SERVICE CONTRACT

DATE: **7/29/2026**	CONTRACT AMOUNT: **$Unencumbered-Work will be performed by Delivery Order**
ADVANTAGE CONTRACT #: RQS 10A 20260722000000000127 MA 18P 260903-048	
DEPARTMENT AGREEMENT #: DRPC-26-711	
START DATE: 6/1/2026	END DATE: 5/31/2028

This Contract is between the following State of Maine Department and Provider:

STATE OF MAINE DEPARTMENT		
DEPARTMENT NAME: Health and Human Services		
ADDRESS: 109 Capitol St		
CITY: Augusta	STATE: ME	ZIP CODE: 04333-0011
PROVIDER		
PROVIDER NAME: Aya Healthcare, Inc. DBA:		
ADDRESS: 5930 Cornerstone Court West, Suite 300		
CITY: San Diego	STATE: CA	ZIP CODE: 92121
VENDOR CUSTOMER #: VS0000022451	FEDERAL UEI #:	

Each signatory below represents that the person has the requisite authority to enter into this Contract.

Department Representative:

8/6/2026

BY: Signature **Todd Haber,** Date

Acting Deputy Commissioner of Finance

Provider Representative:

Signed by: Peter Kaufman A3C5B9F601F3486... 8/24/2026

BY: Signature **Peter Kaufman,** Date

EVP of Enterprise Services

The contract is fully executed when all parties sign and funds have been encumbered. Upon final approval by the Office of State Procurement Services, a case details page will be made part of this contract.

DEPARTMENT AND PROVIDER POINT OF CONTACT

CONTRACT ADMINISTRATOR: The following person is designated as the Contract Administrator on behalf of the Department for this Contract. Unless otherwise directed, all financial reports, invoices, correspondence and related submissions from the Provider as outlined in Rider A, Reports, shall be submitted to:

NAME: Nicole Mitchell		
EMAIL: dcm.dhhs@maine.gov	TELEPHONE: (207) 287-5028	
ADDRESS: 109 Capitol St		
CITY: Augusta	STATE: ME	ZIP CODE: 04333-0011

PROGRAM MANAGER:
The following person is designated as the Program Manager. This person will be able to respond to routine questions pertaining to the Contract; they will not be able to alter the scope of the Contract.

NAME: Matthew Davis		
EMAIL: Matthew.J.Davis@maine.gov	TELEPHONE: (207) 624-4658	
ADDRESS: 250 Arsenal Street SHS 11		
CITY: Augusta	STATE: ME	ZIP CODE: 04330

PROGRAM ADMINISTRATOR:
The following person is designated as the Program Administrator. This person will be able to respond to routine questions pertaining to the Contract; they will not be able to alter the scope of the Contract.

NAME: Kathryn Comeau		
EMAIL: Kathryn.Comeau@maine.gov	TELEPHONE: (207) 624-4675	
ADDRESS: 250 Arsenal Street SHS 11		
CITY: Augusta	STATE: ME	ZIP CODE: 04330

PROVIDER CONTACT: The following person is designated as the Contact Person on behalf of the Provider for this Contract. All contractual correspondence from the Department shall be submitted to:

NAME: Attn: Facility Contracts CC: Attn: Legal		
EMAIL: facilitycontracts@ayahealthcare.com	TELEPHONE: NA	
ADDRESS: 5930 Cornerstone Court West, Suite 300		
CITY: San Diego	STATE: CA	ZIP CODE: 92121

TABLE OF RIDERS

The following riders are hereby incorporated into this Contract and made part of it by reference. *(Riders A, B, and G are required. Check all others that apply.)*	
☒	Funding Rider and Payment Rider
☒	Rider A – Scope of Work
☒	Rider B – Terms and Conditions
☒	Rider D – Additional DHHS Requirements
☒	Rider BAA – Business Associate Agreement
☒	Rider G – Identification of Country in Which Contracted Work will be Performed

FUNDING AND PAYMENT RIDER

1. **FUNDING TOTAL. $ Unencumbered – DHHS will use on an as-needed basis**

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

State Funds **$ Unencumbered – DHHS will use on an as-needed basis**

2. **INVOICES AND PAYMENT**. The Department will pay the Provider for work outlined within approved Delivery Orders associated with this Master Contract.

For all Delivery Orders, the Department will pay the Provider as follows: Payment terms are net 30 from the date the State receives an error-free invoice with all of the necessary and complete supporting documents. These payments will be for completed and approved work.

All Delivery Orders will include a Mark-up Rate that is capped using the following chart:

	Recruitment	Mark-up
All Resources	10.00%	50.00%

To the extent travel costs are included:

- In accordance with 5 MRS § 1541,(13)(A), the Department is prohibited from reimbursing the Provider for travel at a rate greater than the rate established for state employees.
- The Provider must submit with the invoice, or make available at the Department's request, itemized supporting documentation (which clearly demonstrates that reimbursements to contracted staff are not greater than what is allowed to be reimbursed to a State employee).
- The established State rate is available at: https://www.maine.gov/osc/travel.

Invoices for payment, submitted on forms approved by the Department, shall be submitted to the email address: RPCBusinessOffice.DHHS@maine.gov

Invoices shall contain sufficient detail to allow proper cost allocation and shall be accompanied by supporting documentation. No invoice will be processed for payment until approved by the Department. All invoices require the following:

- Provider letterhead with Provider name and payment address;
- A unique invoice number;
- The DHHS Agreement number for this Delivery Order;
- The invoice date and the total amount of the invoice;
- The dates of service for the invoice; and
- A line item for each resource, their rate of pay, the hours worked during the dates of service, and the net amount for that resource.

A line item for each resource, their rate of pay, the hours worked during the dates of service, and the net amount for that resource. The sum of the Resource hourly rate plus the mark-up rate will cover all

salary, compensation, applicable employment taxes, insurances, approved travel costs incurred by the resource, and required malpractice costs (including tail coverage) to ensure the Provider fully complies with the terms and conditions of this Contract.

Delivery Orders shall be invoiced no more frequently than every two weeks.

All invoices, including the final invoice, must be submitted no later than forty-five (45) days after the last day of the month for which the service being billed for was performed. Payments are subject to the Provider's compliance with all items set forth in this Contract and subject to the availability of funds. At the discretion of the Department, no payment will be made if the Provider does not comply with these terms.

RIDER A: SCOPE OF WORK

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I. Acronyms/Definitions
II. Introduction/Overview
III. Deliverables
IV. Performance Measures
V. Reports

I. ACRONYMS/DEFINITIONS:

The following terms and acronyms shall have the meaning indicated below as referenced in this Contract:

COMMONLY KNOWN ACRONYMS AND DEPARTMENT ABBREVIATIONS	
BAA	Business Associate Agreement
Contract	Formal and legal binding agreement
DDPC	Dorothea Dix Psychiatric Center
Department	State of Maine Department of Health and Human Services
Hospitals	Dorothea Dix Psychiatric Center (DDPC) and Riverview Psychiatric Center (RPC) a. DDPC located at 656 State Street, Bangor, Maine and 81 State Hospital Drive, Bangor, Maine b. RPC located at 250 Arsenal Street, Augusta, Maine
Provider	Organization providing services under this Contract
RPC	Riverview Psychiatric Center
State	State of Maine

A. **Employee**: A resource who is an employee of the Provider and receives a W-2 at year end.
B. **Engagement**: The specific terms by which the locum tenens resource is expected to work.
C. Independent Contractor: A resource who is self-employed and received a 1099-Misc at year end.
D. **Medical Staff**: Individuals hired by or contracted with the Provider to provide medical coverage for the admission, treatment, and discharge of patients at the Hospital(s). Medical Staff includes but is not limited to Psychiatrists, Primary Care Physicians, Psychologists, Physician Assistants, Nurse Practitioners, Nurses, Residents, and/or Clinical Director Assistants.

E. **Resource**: An Employee or Independent Contractor hired by or contracted with the Provider to perform a specific assignment. Resources may include clinical and/or non-clinical staff and may be long-term or short-term assignments.

II. INTRODUCTION/OVERVIEW:

The purpose of this Contract is to provide Locum Tenens services at the Department's psychiatric hospitals. The individual resources are medical and clinical professionals who are hired to provide medical coverage for the admission, treatment, and discharge of patients at the hospital(s). They may include, but are not limited to, psychiatrists, primary care physicians, psychologists, physician assistants, nurse practitioners, nurses, residents, and/or clinical director assistants.

The Provider shall provide Locum Tenens services, on an as needed basis, at Dorothea Dix and Riverview Psychiatric Centers.

III. DELIVERABLES:

The Provider shall perform all services and maintain all standards and requirements for services provided under this Contract in accordance with the below:

A. Recruitment Requirements
   1. Recruit Locum Tenens, at the request of the Hospital(s), by advertising, screening, interviewing, and conducting all other aspects of recruitment for finding and attracting potential resources necessary to meet the medical staffing needs of the Hospital(s) and who will hold the temporary place of a substitute for a Hospital employee.
      a. Ensure requests for recruitment are fulfilled (at least one (1) proposed candidate has been deemed acceptable to Hospital(s)) within fifteen (15) calendar days of the initial written request.
      b. Ensure the Hospital(s) is afforded the opportunity to interview any final candidates identified by the Provider.
         i. All costs associated with pre-engagement of any Locum Tenens shall be the responsibility of the Provider, including but not limited to travel and lodging for interviews.
         ii. The Hospital(s) will have the right to accept or reject any offer by the Provider for any proposed Locum Tenens.

B. Pre-Engagement Requirements
   1. Facilitate contingent engagement offers and conducts criminal background checks and/or license verifications in accordance with the Department's Rider D, including applicable out-of-state background checks and license verifications, prior to any announced start date of the intended candidate.
      a. Coordinate with the Hospital(s), the Locum Tenens' actual start date.
      b. Provide written notification to the Hospital(s) confirming the approved start date.
   2. Work with the selected Locum Tenens to ensure they:
      a. Receive and pass a pre-engagement drug screening.
      b. Comply with immunization requires under 22 M.R.S.A. §802 and 10-144 C.M.R. Ch. 264 and the Federal Centers for Disease Control and Prevention, Guidelines for Preventing the Transmission of Mycobacterium Tuberculosis in Health-Care

Settings, 2005, including but not limited to:

i. Ensuring Locum Tenens are not in a period of communicability of a communicable disease(s) (mumps, varicella-zoster, rubella, rubeola, tuberculosis, COVID-19, or any other communicable disease as identified by the Hospital(s)).
   a) The Provider shall be responsible for the cost incurred in providing the documentation of the immune status of Locum Tenens.
   b) Ensure a signed letter of declination is provided to the Hospital(s) for Locum Tenens who decline the Hepatitis B vaccine.
   c) The Hospital(s) Infection Control Nurse will evaluate the information received and give clearance for the Locum Tenens to begin orientation.

c. Submit Locum Tenens credentials to become privileged as a member of the Hospital(s), in accordance with the Hospital(s) bylaws, rules, and regulations.
   i. Ensure Locum Tenens expedite submission of credential in order to begin providing services in the required timeframe set forth by the Hospital(s).
d. Pass a competency assessment approved by the Department.
   i. The Hospital(s) will provide the Provider with a list of competencies required for each Locum Tenens position.
   ii. Information obtained from the required orientation and trainings and initial competency assessment shall be used in the credentialing process to ensure Locum Tenens are qualified to provide medical coverage.
   iii. Ensure Locum Tenens comply with the Hospital(s) periodic competency assessments.
   iv. Initial and periodic competency assessments shall include the time period on which the assessment is based, an assessment of the Locum Tenens clinical judgment and skills, specific instances of treatment outcomes, and evaluations of patient outcomes compared to those for similar medical staff employed by the Hospital(s).
e. Sign a Memorandum of Understanding (MOU) with the Department prior to the start date of the Delivery Order, to include but not be limited to:
   i. Terms of the assignment;
   ii. Compensation;
   iii. Work hours;
   iv. Termination;
   v. Knowledge and certification requirements; and
   vi. Duties and deliverables.

3. Provide written confirmation to the Hospital(s) verifying the selected Locum Tenens file is current and has been provided to the Provider's Human Resource Department, including but not limited to:
   a. Application for Engagement;
   b. Documentation of current employment verification and background screening;
   c. Documentation of a current drug screen;
   d. Records of counseling and disciplinary action;
   e. Verification of a valid, in good standing Maine license to practice in the respective field from the appropriate licensing board;
      i. Applicable licensure must remain valid, in good standing throughout the term of the Locum Tenens tenure for providing medical coverage at the Hospital(s).
   f. Documentation of education and training (resume or curriculum vitae);

g. Evidence of appropriate knowledge, experience, and competency related to the specific position responsibilities;
   i. Conduct a competency assessment and provide the results to the Hospital(s) for review and approval.
h. An annual packet, which includes yearly evaluations, competency assessments, signed confidentiality statements, and mandatory policies sign-off.
i. Provide a portion of or full documentation of the selected Locum Tenens file upon request of the Hospital(s).

4. Recruitment Fee – At the approval of the Department, the Provider shall receive a recruitment fee when a candidate successfully completes all of the pre-engagement requirements and that has been accepted by the Department.
   a. The Recruitment Fee will be calculated based upon the candidate's annual compensation multiplied by the Recruitment Rate identified in the Funding and Payment Rider Section 2. The annual compensation is based upon the Resource Rate prior to applying the Markup Rate multiplied by 2080 hours.

C. Termination/Resignation Requirements
1. Coordinate and facilitate meetings with the Hospital(s) and Locum Tenens when performance concerns arise.
   a. Prior to discussing termination, the Hospital(s) will discuss any issues relating to the individual Locum Tenens with the Provider.
   b. The Hospital(s) and Provider shall collaborate and conduct any separation of engagement with the individual Locum Tenens.
   c. Locum Tenens shall be terminated immediately at the discretion of and as directed by the Hospital(s)
2. Notify the Hospital(s) immediately upon discovery of:
   a. Any adverse action being taken by any agency of any state against a Locum Tenens professional license; and/or
   b. If the Locum Tenens professional license expires during their engagement with the Hospital(s).
3. Immediately terminate Locum Tenens when:
   a. He/she loses Locum Tenens privileges at the Hospital(s) secondary to revocation or suspension of the Locum Tenens license to practice in this State, or conviction of a felony; and/or
   b. He/she loses Locum Tenens privileges at the Hospital(s) due to failure to meet the standards of the Hospital(s) medical staff bylaws.
   c. The Hospital(s) Superintendent directs termination of the Locum Tenens.
4. Ensure the Hospital(s) receives at least thirty (30) calendar days written notice of the resignation of any Locum Tenens.
5. Replace Locum Tenens who are terminated, within thirty (30) calendar days to ensure continued medical coverage.

D. General Requirements
1. Secure medical malpractice insurance coverage for all Locum Tenens providing medical coverage through the Provider's insurance carrier with limits of liability equal to or exceeding those required by the Hospital(s).
2. Reimburse Locum Tenens for medical coverage provided at the Hospital(s).
   a. Comply with all record keeping requirements for human resources/payroll services.

3. Work with the Hospital(s) Human Resource Office regarding the Department's process for recruitment, hiring, record keeping, and termination procedures.
    a. The hourly wage for individual Locum Tenens will be negotiated with the Hospital(s) and Provider.
    b. Involve the Department and/or Hospital(s) in the Locum Tenens annual performance review process, when applicable.
        i. Provide copies of human resource documents, including performance reviews, to the Department upon request.
4. Collaborate with the Department annually to review the Hospital(s) Locum Tenens engagement needs and prepare a mutually agreed upon staffing plan within the limitations of the Hospital(s) budget.
5. Ensure Locum Tenens who travel as part of their engagement are reimbursed in accordance with the State's travel policy.
    a. Invoice the Hospital(s) for the allowable travel costs, including details regarding the miles traveled, receipts for expenses, and any other necessary documentation.
    b. Adhere to requests for a detailed audit related to travel records within five (5) business days.
    c. All travel much be preapproved by the Department.
6. Comply with all State and Federal rules, regulations and applicable standards, Hospital(s) policies and those of any regulatory or accreditation entities as determined by the Department.
7. Establish standardized written procedures for the reporting, investigation, follow-up, and tracking of any unexpected or sentinel incidents.
8. All access to the States's systems shall be performed using devices, accounts, authentication methods, and virtual private network, provisioned by the Department. Provider personnel are subjected to the following Policies:
    a. Access Control Policy (https://www.maine.gov/oit/sites/maine.gov.oit/files/inline-files/AccessControlPolicy.pdf)
    b. Access Control Procedure for Users (https://www.maine.gov/oit/sites/maine.gov.oit/files/inline-files/AccessControlProceduresForUsers.pdf)
    c. Security Awareness Training (https://www.maine.gov/oit/sites/maine.gov.oit/files/inline-files/SecurityAwarenessTrainingPolicy.pdf)
    d. Rules of Behavior Policy (https://www.maine.gov/oit/sites/maine.gov.oit/files/inline-files/RulesofBehavior.pdf)
    e. User Device and Commodity Application Policy (https://www.maine.gov/oit/sites/maine.gov.oit/files/inline-files/UserDeviceCommodityAppPolicy.pdf)
    f. Network Device Management Policy (https://www.maine.gov/oit/sites/maine.gov.oit/files/inline-files/NetworkDeviceManagementPolicy.pdf)

E. Engagement Requirements
1. Provide Locum Tenens as requested by the Hospital(s), on an as-needed basis, to provide continuity of care for psychiatric and medical coverage in the admission, treatment, and discharge of patients at the Hospital(s), including but not limited to:
    a. The specific scope of the Locum Tenens respective privileges;
    b. Requested hours of coverage;

i. The Hospital(s) will provide the specific hours of coverage needed for each Locum Tenens requested.
ii. Hours of coverage may include, but not be limited to: days, nights, weekends, holidays, after hours, substitute coverage (i.e. vacations, sick leave, etc.)

c. On-duty Locum Tenens providing after-hour coverage at the Hospital(s) shall reside in the Hospital(s) sleeping quarters, at no cost to the Provider or the Locum Tenens.

2. Ensure Locum Tenens:
   a. Comply with and perform expectations outlined in the specific Delivery Order.
   b. Maintain required medical credentialing/licensing and Locum Tenens privileges at the Hospital(s).
      i. Notify the Department and/or Hospital(s) immediately if any action is taken by any agency of any state against the Locum Tenens license to practice or if the practice license expires.
   c. Perform services in accordance with the highest standards of medical care consistent with the standards established in the medical community of which the Hospital(s) is a part, and which may be amended, including:
      i. The professional and ethical standards of the American Medical Association or American Osteopathic Association, American Psychiatric Association and The Joint Commission on Accreditation of Healthcare Organizations (TJC) as related to the Locum Tenens respective practice type;
      ii. The provisions of the Department and Hospital(s) policies, procedures, bylaws, standards, as may be amended by law, regulation, or court order.
      iii. The Rights of Recipients of Mental Health Services;
      iv. Any requirements imposed by the Federal Centers for Medicare and Medicaid Services (CMS) or the Department as may be amended from time to time; and
      v. All other applicable State and Federal rules, regulations, and applicable standards, all Hospital(s) policies and those of regulatory bodies (TJC, CMS and the Department's Division of Licensing and Certification).
   d. Do not perform outside practice duties without prior approval of the Hospital(s) designee.
   e. Provide medical and psychiatric treatment to patients who are under the care of the Hospital(s), irrespective of the patients' ability to pay.

F. Orientation and Training Requirements
1. Ensure Locum Tenens attend all required Hospital(s) orientation and trainings, which may include, but not be limited to:
   a. Mandatory orientation and trainings regarding the Hospital(s) facilities, practices, and procedures;
   b. Annual training in Behavioral Response Options (BRO);
   c. Behavioral Emergency Response Team (BERT) training;
   d. Bi-annual (every other year) CPR training/certification;
   e. Bi-annual (every other year) American Health Association (AHA) Basic Life Support (BLS) Healthcare Provider training;
   f. Non-Abusive Psychological and Physical Intervention (NAPPI) training;
   g. Adult Development training;
   h. Age Specific Competency training;
   i. Blood Borne Pathogens training;
   j. Boundaries and Treatment Modalities training;

k. Code of Conduct training;
l. Continuous Performance Improvement training;
m. Emergency Preparedness training;
n. Fire Extinguisher training;
o. Hazard Communication training;
p. Confidentiality training;
q. Patient Rights training;
r. Risk Management/Mandatory Reporting/Extreme Weather training;
s. Sexual Harassment training;
t. Suicide Prevention training; and/or
u. Trauma and Sexual Abuse training.

G. Locum Tenens Conversion to State Employment

1. Cooperate with the Department in the instance of the Resource being selected to be hired under a State payroll line in converting the Resource in an efficient, effective, and timely manner, and in accordance with State human resources procedures.
   a. Applicable candidates for a Conversion Fee include only those where the Resource was identified by the Provider. The Provider is not eligible for a Conversion Fee when the Resource was identified by the Department.
   b. Upon approval, the Department will pay the Provider a Conversion Fee according to the following structure:
      i. The maximum payment will be equal to ten (10) percent of the cost of the first six (6) months of the engagement.
      ii. The Conversion Fee amount will be based upon an estimate of the number of remaining workdays, excluding holidays and excluding prorated PTO days (versus annual PTO Day allowance).
      iii. The Conversion Fee will be calculated based upon the Billable Hourly Rate.
   c. No Conversion Fees will be made to the Provider for transitions after the initial six (6) months of the engagement.
   d. The Provider shall invoice separately for the Conversion Fee upon Department approval of the amount.

IV. PERFORMANCE MEASURES:

In performing all services under this Agreement, the Provider shall achieve all Performance Measures listed within the Performance Measures table directly below. Failure to achieve such Performance Measures may result in the Department withholding Agreement payment(s) to the Provider, at the discretion of the Department. The Provider shall provide additional Supportive Documentation as indicated within the table, for the Department validation of the summary data submitted within the Performance Measures Report.

PROVIDER PERFOMANCE MEASURES			
	Performance Measure	**Assessment Cycle**	**Supportive Documentation**
A.	Number of days between the Hospital(s) initial request for a candidate to the date	Quarterly	Evidence of date of Hospital(s) request and Hospital(s) acceptance of at least one (1) candidate

	the Provider provides at least one (1) acceptable candidate		
B.	Number of days between the Hospital(s) acceptance of a candidate until all background checks and Credentialing are provided to the Hospital(s)	Quarterly	Evidence of the date Hospital(s) accepted candidate and date of final background check/credentials provided to the Hospital(s)
C.	Percent of candidates presented to the Hospital(s) that are deemed acceptable to the Hospital(s)	Quarterly	Names of candidate provided to, and names of candidates deemed acceptable to the Hospital(s)
D.	Percent of Locum Tenens who complete their contract term	Quarterly	Names of Locum Tenens, start dates of contracts and finish dates of contracts
E.	Percent of Locum Tenens with any Hospital(s)-initiated disciplinary action	Quarterly	Number of Locum Tenens for which the Provider has received notice of disciplinary action by the Hospital(s), and total number of Locum Tenens contracted to the Hospital(s)

V. REPORTS:

A. Required Reports

The Provider shall track and record all data/information necessary to complete the reports listed in the table below:

	Name of Report:	**Description or Appendix #:**
1.	Performance Measures/Recruitment and Engagement Report	Demonstrates evidence of successful recruitment, retention and performance engagement terms.
2.	Competency Assessment	Demonstrates competency of Locum Tenens being considered for engagement.
3.	Cost Report	Includes the compensation paid to Locum Tenens and the Provider’s costs.

B. Reporting Schedule for Above listed Required Reports

The Provider shall submit all reports listed in the table below to the Department in accordance with the deadlines established within the table:

	Name of Report:	**Period Captured by Report:** (*"Each year/quarter/ month/week")*	**Due Date and/or Frequency:** *("# days after each year/quarter/ month/week")*	**Submit Reports To:** *(in accordance with Department and Provider Point of Contacts Section of this Agreement)*
1.	Performance Measures/Recruitment and Engagement	Each quarter	Thirty (30) calendar days after each quarter	Program Administrator
2.	Competency Assessment	Point-in-time	Prior to Locum Tenens engagement	Program Administrator
3.	Cost Report	Each quarter	Fifteen (15) calendar days after each quarter	Program Administrator

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

The Provider further agrees to submit such other reports as may be reasonably requested by the Contract Administrator.

RIDER B: TERMS AND CONDITIONS

1. **BENEFITS AND DEDUCTIONS**. If the Provider is an individual, the Provider understands and agrees that they are 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 their Income Tax records.

2. **INDEPENDENT CAPACITY**. In the performance of this Contract, 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.

3. **DEPARTMENT'S REPRESENTATIVE**. The Contract Administrator shall be the Department's representative during the period of this Contract. The Contract Administrator has authority to curtail services if necessary to ensure proper execution. They shall certify to the Department when payments under the Contract are due and the amounts to be paid. They shall make decisions on all claims of the Provider, subject to the approval of the Commissioner of the Department.

4. **CHANGES IN THE WORK**. The Department may order changes in the work, the Contract 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 Procurement Review Committee. Said amendment must be effective prior to the execution of the changed work.

5. **SUB-CONTRACTORS**. The Provider may not enter into any subcontract for the work to be performed under this Contract without the express written consent of the Department. This provision shall not apply to contracts of employment between the Provider and its employees.

   The Provider is solely responsible for the performance of work under this Contract. The approval of the Department for the Provider to subcontract for work under this Contract shall not relieve the Provider in any way of its responsibility for performance of the work.

   All Subcontractors shall be bound by the terms and conditions set forth in this Contract. The Provider shall give the State immediate notice in writing of any legal action or suit filed, and prompt notice of any claim made against the Provider by any Subcontractor, which may result in litigation related in any way to this Contract, or which may affect the performance of duties under this Contract.

6. **SUBLETTING, ASSIGNMENT OR TRANSFER**. The Provider shall not sublet, sell, transfer, assign or otherwise dispose of this Contract or any portion thereof, or of its right, title or interest therein, without the written request and written approval from the Department. Such approval shall not in any case relieve the Provider of its responsibility for performance of work or liability under this Contract.

7. **EQUAL EMPLOYMENT OPPORTUNITY.** During the performance of this Contract, the Provider certifies as follows:

   A. The Provider shall not discriminate against any employee or applicant for employment relating to this Contract because of race, color, religious creed, sex, national origin, familial status, ancestry, age, physical or mental disability, sexual orientation, or gender identity, unless related to a bona fide occupational qualification.

      Such action shall include but not be limited to the following: employment, upgrading, demotions, or transfers; recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Provider agrees to post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of this nondiscrimination clause.

   B. The Provider shall, in all solicitations or advertising for employees placed by or on behalf of the Provider relating to this Contract, state that all qualified applicants shall receive consideration for employment without regard to race, color, religious creed, sex, national origin, familial status, ancestry, age, physical or mental disability, sexual orientation, or gender identity.

   C. The Provider shall send to each labor union or representative of the workers with which it has a collective bargaining Contract, or other Contract or understanding, whereby it is furnished with labor for the performance of this Contract a notice to be provided by the contracting agency, advising the said labor union or workers' representative of the Provider's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

   D. The Provider shall inform the contracting Department's Equal Employment Opportunity Coordinator of any discrimination complaints brought to an external regulatory body (Maine Human Rights Commission, EEOC, Office of Civil Rights, etc.) against their agency by any individual as well as any lawsuit regarding alleged discriminatory practice.

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

   F. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Contract 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.

8. **CONFLICT OF INTEREST.** The Provider warrants that no State employee has or will receive any direct or indirect pecuniary interest in or receive or be eligible to receive, directly or indirectly, any benefit that may arise from this Contract, for any employee who participated in any way in the solicitation, award or administration of this Contract according to Title 5 MRS §18-A, (2) and in harmony with Title 17 MRS §3104. Any contract made in violation of these sections is void.

The Provider certifies that it presently has no interest and shall not acquire any interest which would conflict in any manner or degree with the performance of its services hereunder. The Provider further certifies that in the performance of this Contract, no person having any such known interests shall be employed.

9. **EMPLOYMENT AND PERSONNEL**. The Provider shall not engage on a full-time, part-time or other basis during the period of this Contract, any executive employee who participated in any way in the solicitation, award or administration of this Contract according to Title 5 MRS §18-A, (2) and in harmony with Title 17 MRS §3104. Any contract made in violation of these sections is void.

10. **NON-COLLUSION.** 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 Contract 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 of this Contract.

    And, the Provider has not entered into a prior understanding, agreement, or connection with any corporation, firm, or person submitting a response for the same materials, supplies, equipment, or services, and this proposal is in all respects fair and without collusion or fraud. The above-mentioned entities understand and agree that collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards.

    For breach or violation of this provision, the Department shall have the right to terminate this Contract without liability or, at its discretion to otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

11. **ACCESS TO RECORDS**. As a condition of accepting a Contract for services under this section, a Provider must agree to treat all records, other than proprietary information, relating to personal services work performed under the Contract as public records under the freedom of access laws to the same extent as if the work were performed directly by the Department or agency. For the purposes of this subsection, "proprietary information" means information that is a trade secret or commercial or financial information, the disclosure of which would impair the competitive position of the Provider and would make available information not otherwise publicly available. Information relating to wages and benefits of the employees performing the personal services work under the Contract and information concerning employee and Contract oversight and accountability procedures and systems are not proprietary information. The Provider shall maintain all books, documents, payrolls, papers, accounting records and other evidence pertaining to this Contract and make such materials available at its offices at all reasonable times during the period of this Contract and for such subsequent period as specified under Maine Uniform Accounting and Auditing Practices for Community Agencies (MAAP) rules. The Provider shall allow inspection of pertinent documents by the Department or any authorized representative of the State of Maine or Federal Government, and shall furnish copies thereof, if requested. This subsection applies to contracts, contract extensions and contract amendments executed on or after October 1, 2009.

12. **TERMINATION.** The performance of work under this Contract may be terminated by the Department whenever for any reason the Contract Administrator shall determine that such

termination is in the best interest of the Department. Any such termination shall be affected by the delivery to the Provider of a Notice of Termination specifying the date on which such termination becomes effective.

Either party may terminate this Contract for cause by providing a written notice of termination stating the reason for the termination a minimum of thirty (30) calendar day ahead of the effective date of the termination. As part of the thirty (30) calendar days written notice of termination, the defaulting party shall have fifteen (15) calendar days to cure the default. If the default is of such a nature that it cannot be cured within fifteen (15) calendar days, the defaulting party shall have such additional time, as the parties may agree to, to cure the default, provided the defaulting party has taken steps to cure the default within the initial fifteen (15) calendar days.

Upon termination, the Department shall pay the Provider for work performed by the Provider prior to the date of Notice of Termination.

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

14. **GOVERNING LAW**. This Contract 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 Contract shall be brought in the State of Maine administrative or judicial forums. The Provider consents to personal jurisdiction in the State of Maine.

15. **STATE HELD HARMLESS**. The Provider shall indemnify and hold harmless the Department and its officers, agents, and employees from and against any and all third party claims, liabilities, and costs, including reasonable attorney fees, for any or all injuries to persons or property or claims for money damages, including claims for violation of intellectual property rights, arising from the negligent acts or omissions of the Provider, its employees or agents, officers or Subcontractors in the performance of work under this Agreement; provided, however, the Provider shall not be liable for claims arising out of the negligent acts or omissions of the Department, or for actions taken in reasonable reliance on written instructions of the Department.

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

17. **APPROVAL**. This Contract must be approved by the State Controller and the State Purchases Review Committee before it can be considered a valid, enforceable document.

18. **INSURANCE REQUIREMENT.** 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 Contract 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 Contract, the Provider shall furnish the Department with written or photocopied verification of the existence of such liability insurance policy.

A. Other Provisions - Unless explicitly waived by the Department, the insurance policies shall contain, or be endorsed to contain, the following provisions:

i. The Provider's insurance coverage shall be the primary and contributory. Any insurance or self-insurance maintained by the Department for its officers, agents, and employees shall be in excess of the Provider's insurance and shall not contribute to it.

ii. The Provider's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

iii. The Provider shall furnish the Department with certificates of insurance, and with those endorsements, if any, affecting coverage, required by these Insurance Requirements. The certificates and endorsements for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the Department before this Contract commences. The Department reserves the right to require complete, certified copies of all required insurance policies at any time.

iv. All policies should contain a revised cancellation clause allowing thirty (30) days notice to the Department in the event of cancellation for any reason, including nonpayment.

v. The Department will not grant the Provider, or any sub-contractor of the Provider, "Additional Insured" status and the Department will not grant any Provider a "Waiver of Subrogation".

19. **NON-APPROPRIATION.** Notwithstanding any other provision of this Contract, if the State does not receive sufficient State, Federal, or other sources of funds to fund this Contract and other obligations of the State, if funds are de-appropriated, or if the State does not receive legal authority to expend funds from State or Federal legislative, executive or judicial bodies, then the State is not obligated to make payment under this Contract.

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

21. **ORDER OF PRECEDENCE**. In the event of a conflict between the documents comprising this Contract, the Order of Precedence shall be:

Rider C Exceptions
Rider B Terms and Conditions
Rider A Scope of Work
Funding and Payment Rider
Rider D Additional DHHS Requirements
Rider BAA Business Associate Agreement included at Department's Discretion
Rider E Included at Department's Discretion
Rider F Included at Department's Discretion
Rider G Identification of Country in which contracted work will be performed
Other Included at Department's Discretion

22. **FORCE MAJEURE.** The performance of an obligation by either party shall be excused in the

event that performance of that obligation is prevented by an act of God, act of war, riot, fire, explosion, flood, pandemic 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.

23. **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 Contract up to any amounts due and owing to the State with regard to this Contract, any other Contract with any State department or agency, including any Contract for a term commencing prior to the term of this Contract, plus 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.

24. **ENTIRE CONTRACT**. This document contains the entire Contract 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 Contract 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 Contract, or to exercise an option or election under the Contract, 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 Contract shall be deemed to be a waiver of any prior or subsequent rights or remedy under the Contract or at law.

25. **AMENDMENT**. No changes, modifications, or amendments in the terms and conditions of this Contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Provider.

26. **DEBARMENT AND PERFORMANCE CERTIFICATION.** By signing this Contract, the Provider certifies to the best of Provider's knowledge and belief that the aforementioned organization:

    A. Are not presently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from bidding or working on contracts issued by any governmental agency.

    B. Have not within three years of submitting the proposal for this contract been convicted of or had a civil judgment rendered against them for:
        i. Fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state or local government transaction or contract.
        ii. Violating Federal or State antitrust statutes or committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

iii. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
iv. Have not within a three (3) year period preceding this proposal had one or more federal, state or local government transactions terminated for cause or default.

27. STATE PROPERTY. The Provider shall be responsible for the proper custody, care and return of any Department or State-owned property furnished or state-funded for the Provider's use in connection with the performance of this Contract, and the Provider will reimburse the Department for its loss or damage, normal wear and tear excepted.

28. CYBERSECURITY AND PROHIBITED TECHNOLOGIES. Through the execution of this contract, the Provider certifies that the aforementioned organization, its principals and any subcontractors named in this Contract:

A. is not a foreign adversary business entity, https://www.maine.gov/oit/prohibited-technologies, Title 5 M.R.S. §2021 (3); and
B. is not on the list of prohibited companies or does not obtain or purchase any information or communications technology or services included on the list of prohibited information and communications technology and services https://www.maine.gov/oit/prohibited-technologies, Title 5 M.R.S. §2030-B.

Contracts entered into by a state agency in violation of Title 5 M.R.S. §2030-B are void. A person who executes this contract in violation of this section commits a civil violation for which a fine may be adjudged in an amount that is twice the amount of this contract or $250,000, whichever is greater, (Title 5 M.R.S., §2030-A).

29. CONFIDENTIALITY.

A. Subject to the Maine Freedom of Access Act (FOAA), Title 1 M.R.S. §400 et seq., “confidential information” means non-public information designated as protected from disclosure under state or federal law. Confidential information given to the Provider by the Department, or acquired by the Provider on behalf of the Department, whether in verbal, written, electronic, or any other format, shall be subject to the requirements herein. The term “confidential information” does not include any information or documentation that is subject to disclosure under FOAA.

B. In conformance with applicable Federal and State statutes, regulations, and ethical standards, the Provider and the Department shall take all necessary steps to protect confidential information regarding all persons served by the Department, including the proper care, custody, use, and preservation of records, papers, files, communications, and any such items that may reveal confidential information about persons served by the Department, or whose information is utilized in order to accomplish the purposes of this Contract.

C. In the event of a breach of this confidentiality provision, the Provider shall notify the Contract Administrator immediately.

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

30. **TARIFFS**. Any price increases implemented by the provider due to the imposition of tariffs shall remain in effect only for the duration that such tariffs are in place. In the event of the repeal or reduction of any applicable tariff(s), the provider shall immediately return to the original price list or make a proportional reduction in the price to reflect the decrease in tariff(s). Price adjustments under this clause shall be made in good faith and without undue delay upon confirmation via documents reflecting tariff changes.

RIDER D: Additional DHHS Requirements

1. **LOBBY:** No Federal or State appropriated funds shall be expended by the Provider for influencing or attempting to influence, as prohibited by state or federal law, an officer or employee of any Federal or State agency, a member of Congress or a State Legislature, or an officer or employee of Congress or a State Legislature in connection with any of the following covered actions: the awarding of any Agreement; the making of any grant; the entering into of any cooperative agreement; or the extension, continuation, renewal, amendment, or modification of any Agreement, grant, or cooperative agreement. The signing of this Agreement fulfills the requirement that providers receiving over $100,000 in Federal or State funds file with the Department with respect to this provision.

   If any other funds have been or will be paid to any person in connection with any of the covered actions specified in this provision, the Provider shall complete and submit a "Disclosure of Lobbying Activities" form available at: https://www.gsa.gov/forms-library/disclosure-lobbying-activities.

2. **DRUG-FREE WORKPLACE:** By signing this Agreement, the Provider certifies that it shall comply with the drug-free workplace requirements of the Drug-Free Workplace Act (41 U.S.C. Ch. 81).

3. **ENVIRONMENT TOBACCO SMOKE:** By signing this Agreement, the Provider certifies that it shall comply with the Pro-Children Act of 1994, P.L. 103-227, Part C, which requires that smoking not be permitted in any portion of any indoor facility owned, leased, or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments by Federal grant, Agreement, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or MaineCare funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1,000 per day and/or the imposition of an administrative compliance order on the responsible entity.

   Also, the Provider of foster care services agrees that it will comply with Resolve 2003, c. 134, which prohibits smoking in the homes and vehicles operated by foster parents.

4. **MEDICARE AND MAINECARE ANTI-KICKBACK:** By signing this Agreement, the Provider agrees that it shall comply with the dictates of 42 U.S.C. 1320a-7b(b), which prohibits the solicitation or receipt of any direct or indirect remuneration in return for referring or arranging for the referral of an individual to a Provider of goods or services that may be paid for with Medicare, MaineCare, or state health program funds.

5. **PUBLICATIONS:** When issuing reports, brochures, or other documents describing programs funded in whole or in part with funds provided through this Agreement, the Provider agrees to clearly acknowledge the participation of the Department of Health and Human Services in the program. In addition, when issuing press releases and requests for proposals, the Provider shall clearly state the percentage of the total cost of the project or program to be financed with Agreement funds and the dollar amount of Agreement funds for the project or program.

6. **OWNERSHIP:** All notebooks, plans, working papers, data, or other work produced in the performance of this Agreement, which are related to specific deliverables under this Agreement, are the property of the Department and upon request shall be turned over to the Department. The State (and the Federal Government, if Federal funds are involved) shall have unlimited rights to use, disclose, duplicate, or publish for any purpose whatsoever all information and data developed, derived, documented, or furnished by the Provider under this Agreement. The Provider shall furnish such information and data, upon the request of the Department, in accordance with applicable Federal and State laws.

7. **PROVIDER RESPONSIBLITIES / SUB AGREEMENTS:** The Provider is solely responsible for fulfillment of this Agreement with the Department. The Provider assumes responsibility for all services offered and products to be delivered whether or not the Provider is the manufacturer or producer of said services.

   a) Sub-agreements.
      i) All sub-agreements must contain the assurances of Rider B and Rider D of this Agreement;
      ii) All sub-agreements must be signed and delivered to the Department's Agreement Administrator within five (5) business days following the execution date of the sub-agreement.
      iii) See Rider B Section 5.
   b) Relationship between Provider, Subcontractor and Department. The Provider shall be wholly responsible for performance of the entire Agreement whether or not subcontractors are used. Any sub-agreement into which the Provider enters with respect to performance under this Agreement shall not relieve the Provider in any way of responsibility for performance of its duties. Further, the Department will consider the Provider to be the sole point of contact with regard to any matters related to this Agreement, including payment of any and all charges resulting from this Agreement. The Department shall bear no liability for paying the claims of any subcontractors, whether or not those claims are valid. The Provider is responsible for ensuring that all staff, employees, subcontractors, or other individuals or entities providing any services on behalf of the Provider clearly explain, verbally and in writing, to clients and families their relationship to the Provider and the Provider's relationship to the Department.
   c) Liability to Subcontractor. The requirement of prior approval of any sub-agreement under this Agreement shall not make the Department a party to any sub-agreement or create any right, claim or interest in the subcontractor or proposed subcontractor against the Department. The Provider agrees to defend (subject to the approval of the Attorney General) and indemnify and

hold harmless the Department against any claim, loss, damage, or liability against the Department based upon the requirements of Rider B, Section 15.

8. **RENEWALS:** This Agreement may be renewed at the discretion of the Department.

9. **NO RULE OF CONSTRUCTION:** The parties acknowledge that this Agreement was initially prepared by the Department solely as a convenience and that all parties hereto, and their counsel, have read and fully negotiated all the language used in the Agreement. The parties acknowledge that, because all parties and their counsel participated in negotiating and drafting this Agreement, no rule of construction shall apply to this Agreement that construes ambiguous or unclear language in favor of or against any party because such party drafted this Agreement.

10. **WHISTLEBLOWER PROTECTION:**
    a) This Agreement and employees working on this Agreement will be subject to the whistleblower rights and remedies in the pilot program on employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and FAR 3.908.
    b) The Provider shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in section 3.908 of the Federal Acquisition Regulation.
    c) The Provider shall insert the substance of this clause, including this paragraph (c), in all subcontracts over the simplified acquisition threshold.

11. **FUNDING SOURCES REDUCED:** Notwithstanding any other provision of this Agreement, if the United States Government or any department of the United States Government, has de-appropriated or suspended funds for this Agreement, or where the Governor of the State of Maine has curtailed funds for this Agreement then the Department is not obligated to make payment under this Agreement to the extent of such de-appropriation, suspension or curtailment of funds. In the event of such de-appropriation, suspension or curtailment of funds, the Agreement shall be modified accordingly.

12. **CHANGE OF OPERATIONS:** The Provider shall report to the Agreement Administrator and Program Administrator any anticipated changes of the Provider's operations, including but not limited to mergers, acquisitions, or closings, at the earliest possible date and no later than sixty (60) days prior to the anticipated closure date, with the exception of reasonably unforeseen circumstance.

13. **BACKGROUND CHECKS:** The Provider agrees to conduct background checks on all employees, temporary staff persons, persons contracted or hired, consultants, volunteers, students, and other persons who may provide services under this Agreement. The Provider shall confirm the pass/fail results of each background check with the Program Administrator upon request. The cost of performing each background check shall be the responsibility of the Provider. The methods of performing the background checks must include information from the

Bureau of Motor Vehicles, the Sex Offender Registry, and the Maine State Bureau of Investigation. If services to be provided under this agreement include services to minor children then the background check will include information from the Department's Office of Child and Family Services regarding substantiated findings of abuse or neglect of a child. If services to be provided under this agreement are to be performed by a person who is professionally licensed then the background check will include information from the appropriate licensing board or entity regarding the status of the person's license.

The Provider shall not hire or retain in any capacity any person who may directly provide services to a client under this Agreement if that person has a record of:

a) any criminal conviction that involves client abuse, neglect or exploitation;
b) any criminal conviction, classified as Class A, B or C or the equivalent of any of these, or any reckless conduct that caused, threatened, solicited or created the substantial risk of bodily injury to another person within the preceding two years; or
c) any criminal conviction resulting from a sexual act, contact, touching or solicitation in connection to any victim.

The Provider shall not hire or retain in any capacity any person who may directly provide services to a client who is minor child under this Agreement if that person has a record of substantiated abuse or neglect of a child.

The Provider shall not hire or retain a person to perform any service under this agreement that is required to be performed by a person with an appropriate license unless it has confirmation from the appropriate licensing board or entity that the person has a license in good standing.

14. **TANF SUBRECIPIENT REQUIREMENTS:** To the extent the contract utilizes To the extent the contract utilizes Temporary Assistance for Needy Families (TANF) funding, the provider acknowledges that it is aware of the "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (2 CFR 200 (Uniform Guidance), that TANF block grant funding is being used to fund the contract, to what extent TANF funding is being used and that TANF is governed by the Social Security Act, Title IV (Part A of Title IV), and TANF Regulations 45 CFR Chapter II (Parts 260 through 265)) and that it agrees that it shall:

    a) Ensure that funds are expended in accordance with state laws and procedures for the state's own funds and allow the Department to review the Provider's financial management system, in accordance with 2 CFR 200.302.
    b) Ensure that effective internal controls are used, which includes complying with federal statutes and taking prompt action in instances of non-compliance, in accordance with 2 CFR 200.303.
    c) Ensure that funds are spent in accordance with 2 CFR 200.305.
    d) Monitor program performance and, if required, submit performance reports, data on program objectives and the progress towards meeting those objectives, and additional pertinent data, in accordance with 2 CFR 200.328.

e) Retain program, financial and statistical records for at least five years from the end of each program year, in accordance with 2 CFR 200.333.
f) Conduct a Single Audit in accordance with 2 CFR 200 Subpart F, if applicable.

15. **CLEAN AIR AND CLEAN WATER:** By signing this agreement, the Provider agrees that it will comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).

16. **INSURANCE.** In addition to the requirements identified in Rider B, Section 18, the following shall inclusions to the insurance policy shall apply. Errors & Omissions, or Professional Liability Insurance, or Insurance by any other name, should at a minimum cover the following:
    a) All acts, errors, omissions, negligence, infringement of intellectual property (except patent and trade secret) in an amount not less than $1,000,000 per occurrence, and as an annual aggregate.
    b) Network security and privacy risks, including, but not limited to, unauthorized access, failure of security, breach of privacy, wrongful disclosure, collection, or other negligence in the handling of confidential information, related regulatory defense, and penalties in an amount not less than $1,000,000 per occurrence, and as an annual aggregate.
    c) To the extent the Provider manages sensitive data, Data breach expenses in an amount not less than $1,000,000, which coverage shall include, but is not limited to, the following:
        i) Consumer notification, whether or not required by law;
        ii) Forensic investigations;
        iii) Public relations and crisis management fees; and
        iv) Credit or identity monitoring, or similar remediation services.
    d) To the extent the Provider stores State sensitive data, the amount shall be payable, whether incurred by the Department or the Provider. The policy shall affirm coverage for contingent bodily injury and property damage arising from the failure of the Provider's technology services, or an error, or omission, in the content of, and information from, the Provider. If a sub-limit applies to any element of the coverage, the certificate of insurance must specify the coverage section and the amount of the sub-limit.
    e) Workers' Compensation and employer's liability, as required by law.
    f) Property (including contents coverage for all records maintained pursuant to this Contract): $1,000,000 per occurrence.
    g) To the extent the Provider uses vehicles to perform services under this Agreement, Automotive Liability of not less than $400,000 per occurrence single limit.
    h) Crime, in an amount not less than $500,000.
    i) Business Interruption, in an amount that would allow the Provider to maintain operations in the event of a Property loss.

17. **TOBACCO FREE FACILITY:** This policy outlines the prohibited use of tobacco products (cigarettes, cigars, chewing tobacco and any other tobacco-related substance) on the campus.

This policy is applicable to all hospital staff, patients, physicians, visitors, students, volunteers, vendors, contracted and per diem employees.

18. **FRAGRANCE FREE ENVIRONMENT:** Chemical compositions in many fragrances pose health risks to some people. Therefore, in an effort to promote a healthy environment, The Department prohibits the use of perfume, cologne, and heavily scented products within the hospital.

    This policy will apply to staff, visitors and all those served by the hospital.

    Staff, patients and all visitors to the Hospital are requested to avoid the use of personal fragrances such as perfumes and colognes. The policy also addresses “heavily scented products” which include air fresheners, scented candles, potpourri and other similar personal fragrance products.

RIDER BAA: BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement") is made between the State of Maine, Department of Health and Human Services (the Covered Entity, hereinafter, the "Department") and the Provider ("Business Associate"), together (the "Parties"); and

WHEREAS, Business Associate may use, disclose, create, receive, maintain or transmit protected health information in a variety of form or formats, including verbal, paper and electronic (together, "PHI") on behalf of the Department in connection with Business Associate's performance of its obligations under the Agreement for which this Business Associate Agreement is a Rider (the "Underlying Agreement"); and

WHEREAS, the Parties intend to ensure the confidentiality, privacy and security of Department's PHI as required by law, including as required under the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191 (HIPAA), and its implementing regulations at 45 CFR Parts 160 and 164 (the Privacy, Security, Breach Notification and Enforcement Rules or "HIPAA Rules") as updated by the Health Information Technology for Economic and Clinical Care Act (HITECH) enacted under Title XII of the American Recovery and Reinvestment Act of 2009, and its implementing Regulations (together, the "HIPAA and HITECH Rules"); and

WHEREAS, the Parties agree that certain federal and state laws, rules, regulations and accreditation standards also impose confidentiality restrictions that apply to this business relationship, and may include, but are not limited to: 42 CFR 2 *et. seq;* 5 M.R.S.A. §19203-D; 22 M.R.S.A. §§42, 261, 815, 824, 833, 1494, 1596, 1711-C, 1828, 3173, 3292, 4008, 5328, 7250, 7703, 8754; 10 M.R.S.A 1346 *et. seq*; 34-B M.R.S.A. §1207; 14-193 C.M.R, Ch. 1, Part A, § IX; and applicable accreditation standards of The Joint Commission or other appropriate accreditation body regarding confidentiality.

NOW THEREFORE, the Parties agree as follows:

Specific Definitions for the Purpose of this Agreement:

Breach means the unauthorized acquisition, access, use or disclosure of PHI in any format in a manner not permitted by Subpart E of the HIPAA and HITECH Rules that compromises the security or privacy of such PHI.

Business Associate is a person or entity that creates, receives, maintains or transmits PHI on behalf of, or provides services to, a covered entity, as set forth in the HIPAA Rules and other than in the capacity of a workforce member.

Covered Entity is a 1) health plan, (2) health care clearinghouse, or 3) health care provider who electronically transmits any health information in connection with transactions for which HHS has adopted standards. Generally, these electronic transactions concern billing and payment for services or insurance coverage.

Designated Record Set means the billing and medical records about individuals maintained by or for a covered provider: the enrollment, claims adjudication, payment, case or medical management

record systems maintained by or for a health plan; or that are used in whole, or in part, by the covered entity to make decisions about individuals.

Individual means the person who is the subject of the PHI.

Protected Health Information (PHI) means the same as that term is defined under HIPAA at 45 CFR 160.103, namely, individually identifiable health information that is created or received by a health care provider, health plan or health care clearinghouse that relates to a) the past, present, or future physical or mental health or condition of an individual; b) the provision of health care to an individual; or c) the past, present, or future payment for the provision of health care to an individual and d) that is transmitted or maintained in electronic or any other form or medium.

Reproductive Health Care Information means any health care that affects a person's reproductive system, including its functions and processes, including, but not limited to: all supplies, care and services of a medical, behavioral health, mental health, surgical, psychiatric, therapeutic, diagnostic, preventive, rehabilitative or supportive nature, including medication, relating to pregnancy, contraception, assisted reproduction, pregnancy loss management or the termination of a pregnancy in accordance with applicable standards of care as defined by major medical professional organizations and agencies with expertise in the field of reproductive health care.

Security Incident means the attempted or successful unauthorized access, use, disclosure, modification or destruction of information [or PHI] or interference with system operation in an information system. For clarity, an attempted Security Incident is one in which there is suspicion or evidence that information or PHI has been accessed, used, disclosed, modified, or destroyed.

Subcontractor means a natural person, trust or estate, partnership, corporation, professional association or corporation, or other entity, public or private, to whom a business associate has delegated a function, activity, or service, other than in the capacity of a member of the workforce of such business associate.

Unsecured Protected Health Information means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the U.S. Department of Health and Human Services (“HHS”) in its guidance.

General Definitions. The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA and HITECH Rules: Data Aggregation, Disclosure, Health Care Operations, Minimum Necessary, Notice of Privacy Practices, Required by Law, and Use.

1. Permitted Uses and Disclosures

a. Business Associate agrees to use or disclose the PHI authorized by this Agreement only to perform the services of the Underlying Agreement between the Parties, or as required by law.

b. Business Associate may use or disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of the Business Associate, only where a) the use or disclosure does not violate any law governing the protection of the PHI, including, but not limited to, prohibitions under 42 CFR Part 2 (Part 2 Regulations), and b) the disclosures are required by law or c) Business Associate agrees only to disclose the minimum

necessary PHI to accomplish the intended purpose and i) obtains reasonable assurances from the person or entity to whom the PHI is disclosed that the PHI will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person or entity, and ii) the person or entity agree to immediately notify Business Associate of any instances of which it is aware that such PHI has been subject to a Security Incident or Breach.

c. Business Associate may provide data aggregation services relating to the health care operations of the Department, or de-identify the Department's PHI, only when such specific services are permissible under the Underlying Agreement or as otherwise preapproved in writing by the Department.

2. Obligations and Activities of the Business Associate

a. *Compliance.* Business Associate agrees to comply with the HIPAA and HITECH Rules, and other applicable state or federal law, to ensure the protection of the Department's PHI, and only use and disclose PHI consistent with the Department's minimum necessary policy and the legal requirements of this Agreement. Business Associate may not use or disclose PHI in a manner that would violate the HIPAA or HITECH Rules or other state or federal law if performed by the Department.

b. *Safeguards*. In complying with the HIPAA and HITECH Rules, Business Associate agrees to use appropriate administrative, technical and physical safeguards, and comply with any required security or privacy obligations, to protect the confidentiality, integrity and availability of the Department's PHI.

c. *Reporting.* Business Associate agrees to report to the Department any unauthorized use or disclosure of the Department's PHI of which it becomes aware, i.e. any use or disclosure not permitted under this Agreement or in violation of any legal requirement, including any Security Incident involving Department PHI. A report will be made to the Department's Director of Healthcare Privacy or her designee within twenty-four (24) hours of when the Business Associate becomes aware of such Security Incident, or if Business Associate becomes aware of such Security Incident after regular business hours, then reporting shall be made on the next business day. In the event that a breach is determined to have occurred under the authority of the Business Associate, Business Associate will cooperate promptly with the Department to provide all specific information required by the Department for mandatory notification purposes.

d. *Subcontractors and Agents.* In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate shall ensure that any third parties, agents or subcontractors (together, "Subcontractors") that use, disclose, create, acquire, receive, maintain, or transmit PHI on behalf of Business Associate agree to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such PHI. Business Associate shall obtain and maintain a written agreement with each Subcontractor that has or will have access, through Business Associate, to the Department's PHI, ensuring that the Subcontractor agrees to be bound to the same restrictions, terms and conductions that apply to Business Associate under this Agreement.

e. *Mitigation.* The Business Associate shall exhaust, at its sole expense, all reasonable efforts to mitigate any harmful effect known to the Business Associate arising from the use or disclosure of PHI by Business Associate in violation of the terms of this Agreement.

f. *Accounting of Disclosures*. To the extent required by the terms of this Agreement, Business Associate will maintain and make available the PHI and documentation required to provide an accounting of disclosures as necessary to satisfy the Department's obligations under 45 CFR 164.528.

g. *Access.* In the event that Business Associate creates or maintains PHI in a designated record set, Business Associate will use commercially reasonable efforts to make PHI available in the format requested, and as necessary to satisfy the Department's obligation under 45 C.F.R. 164.524, within 30 days from the time of request. Business Associate will inform the Department of the individual's request within 5 (five) business days of the request.

h. *Amendment*. In the event that Business Associate creates or maintains PHI in a designated record set, Business Associate agrees to make any amendment(s) to the PHI as directed or agreed to by the Department, or take other measures as necessary to satisfy the Department's obligations under 45 CFR 164.526, in such time period and in such manner as the Department may direct.

i. *Restrictions*. Upon notification from the Department, Business Associate shall adhere to any restrictions on the use or disclosure of PHI agreed to by or required of the Department pursuant to 45 CFR 164.522.

j. *Audit by the Department or the HHS Secretary*. The Business Associate will make its internal practices, books and records relating to the use or disclosure of PHI received from the Department or used, acquired, maintained, created or received by the Business Associate on behalf of the Department, available to either the Department or the HHS Secretary for the purposes of determining the compliance of either the Department or the Business Associate with the Medicaid Act, and the HIPAA and HITECH Rules, or any other federal, state or accreditation requirement. 45 C.F.R. 164.504.

k. *Reproductive Health Care Disclosure Prohibited:* Business Associate shall not disclose or respond to any request or demand for PHI, other than from the Department or its designee, that is actually or potentially related to reproductive health care. Business Associate agrees that it will not use, disclose, transmit, or otherwise provide PHI for the purpose(s) of identifying an individual, conducting a criminal, civil or administrative investigation about an individual, or imposing criminal, civil or administrative liability upon an individual for seeking, obtaining, providing or facilitating lawful reproductive health care services. Any request or demand for such PHI must be forwarded to the Department for review.

l. *Other Obligations*: To the extent that Business Associate is to carry out one or more of the Department's obligations under the HIPAA and HITECH Rules or other federal or state law, Business Associate agrees to comply with the legal requirements that apply to the Department in performing that obligation.

3. Obligations of the Department

a. The Department shall notify Business Associate of a) any limitation in any applicable Notice of Privacy Practices that would affect the use or disclosure of PHI by the Business Associate and b) any changes, revocations, restrictions or permissions by an individual to the use and disclosure of his/her PHI to which the Department has agreed, to the extent such restrictions or limitations may affect the performance of Business Associate's services on behalf of the Department.

b. The Department shall not request that Business Associate use or disclose PHI in any format, and in any manner, that would be prohibited if performed by the Department.

4. Hold Harmless

Business Associate agrees to indemnify and hold harmless the Department, its directors, officers, agents, shareholders, and employees against any and all claims, demands, expenses, liabilities or causes of action that arise from any use or disclosure of PHI not specifically permitted by this Agreement, applicable state or federal laws, licensing, accreditation or other requirements.

5. Term of Agreement

a. *Term*. This Agreement shall be effective as of the Effective Date and shall terminate at the end of the term of the Underlying Agreement. To the extent that the Underlying Agreement automatically renews, this Agreement shall also automatically renew itself for the same renewal period unless the Department terminates this Agreement for cause as set forth in Section 5(c). Either party may terminate the Agreement consistent with the written notice provision regarding termination in the Underlying Agreement.

b. *Auto-renewal.* In the event that this Agreement is automatically renewed, the Business Associate agrees to be bound by the terms of this Agreement and laws referenced in this Agreement that are current and in effect at the time of renewal.

c. *Termination for Cause*. Notwithstanding the foregoing, Business Associate authorizes termination of this Agreement by the Department if the Department determines that Business Associate has violated a material term of the Agreement. The Department shall either, at its sole discretion:

    i. Provide the Business Associate an opportunity to cure or end the violation within a time frame and upon such conditions as established by the Department; and

    ii. Immediately terminate this Agreement in the event the Business Associate has either failed to cure in the time frame provided by the Department or if cure is not possible.

d. *Obligations of the Business Associate upon Termination*. Upon termination of this Agreement for any reason, Business Associate, shall

    i. Return or destroy all PHI used, created, accessed, acquired, maintained, or received by the Business Associate on behalf of the Department, and retain no

copies in any format. Business Associate shall ensure that its Subcontractors do the same.

ii. If the Department agrees that Business Associate may destroy all PHI in its possession, Business Associate shall certify such destruction to the Department.

iii. If returning or destroying PHI is not feasible, Business Associate agrees to protect the confidentiality of the PHI and retain only that PHI which is necessary for the Business Associate to continue its proper management and administration, or to carry out its legal responsibilities. Business Associate shall not use or disclose the PHI for other than the purpose for which it was retained, and return to the Department, or destroy if approved by the Department, such PHI when no longer required. Furthermore, Business Associate shall continue to use appropriate safeguards and comply with the HIPAA and HITECH Rules, other applicable state and federal law, with respect to PHI in any format for as long as Business Associate retains the PHI.

iv. Upon appropriate direction from the Department, Business Associate shall transmit the PHI to another business associate of the Department consistent with all legal and regulatory safeguards delineated in this Agreement.

6. Qualified Service Organization Agreement

To the extent that in performing its services for or on behalf of the Department, Business Associate uses, discloses, maintains or transmits PHI that is protected by the Part 2 Regulations, Business Associate acknowledges that it is a Qualified Service Organization for the purpose of such federal law; acknowledges that in receiving, storing, processing or otherwise dealing with any such patient records, it is fully bound by the Part 2 Regulations; and, if necessary, will resist in judicial proceedings any efforts to obtain access to patient records except as permitted by the Part 2 Regulations.

7. Survival of Business Associate Obligations

The obligations of the Business Associate under this Agreement shall survive the termination of this Agreement indefinitely.

8. Miscellaneous

a. *Amendment*. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the Department to comply with the requirements of the HIPAA and HITECH Rules, and/or other applicable laws or requirements. This Agreement may only be amended in writing, signed by authorized representatives of the Parties.

b. *Injunction.* The Department and Business Associate agree that any violation of the provisions of this Addendum may cause irreparable harm to the Department. Accordingly, in addition to any other remedies available to the Department, Department shall be entitled to seek an injunction or other decree of specific performance with respect to any violation of this Agreement or explicit threat thereof,

without bond or other security being required and without the necessity of demonstrating actual damages.

c. *Interpretation*. Any ambiguity in this Agreement shall be resolved to ensure that the Department is in compliance with the HIPAA and HITECH Rules, or other applicable laws or privacy or security requirements.

d. *Legal References.* A reference in this Agreement to a section in the HIPAA or HITECH Rules or to other federal or state law, means the section as in effect or as amended.

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

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

☒ **United States. Please identify state: Maine**

☐ **Other. Please identify country: Enter Country**

Notification of Changes to the Information:

The Provider agrees to notify the Office of State Procurement Services of any changes to the information provided above.