

PROVIDER AGREEMENT

Between
State of Nevada
Department of Employment, Training and Rehabilitation
VOCATIONAL REHABILITATION

And

Provider Name		
Business Name		
Address		
Telephone Number	Fax Number	Email Address
		N/A
NV Business License Number	Vendor Number	Provider Agreement Number

This Agreement between the State of Nevada Department of Employment, Training and Rehabilitation (hereinafter called the Department) and the undersigned vendor / practitioner/ contractor (hereinafter called Provider) is dated as set forth below per the Scope of Work; and

WHEREAS, it is deemed that the service of the Provider is both necessary and in the best interests of the State of Nevada;

NOW, THEREFORE, the Department of Employment, Training and Rehabilitation is authorized to contract for, and Provider is ready, willing and able to provide, services as required per this Agreement. Therefore, in consideration of the mutual promises made by the parties hereto:

PROVIDER AGREES:

1. "State" means the State of Nevada and any state agency identified herein, its officers, employees and immune contractors as defined in NRS 41.0307. "Independent Contractor" means a person or entity that performs services and/or provides goods for the State under the terms and conditions set forth in this Agreement. "Fiscal Year" is defined as the period beginning July 1 and ending June 30 of the following year. "Current State Employee" means a person who is an employee of an agency of the State. "Former State Employee" means a person who was an employee of any agency of the State at any time within the preceding 24 months.
2. Provider is an independent contractor and all provisions of NRS 333.700 apply.
3. To provide services as designated within the Scope of Work (Attachment AA).

4. NOTICE. Unless otherwise specified, termination shall not be effective until 30 calendar days after a party has served written notice of termination for default, or notice of termination without cause upon the other party. All notices or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by telephonic facsimile with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address specified above.
5. To adhere to standards of practice, professional standards and levels of Service as set forth in all applicable local, state and federal laws, statutes, rules and regulations as well as administrative policies and procedures set forth by the Department relating to the Provider's performance under this Agreement.
6. To provide Services in accordance with the terms, conditions and requirements of the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and regulations adopted there under contained in 45 CFR 160, 162 and 164.
7. To provide a copy to the Department and maintain all licenses, permits, certification, registration, credentialing purposes and authority necessary to do business and render service under this Agreement. Where applicable, the provider shall comply with all laws regarding safety, unemployment insurance and workers compensation. Copies of applicable licensure/certification must be submitted at the time of each license/certification renewal.
8. To provide a copy to the Department and maintain insurance for the duration of the agreement as determined by the Nevada State Risk Management Division as noted on Insurance Schedule (Attachment BB).
9. To provide evidence of Nevada State Business License as required by the State of Nevada Secretary of State's office and remain in good standing with the State of Nevada Secretary of State's office for the duration of this agreement. To register with the State of Nevada Controller's office to obtain a vendor number for Electronic Funds Payments per NRS 227.
10. To check the List of Excluded Individuals/Entities on the Office of Inspector General (OIG) website prior to hiring or contracting with individuals or entities and periodically check the OIG website to determine the participation/exclusion status of current employees and contractors.
11. To obtain prior authorizations, submit accurate, complete and timely claims, and conduct business in such a way the Recipient retains freedom of choice of provider.
12. To comply with all applicable local, state and federal laws, statutes, rules and regulations as well as any applicable administrative policies and procedures set forth by the Department relating to the Provider's provision of Services and submitting reimbursement claims pursuant this Agreement, and any changes thereto during the term of this Agreement.
13. To provide for adequate insurance coverage for any business liability and/or professional acts or omissions pursuant to this Agreement, which shall not be less than the types and amounts of insurance set forth in the attached Insurance Schedule (Attachment BB), and to indemnify and hold harmless the Department, its employees and agents from any negligent or wrongful acts or omissions of the Provider, its employees and agents.

14. To operate and provide Services to qualified Recipients in compliance with the requirements of the Civil Rights Act of 1964, as amended, and the Rehabilitation Act of 1973, P.L. 93-112, as amended, and any relevant program-specific regulations, and shall not discriminate against any employee or offer for employment because of race, national origin, creed, color, sex, religion, age, disability or handicap condition (including AIDS and AIDS-related conditions).
15. To operate and provide Services to qualified Recipients in compliance with the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted there under contained in 28 CFR 26.101-36.999 inclusive, and any relevant program-specific regulations.
16. That by signing this Agreement, Provider certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to regulations implementing Executive Order 12549, Debarment and Suspension, 28 C.F.R. pt. 67 § 67.510, as published as pt. VII of May 26, 1988, Federal Register (pp.19150-19211). This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.
17. To keep confidential all information, in whatever form, produced, prepared, observed or received by Provider to the extent that such information is confidential by law or otherwise required by this Agreement.
18. To keep and maintain under generally accepted accounting principles (GAAP) full, true and complete records, contracts, books, and documents as are necessary to fully disclose to the State or United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with all state and federal regulations and statutes.
19. That the relevant books, records (written, electronic, computer related or otherwise), including, without limitation, relevant accounting procedures and practices of Provider or its subcontractors, financial statements and supporting documentation, and documentation related to the work product shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of Provider where such records may be found, with or without notice by the State Auditor, the relevant state agency or its contracted examiners, the Department of Administration, Budget Division, the Nevada State Attorney General's Office or its Fraud Control Units, the State Legislative Auditor, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives. All subcontracts shall reflect requirements of this paragraph.
20. To keep and permit access to all records necessary to fully disclose the extent of services provided to the Department clients for six (6) calendar years.
21. That the Provider is associated with the State only for the purposes and to the extent specified in this Agreement, and in respect to performance of the agreed services pursuant to this Agreement, Provider is and shall be an independent contractor and, subject only to the terms of this Agreement, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Agreement. Nothing contained in

this Agreement shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for the State whatsoever with respect to the indebtedness, liabilities, and obligations of Provider or any other party. Provider shall be solely responsible for, and the State shall have no obligation with respect to: (1) withholding of income taxes, FICA or any other taxes or fees; (2) industrial insurance coverage; (3) participation in any group insurance plans available to employees of the State; (4) participation or contributions by either Provider or the State to the Public Employees Retirement System; (5) accumulation of vacation leave or sick leave; or (6) unemployment compensation coverage provided by the State. Provider shall indemnify and hold State harmless from, and defend State against, any and all losses, damages, claims, costs, penalties, liabilities, and expenses arising or incurred because of, incident to, or otherwise with respect to any such taxes or fees.

22. To the extent that any assignment of any right under this Agreement changes the duty of either party, increases the burden or risk involved, impairs the chances of obtaining the performance of this Agreement, attempts to operate as a novation, or includes a waiver or abrogation of any defense to payment by State, such offending portion of the assignment shall be void, and shall be a breach of this Agreement. The Provider shall neither assign, transfer nor delegate any rights, obligations or duties under this Agreement without the prior written consent of the State.
23. Pursuant to NRS 239.010, information or documents received from the Provider may be open to public inspection and copying. The State has a legal obligation to disclose such information unless a particular record is made confidential by law or a common law balancing of interests. The Provider may label specific parts of an individual document as a "trade secret" or "confidential" in accordance with NRS 333.333, provided that the Provider thereby agrees to indemnify and defend the State for honoring such a designation. The failure to so label any document that is released by the State shall constitute a complete waiver of any and all claims for damages caused by any release of the records.
24. Whether expressly prohibited by federal law, or otherwise, no funding associated with this agreement will be used for any purpose associated with or related to lobbying or influencing or attempting to lobby or influence for any purpose the following:
 - a. Any federal, state, county or local agency, legislature, commission, counsel or board;
 - b. Any federal, state, county or local legislator, commission member, counsel member, board member, or other elected official; or
 - c. Any officer or employee of any federal, state, county or local agency; legislature, commission, counsel or board.
25. The Provider has disclosed to the State all persons that the Provider will utilize to perform services under this Agreement who are Current State Employees or Former State Employees. The Provider will not utilize any of its employees who are Current State Employees or Former State Employees to perform services under this agreement without first notifying the Contracting Agency of the identity of such persons and the services that each such person will perform, and receiving from the Contracting Agency approval for the use of such persons.

26. Where applicable, Provider may perform functions and/or activities that involve the use and disclosure of Protected Health Information in the provision of, or in claims for reimbursement for, Services as authorized by the Department therefore, the Provider will be considered a HIPAA Business Associate of the Department unless Provider falls within an exception recognized by the federal Office of Civil Rights (HIPAA Privacy). It will be the responsibility of the Provider to fully document in writing to the Department the facts supporting any request to be recognized by the Department as being exempt from the execution of the Department's additional HIPAA Business Associate Agreement (which upon execution shall be incorporated into this Agreement as ATTACHMENT DD).
27. No services may be provided to a Recipient, nor reimbursement claimed, prior to Provider's (and any of the Provider's applicable subcontractors') separate execution and delivery of the Department's HIPAA Business Associate Agreement, or receipt of the Department's concurrence in writing that Provider's (or applicable subcontractor's) Services fall within an exception from the HIPAA business associate requirements. Provider will have a duty to disclose to the Department any of its subcontractors that are providing business associate functions or activities (having access to Protected Health Information) including without limitation: claims processing or administration, data analysis, utilization review, quality assurance, billing, benefit management, practice management, re-pricing, legal services, accounting services, consulting services, data aggregation, and office management.
28. Provider shall notify the Contracting Agency within five (5) days of knowledge of any of the following: Any action which may result in the suspension, revocation, condition, limitation, qualification or other material restriction the Provider's licenses, certifications, permits or staff privileges by any entity under which a Provider is authorized to Provide Services; indictment, arrest or conviction for a felony or for any criminal charge; Any change in address or addition to or removal of practitioners or any other information pertinent to the receipt of Department funds; or Any change in ownership and to fully disclose terms of sales agreement, including disposition of all relevant records.
29. The continuation of this Agreement beyond the current biennium is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the State Legislature and/or federal sources. The State may terminate this Agreement, and Provider waives any and all claim(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason the Contracting Agency's funding from State and/or federal sources is not appropriated or is withdrawn, limited, or impaired.
30. To the fullest extent permitted by law, Provider shall indemnify, hold harmless and defend, not excluding the State's right to participate, the State from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of an alleged negligent or willful acts or omissions of Provider, its officers, employees and agents.
31. Any reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer code (which is intended to be consideration under the Agreement), or any other documents or drawings, prepared or in the course of preparation by the Provider (or its subcontractors) in performance of its obligations under this Agreement shall be the exclusive property of the State and all such materials shall be delivered into State possession by the Provider upon completion, termination, or cancellation of this Agreement.

The Provider shall not use, willingly allow, or cause to have such materials used for any purpose other than performance of the Provider's obligations under this Agreement without the prior written consent of the State. Notwithstanding the foregoing, the State shall have no proprietary interest in any materials licensed for use by the State that are subject to patent, trademark or copyright protection.

BOTH PARTIES AGREE:

1. That this Agreement may be terminated as follows:
 - a. Any discretionary or vested right of renewal notwithstanding, this Agreement may be terminated upon written 30-day notice by mutual consent of both parties or unilaterally by either party without cause.
 - b. The continuation of this Agreement beyond the current biennium is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the State Legislature and/or federal sources. The State may terminate this Agreement upon 30-day notice, and Provider waives any and all claim(s) for damages, immediately upon receipt of written notice (or any date specified therein) if for any reason the Department's funding from State and/or federal sources is not appropriated or is withdrawn, limited, or impaired.
 - c. A default or breach may be declared with or without termination.
 - i. If Provider fails to provide or satisfactorily perform any of the conditions, work, deliverables, goods, or services called for by this Agreement within the time requirements specified in this Agreement or within any granted extension of those time requirements; or
 - ii. If any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Provider to provide the goods or services required by this Agreement is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or
 - iii. If Provider becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the bankruptcy court; or
 - iv. If the State materially breaches any material duty under this Agreement and any such breach impairs Provider's ability to perform; or
 - v. If it is found by the State that any quid pro quo or gratuities in the form of money, services, entertainment, gifts, or otherwise were offered or given by Provider, or any agent or representative of Provider, to any officer or employee of the State of Nevada with a view toward securing an Agreement or securing favorable treatment with respect to awarding, extending, amending, or making any determination with respect to the performing of such Agreement; or
 - vi. If it is found by the State that Provider has failed to disclose any material conflict of interest relative to the performance of this Agreement.
 - d. Time to Correct. Termination upon a declared default or breach may be exercised only after service of formal written notice as specified in paragraph four (4), "Notice", and the subsequent failure of the defaulting party within fifteen (15) calendar days of receipt of that notice to provide evidence, satisfactory to the aggrieved party, showing that the declared default or breach has been corrected.

2. In the event of termination of this Agreement for any reason, the parties agree that the provisions of this paragraph survive termination:
 - a. The parties shall account for and properly present to each other all claims for fees and expenses and pay those which are undisputed and otherwise not subject to set off under this Agreement. Neither party may withhold performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination;
 - b. Provider shall satisfactorily complete work in progress at the agreed rate (or a pro rata basis if necessary) if so requested by the Contracting Agency;
 - c. Provider shall execute any documents and take any actions necessary to effectuate an assignment of this Agreement if so requested by the Contracting Agency;
 - d. Provider shall preserve, protect and promptly deliver into State possession all proprietary information in accordance with paragraph thirty-one (31).
3. Except as otherwise provided for by law or this Agreement, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages, and to a prevailing party reasonable attorneys' fees and costs. It is specifically agreed that reasonable attorneys' fees shall include, without limitation, one hundred and twenty-five dollars (\$125.00) per hour for State-employed attorneys. The State may set off consideration against any unpaid obligation of Provider to any State agency in accordance with NRS 353C.190. In the event that the Provider voluntarily or involuntarily becomes subject to the jurisdiction of the Bankruptcy Court, the State may set off consideration against any unpaid obligation of Provider to the State or its agencies, to the extent allowed by bankruptcy law, without regard to whether the procedures of NRS 353C.190 have been utilized.
4. The State will not waive and intends to assert available NRS chapter 41 liability limitations in all cases. Agreement liability of both parties shall not be subject to punitive damages. Damages for any State breach shall never exceed the amount of outstanding unreimbursed claims submitted pursuant to the Program.
5. Neither party shall be deemed to be in violation of this Agreement if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the Agreement after the intervening cause ceases.
6. The parties hereto represent and warrant that the person executing this Agreement on behalf of each party has full power and authority to enter into this Agreement. The Provider acknowledges that as required by statute or regulation this Agreement is effective only after approval by the State Board of Examiners and only for the period of time specified in the Agreement. Any services performed by the Provider before this Agreement is effective or after it ceases to be effective are performed at the sole risk of the Provider.

7. This Agreement and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada, without giving effect to any principle of conflict-of-interest that would require the application of the law of any other jurisdiction. Provider consents to the jurisdiction of the Nevada district courts for enforcement of this Agreement.
8. This Agreement and its integrated attachment(s) constitute the entire agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Agreement specifically displays a mutual intent to amend a particular part of this Agreement, general conflicts in language between any such attachment and this Agreement shall be construed as consistent with the terms of this Agreement. Unless otherwise expressly authorized by the terms of this Agreement, no modification or amendment to this Agreement shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto and approved by the Office of the Attorney General and the State Board of Examiners.
9. If any provision contained in this Agreement is held to be unenforceable by a court of law or equity, this Agreement shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Agreement unenforceable.
10. Timeliness of billing is of the essence to the Agreement and recognize that the State is on a fiscal year. All billings for dates of service prior to July 1 must be submitted to the State no later than the first Friday in August of the same calendar year. A billing submitted after the first Friday in August, which forces the State to process the billing as a stale claim pursuant to NRS 353.097, will subject the Provider to an administrative fee not to exceed one hundred dollars (\$100.00). The parties hereby agree this is a reasonable estimate of the additional costs to the State of processing the billing as a stale claim and that this amount will be deducted from the stale claim payment due to the Provider.
11. Payment of services actually and properly rendered by Provider in accordance with this Provider Agreement and Attachments, program limitations and procedures of the Department will be paid upon approval of submitted invoice.
12. INCORPORATED DOCUMENTS. This Agreement incorporates the following attachments, Scope of Work (Attachment AA), Insurance Schedule (Attachment BB), Fee Schedule (Attachment CC) and HIPAA Business Associate Agreement (Attachment DD), if applicable, and are a part hereof as though fully set forth herein. A Provider's Attachment shall not contradict or supersede any State specifications, terms or conditions without written evidence of mutual assent to such change appearing in this Agreement.

13. This Agreement shall be in effect from date of approval through two years. It will be renewed automatically at the sole discretion of the Department, for a successive period of two years. It is further expressly understood and agreed that either party to this Agreement, notwithstanding the automatic renewal clause, may terminate this Agreement without cause at any time during the term of this Agreement by providing written notice 30 days prior to termination.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed and intend to be legally bound thereby.

DEPARTMENT OF EMPLOYMENT, TRAINING AND REHABILITATION	
Business Name	Department Name
Provider Representative	Vocational Rehabilitation Agency Name
Print Title	751 Basque Way Agency Address
	Carson City Nevada 89706 City State Zip
Authorized Signature	Michele Killian, Program Officer I Agency Contact Name
Print Name	(775) 687-6860 (775) 684-4184 Agency Phone # Agency Fax #
Date	By: Administrator Date
APPROVED AS TO FORM ONLY BY THE DEPUTY ATTORNEY GENERAL ON 06/27/2014	APPROVED AS TO FORM BY THE BOARD OF EXAMINERS ON 08/12/2014