

1. Modifications, Amendments, and Assignments

Modification: This Agreement shall be modified only by the written agreement of the parties with the approval of the Authorized Representative of the Division of Vocational Rehabilitation. No alteration or variation of the terms and conditions of the Agreement shall be valid unless made in writing and signed by the parties. Every amendment shall specify the date on which its provisions shall be effective.

Assignment: The Provider shall not assign, convey, encumber, or otherwise transfer its rights or duties under this Agreement without the prior written approval from DVR. A new DVR Service Agreement must be completed by the new service provider, including completion of all attachments, and DVR review for approval.

This Agreement may terminate in the event of its assignment, conveyance, encumbrance or other transfer by the Provider without the prior written approval from DVR.

2. Assurances/Non-Assurance

The Provider certifies that by signing this Agreement, assigned staff is qualified to provide the services as required in the technical specifications (Attachment #7).

The DVR must be assured that entities completing Agreements with DVR meet performance outcomes and provide equitable and quality services to all DVR consumers. This assurance also applies to any entity the Provider subcontracts with. DVR will review performance outcomes and require appropriate action as needed. The Provider will submit quarterly performance outcome reports to the DVR. These elements include but are not limited to: Consumer information, relevant dates of service, provider wait list expected duration, employer contacts, wages, benefits and hours, data secured for DVR consumers, staff assigned, information on reasons for unsuccessful job search. Provider must provide all components of the service program(s) under this Agreement as required in the technical specifications (Attachment #7).

Provider must list all Personnel with its agency (Attachment #10).

The Provider will schedule a face to face interview with the DVR Workforce Development Director, Supervisor or Designee in the area of the State where Provider is located and/or where Provider will be providing services. This interview will include questions in regard to the Provider having a business agreement and relationship that can sustain measurable outcomes of high quality. This face-to-face interview shall be completed before this Agreement is reviewed and approved. Renewing service providers may be exempt from this requirement at the discretion of DVR management.

The Provider and Provider staff involved in providing consumer services and billing must also provide verification of review of the online technical specification changes posted on the DVR website. This verification must include the names of staff and date of review before being accepted as an authorized service provider for the DVR specified services under this Agreement.

3. Criminal Background Check

A criminal background check shall be completed on an annual basis for the Provider and the Provider staff involved in providing consumer services and billing. The Provider will be responsible for completion and payment of this background check.

The resources to complete this background check are located:

<http://www.doj.state.wi.us/dles/cib/crimback.asp>.

The Provider is to complete and sign the Assurance Form (Attachment 11). The DVR will complete an audit on the background checks submitted by the Provider.

The Provider shall review the Wisconsin Sexual Offender List and certify that its employees and agents are not on the List. This site is <http://offender.doc.state.wi.us/public/home/jsp>

4. Electronic Reports and Data Security

The Provider **shall** not store any consumer information improperly on Provider electronic equipment. The Provider is responsible for ensuring that safeguards are in place in regard to any consumer information on Provider electronic equipment.

This includes the Provider insuring the use of full disk encryption protection with a strong password that is at least eight characters long, contains a combination of letters, numbers and symbols, and is changed every 60 days. All computers that contain any consumer information must use hardware or software firewall protection (Windows Firewall, Norton, McAfee, etc) and up-to-date virus protection systems. All computers must be updated with the latest security patches and fixes from the respective software service providers such as Microsoft. If the information is stored on a server, the server should not be Internet accessible and should be restricted to only those staff needing access to the information.

In the event that consumer data in the custody of the Provider is lost, stolen or otherwise compromised or put at risk of misuse, the Provider shall notify DVR in writing within 24 hours of the incident, including a copy of any law enforcement report. The Provider shall cooperate with DVR by providing notice of the data breach to affected consumers and taking other corrective steps specified by DVR, including but not limited to the purchase of credit risk counseling services for the affected consumers.

Immediately after the end of the retention period of three (3) years required by Paragraph 15, all personal information shall be shredded or otherwise destroyed in a manner which protects the confidentiality of the information.

5. Security Awareness Training Requirement

The Provider shall complete the Department of Workforce Development Online Information Technology (IT) Security Awareness Training Basic and Refresher modules before being accepted as an authorized service provider for the DVR specified services under this Agreement. The refresher training must be completed once per service agreement year. If a new electronic security module is identified by DWD or DVR, the service provider and service provider staff must complete online courses as directed and in the timeframe as directed. Any new Provider staff hired during the contract year must also complete the basic and refresher modules of the Security Awareness Training.

This Online Training can be accessed:

<http://workweb.dwd.state.wi.us/DWDTraining>

Provider staff responsible for delivering services and/or required to sign this Agreement must also complete the Training Modules. Other Provider staff, at the operational level, is encouraged to also complete this Training.

Upon completion of the Training, the Provider shall submit a copy of the Training Certificates for each provider and provider staff who have completed the training to DVR along with other required service agreement documents. The Provider will identify the individual who completed the Training and the Provider agency name on the Training Certificates.

The DVR will notify Provider when future modules are available and the completion requirements.

6. Consumer Progress Reports

Reports should be faxed toll free to 1-888-693-3479. Or if unable to fax, reports can be mailed to: CSS Scanning Unit, PO Box 8927, Madison, WI 53708-8927. Options for faxing will be available on the DVR Service Provider website for those who may need this additional information.

Providers are reminded to include the DVR (IRIS) case number on all reports. The IRIS number can be retrieved from the purchase order, case notes or other referral information from DVR. If the IRIS number is not available, include the consumer's **full first and last name**.

7. Payment for Services

The fees charged for the rehabilitation services programs shall be as established in the DVR Statewide Fee Schedule (Attachment #8).

The Catalog of Federal Domestic Assistance (CFDA) number for fees under this Agreement is 84.126.

There are no assurances of a certain level of business usage. DVR staff and consumers will select the program and the Provider that best meets the needs of the consumer. Provider must accept all referrals made for all consumers authorized. The authorization/agreement and resulting services can only be severed in consultation and agreement with DVR. Any decision not to accept a referral or sever an agreement based on an authorization of service, requires DVR supervisory level approval.

The Provider, staff or sub-contract entity cannot directly solicit DVR consumers for services. This is an unethical business practice and is subject to termination or suspension of the agreement for cause.

All services in accordance with the technical specifications (Attachment #7) and the DVR Statewide Service Fee Schedule (Attachment #8) require prior written authorization by the DVR before services can be rendered and payment can be made.

Invoices should be sent to DVR as soon as the supply/service has been rendered and received. The preferred method for billing DVR is to send the invoice electronically to: dvrvendorinv@dwd.wisconsin.gov

There is important **new** information regarding invoices:

To facilitate processing of the invoice, DVR asks that the provider identify its business name on the subject line of the email transmission. This will enable more efficient processing for DVR and accuracy in the amount of the payment.

The Provider's invoice will include the following:

- Provider name and address
- Provider Federal Employee Identification Number
- List of DVR consumers with description of services received
- DVR purchase order number for each consumer
- Unit cost for each consumer
- Total amount charged per consumer
- Grand total amount of the invoice

If not able to send electronically, mail the invoice to:

Dept of Workforce Development
DVR CCP Unit
PO BOX 7904
Madison, WI 53707-7904

If you do not receive payment after 30 days of sending the invoice and you have not received a letter of dispute, please contact the local office which authorized the service, or send a note with another copy of your invoice again to prevent outstanding invoices.

The DVR reserves the right to withhold payments for services for noncompliance with the terms of the Agreement **after** notifying the Provider in writing of its noncompliance. Payments will be released when Provider complies with the requirements of the Agreement. If Provider does not comply with Agreement terms, DVR will terminate the Agreement.

8. Undue Hardship Policy for Small Service Providers

The American with Disabilities Act, ADA provides a measure of protection from undue hardship to employers with 15 total employees or less. The Wisconsin Division of Vocational Rehabilitation (DVR) will apply this same standard to providers of contracted consumer direct services with regard to undue hardship. DVR will pay the costs associated with providing an accommodation for the consumer as part of authorized vocational rehabilitation services consistent with an approved Individualized Plan for Employment, if a contracted service provider has 15 employees or less.

Undue hardship means that an accommodation would be unduly costly, extensive, substantial or disruptive, or would fundamentally alter the nature or operation of the business.

This would include the services of a qualified sign language interpreter during the provision of authorized contracted services. These costs will be paid directly to the provider of the service and will not be paid to the service provider of the contracted service. Any ongoing or hourly costs will be provided as case progress dictates.

9. State and Federal Rules and Regulations

The Provider agrees to meet State and Federal service standards and program policies as expressed by State and Federal law applicable to the services covered by this Agreement, and agrees to meet the requirements of the Rehabilitation Act of 1973 and Amendments and the Americans with Disabilities Act of 1990 and Amendments. The Provider agrees that all services provided under this Agreement meet conditions under State and Federal civil rights compliance requirements, including the Equal Opportunity Requirements under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, as amended, Equal Pay Act of 1963, Age Discrimination in Employment Act of 1967, Age Discrimination Act of 1975, Americans with Disabilities Act of 1990, Title IX of the Education Amendments of 1972, Public Accommodations and Amusements Law of 1965, Wisconsin Fair Employment Act, and any related provisions of Wisconsin Statutes and Wisconsin Administrative Code. Further, the Provider agrees to comply with all guidelines issued by the DVR to ensure implementation of these and other related State and Federal requirements.

10. Certifications Requirement

The Provider must review, complete, and sign the following: Certification Regarding Debarment, Suspension and Other Responsibility Matters; Certification Regarding Lobbying, and Certification Regarding Drug-Free Workplace Requirements (Attachments # 4, # 5, # 6).

11. Assignment of Agreement to Subcontracted Agencies

The Provider retains responsibility for fulfillment of all terms and conditions of the Agreement with any subcontracted agency. **All subcontracted agencies must be identified (attachment#3) and complete the forms Certification Regarding Debarment, Suspension, and Other Responsibility Matters, Certification Regarding Lobbying, and Certification Regarding Drug-Free Workplace Requirements (Grants), Attachments #4, #5, # 6.** All DVR purchase authorizations will be issued to and payments made to the Provider, not the subcontracted agency.

12. Minority Business Subcontracted Agencies

The State of Wisconsin has a goal of placing five (5) percent of its total purchasing dollars with certified minority businesses. Authority for this program is found at ss. (2), 16.74(4), 16.766 and 560.036(2) Wis.Stats. DVR is committed to the promotion of minority business in the State's purchasing program. If the Provider subcontracts with other entities, it is encouraged to have subcontracts with minority businesses.

13. Confidentiality

The Provider shall not release personal information regarding any consumer authorized for services by the DVR without the prior written consent of the consumer. The applicable statutory references for confidential information at the time of this Agreement are 34 CFR § 361.38, Personal, use, and release of personal information, Code of Federal Regulations, and Ch. DWD 68, Confidential Information, Wis. Admn. Code.

The Provider acknowledges that some of the data it may become privy to in the performance of this Agreement is of a confidential nature and the Provider shall make all reasonable efforts to ensure that no such confidential information is disseminated by it or its employees.

The Provider agrees to observe complete confidentiality with respect to all aspects of any confidential information, proprietary data and/or trade secrets and any parts thereof, whether such contents are the State's or other manufacturer's, Provider's or distributor's whereby Provider or any Provider's personnel may gain access while engaged by the State or while on State premises. The restrictions herein shall survive the termination of the Agreement for any reason and shall continue in full force and effect and shall be binding upon the Provider or its agents, employees, successors, assigns, subcontracted agencies, or any party claiming an interest in the Agreement on behalf of or under the rights of Provider following any termination. Provider shall advise all Providers' agents, employees, successors, assigns, and subcontracted entities which are engaged by the State of the restrictions, present and continuing, set forth herein. The Provider shall defend and incur all costs, if any, for actions, which arise as a result of noncompliance by Provider, agents, employees, successors, assigns and sub-contracted entities regarding the restrictions herein.

14. Audit Requirements

DVR reserves the right to audit Provider performance. The Provider agrees to cooperate with DVR, and other State, Federal, and or DVR contracted program and fiscal auditors. Questions and comments on the State Single Audit Guidelines should be referred to:

Yasin Samadzada_or designee
DWD Bureau of Financial Management
P.O. Box 7946
Madison, WI 53707-7946
Yasin.Samadzada@dwd.wisconsin.gov
608-266-1735

15. Record Keeping and Record Retention

The DVR shall have the right to audit, review, examine, copy, and transcribe any pertinent records or documents relating to any Agreement resulting from this award held by the Provider. The Provider will retain all documents applicable to the Agreement for a period of three (3) years after final payment is made.

16. Indemnification

The Provider indemnifies and holds harmless the State and its agents and employees from and against all suits, claims, damages, judgments, losses and expenses, including attorneys' fees, arising out of or resulting from the performance of the work, which includes all labor, material, and equipment required to produce the commodity, construction, and/or service requirement by the Agreement, provided that any such claim, damage, loss, or expense: (1) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction to tangible property (other than the work itself), including the loss of use resulting there from; and (2) is caused in whole or part by any negligent act or omission of the Provider, and sub-agreement agency, anyone directly or indirectly employed by any of them or anyone for whose act any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

17. Consent to Breach Not Waiver

The waiver by the State of any breach of any provision contained in the Agreement shall not be deemed to be a waiver of such provision on any subsequent breach of the same of any other provision contained in the Agreement. Likewise, such a waiver shall not establish a course of performance between the parties contradictory to the terms of the Agreement.

18. Force Majeure

If the Provider is prevented from performing any of its obligations in whole or in part under the Agreement as a result of an act of God, war, civil disturbance or any other cause beyond its control, then such nonperformance shall not be grounds for the assessment of liquidated damages or any other remedy. Immediately upon the occurrence of any such event, the Provider shall commence to use its best efforts to provide to the fullest extent practicable, comparable performance. Comparability will be determined by the State, and such determination shall be reasonable under the circumstances. During any such period, the Provider shall continue to be responsible for all the costs and expenses related to such alternative performance. This section shall not be construed as relieving the Provider of its responsibility for any obligation or for any obligation being performed by a sub-agreement agency or supplier of services, unless the sub-agreement agency or supplier was prevented from performing such obligation by one of the events set forth above.

19. Legal Relations

The Provider will at all times comply with and observe all Federal and State laws, local laws, ordinances, and regulations which are in effect during the period of the Agreement and which in any manner affect the work or its conduct.

In carrying out any provisions of the Agreement or in exercising any power or authority granted to the Provider thereby, there will be no personal liability upon the DVR, it being understood that in such matters the DVR acts as agent and representative of the State.

20. Accounting Requirements

For agreements of twenty-five thousand dollars (\$25,000) or more, the Provider shall maintain a uniform double entry, full accrual accounting system and a financial management information system in accordance with generally accepted accounting principles.

The Provider shall establish and maintain adequate records of all expenditures incurred under the Agreement. All records must be kept in accordance with generally accepted accounting procedures. All procedures must be in accordance with federal, state, and local ordinances.

21. Reporting

The Provider shall comply with the fiscal and program reporting requirements of the DVR. Any required reports will be forwarded to the DVR. Failure to submit the required reports or requested statistical data by dates specified by the DVR shall result in the DVR withholding payment for services provided in accordance with this Agreement.

22. Severability

If any provision of this Agreement is declared or found to be illegal, unenforceable, or void, then both parties shall be relieved of all obligations under that provision. Performance under the remaining terms of the Agreement shall continue.

23. Site Rules and Regulations

The Provider shall use its best efforts to assure that its employees and agents, while on the State's premises or in the presence of State employees, shall comply with the State's work rules and regulations applicable to the work site.

Neither party shall require waivers or releases of any personal rights from representatives of the other in connection with visits to its premises nor do both parties agree that no such releases or waivers shall be pleaded by them in any action or proceeding.

Provider is an independent business responsible for providing its own equipment, telephone, office supplies, etc. to provide services to DVR consumers. The Provider shall provide accessible confidential meeting space to serve DVR consumers and must receive verbal or written consent from the DVR consumer approving the space and location when conducting meetings or other business connected with a service agreement. Accessible space is space meeting ADA requirements. Confidential space is space that allows for conversations to be kept secret and not intended to be known publicly.

24. Amendment and Non-Compliance

The Agreement may be amended, by the DVR, by giving written notice to the Provider at least thirty (30) days prior to the effective date of such amendment.

Provider shall give written notice to the DVR of all instances of non-compliance with the terms of this Agreement. Instances of non-compliance shall be corrected promptly and reported timely by the Provider to the DVR. If the DVR becomes aware of non-compliance with this Agreement, either through notice from the Provider or through other means, appropriate procedures shall be instituted to protect the interests of the DVR.

If a service provider amends any language in this Agreement, delays in approvals from DWD/DVR will result in the provider not receiving any referrals until all parties sign the Agreement.

25. Termination of Service Agreements

1. *Without Cause:*

Upon ninety days (90) calendar days of written notice, either Party may terminate the service agreement without cause.

2. *With Cause - Substantial Noncompliance:*

The Division may terminate the service agreement immediately if the Division determines that the provider is in substantial non-compliance with the terms and conditions of the service agreement, which creates an emergency that requires the Division to obtain service from other providers.

The provider will be given written notice of alleged noncompliance and/or possible service agreement termination. Suspension of referrals may be enforced until an investigation and/or review can be completed by DVR management.

Substantial noncompliance exists for example, when the:

- provider is not able to provide services within required service period of receipt of the purchase order as detailed in the technical specifications;
- provider cannot provide services in a confidential and accessible place of business
- provider's human resource capacity cannot accommodate the DVR referrals creating a waitlist that exceeds 30 days;
- provider or their staff have solicited referrals by either directly approaching DVR consumers or blanket marketing materials on vehicles parked at or near where DVR consumers may be visiting DVR offices;
- provider has more than three incidents of late filing progress reports (as defined in the technical specifications);
- provider or their staff cancels appointments two or more times with the same consumer;
- provider availability is inconsistent.

In the event of such termination, the Provider will be compensated for all work performed prior to such termination date and for all reasonable costs and liabilities to which the Provider has, out of necessity, obligated itself as a result of the Agreement, which are applicable to any period after such termination. The Provider shall use its best efforts to minimize the cost to the State.

26. Availability of Funds

It is understood and agreed by the parties hereto that all obligations of DVR, including the continuance of payments hereunder, are contingent upon the availability and continued appropriation of State and Federal funds, and in no event shall DVR be liable for any payments hereunder in excess of such available appropriated funds. In the event that the amount of any available or appropriated funds provided by the State or Federal sources for the purchase of services hereunder shall be reduced, terminated, or shall not be continued at an aggregate level sufficient to allow for the purchase of the specified amount of services to be purchased hereunder for any reason whatsoever, DVR shall notify the Provider of such reduction of funds available and DVR shall be entitled to reduce its commitment here under as it deems necessary.