

PROVIDER AGREEMENT CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR

A Contract Between the State of Nevada
Acting By and Through Its

Department of Health and Human Services
Division of Child and Family Services
4126 Technology Way, 3rd Floor
Carson City, NV 89706
Ph: (775) 684-4400

And

Independent Contractor: _____
Address: _____
Ph: _____

WHEREAS, NRS 333.700 authorizes elective officers, heads of departments, boards, commissions or institutions to engage, subject to the approval of the Board of Examiners, services of persons as independent contractors; and

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

NOW, THEREFORE, in consideration of the aforesaid premises, the parties mutually agree as follows:

1. **REQUIRED APPROVAL.** This Provider Agreement Contract ("Contract") shall not become effective until and unless approved by the Nevada State Board of Examiners.

2. **DEFINITIONS.** "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 Contract. "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.

3. **CONTRACT TERM.** This Contract shall be effective subject to Board of Examiners' approval and from approval of both parties to _____ (not to exceed the end of the tenth (10th) fiscal year from the date of approval, unless sooner terminated by either party as specified in paragraph ten (10)).

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 Contract 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. **INCORPORATED DOCUMENTS.** The parties agree that this Contract, inclusive of the following attachments, specifically describes the scope of work. This Contract incorporates the following attachments in descending order of constructive precedence:

ATTACHMENT AA:	SCOPE OF WORK: EMERGENCY SHELTER CARE
ATTACHMENT BB:	INSURANCE SCHEDULE;
ATTACHMENT CC:	BUSINESS ASSOCIATE ADDENDUM;
ATTACHMENT DD:	FISCAL PROCEDURES; and
ATTACHMENT EE:	ADDITIONAL INFORMATION

A Contractor'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 Contract.

6. CONSIDERATION. The parties agree that Contractor will provide the services specified in paragraph five (5) at a cost as specified in ATTACHMENT AA. For all independent contractors providing services under this Contract, cumulative payments in any Fiscal Year shall not exceed the Legislatively approved budget amount. The State does not agree to reimburse Contractor for expenses unless otherwise specified in the incorporated attachments. Any intervening end to a biennial appropriation period shall be deemed an automatic renewal (not changing the overall Contract term) or a termination as the results of legislative appropriation may require.

7. ASSENT. The parties agree that the terms and conditions listed on incorporated attachments of this Contract are also specifically a part of this Contract and are limited only by their respective order of precedence and any limitations specified.

8. BILLING SUBMISSION; TIMELINESS. The parties agree that timeliness of billing is of the essence to the contract 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 Contractor 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 Contractor.

9. INSPECTION & AUDIT.

a. Books and Records. Contractor agrees 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.

b. Inspection & Audit. Contractor agrees that the relevant books, records (written, electronic, computer related or otherwise), including, without limitation, relevant accounting procedures and practices of Contractor 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 Contractor 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.

c. Period of Retention. All books, records, reports, and statements relevant to this Contract must be retained a minimum three (3) years, and for five (5) years if any federal funds are used pursuant to the Contract. The retention period runs from the date of payment for the relevant goods or services by the State, or from the date of termination of the Contract, whichever is later. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.

10. CONTRACT TERMINATION.

a. Termination Without Cause. Any discretionary or vested right of renewal notwithstanding, this Contract may be terminated upon written notice by mutual consent of both parties, or unilaterally by either party without cause.

b. State Termination for Non-appropriation. The continuation of this Contract 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 Contract, and Contractor 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.

c. Cause Termination for Default or Breach. A default or breach may be declared with or without termination. This Contract may be terminated by either party upon written notice of default or breach to the other party as follows:

- i. If Contractor fails to provide or satisfactorily perform any of the conditions, work, deliverables, goods, or services called for by this Contract within the time requirements specified in this Contract 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 Contractor to provide the goods or services required by this Contract is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or
- iii. If Contractor 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 Contract and any such breach impairs Contractor'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 Contractor, or any agent or representative of Contractor, to any officer or employee of the State of Nevada with a view toward securing a contract or securing favorable treatment with respect to awarding, extending, amending, or making any determination with respect to the performing of such contract; or
 - vi. If it is found by the State that Contractor has failed to disclose any material conflict of interest relative to the performance of this Contract.
- 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), 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.
- e. Winding Up Affairs Upon Termination. In the event of termination of this Contract for any reason, the parties agree that the provisions of this paragraph survive termination:
- i. 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 Contract. Neither party may withhold performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination;
 - ii. Contractor shall satisfactorily complete work in progress at the agreed rate (or a pro rata basis if necessary) if so requested by the Contracting Agency;
 - iii. Contractor shall execute any documents and take any actions necessary to effectuate an assignment of this Contract if so requested by the Contracting Agency;
 - iv. Contractor shall preserve, protect and promptly deliver into State possession all proprietary information in accordance with paragraph twenty-one (21).

11. REMEDIES. Except as otherwise provided for by law or this Contract, 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 Contractor to any State agency in accordance with NRS 353C.190. In the event that the Contractor voluntarily or involuntarily becomes subject to the jurisdiction of the Bankruptcy Court, the State may set off consideration against any unpaid obligation of Contractor 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.

12. LIMITED LIABILITY. The State will not waive and intends to assert available NRS chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Liquidated damages shall not apply unless otherwise specified in the incorporated attachments. Damages for any State breach shall never exceed the amount of funds appropriated for payment under this Contract, but not yet paid to Contractor, for the fiscal year budget in existence at the time of the breach. Damages for any Contractor breach shall not exceed one hundred and fifty percent (150%) of the contract maximum "not to exceed" value. Contractor's tort liability shall not be limited.

13. FORCE MAJEURE. Neither party shall be deemed to be in violation of this Contract 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 Contract after the intervening cause ceases.

14. INDEMNIFICATION. To the fullest extent permitted by law Contractor 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 any alleged negligent or willful acts or omissions of Contractor, its officers, employees and agents.

15. INDEPENDENT CONTRACTOR. Contractor is associated with the State only for the purposes and to the extent specified in this Contract, and in respect to performance of the contracted services pursuant to this Contract, Contractor is and shall be an independent contractor and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract 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 Contractor or any other party. Contractor 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 Contractor 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. Contractor 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. Neither Contractor nor its employees, agents, nor representatives shall be considered employees, agents, or representatives of the State. The State and Contractor shall evaluate the nature of services and the term of the Contract negotiated in order to determine "independent contractor" status, and shall monitor the work relationship throughout the term of the Contract to ensure that the independent contractor relationship remains as such. To assist in determining the appropriate status (employee or independent contractor), Contractor represents as follows:

		<u>Contractor's Initials</u>	
		YES	NO
1.	Does the Contracting Agency have the right to require control of when, where and how the independent contractor is to work?	_____	_____
2.	Will the Contracting Agency be providing training to the independent contractor?	_____	_____
3.	Will the Contracting Agency be furnishing the independent contractor with worker's space, equipment, tools, supplies or travel expenses?	_____	_____
4.	Are any of the workers who assist the independent contractor in performance of his/her duties employees of the State of Nevada?	_____	_____
5.	Does the arrangement with the independent contractor contemplate continuing or recurring work (even if the services are seasonal, part-time, or of short duration)?	_____	_____
6.	Will the State of Nevada incur an employment liability if the independent contractor is terminated for failure to perform?	_____	_____
7.	Is the independent contractor restricted from offering his/her services to the general public while engaged in this work relationship with the State?	_____	_____

16. **INSURANCE SCHEDULE.** Unless expressly waived in writing by the State, Contractor, as an independent contractor and not an employee of the State, must carry policies of insurance and pay all taxes and fees incident hereunto. Policies shall meet the terms and conditions as specified within this Contract along with the additional limits and provisions as described in Attachment BB, incorporated hereto by attachment. The State shall have no liability except as specifically provided in the Contract.

The Contractor shall not commence work before:

- 1) Contractor has provided the required evidence of insurance to the Contracting Agency of the State, and
- 2) The State has approved the insurance policies provided by the Contractor.

Prior approval of the insurance policies by the State shall be a condition precedent to any payment of consideration under this Contract and the State's approval of any changes to insurance coverage during the course of performance shall constitute an ongoing condition subsequent this Contract. Any failure of the State to timely approve shall not constitute a waiver of the condition.

Insurance Coverage: The Contractor shall, at the Contractor's sole expense, procure, maintain and keep in force for the duration of the Contract insurance conforming to the minimum limits as specified in Attachment BB, incorporated hereto by attachment. Unless specifically stated herein or otherwise agreed to by the State, the required insurance shall be in effect prior to the commencement of work by the Contractor and shall continue in force as appropriate until:

1. Final acceptance by the State of the completion of this Contract; or
 2. Such time as the insurance is no longer required by the State under the terms of this Contract;
- Whichever occurs later.

Any insurance or self-insurance available to the State shall be in excess of, and non-contributing with, any insurance required from Contractor. Contractor's insurance policies shall apply on a primary basis. Until such time as the insurance is no longer required by the State, Contractor shall provide the State with renewal or replacement evidence of insurance no less than thirty (30) days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by the Contract, an insurer or surety shall fail to comply with the requirements of this Contract, as soon as Contractor has knowledge of any such failure, Contractor shall immediately notify the State and immediately replace such insurance or bond with an insurer meeting the requirements.

General Requirements:

- a. Additional Insured: By endorsement to Contractor's general liability insurance policy, the State of Nevada, its officers, employees and immune contractors as defined in NRS 41.0307 shall be named as additional insureds for all liability arising from the Contract.
- b. Waiver of Subrogation: Each insurance policy shall provide for a waiver of subrogation against the State of Nevada, its officers, employees and immune contractors as defined in NRS 41.0307, for losses arising from work/materials/equipment performed or provided by or on behalf of the Contractor.
- c. Cross-Liability: All required liability policies shall provide cross-liability coverage as would be achieved under the standard ISO separation of insureds clause.
- d. Deductibles and Self-Insured Retentions: Insurance maintained by Contractor shall apply on a first dollar basis without application of a deductible or self-insured retention unless otherwise specifically agreed to by the State. Such approval shall not relieve Contractor from the obligation to pay any deductible or self-insured retention. Any deductible or self-insured retention shall not exceed fifty thousand dollars (\$50,000.00) per occurrence, unless otherwise approved by the Risk Management Division.
- e. Policy Cancellation: Except for ten (10) days notice for non-payment of premium, each insurance policy shall be endorsed to state that without thirty (30) days prior written notice to the State of Nevada, c/o Contracting Agency, the policy shall not be canceled, non-renewed or coverage and /or limits reduced or materially altered, and shall provide that notices required by this paragraph shall be sent by certified mailed to the address shown on page one (1) of this contract:
- f. Approved Insurer: Each insurance policy shall be:
 - 1) Issued by insurance companies authorized to do business in the State of Nevada or eligible surplus lines insurers acceptable to the State and having agents in Nevada upon whom service of process may be made; and
 - 2) Currently rated by A.M. Best as "A-VII" or better.

Evidence of Insurance:

Prior to the start of any Work, Contractor must provide the following documents to the contracting State agency:

1) Certificate of Insurance: The Acord 25 Certificate of Insurance form or a form substantially similar must be submitted to the State to evidence the insurance policies and coverages required of Contractor. The certificate must name the State of Nevada, its officers, employees and immune contractors as defined in NRS 41.0307 as the certificate holder. The certificate should be signed by a person authorized insurer to bind coverage on its behalf. The state project/contract number; description and contract effective dates shall be noted on the certificate, and upon renewal of the policies listed Contractor shall furnish the State with replacement certificates as described within Insurance Coverage, section noted above.

Mail all required insurance documents to the State Contracting Agency identified on page one of the contract.

2) Additional Insured Endorsement: An Additional Insured Endorsement (CG 20 10 11 85 or CG 20 26 11 85) , signed by an authorized insurance company representative, must be submitted to the State to evidence the endorsement of the State as an additional insured per General Requirements, subsection a above.

3) Schedule of Underlying Insurance Policies: If Umbrella or Excess policy is evidenced to comply with minimum limits, a copy of the underlying Schedule from the Umbrella or Excess insurance policy may be required.

Review and Approval: Documents specified above must be submitted for review and approval by the State prior to the commencement of work by Contractor. Neither approval by the State nor failure to disapprove the insurance furnished by Contractor shall relieve Contractor of Contractor's full responsibility to provide the insurance required by this Contract. Compliance with the insurance requirements of this Contract shall not limit the liability of Contractor or its sub-contractors, employees or agents to the State or others, and shall be in addition to and not in lieu of any other remedy available to the State under this Contract or otherwise. The State reserves the right to request and review a copy of any required insurance policy or endorsement to assure compliance with these requirements.

17. COMPLIANCE WITH LEGAL OBLIGATIONS. Contractor shall procure and maintain for the duration of this Contract any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract. Contractor will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Real property and personal property taxes are the responsibility of Contractor in accordance with NRS 361.157 and NRS 361.159. Contractor agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract. The State may set-off against consideration due any delinquent government obligation in accordance with NRS 353C.190.

18. WAIVER OF BREACH. Failure to declare a breach or the actual waiver of any particular breach of the Contract or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

19. SEVERABILITY. If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract 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 Contract unenforceable.

20. ASSIGNMENT/DELEGATION. To the extent that any assignment of any right under this Contract changes the duty of either party, increases the burden or risk involved, impairs the chances of obtaining the performance of this Contract, 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 Contract. Contractor shall neither assign, transfer nor delegate any rights, obligations or duties under this Contract without the prior written consent of the State.

21. STATE OWNERSHIP OF PROPRIETARY INFORMATION. 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 Contract), or any other documents or drawings, prepared or in the course of preparation by Contractor (or its subcontractors) in performance of its obligations under this Contract shall be the exclusive property of the State and all such materials shall be delivered into State possession by Contractor upon completion, termination, or cancellation of this Contract. Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than performance of Contractor's obligations under this Contract 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.

22. PUBLIC RECORDS. Pursuant to NRS 239.010, information or documents received from Contractor 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. Contractor may label specific parts of an individual document as a "trade secret" or "confidential" in accordance with NRS 333.333, provided that Contractor 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.

23. CONFIDENTIALITY. Contractor shall keep confidential all information, in whatever form, produced, prepared, observed or received by Contractor to the extent that such information is confidential by law or otherwise required by this Contract

24. FEDERAL FUNDING. In the event federal funds are used for payment of all or part of this Contract:

a. Contractor certifies, by signing this Contract, 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 the regulations implementing Executive Order 12549, Debarment and Suspension, 28 C.F.R. pt. 67, § 67.510, as published as pt. VII of the May 26, 1988, Federal Register (pp. 19160-19211), and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.

b. Contractor and its subcontractors shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted thereunder contained in 28 C.F.R. 26.101-36.999, inclusive, and any relevant program-specific regulations.

c. Contractor and its subcontractors shall comply with the requirements of the Civil Rights Act of 1964, as amended, 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 offeror for employment because of race, national origin, creed, color, sex, religion, age, disability or handicap condition (including AIDS and AIDS-related conditions.)

25. **LOBBYING.** The parties agree, whether expressly prohibited by federal law, or otherwise, that no funding associated with this contract 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.

26. **WARRANTIES.**

- a. **General Warranty.** Contractor warrants that all services, deliverables, and/or work product under this Contract shall be completed in a workmanlike manner consistent with standards in the trade, profession, or industry; shall conform to or exceed the specifications set forth in the incorporated attachments; and shall be fit for ordinary use, of good quality, with no material defects.
- b. **System Compliance.** Contractor warrants that any information system application(s) shall not experience abnormally ending and/or invalid and/or incorrect results from the application(s) in the operating and testing of the business of the State.

27. **PROPER AUTHORITY.** The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract. Contractor acknowledges that as required by statute or regulation this Contract is effective only after approval by the State Board of Examiners and only for the period of time specified in the Contract. Any services performed by Contractor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Contractor.

28. **NOTIFICATION OF UTILIZATION OF CURRENT OR FORMER STATE EMPLOYEES.** Contractor has disclosed to the State all persons that the Contractor will utilize to perform services under this Contract who are Current State Employees or Former State Employees. Contractor will not utilize any of its employees who are Current State Employees or Former State Employees to perform services under this contract 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.

29. **ASSIGNMENT OF ANTITRUST CLAIMS.** Contractor irrevocably assigns to the State any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state of Nevada or federal antitrust laws in connection with any goods or services provided to the Contractor for the purpose of carrying out the Contractor's obligations under this Contract, including, at the State's option, the right to control any such litigation on such claim for relief or cause of action. Contractor shall require any subcontractors hired to perform any of Contractor's obligations under this Contract to irrevocably assign to the State, as third party beneficiary, any right, title or interest that has accrued or which may accrue in the future by reason of any violation of state of Nevada or federal antitrust laws in connection with any goods or services provided to the subcontractor for the purpose of carrying out the subcontractor's obligations to the Contractor in pursuance of this Contract, including, at the State's option, the right to control any such litigation on such claim or relief or cause of action.

30. **GOVERNING LAW; JURISDICTION.** This Contract 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 laws that would require the application of the law of any other jurisdiction. The parties consent to the exclusive jurisdiction of the First Judicial District Court, Carson City, Nevada for enforcement of this Contract.

31. **ENTIRE CONTRACT AND MODIFICATION.** This Contract and its integrated attachment(s) constitute the entire agreement of the parties and as such are intended to be the 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 Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be construed consistent with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract, no modification or amendment to this Contract 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.

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

Independent Contractor's Signature

Date

Independent's Contractor's Title

Signature

Date

Administrator Division of Child and Family Services
Title

This Contract was approved as to form by the Nevada State Board of Examiners on March 14, 2017.

This Contract was approved as to form by a Deputy Attorney General for the Attorney General on February 3, 2017.

ATTACHMENT AA

SCOPE OF WORK EMERGENCY SHELTER CARE

To contract with qualified, licensed providers of Emergency Shelter Care for children in the care and custody of the Division of Child and Family Services (DCFS).

DCFS will refer a child to the Provider based on child's needs and circumstances. DCFS maintains sole discretion to make placement decisions for a child in its custody. DCFS does not guarantee Provider will receive any referrals.

Emergency Shelter Care is defined as emergent, transitional, and short-term care, usually not to exceed 30 days. Emergency Shelter Care is provided until long-range plans can be made for a child that cannot be maintained in his/her own home because he/she is in clear and present danger of abuse, neglect, or exploitation or due to disruption of a subsequent out-of-home placement.

Emergency Shelter Care consists of group or family based care in a facility of less than 15 beds. Emergency Shelter Care provides a structured, nurturing, safe and reassuring environment to children who are experiencing issues of grief and loss related to the disruption of their life. Emergency Shelter Care has the purpose of meeting the child's immediate emotional, physical, and crisis stabilization needs.

KNOWLEDGE AND SKILLS

Providers and staff (to include, but not limited to, employees, subcontractors, volunteers, etc.) must comply with and meet requirements for foster care licensing per NRS 424 and NAC 424.

SERVICES

Providers are expected to provide temporary shelter and care for children ranging in age from 6 -17 years or infant to 17 years old as permitted by NRS 432B.3905 (this statute permits children under 6 be placed into shelter care if the child requires medical services and such medical services could not be provided at any other placement or if necessary to avoid separating siblings). Providers must: Be available to accept placements 24 hrs. per day, 7 days per week; Supply a monthly progress report to the assigned DCFS case manager relating to functioning levels, strengths, skills, and perceived long-term needs of the child; Perform a basic needs assessment and keep appropriate documentation; Engage in strategies to ease child's adjustment to the shelter and subsequent placement and coordinate with family members, foster families and other providers to ensure a smooth transition; Maintain adult supervision of children at all times; Conduct age-appropriate structure and daily routines consistent with the case plan provided by DCFS; Maintain regular contact with the assigned DCFS case manager, and Clinical Services Program Manager or IFS caseworker for emotional/behavioral issues; Maintain reasonable contacts with siblings and parents in accordance with the case plan; Provide dedicated safe, private, and comfortable room for family visits; Ensure the coordination and facilitation of services provided by others, including, but is not limited to: schools, licensed professionals and case managers; Provide transportation services to school of origin in Carson and Douglas Counties, and visitations as well as necessary appointments including medical, dental, counseling/mental health and specific social, recreational and community activities; Ensure child participation in social, recreational, and community activities consistent with the child's developmental needs and provide regular staff monitoring of all these activities, particularly those that

occur off-site, as developmentally and behaviorally appropriate; Maintain necessary contact and cooperate with schools at a frequency to appropriately monitor school assignments, attendance, activities, and school related problems; Meet each child's physical space, clothing, and nutritional needs on a continuous and consistent basis; and Maintain weekly log of client behaviors and activities. The log may be used for mental health needs assessments, placement needs, education needs, and/or other care needs. Provider will share information from weekly logs with the assigned DCFS case manager upon request.

PROVIDER STAFF TRAINING

Provider must provide initial and annual continuing post licensing training that meets State of Nevada requirements for licensed foster homes (NRS 424 and NAC 424.712-424.718). Trainings include but are not limited to:

Skill development, knowledge acquisition, and education related to the care of emotionally and behaviorally challenged clients; Use of force and restraint on children; Suicide awareness and prevention; Sexual and/or child abuse/neglect identification, prevention, and mandated reporting; Distribution of medication to children; Applicable State and federal constitutional and statutory rights of children; Privacy and confidentiality of child and family information; Specialized training if the emergency shelter serves specialized populations or takes referrals of children with unique needs such as gender issues, teen moms, sexual abuse and/or sexually aggressive children/youth, substance abuse, children with developmental disabilities, and the impact of abuse and neglect on young children; Working with primary families; Cultural and diversity competence; Separation, loss (grief) and attachment; Verbal de-escalation technique; Family dynamics and systems; Positive discipline, medication management and administration; and Reasonable Prudent Parenting.

RESPONSIBILITIES OF PROVIDER

Provider shall:

Notify in advance the DCFS regional contract representative and Foster Care Licensing personnel of any intent to accept, or acceptance of, children referred by agencies or persons other than DCFS. (See NAC 424.475, NAC 424.175, NAC424.626, NAC424.450, NAC424.470):

Supervise the placement to ensure that the child's needs are being met; Go onsite to provide supervision, consultation, technical assistance, and crisis management. When multiple sites are in operation, assure consistency of program services throughout program sites; Except in emergencies, request prior authorization through the assigned DCFS case manager for any medical, dental or psychological services to be provided on behalf of a child placed by DCFS; Conduct initial clothing inventory for each DCFS child placed in emergency shelter care. Expediently purchase and/or provide each DCFS child with new clothing items. Clothing items must be similar in appearance and quality to other children in the community; Maintain individualized documentation on all clothing item purchases for each DCFS child. Documentation must include an inventory of each clothing item purchased. Additionally, documentation must include individualized purchase receipts for clothing items purchased for each DCFS child. Receipts for clothing

item purchases must be child specific. Providers may not blend clothing item purchases for multiple children on one purchase receipt. Provider will diligently work with assigned DCFS social worker(s) to assure each DCFS child has adequate clothing items throughout placement and upon discharge; Furnish transportation within Carson and Douglas Counties for each child to school and visitations as well as necessary appointments including medical, dental, counseling/mental health and to specific social, recreational and community activities; Assume responsibility for maintaining a close liaison with the schools to prevent problems and provide support. Facilitate academic support as identified via the IEP or school consultations. The assigned DCFS case manager shall be notified to participate in any Individual Education Plan (IEP) meetings; Participate as a team member with the assigned DCFS case manager to jointly identify and evaluate the child's needs, develop and implement the case plan.

NOTIFY DCFS IMMEDIATELY WHEN ANY OF THE FOLLOWING OCCUR TO CHILDREN IN THE CARE OF DCFS:

Accidents; Acute psychiatric episode(s); Attempts or threats of harm by or towards DCFS placed children or by other placed children, emergency shelter staff, and/or others; Emergency room care; Injuries to a DCFS placed child that require medical attention; Missing/runaway child; Physical restraint and commission of delinquent acts; Self-mutilation; Serious illness; Sexual abuse and/or misconduct; Suicide ideations, attempts, and/or threats; and/or any behavior which is considered by the Provider to be dangerous to the child, community, other children at the facility or to the Provider staff. Work together with the assigned DCFS case manager, Clinical Program Manager or IFS caseworker to mitigate behaviors that provider feels will jeopardize the placement or cause harm to others; plan and carry out appropriate plans for the discharge of each child from the provider's facility. The provider shall prepare the child for his/her discharge and subsequent placement in cooperation with the assigned DCFS case manager; Permit the removal of any child in the care of DCFS when the State requests such removal. Discharge from the provider's facility shall be planned in advance. Provider agrees to maintain a child's placement until reasonable efforts are attempted with DCFS to prevent disruption and will request support services prior to submitting notice for removal of the child. The Provider, after consultation with DCFS Clinical Services Clinical Program Manager, shall give DCFS ten (10) working days prior written notice when requesting removal of children, except when Provider believes there is an immediate safety risk to the child, other children in residence, or staff; Provider and their employees shall meet and comply with national, State and local licensing regulations and standards prior to the date of hire; Copies of all licenses required within the State of Nevada shall be submitted with the Provider Agreement and must be current for all provider staff; Ensure that staff, employees, sub-contract personnel, volunteers or program guests (other than approved family visits) who do not meet or comply with national, State, and/or local background investigation guidelines are not permitted to be alone with children; The provider shall not accept a private placement without the prior approval of a licensing authority representative; Assure all children have access to regular contacts with family as documented in the case plan or as advised by the assigned DCFS case manager unless specifically prohibited by the court or the assigned DCFS case manager; Provide specific program and client data on a weekly basis such as census, Critical Incident Reports, and discharge information.

GENERAL REQUIREMENTS FOR ALL SERVICES

Records

All referrals for placement in the Provider's program shall be prior authorized by the assigned DCFS case manager and social work supervisor prior to admission. Failure to receive prior authorization as evidenced by the signed disposition shall impact Provider's reimbursement; and

Provider shall maintain individual records for each client as required by. NAC424.726. At a minimum, each record will include:

Placement authorization information:

Intake/referral packet; Disposition; Any other information related to placement justification; Clothing and incidental money accounting for each child; School records - Individual Education Plan (IEP) as appropriate; Critical Incident Reports - Immediately provide written incident report to the assigned DCFS case manager or social work supervisor; Contacts made with the client's family, school officials, and other agency personnel (date and time of contact should be noted); Health Record including but not limited to a medical history, immunization records, and physician's visits; School Record, to include but not limited to a record of the child's school placement, adjustment to school, academic performance, and behavior.

Fiscal Responsibility, Records and Monitoring

Provider agrees to maintain, books, records, documents and other evidence which sufficiently and properly reflect costs of any nature expended in the performance of this agreement. Records shall be maintained in accordance with generally accepted accounting standards (GAAP)

Medication Records and Storage

Provider agrees to store prescribed and non-prescribed medication in a locked area and will maintain a medication log that shall include:

Name; Dosage; Frequency of dosage; Reason given; and unusual side-effects.

Provider will assure that staff members who dispense medications are appropriately trained on safe medications distribution policies and procedures. Providers must comply with the provisions of NAC 424.560 - the administration of medication.

Program Records

Provider agrees to maintain program records required by DCFS in an organized and updated manner. Program records will include but are not limited to:

Employee personnel - Providers shall maintain personnel records for each staff as required by NAC 424.728; Staff Training; Licenses; Payroll; Insurance; Staffing logs and; Client and medication records.

Monitoring Records

Provider shall allow a program and facility inspection, review, copying and audit, including but not limited to, meetings with consumers, review of services records, review of service policy/procedure, staffing ratios, job descriptions and meetings with any staff directly or indirectly involved in the provision of services, to be conducted at any reasonable time by federal personnel and other persons duly authorized by the State and DCFS.

Retention of Records

Provider agrees to retain all books, records, logs and other documentation relevant to this agreement for three (3) years. Federal auditors and persons duly authorized by the State and DCFS shall have full access to and the right to examine and copy any of said materials during said period. Disposal of client records shall include shredding and/or removing and shredding any identifying client data from records.

Audit Adjustments

Provider agrees that if an audit discloses DCFS overpayments for services or misallocation of funds paid the provider on behalf of the child, the Provider shall promptly reimburse DCFS such unallowable costs. If such audit discloses unpaid allowable costs, DCFS shall pay the Provider such costs as are properly allowable as provided for herein.

Safeguarding of Client Information and Client Confidentiality

Provider is prohibited from using or disclosing any part of any information concerning a child for any purpose not directly connected with the administration of DCFS or the Provider's responsibilities with respect to services provided and purchased as stipulated in this contract.

Provider shall read and comply with the provisions of NAC 424.485 (Confidentiality Regarding Children and Public Photographs of Children).

Discipline and Physical Restraint

Provider and staff are prohibited from using corporal punishment as a form of discipline.

Provider and staff are prohibited from using any form of demeaning or harsh punishment as a form of discipline.

Provider and staff of any level of care are discouraged from practicing physical restraint of children. Physical restraint of children may only be practiced if:

All methods of verbal and environmental de-escalation have failed; the presenting behavior of the child demonstrates a clear and present danger to himself, provider staff, community or other children at the facility; and

The Provider and staff have been thoroughly trained in a nationally recognized model of physical restraint and verbal de-escalation. Provider shall require all staff to complete annual training in a nationally recognized model of physical restraint and verbal de-escalation of children.

Provider shall maintain a written physical restraint log documenting each incident of physical restraint as to the following:

Child's name; Date and time of restraint; surrounding circumstances; and Final outcome;

Physical restraint of children will not be associated with or applied as a punishment. The provider and staff are prohibited from using any mechanical, leather or tie-down restraints of any kind.

Physical restraint and mechanical restraint have the meaning defined in NRS 433.547 & 433.5476. The provider shall comply with NRS 433.545 to 433.551 regarding Use of Restraints and Interventions.

Religious Activities

The Provider shall not encourage, discourage, or engage in any form of religious proselytizing (i.e., religious recruitment and/or inducement) with children placed by DCFS.

Children must be given clear and consistent alternatives to any religious and/or spiritual education;

Provider is responsible for providing adult supervision for children choosing not to attend religious or spiritual services; and

Appropriate and safe adult supervision must be provided in the facility of the Provider or other licensed non-religious resource.

Contract Services, Corrective Action Plans and Sanctions

DCFS shall audit the Provider's program performance to ensure the Provider is implementing the programming outlined in the Provider Agreement.

Provider shall promptly (within seven working days) provide DCFS with all requested Corrective Action Plans. Provider will cooperate with DCFS by providing any and all requested documentation and access to program files, notes, fiscal data, and clients;

Provider shall complete to the satisfaction of DCFS any Corrective Action Plan issued by DCFS within the time frame prescribed in the corrective action audit report; and

Providers who fail to complete, to the satisfaction of DCFS, a Corrective Action Plan within the time frame specified shall be subject to sanctions that may include suspension of referrals or termination of contract.

RESPONSIBILITIES OF THE DIVISION

Before placing, and during the placement of a child in Emergency Shelter Care, the licensing authority shall provide to the Provider such information relating to the child as is necessary to ensure the health and safety of the child and the other residents of the foster home. This information must include the medical history and previous behavior of the child to the extent that such information is available.

DCFS will visit each child within 72 hours of placement or at least every 30 days during their Emergency Shelter Care stay. The assigned DCFS case manager will assess the child's needs and determine if the child is receiving adequate care in accordance with their needs. The assigned DCFS case manager will immediately notify the Provider in all cases where a child's physical, emotional, behavioral, medical and clothing needs are not being met by the Provider.

DCFS will notify the Provider of any applicable trainings for staff that will enhance skills or will provide specific training annually or upon request.

DCFS will respond to crisis calls and provide support.

DCFS will notify the Provider when any of the following events occur with the biological parents or relatives of children in DCFS' care: Serious illness; Accident; or Death.

DCFS will work collaboratively with the Provider to plan and implement appropriate discharge plans for each DCFS child placed in the Provider's program. DCFS shall furnish the Provider with the information needed to adequately prepare the child for his removal and subsequent placement. DCFS will provide each eligible child with a State of Nevada Medicaid Card. DCFS will provide Provider with the following information: Child's case plan; Custody date; Date of birth; and Current Medicaid number and eligibility period.

Medical

DCFS will provide each eligible child with a State of Nevada Medicaid Card. Except in emergencies, the Provider shall request prior approval by DCFS for medical, dental, or psychological services to be provided on behalf of a child placed by DCFS.

Payment Rate

Rate per day is \$100.00 per child per day through June 30th, 2017.

Rates charged for those children placed privately or by agencies other than DCFS may not be less than the rates charged DCFS. Payment shall be made for the day of admission but not for the day of discharge.

As of July 1, 2017 the proposed payment rate per day, per child is \$125.00 per child per day.

Attachment BB
Insurance Schedule

The following are the insurance limits the awarded vendor(s) will be required to maintain for the life of the contract. The awarded vendor(s) shall not commence work before providing the required evidence of insurance to DCFS and DCFS has approved the insurance policies provided. The awarded vendor(s) will be required to provide evidence of continuing insurance to DCFS on an ongoing basis prior to expiration of the insurance policies provided.

INDEMNIFICATION CLAUSE:

Contractor shall indemnify, hold harmless and, not excluding the State's right to participate, defend the State, its officers, officials, agents, and employees (hereinafter referred to as "Indemnatee") from and against all liabilities, claims, actions, damages, losses, and expenses including without limitation reasonable attorneys' fees and costs, (hereinafter referred to collectively as "claims") for bodily injury or personal injury including death, or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnatee shall, in all instances, except for claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the State.

INSURANCE REQUIREMENTS:

Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, his agents, representatives, employees or subcontractors and Contractor is free to purchase additional insurance as may be determined necessary.

A. MINIMUM SCOPE AND LIMITS OF INSURANCE: Contractor shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a “following form” basis.

1. Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

• General Aggregate	\$2,000,000
• Products – Completed Operations Aggregate	\$1,000,000
• Personal and Advertising Injury	\$1,000,000
• Each Occurrence	\$1,000,000

a. The policy shall be endorsed to include coverage for physical/sexual abuse and molestation.

b. The policy shall be endorsed to include the following additional insured language: “The State of Nevada shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor”.

2. Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL)	\$1,000,000
-----------------------------	-------------

a. The policy shall be endorsed to include the following additional insured language: “The State of Nevada shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor, including automobiles owned, leased, hired or borrowed by the Contractor”.

3. Worker's Compensation and Employers' Liability

Workers' Compensation	Statutory
-----------------------	-----------

Employers' Liability

Each Accident	\$100,000
Disease – Each Employee	\$100,000
Disease – Policy Limit	\$500,000

a. The policy shall contain a waiver of subrogation against the State of Nevada.

b. The requirement shall not apply when a contractor or subcontractor is exempt under N.R.S., AND when such contractor or subcontractor executes the appropriate sole proprietor waiver form.

4. Professional Liability (Errors and Omissions Liability)

The Policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services of this contract.

Each Claim	\$1,000,000
Annual Aggregate	\$2,000,000

a. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

5. Fidelity Bond or Crime Insurance

Bond or Policy Limit

\$100,000

- a. The bond or policy shall include coverage for all directors, officers, agents and employees of the Contractor.
- b. The bond or policy shall include coverage for third party fidelity and name the State of Nevada and their clients as loss payee where as their interests may appear.
- c. The bond or policy shall include coverage for extended theft and mysterious disappearance.
- d. The bond or policy shall not contain requiring an arrest and conviction.
- e. Policies shall be endorsed to provide coverage for computer crime/fraud.

B. ADDITIONAL INSURANCE REQUIREMENTS: The policies shall include, or be endorsed to include, the following provisions:

1. On insurance policies where the State of Nevada is named as an additional insured, the State of Nevada shall be an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.
2. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

C. NOTICE OF CANCELLATION: Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to the State, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice shall be sent directly to

DCFS Contract Manager
State of Nevada
Department of Health & Human Services
Division of Child & Family Services
Fiscal
4126 Technology Way, 3rd Floor
Carson City, NV 89706

D. ACCEPTABILITY OF INSURERS: Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Nevada and with an "A.M. Best" rating of not less than A-VII. The State in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

E. VERIFICATION OF COVERAGE: Contractor shall furnish the State with certificates of insurance (ACORD form or equivalent approved by the State) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by the State before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

All certificates required by this Contract shall be sent directly to

DCFS Contract Manager
State of Nevada
Department of Health & Human Services
Division of Child & Family Services
Fiscal
4126 Technology Way, 3rd Floor
Carson City, NV 89706

The State project/contract number and project description shall be noted on the certificate of insurance. The State reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE STATES RISK MANAGEMENT DIVISION.**

F. **SUBCONTRACTORS:** Contractors' certificate(s) shall include all subcontractors as additional insureds under its policies or Contractor shall furnish to the State separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

G. **APPROVAL:** Any modification or variation from the insurance requirements in this Contract shall be made by the Attorney General's Office or the Risk Manager, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.

_____ Independent Contractor's Signature	_____ Date	_____ Title
_____ Signature – State of Nevada	_____ Date	<u>Administrator, Division of Child and</u> <u>Family Services</u> _____ Title

ATTACHMENT CC
STATE OF NEVADA
DEPARTMENT OF HEALTH AND HUMAN SERVICES

BUSINESS ASSOCIATE ADDENDUM

BETWEEN

DIVISION OF CHILD AND FAMILY SERVICES
Hereinafter referred to as "Covered Entity"

And

Hereinafter referred to as "Business Associate".

PURPOSE. In order to comply with the requirements of Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act of 2009, Public Law 111-5 ("HITECH") and the United States Department of Justice Final Rule, 28 C.F.R. § 115 (2003), this Addendum is hereby added and made part of the Contract between the Covered Entity and the Business Associate. This Addendum establishes the obligations of Business Associate and Covered Entity as well as the permitted uses and disclosures by Business Associate of protected health information it may possess by reason of the Contract. The Covered Entity and Business Associate shall protect the privacy and provide for the security of protected health information disclosed to the Business Associate pursuant to the Contract and in compliance with HIPAA, HITECH, and regulation promulgated thereunder by the U.S. Department of Health and Human Services ("HIPAA Regulations") and other applicable laws.

WHEREAS, Business Associate will provide certain services to the Covered Entity, and, pursuant to such arrangement, the Business Associate is considered a business associate of the Covered Entity as defined in HIPAA Regulations; and

WHEREAS, Business Associate may have access to and/or create, receive, maintain or transmit certain protected health information from or on behalf of the Covered Entity, in fulfilling its responsibilities under such arrangement; and

WHEREAS, HIPAA Regulations require Covered Entity to enter into a contract containing specific requirements of the Business Associate prior to the disclosure of protected health information;

THEREFORE, in consideration of the mutual obligations below and the exchange of information pursuant to this Addendum, and to protect the interests of both Parties, the Parties agree to all provisions of this Addendum.

I. DEFINITIONS.

1. The following terms shall have the meaning ascribed to them in HIPAA Regulations:
Breach, Data Aggregation, Designated Record Set, Disclosure, Electronic Health Record, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Subcontractor, Unsecured Protected Health Information, and Use.
2. The following terms shall have the meaning ascribed to them in this Section:

- a. **Business Associate** shall mean the organization or entity listed above and shall have the meaning given to such term under HIPAA Regulations, including 45 CFR 160.103.
 - b. **Contract** shall refer to this Addendum and that particular Contract to which this Addendum is made a part.
 - c. **Covered Entity** shall mean the Division named above and shall have the meaning given to such term under HIPAA Regulations, including 45 CFR 160.103.
 - d. **Parties** shall mean the Business Associate and the Covered Entity.
3. Other capitalized terms shall have the meaning ascribed to them in the context in which they first appear.

II. OBLIGATIONS OF BUSINESS ASSOCIATE.

1. **Access to Protected Health Information.** The Business Associate will provide, as directed by the Covered Entity or an individual, access to inspect or obtain a copy of protected health information about the Individual that is maintained in a designated record set by the Business Associate or, its agents or subcontractors, in order to meet the requirements of HIPAA Regulations. If the Business Associate maintains an electronic health record, the Business Associate, its agents or subcontractors shall provide such information in electronic format to enable the Covered Entity to fulfill its obligations under HIPAA Regulations.
2. **Access to Records.** The Business Associate shall make its internal practices, books and records relating to the use and disclosure of protected health information available to the Covered Entity and to the Secretary for purposes of determining Business Associate's compliance with HIPAA Regulations.
3. **Accounting of Disclosures.** Upon request, the Business Associate and its agents or subcontractors shall make available, to the Covered Entity or individual, information required to provide an accounting of disclosures in accordance with HIPAA Regulations.
4. **Agents and Subcontractors.** The Business Associate must ensure that all agents and subcontractors that access, create, receive, maintain, or transmit protected health information on behalf of the Business Associate agree in writing to the same restrictions and conditions that apply to the Business Associate with respect to such information. The Business Associate must implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation as outlined under HIPAA Regulations.
5. **Amendment of Protected Health Information.** The Business Associate will make available protected health information for amendment and incorporate any amendments in the designated record set maintained by the Business Associate or its agents or subcontractors, as directed by the Covered Entity or an individual, in order to meet the requirements of HIPAA Regulations.
6. **Audits, Investigations, and Enforcement.** If the data provided or created through the execution of the Contract becomes the subject of an audit, compliance review, or complaint investigation by the Office of Civil Rights or any other federal or state oversight agency, the Business Associate shall immediately notify the Covered Entity and provide to the Covered Entity a copy of any protected health information that the Business Associate provides to the Secretary or other federal or state oversight agency concurrently with such provision, to the extent permitted by law. The Business Associate and individuals associated with the Business Associate are solely responsible for all civil and criminal penalties assessed as a result of an audit, breach, or violation of HIPAA Regulations.
7. **Breach or Other Improper Access, Use or Disclosure Reporting.** The Business Associate must report to the Covered Entity, in writing, any access, use or disclosure of protected health information not permitted by the Contract, Addendum or HIPAA Regulations, by the Business Associate or its agents or subcontractors. The Covered Entity must be notified immediately upon discovery, or the first day such breach or suspected breach is known to the Business Associate, or by exercising reasonable diligence would have been known by the Business Associate, in accordance with HIPAA Regulations. In the event of a breach or suspected breach of protected health information, the report to the Covered Entity must be in writing and include the following: a brief description of the incident; the date of the incident; the date the incident was discovered by the Business Associate; a thorough description of the unsecured protected health information that

was involved in the incident; the number of individuals whose protected health information was involved in the incident; and the steps the Business Associate or its agent or subcontractor is taking to investigate the incident and to protect against further incidents. The Covered Entity will determine if a breach of unsecured protected health information has occurred and will notify the Business Associate of the determination. If a breach of unsecured protected health information is determined, the Business Associate must take prompt corrective action to cure any such deficiencies and mitigate any significant harm that may have occurred to individual(s) whose information was disclosed inappropriately.

8. **Breach Notification Requirements.** If the Covered Entity determines a breach of unsecured protected health information by the Business Associate or its agents or subcontractors has occurred, the Business Associate will be responsible for notifying the individuals whose unsecured protected health information was breached in accordance with HIPAA Regulations. The Business Associate must provide evidence to the Covered Entity that appropriate notifications to individuals and/or media, when necessary, as specified in HIPAA Regulations has occurred. The Business Associate is responsible for all costs associated with notification to individuals, the media or others, as well as costs associated with mitigating future breaches. The Business Associate must notify the Secretary of all breaches in accordance with HIPAA Regulations and must provide the Covered Entity with a copy of all notifications made to the Secretary.
9. **Breach Pattern or Practice by Covered Entity.** Pursuant to HIPAA Regulations, if the Business Associate knows of a pattern of activity or practice of the Covered Entity that constitutes a material breach or violation of the Covered Entity's obligations under the Contract or Addendum, the Business Associate must immediately report the problem to the Secretary.
10. **Data Ownership.** The Business Associate acknowledges that the Business Associate or its agents or subcontractors have no ownership rights with respect to the protected health information it creates, receives or maintains, or otherwise holds, transmits, uses or discloses.
11. **Litigation or Administrative Proceedings.** The Business Associate shall make itself, and any subcontractors, employees, or agents assisting the Business Associate in the performance of its obligations under the Contract or Addendum, available to the Covered Entity at no cost to the Covered Entity, to testify as witnesses, or otherwise, in the event litigation or administrative proceedings are commenced against the Covered Entity, its administrators or workforce members upon a claimed violation by the Business Associate or its agents or subcontractors of HIPAA Regulations or other laws relating to security and privacy.
12. **Minimum Necessary.** The Business Associate and its agents and subcontractors shall request, use and disclose only the minimum amount of protected health information necessary to accomplish the purpose of the request, use or disclosure in accordance with HIPAA Regulations.
13. **Policies and Procedures.** The Business Associate must adopt written privacy and security policies and procedures and documentation standards to meet the requirements of HIPAA Regulations.
14. **Privacy and Security Officer(s).** The Business Associate must appoint Privacy and Security Officer(s) whose responsibilities shall include: monitoring the Privacy and Security compliance of the Business Associate; development and implementation of the Business Associate's HIPAA Privacy and Security policies and procedures; establishment of Privacy and Security training programs; and development and implementation of an incident risk assessment and response plan in the event the Business Associate sustains a breach or suspected breach of protected health information.
15. **Safeguards.** The Business Associate must implement safeguards as necessary to protect the confidentiality, integrity, and availability of the protected health information the Business Associate creates, receives, maintains, or otherwise holds, transmits, uses or discloses on behalf of the Covered Entity. Safeguards must include administrative safeguards (e.g., risk analysis and designation of security official), physical safeguards (e.g., facility access controls and workstation security), and technical safeguards (e.g., access controls and audit controls) to the confidentiality, integrity and availability of the protected health information, in accordance with HIPAA Regulations. Technical safeguards must meet the standards set forth by the guidelines of the National Institute of Standards and Technology (NIST). The Business Associate agrees to only use, or disclose protected health information as provided for by the Contract and Addendum and to mitigate, to the extent practicable, any harmful effect that is known to the Business Associate,

of a use or disclosure, in violation of the requirements of this Addendum as outlined in HIPAA Regulations.

16. **Training.** The Business Associate must train all members of its workforce on the policies and procedures associated with safeguarding protected health information. This includes, at a minimum, training that covers the technical, physical and administrative safeguards needed to prevent inappropriate uses or disclosures of protected health information; training to prevent any intentional or unintentional use or disclosure that is a violation of HIPAA Regulations; and training that emphasizes the criminal and civil penalties related to HIPAA breaches or inappropriate uses or disclosures of protected health information. Workforce training of new employees must be completed within 30 days of the date of hire and all employees must be trained at least annually. The Business Associate must maintain written records for a period of six years. These records must document each employee who received training and the date the training was provided or received.
17. **Use and Disclosure of Protected Health Information.** The Business Associate must not use or further disclose protected health information other than as permitted or required by the Contract or as required by law. The Business Associate must not use or further disclose protected health information in a manner that would violate the requirements of HIPAA Regulations.

III. PERMITTED AND PROHIBITED USES AND DISCLOSURES BY BUSINESS ASSOCIATE.

The Business Associate agrees to these general use and disclosure provisions:

1. Permitted Uses and Disclosures:

- a. Except as otherwise limited in this Addendum, the Business Associate may use or disclose protected health information to perform functions, activities, or services for, or on behalf of, the Covered Entity as specified in the Contract, provided that such use or disclosure would not violate HIPAA Regulations, if done by the Covered Entity.
- b. Except as otherwise limited by this Addendum, the Business Associate may use or disclose protected health information received by the Business Associate in its capacity as a Business Associate of the Covered Entity, as necessary, for the proper management and administration of the Business Associate, to carry out the legal responsibilities of the Business Associate, as required by law or for data aggregation purposes in accordance with HIPAA Regulations.
- c. Except as otherwise limited in this Addendum, if the Business Associate discloses protected health information to a third party, the Business Associate must obtain, prior to making any such disclosure, reasonable written assurances from the third party that such protected health information will be held confidential pursuant to this Addendum and only disclosed as required by law or for the purposes for which it was disclosed to the third party. The written agreement from the third party must include requirements to immediately notify the Business Associate of any breaches of confidentiality of protected health information to the extent it has obtained knowledge of such breach.
- d. The Business Associate may use or disclose protected health information to report violations of law to appropriate federal and state authorities, consistent with HIPAA Regulations.

2. Prohibited Uses and Disclosures:

- a. Except as otherwise limited in this Addendum, the Business Associate shall not disclose protected health information to a health plan for payment or health care operations purposes if the patient has required this special restriction, and has paid out of pocket in full for the health care item or service to which the protected health information relates in accordance with HIPAA Regulations.
- b. The Business Associate shall not directly or indirectly receive remuneration in exchange for any protected health information, unless the Covered Entity obtained a valid authorization in accordance with HIPAA Regulations that includes a specification that protected health information can be exchanged for remuneration.

IV. OBLIGATIONS OF COVERED ENTITY

1. The Covered Entity will inform the Business Associate of any limitations in the Covered Entity's Notice of Privacy Practices in accordance with 45 CFR 164.520, to the extent that such limitation may affect the Business Associate's use or disclosure of protected health information.
2. The Covered Entity will inform the Business Associate of any changes in, or revocation of, permission by an individual to use or disclose protected health information, to the extent that such changes may affect the Business Associate's use or disclosure of protected health information.
3. The Covered Entity will inform the Business Associate of any restriction to the use or disclosure of protected health information that the Covered Entity has agreed to in accordance with HIPAA Regulations, to the extent that such restriction may affect the Business Associate's use or disclosure of protected health information.
4. Except in the event of lawful data aggregation or management and administrative activities, the Covered Entity shall not request the Business Associate to use or disclose protected health information in any manner that would not be permissible under the HIPAA Regulations, if done by the Covered Entity.

V. TERM AND TERMINATION

1. **Effect of Termination:**

- a. Except as provided in paragraph (b) of this section, upon termination of this Addendum, for any reason, the Business Associate will return or destroy all protected health information received from the Covered Entity or created, maintained, or received by the Business Associate on behalf of the Covered Entity that the Business Associate still maintains in any form and the Business Associate will retain no copies of such information.
 - b. If the Business Associate determines that returning or destroying the protected health information is not feasible, the Business Associate will provide to the Covered Entity notification of the conditions that make return or destruction infeasible. Upon a mutual determination that return or destruction of protected health information is infeasible, the Business Associate shall extend the protections of this Addendum to such protected health information and limit further uses and disclosures of such protected health information to those purposes that make return or destruction infeasible, for so long as the Business Associate maintains such protected health information.
 - c. These termination provisions will apply to protected health information that is in the possession of subcontractors, agents, or employees of the Business Associate.
2. **Term.** The Term of this Addendum shall commence as of the effective date of this Addendum herein and shall extend beyond the termination of the contract and shall terminate when all the protected health information provided by the Covered Entity to the Business Associate, or accessed, maintained, created, retained, modified, recorded, stored, or otherwise held, transmitted, used or disclosed by the Business Associate on behalf of the Covered Entity, is destroyed or returned to the Covered Entity, or, if it not feasible to return or destroy the protected health information, protections are extended to such information, in accordance with the termination.
3. **Termination for Breach of Contract.** The Business Associate agrees that the Covered Entity may immediately terminate the Contract if the Covered Entity determines that the Business Associate has violated a material part of this Addendum.

VI. MISCELLANEOUS

1. **Amendment.** The parties agree to take such action as is necessary to amend this Addendum from time to time for the Covered Entity to comply with all the requirements of HIPAA Regulations.
2. **Clarification.** This Addendum references the requirements of HIPAA Regulations, as well as amendments and/or provisions that are currently in place and any that may be forthcoming.
3. **Indemnification.** Neither party waives any right or defense to indemnification that may exist in law or equity.
4. **Interpretation.** The provisions of the Addendum shall prevail over any provisions in the Contract that may conflict or appear inconsistent with any provision in this Addendum. This Addendum and the Contract shall be interpreted as broadly as necessary to implement and comply with

HIPAA Regulations. The parties agree that any ambiguity in this Addendum shall be resolved to permit the Covered Entity and the Business Associate to comply with HIPAA Regulations.

5. **Regulatory Reference.** A reference in this Addendum to HIPAA Regulations means the sections as in effect or as amended.
6. **Survival.** The respective rights and obligations of Business Associate under Effect of Termination of this Addendum shall survive the termination of this Addendum.

VII. Prison Rape Elimination Act (PREA)

In accordance with the United States Department of Justice Final Rule, 28 C.F.R. § 115 (2003), the Prison Rape Elimination Act mandates processes to provide for the analysis of the incidence and effects of prison rape in Federal, State, and local institutions and to provide information, resources, recommendations and funding to protect individuals from prison rape.

1. Specifically, Section 312 of this Act states that:
 - a. A public agency that contracts for the confinement of its residents with private agencies or other entities, including other government agencies, shall include in any new contract or contract renewal the entity's obligation to adopt and comply with the PREA standards.
 - b. Any new contract or contract renewal shall provide for agency contract monitoring to ensure that the contractor is complying with the PREA standards.
2. Therefore, this signed attachment acknowledges you will:
 - a. Be PREA compliant and provide proof of this compliance via a PREA audit, completed within the last three (3) years, and performed by a Federal certified auditor; OR
 - b. Be actively working towards PREA compliance, with identified action plans and timelines, as established within a PREA audit as described above.
3. In addition to meeting compliance or working towards compliance, this signed attachment acknowledges you will provide to the Division of Child and Family Services PREA Coordinator all PREA allegations and administrative and criminal investigations, specifically:
 - a. PREA report (Survey of Sexual Victimization , Form SSV-IJ) as they occur;
 - b. All administrative investigations tied to each incident report, within 30 days of the date of the incident, which:
 - i. Shall be documented in a written report that includes a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings;
 - ii. Shall include an effort to determine whether staff actions or failures to act contributed to the abuse.
 - c. All criminal investigations shall be documented in a written report and provided, once completed, that contain a thorough description of physical, testimonial, and documentary evidence and attaches copies of all documentary evidence where feasible.

IN WITNESS WHEREOF, the Business Associate and the Covered Entity have agreed to the terms of the above written agreement as of the effective date set forth by the Contract.

COVERED ENTITY

BUSINESS ASSOCIATE

Division of Child and Family Services

(Enter Business Name)

4126 Technology Way, 3rd Floor

(Enter Business Address)

Carson City NV 89706

(Enter Business City, State and Zip Code)

(775) 684-4400

(Enter Business Phone Number)

(775) 684-4455

(Enter Business Fax Number)

(Authorized Signature)

(Authorized Signature)

(Print Name)

(Print Name)

Administrator, Division of Child and Family Services

(Title)

(Date)

(Date)

FISCAL PROCEDURES

FISCAL INFORMATION

1. Vendor shall maintain fiscal records necessary to correspond with the contractual rate when audited and how funds provided by this contract have been disbursed.
2. Vendor shall submit cost information in the prescribed format when requested by the Division of Child and Family Services (DCFS).
3. Vendor agrees to use the same name and address on billings as that listed on the contract, to ensure timely payment.
4. Vendor agrees to notify the DCFS Contract Monitor immediately, in writing, when a name and/or address change occurs.
5. Vendor must maintain adequate financial resources to operate all aspects of vendor's respective services for a period of no less than sixty (60) working days.

BILLING INFORMATION

1. Prior authorization is required for all services not mentioned in the scope of work.
2. Vendor will submit an invoice within 20 days from the end of the month that the services were rendered.
3. All invoices shall be submitted to the corresponding address listed on the first page of the contract or as otherwise directed by DCFS fiscal.
4. Vendors will not be paid for services that are not properly invoiced in accordance to the rates outlined in this contract.
5. All invoices will be processed within 30 days from receipt of invoice into the DCFS fiscal unit.

CONTRACT CAPITATION

Vendors are required to monitor their contract to ensure that they will not exceed the contracted consideration in section six (6) of contract for authorized services, per the scope of work, for the term of the contract. The vendor shall work with the Contract Monitor in the event that additional authority is needed.

Attachment EE
ADDITIONAL INFORMATION

Company Name

Contact Name

Physical Address

City, State Zip

Phone Number (Office)

Phone Number (Cell)

Fax Number

E-mail Address

Federal Tax ID#

Nevada Business ID (starts with NV...)

Legal Entity Name

Is "Legal Entity Name" the same name that the vendor is doing business as? ☐ Yes ☐ No

If "No," provide an explanation.

Has your company ever been engaged under contract by any State of Nevada agency? ☐ Yes ☐ No

If "Yes," provide the name and address of the agency.

Vendor # (as assigned by the State of Nevada Controller's Office, starts with T or P...)

Company Name

Service Areas Where Located and Willing to Travel to

- | | |
|--|---|
| ☐ Battle Mountain | ☐ Lovelock |
| ☐ Caliente | ☐ Mesquite |
| ☐ Carlin | ☐ Pahrump |
| ☐ Carson, Minden, Gardnerville, Genoa | ☐ Pioche |
| ☐ Elko | ☐ Reno, Sparks |
| ☐ Ely | ☐ Silver Springs, Lahontan,
Fernley |
| ☐ Fallon | ☐ Tonopah |
| ☐ Hawthorne | ☐ Virginia City, Silver City |
| ☐ Lake Tahoe, Zephyr Cove, Incline Village | ☐ Wells |
| ☐ Las Vegas, Boulder City, Indian Springs, Jean,
Henderson | ☐ Winnemucca |
| ☐ Laughlin | ☐ Yerington |