

RIDER B
PAYMENT AND OTHER PROVISIONS

1. <u>AGREEMENT AMOUNT: \$</u>	Base Amount	\$	0.00
	Maximum Amount	\$	0.00
	Minimum Amount	\$	0.00

The Base Amount is the amount on which the agency budget, units of service to be provided, and unit cost shall be based.

The Maximum Amount is the maximum amount payable to the Provider under the Rider A performance incentive terms of this agreement. The maximum incentive amount is **\$0.00**.

The Minimum Amount is the minimum amount payable to the Provider under the Rider A performance penalty terms of this agreement. The maximum penalty amount is **\$-0.00**.

1A. **MAINECARE AGREEMENT AMOUNT.** \$ -0- (SEED ONLY)

2. **INVOICES AND PAYMENT.** The Department will pay the Provider as follows:

Subject to the availability of funds and other terms of this agreement, payments will be made to the Provider on the basis of the payment rates, amounts and frequency indicated below, not to exceed the agreement amount. Payments are subject to the Provider's compliance with all items set forth in this Agreement and subject to the availability of funds.

Payment Schedule

August 2012 or upon encumbrance	One monthly base payment of \$0.00 for the month of July 2012
August 2012	One monthly base payment of \$0.00 for the month of August, 2012 plus or minus the amount earned for the 1 st quarter based on the 4 th quarter of FY12 performance
September, 2012	One monthly base payment of \$0.00.00 for the month of September, 2012
October, 2012	One monthly base payment of \$0.00 for the month of October, 2012
November, 2012	One monthly base payment of \$0.00 for the month of November, 2012 plus or minus the amount earned for the 2 nd quarter based on the 1 st quarter performance
December, 2012	One monthly base payment of \$0.00 for the month of December 2012
January 2013	One monthly base payment of \$15,963.00 for the month of January 2013
February, 2013	One monthly base payment of \$0.00 for the month of February, 2013 plus or minus the amount earned for the 3 rd quarter based on the 2 nd quarter performance
March, 2013	One monthly base payment of \$0.00 for the month of March 2013
April, 2013	One monthly base payment of \$0.00 for the month of April 2013
May 2013	One monthly base payment of \$0.00 for the month of May, 2013 plus or minus the amount earned for the 4 th quarter based on the 3 rd quarter performance

For performance evaluation, quarters are defined as follows:

- 1st Quarter - July 1, 2012 through September 30, 2012
(Incentive paid in November 2012)
- 2nd Quarter - October 1, 2012 through December 31, 2012
(Incentive paid in February 2013)
- 3rd Quarter - January 1, 2013 through March 31, 2013
(Incentive paid in May 2013)
- 4th Quarter - April 1, 2012 through June 30, 2012
(Incentive paid in August 2012 contingent on agency contract renewed for FY2013)

Incentives or penalties shall be assessed in the 1st quarter based on the 4th quarter performance for FY12 (April 1, 2012 through June 30, 2012) and paid in August 2012.

PLEASE NOTE: If contract is funded for Outpatient care or Intensive Outpatient within this contract the percentage incentive and penalty will be based on the amounts separated out by contract for each service.

The performance of the Provider in any quarter shall be evaluated independently of any other quarter, not on a cumulative basis from quarter to quarter.

Incentives or penalties earned by the Provider in any quarter shall be applied independently of any other quarter.

The total required number of units to be delivered shall be based on the aggregate number of Outpatient and Intensive Outpatient units of service entered on the Summary of Services Purchased (Budget Form 6). When an agency is contracted for both Outpatient and Intensive Outpatient the units will be split between each service dependent on the funds allocated on Budget Form 6.

The units delivered performance of the Provider for each quarter shall be evaluated on the basis of the data reported on the Outpatient Service Delivery Reports submitted for the quarter. The Provider shall submit **Outpatient Service Delivery Reports and Wait Lists** by the required submission date to qualify for a units delivered incentive payment.

The required number of units required for each quarter is as follows:

- 1st Quarter - Intensive Outpatient – XXXXX
- 1st Quarter - Non-Intensive Outpatient -- XXXXX
- 2nd Quarter - Intensive Outpatient – XXXXX
- 2nd Quarter - Non-Intensive Outpatient -- XXXXX
- 3rd Quarter - Intensive Outpatient – XXXXX
- 3rd Quarter - Non-Intensive Outpatient -- XXXXX

4th Quarter - Intensive Outpatient – XXXXX

4th Quarter - Non-Intensive Outpatient -- XXXXX

The Access and Retention performance of the Provider for each quarter shall be based on the individual client data entered into the Treatment Data System (TDS). The Provider shall enter individual client data into the Treatment Data System (TDS) by the required submission date to qualify for an Access and Retention incentive payment.

Payments may be delayed or reduced when:

- A. The provider has not submitted required program and fiscal reports.
- B. There is an under expenditure of budgeted funds or under delivery of services amounting to 10% or more of the total agreement for 3 consecutive months.
- C. Services have been provided to ineligible recipients.
- D. An audit finding shows that the provider holds an overpayment from a prior contract.
- E. Other circumstances where, in the judgment of the Agreement Administrator, delay or reduction of payment is appropriate.

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

2A. **MAINECARE INVOICES AND PAYMENT.** Payment shall be subject to the Provider's compliance with all items set forth in this Agreement and subject to the availability of funds. Payment shall be made at the approved MaineCare rate in the MaineCare Benefits Manual, Chapter III, Section 111.

3. **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.

4. **INDEPENDENT CAPACITY.** In the performance of this Agreement, 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.

5. **DEPARTMENT'S REPRESENTATIVE.** The Agreement Administrator shall be the Department's representative during the period of this Agreement. He/she has authority to curtail services if necessary to ensure proper execution. He/she shall certify to the Department when payments under the Agreement 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.

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

Name and Title:

Address:

Telephone:

E-mail Address:

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

The following is designated as the Program Administrator for this Agreement and shall be responsible for oversight of the programmatic aspects of this Agreement.

Name and Title:

Address:

Telephone:

E-mail Address:

7. **CHANGES IN THE WORK**. The Department may order changes in the work, the Agreement 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.

8. **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.

9. **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.

10. **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 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 Agreements 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.

11. **EMPLOYMENT AND PERSONNEL.** The Provider shall not engage any person in the employ of any State Department or Agency in a position that would constitute a violation of 5 M.R.S.A. § 18 or 17 M.R.S.A. § 3104. The Provider shall not engage on a full-time, part-time or other basis during the period of this Agreement, any other personnel who are or have been at any time during the period of this Agreement in the employ of any State Department or Agency, except regularly retired employees, without the written consent of the State Purchases Review Committee. Further, the Provider shall not engage on this project on a full-time, part-time or other basis during the period of this Agreement any retired employee of the Department who has not been retired for at least one year, without the written consent of the State Purchases Review Committee. 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.

12. **STATE EMPLOYEES NOT TO BENEFIT.** No individual employed by the State at the time this Agreement is executed or any time thereafter shall be admitted to any share or part of this Agreement or to any benefit that might arise there from directly or indirectly that would constitute a violation of 5 M.R.S.A. § 18 or 17 M.R.S.A. § 3104. No other individual employed by the State at the time this Agreement is executed or any time thereafter shall be admitted to any share or part of this Agreement or to any benefit that might arise there from directly or indirectly due to his employment by or financial interest in the Provider or any affiliate of the Provider, without the written consent of the State Purchases Review Committee. 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.

13. **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 Agreement 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 Agreement. For breach or violation of this warranty, the Department shall have the right to annul this Agreement without liability or, in its discretion to otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

14. **ACCESS TO RECORDS.** As a condition of accepting an Agreement 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 Agreement 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 Agreement and information concerning employee and Agreement 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 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.

15. **TERMINATION.** The performance of work under the Agreement may be terminated by the Department in whole, or in part, whenever for any reason the Agreement 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 extent to which performance of the work under the Agreement is terminated and the date on which such termination becomes effective. The Agreement shall be equitably adjusted to compensate for such termination, and modified accordingly.

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

17. **GOVERNING LAW.** This Agreement 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 Agreement shall be brought in State of Maine administrative or judicial forums. The Provider consents to personal jurisdiction in the State of Maine.

18. **STATE HELD HARMLESS.** The Provider agrees to indemnify, defend and save harmless the State, its officers, agents and employees 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, without limitation, the following: (i) claims suffered or incurred by any Provider, subcontractor, materialman, 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 that results solely and directly from (i) the Department's negligence or unlawful act, or (ii) action by the Provider taken in reasonable reliance upon an instruction or direction given by an authorized person acting on behalf of the Department in accordance with this Agreement.

19. **NOTICE OF CLAIMS**. The Provider shall give the Agreement Administrator immediate notice in writing of any legal action or suit filed that is 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 the Agreement or which may affect the performance of duties under the Agreement.

20. **APPROVAL**. This Agreement must have the approval of the State Controller and the State Purchases Review Committee before it can be considered a valid, enforceable document.

21. **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 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 Agreement, the Provider shall furnish the Department with written or photocopied verification of the existence of such liability insurance policy.

22. **NON-APPROPRIATION**. Notwithstanding any other provision of this Agreement, if the State does not receive sufficient funds to fund this Agreement 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 Agreement.

23. **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.

24. **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 (except for expressed exceptions to Rider B included in Rider C), followed in precedence by Rider A, and any remaining Riders in alphabetical order.

25. **FORCE MAJEURE**. The Department 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 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. The Department 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 to reinstate compliance with the terms of this Agreement.

26. **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 Agreement up to any amounts due and owing to the State with regard to this Agreement, any other Agreement, any other Agreement with any State department or agency, including any Agreement for a term commencing prior to the term of this Agreement, 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.

27. **ENTIRE AGREEMENT.** This document 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.