

Contract For Services



Missouri Department of Mental Health
Office of Administration
Purchasing and General Services
1706 East Elm Street, P.O. Box 687
Jefferson City, MO 65102

Contract #: ER019914xxx

Title: Purchase of Service Program for the
Division of Developmental Disabilities

Contract Period:
xxxxxxxxxxxxxxxxxxxx through June 30, 2014

The Department of Mental Health desires to contract for the services described herein. All terms, conditions, and prices contained herein shall govern the performance of this contract. The contractor shall review and sign this contract and submit the executed signature page to the Department of Mental Health, Purchasing and General Services Unit.

Contractor Information:

Contractor Name:
Mailing Address:
City, State Zip:

Contact Person Name and Title: _____

Contact Person E-Mail Address: _____

Not For Profit Status: (Check box if your organization is a not-for profit entity)

For State Office Use Only	
State Vendor #:	
Medicaid #:	
NPI:	
Responsible DMH Facility:	xxxxxx

~~~~~  
*The undersigned hereby agrees to provide the services and/or items, at the prices stated, pursuant to the requirements of this document and further agrees that when this document is countersigned by an authorized official of the Missouri Department of Mental Health, a binding contract shall exist between the contractor and the Department of Mental Health.*

*The authorized signer of this document certifies that the contractor named below and each of its principals (as defined by 45 CFR 76) are not suspended or debarred by the federal government.*

***In witness thereof, the parties below hereby execute this agreement.***

\_\_\_\_\_  
Authorized Signature for the Contractor

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Director of the Division of Administrative Services  
Department of Mental Health

\_\_\_\_\_  
Date

## **1 Introduction and Background Information**

1.1 The Missouri Department of Mental Health, Division of Development Disabilities (Department), hereby enters into this contract with xxxxxxxxxxxxxxxxxxxx (contractor) for the purchase of services for individuals with developmental disabilities.

1.2 The Department issues contracts for these services under the authority of an Expenditure Registration System (ER199) issued to the Department by the State Office of Administration.

1.3 The contract period shall be from xxxxxxxxxxxxxxxxxxxx through June 30, 2014.

### **1.4 Coordination**

1.4.1 The contractor shall fully coordinate all contract activities with those activities of the Department.

1.4.2 The contractor shall coordinate delivery of services with the authorizing Division of Developmental Disabilities Regional Office (RO), as required.

1.4.3 In the course of providing the services required herein, the contractor shall collaborate with other agencies, resources, and individuals within the geographic area being served (community), as requested by the Department.

### **1.5 Correspondence**

1.5.1 Within five (5) days of contract award, the contractor shall provide the Department with the name, address, e-mail address, and telephone number of the contractor's representative servicing the contract.

1.5.2 The contractor understands and agrees that electronic mail (e-mail) will be used to transmit contract documents and other correspondence from the Department to the contractor. It shall be the responsibility of the contractor to ensure the timely review and response to e-mailed documents. The contractor shall agree to return executed contract documents in a manner specified by the Department. The Department will normally require executed contract documents to be returned by fax or e-mail.

## **2 General Performance Requirements**

### **2.1 Services Provided**

2.1.1 The contractor shall provide services for the Department in accordance with the provisions and requirements stated herein.

2.1.2 The contractor shall provide services in support of each individual's Individualized Service Plan (ISP) based on a person-centered planning process and approved by the RO. The contractor shall be given a service authorization specifying the services on the ISP for which they are responsible. The contractor may be given a copy of the ISP at the discretion of the RO.

2.1.3 Billable services shall include those services listed on the Pricing Page, attached hereto, as provided in accordance with the requirements and limitations specified in the Non-Waiver Services Definitions attached hereto as Attachment B and DD Waiver Service Definitions attached hereto as Attachment C.

a. The contractor understands and agrees that the Department reserves the sole right to make changes, additions, deletions or other specific modifications to the aforementioned Attachment B: Non-Waiver Service Definitions and Attachment C: DD Waiver Service Definitions.

b. The contractor further understands and agrees that the Department reserves the right to make Attachment B: Non-Waiver Service Definitions, and Attachment C: DD Waiver Service Definitions and any updates thereof, available to the contractor in an online format.

2.1.4 The Department makes no guarantee of the number of units purchased under this contract or the amount of dollars expended. The contractor shall provide services on an as needed, if needed basis, as preauthorized by the RO, and subject to appropriation by the Missouri General Assembly.

### **2.2 Certification/Program Standards**

2.2.1 The contractor shall comply with all applicable requirements of:

- a. 9 CSR, Division 10, Chapter 5 (General Program Procedures); and
- b. 9 CSR, Division 40, (Licensing Rules); and
- c. 9 CSR, Division 45, (Division of Developmental Disabilities); and
- d. any subsequent revisions or additions to the above.

2.2.2 The contractor shall:

- a. obtain any required certification(s) prior to the actual delivery of services;
- b. maintain any such certification(s) throughout the contract period; and
- c. deliver services in a manner consistent with the treatment principles stated in the certification/program standards.

2.2.3 Certification/Program standards may be downloaded from the following internet site:

<http://www.sos.mo.gov/adrules/csr/current/9csr/9csr.asp>

### 2.3 **Information and Billing Systems**

2.3.1 The contractor shall support and utilize the Department's computerized systems, as required, for service reporting, billing, data collection and other activities specified by the Department. The contractor shall support, maintain and utilize any computer system developed by the Department for the purpose of reporting, billing, outcome measurement and other related activities, as required. The contractor shall ensure that all required information is entered in a timely, accurate manner, in accordance with Department specified timeframes.

2.3.2 The contractor shall coordinate its data collection and analysis activities with those of the Department including, but not limited to, acquiring computer equipment and training to support State and Federal efforts to uniformly collect and analyze services data.

### 2.4 **Outcomes Data and Consumer Satisfaction**

2.4.1 The contractor shall participate in the collection and evaluation of outcomes data, including consumer satisfaction surveys, as required by the Department.

2.4.2 The contractor shall utilize the assessment tools, survey protocols and instruments specified by the Department, and shall have ready access to the information supplied to the Department to assist with performance improvement and benchmarking efforts.

2.4.3 The contractor shall establish, implement, and monitor a plan of action to improve outcomes and consumer satisfaction, as directed by the Department.

### 2.5 **Personnel**

2.5.1 Contractor staff utilized in the provision of services must be appropriately trained, licensed, certified and/or credentialed, as specified in Attachment B: Non-Waiver Service Definitions and Attachment C: DD Waiver Service Definitions, as applicable.

2.5.2 All personnel provided by the contractor must have background checks conducted in accordance with RSMo 630.170 and 9 CSR 10-5.190. The contractor shall be responsible for all costs related to background checks and screenings.

### 2.6 **Business Associate Provisions**

2.6.1 The Department is subject to and must comply with provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all regulations promulgated pursuant to authority granted therein.

2.6.2 Therefore, unless the contractor declares itself to be a Covered Entity as defined in the HIPAA regulations, the contractor shall be a "Business Associate" of the Department as such term is defined in the Code of Federal Regulations (CFR) at 45 CFR 160.103 and the contractor shall comply with the provisions of the Business Associate Agreement attached hereto as Attachment A.

2.6.3 The contractor must notify the Department in writing if declaring itself to be a Covered Entity as defined in the HIPAA regulations.

### **3 Specific Performance Requirements**

#### **3.1 Medicaid Requirements**

- 3.1.1 Certain services provide by the contractor may be included under one of the 1915(c) Home and Community Based Services Medicaid Waiver programs (waivered services) for individuals with mental retardation or other developmental disabilities. Therefore, any waived services provided by the contractor shall be subject to all applicable Medicaid regulations, rules and requirements.
- 3.1.2 The contractor must be enrolled as a DD Home and Community Based (HCB) Services Medicaid Waiver provider prior to the delivery of waived services and throughout the contract period, except when such waived service is provided by the contractor as a subcontractor under an Organized Health Care Delivery System (OHCDS) arrangement.
- 3.1.3 The contractor shall have all licenses/accreditation's/certifications required by the DD HCB Medicaid Waiver, as applicable.
- 3.1.4 The contractor shall not subcontract for the provision of waived services unless the contractor is designated by the Department as an Organized Health Care Delivery System (OHCDS) and is in compliance with 42 CFR, Part 434 and 45 CFR, Part 74.

#### **3.2 Service Authorizations**

- 3.2.1 The contractor shall provide services upon receipt of authorization from the Department.
- 3.2.2 The contractor understands and agrees that the Department reserves the sole right to:
  - a. specify the process that will be utilized to authorize delivery of services to a consumer;
  - b. specify the number of units and or/frequency of services, dollar amounts and other authorization limits;
  - c. adjust or terminate authorizations; and
  - d. resolve any dispute related to authorizations.
- 3.2.3 The contractor may decline to provide services to a consumer for any reason within ten (10) calendars days after the service authorization is issued by notifying the RO, in writing, of such decision to decline.
- 3.2.4 In the event the contractor is unable to provide any authorized residential or ancillary service to a particular consumer, the contractor shall notify the RO, in writing, at least fifteen (15) calendar days prior to the date proposed for curtailment of such services to that consumer.
  - a. For purposes of this contract, the term "ancillary service" shall mean any:
    - 1) service included in the consumer's personal plan which is arranged or provided by the contractor and is not included the contractor's residential per-diem rate; or
    - 2) approved, time-limited reimbursements for other consumer-specific costs.

#### **3.3 Service Delivery Staff**

- 3.3.1 Contractor staff providing services must meet the training and educational requirements specified in the service definition of the particular service being provided, as required in Attachment B: Non-Waiver Service Definitions and Attachment C: DD Waiver Service Definitions.
- 3.3.2 The contractor shall maintain employee files which document, at a minimum, the employee's:
  - a. name;
  - b. date hired;
  - c. current hourly pay rate or salary;
  - d. highest level of education completed or passage of the General Education Requirements (GED);
  - e. completion dates of training courses; and
  - f. criminal history background check results in compliance with 42 CFR 447.10.

- 3.3.3 The contractor shall submit copies of changes or amendments to licenses, certification, accreditation, or other professional qualifications of professional staff, including Qualified Developmental Disability Professionals (QDDPs), to the RO on the annual contract renewal date. This shall include any adverse actions taken on licenses, certifications or accreditations.
- 3.3.4 The Department reserves that right to review the contractor's employee files documentation.
- 3.3.5 All staff employed to carry out the provisions of this contract shall meet the training and educational requirements as specified in service definition of the particular service being purchased, as noted as in Attachment B: Non-Waiver Service Definitions and Attachment C: DD Waiver Service Definitions.
- a. All staff providing residential or day habilitation, out-of-home respite, or agency-based personal assistance services shall have completed training in preventing, detecting, and reporting of abuse/neglect, prior to providing direct care, and shall repeat the training every two (2) years. Staff must also have current certification in a competency based CPR and First Aid course.
  - b. Staff may provide direct care while obtaining required CPR/First Aid, Emergency Intervention, Medication Administration training as long as there is one fully trained staff on duty during each shift at each service delivery location.

### 3.4 **Documentation of Services**

- 3.4.1 The contractor shall document the provision of authorized services and consumer progress.
- 3.4.2 The contractor shall document and maintain records of services provided. In the event the contractor provides waived services, the contractor shall document and maintain records of waived services in accordance with any Medicaid requirements. Service records shall be provided to the Department, as requested, and shall include, but are not limited to:
- a. the service type and number of units provided;
  - b. the activity related to the personal plan;
  - c. the date of service and the start and end times;
  - d. the name of the staff person providing the service;
  - e. the name of the consumer receiving services;
  - f. the location where services were provided;
  - g. the signature and title of the program supervisor/provider; and
  - h. other information deemed necessary by Department.
- 3.4.3 The contractor shall document and submit consumer progress reports to the RO on at least a monthly basis. Progress reports shall include, at a minimum, the service(s) provided, the time period covered in the report, an assessment of consumer progression specific goals and objectives as documented in the consumer's personal plan, the signature and title of the person completing the report (QDDP) and any other information required by Department.
- a. The contractor shall submit consumer progress reports at other times, as required by the RO.
  - b. The contractor shall participate in the review of consumer progress with the RO, as required, and shall provide input regarding individual Plans of Care as requested.

### 3.5 **Residential Service Delivery**

- 3.5.1 In the event the contractor is providing residential services, the contractor shall provide quality care and oversight to consumers and implement those portions of the consumer's Plan of Care which are approved by the RO.
- 3.5.2 In the event the contractor is providing residential services, the contractor shall assist in the formulation, implementation and evaluation of consumer Plans of Care as requested by the RO. The contractor and appropriate direct contact staff shall attend the consumer's annual personal plan conference as requested by the RO.

- 3.5.3 In the event the contractor is providing residential services, the contractor shall obtain an annual physical examination for each Department consumer receiving services.
- a. The contractor shall arrange for the annual exams within timeframe specified by the RO.
  - b. The contractor shall include a record of the examinations in the consumer's chart.
  - c. In the event a consumer is not Medicaid-eligible, the cost for physical examinations and other physician services shall be considered reimbursable ancillary services, subject to the prior approval/authorization of the RO.
  - d. The contractor shall arrange for additional physical examinations as authorized by the RO.
- 3.5.4 In the event the contractor is providing residential services, the contractor shall provide consumers with appropriate opportunities for leisure activities and recreational programming.
- 3.5.5 In the event the contractor is providing residential services, the contractor shall provide the RO with an emergency contact person and phone number which shall be answered twenty-four (24) hours per day, seven (7) days per week.
- 3.5.6 In the event the contractor is providing residential services, excluding ISL services, the contractor shall provide, without additional reimbursement, personal hygiene, grooming and first aid supplies such as, but not limited to: linens, towels, shampoo, soap, brushes, toothpaste, lotion, sanitary napkins, and band aids.
- 3.5.7 The Department reserves the right to remove any or all of its consumers, withdraw financial support for any or all of its consumers and/or terminate this contract without notice when, in the Department's sole judgment, the health and welfare of its consumers are threatened by their continued presence in the contractor's facility.
- 3.5.8 When it becomes apparent to the contractor that the health or welfare of the consumer is jeopardized by continued services with the contractor, the contractor shall:
- a. if a medical emergency, seek immediate emergency medical care/treatment for the consumer followed by immediate notification to the RO; or
  - b. if not a medical emergency, notify the RO of their intent to terminate services to the consumer. The residential contractor shall not terminate services to a consumer without thirty (30) days prior written notice to the RO, unless an earlier date is mutually agreed upon.
- 3.5.9 The contractor shall immediately notify the RO when there is:
- a. a significant, unanticipated deterioration in a consumer's physical or mental condition; or
  - b. an unexplained absence of a consumer.
- 3.5.10 In the event the contractor is providing residential services from a property or premises not owned the contractor, the contractor shall secure a legally binding written agreement from the property owner (landlord) requiring the landlord to provide sixty (60) days advance notice to the contractor before evicting or otherwise requiring the contractor to quit the premises. A property lease or other agreement which includes the above notice provisions may be provided in lieu of the statement.
- a. In the event the contractor receives notice from the landlord to quit the premises, the contractor shall forward such notice to the RO within 24 hours of receipt.
- 3.5.11 The contractor shall not transfer a consumer to another place of residence without the prior written consent of the RO.
- 3.5.12 The contractor shall assist the RO with the relocation of a consumer, as required. Such coordination may include, but is not limited to, arranging or providing transportation and assisting the consumer with preparation to relocate.

- 3.5.13 In the event the contractor provides residential services and has a vacancy, the contractor may backfill the vacant bed(s) with private pay consumer(s) only if the following requirements are met:
- The contractor must conduct sufficient checks and screenings that will ensure the safety of the DD consumers;
  - The contractor may not charge the private pay consumer less than the current per diem rate established for the DD consumers;
  - Staffing ratios, established for the DD consumers, shall not be compromised as a result of the presence of the private pay consumer(s); and
  - In the event the contractor is at full bed capacity, including any private pay consumer(s), and the RO places a consumer, the contractor shall, within ten (10) calendar days, either make other arrangements for the private pay consumer(s) or refuse the DD placement.

3.5.14 In the event the contractor provides group home services in group homes or residential centers, the contractor shall maintain appropriate levels of staff according to the following Division of Developmental Disabilities residential levels-of-care model:

| Residential Facility Category | Description per 9CSR 454.010(1)(O)                                                                                                                                                                   | Staffing Ratio                             | Degreed Professional Manager                     | Characteristics of Persons Served                                                                                                                                                                                                |
|-------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|--------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Category I                    | Facility designed to provide a group living environment and minimum level of habilitation and supervision for persons with no severe medical needs or maladaptive behaviors.                         | 1:8 (Day)<br>1:8 (Evening)<br>1:16 (Night) | Minimum of 1.66 hours per week per person served | Person with mild to moderate levels of adaptive functioning, who are ambulatory, or mobile non ambulatory, have basic self-help skills but may need minimal assistance or prompting with daily living skills.                    |
| Category II                   | Facility designated to provide a group living and habilitation environment for persons with no severe medical needs or severe maladaptive behaviors but who need self-help or habilitation training. | 1:4 (Day)<br>1:4 (Evening)<br>1:8 (Night)  | Minimum of 2.50 hours per week per person served | Persons with moderate to severe levels of adaptive functioning, who are ambulatory or mobile non ambulatory, and need training in basic self-help skills, socialization and daily living skills.                                 |
| Category III (Specialized)    | Specialized facility designed to provide a habilitation environment for persons with intensive physical or medical needs, severe adaptive behaviors or other specialized care needs.                 | 1:3 (Day)<br>1:3 (Evening)<br>1:6 (Night)  | Minimum of 2.50 hours per week per person served | Persons with various levels of adaptive functioning who are non ambulatory and unable to provide for their own needs or who are ambulatory/non-ambulatory with intensive medical/physical needs or severe maladaptive behaviors. |

3.5.15 Providers of residential supports who provide services in semi-independent living (SIL) arrangements, shall maintain appropriate levels of staff sufficient to meet the needs of the individuals being served. Staffing plans deemed appropriate and sufficient are approved by the regional office using an individualized supported living budget. The budget shall reflect the approved staffing plan.

### 3.6 **Community RN Requirements**

3.6.1 In the event the contractor is providing residential services, the contractor shall provide nursing oversight services for all residential consumers. Nursing oversight shall be provided by Registered Nurses (RNs) licensed and in good standing in the state of Missouri.

3.6.2 The contractor and all RNs utilized by the contractor shall participate in the Community RN Program orientation training and any subsequent mandatory program update training(s).

- Within ninety (90) days of the contract effective date, the contractor must complete the state-sponsored orientation training.
- Any RN(s) utilized by the contractor must complete the state-sponsored orientation training within

ninety (90) days of hire, whether employed by or contracted with the contractor.

- 3.6.3 Nursing oversight activities shall include, but are not limited to:
- a. regular monthly nursing functions specified by the Department for each consumer;
  - b. collaboration with designated Department staff in the implementation of statewide health and safety initiatives;
  - c. review and analysis of event reports for medication errors and injuries; and
  - d. completion of a Monthly Health Summary for each consumer.
- 3.6.4 The contractor shall review the RN's Monthly Health Summary as part of the consumer's monthly service review and address any issues identified by the RN.
- 3.6.5 The contractor understands and agrees that the contractor's residential rate is predicated, in part, on the utilization of 1.25 hours per month per consumer for Community RN services.
- a. The contractor shall account for Community RN service hours separately from any other service hours for which the RN may be employed by the provider and shall provide such accounting to the Department, as requested.
  - b. The contractor understand and agrees that the total required Community RN services hours may be combined and distributed within the contractor's agency based on individual needs as along as all required monthly functions are met for each consumer.
- 3.6.6 The contractor shall notify the RO immediately if the Community RN position becomes vacant or if, for any reason, nursing oversight services cannot be provided.
- a. Upon such notification to the Department, the contractor shall submit an interim plan which describes how nursing oversight needs will be met. Such interim plan shall be subject to Department approval and acceptance.
  - b. In order to ensure the health and safety of consumers and the training/supervision needs of contractor staff, the Department may require the utilization of a temporary nurse.
- 3.6.7 In the event the Department determines the contractor has failed to provide appropriate nursing oversight, the Department reserves that right to recover the applicable portion of the residential rate and /or cancel the contract.
- 3.7 **Emergency Medical Care and Do Not Resuscitate Orders**
- 3.7.1 The contractor shall administer or obtain immediate emergency medical care whenever the withholding of such care may result in bodily injury or jeopardize the life of a client, except when authorized to implement a "Do Not Resuscitate" (DNR) order for such client for a specific terminal condition.
- 3.7.2 In accordance with the Department's statutory mission to habilitate, treat, or rehabilitate its consumers, the contractor shall not withhold or withdraw:
- a. food, hydrations, antibiotics or anti-seizure medication for the purpose of ending life;
  - b. psychotropic drugs essential to treatment of mental illness that are otherwise authorized by law or Department rule;
  - c. any medication, medical procedure or intervention that, in the opinion of facility staff, is necessary to prevent the suicide of a resident or patient; or
  - d. CPR or other emergency intervention without a non-hospital DNR order authorized for use in a Department-operated facility or the contractor's facility.
- 3.7.3 In the event a consumer has a terminal condition and a non-hospital DNR order is desired, the consumer and/or legally responsible person must obtain a Department "Statement of Terminal Condition" form for completion by their attending physician.
- a. For purposes of this contract, a terminal condition is defined as "an incurable or irreversible condition which, in the opinion of the attending physician, is such that death will occur within a short time regardless of the application of medical procedures" (RSMo.459.010). "Death within a short time" is defined as within six (6) months, in accordance with the Missouri Hospice definition.

- b. The completed form shall be and submitted to the Department for authorization by the Department's Medical Director, or designee.
  - c. Once authorized, a non-hospital DNR order may be obtained by the contractor for implementation in its facility.
  - d. The contractor should inform consumers and their families about available hospice services.
  - e. The health status of the consumer shall be continually reviewed with documentation by the attending physician specific for the anticipated, imminent cause of demise.
  - f. If a non-hospital DNR order is needed beyond six (6) months, the status must be reviewed by the Department of Mental Health Medical Director or designee.
  - g. In the event a non-hospital DNR order is rescinded, or when a terminal diagnosis is changed, the contractor shall implement the change and immediately notify the RO.
- 3.7.4 In the event the consumer's current condition is not terminal but is such that CPR would cause more harm than good to the individual and substantially compromise his or her well-being, the planning team and attending physician shall determine what emergency medical care is needed.
- a. An attending physician will define the appropriate emergency medical care on the Alternative to CPR form and it shall be integrated into the person-centered plan and staff shall be trained by a medical professional to competently carry out the orders accurately.
- 3.7.5 Prior approval for the provision or the obtainment of emergency medical care for Department clients is not required. The contractor shall immediately notify the RO whenever there is a medical emergency. Any follow-up medical services relating to such emergency shall require the prior approval of the RO.
- 3.8 **Management of Consumer Property**
- 3.8.1 Money belonging to consumers receiving residential services, which is held by the contractor, shall be held in trust for the consumer(s). Such money held in trust shall not be commingled with any contractor funds.
- 3.8.2 The contractor shall maintain records, on a cash basis, of receipts and disbursements by or on behalf of individual consumers.
- a. For each individualized supported living resident, the contractor shall maintain a record of personal spending monies and a separate record for all other monies (rent, utilities, and any other funding).
- 3.8.3 The contractor shall not charge the consumer's personal funds for any expenses which the contractor is obligated to provide under this contract or for items or services not clearly set out in 9 CSR 25-5.010 nor shall the contractor use money of one consumer to defray the expenses of another consumer.
- 3.8.4 The contractor shall not charge the consumer for the maintenance of a consumer's personal account. The contractor may, however, charge consumer personal accounts for bank check writing charges.
- a. Allowable bank charges shall not include charges for check overdrafts.
  - b. The contractor may allocate bank charges to consumer personal accounts based on the number of personal accounts comprising the bank balance.
  - c. The contractor understands and agrees that the Department assumes no responsibility for deficit spending of consumer accounts.
- 3.8.5 The contractor shall report quarterly, or more frequently if required by the RO, the account balance of each consumer. At no time shall the personal spending account balance be in excess of \$200.
- 3.8.6 The contractor shall not purchase property from a consumer's personal spending account which will not provide meaningful benefit to the consumer.
- a. Any consumer purchase of \$100 or more shall require prior written approval of the RO.
  - b. Property purchased for a consumer should be kept in the consumer's immediate living area, if practical. If it is not practical to keep a consumer's property in the consumer's immediate living area, the consumer's property shall be kept in an area easily accessible to the consumer, and shall not be used by anyone else without the permission of the consumer.

c. Unless otherwise agreed to in writing by the consumer or other responsible person, all property purchased for the consumer shall clearly bear the consumer's personal identification. In any event, all personal property purchased for the consumer shall be clearly enumerated in the consumer's personal inventory listing.

3.8.7 The contractor shall immediately notify the RO when any discrepancy is discovered relating to consumer funds or property.

3.8.8 Within thirty (30) days after the death or transfer of a consumer, the contractor shall coordinate the disposition of the consumer's funds and personal property with the RO.

### 3.9 **Consumer Rights**

3.9.1 The contractor shall not limit the rights of a resident or consumer, as defined in RSMo. 630.115, and shall exercise diligence to protect a consumer's rights in accordance with federal and state statutes, regulations and Department rules and guidelines.

3.9.2 The contractor shall comply with RSMo. 630.120 and shall not presume that residents and consumers are incompetent or limit their rights, responsibilities or obligations of citizenship as a consequence of receiving evaluation, care, treatment, habilitation for mental retardation or other developmental disabilities.

3.9.3 The contractor may limit consumer rights as specified in RSMo. 630.110 only if exercising these rights would be inconsistent with the person's therapeutic care, treatment, habilitation or rehabilitation. The determination of inconsistency shall be made only when the consumer is a clear danger to themselves, others or community property and shall only be made jointly by the contractor and the RO.

3.9.4 In the event the contractor is providing residential services in a licensed, certified or accredited residential facility with a capacity of ten (10) or more consumers, the contractor shall appoint a consumer rights committee, whose function shall be to review existing and planned programs, ensuring that legal rights of consumers are upheld as specified in RSMo 630.110.

a. The consumer rights committee shall consist of no fewer than five (5) adult individuals, one of which must be a representative of the RO.

### 3.10 **Annual Uniform Cost Report (UCR)**

3.10.1 The contractor shall submit to the Department a Uniform Cost Report (UCR) documenting the contractor's actual costs incurred in the provision of services during that specific fiscal year. The contractor shall submit its UCR in 2012 and once every three (3) fiscal years thereafter.

3.10.2 The cost report may be submitted in a format, of the contractor's choice, and should include all information required by the Department.

3.10.3 The cost report must properly separate specific services by individually contracted service type and/or cost center, as specified by the Department.

3.10.4 The contractor shall be exempt from submitting the UCR in the event:

a. the contractor is paid less than \$300,000 in state and/or federal funds annually by the Department; or

b. the contractor only provides any of the following to the Department:

- 1) therapy services,
- 2) personal assistance services,
- 3) transportation services,
- 4) specialized medical equipment and supplies, or
- 5) environmental accessibility adaptation services.

### 3.11 **OHCDs**

3.11.1 In the event the contractor is designated by the Department as an Organized Health Care Delivery System (OHCDs) the contractor shall comply with the requirements specified in this section.

3.11.2 As an OHCDs, the contractor shall assure its full compliance with terms and conditions specified in this contract.

- 3.11.3 The contractor (also referred to in this section as OHCD) shall directly provide at least one Medicaid-covered service with its own employees and shall assure that its employees, who provide a Medicaid service, shall satisfy state minimum qualifications for the specific service provision.
- 3.11.4 The contractor understands and agrees that all services provided under the Home and Community Based Services Medicaid Waiver will be provided in accordance with the individual's plan of care as developed by his or her interdisciplinary planning team. The contractor shall be responsible for coordinating services with the planning team.
- 3.11.5 As allowed under the Medicaid Home and Community Based Services Waiver, the OHCD may subcontract for certain services, subject to the requirements specified herein.
- a. As authorized by the RO, the OHCD may sub-contract for the services listed below:
- † Adaptive Equipment/Specialized Medical Equipment and Supplies
  - † Assistive Technology
  - † Behavior Analysis
  - † Behavior Therapy
  - † Career Preparation
  - † Communication Skills Instruction
  - † Community Employment/Supported Employment
  - † Community Specialist
  - † Counseling
  - † Crisis Intervention
  - † Day Service/Day Habilitation
  - † Dental
  - † Group Home
  - † Home Modification
  - † Host Home
  - † Individualized Supported Living
  - † Job Discovery
  - † Job Preparation
  - † Occupational Therapy
  - † Personal Electronic Safety Device
  - † Personal Assistance
  - † Physical Therapy
  - † Positive Behavior Support
  - † Professional Assessment and Monitoring
  - † Respite (In-Home and Out-of-Home)
  - † Speech/Language Therapy
  - † Support Broker
  - † Transportation
- b. In the event the contractor subcontracts for any service listed above, the contractor shall ensure that the subcontractor meets all of the qualifications required in the waiver for that particular service.
- 1) The contractor shall verify any required licensure, certification, accreditation, and certification of good standing with the Secretary of State.
  - 2) The contractor shall conduct a background screen of any subcontractor providing any of the services listed above, including Family Care Safety Registry, FBI check, and the Office of Inspector General Medicare and Medicaid exclusion list. In the event a subcontractor is already directly enrolled with MO HealthNet to provide any other state plan or waiver services, they shall be deemed to have met all provider requirements for provision of the DD waiver service.
- c. The contractor shall ensure that the subcontractor documents any and all services, authorized by the Regional Office, in accordance with the documentation requirements specified in 13 CSR 70-3.030 (2) (a).
- d. All sub-contracts which the OHCD enters into must include:

- 1) Assurances that all employees of the sub-contractors providing a Medicaid service shall meet Department minimum qualifications for service provision;
- 2) Provisions that define a sound and complete procurement contract per 42 CFR, Part 434 and 45 CFR, Part 74, Appendix G, except that the sound and secure procurement system shall not be any form of competitive bid;
- 3) Identification of the population covered by the sub-contract;
- 4) Relevant procedures for enrollment or reenrollment of the covered population;
- 5) Provisions that the state Medicaid Agency, the Department of Health and Human Services (HHS) and the Department may evaluate, through inspection or other means, the quality, appropriateness and timeliness of services performed;
- 6) Procedures and criteria for terminating the sub-contract, including a requirement that the sub-contractor promptly supply all information necessary for the reimbursement of any outstanding Medicaid claims;
- 7) Provisions that the subcontractor maintains an appropriate record system for services to enrolled recipients;
- 8) Provisions that the subcontractor safeguards information about recipients as required by 42 CFR, part 431, subpart F and state laws;
- 9) Activities to be performed by the subcontractor that relate to third-party liability requirements in 42 CFR, part 433, subpart D;
- 10) Identification of the services to be provided;
- 11) Provisions that the OHCDs and the Department reserve the right to review, approve, and monitor the subcontractor's compliance with all rules and requirements applicable to the Medicaid Services/Supports provided, and compliance with the applicable sections of 42 CFR Part 434; and
- 12) Provisions assuring that the subcontractor will observe and guarantee the free choice of the client to obtain services from any qualified provider.

3.11.6 The contractor shall not invoice the Department more than the cost paid to the subcontractor by the OHCDs for the service.

3.11.7 The OHCDs shall document the consumer's free choice of providers for waiver services delivered to him/her by the OHCDs, or its subcontractors.

### 3.12 **Emergency Intervention System**

3.12.1 Contractor direct care staff must be trained in an emergency intervention system approved by the Director of the Division of Developmental Disabilities or designee, when the need is identified in a consumer's Individual Support Plan.

- a. Currently, the approved emergency intervention systems include *The Mandt System*® and *The Nonviolent Crisis Intervention*® program developed by the Crisis Prevention Institute (CPI).
- b. Any request from the contractor to utilize an alternative emergency intervention system must be made in writing to the Division of DD and must include reasons why the alternative system is necessary.

3.12.2 The contractor shall not utilize any restraint procedure associated with a high risk of harm. The contractor understands and agrees that the forms of restraints listed below are specifically prohibited by the Department:

- Physical restraint techniques that interfere with breathing; or any strategy in which a pillow, blanket, or other item is used to cover the individual's face as part of a reactive strategy;
- Prone restraints (on stomach), restraints positioning the person on their back supine, or restraint against a wall or object;
- Restraints which involve staff lying/sitting on top of a person;
- Restraints that use the hyperextension of joints;
- Any technique which has not been approved by the Division, or for which the person implementing has not received Division-approved training;

- Any reactive strategy that may exacerbate a known medical or physical condition, or endanger the individual's life, or is otherwise contraindicated for the individual by medical or professional evaluation;
- Containment without continuous monitoring and documentation of vital signs and status with respect to release criteria;
- Use of any reactive strategy on a "PRN" i.e., "as required" basis. Identification of safe procedures for use during a crisis in an individual's safety crisis plan shall not be considered approval for a restraint procedure on an as-needed basis;
- Seclusion – Placement alone in a locked room or area which a person cannot leave, or aversive stimuli;
- Any procedure used as punishment, for staff convenience, or as a substitute for engagement, active treatment or behavior support services;
- Inclusion of a reactive strategy as part of a behavior support plan for the reduction or elimination of a behavior;
- Reactive strategy techniques administered by other persons who are being supported by the agency;
- Corporal punishment or use of aversive conditioning such as, but not limited to applying painful stimuli as a penalty for certain behavior, or as a behavior modification technique;
- Overcorrection by requiring the performance of repetitive behavior. Examples include, but are not limited to: Contingent exercise, writing sentences, over-cleaning an area, repeatedly walking down a hallway after running;
- Placing persons in totally enclosed cribs or barred enclosures other than crib; and
- Any treatment, procedure, technique or process prohibited by federal or state laws.

### **3.13 Annual Provider Plan**

- 3.13.1 All providers deemed licensed, certified or accredited shall develop and submit an annual plan to the Division. The annual plan shall include an agency overview, internal assessment as well as information available from the Division various information management systems. With this information, the provider shall develop outcome-based goals designed to promote quality improvement for the upcoming year.
- 3.13.2 Accredited providers may utilize their Annual Performance Report as the Annual Provider Plan.
- 3.13.3 The plan shall be forwarded to the appropriate Regional Office within 30 days of the mutually agreed upon due date.

## **4 General Contractual Requirements**

### **4.1 General**

- 4.1.1 The contract shall consist of any and all of the following documents, as applicable:
- a. a Request for Proposal (RFP) or Invitation for Bid (IFB) and any amendments, attachments and exhibits thereto;
  - b. the proposal or bid submitted by the contractor in response to the RFP/IFB, as accepted by the Department;
  - c. an original contract document; and
  - d. any subsequent amendments to the contract.
- 4.1.2 This contract shall be construed according to the laws of the State of Missouri and shall govern the terms and conditions of the contracted services provided to clients of the Department by the contractor.
- a. To the extent that a provision of the contract is contrary to the Constitution or laws of the State of Missouri or of the United States, the provisions shall be void and unenforceable. However, the balance of the contract shall remain in force between the parties unless terminated by consent of both the contractor and the state.
  - b. The contract will be read and enforced as though every provision of law and clause required by law to be inserted herein were included. If any such provision is not inserted, then upon the notification of either party the contract will be amended to make such correction.
- 4.1.3 The contractor shall comply with all local, state and federal laws and regulations related to the performance of the contract to the extent that these may be applicable.
- 4.1.4 The exclusive venue for any legal proceeding relating to or arising out of the contract shall be in the Circuit Court of Cole County, Missouri.
- 4.1.5 This contract shall constitute an assignment by the contractor to the State of Missouri of all rights, title and interest in and to all causes of action that the contractor may have under the antitrust laws of the United States or the State of Missouri for which causes of action have accrued or will accrue as the result of or in relation to the particular supplies and/or services purchased or procured by the contractor in the fulfillment of the contract.
- 4.1.6 By signing this contract the contractor certifies that the contractor and each of its principals (owners, director and others as defined by 45 CFR 76) are not suspended or debarred from contracting with the federal government.
- a. In the event the contractor or any of its principals become suspended or debarred during the contract period, the contractor shall immediately send written notification to the Department.
  - b. Suspension or debarment of the contractor, or failure by the contractor to provide written notification of suspension or debarment to the Department, may result in immediate termination of the contract.
- 4.1.7 The Department enters into this contract by the authority of its director. The contractor enters into this contract individually or, if incorporated, pursuant to and by authority of its board of directors.
- 4.1.8 The contractor shall not transfer any interest in the contract, whether by assignment or otherwise, without the prior written consent of the Department.

### **4.2 Amendment, Termination and Renewal**

- 4.2.1 The contract shall not bind, nor purport to bind, the Department for any commitment in excess of the original contract period.
- 4.2.2 The contractor understands and agrees that authorization for the Department to contract for the services required herein is granted each fiscal year by the Office of Administration and that authorization for additional contract periods requires the annual renewal of the authorization.

- 4.2.3 The contractor understands and agrees that funding for the contract must be appropriated by the Missouri General Assembly for each fiscal year included within the contract period. Therefore, the contract shall not be binding upon the Department for any period in which funds have not been appropriated, and the Department shall not be liable for any costs associated with termination caused by lack of appropriations.
- a. The Department reserves the right to terminate the contract, without penalty or termination costs, if such funds are not appropriated or available.
  - b. In the event funds are not appropriated or available for the contract, the contractor shall not prohibit or limit the Department's right to pursue alternate contracts, as necessary, to conduct state governmental affairs.
  - c. The provisions of the above paragraphs shall apply to any amendment or the execution of any option to extend the contract.
- 4.2.4 Any change, whether by modification and/or supplementation, shall be accomplished by a formal contract amendment.
- 4.2.5 The Department shall have the right, at its sole option, to renew the contract. In the event the Department exercises its renewal option, all terms, conditions and provisions of the original contract and any subsequent amendments shall remain in effect and shall apply during the renewal period.
- 4.2.6 The Department shall have the right, at its sole option, to consolidate all or portions of related service contracts into a single contract.
- 4.2.7 The contract may be terminated by either party, by giving sixty (60) days advance written notice to the other party at its principal address. The termination shall be effective sixty (60) days from the date of notice or the date specified in the notice. The Department reserves the right to withdraw any or all of its clients before the end of the sixty (60) day period.
- 4.2.8 The Department may terminate the contract for breach of contract by providing the contractor with a written notice of termination. The termination shall become effective on the date specified in the notice. At its sole discretion, the Department may give the contractor an opportunity to cure the breach or to explain how the breach will be cured. Payments for services shall not be made beyond the date of termination.
- 4.2.9 Any written notice to the contractor shall be deemed sufficient when deposited in the United States mail postage prepaid, transmitted by facsimile, electronic mail, or hand-carried and presented to an authorized employee of the contractor at the contractor's address as listed in the contract.
- 4.2.10 In the event of termination all client records, documentation, data, reports, supplies, equipment and accomplishments prepared, furnished, acquired or developed by the contractor as a direct requirement specified in the contract shall become the property of the Department.
- 4.2.11 Upon termination of the contract, the contractor shall maintain, store, transfer, and provide for the authorized release of all client records developed by the contractor as a direct requirement of this contract. The contractor agrees that upon termination of the contract the Department shall have access to all client records pertaining to the performance of the contract and, as requested by the Department, the contractor shall make available to the Department all client records and documents prepared or developed as a result of the contract.
- 4.2.12 Transition of Services: Upon expiration, termination, or cancellation of the contract, the contractor shall assist the Department to ensure an orderly transfer of responsibility and/or the continuity of those services required under the terms of the contract to an organization designated by the Department, if requested in writing. The contractor shall provide and/or perform any or all of the following responsibilities:
- a. 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 Department and/or to the Department's designee within seven (7) days after receipt of the written request.

- b. The contractor shall agree to 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 thirty (30) 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.
- c. The contractor shall discontinue providing service or accepting new assignments under the terms of the contract, on the date specified by the Department, in order to ensure the completion of such service prior to the expiration of the contract.

#### 4.3 **Subcontracting**

- 4.3.1 The contractor may subcontract for the services/products required herein with prior written approval from the Department.
- 4.3.2 The contractor understands and agrees that utilization of a sub-contractor shall in no way relieve the contractor of the responsibility for providing the services required herein.
- 4.3.3 Any subcontracts for the services/products described herein shall be in writing and shall include appropriate provisions and contractual obligations, including all requirements of the contract's General Contractual Requirements, to ensure the successful fulfillment of all contractual obligations.
- 4.3.4 Any subcontracts must ensure that the Department and 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 Department and the contractor.
- 4.3.5 The contractor understands and agrees that the contractor shall be solely responsible for all legal and financial responsibilities related to the execution of a subcontract.

#### 4.4 **Conflict of Interest**

- 4.4.1 By signing this contract the contractor certifies that the contractor has no other contractual relationships which create any actual conflict of interest. The contractor further agrees that during the term of the contract neither the contractor nor any of its employees shall acquire any other contractual relationships which would create such a conflict.
- 4.4.2 In accordance with state and federal laws and regulations, state executive order or regulations, the contractor certifies that it presently has no interest and shall not acquire any interest, directly or indirectly, which would conflict in any manner or degree with their performance of the contracted services. The contractor further agrees that no person having such interest shall be employed or conveyed an interest, directly or indirectly, in the contract.
- 4.4.3 In accordance with state law, no official or employee of the Department or public official of the State of Missouri who exercises any functions or responsibilities related to development, review, approval or oversight of the contract shall acquire any personal interest, directly or indirectly, in the contract or proposed contract. Therefore, the contractor certifies that:
  - a. no State of Missouri employee assisted the contractor in obtaining this contract or will participate in the performance of this contract if such involvement constitutes a conflict of interest;
  - b. no State of Missouri employee shall be compensated under this contract for duties performed in the course of his/her state employment; and
  - c. before any State of Missouri employee may be involved in the performance of this contract written approval shall be obtained from the director of the Department.
- 4.4.4 In the event the contractor is a not-for-profit agency, contractor board members must abstain from voting on any funding proposal in which they have administrative control or a monetary interest with the proposed grantee. Board members who have such an interest and participate in discussion prior to a vote must disclose such interest in a meeting of the board prior to such discussion.
- 4.4.5 The contractor shall represents itself as an independent contractor offering such services to the general public and shall not represent itself or its employees as employees of the Department or the State of Missouri.

#### 4.5 **Business Compliance**

- 4.5.1 The contractor must be in compliance with applicable laws regarding conducting business in the State of Missouri and certifies by signing this contract that it and any subcontractors are presently, and will remain, in compliance with such laws.
- 4.5.2 The contractor shall have all licenses and/or certifications current which are required by law, rule or regulation.
- 4.5.3 If required by state law, the contractor shall be registered and in good standing with the State's Secretary of State and shall submit their State Certificate of Good Standing to the Department upon request.
- 4.5.4 The contractor must timely file and pay all Missouri sales, withholding, corporate and any other required Missouri tax returns and taxes, including interest and additions to tax.

#### 4.6 **Personnel and Staffing**

- 4.6.1 The contractor shall comply with the Fair Labor Standard Act, Equal Opportunity Employment Act, any other federal and state laws, rules, regulations and executive orders to the extent that these may be applicable and further agrees to insert the foregoing provision in all subcontracts awarded.
- 4.6.2 The contractor understands and agrees that by signing this document, they certify the following:
  - a. The contractor shall only utilize 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 laws of the 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.
  - c. The contractor agrees to fully cooperate with any audit or investigation from federal, state or local law enforcement agencies.
- 4.6.3 The contractor shall assume all legal and financial responsibility for taxes, FICA, employee 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. The contractor shall authorize and direct all custodians of records of their taxes, FICA and other employee benefits to release information to the Department upon request.
- 4.6.4 The contractor agrees that this contract is predicated, in part, on the utilization of the specific resources, individuals and/or personnel qualifications as identified and/or described in the contractor's proposal/bid, when applicable, or in Department required applications and/or financial reporting tools.
  - a. The contractor agrees that no personnel and/or individuals will be utilized in the performance of this contract who fail to meet specific qualifications required for services to be provided, as specified in the Department's service catalog for such service(s).
  - b. No substitution of provider qualifications shall be made by the contractor without written approval of the Department.
  - c. The contractor agrees that substitutions made pursuant to this paragraph shall be equal to or better than originally proposed, offered or identified.
- 4.6.5 The contractor understands and acknowledges that Department-approved staffing ratios and/or patterns are essential for providing certain services. Therefore, as applicable, the contractor shall maintain all Department-approved staff ratios, hours of services and/or patterns. The contractor shall maintain time, salary or hourly pay rate data and personnel records, as specified by the Department, to document compliance with this requirement.
  - a. The contractor may request a written waiver from the Department to vary from required staff ratios, hours of services and/or patterns.

- b. The contractor understands and agrees that the Department may require a reduction of unit price(s) due to a contractor requested reduction of staff/resources upon which the unit price is based.
  - c. The contractor understands and agrees that the Department reserves the right to recover excess payments made to the contractor when the contractor has failed to maintain required staff ratios, hours of services and/or patterns. Such recovery of payments shall be retroactive to the date of occurrence.
- 4.6.6 The contractor shall be responsible for assuring that all personnel including those of any subcontractor(s), are appropriately qualified and licensed or certified, as required by state, federal or local law, statute or regulation, respective to the services to be provided through this contract, and shall provide documentation of such licensure or certification upon request.

#### 4.7 **Federal Funds Requirements**

- 4.7.1 The contractor understands and agrees that the contract may involve the expenditure of federal funds. Therefore, the contractor shall comply with the requirements listed in the following subparagraphs, as applicable.
- 4.7.2 If during the contractor's fiscal year the contractor expends \$500,000 or more in federal grant funds received from the Department, the contractor shall have an annual audit conducted in accordance with United States Office of Management and Budget (OMB) Circular A-133.
- a. The audit shall be conducted by an individual or firm licensed by the Missouri State Board of Accountancy.
  - b. The contractor shall submit a copy of the audit to the Department by the due date for filing the audit with the federal clearinghouse specified in OMB Circular A-133. The items to be submitted to the Department shall consist of the reporting package specified in OMB A-133.
  - c. Failure to comply with the audit requirements may result in reduction of available allocation of funds, reduction or suspension of payments to the contractor or cancellation of this contract between the Department and the contractor.

#### 4.8 **Financial Requirements**

- 4.8.1 The availability of funding for this contract shall be determined solely by the Department and such determination shall be final and without recourse by the contractor.
- 4.8.2 Moneys received from the Department under this contract shall not be used to supplant local funds or subsidize services provided to other agencies, organizations, or individuals.
- 4.8.3 Payments due under the terms of the contract shall be made by the Department upon receipt of a properly itemized invoice.
- a. The contractor shall submit their invoices in a timely fashion and no later than the time period specified in 33.120 RSMo, unless more restrictive requirements are established by state or federal law or regulation.
  - b. The contractor shall invoice for services provided at the contracted unit price(s). Unit prices charged the Department shall be no greater than those charged to the general public for the same service.
  - c. The contractor shall not invoice federal or state tax.
- 4.8.4 The Department reserves the right to: 1) audit all invoices, 2) reject any invoice for good cause, 3) make invoice corrections and/or changes with appropriate notification to the contractor, and 4) deduct from an invoice any overpayment made by the Department.
- a. All overpayments shall be collected in accordance with 630.460 RSMo. Overpayment is defined by 630.460 RSMo as any payment by the Department to a vendor providing care, treatment, habilitation or rehabilitation services to clients under contract with the Department which is:
    1. in excess of the contracted rate less payments by the client, or on his behalf, as required to be made by the Standard Means Test, contained in 9 CSR 10-31.011;
    2. in payment of services not provided;
    3. in payment for any service not authorized in the contract with the Department; or
    4. in payment for services provided contrary to the provisions of the contract with the Department.

- 4.8.5 In accordance with 9 CSR 10-31.011, the contractor shall apply to the costs incurred for providing services to the client the benefits received or available on behalf of or to the client from private and public health insurance, health services corporation and health maintenance organization plans, policies and contracts including individual, company, fraternal, group, Medicare, Medicaid and similar plans to the extent and limits of the coverage for the recipient.
- a. The Department reserves the right to deduct from the contractor's invoice, if not deducted by the contractor, all amounts to be collected by the contractor from the client or other payment sources.
- 4.8.6 The contractor shall not make any collection for Title XIX Medicaid-covered services from the recipient, his or her spouse, parent, guardian, relative or anyone else receiving public assistance, and if any payment is received or assured from any other source on the recipient's account, the contractor shall deduct that amount from the claim filed with Title XIX Medicaid.
- 4.9 **Standard Means Test**
- 4.9.1 For all clients whose services are paid by the Department, the contractor shall apply the Department's Standard Means Test in accordance with 9 CSR 10-31.011, when not applied by the Department. Nothing in this contract shall deny the right of a client or his responsible person to appeal to the Department for re-determination of the amounts payable by them to the contractor under 9 CSR 10-31.011.
- 4.9.2 The contractor shall charge and become responsible for the collection of client payments as determined by the Standard Means Test, in accordance with 9 CSR 10-31.011. Amounts charged to clients, whether or not collected, shall be shown as a credit on the invoice.
- 4.9.3 The contractor shall not impose or increase fees for service for Department clients without the written consent of the Department except as permitted by the Standard Means Test.
- 4.9.4 Nothing in this contract shall impair the statutory rights of the Department to charge a Department client, a client's estate or the person(s) obligated to pay for services rendered to the client for expenditures made by the Department for the client.
- 4.10 **Insurance**
- 4.10.1 The contractor understands and agrees that the Department and 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 shall acquire and maintain adequate liability insurance in the form(s) and amount(s) sufficient to protect the State of Missouri, its agencies, its clients, its employees and the general public against any loss, damage and/or expense related to his/her performance under the contract.
- 4.10.2 The contractor shall be responsible for all injury or damage as a result of the contractor's negligence, or any future negligent act, involving any equipment or service provided under the terms and conditions, requirements and specifications of the contract. In addition to the liability imposed upon the contractor on account of personal injury, bodily injury (including death), or property damage suffered as a result of the contractor's negligence, the contractor assumes the obligation to save the State of Missouri, including its agencies, employees, and assigns, from every expense, liability, or payment arising out of such negligent act. The contractor also agrees to hold the State of Missouri, including its agencies, employees, and assigns, 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.
- 4.10.3 The contractor shall maintain adequate automobile liability insurance for the operation of any motor vehicle used to provide any form of transportation service related to the services of this contract.
- 4.10.4 If the contract involves the performance of medical services of any type, the contractor shall maintain adequate liability insurance to cover all medical services rendered.
- 4.10.5 Proof of the insurance coverage shall include, but not be limited to, effective dates of coverage, limits of liability, insurers' names, policy numbers, company, etc. Proof of self-insurance coverage or another alternative risk financing mechanism may be utilized provided that such coverage is verifiable and irrevocably reliable. Proof of insurance coverage shall be submitted to the Department as requested.

#### 4.11 **Human Rights**

- 4.11.1 The contractor shall establish a system satisfactory to the Department through which recipients of services under this contract may present grievances. The contractor shall maintain at the facility a file of all Department client grievances of an alleged violation of rights and how the grievance has been or is proposed to be resolved. The person in charge shall cooperate fully with any subsequent Department investigation of the grievance.
- 4.11.2 If this contract is federally funded, the contractor shall abide by the provisions of the Pro-Children Act of 1994 (PL 103-227) regarding environmental tobacco smoke, which is incorporated herein as if fully set out.
- 4.11.3 The contractor shall comply with all applicable provisions of the Civil Rights Act (45 CFR 80) and the Age Discrimination in Employment Act of 1967 (45 CFR 90).
- 4.11.4 In compliance with Governor's Executive Order #87-6 (Art. XIII); Federal Executive Order 11246 as amended; Section 503 of the Rehabilitation Act (45 CFR 84) as amended; Vietnam-Era Veterans Readjustment Assistance Act as amended, 38 U.S.C. 4212 (formerly 2012); and the Americans with Disabilities Act of 1990; contractors that employ fifty (50) or more persons shall comply with the above state and federal regulations which require non-discrimination in employment and delivery of services.
- a. In addition to the above, the contractor shall make the following human rights assurances:
    1. Not to discriminate against recipients of services on the basis of race, color, religion, national origin, sex, physical ability, veteran status or age.
    2. Not to discriminate against any employee or applicant for employment on the basis of race, color, religion, national origin, sex or otherwise qualified status of physical ability.
    3. Not to discriminate against any applicant for employment or employee on the basis of age, where such applicant or employee is between the ages of forty (40) and seventy (70) and where such contractor employs at least twenty (20) persons.
    4. Not to discriminate against any applicant for employment or employee on the basis of that person's status as a disabled or Vietnam-era veteran, if the compensation payable to the contractor or subcontractor is at least \$10,000 within a fiscal year.
    5. To develop, implement and maintain an affirmative action program if at least fifty (50) persons in the aggregate are employed. For the purpose of this contract, an "affirmative action program" means positive action to influence all employment practices (including, but not limited to, recruiting, hiring, promoting and training) in providing equal employment opportunity regardless of race, color, sex, origin, religion, age, physical ability and Vietnam-era veteran status. Such an Affirmative Action Program shall include:
      - aa. A written policy statement committing the total organization to affirmative action and assigning management responsibilities and procedures for evaluation and dissemination;
      - bb. The identification of a person designated to handle affirmative action;
      - cc. The establishment of non-discriminatory selection standards, objective measures to analyze recruitment, an upward mobility system, a wage and salary structure and standards applicable to layoff, recall, discharge, demotion and discipline;
      - dd. The exclusion of discrimination from all collective bargaining agreements; and
      - ee. Performance of an internal audit of the reporting system to monitor execution and to provide for future planning.
  - b. If the contractor uses any funds of this contract in a subcontract, then the contractor shall require such a subcontractor to comply with the applicable human rights clauses above.
  - c. The Department shall have the right to enforce all applicable clauses by appropriate procedures, including but not limited to, requests, reports, site visits and inspection of relevant documentation of the contractor.

- 4.11.5 The contractor shall comply with all applicable requirements and provisions of the Americans with Disabilities Act (Public Law 101-336) (28 CFR 35), which prohibits discrimination against people with disabilities in employment, services, transportation, public accommodations, communications and activities of state and local government. The contractor's failure to comply with this act may result in termination of the contract. The contractor shall notify the Department immediately of any allegations, claims, disputes, or challenges made against the contractor concerning this act.
- 4.11.6 Disclosure of information, by either party to the contract, concerning a client for any purpose not directly related to the performance of this contract is prohibited except as specified by applicable state and federal laws and regulations.
- 4.12 **Recordkeeping and Reporting Requirements**
- 4.12.1 The contractor shall maintain auditable records for all activities performed under this contract. Financial records shall conform to Generally Accepted Accounting Principles (GAAP). Such records shall reflect, at a minimum, the specific number and type of service units provided, the number and type of clients served, client progress and other relevant records. The contractor shall submit itemized reports, records and information at the request of the Department.
- 4.12.2 The contractor shall allow the Department or its authorized representative to inspect and examine the contractor's premises and/or records which relate to the performance of the contract at any time during the period of the contract and within the period specified herein for the contractor's retention of records.
- 4.12.3 The contractor shall provide the Department with access to its clients and client records without limitation. If access is denied or limited, the Department reserves the right to terminate payment from the day access is denied or limited.
- 4.12.4 The contractor shall retain all records pertaining to the contract for six (6) years after the close of the contract year unless audit questions have arisen within the six year limitation and have not been resolved. All records shall be retained until all audit questions have been resolved.
- 4.12.5 The contractor shall provide written notification to the Department when there is any change in the contractor's licensure or certification/accreditation status, official name, address, Executive Director, or change in ownership and/or control of the contractor's organization.
- 4.12.6 Upon filing for any bankruptcy or insolvency proceeding by or against the contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assignee for the benefit of creditors, the contractor shall notify the Department immediately. Upon learning of any such actions the Department reserves the right, at its sole discretion, to either cancel the contract or affirm the contract and hold the contractor responsible for damages.
- 4.13 **Notification Requirements**
- 4.13.1 The contractor shall immediately notify the Department, in accordance with guidelines established by the Department, when there is a death of a client.
- 4.13.2 The contractor shall notify the Department in accordance with 9 CSR 10-5.200 when there are allegations of physical abuse, sexual abuse, verbal abuse or neglect of a client or misuse of client funds/property.
- 4.13.3 Under circumstances, as referenced in 632.300 RSMo, in which a client's conduct is jeopardizing the safety of the client or others in the community, the contractor shall immediately notify the authorizing Department facility. If an immediate response is needed to ensure the health and/or safety of the client or others, the contractor shall also notify local law enforcement officials.
- 4.13.4 In the event the contractor receives notice of a Class I license violation from the Department of Health and Human Services or the Department of Health and Senior Services or a notice under certification that a condition of jeopardy exists, the contractor shall immediately notify the Department.
- a. Notification to the Department may be verbal and shall be followed by written notification mailed within forty-eight (48) hours.

- b. If applicable, the contractor shall submit to the Department a copy of any plan of correction for Class I deficiencies which has been approved by the Department of Health and Senior Services, the Department, Health Care Financing Administration or other license certification or accreditation authority.

4.14 **Miscellaneous**

- 4.14.1 Unless otherwise specified, the contractor shall be responsible for furnishing all material, labor, facilities, equipment and supplies necessary to perform the services required.
- 4.14.2 The Department may require the attendance of the contractor's personnel at training activities and may require the cooperation of the contractor's personnel where the Department provides technical assistance.
- 4.14.3 The Department reserves the right to place a monitor with the contractor, given any situation described in Section 630.763 RSMo, or when the Department determines that the health, safety or welfare of the clients cannot be adequately assured.
- 4.14.4 The contractor shall fully cooperate with all investigations conducted by the Department, or its agents, which relate, directly or indirectly, with the performance of this contract.
- 4.14.5 The Department endorses a drug free environment and the absence of substance abuse. The contractor shall support and enforce these philosophies in their performance of the contract.
- 4.14.6 The contractor agrees to maintain appropriate documentation that it has appropriate systems and controls in place to ensure that any and all information software systems used in relationship to the contractual responsibilities with the Department have been acquired, operated and maintained consistently with U.S. copyright law or applicable licensing restrictions. The contractor agrees to make documentation of such compliance and any such license immediately available upon request by the Department.
- 4.14.7 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 Department.

## 5 **Payments to the Contractor**

### 5.1 **General**

- 5.1.1 The contractor shall be paid for services provided in accordance with the firm, fixed prices stated on the Pricing Page.
- 5.1.2 In the event the contractor is providing residential services, the contractor may be reimbursed, with the prior approval of the RO, for over the counter medications prescribed by a physician provided to a consumer and prescription medications included in the Title XIX Formulary when the consumer is not a Medicaid recipient or eligible for other third-party payment, and is not financially able to pay for the medication.
  - a. Reimbursements for medications shall not exceed the Title XIX rate, where possible. If medication is to be totally or partially paid for by the Department, the contractor shall request that physicians prescribe or allow the substitution of generic drugs whenever available and appropriate.
- 5.1.3 The contractor may be reimbursed for transportation mileage related to re-location of a consumer, with the prior approval of the RO, if not such costs are not already included in a contracted service rate.
- 5.1.4 The contractor may be reimbursed for other authorized ancillary services, subject to the requirements of such services.
- 5.1.5 No payments or reimbursements shall be made to the contractor other than those specified above.
- 5.1.6 The Department reserves the right to recover payments for services not provided in accordance with the requirements of this contract.
- 5.1.7 The contractor shall understand and agree that the Department reserves the right to make payments to the contractor through electronic funds transfer (EFT). Therefore, prior to any payments becoming due under the contract, the contractor should return a completed State Vendor ACH/EFT Application which can be downloaded from the internet at: <http://www.oa.mo.gov/purch/vendorinfo/vendorach.pdf>.

### 5.2 **Invoicing**

- 5.2.1 The contractor shall submit requests for payment in the form and format specified by the Department. Invoices must be received in accordance with the schedule established by the Department.
- 5.2.2 Under no circumstances may the contractor bill the state Medicaid agency directly for services provided under this contract.

### 5.3 **Allowable/Billable Costs**

- 5.3.1 The date on which residential services begin shall be reimbursable. The date of discharge, transfer, death, or other departure shall not be considered as a reimbursable day for computation of payments.
- 5.3.2 The contractor shall not be reimbursed for days the consumer is not present. The contractor's allowable monthly costs shall be redistributed across the days the consumer was present to produce an adjusted payment per day, up to the Medicaid maximum allowable per diem amount.
- 5.3.3 The contractor shall not bill the Department for unapproved consumer absences. The contractor may, however, bill the consumer, the spouse, parents, conservator or other financially responsible person for such absences.
- 5.3.4 Allowable monthly costs for congregate residential habilitation services shall consist of the contractor's per diem rate times the total days in a month, less any days prior to admission or subsequent to discharge.
- 5.3.5 Allowable monthly costs for Individualized Supported Living (ISL) services shall consist of the monthly reimbursable amount specified on the supported living budget, approved by the Regional Office for the month of service.
- 5.3.6 The contractor shall not use funds received under this contract to supplant other sources of reimbursement for which the client is eligible.

5.3.7 The contractor shall not charge, increase or decrease charges to a Department client without the prior written consent of the Department.

5.4 **3<sup>rd</sup> Party Payments**

5.4.1 The contractor shall be responsible for collecting, from the consumer or their financially responsible person, any amounts due based on the consumer's Standard Means Test.

- a. The contractor understands and agrees that the Department assumes no responsibility for the above amounts due the contractor from the consumer or their financially responsible person except when the contractor:
  - 1) notifies the RO in writing within thirty (30) days after default of a payment or installment; and
  - 2) demonstrates that a reasonable effort has been made to collect.
- b. The contractor understands and agrees that the Department may exercise its option to discharge the client for failure to pay under the provisions of Section 630.210, RSMo.

5.4.2 All amounts paid to the contractor on behalf of a Department consumer by the Department of Social Services, the Social Security Administration, the United States Department of Housing and Urban Development, the consumer, the consumer's conservator and other sources shall reduce the Department's amount payable on a dollar for dollar basis.

5.4.3 Credits from a client or any 3<sup>rd</sup> party payer must be reflected as a credit on an invoice no later than 90 days from receipt of the payment.

SAMPLE

## Attachment A – Business Associate Agreement

(rev 06.07.13)

1. Health Insurance Portability and Accountability Act of 1996, as amended - The Department of Mental Health 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 Department. Therefore, the term, “contractor” as used in this section shall mean “Business Associate.”
2. 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:
  - a. “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.
  - b. “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.
  - c. “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.
  - d. “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 Department.
  - e. “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.
  - f. “Enforcement Rule” shall mean the HIPAA Administrative Simplification: Enforcement; Final Rule at 45 CFR Parts 160 and 164.
  - g. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
  - h. “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).
  - i. “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.
  - j. “Protected Health Information” as defined in 45 CFR 160.103, shall mean individually identifiable health information:
    - 1) Except as provided in paragraph (2) 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.
    - 2) 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 (Department) in its role as employer.
  - k. “Security Incident” shall be defined as set forth in the “Obligations of the Contractor” section of the Business Associate Provisions.

- l. "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 164, Subpart C.
  - m. "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.
3. 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.
4. The contractor must appropriately safeguard Protected Health Information which the contractor receives from or creates or receives on behalf of the Department. 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.
5. The Department 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.
6. **Permitted Uses and Disclosures of Protected Health Information by the Contractor:**
  - 6.1 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 Department, except for the specific uses and disclosures in the contract.
  - 6.2 The contractor may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, the Department as specified in the contract, provided that such use or disclosure would not violate HIPAA and the regulations promulgated thereunder.
  - 6.3 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 Department by no later than ten (10) calendar days after the contractor becomes aware of the disclosure of the Protected Health Information.
  - 6.4 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.
  - 6.5 If the disclosure is required by law, the contractor may disclose Protected Health Information to carry out the legal responsibilities of the contractor.
  - 6.6 If applicable, the contractor may use Protected Health Information to provide Data Aggregation services to the Department as permitted by 45 CFR 164.504(e)(2)(i)(B).
  - 6.7 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 Department to do so.
  - 6.8 The contractor agrees to make uses and disclosures and requests for Protected Health Information consistent with the Department's minimum necessary policies and procedures.
7. **Obligations and Activities of the Contractor:**
  - 7.1 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).

- 7.2 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:
- a. Workforce training on the appropriate uses and disclosures of Protected Health Information pursuant to the terms of the contract;
  - b. Policies and procedures implemented by the contractor to prevent inappropriate uses and disclosures of Protected Health Information by its workforce and subcontractors, if applicable;
  - c. Encryption of any portable device used to access or maintain Protected Health Information or use of equivalent safeguard;
  - d. Encryption of any transmission of electronic communication containing Protected Health Information or use of equivalent safeguard; and
  - e. Any other safeguards necessary to prevent the inappropriate use or disclosure of Protected Health Information.
- 7.3 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 Department 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.
- 7.4 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.
- 7.5 By no later than ten (10) calendar days after receipt of a written request from the Department, or as otherwise required by state or federal law or regulation, or by another time as may be agreed upon in writing by the Department, 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 Department available to the Department 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.
- 7.6 The contractor shall document any disclosures and information related to such disclosures of Protected Health Information as would be required for the Department 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 Department, or as otherwise required by state or federal law or regulation, or by another time as may be agreed upon in writing by the Department, the contractor shall provide an accounting of disclosures of Protected Health Information regarding an individual to the Department. If requested by the Department 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 Department upon request.
- 7.7 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 Department 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 Department, provide the Department access to the Protected Health Information in an individual's designated record set. However, if requested by the Department, the contractor shall provide access to the Protected Health Information in a designated record set directly to the individual for whom such information relates.

- 7.8 At the direction of the Department, the contractor shall promptly make any amendment(s) to Protected Health Information in a Designated Record Set pursuant to 45 CFR 164.526.
- 7.9 The contractor shall report to the Department'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 Department'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.
- 7.10 The contractor shall report to the Department'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 Department'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.
- 7.11 The contractor shall report to the Department'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 Department'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.
- 7.12 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"):
- a. The name, address, and telephone number of each individual whose information was involved if such information is maintained by the contractor;
  - b. The electronic address of any individual who has specified a preference of contact by electronic mail;
  - c. A brief description of what happened, including the date(s) of the incident and the date(s) of the discovery of the incident;
  - d. 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
  - e. The recommended steps individuals should take to protect themselves from potential harm resulting from the incident.
- 7.13 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.
- 7.14 Contractor shall not directly or indirectly receive remuneration in exchange for any Protected Health Information without a valid authorization.

- 7.15 If the contractor becomes aware of a pattern of activity or practice of the Department that constitutes a material breach of contract regarding the Department's obligations under the Business Associate Provisions of the contract, the contractor shall notify the Department's Security Officer of the activity or practice and work with the Department to correct the breach of contract.
- 7.16 The contractor shall indemnify the Department 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 Department 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 Department 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.
- 7.17 Notwithstanding the language in this Agreement set forth above in the Section 7.16, the parties recognize that certain Business Associates and/or contractors may be entities that are sovereign political subdivisions of the State of Missouri – including but not limited to a department, board or other governmental unit of a city, county, township, etc. In that instance, the Business Associate or contractor, by entering into this agreement, is not thereby waiving or limiting the rights or defenses it may have with respect to sovereign or governmental immunity, official immunity or any other legal protections applicable under federal or state law, which are afforded to that Business Associate or contractor and its employees by virtue of the entity's status as a political subdivision of the State of Missouri.

#### **8. Obligations of the Department:**

- 8.1 The Department 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 Department's notice of privacy practices in accordance with 45 CFR 164.520.
- 8.2 The Department shall notify the contractor of any changes in, or revocation of, authorization by an Individual to use or disclose Protected Health Information.
- 8.3 The Department shall notify the contractor of any restriction to the use or disclosure of Protected Health Information that the Department has agreed to in accordance with 45 CFR 164.522.
- 8.4 The Department 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.

#### **9. 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 Department, either return to the Department or destroy all Protected Health Information received by the contractor from the Department, or created or received by the contractor on behalf of the Department, 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.

In the event the Department 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 Department and obtain instructions from the Department for either the return or destruction of the Protected Health Information.

#### **10. 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 Department determines that cancellation of the contract is not feasible, the State of Missouri may elect not to cancel the contract, but the Department shall report the breach of contract to the Secretary of the Department of Health and Human Services.

SAMPLE

SAMPLE

SAMPLE

SAMPLE