Advantage CT #:

DHHS Agreement #:

Vendor/Customer #:

**State of Maine**

**Department of Health and Human Services**

Agreement to Purchase Services

THIS AGREEMENT, made this \_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 20\_\_, is by and between the State of Maine, Department of Health and Human Services, hereinafter called “Department,” and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ , hereinafter called “Provider”, for the period of Start Date\_\_\_\_\_\_\_\_\_\_\_\_\_ to End Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

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

|  |  |  |
| --- | --- | --- |
| Rider A  | – | Specifications of Work to be Performed  |
| Rider B  | – | Payment and Other Provisions |
| Rider D  | – | Additional Requirements |
| Rider E | – | Program Requirements |
| Rider F | – | Budget; F-1 Agreement Settlement Form; F-2 Agreement Compliance Form |
| Rider G | – | Identification of Country In Which Contracted Work Will Be Performed |
| Rider I  | – | Assurance of Compliance |
| BAA | – | Business Associate Agreement (Requires Signature) |
| Rider  | – | Exceptions |

IN WITNESS WHEREOF, the Department and the Provider, by their representatives duly authorized, have executed this agreement in one original copy.

**Department of Health and Human Services**

By:

Jeffrey Wiley, Acting Deputy Commissioner of Finance

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_

and

**Provider: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

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

Name and Title, Provider Representative

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_

Total Agreement Amount: **$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

The approval and encumbrance of this Agreement by the Chair of the State Procurement Review Committee and the State Controller is evidenced only by a stamp affixed to this page or by a Case Details Page from the Division of Procurement Services.

**RIDER A**

**SPECIFICATIONS OF WORK TO BE PERFORMED**

**RIDER B
 PAYMENT AND OTHER PROVISIONS**

1. **AGREEMENT AMOUNT: $**

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

|  |  |  |
| --- | --- | --- |
| **A. State General Fund** | **$-0-** |  |
|  |
| **B. Dedicated/Special Revenue** | **$-0-** |  |
|  |  |  |  |
| **C. Federal Funds** | **$-0-** |  |
|  |  |  |  |
| [ ]  | CFDA# & Description (CFDA Title, award name, award no., federal awarding agency):  | **$** |
|  |  |  |
|  |  |  |
| [ ]  | CFDA# & Description (CFDA Title, award name, award no., federal awarding agency): | **$** |
|  |  |  |
|  |  |  |
| [ ]  | CFDA# & Description (CFDA Title, award name, award no., federal awarding agency): | **$** |
|  |  |  |
|  |  |  |
| [ ]  | CFDA# & Description (CFDA Title, award name, award no., federal awarding agency): | **$** |
|  |  |  |
|  |  |  |

2. **INVOICES AND PAYMENT**:

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:

1. 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.

1. 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.
2. 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.
3. 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.
4. 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.
5. Providers and subcontractors with Agreements in excess of $50,000 shall also pursue in good faith affirmative action programs.
6. 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 the Exceptions Rider), 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.

**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.

1. **Lobbying.** 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: <http://www.whitehouse.gov/omb/grants/#forms>.

1. **Drug-Free Workplace.** By signing this Agreement, the Provider certifies that it shall provide a drug-free workplace by: publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, 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 violation of such prohibition; establishing a drug-free awareness program to inform employees about the dangers of drug abuse in the workplace, the Provider’s policy of maintaining a drug-free workplace, available drug counseling and rehabilitation programs, employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace; providing a copy of the drug-free workplace statement to each employee to be engaged in the performance of this Agreement; notifying the employees that as a condition of employment under the Agreement the employee will abide by the terms of the statement and notify the employer of any criminal drug conviction for a violation occurring in the workplace no later than five days after such conviction.

The Provider shall notify the state agency within ten days after receiving notice of criminal drug convictions occurring in the workplace from an employee, or otherwise receiving actual notice of such conviction, and will take one of the following actions within 30 days of receiving such notice with respect to any employee who is so convicted: take appropriate personnel action against the employee, up to and including termination, or requiring the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

1. **Debarment and Suspension.** By signing this Agreement, the Provider certifies to the best of its knowledge and belief that it and its principals:
	1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
	2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction, violation of Federal or State anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
	3. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph b of this section; and
	4. Have not within a three-year period preceding this Agreement had one or more public transactions (Federal, State or local) terminated for cause or default.

The Provider further agrees that this Debarment and Suspension Provision shall be included, without modification, in all sub-agreements.

1. **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.

1. **Medicare and MaineCare Anti-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. <http://www.gpoaccess.gov/uscode/index.html>
2. **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.
3. **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.
4. **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.
5. **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.
	1. Sub-agreements.
		1. All sub-agreements must contain the assurances of Rider B, Rider D, and Rider I of this Agreement;
		2. 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.
		3. See Rider B Section 8.
	2. 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.
	3. 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 18.
6. **Renewals.** This Agreement may be renewedat the discretion of the Department.
7. **No Rule of Construction.** 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.
8. **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, #11 and #12]**
9. **Whistleblower Protection.**
	1. 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.
	2. 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.
	3. The Provider shall insert the substance of this clause, including this paragraph (c), in all subcontracts over the simplified acquisition threshold.
10. **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.
11. **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.

1. **Termination or Change of Work Performance**.

In addition to the requirements of Rider D, Section 16, the written communication shall be specific and also include, and not be limited to, the date of expected closure, description of any and all programs affected, number of clients projected to be impacted, plans for addressing needs of the clients affected, and the name and contact information of the person(s) responsible for the care of clients affected and their records. The Provider shall assist the client and the client’s case manager or other supports in obtaining services from another provider.

* 1. The Provider shall report to the Program Administrator all major programming and structural changes in programs funded, seeded, or licensed by the Department within the timeframe noted above. Any changes that add, alter, or eliminate existing services must be negotiated and approved by the Program Administrator prior to implementation. Major program changes include, but are not limited to, the following: (1) The addition of new services or deletion of existing services; (2) Serving a population not served by the agency previously; (3) Significant increases or decreases in service capacity as defined by the governing body; (4) Significant changes in the organizational structure as defined by the governing body; (5) Changes in the executive director or name or ownership of the agency; or 6) Relocation of services.  For MaineCare funded services, the Provider shall give due process notification as required by MaineCare regulations, Chapter I, §1.03-4 of the MaineCare Benefits Manual. In addition to MaineCare Benefits Manual Chapter I, §1.03-4, the following shall apply:
		1. If a provider provides services under this Agreement and chooses to voluntarily terminate participation in MaineCare or voluntarily terminates State funded services funded in whole or part by this agreement, the provider must inform the Program Administrator of the intent. This notice should be concurrent with the notice to MaineCare as required in Chapter I. The provider is expected to work cooperatively with the Department on the planning the transition to replacement services for the affected members. In order to facilitate continuity of services for the member(s), the Department reserves the right to require that the provider continue to provide necessary services until appropriate replacement services are secured for the member(s).
		2. If a provider chooses to terminate services to a specific member or group of members, the provider must request permission to do so from the Program Administrator. Such a request must be in writing and with a minimum of 30 days advance notice. The written request must state that the provider will agree to work with the member, the Department and any potential replacement provider on the transition of services. In order to facilitate continuity of services for the member(s), the Department reserves the right to request that the provider continue to provide necessary services until appropriate replacement services are secured for the member(s).
1. **Audit.** Funds provided under this Agreement to community agencies for social services are subject to the audit requirements contained in the Maine Uniform Accounting and Auditing Practices for Community Agencies (MAAP), 2CFR Part 200.501, and may further be subject to audit by authorized representatives of the Federal Government, according to the Agreement Settlement Form (pro forma) contained in Rider F, if applicable. Agencies that expend $750,000 or more in a year in Federal Awards shall have a single or program-specific audit conducted for that year in accordance with 2CFR Part 200.501, Audits of States, Local Governments, and Non-Profit Organizations.

Please see <http://www.maine.gov/dhhs/audit/social-services/rules.shtml> for details on this requirement.

The Department’s Agreement Administrator may approve Provider submissions, but has no authority to relieve the Provider from being audited according to MAAP and Federal regulations in cases where this approval may be counter to the MAAP and Federal regulations.

1. **Motor Vehicle Check.** The Provider shall complete a check with the Bureau of Motor Vehicles on all of Provider’s staff and volunteers who transport clients or who may transport clients. This check must be completed before the Provider allows the staff person or volunteer to transport clients, and at least every two years thereafter. If the record of a staff member or volunteer contains an arrest or conviction for Operating under the Influence or any other violations which, in the judgment of the Provider, indicate an unsafe driving history within the previous three (3) years, the Provider shall not permit the staff member or volunteer to transport clients. The Provider shall implement appropriate procedures to ensure compliance with the requirements of this section.
2. **Exceptions to OMB Circulars for Non-Federally-Funded Activities.**
	1. Travel. The reimbursement rate for mileage charged to Department funded programs cannot exceed the reimbursement rate allowed for state employees. (5 M.R.S.A. §1541(13)(A)).
	2. Any other exceptions to OMB Circular A-122 are allowable only with prior written approval from the Department and must be offset against identified unrestricted non-Federal revenue.
3. **MaineCare Regulations.** Providers who receive MaineCare funds will assure that their programmatic and financial management policies and procedures are in accordance with applicable MaineCare regulations and that their staff members are familiar with the requirements of the applicable MaineCare service they are providing. Providers will ensure that they are in compliance with the applicable MaineCare regulation prior to billing for the service.
4. **Revenue Maximization.** The Provider shall conduct its services in such a way as to maximize revenues from MaineCare and other third-party sources such as private insurance as may be available to reduce the need for funds from the Department. Agreement funds may not be used to pay for services that are reimbursable by other third party sources, such as private health insurance and MaineCare, under any circumstances. It is the Provider’s obligation to seek and obtain reimbursement from other third party sources for any reimbursable services provided to covered individuals.
5. **Illegal Aliens Ineligible for State and Local Public Benefits.** Notwithstanding any other provision of this Agreement, if this Agreement is for the provision of any State or local public benefit, the Provider certifies that it shall comply with the requirements of 8 U.S.C. § 1621 regarding the ineligibility of illegal aliens for any State or local public benefits.
6. **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 allegations 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:

* 1. any criminal conviction that involves client abuse, neglect or exploitation;
	2. 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
	3. 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.

1. **Notification and Reporting.** The Provider shall follow all policies, procedures, and protocols developed by the Department, including procedures and protocols for tracking and reporting to the Program Administrator (i) reportable events; (ii) critical incidents; including all incidents of abuse and neglect or children and adults. The Provider shall develop the capacity to transmit identified uniform data elements in accordance with specifications established by the office of the Program Administrator.

Insofar as the Provider serves members of the class outlined in the “Community Consent Decree", Consumer Advisory Board v. DHHS Commissioner, No. 91-321-P-C (D. Ct. Me.), all terms and conditions of the Community Consent Decree are applicable to this Agreement. All Providers must pay particular attention to the Grievance process available to persons with developmental disabilities served by the Provider, and ensure that notice of the process is regularly provided to persons served by the Provider. Providing notice includes ensuring that written notice of the grievance process is provided to the person and/or their guardian at any planning meeting; posting notice of the grievance process in an appropriate common area of all facilities operated by the Provider; and posting notice of the grievance process on any website maintained by the Provider. In addition, the Provider must ensure that all new staff is trained in the grievance process and that it is available to all persons served by the Department. The Provider is also 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 their roles and responsibilities and include, in writing, contact information for the individual(s) responsible for responding to complaints or grievances on behalf of the Provider.

RIDER G

IDENTIFICATION OF COUNTRY

IN WHICH CONTRACTED WORK WILL BE PERFORMED

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

[x]  United States. Please identify state:

[ ]  Other. Please identify 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.

**RIDER I**

**MAINE STATE DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**ASSURANCE OF COMPLIANCE**

ASSURANCE OF COMPLIANCE WITH TITLES VI OF THE CIVIL RIGHTS ACT OF 1964, SECTION 504 OF THE REHABILITATION ACT OF 1973, TITLE IX OF THE EDUCATION AMENDMENTS OF 1972, THE AGE DISCRIMINATION ACT OF 1975, THE CODE OF FAIR PRACTICES AND AFFIRMATIVE ACTION AND STATE OF MAINE EXECUTIVE ORDER 17/FY 04/05.

The Provider/Contractor provides this assurance in consideration of and for the purpose of obtaining Federal/State grants, loans, contracts, agreements, property, discounts or other Federal/State financial assistance from the U.S./State Departments of Health and Human Services.

By signing this Agreement, Rider I Assurance of Compliance is by agreement fully incorporated into the Agreement.

THE PROVIDER/CONTRACTOR HEREBY AGREES THAT IT WILL COMPLY WITH:

1. Titles VI of the Civil Rights Act of 1964 (Pub. L. 88-352), as amended, and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Service (45 C.F.R. Part 80), to the end that, in accordance with Title VI of that Act and the Regulation, no person in the United States, shall on the grounds of race, color or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity for which the Provider/Contractor receives Federal/State financial assistance from the Department. Specifically, providers of client services shall develop clear, written communication plans, provide and document training in order to ensure that staff can communicate meaningfully with applicants/clients and/or family members who are limited English proficient (LEP); determine the primary language of applicants/clients and/or family members, and ensure that bi-lingual workers or qualified interpreters will be provided at no cost to the applicant/client.

2. Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended, and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services (45 C.F.R. Part 84), to the end that, in accordance with Section 504 of that Act and the Regulation, no otherwise qualified handicapped individual in the United States shall, solely by reason of his handicap be excluded from participation in, be denied the benefits of, or subjected to discrimination under any program or activity for which the Provider/Contractor receives Federal/State financial assistance from the Department. Specifically, providers shall develop clear, written communication plans, provide and document training in order to ensure that staff can communicate meaningfully with applicants/clients and/or family members who are deaf, hard or hearing, late deafened, speech impaired and/or nonverbal. The Provider will provide visible or tactile alarms for safety and privacy, telecommunications device for the deaf (TTY), amplified phone or fax machine, and train staff in the use of adaptive equipment. The Provider shall obtain the services of a qualified, licensed sign language interpreter or other adaptive service such as CART or C-Print at no expense to the applicant/client or family member.

3. Title IX of the Educational Amendments of 1972 (Pub. L. 92-318), as amended, and all requirements imposed by for pursuant to the Regulation of the Department of Health and Human Services (45 C.F.R. Part 86), to the end that, in accordance with Title IX and the Regulation, no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of /or be otherwise subjected to discrimination under any education program or activity for which the Provider/Contractor receives Federal/State financial assistance from the Department.

4. The Age Discrimination Act of 1975 (Pub. L. 94-135), as amended, and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services (45 C.F.R. Part 91), to the end that, in accordance with the Act and the Regulation, no person in the United States shall, on the basis of age, be denied the benefits of, be excluded from participation in or be subjected to discrimination under any program or activity for which the Provider/Contractor receives Federal/State financial assistance from the Department.

5. The Code of Fair Practices and Affirmative Action, 5 M.R.S.A. § 781 *et. seq.,* to the end that, in accordance with the Code of Fair Practices and Affirmative Action, no state or state related agency contractor, subcontractor, or labor union or representative of the workers with which the contractor has an agreement will discriminate because of race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability while providing any function or service to the public, in enforcing any regulation, or in any education, counseling, vocational guidance, apprenticeship and on the job training programs, unless based upon a bona fide occupational qualification. During the performance of this contract, the Provider/Contractor agrees as follows:

A. That it will not discriminate against any employee or applicant for employment because of race, color, religious creed, sex, national origin, ancestry, age physical or mental disability. Such action shall include, but not be limited to the following: Employment, upgrading, demotions, transfers, recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

B. The Provider/Contractor will, in all solicitations or advertisements for employees place by or on behalf of the Provider/Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability.

C. The Provider/Contractor will send to each labor union or representative of the workers with which it has a collective or bargaining agreement, or other contract or understanding, whereby he is furnished with labor for the performances of his contract, a notice, to be provided by the contracting department or agency, advising the said labor union or workers’ representative of the contractor’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/Contractor will cause the foregoing provisions to be inserted in all contracts for any work covered by this agreement so that such provisions will be binding upon each subcontractor.

E. Provider/Contractors and subcontractors with contracts in excess of $50,000 will also pursue in good faith affirmative action programs.

6. State of Maine Executive Order 17 FY 04/05 which provides that all contractors entering into contracts for services to be provided to or on behalf of the State of Maine not discriminate against any employee or applicant for employment because of that employee’s or applicant’s sexual orientation. Solicitations or advertisements for employment by the contractor or subcontractor shall state that all qualified applicants will receive consideration for employment without regard to sexual orientation. Contractor will notify each labor union or workers’ representative of the contractor’s obligations under State of Maine Executive Order 17 FY 04/05 and post such notice in conspicuous places available to employees and applicants for employment. The contractor will cause the requirement of State of Maine Executive Order 17 FY 04/05 to be inserted in all contracts for work covered by a State contract for services such that the requirements will be binding on any and all subcontractors. The Provider further stipulates that services will be provided in a culturally sensitive and age appropriate manner.

The Provider/Contractor agrees that compliance with this assurance constitutes a condition of continued receipt of Federal/State financial assistance, and that it is binding upon the Provider/Contractor, its successors, transferees and assignees for the period during which such assistance is provided. The Provider/Contractor also agrees that the Department may withhold financial assistance to any recipient found to be in violation of the Maine Human Rights Act, 5 M.R.S.A. § 4551 *et. seq.* or the Federal Civil Rights Act, 42 U.S.C. § 1981 *et. seq.* in accordance with 5 M.R.S.A. § 783. If any real property or structure thereon is provided or improved with the aid of Federal/State financial assistance extended to the Provider/Contractor by the Department, this assurance shall obligate the Provider/Contractor, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal/State financial assistance is extended or for another purpose involving the provision of similar service or benefits. If any personal property is so provided, this assurance shall obligate the Provider/Contractor for the period during which it retains ownership or possession of the property. The Provider/Contractor further recognizes and agrees that the United States shall have the right to seek judicial enforcement of the assurance.

\* Technical assistance and information relating to the requirements associated with sections 1 through 5 can be found at U.S. Health and Human Services Website: <http://www.hhs.gov/ocr/>. Technical assistance and information regarding section 1 can also be found at the U.S. Equal Employment Opportunity Commission website: [www.eeoc.gov](http://www.eeoc.gov). Technical assistance and information relating to the requirements associated with section 6 can be found at [www.maine.gov/mhrc/laws/index.html](http://www.maine.gov/mhrc/laws/index.html). Information relating to section 6 can be found at <http://www.mainelegislature.org/legis/statutes/search.asp>.