



State Intermediate Educational Unit – 146 State House Station, Augusta, ME 04333  
Telephone (207) 624-6660 – Fax (207) 624-6661 – TTY-1- 888-577-6690

**CHILD DEVELOPMENT SERVICES**  
Agreement to Purchase Services

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, is by and between Child Development Services \_\_\_\_\_ hereinafter called “CDS” and \_\_\_\_\_, located at \_\_\_\_\_, telephone number \_\_\_\_\_, hereinafter called “Provider”, for the period of \_\_\_\_\_ to \_\_\_\_\_.

The CDS Vendor number of the Provider is \_\_\_\_\_.

WITNESSETH, that for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by CDS, the Provider hereby agrees with CDS to furnish all qualified personnel, facilities, materials and services and in consultation with CDS, to perform the services, study or projects in Rider A, and under the terms of the Agreement. The following riders are hereby incorporated into this Agreement and made part of it by reference:

- Rider A – Specifications of Work to be Performed
- Rider B -- Method of Payment and Other Provisions
- Rider C – Additional Provisions

IN WITNESS WHEREOF, CDS and the Provider, by their representatives duly authorized, have executed this agreement in \_\_\_\_\_ original copies.

CDS

By: \_\_\_\_\_  
Name and Title, CDS Representative

And

By: \_\_\_\_\_

By: \_\_\_\_\_  
Name and Title, Provider Representative

**RIDER A**  
**SPECIFICATIONS OF WORK TO BE PERFORMED**

1. **SERVICES.** The Provider shall provide the following services on behalf of CDS to clients referred by CDS:
  
2. **RATES.** CDS shall pay the Provider the following rate(s) for services rendered to clients referred by CDS:

**RIDER B**  
**METHOD OF PAYMENT AND OTHER PROVISIONS**

**1. INVOICES AND PAYMENTS.** CDS will pay the Provider as follows:

a. For each client served under this Agreement, CDS will notify the Provider in writing of all third-party payment sources that may be billed for services to the client, including but not limited to private or public insurance. Third-party payment sources that are included in the notification to the Provider are referred to in this Agreement as “billable third-party payers.” Only third-party payers authorized by the parent of a client will be included in the CDS notification. **The Provider will not, under any circumstances, bill any payment source other than the payment source identified by CDS, for services provided under this Agreement.**

b. Before rendering services to a client, the Provider shall enroll with billable third party payers as described in paragraph a, and shall bill those third-party payers for eligible costs prior to sending an invoice to CDS. CDS shall pay the difference between the payments received by the Provider from third party payers and the rate(s) listed in Rider A, for properly submitted invoices.

If the Provider declines to enroll with one or more billable third party payers, notwithstanding any other provision of this Agreement, CDS reserves the right to terminate the services provided to any client by the Provider immediately upon identification of a qualified provider enrolled with billable third party payers who is available to serve the client.

c. Invoices to CDS must be submitted to Child Development Services, Attn: Accounts Payable, 146 State House Station, Augusta, ME 04333, within 30 days of completion of an evaluation report or within 30 days of service delivery, unless a third party is being billed. If a third party is being billed, the invoice must be submitted to the third party within 30 days of completion of the evaluation report or within 30 days of service delivery, and an invoice for any remaining amount due must be submitted to CDS within 30 days of notice from the third-party payer of partial payment or rejection of the invoice.

d. Payment for services rendered will be made by CDS after receipt and certification of itemized invoice(s) submitted on the Provider’s usual or customary billing form or letterhead containing the information described below, along with evidence of rejection from any billable third party payers billed pursuant to paragraphs a and b.

An invoice must include:

- i. Unique invoice number;
- ii. CDS Site from which child was referred for service;
- iii. Name of child;
- iv. Date of birth;
- v. Dates of service;

- vi. Name of provider, billing address, and telephone number;
- vii. Type of service performed;
- viii. Hourly rate, which must be the rate contained in Rider A;
- ix. Number of hours billed;
- x. Third party payments received with copy of Explanation of Benefits; and
- xi. Total amount due.

In order to be paid, an invoice for services rendered must match the services(s) at the frequency and intensity contained in the client's Individualized Family Service Plan ("IFSP") or Individualized Education Program ("IEP").

e. All invoices for a given fiscal year must be received by August 15<sup>th</sup> immediately following the end of that fiscal year and must be accompanied by a list of all outstanding accounts on children served pursuant to this Agreement that are being billed to a third party. After August 15<sup>th</sup>, only invoices related to the listed outstanding accounts and received by August 30<sup>th</sup> will be paid by CDS, unless extended time is approved in writing by the local CDS site and sent to the State CDS prior to August 30<sup>th</sup>.

f. If the Provider has billed CDS for services or evaluations for a client who is subsequently determined to be eligible for MaineCare, and if CDS notifies the Provider that the Parent has authorized access to MaineCare for the services provided pursuant to this Agreement, then the Provider agrees to bill MaineCare retroactively for the maximum allowable period for any such services or evaluations, to the extent permitted by MaineCare. If any reimbursement is received from MaineCare as a result of the retroactive billing, then the amount of the reimbursement must be refunded to CDS within 30 days.

g. The Provider shall comply with the terms of the most current version of the CDS Billing Procedures.

Payments are subject to the Provider's compliance with all items set forth in this Agreement and subject to the availability of funds.

2. **BENEFITS AND DEDUCTIONS.** If the Provider is an individual, the Provider understands and agrees that he/she is an independent contractor for whom no Federal or State Income Tax will be deducted by CDS, and for whom no retirement benefits, survivor benefit insurance, group life insurance, vacation and sick leave, and similar benefits available to CDS employees will accrue. The Provider further understands that annual information returns, as required by the Internal Revenue Code or State of Maine Income Tax Law, will be filed by CDS with the Internal Revenue Service and the State of Maine Bureau of Revenue Services, copies of which will be furnished to the Provider for his/her Income Tax records.

3. **INDEPENDENT CAPACITY.** In the performance of this Agreement, the parties hereto agree that Provider, and any agents and employees of the Provider shall act in the capacity of an independent contractor and not as officers or employees or agents of CDS.

4. **CDS REPRESENTATIVE.** The Agreement Administrator shall be the CDS representative during the period of this Agreement. He/she has authority to curtail services if necessary to ensure proper execution.

5. **AGREEMENT ADMINISTRATOR.** All progress reports, correspondence and related submissions from the Provider shall be submitted to:

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

who is designated as the Agreement Administrator on behalf of CDS for this Agreement, except where specified otherwise in this Agreement.

6. **SUB-AGREEMENTS.** Unless provided for in this Agreement, no arrangement shall be made by the Provider with any other party for furnishing any of the services herein contracted for without the consent and approval of the Agreement Administrator. Any sub-agreement hereunder entered into subsequent to the execution of this Agreement must be annotated “approved” by the Agreement Administrator before it is reimbursable hereunder. This provision will not be taken as requiring the approval of contracts of employment between the Provider and its employees assigned for services thereunder.

7. **SUBLETTING, ASSIGNMENT OR TRANSFER.** The Provider shall not sublet, sell, transfer, assign or otherwise dispose of this Agreement or any portion thereof, or of its right, title, or interest therein, without written request to and written consent of the Agreement Administrator. No subcontracts or transfer of agreement shall in any case release the Provider of its liability under this Agreement.

8. **EQUAL EMPLOYMENT OPPORTUNITY.** During the performance of this Agreement, the Provider agrees as follows:

- a. The Provider shall not discriminate against any employee or applicant for employment relating to this Agreement because of race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation, unless related to a bona fide occupational qualification. The Provider shall take affirmative action to ensure that applicants are employed and employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, physical or mental disability, or sexual orientation.

Such action shall include but not be limited to the following: employment, upgrading, demotions, or transfers; recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Provider agrees to post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of this nondiscrimination clause.

- b. The Provider shall, in all solicitations or advertising for employees placed by or on behalf of the Provider relating to this Agreement, state that all qualified applicants shall receive consideration for employment without regard to race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation.
- c. The Provider shall send to each labor union or representative of the workers with which it has a collective bargaining agreement, or other agreement or understanding, whereby it is furnished with labor for the performance of this Agreement a notice to be provided by the contracting agency, advising said labor union or workers' representative of the Provider's commitment under this section and shall post copies of this notice in conspicuous places available to employees and applicants for employment.
- d. The Provider shall inform the CDS State Intermediate Educational Unit's Equal Employment Opportunity Coordinator of any discrimination brought to an external regulatory body (Maine Human Rights Commission, EEOC, Office of Civil Rights) against their agency by any individual as well as any lawsuit regarding alleged discriminatory practice.
- e. The Provider shall comply with all aspects of the Americans with Disabilities Act (ADA) in employment and in the provision of service to include accessibility and reasonable accommodations for employees and clients.
- f. Contractors and subcontractors with contracts in excess of \$50,000 shall also pursue in good faith affirmative action programs.
- g. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

9. **ACCESS TO PUBLIC RECORDS.** As a condition of accepting a contract for services under this section, a contractor must agree to treat all records, other than proprietary information, relating to personal services work performed under the contract as public records under the freedom of access laws to the same extent as if the work were performed directly by CDS. For the purposes of this subsection, "proprietary information" means information that is a trade secret or commercial or financial information, the disclosure of which would impair the competitive position of the contractor and would make available information not otherwise publicly available. Information relating to wages and benefits of the employees performing the personal services work under the contract and information concerning employee and contract oversight and accountability procedures and systems are not proprietary information. The Provider shall maintain all books, documents, payrolls, papers, accounting records and other evidence pertaining to this Agreement and make such materials available at its offices at all

reasonable times during the period of this Agreement and for five years from the end date of this Agreement. The Provider shall allow inspection of pertinent documents by CDS, the CDS State Intermediate Educational Unit, the Department of Education, or any authorized representative of the State of Maine or the Federal Government, and shall furnish copies thereof, if requested.

10. **TERMINATION.** The performance of work under the Agreement may be terminated by CDS in whole, or in part, whenever for any reason the Agreement Administrator shall determine that such termination is in the best interest of CDS. Any such termination shall be effected by delivery to the Provider of a Notice of Termination specifying the extent to which performance of the work under the Agreement is terminated and the date on which such termination becomes effective.

11. **GOVERNMENTAL REQUIREMENTS.** The Provider warrants and represents that it will comply with all governmental ordinances, laws and regulations.

12. **GOVERNING LAW.** This Agreement shall be governed in all respects by the laws, statutes, and regulations of the United States of America and the State of Maine. Any legal proceeding against CDS, the CDS State Intermediate Educational Unit, the Department of Education or the State regarding this Agreement shall be brought in State of Maine administrative or judicial forums. The Provider consents to personal jurisdiction in the State of Maine.

13. **CDS/STATE IEU/STATE HELD HARMLESS.** The Provider agrees to indemnify, defend and save harmless CDS, the CDS State Intermediate Educational Unit, the Department of Education, the State, their officers, agents and employees (hereinafter in this paragraph referred to as "indemnitees") from any and all claims, costs, expenses, injuries, liabilities, losses and damages of every kind and description (hereinafter in this paragraph referred to as "claims") resulting from or arising out of the performance of this Agreement by the Provider, its employees, agents, or subcontractors. Claims to which this indemnification applies include, but without limitation, the following: (i) claims suffered or incurred by any contractor, subcontractor, material man, laborer, and any other person, firm, corporation or other legal entity (hereinafter in this paragraph referred to as "person") providing work, services, materials, equipment or supplies in connection with the performance of this Agreement; (ii) claims arising out of a violation or infringement of any proprietary right, copyright, trademark, right of privacy or other right arising out of publication, translation, development, reproduction, delivery, use, or disposition of any data, information or other matter furnished or used in connection with this Agreement; (iii) Claims arising out of a libelous or other unlawful matter used or developed in connection with this Agreement; (iv) claims suffered or incurred by any person who may be otherwise injured or damaged in the performance of this Agreement; and (v) all legal costs and other expenses of defense against any asserted claims to which this indemnification applies. This indemnification does not extend to a claim against an indemnitee that results solely and directly from (i) negligence or unlawful act of that indemnitee, or (ii) action by the Provider taken in reasonable reliance upon an instruction or direction given by that indemnitee in accordance with this Agreement.

14. **NOTICE OF CLAIMS.** The Provider shall give the Contract Administrator immediate notice in writing of any legal action or suit filed related in any way to the Agreement or which may affect the performance of duties under the Agreement, and prompt notice of any claim made against the Provider by any subcontractor which may result in litigation related in any way to this Agreement or which may affect the performance of duties under the Agreement.

15. **LIABILITY INSURANCE.** The Provider shall keep in force a liability policy issued by a company fully licensed or designated as an eligible surplus line insurer to do business in this State by the Maine Department of Professional & Financial Regulation, Bureau of Insurance, which policy includes the activity to be covered by this Agreement with adequate liability coverage to protect itself and CDS, the State Intermediate Educational Unit, the Department of Education and the State from suits. Providers insured through a “risk retention group” insurer prior to July 1, 1991 may continue under that arrangement. Prior to or upon execution of this Agreement, the Provider shall furnish CDS with a copy of a liability insurance policy that meets the requirements of this section.

16. **NON-APPROPRIATION.** Notwithstanding any other provision of this Agreement, if CDS does not receive sufficient funds to fund this Agreement and other obligations of CDS, if funds are deappropriated, or if CDS does not receive legal authority to expend funds from the Maine State Legislature or Maine courts, then CDS is not obligated to make payment under this Agreement.

17. **SEVERABILITY.** The invalidity or unenforceability of any particular provision or part thereof of this Agreement shall not affect the remainder of said provision or any other provisions, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

18. **INTEGRATION.** All terms of this Agreement are to be interpreted in such a way as to be consistent at all times with the terms of Rider B, followed by precedent by Rider A, and any remaining Riders in alphabetical order.

19. **FORCE MAJEURE.** CDS may, at its discretion, excuse the performance of an obligation by a party under this Agreement in the event that performance of that obligation by that party is prevented by an act of God, act of war, riot, fire, explosion, flood or other catastrophe, sabotage, severe sabotage of fuel, power or raw materials, change in law, court order, national defense requirement, or strike or labor dispute, provided that any such event and the delay caused thereby is beyond the control of, and could not reasonably be avoided by, that party. CDS may, at its discretion, extend the time period for performance of the obligation excused under this section by the period of the excused delay together with a reasonable period of reinstate compliance with the terms of this Agreement.

20. **SET-OFF RIGHTS.** CDS shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, CDS’ option to withhold for the purposes of set-off any monies due to the Provider under this Agreement up to any amounts due and owing to CDS with regard to this Agreement. CDS shall exercise its set-off rights in

accordance with the normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by CDS, the Department of Education, or their representatives.

21. **ENTIRE AGREEMENT.** This documents contains the entire Agreement of the parties, and neither party shall be bound by any statement or representation not contained herein. No waiver shall be deemed to have been made by any of the parties unless expressed in writing and signed by the waiving party. The parties expressly agree that they shall not assert in any action relating to the Agreement that any implied waiver occurred between the parties which is not expressed in writing. The failure of any party to insist in any one or more instances upon strict performance of any of the terms or provisions of the Agreement, or to exercise an option or election under the Agreement, shall not be construed as a waiver or relinquishment for the future of such terms, provisions, option or election, but the same shall continue in full force and effect, and no waiver by any party of any one or more of its rights or remedies under the Agreement shall be deemed to be a waiver of any prior or subsequent rights or remedy under the Agreement or at law.

**RIDER C.**  
**ADDITIONAL PROVISIONS**

1. **REFERRALS.** This Agreement delineates the terms in the event that clients are referred to the Provider by CDS for evaluation, early intervention services, or special education and related services. Nothing in this Agreement should be construed as an entitlement on the part of the Provider to have a specific number, or any number, of clients referred by CDS over the term of the Agreement. CDS is solely responsible for deciding whether to refer any client(s) to the Provider, and, once referred, whether to continue the referral of the client(s) to the Provider.
2. **CONFIDENTIALITY.** The Provider agrees to maintain the confidentiality of information or records regarding children and families being served in accordance with the Family Educational Rights and Privacy Act (FERPA) as well as all other State and Federal laws and regulations and applicable professional standards regarding confidentiality provided that they do not conflict with FERPA. The Provider agrees to provide any information or records to CDS immediately upon request.
3. **EMPLOYEE QUALIFICATIONS.** The Provider agrees that any employees serving clients referred by CDS must maintain State of Maine licensure and/or certification under Maine Department of Education Rule, Chapters 101, the Maine Unified Special Education Regulation (referred to in this Rider as “MUSER”) and Rule, Chapter 115, both as amended, where applicable, and Provider agrees to provide verification thereof to CDS with this Agreement and at any other time upon request.

For any employee providing any services to clients of CDS who does not hold a certificate or authorization pursuant to Maine Department of Education Rule Chapter 115, the Provider shall supply CDS with evidence of an approval issued pursuant to that Chapter. The Provider agrees that CDS, and/or other public agencies, including but not limited to the Department of Education and the Department of Health and Human Services may initiate investigations of the Provider or its employees for the purpose of ensuring the health, safety and welfare of CDS clients, and shall take all steps reasonably requested in order to cooperate with any such investigation.

4. **NOTICE OF CHANGE.** The Provider agrees to promptly notify CDS of any changes involving any individual or program certification, license, liability insurance or required registration.
5. **PROGRAM APPROVAL.** The Provider agrees that, if services are provided in a program that is required to be approved under MUSER, Section XII, the services will be provided only in a program that has obtained and maintained full approval under that Section XII.
6. **COMPLIANCE WITH LAWS.** The Provider agrees to comply with the Individuals with Disabilities Education Act (IDEA) as amended, and MUSER. The Provider agrees to comply with all written policies or procedures of the Department of Education, the

State Intermediate Educational Unit, and CDS within 10 days of receipt of the policy or procedure unless additional time is agreed to by the issuing entity. The delineation of specific Provider obligations in this Agreement does not relieve Provider of responsibility for compliance with all applicable laws and regulations.

**7. IFSP/ IEP TEAM MEETING.** The Provider shall attend and participate in IFSP/ IEP Team meetings upon the request of CDS and in accordance with MUSER. Prior to any such IFSP/IEP Team meeting, the Provider shall have reviewed all applicable provisions of MUSER, including, but not limited to: evaluations, individualized plan team membership, the IEP decision-making process, eligibility criteria and procedures for determination, individualized plans, early intervention/ special education services and settings, natural environment, least restrictive environment and program settings, and early intervention/ related services.

**8. EVALUATIONS.** For Providers who are providing evaluations:

a. The Provider agrees to conduct evaluations and re-evaluations of CDS clients only upon receipt of a Referral for Evaluation Form from CDS.

b. Prior to completion of any evaluation, the Provider agrees to obtain all provider authorizations required to ensure access to billable third party payers, as described in Rider B, section 1, paragraph a. This includes primary care provider (“PCP”) referral required by MaineCare and other payers.

c. The Provider agrees to provide to CDS written evaluation reports as follows.

(i) For infants and toddlers birth-2, evaluation reports must be provided to CDS in sufficient time so that the evaluation can be mailed to the parent and so that an IFSP Team meeting may be held within 45 days of the referral to CDS.

(ii) For children ages 3-5, evaluation reports must be provided to CDS no later than 20 days from the receipt of referral from CDS so that CDS can provide the parent the report at least 3 days prior to the IEP team meeting at which the report will be discussed. The IEP team meeting will be within 60 calendar days from the date the parental consent to evaluate is received by CDS.

d. For infants and toddlers ages birth-2, the Provider agrees that their evaluations will comply with the requirements of MUSER, whether the Provider is conducting a complete evaluation or working on one portion of an evaluation conducted by a multidisciplinary team.

e. For children ages 3-5, the Provider agrees to include in the evaluation report:

- i. Evaluation date(s);
- ii. Report date;
- iii. Birthdate and age at date of evaluation;
- iv. Referral question and by whom;

- v. Relevant background information;
- vi. Observation in the learning environment (which could be conducted by another evaluator or an IEP Team member and be considered in the preparation of the report);
- vii. Clinical observation, if appropriate;
- viii. Summary of the evaluation procedures employed;
- ix. Results of information assessment procedures;
- x. Specification of the results of each evaluation with testing interpretation (including standard deviation scores). The DSM multi-axial must be included when DSM diagnostic impression is required;
- xi. Summary of the evaluation results and diagnostic impressions;
- xii. Specification of the education recommendations necessary to meet the child's educational needs; and
- xiii. If intervention is recommended, the needs that could be address in regular education or in special education, if the child is identified by the IEP Team as a child with a disability.

f. Evaluation reports shall not make either eligibility or placement determinations. The Provider acknowledges that these determinations are the responsibility of the IFSP/ IEP Team, and that in the absence of Team consensus, CDS must make the determination (subject to the parent's right to challenge CDS's determination through due process).

g. CDS reserves the right to reject, in whole or in part, any evaluation report that is untimely or fails to meet the criteria described above.

**9. EARLY INTERVENTION, SPECIAL EDUCATION and RELATED SERVICES.**

For Providers who are providing early intervention services or special education and related services:

a. The Provider agrees that an eligibility determination must be made by the IFSP/IEP Team and must be developed prior to initiation of service. Service shall begin and end according to the child's IFSP or IEP and the Referral for Service form.

b. Prior to the delivery of services, Provider agrees to obtain all provider authorization required to ensure access to billable third party payers, as described in Rider B, section 1, paragraph a. This includes primary care provider ("PCP") referrals required by MaineCare and other payers.

c. The Provider agrees to deliver services to the client that are consistent with the outcomes (for infants and toddlers with disabilities ages birth-2) or goals (for children with disabilities 3-5) established by the IFSP/ IEP Team and outlined in the IFSP/IEP.

d. The Provider agrees to develop and complete any documentation required by any third party payers in order to access payments for services to CDS clients, including, but not limited to the Plan of Care required by MaineCare.

- e. The provider agrees to provide CDS with written progress reports in accordance with the child's IFSP/IEP. Progress reports shall describe, in appropriate detail, the child's progress toward the outcomes or goals in the child's IFSP/ IEP. For children with disabilities ages 3-5, quarterly progress reports will be based on the CDS School Calendar.
- f. The Provider agrees to serve clients referred by CDS in accordance with the CDS School Year Calendar.
- g. The Provider agrees to follow Extended School Year ("ESY") requirements contained in MUSER, including the use of ESY forms required by CDS.
- h. The Provider shall provide any information or data requested by the Department of Education, the State Intermediate Education Unit, or CDS in order to assist them to comply with any Federal or State reporting requirements.
- i. The Provider shall not increase or decrease the frequency or intensity of services, discharge a client from service, or change any client's outcomes or goals without receiving notice of the change(s) in writing from CDS. Receipt of a new or amended IFSP/ IEP constitutes written notice of such a change.