

**1. Modifications, Amendments, and Assignments**

**Modification:** This Agreement shall be modified only by the written agreement of the parties with the approval of the Deputy Administrator 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 consent of the State.

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

**2. Electronic Reports and Data Security**

The Provider is not to store consumer information improperly on Provider electronic equipment. The Provider is responsible for ensuring that safeguards have been taken in regard to 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 consumer information must use hardware or software firewall protection (Windows Firewall, Norton, McAfee, etc) and up-to-date virus protection. All computers must be updated with the latest security patches and fixes from the respective software vendors 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 within 24 hours. 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 13, all personal information shall be shredded or otherwise destroyed in a manner which protects the confidentiality of the information.

**3. Security Awareness Training Requirement**

The Provider is to complete the Department of Workforce Development Online Information Technology (IT) Security Awareness Training before being accepted as an authorized vendor for the DVR specified services under this Agreement. This Online Training can be accessed at:

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

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

Upon completion of the Training, the Provider will submit a copy of the Training Certificates to the DVR. The Provider will identify the individual who completed the Training and the Provider agency name on the Training Certificates.

#### **4. Consumer Progress Reports**

Consumer progress reports must be provided. Progress reports are to be sent via e-mail to:

**DVRSCAN@dwd.wisconsin.gov**

**Consumer reports can also be sent to the DVR E-Fax telephone number at 608-260-2452. This is the number for the DVR Scanning Unit.**

The Provider is to send a separate document for each consumer progress report. Consumer progress reports are due within five (5) business days of completion of service.

#### **5. 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 84.126A.

There are no assurances of a certain level of usage. DVR staff and consumers will select the program and the Provider that best meets the needs of the consumer.

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.

The Provider shall bill for DVR consumers who have received the specified rehabilitation services in accordance with the service program technical specifications. The Division will not make payments for costs in excess of the Fees for Service or incurred outside the Agreement period.

The Provider shall bill DVR no later than 10 business days from start of the month for previous month's services.

The Provider's invoice to 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

Invoices are to be sent electronically to the DVR Center for Consumer Payments at:

**DVRVendorInv@dwd.wisconsin.gov**

The DVR reserves the right to withhold payments for services for noncompliance with the terms of the Agreement 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 Agreement.

#### **6. Americans with Disabilities Act (ADA) Requirements**

As an entity covered by the Americans with Disabilities Act (ADA), it is expected that the Service Provider will assume the responsibilities for all auxiliary aids and other accommodations required for consumers to access the services unless undue burden can be demonstrated.

## **7. 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 Amendments of 1992 and the Americans with Disabilities Act of 1990. 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 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.

## **8. 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).

## **9. Assignment of Agreement To Subcontracted Agencies**

The Provider retains responsibility for fulfillment of all terms and conditions of the Agreement with the subcontracted agency. All subcontracted agencies must 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.

## **10. 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 in Wisconsin Statutes 15.107(2), 16.74(4), 16.766 and 560.036(2). DVR is committed to the promotion of minority business in the State's purchasing program. If the Provider subcontracts with other agencies, it is encouraged to have subcontracts with minorities.

## **11. 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, Code of Federal Regulations, and Chapter DWD 68, Wisconsin Administrative Code (Confidentiality of DVR Records).

The Provider acknowledges that some of the data it may become privy to in the performance of the 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 Provider's agents, employees, successors, assigns, and subcontracted agencies 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, his agents, employees, successors, assigns and sub-contracted agencies regarding the restrictions herein.

## **12. 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 auditors.

## **13. 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.

## **14. Indemnification**

The Provider indemnifies and holds harmless the State and its agents and employees from and against all suits, claims, damages, judgements, 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 therefrom; 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.

## **15. 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.

## **16. 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.

## **17. 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.

## **18. 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.

## **19. 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 statistical data by dates specified by the DVR shall result in the DVR withholding payment for services provided in accordance with this Agreement.

## **20. 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.

## **21. 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 and 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 own equipment, office supplies, etc. to provide services to DVR consumers.

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>.

## **22. 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.

## **23. Termination**

The Agreement shall be subject to termination under any of the following conditions:

### **1. Cure Period**

If the Provider fails to perform as specified herein during the Agreement, the DVR may issue a written notice providing for at least a 15-working days period in which the Provider shall have an opportunity to cure, provided that cure is possible and feasible. Time allowed for shall not diminish or eliminate the Provider's liability for liquidated damages. If after opportunity to cure, the problem remains, the DVR may do one or more of the following:

- (1) exercise any remedy provided in law or in equity; and/or,
- (2) terminate Provider services after issuing a 30-day notice.

**2. Termination in the Interest of the State**

DVR's Contract Officer, by 30-day prior written notice, may terminate performance of work under the Agreement when it is in the best interest of the State to do so. 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 up to the term of the Agreement as determined in accordance with the applicable provision of 41 CFR, Sections 1-8. The Provider shall use its best efforts to minimize the cost to the State.

**3. 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 hereunder as it deems necessary.