



STATE OF MISSOURI  
OFFICE OF ADMINISTRATION  
DIVISION OF PURCHASING

**NOTIFICATION OF STATEWIDE CONTRACT**

Date: December 8, 2015

**CONTRACT TITLE:** Document Destruction and Disposal

<b>CURRENT CONTRACT PERIOD:</b>	<b>January 1, 2016 through December 31, 2016</b>	
<b>RENEWAL INFORMATION:</b>	Original Contract Period:	<b>January 1, 2016 through December 31, 2016</b>
	Renewal Options Available:	Two
	Potential Final Expiration:	December 31, 2018
<b>BUYER INFORMATION:</b>	Molly Hurt (573) 751-8900 Molly.Hurt@oa.mo.gov	

ALL PURCHASES MADE UNDER THIS CONTRACT MUST BE FOR **PUBLIC USE ONLY**.  
PURCHASES FOR PERSONAL USE BY PUBLIC EMPLOYEES OR OFFICIALS ARE PROHIBITED.

THE USE OF THIS CONTRACT IS **PREFERRED** FOR ALL STATE AGENCIES.

Local Purchase Authority **should not** be used to purchase supplies/services included in this contract unless it is determined to be in the best interest of the State of Missouri for a state agency to obtain alternative services elsewhere.

The entire contract document may be viewed and printed from the Division of Purchasing's **Awarded Bid & Contract Document Search** located on the Internet at

<http://oa.mo.gov/purchasing>.

*~ Instructions for use of the contract, specifications, requirements, and pricing are attached ~.*

CONTRACT NUMBER	VENDOR NUMBER	VENDOR INFORMATION	MBE/WBE	COOP PROCUREMENT
CS160064001	4318895140 1	OnSite Mobile Document Destruction of Missouri, LLC PO Box 238 Camdenton, MO 65020 Contact Person: Diane K. Oltmann Phone: (573) 873-5915 Email: onsitedoc@charter.net	No	Yes

Counties Awarded:  
**Central Region** – Carroll, Chariton, Randolph, Monroe, Saline, Howard, Boone, Audrain, Callaway, Montgomery, Pettis,

CONTRACT NUMBER	VENDOR NUMBER	VENDOR INFORMATION	MBE/WBE	COOP PROCUREMENT
Cooper, Moniteau, Cole, Osage, Gasconade, Benton, Morgan, Miller, Maries, Camden, Pulaski, Phelps, Laclede, and Dent Counties				
CS160064002	1137913230 0	T2 Holdings, LLC 3052 S 24 <sup>th</sup> St Kansas City, KS 66106 Contact: DJ McDaniel Phone: (913) 327-8889 Email: djmcdaniel@proshred.com	No	Yes
<u>Counties Awarded</u> <b>Northwest Region</b> – Atchison, Nodaway, Worth, Harrison, Holt, Andrew, Gentry, Dekalb, Daviess, Buchanan, Clinton and Caldwell <b>Greater Kansas City Region</b> – Platte, Clay, Ray, Jackson, Lafayette, Cass, Johnson, Bates, and Henry				

## STATEWIDE CONTRACT HISTORY

The following summarizes actions related to this Notification of Statewide Contract since its initial issuance. Any and all revisions have been incorporated into the attached document.

<b>Contract Period</b>	<b>Issue Date</b>	<b>Summary of Changes</b>
01/01/16- 12/31/16	12/8/15	<b>Initial issuance of new statewide contract</b>

**1. PRICING**

**OnSite Mobile Document Destruction of Missouri, LLC  
Contract CS160064001**

<b>CENTRAL REGION</b>		
<b>Consists of the following counties: Carrol, Chariton, Randolph, Monroe, Saline, Howard, Boone, Audrain, Callaway, Montgomery, Pettis, Cooper, Moniteau, Cole, Osage, Gasconade, Benton, Morgan, Miller, Maries, Camden, Pulaski, Phelps, Laclede, and Dent</b>		
<b>LINE ITEM</b>	<b>WEIGHT CATEGORY</b>	<b>FIRM, FIXED PRICE <i>per pound</i></b>
1	0-500 POUNDS	\$0.12
2	OVER 500 POUNDS	\$0.10
<b>LINE ITEM</b>	<b>DESCRIPTION</b>	<b>FIRM, FIXED MINIMUM CHARGE</b>
3	MINIMUM CHARGE	\$30.00

**T2 Holdings, LLC**  
**Contract CS160064002**

<b>GREATER KANSAS CITY REGION</b>		
<b>Consists of the following counties: Platte, Clay, Ray, Jackson, Lafayette, Cass, Bates, and Henry</b>		
<b>LINE ITEM</b>	<b>WEIGHT CATEGORY</b>	<b>FIRM, FIXED PRICE <i>per pound</i></b>
4	0-500 POUNDS	\$0.00
5	OVER 500 POUNDS	\$0.09
<b>LINE ITEM</b>	<b>DESCRIPTION</b>	<b>FIRM, FIXED MINIMUM CHARGE</b>
6	MINIMUM CHARGE	\$30.00

<b>NORTHWEST REGION</b>		
<b>Consists of the following counties: Atchison, Nodaway, Worth, Harrison, Holt, Andrew, Gentry, Dekalb, Daviess, Buchanan, Clinton, and Caldwell</b>		
<b>LINE ITEM</b>	<b>WEIGHT CATEGORY</b>	<b>FIRM, FIXED PRICE <i>per pound</i></b>
13	0-500 POUNDS	\$0.00
14	OVER 500 POUNDS	\$0.09
<b>LINE ITEM</b>	<b>DESCRIPTION</b>	<b>FIRM, FIXED MINIMUM CHARGE</b>
15	MINIMUM CHARGE	\$55.00

The Division of Purchasing has awarded Contracts CS160064001 through CS160064002 in accordance with the following requirements:

## **2. CONTRACTUAL REQUIREMENTS**

### **2.1 General Requirements:**

- 2.1.1 The contractor shall provide document destruction and disposal services for any agency of the State of Missouri (hereinafter referred to as the state agency), in accordance with the provisions and requirements stated herein.
  - a. For purposes of the contract, a state agency shall be defined as a division, section, bureau, office, program, board, regional/district office, etc., that exists within a department of Missouri State Government. For the purposes of this document, this shall also include the University of Missouri system and the Judicial and Legislative branches of the State of Missouri.
  - b. The contractor shall provide services in the region awarded as specified the Notice of Award issued by the Division of Purchasing.
- 2.1.2 The contractor shall destroy and dispose of documents, which shall include, but not necessarily be limited to, any or all of those items listed on **Attachment 2**. For purposes of this document, the term “*documents*” shall be used to define those items to be destroyed.
- 2.1.3 The contractor shall perform all services during normal State of Missouri hours, which are typically 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding Official State Holidays.
- 2.1.4 The contractor shall perform all services to the sole satisfaction of the state agency.
- 2.1.5 The contractor shall understand that the state agency or designee shall, at any time throughout the contract, accompany the contractor during any collection, hauling, weighing, or destruction process being conducted by the contractor. The contractor shall not restrict or in any way limit the state agency’s right or ability to oversee any and all services provided by the contractor.
- 2.1.6 The contractor shall provide the services on an as needed, if needed basis. The State of Missouri does not guarantee any usage of the contract whatsoever. The contractor shall agree and understand that the contract shall be construed as a preferred use contract but shall not be construed as an exclusive arrangement. Preferred use means that any state agency needing the services should use the established contract unless it is determined to be in the best interest of the State of Missouri for a state agency to obtain alternate services elsewhere.
- 2.1.7 The contractor shall participate in the State of Missouri’s Cooperative Procurement Program. The contractor shall provide document destruction and disposal services as described herein under the terms and conditions, requirements and specifications of the contract, including prices, to other government entities in accordance with the Technical Services Act (section 67.360, RSMo, which is available on the internet at: <http://www.moga.mo.gov/mostatutes/stathtml/06700003601.html>.) The contractor shall further understand and agree that participation by other governmental entities is discretionary on the part of that governmental entity and the State of Missouri bears no financial responsibility for any payments due the contractor by such governmental entities.

### **2.2 Specific Requirements:**

- 2.2.1 The contractor shall perform document destruction services on-site at each applicable state agency facility on an as needed, if needed basis or on a regular scheduled basis, as mutually agreed upon between the contractor and each applicable state agency.
- 2.2.2 The contractor shall provide the document destruction services by no later than five (5) working days after a request for service is made, or by the date mutually agreed upon between the state agency and the contractor. The

state agency shall request services by telephone, fax, or other method as agreed upon between the contractor and each state agency.

2.2.3 The contractor shall understand and agree that the State of Missouri requires flexibility in the arrangements and methods for the collection of documents on a building-to-building and case-by-case basis. The contractor shall coordinate and work in good faith with each state agency and designee in seeking and obtaining the arrangements and methods of collection.

2.2.4 If requested by the state agency, the contractor shall supply locked security containers for the collection of documents in the size(s) and quantity specified by the applicable state agency. The contractor shall provide all containers free of charge.

- a. Each container shall have a drop-slot and a key-locked deadbolt. The contractor shall place each container in the location requested by the state agency, provided that placement is in accordance with applicable fire codes.
- b. The contractor shall clearly mark containers for their intended use.
- c. The contractor shall not limit the number of containers at any particular state agency site. However, if containers are requested, the state agency estimates that approximately one (1) 40-45 gallon, or estimated size of 36" x 20" x 19.5", container may be required for every 25-30 employees. The state agency designee shall notify the contractor if it is determined that different sizes or additional containers are required. The contractor shall coordinate and work in good faith with each state agency designee in determining the number and size of containers required.
- d. The contractor shall retain ownership of the containers. The contractor shall agree that the State of Missouri shall not be responsible for any liability incurred by the contractor or the contractor's employees arising out of the possession, use, maintenance, delivery, return, and/or collection from the containers provided by the contractor.

2.2.5 In most cases, documents to be destroyed will be in a locked storage area at the state agency facility. Therefore, the contractor, with accompaniment by a state agency designee, shall transport the documents on carts or other method from each storage area to the contractor's truck on-site. The contractor shall load and unload all documents without assistance from state agency personnel.

- a. The contractor shall handle and transport all documents in covered containers to insure that no record is lost or mislaid en route.
  - 1) In the event the state agency does not have the documents in covered container(s), the contractor shall make every effort to ensure that no record is lost or mislaid en route.
- b. If requested, the contractor shall remove and/or dispose of all cardboard boxes that were used to contain the documents. The contractor is encouraged to reuse or recycle all cardboard boxes.

2.2.6 The contractor shall collect all documents from an identified location, weigh all documents using a certified scale, destroy completely, and provide the state agency with a Certificate of Destruction and weigh ticket. At a minimum, the Certificate of Destruction must include the name and address of the state agency facility, date of service, description and weight of documents destroyed, service representative name, and truck number.

- a. The contractor shall destroy all documents to a maximum size of no greater than particles one square inch. However, if requested by the state agency and if the contractor is capable (as specified in Exhibit B), the contractor shall destroy documents to a maximum size of 5/16".
- b. The contractor shall clean up the immediate document destruction area and ensure that all loose material particles collected and removed each time document destruction services are performed.

- 2.2.7 Confidentiality: Due to the sensitivity of the documents being destroyed, the contractor shall not disclose any information obtained from the documents in the event the contractor observes any such documents during the course of pick up and document destruction. Furthermore, to the extent the contractor may have access to any report, tax return, or other information received by a state agency in connection with the administration of the tax laws of the State, the contractor specifically shall comply with the section 32.057, RSMo. Any person making unlawful disclosure of information in violation of such section shall, upon conviction, be guilty of a class D felony. Therefore, as the need for confidentiality dictates, the contractor shall agree and understand that either of the following may be required; however, the determination of what is required shall rest solely on the state agency designee.
- a. The state agency designee shall witness the destruction of the confidential documents.
  - b. The contractor shall agree and understand that all discussions with the contractor and all information gained by the contractor as a result of the contractor's performance under the contract shall be confidential and that no reports, documentation, or material prepared as required by the contract shall be released to the public without the prior written consent of the state agency.
  - c. The contractor shall submit a letter to the applicable state agency office guaranteeing that the confidentiality of all such documents were maintained from the time of collection until the documents were destroyed and that none of the documents were read or copied by the contractor or contractor's personnel prior to such destruction.
  - d. If required by the state agency, the contractor and any required contractor personnel must sign specific documents regarding confidentiality, security, or other similar documents upon request. Failure of the contractor and any required personnel to sign such documents shall be considered a breach of contract and subject to the cancellation provisions of this document.
- 2.2.8 The contractor's personnel assigned to perform services under the contract must, at all times, wear a photo ID badge and uniform, which reflects the contractor's company name. In addition, the contractor's personnel shall sign in and out on a log provided by each state agency.
- a. The contractor shall sign a signature log each time services are required to attest that all confidential documents have been destroyed. The signature log should have the date, time, and location when document destruction was completed and must also be countersigned by the state agency designee. The signature log must be maintained at each participating state agency and made available for federal/state audit purposes.
- 2.2.9 The contractor and each of the contractor's personnel assigned to work with confidential documents must have a security clearance approved by the utilizing state agency and sign a statement of confidentiality guaranteeing non-disclosure of information in order to provide services under the contract.
- a. The contractor must obtain each of the required security clearances from the State Highway Patrol.
  - b. The confidentiality statement shall be designed, implemented, and maintained by the contractor.
- 2.2.10 If requested, the contractor shall replace any personnel with whom the state agency is not satisfied.
- 2.2.11 The contractor shall recycle destroyed documents that are recyclable. As an incentive for the contractor to lower prices, the contractor may keep all funds received from the sale of the recyclable documents stated herein.
- 2.2.12 Unless otherwise specified herein, the contractor shall furnish all material, labor, facilities, equipment, and supplies necessary to perform the services required herein.
- 2.3 Missouri Statewide Contract Quarterly Usage Report:**
- 2.3.1 The contractor shall submit a Missouri Statewide Contract Quarterly Usage Report to the Division of Purchasing which shall provide the Data Element information listed below:



Data Element	Description
Contractor Name	Contractor name as it appears on the contract.
Statewide Contract Number	Statewide contract number as listed on the cover page of your contract with the State of Missouri.
Report Contact Name	Name of the person completing the report on behalf of the contractor.
Contact Phone Number	Phone number for the person completing the report.
Contact Email Address	Email address for the person completing the report.
Date Report Submitted	Date the Missouri Statewide Contract Quarterly Usage Report is submitted to PURCHASING.
Reporting Quarter	Quarter for which the contractor is reporting purchases on the contract.
Entity Type	Indicate the type of entity by entering "S" for Missouri state agency, "P" for Missouri political subdivision, "U" for Missouri university, or "O" for political subdivision or state entity from another state.
Customer Name	Customer's name. If the customer has multiple locations, please only use the main entity name.
Product or Service Description	Description of product or service purchased.
Purchase Authorization Number/Identifier	Purchase Authorization Number/Identifier supplied by customer to contractor. Enter PO or other authorization number/identifier. If procurement card used, enter "P-Card".
Contract Line Item Number	Line item number on the contract.
Quantity Delivered	Quantity (i.e. excluding returns) of products delivered. Enter a quantity of "1" for a service/project.
Unit Price Charged	Unit Price Charged (i.e. excluding credits) for the product or service purchased.
Extended Price	Quantity Delivered X Unit Price Charged.

2.3.2 The contractor shall prepare and submit the Missouri Statewide Contract Quarterly Usage Report at the end of each calendar quarter (i.e. March 31, June 30, September 30, December 31) for the purchases made under the contract during the calendar quarter. The Missouri Statewide Contract Quarterly Usage Report must be received by the Division of Purchasing no later than the 15<sup>th</sup> calendar day of the month following the reporting quarter entered on the Missouri Statewide Contract Quarterly Usage Report, unless the 15<sup>th</sup> is not a business day in which case the next business day thereafter shall be considered the reporting deadline. Even if there has been no usage of the contract during the reporting quarter, the contractor must still submit a report and indicate no purchases were made.

2.3.3 The contractor must submit a Missouri Statewide Contract Quarterly Usage Report electronically either utilizing the “Missouri Statewide Contract Quarterly Usage Report” worksheet included herein in **Attachment 3** which is downloadable from <http://oa.mo.gov/purchasing/vendor-information> or utilizing another format which is Excel-exportable. The contractor must submit the Missouri Statewide Contract Quarterly Usage Report to the following email address: [ereports@oa.mo.gov](mailto:ereports@oa.mo.gov).

2.3.4 The contractor shall agree that the Division of Purchasing reserves the right to modify the requested format and content of the Missouri Statewide Contract Quarterly Usage Report by providing thirty (30) calendar days’ written notice to the contractor. The contractor shall also agree the Division of Purchasing may unilaterally amend the contract, with thirty (30) calendar days’ notice to the contractor to change the timing for submission of the Missouri Statewide Contract Quarterly Usage Report. The contractor shall understand and agree that if such an amendment is issued by the Division of Purchasing, the contractor shall comply with all contractual terms, as amended.

## 2.4 Reporting and Financial Requirements:

- 2.4.1 Monthly Report: By no later than the 15<sup>th</sup> of each month, the contractor shall submit a monthly report to the Recycling Coordinator as specified below:
- a. The monthly report must contain the following information from the document destruction activities from the prior month:
    - 1) Name and Address of the state agency
    - 2) Date of Service
    - 3) Weight of documents destroyed
    - 4) Actual number of pounds of destroyed documents recycled
  - b. Immediately after contract award, the Recycling Coordinator shall provide the contractor with the actual monthly report to be used. A sample of the monthly report is provided herein as **Attachment 4**.

## 2.5 Invoicing and Payment Requirements:

- 2.5.1 Prior to any payments becoming due under the contract, the contractor must update their vendor registration with their ACH-EFT payment information at <https://MissouriBUYS.mo.gov>.
- a. The contractor understands and agrees that the State of Missouri reserves the right to make contract payments through electronic funds transfer (EFT).
  - b. The contractor must submit invoices on the contractor's original descriptive business invoice form and must use a unique invoice number with each invoice submitted. The unique invoice number will be listed on the State of Missouri's EFT addendum record to enable the contractor to properly apply the state agency's payment to the invoice submitted. The contractor may obtain detailed information for payments issued for the past 24 months from the State of Missouri's central accounting system (SAM II) on the Vendor Services Portal at:
- 2.5.2 <https://www.vendorservices.mo.gov/vendorservices/Portal/Default.aspx>Invoicing – The contractor shall submit an invoice by no later than the 15<sup>th</sup> day of the following month to each participating state agency for which services were provided during the month.
- a. Each invoice shall be itemized by date of service, number of pounds of documents destroyed, the applicable firm, fixed price per pound, and the total invoice amount.
    - 1) If the minimum charge is not met for document destruction services, the contractor may invoice the minimum charge amount (instead of the firm, fixed price per pound) in accordance with the Pricing Page.
    - 2) The applicable firm, fixed price per pound shall be determined based upon the total weight of the destroyed documents.
- 2.5.3 Payments – For each trip to a state agency facility, the contractor shall be paid for each pound of documents destroyed in accordance with the applicable firm, fixed price stated on the Pricing Page. In the event the total payment due the contractor is less than the applicable firm, fixed minimum charge stated on the Pricing Page, the contractor shall be paid the minimum charge instead of being paid based on the per pound price. However, if the total payment due the contractor is greater than the applicable firm, fixed minimum charge stated on the Pricing Page, the contractor's payment shall be based solely on the per pound price.
- a. Each state agency shall be solely responsible for payment for only those services requested by the state agency.
  - b. Other than the payments specified above, no other payments or reimbursements shall be made to the contractor for any reason whatsoever.

## 2.6 Missouri Statewide Contract Quarterly Administrative Fee:

- 2.6.1 The contractor shall pay a one percent (1%) administrative fee to the State of Missouri which shall apply to all payments received by the contractor for all services provided under the contract. Payment of the one percent administrative fee shall be non-negotiable.
- 2.6.2 The contractor shall pay the administrative fee at the end of each calendar quarter (i.e. March 31, June 30, September 30, December 31). The total administrative fee for a given quarter must equal one percent (1%) of the total payments (minus returns and credits) received by the contractor during the calendar quarter as reported on the contractor's Missouri Statewide Contract Quarterly Administrative Fee Report specified below. The administrative fee must be received by the Division of Purchasing no later than the 15<sup>th</sup> calendar day of the month immediately following the end of the calendar quarter, unless the 15<sup>th</sup> is not a business day in which case the next business day thereafter shall be considered the administrative fee deadline.
- 2.6.3 Payments shall be made using one of the following acceptable payment methods:
- a. **Check:** Personal check, company check, cashier's check, or money order made payable to the "Missouri Revolving Information Technology Trust Fund" and sent to the following mailing address: Division of Purchasing, P.O. Box 809, Jefferson City, MO 65102 – 0809 OR Division of Purchasing, 301 West High Street, Room 630, Jefferson City, MO 65101-1517. The contractor's payment by check shall authorize the State of Missouri to process the check electronically. The contractor understands and agrees that any returned check from the contractor may be presented again electronically and may be subject to additional actions and/or handling fees.
  - b. **Electronic Payment:** Instructions on how to submit payments electronically by automated clearing house (ACH) will be provided upon request by contacting the Division of Purchasing at (573) 751-2387.
- 2.6.4 All payments of the administrative fee shall include the contract number on any check or transmittal document. However, only one contract number must be entered on a check or transmittal document. If submitting an administrative fee payment for more than one contract, then a separate check or electronic payment and associated transmittal document must be submitted by the contractor for each contract.

## **2.7 Missouri Statewide Contract Quarterly Administrative Fee Report:**

- 2.7.1 The contractor shall submit a Missouri Statewide Contract Quarterly Administrative Fee Report to the Division of Purchasing which shall identify the total payments (minus returns and credits) received by the contractor from state agencies, political subdivisions, universities, and governmental entities in other states that were made pursuant to the contract.
- 2.7.2 The contractor shall prepare and submit the Missouri Statewide Contract Quarterly Administrative Fee Report at the end of each calendar quarter (i.e. March 31, June 30, September 30, December 31) for total payments (minus returns and credits) received by the contractor during the calendar quarter. The Missouri Statewide Contract Quarterly Administrative Fee Report must be received by the Division of Purchasing no later than the 15<sup>th</sup> calendar day of the month following the reporting quarter entered on the report, unless the 15<sup>th</sup> is not a business day in which case the next business day thereafter shall be considered the reporting deadline. Even if there has been no usage of the contract during the reporting quarter, the contractor must still submit a report and indicate no payments were received by marking the appropriate box on the report form.
- 2.7.3 The Missouri Statewide Contract Quarterly Administrative Fee Report form may be downloaded from the following Division of Purchasing website: <http://oa.mo.gov/purchasing/vendor-information>. The Missouri Statewide Contract Quarterly Administrative Fee Report is also included herein as **Attachment 5**. The Missouri Statewide Contract Quarterly Administrative Fee Report must be submitted using one of the following methods:
- **Mail:** Division of Purchasing ,  
P.O. Box 809, Jefferson City MO 65102-0809  
OR  
Division of Purchasing,  
301 West High Street, Room 630, Jefferson City, MO 65101-1517
  - **Fax:** (573) 526-9815

- **Email:** [ereports@oa.mo.gov](mailto:ereports@oa.mo.gov)

2.7.4 The contractor shall agree that the Division of Purchasing reserves the right to modify the requested format and content of the Missouri Statewide Contract Quarterly Administrative Fee Report by providing thirty (30) calendar days written notice to the contractor. The contractor shall also agree the Division of Purchasing may unilaterally amend the contract, with thirty (30) calendar days notice to the contractor to change the method of payment of the administrative fee, the timing for submission of the Missouri Statewide Contract Quarterly Administrative Fee Report, and/or timing for payment of the administrative fee. The contractor shall understand and agree that if such an amendment is issued by the Division of Purchasing, the contractor shall comply with all contractual terms, as amended.

## **2.8 Other Contractual Requirements:**

2.8.1 Contract - A binding contract shall consist of: (1) the RFP, addendums thereto, and any Best and Final Offer (BAFO) request(s) with RFP changes/additions, (2) the contractor's proposal including any contractor BAFO response(s), (3) clarification of the proposal, if any, and (4) the Division of Purchasing's acceptance of the proposal by "notice of award". All Exhibits and Attachments included in the RFP shall be incorporated into the contract by reference.

- a. A notice of award issued by the State of Missouri does not constitute an authorization for shipment of equipment or supplies or a directive to proceed with services. Before providing equipment, supplies and/or services for the State of Missouri, the contractor must receive a properly authorized purchase order or other form of authorization given to the contractor at the discretion of the state agency.
- b. The contract expresses the complete agreement of the parties and performance shall be governed solely by the specifications and requirements contained therein.
- c. Any change to the contract, whether by modification and/or supplementation, must be accomplished by a formal contract amendment signed and approved by and between the duly authorized representative of the contractor and the Division of Purchasing prior to the effective date of such modification. The contractor expressly and explicitly understands and agrees that no other method and/or no other document, including correspondence, acts, and oral communications by or from any person, shall be used or construed as an amendment or modification to the contract.

2.8.2 Contract Period - The original contract period shall be as stated on the Notice of Award. The contract shall not bind, nor purport to bind, the state for any contractual commitment in excess of the original contract period. The Division of Purchasing shall have the right, at its sole option, to renew the contract for two (2) additional one-year periods, or any portion thereof. In the event the Division of Purchasing exercises such right, all terms and conditions, requirements and specifications of the contract shall remain the same and apply during the renewal period, pursuant to applicable option clauses of this document.

2.8.3 Renewal Periods - If the option for renewal is exercised by the Division of Purchasing, the contractor shall agree that the prices for the renewal period shall not exceed the maximum price for the applicable renewal period stated on the Pricing Page of the contract.

- a. If renewal prices are not provided, then prices during renewal periods shall be the same as during the original contract period.
- b. In addition, the contractor shall understand and agree that renewal period price increases specified in the contract are not automatic. At the time of contract renewal, if the state determines funding does not permit the specified renewal pricing increase or even a portion thereof, the renewal pricing shall remain the same as during the previous contract period. If such action is rejected by the contractor, the contract may be terminated, and a new procurement process may be conducted. The contractor shall also understand and agree the state may determine funding limitations necessitate a decrease in the contractor's pricing for the renewal period(s). If such action is necessary and the contractor rejects the decrease, the contract may be terminated, and a new procurement process may be conducted.

2.8.4 Termination - The Division of Purchasing reserves the right to terminate the contract at any time, for the convenience of the State of Missouri, without penalty or recourse, by giving written notice to the contractor at least thirty (30) calendar days prior to the effective date of such termination. The contractor shall be entitled to receive compensation for services and/or supplies delivered to and accepted by the State of Missouri pursuant to the contract prior to the effective date of termination.

2.8.5 Transition:

- a. Upon award of the contract, the contractor shall work with the state agency and any other organizations designated by the state agency to ensure an orderly transition of services and responsibilities under the contract and to ensure the continuity of those services required by the state agency.
- b. Upon expiration, termination, or cancellation of the contract, the contractor shall assist the state agency to ensure an orderly and smooth transfer of responsibility and continuity of those services required under the terms of the contract to an organization designated by the state agency. If requested by the state agency, the contractor shall provide and/or perform any or all of the following responsibilities:
  - 1) The contractor shall deliver, FOB destination, all records, documentation, reports, data, recommendations, or printing elements, etc., which were required to be produced under the terms of the contract to the state agency and/or to the state agency's designee within seven (7) days after receipt of the written request in a format and condition that are acceptable to the state agency.
  - 2) The contractor shall discontinue providing service or accepting new assignments under the terms of the contract, on the date specified by the state agency, in order to ensure the completion of such service prior to the expiration of the contract.
  - 3) If requested in writing via formal contract amendment, the contractor shall continue providing any part or all of the services in accordance with the terms and conditions, requirements and specifications of the contract for a period not to exceed 90 calendar days after the expiration, termination, or cancellation date of the contract for a price not to exceed those prices set forth in the contract.

2.8.6 Contractor Liability - The contractor shall be responsible for any and all personal injury (including death) or property damage as a result of the contractor's negligence involving any equipment or service provided under the terms and conditions, requirements and specifications of the contract. In addition, the contractor assumes the obligation to save the State of Missouri, including its agencies, employees, and assignees, from every expense, liability, or payment arising out of such negligent act.

- a. The contractor also agrees to hold the State of Missouri, including its agencies, employees, and assignees, harmless for any negligent act or omission committed by any subcontractor or other person employed by or under the supervision of the contractor under the terms of the contract.
- b. The contractor shall not be responsible for any injury or damage occurring as a result of any negligent act or omission committed by the State of Missouri, including its agencies, employees, and assignees.
- c. Under no circumstances shall the contractor be liable for any of the following: (1) third party claims against the state for losses or damages (other than those listed above); or (2) economic consequential damages (including lost profits or savings) or incidental damages, even if the contractor is informed of their possibility.

2.8.7 Insurance - The contractor shall understand and agree that the State of Missouri cannot save and hold harmless and/or indemnify the contractor or employees against any liability incurred or arising as a result of any activity of the contractor or any activity of the contractor's employees related to the contractor's performance under the contract. Therefore, the contractor must acquire and maintain adequate liability insurance in the form(s) and amount(s) sufficient to protect the State of Missouri, its agencies, its employees, its clients, and the general public against any such loss, damage and/or expense related to his/her performance under the contract. General and other non-professional liability insurance shall include an endorsement that adds the State of Missouri as an

additional insured. Self-insurance coverage or another alternative risk financing mechanism may be utilized provided that such coverage is verifiable and irrevocably reliable and the State of Missouri is protected as an additional insured.

- a. In the event any insurance coverage is canceled, the state agency must be notified at least thirty (30) calendar days prior to such cancelation.

2.8.8 Subcontractors - Any subcontracts for the products/services described herein must include appropriate provisions and contractual obligations to ensure the successful fulfillment of all contractual obligations agreed to by the contractor and the State of Missouri and to ensure that the State of Missouri is indemnified, saved, and held harmless from and against any and all claims of damage, loss, and cost (including attorney fees) of any kind related to a subcontract in those matters described in the contract between the State of Missouri and the contractor.

- a. The contractor shall expressly understand and agree that he/she shall assume and be solely responsible for all legal and financial responsibilities related to the execution of a subcontract.
- b. The contractor shall agree and understand that utilization of a subcontractor to provide any of the products/services in the contract shall in no way relieve the contractor of the responsibility for providing the products/services as described and set forth herein.
- c. Pursuant to subsection 1 of section 285.530, RSMo, no contractor or subcontractor shall knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the state of Missouri. In accordance with sections 285.525 to 285.550, RSMo, a general contractor or subcontractor of any tier shall not be liable when such contractor or subcontractor contracts with its direct subcontractor who violates subsection 1 of section 285.530, RSMo, if the contract binding the contractor and subcontractor affirmatively states that:
  - 1) The direct subcontractor is not knowingly in violation of subsection 1 of section 285.530, RSMo, and shall not henceforth be in such violation.
  - 2) The contractor or subcontractor receives a sworn affidavit under the penalty of perjury attesting to the fact that the direct subcontractor's employees are lawfully present in the United States.

2.8.9 Participation by Other Organizations - The contractor must comply with any Organization for the Blind/Sheltered Workshop, Service-Disabled Veteran Business Enterprise (SDVE), participation levels committed to in the contractor's awarded proposal.

- a. The contractor shall prepare and submit to the Division of Purchasing a report detailing all payments made by the contractor to Organizations for the Blind/Sheltered Workshops, SDVEs, participating in the contract for the reporting period. The contractor must submit the report on a monthly basis, unless otherwise determined by the Division of Purchasing.
- b. The Division of Purchasing will monitor the contractor's compliance in meeting the Organizations for the Blind/Sheltered Workshop and SDVE participation levels committed to in the contractor's awarded proposal. If the contractor's payments to the participating entities are less than the amount committed, the state may cancel the contract and/or suspend or debar the contractor from participating in future state procurements, or retain payments to the contractor in an amount equal to the value of the participation commitment less actual payments made by the contractor to the participating entity. If the Division of Purchasing determines that the contractor becomes compliant with the commitment, any funds retained as stated above, will be released.
- c. If a participating entity fails to retain the required certification or is unable to satisfactorily perform, the contractor must obtain other organizations for the blind/sheltered workshops or other SDVEs to fulfill the participation requirements committed to in the contractor's awarded proposal.
  - 1) The contractor must obtain the written approval of the Division of Purchasing for any new entities. This approval shall not be arbitrarily withheld.

2) If the contractor cannot obtain a replacement entity, the contractor must submit documentation to the Division of Purchasing detailing all efforts made to secure a replacement. The Division of Purchasing shall have sole discretion in determining if the actions taken by the contractor constitute a good faith effort to secure the required participation and whether the contract will be amended to change the contractor's participation commitment.

d. No later than 30 days after the effective date of the first renewal period, the contractor must submit an affidavit to the Division of Purchasing. The affidavit must be signed by the director or manager of the participating Organizations for the Blind/Sheltered Workshop verifying provision of products and/or services and compliance of all contractor payments made to the Organizations for the Blind/Sheltered Workshops. The contractor may use the affidavit available on the Division of Purchasing's website at <http://oa.mo.gov/sites/default/files/bswaffidavit.doc> or another affidavit providing the same information.

2.8.10 Substitution of Personnel - The contractor agrees and understands that any substitution of the specific key individual(s) and/or personnel qualifications identified in the proposal must be with individual(s) of equal or better qualifications than originally proposed.

2.8.11 Authorized Personnel:

a. The contractor shall only employ personnel authorized to work in the United States in accordance with applicable federal and state laws. This includes but is not limited to the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and INA Section 274A.

b. If the contractor is found to be in violation of this requirement or the applicable state, federal and local laws and regulations, and if the State of Missouri has reasonable cause to believe that the contractor has knowingly employed individuals who are not eligible to work in the United States, the state shall have the right to cancel the contract immediately without penalty or recourse and suspend or debar the contractor from doing business with the state. The state may also withhold up to twenty-five percent of the total amount due to the contractor.

c. The contractor shall agree to fully cooperate with any audit or investigation from federal, state, or local law enforcement agencies.

d. If the contractor meets the definition of a business entity as defined in section 285.525, RSMo, pertaining to section 285.530, RSMo, the contractor shall maintain enrollment and participation in the E-Verify federal work authorization program with respect to the employees hired after enrollment in the program who are proposed to work in connection with the contracted services included herein. If the contractor's business status changes during the life of the contract to become a business entity as defined in section 285.525, RSMo, pertaining to section 285.530, RSMo, then the contractor shall, prior to the performance of any services as a business entity under the contract:

1) Enroll and participate in the E-Verify federal work authorization program with respect to the employees hired after enrollment in the program who are proposed to work in connection with the services required herein; AND

2) Provide to the Division of Purchasing the documentation required in the exhibit titled, Business Entity Certification, Enrollment Documentation, and Affidavit of Work Authorization affirming said company's/individual's enrollment and participation in the E-Verify federal work authorization program; AND

3) Submit to the Division of Purchasing a completed, notarized Affidavit of Work Authorization provided in the exhibit titled, Business Entity Certification, Enrollment Documentation, and Affidavit of Work Authorization.

e. In accordance with subsection 2 of section 285.530, RSMo, the contractor should renew their Affidavit of Work Authorization annually. A valid Affidavit of Work Authorization is necessary to award any new contracts.

#### 2.8.12 Prison Rape Elimination Act (PREA) Requirements:

- a. The contractor's personnel and agents providing service under the contract and within the security perimeter of the state agency's institution must be at least 18 years of age.
- b. Prior to the provision of service, the state agency may conduct a Missouri Uniform Law Enforcement System (MULES) or other background investigation on the contractor's personnel and agents. Such investigation shall be equivalent to investigations required of all personnel employed by the state agency.
  - 1) The state agency shall have the right to deny access into the institution for any of the contractor's personnel and agents, for any reason. Such denial shall not relieve the contractor of any requirements of the contract.
- c. The contractor must obtain written approval from the state agency's Director of the Division of Adult Institutions for any contractor personnel and agents under active federal or state felony or misdemeanor supervision, and contractor personnel and agents with prior felony convictions but not under active supervision, prior to such personnel and agents performing contractual services.
- d. The contractor and the contractor's personnel and agents shall at all times observe and comply with all applicable state statutes, state agency rules, regulations, guidelines, internal management policy and procedures, and general orders of the state agency that are applicable, regarding operations and activities in and about all state agency property. Furthermore, the contractor and the contractor's personnel and agents shall not obstruct the state agency nor any of its designated officials from performing their duties in response to court orders or in the maintenance of a secure and safe correctional environment. The contractor shall comply with the state agency's policy and procedures relating to personnel conduct.
  - 1) The state agency has a zero tolerance policy for any form of sexual misconduct to include staff/contractor/volunteer-on-offender or offender-on-offender sexual harassment, sexual assault, sexual abusive contact, and consensual sex. The contractor and the contractor's personnel and agents who witness sexual misconduct must immediately report such to the institution's warden. If the contractor, or the contractor's personnel and agents, engage in, fail to report, or knowingly condone sexual misconduct with or between offenders, the contract shall be subject to cancelation and the contractor or the contractor's personnel and agents may be subject to criminal prosecution.
  - 2) If the contractor, or the contractor's personnel and agents, engage in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility or other institution, the contractor or the contractor's personnel and agents shall be denied access into the institution.
- e. The contractor and the contractor's personnel and agents shall not interact with the offenders except as is necessary to perform the requirements of the contract. The contractor and the contractor's personnel and agents shall not give anything to nor accept anything from the offenders except in the normal performance of the contract.

2.8.13 Contractor Status - The contractor is an independent contractor and shall not represent the contractor or the contractor's employees to be employees of the State of Missouri or an agency of the State of Missouri. The contractor shall assume all legal and financial responsibility for salaries, taxes, FICA, employee fringe benefits, workers compensation, employee insurance, minimum wage requirements, overtime, etc., and agrees to indemnify, save, and hold the State of Missouri, 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.

2.8.14 Coordination - The contractor shall fully coordinate all contract activities with those activities of the state agency. As the work of the contractor progresses, advice and information on matters covered by the contract shall be made available by the contractor to the state agency or the Division of Purchasing throughout the effective period of the contract.

2.8.15 Property of State - All documents, data, reports, supplies, equipment, and accomplishments prepared, furnished, or completed by the contractor pursuant to the terms of the contract shall become the property of the State of



Missouri. Upon expiration, termination, or cancellation of the contract, said items shall become the property of the State of Missouri.

#### 2.8.16 Confidentiality:

- a. The contractor shall agree and understand that all discussions with the contractor and all information gained by the contractor as a result of the contractor's performance under the contract shall be confidential and that no reports, documentation, or material prepared as required by the contract shall be released to the public without the prior written consent of the state agency.
- b. If required by the state agency, the contractor and any required contractor personnel must sign specific documents regarding confidentiality, security, or other similar documents upon request. Failure of the contractor and any required personnel to sign such documents shall be considered a breach of contract and subject to the cancellation provisions of this document.

#### 2.8.17 Contractor Equipment Use:

- a. Title to any equipment required by the contract shall be held by and vested in the contractor. The State of Missouri shall not be liable in the event of loss, incident, destruction, theft, damage, etc., for the equipment. It shall be the contractor's sole responsibility to obtain insurance coverage for such loss in an amount that the contractor deems appropriate.
- b. Liability - The contractor shall agree that the State of Missouri shall not be responsible for any liability incurred by the contractor or the contractor's employees arising out of the ownership, selection, possession, leasing, rental, operation, control, use, maintenance, delivery, return, and/or installation of equipment provided by the contractor, except as otherwise provided in the contract.

2.8.18 Commercial Drivers License - The contractor and the contractor's drivers who, in the provision of services under the contract: (1) operate any single vehicle with a Gross Vehicle Weight Rating (GVWR) of over 26,000 pounds or any combination vehicle with a Gross Combination Weight Rating of over 26,000 pounds provided the Gross Vehicle Weight Rating of the vehicle(s) being towed is in excess of 10,000 pounds, (2) operate any size vehicle which requires hazardous materials placards, (3) operate any vehicle designed to transport more than 15 persons (including the driver) transports more than 15 persons, or (4) engage in any other activity outlined in the Commercial Motor Vehicle Safety Act, must comply with all other requirements in the Commercial Motor Vehicle Safety Act. The contractor must submit proof or verification of compliance with such Act to the state agency no later than 30 calendar days after award of the contract.

2.9 **Federal Funds Requirements** - The contractor shall understand and agree that the contract may involve the use of federal funds. Therefore, for any federal funds used, the following paragraphs shall apply:

2.9.1 Applicable Laws and Regulations - In performing its responsibilities under the contract, the contractor shall fully comply with the following Office of Management and Budget (OMB) administrative requirements and cost principles, as applicable, including any subsequent amendments.

- a. Uniform Administrative Requirements - OMB Circular A-102 – Grants and Cooperative Agreements with State and Local Governments; and 2 CFR 215 – Grants and Other Agreements with Institutions of Higher Learning, Hospitals and Other Non-Profit Organizations (OMB Circular A-110).
- b. Cost Principles:
  - 1) 2 CFR 225 – State, Local and Indian Tribal Governments (OMB Circular A-87);
  - 2) 2 CFR 230 – Non-Profit Organizations (OMB Circular A-122);
  - 3) 2 CFR 220 Educational Institutions (OMB Circular A-21);
  - 4) 48 CFR 31.2 – For-Profit Organizations; and
  - 5) 45 CFR 74 Appendix E – Hospitals.

2.9.2 Steven's Amendment – In accordance with the Departments of Labor, Health and Human Services, and Education and Related Agencies Appropriations Act, Public Law 101-166, Section 511, "Steven's Amendment", the

contractor shall not issue any statements, press releases, and other documents describing projects or programs funded in whole or in part with Federal funds unless the prior approval of the state agency is obtained and unless they clearly state the following as provided by the state agency:

- a. The percentage of the total costs of the program or project which will be financed with Federal funds;
- b. The dollar amount of Federal funds for the project or program; and
- c. The percentage and dollar amount of the total costs of the project or program that will be financed by nongovernmental sources.

2.9.3 The contractor shall comply with 31 U.S.C. 1352 relating to limitations on use of appropriated funds to influence certain federal contracting and financial transactions. No funds under the contract shall be used to pay the salary or expenses of the contractor, or agent acting for the contractor, to engage in any activity designed to influence legislation or appropriations pending before the United States Congress or Missouri General Assembly. The contractor shall comply with all requirements of 31 U.S.C. 1352 which is incorporated herein as if fully set forth. The contractor shall submit to the state agency, when applicable, Disclosure of Lobbying Activities reporting forms.

2.9.4 The contractor shall comply with the requirements of the Single Audit Act Amendments of 1996 (P.L. 104-156) and OMB Circular A-133, including subsequent amendments or revisions, as applicable or 2 CFR 215.26 as it relates to for-profit hospitals and commercial organizations. A copy of any audit report shall be sent to the state agency each contract year if applicable. The contractor shall return to the state agency any funds disallowed in an audit of the contract.

2.9.5 The contractor shall comply with the Pro-Children Act of 1994 (20 U.S.C. 6081), which prohibits smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.

2.9.6 The contractor shall comply with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations, as applicable.

2.9.7 The contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.).

2.9.8 If the contractor is a sub-recipient as defined in OMB Circular A-133, Section 210, the contractor shall comply with all applicable implementing regulations, and all other laws, regulations and policies authorizing or governing the use of any federal funds paid to the contractor through the contract.

2.9.9 The contractor shall comply with the public policy requirements as specified in the Department of Health and Human Services (HHS) Grants Policy Statement:

<http://www.hhs.gov/asfr/ogapa/aboutog/hhsgps107.pdf>

2.9.10 The contractor shall comply with Trafficking Victims Protection Act of 2000 (22 U.S.C. 7104), as amended.

2.9.11 The contractor shall provide a drug free workplace in accordance with the Drug Free Workplace Act of 1988 and all applicable regulations. The contractor shall report any conviction of the contractor's personnel under a criminal drug statute for violations occurring on the contractor's premises or off the contractor's premises while conducting official business. A report of a conviction shall be made to the state agency within five (5) working days after the conviction.

2.9.12 Contractor Whistleblower Protections:

- a. The contractor shall comply with the provisions of 41 U.S.C. 4712 that states an employee of a contractor, subcontractor, grantee, or subgrantee may not be discharged, demoted or otherwise discriminated against as a reprisal for "whistleblowing". In addition, whistleblower protections cannot be waived by any agreement, policy, form, or condition of employment.

- b. The contractor's employees are encouraged to report fraud, waste, and abuse. The contractor shall inform their employees in writing they are subject to federal whistleblower rights and remedies. This notification must be in the predominant native language of the workforce.
- c. The contractor shall include this requirement in any agreement made with a subcontractor or subgrantee.

2.9.13 Non-Discrimination and ADA - The contractor shall comply with all federal and state statutes, regulations and executive orders relating to nondiscrimination and equal employment opportunity to the extent applicable to the contract. These include but are not limited to:

- a. Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color, or national origin (this includes individuals with limited English proficiency) in programs and activities receiving federal financial assistance and Title VII of the Act which prohibits discrimination on the basis of race, color, national origin, sex, or religion in all employment activities;
- b. Equal Pay Act of 1963 (P.L. 88 -38, as amended, 29 U.S.C. Section 206 (d));
- c. Title IX of the Education Amendments of 1972, as amended (20 U.S.C 1681-1683 and 1685-1686) which prohibits discrimination on the basis of sex;
- d. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794) and the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) which prohibit discrimination on the basis of disabilities;
- e. The Age Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107) which prohibits discrimination on the basis of age;
- f. Equal Employment Opportunity – E.O. 11246, “Equal Employment Opportunity”, as amended by E.O. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity”;
- g. Missouri State Regulation, 19 CSR 10-2.010, Civil Rights Requirements;
- h. Missouri Governor’s E.O. #94-03 (excluding article II due to its repeal);
- i. Missouri Governor’s E.O. #05-30; and
- j. The requirements of any other nondiscrimination federal and state statutes, regulations and executive orders which may apply to the services provided via the contract.

**2.10 Business Associate Provisions:**

2.10.1 Health Insurance Portability and Accountability Act of 1996, as amended - The state agency and the contractor are both subject to and must comply with provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH) (PL-111-5) (collectively, and hereinafter, HIPAA) and all regulations promulgated pursuant to authority granted therein. The contractor constitutes a “Business Associate” of the state agency. Therefore, the term, “contractor” as used in this section shall mean “Business Associate.”

- a. The contractor agrees that for purposes of the Business Associate Provisions contained herein, terms used but not otherwise defined shall have the same meaning as those terms defined in 45 CFR Parts 160 and 164 and 42 U.S.C. §§ 17921 *et. seq.* including, but not limited to the following:
  - 1) “Access”, “administrative safeguards”, “confidentiality”, “covered entity”, “data aggregation”, “designated record set”, “disclosure”, “hybrid entity”, “information system”, “physical safeguards”, “required by law”, “technical safeguards”, “use” and “workforce” shall have the same meanings as defined in 45 CFR 160.103, 164.103, 164.304, and 164.501 and HIPAA.
  - 2) “Breach” shall mean the unauthorized acquisition, access, use, or disclosure of Protected Health Information which compromises the security or privacy of such information, except as provided in 42 U.S.C. § 17921. This definition shall not apply to the term “breach of contract” as used within the contract.
  - 3) “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR 160.103, and in reference to the party to this agreement, shall mean the contractor.
  - 4) “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR 160.103, and in reference to the party to this agreement, shall mean the state agency.

- 5) "Electronic Protected Health Information" shall mean information that comes within paragraphs (1)(i) or (1)(ii) of the definition of Protected Health Information as specified below.
  - 6) "Enforcement Rule" shall mean the HIPAA Administrative Simplification: Enforcement; Final Rule at 45 CFR Parts 160 and 164.
  - 7) "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
  - 8) "Individual" shall have the same meaning as the term "individual" in 45 CFR 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502 (g).
  - 9) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
  - 10) "Protected Health Information" as defined in 45 CFR 160.103, shall mean individually identifiable health information:
    - (a) Except as provided in paragraph (b) of this definition, that is: (i) Transmitted by electronic media; or (ii) Maintained in electronic media; or (iii) Transmitted or maintained in any other form or medium.
    - (b) Protected Health Information excludes individually identifiable health information in (i) Education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. 1232g; (ii) Records described at 20 U.S.C. 1232g(a)(4)(B)(iv); and (iii) Employment records held by a covered entity (state agency) in its role as employer.
  - 11) "Security Incident" shall be defined as set forth in the "Obligations of the Contractor" section of the Business Associate Provisions.
  - 12) "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 164, Subpart C.
  - 13) "Unsecured Protected Health Information" shall mean Protected Health Information that is not secured through the use of a technology or methodology determined in accordance with 42 U.S.C. § 17932 or as otherwise specified by the secretary of Health and Human Services.
- b. The contractor agrees and understands that wherever in this document the term Protected Health Information is used, it shall also be deemed to include Electronic Protected Health Information.
  - c. The contractor must appropriately safeguard Protected Health Information which the contractor receives from or creates or receives on behalf of the state agency. To provide reasonable assurance of appropriate safeguards, the contractor shall comply with the business associate provisions stated herein, as well as the provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH) (PL-111-5) and all regulations promulgated pursuant to authority granted therein.
  - d. The state agency and the contractor agree to amend the contract as is necessary for the parties to comply with the requirements of HIPAA and the Privacy Rule, Security Rule, Enforcement Rule, and other rules as later promulgated (hereinafter referenced as the regulations promulgated thereunder). Any ambiguity in the contract shall be interpreted to permit compliance with the HIPAA Rules.

#### 2.10.2 Permitted Uses and Disclosures of Protected Health Information by the Contractor:

- a. The contractor may not use or disclose Protected Health Information in any manner that would violate Subpart E of 45 CFR Part 164 if done by the state agency, except for the specific uses and disclosures in the contract.

- b. The contractor may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, the state agency as specified in the contract, provided that such use or disclosure would not violate HIPAA and the regulations promulgated thereunder.
- c. The contractor may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR 164.502(j)(1) and shall notify the state agency by no later than ten (10) calendar days after the contractor becomes aware of the disclosure of the Protected Health Information.
- d. If required to properly perform the contract and subject to the terms of the contract, the contractor may use or disclose Protected Health Information if necessary for the proper management and administration of the contractor's business.
- e. If the disclosure is required by law, the contractor may disclose Protected Health Information to carry out the legal responsibilities of the contractor.
- f. If applicable, the contractor may use Protected Health Information to provide Data Aggregation services to the state agency as permitted by 45 CFR 164.504(e)(2)(i)(B).
- g. The contractor may not use Protected Health Information to de-identify or re-identify the information in accordance with 45 CFR 164.514(a)-(c) without specific written permission from the state agency to do so.
- h. The contractor agrees to make uses and disclosures and requests for Protected Health Information consistent with the state agency's minimum necessary policies and procedures.

#### 2.10.3 Obligations and Activities of the Contractor:

- a. The contractor shall not use or disclose Protected Health Information other than as permitted or required by the contract or as otherwise required by law, and shall comply with the minimum necessary disclosure requirements set forth in 45 CFR § 164.502(b).
- b. The contractor shall use appropriate administrative, physical and technical safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by the contract. Such safeguards shall include, but not be limited to:
  - 1) Workforce training on the appropriate uses and disclosures of Protected Health Information pursuant to the terms of the contract;
  - 2) Policies and procedures implemented by the contractor to prevent inappropriate uses and disclosures of Protected Health Information by its workforce and subcontractors, if applicable;
  - 3) Encryption of any portable device used to access or maintain Protected Health Information or use of equivalent safeguard;
  - 4) Encryption of any transmission of electronic communication containing Protected Health Information or use of equivalent safeguard; and
  - 5) Any other safeguards necessary to prevent the inappropriate use or disclosure of Protected Health Information.
- c. With respect to Electronic Protected Health Information, the contractor shall use appropriate administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Electronic Protected Health Information that contractor creates, receives, maintains or transmits on behalf of the state agency and comply with Subpart C of 45 CFR Part 164, to prevent use or disclosure of Protected Health Information other than as provided for by the contract.
- d. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), the contractor shall require that any agent or subcontractor that creates, receives, maintains, or transmits Protected Health Information on behalf of the

contractor agrees to the same restrictions, conditions, and requirements that apply to the contractor with respect to such information.

- e. By no later than ten (10) calendar days after receipt of a written request from the state agency, or as otherwise required by state or federal law or regulation, or by another time as may be agreed upon in writing by the state agency, the contractor shall make the contractor's internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, created by, or received by the contractor on behalf of the state agency available to the state agency and/or to the Secretary of the Department of Health and Human Services or designee for purposes of determining compliance with the HIPAA Rules and the contract.
- f. The contractor shall document any disclosures and information related to such disclosures of Protected Health Information as would be required for the state agency to respond to a request by an individual for an accounting of disclosures of Protected Health Information in accordance with 42 USCA §17932 and 45 CFR 164.528. By no later than five (5) calendar days of receipt of a written request from the state agency, or as otherwise required by state or federal law or regulation, or by another time as may be agreed upon in writing by the state agency, the contractor shall provide an accounting of disclosures of Protected Health Information regarding an individual to the state agency. If requested by the state agency or the individual, the contractor shall provide an accounting of disclosures directly to the individual. The contractor shall maintain a record of any accounting made directly to an individual at the individual's request and shall provide such record to the state agency upon request.
- g. In order to meet the requirements under 45 CFR 164.524, regarding an individual's right of access, the contractor shall, within five (5) calendar days following a state agency request, or as otherwise required by state or federal law or regulation, or by another time as may be agreed upon in writing by the state agency, provide the state agency access to the Protected Health Information in an individual's designated record set. However, if requested by the state agency, the contractor shall provide access to the Protected Health Information in a designated record set directly to the individual for whom such information relates.
- h. At the direction of the state agency, the contractor shall promptly make any amendment(s) to Protected Health Information in a Designated Record Set pursuant to 45 CFR 164.526.
- i. The contractor shall report to the state agency's Security Officer any security incident immediately upon becoming aware of such incident and shall take immediate action to stop the continuation of any such incident. For purposes of this paragraph, security incident shall mean the attempted or successful unauthorized access, use, modification or destruction of information or interference with systems operations in an information system. This does not include trivial incidents that occur on a daily basis, such as scans, "pings," or unsuccessful attempts that do not penetrate computer networks or servers or result in interference with system operations. By no later than five (5) days after the contractor becomes aware of such incident, the contractor shall provide the state agency's Security Officer with a description of any remedial action taken to mitigate any harmful effect of such incident and a proposed written plan of action for approval that describes plans for preventing any such future security incidents.
- j. The contractor shall report to the state agency's Privacy Officer any unauthorized use or disclosure of Protected Health Information not permitted or required as stated herein immediately upon becoming aware of such use or disclosure and shall take immediate action to stop the unauthorized use or disclosure. By no later than five (5) calendar days after the contractor becomes aware of any such use or disclosure, the contractor shall provide the state agency's Privacy Officer with a written description of any remedial action taken to mitigate any harmful effect of such disclosure and a proposed written plan of action for approval that describes plans for preventing any such future unauthorized uses or disclosures.
- k. The contractor shall report to the state agency's Security Officer any breach immediately upon becoming aware of such incident and shall take immediate action to stop the continuation of any such incident. By no later than five (5) days after the contractor becomes aware of such incident, the contractor shall provide the state agency's Security Officer with a description of the breach, the information compromised by the breach, and any remedial action taken to mitigate any harmful effect of such incident and a proposed written plan for approval that describes plans for preventing any such future incidents.

- l. The contractor's reports required in the preceding paragraphs shall include the following information regarding the security incident, improper disclosure/use, or breach, (hereinafter "incident"):
  - 1) The name, address, and telephone number of each individual whose information was involved if such information is maintained by the contractor;
  - 2) The electronic address of any individual who has specified a preference of contact by electronic mail;
  - 3) A brief description of what happened, including the date(s) of the incident and the date(s) of the discovery of the incident;
  - 4) A description of the types of Protected Health Information involved in the incident (such as full name, Social Security Number, date of birth, home address, account number, or disability code) and whether the incident involved Unsecured Protected Health Information; and
  - 5) The recommended steps individuals should take to protect themselves from potential harm resulting from the incident.
- m. Notwithstanding any provisions of the Terms and Conditions attached hereto, in order to meet the requirements under HIPAA and the regulations promulgated thereunder, the contractor shall keep and retain adequate, accurate, and complete records of the documentation required under these provisions for a minimum of six (6) years as specified in 45 CFR Part 164.
- n. Contractor shall not directly or indirectly receive remuneration in exchange for any Protected Health Information without a valid authorization.
- o. If the contractor becomes aware of a pattern of activity or practice of the state agency that constitutes a material breach of contract regarding the state agency's obligations under the Business Associate Provisions of the contract, the contractor shall notify the state agency's Security Officer of the activity or practice and work with the state agency to correct the breach of contract.
- p. The contractor shall indemnify the state agency from any liability resulting from any violation of the Privacy Rule or Security Rule or Breach arising from the conduct or omission of the contractor or its employee(s), agent(s) or subcontractor(s). The contractor shall reimburse the state agency for any and all actual and direct costs and/or losses, including those incurred under the civil penalties implemented by legal requirements, including but not limited to HIPAA as amended by the Health Information Technology for Economic and Clinical Health Act, and including reasonable attorney's fees, which may be imposed upon the state agency under legal requirements, including but not limited to HIPAA's Administrative Simplification Rules, arising from or in connection with the contractor's negligent or wrongful actions or inactions or violations of this Agreement.

#### 2.10.4 Obligations of the State Agency:

- a. The state agency shall notify the contractor of limitation(s) that may affect the contractor's use or disclosure of Protected Health Information, by providing the contractor with the state agency's notice of privacy practices in accordance with 45 CFR 164.520.
- b. The state agency shall notify the contractor of any changes in, or revocation of, authorization by an Individual to use or disclose Protected Health Information.
- c. The state agency shall notify the contractor of any restriction to the use or disclosure of Protected Health Information that the state agency has agreed to in accordance with 45 CFR 164.522.
- d. The state agency shall not request the contractor to use or disclose Protected Health Information in any manner that would not be permissible under HIPAA and the regulations promulgated thereunder.

- 2.10.5 Expiration/Termination/Cancellation - Except as provided in the subparagraph below, upon the expiration, termination, or cancellation of the contract for any reason, the contractor shall, at the discretion of the state agency, either return to the state agency or destroy all Protected Health Information received by the contractor from the state agency, or created or received by the contractor on behalf of the state agency, and shall not retain any copies of such Protected Health Information. This provision shall also apply to Protected Health Information that is in the possession of subcontractor or agents of the contractor.
- a. In the event the state agency determines that returning or destroying the Protected Health Information is not feasible, the contractor shall extend the protections of the contract to the Protected Health Information for as long as the contractor maintains the Protected Health Information and shall limit the use and disclosure of the Protected Health Information to those purposes that made return or destruction of the information infeasible. If at any time it becomes feasible to return or destroy any such Protected Health Information maintained pursuant to this paragraph, the contractor must notify the state agency and obtain instructions from the state agency for either the return or destruction of the Protected Health Information.
- 2.10.6 Breach of Contract – In the event the contractor is in breach of contract with regard to the business associate provisions included herein, the contractor agrees that in addition to the requirements of the contract related to cancellation of contract, if the state agency determines that cancellation of the contract is not feasible, the State of Missouri may elect not to cancel the contract, but the state agency shall report the breach of contract to the Secretary of the Department of Health and Human Services.



**ATTACHMENT 2**

**POTENTIAL DOCUMENTS TO BE DESTROYED**

*The following materials shall be considered acceptable for document destruction and disposal services pursuant to the requirements of this document.*

White and Colored Paper and cardstock (all grades and colors), including, but not limited to:	<ul style="list-style-type: none"><li>• Copier paper</li><li>• Computer paper</li><li>• Fax paper</li><li>• Ledger paper</li><li>• Card Stock</li><li>• NCR forms (carbonless)</li><li>• Road maps</li></ul>
All envelopes with or without adhesive labels and stamps, and with or without windows, including, but not limited to:	<ul style="list-style-type: none"><li>• Regular 10#</li><li>• Window</li><li>• Kraft (brown)</li><li>• White</li></ul>
Adding Machine Tape	
Post-it Notes	
File Folders (manila)	
Copier paper (ream) wrappers	
Shredded paper	May be in bags
Confidential materials	Boxed and marked as confidential
Newsprint Paper and Publications, including, but not limited to:	<ul style="list-style-type: none"><li>• Newspapers</li><li>• City Telephone Books</li><li>• State Telephone Books</li><li>• Missouri State Statute Books and Revisions</li></ul>
Books or bound materials, regardless of quality of paper or type of binding	
Glossy and coated paper, including, but not limited to:	<ul style="list-style-type: none"><li>• Magazines</li><li>• Catalogs</li><li>• Junk Mail</li><li>• Sales Literature &amp; brochures</li><li>• Calendars</li><li>• Publications</li></ul>
Non-paper items, including, but not limited to:	<ul style="list-style-type: none"><li>• Paper clips</li><li>• Staples</li><li>• Spiral and GBC (plastic comb) bindings</li><li>• Rubber bands</li></ul>