

RIDER D  
ADDITIONAL DHHS 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, or is otherwise protected by law, ("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 one (1) business day 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."

The Provider shall comply with the Maine Public Law, Title 10, Chapter 210-B (Notice of Risk to Personal Data Act).

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).
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 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.
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. The State (and the Federal Government, if Federal funds are involved) shall have unlimited rights to use, disclose, duplicate, or publish for any purpose whatsoever all information and data developed, derived, documented, or furnished by the Provider under this Agreement. The Provider shall furnish such information and data, upon the request of the Department, in accordance with applicable Federal and State laws. Any equipment or products loaned by the Department to the Provider shall remain the property of the Department. Except for reasonable wear and tear, the Provider shall be responsible for the costs of repairing, or replacing, any damage to loaned Department equipment or products. At the end of this agreement, the Provider shall immediately return any loaned equipment or products to the Department.

8. **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 and Rider D 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.
9. **RENEWALS:** This Agreement may be renewed at the discretion of the Department.
10. **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.
11. **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, Section 8]

12. **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.

13. **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.

14. **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.

15. **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 Provider shall confirm the pass/fail results of each background check with the Program Administrator upon request. The cost of performing each background check shall be the responsibility of the Provider. The methods of performing the background checks must 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 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.

16. **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.

17. **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).

18. **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), Uniform Guidance 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. Please see <http://www.maine.gov/dhhs/audit/social-services/rules.shtml> for details on this requirement.

19. **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.
  
20. **EXCEPTIONS TO OMB CIRCULARS FOR NON-FEDERALLY-FUNDED ACTIVITIES:**
  - a) 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)).
  - b) Any other exceptions to Uniform Guidance are allowable only with prior written approval from the Department and must be offset against identified unrestricted non-Federal revenue.
  
21. **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.
  
22. **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.
  
23. **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.

24. **TERMINATION OR CHANGE OF WORK PERFORMANCE:** In addition to the requirements of Rider D, Section 15, 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.

- a) 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:
- i) 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).

- ii) 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).