**EXHIBIT A-1**
**BIDDER'S PROPOSED MODIFICATIONS TO THE RFP**
**MCHCP PBM CLAIM AUDIT RFP 2027**

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-2**
**Confirmation Document**
**MCHCP PBM Claim Audit RFP 2027**

Please complete this form, sign, and upload.

1) Confirm that you have read and understand all MCHCP's instructions included in the Proposal Tech 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-3**

**CONTRACTOR CERTIFICATION**
**OF COMPLIANCE WITH FEDERAL EMPLOYMENT LAWS**
**MCHCP PBM CLAIM AUDIT RFP 2027**

_____ (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-4**

**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 November 4, 2026 (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

SAMPLE

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

SAMPLE

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.

**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.

SAMPLE

## 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 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 members for calendar year 2026 for pharmaceutical claims processed by the Plan's pharmacy benefits manager (PBM), Express Scripts.

### 5.1 Categories for Review

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

SAMPLE

**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 Express Scripts, 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 Express Scripts 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 Express Scripts to true-up any refund to MCHCP for 2026 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 100 percent of claims to validate application of plan benefits designed for each of the two pharmacy plans.

**5.1.1.2.1** Audit Company must review 100 percent 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, and auto-refilled at the correct time to minimize stockpiling).

**5.1.1.3** Rebate Review, which requires identification of the top manufacturers for the commercial plan and the top manufacturers for EGWP, and comparing the rebates credited to MCHCP under each manufacturer's contract with Express Scripts for a period to be determined following contract award.

**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 as the

SAMPLE

manufacturer arrangements may be different between the two plans.

**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 (Express Scripts) 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.

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**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 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 Righ**t: 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.

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

SAMPLE

**EXHIBIT A-5**
**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 MCHCP PBM Claim Audit RFP 2027 ("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, Sharie Hahn, (573) 522-3242, sharie.hahn@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: _____ |