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EXHIBIT D
SPECIAL TERMS AND CONDITIONS

I. TERMINATION

A. Annual Termination

Contractor may terminate this Agreement on an annual basis without cause by giving written notice of termination to the State no later than five months before the beginning of the next plan year for the Program. The effective date of any termination pursuant to this section shall be the first day of the next plan year.

B. Termination for Convenience

1. In addition to the State's right to terminate pursuant to Exhibit C, Section VII and as otherwise provided in this Agreement., the State may terminate this Agreement without cause by giving written notice of termination to the Contractor not less than thirty (30) calendar days prior to the effective date of the termination. In the event the State terminates all or a portion of this Agreement pursuant to this Item I.B., it is understood that the State shall pay the Contractor for satisfactory services rendered prior to the termination, but not in excess of the amount payable pursuant to the terms of this Agreement or in excess of the maximum contract amount.

2. If, after notice of termination for failure to fulfill contract obligations pursuant to Exhibit C, Item VII, it is determined that Contractor had not so failed, the termination shall be deemed to have been effected for the convenience of the State pursuant to this Item I.B.

C. Termination for Insolvency

Contractor shall notify the State immediately in writing in the event that Contractor files any federal bankruptcy action or state receivership action, any federal bankruptcy or state receivership action is commenced against Contractor, Contractor is adjudged bankrupt, or a receiver is appointed and qualifies. In the event of any of the foregoing events, or if the State determines, based on reliable information, that there is a substantial probability that Controller will be financially unable to continue performance under this Agreement, the State may terminate this Agreement and all further rights and obligations immediately by giving five (5) days' notice in writing.

D. Responsibilities of the Parties

Upon notice of termination on any basis under this Agreement the responsibilities of the parties shall be as follows:

1. Upon receipt of any notice terminating this Agreement, the Contractor shall immediately discontinue all services affected, unless the notice directs otherwise.

2. New enrollments by the Contractor shall cease on a date to be determined by the State.

E. Assurances Upon Termination

Upon the termination of this Agreement, the Contractor shall cooperate fully with the State in order to effect an orderly transition of subscribers to another vision care plan. This cooperation shall include, without limitation, attending such post-termination meetings as shall be reasonably requested by the State.

II. AFFIRMATIVE COVENANTS

A. Notice of Proceedings

The Contractor shall promptly notify the State in writing of any investigation, examination or other proceeding involving the Contractor, or any Key Personnel, commenced by any regulatory agency which proceeding is not conducted in the ordinary course of the Contractor's business.

B. Maintenance of Insurance

1. The Contractor warrants that it carries adequate directors and officers liability insurance, workers' compensation insurance, employer liability insurance and other insurance as specified by the State, and that it shall maintain such insurance at levels acceptable to the State in full force and effect during the term of this Agreement. All insurance shall be adequate to provide coverage against losses and liabilities attributable to the acts or omissions of the Contractor in performance of this Agreement and to otherwise protect and maintain the resources necessary to fulfill the Contractor's obligations under this Agreement. The Contractor shall maintain additional insurance coverage for business

interruption and data processing coverage arising from significant system problems. Satisfactory evidence of all coverage shall be made available to the State upon request.

2. Contractor represents that Contractor's participating ophthalmologists and optometrists are insured for malpractice, either independently or through Contractor, in a dollar amount sufficient for their practice. Contractor's participating providers also have liability insurance in a dollar amount appropriate for their business practice.

C. Books and Records

The Contractor shall keep accurate books and records connected with the performance of this Agreement during and for three years after the term of this Agreement, or until the final payment under this Agreement, whichever is later. Such books and records shall be kept in a secure location at the Contractor's office(s). If an audit, review, examination or evaluation is commenced during the time specified herein for the maintenance of books and records, Contractor shall continue to maintain all relevant books and records until the audit, review, examination or evaluation is completed. The Contractor shall ensure that books and records of subcontractors, suppliers, and other providers shall also be accurately maintained for the same periods.

D. Quality and Financial Audits

1. During and for three years after the term of this Agreement, or until the final payment under this Agreement, whichever is later, the Contractor agrees that the State, its authorized representatives, and such consultants and specialists as needed, as well as the State Auditor, or their representatives, consultants, and specialists shall have the right to review, obtain, and copy all records pertaining to performance of the contract. The Contractor agrees to provide the applicable state agencies or their representatives, consultants, and specialists with any requested information connected with performance of this Agreement and shall permit the agencies or their representatives, consultants, and specialists access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation. If an audit, review, examination or evaluation is commenced during the time specified herein, Contractor shall continue to provide access

as specified above until the audit, review, examination or evaluation is completed.

2. The Contractor shall comply with the caveats and be aware of the penalties for violations of fraud and for obstruction of investigation as set forth in Public Contract Code Section 10110.10.

3. The Contractor shall submit to the State a copy of its annual Certified Public Accountant (CPA) report (balance sheet, income statement, cash flow statement and related notes to the financial statements, as well as the management letter). The Contractor shall submit the CPA report to the State within thirty (30) calendar days of its receipt. The Contractor shall also report to the State as applicable, its corrective action plan in any audit findings specifically related to the duties and responsibilities under this agreement. The Contractor agrees to submit quarterly unaudited financial statements (balance sheet and income statements) to the State, if such statements are requested by the State.

4. The State may make periodic audits and reviews, examinations or evaluations at its expense regarding the Contractor's performance under this Agreement, including but not limited to the quality of services rendered pursuant to this Agreement. The State may also audit and examine records and accounts, which pertain, directly or indirectly, to the Contractor (including its parent corporation). The Contractor shall cooperate fully with such auditors; however, such audit shall not interfere with the administration of the Contract, or with the administration of the Contractor.

5. Audits, reviews, examinations or evaluations may be undertaken directly by the State, or by the Office of the State Auditor, or by third parties engaged by the State, including accountants, consultants and physicians. The Contractor shall cooperate fully with the State or any such third party in connection with such audit, review, examination or evaluation.

6 All adjustments, payments and/or reimbursements determined to be necessary by any audit, review, examination or evaluation shall be made promptly by the appropriate party.

7. The Contractor shall have the opportunity, prior to the release of the audit, review, examination, or evaluation report, to review the draft and to include in the report its responses to issues raised by the report.

E. Contractor Cooperation

The State has agreements with an administrative vendor, other participating health plans and other contractors and consultants for the purpose of implementing and maintaining the Program. The Contractor shall cooperate fully, and in a timely manner with the State and any of the State's other contractors involved in implementing and maintaining the Program.

F. Copyright Protections

The Contractor agrees to grant to the State a royalty-free, nonexclusive and irrevocable license to publish, translate, reproduce, deliver, perform, dispose of and authorize others to do so, all data, electronic data processing software that is specifically developed exclusively for this contract, and all Program forms and public informational materials, which are covered by copyright and were specifically developed by the Contractor for the implementation of this Agreement. Such license shall be effective only to the extent that the Contractor has the right to grant such license without becoming liable to pay compensation to others because of such grant.

G. Subcontractors

The Contractor shall obtain prior written approval from the state before subcontracting any of the services delivered under this Agreement unless approval of the subcontract is included in this Agreement. Any subcontracting shall be subject to applicable provisions of this contract, and all applicable State and Federal regulations. The Contractor shall be held responsible by the State for the performance of any subcontractor.

H. Notices

The parties agree that to avoid unreasonable delay in the progress of the services performed hereunder, the Contractor and the State shall each designate specific staff representatives for the purpose of communication between the parties. Any notice or other written communication required or which may be given hereunder shall be deemed given when delivered personally, or if mailed, three (3) days after the date of mailing; unless by express mail, facsimile telecopy, or telegraph, then upon the date of confirmed receipt, to the following representatives:

For the State:

Managed Risk Medical Insurance Board
Attn: ~~Janette Lopez,~~ The Chief Deputy Director
1000 G Street, Suite 450
Sacramento, CA 95814
Telephone No.: (916) 324-4695
Fax No. (916) 324-4878

For Contractor: The designee's name, title, address, and telephone numbers shall be provided in writing or email.

~~**Health Plan**~~
~~**Attn: Name**~~
~~*******~~
~~*******~~
~~**Telephone No. (***) ***-***~~
~~**Fax No. (***) ***-****~~

Either party hereto may, from time to time by notice in writing served upon the other as aforesaid, designate a different mailing address or a different ~~or additional~~ person to which all such notices or demands thereafter are to be addressed.

I. Permits and Licenses

The Contractor shall procure and keep in full force and effect during the term of this Agreement all permits and licenses necessary to accomplish the work contemplated in this Agreement.

J. Compliance with Applicable Law

The Contractor shall carry out its duties and responsibilities herein in accordance with, be limited in the exercise of its rights by, and observe and comply with, all federal, state, city and county law, including but not limited to statutes, ordinances, rules and regulations, and common law affecting services under this Agreement.

K. Reports and/or Meetings

1. The Contractor shall provide oral or written progress reports as requested by the State to determine if the Contractor is performing to expectations or is on schedule, to provide communication of interim findings, and to afford occasions for discussing and resolving problems encountered.

2. The Contractor shall meet with the State upon request to discuss progress on the Agreement or to present findings, conclusions and recommendations.

L. Additional Documents

The Contractor and the State agree to execute such additional documents, and perform such further acts, as may be reasonable and necessary to carry out the provisions of this Agreement.

M. Changes in Control Organization

The Contractor shall promptly, and in any case within five (5) calendar days, notify the State in writing: (i) if any of the Contractor's representations and warranties, as set forth in this Agreement, cease to be true at any time during the term of this Agreement; (ii) of any change in the Contractor's staff who exercise a significant administrative, policy, or consulting role under this Agreement; (iii) of any change in the majority ownership, control, or business structure of the Contractor; or (iv) of any other material change in the Contractor's business, partnership or corporate organization. All written notices from the Contractor under this provision shall contain sufficient information to permit the State to evaluate the changes within the Contractor's personnel or organization under the same criteria as was used by the State in its award of this Agreement to the Contractor. The Contractor agrees to promptly provide the State with such additional information as the State may request.

N. Confidentiality

1. The Contractor agrees to protect the security and confidentiality of all eligibility and enrollment data and all other personal information and protected health information about individuals maintained as part of each Program in accordance with the Information Practices Act, Civil Code Section 1798 et seq., and all other applicable State and Federal laws and regulations, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the regulations promulgated thereunder. All financial, statistical, personal, technical and other data and information relating to the State operations which are designated confidential by the State which become available to the Contractor shall be protected by the Contractor from unauthorized use and disclosure.

2 All financial, statistical, personal, technical and other data and information relating to the State's operation, which are designated

confidential by the State and which become available to the Contractor shall be protected by Contractor from unauthorized use and disclosure.

3. The Contractor agrees that it shall not use any individual identifiable information or other confidential information for any purpose other than carrying out the provisions of this Agreement.

4. The Contractor shall ensure that all of its officers, employees, representatives, consultants, subcontractors, or agents who have access to any confidential information for purposes of carrying out the provisions of this Agreement shall execute a confidentiality agreement incorporating all requirements of this Item II.N. ~~in a form acceptable to the State.~~

O. HIPAA Compliance

The State and Contractor recognize that, as regulations are promulgated and become effective under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the State may add one or more additional provisions to this Agreement in order for the State to achieve compliance with all applicable HIPAA requirements. The State may, by written notice to Contractor, amend this Agreement to comply with such new regulations. If Contractor agrees with any such amendment, it shall so notify the State in writing within thirty (30) days of the written notice. If the parties are unable to agree on an amendment within thirty (30) days thereafter, the State may terminate this Agreement for cause as provided in Exhibit C, Section VII.

P. Disclosure of Contractor Records and Rates of Payment

1. As authorized by Section 6254 of the Government Code, the State and the Contractor shall protect from public disclosure all program records related to the deliberative process, discussions, communications or negotiations over the development of this Agreement.

2. This Agreement and its terms shall remain confidential to the full extent permitted by applicable law, including Government Code Section 6254. For the purposes of this Agreement, disclosure shall be as follows:

   a. This Agreement and any subsequent amendments, with the exception of Attachment IV, Confidential Rates of Payment,

shall not be open to public inspection and shall be kept confidential until one year after the effective starting date of this Agreement or amendment, as applicable, except as required by law.

b. The rates of payment for this Agreement as contained in Attachment IV, Confidential Rates of Payment, shall not be open to public inspection and shall be kept confidential until four years after the effective starting date of this Agreement. All documents and reports held by the State which refer to rates of payment shall also be kept from public inspection until four years after this Agreement has been fully executed.

c. Any rates of payment for this Agreement added through a contract amendment and as contained in Attachment IV, Confidential Rates of Payment, shall not be open to public inspection and shall be kept confidential until four years after the effective date of the added rates. All documents and reports held by the State which refer to rates of payment as amended shall also be kept from public inspection until four years after the effective date of the added rates.

d. The entire Agreement, or amendments to this Agreement, or other records pertaining to the rate of payment, shall be open to inspection by the Joint Legislative Audit Committee and its authorized auditors.

e. The records pertaining to the rate of payment shall be open to federal auditing authorized by the Department of Health and Human Services or the United States Comptroller General and their authorized representatives.

f. As needed, the State shall also allow its own authorized auditors and contractors, including actuarial consultants, whether public or private, to have access to the Agreement, its amendments, the payment rates, and records containing payment rates. The State shall bind its auditors and contractors to the confidentiality requirements contained in this Agreement.

III. NEGATIVE COVENANTS

A. Conflict of Interest

1. The Contractor shall not directly or indirectly receive any benefit from recommendations made to the State and shall disclose to the State any investment or economic interest of the Contractor, or the Contractor's personnel performing services under this Agreement, which may be enhanced by the recommendations made to the State. The Contractor acknowledges that the State, and its employees and consultants, are subject to the provisions of the Fair Political Practices law of California (Government Code Section 81000, et seq., and all regulations adopted thereunder, including, but not limited to, Title 2, California Code of Regulations Section 18700) and the Contractor shall comply promptly with any requirement thereunder. The Contractor shall require any of its personnel to whom the legal requirements apply to file Statements of Economic Interests in compliance with the State's Conflict of Interest Code (Title 2, California Code of Regulations, Section 54400.

2. The Contractor affirms that the Contractor shall not use any information resulting from this Agreement to advantage the Contractor's other business operations.

B. Publicity

No publicity release or announcement concerning this Agreement or the transactions contemplated herein shall be issued by the Contractor without advance written approval by the State.

C. Services or Procurement Resulting from Agreement

Neither the Contractor, nor any of its subsidiaries, officers or directors, may submit a bid or be awarded a contract for the provision of services, procurement of goods or supplies, or any other related action which is required, suggested, or otherwise deemed to be an outgrowth of the advice or recommendations that the Contractor provides under this Agreement.

IV. REPRESENTATIONS AND WARRANTIES

A. Power and Authority

1. The Contractor represents and warrants that it has the power and authority to enter into this Agreement and to carry out its obligations hereunder. The execution of this Agreement has been duly authorized by the Contractor and no other proceeding on the part of the Contractor is necessary to authorize this Agreement. The Contractor has completed, obtained and performed all registrations, filings, approvals, authorizations, consents or examination required by any government or governmental authority for its acts contemplated by this Agreement.

2. The Contractor's participating providers are duly licensed or certified, as required by the laws of this state. The Contractor routinely monitors its participating providers' licenses to ensure that they are current. The Contractor's participating providers have no Department of Health Care Services, Medical Board of California, or California Board of Optometry licensing restrictions.

B. Legal Proceedings

Except as specifically disclosed in writing to the Program by the Contractor prior to the date hereof, and approved by the State in writing, the Contractor certifies that there are no suits, investigations, or other proceedings pending or threatened against the Contractor which would have an effect on the Contractor's ability to perform under this Agreement.

C. Financial Information

The Contractor certifies that all financial information delivered to the State, including, without limit, audited financial statements and related financial periodic information relating to the Contractor, its parent corporation, its affiliates and subsidiaries, its partners or joint ventures, or any Guarantor, fairly and accurately represents such financial condition and has been prepared in accordance with Generally Accepted Accounting Principles unless otherwise noted in such information. Unless the Contractor so informs the State, the Contractor certifies that no material adverse change in such financial condition has occurred.

D. Reporting Accuracy

The Contractor certifies that all reports, documents, instruments, papers, data, information and forms of evidence delivered to the State with respect to this Agreement are accurate and correct, and complete insofar as completeness may be necessary to give the State true and accurate knowledge of the subject matter thereof, and do not contain any material misrepresentations or omissions.

E. Agreement Does Not Violate Law

Neither the execution of this Agreement nor the acts contemplated hereby nor compliance by the Contractor with any provisions hereof shall:

1. Violate any provision of the charter documents of the Contractor;

2. Violate any statute or law or ordinance or any judgment, decree, order, regulation or rule of any court or governmental authority applicable to the Contractor; or

3. Violate, or be in conflict with, or constitute a default under, or permit the termination of, or require the consent of any person under, any agreement to which the Contractor may be bound, the violation of which in the aggregate would have a material adverse effect on the properties, business, prospects, earnings, assets, liabilities or condition (financial or otherwise) of the Contractor.

F. Due Organization

The Contractor is duly organized, validly existing and in good standing under the laws of the State of its incorporation or organization.

G. Signature Authorization

The person signing this Agreement warrants that he/she is an agent of the Contractor and is duly authorized to enter into this Agreement on behalf of the Contractor.

V. GENERAL PROVISIONS

A. Binding Effect

This Agreement, any instrument or agreement executed pursuant to this Agreement, and the rights, covenants, conditions and obligations of the

Contractor and the State contained therein, shall be binding upon the parties and their successors, assignees and legal representatives.

B. Public Assistance Hiring Preference

As the maximum amount of this Agreement exceeds $200,000 the Contractor shall give priority consideration in filling vacancies for positions funded by this contract to recipients of California public assistance Programs, in accordance with the criteria and exemption set forth in Section 10353 of the Public Contract Code, and Section 11349 of the Welfare and Institutions Code. This requirement shall not interfere with or require a violation of a collective bargaining agreement, a federal affirmative action obligation for hiring disabled veterans of the Vietnam era, or nondiscrimination compliance laws of California and does not require the employment of unqualified recipients of aid.

C. Contractor Federal Employer/Contractor ID Number

The Contractor is hereby notified of its responsibility to use the assigned Contractor Federal Identification Number contained on the front page of the Agreement on each subsequent contract entered into with the State of California

D. Taxes

The State is exempt from federal excise taxes and shall not make any payment for any personal property taxes levied on the Contractor or any taxes levied on employee wages. The only taxes the State shall pay on the services rendered pursuant to this Agreement are state and local sales or use taxes.

E. Incorporation of Amendments to Applicable Laws

Any references to sections of federal or state statutes or regulations shall be deemed to include a reference to any amendments thereof and any successor provisions thereto.

F. Ambiguities Not Held Against Drafter

This contract having been freely and voluntarily negotiated by all parties, the rule that ambiguous contractual provisions are construed against the drafter of the provision shall be inapplicable to this contract.

G. Force Majeure

Neither party to this Agreement shall be liable for damages resulting from delayed or defective performance when such delays arise out of causes beyond the control and without the fault or negligence of the offending party. Such causes may include, but are not restricted to, Acts of God or of the public enemy, acts of the State in its sovereign capacity, fires, floods, power failure, disabling strikes, epidemics, quarantine restrictions, and freight embargoes.

H. Waivers

No delay on the part of any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any party of any right, power or privilege hereunder, nor any single or partial exercise of any right, power or privilege hereunder, preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

I. Titles/Section Headings

Titles or headings are not part of this Agreement, are for convenience of reference only, and shall have no effect on the construction or legal effect of this Agreement.

J. Counterparts

This Agreement may be executed in one or more counterparts, each of, which shall be deemed an original, but all of which together shall constitute one and the same instrument.

K. Cumulative Remedies

The rights and remedies provided herein are cumulative and are not exclusive of any rights or remedies, which any party may otherwise have at law or in equity.

L. Entire Agreement/Incorporated Documents/Order of Precedence

1. This Agreement contains all representations and the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda, or agreements are replaced in total by this Agreement.

2. This Agreement shall consist of the terms of this Agreement, and all attached documents which are expressly incorporated herein.

3. In the event there are any inconsistencies or ambiguities among the terms of this Agreement and incorporated documents, the following order of precedence shall be used: (i) applicable laws; (ii) the terms and conditions of this Agreement, including attachments; and (iii) any other provisions, terms, or materials incorporated herein.

M. Dispute Resolution

Any dispute concerning a question of fact arising under the terms of this Agreement which is not disposed of within a reasonable period of time by Contractor and State employees normally responsible for the administration of this Agreement shall be brought to the attention of the Executive Officer (or designated representative) of each organization for joint resolution. At the request of either party, the State shall provide a forum for the discussion of the disputed item(s). If agreement cannot be reached through the application of high level management attention, either party may assert its other rights and remedies within this Agreement or within a court of competent jurisdiction.

The State and Contractor agree that, the existence of a dispute notwithstanding, they shall continue without delay to carry out all their responsibilities under this Agreement which are not affected by this dispute.