

**State of Maine  
Department of Administrative and Financial Services  
Division of Purchases**

**COMMISSIONER'S OR DEPARTMENT HEAD'S REQUEST  
FOR CONTRACT/GRANT/PURCHASE APPROVAL**

Department: [Health and Human Services](#)

Date: [February 15, 2006](#)

Contractor: [Blanket Approval, Direct Service Provider](#)

Amount: [See Contract](#)

Document #: N/A (Not applicable for contracts and grants)

Pursuant to Executive Order Number 01 FY 03/04, please complete the following when submitting contracts, grants and/or requisitions for approval:

1. Explain the emergency or essential nature of the service, and the impact of delay or postponement.

Formatted: Bullets and Numbering

[The service\(s\) provided through the accompanying agreement are direct client services.](#) The legislature has directed the Department to implement managed care and has deappropriated \$10M from DHHS as a result of savings from this initiative.

2. Describe the funding source and any required match, whether immediate or by future journal or other transaction.

[See agreement document.](#)

3. Describe the effort made to reduce the contract or requisition amount (i.e. by work reduction, rate concession, delay of purchase, etc.)

[For MaineCare seed only agreements, MaineCare rates are determined using standard methodology.](#)

[For other agreements, efforts are made to maintain or reduce funding levels, to match allocations to service needs, to maximize Federal dollars as appropriate, and to negotiate cost effective services.](#)

4. Contact person name: [see Rider B, #6](#)

5. Signature, Commissioner, Department Head, or designee:

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THIS COMPLETED FORM MUST ACCOMPANY EACH CONTRACT, GRANT AND REQUISITION SUBMITTED  
FOR APPROVAL.

**Part One Contract/Grant Designation**

♦ It is required to CHECK ONE of the following options which best describes the attached document:

The document is a **Contract**

The document is a **Grant**

The principal purpose of this relationship is to purchase, lease, or barter property or services for the direct benefit of the government.

The principal purpose of this relationship is the transfer of money, property, services, or anything of value to the recipient in order to accomplish a public purpose of support—with no substantial involvement between the state agency or department and the recipient during the performance of the activity.

Please refer to State Controller's Bulletin 05-05: Determination of Subrecipient vs. Vendor Relationship for additional guidance as well as OMB Circular A-133.

**Part Two Requisition for Contract/Grant Authorization BP37R (Oct2004)**

♦ Please complete any of the following entries which apply to the document (agreement or amendment):

Agency/Department	DHHS	Dept. Contact	Jereal Holley							
Contractor Name	Mercer Health & Benefits, LLC	Contact Phone	(207) 822-0486							
At the right, briefly Describe the Service Provided	Behavioral Health Capitation Rates & Managed Care Technical Assistance	Contract Amount	\$500,000.00							
		Amendment Amt.								
		Doc. End Date	12/31/2006							
Show Principal Item Coding:	Fund	Agency	Org	SubOrg	Approp	Activity	Object	SubObj	Job No	RptCtgy
See Standard Agreement Cover Page										

♦ Please respond to all questions applicable for this document. Additional pages may be attached if necessary. NOTE: If this is an amendment, please complete the **Substantiation of Need** section only.

**Substantiation of Need.** Include statutory citations, cost savings, which will be achieved, and a history of the relationship with the contractor. Provide services to adults with mental illness.

This contract is unique in that the Provider delivers professional services to the Department in order to meet the requirements of the Court's Part II Order to manage the mental health system and legislative mandate. This includes capitation rate development, capitation rate methodology, and certification.

<b>Impact on the Civil Service System,</b> Describe any displacement or dislocation of state employees. None	<b>Employer/Employee Relationship</b> between the State and the Contractor (if any) None	<b>Effect on State Affirmative Action Efforts.</b> None
None	None	None

**Justification for Sole Source Procurement** Is this the only source of the service; is the service so specialized that it can only be effectively obtained from a single source; what will be the impact if the contract is delayed as a result of competitive bidding? Contract Renewal

This Provider has expertise that is needed immediately in order to respond to the recent ruling related to the AMHI Consent Decree and legislative mandate to implement a Managed Medicaid Behavioral Health System by the beginning of FY2007. The Provider has worked with numerous states on managed care issues for behavioral health treatment. They are the world's largest employer of actuaries and have conducted independent actuarial reviews in the majority of the states in the country.

**Evidence of Prior or Scheduled RFP** If no RFP was issued, show the vendors contacted for quotations. If the value of the contract exceeds \$2,500, attach the written quotations.

MSEA REVIEW: Date Forwarded:	Purchases File Number:
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♦ Completed forms should be attached to the document and the package forwarded to:

Division of Purchases, 4<sup>th</sup> Floor, Burton M. Cross Building, 9 State House Station, Augusta, ME 04333-0009

Agreement Number:  
DHHS Agreement Number: MH1-06-860

**STATE OF MAINE  
DEPARTMENT OF HEALTH AND HUMAN SERVICES  
Agreement to Purchase Services**

**THIS AGREEMENT**, made this 1st day of January, 2006, is by and between the State of Maine, Department of Health and Human Services, hereinafter called "Department," and Mercer Health & Benefits, LLC, mailing address P.O. Box 100260, Pasadena, CA 91189-0260, physical address 3131 East Camelback Road, Suite 300, Phoenix, AZ 85016-4536, hereinafter called "Provider, for the period of 2/15/2006 to 12/31/2006.

The Employer Identification Number of the Provider is E342015463.

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 C -- Rider B Exceptions
- Rider D -- Additional Requirements
- Rider F -- F-2 Agreement Compliance Form
- Rider G -- Provision of Contract Services by Foreign Nationals or Work Performed Abroad

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: \_\_\_\_\_

Geoffrey W. Green, Deputy Commissioner for Operations and Support

And

Mercer Health & Benefits, LLC

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

Steven P. Schramm, World Wide Partner

Total Agreement Amount: \$500,000.00

Approved: \_\_\_\_\_

Chair, State Purchases Review Committee



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

Agreement# **MH1-06-860**  
Encumbrance #

Community Agency Name: **Mercer Health & Benefits, LLC**

Address: **P.O. Box 100260, Pasadena, CA 91189-0260**

Program Name: **Service: Capitation Rates Development & Managed Care Technical Assistance**

Geographic Area Served: **Statewide**

DHHS District # \_\_\_ DHHS Region # \_\_\_ Employer ID#: **E342015463**  
Agency Fiscal Year: **JUL-JUN**

**FOR DEPARTMENT USE ONLY**

**Agreement Period**

**Type of Agreement**

Effective Date: **1/1/2006**  
Termination Date: **12/31/2006**  
Amended Effective Date: \_\_\_  
Amended Termination Date: \_\_\_

- Contract-State Services  New
- Grant- Client Services  Renewal
- Amendment
- Budget Revision

CFDA #	ACCOUNT #	FY 2006 Encumbrance	FY 2007 Encumbrance	Agreement Total
1.	010-10A-3010-012-4045	\$250,000		\$250,000
2.	013-10A-3010-012-4045	\$250,000		\$250,000
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
<b>TOTALS</b>		<b>\$ 500,000</b>	<b>\$</b>	<b>\$ 500,000</b>

Agreement Routing: Agreement Administrator Jereal Holley  
Purchased Service Manager Katherine Murray

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

**PROVIDER SUMMARY PAGE**

Community Agency/Program Name: \_\_\_\_\_ Mercer Health & Benefits, LLC

Executive Director: Steve P. Schramm  
Telephone #: 602-522-6561 Fax #: 602-957-9573  
Address: 3131 E. Camelback Road,  
Suite 300, Phoenix, AZ  
85016  
E-mail address: Steve.schramm@mercer.com

Agreement Contact Person: Michelle Raleigh  
Telephone #: 602-522-6534 Fax #: 602-957-9573  
Address: 3131 E. Camelback Road,  
Suite 300, Phoenix, AZ 85016  
E-mail address: Michelle.Raleigh@mercer.com

Fiscal Contact Person: Peter Charlton  
Telephone #: 602-522-6505 Fax #: 602-957-9573  
Address: 3131 E. Camelback Road,  
Suite 300, Phoenix, AZ  
85016  
E-mail address: Peter.Charlton@mercer.com

Other Contact Information:

List all locations where 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

**RIDER A**  
**SPECIFICATIONS OF WORK TO BE PERFORMED**

**I. AGREEMENT FUNDING SUMMARY**

Funds are provided under this Agreement for the provision of professional services. Funding and service descriptions are detailed in Section III Service Specifications and Performance Guidelines.

**II. REPORTING REQUIREMENTS**

The Provider shall submit reports in accordance with the specifications of the Department, according to the following schedule:

The Provider agrees to submit monthly reports of activities, time and expenses.

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

The Provider further agrees to submit such other data and reports as may be requested by the Agreement Administrator. The Provider shall submit all data and reports to the Department in accordance with 34-B M.R.S.A. §1207 and in accordance with Section 6 of Rider B of this Agreement.

**III. SERVICE SPECIFICATIONS AND PERFORMANCE GUIDELINES**

The Department agrees to fund the Provider up to the amount of \$500,000 to provide special services in order to meet the requirements of the Court's Part II Order to manage the mental health system. The Provider will deliver actuarial and data analysis services to assist the State in its implementation of managed care. A work plan is attached. The Provider will deliver the following services:

**RATE DEVELOPMENT PLAN**

The Provider will develop a work plan after discussions with the State about the project and a review of the State's work plan.

**DATA REQUEST LETTER**

The Provider will develop a letter outlining data needs in order to calculate behavioral health capitation rates. This includes consultation and technical assistance to assure that required data is collected and available for the

development of rates. These data will also be used to develop the cost effectiveness section of the 1915(b) waiver, if necessary.

#### DATA VALIDATION AND REVIEW

Summarized data collected for the development of rates will be loaded on the Provider system. The Provider will perform data analyses comparing the data to other State reports for validation. The Provider will benchmark results to other states' behavioral health programs and identify any issues. In addition, cross checks (across services, populations, or regions) will be performed.

#### DATA BOOK DESCRIBING METHODOLOGY USED TO CALCULATE RATES

The Provider will develop a Data Book providing information required in calculating rates. This includes outlining the methodology used to calculate rates. This product is essential, as it will become public information required for stakeholders in the understanding and reviewing of the process used in calculating rates. In addition, potential contractor(s) will need this information when developing bids, especially if there are certain regions or services not currently covered.

#### 1915(b) WAIVER CALCULATIONS AND FINALIZING THE WAIVER SECTION

The Provider will develop cost effectiveness estimates (Section D) for the 1915(b) waiver. This includes working with the Department regarding the waiver design, data requirements, drafting the waiver, reviewing the draft and finalizing the waiver Section D. The Provider will also participate in the State's waiver discussions in order to determine necessary changes to cost and caseload estimates as a result of policy decisions.

#### CONTRACTOR (S) MEETING PARTICIPATION

Depending on the procurement process, the Provider will participate in technical assistance meetings held by the State for potential managed care contractors. The Provider will describe the overall process used in the development of rates including types of data collected, data analyses performed, and the rate setting methodology. This activity will allow the potential contractor(s) to ask questions and have the knowledge required for rate development. Travel for up to 4 consultants is included for a one-day meeting in Maine.

## DEVELOPMENT OF CAPITATION RATES

The Provider will develop actuarially sound capitation rates to be paid to the contractor(s). These rates will be based on the data in the Data Book and include adjustments for program design, risk, completion of the data, trends, and administration fees. The Provider may develop rating categories for the State including those for non-seriously mentally ill (SMI) adults, SMI adults, non-seriously and emotionally disturbed (SED) children, and SED children. The Provider may develop rating categories for administrative services only based on a per member per month payment system.

## METHODOLOGY LETTER AND ACTUARIAL CERTIFICATION

With the finalization of rates, the Provider will develop a final methodology letter and actuarial certification package for the State. This may include a separate crosswalk between the methodology letter and the CMS checklist.

See attached work plan identifying tasks/activities associated with functions listed in Rider A. The work plan represents the contract tasks as known today. However, specific work requirements may change to reflect changes as a result of implementation and design experience.

Reports are required on a monthly basis, due on the 15<sup>th</sup> of the month following. Reports shall be delivered to the Director of Adult Mental Health Services. Reports must contain at least the following information:

- Progress reports on the plans and implementation of tasks/activities including the achievement of timelines;
- Any challenges or difficulties encountered and recommendations/plans to address those challenges, constraints, or difficulties;
- Resulting modifications requested to perform and complete tasks/activities and to achieve timelines; and
- Decision-making and/or strategies required to achieving tasks, activities and timelines.

Changes to the work plan or costs require the approval of the Program Administrator.

**RIDER B**  
**PAYMENT AND OTHER PROVISIONS**

1. **AGREEMENT AMOUNT:** \$500,000.00
2. **INVOICES AND PAYMENT:** Per Provider billing up to \$500,000.00.

Payments are subject to the Provider's compliance with all items set forth in this Agreement and subject to the availability of funds. The Department will process approved payments within 30 days.

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: Jereal Holley, Agreement  
Administrator  
Address: 175 Lancaster street, Portland, ME  
04101  
Telephone: (207) 822-0486  
E-mail Address: Jereal.Holley@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 Zukas-Lessard, Director of  
Managed Care  
Address: Marquardt Bldg., 2<sup>nd</sup> Floor, 11 State  
House Station, Augusta, ME 04333-  
0011  
Telephone: (207) 287-7349  
E-mail Address: chris.zukas-lessard@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. **SUB-AGREEMENTS.** Unless provided for in this Agreement, no arrangement shall be made by the Provider with any other party for furnishing any of the services herein contracted for without the consent and approval of the Agreement Administrator. Any sub-agreement hereunder entered into subsequent to the execution of this Agreement must be annotated "approved" by the Agreement Administrator before it is reimbursable hereunder. This provision will not be taken as requiring the approval of contracts of employment between the Provider and its employees assigned for services thereunder.

9. **SUBLETTING, ASSIGNMENT OR TRANSFER.** The Provider shall not sublet, sell, transfer, assign or otherwise dispose of this Agreement or any portion thereof, or of its right, title or interest therein, without written request to and written consent of the Agreement Administrator. No subcontracts or transfer of agreement shall in any case release the Provider of its liability under this Agreement.

10. **EQUAL EMPLOYMENT OPPORTUNITY.** During the performance of this Agreement, the Provider agrees as follows:

- a. The Provider shall not discriminate against any employee or applicant for employment relating to this Agreement because of race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation, unless related to a bona fide occupational qualification. The Provider shall take affirmative action to ensure that applicants are employed and employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, physical or mental disability, or sexual orientation.

Such action shall include but not be limited to the following: employment, upgrading, demotions, or transfers; recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Provider agrees to post in conspicuous

places available to employees and applicants for employment notices setting forth the provisions of this nondiscrimination clause.

- b. The Provider shall, in all solicitations or advertising for employees placed by or on behalf of the Provider relating to this Agreement, state that all qualified applicants shall receive consideration for employment without regard to race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation.
- c. The Provider shall send to each labor union or representative of the workers with which it has a collective bargaining agreement, or other agreement or understanding, whereby it is furnished with labor for the performance of this Agreement a notice to be provided by the contracting agency, advising the said labor union or workers' representative of the Provider's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. The Provider shall inform the contracting Department's Equal Employment Opportunity Coordinator of any discrimination complaints brought to an external regulatory body (Maine Human Rights Commission, EEOC, Office of Civil Rights) against their agency by any individual as well as any lawsuit regarding alleged discriminatory practice.
- e. The Provider shall comply with all aspects of the Americans with Disabilities Act (ADA) in employment and in the provision of service to include accessibility and reasonable accommodations for employees and clients.
- f. 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.

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 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.

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.** 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.

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 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.

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

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

21. **LIABILITY INSURANCE.** The Provider shall keep in force a liability policy issued by a company fully licensed or designated as an eligible surplus line insurer to do business in this State by the Maine Department of Professional & Financial Regulation, Bureau of Insurance, which policy includes the activity to be covered by this Agreement with adequate liability coverage to protect itself and the Department from suits. Providers insured through a "risk retention group" insurer prior to July 1, 1991, may continue under that arrangement. Prior to or upon execution of this Agreement, the Provider shall furnish the Department with written or photocopied verification of the existence of such liability insurance policy.

22. **NON-APPROPRIATION.** Notwithstanding any other provision of this Agreement, if the State does not receive sufficient funds to fund this Agreement and other obligations of the State, if funds are de-appropriated, or if the State does not receive legal authority to expend funds from the Maine State Legislature or Maine courts, then the State is not obligated to make payment under this Agreement.

23. **SEVERABILITY.** The invalidity or unenforceability of any particular provision, or part thereof, of this Agreement shall not affect the remainder of said provision or any other provisions, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

24. **INTEGRATION.** All terms of this Agreement are to be interpreted in such a way as to be consistent at all times with the terms of Rider B (except for expressed exceptions to Rider B included in Rider C), followed in precedence by Rider A, and any remaining Riders in alphabetical order.

25. **FORCE MAJEURE.** The Department may, at its discretion, excuse the performance of an obligation by a party under this Agreement in the event that performance of that obligation by that party is prevented by an act of God, act of war, riot, fire, explosion, flood or other catastrophe, sabotage, severe shortage of fuel, power or raw materials, change in law, court order, national defense requirement, or strike or labor dispute, provided that any such event and the delay caused thereby is beyond the control of, and could not reasonably be avoided by, that party. The Department may, at its discretion, extend the time period for performance of the obligation excused under this section by the period of the excused delay together with a reasonable period to reinstate compliance with the terms of this Agreement.

26. **SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any monies due to the Provider under this Agreement up to any amounts due and owing to the State with regard to this Agreement, any other Agreement, any other Agreement with any State department or agency, including any Agreement for a term commencing prior to the term of this Agreement, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Controller.

27. **ENTIRE AGREEMENT.** This document contains the entire Agreement of the parties, and neither party shall be bound by any statement or representation not contained herein. No waiver shall be deemed to have been made by any of the parties unless expressed in writing and signed by the waiving party. The parties expressly agree that they shall not assert in any action relating to the Agreement that any implied waiver occurred between the parties, which is not expressed in writing. The failure of any party to insist in any one or more instances upon strict performance of any of the terms or provisions of the Agreement, or to exercise an option or election under the Agreement, shall not be construed as a waiver or relinquishment for the future of such terms, provisions, option or election, but the same shall continue in full force and effect, and no waiver by any party of any one or more of its rights or remedies under the Agreement shall be deemed to be a waiver of any prior or subsequent rights or remedy under the Agreement or at law.



**RIDER C**  
**EXCEPTIONS TO RIDER B**

See attached suggested language for Rider C.

Rev. 5/1/01

**RIDER D**  
**ADDITIONAL PROVISIONS**

**Direct Client Services**

1. **Audit.** Funds provided under this Agreement 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.
2. **Reporting Suspected Abuse/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. 9.
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. <http://www.gpoaccess.gov/uscode/index.html>
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.**

- a. **Bad Debt.** Bad debt is defined as the operating expense incurred because of the failure to collect receivables, and the related costs to collect. Bad debts must be offset against identified non-State, non-Federal, unrestricted revenue. The provider must make a good faith effort to collect the receivable (e.g. through billing, pursuing through a collection agency, etc.)
- b. **Interest Expense**
  - i. Per A-122, paragraph 23: costs incurred for interest on borrowed capital are unallowable. Interest on debt incurred after 9/29/95 to acquire or replace capital assets is allowable.
  - ii. DHHS exception allows interest on borrowed capital on or before 9/29/95 to be prorated and offset against DHHS agreement State revenue and other unrestricted non-Federal revenue.  
(Note: interest incurred for short term cash flow loans can be offset using non-State, non-Federal unrestricted revenue).
- c. **Interest Income.** Providers shall maintain advances of Department funds in interest-bearing accounts, unless the total agreement amount is less than \$120,000, throughout the contract period until settlement. Interest earned on state or federal funds must be returned to the Department; the provider may retain the first \$250 for administrative expenses. See federal circular A 110 paragraph 22 for more details.
- d. **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).
- e. 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 is 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.

**RIDER F  
AGREEMENT COMPLIANCE SECTION**

This section identifies compliance requirements that must be considered in audits of agreements between the Department and a Community Agency. Below is a summary of required compliance tests as well as sections within the agreement award relevant to such testing. Failure to comply with any of these areas could lead to material deficiencies.

\_\_\_\_\_ Review the Federal compliance requirements specific to the following CFDA identifiers:

CFDA # \_\_\_\_\_ CFDA # \_\_\_\_\_ CFDA # \_\_\_\_\_

and review all the State compliance requirements listed below that apply to Federal funds.

\_\_\_\_\_ Review the State compliance requirements in applicable areas specified below:

1. INTERNAL CONTROL

2. STANDARD ADMINISTRATIVE PRACTICES

A. OMB Circular A-110/Common Rule Financial and Program Management Property Standards Procurement Standards Reports and Records Termination and Enforcement	B. Department Additions Standards of Bonding Program Budget
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3. ALLOWABLE COSTS/COST PRINCIPLES

\_\_\_ A-122      \_\_\_ A-87      \_\_\_ A-21

4. BUDGET COMPLIANCE

5. TYPES OF SERVICE ALLOWED OR UNALLOWED  
Specific Detail in Rider A

\_\_6. ELIGIBILITY  
Specific Detail in Rider E

\_\_\_ 7. MATCHING REQUIREMENTS  
Specific Detail on Agreement Page(s)

8. REPORTING  
Specific Detail in Rider A

\_\_\_ 9. SUBRECIPIENT MONITORING  
Specific Detail on Agreement Page(s)

X 10. AGREEMENT SETTLEMENT: COST-BASED TYPE  
UNIT-BASED TYPE  
OTHER TYPE: Flat Fee basis  
Specific Detail in Rider B

\_\_\_ 11. SPECIFIC PROVISIONS  
Specific Detail on Agreement Page(s)  
A.  
B.

Mercer Health & Benefits, LLC  
 Work Plan for Behavioral Health Managed Care Rates – State of Maine

<b>Projects *</b>	<b>Timeframes **</b>	<b>Estimated Budget ***</b>
Work plan 1) Draft work plan 2) Provide monthly updates to DHHS	Ongoing	\$20,000
Data Request Letter 1) Prepare and send data request letter 2) Discuss data needs with DHHS 3) Receive necessary data from DHHS	February February– April February – May	\$20,000
Data Review 1) Confirm and check receipt of data from DHHS 2) Create reports to verify data received 3) Compare to other states as appropriate	March – May April – June April – June	\$125,000
Data Book 1) Draft data book for DHHS review 2) Discuss DHHS comments 3) Make final changes to data book and send to DHHS	May – July May – July June – August	\$75,000
Potential Contractor(s) Meeting 1) Prepare for potential contractor(s) meeting; discuss with DHHS 2) Attend meeting and answer questions regarding rate development	March – July March – August	\$30,000
Capitation Rate Development 1) Prepare draft rates once data has been received and validated 2) Review draft rates with DHHS 3) Finalize rates for DHHS	May – September May – September June – October	\$160,000

<b>Projects *</b>	<b>Timeframes **</b>	<b>Estimated Budget ***</b>
Capitation Rate Methodology Letter & Certification  1) Draft methodology letter and checklist for DHHS review 2) Discuss letter and checklist with DHHS 3) Finalize letter and CMS checklist 4) Answer any questions from CMS	June – October  June – November  July – December  July – December	\$25,000
1915(b) Waiver – Section D 1) Discuss waiver design with DHHS 2) Request any additional data needs from DHHS 3) Receive data from DHHS 4) Draft waiver section for DHHS review 5) Review waiver section with DHHS 6) Finalize waiver section and send to DHHS 7) Answer questions from CMS	February – March  February – March  February – April April – May  April – May  April – June  May – July	\$45,000
<b>Total</b>	<b>January – December</b>	<b>\$500,000</b>

\* Note that project management time (e.g., weekly calls with DHHS) are included in each project above.

\*\* These timeframes are estimated spans of time that may need to be adjusted as the State makes decisions about the program. The indicated end dates are most likely to be “not to exceed” dates.

Mercer anticipates working on additional projects (not mentioned above or included in the initial budget) for DHHS. These could include assistance with RFP or MCO contract development, MCO readiness reviews, additional CMS assistance, scoring of RFP responses or evaluations of MCO bids, additional meetings with potential contractor(s), public, state agencies, or other stakeholders, (other than the one contactor meeting included in the estimate listed above). The Program Administrator may approve these projects.

RIDER C  
EXCEPTIONS TO RIDER B

1. Section 2 – Approved payments will be made within 30 days after receipt of an invoice.
2. Section 18 – The Provider's hold harmless obligation shall only be applicable to the extent that the Provider, its employees, agents or subcontractors has engaged in negligence or misconduct in the performance of the Agreement. The Provider's hold harmless obligation shall not be applicable to the extent any claim is attributable to the negligent or wrongful acts or omissions of the State including, without limitation, materials or products provided by the State, modifications made by the State to the products or services provided by the Provider or if the State uses such products or services in a manner not contemplated in the Agreement or required by law.
3. Section 21 - The intent of the Provider's commercial general liability insurance is to protect the Provider (and not the Provider and the State) from claims, suits, actions, costs, damages or expenses arising out of the negligence or misconduct of the Provider in the performance of the Agreement. The Provider will, however, include the State as additional insured under its commercial general liability policy with respect to the State's liability arising out of the Provider's performance of the Agreement.
4. Miscellaneous – The Agreement should also contain the following provisions:
  - (a) The Provider will assume the information supplied by the State (or which is supplied on the State's behalf) is accurate and complete. The Provider's responsibilities (and the associated fees described herein) do not include independent verification of required information. Problems with information quality and/or delays in providing such information may result in a delay in the project delivery date or an increase in fees, subject to mutual agreement.
  - (b) All work product provided to the State will be shared and used only as the parties have contemplated hereunder and for no other purpose without the Provider's prior written consent. The State further understands that the Provider retains exclusive rights to the intellectual capital (such as methodologies, know how, models, tools, and any graphic or digitized representation of any of these) now possessed, or subsequently developed, by the Provider.