
Exhibit A-1

Intent to Bid – 2019 MCHCP Vision 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 Friday, March 9, 2018 at 4 p.m. CT (5 p.m. ET).
-

Minimum Bidder Requirements

To be considered for contract award, bidders must meet the following minimum requirements:

- Licensing – The bidder must hold a certificate of authority to do business in the State of Missouri and be in good standing with the office of the Missouri Secretary of State and the Missouri Department of Insurance, Financial Institutions and Professional Registration (DIFP). MCHCP requires the contractor to comply with all state and federal laws, rules and regulations affecting their conduct of business on their own behalf and on behalf of a covered entity such as MCHCP.
- Data Transfer – Bidder shall agree to provide claim-level data electronically to MCHCP or designated data vendor (currently Truven Health Analytics) on a monthly basis. Bidders may be required to demonstrate the ability to provide such data before a contract award is made.
- Size and Experience – The bidder must currently provide vision coverage to employers that have at least 250,000 covered lives combined and have at least one (1) client with 50,000 covered lives. The bidder must be willing to disclose the name of the large employer client if requested. The bidder must have been in operation and performing the services requested in this RFP for a minimum of five (5) years,
- Network – Bidders must offer a contracted vision provider network capable of delivering benefits as described in the stated plan designs. MCHCP requires a broad network that provides national coverage.
- Contract – Bidders shall not link nor attempt to link (unless permitted by this RFP), the award of this contract to any other bids, products or contracts. Any bid proposal containing any contingency based upon MCHCP's actual or potential awards of contracts, whether or not related specifically to this RFP, or containing pricing contingencies, shall result in such bid proposal being rejected for non-responsiveness and non-compliance with this RFP.
- Rates – Bidders shall not be permitted to alter their rate or fees after submission except with agreement by MCHCP.
- Timely Submission – All deadlines outlined are necessary to meet the timeline for this contract award. MCHCP may reject any submissions after respective deadlines have passed. All bidder documents and complete proposals must be received by the proposal

deadline of March 30, 2018, as outlined in the timeline of events for this RFP. Late proposals will not be accepted. MCHCP reserves the right to modify a deadline or extend a deadline for all bidders at its discretion.

- Plan Designs – Bidders must provide pricing for a base plan and premium plan design as described in the stated plan designs. Additional services and/or options may be offered as part of the entire plan design.

This form will serve as confirmation that our organization has received the 2019 MCHCP Vision 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

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

1. This Agreement is by and between MCHCP, a covered entity under the Health Insurance Portability and Accountability Act of 1996, as amended (“HIPAA”), and _____, hereinafter referred to as “User”.
2. This Agreement addresses the conditions under which MCHCP will disclose and the User will obtain and use MCHCP’s file(s) specified in this agreement. This Agreement supersedes any and all agreements between the parties with respect to the use of MCHCP’s file(s), and preempts and overrides any instructions, directions, agreements, or other understanding in or pertaining to any prior communication from MCHCP with respect to the data specified herein. Further, the terms of this Agreement can be changed only by a written modification to this Agreement, or by the parties adopting a new agreement. The parties agree further that instructions or interpretations issued to the User concerning this Agreement or the data specified herein, shall not be valid unless issued in writing by MCHCP’s Executive Director.
3. Unless otherwise expressly stated in this Agreement, all words, terms, specifications, and requirements used or referenced in this Agreement which are defined in the HIPAA Rules shall have the same meanings as described in the HIPAA Rules. Any reference in this Agreement to a section in the HIPAA Rules means the section as in effect or amended. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.
4. The parties mutually agree that MCHCP retains all ownership rights to the demographic 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 claims 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:

- Modeling of potential claim volume for purposes of bidding on a fully insured contract with MCHCP for vision benefits; and/or
- Network analysis and evaluation of proposed network's geographic accessibility to MCHCP for vision benefits; and/or
- Underwriting and premium rating for purposes of bidding on an insured contract with MCHCP for vision benefits.

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 5 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 4, 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.

Judith Muck, Executive Director
Missouri Consolidated Health Care Plan

Date

**EXHIBIT A-3
BIDDER'S PROPOSED MODIFICATIONS TO THE RFP
2019 MCHCP VISION 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
2019 MCHCP Vision RFP

Please complete this form following the steps listed below:

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

Yes

No

2) Bidders are required to submit a firm, fixed price for CY2019 and not-to-exceed prices for CY2020 and CY2021. Prices will be subject to best and final offer which may result from subsequent negotiation. Pricing for 2022 and 2023 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 and all RFP amendments.

Yes

No

3) Completion of the signature block below constitutes your company's acceptance of all terms and conditions of the original RFP plus any and all RFP amendments, and confirmation that all information include 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 Vendor 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
2019 MCHCP VISION 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

**Documentation of Intent to Participate
2019 MCHCP Vision RFP**

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

~ Copy This Form For Each Organization Proposed ~

Bidder Name: _____

This Section To Be Completed by Participating Organization:

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

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

PRODUCTS/SERVICES PARTICIPATING ORGANIZATION AGREED TO PROVIDE

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

Authorized Signature:

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

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

Exhibit A-7
Provider Match
Instructions

The purpose of this exercise is to determine network overlap with MCHCP's current vision network. The providers listed on each of the tabs represents the providers used by MCHCP members in a recent 12-month period.

1. Bidders should complete both the State and Public Entity tab, indicating in Column H whether the provider is currently participating in your proposed network. Complete the Participating Provider column based upon contracts that are in place as of March 1, 2018. Do not enter the status based upon future contracts.

2. Upload the completed document to DirectPath no later than Friday, March 30, 2018.

Exhibit A-8

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 # XXXX BETWEEN MISSOURI CONSOLIDATED HEALTH CARE PLAN AND **VISION VENDOR**

This Contract is entered into by and between Missouri Consolidated Health Care Plan ("MCHCP") and _____ (hereinafter "VENDOR" or "Contractor") for the express purpose of providing fully insured vision plan(s) for State and Public Entity members pursuant to MCHCP's 2019 Vision RFP released March 5, 2018 (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, 2019 through December 31, 2019. This Contract may be renewed for four (4) additional one-year periods at the sole option of the MCHCP Board of Trustees. The submitted pricing arrangement for the first year (January 1 - December 31, 2019) is a firm, fixed price. The submitted prices for the subsequent (2nd – 3rd) years of the contract period (January 1 - December 31, 2020, January 1 - December 31, 2021, are guaranteed not-to-exceed maximum prices and are subject to negotiation. Pricing for the one-year renewal periods are due to MCHCP by May 15 for the following year's renewal. All prices are subject to best and final offer which may result from subsequent negotiation.

1.2 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 VENDOR in response to the RFP, finalist negotiations, and implementation meetings:
 - i. Pricing Pages
 - ii. Business Associate Agreement
 - iii. Confirmation Document
 - iv. Performance Guarantees
 - v. 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 VENDOR as evidenced by VENDOR 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 VENDOR'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 VENDOR has authority to make, or has made, any statement, agreement or representation, oral or written, in connection with this Contract, which in any way can be deemed to modify, add to or detract from, or otherwise change or alter its terms and conditions. No negotiations between the parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of this Contract.

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

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

1.6 Notices: Unless otherwise expressly provided otherwise, all notices, demands, requests, approvals, instructions, consents or other communications (collectively "notices") which may be required or desired to be given by either party to the other during the course of this contract shall be in writing and shall be made by personal delivery, by prepaid overnight delivery, by United States mail postage prepaid, or transmitted by email to an authorized employee of the

other party or to any other persons as may be designated by written notice from one party to the other. Notices to MCHCP shall be addressed as follows: Missouri Consolidated Health Care Plan, ATTN: Executive Director, P.O. Box 104355, Jefferson City, MO 65110-4355. Notices to VENDOR shall be addressed as follows: VENDOR 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 VENDOR's assurances of the following:
- VENDOR, including its subcontractors, has the skills, qualifications, expertise, financial resources and experience necessary to perform the services described in the RFP, VENDOR'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.
 - VENDOR 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.
 - VENDOR 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, VENDOR currently has the capability to perform in accordance with the terms and conditions of this Contract.
 - VENDOR has also reviewed and understands the risks associated with administering services as described in the RFP.

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

2.1 Eligible Members: **VENDOR** shall agree that eligible members are those employees, retirees and their dependents who are eligible as defined by applicable state and federal laws, rules and regulations, including revision(s) to such. MCHCP is the sole source in determining eligibility. **VENDOR** shall not regard a member as terminated until **VENDOR** receives an official termination notice from MCHCP.

2.2 Confidentiality: **VENDOR** 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 **VENDOR** except as authorized by MCHCP, either during the period of this Contract or thereafter. **VENDOR** must agree to return any or all data furnished by MCHCP promptly at the request of MCHCP in whatever form it is maintained by **VENDOR**. On the termination or expiration of this Contract, **VENDOR** 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.

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

2.4 Disclosure of Material Events: **VENDOR** 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 **VENDOR**;

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

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

- 2.5 Off-shore Services:** All services under this Contract shall be performed within the United States. VENDOR 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 VENDOR being in breach of this Contract.
- 2.6 Change in Laws:** VENDOR agrees that any state and/or federal laws and applicable rules and regulations enacted during the terms of the contract which are deemed by MCHCP to necessitate a change in the contract shall be incorporated into the contract automatically. MCHCP will review any request for additional fees resulting from such changes and retains final authority to make any changes. A consultant may be utilized to determine the cost impact.
- 2.7 Compliance with Laws:** VENDOR 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.
- 2.7.1 Non-discrimination, Sexual Harassment and Workplace Safety:** VENDOR agrees to abide by all applicable federal, state and local laws, rules and regulations prohibiting discrimination in employment and controlling workplace safety. VENDOR shall establish and maintain a written sexual harassment policy and shall

inform its employees of the policy. **VENDOR** 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.

2.7.2 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)**, **VENDOR** 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, **VENDOR** 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.

2.7.3 Patient Protection and Affordable Care Act (PPACA): If applicable, **VENDOR** 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.

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

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

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

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

2.10 Solicitation of Members: **VENDOR** 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.

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

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

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

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

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

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

2.17 Tax Payments: VENDOR 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 VENDOR.

2.18 Conflicts of Interest: VENDOR 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, VENDOR 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 Administrative Services: MCHCP shall provide the following administrative services to assist VENDOR

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

- Coordination of open enrollment period; and
- Administration of COBRA regulations.

3.2 Eligibility: All determinations for coverage eligibility will be made by MCHCP. Effective and termination dates of plan participants will be determined by MCHCP. VENDOR will be notified of enrollment changes through the carrier enrollment eligibility file, by telephone or by written notification from MCHCP. Eligibility and Enrollment periods will be determined by state regulations, 22 CSR 10-2.020 and 22 CSR 10-3.030. VENDOR shall refer any and all questions received from members regarding eligibility or premiums to MCHCP.

3.3 Payment: VENDOR shall agree that the monthly premium due the contractor will be self-billed and will be initiated for electronic payment via automated clearing house (ACH) on the twentieth of the month following the month of coverage. MCHCP will remit all payments and provide all associated reports electronically. VENDOR shall have the right to audit appropriate MCHCP records to determine the accuracy of the monthly premium paid. Any discrepancies must be identified by VENDOR within 90 days after receipt of the payment and such discrepancy must be submitted in writing to MCHCP. Failure to identify a discrepancy within the time frame stated shall be considered as acceptance of MCHCP's calculations, payment and records.

4 RECORDS RETENTION, ACCESS, AUDIT, AND FINANCIAL COMPLIANCE

4.1 Retention of Records: Unless MCHCP specifies in writing a shorter period of time, VENDOR 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. VENDOR agrees that authorized federal representatives, MCHCP personnel, and independent auditors acting on behalf of MCHCP and/or federal agencies shall have access to and the right to examine records during the contract period and during the ten (7) year post contract period. Delivery of and access to the records shall be at no cost to MCHCP.

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

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

4.4 Access to Records: Upon reasonable notice, **VENDOR** 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. **VENDOR** agrees to provide the access described wherever **VENDOR** maintains such books, records, and supporting documentation. Further, **VENDOR** 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. **VENDOR** 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 **VENDOR** to the extent that the books, documents and records relate to costs or pricing data for this Contract. **VENDOR** agrees to maintain records which will support the prices charged and costs incurred for performance of services performed under this Contract. Also, **VENDOR** must furnish all information necessary for MCHCP to comply with all state and/or federal regulations. To the extent described herein, **VENDOR** shall give full and free access to all records to MCHCP and/or their authorized representatives.

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

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

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

5 Scope of Work

5.1 Fully Insured Plan: The contractor shall provide a fully-insured vision plan(s) for eligible and enrolled State and Public Entity members in accordance with the provisions and requirements of this contract on behalf of MCHCP.

- 5.2 Level of Benefits:** VENDOR must administer the plan design presented in the RFP and attached as Exhibit X of this contract. Members shall not be required to pay any additional enrollment fees, application fees or other charges in addition to the monthly premium.
- 5.3 COBRA Coverage:** VENDOR shall comply with the provisions of the Consolidated Omnibus Budget Reconciliation Act (COBRA), Public Law 99-272, as amended, and provide the required maximum period of continuation coverage for eligible members. The contractor agrees that MCHCP will administer COBRA and will retain the additional 2 percent premium.
- 5.4 Website:** VENDOR must have an active, current website that is updated regularly. MCHCP members must be able to access this site to obtain current listings of active network providers and other information. If MCHCP discovers that provider information contained at the contractor's website is inaccurate, MCHCP will notify VENDOR immediately. VENDOR must correct inaccuracies within 10 days of being notified by MCHCP.
- 5.5 Single Sign On:** VENDOR must be able to support single sign-on from MCHCP's Member Portal to the contractor's Member Portal utilizing Security Assertion Markup Language (SAML).
- 5.6 Appeals and Grievance Procedure:** VENDOR shall have the responsibility to perform a complete investigation of all complaints, grievances and appeals and make decisions regarding vision necessity and the provision of services or benefits. VENDOR shall have a timely and organized system for resolving members' complaints and grievances in compliance with state and federal laws and regulations, as amended. If the member's grievance is not resolved to his or her satisfaction, the member has the right to a formal appeal to VENDOR. VENDOR's appeal process shall be in compliance with state and federal laws and regulations as amended.
- 5.7 Account Management:** VENDOR shall establish and maintain throughout the term of the contract an account management team that will work directly with MCHCP staff. This team must include, but is not limited to, a dedicated account executive, a customer service manager, clinical advisor, a person responsible for preparing the reports and an information technology representative. Approval of the account management team rests with MCHCP. The account executive and service representative(s) will deal directly with MCHCP's benefit administration staff. The account management team must:
- 5.7.1** Be able to devote the time needed to the account, including being available for telephone and on-site consultation with MCHCP.
 - 5.7.2** Be extremely responsive.
 - 5.7.3** Be comprised of individuals with specialized knowledge of the contractor's networks, claims and eligibility systems, system reporting capabilities, claims adjudication policies and procedures, administrative services, and relations with third parties.
 - 5.7.4** Be thoroughly familiar with virtually all of the contractor's functions that relate directly or indirectly to the MCHCP account.
 - 5.7.5** Act on behalf of MCHCP in cutting through the bureaucracy of the VENDOR's organization. The account management team must be able to effectively advance the interest of MCHCP through VENDOR's corporate structure.

5.7.6 VENDOR agrees to provide MCHCP with at least 15 days advance notice of any material change to its account management and servicing methodology or to a personnel change in the contractor's account management and servicing team.

5.8 Meetings: MCHCP requires VENDOR to meet with MCHCP staff and/or Board of Trustees as requested to discuss the status of the MCHCP account in terms of utilization patterns and costs, as well as propose new ideas that may benefit MCHCP and its members. VENDOR is expected to present actual MCHCP claims experience and offer suggestions as to ways the benefit could be modified in order to reduce costs or improve the health of MCHCP members. Suggestions must be modeled against actual MCHCP membership and claims experience to determine the financial impact as well as the number of members impacted. VENDOR must also present benchmark data by using the plan's entire book of business, a comparable client to MCHCP, or some other industry norm.

5.9 Customer Service: VENDOR must provide a high quality and experienced customer service unit. VENDOR's staff members must be fully trained in the MCHCP benefit design, and the contractor must have the ability to track and report performance in terms of telephone response time, call abandonment rate, and the number of inquiries made by type.

5.9.1 VENDOR shall maintain a toll-free telephone line to provide prompt access for members and providers to qualified customer service personnel. At a minimum, customer service must be available between the hours of 8:00 a.m. and 5:00 p.m. CT Monday through Friday except for designated holidays.

5.9.2 VENDOR must have a customer service unit in place to answer member inquiries regarding, but not limited to, network and benefit issues.

5.9.3 VENDOR shall refer any and all questions received from members regarding eligibility or premiums to MCHCP.

5.10 ID Cards: VENDOR is responsible for developing, printing and mailing any necessary identification cards directly to the member's home. VENDOR is responsible for these production and mailing costs.

5.11 Written Communications: VENDOR shall agree that MCHCP reserves the right to review and approve all written communications and marketing materials developed and used by VENDOR to communicate specifically with MCHCP members at any time during the contract period. This does not refer to items such as provider directories and plan-wide newsletters as long as they do not contain information on eligibility, enrollment, benefits, rates, etc., which MCHCP must review. Notwithstanding the foregoing, nothing herein prohibits contractor from communicating directly with members in the regular course of providing services under the contract (e.g., responding to member inquiries, etc.).

5.12 Contracted Network: VENDOR must have in place a contracted provider network which will offer access to all MCHCP members nationwide. The offered network must include a full range of general vision practitioners and vision specialists. VENDOR is responsible for having a network available that can provide access to all covered services under this contract. Network providers will be responsible for obtaining all necessary pre-certifications, pre-authorizations, and filing claims for members. At a minimum, ninety percent (90%) of MCHCP members shall have access to a network general dentist provider within twenty (20) miles of their zip code.

5.13 Provider Listings: No provider may be listed on VENDOR's website or distributed to the membership through the vision plan's customer service unit unless a signed contract is in place. In the event a plan provides incorrect information and a member seeks treatment based on that information, VENDOR agrees to recognize and be financially responsible for any services rendered by that provider, under the terms of this contract, as if the provider had been under contract.

5.14 Provider Directories: VENDOR must provide MCHCP members with a toll-free number to request provider directories. These directories must be mailed to the member within three business days of receipt of such request. VENDOR bears all costs for printing and mailing these materials. VENDOR is also required to provide this information via their web site.

5.15 Information Technology and Eligibility File: The contractor shall be able to accept all MCHCP eligibility information on a weekly basis utilizing the ASC X12N 834 (005010X095A1) transaction set. MCHCP will supply this information in an electronic format and the contractor must process such information within 24 hours of receipt. The contractor must provide a technical contact that will provide support to MCHCP Information Technology Department for EDI issues.

5.15.1 It is MCHCP's intent to send a transactional based eligibility file weekly and a periodic full eligibility reconciliation file.

5.15.2 MCHCP will provide a recommended data mapping for the 834 transaction set to the VENDOR.

5.15.3 After processing each file, VENDOR 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 the contractor's audit tests.

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

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

5.15.6 VENDOR shall provide MCHCP with a monthly file ("eligibility audit file") in a mutually agreed upon format of contractor's eligibility records for all MCHCP members. Such file shall be utilized by MCHCP to audit contractor's records. Such eligibility audit file shall be provided to MCHCP no later than the second Thursday of each month.

5.15.7 The preferred method of file transfer is SFTP. No PGP required.

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

- Testing of eligibility file;
- Acceptable date for final eligibility file;
- ID card production and distribution;

- Enrollment kit printing
- Testing of claim file to data warehouse vendor

5.16.1 Open Enrollment Customer Service Center: VENDOR must have a customer service unit in place to answer member inquiries. Note: Open enrollment is anticipated to be October 1-31, 2018 with coverage effective January 1, 2019. At a minimum, the customer service unit must be able to address network and benefit issues.

5.16.2 Initial Eligibility File Testing: VENDOR must work with MCHCP to develop a schedule for testing of the eligibility test record set on electronic media. MCHCP requires that the contractor accept and run an initial test record set no later than September 28, 2018. Results of the test must be provided to MCHCP by October 12, 2018.

6 REPORTING

6.1 VENDOR agrees that all data required by MCHCP shall be confidential and will not be public information. VENDOR further agrees not to disclose this or similar information to any person or company, either directly or indirectly.

6.2 MCHCP reserves the right to retain a third party contractor (currently Truven Health Analytics®, part of the IBM Watson Health) to receive claims-level data from VENDOR and store the data on MCHCP's behalf. This includes a full claim file including, but not limited to all financial, demographic and utilization fields. The contractor agrees to cooperate with MCHCP's designated third party contractor in the fulfillment of VENDOR's duties under this contract, including the provision of data as specified without constraint on its use. VENDOR further agrees to:

- 6.2.1** Provide claims, person-level capitation and utilization data to MCHCP and/or MCHCP's data vendor in a format specified by MCHCP with the understanding that the data shall be owned by MCHCP;
- 6.2.2** Provide data in an electronic form and within a time frame specified by MCHCP;
- 6.2.3** Place no restraints on use of the data, provided MCHCP has in place procedures to protect the confidentiality of the data consistent with HIPAA requirements; and
- 6.2.4** This obligation continues for a period of one year following contract termination.

6.3 Quarterly and Annual Reports: VENDOR shall submit standard reports to MCHCP on a quarterly and annual basis. (MCHCP and VENDOR will negotiate the format and content upon award of this contract.) The reports shall be submitted to MCHCP quarterly and are due within 30 days of the end of the quarter reported. Annual reports are due within 45 days of the end of the year.

6.4 Call Reports: VENDOR shall provide quarterly reports detailing customer service telephone answer time and abandonment. A sample of the bidder's standard reports must be submitted with the proposal. The reports shall be submitted to MCHCP quarterly and are due within 30 days of the end of the quarter reported.

6.5 Annual Customer Satisfaction Survey: At the request of MCHCP and at VENDOR's expense, VENDOR agrees to conduct an annual customer satisfaction survey, and provide MCHCP with all information and responses in connection therewith.

6.6 Ad Hoc Reports: At the request of MCHCP, VENDOR shall submit additional ad hoc reports on information and data readily available to VENDOR.

6.7 Acceptance of Reports and Damages for Late Reports: MCHCP will determine the acceptability of all reports submitted based upon timeliness, format and content. If reports are not deemed to be acceptable or have not been submitted as requested, the contractor will receive written notice to this effect and the applicable liquidated damages, as defined in Exhibit X, will be assessed.

7 CANCELLATION, TERMINATION OR EXPIRATION

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

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

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

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

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

7.6 Rights and Remedies: If this Contract is terminated, MCHCP, in addition to any other rights provided for in this Contract, may require VENDOR to deliver to MCHCP in the manner and to

the extent directed, any completed materials. In the event of termination, VENDOR 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

VENDOR

By: _____

By: _____

Title: Executive Director

Title: _____

Date: _____

Date: _____

SAMPLE

EXHIBIT A-9 BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) between the Missouri Consolidated Health Care Plan (hereinafter “Covered Entity” or “MCHCP”) and **Vision Insurer**. (hereinafter “Business Associate”) is entered into as a result of the business relationship between the parties in connection with services requested and performed in accordance with the **RFP Name** (“RFP”) and under Contract #2019-VIS-01, as renewed and amended, (hereinafter the “Contract”).

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

1 Purpose.

The Contract is for fully insured vision insurance for state and public entity members.

The purpose of this Agreement is to comply with requirements of the Act and the implementing regulations enacted under the Act, 45 CFR Parts 160 - 164, as amended, to the extent such laws relate to the obligations of business associates, and to the extent such laws relate to obligations of MCHCP in connection with services performed by **Vision Insurer** 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 **Vision Insurer**.

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

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

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

- 2.3 To the extent a term is defined in the Contract and this Agreement, the definition in this Agreement, subject in all material respects to the HIPAA Rules, shall govern.
- 2.4 Notwithstanding the forgoing, for ease of reference throughout this Agreement, Business Associate understands and agrees that wherever PHI is referenced in this Agreement, it shall be deemed to include all MCHCP-related PHI in any format or media including paper, recordings, electronic media, emails, and all forms of MCHCP-related ePHI in any data state, be it data in motion, data at rest, data in use, or otherwise.

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

- 3.1 Business Associate agrees to not use or disclose PHI other than as permitted or required by this Agreement or as required by law.
- 3.2 Appropriate Safeguards. Business Associate agrees to implement, maintain, and use appropriate administrative, physical, and technical safeguards, and fully comply with all applicable standards, implementation specifications, and requirements of Subpart C of 45 CFR Part 164 with respect to ePHI, in order to: (i) ensure the confidentiality, integrity, and availability of ePHI created, received, maintained, or transmitted; (ii) protect against any reasonably anticipated threats or hazards to the security or integrity of such information; and (iii) protect against use or disclosure of ePHI by Business Associate, its workforce, and its subcontractors other than as provided for by this Agreement.
- 3.3 Subcontractors. Pursuant to §§ 164.308(b)(2) and 164.502(e)(1)(ii), Business Associate agrees it will not permit any subcontractors to create, receive, access, use, maintain, disclose, or transmit PHI in connection with, on behalf of, or under the direction of Business Associate in connection with performing its duties and obligations under the Contract unless and until Business Associate obtains satisfactory assurances in the form of a written contract or written agreement in accordance with §§ 164.504(e) and 164.314(a)(2) that the subcontractor(s) will appropriately safeguard PHI and in all respects comply with the same restrictions, conditions, and requirements applicable to Business Associate under the HIPAA Rules and this Agreement with respect to such information.

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

- 3.4 Reports to MCHCP. Business Associate agrees to report any use or disclosure of PHI not authorized or provided for by this Agreement, including breaches of unsecured PHI and any security incident involving MCHCP to MCHCP in accordance with the notice provisions prescribed in this Section 3.4. For purposes of the security incident reporting requirement, the term “security incident” shall not include inconsequential incidents that occur on a daily basis, such as scans, “pings,” or other unsuccessful attempts to penetrate computer networks or servers containing ePHI maintained or transmitted by Business Associate.
- 3.4.1 The notice shall be delivered to, and confirmed received by, MCHCP without unreasonable delay, but in any event no later than three (3) business days of Business Associate’s first discovery, as discovery is described under § 164.410, of the unauthorized use or disclosure, breach of unsecured PHI, or security incident.

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

- MCHCP's Privacy Officer → currently, Jennifer Stilabower, (573) 522-3242, Jennifer.Stilabower@mchcp.org, 832 Weathered Rock Court, Jefferson City, MO 65101
- MCHCP's Security Officer → currently, Bruce Lowe, (573) 526-3114, Bruce.Lowe@mchcp.org, 832 Weathered Rock Court, Jefferson City, MO 65101

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

3.4.3 The notice shall include to the fullest extent possible:

- a) a detailed description of what happened, including the date, time, and all facts and circumstances surrounding the unauthorized use or disclosure, breach of unsecured PHI, or security incident;
- b) the date, time, and circumstances surrounding when and how Business Associate first became aware of the unauthorized use or disclosure, breach of unsecured PHI, or security incident;
- c) identification of each individual whose PHI has been, or is reasonably believed by Business Associate to have been involved or otherwise subject to possible breach;
- d) a description of all types of PHI known or potentially believed to be involved or affected;
- e) identification of any and all unauthorized person(s) who had access to or used the PHI or to whom an unauthorized disclosure was made;
- f) all decisions and steps Business Associate has taken to date to investigate, assess risk, and mitigate harm to MCHCP and all potentially affected individuals;
- g) contact information, including name, position or title, phone number, email address, and physical work location of the individual(s) designated by Business Associate to act as MCHCP's primary contact for purposes of the notice triggering event(s);
- h) all corrective action steps Business Associate has taken or shall take to prevent future similar uses, disclosures, breaches, or incidents;
- i) if all investigatory, assessment, mitigation, or corrective action steps are not complete as of the date of the notice, Business Associate's best estimated timeframes for completing each planned but unfinished action step; and

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

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

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

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

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

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

3.5 Confidential Communications. Business Associate agrees it will promptly implement and honor individual requests to receive PHI by alternative means or at an alternative location provided such request has been directed to and approved by MCHCP in accordance with § 164.522(b) applicable to covered entities. If Business Associate receives a request for confidential communications directly from an individual, Business Associate agrees to refer the individual, and promptly forward the individual's request, to MCHCP so that MCHCP can assess, accommodate, and coordinate reasonable requests of this nature in accordance with the HIPAA Rules and prepare a timely response to the individual.

3.6 Individual Access to PHI. If an individual requests access to PHI under § 164.524, Business Associate agrees it will make all PHI about the individual which Business Associate created or received for or from MCHCP that is in Business Associate's custody or control available in a designated record set to

MCHCP or, at MCHCP's direction, to the requesting individual or his or her authorized designee, in order to satisfy MCHCP's obligations as follows:

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

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

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

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

3.7.2 MCHCP will direct Business Associate in writing as to any actions Business Associate is required to take with regard to amending records of individuals who exercise their right to amend PHI under the HIPAA Rules. Business Associate agrees to follow the direction of MCHCP regarding such amendments and to provide written confirmation of such action within seven (7)

business days of receipt of MCHCP's written direction or sooner if such earlier action is required to enable MCHCP to comply with the deadlines established by the HIPAA Rules.

- 3.8 **PHI Disclosure Accounting.** Business Associate agrees to document, maintain, and make available to MCHCP within seven (7) calendar days of a request from MCHCP for all disclosures made by or under the control of Business Associate or its subcontractors that are subject to accounting, including all information required, under § 164.528 to satisfy MCHCP's obligations regarding accounting of disclosures of PHI.
- 3.8.1 If Business Associate receives a request for accounting directly from an individual, Business Associate agrees to refer the individual, and promptly forward the individual's request, to MCHCP so that MCHCP can evaluate, coordinate and prepare a timely response to the individual's request.
- 3.8.2 In addition to the provisions of 3.8.1, all PHI accounting requests received by Business Associate directly from the individual shall be acted upon by Business Associate as a request from MCHCP for purposes of Business Associate's obligations under this section. Unless directed by MCHCP to respond directly to the individual, Business Associate shall provide all accounting information subject to disclosure under § 164.528 to MCHCP within seven (7) calendar days of the individual's request for accounting.
- 3.9 **Privacy of PHI.** Business Associate agrees to fully comply with all provisions of Subpart E of 45 CFR Part 164 that apply to MCHCP to the extent Business Associate has agreed or assumed responsibilities under the Contract or this Agreement to carry out one or more of MCHCP's obligation(s) under 45 CFR Part 164 Subpart E.
- 3.10 **Internal Practices, Books, and Records.** Upon request of MCHCP or the Secretary, Business Associate will make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of MCHCP available to MCHCP and/or the Secretary in a time and manner designated by MCHCP or the Secretary for purposes of determining MCHCP's and/or Business Associate's compliance with the HIPAA Rules.
- 4 Permitted Uses and Disclosures of PHI by Business Associate.**

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

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

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

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

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

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

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

- a) Making disclosures to public officials as permitted under § 164.512, if the public official represents that the information requested is the minimum necessary for the stated purpose(s);
or
- b) The information is requested by a professional who is a member of its workforce or is a business associate of MCHCP for the purpose of providing professional services to MCHCP, if the professional represents that the information requested is the minimum necessary for the stated purpose(s).

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

5 **Obligations of MCHCP.**

- 5.1 Notice of Privacy Practices. MCHCP shall notify Business Associate of any limitation(s) that may affect Business Associate's use or disclosure of PHI by providing Business Associate with MCHCP's Notice of Privacy Practices in accordance with § 164.520, the most recent copy of which is attached to this Agreement.
- 5.2 Individual Authorization Changes. MCHCP shall notify Business Associate in writing of any changes in, or revocation of, the authorization by an individual to use or disclose his or her PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- 5.3 Confidential Communications. MCHCP shall notify Business Associate in writing of individual requests approved by MCHCP in accordance with § 164.522 to receive communications of PHI from Business Associate by alternate means or at alternative locations, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- 5.4 Individual Restrictions. MCHCP shall notify Business Associate in writing of any restriction to the use or disclosure of PHI that MCHCP has agreed and, if applicable, any subsequent revocation or termination of such restriction, in accordance with § 164.522, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- 5.5 Permissible Requests by MCHCP. MCHCP shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Rules if done by MCHCP.

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

- 6.1 Term. This Agreement is effective upon signature of both parties, and shall terminate upon the termination, expiration, or cancellation of the Contract, as amended, unless sooner terminated for cause under subsection 6.2 below.
- 6.2 Termination. Without limiting MCHCP's right to terminate the Contract in accordance with the terms therein, Business Associate also authorizes MCHCP to terminate this Agreement immediately by written notice and without penalty if MCHCP determines, in its sole discretion, that Business Associate has violated a material term of this Agreement and termination of this Agreement is in the best interests of MCHCP or its members. Without limiting the foregoing authorization, Business Associate agrees that MCHCP may, as an alternative or in addition to termination, require Business Associate to end the violation of the material term(s) and cure the breach of contract within the time and manner specified by MCHCP based on the circumstances presented. With respect to this subsection, MCHCP's remedies under this Agreement and the Contract are cumulative, and the exercise of any remedy shall not preclude the exercise of any other.
- 6.3 Obligations of Business Associate Upon Termination. Upon termination, expiration, or cancellation of this Agreement for any reason, Business Associate agrees to return to MCHCP or deliver to another MCHCP business associate at MCHCP's direction all PHI received from MCHCP, any current or former Business Associate or workforce member of MCHCP, or any current or former member of

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

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

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

7 **Miscellaneous.**

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

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

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

regarding such PHI to the extent such acts or omissions violate the terms of the Act or the HIPAA Rules.

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

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

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

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

Missouri Consolidated Health Care Plan

Vision Insurer

By: _____

By: _____

Title: Executive Director

Title: _____

Date: _____

Date: _____