

Agreement No:___
DHHS Contract Number

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

THIS AGREEMENT, made this 1st day of **July, 2007**, is by and between the **State of Maine, Department of Health and Human Services**, hereinafter called "Department," and, **Mid Coast Hospital**, mailing address 123 Medical Center Drive, Brunswick, ME 04011 . physical address, 123 Medical Center Drive, Brunswick, ME 04011 hereinafter called "Provider, for the period of **July 1, 2007** -to **June 30, 2010**.

The Employer Identification Number of the Provider is

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 - Exceptions
- Rider D - Additional Requirements
- Rider E – Program Requirements
- Rider F – Agreement Compliance Form

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 Operations & Support

And

MID COAST HOSPITAL

By: _____
, Provider Representative

Total Agreement Amount: \$0

State Controller

Approved: _____
Chair, State Purchases Review Committee

RIDER A
BEHAVIORAL MEDICINE CONTRACT

THIS CONTRACT, entered into this 1st day of July, 2007, by and between Mid Coast Hospital, a Maine nonprofit hospital corporation with its principal place of business located at, Brunswick, Maine (the "Provider"), and STATE OF MAINE, DEPARTMENT OF HEALTH & HUMAN SERVICES, (DHHS) an agency and instrumentality of the State of Maine, with its principal place of business located at Augusta, Maine (the "Department").

WITNESSETH

WHEREAS, in accordance with the terms of a Consent Decree and Settlement Agreement executed by the Department in Bates V. DHHS, et al, No. CV-89-88 (Me. Sup. Ct., Ken.Cty.) (The "Consent Decree"), the Department is required, among other things, to make reasonable efforts to fund, develop, recruit and support local community acute care hospitalization options so that persons who on or after January 1, 1988 are or were patients at the Augusta Mental Health Institute ("AMHI") or Riverview Psychiatric Center (Riverview) may receive necessary hospital services in or near their home communities and to plan services for individuals identified for diversion from admission to or discharge from Riverview who have a primary diagnosis of mental illness; and

WHEREAS, the Provider has established an integrated system of high quality behavioral medicine services, including mental health and substance abuse services; and

WHEREAS, consistent with the applicable requirements of 34-B M.R.S.A. § 3861, the Provider is a non-state mental health institution capable of receiving involuntary patients; and

WHEREAS, the Department, in order to meet its obligations under the terms of the Consent Decree, desires to encourage use of community hospitals for short-term acute care for persons requiring psychiatric hospitalization by contracting with the Provider for certain behavioral medicine services, and is authorized and willing to reimburse the Provider for the provision of such services, and

WHEREAS, it is the intent of the Provider and the Department to fulfill, as nearly as may be possible under the circumstances, any applicable "safe harbor" requirements with respect to contracts for personal services, including, but not necessarily limited to, the applicable requirements established in the regulations of the Department of Health and Human Services, Office of the Inspector General, 42 C.F.R. §1001.952(d);

NOW, THEREFORE, in consideration of the foregoing, and of the mutual covenants set forth in this Contract, the Provider and the Department agree as follows:

1. **Definitions.** As used in this Contract, the following terms shall have the following meanings unless the context clearly requires otherwise:
 - a. "**Commissioner**" means the Commissioner of the State of Maine Department of Health & Human Services, or its successor agency. To the extent the Commissioner has the legal authority to designate another person to carry out the duties of his or her office, and has in fact done so, the term "Commissioner" as used in this Contract includes the Commissioner's designee.

- b. "**Authorized Client**" means any adult who (i) consistent with 34-B M.R.S.A. § 3801, is a mentally ill person and poses a likelihood of serious harm, and for whom less restrictive appropriate treatment settings are unavailable in the community and has otherwise been determined appropriate for involuntary hospitalization in accordance with the provisions of this Contract.
 - c. "**Episode of Care**" means a continuous period of up to 30 days of medically necessary inpatient care provided by the Hospital to an Authorized Client (and any additional period of hospitalization required due to a delay in transfer caused by the Department), together with any medically necessary outpatient or partial hospitalization care that has been expressly preauthorized by the Department and that the Hospital has provided to an Authorized Client.
 - e. "**Utilization Review**" means a program for the retrospective and concurrent review of the appropriateness of the diagnosis and treatment provided to a patient.
2. **Term.** This Contract shall continue in full force and effect for a term, beginning on the date first set forth above and ending June 30, 2010, unless earlier terminated by agreement of the parties or in accordance with the provisions governing termination set forth herein.
3. **Termination.** This Contract may be terminated as follows:
- a. **Agreement.** The parties may terminate this Contract at any time by a written agreement signed by both parties.
 - b. **Without cause.** Either party may terminate this Contract without cause by delivering to the other party a notice to terminate this Contract, provided such notice is delivered at least 30 days prior to the date of termination set forth in such notice. The Provider's suspension of performance hereunder shall not reduce the Provider's obligation to provide appropriate care and treatment for patients already receiving services hereunder, nor the Department's obligation to reimburse the Provider for such services.
 - c. **With cause.** In the event of a material breach of the terms of this Contract by either party that has not been cured within 30 days of a written notice of breach delivered to the breaching party by the other party, this Contract may be terminated upon delivery of a notice of termination to the breaching party, and the non-breaching party may suspend its performance under this Contract as of the delivery of the written notice of breach to the breaching party; provided, however, that if the Provider is the party giving a written notice of breach, the Provider's suspension of performance hereunder shall not reduce the Provider's obligation to provide appropriate care and treatment for patients already receiving services hereunder, nor the Department's obligation to reimburse the Provider for such services. A shorter period may be used if the reasons for termination involve the health, safety, or welfare of persons directly related to this agreement, as outlined below in Section 3 d.
 - d. **Early Termination by the Department.** The Department may suspend or terminate this agreement immediately upon written notice to the Provider in the event that the Department reasonably believes that conditions at the Provider exist that would put the health of a patient in immediate jeopardy.

- e. **Upon termination of this Contract**, neither party shall have any further obligations hereunder except for (i) the Department's obligation to reimburse the Provider for services hereunder provided prior to the date of termination; (ii) the Provider's obligation to provide appropriate care and treatment for patients still in its custody, subject to the Department's obligation to reimburse the Provider for such services; and (iii) such other obligations set forth herein as are expressly made to extend beyond the term of this Contract. With respect to section 3(c)(I) above, consistent with the Utilization Review provisions set forth in section 6(a), the Department shall not be obligated to reimburse the Provider for particular services and/or billings as to which there is a dispute until such time as said dispute is resolved.

4. **Authorization and Payment.**

- a. **Authorization.** The integrated Crisis Services Program or community psychiatrist or physician in a MaineGeneral Medical Center emergency department will determine that a patient being presented for services hereunder meets the Authorized Client criteria as defined in the attached Exhibit A, which is expressly incorporated in and made a part of this contract as set forth in this Contract. The Provider will determine clinical suitability for admission. Authorized Clients shall be subject to Utilization Review by the Department as set forth in this Contract.
- b. **Reimbursement; Coordination of Benefits.** The Provider shall seek payment for its services rendered to an Authorized Client for an episode of care from any other potentially responsible payers, such as Medicare, Medicaid, Tri-Care Champus, private insurance, or from patients who have a demonstrated ability to pay for such services, and shall seek reimbursement from the Department hereunder only after determining that such other payment is unavailable.
- c. **Reimbursement**
 - (i) **Medicaid Reimbursement.** With respect to Authorized Clients eligible for MaineCare, the Hospital will be reimbursed from the Department's Bureau of Medical Services for MaineCare reimbursement at the behavioral health rate per case.
 - (ii) **Non-Medicaid Reimbursement.** With respect to Authorized Clients who are not reimbursed by MaineCare and have no insurance or other source of payment, the Department shall reimburse the Provider at the Hospital's discharge rate and variable hospital-based physician per discharge rate under MaineCare behavioral health.

5. **Transfers.**

The consent decree plan recognizes the varying missions of the community general hospitals, the specialty hospitals, and the state hospitals. It also recognizes the preference to hospitalize consumers reasonably near their home communities. It also recognizes the undesirability of admissions and discharges from multiple hospitals within the same hospitalization period. In order to balance these considerations and to manage inpatient services effectively, this plan creates single gateways to the state hospitals, with recognition of special circumstances under which the gateways may be bypassed.

a. **Community Hospitals**

Given the goal of ensuring that consumers are hospitalized as close to their home community as possible, community hospitals with psychiatric units are the first level of

hospitalization response. The community hospitals are for short-term admissions, generally 30 days or less. OAMHS, through the Community Services Network memorandum of agreement and the amendment to the MaineCare provider agreement, described below, will ensure that hospitals have a no-reject policy for providing coverage to consumers in their community service network areas.

The crisis provider must document data on consumers who are denied admission to a hospital or crisis stabilization unit that has available beds. The data must include reasons for rejection. This data will be provided to the Community Service Networks for review and action in accordance with their quality improvement functions. This data also must be submitted to OAMHS for contract performance reviews. The crisis provider must also convene a meeting of the rapid response team to assist consumers who are expected to be in the emergency department for more than eight hours. The rapid response protocol that is currently being used describes the responsibilities for the crisis provider in more detail (Attachment 2).

b.Specialty Hospitals

Maine's two specialty hospitals, Acadia and Spring Harbor, are the next line of treatment and will take admissions from the community hospitals. These free standing psychiatric hospitals are designed to safely treat consumers who present with greater acuity and clinical complexity than community hospitals are able to effectively and safely serve. Additionally, Acadia and Spring Harbor serve as community hospitals for their local areas. Consumers who need specialty hospitalization will transfer to the specialty hospital closest to their home community.

c. Public Hospitals

Riverview Psychiatric Center and Dorothea Dix Psychiatric Center are the tertiary hospitals and will take referrals from Spring Harbor and Acadia, forensic admissions, and other admissions based on unique clinical needs, within the statutory authority of the hospitals or based on unusual circumstances as described below. Riverview Psychiatric Center will be paired with Spring Harbor and Dorothea Dix Psychiatric Center will be paired with Acadia Hospital.

d. Unusual Circumstances

Consumers who are hospitalized in a community hospital and who need specialty hospitalization will transfer to the specialty hospital closest to the consumer's home community. Consumers in community hospitals may bypass hospitalization in a specialty hospital when:

- A consumer's history and current presentation indicate that a longer term of stay is likely;
- A consumer's documented clinical history makes a particular hospital inappropriate;
- A consumer has serious objections based on a documented serious incident or experience that would make a particular facility inappropriate.

If the community hospital finds that unusual circumstances, as described above, apply, then it must confer with the closest specialty hospital. The specialty hospital retains authority to decide whether to refer the patient directly to one of the state facilities, provided, however, that if there is a disagreement between the specialty and community

hospital about a proposed referral, that disagreement will be resolved by OAMHS. OAMHS will require the community hospitals to report promptly to OAMHS any requests to bypass the specialty hospitals, and the responses to the requests. OAMHS informed the Hospital and Crisis Initiative Group in September 2006 about the design for the realignment of these services.

The unusual circumstances noted above regarding the consumer's documented clinical history makes a particular hospital inappropriate or a consumer has serious objections based on a documented serious incident or experience that would make a particular facility inappropriate may also apply to the community hospital and be the basis of seeking another community hospital for the initial admission or one of the specialty hospitals. The hospital will report to OAMHS any cases in which this was the basis of not hospitalizing the consumer.

6. **Utilization Review.**

- a. The Department may conduct Utilization Reviews of the Provider's services delivered to Authorized Clients pursuant to this Contract, and shall have access to the Provider's records for the purpose of conducting such Utilization Reviews. The Provider shall cooperate fully in such Utilization Reviews. In the event that the Department determines, on the basis of a Utilization Review, that the services provided, after the Crisis approved 1st five days were not medically necessary or that a patient was not properly determined to be an Authorized Client, the Department may deduct or withhold reimbursement paid to the Provider for services to the patient provided after the 5th day, and the Hospital shall take appropriate steps to assure that, in the future, such cases do not occur.
- b. The Department's Utilization Review process may include ongoing analysis of trends pertaining to Authorized Clients receiving services from the Provider to identify and address issues of over-utilization, under-utilization, appropriateness of admissions and lengths-of-stay, appropriateness of diagnostic procedures and treatment provided, medical necessity of supportive services, and timeliness of discharge. On the basis of the Department's Utilization Review process, the Department and the Provider may develop and implement recommended plans of corrective actions if needed.

7. **Department's Responsibilities to Assist in Securing Community-Oriented Services.**

Consistent with the Department's obligation to assure that patients receive needed mental health and substance abuse services in or near their local communities, the Department shall use its best efforts to assure that residents of the Provider's catchment area receive priority in obtaining the services of the Provider hereunder. The Department shall provide consultation to the Provider concerning discharge planning for Authorized Clients who are admitted from outside the Provider's catchment area, and shall assist in securing services that may be needed to facilitate discharges of Authorized Clients to their communities of origin.

8. **Provider's Responsibilities.**

- a. Beginning on the effective date of this Contract and continuing during the term of this contract, the Provider will accept emergency involuntary patients as long as the Provider has the capacity and capability to do so. The Provider will also deliver the following to Authorized Clients:

- (i) Services in a setting that provides for the total care of the patient including medical care, food, housing, social, mental health, and rehabilitation services.
- (ii) Treatment services in a comprehensive and holistic manner according to the individual needs of each patient.
- (iii) A comprehensive biopsychosocial assessment of the patient and, where possible and indicated, a comprehensive evaluation of the patient's family as well.
- (iv) Notification within 48 hours, on the Authorized Client's behalf and with the Authorized Client's permission, to appropriate community support agencies or state intensive case management program about any treatment planning meetings for the purpose of maintaining or developing an individualized support plan ("I.S.P.") in order to meet the requirements of the Consent Decree.

- b. The Provider shall maintain a therapeutic milieu designed to (i) reduce acute symptoms as rapidly as possible to achieve stabilization; and (ii) return the Authorized Clients, whenever possible, to the community so that care, including outpatient hospital services, can be continued in the least restrictive appropriate setting.
- c. The Provider shall admit Authorized Clients 24 hours a day; 7 days per week, in an expeditious manner.
- d. Upon admission, the admitting physician (or the admitting physician's designee) shall provide a clinical assessment, acute treatment, and initial treatment objectives including estimated length of stay and discharge criteria.
- e. Within 96 hours of admission of an Authorized Client, the Provider will convene a multi-disciplinary treatment team, including the Authorized Client's community support workers, intensive case manager and other appropriate staff from community agencies, to assess needs, diagnose illnesses, identify symptoms and behavior impeding ability to function outside an inpatient setting, and to formulate a written, comprehensive treatment plan.
- f. The Provider shall begin discharge/aftercare planning at the time of admission of an Authorized Client, and shall involve, along with hospital staff, community support workers, intensive case managers and other appropriate community agency staff involved with Authorized Clients.
- g. The Provider will perform all required research and documentation with respect to admission and discharge, including, without limitation, availability of community resources, in order to assist the Department in fulfilling its obligations under the Consent Decree.
- h. The Provider will cooperate with and involve community providers in case management and service planning for Authorized Clients, and shall attempt to secure the active participation of such providers in treatment team planning.

9. **Community Collaboration.** The Provider will maintain liaisons with other community providers through development of service agreements and membership on appropriate Hospital Associations, or Mental Health Councils.

12. **Geriatric Services.** The Provider will deliver acute care psychiatric services to the extent they have the capacity and capability to do so to medically stable geriatric patients. The Provider will address their medical and psychiatric needs consistent with a primary diagnosis of mental illness.
13. **Duration of Services.** The Department will reimburse the Provider for all mental health and substance abuse treatment services provided by the Hospital to Authorized Clients during an Episode of Care.
14. **Patient Rights.** The Provider will comply with rules promulgated by the Department pursuant to 34-B M.R.S.A. Sections 3003 and 3803 regarding patient rights (the "Rights of Recipients of Mental Health Services"). The Department will monitor the Provider's compliance with the Rights of Recipients of Mental Health Services through the Department's Division of Licensing, which will conduct yearly site visits and through the utilization review process.
15. **Confidentiality.** The Provider will comply with the provisions of 34-B M.R.S.A. Section 1207 governing the confidentiality of client records.
16. **Court Commitment Process.**
 - a. The Provider will develop and implement policies and practices to assure that involuntary commitments occur consistent with the requirements of the State involuntary commitment statute.
 - b. The Department will work with the Provider and the court to provide full protection of patient's rights to due process in the course of all involuntary commitment proceedings, including the right to a hearing within the time established by statute for patients admitted pursuant to involuntary hospitalization procedures.
 - c. The Provider shall notify the Department within 48 hours prior to the 3rd day of emergency admission of an Authorized Client if the Provider wishes the Commissioner to petition the District Court for the involuntary hospitalization of the authorized client pursuant to 34-B M.R.S.A. Section 3864, and shall provide the Commissioner with the completed forms and documentation necessary to support the petition. The Commissioner shall designate an appropriate individual to authorize the filing of such involuntary commitment petitions.
 - d. The Provider is responsible for the filing of any necessary involuntary commitment petitions including the signature of the Commissioner's designee and for any subsequent legal proceedings required in connection with the involuntary commitment process, including legal representation at any hearings. If a hearing occurs, the Provider will present the treatment plan to the Court on behalf of the Commissioner.
 - e. The Department shall assist the Provider in implementing the civil commitment process, including providing on-site training and facilitating development of a roster of independent attorneys and examiners.
17. **Licenses and Certifications.** The Provider shall maintain in full force and effect during the term of this Contract its general acute care hospital state license, its Joint Commission on Accreditation of Healthcare Organizations (JCAHO) accreditation, and any necessary licensure by the Department.

18. **Standard of Care.** The Provider will deliver services under this Contract in accordance with prevailing standards of medical care in its community and in accordance with all applicable licensing requirements.
19. **Consent Decree Compliance.** The Provider will assist the Department in complying with the terms of the Consent Decree by activities including:
- a. **Training.** The Provider will participate in any training programs that may be required for the Department to comply with the Consent Decree, including (i) Consent Decree overview; (ii) Patient Rights; (iii) ISP Planning and Documentation; (iv) Special Populations; and (v) Civil Commitment Process, as well as any other training that the Department deems appropriate and necessary to the Department's compliance with the Consent Decree.
 - b. **Unmet Needs.** The Hospital will provide the Department with a list of unmet client needs relating to service delivery and service availability for the purpose of program and budget planning along with Consent Decree compliance.
 - c. **Quality Assurance.** The Provider will review its acute inpatient program pursuant to quality assurance indicators developed by the Department under the Consent Decree.
20. **Maine Tort Claims Act Immunity.** The Provider, any person contracting with the Provider, and any of its employees when admitting treating or discharging a patient under the provisions of sections 3863 and 3864 under this Contract, for the purposes of civil liability, are deemed to be a governmental entity or an employee of a governmental entity under the Maine Tort Claims Act, Title 14, chapter 741(14 MRSA Sec 8101 et seq.), to the extent allowed by law.
21. **Notices.** Any notice required to be served under this Contract shall be deemed sufficiently given to the other party if sent by certified mail, return receipt requested, to the following:
- To the Hospital:**
Herbert Paris
Mid Coast Hospital
123 Medical Center Drive
Brunswick, ME 04011
- To the Department:**
Brenda Harvey, Commissioner
Department of Health & Human Services,
221 State Street
11 State House Station
Augusta, Maine 04333-0011
22. **Independent Contractor.** The parties agree that the Provider, and any agents or employees of the Provider, in the performance of this contract, shall be deemed to be acting as an independent contractor and not as an employee of the Department provided; however, this provision shall in no way limit, modify, waive, or amend the application of the Maine Tort Claims Act, 14 M.R.S.A. Section 8101 et seq., or 34-B M.R.S.A. Section 3861 (1)(A).

23. **Non Appropriation.** This contract is subject to available federal and state budgetary appropriations and shall not create any obligation of any kind on behalf of the Department in excess of such appropriations. In the event that the amount of funds appropriated is such that the Department decides to restrict or terminate funding for this contract, the contract may be terminated 90 days after receipt of written notification from the Department. Notwithstanding the Department's Right to terminate this contract for unavailability of funds in the event of non- appropriation, the Department warrants that it will act in good faith and use its best efforts to meet its obligations under this contract.

RIDER B
PAYMENT AND OTHER PROVISIONS [I didn't look at this Rider]

1. **AGREEMENT AMOUNT:** **\$0.00**

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

July 15, 2004	\$ 0.00	March 15, 2005	\$ 0.00
September 15, 2004	\$ 0.00	June 15, 2005	\$ 0.00
December 15, 2004	\$ 0.00	Total Amount	\$0.00

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: Cheryl Gliniewicz
Address: HHS, 11 State House Station, Marquardt Bldg. ,Augusta,
ME 04333
Telephone: 287-8167
E-mail Address: cheryl.gliniewicz@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: Donald Chamberlain, Director, Community Systems
HHS, 11 State House Station, Region II Administrative
Address: Office, 2rd Floor Marquardt Building, Augusta, ME
04333
Telephone: 207-287-8084
E-mail Address: donald.chamberlain@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:
 - b. 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.
 - c. 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.
 - d. 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.

- e. 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.
- f. 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.
- g. Contractors and subcontractors with contracts in excess of \$50,000 shall also pursue in good faith affirmative action programs.
- h. 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 AND CLARIFICATIONS

1. Nothing in Rider B, paragraph (4) ("Independent Capacity") shall be construed to modify, waive, or amend paragraph (17) of Rider A, nor the immunity of the Provider and its employees and agents when providing services hereunder, in accordance with the applicable provisions of the Maine Tort Claims Act, 14 M.R.S.A. § 8101 et seq., and of 34-B M.R.S.A. § 3861 (1) (A).
2. Nothing in Rider B, paragraph (7) ("Changes in the Work") shall be construed to require the Provider to consent to changes in the work ordered by the Department. Any change in the work ordered by the Department shall be in the form of a written order by the Agreement Administrator committing the Department to pay the extra cost of the work involved. In the event that the Provider notifies the Department that the Provider does not agree to changes in the work ordered by the Department, the Department may terminate the Agreement.
3. Nothing in Rider B, paragraph (8) ("Sub-agreements") shall be construed to require the Agreement administrator's approval for any arrangements between the Provider and members of its Medical Staff who may be independent contractors providing services hereunder.
4. Rider B, Paragraph (10)(d) ("Equal Employment Opportunity") shall read: 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 served by this Agreement as well as any lawsuit regarding alleged discriminatory practice directly related to this Agreement.
5. Nothing in Rider B, Paragraph (15), ("Termination") shall be effective insofar as inconsistent with the applicable provisions of Rider A, paragraph (3).
6. Rider B, paragraph (14) ("Access to Records") shall read:
The Provider agrees that it will make available to the Department, or the Secretary of the United States Department of Health and Human Services, or the Comptroller General of the United States, or the Commissioner of the Maine Department of Health and Human Services, or any of their duly authorized representatives, upon request, at any time during and within four (4) years following the expiration or termination of this Agreement, any of the books, documents, or records that may be necessary to certify the nature and extent of the costs incurred by the Department in purchasing services pursuant to this Agreement. Any contract between the Provider and any subcontractor providing services hereunder shall contain the following clause:
"Until the expiration of four years after the furnishing of services pursuant to this contract, contractor shall make available to the Maine Department of Health and Human Services, or the Secretary of the United States Department of Health and Human Services, or the Comptroller of the United States, or the Commissioner of the Maine Department of Health and Human Services, or any of their duly authorized representatives, upon request, a copy of this contract

and such a of contractor's books, documents and records that are necessary to certify the nature and extent of the costs incurred providing services under this contract."

7. Rider B, Paragraph (18) ("State Held Harmless") shall be construed to provide that in the event of a third party joint liability action against the Department, its successors or assigns, and the Provider resulting from or arising out of the performance of services pursuant to this Agreement, the Provider shall not be required to defend, indemnify or hold harmless the Department for damages, costs and fees apportioned to the fault of the Department, its successors or assigns. Nothing in this Agreement is intended, nor shall it be deemed, to expand or extend the State of Maine's liability, or to waive any immunity to which it is entitled under the Maine Tort Claims Act, 14 M.R.S.A. Section 8101 et seq., and of 34-B M.R.S.A. § 3861 (1)(A).
8. Rider B, paragraph (22) ("Non-appropriation") shall be construed in a manner consistent with the provisions of Rider A, paragraph (24).
9. Rider D, paragraph (1) ("Audit") shall read:
The Provider shall deliver to the Department, upon request, copies of its audited financial statements and of its Medicare/Medicaid cost reports.
10. Rider E, paragraph I (2) shall read:
The Provider agrees to provide services in a manner consistent with the "Assurance Statement" (contained herein as Part II of this Rider E) and to work cooperatively with the Department in fulfilling its requirements under the so-called "AMHI Consent Decree" in Bates v. DHHS, et al Civil Action No. 89-88 (Me. Superior Ct., Kennebec County), the terms of which are incorporated herein by reference. Nothing elsewhere in this Agreement should be read to restrict or limit requirements in the "Assurance Statement", as contained herein as Rider E and modified as provided in Rider C.
11. Rider E,-paragraph I (3) shall read:
The Provider agrees to use and abide by all policies, procedures and protocols developed by the Department, including without limitation procedures and protocols for (1) tracking and reporting grievances and alleged rights violations; and (2) critical incidents, to the extent such policies, procedures or protocols are within the Department's lawful authority. The Provider shall develop the capacity to electronically transmit identified uniform data elements in accordance with specifications reasonably established by the Department.
12. Rider E, paragraph I (E) (1) ("Licensure and Location") shall read:
The Provider shall maintain a current hospital license during the term of this Agreement, in accordance with the Maine Department of Health and Human Services Regulations for the Licensing of General and Specialty Hospitals.
13. Rider E, paragraph I (E) (2) is not applicable
14. Rider E, paragraph II (A) (2) ("Dual Diagnosis") shall be construed in a manner consistent with Rider A, paragraph (11).

15. Rider D, paragraph (12) ("Revenue Maximization") shall be construed in a manner consistent with Rider A, paragraph 4.
16. Rider E, paragraph II (A)(4) ("Reporting and Fiscal Requirements") shall read:
The Hospital shall, within 30 days of the end of each quarter, submit a quarterly report of financial, staffing, and services data in accordance with such reasonable specification as may be lawfully adopted by the Department.
17. Rider E, paragraph-I (4) shall include:
The Provider will develop and implement treatment and discharge plans in coordination with ISPs, and will otherwise work with community and other providers to assure continuity of treatment.
18. Rider E, paragraph II (B) (1) (h) shall include:
The Provider shall verify that its employees providing services hereunder have appropriate licensure, certification or registration.

RIDER D
ADDITIONAL PROVISIONS

The following provisions supplement **Rider B – Methods of Payment and Other Provisions** and apply to all agreements with the Department of Health and Human 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 agrees that when any staff in its employ under this Agreement has reasonable cause to suspect that a child or adult has been or is likely to be abused or neglected, the Provider shall cause a report to be made to the Department of Human Services pursuant to 22 M.R.S.A. §§ 3477 and 4011. The Provider also agrees that when any staff in its employ under this Agreement has reasonable cause to suspect that an adult with mental retardation has been or is likely to be abused, neglected, or exploited, the Provider shall cause a report to be made to the Department of Health and Human Services pursuant to 22 M.R.S.A. §3477. In addition, the Provider agrees to follow the HHS rules on reportable events pursuant to 14-197 CMR ch. 9.
3. **Confidentiality**. In conformance with Federal and State statutes and regulations, the Provider shall protect information of a confidential nature regarding all persons served under the terms of this Agreement, including without limitation the proper care, custody, use, and preservation of records, papers, files, communications of Provider and any such other items that may reveal confidential information about persons served through this 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**. The Provider certifies that it shall provide a drug-free workplace by: publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Provider’s workplace and specifying the actions that will be taken against employees for violation of such prohibition; establishing a drug-free awareness program to inform employees about the dangers of drug abuse in the workplace, the Provider’s policy of maintaining a drug-free

workplace, available drug counseling rehabilitation and 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 services relating to this Agreement; notifying employees that as a condition of employment in the performance of services under this Agreement the employee will abide by the terms of the statement; and requiring that employees notify the Provider of any criminal drug conviction for a violation occurring in the workplace no later than five calendar days after such conviction.

Within ten calendar days after receiving from an employee notice of a criminal drug conviction occurring in the workplace or otherwise receiving actual notice of such conviction, the Provider shall notify the Department of the conviction and shall take one of the following actions within thirty calendar days of the receipt of notice of the conviction: (i) take appropriate personnel action against the employee, up to and including termination; or (ii) require 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.** Provider certifies to the best of its knowledge that it and all persons associated with this Agreement, including persons or corporations who have critical influence on or control over the provision or administration of services under this Agreement, are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any Federal department or agency.

The Provider shall cause the foregoing Debarment and Suspension certification to be inserted, without modification, in any subcontracts for any work covered by this Agreement so that such provisions shall apply to and be binding upon each subcontractor.

7. **Environment Tobacco Smoke.** The Provider certifies that it shall comply with the Pro-Children Act of 1994, P.L. 103-227, Part C, which prohibits smoking 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 age 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.

The Provider shall cause the foregoing certification to be inserted in any subcontracts for any work covered by this Agreement so that such certification shall apply to and be binding upon each subcontractor.

8. **Medicare and MaineCare Anti-Kickback.** The Provider shall comply with the provisions 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 funds from Medicare, MaineCare, or a state health program.

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 Behavioral & Developmental Services in the 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. A staff member or volunteer with a conviction within the last three (3) years for Operating Under the Influence of Intoxicants shall not be allowed to transport clients. A staff member or volunteer with any other criminal conviction within the last three (3) years which, in the judgment of the Provider, indicates an unsafe driving history or pattern shall not be allowed to transport clients. The Provider shall implement appropriate procedures to ensure compliance with the requirements of this section. This section shall not apply to contracts issued by the Office of Substance Abuse.
11. **Bonding.** The Provider shall obtain and maintain at all times during the term of this Agreement a fidelity bond covering the activities of all employees who handle funds of the Provider in an amount equal to at least 20% of the total amount of this Agreement This provision does not apply to contracts that provide only MaineCare seed funds.
12. **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.
13. **Interpretation Services (Communication Access).** The Provider shall determine the primary language of individuals requesting services and ensure that the services are provided either by a bi-lingual clinician or with the assistance of a qualified interpreter when English is not the primary language. The client shall not be charged.
14. **Accessibility for the Deaf and Hard of Hearing.**
 - a. The Provider shall maintain and periodically test a telecommunications device for the deaf (TTY) that is available and accessible for use by clients and staff for incoming and outgoing calls. The Provider shall ensure that appropriate staff have been trained in the use of the telecommunications device and that the TTY telephone number is published on all of the Provider's stationery, letterhead, business cards, etc., and in the local telephone books as well as in the statewide TTY directory
 - b. The Provider, at its expense, shall obtain the services of a qualified sign language interpreter or other adaptive service or device when requested by a consumer or family member. Interpreters must be licensed with the Maine Department of Professional and Financial Regulation in the Office of Licensing and Registration. The Provider shall document the interpreter's name and license number in the file notes for each interpreted contact.

15. **Deaf and/or severely hard of hearing.** Providers who serve deaf and/or severely hard of hearing consumers shall:
 - a. Provide visible or tactile alarms for safety and privacy (e.g., fire alarms, doorbell, door knock light);
 - b. Provide or obtain from the Maine Center on Deafness loan program a TTY or fax as appropriate for the consumers' linguistic ability and preference and a similar device for the program office; and
 - c. Train staff in use and maintenance of all adaptive equipment in use in the program, including but not limited to: hearing aids, TTY, fax machine, caption controls on TV, and alarms.

16. **Provider responsibilities: deaf, hard of hearing and/or nonverbal.** Providers who serve deaf, hard of hearing, and/or nonverbal consumers for whom sign language has been determined as a viable means of communication shall:
 - a. Provide ongoing training in sign language and visual gestural communication to all staff on all shifts who need to communicate meaningfully with these clients, and document staff attendance and performance goals with respect to such training;
 - b. Develop clear written communication policies for the agency and each program of the agency, including staff sign/visual gestural proficiency expectations, and when and how to provide qualified sign language interpretation; and
 - c. Ensure that staff have a level of proficiency in sign language that that is sufficient to communicate meaningfully with consumers.

17. **Service Development.** The Provider shall provide services in a culturally sensitive and age appropriate manner.

18. **Staffing.** The Provider shall supply all staff training, clinical and administrative supervision, and evaluation appropriate to the performance of services under this Agreement. The Provider's staffing of all service programs contracted herein shall be in accordance with its final approved budget submission for the contract period.

19. **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 provide services 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, knowing or reckless 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, within the preceding two years.

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.

20. 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.
 - iii) (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 HHS 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.**

21. Unexpended Funds. Upon the completion of the agency's independent audit for this agreement, the agency will submit to the Department a check in the amount of at least 90% of any unexpended state funds and 100% of unexpended federal funds, plus interest income earned, as an interim payment pending the results of the audit completed by the Division of Audit, Community Services Center. The Provider may retain the first \$250 of interest income for administrative expenses. A copy of the independent audit and the Agreement Settlement Form (F-1) must accompany this payment.

22. 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.

23. 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.

24. Business Associate Clause.

- a.** The purpose of this clause is to establish the permitted and required uses and disclosures of any protected health information (PHI) that the Provider and the Department may possess by reason of their relationships with each other.
 - i) To the extent that Provider or the Department may obtain PHI in the course of their duties under the Contract, Provider and the Department agree:
 - (a) to maintain the same level of security and privacy with respect to the PHI as required under the applicable policies and procedures of the department; and
 - (b) to comply with any security or privacy requirements for the PHI that may be imposed pursuant to the Health Insurance Portability and Accountability Act (HIPAA, PL 104-191) and other applicable laws or regulations.
 - ii) Provider and the Department may use PHI:
 - (a) to carry out their legal responsibilities provided that any such use involving the disclosure of PHI to third parties shall be carried out in accordance with the specific requirements of this Clause; and
 - (b) to provide data aggregation services related to the healthcare operations of the Provider or the Department .
- b.** Uses and disclosures. Except as specifically authorized in writing by individuals who are the subjects of the PHI, or as required by law, Provider and the Department will maintain the confidentiality of all PHI in accordance with the provisions of this Clause and of the HIPAA Privacy Rule 45 CFR Parts 160 and 164). Provider and the Department hereby agree to:
 - i) not use or further disclose the PHI, except as permitted or required by this contract or as required by law;
 - ii) use appropriate safeguards to keep the PHI confidential;
 - iii) report any inappropriate disclosure of the PHI of which the parties becomes aware;
 - iv) ensure that the parties' agents or subcontractors (including any person to whom PHI may be disclosed hereunder) comply with the terms of this amendment;
 - v) make the PHI available to the individual upon written request as appropriate;
 - vi) allow and incorporate amendments to the PHI by the individual;
 - vii) make available to the individual an accounting of any disclosures of the PHI;
 - viii) make the parties' internal practices and records available to the Secretary of HHS for the purposes of determining the parties' compliance with the requirements of the Clause and of the HIPAA Privacy Rule; and
 - ix) return, destroy or keep the protection of the PHI in place for such period as the parties retains the PHI, upon termination of the Contract.
- c.** Termination of Contract. The parties hereby agree that the contract may be terminated for any breach by either party of their obligations hereunder.

- 25. 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 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.

Revised: April, 2004

RIDER E

PROGRAM REQUIREMENTS **(Mental Health Services)**

The following provisions specify program requirements for this agreement.

I. GENERAL PROVISIONS

- A. Eligibility.** All individuals meeting clinical and programmatic criteria for any Office of Adult Mental Health Services (OAMHS)-funded service are eligible for that service without regard to income, within existing resources. The Provider, in accordance with an approved fee schedule or established residential rate, may charge a fee.
- B. Service Planning.**
1. The Provider shall use uniform intake and assessment tools and procedures and shall report data elements according to reporting schedules established by the Department. The Provider also shall use and abide by all policies, procedures, and protocols developed by the Department, including, without limitation, procedures and protocols for tracking and reporting (i) grievances and rights violations and (ii) critical incidents. The Provider shall electronically transmit identified uniform data elements in accordance with specifications established by the Department.
 2. The Provider shall abide by and implement the Individualized Support Plan (ISP) policies, procedures, practices, and/or protocols established by the Department for carrying out its approved ISP Plan pursuant to *Bates v. DHHS* (AMHI Consent Decree), including, without limitation, (i) requirements for supporting Community Integration Service staff in their role of coordinating and monitoring progress on ISPs and (ii) procedures for completing initial and subsequent 90-day reviews in a timely manner.
- C. Service Standards.** The provision of services to a client shall not be contingent on the receiving of other supports, services, benefits, or entitlements that are available to the general public in their communities. If an individual's assessment for needed services identifies such service, the provider shall assist in the referral process if the individual desires.
- D. Availability of Peer and Family Support.** The Provider is required to give all new clients information regarding services available through peer support organizations/groups. The Provider is also required to include among their services the referral of family members, with whom the providers have contact, to area family support groups such as NAMI-Maine. When referring a family member to a family support group the agency shall provide information regarding the group and shall additionally offer to call the support group to give the family member's name and means whereby the support group may contact him or her.

E. Licensure and Location

1. The Provider shall maintain a valid Hospital License and/or other required licensure during the term of this Agreement.
2. The Provider shall make every effort to deliver necessary services where the clients are located, in the event that clients are unable to come to the Provider's office to receive services.
3. The Provider shall report to the Department Licensing Division and to the Department mental health team leader all major programming and structural changes in programs funded, seeded, or licensed by the Department. Any program changes that add, alter, or eliminate existing services must be negotiated with the mental health team leader prior to implementation. Major program changes include, but are not limited to, the following: (1) the addition of new services or deletion of existing services; (2) serving a population not served by the agency previously; (3) significant increases or decreases in service capacity; (4) significant changes in the organizational structure; (5) changes in the executive director or name or ownership of the agency; or 6) relocation of services.

F. Co-occurring Mental Health and Substance Abuse Disorders. In support of the Department statewide initiative to create a system welcoming to clients with co-occurring mental health and substance abuse disorders, the Provider agrees to the following:

1. The Provider shall not deny services to any individual solely on the basis of the individual's having a known substance use/abuse disorder in addition to their mental illness;
2. The Provider shall maintain a written protocol or policy that describes its service approach to individuals with a co-occurring mental health and substance abuse disorder; and
3. The Provider shall ensure that appropriate staff receives training in the interrelationship of mental illness and substance abuse, the identification of available resources, and the referral and treatment process.

G. Interpretation Services (Communication Access). The Provider shall determine the primary language of individuals requesting services and ensure that the services are provided either by a bi-lingual clinician or with the assistance of a qualified interpreter when English is not the primary language. The client shall not be charged for this service.

H. Accessibility for the Deaf and Hard of Hearing. The Provider shall maintain and periodically test appropriate telecommunication equipment including TTY, videophone, or amplified telephone. Equipment must be available and accessible for use by clients and staff for incoming and outgoing calls. The Provider shall ensure that appropriate staff has been trained in the use of the telecommunications device and that the TTY telephone number is published on all of the Provider's stationery, letterhead, business cards, etc., in the local telephone books, as well as in the statewide TTY directory. The Provider, at its

expense, shall obtain the services of a qualified sign language interpreter or other adaptive service or device when requested by a consumer or family member. Interpreters must be licensed with the Maine Department of Professional and Financial Regulation in the Office of Licensing and Registration. The Provider shall document the interpreter's name and license number in the file notes for each interpreted contact.

I. Deaf and/or Severely Hard of Hearing. Providers who serve deaf and/or severely hard of hearing consumers shall:

1. Provide visible or tactile alarms for safety and privacy (e.g., fire alarms, doorbell, door knock light);
2. Provide or obtain from the Maine Center on Deafness loan program a TTY or fax as appropriate for the consumers' linguistic ability and preference and a similar device for the program office; and
3. Train staff in use and maintenance of all adaptive equipment in use in the program, including but not limited to hearing aids, assistive listening devices, TTY, fax machine, television caption controls, and alarms.

The Maine Center on Deafness www.mainecenterondeafness.org offers assistance to individuals who need specialized telecommunications devices.

J. Provider Responsibilities: Deaf, Hard of Hearing and/or Nonverbal. Providers who serve deaf, hard of hearing, and/or nonverbal consumers for whom sign language has been determined as a viable means of communication shall:

1. Provide ongoing training in sign language and visual gestural communication to all staff on all shifts who need to communicate meaningfully with these clients, and shall document staff attendance and performance goals with respect to such training;
2. Develop clear written communication policies for the agency and each program of the agency, including staff sign/visual gestural proficiency expectations and when and how to provide qualified sign language interpretation; and
3. Ensure that staff has a level of proficiency in sign language that that is sufficient to communicate meaningfully with consumers.

K. Annual Survey. The Provider is required to support and participate in the Annual Mental Health Data Infrastructure Consumer and Family Satisfaction Survey Project in accordance with the protocols developed by the Department's Office of Quality Improvement. The surveys are administered directly by the Department. Provider agencies will be required to assist in notifying clients about the survey prior to administration, encouraging client participation and addressing client questions regarding surveys.

Three surveys are used for specific populations, including: the Mental Health Statistics Improvement Program (MHSIP) Adult Consumer Survey (for ages 18 and older), the Youth Services Survey for Families (YSSF) (families of children below 12 and younger), and the Youth Services Survey (YSS) (for youth between the ages of 13 and 18).

II. CONSENT DECREE COMPLIANCE

- A. The Provider agrees to provide services in a manner consistent with terms of this section and to work cooperatively with the Department in fulfilling its requirements under the “AMHI Consent Decree” in *Bates vs. DHHS*, Civil Action No. 89-88 (Me. Superior Ct., Kennebec County), the terms of which are incorporated herein by reference. Nothing elsewhere in this Agreement should be read to restrict or limit requirements in this section
- B. **All Providers.** All providers of services subject to this Rider E shall comply with the following:
1. The Provider shall have in place a grievance policy and procedure in compliance with the Rights of Recipients of Mental Health Services.
 2. The Provider shall notify all clients who apply for services of their rights under the Bates v. DHHS Consent Decree and under the Rights of Recipients of Mental Health Services. Furthermore, the Provider shall notify clients of their right to name a designated representative or representatives to assist them. The Provider shall also provide information to clients regarding available advocacy programs.
 3. Providers of comprehensive mental health services are required to have a consumer on their Board of Directors. This may be a current or former consumer who self discloses as a consumer and does not have to be a consumer of the provider’s services. Other mental health providers are required to either have a consumer on their Board of Directors or to have a consumer advisory committee.
 4. The Provider shall submit a written treatment or service plan to the community support worker when requested by the community support program. The written treatment or service plan shall include a description of the service to be provided and any applicable terms included in the ISP. The written treatment or service plan or written service agreement shall also include a statement that the Provider agrees that it will not discontinue or otherwise interrupt services which the Provider agrees to deliver to the client, without complying with the following terms:
 - a) The Provider shall obtain prior written approval from the Department for class members;
 - b) If written approval is obtained as specified above, and, as a result, services to the client will be discontinued or otherwise interrupted, the Provider shall give thirty days advance written notice to the client, to the client’s guardian, if any, and to the client’s community support worker. If the client poses a threat of imminent harm to persons employed or served by the Provider, the Provider shall give notice which is reasonable under the circumstances;
 - c) The Provider shall give notice as may be required by law or regulation following the applicable, most stringent of Chapter II of

- the MaineCare Benefits Manual, Department Licensing Regulations, or the Bates v. DHHS Consent Decree; and
- d) The Provider shall assist the client and the client's community support worker in obtaining the services from another provider.
5. The Provider shall maintain current client records which chart progress toward achievement of goals and which meet applicable requirements of the settlement agreement, contracts, law, regulations, and professional standards.
 6. The Provider shall maintain a manual of up-to-date job descriptions for each mental health service position. The job descriptions shall clearly define areas of responsibility, including those required in the Bates v. DHHS Consent Decree.
 7. The Provider shall adhere to the Department's Procedural Guidelines for Mental Health Rehabilitation Technician (MHRT/Community) Certification process dated August 2002 to determine the qualifications for each position in terms of education and experience. The Provider shall verify that its employees have appropriate licensure, certification, or registration.
 8. The Provider shall establish a performance evaluation protocol for each direct service position.
 9. The Provider shall verify that all its employees who perform client services have received training consisting of, but not limited to:
 - a) The legal rights of persons with mental illness;
 - b) Identification of, response to, and reporting of client abuse, neglect and exploitation;
 - c) Specific job responsibilities;
 - d) The agency mission;
 - e) Client privacy and confidentiality;
 - f) Physical intervention techniques, if applicable;
 - g) The terms of the Bates v. DHHS Settlement Agreement;
 - h) The perspectives and values of consumers of mental health services, including recovery and community inclusion. This portion of the training shall be delivered, at least in part, by consumers;
 - i) The ISP planning process;
 - j) Introduction to mental health services systems, including,
 - (1) The role of Riverview Psychiatric Center/Dorothea Dix Psychiatric Center in the mental health system,
 - (2) The responsibilities of various professional and staff positions within the mental health system;
 - k) Family support services;
 - l) Principles of Psychosocial Rehabilitation (PSR); and
 - m) Resources within the mental health service system.
 10. The Provider shall not assign staff to duties requiring direct involvement with clients until staff has received the orientation training listed in section

II.10.a-f) above, except where the duties are performed under direct supervision.

11. The Provider shall ensure that employees do not implement physical intervention techniques unless they have received training in the use of a gradually progressive system of alternatives that involves the least restrictive means of interpersonal and physical interaction while maintaining a high level of dignity and respect. Examples of such training include The Mandt System or NAPPI.
12. The Provider shall ensure that all non-medical staff that has client contact is trained in the identification of adverse reactions to psychoactive medications, first aid, and reporting requirements.
13. Specific training may be waived for any employee who the agency verifies has recently received training through prior employment at another licensed community mental health agency in Maine.
14. The Provider shall ensure that professional staff is required to meet the continuing education requirements necessary to maintain their licenses.
15. The Provider shall accept referrals of all Bates v. DHHS Consent Decree class members for services provided under their contract with the Department except as provided in paragraph 277 of the Bates v. DHHS Consent Decree.
16. An ISP shall be developed within 30 days of application for community support services and reviewed every 90 days.
17. The Department has established seven Community Service Network (CSN) areas:
 1. Aroostook County
 2. Hancock, Washington, Penobscot and Piscataquis Counties
 3. Kennebec and Somerset Counties
 4. Knox, Lincoln, Sagadahoc, and Waldo Counties
 5. Androscoggin, Franklin, and Oxford Counties, including northern Cumberland County (Bridgton et. al.)
 6. Cumberland County, excluding northern Cumberland County (Bridgton et. al.)
 7. York County

Except as noted below, the Provider must participate in CSNs in the geographic areas in which the provider offers any of the following services:

- Crisis Services (including Crisis Stabilization Units);
- Peer Services;
- Community Support Services (Community Integration (CI), Intensive Community Integration (ICI), Assertive Community Treatment (ACT) Services, Daily Living Support, Skills Development, and Day Support Services);
- Outpatient Therapy;

- Medication Management;
- Residential Services;
- Vocational Services; and
- Community Hospitalization Services (including services in hospitals that do and hospitals that do not provide inpatient psychiatric services).

If the Provider offers limited services or services in more than one CSN area, then, the Provider may request an exemption from requirements to participate in the CSN. The Provider shall make that request to the Agreement Administrator in writing.

CSN participation includes entering into a Memorandum of Understanding (MOU) and appointing a representative to the CSN who will attend monthly CSN meetings and who is authorized to make commitments on behalf of the Provider, participating in activities to assure appropriate governance, and participating in activities to assure that the goals of the CSN are achieved.

Maintenance of Agency Information

The providers will notify the Agreement Administrator within 5 working days of a change to information included on the Provider Summary Page, using a form available from the Agreement Administrator.

Continuity of Care

Providers must, to the extent permitted by consumers, seek appropriate releases of information at intake and with every treatment/service plan update to improve continuity of care. Agencies shall plan with consumers for appropriate releases of information and educate consumers about the benefits of shared information to continuity of care. If the consumer does not permit a release of information to another provider of service, then the record must document this attempt to secure a release.

C. Providers of Community Support Services (defined herein as CI, ICI, ACT) The Community Support Services Provider must:

- Assign a CSW within 2 days to class members who are hospitalized at the time of application for CSW services, and must meet with the class member within four days of discharge. Providers must assign a CSW within 3 days to class members who are not hospitalized at the time of application. Non-class members must be assigned a CSW within 7 days. Application means the date on which the request for a CSW was made by the consumer or person acting on behalf of the consumer.
- Provide 24/7 access to Community Integration (CI), Intensive Community Integration (ICI), and Assertive Community Treatment (ACT) consumer records (including the ISP, the crisis plan, health care advance directives, medical information as available, and basic demographic and service information that might be needed during a crisis) for better continuity of care during a psychiatric crisis. Additionally, the CSW is responsible for maintaining the name of the prescriber of psychiatric medications and up to date contact information for that prescriber;
- Assign a community support worker to each consumer receiving CI services and assure that a substitute worker is assigned to the consumer when the regular worker is not available (for example, if the regular worker is out sick, is on vacation, or has resigned) and that the consumer is informed of the substitute worker's name;
- Ensure that community support workers (CI, ICI, and ACT) develop Individual Support Plans (ISPs) collaboratively and convene ISP meetings as directed by the consumer, and actively coordinate services that are part of the Individual Service Plans. Documented consent of the consumer shall be necessary for the ISP meeting to be held without the presence of the consumer;
- Ensure that community support workers (IC, ICI, ACT) develop and maintain up-to-date crisis plans and advance directives with each consumer, or document when and why this has not

- occurred. Additionally, it shall be the role of the community support worker to review with the consumer both the ISP and the crisis plan whenever there is a major psychiatric event;
- Ensure that community support workers (CI, ICI, ACT) receive not only annual training on the importance of work to recovery, but also ongoing training to improve engagement skills regarding work and documenting work goals in each ISP;
 - Ensure that each consumer's assigned or substitute CI worker, ICI team member, or ACT team member attends (in person or by telephone or videoconference) the consumer's treatment and discharge planning meetings at state and private psychiatric hospitals, as well as at community hospitals with psychiatric units;
 - Ensure that there is coordination with the consumer's ISP and the hospital's treatment and discharge plan while the consumer is in the hospital;
 - Ensure that the hospital receives a copy of the consumer's ISP as soon as the provider is aware of the admission;
 - Ensure that CI Services are available face-to-face Monday through Friday during normal business hours of no less than 40 hours per week and that availability shall be based on consumer need; and
 - Ensure that employment specialists on ACT teams focus on employment functions with the expectation that 90% of the employment specialist's work time will be devoted to vocational/employment support related tasks.

D. Providers of Crisis Services. The Crisis Services Provider must:

- Ensure 24/7 availability of crisis workers for Emergency Departments within the community service network;
- Facilitate service during a psychiatric emergency and implement the rapid response protocol;
- Collect data on consumers who are denied admission to a psychiatric hospital though a bed is available and on consumers who are denied admission to a crisis stabilization unit though a bed is available. The data must include the reasons for rejection, the date of occurrence, and the disposition of the consumer. These data will be submitted within two working days to the regional mental health team leader in a format designed by OAMHS;
- Provide information to community support providers regarding the provision of crisis services and any psychiatric inpatient or CSU admission to any of their CSS clients within 24 hours of contact;
- Act as the contact for Emergency Departments to retrieve consumer record information from the CSS (Community Integration, Intensive Community Integration, or Assertive Community Treatment) provider; and
- Report any concerns about the possible inappropriate use of blue papers to the Regional Mental Health Team Leader or their designee within 24 hours.

E. Providers of PNMI and Specialized Nursing Facility Services. The PNMI and Specialized Nursing Facility Services Provider must:

- Notify residents of all applicable rights of appeal from a discharge decision;
- Clarify that any transfer of a resident to an acute hospital neither constitutes a transfer nor a discharge for purposes of contracts or regulations; and
- Obtain OAMHS approval for discharges and participate in discharge planning.

F. Providers of Individual and Group Counseling Services. The Individual and Group Counseling Services Provider must:

- Insure that they are the first responders for client crisis situations during normal business hours and that after hour coverage is available either through its own staff or through formal agreement with the local crisis service provider.
- Submit a written copy of the agency's current after hour coverage policy, including procedures for accessing on call staff, with or prior to the submission of its first quarterly

- report.
- Submit a copy of the current signed agreement for crisis services, including any financial remuneration, in the case where the local crisis service is utilized for after hour coverage.

