

**FIRST AMENDMENT
TO THE VISION SERVICES AGREEMENT**

This First Amendment to the Vision Services Agreement (this "Amendment"), is entered into as of _____ (the "Amendment Effective Date") by and between March Vision Care Group Incorporated ("Vendor") and UnitedHealthcare of Kentucky, Ltd. ("United").

WHEREAS, the parties entered into a Vision Services Agreement effective July 1, 2019 (the "Agreement") that sets forth the terms and conditions under which Vendor provides and/or arranges for the provision of Covered Services to United Members.

WHEREAS, by executing this Amendment, the parties each agree to be bound by those terms and conditions, except where provided for in this Amendment, that make up the main body of the Agreement between the parties.

NOW THEREFORE, in consideration of the conditions set forth herein, the receipt and sufficiency of which are hereby acknowledged, Vendor and United hereby agree to amend the Agreement as follows:

1. Capitalized terms used herein which are not otherwise defined in this Amendment or any attachments hereto shall have the meaning assigned to them in the Agreement.
2. Exhibit A, "Compensation for Services Addendum" to the Agreement is hereby deleted in its entirety and replaced with Exhibit A, "Compensation for Services Addendum," attached hereto.
3. Except as so amended, all other provisions of the Agreement shall remain in full force and effect. Any conflict between the Agreement and this Amendment shall be resolved in favor of this Amendment.

***[REST OF THIS PAGE INTENTIONALLY LEFT BLANK FOLLOWED BY
THE SIGNATURE PAGE WHICH MAY BE EXECUTED
ELECTRONICALLY
IN COUNTERPARTS AND SENT VIA FACSIMILE OR EMAIL]***

March Vision - UHCKY AM01
IIPAS Contract ID: 10169-B

IN WITNESS WHEREOF, the parties have executed this Amendment as of the Amendment Effective Date.

March Vision Care Group Incorporated

UnitedHealthcare of Kentucky, Ltd.

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

March Vision - UHCKY AM01
IIPAS Contract ID: 10169-B

**EXHIBIT A
COMPENSATION FOR SERVICES ADDENDUM**

**SECTION 1
COMPENSATION FOR VENDOR SERVICES**

Vendor shall provide the services set forth in this Agreement for the Benefit Plans issued and/or administered by United and identified by United (and agreed to by Vendor) as a Benefit Plan for which the services shall be provided. United shall pay Vendor a services fee (the “Monthly Fee”) according to the rates set forth in the table below.

Segment	Line of Business	Service	Service Type	Service Area *	Rate (\$)	Rate Type	ASO or Full Service
C&S	Medicaid	Kentucky HEALTH	Vision			PMPM	ASO

* If the Service Area listed above is left blank, the rate applies to all locations where United is authorized to do business, unless otherwise indicated.

“ASO” shall mean any Benefit Plan for which (a) Vendor is responsible only for providing administrative services in connection with the Benefit Plan and (b) Payor is fully responsible for the cost of any services or supplies that a Member receives for Covered Services from a Participating Provider.

“Full Service” shall mean any Benefit Plan for which Vendor is responsible for providing administrative services and is financially responsible for the cost of Covered Services covered by this Agreement.

**SECTION 2
PAYMENT TERMS**

2.1 Standard Payment Terms

United shall pay all Monthly Fees on or before the fifteenth (15th) business day of the month following service. United shall calculate Monthly Fees using an estimate of the number of Members based on the then current information available to United for that month. United shall adjust a subsequent Monthly Fee to reflect the difference between the estimated and actual number of Members.

2.2 Settlement of Accounts

Settlement of each month’s balances due between the parties shall occur within ninety (90) days after the end of the month in which the amount owed becomes known. Notwithstanding this requirement, any more specific settlement terms in this Agreement

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shall control, no matter if the settlement date is shorter or longer than that set forth above, as long as the due date is specified.

2.3 Cost Sharing Reductions

With respect to any Service designated as a “Full Service” rate in Section 1 Compensation for Vendor Services, United shall pay to Vendor any cost sharing reduction payment that United has or shall receive pursuant to Section 1402 of the Patient Protection and Affordable Care Act of 2010 (as amended), to the extent that such cost sharing reductions are attributable to Covered Services for which the Vendor is financially responsible under this Agreement.

SECTION 3 COMPENSATION TO PROVIDERS

3.1 Compensation to Participating Providers.

(a) For all ASO Benefit Plans, Vendor shall adjudicate and Payor shall pay a Participating Provider clean claim within thirty (30) days of receiving the clean claim.

(b) For all Full Service Benefit Plans, Vendor shall adjudicate and pay a participating provider clean claim within thirty (30) days of receiving the clean claim or as may be set forth in the Provider Agreement.

In the event that United has not delegated Claims Administrative Services to Vendor for a Full Service Benefit Plan, Vendor shall adjudicate claims and be financially responsible for Covered Services; Payor shall pay a Participating Provider clean claim within thirty (30) days of receiving the claim based on adjudication by Vendor.

VISION SERVICES AGREEMENT

This Vision Services Agreement (this “Agreement”), is entered into as of July 1, 2019 (the “Effective Date”), by and between March Vision Care Group Incorporated (“Vendor”) and UnitedHealthcare of Kentucky, Inc. (“United”). For services provided on or after its Effective Date, this Agreement supersedes and replaces any and all other agreements, whether written or oral, between the parties regarding the subject matter contained herein.

WHEREAS, United issues and/or administers Benefit Plans on behalf of itself and Payors for the benefit of Members;

WHEREAS, United desires to contract with Vendor for the provision of Vendor’s services; and

WHEREAS, this Agreement describes the obligations of both of the parties related to the performance of the services.

NOW THEREFORE, in consideration of the terms and conditions set forth herein, the receipt and sufficiency of which are hereby acknowledged, Vendor and United hereby agree as follows:

SECTION 1 DEFINITIONS

The following terms shall have the meanings set forth below. Additional definitions may be set forth in the Agreement or the exhibits.

1.1 “Benefit Plan” shall mean a certificate of coverage, summary plan description, benefit plan, benefit package description or other document or agreement, whether delivered in paper, electronic, or other format, under which a Payor is obligated to provide Member with coverage for Covered Services.

1.2 “CMS” shall mean The Centers for Medicare and Medicaid Services.

1.3 “Covered Services” shall mean a health care service or product for which a Member is entitled to receive coverage from a Payor, pursuant to the terms of the Member’s Benefit Plan. The Covered Services to be provided by Vendor are specified in more detail in an Exhibit B.

1.4 “Member” shall mean a person eligible and enrolled with United to receive coverage from a Payor for Covered Services.

1.5 “Participating Provider” shall mean a licensed or otherwise appropriately qualified and credentialed health care professional or entity that has entered into a Provider Agreement with Vendor, directly or through another entity, to provide Covered Services to Members.

1.6 “Payor” shall mean United or such other entity obligated to provide reimbursement for Covered Services for the Member.

1.7 “Provider Agreement” shall mean an agreement between Vendor and a Participating Provider that sets forth the terms and conditions under which the Participating Provider participates in one or more of Vendor’s network(s) of providers.

1.8 “Service Area” shall mean the geographic area in which United is authorized to provide Covered Services to Members.

1.9 “Services Addendum” shall mean a description of the services to be provided by Vendor attached to this Agreement as an Exhibit B. The parties may add additional Exhibits for additional services as agreed upon by the parties from time to time. Each such Exhibit shall be numbered as a series of Exhibit B (such as B1, B2, B3 and thereafter).

SECTION 2 SERVICES

2.1 Services Addendum. Vendor shall provide the services described in the Services Addendum to this Agreement.

2.2 United Control and Oversight. Vendor shall be subject to the reasonable direction of United, as it pertains to the services provided pursuant to this Agreement. United shall maintain oversight of Vendor for functions Vendor provides to, or arranges for, United, and will monitor services for quality assurance in conformity with applicable state law and other regulatory requirements as set forth in a regulatory appendix. The parties shall cooperate with and assist each other as reasonably necessary or appropriate in the performance of this Agreement.

SECTION 3 RESPONSIBILITIES AND RELATED PROVISIONS

3.1 Member Eligibility Information. At least monthly, on a date mutually acceptable to United and Vendor, United shall provide Vendor with a current list of eligible Members in an electronic format mutually agreeable to both parties. The eligibility information shall be prepared and provided to Vendor at United’s expense. Vendor shall treat the information received under this Section as confidential and not distribute or furnish such information to any other person or entity, except as necessary and as permitted by law to provide or arrange for Covered Services. If United is unable to provide Vendor with a current list of eligible Members in an electronic format, the parties agree to adjust the compensation payable to Vendor pursuant to Section 11.15 should such alternative process cause Vendor to incur material additional costs. Subject to retroactive eligibility changes that may be required by a state or CMS, Vendor shall be entitled to rely on the most current eligibility information and Benefit Plan documents in its possession in providing the Covered Services, including processing claims for Covered Services, if applicable.

3.2 Retroactive Adjustments of Eligibility. Vendor acknowledges that there may be retroactive adjustments to Member eligibility. United shall use its best efforts to minimize such adjustments.

3.3 Benefit Plans. This Agreement is not intended nor shall be deemed or construed to modify the obligations of United or a Payor to Members as established under any Benefit Plan. United acknowledges that it retains the ultimate responsibility to assure delivery of all benefits required under a Benefit Plan between United and a Member.

3.4 Services Under This Agreement. The responsibilities of Vendor shall be limited as defined by the terms of this Agreement. If Vendor provides or arranges for requested additional services, United or Payor shall pay for the additional services according to Vendor's fee schedule and/or the amounts payable to Participating Providers for such services.

3.5 Responsibility for Information. United understands and agrees that Vendor is not responsible for any delay in the performance of this Agreement or for any non-performance under this Agreement if the delay or non-performance is caused or materially contributed to by United's failure to furnish any material information described in this Agreement.

3.6 New Benefit Plans and Changes to Services. United shall use commercially reasonable efforts to notify Vendor in writing at least ninety (90) days prior to any modification of an existing Benefit Plan, development of a new Benefit Plan or expansion of its Service Area. If such modification, development or expansion is a material change to Vendor's obligations under this Agreement or the pricing assumptions used in establishing rates, the parties shall negotiate to include the modification, development or expansion in this Agreement in accordance with Section 11.15.

3.7 Member Consents and/or Authorizations. United agrees to assist Vendor in obtaining any necessary Member consents or authorizations as required under state or federal law so that Vendor can receive protected health information when necessary for Vendor to perform its obligations under this Agreement.

3.8 Communication Materials and Activities. United and Vendor shall cooperate to provide and prepare Members' publications and programs regarding Covered Services available to Members, as applicable.

United shall use its best efforts to include legally required notices regarding Covered Services or other legally required communications related to Vendor in its scheduled mailings at no cost to Vendor. If United is unable to include legally required communications in its scheduled mailing, Vendor will reimburse United for actual mailing costs, not to include personnel and other internal expenses.

United shall submit communication materials to state and federal regulatory agencies for prior approval as may be required by and in accordance with applicable state and federal law and regulations.

3.9 Taxes. All fees charged by Vendor for the services provided under this Agreement are exclusive of all taxes and fees (including but not limited to, sales, use, excise, value-added, goods and services, consumption, and other similar taxes, duties or fees) now in force or enacted in the future, imposed on the transaction or performance of the services, all of which United will be responsible for and will pay in full, except for taxes based on Vendor's income (gross or net). Should any payment for Services provided by Vendor be subject to withholding tax by any state or local taxing jurisdiction, United shall reimburse Vendor for such withholding tax.

3.10 Identification Cards. United shall ensure that Members receive an identification card and that a mutually agreeable process is established for referring Members to Vendor when appropriate.

3.11 Non-Interference with Advice to Members. Nothing in this Agreement is intended to prohibit or restrict Participating Providers or other health care professionals from advising or advocating on behalf of a Member about:

- (a) the Member's health status, medical care or treatment options (including alternative treatments that may be self-administered), including providing sufficient information to the Member to provide an opportunity to decide among all relevant treatment options;
- (b) the risks, benefits and consequences of treatment or non-treatment; and
- (c) the opportunity for the Member to refuse treatment and express preferences about future treatment decisions.

SECTION 4 PAYMENT; PAYMENT TERMS

4.1 Fee. For the services, United shall pay Vendor as set forth in each Exhibit A. To the extent that any settlement terms contained in this Agreement may not be specific enough to satisfy SSAP No. 25, the parties agree settlement of each month's balances due between the parties shall occur within ninety (90) days after the end of the month in which the amount owed becomes known.

4.2 No Incentive Payments. Vendor shall be strictly prohibited from receiving any incentive payment designed to reduce amounts of necessary medical care through (a) reduction of services or the charges thereof, (b) reduction of length of stay, or (c) utilization of alternative treatment settings.

4.3 Member Protection. Vendor and United agree that in no event, including, but not limited to (a) non-payment for Covered Services provided to Members; (b) insolvency of Vendor, United or another Payor; or (c) breach by United or Vendor of any term or condition of this Agreement or any term or condition of a Provider Agreement, shall United or Vendor bill, charge, collect a deposit from, seek compensation, remuneration or reimbursement from, or have any recourse against any Member or persons acting on behalf of the Member for Covered Services eligible for reimbursement under the Member's Benefit Plan.

The provisions of this Section shall: (i) be construed in favor of the Member; (ii) survive the termination of this Agreement regardless of the reason for termination; and (iii) supersede any oral or written agreement, existing or subsequently entered into, between any of the parties to this Agreement or a Participating Provider and a Member or the representative of the Member if such agreement is inconsistent with this Section.

This Section shall not prohibit collection of any allowed amounts that are the Member's responsibility to pay for Covered Services to a Participating Provider in accordance with the applicable Benefit Plan. It also shall not prohibit the collection of charges for services that are not Covered Services as defined in the Benefit Plan; provided, however, that the Member has been informed of the costs for non-covered services prior to the rendering of such services and has agreed in writing to accept responsibility for payment for such services. The Member's written consent shall be in a form agreed to by the parties and in compliance with any applicable state and federal law. This provision also shall not prohibit payment for any Covered Services delivered after expiration of benefits under the relevant Benefit Plan. If requested by United, Vendor shall submit to United any Member's written acknowledgement to accept responsibility for non-Covered Services provided to him/her. Vendor shall ensure that Vendor's Provider Agreements with Participating Providers are consistent with the obligations in this Section.

This Section applies when any applicable statutes and regulations require that the Member be held harmless from any and all costs, which are the legal obligation of Vendor, United or another Payor.

SECTION 5 INFORMATION; AUDITS; BOOKS AND RECORDS

5.1 Maintaining Records. The books, accounts and records of each party shall be so maintained as to clearly and accurately disclose the transactions contemplated by this Agreement, including such accounting information as is necessary to calculate and support the amount of the payments made by United under this Agreement. All books, accounts and records shall be maintained in compliance with the applicable laws and regulations of the state in which United is domiciled and in accordance with prudent standards of insurance record keeping. Vendor shall maintain at its principal administrative office, and shall require, as applicable, Participating Providers and any subcontractors to maintain, adequate books and records of all transactions related to the services provided pursuant to this Agreement. Vendor shall maintain such books and records for ten (10) years after the date the records were created unless a

different retention period is specified by applicable law or regulation, then such records shall be preserved for such period as required by applicable law or regulation.

5.2 Member Access to Records. Vendor shall, and shall require its Participating Providers to, establish and maintain procedures in accordance with applicable law and regulations to ensure, at a minimum, timely access by Members to medical records and other health information in their possession that pertains to Members.

5.3 Examination of Books and Records. Upon reasonable notice, during normal business hours and at a reasonable time and place, United or its designee shall have the right to examine any books or records of Vendor that relate to this Agreement during the term of this Agreement and for three (3) years thereafter unless otherwise required by law.

5.4 Corrective Action Plans. United shall provide Vendor with a report of any audit findings resulting from an examination within thirty (30) calendar days of the conclusion of an audit. If United notes a regulatory deficiency(ies) during the audit or otherwise notes a failure or delay in performance by Vendor, United may request Vendor to develop a corrective action plan. Upon such a request, Vendor shall prepare a corrective action plan and provide it to United for United's approval within thirty (30) calendar days of United's request. Such plan shall (a) be subject to United's approval (which shall not be unreasonably withheld); and (b) include specifics of and timelines for correcting the regulatory deficiency(ies) (which shall not exceed thirty (30) days).

United shall approve or disapprove the initial corrective action plan in a reasonable timeframe after receipt of such plan from Vendor. Vendor shall implement the approved corrective action plan within the timeframes specified therein. If the corrective action plan is not satisfactory to United or implemented to the reasonable satisfaction of United, United may terminate this Agreement pursuant to Section 7.1.

5.5 Government and Accrediting Agency Access to Records. Government and accrediting agencies which license the operation of United or Vendor shall have the right to inspect, evaluate and audit applicable records. United and Vendor are hereby authorized to release all information and records or copies of such within the possession of United or Vendor that are pertinent to and involve transactions related to this Agreement if such access is necessary to comply with accreditation standards, statutes or regulations applicable to United or Vendor. These audit and inspection rights shall exist for three (3) years from the termination date of this Agreement, the date of completion of any audit, or such other period as required by law or as may be set forth in an Appendix.

5.6 Confidential Information. The parties acknowledge that in the course of performing their obligations under this Agreement, either party may learn or receive confidential and proprietary information, including, but not limited to, trade secrets, business or organizational plans, customer lists, pricing, and underwriting information, concerning the other party or third parties to whom the other party has an obligation of confidentiality (collectively "Confidential Information"). Confidential Information shall not include information that:

- (a) was rightfully in the party's possession prior to receiving Confidential Information;
- (b) is currently or subsequently becomes available to the public through a source other than the receiving party;
- (c) the party develops internally, without reference to the other party's Confidential Information; or
- (d) the party receives from a third party on a non-confidential basis from a source, which to the best of such party's knowledge after due inquiry, is not prohibited from discussing such information by a legal, contractual or fiduciary obligation.

Each party shall take all necessary steps to provide the maximum protection to secure the other party's Confidential Information. Each party agrees to take at least such precautions to protect the other party's Confidential Information as it takes to protect its own Confidential Information. The parties shall not utilize any Confidential Information belonging to the other party without the other party's prior written consent for any purpose other than performance under this Agreement. The parties agree not to disclose Confidential Information to third parties without the express prior written consent of the party to whom the information belongs. The parties further agree that they will not disclose Confidential Information to anyone within their respective organizations other than those employees with a need to know and who have been informed of the party's obligations under this Agreement. The parties may disclose Confidential Information to their attorneys, accountants, or other agents ("Representatives"), but only if they need to know the Confidential Information as described above. The parties shall inform each Representative of the confidential and proprietary nature of the Confidential Information. Upon termination of this Agreement, a party in possession of any Confidential Information belonging to the other party shall either return such Confidential Information to the other party or destroy the Confidential Information, without retaining copies. If any Confidential Information is impossible or impracticable to return or destroy, the party holding such other party's Confidential Information shall remain bound by the terms of this section with regards to the applicable Confidential Information. Each party shall retain sole ownership of its own Confidential Information.

5.7 Required Disclosures. The confidentiality obligations described herein will not restrict any disclosure required by order of a court or any government agency. The party being ordered to disclose the information shall give prompt notice to the other party of any such order and reasonably cooperate with the other party, at the other party's request and expense, to resist such order or to obtain a protective order.

5.8 Ownership; Communications. Except as otherwise expressly provided for in this Agreement:

- (a) Any books and records provided by United to Vendor pursuant to this Agreement, or developed or maintained by United under or related to this Agreement, shall be owned by United and are subject to the control of United.
- (b) All funds and assets of Vendor are the property of Vendor, held for the benefit of Vendor and are subject to the control of Vendor.
- (c) All funds and assets of United are the property of United, held for the benefit of United and are subject to the control of United; provided that United agrees to grant Vendor and its affiliates access to United's assets as necessary to perform the duties under this Agreement; or as may reasonably assist Vendor and its affiliates to perform hereunder, including without limitation to assist Vendor, in concert with other affiliated health plans, to achieve cost efficiencies on United's behalf; or as otherwise permitted by United and by applicable law. Neither this Agreement nor the performance of duties pursuant to this Agreement shall grant Vendor or its affiliates any ownership interest in United's assets used by Vendor or its affiliates pursuant to this Agreement.
- (d) Each party shall retain all right, title and interest in its proprietary business information or work product that may be used in advertising or promoting Covered Services or that is related to other activities under this Agreement, including, but not limited to, trade secrets, computer software and applications, and any other proprietary business information or work product that is not available to the general public.
- (e) Upon termination of this Agreement, each party will return to the other party all intellectual property and work product belonging to the other party and shall not retain copies of such data except as shall be necessary under applicable law.

Except as authorized in this Agreement, each party further agrees to obtain the other party's permission before using any of the other party's copyrighted materials in its communications materials. If either party produces its own communications materials, it shall do so at its own cost and submit materials that use the other party's trademarks, logos, copyrighted or other branding materials to describe Covered Services to the other party for prior review and approval, which shall not be unreasonably withheld or delayed. Any promotional videos may be rebroadcast and brochures made available via the parties' intranet solely for the purpose of providing information about Covered Services to Members; provided, however, such materials contain an appropriate copyright acknowledgment. Neither party shall reproduce any marketing, advertising, or promotional materials, including but not limited to, videos, brochures, posters, newsletters and any other copyrighted materials without the other party's prior written consent, unless expressly permitted otherwise under this Agreement.

SECTION 6 REGULATORY COMPLIANCE

6.1 Compliance with Laws, Regulations; Licensure. Vendor shall maintain and shall, as applicable, require all Participating Providers and health care professionals employed by or

under contract with Vendor, to maintain all federal, state and local licenses, certifications, permits, regulatory approvals and accreditations, without material restriction, that are required to provide the services under this Agreement. Vendor and United shall comply (and, as applicable, Vendor shall require Participating Providers and health care professionals employed by or under contract with Vendor to comply) with all laws and regulations applicable to the services provided hereunder, including without limitation the regulatory provisions set forth in individual appendices attached to this Agreement and made a part hereof (the “Appendix(ces)”), which provisions are hereby incorporated into and made a part of this Agreement. United may add, delete or replace Appendices from time to time as necessary to comply with applicable law without amending this Agreement. Services rendered under this Agreement shall be subject only to those provisions in any Appendix that by law or regulation are applicable to such category of services. Vendor shall comply with the applicable terms and conditions of such Appendices.

Vendor shall notify United if a governmental authority notifies Vendor that it must be licensed as an insurer, health service plan, health maintenance organization, prepaid limited health services organization, or other type of licensed insurer to provide services. In such event, Vendor may cease providing the services that would subject Vendor to such licensure, unless Vendor and United can agree upon an amendment to this Agreement that would make such licensure unnecessary. Any such cessation of services shall be effective the earlier of the date required by the governmental authority or after at least sixty (60) days following prior written notice to United.

6.2 Protected Data. The parties acknowledge and agree that, in the course of performing hereunder, Vendor will receive on behalf of United personal data identifying individuals covered by United, protected health information, and other data protected by law. With respect to such data, Vendor and United shall comply with the Health Insurance Portability and Accountability Act of 1996, the Gramm-Leach Bliley Act, and all other applicable confidentiality, privacy and data security laws and regulations.

6.3 Regulatory Approval and Filing. United shall be responsible for filing this Agreement with any governmental authorities as may be required by any applicable law or regulation. If the governmental authority requests changes to this Agreement, Vendor and United shall jointly discuss the response to the governmental authority. If any governmental authority requires a change to this Agreement that either Vendor or United deems to be material, either party may request re-negotiation of the affected provisions of this Agreement pursuant to Section 11.15.

6.4 Delegation of Activities; Oversight. To the extent applicable to any Covered Services, in compliance with the delegation and oversight obligations imposed on United, including by the applicable state or under its contracts with any state and/or federal regulatory agencies, United (a) shall conduct at least an annual audit of Vendor’s performance of such delegated activities and (b) has the right (including if asked by a regulatory agency) to revoke any functions or activities delegated to Vendor under this Agreement, if in United’s reasonable judgment, Vendor’s performance under this Agreement does not comply with United’s obligations. This right shall be in addition to United’s termination rights under this Agreement.

6.5 Immunity. Vendor and United agree that activities delegated to Vendor by United may be considered professional and quality review procedures and that both Vendor and United may be immune pursuant to the Health Care Quality Improvement Act (42 U.S.C. 11101, et seq., as may be amended from time to time), or other state or federal law, from any civil liability arising from the delegated activities. Vendor agrees to maintain the confidentiality of any privileged information to the extent permitted by law and obtain United's prior written consent before disclosing privileged information to any third party, except as may otherwise required by law.

SECTION 7 TERM; TERMINATION

7.1 Term and Termination. This Agreement shall commence on the Effective Date and shall continue until terminated as follows:

- (a) by mutual agreement of the parties;
- (b) by either party upon at least sixty (60) days prior written notice to the other party;
- (c) by either party, upon at least thirty (30) days prior written notice to the other party in the event of a material breach of this Agreement by the other party unless the material breach has been cured or a reasonable corrective action plan has been developed and approved by the other party before the end of the notice period;
- (d) by either party, immediately upon written notice to the other party, in the event of the other party's loss or suspension of material licensure, certification or other governmental authorization necessary to perform under this Agreement; or
- (e) immediately if required by a state or federal regulatory agency with jurisdiction over this Agreement.

In the event this Agreement is terminated, United shall provide notice thereof in accordance with all requirements of the insurance laws of the state in which United is domiciled.

Upon notice of termination of this Agreement given by one party to another, United shall pay all fees owed to Vendor pursuant to the payment terms under this Agreement and Vendor shall provide services until the effective date of the termination except as provided under Section 7.5 or otherwise required by law.

7.2 United Receivership. If United is placed in receivership pursuant to the relevant state receivership act:

- (a) Vendor shall have no automatic right to terminate this Agreement;

- (b) Vendor shall continue to maintain any systems, programs or other infrastructure notwithstanding such receivership and will make them available to the receiver for as long as Vendor continues to receive timely payment for services rendered;
- (c) all of the rights of United under this Agreement shall extend to the receiver; and
- (d) United's books and records shall immediately be made available to the receiver and shall be turned over to the receiver immediately upon the receiver's request.

7.3 Effect of Expiration or Termination. Upon the expiration or termination of this Agreement, Vendor will cooperate with United and/or United's designee to transition the care and management of Members undergoing treatment on the date of expiration or termination. Vendor, United and/or United's designee will work together to transition business, medical, and management records to United or United's designee in a commercially reasonable manner that reflects the rights and obligations of all parties, including Vendor's need for ongoing access to such records.

7.4 Notice to Members. Upon notice of termination of this Agreement, United and/or Payor shall have the right to notify Members, at their own expense, of such termination.

7.5 Continued Provision of Covered Services After Termination. Vendor agrees that in the event this Agreement is terminated, Vendor shall use commercially reasonable efforts to cause Participating Providers to continue to provide Covered Services to any Members undergoing treatment at the time of such termination until the earlier of:

- (a) the current episode of treatment is completed, or as to any Members confined in inpatient facilities on the date of such termination, until such Members are discharged; or
- (b) arrangements are completed for such Members to be transferred to another provider.

Participating Providers shall be reimbursed in accordance with their Provider Agreements for all such services rendered subsequent to the termination of this Agreement.

SECTION 8 INSURANCE

Unless otherwise agreed to by the parties in writing, Vendor shall procure and maintain the insurance or self-insurance programs in the minimum amounts set forth below. Any such self-insurance programs will include actuarially approved funding levels. Vendor will provide United evidence of such insurance upon request.

- (a) Commercial general liability insurance coverage, including but not limited to errors and omissions, in the minimum amounts of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate for the policy year.

(b) Professional liability insurance coverage in the minimum amounts of ten million dollars (\$10,000,000) per occurrence and ten million dollars (\$10,000,000) aggregate for the policy year.

(c) As applicable, worker's compensation insurance coverage for Vendor employees in an amount and form meeting all applicable legal requirements.

SECTION 9 INDEMNIFICATION

The parties shall each indemnify and hold the other harmless from and against any and all liabilities, including but not limited to, losses, penalties, fines, costs, damages, claims, causes of action, and expenses the other incurs, including reasonable attorneys' fees, to the extent caused by the indemnifying party's (a) material breach of this Agreement; or (b) willful misconduct or reckless or grossly negligent act or omission related to or in connection with performance under this Agreement.

SECTION 10 DISPUTE RESOLUTION

The parties shall attempt in good faith to resolve any disputes arising from this Agreement ("Disputes") in the normal course of business at the operational level.

Either party may elect to submit any Disputes that are not resolved by the parties to binding arbitration in accordance with the then current AAA Commercial Rules for disputes. The arbitrator(s) shall be bound by and shall follow the then current ABA/AAA Rules of Ethics for Arbitrators.

Any arbitration proceeding under this Agreement shall be conducted in the state of Minnesota. The arbitrator(s) may construe or interpret but shall not vary or ignore the terms of this Agreement and shall be bound by controlling law and applicable rules of evidence.

Unless otherwise agreed to by both parties, the parties expressly intend that any Dispute relating to the business relationship between them be resolved on an individual basis so that no other dispute with any third party(ies) may be consolidated or joined with the Dispute related to this Agreement. The parties agree that any arbitration ruling by an arbitrator allowing class action arbitration or requiring consolidated arbitration involving any third party(ies) would be contrary to their intent and would require immediate judicial review of such ruling.

The decision of the arbitrator(s) on the points in dispute will be binding, and judgment on the award may be entered in any court having jurisdiction thereof. The parties acknowledge that because this Agreement affects interstate commerce the Federal Arbitration Act applies.

If any portion of this Section or any part of this Agreement is deemed to be unlawful, invalid or unenforceable, such unlawfulness, invalidity or unenforceability shall not serve to invalidate any other part of this Section or Agreement. If any court determines that this arbitration procedure is not binding or otherwise allows litigation involving a Dispute to proceed, the parties hereby waive any and all right to trial by jury in, or with respect to, such litigation. Such litigation would instead proceed with the judge as the finder of fact.

If a party wishes to terminate this Agreement based on an assertion of uncured material breach, and the other party disputes whether grounds for such a termination exist, the matter will be resolved in accordance with this Section. If the Dispute is submitted to arbitration, the termination for breach will not take effect during the arbitration proceeding.

Neither party shall be liable to the other party for punitive, exemplary, consequential, indirect or special damages, in each case, except to the extent such damages result from an award of damages in a third party claim.

This Section is the parties' sole recourse for any dispute resolution and the parties waive the right to seek relief from a court of competent jurisdiction, unless otherwise required by law.

SECTION 11 MISCELLANEOUS

11.1 Notices. All notices or other communication required under this Agreement shall be in writing (which may be electronic) and shall be deemed delivered when delivered personally or by e-mail, one day after delivery by commercial overnight delivery service, or if mailed, five days after the date of mailing.

11.2 Amendment. Except as may otherwise be set forth in this Agreement, this Agreement may be amended only by both parties agreeing to the amendment in writing and complying with any and all notice and/or approval requirements of the insurance laws of the state in which United is domiciled.

11.3 Assignment; Subcontracting; Successors and Permitted Assigns. Neither United nor Vendor may assign its rights or responsibilities under this Agreement without the prior written consent of the other party, with the exception that United may assign its rights and responsibilities under this Agreement to an affiliate. With respect to any assignment of this Agreement, the parties shall comply with any and all notice or approval requirements of the insurance laws of the state in which United is domiciled. To the extent permitted by law, Vendor shall have the right to subcontract all or a portion of its obligations to any third party or affiliate; provided, however, that (a) Vendor shall be responsible to United for those duties to the same extent that it would have been responsible without the use of an affiliate or subcontractor, and (b) Vendor will ensure that its affiliates and subcontractors comply with all the terms of this Agreement, including, without limitation, the obligation to perform the services hereunder in compliance with all applicable laws and regulations. To the extent required by any regulatory agency governing any Medicare or Medicaid or other governmental benefit plans (or as may be

set forth in an Appendix) or any accrediting agency, Vendor shall provide notice to United and/or obtain consent, prior to any subcontracting of any of its responsibilities under this Agreement. This Agreement shall be binding upon, inure to the benefit of, and be specifically enforceable by and against the parties and their respective successors and permitted assigns. Nothing expressed or referred to in this Agreement will be construed to give any person or entity other than the parties hereto any rights, remedies or claims under or with respect to this Agreement.

11.4 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the state in which United is domiciled without regard to the conflicts of laws provisions thereof.

11.5 Entire Agreement; Counterparts. This Agreement, which incorporates all exhibits, attachments, addenda, and appendices, constitutes the entire agreement between the parties in regard to the subject matter contained in this Agreement. This Agreement replaces any prior written or oral communications or agreements between the parties relating to the subject matter contained in this Agreement. In the event of a conflict between the provisions of the main body of this Agreement and an Appendix or an exhibit, the terms of the applicable Appendix or exhibit will control. The headings and titles within this Agreement are for convenience only and are not part of the Agreement. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which taken together shall constitute one and the same instrument.

11.6 Marketing; Advertising; Use of Names and Trademarks. During the term of this Agreement, the parties shall have the right to designate and make public reference to the other party by name in an accurate and factual manner, as the company providing, managing and/or arranging for the provision of services. Vendor and United shall not otherwise use the other party's name, trademarks, or service marks without prior written approval. The parties mutually agree to provide, at a minimum, forty-eight (48) hours advance notice and opportunity to comment on all press releases, advertisements or other media statements and communications regarding this Agreement, the services or the business relationship between the parties. Vendor shall obtain United's consent prior to any publication or use of such materials or communications. Notwithstanding the foregoing, if Vendor wishes to make a press release, advertisement or other media statement or communication that requires prior approval of a state or federal regulator, United shall be responsible for seeking such approval in a timely manner and Vendor agrees it will not proceed with the statement or communication until the required approval is obtained. Nothing herein shall be construed to create a right or license to make copies of any copyrighted materials.

11.7 Excluded Individuals. Neither Vendor nor United shall employ or contract any individual or entity (a) excluded from participation in Medicare or a state health care program or (b) any entity that employs or contracts with such an individual or entity to provide services under this Agreement.

11.8 Non-waiver. The failure of either party to insist upon the strict observance or performance of any provision of this Agreement or to exercise any right or remedy shall not impair or waive any such right or remedy. Nothing in this Agreement shall be considered waived by either party unless the party claiming the waiver receives the waiver in writing signed by an authorized signatory. A waiver of one right, remedy or strict observation or performance of a provision does not constitute a waiver of any other.

11.9 Relationship Between Parties. The relationship between the parties to this Agreement is solely that of independent contractors. Nothing in this Agreement or otherwise shall be construed or deemed to create any other relationship, including one of employment, partnership, agency, joint venture, association or any other form of separate legal entity or organization.

11.10 Survival of Terms. Any provisions of this Agreement including any attachments hereto, that, by their nature, extend beyond the expiration or termination of this Agreement shall survive the termination of this Agreement and shall remain in effect until all such obligations are satisfied.

11.11 No Third Party Beneficiaries. This Agreement is intended solely for the benefit of the parties hereto and no third parties shall have any rights hereunder or interest herein except as explicitly provided herein.

11.12 Force Majeure. The obligations of a party under this Agreement will be suspended for the duration of any force majeure applicable to that party. The term “force majeure” means any cause not reasonably within the control of the party claiming suspension, including, without limitation, an act of God; war; riot; invasion; acts of a foreign enemy; terrorist action; weather-related disaster and governmental action. A party claiming suspension under this Section shall use its best efforts to resume performance as soon as possible.

11.13 Arm’s Length Negotiations. The parties acknowledge that the terms of this Agreement are fair and reasonable, were negotiated at arm’s length, and that the parties were given ample opportunity to review and consider this Agreement prior to execution.

11.14 Offshoring. To the extent mandated by law, contract or the applicable regulatory agency, United will notify Vendor of any requirements or restrictions for Vendor performing any of the services outside of the United States. Vendor shall comply with such requirements or restrictions.

11.15 Substantial Change. The parties may renegotiate this Agreement if either party would be materially adversely affected by continued performance as a result of a Substantial Change which presents a fundamental departure from the risk, services, administration, costs or expenses or other assumptions or intent of the parties in entering into either this Agreement, including without limitation:

- (a) a significant reduction in the number, or change in the composition of, Member enrollment;

- (b) a material change in utilization or trends;
- (c) a material modification of an existing Benefit Plan;
- (d) development of a new Benefit Plan;
- (e) expansion of a Service Area to a geographic area of the country not originally contemplated under this Agreement; or
- (f) a significant change in any law, rule, regulation or interpretation thereof that would have a material and adverse effect on the ability of a party to receive the benefits it reasonably expects to obtain under this Agreement or renders it illegal for a party to continue to perform under this Agreement in a manner consistent with the parties' intent.

The affected party must promptly notify the other party of the Substantial Change and its desire to renegotiate this Agreement. This section does not affect either party's right to terminate this Agreement in accordance with Section 7.1.

[The rest of this page is left intentionally blank.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

March Vision Care Group Incorporated

By: Patricia Boucher

Print Name: Patricia Boucher

Title: Chief Financial Officer

UnitedHealthcare of Kentucky, Inc.

By: Deborah English

Print Name: Deborah English

Title: CFO

