

AN ORDINANCE **101576**

AUTHORIZING EXECUTION OF A CONTRACT WITH SPECTERA, INC. TO PROVIDE MANAGED VISION PROGRAM SERVICES FOR AN ESTIMATED ANNUAL COST OF \$490,170.00 FROM THE EMPLOYEE BENEFITS SELF-INSURANCE FUND, FOR A TERM BEGINNING ON JANUARY 1, 2006 AND ENDING ON DECEMBER 31, 2008, WITH ONE OPTION TO EXTEND FOR A TWO YEAR PERIOD, SUBJECT TO AND CONTINGENT UPON FUNDING AND APPROVAL BY CITY COUNCIL.

* * * * *

WHEREAS, the City of San Antonio ("City") Department of Human Resources released a Request for Proposals ("RFP") to provide a managed vision program on August 15, 2005; and

WHEREAS, execution of this contract will allow the City to continue to offer an optional managed vision program to eligible non-uniformed employees and their dependents; and

WHEREAS, ten proposals were received and reviewed by an evaluation committee composed of representatives from Human Resources, Environmental Services, Library, Police and Public Works Departments, with one proposal being deemed non-responsive; and

WHEREAS, the committee now recommends that Spectera, Inc. be awarded the contract to provide said services; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

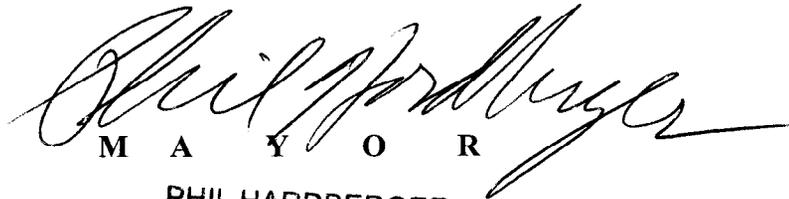
SECTION 1. Spectera, Inc. is hereby selected to provide a Managed Vision Program for City employees for a period commencing on January 1, 2006 and ending on December 31, 2008, for an estimated annual cost of \$490,170.00. The City Manager, or his designee, is authorized 45 business days in which to negotiate and execute a contract in substantially final form as attached hereto as Exhibit "A". If said contract is not negotiated and executed within said 45 days, then there shall be no authority to execute said contract unless there is subsequent City Council authorization. This contract may be renewed for a two year period on the same terms and conditions upon subsequent San Antonio City Council approval.

SECTION 2. The amount of \$490,170.00 will be encumbered in Fund 75002000, Employee Benefits Fund, in GL 5201040, Fees to Professional Contractors, Cost Center 1002010017, and made payable to Spectera Inc. to provide managed vision program services.

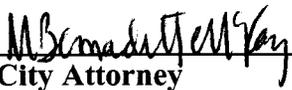
SECTION 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director, may subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers and Fund Numbers as necessary to carry out the purpose of this Ordinance.

SECTION 4. This ordinance shall take effect October 30, 2005.

PASSED AND APPROVED this 20th day of October, 2005.


M A Y O R
PHIL HARDBERGER

ATTEST: 
City Clerk

APPROVED AS TO FORM: 
for City Attorney

**PROFESSIONAL SERVICES AGREEMENT
FOR
MANAGED VISION PROGRAM**

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation ("City"), pursuant to Ordinance No. _____ passed and approved on the 20th day of October, 2005 and Spectera, Inc., ("Vendor"), both of whom may be referred to herein collectively as the "Parties".

Whereas, City offers optional vision care benefits to its active, non-uniformed employees and their dependents as a component of a comprehensive benefits package; and

Whereas, City's plan covers approximately 6035 full time, non-uniformed employees and COBRA participants who may elect to participate in the vision care coverage; and

Whereas, City seeks to contract with Vendor to provide a managed vision program for its employees as further described herein;

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto collectively agree and by the execution hereof are bound to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. DEFINITIONS

As used in this Agreement, the following terms shall have meanings as set out below:

1.1 "City" is defined in the preamble of this Agreement and includes its successors and assigns.

1.2 "Vendor" is defined in the preamble of this Agreement and includes its successors.

1.3 "Director" shall mean the acting director, or Acting Director, of City's Human Resources Department.

1.4 "Plan Participants" are eligible, non-uniformed City employees, COBRA participants, and their dependents for whom the managed vision program benefits are provided.

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence 12:01 a.m. Central Standard Time on January 1, 2006 and terminate at 11:59 p.m. Central Standard Time on December 31, 2008.

2.2 City shall have the option to renew this Agreement on the same terms and conditions for one additional two (2) year period. Renewal shall be in writing and subject to the approval of the City of San Antonio City Council by passage of an ordinance therefore.

2.3 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City's budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

III. SCOPE OF SERVICES

3.1 Vendor agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV. Compensation.

3.2 All work performed by Vendor hereunder shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Vendor, which is not satisfactory to Director. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Vendor's work not be satisfactory to Director; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

3.3 Vendor shall provide the products and perform all the services as set forth in City's Request for Proposal (Exhibit A), and the Vendor's Proposal dated September 12, 2005 (Exhibit C), including submissions made thereafter and prior to award, as modified by the document entitled "Vision Benefit Communication" (Exhibit B). Exhibits A, B, and C are attached hereto and incorporated herein for all purposes.

3.4 Vendor shall work with the Human Resources Director or designee and appropriate City officials to perform any and all related tasks required by City in order to fulfill the purposes of this Contract.

3.5 Reports.

- A. Vendor shall provide to City monthly aggregate group claims experience reports for the City's account in a form approved by City.
- B. Vendor shall provide to City five standard reports and documents, which result from its services to City, including, but not limited to, monthly financial reports,

monthly utilization reports, and monthly individual claims experience reports. City shall select the remaining two reports from Vendor's standard reports. Such reports shall be in a format satisfactory to City, and shall be provided at no charge to City. City may determine that one or more of the standard reports is no longer desired. If such should occur, City may, at its discretion, select another report from Vendor's standard reports as substitution for the report that is no longer desired.

3.6 Vendor shall provide City's employees enrolled in Vendor's plan access to vision services through Vendor's provider network.

3.7 Vendor shall meet monthly with representatives of City's Employee Benefits Division. City shall give Vendor at least twenty-four hours' notice of such meetings.

3.8 In the event of any written complaint against Vendor to the State Board of Insurance, Vendor shall provide City with a copy of the complaint within two business days of receipt of same. Vendor shall also provide City with a copy of all written correspondence regarding the complaint within 2 business days of receiving or sending same.

3.9 Vendor shall maintain a log of all City employee complaints against Vendor, documenting the receipt, response and resolution of each complaint. Vendor shall provide a copy of this log to City on a monthly basis.

3.10 Vendor shall develop and oversee a detailed transition plan to be used at the commencement of the Contract. As part of the transition, Vendor shall prepare participant I.D. cards to be mailed to the employees' homes by Vendor, as well as information materials pertaining to plan design and plan access. The costs associated with the transition plan, including the printing and mailing of ID cards and materials, shall be borne solely by Vendor.

3.11 Vendor shall maintain a network of providers accessible throughout City's geographical area for plan participants and shall not alter its network so as to significantly impact such access by City's plan participants.

3.12 Vendor shall provide City's Employee Benefits staff the following:

- Advanced copies of all general employee correspondence, including changes in services, benefits and providers;
- A minimum of 60 days' notice for provider changes;
- A minimum of 25 updated printed provider lists monthly.

3.13 Vendor shall designate administrative support and an account representative for City.

3.14 Vendor shall maintain the ability to download eligibility information from City via electronic transfer using FTP data transmission via HIPAA compliant transfer medium.

3.15 Vendor shall perform its services in accordance with the ordinary, reasonable standard of care and diligence normally practiced by recognized professional firms in performing services of a similar nature, in the San Antonio, Texas area, under similar circumstances. Vendor must have the knowledge and experience ordinarily required of a member of the profession providing these services, including the skills necessary to adequately cope with problems that arise in performing its services, which skills are not possessed by ordinary laymen.

3.16 Eligibility for City plan participants shall become effective the first day of the month following enrollment.

3.17 Performance Guarantees.

3.17.1 Vendor acknowledges and agrees that Vendor shall provide services under this Contract with a certain degree of accuracy and timeliness. Therefore, as part of this Contract, Vendor agrees to the following performance standards:

Performance Standard	Fee Adjustment for Non-Compliance**
Covered member customer service calls* <ul style="list-style-type: none"> • Average response time of 30 seconds • Call abandonment rate less than 5% 	½% of premium ½% of premium
<ul style="list-style-type: none"> • Turnaround time for payment of non-network clean claims – 90% within 10 days, 99% within 15 days, 100% within 20 days • Claim payment accuracy rate – 99% • Claims coding accuracy rate – 99% • Customer satisfaction rating – 98% favorable 	1% of premium 1% of premium 1% of premium 1% of premium

* Performance is measured by Spectera’s Automatic Call Distribution (ACD) Reporting System. Reports are generated on a quarterly basis.

** For purposes of this section, the percentage of premium to be paid by Vendor is based on the total premiums paid by City for the calendar year of the contract for which the audit is conducted.

3.17.2 Customer Satisfaction Survey

A. Vendor shall fulfill its obligations under this Contract in such a manner as to obtain a minimum 98% favorable rating from City plan participants in the services administered by Vendor. For purposes of this Contract, a favorable rating means a rating of “somewhat satisfied” or “very satisfied.”

B. A determination as to whether Vendor has obtained a 98% favorable rating from City plan participants who have used Vendor’s services will be made each year through the

use of a randomly selected sample of City plan participants. The format of the survey will be jointly developed by the City and Vendor, and will be administered by Vendor, with City's advice and consent to methodology.

3.17.3. Performance compliance audits

A. Annual performance compliance audits may be conducted at the discretion of City using an independent auditor of City's choice. The annual audit for a given calendar year of the contract may be conducted in the subsequent calendar year, until the final year of the original term, or renewal term. City may conduct its audit of that final year's performance measures during that final year. If City conducts a performance audit, either party to this Contract may conduct a second audit, at its own expense, by the same or another independent auditor using a different claim sample of at least equal size. Performance related fee adjustments will then be based on the combined results of both audits. The definition of an error in these audits is subject to a good faith review by the parties. The cost of the first independent audit in any year will be paid by City.

B. Should Vendor fail to meet any performance expectations, Vendor shall:

(1) Pay City the fee adjustment as shown above for the specific performance measure not met within 60 days' notification of audit results that reveal a failure to meet performance standards. If Vendor chooses to conduct its own audit, Vendor shall have 90 days from receiving notification of audit results to do so. In said event, Vendor shall provide its audit results to City. Thereafter, Vendor shall have 30 days from a written demand from City to pay the applicable fee adjustment;

(2) In the final year of the contract, Vendor shall pay City in accordance with (1) above for all premiums previously paid by City, and thereafter allow City to deduct from its monthly premiums, the fee adjustment as shown above for the specific performance measure not met for the remainder of the term; and

(3) Pay the cost of all subsequent audits until it is meeting expected performance levels.

C. If City waives its rights to an independent audit in any plan year, City retains the right to audit in all subsequent years.

D. The provisions of this section pertaining to performance audits are in addition to, and not in lieu of, the audit rights City has pursuant to Article VI. of this Contract.

IV. COMPENSATION TO VENDOR

4.1 In consideration of Vendor's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Agreement, City

agrees to pay Vendor the monthly premiums for each covered City plan participant in accordance with the premium fee schedule shown below:

A. Rates for Original Contract Term of January 1, 2006 through December 31, 2008.

- Employee only \$ 7.62 per month
- Employee + Spouse \$ 13.62 per month
- Employee + Children \$13.62 per month
- Employee + Family \$ 20.18 per month

B. Should City choose to extend this Contract in accordance with section 2.2, the parties shall negotiate the applicable rates for the two year Option Period. However, Vendor agrees that the rates for the extension period shall not increase by more than 6% of the rates stated in 4.1 (A) above.

4.2 City shall self-bill using the City's bi-weekly payroll reports. City shall pay Vendor within fifteen (15) business days after the last payroll of each month. However, City shall have a ten (10) day grace period beyond the fifteen (15) business days to submit payment to Vendor to allow for computer, mail, or other system malfunctions and shall not be considered in breach of this contract during said grace period. A schedule of City's payroll cycle is attached hereto and incorporated herein as Exhibit D.

4.3 If any dispute arises in the amount of premiums paid to Vendor, Vendor shall notify City within ninety (90) calendar days, in writing, from the date City submitted the payment at issue. Failure to so notify City shall result in a waiver of the amount in dispute.

4.4 City may self-credit by reducing a payment retroactively for up to sixty (60) calendar days from the date the original over-payment was submitted. City may self-credit for overpayments due to termination of a plan participant due to non-payment, withdrawal or death.

4.5 City shall provide quarterly statements which reflect balances due to Vendor.

4.6 No additional fees or expenses of Vendor shall be charged by Vendor nor be payable by City. The parties hereby agree that all compensable expenses of Vendor have been provided for in the total payment to Vendor as specified in section 4.1 above. Total payments to Vendor cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing and approved by the San Antonio City Council by passage of an ordinance therefore.

4.7 Final acceptance of work products and services require written approval by City. The approval official shall be Director. Payment will be made to Vendor following written approval of the final work products and services by Director. City shall not be obligated or liable under this Agreement to any party, other than Vendor, for the payment of any monies or the provision of any goods or services.

V. OWNERSHIP OF DOCUMENTS

5.1 Any and all writings, documents or information in whatsoever form and character produced by Vendor pursuant to the provisions of this Agreement is the exclusive property of City; and no such writing, document or information shall be the subject of any copyright or proprietary claim by Vendor.

5.2 Vendor understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction.

VI. RECORDS RETENTION

6.1 Vendor and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

6.2 Vendor shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Vendor shall retain the records until the resolution of such litigation or other such questions. Vendor acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Vendor to return said documents to City prior to or at the conclusion of said retention period.

6.3 To the extent allowed by HIPAA, Vendor shall notify City, immediately, in the event Vendor receives any requests for information from a third party, which pertain to the documentation and records referenced herein, other than as would be provided in the normal course of rendering services hereunder. Vendor understands and agrees that City will process and handle all such requests.

6.4 If an audit carried out pursuant to this article Vendor shall pay City any amount shown by an audit carried to be owed to the City or its employees, within thirty days' of being notified of the results of such an audit.

VII. TERMINATION

7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.

7.2 Termination Without Cause. City may be terminate this Agreement upon 30 calendar days written notice, which notice shall be provided in accordance with Article VIII. Notice.

7.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting;

7.3.2 Any material breach of the terms of this Agreement.

7.4 Defaults With Opportunity for Cure. Should Vendor default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Vendor shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Vendor fails to cure the default within such fifteen-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another vendor to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new vendor against Vendor's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

7.4.1 Failure to comply with the terms and conditions stated in Article XIV. SBEDA;

7.4.2 Bankruptcy or selling substantially all of company's assets;

7.4.3 Any non-material breach of the terms of this Agreement.

7.5 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

7.6 Regardless of how this Agreement is terminated, Vendor shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Vendor, or provided to Vendor, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Vendor in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by

City and shall be completed at Vendor's sole cost and expense. Payment of compensation due or to become due to Vendor is conditioned upon delivery of all such documents, if requested.

7.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Vendor shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by Vendor to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a **Waiver** by Vendor of any and all right or claims to collect moneys that Vendor may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

7.8 Upon the effective date of expiration or termination of this Agreement, Vendor shall cease all operations of work being performed by Vendor or any of its subcontractors pursuant to this Agreement.

7.9 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Vendor for any default hereunder or other action.

VIII. NOTICE

Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to: City of San Antonio, Attn: Marilyn Timlake, Human Resources Dept., Administration Division, 506 Dolorosa, Room 124, San Antonio, Texas 78204.

If intended for Vendor, to: Spectera, Inc., Attn: Nelson R. Armstrong, Jr., 1225 North Loop West, Suite 900, Houston, Texas 77008.

IX. PUBLICATION

9.1 In order to use any advertising relating to business underwritten and/or developed for City, Vendor must obtain written approval by City at least ten (10) business days prior to such use.

9.2 Vendor shall give notice to Plan Participants of the identity of Vendor and the relationship between Vendor and City and the Plan Participant. The notice must be approved by City in writing at least ten (10) business days prior to such distribution.

X. INSURANCE

10.1 Prior to the commencement of any work under this Agreement, Vendor shall furnish an original completed Certificate(s) of Insurance to the City’s Human Resources Department and City Clerk’s Office, and which shall be clearly labeled “Managed Vision Program” in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, containing all required information referenced or indicated thereon. The original certificate(s) or form must have the agent’s original signature, including the signer’s company affiliation, title and phone number, and be mailed directly from the agent to the City. The City shall have no duty to pay or perform under this Agreement until such certificate shall have been delivered to City’s Human Resources Department, Attn: Marilyn Timlake, and the Clerk’s Office, and no officer or employee, other than the City’s Risk Manager, shall have authority to waive this requirement.

10.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City’s Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement, but in no instance will City allow modification whereupon City may incur increased risk.

10.3 A Vendor’s financial integrity is of interest to the City; therefore, subject to Vendor’s right to maintain reasonable deductibles in such amounts as are approved by the City, Vendor shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Vendor’s sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to the City, in the following types and amounts:

1. Workers' Compensation ** Employers' Liability **	Statutory \$500,000/\$500,000/\$500,000
2. Commercial General (public) Liability Insurance to include coverage for the following: a. Premises operations *b. Independent Contractors * c. Products/completed operations d. Personal Injury	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage

e. Contractual Liability *f. Explosion, collapse, underground *g. Broad form property damage, to include fire legal liability	\$50,000
3. Business Automobile Liability* a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>C</u> ombined <u>S</u> ingle <u>L</u> imit for <u>B</u> odily <u>I</u> njury and <u>P</u> roperty <u>D</u> amage of \$1,000,000 per occurrence
4. Professional Liability (Claims Made Form)	\$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission in professional services.
* If Applicable as determined by City's Risk Manager	
** Alternate Plans Must Be Approved by Risk Management	

10.4 The City shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Vendor shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided in Section 10.6 herein within 10 days of the requested change. Vendor shall pay any costs incurred resulting from said changes.

10.5 Vendor agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

- Name the City and its officers, employees, volunteers, and elected representatives as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.

10.6 When there is a cancellation, non-renewal or material change in coverage which is not made pursuant to a request by City, Vendor shall notify the City of such and shall give such notices not less than thirty (30) days prior to the change, if Vendor knows of said change in advance, or ten (10) days notice after the change, if the Vendor did not know of the change in

advance. Such notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the City at the following address:

City of San Antonio
Human Resources Dept.
Administration Division
Attn: Marilyn Timlake
P.O. Box 839966
San Antonio, Texas 78283-3966

City of San Antonio
City Clerk's Office
P.O. Box 839966
San Antonio, Texas 78283-3966

10.7 If Vendor fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the City may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the agreement; however, procuring of said insurance by the City is an alternative to other remedies the City may have, and is not the exclusive remedy for failure of Vendor to maintain said insurance or secure such endorsement. In addition to any other remedies the City may have upon Vendor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Vendor to stop work hereunder, and/or withhold any payment(s) which become due to Vendor hereunder until Vendor demonstrates compliance with the requirements hereof.

10.8 Nothing herein contained shall be construed as limiting in any way the extent to which Vendor may be held responsible for payments of damages to persons or property resulting from Vendor's or its subcontractors' performance of the work covered under this Agreement.

10.9 It is agreed that Vendor's insurance shall be deemed primary with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

10.10 Any and all employees, representatives, agents or volunteers of Vendor, while engaged in the performance of any work required by City in relation to this Agreement, shall be considered employees, representatives, agents or volunteers of Vendor only and not of City. Any and all claims that may result from any obligation for which Vendor may be held liable under any Workers' Compensation, Unemployment Compensation or Disability Benefits law or under any similar law on behalf of said employees, representatives, agents or volunteers shall be the sole obligation and responsibility of Vendor.

XI. INDEMNIFICATION

11.1 VENDOR covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to VENDOR's activities

under this CONTRACT, including any acts or omissions of VENDOR, any agent, officer, director, representative, employee, consultant or subcontractor of VENDOR, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this CONTRACT, all without however, waiving any governmental immunity available to the CITY under Texas Law and without waiving any defenses of the parties under Texas Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS CONTRACT.

It is the EXPRESS INTENT of the parties to this CONTRACT, that the INDEMNITY provided for in this section, is an INDEMNITY extended by VENDOR to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY from the consequences of the CITY'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the City is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the City is the sole cause of the resultant injury, death, or damage. VENDOR further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

11.2 The provisions of this indemnification are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

11.3 Vendor shall advise the City in writing within 24 hours of any claim or demand against the City or Vendor known to Vendor related to or arising out of Vendor's activities under this contract, and shall see to the investigation and defense of such claim or demand at Vendor's cost. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving Vendor of any of its obligations under this paragraph.

11.4 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by Vendor in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. Vendor shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If Vendor fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Vendor shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

11.5 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of Vendor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Vendor or any subcontractor under worker's compensation or other employee benefit acts.

XII. ASSIGNMENT AND SUBCONTRACTING

12.1 Vendor shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Vendor. Vendor, its employees or its subcontractors shall perform all necessary work.

12.2 It is City's understanding and this Agreement is made in reliance thereon, that Vendor intends to use the following subcontractors in the performance of this Agreement: None. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by City of San Antonio City Council (hereafter "City Council"), as evidenced by passage of an ordinance, prior to the provision of any services by said subcontractor.

12.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Vendor. City shall in no event be obligated to any third party, including any subcontractor of Vendor, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City Council.

12.4 Except as otherwise stated herein, Vendor may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the City Council, as evidenced by passage of an ordinance. As a condition of such consent, if such consent is granted, Vendor shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Vendor, assignee, transferee or subcontractor.

12.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Vendor assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Vendor shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Vendor shall in no event release Vendor from any obligation under the terms of this Agreement, nor shall it relieve or release Vendor from the payment of any damages to City, which City sustains as a result of such violation.

XIII. INDEPENDENT CONTRACTOR

Vendor covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Vendor shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between City and Vendor, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Vendor. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Vendor under this Agreement and that the Vendor has no authority to bind the City.

XIV. SBEDA

14.1 Vendor hereby acknowledges that it is the policy of the City of San Antonio to assist in increasing the competitiveness and qualifications of small ("SBE"), women ("WBE"), African American ("AABE"), and minority-owned business ("MBE") enterprises in order to afford greater opportunities for obtaining and participating in contracts, related subcontracts, and leases and concessions awarded by the City. This policy and its implementation are known as the Small, Business Economic Development Advocacy Program (hereinafter referred to as "SBEDA Program").

14.2 Vendor shall implement the plan (hereafter "SBEDA plan") submitted with its proposal under the SBEDA Program for Small, African American, Minority and Women-owned Business Participation in this Agreement, thereby meeting the percentages for participation of those groups as submitted in its proposal. Vendor shall be in full compliance with this article by meeting the percentages listed in its proposal no later than 60 days from the date of execution of this Agreement, and shall remain in compliance throughout the term of this Agreement. Vendor further agrees to continue to make every effort to utilize businesses for subcontracting and supplying during the duration of this Agreement, as may be approved pursuant to this Agreement, which will meet the percentages submitted in its proposal.

14.3 Vendor shall maintain records showing all contracts, subcontracts, and supplier awards to SBE/MBE/AABE/WBE's. Further, such records shall be open to inspection by City or its authorized agent at all reasonable times. Should City find that Vendor is not in compliance with this article, City shall give notice of non-compliance to Vendor. Vendor shall have 15 calendar days after notice of non-compliance to correct any and all deficiencies in compliance with this article. Failure to comply with this article and/or to correct any deficiencies within the time allotted shall be considered a material breach of this Agreement, for which this Agreement may be terminated in accordance with Article VII. Termination.

14.4 In all events, Vendor shall comply with the City's Small Business Economic Development Advocacy Program, contained in San Antonio Ordinance No. 100182, and any amendments thereto. Said ordinances are incorporated herein for all purposes, as if fully set forth herein.

XV. CONFLICT OF INTEREST

15.1 Vendor acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

15.2 Pursuant to the subsection above, Vendor warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. Vendor further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XVI. AMENDMENTS

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Vendor, and subject to approval by the City Council, as evidenced by passage of an ordinance.

XVII. SEVERABILITY

If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XVIII. LICENSES/CERTIFICATIONS

Vendor warrants and certifies that Vendor and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XIX. HIPAA COMPLIANCE

19.1 Vendor shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

19.2 Vendor shall maintain the confidentiality of all medical, dental, prescription and other patient-identifiable health information specifically relating to Plan Participants ("Patient Health Information") in accordance with all applicable federal and state laws and regulations, including the electronic transmissions standards, the Privacy Rule and the Security Rule of the Health Insurance Portability and Accessibility Act of 1996 ("HIPAA"), as may be amended from time to time.

19.3 The parties acknowledge that they are "Business Associates" as defined in 45 CFR 160.103 (HIPAA). The parties shall comply with the terms of the Business Associate Agreement executed by them, attached hereto as Exhibit "E" and incorporated herein by reference.

XX. NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XVI. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXI. LAW APPLICABLE

21.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

21.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

XXII. LEGAL AUTHORITY

The signer of this Agreement for Vendor represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of Vendor and to bind Vendor to all of the terms, conditions, provisions and obligations herein contained.

XXIII. PARTIES BOUND

This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

XXIV. CAPTIONS

The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

XXV. INCORPORATION OF EXHIBITS

Each of the Exhibits listed below is an essential part of this Contract, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below:

- Exhibit A - City's Request for Proposals
- Exhibit B - Vision Benefit Communication
- Exhibit C - Vendor's Proposal, including all submissions
- Exhibit D - Copy of City's Payroll Cycle
- Exhibit E - Business Associate Agreement

In the event of conflict between this contract and the exhibits listed above, the provisions of this contract shall govern.

XXVI. ENTIRE AGREEMENT

This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with Article XVI. Amendments.

EXECUTED and **AGREED** to as of the dates indicated below.

CITY:
CITY OF SAN ANTONIO

VENDOR:
SPECTERA, INC.

J. Rolando Bono
City Manager

Robert Logue
Director of Underwriting

Date: _____

Date: _____

Approved as to Form:

City Attorney

HIPAA BUSINESS ASSOCIATE AGREEMENT

This **HIPAA Business Associate Agreement** is entered into by and between the City of San Antonio Managed Vision Program ("Covered Entity"), and Spectera, Inc., a Business Associate ("BA").

WITNESSETH:

WHEREAS, the City of San Antonio and BA have entered into a Professional Services Contract for the Managed Vision Program (the "Service Contract"), executed on _____, 2005, whereby BA provides health care management services to the Covered Entity; and

WHEREAS, Covered Entity and BA may need to use, disclose and/or make available certain information pursuant to the terms of the Service Contract, some of which may constitute Protected Health Information ("PHI"); and

WHEREAS, Covered Entity and BA intend to protect the privacy and provide for the security of PHI disclosed to each other pursuant to the Service Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws; and

WHEREAS, the purpose of this Agreement is to satisfy certain standards and requirements of HIPAA and the HIPAA Regulations, including, but not limited to, Title 45, Section 164.504(e) of the Code of Federal Regulations ("C.F.R."), as the same may be amended from time to time;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

A. Definitions. For the purposes of this Agreement, the following terms have the meanings ascribed to them:

(1) "Disclosure" with respect to PHI, shall mean the release, transfer, provision of access to or divulging in any other manner of PHI outside the entity holding the PHI.

(2) "Individual" shall have the same meaning as the term "Individual" in 45 C.F.R. 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. 164.502(g).

(3) "Parties" shall mean Covered Entity and BA.

(4) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and Part 164, subparts A and E.

Exhibit "E"

(5) "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 C.F.R. 164.501, limited to the information created or received by BA from or on behalf of Covered Entity.

(6) "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.501.

(7) "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

B. BA Obligations and Activities. BA agrees that it shall:

(1) Not use or disclose the PHI other than as permitted or required by this Agreement or as Required by Law;

(2) Establish and maintain appropriate administrative, physical, and technical safeguards that reasonably and appropriately protect, consistent with the services provided under this Agreement, the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of covered entity;

(3) Mitigate, to the extent practicable, any harmful effect that is known to BA of a use or disclosure of PHI by BA in violation of the requirements of this Agreement;

(4) Report to Covered Entity any use or disclosure of PHI of which BA is aware or becomes aware that is not provided for or allowed by this Agreement as well as any security incident that BA becomes aware of;

(5) Ensure that any of its agents or subcontractors with which BA does business and to whom it provides PHI received from, created or received by BA on behalf of Covered Entity are aware of and agree to the same restrictions and conditions that apply through this Agreement to BA with respect to such information, and further agree to implement reasonable and appropriate administrative, physical and technical safeguards to protect such information;

(6) Provide access, at the request of Covered Entity, and in a reasonable time and manner as agreed by the Parties, to PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements 45 C.F.R. §164.524;

(7) Make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. 164.526 at the request of the Covered Entity or an Individual, and in a reasonable time and manner agreed to by the Parties;

(8) Make available to the Covered Entity or to the Secretary of the U.S. Department of Health and Human Services all internal practices, books and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or

Exhibit "E"

created or received by the BA on behalf of the Covered Entity, for purposes of the Secretary of the U.S. Department of Health and Human Services in determining Covered Entity's compliance with the Privacy Rule;

(9) Document such disclosures of PHI, and information related to such disclosures, as would be required for Covered Entity to respond to a request from an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528;

(10) Provide Covered Entity or an Individual, in a reasonable time and manner as agreed to by the Parties, information collected in accordance with Section B(9) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528.

C. Permitted Uses and Disclosures by BA

(1) Except as otherwise limited in this Agreement, BA may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Service Contract, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.

(2) Except as otherwise limited in this Agreement, BA may disclose PHI for the proper management and administration of the BA, provided that disclosures are Required By Law, or BA obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the BA of any instances of which it is aware in which the confidentiality of the information has been breached.

(3) Except as otherwise limited in this Agreement, BA may use PHI to provide Data Aggregation Services to Covered Entity as permitted by 45 C.F.R. 164.504(e)(2)(i)(B).

(4) BA may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. 502(j)(1).

D. Obligations of Covered Entity. Covered Entity shall inform BA of its privacy practices and restrictions as follows. Covered Entity shall:

(1) notify BA of any limitations in its notice of privacy practices in accordance with 45 C.F.R. 164.520, to the extent that such limitation may affect BA's use or disclosure of PHI;

(2) notify BA of any changes in, or revocation of, permission by any Individual to use or disclose PHI, to the extent that such changes may affect BA's use or disclosure of PHI;

Exhibit "E"

(3) notify BA of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. 164.522 to the extent that such changes may affect BA's use or disclosure of PHI.

E. Permissible Requests by Covered Entity.

Covered Entity shall not request BA to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except that the Business Associate may use or disclose PHI for data aggregation or management and administrative activities of the BA.

F. Term and Termination.

- (1) The term of this Agreement shall commence on the date on which it is fully executed or January 1, 2006, whichever is later. This Agreement shall terminate when all PHI encompassed by this Agreement is destroyed or returned to Covered Entity or, if it is infeasible to return or destroy the PHI, protections are extended to such information in accordance with the termination provisions in this Section.
- (2) Termination for Cause. Upon Covered Entity's knowledge of a material breach by BA, Covered Entity shall either (a) provide an opportunity for BA to cure the breach in accordance with the terms of the Service Contract or, if the BA does not cure the breach or end the violation within the time for cure specified in the Service Contract, end the violation and terminate this Agreement and the Contract; or (b) immediately terminate this Agreement and the Service Contract if BA has breached a material term of this Agreement and cure is not possible. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary of the U.S. Department of Health and Human Services.
- (3) Effect of Termination.
 - (a) Except as provided below in paragraph (b) of this Section F(3), upon termination of this Agreement for any reason, BA shall return or destroy all PHI received from the Covered Entity, or created or received by BA on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of BA or its subcontractors or agents. BA shall not retain any copies of PHI.
 - (b) In the event that BA determines that returning or destroying PHI is infeasible, BA shall provide to Covered Entity written notification of the condition that makes the return or destruction of PHI infeasible. Upon BA's conveyance of such written notification, BA shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make its return or destruction infeasible, for so long as BA maintains such PHI.

Exhibit "E"

- (4) Notwithstanding any other provision under this Agreement, the Parties agree that the Service Contract may be terminated by either Party without penalty should the other Party violate a material obligation under this Agreement.
- G. Amendment to Comply with Law. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and HIPAA.
- H. Survival. The respective rights and obligations of the BA under Sections B, C(2) and (4), and F(3) shall survive the termination of this Agreement.
- I. Interpretation. Any ambiguity in this Agreement shall be interpreted to permit Covered Entity to comply with the Privacy Rule.
- J. Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or amended.
- K. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer upon any person other than Covered Entity, BA, and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- L. **INDEMNIFICATION. BA WILL INDEMNIFY, DEFEND AND HOLD COVERED ENTITY AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS HARMLESS, FROM AND AGAINST ANY AND ALL LOSSES, LIABILITIES, DAMAGES, COSTS AND EXPENSES ARISING OUT OF OR RELATED TO ANY THIRD-PARTY CLAIM BASED UPON ANY BREACH OF THIS AGREEMENT BY BA IN ACCORDANCE WITH THE INDEMNITY PROVISIONS IN THE SERVICE AGREEMENTS, WHICH ARE HEREBY INCORPORATED BY REFERENCE FOR ALL PURPOSES.**
- M. Waiver. No provision of this Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.
- N. Assignment. Neither party may assign (whether by operation or law or otherwise) any of its rights or delegate or subcontract any of its obligations under this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, Covered Entity shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor of Covered Entity, without the prior approval of Business Associate.
- O. Entire Agreement. This Agreement constitutes the complete agreement between Business Associate and Covered Entity relating to the matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this Agreement and the terms of the Service Contracts or any such later agreement(s), the terms of this Agreement shall control unless the terms of such Service Contract comply with the Privacy Standards and the

Exhibit "E"

Security Standards. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either party. This Agreement is for the benefit of, and shall be binding upon the parties, their affiliates and respective successors and assigns. No third party shall be considered a third-party beneficiary under this Agreement, nor shall any third party have any rights as a result of this Agreement.

P. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas.

EXECUTED to be effective January 1, 2006, by the **City of San Antonio Managed Vision Program**, signing by and through its plan administrator.

COVERED ENTITY	BUSINESS ASSOCIATE:
By City of San Antonio Managed Vision Program	Spectera, Inc.

By: _____

By: _____

Print Name: Marilyn Timlake

Print Name: Robert Logue

Print Title: City of San Antonio Employee Benefits Administrator

Print Title: Director of Underwriting

APPROVED AS TO FORM:

Lauren O'Connor
Assistant City Attorney