

**AGREEMENT BETWEEN BROWARD COUNTY AND _____ FOR GROUP
DENTAL PREFERRED PROVIDER ORGANIZATION (DPPO) INSURANCE (RFP # GEN2116451P2)**

This Agreement (“Agreement”) is made and entered by and between Broward County, a political subdivision of the State of Florida (“County”), and [Corporate Name of Insurer], a _____ corporation (“Insurer”) (collectively referred to as the “Parties”).

A. [Insert recitals if applicable]

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1. DEFINITIONS

- 1.1 **Board** means the Board of County Commissioners of Broward County, Florida.
- 1.2 **Contract Administrator** means the Director of the Broward County Human Resources Division, or such other person designated by same in writing.
- 1.3 **County Administrator** means the administrative head of County appointed by the Board.
- 1.4 **County Attorney** means the chief legal counsel for County appointed by the Board.
- 1.5 **County Business Enterprise** or **CBE** means a small business certified as meeting the requirements of Section 1-81, Broward County Code of Ordinances.
- 1.6 **County Employee** means a benefit-eligible employee, retiree, or COBRA participant of County.
- 1.7 **Member** means a County Employee, his or her spouse, a qualified domestic partner, or covered dependents that have elected to participate in the group preferred provider organization dental insurance plan.
- 1.8 **Purchasing Director** means County’s Director of Purchasing as appointed by the County Administrator.
 - 1.8.1 **RFP** means the Request for Proposals RFP # GEN2116451P2, Group Dental Preferred Provider Organization (DPPO) Insurance (rebid).
- 1.9 **Services** means the group dental preferred provider organization insurance plan services provided to Members, pursuant to this Agreement, under the Summary Plan Description set forth in Exhibit A.

1.10 **Subcontractor** means an entity or individual providing services to County through Insurer for all or any portion of the work under this Agreement. The term “Subcontractor” shall include all subconsultants.

ARTICLE 2. EXHIBITS

The following exhibits are attached hereto and incorporated into this Agreement:

Exhibit A	Summary Plan Description
Exhibit B	Premium Rates
Exhibit C	Performance Measures
Exhibit D	Minimum Insurance Coverages

ARTICLE 3. SCOPE OF SERVICES

3.1 Summary Plan Description. Insurer shall provide group dental preferred provider organization insurance plan services to Members under the Summary Plan Description in Exhibit A (“Summary Plan Description”). The Summary Plan Description describes the benefits provided and the limitations of this Agreement. Nothing in the Summary Plan Description is intended to change or void the terms of this Agreement.

3.2 Notice of Judgment or Final Order. Insurer must give notice to County of any judgment or final order rendered by the Florida Department of Financial Services, the Florida Office of Insurance Regulations, any federal or other state agency, or any court of law, finding that any of the specific insurance plans or programs provided pursuant to this Agreement are inconsistent or fail to comply with any applicable federal or state law requirement or regulation. Insurer must also give County notice of any corrective action plan imposed by any state or federal agency, including without limitation by the Florida Department of Financial Services or the Florida Office of Insurance Regulations, concerning any insurance plan or program Insurer provides under this Agreement. The notice required by this section must be provided within thirty (30) days after the judgment or final order is rendered or the corrective action plan is imposed, whichever the case may be.

ARTICLE 4. TERM

4.1 Term. The initial term of this Agreement will commence on January 1, 2020 (“Effective Date”) and expire December 31, 2022, unless sooner terminated. Each annual period is referred to as a “Contract Year.” The continuation of this Agreement beyond the end of any County fiscal year shall be subject to both the appropriation and availability of funds in accordance with Chapter 129, Florida Statutes.

4.2 Extensions. This Agreement can be renewed for up to three (3) additional one (1) year terms upon the written consent of both County and Insurer (individually a “Renewal Term” and collectively “Renewal Terms”). County’s Purchasing Director is authorized to exercise renewal options if the same terms and conditions in effect during the immediately preceding term are

accepted by Insurer (as provided below). If this Agreement is renewed, the first Renewal Term will commence on January 1, 2023, and end on December 31, 2023, a second Renewal Term, if there is one, will commence on January 1, 2024, and end on December 31, 2024, and a third Renewal Term, if there is one, will commence on January 1, 2025, and end on December 31, 2025. Insurer shall give County notice at least two hundred seventy (270) days prior to the expiration of the then existing term that Insurer either accepts renewal on the same terms and conditions in effect during the then existing term, or that Insurer requests an increase in premium rates for the Renewal Term. If Insurer fails to timely provide such notice, Insurer shall be deemed to have accepted renewal on the same terms and conditions in effect during the then existing term. Notwithstanding the above, County shall have the right, by and through its Purchasing Director, and at his or her sole discretion, to extend the then-current term of this Agreement on a month to month basis for up to a maximum of six (6) months ("Extension Term"). The Purchasing Director may exercise this extension option by written notice stating the duration of the Extension Term, which notice shall be provided to Insurer at least thirty (30) days prior to the end of the then current term. Any Extension Term shall be on the same terms and conditions as existed during the immediately preceding term.

ARTICLE 5. PREMIUM RATES

5.1 Premium Rates. The premium rates to be charged by Insurer are set forth in Exhibit B. These rates reflect the maximum premium rates that may be charged by Insurer, unless modified pursuant to Section 5.2.

5.2 Modifications to Premium Rates. County recognizes that changes to federal and state laws may mandate coverage changes that result in adjustments to the premium rates set forth in Exhibit B. Therefore, if an adjustment to the premium rates stated in Exhibit B is required due to changes in federal or state law, and such premium rates are endorsed by the Department of Financial Services for the State of Florida, County and Insurer shall amend this Agreement, upon mutual agreement, to reflect any agreed adjustment to premium rates. County reserves the right to terminate this Agreement for convenience if the Parties are unable to agree on an adjustment to the premium rates.

ARTICLE 6. PERFORMANCE MEASURES

6.1 Performance Measures. Insurer shall meet the performance measures set forth in Exhibit C ("Performance Measures") in performing services under this Agreement. Insurer shall submit performance reports to County within forty-five (45) days after the conclusion of the applicable measurement period as set forth on Exhibit C.

6.2 Extension Request. Insurer may request an extension of any Performance Measure deadline stated in Exhibit C. Such request shall be submitted in writing to the Contract Administrator no less than five (5) business days before the deadline, unless the need for an extension could not reasonably be foreseen by Insurer or County determines that the need for an extension happened for a reason beyond Insurer's control. In the case of a need for an

extension that could not be reasonably foreseen by Insurer, Insurer shall submit any request for an extension as soon as reasonably possible, but in no event later than five (5) business days after occurrence of the event giving rise to the extension request. If County determines that the request for an extension is based upon extenuating circumstances or other causes beyond Insurer's control, approval of the request shall not be unreasonably withheld by County. Insurer's written request must identify the section of Exhibit C to which the request applies and the reasons why the established deadline could not be met. An extension request approved by County can be for such additional time period as County deems appropriate. County shall give notice to Insurer of its decision on an extension request within three (3) business days after receipt of Insurer's request.

6.3 Retention Invoices. If after receipt and review of all quarterly and annual performance reports provided by Insurer as required by Section 6.1 and described on Exhibit C, County, through its Contract Administrator, finds that Insurer has failed at any time to meet any Performance Measure during the prior Contract Year, County will submit a written invoice to Insurer detailing the date(s), Member name(s) and identification number(s), if applicable, alleged Performance Measure failure(s), and the total amount of deductions attributable to such failure(s) due County in accordance with Exhibit C. Unless Insurer files an appeal in strict accordance with the requirements of Section 6.4, Insurer must pay County the amount set forth on the invoice within twenty (20) days after the date of County's invoice. If no such appeal is filed and Insurer fails to timely pay the invoice, County may set off and deduct the invoice amount from County's next premium payment. This section shall survive the expiration or earlier termination of this Agreement.

6.4 Appeal. Insurer may appeal County's written notice of failure to meet Performance Measures within ten (10) days after the date of the notice. The appeal must be in writing to the Purchasing Director and must state the reasons why the deductions should be reduced or not assessed. If the appeal is not resolved by mutual agreement, the Purchasing Director shall promptly issue a decision in writing after consulting with the Office of the County Attorney. The decision shall state the reasons for the action taken and, if the appeal is denied in whole or in part, the decision shall inform Insurer of its right to administrative review. If Insurer disagrees with the decision of the Purchasing Director, Insurer may seek administrative review by filing written notice of intent to take administrative appeal with the Purchasing Director not later than ten (10) days after the decision by the Purchasing Director. County and Insurer agree that the administrative appeal procedures shall be those set forth in Section 21.120 of the Broward County Procurement Code, as amended. If County's finding that Insurer failed to meet the identified Performance Measure(s) is sustained on appeal, County may deduct the amount set forth on the invoice from County's next premium payment.

6.5 Time of the Essence. Time is of the essence in performing the duties, obligations, and responsibilities required by this Agreement.

ARTICLE 7. REPRESENTATIONS AND WARRANTIES

7.1 Representation of Authority. Insurer represents and warrants that this Agreement constitutes the legal, valid, binding, and enforceable obligation of Insurer, and that neither the execution nor performance of this Agreement constitutes a breach of any agreement that Insurer has with any third party or violates any law, rule, regulation, or duty arising in law or equity applicable to Insurer. Insurer further represents and warrants that execution of this Agreement is within Insurer's legal powers, and each individual executing this Agreement on behalf of Insurer is duly authorized by all necessary and appropriate action to do so on behalf of Insurer and does so with full legal authority.

7.2 Licensure and Authorization. Insurer warrants and guarantees that it is properly licensed and authorized to do business in Broward County as required by the laws of the State of Florida, and the administrative rules and regulations of the Florida Department of Financial Services.

7.3 Solicitation Representations. Insurer represents and warrants that all statements and representations made in Insurer's proposal, bid, or other supporting documents submitted to County in connection with the solicitation, negotiation, or award of this Agreement, including during the procurement or evaluation process, were true and correct when made and are true and correct as of the date Insurer executes this Agreement, unless otherwise expressly disclosed in writing by Insurer.

7.4 Contingency Fee. Insurer represents that it has not paid or agreed to pay any person or entity, other than a bona fide employee working solely for Insurer, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

7.5 Truth-In-Negotiation Representation. Insurer's compensation under this Agreement is based upon its representations to County, and Insurer certifies that the wage rates, factual unit costs, and other information supplied to substantiate Insurer's compensation, including without limitation in the negotiation of this Agreement, are accurate, complete, and current as of the date Insurer executes this Agreement. Insurer's compensation will be reduced to exclude any significant sums by which the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs.

7.6 Public Entity Crime Act. Insurer represents that it is familiar with the requirements and prohibitions under the Public Entity Crime Act, Section 287.133, Florida Statutes, and represents that its entry into this Agreement will not violate that Act. Insurer further represents that there has been no determination that it committed a "public entity crime" as defined by Section 287.133, Florida Statutes, and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether Insurer has been placed on the convicted vendor list.

7.7 Discriminatory Vendor and Scrutinized Companies Lists. Insurer represents that it has not been placed on the discriminatory vendor list as provided in Section 287.134, Florida Statutes.

Insurer further represents that it is not ineligible to contract with County on any of the grounds stated in Section 287.135, Florida Statutes.

7.8 Warranty of Performance. Insurer represents and warrants that it possesses the knowledge, skill, experience, and financial capability required to perform and provide all Services under this Agreement, and that each person and entity that will provide Services under this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and is sufficiently experienced and skilled in the area(s) for which such person or entity will render Services. Insurer represents and warrants that the Services under this Agreement shall be performed in a skillful and respectful manner, and that the quality of all such services shall equal or exceed prevailing industry standards for the provision of such services.

7.9 Domestic Partnership Requirement. Unless this Agreement is exempt from the provisions of the Broward County Domestic Partnership Act, Section 16½-157, Broward County Code of Ordinances, Insurer certifies and represents that it will comply with the provisions of Section 16½-157 for the duration of this Agreement, and the contract language referenced in Section 16½-157 is deemed incorporated in this Agreement as though fully set forth in this section.

7.10 Breach of Representations. In entering into this Agreement, Insurer acknowledges that County is materially relying on the representations and warranties of Insurer stated in this article. County shall be entitled to recover any damages it incurs to the extent any such representation or warranty is untrue. In addition, if any such representation or warranty is false, County shall have the right, at its sole discretion, to terminate this Agreement without any further liability to Insurer, to deduct from the compensation due Insurer under this Agreement the full amount of any value paid in violation of a representation or warranty, or to recover all sums paid to Insurer under this Agreement. Furthermore, a false representation may result in debarment from County's competitive procurement activities.

ARTICLE 8. INDEMNIFICATION

Insurer shall indemnify, hold harmless, and defend County and all of County's officers, agents, servants, and employees (collectively, "Indemnified Party") from and against any and all causes of action, demands, claims, losses, liabilities, and expenditures of any kind, including attorneys' fees, court costs, and expenses, including through the conclusion of any appellate proceedings, raised or asserted by any person or entity not a party to this Agreement, and caused or alleged to be caused, in whole or in part, by any intentional, reckless, or negligent act or omission of Insurer, its officers, employees, agents, or servants, arising from, relating to, or in connection with this Agreement (collectively, a "Claim"). In the event any Claim is brought against an Indemnified Party, Insurer shall, upon written notice from County, defend each Indemnified Party against each such Claim by counsel satisfactory to County or, at County's option, pay for an attorney selected by the County Attorney to defend the Indemnified Party. The obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the Contract Administrator and the County Attorney, any sums due

Insurer under this Agreement may be retained by County until all Claims subject to this indemnification obligation have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by County.

ARTICLE 9. INSURANCE

9.1 For the duration of the Agreement, Insurer shall, at its sole expense, maintain the minimum insurance coverages stated in Exhibit D in accordance with the terms and conditions of this article. Insurer shall maintain insurance coverage against claims relating to any act or omission by Insurer, its agents, representatives, employees, or Subcontractors in connection with this Agreement. County reserves the right at any time to review and adjust the limits and types of coverage required under this article.

9.2 Insurer shall ensure that "Broward County" is listed and endorsed as an additional insured as stated in Exhibit D on all policies required under this article.

9.3 On or before the Effective Date or at least fifteen (15) days prior to commencement of Services, Insurer shall provide County with a copy of all Certificates of Insurance or other documentation sufficient to demonstrate the insurance coverage required in this article. If and to the extent requested by County, Insurer shall provide complete, certified copies of all required insurance policies and all required endorsements within thirty (30) days after County's request.

9.4 Insurer shall ensure that all insurance coverages required by this article shall remain in full force and effect for the duration of this Agreement and until all performance required by Insurer has been completed, as determined by Contract Administrator. Insurer or its insurer shall provide notice to County of any cancellation or modification of any required policy at least thirty (30) days prior to the effective date of cancellation or modification, and at least ten (10) days prior to the effective date of any cancellation due to nonpayment, and shall concurrently provide County with a copy of its updated Certificates of Insurance evidencing continuation of the required coverage(s). Insurer shall ensure that there is no lapse of coverage at any time during the time period for which coverage is required by this article.

9.5 Insurer shall ensure that all required insurance policies are issued by insurers: (1) assigned an A. M. Best rating of at least "A-" with a Financial Size Category of at least Class VII; (2) authorized to transact insurance in the State of Florida; or (3) a qualified eligible surplus lines insurer pursuant to Section 626.917 or 626.918, Florida Statutes, with approval by County's Risk Management Division.

9.6 If Insurer maintains broader coverage or higher limits than the minimum insurance requirements stated in Exhibit D, County shall be entitled to any such broader coverage and higher limits maintained by Insurer. All required insurance coverages under this article shall provide primary coverage and shall not require contribution from any County insurance, self-insurance or otherwise, which shall be in excess of and shall not contribute to the insurance required and provided by Insurer.

9.7 Insurer shall declare in writing any self-insured retentions or deductibles over the limit(s) prescribed in Exhibit D and submit to County for approval at least fifteen (15) days prior to the Effective Date or commencement of Services. Insurer shall be solely responsible for and shall pay any deductible or self-insured retention applicable to any claim against County. County may, at any time, require Insurer to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. Insurer agrees that any deductible or self-insured retention may be satisfied by either the named insured or County, if so elected by County, and Insurer agrees to obtain same in endorsements to the required policies.

9.8 Unless prohibited by the applicable policy, Insurer waives any right to subrogation that any of Insurer's insurer may acquire against County, and agrees to obtain same in an endorsement of Insurer's insurance policies.

9.9 Insurer shall require that each Subcontractor maintains insurance coverage that adequately covers the Services provided by that Subcontractor on substantially the same insurance terms and conditions required of Insurer under this article. Insurer shall ensure that all such Subcontractors comply with these requirements and that "Broward County" is named as an additional insured under the Subcontractors' applicable insurance policies.

9.10 In the event Insurer or any Subcontractor fails to maintain the insurance required by this Agreement, County may pay any costs of premiums necessary to maintain the required coverage and deduct such costs from any payment otherwise due to Insurer. Insurer shall not permit any Subcontractor to provide Services under this Agreement unless and until the requirements of this article are satisfied. If requested by County, Insurer shall provide, within one (1) business day, evidence of each Subcontractor's compliance with this section.

9.11 If any of the policies required under this article provide claims-made coverage: (1) any retroactive date must be prior to the Effective Date; (2) the required coverage must be maintained after termination or expiration of the Agreement for at least the duration stated in Exhibit D, and (3) if coverage is canceled or nonrenewed and is not replaced with another claims-made policy form with a retroactive date prior to the Effective Date, Insurer must obtain and maintain "extended reporting" coverage that applies after termination or expiration of the Agreement for at least the duration stated in Exhibit D.

ARTICLE 10. TERMINATION

10.1 This Agreement may be terminated for convenience by the Board. Termination for convenience by the Board shall be effective on the termination date stated in written notice provided by County, which termination date shall be not less than thirty (30) days after the date of such written notice. This Agreement may also be terminated by the County Administrator upon such notice as the County Administrator deems appropriate under the circumstances in the event the County Administrator determines that termination is necessary to protect the public health, safety, or welfare. If County erroneously, improperly, or unjustifiably terminates for

cause, such termination shall be deemed a termination for convenience and shall be effective thirty (30) days after such notice of termination for cause is provided.

10.2 This Agreement may be terminated for cause by County for reasons including but not limited to any of the following:

10.2.1 Insurer's failure to suitably perform the Services, failure to continuously perform the Services in a manner calculated to meet or accomplish the objectives in this Agreement, or repeated submission (whether negligent or intentional) for payment of false or incorrect bills or invoices;

10.2.2 If Insurer is a "scrutinized company" pursuant to Section 215.473, Florida Statutes, if Insurer is placed on a "discriminatory vendor list" pursuant to Section 287.134, Florida Statutes, provides a false certification submitted pursuant to Section 287.135(5), Florida Statutes, or upon the occurrence of any of the grounds stated in Section 287.135, Florida Statutes; or

10.2.3 By the Contract Administrator for any fraud, misrepresentation, or material misstatement by Insurer in the award or performance of this Agreement or that otherwise violates any applicable requirement of Section 1-81, Broward County Code of Ordinances.

County shall give Insurer a written notice of termination specifying the grounds for termination and the termination date, which shall not be more than thirty (30) days from the date of County's written notice.

10.3 Termination by Insurer. In accordance with applicable Florida law, Insurer may terminate this Agreement for one or more of the following reasons upon such notice as provided by Florida law:

10.3.1 County failed to pay premiums in accordance with the terms of this Agreement or Insurer has not received timely premium payments and Insurer provided County with notice in accordance with this Agreement and Florida law;

10.3.2 County performed an act or practice that constitutes fraud or made an intentional misrepresentation of material fact under the terms of this Agreement;

10.3.3 County failed to comply with a material provision of this Agreement that relates to rules for employer contributions of group participation;

10.3.4 Insurer ceases offering this specific Insurer coverage or large group coverage; or

10.3.5 There is no longer any Member who lives or works in the Insurer service area.

10.4 Notice of termination shall be provided in accordance with the "Notices" section of this Agreement except that notice of termination by the County Administrator to protect the public health, safety, or welfare may be oral notice that shall be promptly confirmed in writing.

10.5 In the event this Agreement is terminated for convenience by County, Insurer shall be paid for any Services properly performed under this Agreement through the termination date specified in the written notice of termination, subject to any right of County to retain any sums otherwise due and payable. Insurer acknowledges that it has received good, valuable, and sufficient consideration from County, the receipt and adequacy of which are acknowledged by Insurer, for County's right to terminate this Agreement for convenience.

10.6 In addition to any right of termination stated in this Agreement, County shall be entitled to seek any and all available remedies, whether stated in this Agreement or otherwise available at law or in equity.

ARTICLE 11. EQUAL EMPLOYMENT OPPORTUNITY AND CBE COMPLIANCE

11.1 No party to this Agreement may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement. Insurer shall include the foregoing or similar language in its contracts with any Subcontractors, except that any project assisted by the U.S. Department of Transportation funds shall comply with the nondiscrimination requirements in 49 C.F.R. Parts 23 and 26.

11.2 Insurer shall comply with all applicable requirements of Section 1-81, Broward County Code of Ordinances, in the award and administration of this Agreement. Failure by Insurer to carry out any of the requirements of this article shall constitute a material breach of this Agreement, which shall permit County to terminate this Agreement or exercise any other remedy provided under this Agreement, the Broward County Code of Ordinances, the Broward County Administrative Code, or under other applicable law, all such remedies being cumulative.

11.3 Although no CBE goal has been set for this Agreement, County encourages Insurer to give full consideration to the use of CBE firms to perform work under this Agreement.

ARTICLE 12. MISCELLANEOUS

12.1 Contract Administrator Authority. Unless expressly stated otherwise in this Agreement or otherwise set forth in an applicable provision of the Broward County Procurement Code, Broward County Code of Ordinances, or Broward County Administrative Code, the Contract Administrator may act on behalf of County under this Agreement.

12.2 Rights in Documents and Work. Any and all reports, photographs, surveys, and documents created by Insurer in connection with performing Services under this Agreement shall be owned by County and shall be deemed works for hire by Insurer and its agents; in the event the Services are determined not to be a work for hire, Insurer hereby assigns all right, title, and interest, including any copyright or other intellectual property rights in or to the work, to County. In the event of termination of this Agreement, any reports, photographs, surveys, and other data

and documents prepared by Insurer, whether finished or unfinished, shall become the property of County and shall be delivered by Insurer to the Contract Administrator within seven (7) days after termination of this Agreement. Any compensation due to Insurer may be withheld until all documents are received as provided in this Agreement. Insurer shall ensure that the requirements of this section are included in all agreements with its Subcontractor(s).

12.3 Public Records. To the extent Insurer is acting on behalf of County as stated in Section 119.0701, Florida Statutes, Insurer shall:

12.3.1 Keep and maintain public records required by County to perform the services under this Agreement;

12.3.2 Upon request from County, provide County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

12.3.3 Ensure that public records that are exempt or confidential and exempt from public record requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion or termination of this Agreement if the records are not transferred to County; and

12.3.4 Upon completion or termination of this Agreement, transfer to County, at no cost, all public records in possession of Insurer or keep and maintain public records required by County to perform the services. If Insurer transfers the records to County, Insurer shall destroy any duplicate public records that are exempt or confidential and exempt. If Insurer keeps and maintains the public records, Insurer shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to County upon request in a format that is compatible with the information technology systems of County.

A request for public records regarding this Agreement must be made directly to County, who will be responsible for responding to any such public records requests. Insurer will provide any requested records to County to enable County to respond to the public records request.

Any material submitted to County that Insurer contends constitutes or contains trade secrets or is otherwise exempt from production under Florida public records laws (including Chapter 119, Florida Statutes) ("Trade Secret Materials") must be separately submitted and conspicuously labeled "EXEMPT FROM PUBLIC RECORD PRODUCT – TRADE SECRET." In addition, Insurer must, simultaneous with the submission of any Trade Secret Materials, provide a sworn affidavit from a person with personal knowledge attesting that the Trade Secret Materials constitute trade secrets under Section 812.081, Florida Statutes, and stating the factual basis for same. In the event that a third party submits a request to County for records designated by Insurer as Trade Secret Materials, County shall refrain from disclosing the Trade Secret Materials, unless otherwise ordered by a court of competent jurisdiction or authorized in writing by Insurer.

Insurer shall indemnify and defend County and its employees and agents from any and all claims, causes of action, losses, fines, penalties, damages, judgments and liabilities of any kind, including attorneys' fees, litigation expenses, and court costs, relating to the nondisclosure of any Trade Secret Materials in response to a records request by a third party.

IF INSURER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO INSURER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (954) 357-6700, BENEFITSRECORDS@BROWARD.ORG, 115 S. ANDREWS AVE., SUITE 514, FORT LAUDERDALE, FLORIDA 33301.

12.4 Audit Rights and Retention of Records. County shall have the right to audit the books, records, and accounts of Insurer and its Subcontractors that are related to this Agreement. Insurer and its Subcontractors shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement and performance under this Agreement. All such books, records, and accounts shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, Insurer or its Subcontractor shall make same available in written form at no cost to County.

Insurer and its Subcontractors shall preserve and make available, at reasonable times within Broward County, Florida, for examination and audit, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for at least three (3) years after expiration or termination of this Agreement or until resolution of any audit findings, whichever is longer. Any audit or inspection pursuant to this section may be performed by any County representative (including any outside representative engaged by County). Insurer hereby grants County the right to conduct such audit or review at Insurer's place of business, if deemed appropriate by County, with seventy-two (72) hours' advance notice.

Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for County's disallowance and recovery of any payment upon such entry. If an audit or inspection in accordance with this section discloses overpricing or overcharges to County of any nature by Insurer in excess of five percent (5%) of the total contract billings reviewed by County, the reasonable actual cost of County's audit shall be reimbursed to County by Insurer in addition to making adjustments for the overcharges. Any adjustments or payments due as a result of such audit or inspection shall be made within thirty (30) days after presentation of County's findings to Insurer.

Insurer shall ensure that the requirements of this section are included in all agreements with its Subcontractor(s).

12.5 Independent Contractor. Insurer is an independent contractor under this Agreement, and nothing in this Agreement shall constitute or create a partnership, joint venture, or any other relationship between the Parties. In providing Services under this Agreement, neither Insurer

nor its agents shall act as officers, employees, or agents of County. Insurer shall not have the right to bind County to any obligation not expressly undertaken by County under this Agreement.

12.6 Regulatory Capacity. Notwithstanding the fact that County is a political subdivision with certain regulatory authority, County's performance under this Agreement is as a party to this Agreement. In the event County exercises its regulatory authority, the exercise of such authority and the enforcement of any rules, regulation, laws, and ordinances shall have occurred pursuant to County's regulatory authority as a governmental body separate and apart from this Agreement, and shall not be attributable in any manner to County as a party to this Agreement.

12.7 Sovereign Immunity. Except to the extent sovereign immunity may be deemed to be waived by entering into this Agreement, nothing herein is intended to serve as a waiver of sovereign immunity by County nor shall anything included herein be construed as consent by County to be sued by third parties in any matter arising out of this Agreement. County is a political subdivision as defined in Section 768.28, Florida Statutes, and shall be responsible for the negligent or wrongful acts or omissions of its employees pursuant to Section 768.28, Florida Statutes.

12.8 Third-Party Beneficiaries. Neither Insurer nor County intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no third-party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

12.9 Notices. In order for a notice to a party to be effective under this Agreement, notice must be sent via U.S. first-class mail, hand delivery, or commercial overnight delivery, each with a contemporaneous copy via e-mail, to the addresses listed below and shall be effective upon mailing or hand delivery (provided the contemporaneous email is also sent). The addresses for notice shall remain as set forth in this section unless and until changed by providing notice of such change in accordance with the provisions of this section.

FOR COUNTY:

Broward County Human Resources Division
Attn: Human Resource Director
Governmental Center, Room 508
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Email address: [REDACTED]

FOR INSURER:

[REDACTED]
[REDACTED]
[REDACTED]
Email address: [REDACTED]

12.10 Assignment. All Subcontractors must be expressly identified in this Agreement or otherwise approved in advance and in writing by County's Contract Administrator. Except for subcontracting approved by County in advance, neither this Agreement nor any right or interest in it may be assigned, transferred, subcontracted, or encumbered by Insurer without the prior written consent of County. If Insurer violates this provision, County shall have the right to immediately terminate this Agreement. Any purported assignment, transfer, subcontract, or encumbrance in violation of this Section 12.10 will be void.

12.11 Conflicts. During the term of this Agreement, none of Insurer's officers or employees shall serve as an expert witness against County in any legal or administrative proceeding in which he, she, or Insurer is not a party, unless compelled by court process. Further, such persons shall not give sworn testimony or issue a report or writing as an expression of his or her expert opinion that 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 Insurer or any persons in any way from representing themselves, including giving expert testimony in support of such representation, in any action or in any administrative or legal proceeding. In the event Insurer is permitted pursuant to this Agreement to utilize Subcontractors to perform any Services required by this Agreement, Insurer shall require such Subcontractors, by written contract, to comply with the provisions of this section to the same extent as Insurer.

Insurer agrees that Insurer, including its principals and employees: shall not have or hold any contractual or employment relationship with any of County's fringe benefit providers or any other entities competing to provide fringe benefits or related services to County or its employees in relation to County's employee benefits programs; shall not have a material interest in such providers or entities during the term of this Agreement, including any Extension Term or renewal periods; and shall not have a continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Insurer's loyal and conscientious exercise of judgment related to its performance under this Agreement.

Insurer agrees that Insurer, including its principals and employees, shall not receive any fees, commissions, or other compensation from any of the County's fringe benefit providers or any other entities competing to provide fringe benefits or related services to County or its employees in relation to the County's employee benefits programs.

In the event Insurer utilizes Subcontractors to perform any services required by this Agreement, Insurer shall require such Subcontractors, by written contract, to comply with the provisions of this section to the same extent as Insurer.

12.12 Materiality and Waiver of Breach. Each requirement, duty, and obligation set forth in this Agreement was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth in this Agreement is substantial and important to the formation of this Agreement, and each is, therefore, a material term of this Agreement. County's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or

modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement. To be effective, any waiver must be in writing signed by an authorized signatory of the party.

12.13 Compliance with Laws. Insurer and the Services must comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations including, without limitation, Americans with Disabilities Act, 42 U.S.C. § 12101, Section 504 of the Rehabilitation Act of 1973, and any related federal, state, or local laws, rules, and regulations.

12.14 Severability. In the event any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed from this Agreement and the balance of this Agreement shall remain in full force and effect.

12.15 Joint Preparation. This Agreement has been jointly prepared by the Parties, and shall not be construed more strictly against either party.

12.16 Interpretation. The titles and headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as “herein,” “hereof,” “hereunder,” and “hereinafter” refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section or article of this Agreement, such reference is to the section or article as a whole, including all of the subsections of such section, unless the reference is made to a particular subsection or subparagraph of such section or article. Any reference to “days” means calendar days, unless otherwise expressly stated.

12.17 Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached to, referenced by, or incorporated in this Agreement and any provision of Articles 1 through 12 of this Agreement, the provisions contained in Articles 1 through 12 shall prevail and be given effect.

12.18 Law, Jurisdiction, Venue, Waiver of Jury Trial. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **BY ENTERING INTO THIS AGREEMENT, INSURER AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE**

ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.

12.19 Amendments. No modification, amendment, or alteration in the terms or conditions contained in this Agreement shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by duly authorized representatives of County and Insurer.

12.20 Prior Agreements. This Agreement represents the final and complete understanding of the Parties regarding the subject matter and supersedes all prior and contemporaneous negotiations and discussions regarding that subject matter. There is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document.

12.21 HIPAA Compliance. County has access to protected health information ("PHI") that is subject to the requirements of 45 C.F.R. Parts 160, 162, and 164 and related regulations. In the event Insurer is considered by County to be a covered entity or business associate or is required to comply with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") or the Health Information Technology for Economic and Clinical Health Act ("HITECH"), Insurer shall fully protect individually identifiable health information as required by HIPAA or HITECH and, if requested by County, shall execute a Business Associate Agreement in the form set forth at <http://www.broward.org/Purchasing/Pages/StandardTerms.aspx>. The County Administrator is authorized to execute a Business Associate Agreement on behalf of County. Where required, Insurer shall handle and secure such PHI in compliance with HIPAA, HITECH, and related regulations and, if required by HIPAA, HITECH, or other laws, include in its "Notice of Privacy Practices" notice of Insurer's and County's uses of client's PHI. The requirement to comply with this provision, HIPAA, and HITECH shall survive the expiration or earlier termination of this Agreement. Insurer shall ensure that the requirements of this section are included in all agreements with its Subcontractors.

12.22 Payable Interest

12.22.1 Payment of Interest. County shall not be liable to pay any interest to Insurer for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof Insurer waives, rejects, disclaims, and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim arising from, related to, or in connection with this Agreement. This subsection shall not apply to any claim for interest, including for post-judgment interest, if such application would be contrary to applicable law.

12.22.2 Rate of Interest. If the preceding subsection is inapplicable or is determined to be invalid or unenforceable by a court of competent jurisdiction, the annual rate of interest payable by County under this Agreement, whether as prejudgment interest or for

any other purpose, shall be, to the full extent permissible under applicable law, one quarter of one percent (0.25%) simple interest (uncompounded).

12.23 Incorporation by Reference. Any and all Recital clauses stated above are true and correct and are incorporated in this Agreement by reference. The attached Exhibits are incorporated into and made a part of this Agreement.

12.24 Counterparts and Multiple Originals. This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

12.25 Use of County Logo. Insurer shall not use County's name, logo, or otherwise refer to this Agreement in any marketing or publicity materials without the prior written consent of County.

12.26 Drug-Free Workplace. To the extent required under Section 21.31(a)(2), Broward County Administrative Code, or Section 287.087, Florida Statutes, Insurer certifies that it has a drug-free workplace program and that it will maintain such drug-free workplace program for the duration of this Agreement.

12.27 Additional Services and Changes in Scope of Services. County or Insurer may request changes that would increase, decrease, or otherwise modify the scope of services to be provided by Insurer under this Agreement. Such changes must be contained in a written amendment, prepared and executed consistent with Section 12.19 of this Agreement entitled "Amendments," prior to any deviation from the terms of this Agreement, including the initiation of any additional services. County shall compensate Insurer for such additional services as mutually agreed to by the Parties.

12.28 Legislative, Regulatory, or Administrative Change. In the event there is a change in a relevant federal or state statute or regulation, the adoption of new federal or state legislation, or a change in any reimbursement system, that is reasonably likely to materially and adversely affect the performance of either party under this Agreement or make this Agreement unlawful, the Parties shall immediately enter into good faith negotiations regarding an amendment or new agreement that complies with the law, regulation or policy and that approximates as closely as possible the position of the Parties prior to the change.

12.29 Living Wage Requirement. If Insurer is a "covered employer" within the meaning of the Broward County Living Wage Ordinance, Sections 26-100 through 26-105, Broward County Code of Ordinances, Insurer agrees to and shall pay to all of its employees providing "covered services," as defined in the ordinance, a living wage as required by such ordinance, and Insurer shall fully comply with the requirements of such ordinance. Insurer shall ensure all of its Subcontractors that qualify as "covered employers" fully comply with the requirements of such ordinance.

12.30 Piggyback. Insurer acknowledges that for the term of this Agreement, including any Renewal Terms, other public corporations, entities, or agencies within Broward County, Florida (each, a "Piggyback Entity") may request to piggyback on the group dental preferred provider

organization insurance plan services offered under this Agreement, on the same terms and conditions. If Insurer receives a request to piggyback on this Agreement, Insurer must provide written notice of the request to County within three (3) days of receipt. If Insurer accepts the request to piggyback, the administration of the services provided to any Piggyback Entity must be governed under a separate agreement between Insurer and such Piggyback Entity. County shall have no obligation or liability to Insurer, any Piggyback Entity, or any third party in connection with the administration of services provided to any Piggyback Entity.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: BROWARD COUNTY, through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the ____ day of _____, 20__, and Insurer, signing by and through its _____, duly authorized to execute same.

COUNTY

ATTEST:

BROWARD COUNTY, by and through
its Board of County Commissioners

Broward County Administrator, as
ex-officio Clerk of the Broward County
Board of County Commissioners

By: _____
Mayor
____ day of _____, 20__

Insurance requirements approved by Broward
County
Risk Management Division:

Approved as to form by
Andrew J. Meyers
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

By: _____

Name: _____

Title: _____

By: _____
Alicia C. Lobeiras (Date)
Assistant County Attorney

By: _____
Jeffrey S. Siniawsky (Date)
Assistant County Attorney

ACL/dp
Dental (rebid) – Form Agreement - PPO.docx
10/15/2018
#386136

AGREEMENT BETWEEN BROWARD COUNTY AND _____ FOR
GROUP DENTAL PREFERRED PROVIDER ORGANIZATION (DPPO) INSURANCE
(RFP # GEN2116451P2)

INSURER

WITNESSES:

INSURER NAME

Signature

By: _____
Authorized Signor

Print Name of Witness above

Print Name and Title

Signature

____ day of _____, 20__

Print Name of Witness above

ATTEST:

Corporate Secretary or other person
authorized to attest

(CORPORATE SEAL OR NOTARY)

EXHIBIT A
Summary Plan Description

[To be determined; subject to negotiation]

EXHIBIT B
Premium Rates

[To be determined; subject to negotiation]

EXHIBIT C
Performance Measures

[To be determined; subject to negotiation]

EXHIBIT D
Minimum Insurance Coverages

[To be determined; subject to negotiation]