

Terms and Conditions

All providers of services to DOR consumers are required to comply with the following Terms & Conditions, which are incorporated by reference on page 2 of all "Authorization for Services" (DR297B) and "Medical Authorization and Invoice" (DR297C) documents, hereinafter referred to as "Agreement:"

1. **CONTRACTS FUNDED BY THE FEDERAL GOVERNMENT:** It is mutually understood between the parties that this contract may have been written before ascertaining the availability of congressional appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the contract were executed after that determination was made.

This contract is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the Fiscal Year(s) covered by this agreement for the purposes of this program. In addition, this contract is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress, which may affect the provisions, terms, or funding of this contract in any manner.

It is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this contract shall be amended to reflect any reduction in funds.

The DOR of Rehabilitation (DOR) has the option to void the contract immediately upon written notice to the Contractor or to amend the contract to reflect any reduction of funds.

The Contractor shall comply with the Single Audit Act and the reporting requirements set forth in OMB Circular A-133.

2. **PROGRESS REPORTS:** Contractor shall submit progress reports to State representative, as required, describing work performed, work status, work progress difficulties encountered, remedial action, and statement of activity anticipated subsequent to reporting period for approval prior to payment of invoices. Contractor to be reimbursed by invoicing, in detail, all costs and charges with Contract Number and sending to designated address.
3. **AUDIT REPORTS - FOR PROFIT ENTITIES/INDIVIDUAL SERVICE PROVIDERS:** Contractor agrees that the DOR, the Department of General Services, the Bureau of State Audits, or their designated

representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).

4. AUDIT REPORTS - NON-PROFIT AGENCIES: Contractor understands that:

1. Funds provided under this Agreement shall be included in an audit conducted in accordance with the provisions of OMB Circular A-133 for nonprofit and public agencies, standards promulgated by the American Institute of Certified Public Accountants (AICPA), and those standards included in "Government Auditing Standards, 1994 Revision".
2. The financial and compliance audit shall contain the following supplementary financial information:
 1. The amount due Contractor;
 2. The amount due State; or
 3. Whether the Contractor has been paid in full.
3. If the Contractor has used the same independent audit firm for more than five (5) consecutive years, the Contractor must submit, to the DOR's Audit Services Unit, a written justification for using the same audit firm in excess of five (5) years and request approval from the Audit Services Unit to continue using the same audit firm.
4. Private, nonprofit Contractors shall submit to the DOR two (2) copies of the required audit report within six (6) months of the end of the Contractor's fiscal year. An extension may be granted by the DOR's Audit Services Unit upon written request by the Contractor's Certified Public Accountant, to include but not be limited to, an explanation of why the required audit cannot be

submitted within six (6) months of the end of the Contractor's fiscal year, for submittal of the audit report not to exceed an additional thirty (30) calendar days from the original due date. Audit reports are to be submitted to the following address:

Department of Rehabilitation
Audit Services Section
721 Capitol Mall
Sacramento, CA 95814

5. Local governmental entities shall submit to the DOR two (2) copies of the required audit report within thirty (30) calendar days after the completion of the audit, but no later than nine (9) months after the end of the audit period. The audit reports are to be submitted to the address stated above.

Local governmental agencies shall submit the required number of copies of the audit report in accordance with the guidelines set by the Division of Audits of the State Controller's Office. Said reports are to be submitted to the following address:

State Controller
Division of Audits
300 Capitol Mall, Fifth Floor
Sacramento, CA 95814

6. Where services or funds under this Agreement are provided to, for, or by a wholly owned, or wholly controlled subsidiary of Contractor, Contractor hereby provides assurance that an audit shall be performed of this subsidiary organization in accordance with this Section. Said required audit report shall be made available to the State upon request.
5. **DISPUTES:** Contractor shall continue with the responsibilities under this Agreement during any dispute.
 6. **TERMINATION FOR CAUSE:** The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the

State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

7. INDEPENDENT CONTRACTORS/INDIVIDUAL SERVICE

PROVIDERS: Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

8. RECYCLING CERTIFICATION: The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).

9. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

Contractor Certification Clauses - All providers of services to DOR consumers are required to comply with the following Certification Clauses, which are incorporated by reference on page 2 of all "Authorization for Services" (DR297B) and "Medical Authorization and Invoice" (DR297C) documents, hereinafter referred to "Agreement:"

1. STATEMENT OF COMPLIANCE: Contractor has, unless exempted, complied with the nondiscrimination program requirements. (Gov. Code §12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)
2. DRUG-FREE WORKPLACE REQUIREMENTS: Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:
 1. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
 2. Establish a Drug-Free Awareness Program to inform employees about:
 1. the dangers of drug abuse in the workplace;
 2. the person's or organization's policy of maintaining a drug-free workplace;
 3. any available counseling, rehabilitation and employee assistance programs; and,
 4. penalties that may be imposed upon employees for drug abuse violations.
 3. Every employee who works on the proposed Agreement will:
 1. receive a copy of the company's drug-free workplace policy statement; and,
 2. agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the DOR determines that any of the following has

occurred: the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (Gov. Code §8350 et seq.)

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION:

Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court, which orders Contractor to comply with an order of the National Labor Relations Board. (Pub. Contract Code §10296) (Not applicable to public entities.)

4. EXPATRIATE CORPORATIONS: Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State of California.

DOING BUSINESS WITH THE STATE OF CALIFORNIA

The following laws apply to persons or entities doing business with the State of California.

1. CONFLICT OF INTEREST - INDIVIDUAL SERVICE PROVIDER:

Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the DOR must be contacted immediately for clarification.

Current State Employees (Pub. Contract Code §10410):

- 1) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- 2) No officer or employee shall contract on his or her own behalf as an independent Contractor with any state agency to provide goods or services.

Former State Employees (Pub. Contract Code §10411):

3. For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
4. For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (Pub. Contract Code §10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (Pub. Contract Code §10430 (e))

2. CONFLICT OF INTEREST - NON-PROFIT ENTITIES:

- 1) Contractor certifies that its employees and the officers of its governing body shall avoid any actual or potential conflicts of interest, and that no officer or employee who exercises any functions or responsibilities in connection with this Agreement shall have any personal financial interest or benefit which either directly or indirectly arises from this Agreement.
- 2) Contractor shall establish safeguards to prohibit its employees or its officers from using their positions for a purpose which could result in private gain or which gives the appearance of being motivated for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

3. **LABOR CODE/WORKERS' COMPENSATION:** Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)
4. **AMERICANS WITH DISABILITIES ACT:** Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)
5. **CONTRACTOR NAME CHANGE:** An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.
6. **CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:**
 - 1) When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the Contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.
 - 2) "Doing business" is defined in Revenue and Taxation Code Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate Contractor performing within the state not be subject to the franchise tax.
 - 3) Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.
7. **PAYEE DATA RECORD FORM STD. 204:** This form must be completed by all Contractors that are not another state agency or other governmental entity.