

Agreement # _____

Service PO # _____

**STATE OF SOUTH DAKOTA
DEPARTMENT OF HUMAN SERVICES
DIVISION OF REHABILITATION SERVICES**

Purchase of Services Agreement
Between

Business Name	State of South Dakota
Business Address	Department of Human Services
Business Address	Division of Rehabilitation Services
Referred to as Provider	Hillsview Plaza, East Highway 34
	c/o 500 East Capitol
	Pierre SD 57501-5070
	Referred to as State

1. This is a vendor-type contractual agreement for procurement of goods or services. While performing services hereunder, Provider is an independent contractor and not an officer, agent, or employee of the State of South Dakota.
2. DESCRIPTIONS, METHODS AND LOCATIONS OF SERVICES:
 - A. This agreement is made for the purpose of providing services for eligible individuals with disabilities. Provider agrees to the rights and responsibilities identified in Attachment 1.
 - B. Does this Agreement involve Protected Health Information (PHI)? YES (X) NO ()
If PHI is involved, a Business Associate Agreement is attached and is fully incorporated herein as part of the Agreement (see Appendix A).
3. PERIOD OF PERFORMANCE:

This agreement shall be effective as of July 1, 2020 and shall end on June 30, 2021, unless sooner terminated pursuant to the terms hereof.
4. BASIS OF AGREEMENT AMOUNTS:

The rate and amount for services purchased have been determined on the following basis:

The State agrees to reimburse the Provider for services authorized and provided based upon the current fee schedule. All services will be authorized by the Rehabilitation Counselor in the District Offices. Payment will be rendered for services authorized, provided, and upon presentation of services report and billing.

The total amount of this agreement will not exceed \$NA.

5. METHOD AND SOURCE OF PROVIDER PAYMENT:

Provider agrees to submit an initial bill for services within 30 days following the end of the **month** in which services were provided. If the provider cannot submit a bill within the 30-day timeframe, a written request for an extension of time must be provided to the State. If a bill has not been received by the State, the State reserves the right to refuse payment. Final billing for agreements ending May 31, 2020 must be received by the State by June 5, 2020.

An exception to this is when a provider is waiting for program/funding eligibility determination and billing cannot be made within 30 days. Valid adjustments and/or voiding of claims can continue to occur past the 30-day timeframe.

6. TECHNICAL ASSISTANCE:

The State agrees to provide technical assistance regarding Department of Human Services' rules, regulations and policies to the Provider and to assist in the correction of problem areas identified by the State's monitoring activities.

7. LICENSING AND STANDARD COMPLIANCE:

The Provider agrees to comply in full with all licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance in which the service and/or care is provided for the duration of this agreement. Liability resulting from noncompliance with licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance or through the Provider's failure to ensure the safety of all individuals served is assumed entirely by the Provider.

8. ASSURANCE REQUIREMENTS:

The Provider agrees to abide by all applicable provisions of the following assurances: Lobbying Activity, Drug-Free Workplace, Title VI of the Civil Rights Act of 1964, Section 504 and Section 511 of the Rehabilitation Act of 1973 as amended, Title IX of the Education Amendments of 1972, Age Discrimination Act of 1975, Americans with Disabilities Act of 1990, Health Insurance Portability and Accountability Act (HIPAA) of 1996, Charitable Choice Provisions and Regulations, Deficit Reduction Act of 2005, and American Recovery and Reinvestment Act of 2009, as applicable.

9. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION:

Provider certifies, by signing this agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in transactions by the federal government or any state or local government department or agency. Provider further agrees that it will immediately notify the State, if during the term of this Agreement, the Provider or its principals become subject to debarment, suspension, proposed for debarment, or declared ineligible from participating in transactions by the federal government, or by any state or local government department or agency.

10. OFFICE OF INSPECTOR GENERAL EXCLUSIONARY LIST REQUIREMENTS

Providers, who utilize federal Medicaid or Medicare funds, agree to screen all employees and contractors, prior to hiring or contracting and on a regular basis, to determine whether any of them are listed on the Office of Inspector General (OIG) List of Excluded Individuals/Entities. Provider shall maintain documentation to support the screenings were performed and shall immediately report to DHS all cases in which employees are found on the exclusionary list. Provider understands that no payment shall be made for any goods or services furnished, ordered, or prescribed by an excluded individual or entity and any payment made for services provided by excluded parties will be recouped; and recoupment may include penalties.

11. RETENTION AND INSPECTION OF RECORDS:

The Provider agrees to maintain or supervise the maintenance of records necessary for the proper and efficient operation of the program, including records and documents regarding applications, determination of eligibility (when applicable), the provision of services, administrative costs, statistical, fiscal, other records, and information necessary for reporting and accountability required by the State. The Provider shall retain such records for six years following termination of the agreement. If such records are under pending audit, the Provider agrees to hold such records for a longer period upon notification from the State. The State, through any authorized representative, will have access to and the right to examine and copy all records, books, papers or documents related to services rendered under this agreement.

All payments to the Provider by the State are subject to site review and audit as prescribed and carried out by the State. Any over payment of this agreement shall be returned to the State within thirty days after written notification to the Provider.

12. AUDIT REQUIREMENTS:

If the total of all Department of Human Service funding is greater than \$750,000 during the Provider's fiscal year, the Provider agrees to submit to the State a copy of an annual entity-wide, independent financial audit. The audit shall be completed and filed with the Department

of Human Services by the end of the fourth month following the end of the fiscal year being audited or 30 days after receipt of the auditor's report, whichever is earlier. The audit should be sent to:

Department of Human Services
Provider Reimbursements and Grants
3800 East Highway 34
c/o 500 East Capitol
Pierre, SD 57501

If federal funds of \$750,000 or more have been received by the Provider the audit shall be conducted in accordance with OMB Uniform Guidance 2 CFR Chapter I, Chapter II, Part 200, et al Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards by an auditor approved by the Auditor General to perform the audit. On continuing audit engagements, the Auditor General's approval should be obtained annually. Audits shall be completed and filed with the Department of Legislative Audit by the end of the fourth month following the end of the fiscal year being audited or 30 days after receipt of the Auditor's report, whichever is earlier. For a Uniform Guidance audit, approval must be obtained by forwarding a copy of the audit engagement letter to:

Department of Legislative Audit
427 South Chapelle
% 500 East Capitol
Pierre, SD 57501-5070

For either an entity-wide, independent financial audit or a Uniform Guidance audit, the Provider assures resolution of all interim audit findings. The provider shall facilitate and aid any such reviews, examinations, agreed upon procedures etc., the Department or its' contractor(s)/subrecipient(s) may perform.

Failure to complete audit(s) as required will result in the disallowance of audit costs as direct or indirect charges to programs. Additionally, a percentage of awards may be withheld, overhead costs may be disallowed, and/or awards may be suspended, until the audit is completely satisfied.

13. TERMINATION:

This agreement may be terminated by either party hereto upon thirty (30) days written notice, and may be terminated by the State for cause at any time, with or without notice. On termination of this agreement all accounts and payments shall be processed according to financial arrangements set forth herein for services rendered to date of termination.

14. FUNDING:

This agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reduction, this agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

15. AMENDMENTS:

This agreement may not be assigned without the express prior written consent of the State. This agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto.

16. CONTROLLING LAW:

This agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

17. SUPERCESSION:

All other prior discussions, communications and representations concerning the subject matter of this agreement are superseded by the terms of this agreement, and except as specifically provided herein, this agreement constitutes the entire agreement with respect to the subject matter hereof.

18. SEVERABILITY:

In the event that any provision of this agreement shall be held unenforceable or invalid by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

19. NOTICE:

Any notice or other communication required under this agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to the Division being contracted with on behalf of the State, and by the Provider, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

20. SUBCONTRACTORS:

Provider may not use subcontractors to perform the services described herein without the express prior written consent of the State. Provider will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this agreement, to indemnify the State, and to have insurance coverage in a manner consistent with this agreement. Provider will cause its subcontractors, agents, and employees to comply with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance

21. HOLD HARMLESS:

The Provider agrees to hold harmless and indemnify the State of South Dakota, its officers, agents and employees, from and against any and all actions, suits, damages, liability or other proceedings which may arise as the result of performing services hereunder. This section does not require the Provider to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents or employees.

22. INSURANCE:

a. Commercial General Liability Insurance:

Provider shall maintain occurrence-based commercial general liability insurance or an equivalent form with a limit of not less than \$ 1,000,000.00 for each occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two times the occurrence limit.

b. Business Automobile Liability Insurance:

Provider shall maintain business automobile liability insurance or an equivalent form with a limit of not less than \$ 500,000.00 for each accident. Such insurance shall include coverage for owned, hired, and non-owned vehicles.

c. Workers' Compensation Insurance:

Provider shall procure and maintain workers' compensation and employers' liability insurance as required by South Dakota law.

d. Professional Liability Insurance:

Provider agrees to procure and maintain professional liability insurance with a limit not less than \$ 1,000,000.00.

Before beginning work under this agreement, Provider shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this agreement and which provide that such insurance may not be canceled except on 30 days prior written notice to the State. Provider shall furnish copies of insurance policies if requested by the State.

23. REPORTING:

Provider agrees to immediately report to the Department any event or incident encountered in the course of performance of this agreement which results in injury to any person or property, or which may otherwise subject Provider, or the State of South Dakota or its officers, agents or employees to liability. Provider shall report any such event to the State immediately upon discovery.

Provider's obligation under this section shall only be to report the occurrence of any event to the State and to make any other report provided for by their duties or applicable law.

Provider's obligation to report shall not require disclosure of any information subject to privilege or confidentiality under law. Reporting to the State under this section shall not excuse or satisfy any obligation of Provider to report any event to law enforcement or other entities under the requirements of any applicable law.

24) CONFLICT OF INTEREST

Provider agrees to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal organizational conflict of interest, or personal gain as contemplated by SDCL 5-18A-17 through 5-18A-17.6. Any potential conflict of interest must be disclosed in writing. In the event of a conflict of interest, the Provider expressly agrees to be bound by the conflict resolution process set forth in SDCL 5-18A-17 through 5-18A-17.6.

25. AUTHORIZED SIGNATURES: In witness hereto, the parties signify their agreement by affixing their signatures hereto.

_____	_____
Provider Signature	Date
_____	_____
State - DHS Division Director	Date
_____	_____
State - DHS Office of Budget and Finance	Date
_____	_____
State - Office of the Secretary	Date

Approved Template CJB 5/29/2019
Approved Contract _____

Agreement # _____

Contract Description Code _____
State Agency Coding: _____

CFDA Number 84.126A _____

Company 2003 _____

Account 520643009 _____

Center Req 19500021 _____

Center User 142 _____

Dollar Total _____

SVC PO Code 5055 _____

DHS Program Contact Person Bernie Grimme _____

Phone 605-773-6284

DHS Fiscal Contact Person Alan Fickbohm _____

Phone (605) 773-5990

Provider Program Contact Person _____

Phone _____

Provider Fiscal Contact Person _____

Phone _____

Agreement# _____

PO# _____

Vendor # _____

Group _____

THIS PAGE INTENTIONALLY LEFT BLANK

Appendix A

HIPAA Business Associate Agreement

A. Definitions of Terms

1. Agreement means the agreement to which this Business Associate Agreement is attached to including this attachment entitled HIPAA Business Associate Agreement.

2. Business Associate shall have the meaning given to such term in 45 C.F.R. section 160.103 and 42 U.S.C. section 17938, and in reference to the party of this agreement, shall mean the Provider, Consultant, or other entity contracting with the State of South Dakota, Department of Human Services as set forth more fully in the Agreement this Business Associate Agreement is attached.

3. C.F.R. shall mean the Code of Federal Regulations.

4. Department shall mean South Dakota Department of Human Services

5. Designated Record Set shall have the meaning given to such term in 45 C.F.R. section 164.501.

6. Covered Entity shall have the meaning given to such term in 45 C.F.R. section 160.103, and in reference to the party to this agreement, shall mean South Dakota Department of Human Services.

7. Protected Health Information or PHI shall have the meaning given to such term in 45 C.F.R. section 164.103 and section 164.501, and is limited to the Protected Health Information received from, or received or created on behalf of Covered Entity by Business Associate pursuant to performance of the Services under the Agreement.

8. Regulations shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E, Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and 164, Subparts A and C, 45 CFR 164.314, and as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH) §§ 13400-13424, 42 U.S.C. §§ 17921-17954 (2009) as it directly applies, as in effect on the date of this Business Associate Agreement.

B. Obligations of the Business Associate.

1. Security Safeguards. The Business Associate shall implement a documented information security program that includes administrative, technical and physical safeguards designed to prevent the accidental or otherwise unauthorized use or

disclosure of PHI, and that reasonably protect the confidentiality, integrity, and availability of any electronic Protected Health Information that it creates, receives, maintains or transmits to or on behalf of Covered Entity as required by the Regulations. The Business Associate agrees to comply with the requirements of the Privacy and Security Rules directly applicable to Business Associates including the HITECH Act.

2. Affiliates, Agents, Subsidiaries and Sub-Contractors. The Business Associate shall require that any agents, employees, affiliates, subsidiaries or sub-contractors, to whom it provides PHI received from, or created or received by the Business Associate on behalf of the Department agree in writing to the same use and disclosure restrictions imposed on the Business Associate by this Agreement.

3. Reporting and Mitigating Unauthorized Uses and Disclosures of PHI. Immediately upon notice to the Business Associate, the Business Associate shall report to the Department any uses or disclosures of PHI not authorized by this Agreement. The Business Associate shall also notify the affected individual of the breach. If the breach affects more than 500 individuals, the Business Associate must contact the U.S. Health and Human Services Secretary and the media, under the American Recovery and Reinvestment Act of 2009. The Business Associate shall use its best efforts to mitigate the deleterious effects of any use or disclosure of PHI not authorized by this Agreement. Further, in the notice provided to the Department by the Business Associate regarding unauthorized uses and/or disclosures of PHI, the Business Associate shall describe the remedial or other actions undertaken or proposed to be undertaken regarding the unauthorized use or disclosure of PHI.

4. Permitted Uses and Disclosures. The Business Associate may not use or disclose PHI received or created pursuant to this Agreement except as follows:

(a) The Business Associate's Operations – Permitted Uses of PHI. The Business Associate may use the PHI it receives in its capacity for the proper management and administration of the Business Associate or to carry out the Business Associate's legal responsibilities.

(b) The Business Associate's Operations – Permitted Disclosures of PHI. The Business Associate may disclose the PHI it obtains in its capacity as a Business Associate if such disclosure is necessary for the Business Associate's proper management and administration or to carry out the Business Associate's legal responsibilities, and:

(i) The disclosure is required by law; or

(ii) The Business Associate obtains reasonable assurances from the person or entity to whom the PHI is disclosed that the PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person or entity notifies the Business Associate (and the

Business Associate in turn notifies the Department) of any instances of which it is aware in which the confidentiality of the PHI has been breached.

5. Disclosure Accounting. In the event that the Business Associate makes any disclosures of PHI related to the business associate function under this Agreement that are subject to the accounting requirements of 45 C.F.R. section 164.528, the Business Associate promptly shall maintain a record of each disclosure, including the date of the disclosure, the name and if available, the address of the recipient of the PHI, a brief description of the PHI disclosed and a brief description of the purpose of the disclosure. The Business Associate shall maintain this record for a period of six (6) years and make available to the Department upon request in an electronic format so that the Department may meet its disclosure accounting obligations under 45 C.F.R. section 164.528.

6. Access to PHI by Individuals. The Business Associate shall cooperate with the Department to fulfill all requests by individuals for access to the individual's PHI that are approved by the Department. The Business Associate shall cooperate with the Department in all respects necessary for the Department to comply with 45 C.F.R. section 164.524. If the Business Associate receives a request from an individual for access to PHI that affects funding eligibility, the Business Associate immediately shall forward such request to the Department within (10) business days. The Department shall be solely responsible for determining the scope of PHI and Designated Record Set to be released with respect to each request by an individual to access or obtain copies of the individual's PHI covered by this Agreement and in accordance with C.F.R. 164.524. The Business Associate shall make the PHI available in the format requested by the individual and approved by the Department, unless the PHI is not readily producible in such format, in which case the PHI shall be produced in hard copy format.

7. Access by the Department to the Business Associate's Books and Records. The Business Associate shall make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of the Department available to the Department and the Secretary of the Department of Health and Human Services for purposes of determining the Department's compliance with the HIPAA laws and regulations. Upon reasonable notice to the Business Associate and during the Business Associate's normal business hours, the Business Associate shall make such internal practices, books and records available to the Department to inspect for purposes of determining compliance with this Agreement.

8. Amendment of PHI. As directed and in accordance with the time frames specified by the Department, the Business Associate shall incorporate all amendments to PHI received from the Department. The Business Associate shall provide written notice to the Department within ten (10) business days confirming that the Business Associate has made the amendments to PHI as directed by the Department. This confirmation shall also contain any other information that may be necessary for the Department to provide adequate notice to the individual in accordance with 45 C.F.R., section 164.526. The

Department warrants that all time frames specified will be made in good faith and reasonable length so that the Business Associate can comply with the timeframe.

C. Obligations of the Department

1. The Department shall notify Business Associate of any limitation(s) in its notice of privacy practices of the Department in accordance with 45 CFR 164.520 to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

2. The Department shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI to the extent that such changes may affect Business Associates use or disclosure of PHI.

3. The Department shall notify Business Associate of any restriction to use or disclosure of PHI that the Department has agreed to in accordance with 45 CFR 164.522 to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

D. Term and Termination.

1. Term. The term of this Agreement shall be effective as of and shall terminate on the dates set forth in the primary Agreement this Business Associate Agreement is attached to or on the date the primary Agreement terminates, whichever is sooner

2. Termination by Breach. The Department may immediately terminate the primary Agreement this Business Associate Agreement is attached to if the Business Associate has breached a material term of this Business Associate Agreement. Alternatively, the department may choose to

(i) provide Business Associate with five (5) days written notice of the existence of an alleged material breach; and

(ii) afford Business Associate an opportunity to cure said alleged material breach to the satisfaction of Department within five (5) days.

Business Associate's failure to cure shall be grounds for immediate termination of the primary Agreement to which the Business Associate Agreement is attached. Department's remedies under this Agreement are cumulative, and the exercise of any remedy shall not preclude the exercise of any other. However, in the event that the Department determines that termination of the Agreement is not feasible, the Department shall have the right to report the breach to the Secretary of the Department of Health and Human Services, notwithstanding any other provisions of this Agreement to the contrary.

3. Effects of Termination; Disposal of PHI. Upon termination of the primary Agreement to which this Business Associate Agreement is attached, the Business

Associate shall recover all PHI that is in the possession of the Business Associate's agents, affiliates, subsidiaries or sub-contractors. The Business Associate shall return to the Department or destroy all PHI that the Business Associate obtained or maintained pursuant to this Agreement on behalf of the Department. If the parties agree at that time that the return or destruction of PHI is not feasible, the Business Associate shall extend the protections provided under this Agreement to such PHI, and limit further use or disclosure of the PHI to those purposes that make the return or destruction of the PHI infeasible. If the parties agree at the time of termination of this Agreement that it is infeasible for the Business Associate to recover all PHI in the possession of the Business Associate's agents, affiliates, subsidiaries or sub-contractors, the Business Associate shall provide written notice to the Department regarding the nature of the unfeasibility and the Business Associate shall require that its agents, affiliates, subsidiaries and sub-contractors agree to the extension of all protections, limitations and restrictions required of the Business Associate hereunder.

E. Miscellaneous.

1. The Business Associate's Compliance with HIPAA. The Department makes no warranty or representation that compliance by the Business Associate with this Agreement, HIPAA or the HIPAA regulations will be adequate or satisfactory for the Business Associate's own purposes or that any information in the Business Associate's possession or control, or transmitted or received by the Business Associate, is or will be secure from unauthorized use or disclosure. The Business Associate is solely responsible for all decisions made by the Business Associate regarding the safeguarding of PHI.

2. Change in Law. In the event that there are subsequent changes or clarifications of statutes, regulations or rules relating to this Agreement, the Department shall notify the Business Associate of any actions it reasonably deems are necessary to comply with such changes, and the Business Associate promptly shall take such actions. In the event that there shall be a change in the federal or state laws, rules or regulations, or any interpretation or any such law, rule, regulation or general instructions which may render any of the material terms of this Agreement unlawful or unenforceable, or materially affects the financial arrangement contained in this Agreement, the Business Associate may, by providing advanced written notice, propose an amendment to this Agreement addressing such issues.

3. Assignment/Subcontracting. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives, successors and assigns. The Business Associate may not assign or subcontract the rights or obligations under this Agreement without the express written consent of the Department. The Department may assign its rights and obligations under this Agreement to any successor or affiliated entity.

4. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

5. Assistance in Litigation or Administrative Proceedings. The Business Associate shall make itself and any agents, affiliates, subsidiaries, sub-contractors or employees assisting the Business Associate in the fulfillment of its obligations under this Agreement, available to the Department, at no cost to the Department, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings resulting from the performance of this Agreement being commenced against the Department, its directors, officers, or employees, except where the Business Associate or its agents, affiliates, subsidiaries, sub-contractors or employees are a named adverse party.

The Department shall make itself and any agents, affiliates, subsidiaries, sub-contractors or employees assisting the Department in the fulfillment of its obligations under this Agreement, available to the Business Associate, at no cost to the Business Associate, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings resulting from the performance of this Agreement being commenced against the Business Associate, its directors, officers, or employees, except where the Department or its agents, affiliates, subsidiaries, sub-contractors or employees are a named adverse party.

6. Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA rules.

7. Conflicts. In the event of a conflict in between the terms of this Business Associate Agreement and the primary Agreement to which Business Associate Agreement is attached, the terms of this Business Associate Agreement shall prevail to the extent such an interpretation ensures compliance with the HIPAA Rules.

For-Profit Provider's Rights and Responsibilities

The Provider has the right to:

1. Determine on a case by case situation if the provider chooses to work with a client from the state.
2. Hire and fire qualified employees who perform the services.
3. Set your own work hours.
4. Determine the method of delivery of services.
5. Provide services to other entities without approval from the State.
6. Be evaluated only on the basis of the end result of your work.

The Provider has the responsibility to:

1. Register with the South Dakota Secretary of State's Office as a business (sole proprietorship, LLC or Corporation).
2. Obtain an Employer Identification Number from the Internal Revenue Service.
3. File federal income tax returns in the name of your business or a business Schedule C as part of the personal income tax return, for the previous year, or expect to file federal and state income tax returns, for labor or services performed as an independent contractor in the previous year.
4. Furnish your own supplies, tools and equipment necessary for the contracted services.
5. Incur unreimbursed expenses in connection with the services performed.
6. Complete the work as contractually agreed.
7. Market services to the public as an independent, for-profit business.
8. Provide paid services to at least three other businesses (other than the state) annually.
9. Provide training to all employees at the provider's expense.