
Exhibit A-1

Intent to Bid – 2027 MCHCP Employee Assistance Program RFP

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

Please complete this form following the steps listed below:

- 1) Fill this form out electronically and sign it with your electronic signature.
 - 2) Upload the completed document to the Response Documents area of the RFP no later than Tuesday, March 24, 2026, at 5 p.m. CT (6 p.m. ET).
-

Minimum Bidder Requirements

Only bidders that meet all the following minimum requirements will be considered. Proposals that do not meet these requirements will not be considered for the contract:

- **Licensure** – Must be licensed to do business in the State of Missouri to perform the duties described in this RFP and be in good standing with the Missouri Secretary of State.
- **Size and Experience** - Must have a minimum five (5) years' experience in administering and providing EAP services, with at least three (3) current clients having more than 50,000 employees. The bidder must currently offer at least one (1) free standing program.
- **Business Size** - Combined account (MCHCP and the additional 3 state departments who are eligible to elect to contract under this proposal), as measured by total employees covered for EAP services, may represent no more than 15 percent of the bidder's total current EAP business. The bidder must currently cover approximately 335,000 employees for EAP services.
- **Call Center and Staff** – Centralized referral call center based in the United States, staffed 24 hours a day, 7 days a week by licensed mental health professionals. A core team of professionals shall be consistently assigned to the MCHCP account.
- **Account Management** - Must identify MCHCP's proposed account manager(s), their experience and geographic location. Account manager(s) must be available for an interview and/or site visit during the bid evaluation process and be permanently assigned to the combined MCHCP account.

- **Network** – Must demonstrate a broad Missouri statewide network of licensed mental health professionals for face-to-face counseling sessions:
 - Ninety percent (90%) of the combined MCHCP population in Missouri and adjacent states in the Kansas City and St. Louis metropolitan areas must have access to one (1) provider practice accepting new patients throughout the term of the contract within twenty-five (25) miles.
 - Ninety percent (90%) of the combined MCHCP population in Boone, Cole, Callaway, St. Louis, St. Louis City, St. Charles, Jackson, and Greene counties must have access to five (5) provider practices accepting new patients within twenty-five (25) miles.

This form will serve as confirmation that our organization has received the MCHCP 2027 Employee Assistance Program RFP.

We intend to submit a complete proposal.

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

Name of Organization

Signature of Plan Representative

Title of Plan Representative

Date

EXHIBIT A-2
LIMITED DATA USE AGREEMENT

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 file 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:

E-mail Address:

6. The User represents and warrants, and in furnishing the demographic 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:

- Network analysis and evaluation of proposed network's geographic accessibility to employees related to bidding on a contract for employee assistance services;
- Modeling of potential claim volumes for purposes of bidding on a contract with MCHCP; and/or
- Utilization analysis and pricing related to bidding on a contract with MCHCP for employee assistance services.

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) and (g).

7. MCHCP will provide the User with the files, which is a subset of MCHCP's master records. MCHCP warrants that the file is accurate to the extent possible.
8. The parties mutually agree that the aforesaid file (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 bidding 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 file 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 6 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 6, 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 6 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 file 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 specified in section 6, 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.

(Name/Title of Individual):

(State Agency/Organization):

(Street Address):

(City/State/ZIP Code):

(Phone Number Including Area Code):

(E-mail Address):

Signature:

Date:

20. 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.

John Wiemann, Executive Director
Missouri Consolidated Health Care Plan

Date

**EXHIBIT A-3
BIDDER'S PROPOSED MODIFICATIONS TO THE RFP
2027 MCHCP EMPLOYEE ASSISTANCE PROGRAM 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 Employee Assistance Program RFP

Please complete this form, sign with your electronic signature, and upload the completed document to the Response Documents section of Optavise.

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

Yes

No

- 2) Bidders are required to submit a firm, fixed price for CY2027 and not-to-exceed prices for CY2028 and CY2029. Prices will be subject to best and final offer which may result from subsequent negotiation. Pricing for 2030 and 2031 will be negotiated. You are advised to review all proposal submission requirements stated in the original 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 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 all RFP amendments, and confirmation that all information included in this 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 EMPLOYEE ASSISTANCE PROGRAM 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
MCHCP Employee Assistance Program 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.

CONTRACT # XXXXX BETWEEN
MISSOURI CONSOLIDATED HEALTH CARE PLAN
AND EMPLOYEE ASSISTANCE PROGRAM

This Contract is entered into by and between Missouri Consolidated Health Care Plan ("MCHCP") and Employee Assistance Program Contractor (hereinafter "EAP" or "Contractor") for the express purpose of providing employee assistance program services to eligible employees, pursuant to MCHCP's Employee Assistance Program Request for Proposal released **March 17, 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 four (4) additional one-year periods at the sole option of the MCHCP Board of Trustees. The submitted price for the first calendar year period (January 1, 2027 through December 31, 2027) is a firm fixed price. The submitted prices for the second and third years of the contract period (January 1, 2028 through December 31, 2028 and January 1, 2029 through December 31, 2029 respectively) are not-to-exceed prices are subject to negotiation. Pricing arrangements for the last two one-year renewal periods of this contract (January 1, 2030 through December 31, 2030 and January 1, 2031 through December 31, 2031 respectively) will be negotiated. Pricing for the one-year renewal periods are due to MCHCP by May 15th for the following year's renewal. All prices are subject to best and final offer which may result from subsequent negotiation.

1.2 Contract Documents: This Contract and following documents, attached hereto and 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 EAP in response to the RFP, finalist negotiations, and implementation meetings held

following execution of the Preliminary Agreement between the parties and superseded by this Contract in accordance with its terms:

- i. Exhibit 1 Pricing Pages
 - ii. Exhibit 2 Business Associate Agreement
 - iii. Exhibit 3 Proposed Modifications to the RFP
 - iv. Exhibit 4 Confirmation Document
 - v. Exhibit 5 Performance Guarantees
 - vi. Exhibit 6 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 EAP as evidenced by EAP's 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 EAP'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 EAP has authority to make, or has made, any statement, agreement or representation, oral or written, in connection with this Contract, which in any way can be deemed to modify, add to or detract from, or otherwise change or alter its terms and conditions. No negotiations between the parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of this Contract.

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

- **"Amendment"** means a written, official modification to the RFP or to this Contract.
- **"May"** means permissible but not required.
- **"Must"** means that a certain feature, component, or action is a mandatory condition. Failure to provide or comply may result in a breach.

- **“Request for Proposal” or “RFP”** means the solicitation document issued by MCHCP to potential bidders for the purchase of services as described in the document. The definition includes Exhibits, Attachments, and Amendments thereto.
- **“Shall”** has the same meaning as the word must.
- **“Should”** means desirable but not mandatory.
- The terms **“include,” “includes,”** and **“including”** are terms of inclusion, and where used in this Contract, are deemed to be followed by the words “without limitation”.

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

- EAP is an established EAP administrator that provides EAP services for health plans and/or employers..
- EAP, including its subcontractors, has the skills, qualifications, expertise, financial resources and experience necessary to perform the services described in the RFP, EAP’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.
- EAP 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.

- EAP 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, EAP currently has the capability to perform in accordance with the terms and conditions of this Contract.

Accordingly, on the basis of the terms and conditions of this Contract, MCHCP desires to engage EAP 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 EAP'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: EAP 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, EAP 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. EAP 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 EAP 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 EAP any authority related to this Contract except as authorized in writing by MCHCP. EAP 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, EAP 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 EAP 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 EAP's Obligations

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

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

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

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

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

2.5 Change in Laws: EAP agrees that and 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 EAP, an actuary may be utilized to determine the cost impact.

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

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

2.6.2 Americans with Disabilities Act (ADA) and Americans with Disabilities Act Amendments Act of 2008 (ADAAA): Pursuant to federal regulations promulgated under the authority of The Americans with Disabilities Act (ADA) and **Americans with Disabilities Act Amendments Act of 2008 (ADAAA)**, EAP 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, EAP agrees to comply with all regulations promulgated under ADA or ADAAA which are applicable to all benefits, services, programs, and activities provided by MCHCP through contracts with outside contractors.

2.6.3 Patient Protection and Affordable Care Act (PPACA): If applicable, EAP 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.

2.6.4 Health Insurance Portability and Accountability Act of 1996 (HIPAA): EAP 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.

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

2.7 Indemnification: EAP 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 EAP's, EAP's employees, or EAP's associate or any associate's or subcontractor's failure to comply with section 2.6 of this contract.

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

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

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

2.11 Hold Harmless: EAP shall hold MCHCP harmless from an indemnify against any and all claims for injury to or death of any persons; for loss or damage to any property; and for infringement of any copyright or patent to the extent caused by EAP or EAP's employees or its subcontractors. MCHCP shall not be precluded from receiving the benefits of any insurance EAP may carry which provides for indemnification for any loss or damage of property in EAP's custody and control, where such loss or destruction is to MCHCP's property. EAP shall do nothing to prejudice MCHCP's right to recover against third parties for any loss, destruction, or damage to MCHCP's property.

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

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

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

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

2.16 Tax Payments: EAP 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 EAP.

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

2.18 Conflicts of Interest: EAP 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, EAP shall not knowingly employ, during the period of this Contract or any extensions to it, any employee of MCHCP who has participated in the making of this Contract until at least two years after his/her termination of employment with MCHCP.

3 MCHCP'S OBLIGATIONS

3.1 MCHCP Responsibilities: MCHCP will provide the following administrative services to assist EAP:

3.1.1 Certification of employee eligibility in the form of electronic media

3.1.2 Maintenance of employee eligibility data

3.1.3 Payment of monies owed by MCHCP and due the contractor

3.2 Payment: MCHCP shall promptly pay all monies due EAP in a timely manner. MCHCP will remit all payments electronically. The monthly fee(s) due EAP will be self-billed by MCHCP and will be paid on the 10th of the month following the end of the month of coverage. The amount due EAP will be calculated by the number of eligible employees times the contracted per employee per month (PEPM) price.

EAP shall have the right to audit appropriate MCHCP records to determine the accuracy of the monthly payment. Any discrepancies must be identified by EAP within ninety (90) days after receipt of the payment and such discrepancy must be submitted in writing to MCHCP. Failure to identify a discrepancy within the timeframe stated shall be considered as acceptance of MCHCP's calculations and records.

Once the minimum annual pool of CID hours, educational session, and/or health fair hours have been exhausted, EAP shall bill the requesting agency directly and payment for the services will be handled directly with the requesting agency.

4 RECORDS RETENTION, ACCESS, AUDIT, AND FINANCIAL COMPLIANCE

4.1 Audit Rights: MCHCP and its designated auditors shall have access to and the right to examine any and all pertinent books, documents, papers, files, or records of EAP involving any and all transactions related to the performance of this Contract, including provision do the Business Associate Agreement. EAP shall furnish all information necessary for MCHCP to comply with

all Missouri and/or federal laws and regulations. MCHCP shall bear the cost of any such audit or review. MCHCP and EAP shall agree to reasonable times for EAP to make sure records available for audit.

4.2 Ownership: All data developed or accumulated by EAP under this Contract shall be owned by MCHCP. EAP 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.

4.3 Access to Records: Upon reasonable notice, EAP 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. EAP agrees to provide the access described wherever EAP maintains such books, records, and supporting documentation. Further, EAP 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. EAP 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 EAP to the extent that the books, documents and records relate to costs or pricing data for this Contract. EAP agrees to maintain records which will support the prices charged and costs incurred for performance of services performed under this Contract. To the extent described herein, EAP shall give full and free access to all records to MCHCP and/or their authorized representatives.

5 Scope of Work

5.1 EAP shall provide a fully-insured Employee Assistance Program (EAP) for eligible active employees of the State of Missouri and participating public entities and members of their households in accordance with the provisions and requirements of this contract.

5.2 Confidentiality: EAP shall ensure that all clinical information is held strictly confidential and protected in accordance with all applicable federal and state privacy laws and regulations, including but not limited to HIPAA and applicable confidentiality requirements governing behavioral health issues .

5.3 Eligibility: All determinations of eligibility shall be made by MCHCP.

5.3.1 An active employee shall be eligible for EAP services if the employee is in a benefit-eligible position that provides eligibility for benefits through MCHCP.

5.3.2 A public entity must elect to participate in EAP services for its employees to be eligible. Upon election, active MCHCP-eligible public entity employees and members of their household shall be eligible for EAP services.

- 5.3.3 Surviving household members of a deceased employee shall continue to be eligible for EAP services for a period of six (6) months following the employee's death.
- 5.3.4 Employees who experience a layoff and members of their household will continue to be eligible for EAP services through the last day of the month following the layoff date.

5.4 Account Management: EAP shall establish and maintain, throughout the term of the contract, a dedicated account management team to work directly with MCHCP staff. All members of the account management team shall be subject to MCHCP approval. The account management team shall devote sufficient time and resources to the account and shall be available for telephonic and on-site consultation with MCHCP, as required

- 5.4.1 At MCHCP's request, EAP shall meet with MCHCP staff and/or the MCHCP Board of Trustees to review the status of the account, including utilization trends, performance metrics, and costs, and to present recommendations or innovative solutions that may benefit MCHCP. Meetings shall be held at MCHCP's office unless otherwise agreed. EAP's meeting participants shall include appropriate account managers and organizational decision-makers with authority to impact account performance. EAP shall be solely responsible for all of contractor's travel and out-of-pocket expenses incurred in relationship to these meetings.

5.5 Implementation: EAP and MCHCP must agree to a final implementation schedule within thirty (30) days of the contract award. At a minimum, the timeline must include the required dates for the following activities:

- 5.5.1 Testing of eligibility file
- 5.5.2 Acceptable date for final eligibility file
- 5.5.3 Development of covered population communications
- 5.5.4 Distribution of covered population communications
- 5.5.5 Plan for transitioning open referral authorizations from incumbent
- 5.5.6 Analysis of network disruption from incumbent network to EAP's network and communication to eligible persons affected by such disruption.

5.6 Customer Service: EAP shall provide a high-quality customer service unit fully trained in all services covered by this contract. Live customer service representatives shall be available twenty-four (24) hours per day, seven (7) days per week.

- 5.6.1 EAP must have the ability to track and report customer services metrics, including but not limited to telephone response time, call abandonment rate, and the volume of inquiries made by type. MCHCP may request copies of this performance report at any time.
- 5.6.2 EAP must accept and use MCHCP's current toll free number (800-808-2261). Upon the award of the contract, EAP must facilitate the transfer of the number from the incumbent contractor's telephone carrier to the EAP's telephone carrier.

5.6.3 The customer service call center must have translation services available immediately and not require an additional phone call or callback by the client.

5.6.4 EAP must conduct a satisfaction survey annually using a statistical random sample representative of the covered population.

5.7 Communications: EAP agrees that all written communications and marketing materials developed or used to communicate specifically with members during the contract term shall be reviewed and approved by MCHCP before distribution. All costs associated with the printing and mailing of such materials shall be the responsibility of the contractor. Notwithstanding the foregoing, nothing herein shall prohibit EAP from communicating directly with eligibles in the ordinary course of providing services under the contract, including responding to inquiries or facilitating access to services..

5.8 Integrated Approach: EAP must provide an integrated continuity-of-care approach for eligible persons. This will require EAP to understand all of the MCHCP medical plans including the mental health benefits. EAP must be able to coordinate activities closely with the mental health benefits in the health plans offered by MCHCP as well as community services in all geographic areas within Missouri. EAP also will be expected to be knowledgeable and establish liaisons with community service resources that are available to eligible persons.

5.9 Short Term Counseling Services: EAP shall provide short-term counseling and referral services for emotional, mental health and personal concerns consistent with standard Employee Assistance Program practices.

5.9.1 EAP shall provide 24-hour, 7-days-per-week, toll-free telephone access to qualified, licensed mental health professionals throughout the year.

5.9.2 EAP shall provide ten (10) no cost counseling visits per person, per problem, per calendar year.

5.9.2.1 A problem is defined as a request for services related to a specific event or concern that requires short-term counseling and/or referral for ongoing treatment.

5.9.2.2 There shall be no annual limit on the number of problems for which an individual may access EAP services.

5.9.3 Employer Mandated Visits: EAP shall provide ten (10) no-cost employer-mandated counseling visits per active employee, per referral, when required by the employer as part of a management or supervisory referral, including disciplinary or performance-related processes. There shall be no annual limit on the number of employer-mandated referrals an employee may receive.

5.9.4 A visit or session is defined as a face-to-face interaction, either in person or via secure telehealth, between the eligible individual and a qualified, licensed mental health professional. Telephone calls alone do not constitute a counseling session. When more than one family member participates in a session, each participating individual shall be counted as having utilized one session.

5.9.5 EAP shall arrange a referral for an eligible individual to a local licensed mental health professional and ensure the individual is able to schedule an initial appointment within three (3) days following a request.

5.10 Legal Services: EAP shall provide an initial face-to-face or phone consultation of up to sixty (60) minutes with a network attorney, per separate legal matter, per year.

5.11 Financial Services: EAP shall provide unlimited phone consultation with financial services professionals.

5.12 Identity Theft: EAP shall provide access to trained fraud-resolution specialists to assist eligible persons who have experienced identity theft, including a no-cost, sixty (60) minute consultation that focuses on the immediate fraud-related issues faced by the eligible person.

5.13 Critical Incident: EAP shall provide Critical Incident Debriefing (CID) programs. Services must be available on-site within five (5) days of the request.

5.13.1 Participating state agencies and public entities may request the CID services directly from EAP on a first-come, first-serve basis.

5.13.2 EAP shall provide a minimum annual pool of two hundred (200) CID hours.

5.13.3 Upon exhaustion of the annual CID service hour pool, additional CID services may be provided at the request of a participating agency, with prior notice to and approval by MCHCP. Any additional CID service hours shall be provided at the expense of the requesting agency. EAP shall notify the requesting agency in advance of the anticipated cost of the additional services prior to delivery.

5.14 Educational Sessions: EAP shall develop and provide educational sessions covering a variety of topics, including but not limited to stress management, relaxation techniques, biofeedback and workplace violence prevention.

5.14.1 Participating state agencies and public entities may request educational sessions directly from EAP on a first-come, first-serve basis.

5.14.2 EAP shall provide a minimum annual pool of sixty (60) educational sessions equal to ninety (90) minutes each, at locations and times determined by MCHCP, state departments, divisions, or agencies or public entity groups in consultation with EAP.

5.14.3 Upon exhaustion of the annual pool of educational sessions, additional sessions shall be provided at the request of a participating agency, with prior notice to and approval by MCHCP. Any additional educational sessions shall be provided at the expense of the requesting agency. EAP shall notify the requesting agency in advance of the anticipated cost prior to the delivery of the additional session(s)..

5.15 Supervisor Training: EAP shall provide annual supervisor training sessions regarding appropriate use of EAP services. EAP shall provide an annual pool of sixteen (16), one (1) hour "train-the-trainer" supervisor sessions as requested by MCHCP. These are generally held in April or May. All costs for these sessions are the responsibility of EAP.

5.16 Health Fairs: EAP shall participate in on-site health fairs.

- 5.16.1** Participating state agencies and public entities may request EAP participation in on-site health fairs directly from EAP on a first-come, first-serve basis.
- 5.16.2** EAP shall provide a minimum annual pool of forty-nine (49) health fair hours.
- 5.16.3** Upon exhaustion of the annual pool of health fair service hours, additional health fair participation may be provided at the request of a participating agency, with prior notice to and approval by MCHCP. Any additional health fair service hours shall be provided at the expense of the requesting agency. EAP shall notify the requesting agency in advance of the anticipated cost prior to delivery of the additional services.

5.17 Informational Materials: EAP must develop and provide education and promotional materials for use by employees or employers, including but not limited to brochures, posters, newsletters or other general information which encourages the use of the EAP benefit.

- 5.17.1** EAP must develop and provide a refrigerator magnet, benefit summary, and question-and-answer (Q&A) document to be mailed to each eligible employee's home address no later than January 31, 2027. For newly eligible employees, these materials shall be available and mailed to the employee's home address within thirty-one (31) days of notification of eligibility.
- 5.17.2** A minimum of 3,000 posters and supervisor handbooks shall be available each contract year to MCHCP. This may be reduced at MCHCP's discretion if EAP implements a web-based supervisor education program.
- 5.17.3** At least one (1) mailing to each employee's home address in each contract renewal year prior to the beginning of the renewal contract period is required. The mailings may include information such as updated program materials, information on new or enhanced services, and/or general information intended to encourage utilization of the EAP benefit.

5.18 Provider Network: EAP shall maintain a provider network that is sufficient size and composition to ensure that all covered services are accessible to eligibles without unreasonable delay

- 5.18.1** EAP shall credential their network providers in accordance with industry standards to ensure the quality, safety and appropriateness of services delivered through the network.
- 5.18.2** EAP must provide and maintain a comprehensive Missouri and national provider network for MCHCP eligible members. The network must be available to eligible persons throughout the United States. EAP shall notify MCHCP within ten (10) days of any material change in network geographic access from what was proposed in the RFP response.

5.18.3 EAP shall provide and maintain a geographically adequate provider network for the covered population and shall comply with the following access standards:

5.18.3.1 Ninety percent (90%) of eligible persons must live within twenty-five (25) miles of one (1) provider practice which is accepting new patients throughout the term of the contract.

5.18.3.2 Ninety percent (90%) of eligible persons residing in the following counties must live within twenty-five (25) miles of five (5) provider practices which are accepting new patients throughout the term of the contract: St. Louis City, St. Louis County, St. Charles, Jackson, Greene, Cole, Boone, and Callaway.

5.18.4 EAP shall have a process for monitoring and ensuring on an ongoing basis the sufficiency of the network to meet the needs of the covered population. In addition to looking at the needs from an overall covered population standpoint, EAP shall ensure the network 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.

5.19 Electronic Transmission Protocols: EAP 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.).

5.20 Information Technology and Eligibility File: EAP shall accept MCHCP eligibility information on a weekly basis. MCHCP will provide eligibility data in an electronic format, and the contractor shall process each file within twenty-four (24) hours of receipt. The contractor must designate a technical contact to provide support to the MCHCP Information Technology Department for electronic data interchange (EDI) issues.

5.20.1 MCHCP shall send a full eligibility file.

5.20.2 After processing each file, EAP 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 the contractor audits will be provided to ensure the data MCHCP is sending will pass EAP's audit tests.

5.20.3 EAP shall provide access to view data on their system to ensure the file MCHCP sends is correctly updating the contractor's system.

5.20.4 EAP will supply a data dictionary of the fields MCHCP is updating on their system and the allowed values for each field.

5.20.5 EAP 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. EAP must accept a final eligibility file no later than 30 days prior to the contract effective date.

5.21 Website: EAP shall maintain an active, current web portal that is customizable for client-specific branding, including use of the MCHCP logo. The web portal should be updated regularly and designed to support a simplified, user-friendly member experience. The portal shall be fully accessible to all eligible members, including individuals who are hearing or visually impaired. Accessibility requirements shall include at a minimum, real-time closed captioning or immediately available transcripts for any videos, webinars or webcast events hosted on the website. The web portal shall include functionality that allows eligibles to:

- 5.21.1** Access current network provider directories. If MCHCP identifies inaccuracies in provider information displayed on the EAP's website, MCHCP shall notify the contractor. EAP shall correct any identified inaccuracies within ten (10) days of notification or upon discovery by EAP, whichever occurs first.
- 5.21.2** Map provider locations
- 5.21.3** Complete satisfaction surveys
- 5.21.4** Access additional program and benefit information
- 5.21.5** EAP must be able to support single sign-on from MCHCP's Member Portal to EAP's Member Portal utilizing Security Assertion Markup Language (SAML) if deemed necessary.

5.22 Reporting: EAP will provide quarterly and annual reports to MCHCP. Quarterly reports shall be submitted within twenty (20) days following the close of each calendar quarter. Annual reports shall be submitted within forty-five (45) days following the close of the ninety (90)-day claim run-out period. Reports may be submitted in the contractor's standard format, subject to prior review and approval by MCHCP. EAP shall provide additional information and/or reports, within reason, as requested by MCHCP. Any costs associated with the development of additional reports shall be subject to negotiation and mutual agreement between the contractor and MCHCP.

5.23 Performance Standards: EAP shall follow the performance standards as outlined in Exhibit XX. EAP agrees that any liquidated damages assessed by MCHCP shall be in addition to, and not in lieu of, any other equitable remedies available under the contract or awarded by a court of law including injunctive relief. The assessment of liquidated damages assessed by MCHCP shall not be construed as a waiver of any contract requirement or provision, nor as a waiver by MCHCP of any other remedies available in law or in equities. EAP is required to self-report compliance and non-compliance with performance guarantees. MCHCP reserves the right to audit performance standards and require supporting documentation to verify compliance.

6 CANCELLATION, TERMINATION OR EXPIRATION

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

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

6.3 Termination Right: Notwithstanding any other provision, MCHCP reserves the right to terminate this Contract without penalty or recourse by giving EAP thirty (30) days prior notice of termination.

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

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

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

EAP.

By: _____

By: _____

Title: Executive Director

Title: _____

Date: _____

Date: _____

EXHIBIT A-7
BUSINESS ASSOCIATE AGREEMENT
BETWEEN MISSOURI CONSOLIDATED HEALTH CARE PLAN AND EMPLOYEE ASSISTANCE PROGRAM

This Business Associate Agreement (“Agreement”) between the Missouri Consolidated Health Care Plan (hereinafter “Covered Entity” or “MCHCP”) and Employee Assistance Program Contractor (hereinafter “Business Associate”) is effective XXXX, and entered into as a result of the business relationship between the parties in connection with services requested and performed under Contract #, 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”), the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 (the “HITECH Act”), and the HIPAA Rules, as defined in Section 2.1 below.

1 Purpose.

The Contract addresses and relates to the provision of employee assistance services.

The purpose of this Agreement is to comply with requirements of the Act, the HITECH Act, and the implementing regulations enacted under the Act and the HITECH 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 Pharmacy Benefit Manager 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 Employee Assistance Program Contractor.

“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.

- 3.4.1 The notice shall be delivered to, and confirmed received by, MCHCP without unreasonable delay, but in any event no later than three (3) business days of Business Associate's first discovery, as discovery is described under § 164.410, of the unauthorized use or disclosure, breach of unsecured PHI, or security incident.
- 3.4.2 The notice shall be in writing and sent to both of the following MCHCP workforce members and deemed delivered only upon personal confirmation, acknowledgement or receipt in any form, verbal or written, from one of the designated recipients:
- MCHCP's Privacy Officer → currently Jennifer Stilabower, (573) 522-3242, Jennifer.Stilabower@mchcp.org, 832 Weathered Rock Court, Jefferson City, MO 65101
 - MCHCP's Security Officer → currently Brad Kifer, (573) 526-2858, Brad.kifer@mchcp.org, 832 Weathered Rock Court, Jefferson City, MO 65101

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

- 3.4.3 The notice shall include to the fullest extent possible:
- a) a detailed description of what happened, including the date, time, and all facts and circumstances surrounding the unauthorized use or disclosure, breach of unsecured PHI, or security incident;
 - b) the date, time, and circumstances surrounding when and how Business Associate first became aware of the unauthorized use or disclosure, breach of unsecured PHI, or security incident;
 - c) identification of each individual whose PHI has been, or is reasonably believed by Business Associate to have been involved or otherwise subject to possible breach;
 - d) a description of all types of PHI known or potentially believed to be involved or affected;
 - e) identification of any and all unauthorized person(s) who had access to or used the PHI or to whom an unauthorized disclosure was made;
 - f) all decisions and steps Business Associate has taken to date to investigate, assess risk, and mitigate harm to MCHCP and all potentially affected individuals;
 - g) contact information, including name, position or title, phone number, email address, and physical work location of the individual(s) designated by Business Associate to act as MCHCP's primary contact for purposes of the notice triggering event(s);

- h) all corrective action steps Business Associate has taken or shall take to prevent future similar uses, disclosures, breaches, or incidents;
- i) if all investigatory, assessment, mitigation, or corrective action steps are not complete as of the date of the notice, Business Associate's best estimated timeframes for completing each planned but unfinished action step; and
- j) any action steps Business Associate believes affected or potentially affected individuals should take to protect themselves from potential harm resulting from the matter.

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

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

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

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

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

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

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

- 3.6 Individual Access to PHI. If an individual requests access to PHI under § 164.524, Business Associate agrees it will make all PHI about the individual which Business Associate created or received for or from MCHCP that is in Business Associate's custody or control available in a designated record set to MCHCP or, at MCHCP's direction, to the requesting individual or his or her authorized designee, in order to satisfy MCHCP's obligations as follows:
- 3.6.1 If Business Associate receives a request for individual PHI in a designated record set from MCHCP, Business Associate will provide the requested information to MCHCP within five (5) business days from the date of the request in a readily accessible and readable form and manner or as otherwise reasonably specified in the request.
- 3.6.2 If Business Associate receives a request for PHI in a designated record set directly from an individual current or former MCHCP member, Business Associate will require that the request be made in writing and will also promptly notify MCHCP that a request has been made verbally. If the individual submits a written request for PHI in a designated record set directly to Business Associate, no later than five (5) business days thereafter, Business Associate shall provide MCHCP with: (i) a copy of the individual's request to MCHCP for purposes of determining an appropriate response to the request; (ii) the designated record sets in Business Associate's custody or control that are subject to access by the requesting individual(s) requested in the form and format requested by the individual if it is readily producible in such form and format, or if not, in a readable hard copy form; and (iii) the titles of the persons or offices responsible for receiving and processing requests for access by individual(s). MCHCP will direct Business Associate in writing within five (5) business days following receipt of the information described in (i), (ii), and (iii) of this subsection 3.6.2 whether Business Associate should send the requested designated data set directly to the individual or whether MCHCP will forward the information received from Business Associate as part of a coordinated response or if for any reason MCHCP deems the response should be sent from MCHCP or another Business Associate acting on behalf of MCHCP. If Business Associate is directed by MCHCP to respond directly to the individual, Business Associate agrees to provide the designated record set requested in the form and format requested by the individual if it is readily producible in such form and format; or, if not, in a readable hard copy form or such other form and format as agreed to by Business Associate and the individual. Business Associate will provide MCHCP's Privacy Officer with a copy of all responses sent to individuals pursuant to § 164.524 and the directives set forth in this subsection 3.6.2 for MCHCP's compliance and documentation purposes.
- 3.7 Amendments of PHI. Business Associate agrees it will make any amendment(s) to PHI in a designated record set as directed or agreed to by MCHCP pursuant to § 164.526, and take other measures as necessary and reasonably requested by MCHCP to satisfy MCHCP's obligations under § 164.526.

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

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

3.8 PHI Disclosure Accounting. Business Associate agrees to document, maintain, and make available to MCHCP within fifteen (15) 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 fifteen (15) 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 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.
- 4.2 Authorization by Law. Business Associate may use or disclose PHI as permitted or required by law.
- 4.3 Qualified Authorization. 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:
- 4.3.1 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; and
- 4.3.2 This Agreement permits Business Associate to disclose PHI received by Business Associate in its capacity as a business associate of MCHCP, only if: (A) the disclosure is required by law; or (B) Business Associate obtains reasonable assurance from the person to whom the PHI is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person; and such person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- 4.4 Data Aggregation. In addition, Business Associate may 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.
- 4.5 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:
- 4.5.1 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 needs 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.

4.5.2 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.

4.5.3 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).

4.5.4 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.
- 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.
- 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.
- 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: _____