

Encumbrance #: 10A-20090790-00830
DHHS Agreement #: ADM-10-2009A ~~098-10~~
Vendor/Customer #: VS0000007681

**STATE OF MAINE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
American Recovery and Reinvestment Act (ARRA)
Agreement to Purchase Services**

THIS AGREEMENT, made this 1st day of July, 2009, is by and between the State of Maine, Department of Health and Human Services, hereinafter called "Department," and ABG Consulting mailing address 232 N. Raymond Road Gray, Maine 04039, physical address 232 N. Raymond Road Gray, Maine 04039, hereinafter called "Provider", for the period of 07/01/2009 to 6/30/2010.

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 and Attachments 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 C - Rider B Exceptions
- Rider D - Additional Requirements
- Rider G - Identification of Country In Which Contracted Work Will Be Performed
- Rider I - Assurance of Compliance

WITNESSETH, that this contract is consistent with Executive Order 17 FY 08/09 or a superseding Executive Order, and complies with its requirements.

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: [Signature]
Russell J. Begin, Deputy Commissioner for Finance
And

ABG CONSULTING

By: [Signature] 7-1-09
Anne B. Gass, Executive Director

ENCUMBERED
AUG 12 2009
STATE CONTROLLER

Total Agreement Amount: \$7,200.00

Approved: [Signature] AUG 12 2009
Chair, State Purchases Review Committee



**STATE OF MAINE
STANDARD AGREEMENT COVER PAGE
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**DHHS Agreement #ADM-10-200RA
AdvantageME CT #10A-20090730 - 00820**

Community Agency Name: ABG Consulting

Address: 232 N. Raymond Road Gray, ME 04039

Program Name: _____

Service: CHIPRA Grant request

Geographic Area Served: Statewide

DHHS District #

DHHS Region #

Vendor/Customer #: VS000007681

Agency Fiscal Year: 7/1 to 6/30

FOR DEPARTMENT USE ONLY

Agreement Period

Type of Agreement

Effective Date: 7/1/2009

Termination Date: 06/30/2010

Amended Effective Date: _____

Amended Termination Date: _____

Contract-State Services

Grant- Client Services

New

Renewal

Amendment

Budget Revision

CFDA #	ACCOUNT #	FY 2010 Encumbrance	FY 2011 Encumbrance	Agreement Total
1. 93.710	021-10A-0716-01-8064-4099- CSBGRA	\$7,200.00	\$0.00	\$7,200.00
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
TOTALS		\$7,200.00	\$0.00	\$7,200.00

Agreement Routing: Agreement Administrator Tom Collins
Purchased Services Manager Rob Jones

AMERICAN RECOVERY AND REINVESTMENT ACT FUNDING MATRIX

A. STATE GENERAL FUNDS \$ _____
B. FEDERAL FUNDS \$ _____
C. FEDERAL ARRA STIMULUS FUNDS \$ 7,200
E. OTHER FUNDS \$ _____

AGREEMENT TOTAL \$7,200

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

PROVIDER SUMMARY PAGE

Community Agency/Program Name: ABG Consulting

TTY: _____

Executive Director: Anne B. Gass

Telephone #: 207-657-4935 **Fax #:** _____

Address: 232 N. Raymond Road Gray, ME 04039

E-mail address: agass@maine.rr.com

Agreement Contact Person: Anne B. Gass

Telephone #: 207-657-4935 **Fax #:** _____

Address: See Exec. Director

E-mail address: See above/below

Fiscal Contact Person: _____

Telephone #: _____ **Fax #:** _____

Address: _____

E-mail address: _____

Clinical Director: _____

Telephone #: _____ **Fax #:** _____

Address: _____

E-mail address: _____

IT Services Contact: _____

Telephone #: _____ **Fax #:** _____

Address: _____

E-mail address: _____

Other Contact Information:

List all locations where client services are provided and include the contact person, telephone number, and hours of service.

Service	Service Site	Contact Person	Telephone #	Hours of Service	License Type and Capacity
Case Management	771 Main Street, Prs Isle	Susan Deschene	(207) 764-3721	8am -5 pm	LSW
Dental Education	744 Main Street, Prs Isle	Donna Kenneson	(207) 768-3026	8am – 5 pm	

RIDER A
SPECIFICATIONS OF WORK TO BE PERFORMED

I.

The Provider will assist the Department and its partners in planning and submitting a CHIPRA grant to the Federal DHHS Centers for Medicare and Medicaid Services. The Provider will:

- Be responsible for overall project management
- Consult on program design
- Write drafts of the narrative and incorporating edits
- Consult on the budget and prepare it in the form required for submission
- Provide a final draft of the narrative ready for submission
- Help to prepare the final grant for submission, including the project cover letter and abstract as well as the narrative, budget, and attachments
- Secure letters of support from the Congressional delegation
- Draft and circulate an MOU to sign with partners, if needed, or obtain other letters of support/commitment

The Department will:

- Review and comment on drafts of the narrative
- Assist with developing the budget
- Help secure signatures on needed forms
- Supply data on Department-administered programs, as required by the grant
- Complete and fax the Notice of Intent to Apply on or before July 27, 2009
- Help in finalizing MOUs, if needed
- Identify the Principal Investigator/Project Director for the grant

RIDER B
PAYMENT AND OTHER PROVISIONS
AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA)

1. **AGREEMENT AMOUNT:** **\$ 7,200.00**

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

The Department will pay the Provider upon receipt of an approved invoice. These payments will be based upon actual services delivered at the approved rate of \$100/hour up to a total of \$7,200. Payments are subject to the Provider's compliance with all items set forth in this Agreement and subject to the availability of funds.

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:	Thomas Collins
Address:	221 State Street Augusta, ME 04330
Telephone:	(207)287-8619
E-mail Address:	thomas.collins@maine.gov

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: Christine Merchant
Address: 2 Anthony Avenue 11 SHS Augusta, Maine
Telephone: (207)-624-7934
E-mail Address: Christine.Merchant@maine.gov

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. **SUBCONTRACTING AND ASSIGNMENT.** The Provider shall not assign or otherwise transfer or dispose of its right, title and interest in this Agreement without the express written consent of the Department. The Provider shall not subcontract, or make a sub-grant for, all or any portion of the work to be performed under this Agreement without the express written consent of the Department. The consent of the Department to any assignment or subcontract or sub-grant shall not relieve the Provider of its responsibility for performance of the work. The Provider shall include in any subcontract or sub-grant the terms of this Agreement set forth in Sections 1 to 36.

9. **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, and Office of Civil Rights) against their agency by any individual as well as any lawsuit regarding alleged discriminatory practice.

e. The Provider shall comply with all aspects of the Americans with Disabilities Act (ADA) in employment and in the provision of service to include accessibility and reasonable accommodations for employees and clients.

f. Contractors and subcontractors with contracts in excess of \$50,000 shall also pursue in good faith affirmative action programs.

g. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

h. The Provider shall comply with Title 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, and other civil rights laws applicable to providers of Federal financial assistance.

10. **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 MRSA § 18 or 17 MRSA § 3104. The Contractor 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.

11. **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 MRSA § 18 or 17 MRSA § 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.

12. **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.

13. **RECORD RETENTION AND INSPECTION.** The Provider shall retain during the term of this Agreement and for such subsequent period as specified under Maine Uniform Accounting and Auditing Practices for Community Agencies ("MAAP") rules all records, in whatever form, that directly pertain to, and involve the work to be performed under this Agreement. The Provider shall permit the Department or any authorized representative of the State of Maine, and the United State Controller General or his representative or the appropriate inspector general appointed under Section 3 or 8G of the Inspector General Act of 1998 or his representative (a) to examine such records; and (b) to interview any officer or employee of the Provider or any of its subcontractors or sub-grantees regarding the work performed under this Agreement. The Provider shall furnish copies of such records upon request. The Provider shall include in any subcontract or sub-grant the provisions of this Section 13.

14. **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.

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

16. **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.

17. **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, but without limitation, the following: (i) claims suffered or incurred by any contractor, 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.

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

19. **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.

20. **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.

21. **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.

22. **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.

23. **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.

245. **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.

25. 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.

26. WHISTLEBLOWER PROTECTIONS.

a. Section 1553 of Title XV of Division A of the ARRA prohibits all non-federal providers of American Recovery and Reinvestment Act (ARRA) funds, including the State of Maine, and all contractors and grantees of the State of Maine, from discharging, demoting or otherwise discriminating against an employee for disclosures by the employee that the employee reasonably believes are evidence of (1) gross mismanagement of a contract or grant relating to ARRA funds; (2) a gross waste of ARRA funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (4) an abuse of authority related to implementation or use of ARRA funds; or (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to ARRA funds. The Provider must post notice of the rights and remedies available to employees under Section 1553 of Title XV of Division A of the ARRA.

b. This term must be included in all subcontracts or sub-grants involving the use of funds made available under the ARRA.

The State of Maine is committed to ensuring that American Recovery and Reinvestment Act funds are used for authorized purposes without fraud, waste, error, or abuse. Any individual with direct knowledge that Recovery Funds are being misused, whether by fraud, waste, error, and/or abuse in the application and utilization of these funds, should report their observations to the ARRA Fraud Hotline at 1-866-224-3033 or by email to ARRA.Hotline@Maine.gov.

27. WAGE REQUIREMENTS. All laborers and mechanics employed by contractors and subcontractors on projects funded in whole or in part with funds available under the ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality, as determined by the United States Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40 of the United States Code. (See ARRA Sec. 1606). The Secretary of Labor's determination regarding the prevailing wages applicable in Maine is available at <http://www.gpo.gov/davisbacon/me.html>.

28. **REPORTING REQUIREMENT.** Not later than ten calendar days after the end of each calendar quarter, the State must submit a report that, at a minimum, contains the information specified in Section 1512 of Division A, Title XV of the ARRA. It is imperative all contracts involving the use of ARRA funds include requirements that the Provider supply the State with the necessary information to submit these reports to the federal government in a timely manner. More detail will follow regarding the timing and submission of reports. The Provider's failure to provide complete, accurate and timely reports shall constitute an "Event of Default". Upon the occurrence of an Event of Default, the state department or agency may terminate this contract upon 30 days prior written notice if the default remains uncured within five calendar days following the last day of the calendar quarter, in addition to any other remedy available to the state department or agency in law or equity.
29. **AVAILABILITY OF FUNDING.** The Provider acknowledges that the programs supported with temporary federal funds made available by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 will not be continued with state financed appropriations once the temporary federal funds are expended.
30. **FALSE CLAIMS ACT.** The Provider shall promptly refer to an appropriate federal inspector general any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor or other person has committed a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds.
31. **CONFLICTING REQUIREMENTS.** If the ARRA requirements conflict with State of Maine requirements, then ARRA requirements control.
32. **COMPETITIVE FIXED PRICE CONTRACTS.** The Provider, to the maximum extent possible, shall award any subcontracts funded, in whole or in part, with Recovery Act funds as fixed-price contracts through the use of competitive procedures.
33. **SEGREGATION OF FUNDS.** The Provider shall segregate obligations and expenditures of Recover Act funds from other funding. No part of funds made available under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 may be commingled with any other funds or used for a purpose other than that of making payments for costs allowable under the ARRA.
34. **JOB POSTING.** The Provider will post any jobs that it creates or seeks to fill as a result of this agreement. Providers will post to Maine Career Centers (<http://www.mainecareercenter.com>) notwithstanding any other posting they might make. Any advertisements posted by the provider for positions pursuant to this contract must indicate the position is funded with ARRA funds.
35. **BUY AMERICAN REQUIREMENT.** The provider acknowledges and agrees that:
- a. The Buy American provision in Section 1605 of Division A, Title XVI of the ARRA requires that all "iron, steel and manufactured goods used in the construction, alteration, maintenance or repair of a "public building or public work funded in whole or in part by funds made available under the ARRA be "produced in the United States," unless this requirement is waived by the appropriate federal agency.
 - b. Iron and steel are "produced in the United States" if all of the manufacturing processes, except metallurgical processes involving refinement of steel additives, take place in the United

States. Iron or steel used as components or subcomponents of manufactured goods used in an ARRA-funded project; however, do not have to be "produced in the United States." Manufactured goods are "produced in the United States" if the manufacturing occurs in the United States (there is no requirement about the origin of the components or subcomponents of the manufactured goods).

c. The Buy American requirement may be waived by federal agencies in the following circumstances only: (1) application of the Buy American requirement would be inconsistent with the public interest; (2) iron, steel and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; (3) or inclusion of iron, steel or manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

d. As used in this Section, "steel" means any alloy that includes at least 50 percent iron, between .02 and 2 percent carbons, and may include other elements. "Manufactured good" means a good brought to the construction site for incorporation into the building or work that has been – (1) processed into a specific form and shape; or (2) combined with other raw material that has different properties than the properties of individual raw materials. "Public building or public work" means a public building of, and a public work of, the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State regional or interstate entities which have governmental functions).

36. **RECOVERY ACT LOGO** The Provider is receiving funding under the American Recovery and Reinvestment Act of 2009 (Recovery Act). Any product or service resulting from this award shall display the Recovery Act Logo in a manner that informs the public that the project is a Recovery Act investment. The ARRA logo may be obtained at the following website:

<http://www.recovery.gov/?q=content/president-and-vice-president-unveil-new-recovery-emblem-download-available>

{ANY ADDITIONAL DEPARTMENT LOGO SPECIFICATIONS MAY BE PLACED IN THIS SECTION }

37. **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 C
EXCEPTIONS TO RIDER B

No exceptions to Rider B are included in this contract.

Rider D Additional Requirements

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-III), Federal OMB Circular A-110, 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. This provision does not apply to contracts that provide only MaineCare seed funds.

Please see <http://www.maine.gov/sos/cec/rules/10/chaps10.htm> for details on this requirement.

2. REPORTING SUSPECTED ABUSE OR NEGLECT. The Provider shall comply with the DHHS rules for reporting abuse or neglect of children or adults pursuant to 22 MRSA §§ 3477 and 4011-A. In addition, the Provider agrees to follow the DHHS rules on reportable events pursuant to 14-197 CMR ch. 12.

3. CONFIDENTIALITY. The provider shall comply with Federal and State statutes and regulations for the protection of information of a confidential nature regarding all persons served under the terms of this Agreement. In addition, the provider shall comply with Title II, Subtitle F, Section 261-264 of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, titled "Administrative Simplification" and the rules and regulations promulgated thereunder.

To the extent the Provider is considered a Business Associate under HIPAA, the Provider shall execute and deliver in form acceptable to the Department a Business Associate agreement (BA agreement). The terms of the BA agreement shall be incorporated into this Agreement by reference. The Department shall have recourse to such remedies as are provided for in this Agreement for breach of contract, in the event the Provider either fails to execute and deliver such BA agreement to the Department or fails to adhere to the terms of the BA Agreement.

4. 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>.

5. 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 grantee'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 grantee'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.

6. DEBARMENT AND SUSPENSION. By signing this agreement, the Provider certifies to the best of its knowledge and belief that it and all persons associated with the agreement, including persons or corporations who have critical influence on or control over the agreement, are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

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

7. 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, contract, 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.

8. 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.

9. 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.

10. 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.

11. OWNERSHIP. All notebooks, plans, working papers, or other work produced in the performance of this Agreement that are related to specific deliverables under this Agreement, are the property of the Department and upon request shall be turned over to the Department.

12. 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.

13. EXCEPTIONS TO OMB CIRCULARS FOR NON-FEDERALLY-FUNDED ACTIVITIES.

(a) Travel. The reimbursement rate for mileage charged to DHHS funded programs cannot exceed the reimbursement rate allowed for state employees. (5 M.R.S.A. §1541(13)(A).

(b) 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.

14. 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.

15. 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. Contract 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.

16. BACKGROUND CHECKS. The Provider agrees to conduct background checks on all prospective employees, persons contracted or hired, consultants, volunteers, students, and other persons who may provide services under this contract. Background checks on persons professionally licensed by the State of Maine will include a confirmation that the licensee is in good standing with the appropriate licensing board or entity. The Provider shall not hire or retain in any capacity any person who may directly provide services to a client under this contract if that person has a record of:

- (a) any criminal conviction that involves client abuse, neglect or exploitation;
- (b) any criminal conviction in connection to intentional or knowing conduct that caused, threatened, solicited or created the substantial risk of bodily injury to another person;
- (c) any criminal conviction resulting from a sexual act, contact, touching or solicitation in connection to any victim; or
- (d) any other 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. Employment of persons with records of such convictions more than two years ago is a matter within the Provider's discretion after consideration of the individual's criminal record in relation to the nature of the position.

The Provider shall contact child protective services units within State government to obtain any record of substantiated allegations of abuse, neglect or exploitation against an employment applicant before hiring the same. In the case of a child protective services investigation substantiating abuse, neglect or exploitation by a prospective employee of the Provider, it is the Provider's responsibility to decide what hiring action to take in response to that substantiation, while acting in accordance with licensing standards.

Providers are not required to obtain records from child protective services for employees who (a) do not provide services to children, and (b) work in settings where there is on-site supervision at all times.

17. 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 enumerated in Sections 10, 11, and 12 of Rider B and Sections 4, 5, 6, 7 of Rider D;

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.

(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.

(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 18.

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

19. 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.

20. 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.)

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

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

- United States. Please identify state: Maine**
- Other. Please identify country: _____**

Notification of Changes to the Information

The Provider agrees to notify the Division of Purchases 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, property, discounts or other Federal/State financial assistance from the U.S./State Departments of Health and Human Services.

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

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 or 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: www.hhs.gov/ocr/pregrant/indexpg.html. Technical assistance and information regarding section 1 can also be found at the U.S. Equal Employment Opportunity Commission website: www.eeoc.gov. Technical assistance and information relating to the requirements associated with section 6 can be found at www.state.me.us/mhrc/laws.htm. For technical assistance and information relating to section 6 above, please refer to www.jan.wvu.edu/links/adalinks.html. Information relating to section 6 can be found at <http://janus.state.me.us/legis/statutes/search.asp>.