



Specifications for SWC #121 Shredding Services

The State of Tennessee (State) is seeking to establish a contract for secured shredding services for State agencies, local governmental units within the geographic limits of the State of Tennessee, any private nonprofit institution of higher education chartered in Tennessee, and any corporation which is exempted from taxation under 26 U.S.C. Section 501(c) (3) as amended and which contracts with the Department of Mental Health and Substance Abuse Services to provide services to the public (T.C.A. § 33-2-401 et seq.). The resulting contract will be open to the aforementioned entities unless a letter is attached to your bid, requesting exemption to this allowance. Contractor(s) agree to extend services under this contract to all authorized contract users at the same price and under the same terms and conditions offered in this bid.

The purpose of this ITB is to competitively procure shredding services for paper or printed media to ensure compliance with state and federal privacy laws and to mitigate risk to user agencies across the State by providing a program focused on safeguarding confidential information from being accessed and used for fraudulent purposes.

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Section One: General Solicitation Information & Requirements

I.I. Definitions of Terms and Acronyms

Term/Acronym	Definition
As Needed Shredding Service	The collection and shredding (Mobile or Plant-Based) of contents from bins on a non-scheduled or situation arises basis.
Contract Administrator	Main point of contact for contract at Central Procurement Office.
Contract Manager	A representative of the Contractor and single point of contact for the State Contract Administrator responsible for addressing broad contract issues and requests brought to them by the State Contract Administrator or End User.
End User	Using Agency, local government, or other entity of statewide contract.
Mobile Shredding	Secure destruction activities carried out using mobile commercial-grade destruction equipment that destroys Paper and Printed Media within an enclosed and securable vehicle (truck or trailer) at the End User's site.
National Association for Information Destruction (NAID)	The international trade association that governs information destruction service companies.
Paper or Printed Media	Information printed on paper or other material that can be read by the naked eye without the assistance of a special device, such as documents, ID badges, credit/debit cards and photos.
Plant-Based Shredding	Secure destruction activities carried out using fixed-location commercial-grade destruction equipment that conducts the entire process, including the staging, destruction, baling and storage of destroyed materials, within a secure building environment.
Purge Service	An information destruction project that is defined by the End User as an inordinately large amount of confidential customer media to be destroyed.
Scheduled Shredding Service	The collection and shredding (Mobile or Plant-Based) of contents from bins on a regularly scheduled basis that is mutually agreed upon by

Contractor and End User, e.g. once a week, twice a month, etc.

I.II. Scope of Service

Contractors responding to this ITB must be able to provide services in the following service categories for shredding services:

Mobile Shredding

Plant-Based Shredding

Purge Service (Per Bin/Container Size)

I.III. Contract Structure and Approach

The State intends to award a contract(s) for all line items per county, as defined in Attachment B, to the respondent(s) whose response meets the requirements and criteria set forth in the ITB at the lowest cost. This may result in one or multiple awards.

Section Two: General Administrative Requirements

II.I. Contract Manager

The Contractor shall designate a Contract Manager for the contract. The Contract Manager will be a single point of contact for the State Contract Administrator and be responsible for addressing broad contract issues and requests brought to them by the State Contract Administrator or End User. The Contract Manager should have the authority and competence to address and correct any issues related to the contract. The Contractor shall notify the State Contract Administrator in writing within three (3) business days of assigning a new Contract Manager. Contact information shall be provided for each Contractor location awarded under SWC 121. End Users must be able to reach out to each location with questions including, but not limited to the following: scheduling, billing, invoices, estimates, and service.

II.II. Escalation Tree

An agreed upon escalation tree of employees and contact information shall be provided by the awarded Contractor(s) within five (5) business days after the contract award. This document will provide contact information to be used when either party has questions or concerns regarding the contract, specifically if an issue with the contract must be escalated. The "tree" must include employee names, titles, phone numbers, and email addresses and must be listed in ascending order by position. The document may not be abused by either

party to reach the highest-ranking employee with questions or issues that may be addressed by a lower position. Contact information must be provided starting with the Contractor's Contract Manager or administrative position and ending with a position that has high-level decision-making power for the party. The number of positions may differ for each party.

This escalation tree is to include "branches" for billing/invoicing and reporting information contacts. If the contact is the same as the Contract Manager, that must be specified.

II.III. Contractor Administrative Responsibilities

The Contractor shall respond by phone or email to any call or email sent by the State or its Authorized Users within a maximum of two (2) business days.

II.IV. Service Transition

- A. After contract award, the Contractor shall work with the End User and any other organizations designated by the End User to ensure an orderly transition of services and responsibilities under the contract and to ensure the continuity of those services required by the End User.
- B. The Contractor understands and agrees that each End User has different needs and can set up their own schedules, billing location(s), and contact information for each location.
- C. The Contractor will assist the End User by providing a contact(s) for each service location/area for areas of billing, servicing, and disputes.

II.V. Certification Requirements

- A. Contractor shall be an AAA-certified member in good standing with the National Association for Information Destruction (NAID). Contractor agrees to maintain NAID certification throughout the entirety of this contract at no additional charge to the State. Contractor shall immediately notify Contract Administrator if Contractor fails to maintain NAID certification. Contractor and all approved subcontractor(s) shall supply the State with a copy of NAID certification when requested at no additional charge to the State.
- B. All shredding facilities used during the performance of this contract shall be NAID certified.
- C. Contractor(s) shall submit proof of NAID certification(s) to the State's Contract Administrator annually.

Section Three: Pricing & Special Invoicing Accommodations

III.I. Pricing Structure

- A. All pricing includes all associated cost for the items; no additional or hidden fees are allowed.
- B. Pricing shall be provided for Mobile and Plant-Based shredding for Paper or Printed Media on a per bin occurrence.
- C. Pricing for Purge Services shall be provided on a per bin/container occurrence.

III. II. Special Invoicing

- A. State Agencies may have special invoicing requirements including, but not limited to, centralized billing or billing by serviced location. The Contractor shall accommodate invoicing requirement requests by Agencies at no extra charge to the State.
- B. Contractor shall work with Agencies to confirm where invoices are to be sent, whether it is through a paper statement sent to a physical address or sent electronically to an email address.
- C. Agency requests and Contractor accommodation of invoice requests shall not conflict with Terms and Conditions Section 6.4. Invoice Requirements.

Section Four: Servicing Requirements

IV.I. Bin Requirements

- A. The Contractor shall coordinate and work in good faith with each End User to determine the number and size of bins required to meet End User needs. The quantity or location of bins may change per End User at any time per request of End User; Contractor shall coordinate with End Users as to quantities needed per location. Neither the State, nor the Contractor, will assign minimum or maximum quantities of bins to any End User utilizing this contract.
- B. Contractor must have the ability to supply three (3) different-sized locking bins to accommodate paper/records collection at End User locations. The three sizes must fall within one of each of the following inclusive ranges: 28-32, 60-70 and 90-100 gallons. Respondents are allowed to bid additional bin sizes, but one bin from each of the three inclusive ranges above are the minimum requirements. Additional bin sizes may be added to the contract based on what is in the best interest of the State at the time of contract award.

- C. All bins shall be provided free of charge to the End User with no rental or delivery/pickup fees.
- D. The 28-32 gallon bin shall meet Joint Commission Standards (JCAHO) and have a maximum capacity of 32 gallons.
- E. Contractor shall maintain all bins in operable condition, replacing locks, lids, handles, etcetera as needed. Contractor shall replace and repair damaged bins at no additional charge to the End User; the End User determines if a bin needs to be replaced. If damage occurs due to willful authorized End User employee neglect, the End User will pay for any repair costs up to the fair market value of the bin before the loss. If willful authorized End User employee neglect results in a bin being rendered unusable, then the End User will pay the fair market value of the bin before the loss.
- F. Contractor shall clearly mark bins for their intended use with a list of items that may or may not be placed in bins.
- G. End Users shall not place in bins any material that is highly flammable, may attract vermin or insects, or is otherwise dangerous or unsafe to store or handle, or any material that is regulated by federal or state law or regulation relating to the environment or hazardous materials.
- H. The Contractor shall retain ownership of the bins. The Contractor shall agree that the State shall not be responsible for any liability incurred by the Contractor, the Contractor's employee, or subcontractor personnel arising out of the possession, use, maintenance, delivery, return, or collection from the bins provided by the Contractor.

IV.II. Servicing of Bins

- A. All materials shall be destroyed to the applicable NAID specifications. If at any point these specifications are updated by NAID it is the Contractor's responsibility to abide by the new specifications and notify Contract Administrator immediately.
- B. Contractor to provide "Certificate of Destruction" at the end of each service to End User representative on the same day of service.
- C. Contractor agrees that the End User, at any time throughout the contract, can accompany the Contractor during any collection, hauling, weighing, or destruction process being conducted by the Contractor for mobile destruction. Contractor shall not restrict or in any way limit the End User's right or ability to oversee any services provided by the Contractor.

- D. For Mobile Shredding Services, the Contractor shall clean up the immediate document destruction area and ensure that all loose materials are collected and removed each time document destruction services are performed.
- E. End Users reserve the right to decide which shredding service is best for them and which service maintains the required level of security for sensitive documents.

IV.III. Delivery and Retrieval of Bins

- A. The Contractor shall deliver all bins and have them available for End User use within five (5) business days of request/purchase order, unless otherwise specified and agreed upon by End User.
- B. Delivery and retrieval shall be made during normal business hours only, 8:00 AM to 4:30 PM Monday through Friday except for State holidays, unless prior approval for other times has been obtained from the End User in writing.
- C. Contractor shall deliver bins on the dates and times agreed upon by the End User and Contractor. The End User has the right to refuse any unscheduled pick-ups without charge or penalty.
- D. Contractor will be responsible for delivery, set-up and all transportation costs.
- E. Contractors and subcontractors are required to sign-in and sign-out at all State facilities. Security provisions for all state facilities must be strictly observed.

IV.IV. Scheduled Service

- A. Contractor shall coordinate with End Users to schedule recurring service times and dates.
- B. The End User will request scheduled shredding service depending on the anticipated need of the End User. The bin size(s) and schedule may be adjusted at any time, with five (5) business days written advance notice, by the End User to better complement the End User's requirements.
- C. Contractor agrees to notify End User within two (2) hours of knowledge if it will not be able to fulfill a scheduled shredding service appointment. Contractor agrees to complete service within twenty-four (24) hours of missed appointment, unless otherwise specified and agreed upon in writing by End User.

IV.V. As Needed Shredding Service and Purge Service

- A. Occasionally, existing End Users may have an unexpected shredding service need; in these situations, the Contractor shall complete service request within five (5) business days upon notification or purchase order from End User, unless otherwise specified and agreed upon in writing by End User.

- B. Contractor shall honor Purge Service pricing for:
 - I. All bin sizes specified in Section IV.I. of these Specifications
 - II. Banker boxes or containers up to 2.4 cubic feet in size

IV.VI. Subcontracting

- A. Subcontractors shall be AAA-certified members in good standing with the National Association for Information Destruction (NAID).
- B. Prior to using a subcontractor, the Contractor is required to obtain written authorization from the Department of General Services, Central Procurement Office. The Contractor will need to send a letter or email to the state Contract Administrator requesting permission to subcontract. The letter or email shall include the following information:
 - I. The subcontractor(s) name, address, contact person(s), email(s) and telephone number(s);
 - II. A brief description of the work to be performed;
 - III. An estimated dollar amount to be given to the subcontractor for the job or annually; and
 - IV. State whether the request is for a one-time job or continued service.
- C. Subcontractor personnel are required to sign-in and sign-out and meet the same requirements as the Contractor's personnel.
- D. The Contractor cannot charge any higher rates than the contract rate even though their subcontractor may be charging a higher rate to the Contractor.
- E. The Contractor is responsible for paying their subcontractors.

IV.VII. State Facility Requirements

- A. All Contractor and subcontractor personnel must have visible identification at all times. Contractor and subcontractor personnel shall be required to provide photographic identification for inspections upon entering all state facilities.
- B. The Contractor is advised that the Contractor, their employees, and subcontractor personnel shall strictly abide by all state policies and procedures. All state facilities are non-smoking facilities; the Contractor, their employees, and subcontractor personnel must adhere to this requirement. Deviations from these policies by the Contractor, their employees, or subcontractor personnel will not be tolerated and may be considered grounds for contract cancellation.

Section Five: Security & Sensitive Material Requirements

V.I. Security Requirements for Correctional Facilities

- A. The Contractor is advised that some state locations are correctional institutions and require all Contractor and subcontractor personnel to strictly abide by all Tennessee Department of Correction policies and procedures at all times.
- B. Deviations from these policies by the Contractor or the Contractor's employees will not be tolerated and will be considered grounds for immediate contract cancellation. For example, Contractor's employees and vehicles are subject, but not limited, to the following:
 - I. TDOC policy 506.06: all persons and property are subject to search. Drugs, alcohol, firearms, ammunition, explosives and weapons are prohibited. Violators will be prosecuted.
 - II. TDOC policy 206.02: restricts and may prohibit the usage of cellular telephones at any Correctional facility. Use of cellular telephones while on state property must have the prior approval of the Warden. The Warden's decision will be based on the Contractor's need to perform his/her job responsibility. Contractors have no guarantee that approval will be granted.

V.II. Handling Confidential and Sensitive Material

- A. Contractor acknowledges that they will be handling confidential and sensitive material and must agree to maintain the confidentiality of the information. All records are to be disposed of in a confidential manner. Removal of records to the municipal dump is not permitted. The Contractor must:
 - I. Ensure no violation of any state, federal or local law, including HIPAA guidelines;
 - II. Ensure that there are appropriate safeguards to prevent use or disclosure of the information;
 - III. Immediately inform the affected End User and the Contract Administrator of any use or disclosure of information; and
 - IV. Ensure that all subcontractor and third-party entity (i.e. paper mills, trucking companies, etc.) employees are aware and prohibited from disclosing confidential information.
- B. Contractor must enter into a Business Associate Agreement (BAA) with the State as described in Attachment A of the Contract.

**HIPAA BUSINESS ASSOCIATE AGREEMENT
COMPLIANCE WITH PRIVACY AND SECURITY RULES**

THIS BUSINESS ASSOCIATE AGREEMENT (hereinafter "Agreement") is between **The State of Tennessee, Department of General Services** (hereinafter "Covered Entity") and **BUSINESS ASSOCIATE NAME** (hereinafter "Business Associate"). Covered Entity and Business Associate may be referred to herein individually as "Party" or collectively as "Parties."

BACKGROUND

Parties acknowledges that they are subject to the Privacy and Security Rules (45 CFR Parts 160 and 164) promulgated by the United States Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191 as amended by Public Law 111-5, Division A, Title XIII (the HITECH Act), in certain aspects of its operations.

Business Associate provides services to Covered Entity pursuant to one or more contractual relationships detailed below and hereinafter referred to as "Service Contracts."

LIST OF AGREEMENTS AFFECTED BY THIS BUSINESS ASSOCIATE AGREEMENT:

LIST OF CONTRACTS AFFECTED BY HIPAA REQUIREMENTS OR NOT APPLICABLE

Contract Name:

Execution Date:

In the course of executing Service Contracts, Business Associate may come into contact with, use, or disclose Protected Health Information ("PHI"). Said Service Contract(s) are hereby incorporated by reference and shall be taken and considered as a part of this document the same as if fully set out herein.

In accordance with the federal privacy and security regulations set forth at 45 C.F.R. Part 160 and Part 164, Subparts A, C, D and E, which require Covered Entity to have a written memorandum with each of its Business Associates, the Parties wish to establish satisfactory assurances that Business Associate will appropriately safeguard PHI and, therefore, make this Agreement.

DEFINITIONS

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 CFR §§ 160.103, 164.103, 164.304, 164.501 and 164.504.

- 1.1 "Breach of the Security of the [Business Associate's Information] System" shall have the meaning set out in its definition at T.C.A. § 47-18-2107
- 1.2 "Business Associate" shall have the meaning set out in its definition at 45 C.F.R. § 160.103.
- 1.3 "Covered Entity" shall have the meaning set out in its definition at 45 C.F.R. § 160.103.
- 1.4 "Designated Record Set" shall have the meaning set out in its definition at 45 C.F.R. § 164.501.

- 1.5 "Electronic Protected Health Care Information" shall have the meaning set out in its definition at 45 C.F.R. § 160.103.
- 1.6 "Genetic Information" shall have the meaning set out in its definition at 45 C.F.R. § 160.103.
- 1.7 "Health Care Operations" shall have the meaning set out in its definition at 45 C.F.R. § 164.501.
- 1.8 "Individual" shall have the same meaning as the term "individual" in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- 1.9 "Information Holder" shall have the meaning set out in its definition at T.C.A. § 47-18-2107
- 1.10 "Marketing" shall have the meaning set out in its definition at 45 C.F.R. § 164.501.
- 1.11 "Personal information" shall have the meaning set out in its definition at T.C.A. § 47-18-2107
- 1.12 "Privacy Official" shall have the meaning as set out in its definition at 45 C.F.R. § 164.530(a)(1).
- 1.13 "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.
- 1.14 "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- 1.15 "Required by Law" shall have the meaning set forth in 45 CFR § 164.512.
- 1.16 "Security Incident" shall have the meaning set out in its definition at 45 C.F.R. § 160.304.
- 1.17 "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Parts 160 and 164, Subparts A and C.

2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE (Privacy Rule)

- 2.1 Business Associate is authorized to use PHI for the purposes of carrying out its duties under the Services Contract. In the course of carrying out these duties, including but not limited to carrying out the Covered Entity's duties under HIPAA, Business Associate shall fully comply with the requirements under the Privacy Rule applicable to "business associates," as that term is defined in the Privacy Rule and not use or further disclose PHI other than as permitted or required by this Agreement, the Service Contracts, or as Required By Law. Business Associate is subject to requirements of the Privacy Rule as required by Public Law 111-5, Section 13404 [designated as 42 U.S.C. 17934] In case of any conflict between this Agreement and the Service Contracts, this Agreement shall govern.
- 2.2 The Health Information Technology for Economic and Clinical Health Act (HITECH) was adopted as part of the American Recovery and Reinvestment Act of 2009. HITECH and its implementing regulations impose new requirements on Business Associates with respect to privacy, security, and breach notification. Business Associate hereby acknowledges and agrees that to the extent it is

functioning as a Business Associate of Covered Entity, Business Associate shall comply with HITECH. Business Associate and the Covered Entity further agree that the provisions of HIPAA and HITECH that apply to business associates and that are required to be incorporated by reference in a business associate agreement have been incorporated into this Agreement between Business Associate and Covered Entity. Should any provision not be set forth specifically, it is as if set forth in this Agreement in its entirety and is effective as of the Applicable Effective Date, and as amended.

- 2.3 Business Associate shall use appropriate administrative, physical, and technical safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement, Services Contract(s), or as Required By Law. This includes the implementation of Administrative, Physical, and Technical Safeguards to reasonably and appropriately protect the Covered Entity's PHI against any reasonably anticipated threats or hazards, utilizing the technology commercially available to the Business Associate. The Business Associate shall maintain appropriate documentation of its compliance with the Privacy Rule, including, but not limited to, its policies, procedures, records of training and sanctions of members of its Workforce.
- 2.4 Business Associate shall require any agent, including a subcontractor, to whom it provides PHI received from, maintained, created or received by Business Associate on behalf of Covered Entity or that carries out any duties for the Business Associate involving the use, custody, disclosure, creation of, or access to PHI or other confidential information, to agree, by written contract with Business Associate, to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- 2.5 Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.
- 2.6 Business Associate shall require its employees, agents, and subcontractors to promptly report, to Business Associate, immediately upon becoming aware of any use or disclosure of PHI in violation of this Agreement. Business Associate shall report to Covered Entity any use or disclosure of the PHI not provided for by this Agreement. Business Associate will also provide additional information reasonably requested by the Covered Entity related to the breach.
- 2.7 As required by the Breach Notification Rule, Business Associate shall, and shall require its subcontractor(s) to, maintain systems to monitor and detect a Breach of Unsecured PHI, whether in paper or electronic form.
 - 2.7.1 Business Associate shall provide to Covered Entity notice of a Provisional or Actual Breach of Unsecured PHI immediately upon becoming aware of the Breach.
 - 2.7.2 Business Associate shall cooperate with Covered Entity in timely providing the appropriate and necessary information to Covered Entity.
 - 2.7.3 Covered Entity shall make the final determination whether the Breach requires notification and whether the notification shall be made by Covered Entity or Business Associate.
- 2.8 If Business Associate receives PHI from Covered Entity in a Designated Record Set, Business Associate shall provide access, at the request of Covered Entity, to PHI in a Designated Record

Set to Covered Entity, in order to meet the requirements under 45 CFR § 164.524, provided that Business Associate shall have at least 30 business days from Covered Entity notice to provide access to, or deliver such information.

- 2.9 If Business Associate receives PHI from Covered Entity in a Designated Record Set, then Business Associate shall make any amendments to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to the 45 CFR § 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity, provided that Business Associate shall have at least 30 business days from Covered Entity notice to make an amendment.
- 2.10 Business Associate shall make its internal practices, books, and records including policies and procedures and PHI, relating to the use and disclosure of PHI received from, created by or received by Business Associate on behalf of, Covered Entity available to the Secretary of the United States Department of Health in Human Services or the Secretary's designee, in a time and manner designated by the Secretary, for purposes of determining Covered Entity's or Business Associate's compliance with the Privacy Rule.
- 2.11 Business Associate shall document disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosure of PHI in accordance with 45 CFR § 164.528.
- 2.12 Business Associate shall provide Covered Entity or an Individual, in time and manner designated by Covered Entity, information collected in accordance with this Agreement, to permit Covered Entity to respond to a request by an Individual for and accounting of disclosures of PHI in accordance with 45 CFR § 164.528, provided that Business Associate shall have at least 30 business days from Covered Entity notice to provide access to, or deliver such information which shall include, at minimum, (a) date of the disclosure; (b) name of the third party to whom the PHI was disclosed and, if known, the address of the third party; (c) brief description of the disclosed information; and (d) brief explanation of the purpose and basis for such disclosure. Business Associate shall provide an accounting of disclosures directly to an individual when required by section 13405(c) of Public Law 111-5 [designated as 42 U.S.C. 17935(c)].
- 2.13 Business Associate agrees it must limit any use, disclosure, or request for use or disclosure of PHI to the minimum amount necessary to accomplish the intended purpose of the use, disclosure, or request in accordance with the requirements of the Privacy Rule.
 - 2.13.1 Business Associate represents to Covered Entity that all its uses and disclosures of, or requests for, PHI shall be the minimum necessary in accordance with the Privacy Rule requirements.
 - 2.13.2 Covered Entity may, pursuant to the Privacy Rule, reasonably rely on any requested disclosure as the minimum necessary for the stated purpose when the information is requested by Business Associate.
 - 2.13.3 Business Associate acknowledges that if Business Associate is also a covered entity, as defined by the Privacy Rule, Business Associate is required, independent of Business Associate's obligations under this Memorandum, to comply with the Privacy Rule's minimum necessary requirements when making any request for PHI from Covered Entity.

- 2.14 Business Associate shall adequately and properly maintain all PHI received from, or created or received on behalf of, Covered Entity
- 2.15 If Business Associate receives a request from an Individual for a copy of the individual's PHI, and the PHI is in the sole possession of the Business Associate, Business Associate will provide the requested copies to the individual and notify the Covered Entity of such action. If Business Associate receives a request for PHI in the possession of the Covered Entity, or receives a request to exercise other individual rights as set forth in the Privacy Rule, Business Associate shall notify Covered Entity of such request and forward the request to Covered Entity. Business Associate shall then assist Covered Entity in responding to the request.
- 2.16 Business Associate shall fully cooperate in good faith with and to assist Covered Entity in complying with the requirements of the Privacy Rule.

3 OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE (Security Rule)

- 3.1 Business Associate shall fully comply with the requirements under the Security Rule applicable to "business associates," as that term is defined in the Security Rule. In case of any conflict between this Agreement and Service Agreements, this Agreement shall govern.
- 3.2 Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of the covered entity as required by the Security Rule and Public Law 111-5. This includes specifically, but is not limited to, the utilization of technology commercially available at the time to the Business Associate to protect the Covered Entity's PHI against any reasonably anticipated threats or hazards. The Business Associate understands that it has an affirmative duty to perform a regular review or assessment of security risks, conduct active risk management and supply best efforts to assure that only authorized persons and devices access its computing systems and information storage, and that only authorized transactions are allowed. The Business Associate will maintain appropriate documentation to certify its compliance with the Security Rule.
- 3.3 Business Associate shall ensure that any agent, including a subcontractor, to whom it provides electronic PHI received from or created for Covered Entity or that carries out any duties for the Business Associate involving the use, custody, disclosure, creation of, or access to PHI supplied by Covered Entity, to agree, by written contract (or the appropriate equivalent if the agent is a government entity) with Business Associate, to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- 3.4 Business Associate shall require its employees, agents, and subcontractors to report to Business Associate within five (5) business days, any Security Incident (as that term is defined in 45 CFR § 164.304) of which it becomes aware. Business Associate shall promptly report any Security Incident of which it becomes aware to Covered Entity.
- 3.5 Business Associate shall make its internal practices, books, and records including policies and procedures relating to the security of electronic PHI received from, created by or received by Business Associate on behalf of, Covered Entity available to the Secretary of the United States Department of Health in Human Services or the Secretary's designee, in a time and manner

designated by the Secretary, for purposes of determining Covered Entity's or Business Associate's compliance with the Security Rule.

- 3.6 Business Associate shall fully cooperate in good faith with and to assist Covered Entity in complying with the requirements of the Security Rule.
- 3.7 Notification for the purposes of Sections 2.8 and 3.4 shall be in writing made by email/fax, certified mail or overnight parcel immediately upon becoming aware of the event, with supplemental notification by facsimile and/or telephone as soon as practicable, to:

**State of Tennessee, Department of General Services
Eve Whittenburg, Contract Administrator
Tennessee Towers, 3rd Floor
312 Rosa L. Parks Ave.
Nashville, TN 37243
Telephone: 615-253-3000
Fax: 615-741-0684**

- 3.8 Business Associate identifies the following key contact persons for all matters relating to this Agreement:

Business Associate shall notify Covered Entity of any change in the key contact during the term of this Agreement in writing within ten (10) business days.

4. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

- 4.1 Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in Service Contract(s), provided that such use or disclosure would not violate the Privacy and Security Rule, if done by Covered Entity. Business Associate's disclosure of PHI shall be subject to the limited data set and minimum necessary requirements of Section 13405(b) of Public Law 111-5, [designated as 42 U.S.C. 13735(b)]
- 4.2 Except as otherwise limited in this Agreement, Business Associate may use PHI as required for Business Associate's proper management and administration or to carry out the legal responsibilities of the Business Associate.
- 4.3 Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or provided that, if Business Associate discloses any PHI to a third party for such a

purpose, Business Associate shall enter into a written agreement with such third party requiring the third party to: (a) maintain the confidentiality, integrity, and availability of PHI and not to use or further disclose such information except as Required By Law or for the purpose for which it was disclosed, and (b) notify Business Associate of any instances in which it becomes aware in which the confidentiality, integrity, and/or availability of the PHI is breached immediately upon becoming aware.

- 4.4 Except as otherwise limited in this Agreement, Business Associate may use PHI to provide data aggregation services to Covered Entity as permitted by 42 CFR § 164.504(e)(2)(i)(B).
- 4.5 Business Associate may use PHI to report violations of law to appropriate Federal and State Authorities consistent with 45 CFR 164.502(j)(1).
- 4.6 Business Associate shall not use or disclose PHI that is Genetic Information for underwriting purposes. Moreover, the sale, marketing or the sharing for commercial use or any purpose construed by Covered Entity as the sale, marketing or commercial use of member's personal or financial information with affiliates, even if such sharing would be permitted by federal or state laws, is prohibited.
- 4.7 Business Associate shall enter into written agreements that are substantially similar to this Business Associate Agreements with any Subcontractor or agent which Business Associate provides access to Protected Health Information.
- 4.8 Business Associates shall implement and maintain information security policies that comply with the HIPAA Security Rule.

5. OBLIGATIONS OF COVERED ENTITY

- 5.1 Covered Entity shall provide Business Associate with the Notice of Privacy Practices that Covered Entity produces in accordance with 45 CFR § 164.520, as well as any changes to such notice. Covered Entity shall notify Business Associate of any limitations in its notice that affect Business Associate's use or disclosure of PHI.
- 5.2 Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses.
- 5.3 Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use of PHI.

6. PERMISSIBLE REQUESTS BY COVERED ENTITY

Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy or Security Rule, if done by Covered Entity.

7. TERM AND TERMINATION

7.1 Term. This Agreement shall be effective as of the date on which it is signed by both parties and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, Section 7.3. below shall apply.

7.2 Termination for Cause.

7.2.1 This Agreement authorizes and Business Associate acknowledges and agrees Covered Entity shall have the right to immediately terminate this Agreement and Service Contracts in the event Business Associate fails to comply with, or violates a material provision of, requirements of the Privacy and/or Security Rule or this Memorandum.

7.2.2 Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:

7.2.2.1 Provide a reasonable opportunity for Business Associate to cure the breach or end the violation, or

7.2.2.2 If Business Associate has breached a material term of this Agreement and cure is not possible or if Business Associate does not cure a curable breach or end the violation within a reasonable time as specified by, and at the sole discretion of, Covered Entity, Covered Entity may immediately terminate this Agreement and the Service Agreement.

7.2.2.3 If neither cure nor termination is feasible, Covered Entity shall report the violation to the Secretary of the United States Department of Health in Human Services or the Secretary's designee.

7.3 Effect of Termination.

7.3.1 Except as provided in Section 7.3.2. below, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of, Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

7.3.2 In the event that Business Associate determines that returning or destroying the PHI is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction unfeasible. Upon mutual agreement of the Parties that return or destruction of PHI is unfeasible; Business Associate shall extend the protections of this Memorandum to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction unfeasible, for so long as Business Associate maintains such PHI.

8. MISCELLANEOUS

8.1 Regulatory Reference. A reference in this Agreement to a section in the Privacy and or Security Rule means the section as in effect or as amended.

- 8.2 Indemnity. The Business Associate shall indemnify the Covered Entity and hold it harmless for any claims, losses or other damages arising from or associated with any act or omission of Business Associate under this Agreement. This includes the costs of responding to a breach of the Agreement or the release of PHI contrary to the terms and conditions of this Agreement, the costs of responding to a government enforcement action related to the breach, and any resultant fines, penalties, or damages paid by the Covered Entity.
- 8.3 Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy and Security Rules and the Health Insurance Portability and Accountability Act, Public Law 104-191, including any amendments required by the United States Department of Health and Human Services to implement the Health Information Technology for Economic and Clinical Health and related regulations upon the effective date of such amendment, regardless of whether this Agreement has been formally amended, including, but not limited to changes required by the American Recovery and Reinvestment Act of 2009, Public Law 111-5.
- 8.4 Survival. The respective rights and obligations of Business Associate under Section 7.3. of this Memorandum shall survive the termination of this Agreement.
- 8.5 Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity and the Business Associate to comply with the Privacy and Security Rules.
- 8.6 Notices and Communications. All instructions, notices, consents, demands, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered by hand, by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below, or to such other party, facsimile number, or address as may be hereafter specified by written notice.

COVERED ENTITY:

**STATE OF TENNESSEE, DEPARTMENT OF
GENERAL SERVICES
Eve Whittenburg, Contract Administrator
Tennessee Towers, 3rd Floor
312 Rosa L. Parks Ave.
Nashville, TN 37243
Telephone: 615-253-3000
Fax: 615-741-0684**

BUSINESS ASSOCIATE:

**ENTITY NAME
NAME AND TITLE
ADDRESS
Telephone: NUMBER
Fax: NUMBER**

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the date of hand delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the facsimile machine at the receiving location and receipt is verbally confirmed by the sender.

- 8.7 Strict Compliance. No failure by any Party to insist upon strict compliance with any term or provision of this Agreement, to exercise any option, to enforce any right, or to seek any remedy upon any default of any other Party shall affect, or constitute a waiver of, any Party's right to insist upon such strict compliance, exercise that option, enforce that right, or seek that remedy with respect to that

default or any prior, contemporaneous, or subsequent default. No custom or practice of the Parties at variance with any provision of this Agreement shall affect, or constitute a waiver of, any Party's right to demand strict compliance with all provisions of this Agreement

- 8.8 Severability. With respect to any provision of this Agreement finally determined by a court of competent jurisdiction to be unenforceable, such court shall have jurisdiction to reform such provision so that it is enforceable to the maximum extent permitted by applicable law, and the Parties shall abide by such court's determination. In the event that any provision of this Agreement cannot be reformed, such provision shall be deemed to be severed from this Agreement, but every other provision of this Agreement shall remain in full force and effect.
- 8.9 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee except to the extent that Tennessee law has been pre-empted by HIPAA.
- 8.10 Compensation. There shall be **no** remuneration for performance under this Agreement except as specifically provided by, in, and through, existing administrative requirements of Tennessee State government and services contracts referenced herein.
- 8.11 Security Breach. A violation of HIPAA or the Privacy or Security Rules constitutes a breach of this Business Associate Agreement and a breach of the Service Contract(s) listed on page one of this agreement, and shall be subject to all available remedies for such breach.

IN WITNESS WHEREOF,

STATE OF TENNESSEE, DEPARTMENT OF GENERAL SERVICES:

MICHAEL F. PERRY, CHIEF PROCUREMENT OFFICER

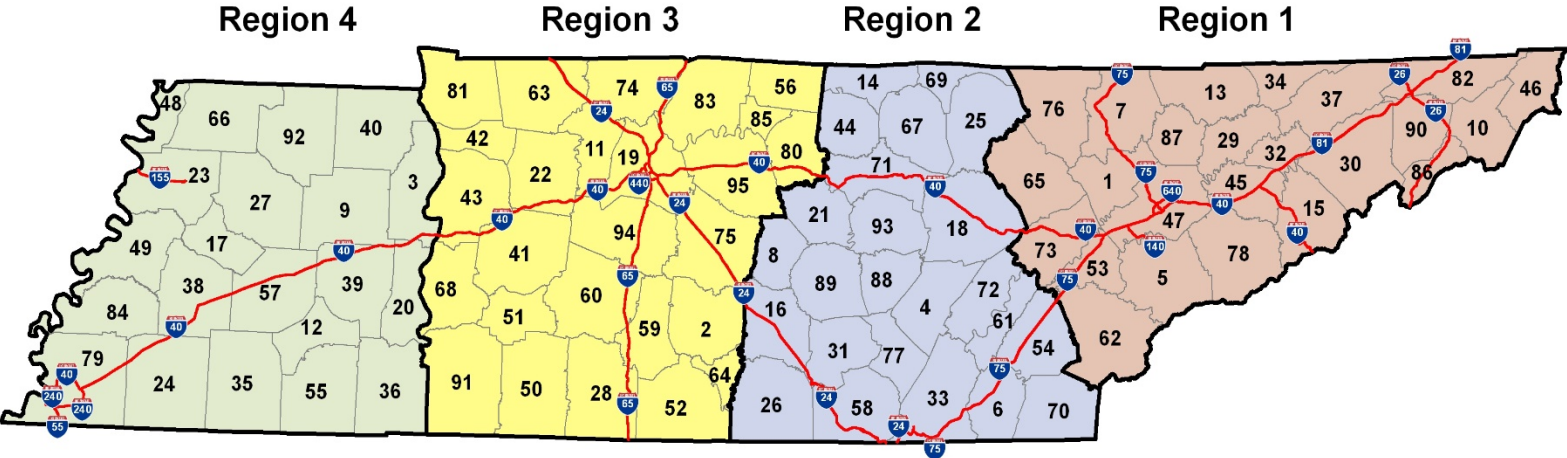
Date:

BUSINESS ASSOCIATE LEGAL ENTITY NAME:

NAME AND TITLE

Date:

List of Tennessee Counties



Alphabetical List of Counties in Tennessee

01 Anderson	17 Crockett	33 Hamilton	49 Lauderdale	65 Morgan	81 Stewart
02 Bedford	18 Cumberland	34 Hancock	50 Lawrence	66 Obion	82 Sullivan
03 Benton	19 Davidson	35 Hardeman	51 Lewis	67 Overton	83 Sumner
04 Bledsoe	20 Decatur	36 Hardin	52 Lincoln	68 Perry	84 Tipton
05 Blount	21 DeKalb	37 Hawkins	53 Loudon	69 Pickett	85 Trousdale
06 Bradley	22 Dickson	38 Haywood	54 McMinn	70 Polk	86 Unicoi
07 Campbell	23 Dyer	39 Henderson	55 McNairy	71 Putnam	87 Union
08 Cannon	24 Fayette	40 Henry	56 Macon	72 Rhea	88 Van Buren
09 Carroll	25 Fentress	41 Hickman	57 Madison	73 Roane	89 Warren
10 Carter	26 Franklin	42 Houston	58 Marion	74 Robertson	90 Washington
11 Cheatham	27 Gibson	43 Humphreys	59 Marshall	75 Rutherford	91 Wayne
12 Chester	28 Giles	44 Jackson	60 Maury	76 Scott	92 Weakley
13 Claiborne	29 Grainger	45 Jefferson	61 Meigs	77 Sequatchie	93 White
14 Clay	30 Greene	46 Johnson	62 Monroe	78 Sevier	94 Williamson
15 Cocks	31 Grundy	47 Knox	63 Montgomery	79 Shelby	95 Wilson
16 Coffee	32 Hamblen	48 Lake	64 Moore	80 Smith	

Regional List of Tennessee Counties

Region 1 East TN	Region 2 Middle TN (East)	Region 3 Middle TN (West)	Region 4 West TN
Anderson	Bledsoe	Bedford	Benton
Blount	Bradley	Cheatham	Carroll
Campbell	Cannon	Davidson	Chester
Carter	Clay	Dickson	Crockett
Claiborne	Coffee	Giles	Decatur
Cocke	Cumberland	Hickman	Dyer
Grainger	DeKalb	Houston	Fayette
Greene	Fentress	Humphreys	Gibson
Hamblen	Franklin	Lawrence	Hardeman
Hancock	Grundy	Lewis	Hardin
Hawkins	Hamilton	Lincoln	Haywood
Jefferson	Jackson	Macon	Henderson
Johnson	Marion	Marshall	Henry
Knox	McMinn	Maury	Lake
Loudon	Meigs	Montgomery	Lauderdale
Monroe	Overton	Moore	Madison
Morgan	Pickett	Perry	McNairy
Roane	Polk	Robertson	Obion
Scott	Putnam	Rutherford	Shelby
Sevier	Rhea	Smith	Tipton
Sullivan	Sequatchie	Stewart	Weakley
Unicoi	Van Buren	Sumner	
Union	Warren	Trousdale	
Washington	White	Wayne	
	Catoosa County, GA	Williamson	
		Wilson	
		Fort Campbell, KY	