

# INDEPENDENT CONTRACTOR'S AGREEMENT

## I. INDEPENDENT CONTRACTOR INFORMATION (all information is required, including answering the questions below)

Last name	First name	Middle initial
Name of business <i>(if other than above)</i>	Social Security Number/ITIN	or EIN

**Contractor must complete and attach BCN Vendor Registration Substitute W-9 form** (forms can be downloaded from <http://www.bcn-nshe.org/downloads/?deptID=Purchasing>), as Pages 9 and 10 of this agreement.

**A) Does NSHE pay others, as employees, who perform the same duties that are to be performed by this independent contractor?**  Yes  No

**B) Is the recommended independent contractor a current or former (within the current calendar year) employee of any institution of the Nevada System of Higher Education (which includes College of Southern Nevada, Desert Research Institute, Great Basin College, Nevada State College, Truckee Meadows Community College, University of Nevada, Las Vegas, University of Nevada, Reno, Western Nevada College or any NSHE Offices)?**  Yes  No

If the answer to question A or B is "Yes", do not proceed with this form. Process the payment on an employment document.

**C) Is the recommended independent contractor a member of the same household as a NSHE employee?**  Yes  No

If the answer to question C is "Yes", do not proceed with this form. Under the Board of Regents "Conflict of Interest" policy (B/R Handbook, Title 4, Chapter 10), payment is not allowed.

**D) Does the Contractor's business have a principal who is a current or former Nevada State employee?**  Yes  No

If "Yes", Contractor must provide TMCC with a current Certificate of Good Standing issued by the Nevada Secretary of State.

**E) Is the recommended independent contractor a U.S. citizen or lawful permanent resident (green card holder)?**  Yes  No

If the answer to question E is "No", contact the Cashier's Office for additional documentation requirements and approval of Section VI, Foreign National.

## II. CONTRACT EFFECTIVE DATES, SCOPE OF SERVICES AND PAYMENT TERMS

This Contract shall be effective from \_\_\_\_\_ to \_\_\_\_\_.

**(A) Explain in detail what the independent contractor will do (specifically what will be done, where the work will be accomplished, and when the work will be completed).**



**1. Workers' Compensation and Employer's Liability Insurance**

(a) Does the Contractor have employees?  Yes  No

If the answer to question (a) is "Yes", the Contractor shall provide proof of worker's compensation insurance as required by NRS 616B.627 or proof that compliance with the provisions of Nevada Revised Statutes, Chapters 616A-D and all other related chapters, is not required.

(b) Nevada law allows the following to reject workers' compensation coverage if they do not use employees or subcontractors in the performance of work under the contract. Indicate the appropriate category below:

- Sole proprietors (NRS 616B.627 and NRS 617.210)
- Unpaid officers of quasi-public, private, or nonprofit corporations (NRS 616B.624 and NRS 617.207)
- An officer or manager of a corporation or limited liability company who owns the corporation or company (NRS 616B.624 and NRS 617.207)
- Unpaid managers of limited liability companies (NRS 616B.624 and NRS 617.207)

If a Contractor has rejected workers' compensation coverage under applicable Nevada law, the Contractor must indicate the basis for the rejection of coverage above; and complete and sign an Affidavit of Rejection of Coverage (the form can be downloaded from <http://www.tmcc.edu/budget/downloads/contracts>).

**2. Commercial General Liability (Minimum Limits)**

(a) Does the Contractor have a Commercial General Liability policy?  Yes  No

If the answer to question (a) is "Yes", the Contractor shall provide a Certificate of Insurance for Commercial General Liability with the following minimum limits:

- Each Occurrence \$1,000,000
- Products/Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- General Aggregate \$1,000,000

If the answer to question (a) is "No" or if the Contractor's limits do not meet the requirement shown above, contact the Grants, Contracts and Risk Management office at 775-674-7594.

**3. Business Auto Liability Insurance**

(a) Will the Contractor drive onto TMCC/NSHE property and/or transport TMCC/NSHE employees or student?  Yes  No

If the answer to question (a) is "No", evidence of business auto liability insurance is not required.

(b) Does the Contractor have a Business Auto Liability policy?  Yes  No

If the answers to questions (a) and (b) are "Yes", the Contractor shall provide a Certificate of Insurance for Business Auto Liability with the following minimum limits for Owned, Non-Owned, or Hired Automobiles: Per Accident, Combined Single Limit \$1,000,000.

If the answer to question (b) is "No", please contact the Grants Contracts and Risk Management office at 775-674-7594.

**4. High Risk Activities**

Activities involving aircraft, boats, and chartered buses will require additional insurance. Architects, Engineers, Construction Contractors, Professional Consultants, Medical Affiliations, and high risk activities will require higher limits than discussed above. Contact the Grants, Contracts and Risk Management office 775-674-7594 when you have a question about the nature of the activity and insurance requirements.

**V. TERMS AND CONDITIONS**

A contract between the Board of Regents of the Nevada System of Higher Education (NSHE), on behalf of Truckee Meadows Community College, hereinafter referred to as TMCC/NSHE, and the Independent Contractor, hereinafter referred to as Contractor.

**Preamble**

WHEREAS, NRS 284.173 authorizes elective officers, heads of departments, boards, commissions, or institutions to engage the services of persons as Independent Contractors; and

WHEREAS, it is deemed that the services of Contractor herein specified are both necessary and desirable and in the best interests of TMCC/NSHE; and

WHEREAS, Contractor represents that it is duly qualified and able to render the services hereinafter described:

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

1. The period of this Agreement shall be effective from dates stated on this form, unless revoked by either party as set forth in Paragraph (2).
2. This agreement may be revoked without cause by either party prior to the date set forth in Paragraph (1) by notifying the other party in writing at least ten (10) days in advance of the effective date of the termination specified in such notice.
3. The parties agree to the services to be performed. These are stated on the reverse side, or in attachments, which are made a part of the agreement by reference thereto.
4. Contractor agrees to provide the services set forth in Paragraph (3) for a total cost not to exceed the amount stated on the Payment Terms.
5. This agreement shall be construed and interpreted according to the laws of TMCC/NSHE.
6. The Contractor shall neither assign, transfer, nor delegate any rights, obligations, or duties under this agreement without the prior written consent of TMCC/NSHE.
7. The books, records, documents, and accounting procedures and practices of the Contractor relevant to this agreement shall be subject to inspection, examination, and audit by TMCC/NSHE.
8. Any reports, studies, photographs, negatives, or other documents or drawings prepared by Contractor in the performance of its obligations under this agreement shall be the exclusive property of TMCC/NSHE and all such materials, if any, shall be remitted to TMCC/NSHE by Contractor upon completion, termination, or cancellation of this agreement. Contractor shall not use, willingly allow or cause to have such materials, if any, used for any purpose other than the performance of Contractor's obligations under this agreement without the prior written consent of TMCC/NSHE.
9. Contractor agrees to indemnify and save and hold the Board of Regents of the Nevada System of Higher Education, the college, their agents, officers, and employees harmless from any and all claims, causes of action, or liability arising from the performance of this agreement by Contractor or Contractor's agents, officers, or employees.
10. The parties agree that Contractor is an Independent Contractor and that this agreement is entered into in accordance with NRS 284.173, which statute in pertinent part provides that the Contractor is not an employee of TMCC/NSHE and there shall be no:
  - (a) Withholding of income taxes by TMCC/NSHE;
  - (b) Industrial insurance coverage provided by TMCC/NSHE;
  - (c) Participation in group insurance plans which may be available to employees of TMCC/NSHE;
  - (d) Participation or contributions by either the Independent Contractor or TMCC/NSHE to the public employees' retirement system;
  - (e) Accumulation of vacation leave or sick leave;
  - (f) Unemployment compensation coverage provided by TMCC/NSHE if the requirements of NRS 612.085 for Independent 2010 Contractors are met.
11. The Nevada System of Higher Education (NSHE) is committed to providing a place of work and learning free of discrimination on the basis of a person's age, disability, whether actual or perceived by others (including service-connected disabilities), gender (including pregnancy related condition), military status or military obligations, sexual orientation, gender identity or expression, genetic information, national origin, race, or religion. Where discrimination is found to have occurred, the NSHE will act to stop the discrimination, to prevent its recurrence, to remedy its effects, and, if appropriate, to discipline those responsible.
12. This agreement constitutes the entire agreement between the parties and may only be modified by a written amendment signed by the parties.
13. Written notices required under this agreement shall be sent certified mail, return receipt requested.

14. 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) TMCC/NSHE 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 NSHE Legislature and/or federal sources. TMCC/NSHE 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 TMCC/NSHE 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 TMCC/NSHE, 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 TMCC/NSHE 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 TMCC/NSHE 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 TMCC/NSHE 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.
  - (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 (2), and the subsequent failure of the defaulting party within 10 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 amid expenses and pay those which are undisputed amid 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 prop 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 promptly deliver into TMCC/NSHE possession all proprietary information in accordance with paragraph (20).
15. 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 \$125 per hour for TMCC/NSHE - employed attorneys. TMCC/NSHE may set off consideration against any unpaid obligation of Contractor to any TMCC/NSHE agency.
16. LIMITED LIABILITY. TMCC/NSHE 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 TMCC/NSHE 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 150% of the contract maximum "not to exceed" value. Contractor's tort liability shall not be limited.
17. FORCE MAIEURE. 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, amid the excused party is obligated to promptly perform in accordance with the terms of the Contract after the intervening cause ceases.

18. **INSURANCE.** Unless expressly waived in writing by the TMCC/NSHE, Contractor, as an independent contractor and not an employee of the TMCC/NSHE, must carry policies of insurance in amounts specified in Section IV, Insurance Requirements and pay all taxes and fees incident hereunto. The TMCC/NSHE shall have no liability except as specified in this contract.
19. **GOVERNMENT OBLIGATIONS.** Contractor shall be responsible for all applicable federal, TMCC/NSHE, and local government obligations. 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 361.159. Contractor warrants that it has a valid business license. Contractor agrees to be responsibility for payment of any such government obligations not paid by its subcontractors during performance of this Contract. TMCC/NSHE may set-off against consideration due any delinquent government obligation.
20. **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.
21. **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 nonenforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.
22. **PUBLIC RECORDS.** Pursuant to NRS 239.010, Information or documents received from Contractor maybe open to public inspection and copying. TMCC/NSHE will have the duty to disclose unless a particular record is made confidential by law or a common law balancing of interests. Contractor may clearly label individual documents as a "trade secret" or "confidential" provided that Contractor thereby agrees to indemnify and defend TMCC/NSHE for honoring such a designation. The failure to so label any document that is released by TMCC/NSHE shall constitute a complete waiver of any and all claims for damages caused by any release of the records. If a public records request for a labeled document is received by TMCC/NSHE, TMCC/NSHE will notify Contractor of the request and delay access to the material until seven working days after notification to Contractor. Within that time delay, it will be the duty of Contractor to act in protection of its labeled record. Failure to so act shall constitute a complete waiver.
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 certified, 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 mi 28 C.F.R. 26.101-36.999, inclusive, amid 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 offer for employment because of race, national origin, creed, color, sex, religion, age, disability, or handicap condition (including AIDS and AIDS-related conditions.)
25. **WARRANTIES.**
  - (a) **General Warranty.** Contractor warrants that all deliverables and 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) **Millennium Compliance.** Contractor warrants that any information system application(s), during or after the calendar year 2000, 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 TMCC/NSHE. This warranty includes, without limitation, century recognition, calculations that accommodate same century and multicentury formulas and data values and date data interface values that reflect the century. Pursuant to NRS 41.0321, TMCC/NSHE is immune from liability due to any failure of millennium compliance.

26. **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 NSHE 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.

<p>CERTIFICATION: Based on the above, it is my determination that the desired service should be most properly obtained from a hired contractor. I acknowledge that TMCC may hold my department financially responsible for an additional taxes, interest and penalties that the IRS may assess due to misclassification.</p>	
Authorized Hiring Signature _____	Date _____
Printed name of authorized signer	
Department	Mailstop
Telephone Number	Fax Number

<p>AGREEMENT: I have read and agree to the above representations and assert that they are true and correct. I acknowledge that <b>payments to international contractors are subject to 30% federal income tax withholding.</b> I further agree to the scope, terms and conditions set forth by this document, and acknowledge that <b>THIS CONTRACT IS NOT FULLY EXECUTED UNTIL SECTION VIII IS COMPLETED.</b></p>		
Contractor's Signature _____		Date _____
Printed name of contractor/business name		
Address		
City	State	Zip code
Telephone Number	Fax Number	
International Address (include city or town, state or province, and postal code)		
Country		
International fax number	International telephone number	

**THIS CONTRACT IS NOT FULLY EXECUTED UNTIL SECTION VIII , APPROVAL IS COMPLETED.**

**VI. FOREIGN NATIONALS**

Foreign nationals may not be contracted, paid, or reimbursed without documentation substantiating the individual's immigration status prior to the commencement of services. Contact the Cashier's Office for information on obtaining the proper visa status for independent contractors. A checklist of additional documentation requirements for visa categories can be obtained from the Cashier's Office and approval of the non-resident alien tax specialist must be obtained. **Payments to Foreign National Contractors are subject to 30% federal income tax withholding.** All payments will be reported on Form 1042-S.

Approval of NSHE Nonresident Tax Specialist: \_\_\_\_\_ Date: \_\_\_\_\_

**VII. ACCOUNT(S) TO BE CHARGED**

NSHE may not be directly invoiced from a vendor for a contract's expenses. The total amount paid to the contractor will be subject to IRS 1099 or 1042-S (if nonresident alien) reporting guidelines.

In general, independent contractors are responsible for paying their own travel and lodging expenses. Any charges to TMCC should be made lump sum, all-inclusive of costs. TMCC will subject the entire payment to 1099 tax reporting guidelines.

Fund	AGCY	ORGN	OBJT	SOBJ	BACC	Description	Amount
<b>Total</b>							

Encumber amounts listed above  
 NOTE: If the amount of this agreement is \$2,000.00 or more, please attach a Purchase Requisition worksheet (you can download the form from <http://www.bcn-nshe.org/downloads/?deptID=Purchasing>).

Disposition of check if not to be mailed to contractor's address

All contracts and payment paperwork must be completed 10 working days prior to the services render specified in this agreement.

**Contractor must complete and attach a BCN Vendor Registration Substitute W-9 form (forms can be downloaded from <http://www.bcn-nshe.org/downloads/?deptID=Purchasing>), as Pages 9 and 10 of this agreement.**

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Department contact	Telephone Number	E-mail Address

**VIII. APPROVAL**

Board of Regents of the Nevada System of Higher Education, on behalf of Truckee Meadows Community College.

Approval Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_