

---

## EXHIBIT A-1

### Intent to Bid – 2027 MCHCP COMMERCIAL PBM AND PART D EGWP PBM RFP

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

---

Please complete this form following the steps listed below:

- 1) Complete this form 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 3, 2026, at 5 p.m. CT (6 p.m. ET).

---

#### **Minimum Bidder Requirements**

Only bidders that meet the following minimum requirements will be considered. Bids from companies not meeting all the minimum requirements will not be considered by MCHCP for this contract.

- Licensing – The bidder must be licensed as necessary to do business in the State of Missouri to perform the duties described in this RFP and be in good standing with the office of the Missouri Secretary of State. MCHCP requires the contractor to comply with all state and federal laws, rules and regulations affecting their conduct of business.
- Size and Experience – The bidder must have been in the PBM business for a minimum of five years.

The bidder must currently administer commercial prescription drug benefits to at least 500,000 covered lives and administer prescription drug benefits for at least two large employer groups with 50,000 covered lives or more. The bidder must be willing to disclose the names of the large employer clients if requested.

The bidder or subcontractor must currently administer EGWP prescription drug benefits for at least 100,000 covered lives and administer EGWP prescription drug benefits to at least two large employer groups with 10,000 covered lives or more.

- Impact of Award – The bidder must certify that, if awarded a contract, the bidder would not increase its total annual claim payment volume by more than 25 percent with the addition of this business. MCHCP actual pharmacy claims (before rebates) were \$373 million through November, 2025 and are estimated to exceed \$405 million for the 2025 calendar year (commercial and EGWP). Pharmacy trend is estimated to be 12 percent for 2026 and 2027. The bidder must only use their book of business as of the proposal submission date and MCHCP's pharmacy expenses when calculating the percentage increase. Business not yet awarded may not be used in the calculation.
- Bankruptcy and Legal – The bidder must not have any bankruptcy filings within the last 5 years; and bidder's senior officers, board members, or directors must not have any felony convictions, and they must not have been excluded from Medicare.

- Contract Term – The bidder must agree to a one-year contract term with renewals for Years 2, 3 and 4.
- Employee Group Waiver Program (EGWP) – The bidder must have or have a subcontractor that has a 2026 contract in place with CMS and be approved to provide Employee Group Waiver Plan (EGWP) services similar in scope and size that is currently in place for MCHCP today. The bidder must be able to administer a commercial wrap for the EGWP program.

---

This form will serve as confirmation that our organization has received the 2027 MCHCP Commercial PBM and Part D EGWP PBM RFP.

We intend to submit a complete proposal for full PBM services for the entire population. We hereby certify that we have reviewed all minimum requirements in this Intent to Bid and the Request for Proposal (RFP) and affirm that we fully meet or exceed each requirement as stated. We further acknowledge that any misrepresentation or failure to meet the minimum requirements may result in disqualification.

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

---

**Name of Organization**

---

**Signature of Plan Representative**

---

**Name and Title of Plan Representative**

---

**Date**

**EXHIBIT A-2**  
**LIMITED DATA USE AGREEMENT**

In order to secure data that resides with Missouri Consolidated Health Care Plan (MCHCP) and in order to ensure the integrity, security, and confidentiality of information maintained by MCHCP, and to permit appropriate disclosure and use of such data as permitted by law, MCHCP and \_\_\_\_\_ enter into this Agreement to comply with the following specific paragraphs.

1. This Agreement is by and between MCHCP, a covered entity under the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA"), and \_\_\_\_\_, hereinafter referred to as "User".
2. This Agreement addresses the conditions under which MCHCP will disclose and the User will obtain and use MCHCP's file(s) specified in this agreement. This Agreement supersedes any and all agreements between the parties with respect to the use of MCHCP's file(s), and preempts and overrides any instructions, directions, agreements, or other understanding in or pertaining to any prior communication from MCHCP with respect to the data specified herein. Further, the terms of this Agreement can be changed only by a written modification to this Agreement, or by the parties adopting a new agreement. The parties agree further that instructions or interpretations issued to the User concerning this Agreement or the data specified herein, shall not be valid unless issued in writing by MCHCP's Executive Director.
3. 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. Any reference in this Agreement to a section in the HIPAA Rules means the section as in effect or amended. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.
4. The parties mutually agree that MCHCP retains all ownership rights to the demographic and claim files referred to in this Agreement, and that the User does not obtain any right, title, or interest in any of the data furnished by MCHCP.
5. The parties mutually agree that the following named individual is designated as "Custodian" of the file on behalf of the User, and will be personally responsible for the observance of all conditions of use and for establishment and maintenance of security arrangements as specified in this Agreement to prevent unauthorized use. The User agrees to notify MCHCP within five (5) days of any change of custodianship. The parties mutually agree that MCHCP may disapprove the appointment of a custodian, or may require the appointment of a new custodian at any time.

Name of Custodian: \_\_\_\_\_  
Name of Company: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
City, State and Zip Code: \_\_\_\_\_  
Phone Number w/ Area Code: \_\_\_\_\_  
Email Address: \_\_\_\_\_

6. The User represents and warrants, and in furnishing the demographic and claim file(s), MCHCP relies upon such representation and warranty, that these files will be used solely for the purposes outlined below. The User agrees not to use or further disclose the data covered by

this Agreement other than as provided for by this Agreement. The parties agree that no provision of this Agreement permits the User to use or disclose protected health information (PHI) in a manner that would violate HIPAA if used or disclosed in like manner by MCHCP. MCHCP's claims files are used solely for the following:

- Evaluating, pricing and bidding Network analysis related to bidding on a contract for pharmacy benefit administration; and
- Utilization analysis and pricing related to bidding on a contract with MCHCP for pharmacy benefit administration.

The User represents and warrants further that the User shall not disclose, release, reveal, show, sell, rent, lease, loan, or otherwise grant access to the data covered by this Agreement to any person(s) other than as allowed by this Agreement. The User agrees that, within the User organization, access to the data covered by this Agreement shall be limited to the minimum number of individuals necessary to achieve the purpose stated in this section and to those individuals on a need-to-know basis only. The User agrees to ensure that any individual(s) or agent(s) the User discloses or allows to access the data covered by this Agreement will be bound to the same restrictions and conditions that apply to the User. Disclosure of this data is made pursuant to 45 CFR §§ 164.514(e)(1).

7. MCHCP will provide the User with the file(s), which is a subset of MCHCP's master records. MCHCP warrants that the file(s) is accurate to the extent possible. The file shall not contain any prohibited items.
8. The parties mutually agree that the aforesaid file(s) (and/or any derivative file(s) [includes any file that maintains or continues identification of individuals]) may be retained by the User only for the period of time required for any processing related to the purposes outlined in Section 6 above. After the process is complete, the User agrees to promptly destroy such data. The User agrees that no data from MCHCP records, or any parts thereof, shall be retained when the aforementioned file(s) are destroyed unless authorization in writing for the retention of such file(s) has been received from MCHCP's Executive Director. The User acknowledges that stringent adherence to the aforementioned information outlined in this paragraph is required. The User further acknowledges that MCHCP's demographic and claim files received for any previous periods, and all copies thereof, must be destroyed upon receipt of an updated version. The User agrees that for any data covered by this Agreement, in any form, that the User maintains after the bidding process is complete, the User agrees to: (i) refrain from any further use or disclosure of the PHI; (ii) continue to safeguard the PHI thereafter in accordance with the terms of this Agreement; and (iii) not attempt to de-identify the PHI.
9. The User agrees to establish appropriate administrative, technical, and physical safeguards to protect the privacy and security of the data, and to prevent any unauthorized use or disclosure. The safeguards shall provide a level and scope of security that is not less than the level and scope of security established by HIPAA. The User acknowledges that the use of unsecured telecommunications, including the Internet, to transmit individually identifiable, including protected health information, or deducible information derived from the file(s) specified above in Section 7 is strictly prohibited. Further, the User agrees that the data must not be physically moved or transmitted in any way from the site indicated above in Section 5, without written approval from MCHCP.

10. The User agrees that the authorized representatives of MCHCP and the Department of Health and Human Services (“HHS”) will be granted access to the premises where the aforesaid file(s) are kept for the purpose of inspecting security arrangements and confirming whether the User is in compliance with the privacy and security requirements specified in this Agreement.
11. The User agrees that no findings, listing, or information derived from the file(s) specified in Section 7, with or without identifiers, may be released if such findings, listing, or information contain any combination of data elements that might allow the deduction of a MCHCP member’s identification (Examples of such data elements include, but are not limited to, address, zip code, sex, age, etc.) The User agrees further that MCHCP shall be the sole judge as to whether any finding, listing, or information, or any combination of data extracted or derived from MCHCP’s files identifies or reasonably could identify an individual or to deduce the identity of an individual.
12. The User agrees that the User shall make no attempt to link records included in the file(s) specified in Section 7 to any other identifiable source of information or attempt to identify the information or individual(s) contained in the data. This includes attempts to link to other MCHCP data files. In addition, the User agrees not to contact the individual(s) who are the subject of the data covered by this Agreement.
13. The User understands and agrees that it may not reuse original or derivative data file(s) without prior written approval from MCHCP’s Executive Director.
14. The User agrees to immediately report to MCHCP any use or disclosure of PHI not authorized or provided for by this Agreement in accordance with the notice provisions prescribed in this Section 14.
  - 14.1 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 the User’s first discovery, meaning the first day on which such unauthorized use or disclosure is known to the User, or by exercising reasonable diligence, would have been known to the User, of the unauthorized use or disclosure.
  - 14.2 The notice shall be in writing and shall include a complete description of the unauthorized use or disclosure, and if applicable, a list of affected individuals and a copy of the template breach notification letter to be sent to affected individuals.
15. The User agrees that in the event MCHCP determines or has a reasonable belief that the User has made or may have used or disclosed the aforesaid file(s) that is not authorized by this Agreement, or other written authorization from MCHCP’s Executive Director, MCHCP in its sole discretion may require the User to: (a) promptly investigate and report to MCHCP the User’s determinations regarding any alleged or actual unauthorized use or disclosure; (b) promptly resolve any problems identified by the investigation; (c) if requested by MCHCP, submit a formal written response to an allegation of unauthorized use or disclosure; (d) if requested by MCHCP, submit a corrective action plan with steps designed to prevent any future unauthorized uses or disclosures; and (e) if requested by MCHCP, destroy or return data files to MCHCP immediately. The User understands that as a result of MCHCP’s determination or reasonable belief that unauthorized uses or disclosures have taken place, MCHCP may refuse to release further MCHCP data to the User for a period of time to be determined by MCHCP. Further, the User agrees that MCHCP may report the problem to the Secretary of HHS.

16. The User agrees to assume all costs and responsibilities associated with any breach, as defined in the HIPAA breach notification provisions, of any protected health information obtained from MCHCP's demographic or claim file(s) caused by the User organization. Such costs and responsibilities include: determining if and when a breach has occurred, however, all final decisions involving questions of a breach shall be made by MCHCP; investigating the circumstances surrounding any possible incident of breach; providing on behalf of MCHCP all notifications legally required of a covered entity in accordance with HIPAA breach notification laws and regulations; paying for the reasonable and actual costs associated with such notifications. The User further agrees to indemnify and hold MCHCP harmless from any and all penalties or damages associated with any breach caused by the User organization.
17. The User hereby acknowledges the criminal and civil penalties for violations under HIPAA. If User is a covered entity under HIPAA, its receipt of MCHCP's limited data set and violation of this data use agreement may cause the User to be in noncompliance with the standards, implementation specifications, and requirements of 45 CFR § 164.514 (e).
18. By signing this Agreement, the User agrees to abide by all provisions set out in this Agreement for protection of the data file(s) specified in Section 7, and acknowledges having received notice of potential criminal and civil penalties for violation of the terms of the Agreement.
19. On behalf of the User, the undersigned individual hereby attests that he or she is authorized to enter into this Agreement and agrees to all the terms specified herein. This Agreement shall be effective upon signature by both parties. The duration of this Agreement is one year from the effective date. The User also acknowledges that this Agreement may be terminated at any time with the consent of both parties involved. Either party may independently terminate the Agreement upon written request to the other party, in which case the termination shall be effective 60 days after the date of the notice, or at a later date specified in the notice.

[REDACTED]  
(Name/Title of Individual)

[REDACTED]  
(Organization)

[REDACTED]  
(Street Address)

[REDACTED]  
(City/State/ZIP Code)

[REDACTED]  
(Phone Number Including Area Code)

[REDACTED]  
(Email Address)

[REDACTED]  
Signature

[REDACTED]  
Date

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

---

John D. Wiemann, Executive Director  
Missouri Consolidated Health Care Plan

---

Date

**EXHIBIT A-3**  
**BIDDER'S PROPOSED MODIFICATIONS TO THE RFP**  
**2027 MCHCP COMMERCIAL PBM AND PART D EGWP PBM 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.**

---

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  
Missouri Consolidated Health Care Plan

Date

---

**Exhibit A-4**  
**Confirmation Document**  
**2027 MCHCP Commercial PBM and Part D EGWP PBM RFP**

---

Please complete this form following the steps listed below:

---

1) Confirm that you have read and understand all of MCHCP's instructions included in the Optavise application.

Yes  
 No

---

2) Bidders are required to submit a firm, fixed pricing arrangement for CY2027 and not-to-exceed prices for CY2028, CY2029, and CY2030. Pricing arrangements will be subject to best and final offer which may result from subsequent negotiation. You are advised to review all proposal submission requirements stated in the original Request for Proposal (RFP) and in any amendments, thereto. 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 and confirmation that all information included in the response is truthful and accurate to the best of your knowledge. 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.

---

Name/Title of Individual

---

Organization

---

Signature

---

Date

## EXHIBIT A-5

### CONTRACTOR CERTIFICATION OF COMPLIANCE WITH FEDERAL EMPLOYMENT LAWS 2027 MCHCP COMMERCIAL PBM AND PART D EGWP PBM 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.

\_\_\_\_\_  
Name/Title of Individual

\_\_\_\_\_  
Organization

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Exhibit A-6**  
**Sample Contract**  
**2027 MCHCP Commercial PBM and Part D EGWP PBM RFP**

**This contract is a sample contract for review during the RFP process only. Additional clauses and obligations may be added that are consistent with the RFP and bidder's submission which is awarded by the Board of Trustees. If there is a conflict with this sample contract and the RFP materials, the RFP materials will take precedence during the bidding process.**

This Contract is entered into by and between Missouri Consolidated Health Care Plan ("MCHCP") and \_\_\_\_\_ (hereinafter "PBM" or "Contractor") for the express purpose of providing pharmacy benefit management administrative services for a self-insured prescription drug program for all members enrolled in MCHCP pursuant to MCHCP's Commercial PBM and Part D EGWP PBM Request for Proposal released January 27, 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 of one (1) year from January 1, 2027 through December 31, 2027. This Contract may be renewed for three (3) additional one-year periods at the sole option of the MCHCP Board of Trustees. The submitted pricing arrangement for the first year (January 1 - December 31, 2027) is a firm, fixed price. The submitted prices for the subsequent (2nd - 4th) years of the contract period (January 1 - December 31, 2028, January 1 - December 31, 2029, and January 1 - December 31, 2030, respectively) are guaranteed not-to-exceed maximum prices and are subject to negotiation. Pricing for the one-year renewal periods are due to MCHCP by May 15 for the following year's renewal. All prices are subject to best and final offer which may result from subsequent negotiation.

**1.1.1** On an annual basis, MCHCP may review the financial terms of this Contract against comparable financial offerings available in the marketplace. Such review may be conducted by MCHCP's actuary and would consider the total value of the pricing terms (discounts, dispensing fees, administrative fees, rebates) to create an aggregate benchmark. PBM will have ten (10) business days to offer a comparable or better financial arrangement following such request from MCHCP or its actuary. Upon agreement of the market check pricing by the parties, within ten (10) business days, PBM will prepare and submit revised renewal pricing to be effective January 1 of the next succeeding contract year, beginning January 1, 2028, if applicable. PBM understands and agrees that MCHCP will not have access to the details of other PBM financial arrangements utilized by its actuary to conduct this market check and, therefore, will not be able or required to provide PBM such details at any time.

**1.2 Contract Documents:** This Contract and following documents, attached hereto and hereby 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, the substance of which are based on final completed exhibits or attachments required and submitted by PBM in response to the RFP, finalist negotiations, and implementation meetings:
  - i. Exhibit 1: Pricing Pages
  - ii. Exhibit 2: Business Associate Agreement
  - iii. Exhibit 3: Confirmation Document
  - iv. Exhibit 4: Performance Guarantees
  - v. Exhibit 5: Certification of Compliance with State and Federal Employment Laws
- d. The original RFP, including any amendments, the mandatory terms of which are deemed accepted and confirmed by PBM as evidenced by PBM affirmative confirmations and representations required by and in accordance with the bidder response requirements described throughout the RFP.

Any exhibits or attachments voluntarily offered, proposed, or produced as evidence of PBM's ability and willingness to provide more or different services not required by the RFP that are not specifically described in this Section or otherwise not included elsewhere in the Contract documents are excluded from the terms of this Contract unless subsequently added by the parties in the form of a written and executed amendment to this Contract.

**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 PBM 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:

- *(Definitions that are used in the RFP will be added as needed for the contract.)*
- **“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 PBM shall be addressed as follows: PBM 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 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 PBM's assurances of the following:

- PBM, including its subcontractors, has the skills, qualifications, expertise, financial resources and experience necessary to perform the services described in the RFP, PBM'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.

- PBM 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.
- PBM 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, PBM currently has the capability to perform in accordance with the terms and conditions of this Contract.
- PBM 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 PBM 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 PBM'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 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:** PBM 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, PBM 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. PBM 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 PBM 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 PBM any authority related to this Contract except as authorized in writing by MCHCP. PBM 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 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, PBM shall not be entitled to make or assess claim for damage by reason of said delay.

**1.18 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.

**1.19 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.

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

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

**1.22 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 PBM's Obligations

**2.1 Security Deposit:** PBM must furnish an original performance security deposit in the form of check, cash, bank draft, or irrevocable letter of credit, issued by a bank or financial institution authorized to do business in Missouri, or a surety performance bond issued by an insurance carrier to MCHCP within ten (10) days after award of the contract and prior to performance of service under the contract. The performance security deposit must be made payable to MCHCP in the amount of \$5,000,000. The contract number and contract period must be specified on the performance security deposit. In the event MCHCP exercises an option to renew the contract for an additional period, PBM shall maintain the validity and enforcement of the security deposit for the renewal period, pursuant to the provisions of this paragraph, in an amount stipulated at the time of contract renewal, not to exceed \$5,000,000.

**2.2 Eligible Members:** Eligibility: PBM shall agree that eligible members are those employees, retirees and their dependents who are eligible as defined by applicable state and federal laws, rules and regulations, including revision(s) to such. MCHCP is the sole source in determining eligibility. PBM shall not regard a member as terminated until Contractor receives an official termination notice from MCHCP. All determinations for coverage eligibility will be made by MCHCP. Effective and termination dates of plan participants will be determined by MCHCP. PBM will be notified of enrollment changes through the carrier enrollment eligibility file, by telephone or by written notification from MCHCP. PBM shall refer any and all questions received from members regarding eligibility or premiums to MCHCP.

**2.3 Confidentiality:** PBM will have access to private and/or confidential data maintained by MCHCP to the extent necessary to carry out its responsibilities under this Contract. Contractor will sign a Business Associate Agreement with MCHCP. No private or confidential data received, collected, maintained, transmitted, or used in the course of performance of this Contract shall be disseminated by PBM except as authorized by MCHCP, either during the period of this Contract or thereafter. PBM must agree to return any or all data furnished by MCHCP promptly at the request of MCHCP in whatever form it is maintained by PBM. On the termination or expiration of the Contract, PBM 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.

**2.4 Subcontracting:** Subject to the terms and conditions of this section, this Contract shall be binding upon the parties and their respective successors and assigns. PBM 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. PBM 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. PBM agrees that any and all subcontracts entered into by PBM for the purpose of meeting the requirements of this Contract are the responsibility of PBM. MCHCP will hold PBM responsible for assuring that subcontractors meet all the requirements of this Contract and all amendments thereto. PBM must provide complete information regarding each subcontractor used by PBM to meet the requirements of this Contract.

**2.5 Disclosure of Material Events:** PBM 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 PBM;
- Any merger, sale or other material change of ownership of PBM;
- Any conflict of interest or potential conflict of interest between PBM's engagement with MCHCP and the work, services or products that PBM is providing or proposes to provide to any current or prospective customer; and
- (1) Any material investigation of PBM by a federal or state agency or self-regulatory organization; (2) Any material complaint against PBM filed with a federal or state agency or self-regulatory organization; (3) Any material proceeding naming PBM before any federal or state agency or self-regulatory organization; (4) Any material criminal or civil action in state or federal court naming PBM as a defendant; (5) Any material fine, penalty, censure or other disciplinary action taken against PBM by any federal or state agency or self-regulatory organization; (6) Any material judgment or award of damages imposed on or against PBM as a result of any material criminal or civil action in which PBM was a party; or (7) Any other matter material to the services rendered by PBM 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, PBM 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 PBM'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 PBM designated by PBM to monitor and report such matters.

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

**2.6 Off-shore Services:** All services under this Contract shall be performed within the United States. PBM 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 PBM being in breach of this Contract.

**2.7 Change in Laws:** Contractor agrees that any state and/or federal laws, 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 deemed incorporated into the Contract. MCHCP will review any request for additional fees resulting from such changes and retains final authority to make any changes. In consultation with Contractor, a consultant may be utilized to determine the cost impact.

**2.8 Compliance with Laws:** PBM 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.

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

**2.8.2 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), PBM 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, PBM 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.

**2.8.3 Patient Protection and Affordable Care Act (PPACA):** If applicable, PBM shall comply with the Patient Protection and Affordable Care Act (PPACA) and all regulations promulgated under the authority of PPACA, including any future regulations promulgated under PPACA, which are applicable to all benefits, services, programs, and activities provided by MCHCP through contracts with outside contractors.

**2.8.4 Health Insurance Portability and Accountability Act of 1996 (HIPAA):** PBM 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.

**2.8.5 Genetic Information Nondiscrimination Act of 2008:** PBM shall comply with the Genetic Information Nondiscrimination Act of 2008 (GINA) and implementing regulations, as amended.

**2.8.6 Consolidated Appropriations Act, 2021:** Contractor shall comply with CAA, including the No Surprises Act (NSA) and implementing regulations, as amended.

**2.9 Indemnification:** PBM 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 PBM's, PBM's employees, or PBM's associate or any associate's or subcontractor's failure to comply with section 2.8 of this contract.

**2.10 Prohibition of Gratuities:** Neither PBM nor any person, firm or corporation employed by PBM 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.

**2.11 Solicitation of Members:** PBM 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.

**2.12 Insurance and Liability:** PBM 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. PBM 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. PBM shall bear the risk of any loss or damage to any personal property in which PBM holds title.

**2.13 Hold Harmless:** PBM 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 PBM or PBM's employees or its subcontractors. MCHCP shall not be precluded from receiving the benefits of any insurance PBM may carry which provides for indemnification for any loss or damage of property in PBM's custody and control, where such loss or destruction is to MCHCP's property. PBM shall do nothing to prejudice MCHCP's right to recover against third parties for any loss, destruction, or damage to MCHCP's property.

**2.14 Assignment:** PBM 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 PBM made without prior written consent of MCHCP. Notwithstanding the foregoing, PBM may, without the consent of MCHCP, assign its rights to payment to be received under this Contract, provided that PBM 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 PBM 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 PBM 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 PBM, following which PBM's federal identification number remains unchanged, shall not be considered to be an assignment hereunder. PBM shall give MCHCP written notice of any such change of name.

**2.15 Patent, Copyright, and Trademark Indemnity:** PBM 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. PBM 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 PBM's written request, it shall be at PBM's expense, but the responsibility for such expense shall be only that within PBM's written authorization. PBM shall indemnify and hold MCHCP harmless from all damages, costs, and expenses, including attorney's fees that PBM 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 PBM in such suit or proceeding are held to constitute infringement and the use is enjoined, PBM 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 PBM is unable to do any of the preceding, PBM 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 PBM under this paragraph continue without time limit. No costs or expenses shall be incurred for the account of PBM without its written consent.

**2.16 Compensation/Expenses:** PBM 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. PBM shall be compensated only for work performed to the satisfaction of MCHCP. PBM shall not be allowed or paid travel or per diem expenses except as specifically set forth in this Contract.

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

**2.18 Tax Payments:** PBM 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 PBM.

**2.19 Conflicts of Interest:** PBM 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, PBM 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.

**2.20 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.).

**2.21** PBM agrees that in the event of a dispute between the parties, about the payment or entitlement to receive payment, or any administrative fees hereunder, PBM and MCHCP shall endeavor to meet and negotiate a reasonable outcome of said dispute. In NO event shall the Contractor undertake unilateral offset against any monies due and owed MCHCP, whether from manufacturer rebates, credit adjustment or otherwise.

**2.22** Any fees not proposed in the proposal, for items included in the proposal cannot be considered at a later date. This does not limit new or additional programs from being proposed and fees set forth at the time of proposal for the consideration of the board.

### **3 MCHCP'S OBLIGATIONS**

**3.1 Administrative Services:** MCHCP shall provide the following administrative services to assist PBM

- Certification of eligibility;
- Enrollments (new, change and terminations) in an electronic format;
- Maintenance of individual eligibility and membership data;
- Payment of monies due PBM;

**3.2 Eligibility:** All determinations for coverage eligibility will be made by MCHCP. Effective and termination dates of plan participants will be determined by MCHCP. PBM will be notified of enrollment changes through the carrier enrollment eligibility file, by telephone or by written notification from MCHCP. PBM shall refer any and all questions received from members regarding eligibility or premiums to MCHCP.

**3.3 Payment:** PBM shall not bill more frequently than once every two weeks from a centralized billing system for all network pharmacies and mail order pharmacies. The invoice shall be submitted electronically in an Excel-compatible format. The invoice shall clearly designate and describe all components of the billing and shall separate the billed activity between claims and administration. Furthermore, the invoice should clearly delineate the activity between MCHCP's commercial and EGWP pharmacy claims and the administration fees associated with

each program separately and individually. Commercial activity should further be separately designated between active and retiree transactions. MCHCP will initiate payment to PBM within ten business days of receipt of the invoice. Payment will be made via Automated Clearing House (ACH) to the financial institution designated by PBM. PBM agrees that MCHCP is not responsible for any amounts owed by member to PBM. Collecting such amounts must be the sole responsibility of PBM. PBM must provide supporting documentation for all invoiced fees with each invoice.

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

**4.1 Retention of Records:** Unless MCHCP specifies in writing a shorter period of time, PBM 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 ten (10) 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 ten (10) years. PBM 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 ten (10) year post contract period. Delivery of and access to the records shall be at no cost to MCHCP.

**4.2 Audit Rights:** PBM must allow MCHCP the right to audit all aspects of the pharmacy program managed by PBM including financial terms, the specialty program, service agreements, administration, guarantees and all transparent and pass through components at no cost to MCHCP. The review of all aspects of the pharmacy program May include but must not be limited to: paid claims, the claim processing system, Rebate agreements, rebate aggregators, performance guarantees, pricing guarantees, retail network, Medicare Part D reconciliations, transparency, pricing benchmarks (e.g., AWP source), onsite assessments, operational assessments, clinical assessments and customer service call monitoring for both the commercial plan and EGWP plan, if applicable. Audits must be conducted by a firm selected by MCHCP.

**4.3 Ownership:** All data developed or accumulated by PBM under this Contract shall be owned by MCHCP. PBM 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. PBM acknowledges that MCHCP owns all claims-related data, including extracts, reports, and rebate details, and will provide this data upon MCHCP's request in a timely manner not to exceed 30 days from the date of the request.

**4.4 Access to Records:** Upon reasonable notice, PBM must provide, and cause its subcontractors to provide, the officials and entities identified in this Section with prompt, reasonable, and adequate access to any records, books, documents, and papers that are directly pertinent to the performance of the services. Such access must be provided to MCHCP and, upon execution of a confidentiality agreement, to any independent auditor or consultant acting on behalf of MCHCP; and any other entity designated by MCHCP. PBM agrees to provide the

access described wherever PBM maintains such books, records, and supporting documentation. Further, PBM agrees to provide such access in reasonable comfort and to provide any furnishings, equipment, or other conveniences deemed reasonably necessary to fulfill the purposes described in this section. PBM shall require its subcontractors to provide comparable access and accommodations. MCHCP shall have the right, at reasonable times and at a site designated by MCHCP, to audit the books, documents and records of PBM to the extent that the books, documents and records relate to costs or pricing data for this Contract. PBM agrees to maintain records which will support the prices charged and costs incurred for performance of services performed under this Contract. Also, PBM must furnish all information necessary for MCHCP to comply with all state and/or federal regulations. To the extent described herein, PBM shall give full and free access to all records to MCHCP and/or their authorized representatives.

**4.5 Financial Record Audit and Retention:** PBM agrees to maintain, and require its subcontractors to maintain, supporting financial information and documents that are adequate to ensure the accuracy and validity of PBM's invoices. Such documents will be maintained and retained by PBM or its subcontractors for a period of ten (10) years after the date of submission of the final billing or until the resolution of all audit questions, whichever is longer. PBM agrees to timely repay any undisputed audit exceptions taken by MCHCP in any audit of this Contract.

**4.6 Response/Compliance with Audit or Inspection Findings:** PBM must take action to ensure its or its subcontractors' compliance with or correction of any finding of noncompliance with any law, regulation, audit requirement, or generally accepted accounting principle relating to the services or any other deficiency contained in any audit, review, or inspection. This action will include PBM's delivery to MCHCP, for MCHCP's approval, a corrective action plan that addresses deficiencies identified in any audit(s), review(s), or inspection(s) within thirty (30) calendar days of the close of the audit(s), review(s), or inspection(s).

**4.7 Inspections:** Upon notice from MCHCP, PBM will provide, and will cause its subcontractors to provide, such auditors and/or inspectors as MCHCP may from time to time designate, with access to PBM service locations, facilities, or installations. The access described in this section shall be for the purpose of performing audits or inspections of the Services and the business of MCHCP. PBM must provide as part of the services any assistance that such auditors and inspectors reasonably may require to complete such audits or inspections.

## **5 Scope of Work**

**5.1 Administrative Services:** PBM shall provide pharmacy benefit manager services for a self-insured prescription health plan for the members of MCHCP in accordance with the provisions and requirements of this Contract on behalf of MCHCP. PBM understands that in carrying out its mandate under the law, MCHCP is bound by various statutory, regulatory and fiduciary duties and responsibilities and contractor expressly agrees that it shall accept and abide by such duties and responsibilities when acting on behalf of MCHCP pursuant to this engagement. PBM must administer benefits as determined by MCHCP. MCHCP benefits and services are promulgated by rule in Title 22 of the Missouri Code of State Regulations. PBM is obligated to follow the performance standards as outlined in this contract, including but not limited to Exhibit 4.

**5.2 Coordination with Business Associates:** PBM shall coordinate, cooperate, and electronically exchange information with MCHCP's identified business associates as necessary to implement benefit design. Necessary information can include, but is not limited to, deductible and out-of-pocket accumulators, participation in care management, or referral for disease management. Frequency of electronically exchanged information can be daily.

- 5.2.1** PBM shall work with MCHCP's contracted high deductible health plan (HDHP) administrator(s) (currently Anthem Blue Cross Blue Shield) to coordinate deductible and out-of-pocket accumulations. This requires PBM to send a daily file to MCHCP's contracted HDHP administrator(s), and to accept a daily file from the contracted HDHP administrator(s), for the purpose of adjudicating and applying claims to a member's deductible and out-of-pocket maximum in real time.
- 5.2.2** PBM will work with MCHCP's Medicare Advantage (MA) plan (currently United Healthcare) to coordinate benefits for MCHCP's Medicare eligible members when needed.

**5.3 Account Management:** PBM shall establish and maintain throughout the term of the contract an account management team that will work directly with MCHCP staff. This team must include but is not limited to a dedicated account executive, a customer service manager, a registered pharmacist, and a management information system representative. MCHCP prefers that the account team be officed within the State of Missouri. Approval of the account management team rests with MCHCP. The account executive and service representative(s) will deal directly with MCHCP's benefit administration staff. The account management team must:

- 5.3.1** Be able to devote the time needed to the account, including being available for frequent telephone and semi-annual consultation with MCHCP. Dedicated account team members may service other accounts but must consistently be available to MCHCP.
- 5.3.2** Be extremely responsive.
- 5.3.3** Be comprised of individuals with specialized knowledge of PBM's networks, claims and eligibility systems, system reporting capabilities, claims adjudication policies and procedures, administrative services, and relations with third parties.
- 5.3.4** Be thoroughly familiar with virtually all of PBM's functions that relate directly or indirectly to the MCHCP account.
- 5.3.5** Be able to effectively advance the interest of MCHCP through PBM's corporate structure.

**5.4 Meetings:** MCHCP requires PBM to meet with MCHCP staff and/or Board of Trustees at least quarterly to discuss the status of the MCHCP account in terms of utilization patterns and costs, as well as to propose new ideas that may benefit MCHCP and its members. These meetings will take place at the MCHCP office or virtually if in-person meetings are not possible.

- 5.4.1** PBM is expected to present actual MCHCP claims experience and offer suggestions as to ways the benefit could be modified to reduce costs

and/or improve the health of MCHCP members. Suggestions must be modeled against actual MCHCP membership and claims experience to determine the financial impact as well as the number of members affected.

- 5.4.2** PBM must also present benchmark data by using the PBM's entire book of business, a large subset of comparable clients to MCHCP, or some other industry norm.
- 5.4.3** The data must be separated between Commercial and EGWP populations. The Commercial population must be separated between active employees and retirees.

**5.5 Customer Service:** PBM must provide a high quality customer service unit. PBM staff members must be fully trained in the MCHCP benefit design, and PBM must have the ability to track and report performance in terms of telephone response time, call abandonment rate, and the number of inquiries made by type. MCHCP may request copies of this performance report.

**5.6 Customer Satisfaction:** PBM must conduct a member satisfaction survey annually using a statistical random sample of MCHCP members representative of the population. The timeframe for conducting and reporting the survey shall be mutually agreed upon by PBM and MCHCP. A separate survey must be conducted for the Commercial and EGWP populations.

**5.7 Implementation:** PBM must coordinate all activity among MCHCP and their vendors in support of a successful onboarding experience (e.g., phone calls, emails, meeting agendas, and project lists.) PBM must lead implementation calls and drive tasks to completion. PBM must review and lead a thorough discussion of set-up documentation and available programs and edits. A final implementation schedule must be agreed to by MCHCP and PBM within thirty (30) days of the contract award.

- 5.7.1** At a minimum, the timeline must include the required dates for the following activities:
  - 5.7.1.1** Training key staff;
  - 5.7.1.2** Detailed benefit setup;
  - 5.7.1.3** Testing of eligibility file transfer;
  - 5.7.1.4** Acceptable date for final eligibility file;
  - 5.7.1.5** ID card production and distribution;
  - 5.7.1.6** Testing file transmission to MCHCP's data warehouse vendor;
  - 5.7.1.7** Communications schedule and members material review;
  - 5.7.1.8** Enrollment kit printing;
  - 5.7.1.9** Finalization of formulary, prior authorization list, step therapy, quantity level limits, and other clinical programs; and
  - 5.7.1.10** Plan for transitioning mail order and specialty refills from incumbent.

- 5.7.2** PBM must have a customer service unit in place to answer member inquiries during open enrollment. Open enrollment is anticipated to be October 1-31, with coverage effective January 1, the following calendar year. At a minimum, the customer service unit must timely and accurately address network and benefit issues, including formulary content.
- 5.7.3** PBM shall load all current prior authorizations, open mail order refills, specialty transfer files, claim history files, and accumulator files that exist for current members from the existing PBM at no charge to MCHCP if the files are provided by the former PBM in a reasonable format and contain valid data.
- 5.7.4** PBM must accept and load up to twelve months of historical claims data at no additional cost to MCHCP.
- 5.7.5** PBM shall grandfather MCHCP's current utilizers for 90 days following the contract effective date, with no impact on rebate guarantees during the grandfathering period. In this instance, grandfathering indicates maintaining the current member cost share for each product whether it is at a \$0 copay under the ACA or any of the member cost share tiers.
- 5.7.6** PBM must work with MCHCP to develop a schedule for testing of the electronic eligibility file. The expectation is that testing is completed 60 days prior to the effective date of the contract. PBM must accept a final eligibility file no later than 30 days prior to the contract effective date.

**5.8 Toll-Free Telephone Line:** PBM shall maintain a toll-free telephone line to provide prompt access for members and providers to qualified customer service personnel, including at least one registered pharmacist. Live customer service personnel must be available 24 hours a day, seven days a week.

**5.9 ID Cards:** By December 20, 2026, the contractor must provide welcome packages to all members that will be effective on January 1, 2027. For members effective after January 1, 2027, the contractor must provide welcome packages prior to the effective date of coverage, or within 15 working days of receipt by the contractor of the enrollment or status change notice from MCHCP, whichever date is latest. A welcome package includes, at a minimum, the member ID card and general information about the benefit. The welcome package contents must be approved by MCHCP prior to distribution. Upon a member's request, PBM shall issue and mail a membership identification card within two business days of the request. PBM shall re-card the entire population should a benefit change or other change in operation result in the identification card in the member's possession becoming obsolete.

**5.10 Communications:** MCHCP reserves the right to review and approve all written communications and marketing materials developed and used by PBM to communicate specifically with MCHCP members at any time during the contract period. This does not refer to items such as provider directories and plan wide newsletters if they do not contain information on eligibility, enrollment, benefits, rates, etc., which MCHCP must review. Notwithstanding the foregoing, nothing herein prohibits PBM from communicating directly

with members in the regular course of providing services under the Contract (e.g., responding to member inquiries, etc.).

**5.10.1** PBM must provide an EGWP communication timeline that aligns with CMS requirements. Member communications must be customized and that customization must meet CMS requirements for EGWP.

**5.11 Quality Assurance Program:** PBM must provide a quality assurance program. The program must contain, at a minimum, the following attributes:

**5.11.1** Each prescription reviewed by a licensed pharmacist;

**5.11.2** Tracking abusive providers and members;

**5.11.3** Using methods that meet or exceed industry standards, auditing the internal dispensing and utilization procedures of participating pharmacies; and

**5.11.4** Employ a system that meets or exceeds industry standards (for a large governmental sector) for preventing, detecting, and reporting both actual and patterns of fraud and abuse. In addition, PBM must report its results to MCHCP at least quarterly.

**5.12 Pharmacy Network:** PBM must provide and maintain a broad Missouri and national retail pharmacy network(s) for MCHCP members. The network(s) must be available to members throughout the United States. PBM shall notify MCHCP within five business days if the network geographic access changes from what was proposed by PBM during the RFP process. PBM shall maintain a network(s) that is sufficient in number and types of providers to assure that all services will be accessible without unreasonable delay.

**5.12.1** PBM shall have a process for monitoring and ensuring on an ongoing basis the sufficiency of the network(s) to meet the needs of the enrolled members. In addition to looking at the needs from an overall member population standpoint, PBM shall ensure the network(s) is able to address the needs of those with special needs including but not limited to, visually or hearing impaired, limited English proficiency and low health literacy.

**5.12.2** PBM must credential participating pharmacies consistent with the National Council for Prescription Drug Programs (NCPDP) standards to ensure the quality of the network(s).

**5.12.3** PBM must contract with participating pharmacies, including negotiating pricing arrangements to optimize ingredient cost discounts while at the same time assuring adequate access to participating pharmacies. PBM shall maintain a network that ensures reasonable access to both independent pharmacies and chain pharmacies.

**5.12.4** PBM shall apply reimbursement methodologies or business practices that do not unfairly disadvantage independent pharmacies versus chain pharmacies, including but not limited to pricing, retrospective adjustments, and reimbursements.

**5.12.5** PBM shall agree to provide written notice to MCHCP and then to affected members when a provider who fills a substantial number of scripts in PBM's book of business within the previous 180 days leaves the network. The notice must be sent at least 30 days prior to the termination or non-renewal or as soon as possible after non-renewal or termination.

**5.13 Mail Order Pharmacy:** PBM must provide a mail order pharmacy program that is fully integrated with the retail network(s) in terms of on-line real-time adjudication and Drug Utilization Review (DUR).

**5.13.1** For mail order service, PBM shall at a minimum track the dates the prescription or refill request was received, filled, and mailed. MCHCP requires that prescriptions requiring no intervention be shipped within two (2) business days of receipt. Prescriptions requiring intervention must be shipped within three (3) business days of receipt. For purposes of this provision, the mail service will be assumed to have a seven-day work week, excluding legal holidays.

**5.13.2** All mail order claims will be priced based on the original package size, defined as the quantity as originally purchased for the mail order facility before re-packaging in smaller quantities.

**5.14 Specialty Pharmacy:** PBM must provide a specialty pharmacy program. PBM must maintain and agree to share an up-to-date and accurate specialty drug list with MCHCP at all times. However, PBM may not require the use of its own or affiliated specialty pharmacy as a condition of contracting. MCHCP reserves the sole and exclusive right to determine which specialty pharmacy(ies) will be used for specialty medication dispensing and related services. At any time during the term of the contract, MCHCP may carve out specialty pharmacy services and award to its choice of vendor. PBM must fully support and integrate with MCHCP's chosen specialty pharmacy(ies).

**5.15 Benefit Administration:** PBM must administer benefits as determined by MCHCP, in terms of covered drugs and member responsibility, in accordance with all applicable federal and state laws and regulations. MCHCP benefits and services are promulgated by rule in Title 22 of the Missouri Code of State Regulations. PBM must administer a plan to commercial members (those MCHCP members not enrolled in the EGWP) and a separate CMS Part D Medicare Prescription Drug plan as an employer group waiver plan (EGWP) with wrap-around coverage that is substantially similar with the commercial plan, to those enrolled in MCHCP's Medicare Advantage Plan.

**5.15.1** PBM must be able to administer a multi-tiered co-payment structure, deductible/coinsurance structure, or any other benefit structure developed by MCHCP. MCHCP will consult with PBM regarding the final benefit structure, but maintains authority on the final design.

**5.15.2** PBM must provide a formulary consisting of the most cost effective drugs within various therapeutic or pharmacological classes of drugs. MCHCP reserves the right to approve the final list of drugs included on the formulary and any changes throughout the contract period.

**5.15.3** PBM must be able to implement changes to the program within 60 days of notification. This may include, but is not limited to, copayment changes, formulary changes, and/or changes in the prior authorization list. These changes are expected to be infrequent and many would likely be implemented at the beginning of a new plan year.

**5.15.4** PBM must notify MCHCP by June 1 of any anticipated drug exclusions or movement of medications to/from the non-specialty and specialty preferred drug list planned for the following calendar year, and MCHCP may reject the annual formulary suggested change with no changes to the stated financials during the lifetime of the contract. Any proposed changes may only improve the rebate guarantees. PBM must provide the names of the medications and the impact to MCHCP of the drug exclusions by August 1st of each year.

**5.15.5** PBM must agree that PBM's organization must never switch for a medication with a lower ingredient cost to a higher ingredient cost regardless of rebate impact without MCHCP's approval.

**5.15.6** PBM must administer the EGWP on a self-insured basis, with pass-back to MCHCP of all third-party funding sources including CMS direct subsidies, pharmaceutical manufacturer discounts, federal reinsurance payments, Selected Drug subsidies, and CMS low income premium and cost sharing subsidies.

**5.15.7** PBM must administer the MCHCP pharmacy benefits, both Commercial and EGWP, on a carve out basis.

**5.15.8** Prior to January 1 of each plan year, PBM shall implement any eligibility, plan design and benefit changes as directed by MCHCP and test all plan design and benefit elements. Any test results that fail to meet requirements will be corrected and retested prior to January 1. Test results will be shared with MCHCP.

**5.15.9** PBM must administer the EGWP in accordance with all applicable laws and regulations. The contractor must also provide all necessary reporting and support on behalf of and approved by MCHCP to satisfy Medicare requirements.

**5.16 Appeals:** PBM agrees to conduct all grievances and internal appeals filed by MCHCP members, including but not limited to appeals under Patient Protection and Affordable Care Act, and appeals required by the Centers for Medicare and Medicaid (CMS), in accordance with applicable state and federal laws and regulations. PBM agrees to participate in any review, appeal, fair hearing or litigation involving issues related to services provided under this Contract if, and to the extent, MCHCP deems necessary.

**5.17 Information Technology and Eligibility File:** PBM shall be able to accept all MCHCP eligibility information on a weekly basis utilizing the ASC X12N 834 (005010X095A1) transaction set. MCHCP will supply this information in an electronic format and PBM must process such

information within 24 hours of receipt. PBM must provide a technical contact that will provide support to MCHCP Information Technology Department for EDI issues.

- 5.17.1** The contractor and MCHCP will provide each other a recommended data mapping for the 834 transaction set to MCHCP after the contract is awarded.
- 5.17.2** After processing each file, PBM will provide a report that lists any errors and exceptions that occurred during processing. The report will also provide record counts, error counts and list the records that had an error, along with an error message to indicate why it failed. A list of the conditions PBM audits will be provided to ensure the data MCHCP is sending will pass PBM's audit tests.
- 5.17.3** PBM shall provide access to view data on their system to ensure the file MCHCP sends is correctly updating PBM's system.
- 5.17.4** PBM will supply a data dictionary of the fields MCHCP is updating on their system and the allowed values for each field.
- 5.17.5** PBM shall provide MCHCP with a monthly file ("eligibility audit file") in a mutually agreed upon format of contractor's eligibility records for all MCHCP members. Such file shall be utilized by MCHCP to audit contractor's records. Such eligibility audit file shall be provided to MCHCP no later than the second Thursday of each month.

**5.18 Website:** PBM must have a customized active, current website for MCHCP members that is updated regularly. MCHCP members must be able to access this site to obtain current listings of network providers, print ID cards, review benefits and plan design, review explanation of benefits, check status of deductibles, maximums or limits, obtain a history of pharmacy claims, perform price comparison of drugs between pharmacies, map provider locations, complete satisfaction surveys and other information. If MCHCP discovers that provider information contained at the contractor's website is inaccurate, MCHCP will contact the contractor immediately. The contractor must correct inaccuracies within 10 days of being notified by MCHCP or when the contractor discovers the inaccuracy.

- 5.18.1** PBM must be able to support single sign-on from MCHCP's Member Portal to PBM's Member Portal utilizing Security Assertion Markup Language (SAML).

**5.19 Access to PBM System:** PBM shall provide at no cost to MCHCP direct on-line, real time access to PBM's system for the purpose of updating eligibility and member enrollment verification on an as-needed basis. PBM must provide training on the system at MCHCP's office no later than December 1, 2026.

**5.20 Encryption:** All electronic protected health information (ePHI) must be encrypted in transit using TLS 1.3 (or TLS 1.2 at minimum) with FIPS-approved cipher suites and strong certificate management. For file operations and data at rest, encryption shall use symmetric keys of at least AES-256, asymmetric keys of at least RSA 2048 bits (4096 bits preferred), elliptic curve keys of at least 256 bits (e.g., NIST P-256), and hash functions of SHA-256 or stronger for

integrity and digital signatures. Cryptographic operations key management shall adhere to NIST SP 800-57 guidelines, including secure generation, storage, rotation, and destruction.

**5.21 Clinical Management:** PBM shall integrate and coordinate the following types of services in order to utilize health care resources and achieve optimum patient outcome in the most cost effective manner: utilization management including prior authorization and concurrent, retrospective, and prospective drug utilization review, step therapy, quantity level limits, pharmacy and therapeutics committee review of formulary and other clinical components of pharmacy management. These services must be performed in a matter to be consistent with Chapter 22, Missouri State Regulations.

- 5.21.1** PBM shall use documented clinical review criteria that are based on sound clinical evidence and are evaluated periodically to assure ongoing efficacy. PBM may develop its own clinical review criteria, or may purchase or license clinical review criteria from qualified vendors. PBM shall make available its clinical review criteria upon request.
- 5.21.2** PBM shall provide physician-to-pharmacist and pharmacist-to-pharmacist communications.
- 5.21.3** Utilization management services shall be conducted by appropriately licensed personnel with the expertise in the services being reviewed.
- 5.21.4** PBM shall obtain all information required to make a utilization review decision, including pertinent clinical information. PBM shall have a process to ensure that utilization reviewers apply clinical review criteria consistently.
- 5.21.5** PBM shall provide a toll-free telephone number and adequate lines for plan members and providers to access the utilization management program.
- 5.21.6** PBM must provide management of patients with specialty disease states (e.g., Hemophilia, Rheumatoid Arthritis).
- 5.21.7** PBM will provide a prior authorization process that requires documentation of disease severity, other treatments tried, and test results to validate diagnosis. Prior authorization programs shall be used as a clinical management strategy and not a strategy to increase rebates. PBM shall not utilize attestations when reviewing prior authorizations. PBM shall utilize pharmacists when completing prior authorization reviews, and prior authorization criteria will be provided to MCHCP and/or its consultants upon request.
- 5.21.8** PBM must notify MCHCP ninety (90) days prior to any formulary changes and notify any member who is impacted by the formulary change at least sixty (60) days prior to the change..

**5.22 Claims Payment:** PBM shall process claims utilizing the contracted discount arrangements negotiated with participating providers. PBM shall process 99.5% of all retail and mail scripts without monetary errors.

- 5.22.1** PBM shall agree that if a claims payment platform change occurs throughout the course of the contract, MCHCP reserves the right to delay implementation of the new system for MCHCP members until a commitment can be made by PBM that

transition will be without significant issues. This may include requiring PBM to put substantial fees at risk and/or agree to an implementation audit related to these services to ensure a smooth transition.

- 5.22.2** PBM must have the capability to process out-of-network claims for those members using non-participating pharmacies and/or for coordination of benefits.
- 5.22.3** PBM must be able to coordinate benefits in accordance with MCHCP regulations.

**5.23 Cost Mitigation:** PBM will offer cost-management strategies to control costs in order to decrease MCHCP's pharmacy trend. All strategies will be approved by MCHCP prior to implementation. PBM will work with MCHCP to recommend cost containment strategies and provide estimated savings for each initiative.

**5.24 Audit Recoveries:** PBM must agree to pay to MCHCP any financial recoveries from audits contractor has performed on any contracted pharmacies within 30 days of receipt by the contractor.

**5.25 Services Beyond Contract Termination:** At contract termination, MCHCP requires PBM to continue to perform the duties listed below for the stated time period following termination. No additional compensation other than terms and conditions agreed to in the contract will be given for continuation of these activities.

- 5.25.1** Paper processing for out-of-network claims that were incurred while the contract was in place for two years following contract termination
- 5.25.2** Monthly claim file submissions to MCHCP's data vendor (currently Merative) for one year following contract termination
- 5.25.3** Processing all prescriptions received in the mail order facility prior to contract termination using existing time frames
- 5.25.4** Send at least the most current 12 months of claims history data, all current prior authorizations, open mail order refills, specialty transfer files, and accumulator files that exist for MCHCP members to the next/successor PBM at no charge if MCHCP terminates the contract with or without cause at any point of the contractual term.

**5.26 Performance Standards:** Performance standards are outlined in Exhibit 4. PBM shall agree that any liquidated damages assessed by MCHCP shall be in addition to any other equitable remedies allowed by the contract or awarded by a court of law including injunctive relief. PBM shall agree that any liquidated damages assessed by MCHCP shall not be regarded as a waiver of any requirements contained in this contract or any provision therein, nor as a waiver by MCHCP of any other remedy available in law or in equity. Unless otherwise specified, all performance guarantees are to be measured quarterly, reconciled quarterly and any applicable penalties paid annually. MCHCP reserves the right to audit performance standards for compliance.

## 6 REPORTING

**6.1 Reporting Requirements:** PBM shall provide monthly claims and utilization data to MCHCP and/or MCHCP's decision support system vendor (currently Merative) in a format specified by MCHCP with the understanding that the data shall be owned by MCHCP. The PBM shall:

- 6.1.1** Provide data in an electronic format and within a timeframe specified by MCHCP.
- 6.1.2** Place no restraints on use of the data provided MCHCP has in place procedures to protect the confidentiality of the data consistent with HIPAA requirements; and
- 6.1.3** This obligation continues for a period of one year following contract termination
- 6.1.4** Pay applicable fees associated with data format changes due to contractor-initiated or regulatory compliance requirements.

**6.2 Third Party Vendor:** MCHCP reserves the right to retain a third party contractor (currently Merative) to receive the data from PBM and store the data on MCHCP's behalf. This includes a full claim file including, but not limited to, all financial, demographic and utilization fields. PBM agrees to cooperate with MCHCP's designated third party contractor, if applicable, in the fulfillment of PBM's duties under this contract, including the provision of data as specified without constraint on its use.

**6.3 Online Reporting:** PBM must provide an online reporting utility that allows MCHCP to run reports and download report results in a manipulatable format (Microsoft Excel, for example).

**6.4 Appeals Reporting:** Contractor must provide monthly appeals reporting. (MCHCP and PBM will negotiate format and content upon award of this contract.). Additionally, contractor shall copy MCHCP on adverse benefit determination (ABD) letters issued by PBM.

**6.5 Rebate Reporting:** The contractor must provide quarterly rebate reporting at the NDC-9 level. The rebate reporting should include rebate amounts expected and rebate amounts received. The rebate amounts received should reconcile to the quarterly rebate payments. Quarterly reports are due within ninety (90) days following the end of the calendar quarter.

**6.6 Standard Reporting:** At the request of MCHCP, PBM shall submit standard reports to MCHCP on a monthly, quarterly, and/or annual basis. (MCHCP and PBM will negotiate the format, content and timing upon award of this contract.)

**6.7 Ad Hoc Reporting:** At the request of MCHCP, PBM shall submit additional ad hoc reports on information and data readily available to PBM. If any reports are substantially different from the reports agreed upon, fair and equitable compensation will be negotiated with PBM.

## 7 CANCELLATION, TERMINATION OR EXPIRATION

**7.1 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 PBM 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.

**7.2 Termination for Cause:** MCHCP may terminate this Contract, or any part of this Contract, for cause under any one of the following circumstances: 1) PBM fails to make delivery of goods or services as specified in this Contract; 2) PBM fails to satisfactorily perform the work specified in this Contract; 3) PBM fails to make progress so as to endanger performance of this Contract in accordance with its terms; 4) PBM breaches any provision of this Contract; 5) PBM assigns this Contract without MCHCP's approval; or 6) Insolvency or bankruptcy of PBM. 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, PBM 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. PBM shall be liable to MCHCP for any reasonable excess costs for such similar or identical services included within the terminated part of this Contract.

**7.3 Termination Right:** Notwithstanding any other provisions, MCHCP reserves the right to terminate this Contract at the end of any month by giving thirty (30) days' notice, without penalty.

**7.4 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.

**7.5 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.

**7.6 Rights and Remedies:** If this Contract is terminated, MCHCP, in addition to any other rights provided for in this Contract, may require PBM to deliver to MCHCP in the manner and to the extent directed, any completed materials. In the event of termination, PBM 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**

**PBM**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: Executive Director

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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

This Business Associate Agreement (“Agreement”) between the Missouri Consolidated Health Care Plan (hereinafter “Covered Entity” or “MCHCP”) and Pharmacy Benefit Manager. (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 Pharmacy Benefit Manager RFP (“RFP”) and under Contract #2027-PBM, 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 pharmacy benefit manager services.

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 Business Associate 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 Pharmacy Benefit Manager.

“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;**

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](mailto: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](mailto: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**

**Pharmacy Benefit Manager**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: Executive Director

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_