

DCDHS - COUNTY OF DANE
Purchase of Services Agreement

Agreement No.: _____

Begin Date: _____

Expiration Date: _____

Authority: Res.: _____

Maximum Cost: _____

Number of Pages: _____

Corporation Counsel Approval: _____

THIS AGREEMENT is made and entered into by and between the County of Dane (hereafter referred to as "COUNTY") and _____ (hereafter, "PROVIDER"), as of the respective dates representatives of both parties have affixed their respective signatures.

WHEREAS COUNTY, whose address is 1202 Northport Drive, Madison, Wisconsin 53704, desires to purchase services from PROVIDER, whose address is _____ for the purpose of

These services are more particularly described in Section 1 of Schedule A.

AND WHEREAS PROVIDER is able and willing to provide such services;

NOW, THEREFORE, in consideration of the mutual covenants of the parties hereinafter set forth, the receipt and sufficiency of which is acknowledged by each party for itself, COUNTY and PROVIDER do agree as follows:

[End of Page]

I. TERM.

The term of this Agreement shall commence as of the *Begin Date* and shall end as of the *Expiration Date*, both of which are set forth on page one (1) hereof. PROVIDER shall complete its service obligations under this Agreement not later than the *Expiration Date*. COUNTY shall not be liable for any services performed by PROVIDER other than during the term of this Agreement. COUNTY shall never pay more than the *Maximum Cost* as stated above for all services.

II. SERVICES.

- A. PROVIDER agrees to provide the services detailed in the bid specifications, if any; the request for proposals (RFP) and PROVIDER's response thereto, if any; and on the attached *Schedule A*, which is fully incorporated herein by reference. In the event of a conflict between or among the bid specifications, the RFP or responses thereto, or the terms of *Schedule A* or any of them, it is agreed that the terms of *Schedule A*, to the extent of any conflict, are controlling.
- B. PROVIDER shall furnish the services contained in and comply with the performance and productivity requirements contained in the *Program Summary* document, which is attached hereto and fully incorporated herein by reference. . PROVIDER shall complete its obligations under this Agreement in a sound, economical and efficient manner in accordance with this Agreement and all applicable laws.
- C. COUNTY will make payments for services rendered under this Agreement as and in the manner specified herein and in *Schedule B*, which, if attached, is fully incorporated herein by reference.
- D. PROVIDER agrees to make such reports as are required by this Agreement and in the attached *Schedule C*, which is fully incorporated herein by reference.
- E. PROVIDER agrees to secure at PROVIDER's own expense all personnel with the necessary training, supervision and qualifications necessary to carry out PROVIDER's obligations under this Agreement. Such personnel shall not be deemed to be employees of COUNTY. PROVIDER shall ensure PROVIDER's personnel are instructed that they will not have any direct contractual relationship with COUNTY. COUNTY shall not participate in or have any authority over any aspect of PROVIDER's personnel policies and practices, and shall not be liable for actions arising from such policies and practices.
- F. COUNTY shall have the right to request replacement of personnel. PROVIDER shall comply where such personnel are deemed by COUNTY to present a risk to consumers. In other instances, PROVIDER and COUNTY shall cooperate to reach a reasonable resolution of the issue
- G. PROVIDER warrants that it has complied with all necessary requirements to do business in the State of Wisconsin.
- H. PROVIDER shall notify COUNTY immediately, in writing, of any change in its registered agent, his or her address, and/or PROVIDER's legal status. For a partnership, the term 'registered agent' shall mean a general partner.
- I. PROVIDER understands that time is of the essence
- J. Unless specified differently herein, a PROVIDER shall maintain a consistent volume of service delivery throughout the months of the Agreement as determined by COUNTY.

SECTION A
(Non-Discrimination)

III. NON-DISCRIMINATION.

- A. During the term of this Agreement, PROVIDER agrees not to discriminate on the basis of age, race, ethnicity, religion, color, gender, disability, marital status, sexual orientation, national origin, cultural differences, ancestry, physical appearance, arrest record or conviction record, military participation or membership in the national guard, state defense force or any other reserve component of the military forces of the United States, or

political beliefs against any person, whether a recipient of services (actual or potential) or an employee or applicant for employment. Such equal opportunity shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff, termination, training, rates of pay, and any other form of compensation or level of service(s).

- B. PROVIDER agrees to post in conspicuous places, available to all employees, service recipients and applicants for employment and services, notices setting forth the provisions of this paragraph. The listing of prohibited bases for discrimination shall not be construed to amend in any fashion state or federal law setting forth additional bases, and exceptions shall be permitted only to the extent allowable in state or federal law.

IV. AMERICANS WITH DISABILITIES ACT COMPLIANCE.

- A. PROVIDER and all Subcontractors agree not to discriminate on the basis of disability in accordance with The Americans with Disabilities Act (ADA) of 1990, the Wisconsin Statutes secs. 111.321 and 111.34, and Chapter 19 of the Dane County Code of Ordinances. PROVIDER agrees to post in conspicuous places, available to employees, service recipients, and applicants for employment and services, notices setting forth the provisions of this paragraph.
- B. PROVIDER shall give priority to those methods that offer programs and activities to disabled persons in the most integrated setting. Where service or program delivery is housed in an inaccessible location, and accessible alterations are not readily achievable, PROVIDER agrees to offer "programmatically accessibility" to recipients (real or potential) of said services and programs (e.g. change time/location of service).
- C. PROVIDER agrees that it will employ staff with special translation and sign language skills appropriate to the needs of the client population, or will purchase the services of qualified adult interpreters who are available within a reasonable time to communicate with hearing impaired clients. PROVIDER agrees to train staff in human relations techniques and sensitivity to persons with disabilities. PROVIDER agrees to make programs and facilities accessible, as appropriate, through outstations, authorized representatives, adjusted work hours, ramps, doorways, elevators, or ground floor rooms. PROVIDER agrees to provide, free of charge, all documents necessary to its clients' meaningful participation in PROVIDER's programs and services in alternative formats and languages appropriate to the needs of the client population, including, but not limited to, Braille, large print and verbally transcribed or translated taped information. The PROVIDER agrees that it will train its staff on the content of these policies and will invite its applicants and clients to identify themselves as persons needing additional assistance or accommodations in order to apply for or participate in PROVIDER's programs and services.

V. BILINGUAL SERVICES.

PROVIDER agrees to maintain comprehensive policies to ensure compliance with Title VI of the Civil Rights Act of 1964, as updated to address the needs of employees and clients with limited English proficiency. PROVIDER agrees that it will employ staff with bilingual or special foreign language translation skills appropriate to the needs of the client population, or will purchase the services of qualified adult interpreters who are available within a reasonable time to communicate with clients who have limited English proficiency. PROVIDER will provide, free of charge, all documents necessary to its clients' meaningful participation in PROVIDER's programs and services in alternative languages appropriate to the needs of the client population. PROVIDER agrees that it will train its staff on the content of these policies and will invite its applicants and clients to identify themselves as persons needing additional assistance or accommodations in order to apply or participate in PROVIDER's programs and services.

VI. EQUAL OPPORTUNITY NOTICE.

In all solicitations for employment placed on PROVIDER's behalf during the term of this Agreement, PROVIDER shall include a statement to the effect that PROVIDER is an "Equal Opportunity Employer".

SECTION B
(General Terms)

VII. ACKNOWLEDGEMENT OF COUNTY SUPPORT.

PROVIDER shall acknowledge funding support by COUNTY in all publications, including social media statements, regarding services and programs funded by COUNTY. PROVIDER agrees to display the Dane County Department of Human Services logo in its waiting rooms and incorporate the logo in all PROVIDER publications, websites and stationery that pertain to services funded in whole or in part by COUNTY.

VIII. ASSIGNMENT AND TRANSFER.

PROVIDER shall not assign, subcontract or transfer any interest or obligation in this Agreement without the prior written consent of COUNTY, including the hiring of independent contract service providers, unless otherwise provided herein. Claims for money due to PROVIDER from COUNTY under this Agreement may be assigned to a bank, trust company or other financial institution without COUNTY consent if and only if the instrument of assignment provides that the right of the assignee in and to any amounts due or to become due to PROVIDER shall be subject to prior claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the work called for in this Agreement. PROVIDER shall furnish COUNTY with notice of any such assignment or transfer.

IX. CONFIDENTIALITY.

A. PROVIDER agrees to comply with all pertinent federal and state statutes, rules, regulations and county ordinances related to confidentiality. Further, COUNTY and PROVIDER agree that:

1. Client specific information, including, but not limited to, information which would identify any of the individuals receiving services under this Agreement, shall at all times remain confidential and shall not be disclosed to any unauthorized person, forum, or agency except as permitted or required by law.
2. PROVIDER knows and understands it is not entitled to any client specific information unless it is released to persons who have a specific need for the information which is directly connected to the delivery of services to the client under the terms of this Agreement and only where such persons require the requested information to carry out official functions and responsibilities.
3. Upon request from COUNTY, client specific information, including but not limited to treatment information, shall be exchanged between PROVIDER and COUNTY, consistent with applicable federal and state statutes, for the following purposes:
 - a. Research (names and specific identifying information not to be disclosed);
 - b. Fiscal and clinical audits and evaluations;
 - c. Coordination of treatment or services; and
 - d. Determination of conformance with court-ordered service plans.

B. Health Insurance Portability and Accountability Act of 1996 (HIPAA) Applicability.

1. The PROVIDER agrees to comply with the federal regulations implementing the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all relevant regulations as from time to time amended, if PROVIDER receives Medicaid funding or as these regulations apply to the services the PROVIDER provides or purchases with funds provided under this Agreement. Such requirements, where applicable, include:
 - a. Holding protected health information (PHI) in confidence and using it or further disclosing it only for authorized purposes.
 - b. Have a Notice of Privacy Practices.
 - c. Developing and maintaining current and appropriate administrative, technical, and physical safeguards to protect the confidentiality, integrity and availability of all PHI, in any form or media, including electronic storage and transmission.
 - d. Maintaining policies and procedures to protect against the identity theft of client/consumer information.
 - e. Tracking disclosures of PHI as required by law.

- f. Having and maintaining procedures in the event of a breach of PHI, logging security events, providing notices and mitigating damages as required by law.
2. Where PROVIDER has access to COUNTY's client records and discovers any breach or unauthorized acquisition, access, use or disclosure of such records, PROVIDER shall inform COUNTY within five (5) business days after PROVIDER learns of such breach involving COUNTY's clients.
3. If COUNTY has determined that PROVIDER is a "Business Associate" within the context of the law, PROVIDER will sign and return the attached Business Associate Addendum, which will be included and made part of this Agreement.

X. COOPERATION.

- A. PROVIDER agrees to cooperate with departments, agencies, employees and officers of COUNTY in providing the services described herein.
- B. Where PROVIDER furnishes counseling, care, case management, service coordination or other client services and COUNTY requests PROVIDER or any of PROVIDER's employees to provide evidence in a court or other evidentiary proceeding regarding the services provided to any named client or regarding the client's progress given services provided, services purchased under this Agreement include PROVIDER making itself or its employees available to provide such evidence requested by COUNTY as authorized by law.

XI. DELIVERY OF NOTICES.

Notices, bills, invoices and reports required by this Agreement shall be deemed delivered as of the date of postmark if deposited in a United States mailbox, first class postage attached, addressed to a party's address as set forth in this Agreement. Any party changing its address shall notify the other party in writing within five (5) business days.

XII. DISPUTE RESOLUTION.

- A. **Good Faith Efforts.** In the event of a dispute between PROVIDER and COUNTY involving the interpretation or application of the contents of this Agreement, PROVIDER and COUNTY agree to make good faith efforts to resolve grievances informally.
- B. **Formal Procedure.** In the event informal resolution is not achieved, COUNTY and PROVIDER shall follow the following procedure to resolve all disputes:

Step 1: PROVIDER's Chief Executive Officer shall present a description of the dispute and PROVIDER's position, in writing, to COUNTY's Division Manager within fifteen (15) working days of gaining knowledge of the issue. The description shall cite the provision or provisions of this Agreement that are in dispute and shall present all available factual information supporting PROVIDER's position. Failure to timely provide said document constitutes a waiver of PROVIDER's right to dispute the item.

Step 2: Both parties shall designate representatives, who shall attempt to reach a mutually satisfactory resolution within the fifteen (15) working days after mailing of the written notice.

Step 3: If resolution is not reached in Step 2, COUNTY's Division Manager shall provide in writing by mail, an initial decision. Said decision shall be binding until and unless a different decision is reached as outlined below.

Step 4: PROVIDER's Chief Executive Officer or equivalent may request a review of the initial decision by mailing a written request to COUNTY's Human Services Director within fifteen (15) working days of the receipt of the initial decision. Failure to timely provide said request constitutes a waiver of PROVIDER's right to dispute the item.

Step 5: COUNTY's Human Services Director shall respond to the request for review by mailing a final written decision to PROVIDER within fifteen (15) working days of receipt of the request.

Step 6: PROVIDER's Chief Executive Officer or equivalent may request a review by the County Executive of the final decision by mailing said request within fifteen (15)

working days of the postmarked date of the final decision. Failure to timely provide said request constitutes a waiver of PROVIDER's right to dispute the item.

Step 7: The County Executive shall provide a final decision by mailing it to PROVIDER within fifteen (15) working days following the postmarked date of the request for a review. The decision of the County Executive is final and binding on the parties.

C. Client Grievance Procedure.

1. PROVIDER shall have a written client grievance procedure approved by COUNTY, posted in its service area, at all times during the term of this Agreement and made available to each client upon admission.
2. Where clients may be entitled to an administrative hearing concerning eligibility, PROVIDER will cooperate with COUNTY in providing notice of said eligibility to clients.

XIII. EMERGENCY PLANNING.

A. In order for PROVIDER and the people PROVIDER serves to be prepared for an emergency such as a tornado, flood, blizzard, electrical blackout, pandemic and/or other natural or man-made disaster, PROVIDER shall develop a written plan that at a minimum addresses:

1. The steps PROVIDER has taken or will be taking to prepare for an emergency;
2. Which of PROVIDER's services will remain operational during an emergency;
3. The role of staff members during an emergency;
4. PROVIDER's order of succession, evacuation and emergency communications plans, including who will have authority to execute the plans and/or to evacuate the facility;
5. Evacuation routes, means of transportation and use of alternate care facilities and service providers, (such as pharmacies) with which PROVIDER has emergency care agreements in place;
6. How PROVIDER will assist clients/consumers to individually prepare for an emergency; and
7. How essential care records will be protected, maintained and accessible during an emergency.

A copy of the written plan should be kept at each of PROVIDER's office(s).

B. Providers who offer case management or residential care for individuals with substantial cognitive, medical, or physical needs shall assure at-risk clients/consumers are provided for during an emergency.

XIV. FAIR LABOR STANDARDS COMPLIANCE.

A. **Reporting Adverse Findings.** During the term of this Agreement, PROVIDER shall report to the County Contract Compliance Officer, within ten (10) days, any allegations to, or findings by the National Labor Relations Board (NLRB) or Wisconsin Employment Relations Commission (WERC) that PROVIDER has violated a statute or regulation regarding labor standards or relations. If an investigation by the Contract Compliance Officer results in a final determination that the matter adversely affects PROVIDER's responsibilities under this Agreement, and which recommends termination, suspension or cancellation of this Agreement, COUNTY may take such action.

B. **Appeal Process.** PROVIDER may appeal any adverse finding by the Contract Compliance Officer as set forth in sec. 25.08(20)(c), D.C. Ords.

C. **Notice Requirement.** PROVIDER shall post the following statement in a prominent place visible to employees: "As a condition of receiving and maintaining a contract with Dane County, this employer shall comply with federal, state and all other applicable laws prohibiting retaliation for union organizing."

XV. INDEMNIFICATION BY PROVIDER.

A. To the fullest extent permitted by law, PROVIDER shall indemnify, hold harmless and defend COUNTY, its boards, commissions, agencies, officers, agents, volunteers, employees and representatives against any and all liability, claims, losses (including, but not limited to,

property damage, bodily injury and loss of life), damages, costs or expenses (including, but not limited to, court costs, as well as fees and charges of attorney(s)) which COUNTY, its officers, employees, agencies, boards, commissions and representatives may sustain, incur or be required to pay by reason of PROVIDER furnishing the services or goods required to be provided under this Agreement, provided, however, that the provisions of this paragraph shall not apply to liabilities, claims, damages, losses, charges, costs, or expenses caused by or arising from the acts or omissions of COUNTY, its agencies, boards, commissions, officers, agents, volunteers, employees or representatives. The obligations of PROVIDER under the paragraph shall apply to liability, claims, losses, damages, costs or expenses arising from any aspect of PROVIDER's personnel policies or practices, because, except as otherwise provided herein, it is understood that COUNTY assumes no control over PROVIDER's business operations, methods or procedures.

- B. COUNTY reserves the right, but not the obligation, to participate in defense without relieving PROVIDER of any obligation under this paragraph.
- C. The obligations of PROVIDER under this paragraph shall survive the expiration or termination of this Agreement.
- D. The requirements of this section are waived where PROVIDER is the State of Wisconsin.

XVI. INSURANCE.

- A. In order to protect itself and COUNTY, its officers, boards, commissions, agencies, agents, volunteers, employees and representatives under the indemnity provisions of *paragraph XV*, PROVIDER shall, at PROVIDER's own expense, obtain and at all times during the term of this Agreement keep in full force and effect the insurance coverages, limits, and endorsements listed below. Neither these requirements nor the COUNTY's review or acceptance of PROVIDER's certificates of insurance is intended to limit or qualify the liabilities or obligations assumed by the PROVIDER under this Agreement.
 - 1. **Commercial General Liability.**
PROVIDER agrees to maintain Commercial General Liability at a limit of not less than \$1,000,000 per occurrence. Coverage shall include, but not be limited to, Bodily Injury and Property Damage to Third Parties, Contractual Liability, Personal Injury and Advertising Injury Liability, Premises-Operations, Independent PROVIDERS and Subcontractors, and Fire Legal Liability. The policy shall not exclude Explosion, Collapse, and Underground Property Damage Liability Coverage. The policy shall list DANE COUNTY as an Additional Insured.
 - 2. **Commercial/Business Automobile Liability.**
PROVIDER agrees to maintain Commercial/Business Automobile Liability at a limit of not less than \$1,000,000 Each Occurrence. PROVIDER further agrees coverage shall include liability for Owned, Non-Owned & Hired automobiles. In the event PROVIDER does not own automobiles, PROVIDER agrees to maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.
 - 3. **Professional Liability.**
PROVIDER agrees to maintain Professional Liability at a limit of not less than \$1,000,000 per claim with a \$1,000,000 aggregate for all PROVIDER's professional employees. The coverage shall include Unintentional Errors/Omissions Endorsement. There shall be an extended reporting period provision of not less than two years.
 - 4. **Umbrella or Excess Liability.**
PROVIDER may satisfy the minimum liability limits required above for Commercial General Liability and Business Auto Liability under an Umbrella or Excess Liability policy. There is no minimum Per Occurrence limit of liability under the Umbrella or Excess Liability; however, the Annual Aggregate limit shall not be less than the highest "Each Occurrence" limit for the Commercial General Liability and Business Auto Liability. PROVIDER agrees to list DANE COUNTY as an "Additional Insured" on its Umbrella or Excess Liability policy.

5. Workers' Compensation.
PROVIDER agrees to maintain Workers Compensation insurance at Wisconsin statutory limits.
- B. PROVIDER Prohibited from Waiving COUNTY's Right to Subrogation: When obtaining required insurance under this Agreement and otherwise, PROVIDER agrees to preserve COUNTY's subrogation rights in all such matters that may arise that are covered by PROVIDER's insurance.
- C. Upon execution of this Agreement, PROVIDER shall furnish COUNTY with a Certificate of Insurance listing COUNTY as an additional insured and, upon request, certified copies of the required insurance policies. If PROVIDER's insurance is underwritten on a Claims-Made basis, the Retroactive Date shall be prior to or coincide with the date of this Agreement, the Certificate of Insurance shall state that professional malpractice or errors and omissions coverage, if the services being provided are professional services coverage is Claims-Made and indicate the Retroactive Date, PROVIDER shall maintain coverage for the duration of this Agreement and for six (6) years following the completion of this Agreement. PROVIDER shall furnish COUNTY, annually on the policy renewal date, a Certificate of Insurance as evidence of coverage. It is further agreed that PROVIDER shall furnish the COUNTY with a 30-day notice of aggregate erosion, in advance of the Retroactive Date, cancellation, or renewal. It is also agreed that on Claims-Made policies, either PROVIDER or COUNTY may invoke the tail option on behalf of the other party and that the Extended Reporting Period premium shall be paid by PROVIDER. In the event any action, suit or other proceeding is brought against COUNTY upon any matter herein indemnified against, COUNTY shall give reasonable notice thereof to PROVIDER and shall cooperate with PROVIDER's attorneys in the defense of the action, suit or other proceeding. PROVIDER shall furnish evidence of adequate Worker's Compensation Insurance. In case of any sublet of work under this Agreement, PROVIDER shall furnish evidence that each and every subcontractor has in force and effect insurance policies providing coverage identical to that required of PROVIDER.
- D. COUNTY, acting at its sole option and through its Risk Manager, may waive any and all insurance requirements. Waiver is not effective unless in writing. Such waiver may include or be limited to a reduction in the amount of coverage required above. The extent of waiver shall be determined solely by COUNTY's Risk Manager taking into account the nature of the work and other factors relevant to COUNTY's exposure, if any, under this Agreement.
- E. In case of any sublet of work under this Agreement, PROVIDER shall furnish evidence that each and every subcontractor has in force and effect insurance policies providing coverage identical to that required of PROVIDER.
- F. The requirements of this section are waived where PROVIDER is the State of Wisconsin.

XVII. LICENSE, CERTIFICATION AND STANDARD COMPLIANCE.

- A. **Service Standards.** PROVIDER shall meet State and Federal service standards, certifications and assurances as expressed by State and Federal statutes, rules, and regulations applicable to the services covered by this Agreement, including all regulations applicable to the expenditure and reporting of funds for services purchased by this Agreement. PROVIDER certifies that it is not debarred, suspended or declared ineligible from participating in federal assistance programs.
- B. **Licenses and Certifications.** Where required by law, PROVIDER must, at all times, be licensed or certified by either the State or County as a qualified provider of the services purchased hereby. PROVIDER shall fully cooperate with licensing and certification authorities. PROVIDER shall submit copies of the required licenses or certifications upon request by COUNTY. PROVIDER shall promptly notify COUNTY in writing of any citation PROVIDER receives from any licensing or certification authority, including all responses and correction plans.
- C. **County Standards.** Where COUNTY wants to apply a specific set of standards to PROVIDER not contrary to state and federal regulations, the same are specified or are specifically referred to in this Agreement.

- D. **Background Checks.** PROVIDER agrees to do background checks for all its workforce, including interns and volunteers, having regular contact with children, the elderly or vulnerable adults, including caregiver background checks where required by law.
- E. **Public Health Standards.** PROVIDER will follow applicable public health guidelines to provide safe services and a safe workplace. In addition, by signing this Agreement, PROVIDER acknowledges the contagious nature of COVID-19 and voluntarily assumes the risk that PROVIDER and its staff may be exposed to or infected by COVID-19 by providing services under this Agreement and that such exposure or infection may result in personal injury, illness, permanent disability, and death.

PROVIDER further acknowledges that PROVIDER is assuming all of the foregoing risks and accepts sole responsibility for any injury to itself and staff, including, but not limited to, personal injury, disability, death, illness, damage, loss, claim, liability, or expense or any kind, that PROVIDER or its staff may experience or incur in connection with providing services. PROVIDER hereby releases, covenants not to sue, discharges, and holds harmless and indemnifies the COUNTY, its employees, agents, and representatives, of and from any and all claims, including all liabilities, claims, actions, damages, costs or expenses of any kind arising out of or relating thereto. Provider understands and agrees that this release includes any claims based on the actions, omissions, or negligence of COUNTY, its employees, agents and representatives, whether a COVID-19 infection occurs before, during, or after the provision of services under this Agreement.

- F. **Notification.** PROVIDER shall notify the COUNTY promptly, in writing, if it is unable to comply with any of the above requirements.

XVIII. NO WAIVER OF RIGHT OF RECOVERY.

In no event shall the making of any payment or acceptance of any service or product required by this Agreement constitute or be construed as a waiver by COUNTY of any breach of the covenants of this Agreement or a waiver of any default of PROVIDER. The making of any such payment or acceptance of any such service or product by COUNTY while any such default or breach shall exist shall in no way impair or prejudice the right of COUNTY with respect to recovery of damages or other remedy as a result of such breach or default.

XIX. PATENTS AND INVENTIONS. PROVIDER may elect to retain the entire right, title and interest to any invention conceived or first actually reduced to practice in the performance of this Agreement as provided by 37 CFR 401. In the event any invention results from work performed jointly by PROVIDER and COUNTY, the invention(s) shall be jointly owned.

XX. PENALTIES.

- A. PROVIDER shall provide immediate notice in the event it will be unable to meet any deadline, including deadlines for filing reports, set by COUNTY. Concurrent with notification, PROVIDER shall submit either a request for an alternative deadline or other course of action or both. COUNTY may grant or deny the request. COUNTY has the prerogative to withhold payment to PROVIDER upon denial of request or until any condition set by COUNTY is met. In the case of contracts that have been renewed or continued from a previous contractual period, COUNTY may withhold payment in the current period for failures that occurred in a previous period.
- B. If COUNTY is liable for damages sustained as a result of breach of this Agreement by PROVIDER, COUNTY may withhold payments to PROVIDER as set off against said damages.
- C. If, through any act of or failure of action by PROVIDER, COUNTY is required to refund money to a funding source or granting agency, PROVIDER shall pay to COUNTY within ten (10) working days any such amount, along with any interest and penalties.

XXI. RECORDS.

- A. **Open Records Requests.** PROVIDER agrees to assist COUNTY in promptly fulfilling or answering any open records request, in the manner determined by COUNTY, of a record not protected by a law requiring confidentiality that PROVIDER keeps or maintains on behalf of COUNTY.

- B. **Records Retention.** PROVIDER shall retain any record required to be kept on behalf of COUNTY for a period of not less than seven (7) years unless a shorter period of retention is authorized by applicable law or for a longer period of time if required by law. PROVIDER shall preserve Medicaid funded service and billing records for a period of not less than ten (10) years from the last service provided unless a shorter period of retention is specifically authorized by law. This provision survives the term of this contract.
- C. **Records Ownership.**
1. It is understood that in the event this contract terminates for any reason, COUNTY, at its option may take ownership of all records created for the purpose of providing and facilitating provision of services under the Agreement.
 2. If, as the result of the expiration or termination of this Agreement, PROVIDER discontinues services provided under this Agreement to any client who continues to require such service, COUNTY shall have the right to take immediate physical custody of any of the client's records that are necessary to facilitate the transition of services to another provider of such service, including, but not limited to, all documents, electronic data, products and services prepared or produced by PROVIDER under this Agreement.

XXII. RENEGOTIATION.

- A. This Agreement or any part thereof, may be renegotiated at the option of COUNTY in the case of: 1) increased or decreased volume of services; 2) changes required by Federal or State law or regulations or court action; 3) cancellation, increase or decrease in funding; 4) changes in service needs identified by COUNTY; 5) PROVIDER's failure to provide monthly services purchased; or 6) upon any mutual agreement. PROVIDER agrees to renegotiate in good faith if COUNTY exercises this option.
- B. Any agreement reached pursuant to renegotiation shall be acknowledged through a written Agreement addendum signed by COUNTY and PROVIDER.
- C. Changes to the number of units purchased under this Agreement pursuant to renegotiation shall be reflected by amendment to the *Program Summary*.
- D. If PROVIDER refuses to renegotiate in good faith as required by this section, COUNTY may either terminate the Agreement or unilaterally adjust payments downward to reflect COUNTY's best estimate of the volume of services actually delivered by PROVIDER under this Agreement.

XXIII. TERMINATION, SUSPENSION AND/OR MODIFICATION.

This Agreement may be terminated and/or its terms may be modified or altered as follows:

- A. Either party may terminate the Agreement, for any reason, at any time upon ninety (90) days written notice.
- B. Failure of PROVIDER to fill any of its obligations under the Agreement in a timely manner or violation by PROVIDER of any covenants or stipulations contained in this Agreement shall constitute grounds for COUNTY to terminate this Agreement upon ten (10) days written notice of the effective date of termination.
- C. The following shall constitute grounds for immediate termination:
1. Violation by PROVIDER of any state, federal or local law, or failure by PROVIDER to comply with any applicable state and federal service standards, as expressed by applicable statutes, rules and regulations.
 2. Failure by PROVIDER to carry applicable licenses or certifications as required by law.
 3. Failure of PROVIDER to comply with reporting requirements contained herein.
 4. Inability of PROVIDER to perform the work provided for herein.
 5. Exposure of a client to immediate danger when interacting with PROVIDER.
- D. In the event of cancellation or reduction of state, federal or county funding upon which COUNTY relies to fulfill its obligations under this Agreement, PROVIDER agrees and understands that COUNTY may take any of the following actions:
1. COUNTY may terminate this Agreement, upon thirty (30) days written notice.

2. COUNTY may suspend this Agreement without notice for purposes of evaluating the impact of changed funding.
 3. COUNTY may reduce funding to PROVIDER upon thirty (30) days written notice. If COUNTY opts to reduce funding under this provision, COUNTY may, after consultation between PROVIDER and COUNTY's contract manager or designee, specify the manner in which PROVIDER accomplishes said reduction, including, but not limited to, directing PROVIDER to reduce expenditures on designated goods, services and/or costs.
- E. Failure of the Dane County Board of Supervisors or the State or Federal Governments to appropriate sufficient funds to carry out COUNTY's obligations hereunder or failure of PROVIDER to timely commence the contracted for services, shall result in automatic termination of this Agreement as of the date funds are no longer available, without notice.
 - F. Termination or reduction actions taken by COUNTY under this Agreement are not subject to the review process set forth in *section XV B* of this document.

XXIV. FINANCIAL PROVISIONS.

- A. **Accounting.** PROVIDER shall adhere to the *Wisconsin Department of Health Services and/or Wisconsin Department of Children and Families Allowable Cost Policy Manual(s)*, including revisions and updates. PROVIDER agrees to return to COUNTY any funding paid in excess of allowable costs.
- B. **Financial Interest Prohibited.** Under s. 946.13, Wis. Stats. COUNTY employees and officials are prohibited from holding a private pecuniary interest, direct or indirect, in any public contract. By executing this Agreement, each party represents that it has no knowledge of a COUNTY employee or official involved in the making or performance of the Agreement that has a private pecuniary interest therein. It is expressly understood and agreed that any subsequent finding of a violation of s. 946.13, Wis. Stat. may result in this Agreement being voided at the discretion of the COUNTY.
- C. **Organizations with Religious Affiliations.** No portion of funds under this Agreement may be used to support or advance religious activities.

SECTION C

(Contract Construction and Legal Process)

XXV. CONTRACT CONSTRUCTION AND LEGAL PROCESS.

- A. **Choice of Law.** It is expressly understood and agreed to by the parties hereto that in the event of any disagreement or controversy between the parties, Wisconsin law shall be controlling.
- B. **Copies Valid.** This Agreement, and any amendment or addendum relating to it, may be executed and transmitted to any other party by legible facsimile reproduction or by scanned legible electronic PDF copy, and utilized in all respects as, an original, wet-inked manually executed document. Further, this Agreement and any amendment or addendum thereto, may be stored and reproduced by each party electronically, photographically, by photocopy or other similar process, and each party may at its option destroy any original document so reproduced. All parties hereto stipulate that any such legible reproduction shall be admissible in evidence as the original itself in any judicial arbitration or administrative proceeding whether or not the original is in existence and whether or not such reproduction was made by each party in the regular course of business. This term does not apply to the service of notices under this Agreement.
- C. **Construction.** This Agreement shall not be construed against the drafter.
- D. **Counterparts.** The parties may evidence their agreement to the foregoing upon one or several counterparts of this instrument, which together shall constitute a single instrument.
- E. **Entire Agreement.** The entire agreement of the parties is contained herein and this Agreement supersedes any and all oral agreements and negotiations between the parties relating to the subject matter hereof. The parties expressly agree that this Agreement shall not be amended in any fashion except in writing, executed by both parties.

- F. **Execution.** This Agreement has no effect until signed by both parties. The submission of this Agreement to PROVIDER for examination does not constitute an offer. PROVIDER warrants that the persons executing this Agreement on its behalf are authorized to do so. The parties further agree that execution of this document may be made by electronic signatures. Any party not agreeing to execute this document by electronic signature will instead print out this Agreement, execute it by hand-inked signature and notate near the signature line that the organization either refuses to recognize electronic signatures of COUNTY or refuses to be bound by electronic signatures purporting to represent agreement of PROVIDER or both. The parties may make electronic signatures by typing the name of the authorized signature followed by the words, "electronically signed" or by any other electronic means representing an authorized signature by PROVIDER. PROVIDER shall ensure that only authorized persons may affix electronic signatures to this Agreement and COUNTY may rely that the electronic signature provided by PROVIDER is authentic.
- G. **Limitation of Agreement.** This Agreement is intended to be an agreement solely between the parties hereto and for their benefit only. No part of this Agreement shall be construed to add to, supplement, amend, abridge or repeal existing duties, rights, benefits or privileges of any third party or parties, including but not limited to employees or subcontractors of either of the parties. Except, where PROVIDER intends to meet its obligations under this or any part of this Agreement through a subcontract with another entity, PROVIDER shall first obtain the written permission of COUNTY; and further, PROVIDER shall ensure that it requires of its subcontractor the same obligations incurred by PROVIDER under this Agreement.
- H. **Severability.** The invalidity or un-enforceability of any particular provision of this Agreement shall not affect the other provisions herein, and this Agreement shall be construed, in all respects, as though all such invalid or unenforceable provisions were omitted.
- I. **Venue.** Venue for any legal proceedings shall be in the Dane County Circuit Court.

IN WITNESS WHEREOF, COUNTY and PROVIDER, by their respective authorized agents, have caused this Agreement and its Schedules to be executed, effective as of the date by which all parties hereto have affixed their respective signatures, as indicated below.

FOR PROVIDER:

Date Signed: _____ Signature: _____
Print Name and Title of Authorized Agent: _____

Date Signed: _____ Signature: _____
Print Name and Title of Authorized Agent: _____

IF PROVIDER'S BUSINESS OFFICE IS LOCATED OUTSIDE OF THE STATE OF WISCONSIN:

PROVIDER'S Registered Agent: _____

Agent's Address: _____

FOR COUNTY:

Date Signed: _____

SHAWN TESSMANN, Director of Human Services
(when applicable)

Date Signed: _____

JOE PARISI, County Executive
(when applicable)

Date Signed: _____

SCOTT MCDONELL, County Clerk
(when applicable)