

Encumbrance #: CT-10A-20141215*2136
DHHS Agreement #: LRS-15-113
Vendor/Customer #: VS000013416

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

THIS AGREEMENT, made this 1st day of March, 2015 is by and between the State of Maine, Department of Health and Human Services, hereinafter called "Department," and Maine Sheriff's Association mailing address and physical address 406 East Side Trail, Oakland, ME 04963, hereinafter called "Provider," for the period of March 1, 2015 to February 28, 2016.

WITNESSETH, that for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the Department, the Provider hereby agrees with the Department to furnish all qualified personnel, facilities, materials and services and in consultation with the Department, to perform the services, study or projects described in Rider A, and under the terms of this Agreement.

The following Riders and Attachments are hereby incorporated into this Agreement and made part of it by reference:

- Rider A - Specifications of Work to be Performed
- Rider B - Payment and Other Provisions
- Rider D - Additional Requirements
- Rider G - Identification of Country In Which Contracted Work Will Be Performed
- Rider - Exceptions to Agreement

WITNESSETH, that this contract is consistent with Executive Order 01 FY 11/12 or a superseding Executive Order, and complies with its requirements.

IN WITNESS WHEREOF, the Department and the Provider, by their representatives duly authorized, have executed this agreement in one original copy.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

By: _____
Samuel G. Adolphsen, Chief Operating Officer

and

MAINE SHERIFF'S ASSOCIATION

By: _____
Mary-Anne LaMarre, Executive Director

ENCUMBERED
FEB 18 2015
STATE CONTROLLER

Total Agreement Amount: \$167,000.00

Approved: _____
Chair, State Purchases Review Committee

DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF PURCHASE

LEWIS & CLARK

Contract Administrator: Thomas Collins
Customer Relationship Manager: Nancy Tan
Vendor Point of Contact: Mary-Anne LaMarre mlamarre@mainesheriffs.org

RIDER A
SPECIFICATIONS OF WORK TO BE PERFORMED

I. INTRODUCTION/OVERVIEW

The Maine Medical Use of Marijuana Program (MMMP) within the Department of Health and Human Services / Division of Licensing and Regulatory Services is the only licensing unit that does not currently have staff available to respond to complaints. The complaints on the MMMP are received from the community, law enforcement, other program participants, municipalities, other state agencies and professional Licensing Boards. This contract with the Provider will address this need and provide a mechanism for complaints to be investigated once internal triage has occurred. Reports will be generated so that the Department staff may make a final determination of the correct course of action for complaint resolution.

II. DELIVERABLES

- a. The Provider is responsible for hiring and providing insurance coverage for staff, all Human Resource and payroll functions which would include providing equipment, mileage reimbursement, and training unless otherwise assigned in this contract. The Provider agrees that staffing will consist of the services of the Executive Director to provide contract management and oversight, along with the field investigative staff that all have law enforcement experience. The Provider further agrees that all field staff are retired law enforcement personnel and not currently employed by any State of Maine law enforcement agency.
- b. The Provider agrees to hire up to ten part-time staff as needed to perform the work described herein. The Provider agrees to perform the work within the agreed upon payment and time schedules.
- c. Report Assignments - Complaint and incident reports received by the Department will be reviewed internally, entered into the Department's database and triaged. Reports that require further investigatory action will be electronically referred to the Provider. The reports may contain specific questions to be answered or information requested. The Provider will be responsible for assignment of the work to the part-time Provider field staff.
- d. Report Confirmation – The Provider staff will confirm to the Department that the report has been received and that preliminary contacts have been made within 48 hours of receipt.
- e. The Provider staff will send written progress reports on all open cases to Department staff on a weekly basis. Progress reports will include, at a minimum

Case number
Date received
Date assigned
The Provider staff person
Current case status
Activity log

- f. At the end of the first quarter, the Department and the Provider will reevaluate the need for weekly meetings and, if mutually agreed upon, change to a bi-weekly meeting schedule.

- g. The Department will provide to the Provider appropriate training in the Maine Medical Use of Marijuana Program and any other topics the Department deems appropriate for the Provider staff. Initial training in the MMMP will begin immediately upon execution of this contract and ongoing training once per month for the first three months. Other trainings will be scheduled by the Department as needed and the Provider agrees that attendance will be mandatory for the Provider field staff.
- h. The Provider agrees to provide a minimum of two trainings which will be coordinated with Department staff and will occur at a mutually agreeable time within the contract period. The Department and the Provider will determine the content of the training.

III. PERFORMANCE MEASURES

Monthly meetings between the Department and the Provider will review the following:

1. Provider staff will make initial case contact within two business days of receipt of referral. Referrals are received from the staff of the Department
2. Provider staff will close cases within 14 business days of initial receipt of referral. Any exceptions to the above-mentioned time frames must be mutually agreed upon by the Executive Director of the Provider organization and the Department. The maximum extension allowed is five business days.
3. Provider staff will attend a minimum of one training per quarter. Training to be determined by the Department .
4. Provider staff will provide two trainings per year at the request of the Department. Training content will be determined based on program needs by the Department.
5. All reports from section VI must be presented at a monthly meeting held on the 5th business day of the month for review. The meetings dates will be determined within the first 30 days of the commencement of this contract by the Provider and the Department .

IV. REPORTS

Reports will be developed in collaboration the Department and the Provider. The Department will have final approval of the report content and design.

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

a. **Performance Measurement Reports**

Report Period: calendar month

Date Due: 5th business day of the following month

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

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

RIDER B
METHOD OF PAYMENT AND OTHER PROVISIONS

1. **AGREEMENT AMOUNT** **\$167,000.00**

2. **INVOICES AND PAYMENT**. The Department of Health and Human Services, Maine Medical Use of Marijuana Program will pay the Provider twelve (12) monthly payments of \$13,500 for the period ending February 28, 2016, upon receipt of an approved invoice. The payments are based on the line item budget below;

Service	Unit of Measure (A)	# of Units (A)	Rate (B)	Units X Rate(C)
Laptop computers	each	5	400	\$ 2,000.00
Tech support/monthly fee	each	12	150	\$ 1,800.00
Cell phones	each	4	300	\$ 1,200.00
TOTAL	One Time Start Up Cost			\$ 5,000.00
Executive Director, M Lamarre	hour	48 hrs per month	50	\$ 2,400.00
4 MSA staff - TBD	hour	60 hrs per month	160	\$ 9,600.00
Admin costs(travel, insurance, etc)	Individuals	5	300	\$ 1,500.00
TOTAL				\$ 13,500.00
				X 12 MONTHS
				\$ 162,000.00
				\$ 167,000.00

The Department will pay to the Maine Sheriffs' Association \$5,000 at the onset of the contract. This money is for the purchase of equipment necessary for work to commence such as cell phones and tablets. Equipment will not be returned to the Department at the completion of the contract. Payments are subject to the Provider's compliance with all items set forth in this Agreement and subject to the availability of funds. The Provider must submit the final invoice no later than 45 days from the agreement end date. No payment will be made if the Provider does not comply with these terms.

3. **BENEFITS AND DEDUCTIONS** If the Provider is an individual, the Provider understands and agrees that he/she is an independent contractor for whom no Federal or State Income Tax will be deducted by the Department, and for whom no retirement benefits, survivor benefit insurance, group

life insurance, vacation and sick leave, and similar benefits available to State employees will accrue. The Provider further understands that annual information returns, as required by the Internal Revenue Code or State of Maine Income Tax Law, will be filed by the State Controller with the Internal Revenue Service and the State of Maine Bureau of Revenue Services, copies of which will be furnished to the Provider for his/her Income Tax records.

4. **INDEPENDENT CAPACITY** In the performance of this Agreement, the parties hereto agree that the Provider, and any agents and employees of the Provider shall act in the capacity of an independent contractor and not as officers or employees or agents of the State.

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

6. **AGREEMENT ADMINISTRATOR** All progress reports, correspondence and related submissions from the Provider shall be submitted to:

Name and Title:	Thomas Collins, Contract Administrator
Address:	State House Station 11 221 State St Augusta ME 04333
Telephone:	(207) 287-8619
E-mail address	thomas.collins @maine.gov

who is designated as the Agreement Administrator on behalf of the Department for this Agreement, except where specified otherwise in this Agreement

The following is designated as the Program Administrator for this Agreement and shall be responsible for oversight of the programmatic aspects of this Agreement.

Name and Title:	Stella Savage
Address:	41 Anthony Avenue Augusta, ME 04333
Telephone:	(207) 287-9315
E-mail address	Stella.Savage@maine.gov

7. **CHANGES IN THE WORK** The Department may order changes in the work, the Agreement Amount being adjusted accordingly. Any monetary adjustment or any substantive change in the work shall be in the form of an amendment, signed by both parties and approved by the State Purchases Review Committee. Said amendment must be effective prior to execution of the work.

8. **SUB-AGREEMENTS** Unless provided for in this Agreement, no arrangement shall be made by the Provider with any other party for furnishing any of the services herein contracted for without the consent and approval of the Agreement Administrator. Any sub-agreement hereunder entered into subsequent to the execution of this Agreement must be annotated "approved" by the Agreement Administrator before it is reimbursable hereunder. This provision will not be taken as requiring the approval of contracts of employment between the Provider and its employees assigned for services thereunder.

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

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

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

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

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

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

d. The Provider shall inform the contracting Department's Equal Employment Opportunity Coordinator of any discrimination complaints brought to an external regulatory body (Maine Human Rights Commission, EEOC, Office of Civil Rights)

against their agency by any individual as well as any lawsuit regarding alleged discriminatory practice.

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

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

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

11. **EMPLOYMENT AND PERSONNEL** The Provider shall not engage any person in the employ of any State Department or Agency in a position that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. The Contractor shall not engage on a full-time, part-time or other basis during the period of this Agreement, any other personnel who are or have been at any time during the period of this Agreement in the employ of any State Department or Agency, except regularly retired employees, without the written consent of the State Purchases Review Committee. Further, the Provider shall not engage on this project on a full-time, part-time or other basis during the period of this Agreement any retired employee of the Department who has not been retired for at least one year, without the written consent of the State Purchases Review Committee. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

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 therefrom directly or indirectly that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. No other individual employed by the State at the time this Agreement is executed or any time thereafter shall be admitted to any share or part of this Agreement or to any benefit that might arise therefrom 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.** As a condition of accepting an Agreement 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 Agreement 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 Agreement and information concerning employee and Agreement 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 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. This subsection applies to contracts, contract extensions and contract amendments executed on or after October 1, 2009.

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, but without limitation, the following: (i) claims suffered or incurred by any contractor, subcontractor, materialman, laborer and any other person, firm, corporation or other legal entity (hereinafter in this paragraph referred to as "person") providing work, services, materials, equipment or supplies in connection with the performance of this Agreement; (ii) claims arising out of a violation or infringement of any proprietary right, copyright, trademark, right of privacy or other right arising out of publication, translation, development, reproduction, delivery, use, or disposition of any data,

information or other matter furnished or used in connection with this Agreement; (iii) Claims arising out of a libelous or other unlawful matter used or developed in connection with this Agreement; (iv) claims suffered or incurred by any person who may be otherwise injured or damaged in the performance of this Agreement; and (v) all legal costs and other expenses of defense against any asserted claims to which this indemnification applies. This indemnification does not extend to a claim that results solely and directly from (i) the Department's negligence or unlawful act, or (ii) action by the Provider taken in reasonable reliance upon an instruction or direction given by an authorized person acting on behalf of the Department in accordance with this Agreement.

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

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 D Additional Requirements

1. Confidentiality. To the extent that the services carried out under this Agreement involve the use, disclosure, access to, acquisition or maintenance of information that actually or reasonably could identify an individual or consumer receiving benefits or services from or through the Department ("Protected Information"), the Provider agrees to a) maintain the confidentiality and security of such Protected Information as required by applicable state and federal laws, rules, regulations and Department policy, b) contact the Department within 24 hours of a privacy or security incident that actually or potentially could be a breach of Protected Information and c) cooperate with the Department in its investigation and any required reporting and notification of individuals regarding such incident involving Protected Information. To the extent that a breach of Protected Information is caused by the Provider or one of its subcontractors or agents, the Provider agrees to pay the cost of notification, as well as any financial costs and/or penalties incurred by the Department as a result of such breach."

To the extent the Provider under this Agreement is considered a Business Associate under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA) and its updates and associated regulatory requirements, rules and standards, including those issued under the Health Information Technology for Economic and Clinical Care Act (HITECH), the Provider shall execute the Department's Business Associate Agreement template (BA Agreement). The terms of the BA Agreement shall be incorporated into this Agreement by reference. Provider agrees that failure of Provider to execute and deliver such BA Agreement to the Department or to adhere to the terms of the BA Agreement shall result in breach of the underlying Agreement, and that remedies available to the Department for breach of the Agreement apply hereto.

2. 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>.

3. Drug-Free Workplace. By signing this Agreement, the Provider certifies that it shall provide a drug-free workplace by: publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the 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 and rehabilitation programs, employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace; providing a copy of the drug-free workplace statement to each employee to be engaged in the performance of this Agreement; notifying the employees that as a condition of employment under the Agreement the employee will abide by the terms of the statement and notify the employer of any criminal drug conviction for a violation occurring in the workplace no later than five days after such conviction.

The Provider shall notify the state agency within ten days after receiving notice of criminal drug convictions occurring in the workplace from an employee, or otherwise receiving actual notice of such conviction, and will take one of the following actions within 30 days of receiving such notice with respect to any employee who is so convicted: take appropriate personnel action against the employee, up to and including termination, or requiring the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

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

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

5. 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.

6. Medicare and MaineCare Anti-Kickback. By signing this Agreement, the Provider agrees that it shall comply with the dictates of 42 U.S.C. 1320a-7b(b), which prohibits the solicitation or receipt of any direct or indirect remuneration in return for referring or arranging for the referral of an individual to a Provider of goods or services that may be paid for with Medicare, MaineCare, or state health program funds. <http://www.gpoaccess.gov/uscode/index.html>

7. 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.

8. 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.

9. 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.

10. Provider Responsibilities/Sub agreements. The Provider is solely responsible for fulfillment of this Agreement with the Department. The Provider assumes responsibility for all services offered and products to be delivered whether or not the Provider is the manufacturer or producer of said services.

a. Sub-agreements

1. All sub-agreements must contain the assurances enumerated in Sections 10, 11, and 12 of Rider B and Sections 4, 5, 6, 7 of Rider D;
2. 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.
3. See Rider B Section 8.

b. Relationship between Provider, Subcontractor and Department: The Provider shall be wholly responsible for performance of the entire Agreement whether or not subcontractors are used. Any sub-agreement into which the Provider enters with respect to performance under this Agreement shall not relieve the Provider in any way of responsibility for performance of its duties. Further, the Department will consider the Provider to be the sole point of contact with regard to any matters related to this Agreement, including payment of any and all charges resulting from this Agreement. The Department shall bear no liability for paying the claims of any subcontractors, whether or not those claims are valid.

c. Liability to Subcontractor: The requirement of prior approval of any sub-agreement under this Agreement shall not make the Department a party to any sub-agreement or create any right, claim or interest in the subcontractor or proposed subcontractor against the Department. The Provider agrees to defend (subject to the approval of the Attorney General) and indemnify and hold harmless the Department against any claim, loss, damage, or liability against the Department based upon the requirements of Rider B, Section 18.

11. Renewals. This Agreement may be renewed at the discretion of the Department.

12. 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.

13. Conflict of Interest. The Provider covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Provider further covenants that in the performance of this Agreement, no person having any such known interests shall be employed. **[See also Rider B, #11 and #12]**

14. 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.

15. 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.

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

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

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

Notification of Changes to the Information

The Provider agrees to notify the Division of Purchases of any changes to the information provided above

Exceptions to Agreement

No exceptions to Riders

Encumbrance #: CT 10A 20140612*4701
 DHHS Agreement #: OSA-15-317
 Vendor/Customer #: VC1000035274

MaineGeneral Community Care,
10 Water St. STE 302, Waterville ME 04901
7/1/2014 to 6/30/2015

RIDER B

METHOD OF PAYMENT AND OTHER PROVISIONS

1. **AGREEMENT AMOUNT: \$426,461.00**

Base Amount	\$	391,249.00
Maximum Amount	\$	426,461.00
Minimum Amount	\$	356,037.00

The Base Amount is the amount on which the Provider budget, units of service to be provided, and unit cost shall be based.

The Maximum Amount is the maximum amount payable to the Provider under the Rider A performance incentive terms of this Agreement. The maximum incentive amount is \$35,212.00.

The Minimum Amount is the minimum amount payable to the Provider under the Rider A performance penalty terms of this Agreement. The maximum penalty amount is -\$35,212.00.

1A. **MAINECARE AGREEMENT AMOUNT: \$0 SEED ONLY**

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

Subject to the availability of funds and other terms of this Agreement, payments will be made to the Provider on the basis of the payment rates, amounts and frequency indicated below, not to exceed the Agreement amount.

Payment Schedule

July 2014 or upon encumbrance	One monthly base payment of \$32,604.08 for the month of July 2014
August 2014	One monthly base payment of \$32,604.08 for the month of August, 2014 plus or minus the amount earned for the 1 st quarter based on the 4th quarter of FY14 performance
September, 2014	One monthly base payment of \$32,604.08 for the month of September, 2014
October, 2014	One monthly base payment of \$32,604.08 for the month of October, 2014
November, 2014	One monthly base payment of \$32,604.08 for the month of November, 2014 plus or minus the amount earned for the 2 nd quarter based on the 1 st quarter performance
December, 2014	One monthly base payment of \$32,604.08 for the month of December 2014
January 2015	One monthly base payment of \$32,604.08 for the month of January 2015
February, 2015	One monthly base payment of \$32,604.08 for the month of February, 2015 plus or minus the amount earned for the 3 rd quarter based on the

2nd quarter performance

March, 2015	One monthly base payment of \$32,604.08 for the month of March 2015
April, 2015	One monthly base payment of \$32,604.08 for the month of April 2015
May 2015	One monthly base payment of \$32,604.08 for the month of May, 2015 plus or minus the amount earned for the 4 th quarter based on the 3 rd quarter performance
June 2015	One monthly base payment of \$32,604.12 for the month of June 2015

For performance evaluation, quarters are defined as follows:

- 1st Quarter - July 1, 2014 through September 30, 2014
(Incentive paid in November 2014)
- 2nd Quarter - October 1, 2014 through December 31, 2014
(Incentive paid in February 2015)
- 3rd Quarter - January 1, 2015 through March 31, 2015
(Incentive paid in May 2015)
- 4th Quarter - April 1, 2015 through June 30, 2015
(Incentive paid in August 2015 contingent on Provider Agreement renewed for FY2016)

Incentives or penalties shall be assessed in the 1st quarter based on the 4th quarter performance for FY14 (April 1, 2014 through June 30, 2014) and paid in August 2014.

PLEASE NOTE: If Agreement is funded for Outpatient care or Intensive Outpatient within this Agreement the percentage incentive and penalty will be based on the amounts separated out by Agreement for each service.

The performance of the Provider in any quarter shall be evaluated independently of any other quarter, not on a cumulative basis from quarter to quarter.

Incentives or penalties earned by the Provider in any quarter shall be applied independently of any other quarter.

The total required number of units to be delivered shall be based on the aggregate number of Outpatient and Intensive Outpatient units of service entered on the Summary of Services Purchased (Budget Form 6). When the Provider is contracted for both Outpatient and Intensive Outpatient the units will be split between each service dependent on the funds allocated on Budget Form 6.

The units delivered performance of the Provider for each quarter shall be evaluated on the basis of the data reported on the Outpatient Service Delivery Reports submitted for the quarter. The Provider shall submit **Outpatient Service Delivery Reports; TDS Reports and Wait Lists** by the required submission date to qualify for a units delivered incentive payment.

The required number of units required for each quarter is as follows:

1 st Quarter	- Non Intensive Outpatient	3,540
2 nd Quarter	- Non Intensive Outpatient	3,540

3 rd Quarter	- Non Intensive Outpatient	3,540
4 th Quarter	- Non Intensive Outpatient	<u>3,540</u>
	Total	13,800

The Access and Retention performance of the Provider for each quarter shall be based on the individual client data entered into the Treatment Data System (TDS). The Provider shall enter individual client data into the Treatment Data System (TDS) by the required submission date to qualify for an Access and Retention incentive payment.

Payments may be delayed or reduced when:

- A. The Provider has not submitted required program and fiscal reports.
- B. There is an under expenditure of budgeted funds or under delivery of services amounting to 10% or more of the total agreement for 3 consecutive months.
- C. Services have been provided to ineligible recipients.
- D. An audit finding shows that the Provider holds an overpayment from a prior Agreement.
- E. The Provider has not met obligations for prior agreements for which this is a renewal.
- F. Other circumstances where, in the judgment of the Agreement Administrator, delay or reduction of payment is appropriate.

Payments are subject to the Provider's compliance with all items set forth in this Agreement and subject to the availability of funds.