



**SERVICE CONTRACT**

DATE: **12/17/2021**

ADVANTAGE CONTRACT #: **MA 18P 21120900000000000043**

DEPARTMENT AGREEMENT #: **COM-22-6503**

CONTRACT AMOUNT: \$ **Unencumbered – Work will be performed by Delivery Order**

START DATE: **12/15/2021**                      END DATE: **12/31/2026**

This Contract, is between the following Department of the State of Maine and Provider:

**State of Maine DEPARTMENT**

DEPARTMENT: **Health and Human Services**

Address: **109 Capitol Street**

City: **Augusta**

State: **ME**

Zip Code: **04333-0011**

**PROVIDER**

PROVIDER: **Maxim Healthcare Staffing Services Inc.**

Address: **12558 Collections Center Dr.**

City: **Chicago**

State: **IL**

Zip Code: **60693**

Provider's Vendor Customer #: **VS0000024362**

Each signatory below represents that the person has the requisite authority to enter into this Contract. The parties sign and cause this Contract to be executed.

**Department of Health and Human Services**

**Maxim Healthcare Staffing Services Inc.**

DocuSigned by:

DocuSigned by:

*Benjamin Mann*

*Andrea Torres*

Signature **Benjamin Mann,**  
**Deputy Commissioner of Finance**

Signature **Andrea Torres, Assistant Controller**

Date Dec-28-2021

Date Jan-06-2022

**DEPARTMENT AND PROVIDER POINT OF CONTACTS**

DEPARTMENT CONTRACT ADMINISTRATOR: The following person is designated as the Contract Administrator on behalf of the Department for this Contract. All financial reports, invoices, correspondence and related submissions from the Provider as outlined in Rider A, Reports, shall be submitted to:

Name: **Ryan Roberts, Contract Administrator**  
Email: **ryan.roberts@maine.gov**  
Address: **SHS #11, 109 Capitol St.**  
City: **Augusta** State: **ME** Zip Code: **04333-0011**  
Telephone: **207-287-6492**

DEPARTMENT PROGRAM ADMINISTRATOR: The following person is designated as the Program Administrator. This person will be able to respond to routine administrative questions pertaining to the Contract; they will not be able to alter the scope of the Contract.

Name: **Nancy Tan, Program Administrator**  
Email: **Nancy.Tan@maine.gov**  
Address: **SHS #11, 109 Capitol St.**  
City: **Augusta** State: **ME** Zip Code: **04333-0011**  
Telephone: **207-615-2431**

PROVIDER CONTACT: The following person is designated as the Contact Person on behalf of the Provider for the Contract. All contractual correspondence from the Department will be submitted to:

Name: **James Ingalls**  
Email: **jaingall@maxhealth.com**  
Address: **1685 Congress St. Suite 201**  
City: **Portland** State: **ME** Zip Code: **04102**  
Telephone: **207-560-2614**  
Provider's DUNS # **117002087**

**RIDERS**

<input checked="" type="checkbox"/>	The following riders are hereby incorporated into this Contract and made part of it by reference: (check all that apply)
<input checked="" type="checkbox"/>	Funding and Payment Rider
<input checked="" type="checkbox"/>	Rider A – Scope of Work
<input checked="" type="checkbox"/>	Rider B – Terms and Conditions
<input checked="" type="checkbox"/>	Rider D – Additional Requirements
<input checked="" type="checkbox"/>	Rider G – Identification of Country in Which Contracted Work will be Performed
<input checked="" type="checkbox"/>	Rider - Exceptions
<input checked="" type="checkbox"/>	Business Associate Agreement (BAA)
<input checked="" type="checkbox"/>	Appendix A – Contract Staffing Delivery Order Authorization Form
<input checked="" type="checkbox"/>	Appendix B – List of Resource Types Covered by Agreement

## FUNDING AND PAYMENT RIDER

### 1. FUNDING TOTAL. \$ Unencumbered – DHHS will use on an as-needed basis.

The sources of funds and compliance requirements for this Contract follow:

State General Fund / Dedicated/Special Revenue \$ Unencumbered – DHHS will use on an as-needed basis.

2. **INVOICES AND PAYMENT.** The Department will pay the Provider as follows: Payment terms are net 30 from the date the State receives a proper invoice. Invoices will only be paid against an approved Delivery Order and shall contain sufficient detail in accordance with the Delivery Order to allow proper cost allocation. Invoices shall be accompanied by all of the necessary and complete supporting documents.

Invoices for payment, submitted on forms approved by the Department. No invoice will be processed for payment until approved by the Department. All invoices require the following:

- Provider letterhead with Provider name and payment address;
- A unique invoice number;
- The DHHS Contract number for this Contract;
- The Advantage DO number for the Delivery Order;
- The invoice date and the total amount of the invoice; and
- The detailed billing data for each resource, including Department Office, Resource name, title, Resource Hourly Rate, The Markup Rate, The Resource Billable Rate, and net amount billed during period

Delivery Orders will include a Mark-up Rate using the following chart:

	<b>Mark-up Rate Provider Employee</b>
<b>Category I</b>	
Department Identified	39.00%
Provider Identified	53.00%
<b>Category II</b>	
Department Identified	39.00%
Provider Identified	53.00%
<b>Category III</b>	
Department Identified	39.00%
Provider Identified	53.00%

The Mark-up Rate is multiplied by the Resource Hourly Rate to determine the Mark-up Amount. The sum of the Resource Hourly Rate plus the Mark-up Amount is the Resource Billable Rate.

#### Standard Rates:

The Resource Hourly Rate will include at least the following:

- Basic compensation to the Resource (salary).
- Travel costs to and from the main office location.
- The Resource's portion of the costs to cover the benefits outlined in Rider A, Section III (D)(3).
- Malpractice insurance (including tail coverage), to the extent it applies to the Resource.
  - All or part of this expense may be covered through the Standard Mark-up Rate as opposed to this rate.
- At the Discretion of the Department, the Resource Hourly Rate may be increased to accommodate additional days off above the number included in the Standard Mark-up Rate. The number of additional days off shall be capped at twenty (20) per year, prorated based upon the duration of the Engagement.

To the extent the following items are experienced by the Provider, they should be included in the Standard Mark-up Rate:

- Recruitment costs.
- Applicable employment taxes.
- Workers Comp and other insurances including liability.
- Operation costs, including that of payroll/payment services and onboarding costs which includes background checks.
- Basic resource oversight and supervision.
  - To the extent there is a significant need for this role, the Provider may negotiate with the Department for a dedicated Resource to support this role.
- Personal Time-off for select Resources, which includes:
  - Ten (10) days on an annual basis in accordance with 26 MRS § 637 Earned Paid Leave and in support of 26 MRS § 636 Family Sick Leave, prorated based upon the duration of the Engagement.
  - Thirteen (13) State holidays on an annual basis, modified and prorated based upon the holidays that align with the Engagement.
- The Provider's portion of the costs to cover the benefits outlined in Rider A, Section III (D)(3).
- Malpractice insurance (including tail coverage), to the extent it applies to the Resource.
  - This is usually covered through the Resource Hourly Rate as opposed to this rate.
  - All or part of this expense may be covered through the Resource Hourly Rate as opposed to this rate.
- Profit margin.

Independent Contractor vs Provider Employee:

To the extent the Resource is an Independent Contractor to the Provider, the Standard Mark-up Rate shall be reduced, and the Resource Hourly Rate increased to accommodate the expenses that would be transferred to the Resource based upon this relationship.

Approved Overtime:

At the written approval of the Department, a premium rate may be used for hours worked over forty-five (45) in any given week. The premium rate will be capped at 1.5 times the Resource Billable Rate.

Approved Travel:

Expenses associated with approved travel costs in support of assigned work and as outlined in Rider A, Section (III)(D)(4) and identified on the Delivery Order may also be submitted on the invoice.

Delivery Orders shall be invoiced no more frequently than every two weeks.

All invoices, including the final invoice, must be submitted no later than forty-five (45) days after the last day of the month for which the service being billed for was performed. Payments are subject to the Provider's compliance with all items set forth in this Contract and subject to the availability of funds. No payment will be made if the Provider does not comply with these terms.

**RIDER A**  
**SCOPE OF WORK**

**I. DEFINITIONS**

<u>Term/Acronym</u>	<u>Definition</u>
<b>Long-term</b>	More than two thousand eighty (2,080) hours of effort provided by a Resource for a particular project.
<b>State</b>	State of Maine
<b>DHHS</b>	Department of Health and Human Services
<b>Psychiatric Hospitals</b>	Riverview Psychiatric Center and Dorothea Dix Psychiatric Center
<b>OADS</b>	The Department's Office of Aging and Disability Services
<b>OMS</b>	The Department's Office of MaineCare Services
<b>OBH</b>	The Department's Office of Behavioral Health
<b>OCFS</b>	The Department's Office of Child and Family Services
<b>MCDCP</b>	The Department's Center for Disease Control and Prevention
<b>OFI</b>	The Department's Office of Family Independence
<b>DLC</b>	The Department's Division of Licensing and Certification

- A. **Engagement** – The specific terms by which the resource is expected to work.
- B. **Employee** – A Resource who is an employee of the Provider and receives a W-2 at year end.
- C. **Independent Contractor** – A Resource who is self-employed and receives a 1099-Misc at year end.
- D. **Request** – A formal invitation sent by the Department to the Provider, looking for a Resource to be perform a specific assignment. The request will include specifics including but not limited to necessary skills and experience, typical tasks and duties, and general timeframes.
- E. **Resource** – An Employee or Independent Contractor hired by or contracted with the Provider to perform a specific assignment.
- F. **Department Identified Resource** – A Resource who is determined by the Department for which the Provider is providing payroll services.
- G. **Provider Identified Resource** – A Resources who is recruited by the Provider and approved by the Department. The Provider subsequently provides payroll services for this Resource.
- H. **Department Program Manager** - The Department employee to whom the Resource will report.

**II. INTRODUCTION/OVERVIEW**

The purpose of this agreement is to provide Long-term Resource support for a variety of Department projects on an as-needed basis. The types of resources included Traveling Resources, Laboratory/Medical Resources, and other specified Professional Resources. In most cases, the Department will require the Providers to identify and recruit Resources (Provider identified Resource) for the specific need. This Agreement is the result of and consistent with the State of Maine,

Department of Health and Human Services “Long-term Resource Support Services Request for Proposal #202108125”.

The Provider shall recruit resources and/or perform payroll services to support the Department’s contracted staffing needs.

### **III. DELIVERABLES**

The Provider shall perform all services and maintain all standards and requirements for services provided under this Agreement, and all Delivery Orders under this Agreement, in accordance with the below:

#### **A. General Requirements**

1. Provide a single point of contact for both Department staff and Resources to respond to questions and coordinate communication, as agreed upon by the Department and the Provider.
2. Provide recruitment and/or payroll services as outlined in this Contract. The Provide is authorized to provide resources from the following Categories listed in Appendix B:
  - a. Category I – Traveling Resources
  - b. Category II – Laboratory/Medical Resources
  - c. Category III – Other Specialized Professional Resources

#### **B. Recruitment Requirements**

1. Resources from this section are called Provider Identified Resources.
  - a. Resources may be an Employee of the Provider or an Independent Contractor.
2. Respond to recruitment requests made by the Department by advertising, screening, interviewing, and all other standard aspects of recruitment for finding and attracting the potential resources necessary to meet the Resource staffing needs.
3. For Requests the Provider chooses to respond to, ensure the response to requests for recruitment:
  - a. Have a minimum of one (1) proposed candidate that meets or exceeds the specifications made by the Department. The Request will specify the maximum number of candidates that can be proposed.
    - i. The Provider shall notify the Department within five (5) business days if it will be unable to propose candidates.
  - b. Are submitted within the timeframe specified by the Department.
    - i. Standard turnaround time for presenting a viable candidate that meets or exceeds the information in the Request is ten (10) business days.
    - ii. In rare cases, the request may allow additional time for the Provider to recruit the Resource. The request shall be specific to the turnaround timeframe.
  - c. When requested, include a revised and competitive Resource Mark-up rate that is preferably less than, but cannot to exceed, the capped rate identified in the Funding and Payment Rider.
  - d. In the event the Provider must recruit the Resource, the Department will work with the Provider to establish a Resource Hourly Rate to ensure ability to recruit reflects current employment market expectations.
4. Ensure the proposed candidate meets the minimum qualifications for the requested position, including any licenses/certificates required under Maine Laws.
  - a. Additional specific requirements, such as verifying the Resource status on the Office of Inspector General Medicare Exclusion list, will be included on the Request.
5. Ensure the Department is afforded the opportunity to interview any final candidate identified by the Provider.
  - a. The Department may ask the Provider to submit the resume and other related information which could include the application for employment, evidence of appropriate knowledge, experience, and competency related to the specific job responsibilities, prior job performance reviews, and employment references.
6. All costs associated with Recruitment of the Resource shall be the responsibility of the Provider, including but not limited to travel and lodging for interviews.
7. The Department will have the right to accept or reject any offer by the Provider for any proposed Resource.
8. The Department reserves the right to cancel the Request at any time.

### **C. Pre-Engagement Requirements**

1. Facilitate contingent Engagement offers to the Resource and conduct criminal background checks and/or license verifications in accordance with the Rider D, Section 18 Background Checks, including applicable out-of-State background checks and license verifications, prior to any announced start date of the intended candidate.
2. Provide written confirmation, as allowed by law, to the Department verifying the selected Resource's file is current and has been provided to the Provider's Human Resource Department, including but not limited to:
  - a. Application for Engagement
  - b. Documentation of current employment verification and background screening
  - c. Documentation of a current drug screen (when applicable)
  - d. Records of counseling and disciplinary action
  - e. Verification of a valid, in good standing Maine license to practice in their respective field from the appropriate licensing board
    - i. Applicable licensure must remain valid, in good standing throughout the term of the Contract for providing coverage services at the Department. The licensure will be as specified in the Request, or as otherwise agreed to in writing by the parties.
  - f. Verification that the Resource has good status on the Office of Inspector General Medicare Exclusion list as described in the Request.
  - g. Documentation of education and training (resume or curriculum vitae)
  - h. Evidence of appropriate knowledge, experience, and competency related to the specific job responsibilities
    - i. A competency assessment shall be provided by the Provider and used by the Department to evaluate competency.
  - i. One (1) annual packet to include yearly evaluations, competency assessments, signed confidentiality statements, and mandatory policies sign-off.
  - j. The Department may request a portion of or full documentation of the selected Resource's file.
3. Finalize the Resource Hourly Rate, Mark-up Rate, and Resource Billable Rate
  - a. When the Resource is a Provider Identified Resource, the Department will work the Provider to negotiate the Resource Hourly Rate.
    - i. The Resource Hourly Rate should include the Resource's portion of the costs to cover the benefits outlined in Rider A, Section III (D)(3)(a – b).
  - b. At the discretion of the Department, the Resource Hourly Rate may include additional Personal Time Off up to the cap specified in the Funding and Payment Rider, Section 2. This must be justified by the Provider through the response to the Request, augmented by additional information provided at the request of the Department.
  - c. The final Resource Hourly Rate, Mark-up Rate, and Resource Billable Rate must be approved by the Department.
4. Determine Resource Hours – Collaborate with the Department to determine the exact hours for the individual Resource on a case by case basis.
  - a. Resources are typically expected to have a work schedule of forty (40) hours per work week that aligns with the Department's standard operating hours of Monday - Friday, 8am–5pm (Augusta Maine time). This excludes Holidays observed by the State.
    - i. Resource Assignments may be required to provide support on Saturdays, Sundays, State Holidays and/or administrative closing days.
    - ii. Some Assignments may require alternate schedules outside the hours of 8 a.m. to 5 p.m., such as those performing work at the Psychiatric Hospitals or during a state of emergency.
    - iii. The Department and the Provider will determine the exact hours on a case by case basis.
  - b. Reimbursement will only be made for actual hours worked. Reimbursement will not be made for:
    - i. Holidays observed by the State that were not worked
    - ii. Time off for illness
    - iii. Time off for vacation or other personal time off
    - iv. For time not worked as a result of early dismissal of the Resource due to weather or other causes
5. Coordinate with the Department, the Resource's actual start date, which will be documented in the Delivery Order.
6. Follow the Department's Delivery Order process:
  - a. The Staffing Delivery Order Template that will be used for procuring these services is



presented in Appendix A. The typical process is described below.

- i. The Department will create a Staffing Delivery Order which includes, but is not limited to, the following information:
    1. The Resource name
    2. The Resource type
    3. Job description
    4. Department or Provider Identified Resource indicator
    5. Independent Contract or Provider Employee
    6. Resource Hourly rate, multiplier, and total bill rate
    7. Department Program Manager
    8. Primary work location
    9. Dates of Engagement
  - ii. Once the Department approves the Delivery Order, it will route to the State's Division of Procurement Services (part of the Department of Administrative and Financial Services) for final approval.
  - iii. Once approval is applied, the Provider will receive a copy of the Delivery Order via email.
  - iv. No work is authorized until this process is complete.
7. All costs associated with Pre-Engagement of the Resource shall be the responsibility of the Provider, including but not limited to travel and lodging for interviews

#### **D. Engagement General Requirements**

1. Provide payroll functions to Resources, including but not limited to:
  - a. Identifying the selected Resource as an Independent Contractor or Employee.
  - b. Processing weekly timecards.
  - c. Comply with all State record-keeping requirements for Human Resources/Payroll Services.
  - d. Being responsible for all payroll withholding and benefit requirements as applicable.
  - e. Preparing quarterly and annual withholding reports as required by State and Federal employment guidelines.
  - f. Perform general HR/Payroll Record keeping requirements as required by law for Human Resources/Payroll Services.
2. The Provider shall invoice the Department for time worked by the Resource. Supporting documentation shall be in the form of an electronic timecard system for the Department to approve hours worked or through some other mechanism approved in writing by the Department.
3. Benefits - Ensure the following minimum level of benefits for those Resources that are Employees of the Provider:
  - a. Provide health insurance that meets the minimum value standard of at least sixty percent (60%) of the total cost of medical services and which also provides substantial coverage for physician and inpatient hospital services and which complies with the Employer Shared Responsibility Provisions as required under the Affordable Care Act.
  - b. Provide dental insurance that covers preventative care at a minimum value standard of at least ninety-five (95%) of the total cost of dental services, with a minimum of two (2) cleanings per year, with the cost of preventive care not applying towards annual maximum benefit.
4. Travel Reimbursement –Resources who travel as part of his/her assignment may be reimbursed for all or part of their expenses. Reimbursement must have written approval of the Department and will be in accordance with the State's travel policy (<https://www.maine.gov/osc/travel>). The Provider shall:
  - a. Invoice the Department for the allowable travel costs. The invoice shall include details regarding the miles traveled, receipts for expenses and any other necessary documentation.
  - b. Adhere to requests for a detailed audit related to travel records within five (5) business days.
  - c. All travel must be preapproved by the Department.
5. Adherence to Policies as outlined by the Department Program Manager in writing during the onboarding process:
  - a. Ensure Resources adhere to State of Maine policies regarding use of State-owned equipment, confidentiality of information and any other "Statewide" policy as identified by the Department.
  - b. Ensure Resources Comply with all applicable State and federal rules, regulations and standards.
6. Remote working:
  - a. Ensure Resources who work remotely comply with all applicable federal and State privacy and

- security policies.
  - b. All tools and equipment supplied by the Department and/or OIT shall remain property of the State and shall be returned at the end of the Engagement.
  - c. Provide safeguards for Resource to perform work remotely on behalf of the Department and as approved by the Department. Safeguards might include, but are not limited to, the following: confidential working space, reliable and secure internet.
7. Leave Time, Schedule Changes, and Other Accommodations
- a. Notify the Department of approved Family Medical Leave, Workers Compensation and ADA accommodations for the Resource.
    - i. The Provider is responsible for ADA accommodations unless approved in writing by the Department.
    - b. Example: The Department will typically be responsible for ADA accommodations for Department Identified Resources.
  - c. Coordinate scheduled and unscheduled time off with the Department Program Manager.
    - i. The Department must approve scheduled time off.
    - ii. The Provider and/or Resources should notify the Department Program Manager immediately when they are expected to be absent or late.
  - d. Changes to the work schedule must be approved in advance by the Department Program Manager.
8. Overtime
- a. Overtime must be approved in advance in writing by the Department.
  - b. Reimbursement for overtime will be made for actual hours worked at the Resource Billable Rate (straight time).
    - i. At the written approval of the Department, a premium rate may be used for hours worked over forty-five (45) in any given week. The premium rate will be capped at 1.5 times the Resource Billable Rate.
9. Performance and Disciplinary Actions
- a. The Resource is expected to report to work consistently as scheduled by the Department, exhibit an appropriate degree of professionalism, and complete all required tasks as assigned.
  - b. The Department must be made aware of disciplinary discussions and written and/or verbal communications regarding or involving any Resource.
  - c. The Provider must address and work with the Resource to alleviate any performance issues, including feedback from the Department.
  - d. The Department must be consulted in decisions where the Provider believes it should terminate the Resource.
  - e. The Department reserves the right to immediately terminate the Resource/Delivery Order for Performance or when it is in the best interest of the Department.

#### **E. Termination/Resignation Requirements**

1. Coordinate and facilitate meetings with the Department and the Resource when performance concerns arise.
  - a. Prior to discussing termination of the Resource, the Department will discuss any issues relating to the individual Resource with the Provider.
  - b. The Department and the Provider shall collaborate and conduct any separation of Engagement with the individual Resource as needed.
  - c. The Resource shall be terminated immediately at the discretion of and as directed by the Department.
  - d. Any termination actions will be performed by the Provider.
2. Notify the Department immediately upon discovery of:
  - e. Any adverse action being taken by any agency of any state against a Resource's professional license; and/or
  - f. If the Resource's professional license expires during their Engagement with the Department.
3. Ensure the Department receives at least fourteen (14) calendar days written notice of the resignation of any Resource.
  - a. If the Resource resigns or separates from the Department without a fourteen (14) calendar day written notice or fails to complete their Engagement, the Provider shall deduct from their invoice to the Department the amount equal to twenty-five (25) percent of the Resource Billable Rate for each scheduled working day, for every scheduled working day the Resource was less than fourteen (14) calendar days.

- b. At the discretion of the Department:
  - i. The length of the notice may be longer than fourteen (14) calendar days. This will be designated in the Recruitment Request.
  - ii. The penalty may be waived.
- 4. In the event the Resource resigns with less than thirty (30) days into the Engagement, the Provider shall have seven (7) calendar days to present a suitable replacement to the Department that meets or exceeds the qualifications of the Resource who resigned.
  - a. In the event the Provider is unsuccessful in presenting a candidate that is accepted by the Department, the Provider shall deduct from their invoice to the Department the amount equal to twenty-five (25) percent of the Resource Billable Rate for each scheduled working day, for every scheduled working day the Resource was less than thirty (30) days.
  - b. At the discretion of the Department, the penalty may be waived.

**F. Conversion of the Resource to State Employment**

- 1. Cooperate with the Department in the instance of the Resource being selected to be hired under a State payroll line in converting the Resource in an efficient, effective, and timely manner, and in accordance with State human resources procedures.
  - a. The Department will pay the Provider a Liquidation Fee according to the following structure:
    - i. The maximum payment will be equal to ten (10) percent of the cost of first six (6) months of the engagement.
    - ii. No Liquidation Fees will be made to the Provider for transitions after the initial six (6) months of the engagement.
    - iii. If the Resource is hired in the first six (6) months, the payment will be prorated by applying to the number of months remaining in the first six (6) months of the engagement from the original six (6) months.
      - 1. For example, if four (4) months into the engagement, the provider would be entitled to one third (1/3) of the maximum payment.
      - 2. The math would be (6 months – 4 months) / 6 months.

**V. PERFORMANCE MEASURES**

In performing all services under this Agreement, the Provider shall achieve all Performance Measures listed within the Mandatory Performance Measures table directly below. Failure to achieve such Performance Measures may result in the Department withholding Agreement payment(s) to the Provider, at the discretion of the Department. The Provider shall provide additional Supportive Documentation as indicated within the table, for Department validation of the summary data submitted within the Performance Measures Report.

- 1. Perform all services under the contract by achieving all Performance Measures listed within the table below.
  - a. Submit data to support the performance measures outlined by submitting reports as outlined in the Required Reports table below. Submit data within the timeframes as outlined in the Reporting Schedule table below.
  - b. Provide additional supportive documentation for Department validation of the data submitted as reasonably requested by the Department.

<b>PROVIDER MANDATORY PERFORMANCE MEASURES</b>			
<b><u>Performance Measure Letter:</u></b>	<b><u>Performance Measure</u></b>	<b><u>Assessment Cycle</u></b>	<b><u>Supportive Documentation</u></b>
A.	# of days from date of request by Department that the Provider provides at least one (1) acceptable candidate	Quarterly	Evidence of date of Department request and Department's acceptance of at least one (1) candidate.

B.	% of candidates presented to Department that are deemed acceptable to Department	Quarterly	Names of candidates provided to, and names of candidates deemed acceptable to Department.
C.	% Resources who complete their contract term	Quarterly	Names of Resources, start dates of contracts and finish dates of contracts.
D.	% of Resources with any Department-initiated disciplinary action	Quarterly	Number of Resources for which the Provider has received notice that disciplinary action is required, and total number of Resources contracted to Hospital.

**VI. REPORTS**

A. Required Reports

The Provider shall track and record all data/information necessary to complete the reports listed in the table below:

	<b><u>Name of Report or On-Site Visit:</u></b>	<b><u>Description or Appendix #:</u></b>
1.	Performance Measures Report	Demonstrates evidence of successful recruitment, retention and performance of engagement terms.
2.	Quarterly Resource Report	List of Resources that were in an Engagement during the previous quarter. Should include:  1. The name of each Resource; 2. The position title; 3. The location of the Assignment; 4. The start date of the Assignment; 5. The end date of the Assignment; 6. The mark-up and/or billing rate; 7. The Delivery Order number; 8. Total amount of the Delivery Order; 9. The amount paid to date; and 10. The number of hours worked to date.

B. Reporting Schedule for Above listed Required Reports

The Provider shall submit all of the reports listed in the table below to the Department in accordance with the deadlines established within the table:

	<b><u>Name of Report or On-Site Visit:</u></b>	<b><u>Period Captured by Report or on-site visit:</u></b> <i>("Each year/quarter/month/week")</i>	<b><u>Due Date:</u></b> <i>("# days after each year/quarter/ month/week")</i>	<b><u>Submit reports in accordance with Department and Provider Point of Contacts Section of this Agreement to:</u></b>

1.	Performance Measures Report	Each Quarter	Thirty (30) Days After Each Quarter.	Program Administrator
2.	Quarterly Resource Report	To-Date	Thirty (30) Days After Each Quarter.	Program Administrator

The Provider understands that the reports are due within the timeframes established and that the Department will not make subsequent payment installments under this Agreement until such reports are received, reviewed, and accepted. ]

The Provider further agrees to submit such other data and reports as may be reasonably requested by the Contract Administrator.

**RIDER B**  
**TERMS AND CONDITIONS**

1. **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 the Department, and for whom no retirement benefits, survivor benefit insurance, group life insurance, vacation and sick leave, and similar benefits available to State 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 the State Controller 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.
2. **INDEPENDENT CAPACITY.** In the performance of this Contract, the parties hereto agree that the 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 the State.
3. **DEPARTMENT'S REPRESENTATIVE.** The Contract Administrator shall be the Department's representative during the period of this Contract. He/she has authority to curtail services if necessary, to ensure proper execution. He/she shall certify to the Department when payments under the Contract are due and the amounts to be paid. He/she shall make decisions on all claims of the Provider, subject to the approval of the Commissioner of the Department.
4. **CHANGES IN THE WORK.** The Department may order changes in the work, the Contract Amount being adjusted accordingly. Any monetary adjustment or any substantive change in the work shall be in the form of an amendment, signed by both parties and approved by the State Purchases Review Committee. Said amendment must be effective prior to execution of the work.
5. **SUB-AGREEMENTS.** Unless provided for in this Contract, 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 Contract Administrator. Any sub-agreement hereunder Entered into subsequent to the execution of this Contract must be annotated "approved" by the Contract 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.
6. **SUBLETTING, ASSIGNMENT OR TRANSFER.** The Provider shall not sublet, sell, transfer, assign or otherwise dispose of this Contract or any portion thereof, or of its right, title or interest therein, without written request to and written consent of the Contract Administrator. No subcontracts or transfer of Contract shall in any case release the Provider of its liability under this Contract.
7. **EQUAL EMPLOYMENT OPPORTUNITY.** During the performance of this Contract, the Provider agrees as follows:
  - a. The Provider shall not discriminate against any employee or applicant for employment relating to this Contract 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 Contract, 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 Contract, or other Contract or understanding, whereby it is furnished with labor for the performance of this Contract a notice to be provided by the contracting agency, advising the said labor union or workers' representative of the Provider's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
  - d. The Provider shall inform the contracting Department's Equal Employment Opportunity Coordinator of any discrimination complaints 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. Providers and subcontractors with Contracts in excess of \$50,000 shall also pursue in good faith affirmative action programs, which programs must conform with applicable state and federal laws, rules and regulations.
  - g. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Contract 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.
8. EMPLOYMENT AND PERSONNEL. The Provider shall not engage on a full-time, part-time or other basis during the period of this Contract, any (a) state employee or (b) any former state employee who participated in any way in the solicitation, award or administration of this Agreement. This restriction shall not apply to regularly retired employees or any employee who has out of state employment for a period of twelve (12) months.
9. WARRANTY. The Provider warrants that it has not employed or contracted with any company or person, other than for assistance with the normal study and preparation of a proposal, to solicit or secure this Contract and that it has not paid, or agreed to pay, any company or person, other than a bona fide employee working solely for the Provider, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon, or resulting from the award for making this Contract. For breach or violation of this warranty, the Department shall have the right to annul this Contract without liability or, in its discretion to otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.
10. ACCESS TO RECORDS. As a condition of accepting an Contract for services under this section, a Provider 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 the Department or agency. 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 Provider 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 Contract and make such materials available at its offices at all reasonable times during the period of this Contract and for such subsequent period as specified under Maine Uniform Accounting and Auditing Practices for Community Agencies (MAAP) rules. The Provider shall allow inspection of pertinent documents by the Department or any authorized representative of the State of Maine or Federal Government, and shall furnish copies thereof, if requested. This subsection applies to contracts, contract extensions and contract amendments executed on or after October 1, 2009.

11. TERMINATION. (a) The performance of work under the Contract may be terminated by the Department whenever for any reason the Contract Administrator shall determine that such termination is in the best interest of the Department. Any such termination shall be effected by delivery to the Provider of a Notice of Termination specifying the date on which such termination becomes effective. Upon such termination, the Department shall pay the Provider for work performed by the Provider prior to the date of Notice of Termination. (b) Either party may terminate this Agreement for cause by providing a written notice of termination stating the reason for the termination. Upon receipt of the notice of termination, the defaulting party shall have fifteen (15) business days to cure the default. If the default is of such a nature that it cannot be cured within fifteen (15) business days, the defaulting party shall have such additional time, as the parties may agree to, to cure the default, provided the defaulting party has taken steps to cure the default with the initial 15 days.
12. GOVERNMENTAL REQUIREMENTS. The Provider warrants and represents that it will comply with all governmental ordinances, laws and regulations.
13. GOVERNING LAW. This Contract shall be governed in all respects by the laws, statutes, and regulations of the United States of America and of the State of Maine. Any legal proceeding against the State regarding this Contract shall be brought in State of Maine administrative or judicial forums. The Provider consents to personal jurisdiction in the State of Maine.
14. STATE HELD HARMLESS. The Provider shall indemnify and hold harmless the Department and its officers, agents, and employees from and against any and all third party claims, liabilities, and costs, including reasonable attorney fees, for any or all injuries to persons or property or claims for money damages, including claims for violation of intellectual property rights, arising from the negligent acts or omissions of the Provider, its employees or agents, officers or Subcontractors in the performance of work under this Agreement; provided, however, the Provider shall not be liable for claims arising out of the negligent acts or omissions of the Department, or for actions taken in reasonable reliance on written instructions of the Department.
15. NOTICE OF CLAIMS. The Provider shall give the Contract Administrator immediate notice in writing of any legal action or suit filed that is related in any way to the Contract or which may affect the performance of duties under the Contract, and prompt notice of any claim made against the Provider by any subcontractor which may result in litigation related in any way to the Contract or which may affect the performance of duties under the Contract.
16. APPROVAL. This Contract must have the approval of the State Controller and the State Purchases Review Committee before it can be considered a valid, enforceable document.
17. 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 Contract with adequate liability coverage to protect itself and the Department 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 Contract, the Provider shall furnish the Department with written or photocopied verification of the existence of such liability insurance policy.

18. NON-APPROPRIATION. Notwithstanding any other provision of this Contract, if the State does not receive sufficient funds to fund this Contract and other obligations of the State, if funds are de-appropriated, or if the State does not receive legal authority to expend funds from the Maine State Legislature or Maine courts, then the State is not obligated to make payment under this Contract.
19. SEVERABILITY. The invalidity or unenforceability of any particular provision, or part thereof, of this Contract shall not affect the remainder of said provision or any other provisions, and this Contract shall be construed in all respects as if such invalid or unenforceable provision or part thereof had been omitted.
20. ORDER OF PRECEDENCE. In the event of a conflict between the documents comprising this Agreement, the Order of Precedence shall be:

- Exceptions Riders
- Rider B Terms and Conditions
- Rider A Scope of Work
- Funding and Payment Rider
- Rider D Included at Department's Discretion
- Rider E Included at Department's Discretion
- Rider F Included at Department's Discretion
- Rider G Identification of Country in which contracted work will be performed
- Business Associate Agreement included at Department's Discretion
- Other Included at Department's Discretion

21. FORCE MAJEURE. The performance of an obligation by either party shall be excused in the event that performance of that obligation is prevented by an act of God, act of war, riot, fire, explosion, flood or other catastrophe, sabotage, severe shortage 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.
22. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any monies due to the Provider under this Contract up to any amounts due and owing to the State with regard to this Contract, any other Contract, any other Contract with any State department or agency, including any Contract for a term commencing prior to the term of this Contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Controller.
23. ENTIRE CONTRACT. This document contains the entire Contract 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 Contract 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 Contract, or to exercise an option or election under the Contract, 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 Contract shall be deemed to be a waiver of any prior or subsequent rights or remedy under the

Contract or at law.

24. AMENDMENT. No changes, modifications, or amendments in the terms and conditions of this Contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Provider.
25. DEBARMENT, PERFORMANCE, AND NON-COLLUSION CERTIFICATION. By signing this Contract, the Provider certifies to the best of Provider's knowledge and belief that the aforementioned organization, its principals and any subcontractors named in this Contract:
- a. Are not presently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from bidding or working on contracts issued by any governmental agency.
  - b. Have not within three years of submitting the proposal for this contract been convicted of or had a civil judgment rendered against them for:
    - i. Fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state or local government transaction or contract.
    - ii. Violating Federal or State antitrust statutes or committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
    - iii. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
    - iv. Have not within a three (3) year period preceding this proposal had one or more federal, state or local government transactions terminated for cause or default.
  - c. Have not Entered into a prior understanding, agreement, or connection with any corporation, firm, or person submitting a response for the same materials, supplies, equipment, or services and this proposal is in all respects fair and without collusion or fraud. The above-mentioned entities understand and agree that collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards.

**RIDER D**  
**ADDITIONAL REQUIREMENTS**

1. CONFIDENTIALITY. To the extent that the services carried out under this Agreement involve the use, disclosure, access to, acquisition or maintenance of information that actually or reasonably could identify an individual or consumer receiving benefits or services from or through the Department ("Protected Information"), the Provider agrees to a) maintain the confidentiality and security of such Protected Information as required by applicable state and federal laws, rules, regulations and Department policy, b) contact the Department within 24 hours of a privacy or security incident that actually or potentially could be a breach of Protected Information and c) cooperate with the Department in its investigation and any required reporting and notification of individuals regarding such incident involving Protected Information. To the extent that a breach of Protected Information is caused by the Provider or one of its subcontractors or agents, the Provider agrees to pay the cost of notification, as well as any financial costs and/or penalties incurred by the Department as a result of such breach."

To the extent the Provider under this Agreement is considered a Business Associate under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA) and its updates and associated regulatory requirements, rules and standards, including those issued under the Health Information Technology for Economic and Clinical Care Act (HITECH), the Provider shall execute the Department's Business Associate Agreement template (BA Agreement). The terms of the BA Agreement shall be incorporated into this Agreement by reference. Provider agrees that failure of Provider to execute and deliver such BA Agreement to the Department or to adhere to the terms of the BA Agreement shall result in breach of the underlying Agreement, and that remedies available to the Department for breach of the Agreement apply hereto.

2. LOBBY. No Federal or State appropriated funds shall be expended by the Provider for influencing or attempting to influence, as prohibited by state or federal law, an officer or employee of any Federal or State agency, a member of Congress or a State Legislature, or an officer or employee of Congress or a State Legislature in connection with any of the following covered actions: the awarding of any Agreement; the making of any grant; the entering into of any cooperative agreement; or the extension, continuation, renewal, amendment, or modification of any Agreement, grant, or cooperative agreement. The signing of this Agreement fulfills the requirement that providers receiving over \$100,000 in Federal or State funds file with the Department with respect to this provision. If any other funds have been or will be paid to any person in connection with any of the covered actions specified in this provision, the Provider shall complete and submit a "Disclosure of Lobbying Activities" form available at: <https://www.gsa.gov/forms-library/disclosure-lobbying-activities>.
3. DRUG-FREE WORKPLACE. By signing this Agreement, the Provider certifies that it shall comply with the drug-free workplace requirements of the Drug-Free Workplace Act (41 U.S.C. Ch. 81) by:
  - a) publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the provider's workplace and specifying the actions that will be taken against employees for violations of the prohibition;
  - b) establishing a drug-free awareness program to inform employees about—
    - i) the dangers of drug abuse in the workplace;
    - ii) the provider's policy of maintaining a drug-free workplace;
    - iii) available drug counseling, rehabilitation, and employee assistance programs; and
    - (iv) the penalties that may be imposed on employees for drug abuse violations;
  - c) making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by subparagraph (a);

- d) notifying the employee in the statement required by subparagraph (a) that as a condition of employment in the contract the employee will—
  - i) abide by the terms of the statement; and
  - ii) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after the conviction;
- e) notifying the Department ten (10) days after receiving notice under subparagraph (d)(ii) from an employee or otherwise receiving actual notice of a conviction;
- f) imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is convicted, as required by section 8104 of this title; and
- g) making a good faith effort to continue to maintain a drug-free workplace through implementation of subparagraphs (a) to (f).

4. ENVIRONMENT TOBACCO SMOKE. By signing this Agreement, the Provider certifies that it shall comply with the Pro-Children Act of 1994, P.L. 103-227, Part C, which requires that smoking not be permitted in any portion of any indoor facility owned, leased, or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments by Federal grant, Agreement, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or MaineCare funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 per day and/or the imposition of an administrative compliance order on the responsible entity.

Also, the Provider of foster care services agrees that it will comply with Resolve 2003, c. 134, which prohibits smoking in the homes and vehicles operated by foster parents.

- 5. MEDICARE AND MAINECARE ANITI-KICKBACK. By signing this Agreement, the Provider agrees that it shall comply with the dictates of 42 U.S.C. 1320a-7b(b), which prohibits the solicitation or receipt of any direct or indirect remuneration in return for referring or arranging for the referral of an individual to a Provider of goods or services that may be paid for with Medicare, MaineCare, or state health program funds.
- 6. PUBLICATIONS. When issuing reports, brochures, or other documents describing programs funded in whole or in part with funds provided through this Agreement, the Provider agrees to clearly acknowledge the participation of the Department of Health and Human Services in the program. In addition, when issuing press releases and requests for proposals, the Provider shall clearly state the percentage of the total cost of the project or program to be financed with Agreement funds and the dollar amount of Agreement funds for the project or program.
- 7. OWNERSHIP. All notebooks, plans, working papers, data, or other work produced in the performance of this Agreement, which are related to specific deliverables under this Agreement, are the property of the Department and upon request shall be turned over to the Department.
- 8. SOFTWARE OWNERSHIP. Upon request, the State and all appropriate federal agencies shall receive a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to do so, all application software produced in the performance of this Agreement, including, but not limited to, all source, object, and executable code, data files, and job control language, or other system instructions. This requirement applies only to software that is a specific deliverable under this Agreement or is integral to the program or service funded under this Agreement and is primarily financed with funding provided under this Agreement.
- 9. PROVIDER RESPONSIBILITIES / SUB AGREEMENTS. The Provider is solely responsible for fulfillment of this Agreement with the Department. The Provider assumes responsibility for all services

offered and products to be delivered whether or not the Provider is the manufacturer or producer of said services.

a) Sub-agreements.

- i) All sub-agreements must contain the assurances of Rider B, Rider D, and Rider I of this Agreement;
- ii) All sub-agreements must be signed and delivered to the Department's Agreement Administrator within five (5) business days following the execution date of the sub-agreement.

iii) See Rider B Section 5.

b) Relationship between Provider, Subcontractor and Department. The Provider shall be wholly responsible for performance of the entire Agreement whether or not subcontractors are used. Any sub-agreement into which the Provider enters with respect to performance under this Agreement shall not relieve the Provider in any way of responsibility for performance of its duties. Further, the Department will consider the Provider to be the sole point of contact with regard to any matters related to this Agreement, including payment of any and all charges resulting from this Agreement. The Department shall bear no liability for paying the claims of any subcontractors, whether or not those claims are valid. The Provider is responsible for ensuring that all staff, employees, subcontractors, or other individuals or entities providing any services on behalf of the Provider clearly explain, verbally and in writing, to clients and families their relationship to the Provider and the Provider's relationship to the Department.

c) Liability to Subcontractor. The requirement of prior approval of any sub-agreement under this Agreement shall not make the Department a party to any sub-agreement or create any right, claim or interest in the subcontractor or proposed subcontractor against the Department. The Provider agrees to defend (subject to the approval of the Attorney General) and indemnify and hold harmless the Department against any claim, loss, damage, or liability against the Department based upon the requirements of Rider B, Section 14.

10. RENEWALS. This Agreement may be renewed at the discretion of the Department.

11. NO RULES OF CONSTRUCTIONS. The parties acknowledge that this Agreement was initially prepared by the Department solely as a convenience and that all parties hereto, and their counsel, have read and fully negotiated all the language used in the Agreement. The parties acknowledge that, because all parties and their counsel participated in negotiating and drafting this Agreement, no rule of construction shall apply to this Agreement that construes ambiguous or unclear language in favor of or against any party because such party drafted this Agreement.

12. CONFLICT OF INTEREST. The Provider covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Provider further covenants that in the performance of this Agreement, no person having any such known interests shall be employed. [See also Rider B, #8]

13. WHISTLEBLOWER PROTECTION.

- a) This Agreement and employees working on this Agreement will be subject to the whistleblower rights and remedies in the pilot program on employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and FAR 3.908.
- b) The Provider shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in section 3.908 of the Federal Acquisition Regulation.
- c) The Provider shall insert the substance of this clause, including this paragraph (c), in all subcontracts over the simplified acquisition threshold.

14. FUNDING SOURCES REDUCED. Notwithstanding any other provision of this Agreement, if the United States Government or any department of the United States Government, has de-appropriated or suspended funds for this Agreement, or where the Governor of the State of Maine has curtailed funds for this Agreement then the Department is not obligated to make payment under this Agreement to the

extent of such de-appropriation, suspension or curtailment of funds. In the event of such de-appropriation, suspension or curtailment of funds, the Agreement shall be modified accordingly.

15. CHANGE OF OPERATIONS. The Provider shall report to the Agreement Administrator and Program Administrator any anticipated changes of the Provider's operations, including but not limited to mergers, acquisitions, or closings, at the earliest possible date and no later than sixty (60) days prior to the anticipated closure date, with the exception of reasonably unforeseen circumstance.
16. TOBACCO FREE FACILITY. This policy outlines the prohibited use of tobacco products (cigarettes, cigars, chewing tobacco and any other tobacco-related substance) on the campus. This policy is applicable to all hospital staff, patients, physicians, visitors, students, volunteers, vendors, contracted and per diem employees.
17. FRAGRANCE FREE ENVIRONMENT. Chemical compositions in many fragrances pose health risks to some people. Therefore, in an effort to promote a healthy environment, The Department prohibits the use of perfume, cologne, and heavily scented products within the hospital.

This policy will apply to staff, visitors and all those served by the hospital.

Staff, patients and all visitors to the Hospital are requested to avoid the use of personal fragrances such as perfumes and colognes. The policy also addresses "heavily scented products" which include air fresheners, scented candles, potpourri and other similar personal fragrance products.

18. BACKGROUND CHECKS. The Provider agrees to conduct background checks on all employees, temporary staff persons, persons contracted or hired, consultants, volunteers, students, and other persons who may provide services under this Agreement. The results of each background check shall be made available to the Program Administrator within five (5) days of completion and prior to the person providing services under this agreement. The cost of performing each background check shall be the responsibility of the Provider. The methods of performing the background checks must first be approved by the Department in writing and will include information from the Bureau of Motor Vehicles, the Sex Offender Registry, and the Maine State Bureau of Investigation. If services to be provided under this agreement include services to minor children then the background check will include information from the Department's Office of Child and Family Services regarding substantiated findings of abuse or neglect of a child. If services to be provided under this agreement are to be performed by a person who is professionally licensed then the background check will include information from the appropriate licensing board or entity regarding the status of the person's license. The Provider must receive written permission from the Department before making any changes to such methods.

The Provider shall not hire or retain in any capacity any person who may directly provide services to a client under this Agreement if that person has a record of:

- a) any criminal conviction that involves client abuse, neglect or exploitation;
- b) any criminal conviction, classified as Class A, B or C or the equivalent of any of these, or any reckless conduct that caused, threatened, solicited or created the substantial risk of bodily injury to another person within the preceding two years; or
- c) any criminal conviction resulting from a sexual act, contact, touching or solicitation in connection to any victim.

The Provider shall not hire or retain in any capacity any person who may directly provide services to a client who is minor child under this Agreement if that person has a record of substantiated abuse or neglect of a child.

The Provider shall not hire or retain a person to perform any service under this agreement that is required to be performed by a person with an appropriate license unless it has confirmation from the appropriate licensing board or entity that the person has a license in good standing.

19. TANF SUBRECIPIENT REQUIREMENTS. To the extent the contract utilizes Temporary Assistance for Needy Families (TANF) funding, the provider acknowledges that it is aware of the "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (2 CFR 200 (Uniform Guidance), that TANF block grant funding is being used to fund the contract, to what extent TANF funding is being used and that TANF is governed by the Social Security Act, Title IV (Part A of Title IV), and TANF Regulations 45 CFR Chapter II (Parts 260 through 265)) and that it agrees that it shall:

- a) Ensure that funds are expended in accordance with state laws and procedures for the state's own funds and allow the Department to review the Provider's financial management system, in accordance with 2 CFR 200.302.
- b) Ensure that effective internal controls are used, which includes complying with federal statutes and taking prompt action in instances of non-compliance, in accordance with 2 CFR 200.303.
- c) Ensure that funds are spent in accordance with 2 CFR 200.305.
- d) Monitor program performance and, if required, submit performance reports, data on program objectives and the progress towards meeting those objectives, and additional pertinent data, in accordance with 2 CFR 200.328.
- e) Retain program, financial and statistical records for at least five years from the end of each program year, in accordance with 2 CFR 200.333.
- f) Conduct a Single Audit in accordance with 2 CFR 200 Subpart F, if applicable.

20. CLEAN AIR AND CLEAN WATER. By signing this agreement, the Provider agrees that it will comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).

**RIDER G**  
**IDENTIFICATION OF COUNTRY**  
**IN WHICH CONTRACTED WORK WILL BE PERFORMED**

Please identify the country in which the services purchased through this contract will be performed:

- United States. Please identify state: Maine
- Other. Please identify country: Enter Country

**Notification of Changes to the Information**

The Provider agrees to notify the Division of Procurement Services of any changes to the information provided above.



## EXCEPTIONS RIDER

**Rider B, Section 11, is deleted in its entirety and replaced with:**

26. TERMINATION. (a) The performance of work under the Contract may be terminated by the Department whenever for any reason the Contract Administrator shall determine that such termination is in the best interest of the Department. Any such termination shall be effected by delivery to the Provider of a Notice of Termination ~~specifying the date on which such termination becomes effective~~ **thirty (30) days in advance. Notice shall be deemed to have been duly given when received by the other party, or on the fifth (5<sup>th</sup>) business day after which the Notice of Termination is sent, either electronically or through traditional mail.** Upon such termination, the Department shall pay the Provider for work performed by the Provider prior to the date of Notice of Termination. (b) Either party may terminate this Agreement for cause by providing a written notice of termination stating the reason for the termination. Upon receipt of the notice of termination, the defaulting party shall have fifteen (15) business days to cure the default. If the default is of such a nature that it cannot be cured within fifteen (15) business days, the defaulting party shall have such additional time, as the parties may agree to, to cure the default, provided the defaulting party has taken steps to cure the default with the initial 15 days.



## Maine Department of Health and Human Services

### Business Associate Agreement

This Business Associate Agreement (“Agreement”) is made this 15<sup>th</sup> day of December, 2021 (the “Effective Date”) by and between the State of Maine, Department of Health and Human Services (the Covered Entity, hereinafter, the “Department”) and Maxim Healthcare Staffing Services, Inc. (“Business Associate”), together (the “Parties”); and

WHEREAS, Business Associate may use, disclose, create, receive, maintain or transmit protected health information in a variety of form or formats, including verbal, paper and electronic (together, “PHI”) on behalf of the Department in connection with Business Associate’s performance of its obligations under the following agreement between the parties: COM-22 6500 dated 15 December, 2021 (the “Underlying Agreement”); and

WHEREAS, the Parties intend to ensure the confidentiality, privacy and security of Department’s PHI as required by law, including the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191 (HIPAA), and its implementing regulations at 45 CFR Parts 160 and 164 (the Privacy, Security, Breach Notification and Enforcement Rules or “HIPAA Rules”) as updated by the Health Information Technology for Economic and Clinical Care Act (HITECH) enacted under Title XII of the American Recovery and Reinvestment Act of 2009, and its implementing Regulations (together, the “HIPAA and HITECH Rules”); and

WHEREAS, the Parties agree that certain federal and state laws, rules, regulations and accreditation standards also impose confidentiality restrictions that apply to this business relationship, and may include, but are not limited to: 42 CFR 2 *et. seq.*; 5 M.R.S.A. §19203-D; 22 M.R.S.A. §§42, 261, 815, 824, 833, 1494, 1596, 1711-C, 1828, 3173, 3292, 4008, 5328, 7250, 7703, 8754; 10 M.R.S.A 1346 *et. seq.*; 34-B M.R.S.A. §1207; 14-193 C.M.R, Ch. 1, Part A, § IX; and applicable accreditation standards of The Joint Commission or other appropriate accreditation body regarding confidentiality.

NOW THEREFORE, the parties agree as follows:

#### Specific Definitions for the Purpose of this Agreement:

**Breach** means the unauthorized acquisition, access, use or disclosure of PHI that compromises the security or privacy of such PHI. A security or privacy incident that involves PHI is presumed to be a breach requiring notification unless the Department proves, through specific risk analysis steps, that there is a low probability that the PHI was compromised or a) the incident does not involved unsecured PHI, or b) the incident falls into another exception or safe harbor as set forth in the HIPAA and HITECH Rules.

**Business Associate** is a person or entity that creates, receives, maintains or transmits PHI on behalf of, or provides services to, a covered entity, as set forth in the HIPAA Rules and other than in the capacity of a workforce member.

**Covered Entity** is a 1) health plan, (2) health care clearinghouse, or 3) health care provider who electronically transmits any health information in connection with transactions for which HHS has adopted standards. Generally, these electronic transactions concern billing and payment for services or insurance coverage.

**Designated Record Set** means the billing and medical records about individuals maintained by or for a covered provider: the enrollment, claims adjudication, payment, case or medical management record systems maintained by or for a health plan; or that are used in whole, or in part, by the covered entity to make decisions about individuals.

**Individual** means the person who is the subject of the PHI.

**Protected Health Information** means information that is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual and is transmitted or maintained in electronic or any other form or medium.

**Security Incident** means the attempted or successful unauthorized access, use, disclosure, modification or destruction of information [or PHI] or interference with system operation in an information system.

**Subcontractor means** a natural person, trust or estate, partnership, corporation, professional association or corporation, or other entity, public or private, to whom a business associate has delegated a function, activity, or service, other than in the capacity of a member of the workforce of such business associate.

**Unsecured Protected Health Information** means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the U.S. Department of Health and Human Services ("HHS") in its guidance.

**General Definitions.** The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA and HITECH Rules: Data Aggregation, Disclosure, Health Care Operations, Minimum Necessary, Notice of Privacy Practices, Required by Law, and Use.

## 1. Permitted Uses and Disclosures

- a. Business Associate agrees to use or disclose the PHI authorized by this Agreement only to perform the services of the Underlying Agreement between the Parties, or as required by law.
- b. Business Associate may use or disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of the Business Associate, only where a) the use or disclosure does not violate any law governing the protection of the PHI, including, but not limited to, prohibitions under 42 CFR Part 2 (Part 2 Regulations), and b) the disclosures are required by law or c) Business Associate agrees only to disclose the minimum necessary PHI to accomplish the intended purpose and i) obtains reasonable assurances from the person or entity to whom the information is disclosed that the PHI will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person or entity, and ii) the person or entity agree to immediately notify Business Associate of any instances of which it is aware that the confidentiality, privacy or security of the information has been actually or potentially breached.
- c. Business Associate may provide data aggregation services relating to the health care operations of the Department, or de-identify the Department's PHI, only when such specific services are

permissible under the Underlying Agreement or as otherwise preapproved in writing by the Department.

## 2. Obligations and Activities of the Business Associate

- a. *Compliance.* Business Associate agrees to comply with the HIPAA and HITECH Rules, and other applicable state or federal law, to ensure the protection of the Department's PHI, and only use and disclose PHI consistent with the Department's minimum necessary policy and the legal requirements of this Agreement. Business Associate may not use or disclose PHI in a manner that would violate the HIPAA or HITECH Rules or other state or federal law if performed by the Department.
- b. *Safeguards.* In complying with the HIPAA and HITECH Rules, Business Associate agrees to use appropriate administrative, technical and physical safeguards, and comply with any required security or privacy obligations, to protect the confidentiality, integrity and availability of the Department's PHI.
- c. *Reporting.* Business Associate agrees to report to the Department any inappropriate use or disclosure of the Department's PHI of which it becomes aware, i.e. any use or disclosure not permitted in this Agreement or in violation of any legal requirement, including actual and suspected breaches of unsecured PHI, and any actual or potential security incident of which it becomes aware. Such report will be made to the Department's Director of Healthcare Privacy or her designee within twenty-four (24) hours of when the Business Associate becomes aware of an actual or suspected incident or breach. In the event that a breach is determined to have occurred under the authority of the Business Associate, Business Associate will cooperate promptly with the Department to provide all specific information required by the Department for mandatory notification purposes.
- d. *Subcontractors and Agents.* In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate shall ensure that any third parties, agents or subcontractors (together, "Subcontractors") that use, disclose, create, acquire, receive, maintain, or transmit PHI on behalf of Business Associate agree to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such PHI. Business Associate shall obtain and maintain a written agreement with each Subcontractor that has or will have access, through Business Associate, to the Department's PHI, ensuring that the Subcontractor agrees to be bound to the same restrictions, terms and conditions that apply to Business Associate under this Agreement.
- e. *Mitigation.* The Business Associate shall exhaust, at its sole expense, all reasonable efforts to mitigate any harmful effect known to the Business Associate arising from the use or disclosure of PHI by Business Associate in violation of the terms of this Agreement.
- f. *Accounting of Disclosures.* To the extent required by the terms of this Agreement, Business Associate will maintain and make available the information and/or documentation required to provide an accounting of disclosures as necessary to satisfy the Department's obligations under 45 CFR 164.528.
- g. *Access.* In the event that Business Associate creates or maintains PHI in a designated record set, Business Associate will use commercially reasonable efforts to make PHI available in the format requested, and as necessary to satisfy the Department's obligation under 45 C.F.R. 164.524, within 30 days from the time of request. Business Associate will inform the Department of the individual's request within 5 (five) business days of the request.
- h. *Amendment.* In the event that Business Associate creates or maintains PHI in a designated record set, Business Associate agrees to make any amendment(s) to the PHI as directed or agreed to by the Department, or take other measures as necessary to satisfy the Department's obligations under 45 CFR 164.526, in such time period and in such manner as the Department may direct.
- i. *Restrictions.* Upon notification from the Department, Business Associate shall adhere to any restrictions on the use or disclosure of PHI agreed to by or required of the Department pursuant to 45 CFR 164.522.

- j. *Audit by the Department or the HHS Secretary.* The Business Associate will make its internal practices, books and records relating to the use or disclosure of PHI received from the Department or used, acquired, maintained, created or received by the Business Associate on behalf of the Department, available to either the Department or the HHS Secretary for the purposes of determining the compliance of either the Department or the Business Associate with the Medicaid Act, and the HIPAA and HITECH Rules, or any other federal, state or accreditation requirement. 45 C.F.R. 164.504.
- k. *Other Obligations:* To the extent that Business Associate is to carry out one or more of the Department's obligations under the HIPAA and HITECH Rules or other federal or state law, Business Associate agrees to comply with the legal requirements that apply to the Department in performing that obligation;

### 3. Obligations of the Department

- a. The Department shall notify Business Associate of a) any limitation in any applicable Notice of Privacy Practices that would affect the use or disclosure of PHI by the Business Associate and b) any changes, revocations, restrictions or permissions by an individual to the use and disclosure of his/her PHI to which the Department has agreed, to the extent such restrictions or limitations may affect the performance of Business Associate's services on behalf of the Department.
- b. The Department shall not request that Business Associate use or disclose PHI in any format, and in any manner, that would be prohibited if performed by the Department.

### 4. Hold Harmless

Business Associate agrees to indemnify and hold harmless the Department, its directors, officers, agents, shareholders, and employees against any and all claims, demands, expenses, liabilities or causes of action that arise from any use or disclosure of PHI not specifically permitted by this Agreement, applicable state or federal laws, licensing, accreditation or other requirements.

### 5. Term of Agreement

- a. *Term.* This Agreement shall be effective as of the Effective Date and shall terminate at the end of the term of the Underlying Agreement. To the extent that the Underlying Agreement automatically renews, this Agreement shall also automatically renew itself for the same renewal period unless the Department terminates this Agreement for cause as set forth in Section 5(c). Either party may terminate the Agreement consistent with the written notice provision regarding termination in the Underlying Agreement.
- b. *Auto-renewal.* In the event that this Agreement is automatically renewed, the Business Associate agrees to be bound by the terms of this Agreement and laws referenced in this Agreement that are current and in effect at the time of renewal.
- c. *Termination for Cause.* Notwithstanding the foregoing, Business Associate authorizes termination of this Agreement by the Department if the Department determines that Business Associate has violated a material term of the Agreement. The Department shall either, at its sole discretion:
  - i. Provide the Business Associate an opportunity to cure or end the violation within a time frame and upon such conditions as established by the Department; and
  - ii. Immediately terminate this Agreement in the event the Business Associate has either failed to cure in the time frame provided by the Department or if cure is not possible.
- d. *Obligations of the Business Associate upon Termination.* Upon termination of this Agreement for any reason, Business Associate, shall

- i. Return or destroy all PHI used, created, accessed, acquired, maintained, or received by the Business Associate on behalf of the Department, and retain no copies in any format. Business Associate shall ensure that its Subcontractors do the same.
- ii. If the Department agrees that Business Associate may destroy all PHI in its possession, Business Associate shall certify such destruction to the Department.
- iii. If returning or destroying PHI is not feasible, Business Associate agrees to protect the confidentiality of the PHI and retain only that PHI which is necessary for the Business Associate to continue its proper management and administration, or to carry out its legal responsibilities. Business Associate shall not use or disclose the PHI for other than the purpose for which it was retained, and return to the Department, or destroy if approved by the Department, such PHI when no longer required. Furthermore, Business Associate shall continue to use appropriate safeguards and comply with the HIPAA and HITECH Rules, other applicable state and federal law, with respect to PHI in any format for as long as Business Associate retains the PHI.
- iv. Upon appropriate direction from the Department, Business Associate shall transmit the PHI to another business associate of the Department consistent with all legal and regulatory safeguards delineated in this Agreement.

## 6. Qualified Service Organization Agreement

To the extent that in performing its services for or on behalf of the Department, Business Associate uses, discloses, maintains or transmits PHI that is protected by the Part 2 Regulations, Business Associate acknowledges that it is a Qualified Service Organization for the purpose of such federal law; acknowledges that in receiving, storing, processing or otherwise dealing with any such patient records, it is fully bound by the Part 2 Regulations; and, if necessary, will resist in judicial proceedings any efforts to obtain access to patient records except as permitted by the Part 2 Regulations.

## 7. Survival of Business Associate Obligations

The obligations of the Business Associate under this Agreement shall survive the termination of this Agreement indefinitely.

## 8. Miscellaneous

- a. *Amendment.* The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the Department to comply with the requirements of the HIPAA and HITECH Rules, and/or other applicable laws or requirements. This Agreement may only be amended in writing, signed by authorized representatives of the Parties.
- b. *Injunction.* The Department and Business Associate agree that any violation of the provisions of this Addendum may cause irreparable harm to the Department. Accordingly, in addition to any other remedies available to the Department, Department shall be entitled to seek an injunction or other decree of specific performance with respect to any violation of this Agreement or explicit threat thereof, without bond or other security being required and without the necessity of demonstrating actual damages.
- c. *Interpretation.* Any ambiguity in this Agreement shall be resolved to ensure that the Department is in compliance with the HIPAA and HITECH Rules, or other applicable laws or privacy or security requirements.
- d. *Legal References.* A reference in this Agreement to a section in the HIPAA or HITECH Rules or to other federal or state law, means the section as in effect or as amended.

IN WITNESS WHEREOF, the parties have executed this Business Associate Agreement as of the Effective Date.

Department

Signature: DocuSigned by:  
Benjamin March

Name: 2870DA6E0E76471...

Business Associate

Signature: DocuSigned by:  
Andrea Torres

Name: ADD3403299E26...

Title: Deputy Commissioner of Finance

Title: Assistant Controller

Date: Dec-28-2021

Date: Jan-06-2022

**APPENDIX A**



## APPENDIX B

### List of Resource Types Covered by Agreement

The Department has wide range of Resource Support needs that may include, but are not limited to:

#### Category I – Traveling Resources

**Examples:** Registered Nurse, Investigator

#### Category II – Laboratory/Medical Resources

**Examples:** Chemist Assistant, Chemical Safety Officer, Inventory and Property Associate, Inventory and Property Associate II, Chemist II, Microbiologist I, Microbiologist II, Microbiologist III, Bioinformatician, Quality Assurance Assistant, Quality Assurance Officer, Medical Doctors, Registered Nurse, Nursing Consultant, Medical Epidemiologist, Medical Director, Psychiatrist

#### Category III – Other Specialized Professional Resources

**Examples:** Informatics Epidemiologist, Opioid Coordinator, Syndromic Surveillance Epidemiologist, Surveillance Manager, Informatics Project Coordinator, Statistician, Environmental Specialist II, Environmental Specialist III, Field Investigators, Field Epidemiologist, Infection Prevention and Control Associates, Hepatitis Coordinator, Surveillance Epidemiologist, Vaccine Coordinator, Disease Intervention Specialist, Toxicologist, Social Services Program Manager, Social Services Program Specialist, Behavioral Health Program Coordinator, Behavioral Health Manager, Licensing Specialist, Clinical Social Worker, Behavioral Health Professional

Some Resource needs are of a similar nature, even if specific tasks are different; therefore, on a case-by-case basis, the Department may determine that Resources may serve in multiple roles that require the same skill sets.