.

12 TERMINATION

12.1 This Contract may be terminated by (a) either party upon the material breach by the other party if such breach is not cured within thirty (30) days written notice from the non-breaching party.

12.2 County may terminate this Contract for convenience or non-appropriation by upon 30-day prior written notice to Contractor. As such, Contractor shall have no right to compel the Volusia County Council to appropriate funds for any fiscal year to pay the compensation.

12.3 After Contractor’s receipt of a notice of termination pursuant to this Article 11 - Termination, and except as otherwise directed in writing by the County, the Contractor shall:

12.3.1 Stop work under the Contract or applicable Scope of Work/Services on the date specified in the notice of termination.

12.3.2 Place no further orders or subcontracts for materials, services or facilities.

12.3.3 Terminate all orders and subcontracts to the extent that they relate to the performance of Work or Services terminated by the Notice of Termination.

12.3.4 With the approval of the County and to the extent required by the County, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts. County’s approval of such settlements shall be final for all the purposes of this Article 11 - Termination.
11.3.5 Upon being notified of County’s election to terminate for default of Contractor, non-appropriation or convenience, Contractor and its Subcontractors shall refrain from performing further work or incurring additional expenses under the terms of this Contract which is not specifically authorized in the Notice of Termination.

12.4 After receipt of a notice of termination, the Contractor shall submit to the County its termination claim for amounts owed by County (which shall include without limitation all amounts due for Work or Services performed through the date of termination), in the form and with a certification as prescribed by the County. Such claim shall be submitted promptly but in no event later than thirty (30) days from the effective date of termination) in writing within such thirty (30) days period or authorized extension thereof. Upon failure of the Contractor to submit its termination claim within the time allowed, the County may determine on the basis of information available to it, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

12.5 In the event that this Contract is terminated by the County or Contractor for non-appropriation, Contractor shall be paid in accordance with terms of Article 12 - Termination. Contractor shall be paid to the date of termination on a prorated basis for any completed task and Deliverable. Contractor shall have no right to compel the Volusia County Council to appropriate funds for any fiscal year to pay the compensation.

12.6 If termination of this Contract occurs for any reason:

12.6.1 Except as otherwise provided in this Contract, each party shall return to the other party, or destroy, all confidential information in its possession and shall certify the destruction or return of said information in a written document signed by the duly authorized representative that all such information has been destroyed or returned, provided that the receiving party shall be permitted to retain an archival copy of any such confidential information (provided in continues to maintain the confidentiality of such as prescribed herein) to the extent necessary to have a record of the Service performed hereunder.

12.6.2 For all undisputed outstanding invoices submitted to the County for Work completed or Deliverables delivered prior to the effective date of the termination, the County shall cause payments to be made to Contractor within forty-five (45) days of receipt of invoice. Contractor shall invoice the County for any sums Contractor claims to be owed by County under this Contract for work performed from the last invoice to the effective date of termination. County shall review such invoice for payment within fifteen (15) days of receipt and County shall pay any undisputed amount within forty-five (45) days, subject to Article 7 – Contract Price and Compensation. Any disputed amounts on any invoices shall be subject to the dispute resolution process set forth in Article 12 - Termination hereof.
13 DISPUTE RESOLUTION

13.1 County and the Contractor shall exercise their best efforts to negotiate and settle promptly any dispute that may arise with respect to this Contract in accordance with the provisions set forth in this Article 13 – Dispute Resolution. The Contractor and County Project Manager shall use reasonable efforts to arrange personal meetings and/or telephone conferences as needed, at mutually convenient times and places, to address and work toward resolution of issues that arise in performance of this Contract and any applicable statement of Work or Services. Issues shall be escalated to successive management levels as needed.

13.2 Informal Dispute Resolution. If a dispute develops between the parties concerning any provision of this Contract, or the interpretation thereof, or any conduct by the other party under these agreements, and the parties are unable to resolve such dispute within five (5) days, that party, known as the Invoking Party, through its applicable Project Manager, shall promptly bring the disputed matter to the attention of the non-Invoking Party’s Project Manager or designated representative, as the case may be, of the other party in writing (“Dispute Notice”) in order to resolve such dispute.

13.3 Upon issuance of a Dispute Notice, the Project Managers or designated representative shall furnish to each other all non-privileged information with respect to the dispute believed by them to be appropriate and germane. The Project Managers shall negotiate in an effort to resolve the dispute without the necessity of any formal proceeding. If such dispute is not resolved by the Project Managers or designated representative within five (5) County Work Days, the Project Managers shall escalate the dispute as indicated below.

<table>
<thead>
<tr>
<th>County Work Days</th>
<th>Contractor’s Representative</th>
<th>County Representative</th>
</tr>
</thead>
<tbody>
<tr>
<td>10</td>
<td>TBD</td>
<td>Project Manager</td>
</tr>
<tr>
<td>10</td>
<td>TBD</td>
<td>Director of Purchasing and Contracts</td>
</tr>
<tr>
<td>20</td>
<td>TBD</td>
<td>Deputy County Manager</td>
</tr>
</tbody>
</table>

13.4 Formal Dispute Resolution. At any point after issuance of a Dispute Notice under this section, either party may initiate formal non-binding mediation before a single mediator, which mediation shall be completed within thirty (30) days of initiation, in accordance with the rules of practice and procedure adopted by the Supreme Court of Florida for court-ordered mediation, Rule 1.700 et seq. of the Florida Rules of Civil Procedure, and Chapter 44, Florida Statutes. If the dispute remains unresolved after conducting such mediation, then either party may proceed to finalize such termination remedies and commence litigation in a court of competent jurisdiction. Each party shall bear their own costs and attorney’s fees for mediation or arbitration of an issue arising under this Contract.
14 MISCELLANEOUS PROVISIONS

14.1 **Independent Contractor.** Contractor is an independent contractor under this Contract. Services provided by Contractor pursuant to this Contract shall be subject to the supervision of Contractor. In providing such Services, neither Contractor nor its agents shall act as officers, employees, or agents of the County. No partnership, joint venture, or other joint relationship is created hereby. County does not extend to Contractor or Contractor's agents any authority of any kind to bind County in any respect whatsoever.

14.2 **Third Party Beneficiaries.** Neither Contractor nor County intends to directly or substantially benefit a third party by this Contract. The Parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Contract. Therefore, the Parties agree that there are no third party beneficiaries to this Contract and that no third party shall be entitled to assert a claim against either of them based upon this Contract, except as otherwise provided in this Contract.

14.3 **Notice.** All notice required under this Contract shall be in writing and shall be sent by certified United States Mail or national parcel service, postage prepaid, return receipt requested, or by hand-delivery with a written receipt of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

<table>
<thead>
<tr>
<th>In the case of County:</th>
<th>with a copies of legal notices to:</th>
</tr>
</thead>
<tbody>
<tr>
<td>County of Volusia</td>
<td>County of Volusia</td>
</tr>
<tr>
<td>Attn: Director of Purchasing &amp; Contracts</td>
<td>Attn: County Attorney</td>
</tr>
<tr>
<td>Address: 123 W. Indiana Ave., Rm. 302 DeLand, Florida 32720</td>
<td>Address: 123 W. Indiana Ave., Rm. 301 DeLand, Florida 32720</td>
</tr>
<tr>
<td>Phone: 386-736-5935</td>
<td>Phone: 386-736-5950</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>In the case of Contractor:</th>
<th>with a copy of legal notices to:</th>
</tr>
</thead>
<tbody>
<tr>
<td>TBD</td>
<td>TBD</td>
</tr>
<tr>
<td>Attn:</td>
<td>Attn:</td>
</tr>
<tr>
<td>Address:</td>
<td>Address:</td>
</tr>
<tr>
<td>Phone:</td>
<td>Phone:</td>
</tr>
</tbody>
</table>

14.4 **Assignment and Performance.**

Contractor may not assign or otherwise convey Contractor's rights and/or obligations under this Contract without first providing County with a processing fee of FIVE HUNDRED DOLLARS ($500) and obtaining County's prior written consent, which consent County may withhold, limit and/or condition in County's sole discretion.

Failure by the Contractor to obtain the County's consent in accordance with this Section prior to assignment or other conveyance shall: 1) constitute a material
breach of the Contract; and 2) entitle the County to retain any and all legal rights, claims and defense to enforce this Section, including, but not limited to, injunctive, declaratory, damages and attorney’s fees and costs. Payment of any sum by the County in accordance with the Contract to the Contractor or any person or entity prior to the Contractor obtaining the County’s consent to the assignment shall not constitute a waiver of the rights of the County under this Section.

Nothing herein shall preclude the right of the County to waive its rights under this Section but no waiver shall be granted by the County without amendment to the Contract. The Contractor is hereby placed on notice that the County may demand a discount of up to ten percent (10%) from those rates or compensation for the goods or services established in the Contract as a condition to execution of the amendment.

14.5 **Conflicts.** Neither Contractor nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Contractor's loyal and conscientious exercise of judgment related to its performance under this Contract. Contractor further agrees that none of its officers or employees shall, during the term of this Contract, serve as an expert witness against County in any legal or administrative proceeding in which he, she, or Contractor is not a party, unless compelled by court process. Further, Contractor agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of County in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude Contractor or any persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding. In the event Contractor is permitted pursuant to this Contract to utilize subcontractors to perform any services required by this Contract, Contractor agrees to require such subcontractors, by written Contract, to comply with the provisions of this section to the same extent as Contractor.

14.6 **Audit Right and Retention of Records.** County shall have the right to audit the books, records, and accounts of Contractor and its subcontractors that are related to this Contract. Contractor and its subcontractors shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Contract. Contractor shall preserve and make available, at reasonable times for examination and audit by County, all financial records, supporting documents, statistical records, and any other documents pertinent to this Contract for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Contract. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by County to be applicable to Contractor's and its subcontractor's records, Contractor shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by Contractor or its subcontractors. Contractor shall, by written Contract, require its subcontractors to agree to the requirements and obligations of this Section.
14.6

14.7 **Time of the Essence.** Time is of the essence for all Work or Services performed throughout this Contract.

14.8 **Location of County Data.** Contractor shall not out-source any support for this Contract or transfer any County Data outside the territorial limits of the United States of America, without the written approval of the Contract Administrator.

14.9 **References to County or Contractor.** Contractor agrees that during the term of this Contract, except as provided herein, Contractor may not reference County in Contractor's website, and/or press releases, and, may not place County's name and logo on Contractor's Web site or in collateral marketing materials relating to Contractor's products and services without prior review and written approval by County. Further, Contractor agrees that it may not use County's name, logo or any trademarks (including in any press releases, customer "case studies," and the like) without County's prior written consent. Termination or expiration of this Contract shall not affect Contractor's obligation in this regard and such obligation shall survive the termination or cancellation of this Contract.

14.10 **Force Majeure.** Neither party shall be liable for any failure or delay in the performance of its obligations under this Contract to the extent resulting from force majeure, including, but not limited to, compliance with any Government law or regulation, acts of God, act or omissions of the other party, Government acts or omissions, fires, strikes, natural disasters, wars, riots, transportation problems, and/or any other cause whatsoever beyond the reasonable control of the parties (an such cause being referred to as a "Force Majeure Event"). Accordingly, the parties further agree that:

14.10.1 Upon the occurrence of Force Majeure Event, the non-performing party shall be excused from any further performance of those obligations under this Contract affected by the Force Majeure Event for as long as (a) the Force Majeure Event continues; and (b) the non-performing party continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.

14.10.2 Upon the occurrence of a Force Majeure Event, the non-performing party shall notify the other party within two (2) County Work Days of the failure, or as soon as possible after such failure or delay if the Force Majeure Event prevents compliance within two (2) County Work Days, of the occurrence of a Force Majeure Event and shall describe in reasonable detail the nature of the Force Majeure Event.

14.10.3 In the event of a Force Majeure Event, the time for performance by the parties under the applicable statement of work shall be extended for a period of time equal to the time lost by reason of such cause through execution of a Change Order pursuant to the terms of this Contract.

14.11 **Bankruptcy Rights of County.** All rights and licenses granted under or pursuant to this Contract or any attachments hereto by Contractor to County are, and shall
otherwise be deemed to be, for purposes of Section 365 (n) of the United States Bankruptcy Code (the "Code"), or replacement provision therefore, licenses to rights to "intellectual property" as defined in the Code. The parties agree that County, as licensee of such rights under this Contract, shall retain and may fully exercise all of its rights and elections under the Code. The parties further agree that, in the event of the commencement of a bankruptcy proceeding by or against Contractor under the Code, County shall be entitled to retain all of its rights under this Contract.

14.12 **Waiver of Breach and Materiality.** Failure to enforce any provision of this Contract shall not be deemed a waiver of such provision or modification of this Contract. A waiver of any breach of a provision of this Contract shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Contract.

14.13 **Compliance with Laws.** Each party shall comply with all federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations related to this Contract.

15 **LOCAL GOVERNMENT REQUIREMENTS**

15.1 **Public Records Law.** Contractor acknowledges that the County and Contractor are required to comply with the Florida Constitution, and Chapter 119, Florida Statutes, in the handling of the materials created under this Contract and that said statute controls over the terms of this Contract. To the extent practicable, the County agrees to notify Contractor of any public records request concerning the Contractor or matters relating to the services provided under this Contract. Contractor agrees to comply with all provisions of such Public Record Act as they apply to the Contractor.

15.2 **Payments Subject to Appropriation.** Notwithstanding any other term or provision of this Contract, the continuation of this Contract beyond a single fiscal year of County is subject to the appropriation and availability of funds in accordance with Chapter 129, Florida Statutes. If at any time funds are not appropriated for the Services and Deliverables provided or to be provided under this Contract, cancellation shall be accepted by Contractor with thirty (30) days prior written notice, but failure to give such notice shall be of no effect. Termination by the County due to nonappropriation shall be without a termination charge by Contractor. County shall not be obligated to pay Contractor under this Contract beyond the date of termination except as set forth in Article 11 – Termination. County’s obligation to pay Contractor is limited to the budgeted amount for a fiscal year approved by the Volusia County Council for the then current fiscal year of this Contract and is otherwise limited to legally available non-ad valorem tax revenues. Contractor shall have no right to compel the Volusia County Council to appropriate funds for any fiscal year to pay the compensation set forth in Section 5 – Contract Price and Compensation.

15.3 **No Code Violation or Past Due Debt.** Contractor warrants and represents that neither the business, nor any officer or significant stakeholder of the business is in violation of the Volusia County Code of Ordinances, and does not owe the County any past due debt. Any breach of the foregoing warranty and representation shall be a material breach of this Contract and the County shall have the right to terminate this Contract as set forth herein.
15.4 **Changes Due to Public Welfare.** The County and Contractor agree to enter into good faith negotiations regarding modifications to this Contract which may be required in order to implement changes in the interest of the public welfare or due to change in law or Ordinance.

15.5 **Compliance with Applicable Laws.** Contractor shall perform its obligations hereunder in accordance with all applicable federal, state and local laws, ordinances, rules, regulations, and all orders and decrees of bodies or tribunals having jurisdiction or authority which in any manner affect the performance of this Contract. Contractor shall protect and indemnify County and all its officers, agents, servants and employees against any claim or liability arising from or based on the violation of any such law, ordinance, rule, regulation, order or decree caused or committed by Contractor, its representatives, Subcontractors, professional associates, agents, servants or employees. Additionally, Contractor shall obtain and maintain at its own expense all applicable licenses and permits to conduct business pursuant to this Contract from the federal government, State of Florida, County of Volusia or municipalities when legally required and maintain same in full force and effect during the term of this Contract.

15.6 **Nondiscrimination and Americans with Disabilities Act.** Contractor shall not unlawfully discriminate against any person in the operations and activities in the use or expenditure of the funds or any portion of the funds provided by this Contract. Contractor agrees it shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing all Services funded by County, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In performing under this Contract, Contractor agrees that it shall not commit an unfair employment practice in violation of any state or federal law and that it shall not discriminate against any member of the public, employee or applicant for employment for work under this Contract because of race, color, religion, gender, sexual orientation, age, national origin, political affiliation, or disability and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, gender, sexual orientation, age, national origin, political affiliation, or disability.

15.7 **Drug Free Workplace.** The County of Volusia is a drug-free and smoke-free workplace. Contractor agrees that it shall provide a drug-free environment to its personnel during the Term of this Contract and will comply, subject to the prior receipt thereof, with the County’s policies on drug-free and smoke-free work place during the term of this Contract.

15.8 **Employment of Illegal Aliens.** Contractor certifies that it does not knowingly or willingly and will not during the performance of the Contract employ illegal alien workers or otherwise violate the provisions of the Federal Immigration Reform and Control Act of 1986, as amended.
15.9 **Prohibition Against Contingent Fees.**

15.9.1 The Contractor warrants that he or she or it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor to solicit or secure this Contract and that he or she or it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Contractor any fee, commission, compensation, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Contract. For the breach or violation of this provision, the County shall have the right to terminate this Contract without liability and, at its sole discretion, to deduct from the Contract price or compensation, or otherwise recover, the full amount of such fee, commission, percentage, gift, or other consideration.

15.9.2 Contractor understands and acknowledges that any individual, corporation, partnership, firm, or company, other than a bona fide employee working solely for the Contractor, who offers, agrees, or contracts to solicit or secure County contracts for professional services for any other individual, company, corporation, partnership, or firm and to be paid, or is paid, any fee, commission, percentage, gift, or other consideration contingent upon, or resulting from, the award or the making of an agreement for professional services shall, upon conviction in a competent court of this State, be found guilty of a first degree misdemeanor, punishable as provided in Sections 775.082 or 775.083 of the Florida Statutes.

15.9.3 Any County official, agent or employee who offers to solicit or secure, or solicits or secures, an agreement for professional services and to be paid, or is paid, any fee, commission, percentage, gift, or other consideration contingent upon the award or making of such an agreement for professional services between the County and any individual person, company, firm, partnership, or corporation shall, upon conviction by a court of competent authority, be found guilty of a first degree misdemeanor, punishable as provided in Sections 775.082 or 775.083 of the Florida Statutes.

15.10 **Equal Opportunity; Disadvantaged Business Enterprises**

15.10.1 The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

16 **MISCELLANEOUS**

16.1 **Severance.** In the event this Contract or a portion of this Contract is found by a
court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless County or Contractor elects to terminate this Contract.

16.2 **Entire Contract.** This Contract contains the entire agreement between Contractor and County. Any modifications to this Contract shall not be binding unless in writing and signed by both parties.

16.3 **Applicable Law, Venue and Waiver of Jury Trial.** This Contract shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. Jurisdiction of any controversies or legal issues arising out of this Contract, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Judicial Circuit of County of Volusia, Florida, and venue for litigation arising out of the Contract shall be exclusively in such state courts. By entering into this Contract, Contractor and County hereby expressly waive any rights either party may have to a trial by jury of any civil litigation related to this Contract. Each party agrees to bear its own costs and attorney’s fees relating to any dispute arising under this Contract, unless otherwise stated herein.

16.4 **Amendments.** No modification, change order, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Contract and executed by the award authority and Contractor.

16.5 **Prior Contracts.** This document represents the final and complete understanding of the Parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The Parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Contract that is not contained in this written document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

17 **All provisions of this Contract which impose or contemplate continuing obligations on a party shall survive the expiration or termination of this Contract.**

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]
18 SIGNATURES

IN WITNESS WHEREOF, the parties have made and executed this Contract for Group Vision Insurance on the date last written below.

TBD CONTRACTOR ATTEST

BY: _________________________________ _________________________________
    Name: ___________________________ Name: ___________________________
    Title: ___________________________ Title: ___________________________

Date: ___________________________ Date: ___________________________

COUNTY OF VOLUSIA

COUNTY COUNCIL OF VOLUSIA COUNTY, FLORIDA (SEAL)

ATTEST

BY: __________________________________________
    Jason P. Davis
    County Chair

James T. Dinneen
County Manager

Date: ___________________________ Date: ___________________________

CC Date: ___________________________