**Missouri Consolidated Health Care Plan**
832 Weathered Rock Court
PO Box 104355
Jefferson City, MO 65110
Phone: 800-701-8881
www.mchcp.org

Judith Muck, *Executive Director*

my health. my choice. myMCHCP

January 23, 2023

TO: Invited Vendors

FROM: Judith Muck, Executive Director

RE: Pharmacy Claim Audit Request for Proposal (RFP)

MCHCP will be working with DirectPath, an online RFP system, in the marketing of the 2023 Pharmacy Claim Audit RFP. You are invited to submit a proposal for these services. We believe that you will find this RFP a great potential opportunity for your organization.

MCHCP provides the health benefit program for most State of Missouri employees, retirees, and their dependents covering over 85,000 members (lives). An additional 1,000 non-state local government members are covered through their public entity employer.

Bids are requested for an auditor to perform a review of claims pricing and benefit design accuracy as well as a rebate review of MCHCP's contracted Pharmacy Benefit Manager (PBM), Express Scripts, Inc. MCHCP offers a commercial plan to its non-Medicare members and an Employer Group Waiver Plan to its Medicare-eligible members.

The contract will be for a one-time service and will be effective once the contract is signed by MCHCP or its authorized designee.

**Intent to Bid**

Once the RFP is released on February 8, 2023, bidders who are interested in submitting a proposal should complete the Intent to Bid, available as a response document within the DirectPath system. The Intent to Bid is due at 5 p.m. CT (6 p.m. ET), Tuesday, February 14, 2023.

**Use of DirectPath**

During this RFP process you will find DirectPath's internet-based application offers an opportunity to streamline information exchange. We are confident your organization will find the process straightforward and user-friendly. DirectPath will be contacting you within the next two to three days to establish a contact person from your organization and to set up a training session, if necessary. To assist you in preparing for the online proposal process, we have outlined below some important information about this event.

General Instructions

Your proposal will be submitted over the Internet, through an anonymous online bidding process. DirectPath will assign a unique username, which will allow you to view the information pertinent to the bidding process, submit response documents, communicate directly with

MCHCP through the application's messaging component, and respond to our online questionnaires. In addition, DirectPath will provide a user guide with instructions for setting up your account.

You may wish to have other people in your organization access this online event to assist in the completion of the RFP. Each member of your response team must secure a unique username and password from DirectPath by way of a provider contact spreadsheet, e-mailed directly to you by DirectPath. There is no cost to use the DirectPath system.

System Training

DirectPath offers all participants of a DirectPath-hosted event access to their downloadable *User Guides* and *Pre-Recorded Training Sessions*. These guides are located on the homepage of the *vendor-user* view and provide an overview of the application's functionality. We recommend that you and your response team take advantage of this opportunity to realize the full benefit of the application. In addition to this self-help option, DirectPath's experienced support personnel will offer an application overview via a web-cast session.

DirectPath support is also available Monday through Friday from 8:30 a.m. to 5:00 p.m. ET to help with any technical or navigation issues that may arise. The toll-free number for DirectPath is 800-979-9351. Support can also be reached by e-mail at support@directpathhealth.com.

**Key Event Information**

The RFP timeline is provided below.

| | |
|---|---|
| Online RFP Released | Wednesday, February 8, 2023<br>8:00 a.m. CT (9:00 a.m. ET) |
| Intent to Bid Document Due | Tuesday, February 14, 2023<br>5:00 p.m. CT (6:00 p.m. ET) |
| Question Submission Deadline | Tuesday, February 14, 2023<br>5:00 p.m. CT (6:00 p.m.ET) |
| MCHCP Response to Submitted Questions | Friday, February 17, 2023<br>5:00 p.m. CT (6:00 p.m. ET) |
| Proposals Due | Friday, March 3, 2023<br>5:00 p.m. CT (6:00 p.m. ET) |
| Final Vendor Selection/Contract Award | Late April, 2023 |
| Contract Effective Date | Upon signature |

If this notice should have been sent to a different individual within your organization, please contact Tammy Flaugher by phone at 573-526-4922 or by email at tammy.flaugher@mchcp.org.

We look forward to working with you throughout this process.

## Pharmacy Claim Audit Scope of Work

| | Description |
|---|---|
| Pharmacy Claims Pricing (Discount) Accuracy Review | As described in Exhibit B, Sections B2.1.1 and B3, the contractor will analyze 100 percent of the claims incurred for each of the two pharmacy plans to confirm pricing accuracy. |
| Pharmacy Benefit Design Accuracy Review | As described in Exhibit B, Sections B2.1.2 and B4, the contractor must analyze claims to validate application of plan benefits designed for each of the two pharmacy plans. |
| Rebate Review | As described in Exhibit B, Sections B2.1.3 and B5, the contractor will identify the top five drug manufacturers and compare the rebates credited to MCHCP under each manufacturer's contract with ESI, and confirm receipt of CMS EGWP payments. |
| Deliverables | The contractor shall produce preliminary, draft, and final reports according to the mutually agreed upon timeline, as further defined in Exhibit B, Section B6. |

## Pharmacy Claim Audit Pricing

| | Instructions |
|---|---|
| 1. | Bidder must provide a firm fixed price for performing the services outlined in Exhibit B - Scope of Work. |
| 2. | MCHCP reserves the right to award one, two or three of the requested services (i.e., Claim Pricing (Discount) Accuracy Review, Benefit Design Accuracy Review, and/or Rebate Review). |
| 3. | Costs for travel and incidentals must be included in the pricing and shall not be billed separately. |

| | Price |
|---|---|
| Pharmacy Claims Pricing (Discount) Accuracy Review | |
| Pharmacy Benefit Design Accuracy Review | |
| Rebate Review | |
| Total Not to Exceed Price | =SUM('W3'!A1:A3) |

## Pharmacy Claim Audit Questionnaire

MCHCP requires you provide concise responses to questions requiring explanation. Please note there is a 1,000 character limit on all textual responses. MCHCP expects you to provide all explanations within the parameters of the questionnaire.

### Proprietary Statement

**1.1 Pursuant to Section 610.021 RSMo, proposals and related documents shall not be available for public review until a contract has been awarded or all proposals are rejected. MCHCP maintains copies of all bid file material for review by appointment. Regardless of any claim by the bidder as to material being proprietary and not subject to copying or distribution, all material submitted by the bidder in conjunction with this RFP is subject to release after the award of a contract in relation to a request for public records under the Missouri Sunshine Law (see Chapter 610 of the Missouri Revised Statutes). Neither MCHCP nor its consultant shall be obligated to return any materials submitted in response to this RFP. The use of MCHCP's name in any way is strictly prohibited. Confirm your agreement with the Confidentiality and Public Record Policy listed above.**

- ◯ Confirmed
- ◯ Not confirmed (please explain) _____

### Vendor Profile

**2.1 Provide the following information about your company:**

Full and legal company name _____

Name of parent organization (if applicable) _____

Number of years providing pharmacy claim audit services _____

Corporate address _____

Telephone _____

Current ownership of the company, along with the name of any individual holding 10 percent or more of the stock or value of the organization, if applicable _____

**2.2 Complete the following table, indicating the number of clients for whom your organization has provided PBM audit services similar to those outlined in this RFP within the last three (3) years.**

| | Number of clients |
|---|---|
| < $250,000 annual (allowed) pharmacy spend | |
| $250,000 - $1 million annual (allowed) pharmacy spend | |
| $1 - $10 million annual (allowed) pharmacy spend | |
| > $10 million annual (allowed) pharmacy spend | |

**2.3 Complete the following table, indicating the number of clients for whom your organization has provided PBM audit services similar to those outlined in this RFP within the last three (3) years.**

| | Number of clients |
|---|---|
| < 2,000 covered lives | |
| 2,000 - 4,999 covered lives | |
| 5,000 - 24,999 covered lives | |
| > 25,000 covered lives | |

**2.4 Have you completed an audit of Express Scripts?**

- ◯ Yes (quantify the number and type of audits and date of most recent audit) _____
- ◯ No

**2.5 Is there any significant litigation and/or government action pending against your company, or has there been any action taken or proposed against your company within the last five (5) years?**

◯ Yes (describe the situation prompting the suit(s) and the outcome or current status)

◯ No

**2.6 Provide the following information regarding mergers or acquisitions of other organizations completed in the past 24 months or in process.**

Summarize how these mergers or acquisitions directly impact MCHCP

Discuss how these mergers or acquisitions distinguish you and your services from those of your competitors

**2.7 Indicate the date your organization first provided the services requested in this RFP.**

Date services first offered (MM/YYYY format)

**2.8 Provide the following information for all subcontractors that will be used to fulfill the requirements of this contract:**

| | Company name | Service to be provided | Number of years working with your organization |
|---|---|---|---|
| Subcontractor #1 | | | |
| Subcontractor #2 | | | |
| Subcontractor #3 | | | |
| Subcontractor #4 | | | |
| Subcontractor #5 | | | |

**2.9 Identify whether your firm currently performs any work for, provides services to, or receives compensation from, any pharmacy benefit manager (PBM).**

Response

**2.10 For all entities listed in Q2.9 above, describe the measures your firm will take to safeguard the confidentiality of any information provided to or obtained from MCHCP pursuant to this engagement, as well as the measures your firm will take to assure that the information or services provided to MCHCP will not be compromised by or improperly affected by your firm's relationship with the other entity.**

Response

**2.11 Identify all owners and subsidiaries that own or exert control of more than five (5) percent of your organization. Provide this information for subcontractors as well.**

Response relating to bidder

Response relating to subcontractor(s)

**2.12 Provide the names or organizations of which you own or control more than five (5) percent. Provide this information for subcontractors as well.**

Response relating to bidder

Response relating to subcontractor(s)

**2.13 Confirm you have uploaded a document to the Reference Files from Vendor section confirming your organization's authority to do business in the State of Missouri. Name the document "Q2.13 State of Missouri Certificate of Authority".**

◯ Confirmed

◯ Not Confirmed (please explain)

**2.14 Describe the economic advantages that will be realized as a result of your organization performing the required services by providing a response to each item below. If necessary to provide a full description, upload a document to the Reference Files from Vendor section, and name the file "Q2.14 Economic Impact".**

Provide a description of the proposed services that will be performed and/or the proposed products that will be provided by Missourians and/or Missouri

products.

Provide a description of the economic impact returned to the State of Missouri through tax revenue obligations.

Provide a description of the company's economic presence within the State of Missouri (e.g. type of facilities: sales offices, sales outlets, divisions, manufacturing, warehouse, other), including Missouri employee statistics.

**2.15 What services and support are needed from MCHCP to ensure a successful audit?**

Response

## PBM Audit

**3.1 How many years has your firm conducted Claims Pricing (Discount) Accuracy Review audits?**

Number of years

**3.2 How many Claims Pricing (Discount) Accuracy Review audits has your firm conducted in the past three years for clients with 50,000 or more lives?**

Number of audits

**3.3 What percentage of the audits identified in Q3.2 were of Express Scripts?**

Percentage of audits of Express Scripts %

**3.4 Describe typical obstacles involved in conducting Claims Pricing (Discount) Accuracy Review audits and your corresponding remediation efforts and results.**

Response

**3.5 How many years has your firm conducted Benefit Design Accuracy audits?**

Number of years

**3.6 How many Benefit Design Accuracy audits has your firm conducted in the past three years for clients with 50,000 or more lives?**

Number of audits

**3.7 Describe typical obstacles involved in conducting Benefit Design Accuracy audits and your corresponding remediation efforts and results.**

Response

**3.8 How many years has your firm conducted rebate audits?**

Number of years

**3.9 How many rebate audits has your firm conducted in the past three years for clients with 50,000 or more covered lives?**

Number of audits

**3.10 What percentage of the audits identified in Q3.9 were of Express Scripts?**

Percentage of audits of Express Scripts %

**3.11 Describe typical obstacles involved in conducting rebate audits and your corresponding remediation efforts and results.**

Response

**3.12 Based on your experience or industry knowledge, what is the rebate percentage of claims paid, within a 1 percent range, typical for an organization similar to MCHCP?**

Rebate range

**3.13 How many CMS Medicare payment audits has your firm conducted in the past three years for clients with 15,000 or more lives?**

No. of clients

**3.14 Does your firm currently have agreements in place with Express Scripts to conduct Claims Pricing (Discount) Accuracy Review audits, Benefit Design Accuracy audits, and rebate audits? If not, define the expected lag in obtaining such agreements.**

- ○ Yes (please describe)
- ○ No (please explain)

## Key Personnel

**4.1 Confirm you have provided an organizational chart of your company, highlighting the names/positions and office location of all persons who will work on the MCHCP audit. Upload the document(s) to the Reference Files from Vendor section, and name the file "Q4.1 Organizational chart".**

- ○ Confirmed
- ○ Not confirmed (please explain)

**4.2 Provide the following information regarding the lead auditor for the MCHCP pharmacy claims audit.**

Name

Education

Professional credentials and affiliations

Brief work experience bio

Number of years at your organization

Number of years performing pharmacy claim audits

Description of lead auditor's specific responsibilities and duties for this contract

**4.3 Provide the following information for other key personnel who will be performing services for this project.**

| | Name | Title | Education | Professional credentials and affiliations | Number of years at your organization | Number of years performing pharmacy claim audits | Description of individual's specific duties |
|---|---|---|---|---|---|---|---|
| Staff 1 | | | | | | | |
| Staff 2 | | | | | | | |
| Staff 3 | | | | | | | |
| Staff 4 | | | | | | | |
| Staff 5 | | | | | | | |
| Staff 6 | | | | | | | |

## Reporting

**5.1 Confirm you have uploaded a sample PBM audit report that is representative of the reporting you typically provide for an entity that closely resembles MCHCP and the services requested in this RFP. Submit only material you consider not proprietary or confidential. Upload the document to the Reference Files from Vendor section, and name the file "Q5.1 PBM Audit Report". Alternatively, you may provide an online link to such a report.**

○ Confirmed
○ Not confirmed (please explain)

**5.2 Confirm you have provided samples of work that relate to the scope of services you feel that demonstrate the skill and talent of the audit team that would be assigned to the MCHCP audit. Upload the document(s) to the Reference Files from Vendor section, and name the file "Q5.2 Work Samples".**

○ Confirmed
○ Not confirmed (please explain)

**5.3 Confirm you have provided a white paper (no more than three pages) describing how you propose to perform the services outlined in this RFP. Be specific in detailing a work plan that includes all items included in Exhibit B-Scope of Work, including the information you expect to receive from MCHCP staff and the time frames involved in each step. Upload the document to the Reference Files from Vendor section, and name the file "Q5.3 Work Plan".**

○ Confirmed
○ Not confirmed (please explain)

## MBE-WBE Participation Committment

If the bidder is committing to participation by or if the bidder is a qualified MBE/WBE, the bidder must provide the required information in the appropriate table(s) below for the organization proposed and must submit a completed Exhibit A-5 with the bidder's proposal. For Minority Business Enterprise (MBE) and/or Woman Business Enterprise (WBE) Participation, if proposing an entity certified as both MBE and WBE, the bidder must either (1) enter the participation percentage under MBE or WBE, or must (2) divide the participation between both MBE and WBE. If dividing the participation, do not state the total participation on both the MBE and WBE Participation Commitment tables below. Instead, divide the total participation as proportionately appropriate between the tables below.

### 6.1 MBE Participation Committment Table

| | Name of Qualified Minority Business Enterprise (MBE) Proposed | Committed Percentage of Participation for MBE | Description of Products/Services to be Provided by MBE |
|---|---|---|---|
| Company 1 | | % | |
| Company 2 | | % | |
| Company 3 | | % | |
| Company 4 | | % | |
| Total MBE Percentage | | % | |

### 6.2 WBE Participation Committment Table

| | Name of Qualified Women Business Enterprise (WBE) Proposed | Committed Percentage of Participation for WBE | Description of Products/Services to be Provided by WBE |
|---|---|---|---|
| Company 1 | | % | |
| Company 2 | | % | |
| Company 3 | | % | |
| Company 4 | | % | |
| Total WBE Percentage | | % | |

## References

**7.1 Provide references for three current clients (excluding MCHCP) for whom you are providing the services described in this RFP. If possible, list clients of similar size and needs as MCHCP. We will not contact these references without discussing with you first; however, having information on references is critical.**

| | Name or Industry | Services provided by your organization | Number of covered lives | Number of years working with your organization |
|---|---|---|---|---|
| | | | | |

| | | | | |
|---|---|---|---|---|
| Current Client #1 | | | | |
| Current Client #2 | | | | |
| Current Client #3 | | | | |

**Attachment checklist**

**8.1 Confirm the following have been provided with your proposal. A check mark below indicates they have been uploaded to the Reference Files from Vendor section of the RFP and named appropriately.**

- ☐ Q2.13 State of Missouri Certificate of Authority
- ☐ Q2.14 Economic Impact
- ☐ Q4.1 Organizational chart
- ☐ Q5.1 PBM audit report
- ☐ Q5.2 Work samples
- ☐ Q5.3 Work plan

## Mandatory Contract Provisions Questionnaire

### Mandatory Contract Provisions

Bidders are expected to closely read the Mandatory Contract Provisions. Rejection of these provisions may be cause for rejection of a bidder's proposal. MCHCP requires that you provide concise responses to questions requiring explanation. Please note, there is a 1,000 character limit on all textual responses. MCHCP expects that you will provide all explanations within the parameters of this questionnaire.

**1.1 Term of Contract: The term of this Contract is for a period not to exceed one year from the date of the award or until the final audit report is issued. The submitted price for the contract is a firm, fixed price. All prices are subject to best and final offer which may result from subsequent negotiation.**

- ○ Confirmed
- ○ Not confirmed (please explain)

**1.2 Contract Documents: The following documents will be hereby incorporated by reference as if fully set forth within the Contract entered into by MCHCP and the Contractor: (1) Written and duly executed Contract (form of which will be provided and negotiated if necessary prior to award); (2) amendments to the executed Contract; (3) The completed and uploaded Exhibits set forth in this RFP; and (4) This Request for Proposal.**

- ○ Confirmed
- ○ Not confirmed (please explain)

**1.3 Breach and Waiver: Waiver or any breach of any contract term or condition shall not be deemed a waiver of any prior or subsequent breach. No contract term or condition shall be held to be waived, modified, or deleted except by a written instrument signed by the parties thereto. If any contract term or condition or application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, condition or application. To this end, the contract terms and conditions are severable.**

- ○ Confirmed
- ○ Not confirmed (please explain)

**1.4 Confidentiality: Contractor will have access to private and/or confidential data maintained by MCHCP to the extent necessary to carry out its responsibilities under this Contract. No private or confidential data received, collected, maintained, transmitted, or used in the course of performance of this Contract shall be disseminated by Contractor except as authorized by MCHCP, either during the period of this Contract or thereafter. Contractor must agree to return any or all data furnished by MCHCP promptly at the request of MCHCP in whatever form it is maintained by Contractor. On the termination or expiration of this Contract, Contractor will not use any of such data or any material derived from the data for any purpose and, where so instructed by MCHCP, will destroy or render it unreadable.**

- ○ Confirmed
- ○ Not confirmed (please explain)

**1.5 Electronic Transmission Protocols:The contractor and all subcontractors shall maintain encryption standards of 2048 bits or greater for RSA key pairs, and 256 bit session key strength for the encryption of confidential information and transmission over public communication infrastructure. Batch transfers of files will be performed using SFTP or FTPS with similar standards and refined as needed to best accommodate provider configurations (i.e. port assignment, access control, etc.).**

- ○ Confirmed
- ○ Not confirmed (please explain)

**1.6 Force Majeure: Neither party will incur any liability to the other if its performance of any obligation under this Contract is prevented or delayed by causes beyond its control and without the fault or negligence of either party. Causes beyond a party's control may include, but aren't limited to, acts of God or war, changes in controlling law, regulations, orders or the requirements of any governmental entity, severe weather conditions, civil disorders, natural disasters, fire, epidemics and quarantines, and strikes other than by Contractor's or its subcontractor's employees.**

- ○ Confirmed
- ○ Not confirmed (please explain)

**1.7 Governing Law: This Contract shall be governed by the laws of the State of Missouri and shall be**

**deemed executed at Jefferson City, Cole County, Missouri. All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Missouri.**

○ Confirmed
○ Not confirmed (please explain)

**1.8 Jurisdiction: All legal proceedings arising hereunder shall be brought in the Circuit Court of Cole County in the State of Missouri.**

○ Confirmed
○ Not confirmed (please explain)

**1.9 Independent Contractor: Contractor represents itself to be an independent contractor offering such services to the general public and shall not represent itself or its employees to be an employee of MCHCP. Therefore, Contractor shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, worker's compensation, employee insurance, minimum wage requirements, overtime, etc. and agrees to indemnify, save, and hold MCHCP, its officers, agents, and employees, harmless from and against, any and all loss; cost (including attorney fees); and damage of any kind related to such matters. Contractor assumes sole and full responsibility for its acts and the acts of its personnel.**

○ Confirmed
○ Not confirmed (please explain)

**1.10 Injunctions: Should MCHCP be prevented or enjoined from proceeding with this Contract before or after contract execution by reason of any litigation or other reason beyond the control of MCHCP, Contractor shall not be entitled to make or assess claim for damage by reason of said delay.**

○ Confirmed
○ Not confirmed (please explain)

**1.11 Integration: This Contract, in its final composite form, shall represent the entire agreement between the parties and shall supersede all prior negotiations, representations or agreements, either written or oral, between the parties relating to the subject matter hereof. This Contract between the parties shall be independent of and have no effect on any other contracts of either party.**

○ Confirmed
○ Not confirmed (please explain)

**1.12 Modification of the Contract: This Contract shall be modified only by the written agreement of the parties. No alteration or variation in terms and conditions of the Contract shall be valid unless made in writing and signed by the parties. Every amendment shall specify the date on which its provisions shall be effective.**

○ Confirmed
○ Not confirmed (please explain)

**1.13 Notices: All notices, demands, requests, approvals, instructions, consents or other communications (collectively "notices") which may be required or desired to be given by either party to the other during the course of this contract shall be in writing and shall be made by personal delivery or by overnight delivery, prepaid, to the other party at a designated address or to any other persons or addresses as may be designated by notice from one party to the other. Notices to MCHCP shall be addressed as follows: Missouri Consolidated Health Care Plan, ATTN: Executive Director, P.O. Box 104355, Jefferson City, MO 65110-4355.**

○ Confirmed
○ Not confirmed (please explain)

**1.14 Ownership: All data developed or accumulated by Contractor under this Contract shall be owned by MCHCP. Contractor may not release any data without the written approval of MCHCP. MCHCP shall be entitled at no cost and in a timely manner to all data and written or recorded material pertaining to this Contract in a format acceptable to MCHCP. MCHCP shall have unrestricted authority to reproduce, distribute, and use any submitted report or data and any associated documentation that is designed or developed and delivered to MCHCP as part of the performance of this Contract.**

○ Confirmed
○ Not confirmed (please explain)

**1.15 Payment: Contractor shall be paid 25 percent upon completion of 50 percent of the audit, 25 percent upon completion of 75 percent of the audit, and the remaining 50 percent upon final approval of the audit by the MCHCP Board of Trustees.**

○ Confirmed
○ Not confirmed (please explain)

**1.16 Rights and Remedies: If this Contract is terminated, MCHCP, in addition to any other rights provided for in this Contract, may require Contractor to deliver to MCHCP in the manner and to the extent directed, any completed materials. In the event of termination, Contractor shall receive payment prorated for that portion of the contract period services were provided to and/or goods were accepted by MCHCP subject to any offset by MCHCP for actual damages. The rights and remedies of MCHCP provided for in this Contract shall not be exclusive and are in addition to any other rights and remedies provided by law.**

○ Confirmed
○ Not confirmed (please explain)

**1.17 Solicitation of Members: Contractor shall not use the names, home addresses or any other information contained about members of MCHCP for the purpose of offering for sale any property or services which are not directly related to services negotiated in this RFP without the express written consent of MCHCP's Executive Director.**

○ Confirmed
○ Not confirmed (please explain)

**1.18 Statutes: Each and every provision of law and clause required by law to be inserted or applicable to the services provided in the Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein. If through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then on the application of either party the Contract shall be amended to make such insertion or correction.**

○ Confirmed
○ Not confirmed (please explain)

**1.19 Termination Right: Notwithstanding any other provision, MCHCP reserves the right to terminate this Contract by giving thirty (30) days prior notice of termination.**

○ Confirmed
○ Not confirmed (please explain)

**1.20 Off-shore Services: All services under this Contract shall be performed within the United States. Contractor shall not perform, or permit subcontracting of services under this Contract, to any off-shore companies or locations outside of the United States. Any such actions shall result in the Contractor being in breach of this Contract.**

○ Confirmed
○ Not confirmed (please explain)

**1.21 Compliance with Laws: Contractor shall comply with all applicable federal and state laws and regulations and local ordinances in the performance of this Contract, including but not limited to the provisions listed below.**

○ Confirmed
○ Not confirmed (please explain)

**1.22 Non-discrimination, Sexual Harassment and Workplace Safety: Contractor agrees to abide by all applicable federal, state and local laws, rules and regulations prohibiting discrimination in employment and controlling workplace safety. Contractor shall establish and maintain a written sexual harassment policy and shall inform its employees of the policy. Contractor shall include the provisions of this**

**Nondiscrimination/Sexual Harassment Clause in every subcontract so that such provisions will be binding upon each subcontractor. Any violations of applicable laws, rules and regulations may result in termination of the Contract.**

- ○ Confirmed
- ○ Not confirmed (please explain)

**1.23 Americans with Disabilities Act (ADA): Pursuant to federal regulations promulgated under the authority of The Americans with Disabilities Act (ADA), Contractor understands and agrees that it shall not cause any individual with a disability to be excluded from participation in this Contract or from activities provided for under this Contract on the basis of such disability. As a condition of accepting this Contract, Contractor agrees to comply with all regulations promulgated under ADA which are applicable to all benefits, services, programs, and activities provided by MCHCP through contracts with outside contractors.**

- ○ Confirmed
- ○ Not confirmed (please explain)

**1.24 Health Insurance Portability and Accountability Act of 1996 (HIPAA): Contractor shall comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and implementing regulations, as amended, including compliance with the Privacy, Security and Breach Notification regulations and the execution of a Business Associate Agreement with MCHCP.**

- ○ Confirmed
- ○ Not confirmed (please explain)

**1.25 Contractor shall be responsible for and agrees to indemnify and hold harmless MCHCP from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against MCHCP as a result of Contractor's, or any associate's or subcontractor's of Contractor, failure to comply with paragraphs 1.22, 1.23, 1.24, and 1.25 above.**

- ○ Confirmed
- ○ Not confirmed (please explain)

**1.26 Prohibition of Gratuities: Neither Contractor nor any person, firm or corporation employed by Contractor in the performance of this Contract shall offer or give any gift, money or anything of value or any promise for future reward or compensation to any employee of MCHCP at any time.**

- ○ Confirmed
- ○ Not confirmed (please explain)

**1.27 Subcontracting; Subject to the terms and conditions of this section, this Contract shall be binding upon the parties and their respective successors and assigns. Contractor shall not subcontract with any person or entity to perform all or any part of the work to be performed under this Contract without the prior written consent of MCHCP. Contractor may not assign, in whole or in part, this Contract or its rights, duties, obligations, or responsibilities hereunder without the prior written consent of MCHCP. Contractor agrees that any and all subcontracts entered into by Contractor for the purpose of meeting the requirements of this Contract are the responsibility of Contractor. MCHCP will hold Contractor responsible for assuring that subcontractors meet all the requirements of this Contract and all amendments thereto. Contractor must provide complete information regarding each subcontractor used by Contractor to meet the requirements of this Contract.**

- ○ Confirmed
- ○ Not confirmed (please explain)

**1.28 Industry Standards: If not otherwise provided, materials or work called for in this Contract shall be furnished and performed in accordance with best established practice and standards recognized by the contracted industry and comply with all codes and regulations which shall apply.**

- ○ Confirmed
- ○ Not confirmed (please explain)

**1.29 Hold Harmless: Contractor shall hold MCHCP harmless from and indemnify against any and all claims for injury to or death of any persons; for loss or damage to any property; and for infringement of any**

**copyright or patent to the extent caused by Contractor or Contractor's employee or its subcontractor. MCHCP shall not be precluded from receiving the benefits of any insurance Contractor may carry which provides for indemnification for any loss or damage to property in Contractor's custody and control, where such loss or destruction is to MCHCP's property. Contractor shall do nothing to prejudice MCHCP's right to recover against third parties for any loss, destruction or damage to MCHCP's property.**

- ○ Confirmed
- ○ Not confirmed (please explain)

**1.30 Insurance and Liability: Contractor must maintain sufficient liability insurance, including but not limited to general liability, professional liability, and errors and omissions coverage, to protect MCHCP against any reasonably foreseeable recoverable loss, damage or expense under this engagement. Contractor shall provide proof of such insurance coverage upon request from MCHCP. MCHCP shall not be required to purchase any insurance against loss or damage to any personal property to which this Contract relates. Contractor shall bear the risk of any loss or damage to any personal property in which Contractor holds title.**

- ○ Confirmed
- ○ Not confirmed (please explain)

**1.31 Retention of Records: Unless MCHCP specifies in writing a shorter period of time, Contractor agrees to preserve and make available all of its books, documents, papers, records and other evidence involving transactions related to this contract for a period of seven (7) years from the date of the expiration or termination of this contract. Matters involving litigation shall be kept for one (1) year following the termination of litigation, including all appeals, if the litigation exceeds seven (7) years. Contractor agrees that authorized federal representatives, MCHCP personnel, and independent auditors acting on behalf of MCHCP and/or federal agencies shall have access to and the right to examine records during the contract period and during the seven (7) year post contract period. Delivery of and access to the records shall be at no cost to MCHCP.**

- ○ Confirmed
- ○ Not confirmed (please explain)

**1.32 Financial Record Audit and Retention: Audit Company shall make the audit documentation, including, but not limited to, all work papers and reports ("audit documentation"), available upon request to MCHCP and to representatives of federal and state agencies providing direct or indirect funding or for law enforcement purposes. Audit Company agrees to retain the audit documentation for this engagement for a period of seven years, unless Audit Company is notified in writing by MCHCP to extend the retention period. In addition, any audit documentation that is subject to litigation shall be kept for one year following termination of litigation including all appeals, if the litigation exceeds seven years.**

- ○ Confirmed
- ○ Not confirmed (please explain)

**1.33 Acceptance: No contract provision or use of items by MCHCP shall constitute acceptance or relieve Contractor of liability in respect to any expressed or implied warranties.**

- ○ Confirmed
- ○ Not confirmed (please explain)

**1.34 Termination for Cause: MCHCP may terminate this contract, or any part of this contract, for cause under any one of the following circumstances: 1) Contractor fails to make delivery of goods or services as specified in this Contract; 2) Contractor fails to satisfactorily perform the work specified in this Contract; 3) Contractor fails to make progress so as to endanger performance of this Contract in accordance with its terms; 4) Contractor breaches any provision of this Contract; 5) Contractor assigns this Contract without MCHCP's approval; or 6) Insolvency or bankruptcy of the Contractor. MCHCP shall have the right to terminate this Contract, in whole or in part, if MCHCP determines, at its sole discretion, that one of the above listed circumstances exists. In the event of termination, Contractor shall receive payment prorated for that portion of the contract period services were provided to and/or goods were accepted by MCHCP, subject to any offset by MCHCP for actual damages including loss of any federal matching funds. Contractor shall be liable to MCHCP for any reasonable excess costs for such similar or identical services included within the terminated part of this Contract.**

- ○ Confirmed
- ○ Not confirmed (please explain)

**1.35 Arbitration, Damages, Warranties: Notwithstanding any language to the contrary, no interpretation shall be allowed to find MCHCP has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, MCHCP shall not agree to pay attorney fees and late payment charges beyond those available under this Contract, and no provision will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.**

◯ Confirmed

◯ Not confirmed (please explain)

**1.36 Assignment: Contractor shall not assign, convey, encumber, or otherwise transfer its rights or duties under this Contract without prior written consent of MCHCP. This Contract may terminate in the event of any assignment, conveyance, encumbrance or other transfer by Contractor made without prior written consent of MCHCP. Notwithstanding the foregoing, Contractor may, without the consent of MCHCP, assign its rights to payment to be received under this Contract, provided that Contractor provides written notice of such assignment to MCHCP together with a written acknowledgment from the assignee that any such payments are subject to all of the terms and conditions of this Contract. For the purposes of this Contract, the term "assign" shall include, but shall not be limited to, the sale, gift, assignment, pledge, or other transfer of any ownership interest in the Contractor provided, however, that the term shall not apply to the sale or other transfer of stock of a publicly traded company. Any assignment consented to by MCHCP shall be evidenced by a written assignment agreement executed by Contractor and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of this Contract and to assume the duties, obligations, and responsibilities being assigned. A change of name by Contractor, following which Contractor's federal identification number remains unchanged, shall not be considered to be an assignment hereunder. Contractor shall give MCHCP written notice of any such change of name.**

◯ Confirmed

◯ Not confirmed (please explain)

**1.37 Compensation/Expenses: Contractor shall be required to perform the specified services at the price(s) quoted in this Contract. All services shall be performed within the time period(s) specified in this Contract. Contractor shall be compensated only for work performed to the satisfaction of MCHCP. Contractor shall not be allowed or paid travel or per diem expenses except as specifically set forth in this Contract.**

◯ Confirmed

◯ Not confirmed (please explain)

**1.38 Contractor Expenses: Contractor will pay and will be solely responsible for Contractor's travel expenses and out-of-pocket expenses incurred in connection with providing the services. Contractor will be responsible for payment of all expenses related to salaries, benefits, employment taxes, and insurance for its staff.**

◯ Confirmed

◯ Not confirmed (please explain)

**1.39 Conflicts of Interest: Contractor shall not knowingly employ, during the period of this Contract or any extensions to it, any professional personnel who are also in the employ of the State of Missouri or MCHCP and who are providing services involving this Contract or services similar in nature to the scope of this Contract to the State of Missouri. Furthermore, Contractor shall not knowingly employ, during the period of this Contract or any extensions to it, any employee of MCHCP who has participated in the making of this Contract until at least two years after his/her termination of employment with MCHCP.**

◯ Confirmed

◯ Not confirmed (please explain)

**1.40 Patent, Copyright, and Trademark Indemnity: Contractor warrants that it is the sole owner or author of, or has entered into a suitable legal agreement concerning either: a) the design of any product or process provided or used in the performance of this Contract which is covered by a patent, copyright, or trademark registration or other right duly authorized by state or federal law or b) any copyrighted matter in any report document or other material provided to MCHCP under this Contract. Contractor shall defend any suit or proceeding brought against MCHCP on account of any alleged patent, copyright or trademark infringement in the United States of any of the products provided or used in the performance of this Contract. This is upon**

**condition that MCHCP shall provide prompt notification in writing of such suit or proceeding; full right, authorization and opportunity to conduct the defense thereof; and full information and all reasonable cooperation for the defense of same. As principles of governmental or public law are involved, MCHCP may participate in or choose to conduct, in its sole discretion, the defense of any such action. If information and assistance are furnished by MCHCP at the Contractor's written request, it shall be at Contractor's expense, but the responsibility for such expense shall be only that within Contractor's written authorization. Contractor shall indemnify and hold MCHCP harmless from all damages, costs, and expenses, including attorney's fees that the Contractor or MCHCP may pay or incur by reason of any infringement or violation of the rights occurring to any holder of copyright, trademark, or patent interests and rights in any products provided or used in the performance of this Contract. If any of the products provided by Contractor in such suit or proceeding are held to constitute infringement and the use is enjoined, Contractor shall, at its own expense and at its option, either procure the right to continue use of such infringement products, replace them with non-infringement equal performance products or modify them so that they are no longer infringing. If Contractor is unable to do any of the preceding, Contractor agrees to remove all the equipment or software which are obtained contemporaneously with the infringing product, or, at the option of MCHCP, only those items of equipment or software which are held to be infringing, and to pay MCHCP: 1) any amounts paid by MCHCP towards the purchase of the product, less straight line depreciation; 2) any license fee paid by MCHCP for the use of any software, less an amount for the period of usage; and 3) the pro rata portion of any maintenance fee presenting the time remaining in any period of maintenance paid for. The obligations of Contractor under this paragraph continue without time limit. No costs or expenses shall be incurred for the account of Contractor without its written consent.**

- ○ Confirmed
- ○ Not confirmed (please explain)

**1.41 Tax Payments: Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Contract. MCHCP is exempt from Missouri state sales or use taxes and federal excise taxes for direct purchases. MCHCP makes no representation as to the exemption from liability of any tax imposed by any governmental entity on Contractor.**

- ○ Confirmed
- ○ Not confirmed (please explain)

**1.42 Disclosure of Material Events: Contractor agrees to immediately disclose any of the following to MCHCP to the extent allowed by law for publicly traded companies: (*) Any material adverse change to the financial status or condition of Contractor; (*) Any merger, sale or other material change of ownership of Contractor; (*) Any conflict of interest or potential conflict of interest between Contractor's engagement with MCHCP and the work, services or products that Contractor is providing or proposes to provide to any current or prospective customer; and (1) Any material investigation of Contractor by a federal or state agency or self-regulatory organization; (2) Any material complaint against Contractor filed with a federal or state agency or self-regulatory organization; (3) Any material proceeding naming Contractor before any federal or state agency or self-regulatory organization; (4) Any material criminal or civil action in state or federal court naming Contractor as a defendant; (5) Any material fine, penalty, censure or other disciplinary action taken against Contractor by any federal or state agency or self-regulatory organization; (6) Any material judgment or award of damages imposed on or against Contractor as a result of any material criminal or civil action in which Contractor was a party; or (7) Any other matter material to the services rendered by Contractor pursuant to this Contract. For the purposes of this paragraph, "material" means of a nature or of sufficient monetary value, or concerning a subject which a reasonable party in the position of and comparable to MCHCP would consider relevant and important in assessing the relationship and services contemplated by this Contract. It is further understood that in fulfilling its ongoing responsibilities under this paragraph, Contractor is obligated to make its best faith efforts to disclose only those relevant matters which to the attention of or should have been known by Contractor's personnel involved in the engagement covered by this Contract and/or which come to the attention of or should have been known by any individual or office of Contractor designated by Contractor to monitor and report such matters. Upon learning of any such actions, MCHCP reserves the right, at its sole discretion, to terminate this Contract.**

- ○ Confirmed
- ○ Not confirmed (please explain)

**1.43 MCHCP's rights Upon Termination or Expiration of Contract: If this Contract is terminated, MCHCP, in addition to any other rights provided under this Contract, may require Contractor to transfer title and deliver to MCHCP in the manner and to the extent directed, any completed materials. MCHCP shall be obligated only**

**for those services and materials rendered and accepted prior to termination.**

- ○ Confirmed
- ○ Not confirmed (please explain)

**1.44 Termination by Mutual Agreement: The parties may mutually agree to terminate this Contract or any part of this Contract at any time. Such termination shall be in writing and shall be effective as of the date specified in such agreement.**

- ○ Confirmed
- ○ Not confirmed (please explain)

**1.45 Insurance and Liability: Audit Company shall also have professional malpractice insurance of at least two million dollars ($2,000,000).**

- ○ Confirmed
- ○ Not confirmed (please explain)

**1.46 Change in Laws: Contractor agrees that any state and/or federal laws and applicable rules and regulation enacted during the terms of the contract which are deemed by MCHCP to necessitate a change in the contract shall be incorporated into the contract automatically. MCHCP will review any request for additional fees resulting from such changes and retains final authority to make any changes. A consultant may be utilized to determine the cost impact.**

- ○ Confirmed
- ○ Not confirmed (please explain)

**1.47 No Implied Authority: The authority delegated to Contractor by MCHCP is limited to the terms of this Contract. MCHCP is a statutorily created body corporate multi-employer group health plan and trust fund designated by the Missouri Legislature to administer health care services to eligible State of Missouri and public entity employees, and no other agency or entity may grant Audit Company any authority related to this Contract except as authorized in writing by MCHCP. Contractor may not rely upon implied authority, and specifically is not delegated authority under this Contract to: (1) Make public policy; (2) Promulgate, amend, or disregard administrative regulations or program policy decisions made by MCHCP; and/or (3) Unilaterally communicate or negotiate with any federal or state agency, the Missouri Legislature, or any MCHCP vendor on behalf of MCHCP regarding the services included in this Contract.**

- ○ Confirmed
- ○ Not confirmed (please explain)

**1.48 Relationship of the Parties: This Contract does not create a partnership, franchise, joint venture, agency, or employment relationship between the parties.**

- ○ Confirmed
- ○ Not confirmed (please explain)

**1.49 Audit Company bound by MCHCP's Duties: In carrying out MCHCP's mandate under the law, MCHCP is bound by various statutory, regulatory and fiduciary duties and responsibilities and Audit Company expressly agrees that it shall accept and abide by such duties and responsibilities when acting on behalf of MCHCP pursuant to this engagement.**

- ○ Confirmed
- ○ Not confirmed (please explain)

## Introduction

Missouri Consolidated Health Care Plan (MCHCP) provides the health benefit program for most State of Missouri employees, retirees, and their dependents covering over 85,000 members (lives). An additional 1,000 non-state local government members are covered through their public entity employer.

This document constitutes a request for sealed proposals from qualified organizations to provide an audit of MCHCP's contracted Pharmacy Benefit Manager (PBM), Express Scripts.

## Contracting Intentions

- The option to contract will be at the sole discretion of MCHCP.
- Any contract awarded from this RFP will be effective upon signature by MCHCP.
- MCHCP reserves the right to reject any or all proposals, or to make a partial award, including limiting the scope of the audit.

## Background Information

- MCHCP is governed by the provisions of Chapter 103 of the Revised Statutes of Missouri. Under the law, MCHCP is directed to procure health care benefits for most State employees. Rules and regulations governing the plan can be found by following this link http://www.sos.mo.gov/adrules/csr/current/22csr/22csr.asp.
- MCHCP contracts with Express Scripts, Inc. (ESI) as its pharmacy benefit manager for state and public entity members covering more than 85,000 lives. In 2022, MCHCP members had over 1.4 million scripts totaling nearly $256 million in payments.
- ESI has been the PBM for MCHCP since 2002. A new contract with ESI was effective January 1, 2022.
- MCHCP has two separate prescription drug plans – one for the non-Medicare population (i.e., commercial population) and the second is the Employer Group Waiver Plan (EGWP) Medicare prescription drug plan.
- MCHCP has three plan designs. In general, PPO plan members pay fixed copayments for prescriptions obtained from a network pharmacy. Health Savings Account (HSA) Plan members pay a percentage of the allowed amount after meeting the deductible. EGWP plan members have a plan design that is modeled after the commercial PPO Plan.
- MCHCP's latest audit of ESI was performed by PillarRx Consulting, LLC. Claims were audited for the time period of January 1-December 31, 2019.

## Assumptions and Considerations

Your proposal must be submitted using the DirectPath online submission tool no later than **Friday, March 3, 2023, 5:00 p.m. CT, 6:00 p.m. ET**. Due to the limited timeframe for proposal analysis and program implementation, no individual deadline extensions will be granted.

The MCHCP Board of Trustees has final responsibility for all MCHCP contracts. Responses to the RFP and all proposals will remain confidential until awarded and contracts are executed by the MCHCP Board of Trustees or their respective designees or until all proposals are rejected.

***Do not contact MCHCP directly regarding this RFP. Questions about the technical procedures for participating in this online RFP process should be addressed to DirectPath. Any questions concerning the content of the RFP should be submitted via the messaging tool of DirectPath.***

## Proposal Instructions

***NOTE: READ THESE INSTRUCTIONS COMPLETELY PRIOR TO RESPONDING TO THE RFP***

To be considered, you must respond to all required sections of this RFP. Bidders are strongly encouraged to read the entire RFP prior to the submission of a proposal. The bidder must comply with all stated requirements. Bidders are expected to provide complete and concise answers to all questions. Your responses to all questions must be based on your current proven capabilities. You should describe your future capabilities only as a supplement to your current capabilities.

If any information contained in the proposal is found to be falsified, the proposal will immediately be disqualified.

Proposals must be valid until July 1, 2023. If a contract is awarded, prices shall remain firm for the specified contract period.

A proposal may only be modified or withdrawn by signed, written notice which has been received by MCHCP prior to the official filing date and time specified.

## Clarification of Requirements

It is assumed that bidders have read the entire RFP prior to the submission of a proposal and, unless otherwise noted by the bidder, a submission of a proposal and any applicable amendment(s) indicates that the bidder will meet all requirements stated herein.

The bidder is advised that the only official position of MCHCP is that position which is stated in writing and issued by MCHCP as a RFP and any amendments and/or clarifications thereto. No other means of communication, whether oral or written, shall be construed as a formal or official response or statement.

## Schedule of Events

The timeline for the procurement is provided below.

| Activity | Timing |
|---|---|
| Online RFP Released | Wednesday, February 8, 2023<br>8 a.m. CT (9 a.m. ET) |
| Intent to Bid Document Due | Tuesday, February 14, 2023<br>5 p.m. CT (6 p.m. ET) |
| Question Submission Deadline | Tuesday, February 14, 2023<br>5 p.m. CT (6 p.m. ET) |
| MCHCP Responses to Submitted Questions | Friday, February 17, 2023<br>5 p.m. CT (6 p.m. ET) |
| Proposals Due | Friday, March 3, 2023<br>5 p.m. CT (6 p.m. ET) |
| Final Vendor Selection | Late April, 2023 |
| Contract Effective Date | Upon signature |

## Questions

During this bidding opportunity, MCHCP will be using the online messaging module of the DirectPath application for all official answers to questions from bidders, amendments to the RFP, exchange of information and notification of awards. It is the bidder's responsibility to notify MCHCP of any change in contact information of the bidder. During the bidding process you will be notified via the messaging module of the posting of any new bid-related information.

All questions regarding specifications, requirements, competitive procurement process, etc., must be in writing and submitted through the online messaging module of the DirectPath application by **Tuesday, February 14, 2023, 5 p.m. CT (6 p.m. ET)**. Questions received after February 14 will be answered and posted through the messaging module as time permits, but there is no guarantee of a response to these questions. For step-by-step instructions, please refer to the *Downloads* section of the DirectPath application and click on *User Guides*.

Questions deemed universally applicable will be answered in writing and shared with all vendors who have indicated they are quoting. The team will provide a summary of all questions and answers by **Friday, February 17, 2023.**

Bidders or their representatives may not contact other MCHCP employees or any member of the MCHCP Board of Trustees regarding this bidding opportunity or the contents of this RFP. If any such contact is discovered to have occurred, it may result in the immediate disqualification of the bidder from further consideration.

## Proposal Deadline

ALL proposals must be submitted no later than 5:00 p.m. CT (6:00 p.m. ET), March 3, 2023. Submissions received after that time will not be accepted.

## Disclaimers

MCHCP will not be liable under any circumstances for any expenses incurred by any bidder in connection with the selection process.

The description of coverage and plan design contained in this RFP is solely intended to allow for the preparation and submission of proposals by respondents and does not constitute a promise or guarantee of benefits to any individual.

## Confidentiality and Proprietary Materials

Pursuant to Section 610.021 RSMo, proposals and related documents shall not be available for public review until a contract has been awarded or all proposals are rejected. MCHCP maintains copies of all proposals and related documents.

MCHCP is a governmental body under Missouri Sunshine Law (Chapter 610 RSMo). Section 610.011 requires that all provisions be "liberally construed and their exceptions strictly construed to promote" the public policy that records are open unless otherwise provided by law. Regardless of any claim by a bidder as to material being proprietary and not subject to copying or distribution, or how a bidder characterizes any information provided in its proposal, all material submitted by the bidder in conjunction with the RFP is subject to release after the award of a contract in relation to a request for public records under the Missouri Sunshine Law (see Chapter 610 of the Missouri Revised Statutes). Only information expressly permitted by the provisions of Missouri's Sunshine Law to be closed – strictly construed – will be redacted by MCHCP from any public request submitted to MCHCP after an award is made. Bidders should presume

information provided to MCHCP in a proposal will be public following the award of the bid and made available upon request in accordance with the provisions of state law.

**Evaluation Process**

Any apparent clerical error may be corrected by the bidder before contract award. Upon discovering an apparent clerical error, MCHCP shall contact the bidder and request written clarification of the intended proposal. The correction shall be made in the notice of award. Examples of apparent clerical errors are: 1) misplacement of a decimal point; and 2) obvious mistake in designation of unit.

Any pricing information submitted by a bidder must be disclosed on the pricing pages as designated in this RFP. Any pricing information which appears elsewhere in the bidder's proposal shall not be considered by MCHCP.

Awards shall only be made to the bidder(s) whose proposal(s) complies with all mandatory specifications and requirements of the RFP. MCHCP reserves the right to evaluate all offers and based upon that evaluation to limit the number of contract awards or reject all offers.

MCHCP reserves the right to request written clarification of any portion of the bidder's response to verify the intent of the bidder. The bidder is cautioned, however, that its response shall be subject to acceptance or rejection without further clarification.

MCHCP reserves the right to consider historic information and fact, whether gained from the bidder's proposal, question and answer conferences, references, or any other source, in the evaluation process. The bidder is cautioned that it is the bidder's sole responsibility to submit information related to the evaluation categories and that MCHCP is under no obligation to solicit such information if it is not included with the bidder's proposal. Failure of the bidder to submit such information may cause an adverse impact on the evaluation of the bidder's proposal.

After determining that a proposal satisfies the mandatory requirements stated in the RFP, the comparative assessment of the relative benefits and deficiencies of the proposal in relationship to the published evaluation criteria shall be made by using subjective judgment. The award(s) of a contract resulting from this RFP shall be based on the lowest and best proposal(s) received in accordance with the following evaluation criteria:

**Evaluation Criteria**

| | |
|---|---|
| Financial Proposal | 500 points |
| Vendor Profile | 100 points |
| PBM Audit | 300 points |
| Key Personnel | 50 points |
| Reporting | 50 points |
| | 1,000 points |
| Bonus Points – MBE/WBE Participation Commitment | 10 points |

MCHCP will limit the number of finalists to the bidders receiving 80 percent (400 points) of the possible 500 non-financial points available or the top two bidders if less than two bidders receive 80 percent of the possible 500 non-financial points.

The bidder's proposed participation of MBE/WBE firms in meeting the targets of the RFP will be considered in the evaluation process. A maximum of MBE/WBE participation points of 10 points will be awarded based on the participation amount proposed by the bidder. Awarded MBE/WBE participation

points will be added to the non-financial points earned by the bidder and will be included to determine if a bidder meets the 80 percent threshold to obtain finalist status.

**Minority Business Enterprise (MBE)/Women Business Enterprise (WBE) Participation**

The bidder should secure participation of certified MBEs and WBEs in provider products/services required in this RFP. The targets of participation recommended by the State of Missouri are 10% MBE and 5% WBE of the total dollar value of the contract.

a) These targets can be met by a qualified MBE/WBE vendor themselves and/or through the use of qualified subcontractors, suppliers, joint ventures, or other arrangements that afford meaningful opportunities for MBE/WBE participation.

b) The services performed or the products provided by MBE/WBEs must provide a commercially useful function related to the delivery of the contractually required service/product in a manner that will constitute an added value to the contract and shall be performed/provided exclusive to the performance of the contract. Therefore, if the services performed or the products provided by MBE/WBEs is utilized, to any extent, in the bidder's obligations outside of the contract, it shall not be considered a valid added value to the contract and shall not qualify as participation in accordance with this clause.

c) To be considered as meeting these targets, the MBE/WBEs must be "qualified" by the proposal opening date (date the proposal is due). See below for a definition of a qualified MBE/WBE.

d) If the bidder is proposing MBE/WBE participation, to receive evaluation consideration for MBE/WBE participation, the bidder must provide the following information with the proposal.

    a. Participation Commitment - If the bidder is proposing MBE/WBE participation, the vendor must complete Section 6 of the Pharmacy Claim Audit RFP Questionnaire (MBE-WBE Participation Commitment), by listing each proposed MBE and WBE, the committed percentage of participation for each MBE and WBE, and the commercially useful products/services to be provided by the listed MBE and WBE. If the vendor submitting the proposal is a qualified MBE and/or WBE, the vendor must include the vendor in the appropriate table on the Participation Commitment Form.

    b. Documentation of Intent to Participate – The bidder must either provide a properly completed Exhibit A-5, Documentation of Intent to Participate Form, signed and dated no earlier than the RFP issuance date by each MBE and WBE proposed or must provide a letter of intent signed and dated no earlier than the RFP issuance date by each MBE and WBE proposed which: (1) must describe the products/services the MBE/WBE will provide and (2) should include evidence that the MBE/WBE is qualified, as defined herein (i.e., the MBE/WBE Certification Number or a copy of MBE/WBE certificate issued by the Missouri OEO). If the bidder submitting the proposal is a qualified MBE and/or WBE, the bidder is not required to complete Exhibit A-5, Documentation of Intent to Participate Form or provide a recently dated letter of intent.

e) Commitment – If the bidder's proposal is awarded, the percentage level of MBE/WBE participation committed to by the bidder on Exhibit A-5, Participation Commitment, shall be interpreted as a contractual requirement.

Definition -- Qualified MBE/WBE:

To be considered a qualified MBE or WBE for purposes of this RFP, the MBE/WBE must be certified by the State of Missouri, Office of Administration, Office of Equal Opportunity (OEO) by the proposal opening date.

MBE or WBE means a business that is a sole proprietorship, partnership, joint venture, or corporation in which at least fifty-one percent (51%) of the ownership interest is held by minorities or women and the management and daily business operations of which are controlled by one or more minorities or women who own it.

Minority is defined as belonging to one of the following racial minority groups: African Americans, Native Americans, Hispanic Americans, Asian Americans, American Indians, Eskimos, Aleuts, and other groups that may be recognized by the Office of Advocacy, United States Small Business Administration, Washington D.C.

A listing of several resources that are available to assist bidders in their efforts to identify and secure the participation of qualified MBEs and WBEs is available at the website shown below or by contacting the Office of Equal Opportunity (OEO) at:

Office of Administration, Office of Equal Opportunity (OEO)
Harry S Truman Bldg., Room 630, P.O. Box 809, Jefferson City, MO 65102-0809
Phone: (877) 259-2963 or (573) 751-8130
Fax: (573) 522-8078
Web site: http://oeo.mo.gov

## Pricing

The bidder must provide a firm, fixed pricing arrangement for the services requested in this RFP. It is expected that the total charge will be broken down to reflect specific costs associated with each aspect of the audit, as outlined in Exhibit B - Scope of Work.

## Finalist Interview

After an initial screening process, a technical question and answer conference or interview may be conducted, if deemed necessary by MCHCP, to clarify or verify the bidder's proposal and to develop a comprehensive assessment of the proposal. MCHCP also reserves the right to interview the proposed audit team.

## Negotiation and Contract Award

The bidder is advised that under the provisions of this RFP, MCHCP reserves the right to conduct negotiations of the proposals received or to award a contract without negotiations. If such negotiations are conducted, the following conditions shall apply:

- Negotiations may be conducted in person, in writing, or by telephone.
- Negotiations will only be conducted with bidders who provide potentially acceptable proposals. MCHCP reserves the right to limit negotiations to those bidders that received the highest rankings during the initial evaluation phase. All bidders involved in the negotiation process will be invited to submit a best and final offer.
- Terms, conditions, prices, methodology, or other features of the bidder's proposal may be subject to negotiation and subsequent revision. As part of the negotiations, the bidder may be required

to submit supporting financial, pricing, and other data to allow a detailed evaluation of the feasibility, reasonableness, and acceptability of the proposal.

- The mandatory requirements of the RFP shall not be negotiable and shall remain unchanged unless MCHCP determines that a change in such requirements is in the best interest of MCHCP.
- Bidder understands that the terms of any negotiation are confidential until an award is made or all proposals are rejected.

Any award of a contract resulting from this RFP will be made only by written authorization from MCHCP.

**Using DirectPath**

The 2023 MCHCP Pharmacy Claim Audit RFP contains 2 broad categories of items that you will need to work on via the DirectPath application:

1) Items Requiring a Response:
   a. Pricing Form (e.g., Pharmacy Claim Audit Pricing) is an online input form to collect your pricing proposal as requested by MCHCP.
   b. Questionnaires (e.g., Pharmacy Claim Audit Questionnaire) are also online forms to collect your responses to questions about your capabilities.
   c. Response Documents (e.g., Exhibit A-1 Intent to Bid) are attachment files (e.g., MS Word or Excel) that are posted to the DirectPath website. They should be downloaded, completed and/or signed by your organization, and then posted/uploaded back to the DirectPath application. When you upload your response, from the drop-down menu, identify each uploaded document as a *Response* document and associate it to the appropriate document by name. For step-by-step instructions, please refer to the "How to Download and Attach Files" User Guide located in the "Downloads" section on the application homepage.
2) Reference Files from MCHCP:
   a. Documents (e.g., Exhibit B – Scope of Work) that you should download and read completely before submitting your RFP response.

All these components can be found in the DirectPath Application under the 2023 MCHCP Pharmacy Claim Audit RFP on the Event Details page of the application.

Note that as you use the DirectPath application to respond to this RFP, User Guides are accessible throughout the application by simply clicking on the help icon or from the "Downloads" area of the DirectPath application homepage. For help with data entry and navigation throughout the application, you can contact the DirectPath staff:

- Phone: 800-979-9351
- E-mail: support@directpathhealth.com

**Responding to Questionnaires**

We have posted two forms for your response:

- Pharmacy Claim Audit Questionnaire
- Mandatory Contract Provisions Questionnaire

The questionnaires need to be completed and submitted to DirectPath by **Friday, March 3, 2023, 5:00 p.m. CT (6:00 p.m. ET).**

The questionnaires are located within the *Items Requiring a Response* tab. This tab contains all the items you and your team are required to access and respond to. For step-by-step instructions, please refer to the *How to Submit a Questionnaire* User Guide located in the *Downloads* section of the DirectPath application homepage. You have the option to "respond online" or through two different off-line (or desktop) tools.

**Completing Response Documents**

The following exhibits must be completed, signed and uploaded to DirectPath:

- Exhibit A-1 - Intent to Bid (due 5:00 p.m. CT, February 14, 2023)
- Exhibit A-2 – Proposed Bidder Modifications (due 5:00 p.m. CT, March 3, 2023)
- Exhibit A-3 – Confirmation Document (due 5:00 p.m. CT, March 3, 2023)
- Exhibit A-4 – Contractor Certification (due 5:00 p.m. CT, March 3, 2023)
- Exhibit A-5 – MBE-WBE Intent to Participate Document (due 5:00 p.m. CT, March 3, 2023)

The follow exhibits must be reviewed and the bidder provide any suggested red-lined changes to the documents using Microsoft Word Track Changes functionality. Changes proposed may or may not be accepted by MCHCP.

- Exhibit A-6 – Sample MCHCP Contract (due 5:00 p.m. CT, March 3, 2023)
- Exhibit A-7 – MCHCP Business Associate Agreement (due 5:00 p.m. CT, March 3, 2023)

**Completing Pricing Worksheet**

The financial worksheet may be accessed in *Items Requiring a Response*. The *Pricing* or *Bid* contains a worksheet to collect fee quotations based on the services requested in this RFP. For step-by-step instructions, please refer to the *How to Submit a Bid* User Guide located in the *Downloads* section of the DirectPath Application homepage.

**The final bid deadline is Friday, March 3, 2023, 5:00 p.m. CT (6:00 p.m. ET)**. Further detail on how to submit your bids is outlined in the Submitting Bids section of these Instructions.

**Notes Regarding Pricing**

Quotes should assume:

- Contract effective upon signature
- Proposed prices shall be firm and are subject to negotiation prior to the award of a contract by MCHCP. Refer to this Instructions document for detailed pricing worksheet instructions.

**Submitting Bids**

The pricing function allows you to work on a bid submission in draft form. You can enter your rates and *Save* without submitting your proposal to DirectPath. Save frequently to avoid losing work. When you have finished entering your rates, *Save* and then *Calculate*. If you have missed any required fields, you will be notified with an error message. If there are no errors, you can *Submit* your proposal through DirectPath.

Once you have submitted your bid, you can make adjustments at any time up until the bids are due. Simply select the pricing/bid and choose *Edit* to make changes. Follow the steps above to save, calculate, and re-submit.

Refer to the following list of instructions before attempting to input/submit a bid:

- Enter your rates well in advance of the required bid date. Please do NOT wait until the last minute to work on the pricing model worksheet because your bid must comply with the automated rules and data validation checks that have been implemented by MCHCP.
- Partial data entries can be saved; however, the validation rules (error checking) will not be run against your data until you complete the worksheet and either *Calculate* or *Submit* your data.
- To check that your data have been entered accurately, you should press the *Calculate* button at the top of the page. If your input complies with the validation rules, the rates will be calculated and totaled. Otherwise, the calculation and validation rules will not properly execute even if you press the *Calculate* button.
- You will be able to view your final rate submission prior to submitting to DirectPath.
- If your data are accurate and complete, click on the *Submit Bid* icon to submit your bid to DirectPath.
- Data that are submitted incorrectly will receive error messages when calculated or submitted.
- All data fields that are marked as a number or currency must be filled with a numerical value or 0. Blanks and text such as "n/a" are not permitted. If you attempt to *Submit* or *Calculate* your data with incomplete fields, you will receive an error message.
- Be sure to save your data often. Periodic saves will prevent you from losing data in the event the application times-out. For security purposes the system will automatically log you out after a specified time if there is no activity.

**RFP Checklist**

Prior to the March 3 close date, please be sure you have completed and/or reviewed each of the documents listed below.

| Type | Document Name |
|---|---|
| Questionnaire | Pharmacy Claim Audit Questionnaire |
| Questionnaire | Mandatory Contract Provisions Questionnaire |
| Pricing/Bid | Pharmacy Claim Audit Pricing |
| Response | Exhibit A-1 Intent to Bid.docx **DUE: February 14, 2023** |
| Response | Exhibit A-2 Proposed Bidder Modifications.docx |
| Response | Exhibit A-3 Confirmation Document.docx |
| Response | Exhibit A-4 Contractor Certification.docx |
| Response | Exhibit A-5 MBE-WBE Intent to Participate Document.docx |
| Response | Exhibit A-6 Sample Contract.docx |
| Response | Exhibit A-7 Business Associate Agreement.docx |
| Reference | Introduction and Instructions – Pharmacy Claim Audit RFP.pdf |

| Type | Document Name |
|---|---|
| Reference | Exhibit B – Scope of Work.docx |
| Reference | Exhibit C – General Provisions.docx |

**Contact Information**

Content and technical questions may arise. All questions regarding this document and the selection process must be submitted through the online messaging module of the DirectPath application by **February 14, 2023, 5 p.m. CT (6 p.m. ET)**.

For technical questions related to the use of DirectPath, please contact the DirectPath customer support team at support@directpathhealth.com, or call the Customer Support Line at 1-800-979-9351.

EXHIBIT B
SCOPE OF WORK

B1. GENERAL REQUIREMENTS

B1.1 At the request of the MCHCP Board of Trustees, the claims auditor shall perform a comprehensive and objective review of pharmaceutical claims to determine if the claims were adjudicated accurately and rebates and CMS payments were properly applied in accordance with the contract and plan design. There are two distinct pharmacy plans that will be audited. There is a commercial plan incorporating both PPO and high deductible plan designs. The second plan is an Employer Group Waiver Plan (EGWP) Medicare prescription drug plan. The scope includes claims paid on behalf of MCHCP members assigned to one of the two drug plans for calendar year 2022 for pharmaceutical claims processed by the Plan's pharmacy benefits manager (PBM), Express Scripts, Inc. (ESI).

B2. CATEGORIES FOR REVIEW

B2.1 The audit scope incorporates categories of review, as outlined below. The following list is not intended to be exclusive. The proposer is encouraged to suggest additional criteria to enhance the appropriateness of the review. Descriptions of each item are further described in Sections B3, B4, and B5. The contractor must request paid claims data from ESI covering the time period of the audit to complete the reviews.

B2.1.1 **Claims Pricing (Discount) Accuracy Review**, which requires analyzing 100 percent of the claims for each of the two pharmacy plans incurred in the time period of the audit to confirm pricing accuracy.

B2.1.2 **Benefit Design Accuracy Review**, which requires analyzing claims for each time period to validate application of plan benefits designed for each of the two pharmacy plans.

B2.1.3 **Rebate Review**, which requires identification of the top five (5) manufacturers for the commercial plans and the top five (5) manufacturers for the EGWP and comparing the rebates credited to MCHCP under each manufacturer's contract with ESI for the last two calendar quarters of 2022. In addition, it requires confirmation that MCHCP received all CMS payments made on behalf of MCHCP EGWP members.

B3. CLAIMS PRICING (DISCOUNT) ACCURACY REVIEW

B3.1 The contractor must aggregate the discounts achieved for both brand name drugs and generic drugs.

B3.2 The contractor must investigate whether the proper adjudication logic, as outlined in MCHCP's contract with ESI, was selected for all claims.

B3.3 The aggregated discounts will then be compared to the contract guarantees to determine the degree to which ESI met, exceeded, or fell short of the threshold. To the extent a shortfall is identified, the contractor will identify the amount of the shortage

and work directly with ESI to true-up any refund to MCHCP for 2022 claims. The contractor shall also review for proper categorization of drugs used to determine discounts, i.e., test for characterization shifting from generic to brand which may have inflated discounts. The contractor shall analyze and test the dispensing fees against contractual guaranteed amounts.

B4. BENEFIT DESIGN ACCURACY REVIEW

B4.1 The contractor must review a sample of claims to determine whether claims were adjudicated in accordance with the plan designs for the PPO, high deductible and EGWP plans specified in the PBM contract.

B4.2 The contractor must investigate whether the claims were adjudicated using appropriate member cost-sharing requirements for PPO, high deductible and EGWP plan types.

B4.3 The contractor must investigate whether mail order claims were processed with no errors (i.e., dosage, strength, and auto-refilled at the correct time to minimize stockpiling).

B5. REBATE REVIEW

B5.1 The contractor shall confirm that MCHCP received one hundred percent of manufacturer rebates, administrative fees and inflation protection. A separate review shall be done for the commercial plan (PPO and high deductible) and the EGWP plan as the manufacturer arrangements may be different between the two plans.

B5.2 The contractor shall confirm that MCHCP received one hundred percent of CMS payments made on behalf of EGWP members in accordance with the contract.

B6. DELIVERABLES AND REPORTING - Contractor shall provide the following:

B6.1 The contractor shall keep MCHCP apprised of audit progress throughout the process.

B6.2 The bidder shall provide a draft project plan outlining the projected time to complete the audit. In consultation with MCHCP, a final project plan must be completed within fifteen (15) days of contract award.

B6.3 The contractor shall provide a comprehensive, detailed written report to include the methodology used, the claims and performance review findings, and recommendations. This will be provided to MCHCP staff prior to submission to the audited entity to ensure compliance with the scope of the audit.

B6.4 The contractor shall provide MCHCP the final draft report and then, in person or virtually, present the report to the MCHCP Board of Trustees in Jefferson City, MO. MCHCP will not reimburse separately for travel expenses. Upon approval by the Board of Trustees, the contractor shall issue the final report.

EXHIBIT C
GENERAL PROVISIONS

## C1. TERMINOLOGY AND DEFINITIONS

Whenever the following words and expressions appear in this Request for Proposal (RFP) document or any amendment thereto, the definition or meaning described below shall apply.

C1.1 **Amendment** means a written, official modification to an RFP or to a contract.

C1.2 **Bidder** means a person or organization who submitted an offer in response to this RFP.

C1.3 **Breach** shall mean the acquisition, access, use or disclosure of PHI in a manner not permitted by the Privacy Rule that compromises the security or privacy of the PHI as defined, and subject to the exceptions set forth, in 45 C.F.R. 164.402.

C1.4 **Contract** means a legal and binding agreement between two or more competent parties, in consideration for the procurement of services as described in this RFP.

C1.5 **Contractor** means a person or organization who is a successful bidder as a result of an RFP and/or who enters into a contract or any subcontract of a successful bidder.

C1.6 **Employee** means a benefit-eligible person employed by the state and present and future retirees from state employment who meet the plan eligibility requirements.

C1.7 **May** means that a certain feature, component, or action is permissible, but not required.

C1.8 **Member** means any person covered as either a subscriber or a dependent in accordance with the terms and conditions of the plan.

C1.9 **Must** means that a certain feature, component, or action is a mandatory condition. Failure to provide or comply may result in a proposal being considered non-responsive.

C1.10 **Off-shore** means outside of the United States.

C1.11 **Participant** has the same meaning as the word member.

C1.12 **PHI** shall mean Protected Health Information, as defined in 45 C.F.R. 160.103, as amended.

C1.13 **Pricing Pages** apply to the form(s) on which the bidder must state the price(s) applicable for the services required in the RFP. The pricing pages must be completed and uploaded by the bidder prior to the specified proposal filing date and time.

C1.14 **Privacy Regulations** shall mean the federal privacy regulations issued pursuant to the Health Insurance Portability and Accountability Act of 1996, as amended from time to time, codified at 45 C.F.R. Parts 160 and 164 (Subparts A & E).

C1.15 **Proposal Filing Date and Time** and similar expressions mean the exact deadline required by the RFP for the receipt of proposals by Direct Path system.

C1.16 **Provider** means a physician, hospital, medical agency, specialist or other duly licensed health care facility or practitioner certified or otherwise authorized to furnish health care services pursuant to the law of the jurisdiction in which care or treatment is received. A doctor/physician as defined in 22 CSR 10-2010(22). Other providers include but are not limited to:

C1.16.1 Audiologist (AUD or PhD);
C1.16.2 Certified Addiction Counselor for Substance Abuse (CAC);
C1.16.3 Certified Nurse Midwife (CNM) – when acting within the scope of his/her license in the state in which s/he practices and performing a service which would be payable under this plan when performed by a physician;
C1.16.4 Certified Social Worker or Masters in Social Work (MSW)
C1.16.5 Chiropractor;
C1.16.6 Licensed Clinical Social Worker
C1.16.7 Licensed Professional Counselor (LPC);
C1.16.8 Licensed Psychologist (LP);
C1.16.9 Nurse Practitioner (NP);
C1.16.10 Physician Assistant (PA);
C1.16.11 Occupational Therapist;
C1.16.12 Physical Therapist;
C1.16.13 Speech Therapist;
C1.16.14 Registered Nurse Anesthetist (CRNA);
C1.16.15 Registered Nurse Practitioner (ARNP); or
C1.16.16 Therapist with a PhD or Master's Degree in Psychology or Counseling.

C1.17 **Request for Proposal (RFP)** means the solicitation document issued by MCHCP to potential bidders for the purchase of services as described in the document. The definition includes these Terms and Conditions as well as all Pricing Pages, Exhibits, Attachments, and Amendments thereto.

C1.18 **Respondent** means any party responding in any way to this RFP.

C1.19 **Retiree** means a former employee who, at the time of termination of employment, met the eligibility requirements as outlined in subsection 22 CSR 10-2.020(2)(B) and is currently receiving a monthly retirement benefit from a retirement system listed in such rule.

C1.20 **RSMo (Revised Statutes of Missouri)** refers to the body of laws enacted by the Legislature, which govern the operations of all agencies of the State of Missouri. Chapter 103 of the statutes is the primary chapter governing the operations of MCHCP.

C1.21 **Shall** has the same meaning as the word must.

C1.22 **Should** means that certain feature, component and/or action is desirable but not mandatory.

C1.23 **Subscriber** means the person who elects coverage under the plan.

## C2. GENERAL BIDDING PROVISIONS

C2.1 It shall be the bidder's responsibility to ask questions, request changes or clarification, or otherwise advise MCHCP if any language, specifications or requirements of an RFP appear to be ambiguous, contradictory, and/or arbitrary, or appear to inadvertently restrict or limit the requirements stated in the RFP to a single source. Any and all communication from bidders regarding specifications, requirements, competitive procurement process, etc., must be directed to MCHCP via the messaging tool on the Direct Path web site, as indicated on the last page of the *Introduction and Instructions* document of the RFP. Such communication must be received no later than Friday, February 14, 2023, 5 p.m. CT (6 p.m. ET).

Every attempt shall be made to ensure that the bidder receives an adequate and prompt response. However, to maintain a fair and equitable procurement process, all bidders will be advised, via the issuance of an amendment or other official notification to the RFP, of any relevant or pertinent information related to the procurement. Therefore, bidders are advised that unless specified elsewhere in the RFP, any questions received by MCHCP after the date noted above might not be answered.

It is the responsibility of the bidder to identify and explain any part of their response that does not conform to the requested services described in this document. Without documentation provided by the bidder, it is assumed by MCHCP that the bidder can provide all services as described in this document.

C2.2 Bidders are cautioned that the only official position of MCHCP is that position which is stated in writing and issued by MCHCP in the RFP or an amendment thereto. No other means of communication, whether oral or written, shall be construed as a formal or official response or statement.

C2.3 MCHCP monitors all procurement activities to detect any possibility of deliberate restraint of competition, collusion among bidders, price-fixing by bidders, or any other anticompetitive conduct by bidders, which appears to violate state and federal antitrust laws. Any suspected violation shall be referred to the Missouri Attorney General's Office for appropriate action.

C2.4 No contract shall be considered to have been entered into by MCHCP until the contract has been awarded by the MCHCP Board of Trustees and all material terms have been finalized. The contract is expected to be finalized and signed by a duly authorized representative of Contractor in less than fifteen (15) days from MCHCP's initial contact to negotiate a contract. An award will not be made until all contract terms have been accepted.

## C3. PREPARATION OF PROPOSALS

C3.1 Bidders must examine the entire RFP carefully. Failure to do so shall be at the bidder's risk.

C3.2 Unless otherwise specifically stated in the RFP, all specifications and requirements constitute minimum requirements. All proposals must meet or exceed the stated specifications and requirements.

C3.3 Unless otherwise specifically stated in the RFP, any manufacturer's names, trade names, brand names, and/or information listed in a specification and/or requirement are for informational purposes only and are not intended to limit competition. Proposals that do not comply with the requirements and specifications are subject to rejection without clarification.

**C4. DISCLOSURE OF MATERIAL EVENTS**

C4.1 The bidder agrees that from the date of the bidder's response to this RFP through the date for which a contract is awarded, the bidder shall immediately disclose to MCHCP:

C4.1.1 Any material adverse change to the financial status or condition of the bidder;

C4.1.2 Any merger, sale or other material change of ownership of the bidder;

C4.1.3 Any conflict of interest or potential conflict of interest between the bidder's engagement with MCHCP and the work, services or products that the bidder is providing or proposes to provide to any current or prospective customer; and

C4.1.4 (1) Any material investigation of the bidder by a federal or state agency or self-regulatory organization; (2) Any material complaint against the bidder filed with a federal or state agency or self-regulatory organization; (3) Any material proceeding naming the bidder before any federal or state agency or self-regulatory organization; (4) Any material criminal or civil action in state or federal court naming the bidder as a defendant; (5) Any material fine, penalty, censure or other disciplinary action taken against the bidder by any federal or state agency or self-regulatory organization; (6) Any material judgment or award of damages imposed on or against the bidder as a result of any material criminal or civil action in which the bidder was a party; or (7) Any other matter material to the services rendered by the bidder pursuant to this RFP.

C4.1.4.1 For the purposes of this paragraph, "material" means of a nature, or of sufficient monetary value, or concerning a subject which a reasonable party in the position of and comparable to MCHCP would consider relevant and important in assessing the relationship and services contemplated by this RFP. It is further understood that in fulfilling its ongoing responsibilities under this paragraph, the bidder is obligated to make its best faith efforts to disclose only those relevant matters which come to the attention of or should have been known by the bidder's personnel involved in the engagement covered by this RFP and/or which come to the attention of or should have been known by any individual or office of the bidder designated by the bidder to monitor and report such matters.

C4.2 Upon learning of any such actions, MCHCP reserves the right, at its sole discretion, to either reject the proposal or continue evaluating the proposal.

## C5. COMPLIANCE WITH APPLICABLE FEDERAL LAWS

C5.1 In connection with the furnishing of equipment, supplies, and/or services under the contract, the contractor and all subcontractors shall comply with all applicable requirements and provisions of the Health Insurance Portability and Accountability Act (HIPAA) and The Patient Protection and Affordable Care Act (PPACA), as amended.

C5.2 Any bidder offering to provide services must sign a Business Associate Agreement (BAA) (see Exhibit A-7) due to the provisions of HIPAA. Any requested changes shall be noted and returned with the RFP**. The changes are accepted only upon MCHCP signing a revised BAA after contract award.**

C5.3 Upon awarding of the contract by the Board, the BAA shall be signed by both parties within five (5) working days of the request to sign, or the award of the contract may be rescinded.

**Exhibit A-1**

**Intent to Bid – 2023 MCHCP Pharmacy Claim Audit RFP**

(Signing this form does not mandate that a vendor must bid)

Please complete this form following the steps listed below:

1. Fill this form out electronically and sign it with your electronic signature.
2. Upload the completed document to the Response Documents area of the RFP, no later than Tuesday, February 14, 2023, at 5 p.m. CT (6 p.m. ET).

This form will serve as confirmation that our organization has received the 2023 MCHCP Pharmacy Claim Audit RFP.

☐ We intend to submit a complete proposal for the audit of MCHCP's PBM as outlined in the RFP.

☐ We decline to submit a proposal for the following reason(s):

**Name of Organization**

**Signature of Plan Representative**

**Name/Title of Plan Representative**

**Date**

**EXHIBIT A-2**
**BIDDER'S PROPOSED MODIFICATIONS TO THE RFP**
**2023 MCHCP PHARMACY CLAIM AUDIT RFP**

The bidder must utilize this document to clearly identify by subsection number any exceptions to the provisions of the Request for Proposal (RFP) and include an explanation as to why the bidder cannot comply with the specific provision. Any desired modifications should be kept as succinct and brief as possible. **Failure to confirm acceptance of the mandatory contract provisions will result in the bidder being eliminated from further consideration as its proposal will be considered non-compliant.**

**Any modification proposed shall be deemed accepted as a modification of the RFP if and only if this proposed modification exhibit is countersigned by an authorized MCHCP representative on or before the effective date of the contract awarded under this RFP and the terms are included in the final contract executed by the parties.**

_____

Name/Title of Individual

_____

Organization

_____

Signature

_____

Date

On behalf of MCHCP, the undersigned individual hereby attests that he or she is authorized to enter into this Agreement and agrees to all the terms specified herein.

_____

Executive Director Date
Missouri Consolidated Health Care Plan

**Exhibit A-3**
**Confirmation Document**
**2023 MCHCP Pharmacy Claim Audit RFP**

Please complete this form, sign, and upload to DirectPath, following the steps listed below:

1) Confirm that you have read and understand all MCHCP's instructions included in the DirectPath application.
   ☐ Yes
   ☐ No

2) Bidders are required to submit a firm, fixed price for the services described in this RFP. Confirm that you hereby agree to provide the services and/or items at the prices quoted, pursuant to the requirements of the RFP, including any and all RFP amendments.
   ☐ Yes
   ☐ No

3) Completion of the signature block below constitutes your company's acceptance of all terms and conditions of the original RFP plus any and all RFP amendments. You also hereby expressly affirm that you have the requisite authority to execute this Agreement on behalf of the Bidder and to bind such respective party to the terms and conditions set forth herein.

_____
Signature

_____
Name/Title of Individual

_____
Organization

_____
Date

**EXHIBIT A-4**

**CONTRACTOR CERTIFICATION**
**OF COMPLIANCE WITH FEDERAL EMPLOYMENT LAWS**
**2023 MCHCP PHARMACY CLAIM AUDIT RFP**

_____ (hereafter referred to as "Contractor") hereby certifies that all of Contractor's employees and its subcontractors' employees assigned to perform services for Missouri Consolidated Health Care Plan ("MCHCP") and/or its members are eligible to work in the United States in accordance with federal law.

Contractor acknowledges that MCHCP is entitled to receive all requested information, records, books, forms, and any other documentation ("requested data") in order to determine if Contractor is in compliance with federal law concerning eligibility to work in the United States and to verify the accuracy of such requested data. Contractor further agrees to fully cooperate with MCHCP in its audit of such subject matter.

Contractor also hereby acknowledges that MCHCP may declare Contractor has breached its Contract if MCHCP has reasonable cause to believe that Contractor or its subcontractors knowingly employed individuals not eligible to work in the United States. MCHCP may then lawfully and immediately terminate its Contract with Contractor without any penalty to MCHCP and may suspend or debar Contractor from doing any further business with MCHCP.

THE UNDERSIGNED PERSON REPRESENTS AND WARRANTS THAT HE/SHE IS DULY AUTHORIZED TO SIGN THIS DOCUMENT AND BIND THE CONTRACTOR TO SUCH CERTIFICATION.

_____

Signature

_____

Name/Title of Individual

_____

Organization

_____

Date

**Exhibit A-5**

## Documentation of Intent to Participate
## 2023 MCHCP Pharmacy Claim Audit RFP

If the bidder is proposing to include the participation of a Minority Business Enterprise/Women Business Enterprise (MBE/WBE) in the provision of the products/services required in the RFP, the bidder must either provide a recently dated letter of intent, signed and dated no earlier than the RFP issuance date, from each organization documenting the following information, or complete and provide this Exhibit with the bidder's proposal.

*~ Copy This Form For Each Organization Proposed ~*

Bidder Name: _____

**This Section To Be Completed by Participating Organization:**

*By completing and signing this form, the undersigned hereby confirms the intent of the named participating organization to provide the products/services identified herein for the bidder identified above.*

| | | | |
|---|---|---|---|
| Name of Organization: (Name of MBE, WBE) | | | |
| Contact Name: | | Email: | |
| Address: | | Phone #: | |
| City: | | Fax #: | |
| State/Zip: | | Certification # | |
| Type of Organization (MBE or WBE): | | Certification Expiration Date: | (or attach copy of certification) |

**PRODUCTS/SERVICES PARTICIPATING ORGANIZATION AGREED TO PROVIDE**

Describe the products/services you *(as the participating organization)* have agreed to provide:

_____

_____

_____

_____

**Authorized Signature:**

_____ _____

*Authorized Signature of Participating Organization (MBE, WBE)*

*Date (Dated no earlier than the RFP issuance date)*

**Exhibit A-6**

**CONTRACT # XXXX BETWEEN**
**MISSOURI CONSOLIDATED HEALTH CARE PLAN**
**AND AUDIT COMPANY**

This Contract is entered into by and between Missouri Consolidated Health Care Plan ("MCHCP") and Audit Company (hereinafter "Audit Company" or "Contractor") for the express purpose of performing a pharmacy claims audit on behalf of MCHCP, pursuant to MCHCP's Request for Proposal released February 8, 2023 (hereinafter "RFP").

## 1. GENERAL TERMS AND CONDITIONS

**1.1 Term of Contract and Costs of Services:** The term of this Contract is for a period not to exceed one year from (the date of the award), or until the final audit report is issued. The submitted price for the contract is a firm, fixed price. All prices are subject to best and final offer which may result from subsequent negotiation.

**1.2 Contract Documents:** This Contract and following documents, attached hereto and herby incorporated herein by reference as if fully set forth herein, constitute the full and complete Contract and, in the event of conflict in terms of language among the documents, shall be given precedence in the following order:

a. Any future written and duly executed renewal proposals or amendments to this Contract;

b. This written Contract signed by the parties;

c. The following Exhibits listed in this subsection below and attached hereto, After being duly executed by both parties:

   i. Exhibit A - Pricing Pages
   ii. Exhibit B - Business Associate Agreement
   iii. Exhibit C – Contractor Certification

d. The original RFP, including any amendments, the mandatory terms of which are deemed accepted and confirmed by Audit Company as evidenced by Audit Company's affirmative confirmations and representations required by and in accordance with the bidder response requirements described throughout the RFP.

**1.3 Integration:** This Contract, in its final composite form, shall represent the entire agreement between the parties and shall supersede all prior negotiations, representations or agreements, either written or oral, between the parties relating to the subject matter hereof. This Contract between the parties shall be independent of and have no effect on any other contracts of either party.

**1.4 Amendments to this Contract:** This Contract shall be modified only by the written agreement of the parties. No alteration or variation in terms and conditions of the Contract shall be valid

unless made in writing and signed by the parties. Every amendment shall specify the date on which its provisions shall be effective.

No agent, representative, employee or officer of either MCHCP or Audit Company has authority to make, or has made, any statement, agreement or representation, oral or written, in connection with this Contract, which in any way can be deemed to modify, add to or detract from, or otherwise change or alter its terms and conditions. No negotiations between the parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of this Contract.

**1.5 Drafting Conventions and Definitions:** Whenever the following words and expressions appear in this Contract, any amendment thereto, or the RFP document, the definition or meaning described below shall apply:

- **"Amendment"** means a written, official modification to the RFP or to this Contract.
- **"May"** means permissible but not required.
- **"Must"** means that a certain feature, component, or action is a mandatory condition. Failure to provide or comply may result in a breach.
- **"Request for Proposal" or "RFP"** means the solicitation document issued by MCHCP to potential bidders for the purchase of services as described in the document. The definition includes Exhibits, Attachments, and Amendments thereto.
- **"Shall"** has the same meaning as the word must.
- **"Should"** means desirable but not mandatory.
- The terms **"include," "includes,"** and **"including"** are terms of inclusion, and where used in this Contract, are deemed to be followed by the words "without limitation".

**1.6 Notices:** Unless otherwise expressly provided otherwise, all notices, demands, requests, approvals, instructions, consents or other communications (collectively "notices") which may be required or desired to be given by either party to the other during the course of this contract shall be in writing and shall be made by personal delivery, by prepaid overnight delivery, by United States mail postage prepaid, or transmitted by email to an authorized employee of the other party or to any other persons as may be designated by written notice from one party to the other. Notices to MCHCP shall be addressed as follows: Missouri Consolidated Health Care Plan, ATTN: Executive Director, P.O. Box 104355, Jefferson City, MO 65110-4355. Notices to Audit Company shall be addressed as follows: Audit Company ATTN: _____, _____.

**1.7 Headings:** The article, section, paragraph, or exhibit headings or captions in this Contract are for reference and convenience only and may not be considered in the interpretation of this Contract. Such headings or captions do not define, describe, extend, or limit the scope or intent of this Contract.

**1.8 Severability:** If any provision of this Contract is determined by a court of competent jurisdiction to be invalid, unenforceable, or contrary to law, such determination shall not affect the legality or validity of any other provisions. The illegal or invalid provision will be

SAMPLE

deemed stricken and deleted to the same extent and effect as if it were never incorporated into this Contract, but all other provisions will remain in full force and effect.

**1.9 Inducements:** In making the award of this Contract, MCHCP relies on Audit Company's assurances of the following:

- Audit Company is an established auditor that provides medical claims audit services for health plans and/or employers.
- Audit Company, including its subcontractors, has the skills, qualifications, expertise, financial resources and experience necessary to perform the services described in the RFP, Audit Company's proposal, and this Contract, in an efficient, cost-effective manner, with a high degree of quality and responsiveness, and has performed similar services for other public or private entities.
- Audit Company has thoroughly reviewed, analyzed, and understood the RFP, has timely raised all questions or objections to the RFP, and has had the opportunity to review and fully understand MCHCP's current offerings and operating environment for the activities that are the subject of this Contract and the needs and requirements of MCHCP during the contract term.
- Audit Company has had the opportunity to review and fully understand MCHCP's stated objectives in entering into this Contract and, based upon such review and understanding, Audit Company currently has the capability to perform in accordance with the terms and conditions of this Contract.
- Audit Company has also reviewed and understands the risks associated with administering services as described in the RFP.

Accordingly, on the basis of the terms and conditions of this Contract, MCHCP desires to engage Audit Company to perform the services described in this Contract under the terms and conditions set forth in this Contract.

**1.10 Industry Standards:** If not otherwise provided, materials or work called for in this Contract shall be furnished and performed in accordance with best established practice and standards recognized by the contracted industry and comply with all codes and regulations which shall apply.

**1.11 Force Majeure:** Neither party will incur any liability to the other if its performance of any obligation under this Contract is prevented or delayed by causes beyond its control and without the fault or negligence of either party. Causes beyond a party's control may include, but aren't limited to, acts of God or war, changes in controlling law, regulations, orders or the requirements of any governmental entity, severe weather conditions, civil disorders, natural disasters, fire, epidemics and quarantines, and strikes other than by Audit Company's or its subcontractors' employees.

**1.12 Breach and Waiver:** Waiver or any breach of any Contract term or condition shall not be deemed a waiver of any prior or subsequent breach. No Contract term or condition shall be held to be waived, modified, or deleted except by a written instrument signed by the parties. If any Contract term or condition or application thereof to any person(s) or circumstances is

SAMPLE

held invalid, such invalidity shall not affect other terms, condition or application. To this end, the Contract terms and conditions are severable.

**1.13 Independent Contractor:** Audit Company represents itself to be an independent contractor offering such services to the general public and shall not represent itself or its employees to be an employee of MCHCP. Therefore, Audit Company hereby assumes all legal and financial responsibility for taxes, FICA, employee fringe benefits, worker's compensation, employee insurance, minimum wage requirements, overtime, etc. and agrees to indemnify, save, and hold MCHCP, its officers, agents, and employees, harmless from and against, any and all loss; cost (including attorney fees); and damage of any kind related to such matters. Audit Company assumes sole and full responsibility for its acts and the acts of its personnel.

**1.14 Relationship of the Parties:** This Contract does not create a partnership, franchise, joint venture, agency, or employment relationship between the parties.

**1.15 No Implied Authority:** The authority delegated to Audit Company by MCHCP is limited to the terms of this Contract. MCHCP is a statutorily created body corporate multi-employer group health plan and trust fund designated by the Missouri Legislature to administer health care services to eligible State of Missouri and public entity employees, and no other agency or entity may grant Audit Company any authority related to this Contract except as authorized in writing by MCHCP. Audit Company may not rely upon implied authority, and specifically is not delegated authority under this Contract to:

- Make public policy;
- Promulgate, amend, or disregard administrative regulations or program policy decisions made by MCHCP; and/or
- Unilaterally communicate or negotiate with any federal or state agency, the Missouri Legislature, or any MCHCP vendor on behalf of MCHCP regarding the services included within this Contract.

**1.16 Third Party Beneficiaries:** This Contract shall not be construed as providing an enforceable right to any third party.

**1.17 No Increase in Charges:** All prices are fixed firm rates once negotiated and mutually agreed upon.

**1.18 Injunction:** Should MCHCP be prevented or enjoined from proceeding with this Contract before or after contract execution by reason of any litigation or other reason beyond the control of MCHCP, Audit Company shall not be entitled to make or assess claim for damage by reason of said delay.

**1.19 Statutes:** Each and every provision of law and clause required by law to be inserted or applicable to the services provided in this Contract shall be deemed to be inserted herein and this Contract shall be read and enforced as though it were included herein. If through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then on the application of either party the Contract shall be amended to make such insertion or correction.

SAMPLE

**1.20 Governing Law:** This Contract shall be governed by the laws of the State of Missouri and shall be deemed executed at Jefferson City, Cole County, Missouri. All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Missouri.

**1.21 Jurisdiction:** All legal proceedings arising hereunder shall be brought in the Circuit Court of Cole County in the State of Missouri.

**1.22 Acceptance:** No contract provision or use of items by MCHCP shall constitute acceptance or relieve Audit Company of liability in respect to any expressed or implied warranties.

**1.23 Survival of Terms:** Termination or expiration of this Contract for any reason will not release either party from any liabilities or obligations set forth in this Contract that: (i) the parties expressly agree will survive any such termination or expiration; or (ii) remain to be performed or by their nature would be intended to apply following any such termination or expiration.

## 2 Audit Company's Obligations

**2.1 Confidentiality:** Audit Company will have access to private and/or confidential data maintained by MCHCP to the extent necessary to carry out its responsibilities under this Contract. No private or confidential data received, collected, maintained, transmitted, or used in the course of performance of this Contract shall be disseminated by Audit Company except as authorized by MCHCP, either during the period of this Contract or thereafter. Audit Company must agree to return any or all data furnished by MCHCP promptly at the request of MCHCP in whatever form it is maintained by Audit Company. On the termination or expiration of this Contract, Audit Company will not use any of such data or any material derived from the data for any purpose and, where so instructed by MCHCP, will destroy or render it unreadable.

**2.2 Subcontracting:** Subject to the terms and conditions of this section, this Contract shall be binding upon the parties and their respective successors and assigns. Audit Company shall not subcontract with any person or entity to perform all or any part of the work to be performed under this Contract without the prior written consent of MCHCP. Audit Company may not assign, in whole or in part, this Contract or its rights, duties, obligations, or responsibilities hereunder without the prior written consent of MCHCP. Audit Company agrees that any and all subcontracts entered into by Audit Company for the purpose of meeting the requirements of this Contract are the responsibility of Audit Company. MCHCP will hold Audit Company responsible for assuring that subcontractors meet all the requirements of this Contract and all amendments thereto. Audit Company must provide complete information regarding each subcontractor used by Audit Company to meet the requirements of this Contract.

**2.3 Disclosure of Material Events:** Audit Company agrees to immediately disclose any of the following to MCHCP to the extent allowed by law for publicly traded companies:

- Any material adverse change to the financial status or condition of Audit Company;
- Any merger, sale or other material change of ownership of Audit Company;
- Any conflict of interest or potential conflict of interest between Audit Company's engagement with MCHCP and the work, services or products that Audit Company is providing or proposes to provide to any current or prospective customer; and

SAMPLE

- (1) Any material investigation of Audit Company by a federal or state agency or self-regulatory organization; (2) Any material complaint against Audit Company filed with a federal or state agency or self-regulatory organization; (3) Any material proceeding naming Audit Company before any federal or state agency or self-regulatory organization; (4) Any material criminal or civil action in state or federal court naming Audit Company as a defendant; (5) Any material fine, penalty, censure or other disciplinary action taken against Audit Company by any federal or state agency or self-regulatory organization; (6) Any material judgment or award of damages imposed on or against Audit Company as a result of any material criminal or civil action in which Audit Company was a party; or (7) Any other matter material to the services rendered by Audit Company pursuant to this Contract.

  For the purposes of this paragraph, "material" means of a nature or of sufficient monetary value, or concerning a subject which a reasonable party in the position of and comparable to MCHCP would consider relevant and important in assessing the relationship and services contemplated by this Contract. It is further understood in that in fulfilling its ongoing responsibilities under this paragraph, Audit Company is obligated to make its best faith efforts to disclose only those relevant matters which to the attention of or should have been known by Audit Company's personnel involved in the engagement covered by this Contract and/or which come to the attention of or should have been known by any individual or office of Audit Company designated by Audit Company to monitor and report such matters.

  Upon learning of any such actions, MCHCP reserves the right, at its sole discretion, to terminate this Contract.

**2.4 Off-shore Services:** All services under this Contract shall be performed within the United States. Audit Company shall not perform, or permit subcontracting of services under this Contract, to any off-shore companies or locations outside of the United States. Any such actions shall result in Audit Company being in breach of this Contract.

**2.5 Change in Laws:** Audit Company agrees that any state and/or federal laws and applicable rules and regulations enacted during the terms of the contract which are deemed by MCHCP to necessitate a change in the contract shall be incorporated into the contract automatically. MCHCP will review any request for additional fees resulting from such changes and retains final authority to make any changes. A consultant may be utilized to determine the cost impact.

**2.6 Compliance with Laws:** Audit Company shall comply with all applicable federal and state laws and regulations and local ordinances in the performance of this Contract, including but not limited to the provisions listed below.

**2.6.1 Non-discrimination, Sexual Harassment and Workplace Safety:** Audit Company agrees to abide by all applicable federal, state and local laws, rules and regulations prohibiting discrimination in employment and controlling workplace safety. Audit Company shall establish and maintain a written sexual harassment policy and shall inform its employees of the policy. Audit Company shall include the provisions of

SAMPLE

this Nondiscrimination/Sexual Harassment Clause in every subcontract so that such provisions will be binding upon each subcontractor. Any violations of applicable laws, rules and regulations may result in termination of the Contract.

**2.6.2 Americans with Disabilities Act (ADA) and Americans with Disabilities Act Amendments Act of 2008 (ADAAA):** Pursuant to federal regulations promulgated under the authority of The Americans with Disabilities Act (ADA) and **Americans with Disabilities Act Amendments Act of 2008 (ADAAA)**, Audit Company understands and agrees that it shall not cause any individual with a disability to be excluded from participation in this Contract or from activities provided for under this Contract on the basis of such disability. As a condition of accepting this Contract, Audit Company agrees to comply with all regulations promulgated under ADA or ADAAA which are applicable to all benefits, services, programs, and activities provided by MCHCP through contracts with outside contractors.

**2.6.3 Health Insurance Portability and Accountability Act of 1996 (HIPAA):** Audit Company shall comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and implementing regulations, as amended, including compliance with the Privacy, Security and Breach Notification regulations and the execution of a Business Associate Agreement with MCHCP.

**2.7 Indemnification:** Audit Company shall be responsible for and agrees to indemnify and hold harmless MCHCP from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against MCHCP as a result of Audit Company's, Audit Company's employees, or Audit Company's associate or any associate's or subcontractor's failure to comply with section 2.8 of this contract.

**2.8 Prohibition of Gratuities:** Neither Audit Company nor any person, firm or corporation employed by Audit Company in the performance of this Contract shall offer or give any gift, money or anything of value or any promise for future reward or compensation to any employee of MCHCP at any time.

**2.9 Solicitation of Members:** Audit Company shall not use the names, home addresses or any other information contained about members of MCHCP for the purpose of offering for sale any property or services which are not directly related to services negotiated in this RFP without the express written consent of MCHCP's Executive Director.

**2.10 Insurance and Liability:** Audit Company must maintain sufficient liability insurance, including but not limited to general liability, professional liability, and errors and omissions coverage, to protect MCHCP against any reasonably foreseeable recoverable loss, damage or expense under this engagement. Audit Company shall provide proof of such insurance coverage upon request from MCHCP. MCHCP shall not be required to purchase any insurance against loss or damage to any personal property to which this Contract relates. Audit Company shall bear the risk of any loss or damage to any personal property in which Audit Company holds title. Audit Company shall also have professional malpractice insurance of at least two million dollars ($2,000,000).

**2.11 Hold Harmless:** Audit Company shall hold MCHCP harmless from an indemnify against any and all claims for injury to or death of any persons; for loss or damage to any property; and

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for infringement of any copyright or patent to the extent caused by Audit Company or Audit Company's employees or its subcontractors. MCHCP shall not be precluded from receiving the benefits of any insurance Audit Company may carry which provides for indemnification for any loss or damage of property in Audit Company's custody and control, where such loss or destruction is to MCHCP's property. Audit Company shall do nothing to prejudice MCHCP's right to recover against third parties for any loss, destruction, or damage to MCHCP's property.

**2.12 Assignment:** Audit Company shall not assign, convey, encumber, or otherwise transfer its rights or duties under this Contract without prior written consent of MCHCP. This Contract may terminate in the event of any assignment, conveyance, encumbrance or other transfer by Audit Company made without prior written consent of MCHCP. Notwithstanding the foregoing, Audit Company may, without the consent of MCHCP, assign its rights to payment to be received under this Contract, provided that Audit Company provides written notice of such assignment to MCHCP together with a written acknowledgment from the assignee that any such payments are subject to all of the terms and conditions of this Contract. For the purposes of this Contract, the term "assign" shall include, but shall not be limited to, the sale, gift, assignment, pledge, or other transfer of any ownership interest in Audit Company provided, however, that the term shall not apply to the sale or other transfer of stock of a publicly traded company. Any assignment consented to by MCHCP shall be evidenced by a written assignment agreement executed by Audit Company and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of this Contract and to assume the duties, obligations, and responsibilities being assigned. A change of name by Audit Company, following which Audit Company's federal identification number remains unchanged, shall not be considered to be an assignment hereunder. Audit Company shall give MCHCP written notice of any such change of name.

**2.13 Patent, Copyright, and Trademark Indemnity:** Audit Company warrants that it is the sole owner or author of, or has entered into a suitable legal agreement concerning either: a) the design of any product or process provided or used in the performance of this Contract which is covered by a patent, copyright, or trademark registration or other right duly authorized by state or federal law or b) any copyrighted matter in any report document or other material provided to MCHCP under this Contract. Audit Company shall defend any suit or proceeding brought against MCHCP on account of any alleged patent, copyright or trademark infringement in the United States of any of the products provided or used in the performance of this Contract. This is upon condition that MCHCP shall provide prompt notification in writing of such suit or proceeding; full right, authorization and opportunity to conduct the defense thereof; and full information and all reasonable cooperation for the defense of same. As principles of governmental or public law are involved, MCHCP may participate in or choose to conduct, in its sole discretion, the defense of any such action. If information and assistance are furnished by MCHCP at Audit Company's written request, it shall be at Audit Company's expense, but the responsibility for such expense shall be only that within Audit Company's written authorization. Audit Company shall indemnify and hold MCHCP harmless from all damages, costs, and expenses, including attorney's fees that Audit Company or MCHCP may pay or incur by reason of any infringement or violation of the rights occurring to any holder of copyright, trademark, or patent interests and rights in any products provided or used in the

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performance of this Contract. If any of the products provided by Audit Company in such suit or proceeding are held to constitute infringement and the use is enjoined, Audit Company shall, at its own expense and at its option, either procure the right to continue use of such infringement products, replace them with non-infringement equal performance products or modify them so that they are no longer infringing. If Audit Company is unable to do any of the preceding, Audit Company agrees to remove all the equipment or software which are obtained contemporaneously with the infringing product, or, at the option of MCHCP, only those items of equipment or software which are held to be infringing, and to pay MCHCP: 1) any amounts paid by MCHCP towards the purchase of the product, less straight line depreciation; 2) any license fee paid by MCHCP for the use of any software, less an amount for the period of usage; and 3) the pro rata portion of any maintenance fee presenting the time remaining in any period of maintenance paid for. The obligations of Audit Company under this paragraph continue without time limit. No costs or expenses shall be incurred for the account of Audit Company without its written consent.

**2.14 Compensation/Expenses:** Audit Company shall be required to perform the specified services at the price(s) quoted in this Contract. All services shall be performed within the time period(s) specified in this Contract. Audit Company shall be compensated only for work performed to the satisfaction of MCHCP. Audit Company shall not be allowed or paid travel or per diem expenses except as specifically set forth in this Contract.

**2.15 Contractor Expenses**: Audit Company will pay and will be solely responsible for Audit Company's travel expenses and out-of-pocket expenses incurred in connection with providing the services. Audit Company will be responsible for payment of all expenses related to salaries, benefits, employment taxes, and insurance for its staff.

**2.16 Tax Payments:** Audit Company shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Contract. MCHCP is exempt from Missouri state sales or use taxes and federal excise taxes for direct purchases. MCHCP makes no representation as to the exemption from liability of any tax imposed by any governmental entity on Audit Company.

**2.17 Conflicts of Interest:** Audit Company shall not knowingly employ, during the period of this Contract or any extensions to it, any professional personnel who are also in the employ of the State of Missouri or MCHCP and who are providing services involving this Contract or services similar in nature to the scope of this Contract to the State of Missouri. Furthermore, Audit Company shall not knowingly employ, during the period of this Contract or any extensions to it, any employee of MCHCP who has participated in the making of this Contract until at least two years after his/her termination of employment with MCHCP.

## 3 MCHCP'S OBLIGATIONS

**3.1 Cooperation**: MCHCP shall ensure cooperation from Express Scripts (ESI).

**3.2 Payment:** Upon implementation of the undertaking of this Contract and acceptance by MCHCP, Contractor shall be paid pursuant to Exhibit 1. Audit Company shall be paid twenty-five percent (25%) upon completion of 50% of the audit, paid twenty-five (25%) percent upon completion of 75% of the audit, and the remaining fifty (50%) upon final approval of the audit by the MCHCP Board of Trustees.

## 4 RECORDS RETENTION, ACCESS, AUDIT, AND FINANCIAL COMPLIANCE

**4.1 Retention of Records:** Unless MCHCP specifies in writing a shorter period of time, Audit Company agrees to preserve and make available all of its books, documents, papers, records and other evidence involving transactions related to this contract for a period of seven (7) years from the date of the expiration or termination of this contract. Matters involving litigation shall be kept for one (1) year following the termination of litigation, including all appeals, if the litigation exceeds seven (7) years. Audit Company agrees that authorized federal representatives, MCHCP personnel, and independent auditors acting on behalf of MCHCP and/or federal agencies shall have access to and the right to examine records during the contract period and during the seven (7) year post contract period. Delivery of and access to the records shall be at no cost to MCHCP.

**4.2 Financial Record Audit and Retention**: Audit Company shall make the audit documentation, including, but not limited to, all work papers and reports ("audit documentation"), available upon request to MCHCP and to representatives of federal and state agencies providing direct or indirect funding or for law enforcement purposes. Audit Company agrees to retain the audit documentation for this engagement for a period of seven years, unless Audit Company is notified in writing by MCHCP to extend the retention period. In addition, any audit documentation that is subject to litigation shall be kept for one year following termination of litigation including all appeals, if the litigation exceeds seven years.

**4.3 Ownership:** All data developed or accumulated by Audit Company under this Contract shall be owned by MCHCP. Audit Company may not release any data without the written approval of MCHCP. MCHCP shall be entitled at no cost and in a timely manner to all data and written or recorded material pertaining to this Contract in a format acceptable to MCHCP. MCHCP shall have unrestricted authority to reproduce, distribute, and use any submitted report or data and any associated documentation that is designed or developed and delivered to MCHCP as part of the performance of this Contract.

## 5 Scope of Work <<<Additional scope of work may be added to contract based on RFP responses>>>

Audit Company shall perform a comprehensive and objective review of the pharmaceutical claims to determine if the claims were adjudicated accurately and rebates and CMS payments were properly applied in accordance with the contract and plan design. The audit shall consist of two distinct pharmacy plans, (1) the commercial plan incorporating both PPO and high deductible plan designs and (2) the Employer Group Waiver Plan (EGWP) Medicare prescription drug plan. The scope incudes claims paid on behalf of MCHCP state members for calendar year 2022 for pharmaceutical claims processed by the Plan's pharmacy benefits manager (PBM), Express Scripts, Inc. (ESI).).

### 5.1 Categories for Review

**5.1.1** Audit Company shall, at a minimum, incorporate categories of review as set forth below,

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**5.1.1.1** Claims Pricing (Discount) Accuracy Review, which requires analyzing 100 percent of the claims for each of the two pharmacy plans incurred in the time period of the audit to confirm pricing accuracy.

**5.1.1.1.1** Audit Company must aggregate the discounts achieved for both brand name drugs and generic drugs.

**5.1.1.1.2** Audit Company must investigate whether the proper adjudication logic, as outlined in MCHCP's contract with ESI, was selected for all claims.

**5.1.1.1.3** The aggregated discounts will then be compared to the contract guarantees to determine the degree to which ESI met, exceeded, or fell short of the threshold. To the extent a shortfall is identified, Audit Company will identify the amount of the shortage and work directly with ESI to true-up any refund to MCHCP for 2022 claims. Audit Company shall also review for proper categorization of drugs used to determine discounts; i.e. test for characterization shifting from generic to brand which may have inflated discounts. Audit Company shall analyze and test the dispensing fees against contractual guaranteed amounts.

**5.1.1.2** Benefit Design Accuracy Review, which requires analyzing claims for each time period to validate application of plan benefits designed for each of the two pharmacy plans.

**5.1.1.2.1** Audit Company must review a sample of claims to determine whether claims were adjudicated in accordance with the plan designs for the PPO, high deductible and EGWP plans specified in the PBM contract.

**5.1.1.2.2** Audit Company must investigate whether the claims adjudicated using appropriate member cost-sharing requirements for PPO, high deductible and EGWP plan types.

**5.1.1.2.3** Audit Company must investigate whether mail order claims were processed with no errors (i.e dosage, strength, auto-refilled at the correct time to minimize stockpiling).

**5.1.1.3** Rebate Review, which requires identification of the top five (5) manufacturers for the commercial plans and the top five (5) manufacturers for EGWP and comparing the rebates credited to MCHCP under each manufacturer's contract with ESI for the last two calendar quarters of 2022.

**5.1.1.3.1** Audit Company shall confirm that MCHCP received one hundred percent of manufacturer rebates, administrative fees and inflation protection. A separate review shall be done for the commercial plan (PPO and high deductible) and the EGWP plan as the manufacturer arrangements may be different between the two plans.

SAMPLE

**5.1.1.3.2** Audit Company shall confirm that MCHCP received one hundred percent of CMS payments made on behalf of EGWP members in accordance with the contract.

**5.2 DELIVERABLES AND REPORTING:** Audit Company shall keep MCHCP apprised of audit progress throughout the process.

**5.2.1** Draft Report

**5.2.1.1** Audit Company shall provide a comprehensive, detailed written report to include the methodology used, the claims and performance review findings, and recommendations to MCHCP staff prior to submission to the audited entity (ESI) to ensure compliance with the scope of the audit.

**5.2.1.2** Format of Draft Final Report: (Audit Company and MCHCP will mutually agree on the format of the final report following contract award.)

**5.2.1.3** Final Report - The contractor shall provide MCHCP the final draft report, and then, separately in person or virtually, present the report to the MCHCP Board of Trustees in Jefferson City, MO. MCHCP will not reimburse separately for travel expenses. Upon approval by the Board of Trustees, the contractor shall issue the final report.

**5.3 Timeline of Audit and Deliverables** <<<<Details will be inserted according to winning project plan>>>>>.

**5.4 Audit Company bound by MCHCP's Duties**: In carrying out MCHCP's mandate under the law, MCHCP is bound by various statutory, regulatory and fiduciary duties and responsibilities and Audit Company expressly agrees that it shall accept and abide by such duties and responsibilities when acting on behalf of MCHCP pursuant to this engagement.

**5.5 Electronic Transmission Protocols:** Audit Company and all subcontractors will maintain encryption standards of 2048 bit encryption or greater for RSA key pairs and 256 bit session key strength for the encryption of confidential information for transmission over public communication infrastructure. Batch transfers of files will be performed using SFTP or FTPS with similar standards and refined as needed to best accommodate provider configurations (i.e. port assignment, access control, etc.).

## 6 CANCELLATION, TERMINATION OR EXPIRATION

This contract will terminate upon full performance of all requirements contained in the Contract, unless extended or terminated sooner under the terms of the contract.

**6.1 MCHCP's rights Upon Termination or Expiration of Contract:** If this Contract is terminated, MCHCP, in addition to any other rights provided under this Contract, may require Audit Company to transfer title and deliver to MCHCP in the manner and to the extent directed, any completed materials. MCHCP shall be obligated only for those services and materials rendered and accepted prior to termination.

**6.2 Termination for Cause:** MCHCP may terminate this Contract, or any part of this Contract, for cause under any one of the following circumstances: 1) Audit Company fails to make delivery of goods or services as specified in this Contract; 2) Audit Company fails to satisfactorily

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perform the work specified in this Contract; 3) Audit Company fails to make progress so as to endanger performance of this Contract in accordance with its terms; 4) Audit Company breaches any provision of this Contract; 5) Audit Company assigns this Contract without MCHCP's approval; or 6) Insolvency or bankruptcy of Audit Company. MCHCP shall have the right to terminate this Contract, in whole or in part, if MCHCP determines, at its sole discretion that one of the above listed circumstances exists. In the event of termination, Audit Company shall receive payment prorated for that portion of the contract period services were provided to and/or goods were accepted by MCHCP, subject to any offset by MCHCP for actual damages including loss of any federal matching funds. Audit Company shall be liable to MCHCP for any reasonable excess costs for such similar or identical services included within the terminated part of this Contract.

**6.3 Termination Right**: Notwithstanding any other provision, MCHCP reserves the right to terminate this Contract by giving Audit Company thirty (30) days prior notice of termination.

**6.4 Termination by Mutual Agreement**: The parties may mutually agree to terminate this Contract or any part of this Contract at any time. Such termination shall be in writing and shall be effective as of the date specified in such agreement.

**6.5 Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation shall be allowed to find MCHCP has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, MCHCP shall not agree to pay attorney fees and late payment charges beyond those available under this Contract, and, if applicable, no provision will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.

**6.6 Rights and Remedies**: If this Contract is terminated, MCHCP, in addition to any other rights provided for in this Contract, may require Audit Company to deliver to MCHCP in the manner and to the extent directed, any completed materials. In the event of termination, Audit Company shall receive payment prorated for that portion of the contract period services were provided to and/or goods were accepted by MCHCP subject to any offset by MCHCP for actual damages. The rights and remedies of MCHCP provided for in this Contract shall not be exclusive and are in addition to any other rights and remedies provided by law.

THE UNDERSIGNED PERSONS REPRESENT AND WARRANT THAT WE ARE LEGALLY FREE TO ENTER THIS AGREEMENT, OUR EXECUTION OF THIS AGREEMENT HAS BEEN DULY AUTHORIZED, AND OUR SIGNATURES BELOW SIGNIFY OUR CONSENT TO BE BOUND TO THE FOREGOING TERMS AND CONDITIONS.

| **Missouri Consolidated Health Care Plan** | **Audit Company.** |
|---|---|
| By: _____ | By: _____ |
| Title: Executive Director | Title: |

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Date: _____

Date:

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**EXHIBIT A-7**
**BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement ("Agreement") between the Missouri Consolidated Health Care Plan (hereinafter "Covered Entity" or "MCHCP") and Vendor Name. (hereinafter "Business Associate") is entered into as a result of the business relationship between the parties in connection with services requested and performed in accordance with the RFP Name ("RFP") and under Contract *#XXX-XXXX*, as renewed and amended, (hereinafter the "Contract").

This Agreement supersedes all other agreements, including any previous business associate agreements, between the parties with respect to the specific matters addressed herein. In the event the terms of this Agreement are contrary to or inconsistent with any provisions of the Contract or any other agreements between the parties, this Agreement shall prevail, subject in all respects to the Health Insurance Portability and Accountability Act of 1996, as amended (the "Act"), and the HIPAA Rules, as defined in Section 2.1 below.

1 **Purpose**.

The Contract is for audit of Pharmacy Benefit Manager, Express Scripts.

The purpose of this Agreement is to comply with requirements of the Act and the implementing regulations enacted under the Act, 45 CFR Parts 160 - 164, as amended, to the extent such laws relate to the obligations of business associates, and to the extent such laws relate to obligations of MCHCP in connection with services performed by Vendor for or on behalf of MCHCP under the Contract. This Agreement is required to allow the parties to lawfully perform their respective duties and maintain the business relationship described in the Contract.

2 **Definitions.**

2.1 For purposes of this Agreement:

"Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR § 160.103, and in reference to this Agreement, shall mean Vendor.

"Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR § 160.103, and in reference to this Agreement, shall mean MCHCP.

"HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules set forth in 45 CFR Parts 160 and 164, as amended.

2.2 Unless otherwise expressly stated in this Agreement, all words, terms, specifications, and requirements used or referenced in this Agreement which are defined in the HIPAA Rules shall have the same meanings as described in the HIPAA Rules, including but not limited to: breach; data aggregation; designated record set; disclose or disclosure; electronic media; electronic protected health information ("ePHI"); family member; genetic information; health care; health information; health care operations; individual; individually identifiable health information; marketing; minimum necessary; notice of privacy practices; person; protected health information ("PHI"); required by law;

SAMPLE

Secretary; security incident; standard; subcontractor; transaction; unsecured PHI; use; violation or violate; and workforce.

2.3 To the extent a term is defined in the Contract and this Agreement, the definition in this Agreement, subject in all material respects to the HIPAA Rules, shall govern.

2.4 Notwithstanding the forgoing, for ease of reference throughout this Agreement, Business Associate understands and agrees that wherever PHI is referenced in this Agreement, it shall be deemed to include all MCHCP-related PHI in any format or media including paper, recordings, electronic media, emails, and all forms of MCHCP-related ePHI in any data state, be it data in motion, data at rest, data in use, or otherwise.

3 **Obligations and Activities of Business Associate**.

3.1 Business Associate agrees to not use or disclose PHI other than as permitted or required by this Agreement or as required by law.

3.2 Appropriate Safeguards. Business Associate agrees to implement, maintain, and use appropriate administrative, physical, and technical safeguards, and fully comply with all applicable standards, implementation specifications, and requirements of Subpart C of 45 CFR Part 164 with respect to ePHI, in order to: (i) ensure the confidentiality, integrity, and availability of ePHI created, received, maintained, or transmitted; (ii) protect against any reasonably anticipated threats or hazards to the security or integrity of such information; and (iii) protect against use or disclosure of ePHI by Business Associate, its workforce, and its subcontractors other than as provided for by this Agreement.

3.3 Subcontractors. Pursuant to §§ 164.308(b)(2) and 164.502(e)(1)(ii), Business Associate agrees it will not permit any subcontractors to create, receive, access, use, maintain, disclose, or transmit PHI in connection with, on behalf of, or under the direction of Business Associate in connection with performing its duties and obligations under the Contract unless and until Business Associate obtains satisfactory assurances in the form of a written contract or written agreement in accordance with §§ 164.504(e) and 164.314(a)(2) that the subcontractor(s) will appropriately safeguard PHI and in all respects comply with the same restrictions, conditions, and requirements applicable to Business Associate under the HIPAA Rules and this Agreement with respect to such information.

In addition to the forgoing, and in accordance with the Contract, Business Associate agrees it will not permit any subcontractor, or use any off-shore entity, to perform services under the Contract, including creation, use, storage, or transmission of PHI at any location(s) outside of the United States.

3.4 Reports to MCHCP. Business Associate agrees to report any use or disclosure of PHI not authorized or provided for by this Agreement, including breaches of unsecured PHI and any security incident involving MCHCP to MCHCP in accordance with the notice provisions prescribed in this Section 3.4. For purposes of the security incident reporting requirement, the term “security incident” shall not include inconsequential incidents that occur on a daily basis, such as scans, “pings,” or other unsuccessful attempts to penetrate computer networks or servers containing ePHI maintained or transmitted by Business Associate.

3.4.1 The notice shall be delivered to, and confirmed received by, MCHCP without unreasonable delay, but in any event no later than three (3) business days of Business Associate's first discovery, as discovery is described under § 164.410, of the unauthorized use or disclosure, breach of unsecured PHI, or security incident.

3.4.2 The notice shall be in writing and sent to both of the following MCHCP workforce members and deemed delivered only upon personal confirmation, acknowledgement or receipt in any form, verbal or written, from one of the designated recipients:

- MCHCP's Privacy Officer → currently, Jennifer Stilabower, (573) 522-3242, Jennifer.Stilabower@mchcp.org, 832 Weathered Rock Court, Jefferson City, MO 65101

- MCHCP's Security Officer → currently, Brad Kifer, (573) 526-2858, Brad.Kifer@mchcp.org, 832 Weathered Rock Court, Jefferson City, MO 65101

If, and only if, Business Associate receives an email or voicemail response indicating neither of the intended MCHCP recipients are available and no designee(s) confirm receipt within eight (8) business hours on behalf of one or both of the above-named MCHCP Officers, Business Associate shall forward the written notice to their primary MCHCP contact with copies to the Privacy and Security Officers for documentation purposes.

3.4.3 The notice shall include to the fullest extent possible:

a) a detailed description of what happened, including the date, time, and all facts and circumstances surrounding the unauthorized use or disclosure, breach of unsecured PHI, or security incident;

b) the date, time, and circumstances surrounding when and how Business Associate first became aware of the unauthorized use or disclosure, breach of unsecured PHI, or security incident;

c) identification of each individual whose PHI has been, or is reasonably believed by Business Associate to have been involved or otherwise subject to possible breach;

d) a description of all types of PHI known or potentially believed to be involved or affected;

e) identification of any and all unauthorized person(s) who had access to or used the PHI or to whom an unauthorized disclosure was made;

f) all decisions and steps Business Associate has taken to date to investigate, assess risk, and mitigate harm to MCHCP and all potentially affected individuals;

g) contact information, including name, position or title, phone number, email address, and physical work location of the individual(s) designated by Business Associate to act as MCHCP's primary contact for purposes of the notice triggering event(s);

h) all corrective action steps Business Associate has taken or shall take to prevent future similar uses, disclosures, breaches, or incidents;

i) if all investigatory, assessment, mitigation, or corrective action steps are not complete as of the date of the notice, Business Associate's best estimated timeframes for completing each planned but unfinished action step; and

j) any action steps Business Associate believes affected or potentially affected individuals should take to protect themselves from potential harm resulting from the matter.

3.4.4 Business Associate agrees to cooperate with MCHCP during the course of Business Associate's investigation and risk assessment and to promptly and regularly update MCHCP in writing as supplemental information becomes available relating to any of the items addressed in the notice.

3.4.5 Business Associate further agrees to provide additional information upon and as reasonably requested by MCHCP; and to take any additional steps MCHCP reasonably deems necessary or advisable to comply with MCHCP's obligations as a covered entity under the HIPAA Rules.

3.4.6 Business Associate expressly acknowledges the presumption of breach with respect to any unauthorized acquisition, access, use, or disclosure of PHI, unless Business Associate is able to demonstrate otherwise in accordance with § 164.402(2), in which case, Business Associate agrees to fully document its assessment and all factors considered and provide MCHCP no later than ten (10) calendar days following Business Associate's discovery with its complete written risk assessment, conclusion reached, and all documentation supporting a conclusion that the unauthorized acquisition, access, use, or disclosure of PHI presents a low probability that PHI has been compromised.

3.4.7 The parties agree to work together in good faith, making every reasonable effort to reach consensus regarding whether a particular circumstance constitutes a breach or otherwise warrants notification, publication, or reporting to any affected individual, government body, or the public and also the appropriate means and content of any notification, publication, or report. Notwithstanding the foregoing, all final decisions involving questions of breach of PHI shall be made by MCHCP, including whether a breach has occurred, and any notification, publication, or public reporting required or reasonably advisable under the HIPAA Rules and MCHCP's Notice of Privacy Practices based on all objective and verifiable information provided to MCHCP by Business Associate under this Section 3.4

3.4.8 Business Associate agrees to bear all reasonable and actual costs associated with any notifications, publications, or public reports relating to breaches by Business Associate, any subcontractor of Business Associate, and any employee or workforce member of Business Associate and/or its subcontractors, as MCHCP deems necessary or advisable.

3.5 Confidential Communications. Business Associate agrees it will promptly implement and honor individual requests to receive PHI by alternative means or at an alternative location provided such

request has been directed to and approved by MCHCP in accordance with § 164.522(b) applicable to covered entities. If Business Associate receives a request for confidential communications directly from an individual, Business Associate agrees to refer the individual, and promptly forward the individual's request, to MCHCP so that MCHCP can assess, accommodate, and coordinate reasonable requests of this nature in accordance with the HIPAA Rules and prepare a timely response to the individual.

3.6 Individual Access to PHI. If an individual requests access to PHI under § 164.524, Business Associate agrees it will make all PHI about the individual which Business Associate created or received for or from MCHCP that is in Business Associate's custody or control available in a designated record set to MCHCP or, at MCHCP's direction, to the requesting individual or his or her authorized designee, in order to satisfy MCHCP's obligations as follows:

3.6.1 If Business Associate receives a request for individual PHI in a designated record set from MCHCP, Business Associate will provide the requested information to MCHCP within five (5) business days from the date of the request in a readily accessible and readable form and manner or as otherwise reasonably specified in the request.

3.6.2 If Business Associate receives a request for PHI in a designated record set directly from an individual current or former MCHCP member, Business Associate will require that the request be made in writing and will also promptly notify MCHCP that a request has been made verbally. If the individual submits a written request for PHI in a designated record set directly to Business Associate, no later than five (5) business days thereafter, Business Associate shall provide MCHCP with: (i) a copy of the individual's request to MCHCP for purposes of determining an appropriate response to the request; (ii) the designated record sets in Business Associate's custody or control that are subject to access by the requesting individual(s) requested in the form and format requested by the individual if it is readily producible in such form and format, or if not, in a readable hard copy form; and (iii) the titles of the persons or offices responsible for receiving and processing requests for access by individual(s). MCHCP will direct Business Associate in writing within five (5) business days following receipt of the information described in (i), (ii), and (iii) of this subsection 3.6.2 whether Business Associate should send the requested designated data set directly to the individual or whether MCHCP will forward the information received from Business Associate as part of a coordinated response or if for any reason MCHCP deems the response should be sent from MCHCP or another Business Associate acting on behalf of MCHCP. If Business Associate is directed by MCHCP to respond directly to the individual, Business Associate agrees to provide the designated record set requested in the form and format requested by the individual if it is readily producible in such form and format; or, if not, in a readable hard copy form or such other form and format as agreed to by Business Associate and the individual. Business Associate will provide MCHCP's Privacy Officer with a copy of all responses sent to individuals pursuant to § 164.524 and the directives set forth in this subsection 3.6.2 for MCHCP's compliance and documentation purposes.

3.7 Amendments of PHI. Business Associate agrees it will make any amendment(s) to PHI in a designated record set as directed or agreed to by MCHCP pursuant to § 164.526, and take other measures as necessary and reasonably requested by MCHCP to satisfy MCHCP's obligations under § 164.526.

3.7.1 If Business Associate receives a request directly from an individual to amend PHI created by Business Associate, received from MCHCP, or otherwise within the custody or control of Business Associate at the time of the request, Business Associate shall promptly refer the individual to MCHCP's Privacy Officer, and, if the request is in writing, shall forward the individual's request three (3) business days to MCHCP's Privacy Officer so that MCHCP can evaluate, coordinate and prepare a timely response to the individual's request.

3.7.2 MCHCP will direct Business Associate in writing as to any actions Business Associate is required to take with regard to amending records of individuals who exercise their right to amend PHI under the HIPAA Rules. Business Associate agrees to follow the direction of MCHCP regarding such amendments and to provide written confirmation of such action within seven (7) business days of receipt of MCHCP's written direction or sooner if such earlier action is required to enable MCHCP to comply with the deadlines established by the HIPAA Rules.

3.8 PHI Disclosure Accounting. Business Associate agrees to document, maintain, and make available to MCHCP within seven (7) calendar days of a request from MCHCP for all disclosures made by or under the control of Business Associate or its subcontractors that are subject to accounting, including all information required, under § 164.528 to satisfy MCHCP's obligations regarding accounting of disclosures of PHI.

3.8.1 If Business Associate receives a request for accounting directly from an individual, Business Associate agrees to refer the individual, and promptly forward the individual's request, to MCHCP so that MCHCP can evaluate, coordinate and prepare a timely response to the individual's request.

3.8.2 In addition to the provisions of 3.8.1, all PHI accounting requests received by Business Associate directly from the individual shall be acted upon by Business Associate as a request from MCHCP for purposes of Business Associate's obligations under this section. Unless directed by MCHCP to respond directly to the individual, Business Associate shall provide all accounting information subject to disclosure under § 164.528 to MCHCP within seven (7) calendar days of the individual's request for accounting.

3.9 Privacy of PHI. Business Associate agrees to fully comply with all provisions of Subpart E of 45 CFR Part 164 that apply to MCHCP to the extent Business Associate has agreed or assumed responsibilities under the Contract or this Agreement to carry out one or more of MCHCP's obligation(s) under 45 CFR Part 164 Subpart E.

3.10 Internal Practices, Books, and Records. Upon request of MCHCP or the Secretary, Business Associate will make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of MCHCP available to MCHCP and/or the Secretary in a time and manner designated by MCHCP or the Secretary for purposes of determining MCHCP's and/or Business Associate's compliance with the HIPAA Rules.

4 **Permitted Uses and Disclosures of PHI by Business Associate**.

4.1 Contractual Authorization. Business Associate may access, create, use, and disclose PHI as necessary to perform its duties and obligations required by the Contract, including but not limited to specific requirements set forth in the Scope of Work (as such term is defined in the Contract), as amended. Without limiting the foregoing general authorization, MCHCP specifically authorizes Business Associate to access, create, receive, use, and disclose all PHI which is required to provide the services specified in the Contract. The parties agree that no provision of the Contract permits Business Associate to use or disclose PHI in a manner that would violate Subpart E of 45 CFR Part 164 if used or disclosed in like manner by MCHCP except that:

4.1.1 This Agreement permits Business Associate to use PHI received in its capacity as a business associate of MCHCP, if necessary: (A) for the proper management and administration of Business Associate; or (B) to carry out the legal responsibilities of Business Associate.

4.1.2 This Agreement permits Business Associate to combine PHI created or received on behalf of MCHCP as authorized in this Agreement with PHI lawfully created or received by Business Associate in its capacity as a business associate of other covered entities to permit data analysis relating to the health care operations of MCHCP and other PHI contributing covered entities in order to provide MCHCP with such comprehensive, aggregate summary reports as specifically required by, or specially requested under, the Contract.

4.2 Authorization by Law. Business Associate may use or disclose PHI as permitted or required by law.

4.3 Minimum Necessary. Notwithstanding any other provision in the Contract or this Agreement, with respect to any and all uses and disclosures permitted, Business Associate agrees to request, create, access, use, disclose, and transmit PHI involving MCHCP members subject to the following minimum necessary requirements:

4.3.1 When requesting or using PHI received from MCHCP, a member of MCHCP, or an authorized party or entity working on behalf of MCHCP, Business Associate shall make reasonable efforts to limit all requests and uses of PHI to the minimum necessary to accomplish the intended purpose of the request or use. Business Associate agrees its reasonable efforts will include identifying those persons or classes of persons, as appropriate, in Business Associate's workforce who need access to MCHCP member PHI to carry out their duties under the Contract. Business Associate further agrees to identify the minimally necessary amount of PHI needed by each such person or class and any conditions appropriate to restrict access in accordance with such assessment.

4.3.2 For any type of authorized disclosure of PHI that Business Associate makes on a routine basis to third parties, Business Associate shall implement procedures that limit the PHI disclosed to the amount minimally necessary to achieve the purpose of the disclosure. For all other authorized but non-routine disclosures, Business Associate shall develop and follow criteria for reviewing requests and limiting disclosures to the information minimally necessary to accomplish the purposes for which disclosure is sought.

4.3.3 Business Associate may rely, if such reliance is reasonable under the circumstances, on a requested disclosure as the minimum necessary for the stated purpose if and when:

a) Making disclosures to public officials as permitted under § 164.512, if the public official represents that the information requested is the minimum necessary for the stated purpose(s); or

b) The information is requested by a professional who is a member of its workforce or is a business associate of MCHCP for the purpose of providing professional services to MCHCP, if the professional represents that the information requested is the minimum necessary for the stated purpose(s).

4.3.4 Minimum necessary does not apply to: uses or disclosures made to the individual; uses or disclosures made pursuant to a HIPAA-compliant authorization; disclosures made to the Secretary in accordance with the HIPAA Rules: disclosures specifically permitted or required under, and made in accordance with, the HIPAA Rules.

5 **Obligations of MCHCP**.

5.1 Notice of Privacy Practices. MCHCP shall notify Business Associate of any limitation(s) that may affect Business Associate's use or disclosure of PHI by providing Business Associate with MCHCP's Notice of Privacy Practices in accordance with § 164.520, the most recent copy of which is attached to this Agreement.

5.2 Individual Authorization Changes. MCHCP shall notify Business Associate in writing of any changes in, or revocation of, the authorization by an individual to use or disclose his or her PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

5.3 Confidential Communications. MCHCP shall notify Business Associate in writing of individual requests approved by MCHCP in accordance with § 164.522 to receive communications of PHI from Business Associate by alternate means or at alternative locations, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

5.4 Individual Restrictions. MCHCP shall notify Business Associate in writing of any restriction to the use or disclosure of PHI that MCHCP has agreed and, if applicable, any subsequent revocation or termination of such restriction, in accordance with § 164.522, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

5.5 Permissible Requests by MCHCP. MCHCP shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Rules if done by MCHCP.

6 **Term and Termination, Expiration, or Cancellation**.

6.1 Term. This Agreement is effective upon signature of both parties, and shall terminate upon the termination, expiration, or cancellation of the Contract, as amended, unless sooner terminated for cause under subsection 6.2 below.

6.2 Termination. Without limiting MCHCP's right to terminate the Contract in accordance with the terms therein, Business Associate also authorizes MCHCP to terminate this Agreement immediately by written notice and without penalty if MCHCP determines, in its sole discretion, that Business Associate has violated a material term of this Agreement and termination of this Agreement is in the best interests of MCHCP or its members. Without limiting the foregoing authorization, Business Associate agrees that MCHCP may, as an alternative or in addition to termination, require Business Associate to end the violation of the material term(s) and cure the breach of contract within the time and manner specified by MCHCP based on the circumstances presented. With respect to this subsection, MCHCP's remedies under this Agreement and the Contract are cumulative, and the exercise of any remedy shall not preclude the exercise of any other.

6.3 Obligations of Business Associate Upon Termination. Upon termination, expiration, or cancellation of this Agreement for any reason, Business Associate agrees to return to MCHCP or deliver to another MCHCP business associate at MCHCP's direction all PHI received from MCHCP, any current or former Business Associate or workforce member of MCHCP, or any current or former member of MCHCP, as well as all PHI created, compiled, stored or accessible to Business Associate or any subcontractor, agent, affiliate, or workforce member of Business Associate, relating to MCHCP as a result of services provided under the Contract. All such PHI shall be securely transmitted in accordance with MCHCP's written directive in electronic format accessible and decipherable by the MCHCP designated recipient. Following confirmation of receipt and usable access of the transmitted PHI by the MCHCP designated recipient, Business Associate shall destroy all MCHCP-related PHI and thereafter retain no copies in any form for any purpose whatsoever. Within seven (7) business days following full compliance with the requirements of this subsection, an authorized representative of Business Associate shall certify in writing addressed to MCHCP's Privacy and Security Officers that Business Associate has fully complied with this subsection and has no possession, control, or access, directly or indirectly, to MCHCP-related PHI from any source whatsoever.

Notwithstanding the foregoing, Business Associate may maintain MCHCP-PHI after the termination of this Agreement to the extent return or destruction of the PHI is not feasible, provided Business Associate: (i) refrains from any further use or disclosure of the PHI; (ii) continues to safeguard the PHI thereafter in accordance with the terms of this Agreement; (iii) does not attempt to de-identify the PHI without MCHCP's prior written consent; and (iv) within seven (7) days following full compliance of the requirements of this subsection, provides MCHCP written notice describing all PHI maintained by Business Associate and certification by an authorized representative of Business Associate of its agreement to fully comply with the provisions of this paragraph.

6.4 Survival. All obligations and representations of Business Associate under this Section 6 and subsection 7.2 shall survive termination, expiration, or cancellation of the Contract and this Agreement.

7 **Miscellaneous**.

7.1 Satisfactory Assurance. Business Associate expressly acknowledges and represents that execution of this Agreement is intended to, and does, constitute satisfactory assurance to MCHCP of Business Associate's full and complete compliance with its obligations under the HIPAA Rules. Business Associate further acknowledges that MCHCP is relying on this assurance in permitting Business Associate to create, receive, maintain, use, disclose, or transmit PHI as described herein.

7.2 Indemnification. Each party shall, to the fullest extent permitted by law, protect, defend, indemnify and hold harmless the other party and its current and former trustees, employees, and agents from and against any and all losses, costs, claims, penalties, fines, demands, liabilities, legal actions, judgments, and expenses of every kind (including reasonable attorneys' fees and expenses, including at trial and on appeal) arising out of the acts or omissions of such party or any subcontractor, consultant, or workforce member of such party to the extent such acts or omissions violate the terms of this Agreement or the HIPAA Rules as applied to the Contract.

Notwithstanding the foregoing, if Business Associate maintains any MCHCP-related PHI following termination of the Contract and this Agreement pursuant to subsection 6.3, Business Associate shall be solely responsible for all PHI it maintains and, to the fullest extent permitted by law, Business Associate shall protect, defend, indemnify and hold harmless MCHCP and its current and former trustees, employees, and agents from and against any and all losses, costs, claims, penalties, fines, demands, liabilities, legal actions, judgments, and expenses of every kind (including reasonable attorneys' fees and expenses, including at trial and on appeal) arising out of the acts or omissions of Business Associate or any subcontractor, consultant, or workforce member of Business Associate regarding such PHI to the extent such acts or omissions violate the terms of the Act or the HIPAA Rules.

7.3 No Third Party Beneficiaries. There is no intent by either party to create or establish third party beneficiary status or rights or their equivalent in any person or entity, other than the parties hereto, that may be affected by the operation of this Agreement, and no person or entity, other than the parties, shall have the right to enforce any right, claim, or benefit created or established under this Agreement.

7.4 Amendment. The parties agree to work together in good faith to amend this Agreement from time to time as is necessary or advisable for compliance with the requirements of the HIPAA Rules. Notwithstanding the foregoing, this Agreement shall be deemed amended automatically to the extent any provisions of the Act or the HIPAA Rules not addressed herein become applicable to Business Associate during the term of this Agreement pursuant to and in accordance with any subsequent modification(s) or official and binding legal clarification(s), to the Act or the HIPAA Rules.

7.5 Interpretation. Any reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.

THE UNDERSIGNED PERSONS REPRESENT AND WARRANT THAT WE ARE LEGALLY FREE TO ENTER THIS AGREEMENT, THAT OUR EXECUTION OF THIS AGREEMENT HAS BEEN DULY AUTHORIZED, AND THAT UPON BOTH OF OUR SIGNATURES BELOW THIS SHALL BE A BINDING AGREEMENT TO THE FOREGOING TERMS AND CONDITIONS OF THIS BUSINESS ASSOCIATE AGREEMENT.

| **Missouri Consolidated Health Care Plan** | **Vendor** |
|---|---|
| By: _____ | By: _____ |
| Title: Executive Director | Title: _____ |
| Date: _____ | Date: _____ |