

**MAINE DEPARTMENT OF HEALTH & HUMAN SERVICES  
&  
STATE OF VERMONT OFFICE OF VERMONT HEALTH ACCESS**

**MEDICAL SUPPLIES  
REQUEST FOR PROPOSAL # 200812338**

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## 1.0 Introduction

### 1.1 Objective of Procurement

The State of Maine, Department of Health & Human Services and the State of Vermont, Office of Vermont Health Access (“the States”) are soliciting sealed bids from responsible Distributors for certain incontinent care supplies for the MaineCare and Vermont Medicaid programs. The States prefer a Distributor that can:

- \* Assure access to high quality cost effective products and services; and,
- \* Offer prices through arrangements with participating Medicaid providers that save the States money without compromising quality.

The incontinent care supplies in this RFP may or may not continue to be covered benefits of the States’ Medicaid programs. Changes in legislation, medical practice, and technology can all have an impact on covered services.

### 1.2 Acquiring Office and Project Management

The Maine Department of Health & Human Services is the acquiring office. The Project Manager is:

Jennifer Cook, Pharmacy Unit Manager  
Office of MaineCare Services  
11 State House Station  
Augusta, ME 04333-0011  
E-mail: [Jennifer.Cook@maine.gov](mailto:Jennifer.Cook@maine.gov)  
Telephone: 287-2705

### 1.3 Summary of Key Events

The States reserve the right to adjust any of these dates. If the dates are adjusted, all bidders who have received a copy of the RFP from the Project Manager will be notified in writing.

#### Timetable:

Public Notice/Mailings to Interested Parties	December 22, 2008
Bidders Conference	None
Written Questions Due	January 5, 2009
Responses to Questions Due	January 15, 2009
Proposals Due at Division of Purchases	January 26, 2009

1.4 RFP Organization

This RFP is organized into six sections plus appendices.

- **Section 1 -- Introduction** gives general information on the objectives of this RFP.
- **Section 2 -- General Procedures and Instructions** gives general information on the procurement process and rules. This section also describes the requirements the bidders must follow for the packaging and submission of the technical and cost proposals.
- **Section 3 — Proposal Submission Requirements** defines the requirements for information on bidder identification, qualification, and experience. It also defines the requirements that bidders must follow in preparing the proposal including product features and cost information.
- **Section 4 -- Terms and Conditions** describes mandatory contractual provisions, payment provisions, and damages that may be imposed for contractor non-performance.
- **Section 5 -- Scope of Work** provides an overview of the scope of work and the tasks to be performed, State and contractor responsibilities, service specifications and requirements.
- **Section 6 — Facility Standards and Reporting Requirements** describes the general provisions that apply for fiscal records, inspection of premises, and reporting.

**APPENDICES**

Appendix A	Utilization Data
Appendix B	Preferred Products and Bid Computations
Appendix C	Summary of Bid Requirements
Appendix D	State of Maine Standard Contract
Appendix E	State of Vermont Medicaid Provider Agreement and Draft Addendum

## 2.0 General Procedures and Instructions

This section contains solicitation procedures, general proposal format information and submission instructions.

### 2.1 General Information

This Request for Proposal (RFP) is designed to select a qualified Distributor who will be responsible for distributing those medical supplies listed in Appendix A to Participating Providers for members enrolled in Medicaid Programs in Maine and Vermont, including the State Children's Health Insurance Program (SCHIP). Participating providers include approximately 36 Durable Medical Equipment dealers, 300 pharmacies, and 110 nursing facilities. Other State Medicaid programs may participate in the future.

The selected Distributor will be responsible for providing materials and services to meet the requirements identified in this RFP, and will be held accountable for meeting these requirements. Proposals must conform to the mandatory requirements of the RFP.

The States reserve the right to make a contract/provider agreement award without any further discussion with the bidders regarding the proposals received. Therefore, proposals should be submitted initially on the most favorable terms available from a price and technical standpoint. The States, however, reserve the right to conduct discussions with all responsible bidders who submit proposals determined to be reasonably likely of being selected for award.

Proposals must conform to all instructions, conditions, and requirements included in the RFP. Bidders are expected to carefully examine all documentation, schedules, and requirements stipulated in this RFP and respond to each requirement in their proposals in the format prescribed.

### 2.2 Type of Contracts and Provider Agreements/Term

State contracts/provider agreements will be at the prices proposed by the successful bidder and accepted by the States. The States intend to award a contract/provider agreement for two (2) years with the option of two (2) one-year renewals dependent on rate and service and must be by mutual agreement with the winning bidder of this RFP.

In addition to the provisions of this RFP and the winning proposal, which will be incorporated in the resulting contract/provider agreement, any additional clauses or provisions required by Federal or State law or regulation in effect at the time of execution of the resulting contract/provider agreement will be included.

### 2.3 Ineligible Bidders

Any Distributor or Distributor subcontractor who assists the States in preparing this RFP and/or in evaluating the proposals will not be eligible to win the bid. Such entities would also not be eligible to perform any of the tasks for the winning bidder.

### 2.4 Communications with State Staff

From the date of issue of this RFP and until a determination is made and announced regarding the selection of a Distributor, all contact except those made pursuant to any pre-existing obligation, with personnel employed or contracted to the States, must be approved in writing by the Project Manager. The only exceptions to these restrictions are:

- State personnel involved in oral presentations or personnel interviews

Violation of this provision may disqualify the bidder's proposal. Bidders are advised that only the Project Manager can clarify issues or render any opinion regarding the RFP. No employee of the States or member of the selection committee is empowered to make binding statements regarding this RFP. The Project Manager will issue any clarifications regarding the RFP in writing.

2.5 Written Questions And Answers

Questions regarding the meaning of any RFP provision can be submitted by e-mail to the Project Manager identified in Section 1.2. The subject line of the e-mail should be "RFP: Incontinent Care Supplies." The States assume no liability for assuring accurate or complete e-mail transmission or receipt and will not acknowledge receipt except by addressing the questions received.

**Under no circumstances will questions asked in other than written form be entertained.**

The Project Manager will respond in writing to all substantive questions received. Only those answers received in writing will be considered binding. Any information given to bidders concerning the RFP including written questions and answers will be furnished in writing to all bidders who have received a copy of the RFP from the Project Manager.

2.6 Oral Presentation

At the States' option, oral presentations by bidders may be requested for the purpose of explaining or clarifying characteristics or significant elements related to the proposals. Bidders will not be allowed to alter or amend their proposals through the presentation process. Bidders will not be permitted to attend competitor oral presentations. The States reserve the right to require and conduct oral presentations with bidders who submit proposals determined to be reasonably likely of being selected for award.

2.7 Personnel Interviews

At the States' option, personnel proposed by bidders may be requested to participate in a structured interview to determine their understanding of the service requirements, their authority and reporting relationship within the firm, management style, and any other relevant information. Bidders will not be allowed to alter or amend their proposals through the interview process, nor will they be permitted to attend competitor interviews.

2.8 Disclosure of Data

The content of all proposals, correspondence, addenda, memoranda, working papers, or any other medium which discloses any aspect of the Request for Proposals process will be considered public information when the award decision is announced. This includes all proposals received in response to this RFP, both the selected proposal and the proposal(s) not selected, and includes information in those proposals that a bidder may consider to be proprietary in nature. Therefore, the States makes no representation that they can or will maintain the confidentiality of such information.

2.9 Cost of Proposal Preparation

The entire cost for the preparation and submission of a proposal, and the attendance at any oral presentation or personnel interviews will be borne by the bidder.

2.10 Proposals

Following is a description of the proposal submission requirements.

2.10.1 Submission of Proposals

To facilitate the proposal evaluation process, one (1) original and six (6) duplicate paper copies (total of 7), plus one electronic copy of the entire proposal must be delivered by: **2:00 p.m. local time on January 26, 2009.**

To:  
Division of Purchases  
Burton M. Cross State Office Building, 4th Floor  
111 Sewall Street  
9 State House Station  
Augusta, ME 04333-0009

In addition, six (6) duplicate paper copies, plus one electronic copy of the entire proposal must be delivered by: **2:00 p.m. local time on January 26, 2009.**

To:  
Office of Vermont Health Access  
312 Hurricane Lane, Suite 201  
Williston, VT 05495-2806

The proposal must be submitted in accordance with the instructions identified below.

**Proposals that arrive late or at a location other than that noted above will be rejected.**

Emphasis should be concentrated on conformance to the RFP instructions, responsiveness to requirements, and completeness and clarity of content. Elaborate proposals are neither necessary nor desirable. If the bidder's proposal is presented in a fashion that makes evaluation difficult or overly time-consuming, it is likely that points will be sacrificed in the evaluation process.

The proposal must be bound on standard 8 1/2" by 11" paper, except that charts, diagrams, and the like, which may be on foldouts which, when folded fit into the 8 1/2"x 11" format. All pages must be consecutively numbered, starting with page 1. Figures and tables must be numbered and referenced in the text by that number. They should be placed as close as possible to the referencing text.

The proposal must also be delivered electronically in MS WORD and EXCEL formats on a CD.

The original copy of the proposal (original signature(s) required) will be marked "Original." An official authorized to legally bind the bidder must sign the proposal.

2.10.2 Rejection of Proposals

The States reserve the right to reject proposals that contain material deviations from the requirements of this RFP. It is understood that all proposals, whether rejected or not, will become part of the official file. The States also reserve the right to waive minor irregularities in proposals, providing that such action is in the best interest of the States.

2.10.3 Revision of Proposals

The States reserve the right to amend the RFP prior to the proposal due date. All bidders who received a copy of the RFP from the Project Manager will be notified in writing of any amendments to the RFP a minimum of seven (7) days prior to the due date. If an amendment is issued with fewer than seven (7) days remaining prior to the date, the due date will be extended. The States will not be responsible for any additional costs incurred as a result of any such changes in the RFP.

2.10.4 Proposal Evaluation

The States will evaluate the proposals in accordance with the criteria set forth in Subsection 2.12.2.

2.11 Rights of State Government

This RFP does not commit the States to award a contract/provider agreement or pay any cost incurred in the preparation of a proposal for this RFP. The States reserves the right to reject all proposals, and at their discretion may cancel or amend this RFP at any time.

By submitting a proposal in response to this RFP, the bidder grants to the States the right to contact or arrange a visit in person with any or all of the bidder’s clients.

2.12 Evaluation of Proposals and Contract/Provider Agreement Award

The States will select the successful bidder through a formal evaluation process, as outlined in this section. All proposals received will be reviewed and evaluated by a committee designated by the States. Consideration will be given to capabilities or advantages that are clearly described in the proposal, confirmed by oral presentations or interviews if required, and verified by information from reference sources contacted by the States. The States reserve the right to contact individuals, entities or organizations who have had recent dealings with the firm or staff proposed whether they are identified as references or not.

2.12.1 Initial Screening

Initial screening will consist of the review of proposal compliance with the mandatory proposal requirements.

2.12.2 Evaluation

Those proposals that pass the Initial Screening will be evaluated for the ability to meet the requirements identified in this RFP. Costs are to be an accurate representation of any and all goods and/or services to be provided. The Technical Proposal will be evaluated first, followed by the Cost Proposal, then final scoring.

The proposal evaluation will consist of five (5) areas totaling one hundred (100) points. The available points will be distributed as follows:

<b>Proposal Evaluation</b>	<b>Points</b>
1. Distributor Qualifications & References	20
2. Contract/Provider Agreement Performance, Solution Approach and Project Management Plan	35
3. Cost	25*
4. Product Selection	20



**Total:**

100

\* The Cost criterion will be evaluated by the following method. The proposal with the lowest total cost will receive the full 25 points. All other proposals' cost scores will be calculated by dividing the lowest cost by the cost of the proposal being rated, and multiplying by 25 points.

2.12.3 News Releases

News releases pertaining to this document or the services to which it relates shall not be made without prior approval by the States (verbal or written as specified by the States), and then only in accordance with the explicit written instructions from the States. No results of the program are to be released without prior written approval of the States and then only to persons designated.

2.13 Evaluation Process

An evaluation committee will review all proposals on a consensus basis, wherein the committee members initially review the proposals and make notes independently, but scores are assigned only through group discussion. Where presentations and/or interviews are held, the results of these may adjust the scores of the four areas.

During the evaluation, the evaluation and selection committee reserves the right to hold discussions with bidders to obtain clarification of pertinent items in their proposals. Any such discussion may only address services offered in the bidder's proposal; the offering may not be changed or altered. These discussions will be in accordance with applicable State procurement procedures. However, the States reserve the right to make an award without further support of the proposal received. Therefore, it is important that each proposal be submitted in the most favorable manner possible.

2.14 Contract/Provider Agreement Award

The States' evaluation will result in the selection of a proposal which, taken as a whole, offers the best value to the States. After analysis, evaluation and validation of bidder responses, the States will notify all bidders in writing concerning their selection. The States may require the selected bidder to participate in contract/provider agreement negotiations and to submit such price, technical or other revisions to their proposal as may result from negotiations. Upon resolution of the final negotiations, the States will prepare a final contract/provider agreement and award. If for any reason the States are unable to obtain an acceptable contract/provider agreement with the selected bidder, the selected bidder will be disqualified. In this event, the States may then proceed to negotiate a contract/provider agreement with bidder with the next highest-rated proposal, or may cancel negotiations entirely at the States' discretion.

It is to be understood by all parties that the negotiated contract/provider agreement will be made in the best possible interest of the States and that the award decision will be final. The RFP and the proposal of the successful bidder will, at the States' option, be incorporated into and form the basis of a legal contract/provider agreement. The contracts/provider agreements will also include the provisions set forth in standard State contracts (See Appendix D for a sample copy of Maine's) or in provider agreements (See Appendix E for Vermont's Medicaid Provider Agreement and Draft Addendum), as well as any additional clauses or provisions required by Federal or State law or regulation in effect at the time of execution of the contracts/provider agreements.

2.15 Required Contractual/Agreement Provisions

There are certain requirements, established by the States, with respect to proposals submitted in response to

this RFP. The words “shall,” “must,” and “will” (except when used to denote futurity) will be considered as indicative of a requirement in this RFP. Such requirements are to be considered as material to this procurement and may only be waived, in advance of submission of the proposal, by the Project Manager.

2.16 Financial Stability

Evidence of adequate financial stability is a prerequisite to the award of a contract/provider agreement. Bidders must include in their Executive Summary financial documentation to establish their financial stability. This documentation must be submitted in accordance with the requirements of Section 3 of this RFP. The States reserve the right to request any additional information to assure themselves of a bidder’s financial status.

2.17 Request for Stay of Award Decision and/or Appeal

For Maine, appeals of contract and grant awards are governed by the Division of Purchases rule Chapter 120, Rules for Appeal of Contract and Grant Awards. The rule may be obtained on the internet at <http://janus.state.me.us/purchase/chaP120.htm> or by calling the Division of Purchases at (207) 287-3521.

### 3.0 Proposal Submission Requirements

This section describes the requirements that must be met by bidders in preparing the proposal. The proposal will consist of four sections:

- Section 1 - Transmittal Letter
- Section 2 - Executive Summary
- Section 3 - Distributor Qualifications and Solution Approach
- Section 4 - Cost Summary

#### 3.1 Transmittal Letter

A letter of transmittal written on the bidder's official business stationary and signed by an official authorized to legally bind the bidder must accompany proposals. This Transmittal Letter must include the following:

- An itemization of all materials and enclosures submitted;
- A statement that the bidder believes the proposed products meet all the requirements set forth in the RFP;
- An unequivocal statement which acknowledges and agrees to all of the rights of the States including the procurement rules and procedures, terms and conditions, and all other rights and terms specified in this RFP;
- A statement of the bidder's willingness to enter into an agreement with the States;
- A statement that the products and services meet or exceed the specifications where required;
- A statement that the person signing this proposal is authorized to make decisions as to the prices quoted and that (s)he has not participated, and will not participate, in any action contrary to the RFP;
- A statement that the proposal was developed without collusion;
- The bidder's assurance that the proposal will remain in full force and effect for at least ninety (90) days from the proposal due date.

The bidder may include other topics in the letter deemed appropriate.

#### 3.2 Executive Summary

The Executive Summary will condense and highlight the contents of the Technical Proposal to provide the selection committee with a broad understanding of the bidder's proposal. This will be a concise overview summarizing the bidder's commitment to performing the contract/provider agreement. The Executive Summary will include highlights of the following:

- Contract/provider agreement monitoring and quality assurance services plan
- The time schedule and methodology proposed
- Significant features of the bidder's approach to fulfilling the requirements
- Previous relevant experience
- Financial stability

Bidders should present their understanding of the problems being addressed by this RFP, the objectives and the intended results. Bidders should describe their understanding of the products and services as requested by the States. Bidders should summarize how their proposal meets the requirements of this RFP and why the bidder is best qualified to perform the work required.

### 3.3 Distributor Qualifications and Solution Approach

The Distributor Qualifications and Technical Approach section of the Technical Proposal must include the following subsections:

#### 3.3.1 Distributor Qualifications

The Distributor Qualifications subsection of the Technical Proposal must consist of the following subsections:

##### 3.3.1.1 Bidder Identification and Information

In response to this section of the RFP, bidders will:

- State the organization's full company or corporate name and give the address of the organization's headquarters office;
- Specify how the entity is organized (proprietorship, partnership, corporation);
- Specify the state in which the bidder is incorporated or otherwise organized to do business;
- Specify the year in which the bidder was first organized to do business, and whether or not the form of organization has changed in the interim (such as by subsequent incorporation, merger, or other organizational change), and any name changes. The intent of this requirement is to ascertain the longevity of continuous operation of the bidder, and the response should be formulated to provide that information as appropriate to the bidder's business circumstances;
- Provide the Employer Identification Number.
- Describe all affiliations or ownership relationships with other medical equipment manufacturers or medical Distributors. Explain how conflicts of interest will be handled or avoided.
- Describe all sub-contractor relationships that will affect the services performed for the Medicaid programs.

##### 3.3.1.2 Change in Ownership

If any change in ownership or control of the company is anticipated during the twelve (12) months following the proposal due date, describe the circumstances of such change and indicate when the change will likely occur.

##### 3.3.1.3 Office Location

State the address of the bidder's office location responsible for performance under the resulting contracts/provider agreements in the event the bidder becomes the selected Distributor.

##### 3.3.1.4 Relationships with the States

In this section, the bidder shall describe any relationships it, or its subcontractors, may have or have had with the State of Maine and/or the State of Vermont over the last twenty-four (24) months. If no such relationship exists, the bidder must so declare.

###### 3.3.1.4.1 Prior and Existing Contracts/Provider Agreements

If the bidder, or its predecessor, or any subcontractor in the bidder's proposal has contracted with the States, identify the contract/provider agreement number and/or any other information available to identify such contract(s)/provider agreement(s). If no such contracts/provider agreements exist, so declare.

###### 3.3.1.4.2 Bidder's Employee Relations to States

If any party named in the proposal is or was an employee of the State of Maine or the State of Vermont within the past twelve (12) months, identify the individual(s) by name, Social Security Number, State agency by which employed, job title or position held with the State, and separation date. If no such relationship exists, so declare.

#### 3.3.1.5 Contract/Provider Agreement Performance

If the bidder or any proposed subcontractor has had a contract/provider agreement terminated for default during the past three (3) years, all such instances must be described. Termination for default is defined as notice to stop performance due to the bidder's nonperformance or poor performance. In the description, the bidder must include the other party's name, address and telephone number. The response to this subsection must present the bidder's position on the matter. If no such terminations for default have been experienced in the past three (3) years, so declare.

The bidder shall also describe any contract/provider agreement during the past three (3) years that was terminated early for convenience, nonperformance, non-allocation of funds, or any other reason. Describe fully all such terminations including the name and address of the other contracting party and the circumstances surrounding the termination. If no such early terminations have occurred in the past three years, so declare.

#### 3.3.1.6 Bidder's Qualifications and Experience

Bidders shall provide a summary that lists their previous work similar to the services requested in this RFP, in size, scope and complexity. The summary that lists previous work must be organized under the following subsections/sub-headings or each specific project reference must be divided into the following headings:

- Implementation of large scale distributor systems
- Large-scale project-management and monitoring experiences
- Medicaid-specific qualifications and experiences
- Business/functional experiences

Bidders will also provide narrative descriptions to highlight the similarities between their experience and the services requested in this RFP. Bidders will identify projects on which they gained experience in products and services specified in this RFP.

#### 3.3.1.7 Staff Qualifications

Bidders will provide a summary of relevant experience of the proposed staff that will perform each of the major task areas described in this RFP. Refer to Section 5.

#### 3.3.2 Project Management Plan

The bidder is required to submit a project management plan that will describe the bidder's approach to project management and the project's special considerations:

- how the service or product will be provided
- when the service or product will be provided
- how the quality of work performed will be assured
- how customer satisfaction will be measured and monitored
- how customer complaints will be handled
- how the bidder will approach problem identification, tracking, and resolution

- how corrective action will be taken in situations where performance and/or quality of work does not meet the RFP requirements
- how the bidder will interact with State staff
- how status and progress will be reported

### 3.3.3 References

Please provide seven (7) references, including at least three (3) customers and one (1) lending institution.

### 3.4 Preferred Products and Bid Computations

On behalf of this procurement, the State of Vermont solicited samples from manufacturers that were evaluated and tested for quality and effectiveness. Preferred brands and products were identified. Preferred brands and their reviewed products are identified in Appendix B. Bidders may propose one or more of the identified preferred branded products. Proposals will be accepted on alternatives that have comparable quality and effectiveness.

The Bid Computations (See Appendix B) must comply with the requirements presented in this section. Bidders are encouraged to offer a schedule of discounts, where the discount is scaled to the volume purchased.

Bidders should provide a price for each brand and style offered. Bids should reflect the dollar amounts that will be reimbursed by the States to Participating Providers that are or will be part of Distributor's distribution chain. Bidders should also specify what arrangements are available for home delivery and how shipping charges are handled..

The States reserve the right to review all aspects of the cost proposal for reasonableness and to request clarification of any cost proposal. The schedules required that must be submitted with the cost section are contained in Appendix B of this RFP. This form must be completed and submitted by the bidder in Excel on a CD. **All forms are** mandatory. If not submitted, the bidder's proposal may be rejected.

#### 3.4.1 Bid Price and Supporting Detail

Rates quoted must be in the form of a unit cost for each product for each CPT code listed.

The amounts entered on the cost schedules represents the bidder's firm, fixed total cost for services inclusive of any and all tax liability (including Federal, State, local, and other), which may be incurred by the bidder for any activities defined by this RFP. In addition, the amounts entered on the cost schedules will reflect the amount that Participating Providers will be reimbursed by the States for the products.

All prices proposed must include the cost of management functions, other beneficiary and provider services, standard reporting, and account management. Shipping charges should be noted, where they apply.

#### 3.4.2 Payment Schedule

The pharmacy/DME store that directly supplies the products to the MaineCare or Vermont Medicaid members will bill either the State of Maine or the State of Vermont, as appropriate. The Distributor will not bill the States.

3.4.3 Sample Kits

If bidders are offering alternatives to the preferred products, bidders shall provide a current sample of each product by size at the approved performance level to the State of Maine.

## 4.0 Terms And Conditions

This section of the RFP provides the Terms and Conditions associated with this procurement. The formal contracts and/or provider agreements to be entered into with the successful bidder (hereinafter the “Distributor”) shall contain, at a minimum, the terms and conditions set forth in this section.

The term “contract” and the term “provider agreement” as used here is defined as the legal agreement between each State and the successful bidder written as a result of this RFP.

### 4.1 General:

#### Maine Contract:

The contract between the Maine Department of Health and Human Services and the Distributor shall include:

- 1) State of Maine Agreement to Purchase Services, Page 1 signatures;
- 2) State of Maine Agreement to Purchase Services, Rider B, Payment and Other Provisions;
- 3) State of Maine Agreement to Purchase Services, Rider A, Specifications of Work to be Performed;
- 4) State of Maine Agreement to Purchase Services, Rider C, Exceptions to Standard Rider B;
- 5) State of Maine Agreement to Purchase Services, Rider D, Additional Provisions;
- 6) State of Maine Agreement to Purchase Services, Rider E, Further Requirements;
- 7) State of Maine Department of Health and Human Services Request for Proposals, RFP and any amendments, and written questions and answers; and
- 8) The Distributor’s proposal submitted in response to this RFP.

It is mutually understood and agreed that in the event of any conflict among the provisions of the documents, attachments, and/or exhibits that constitute the State of Maine Contract for Special Services with the Distributor, referenced above, the conflict shall be resolved by giving precedence to the documents in the orders listed. The Distributor’s proposal in response to the RFP is subordinate to all other listed documents.

#### Vermont Provider Agreement:

The provider agreement between the State of Vermont Office of Vermont Health Access and Distributor shall include the standard Vermont Medicaid provider agreement and a supplement unique to this procurement. See Appendix E.

#### Other State contracts/provider agreements:

Any contract/provider agreement between future participating states and the Distributor shall include the standard contracting/provider agreement provisions of that state at the time of the inclusion of the state in this arrangement.

In the event that an issue is addressed in one of a State’s documents but is not addressed in its other documents, no conflict in language shall be deemed to occur. However, the States reserve the right to clarify any contractual/provider agreement relationship in writing, and such written clarification shall govern in case of conflict with the applicable requirements stated in the RFP or the Distributor’s proposal.



No modification or change of any provision in the contracts/provider agreements shall be made, or be construed to have been made, unless such modification is mutually agreed to in writing by the Distributor and the State. The /provider agreement modification will be incorporated as a written amendment to the contract/provider agreement. Memoranda of understanding and correspondence shall not be construed as amendments to the contract/provider agreement.

In Maine, authority to approve contracts on behalf of the State is vested in the initiating department, the State Contract Review Committee and the State Controller. The Distributor shall sign a contract, which shall then be forwarded for approval and signature by all appropriate officials in the Maine State government. The Agreement Administrator shall be the single authority to act for the State under the contract. Whenever the State is required by terms of the contract to provide written notice to the Distributor, such notice must be signed by the Agreement Administrator or designee.

The Distributor shall sign a separate provider agreement for Vermont, which shall be then forwarded for approval and signature by all appropriate officials in the Vermont State Government. The Medicaid Director or his/her duly authorized representative shall be the single authority to act for the State of Vermont under the provider agreement.

The Distributor shall sign separate contracts/provider agreements with any other States that opt to participate in this arrangement.

#### 4.2 Deviations from the RFP

The requirements appearing in this RFP shall become a part of the terms and conditions of the contracts/provider agreements. Any deviations from the RFP must have been specifically defined by the Distributor in its proposal, which if accepted by the State(s), must become part of the contract/provider agreement, but such deviations must not be in conflict with the basic nature of this offer. Such exceptions must be **noted on BLUE paper attached to the Transmittal Letter** (See Section 3.1). While the States are very interested in the “best” solution that meets all their requirements, bidders should only take exceptions with due care since any exceptions deemed unacceptable by the States may be grounds for reducing the score of the bidder’s proposal. If the awarded bidder’s proposal includes any exceptions, the award itself will in no way indicate to the awarded bidder whether the exceptions, individually or collectively, are negotiable or non-negotiable.

#### 4.3 Gratuities and Kickbacks

The States prohibit Gratuities and Kickbacks.

#### 4.4 Restriction of Competition

No attempt shall be made by the Distributor to induce any other person or firm to submit or not submit a proposal for the purpose of restricting competition.

## 5.0 Scope of Work

This section provides an overview of the requirements for the contracts/provider agreements. Also provided are a description of the general requirements that must be met and a description of the project scope of work including required tasks and a list of deliverables.

### 5.1 Background Information

#### 5.1.1. Administration

The Maine Department of Health and Human Services is the “single state agency” responsible for the administration of the MaineCare Program in accordance with Federal and State requirements. Within the State agency, the Office of MaineCare Services is responsible for professional and technical aspects of medical services and medically related programs for MaineCare.

The Office of Vermont Health Access is the largest insurer in Vermont paying some or all of the health care costs for 25% of the state’s population. The Vermont Medicaid program has been designated a Managed Care Organization (MCO) under the CMS approved “Global Commitment to Health” 1115 waiver. Under the Global Commitment waiver, OVHA is a Managed Care Organization, and must meet rules for Medicaid managed care organizations. OVHA has interagency agreements with Vermont Agency of Human Services departments that provide or fund Medicaid covered services. These agreements make these departments part of the MCO within the framework of the Global Commitment. Consequently, services provided by those departments pursuant to the terms of the agreements are MCO services. Included in the MCO are all Medicaid funded services, except long-term care services included in the other State 1115 waiver called “Choices for Care.” As an MCO, Medicaid has the opportunity to select preferred and exclusive providers, vendors, and/or suppliers for some services, particularly to the extent to which such a designation will result in higher quality, improved access and lower costs.

#### 5.1.2. Number of Eligible Members and the Benefit

As of May 30, 2008 MaineCare had 270,000 full-benefit members. (See benefit manual available at MaineCare’s website: <http://www.maine.gov/dhhs/bms>).

As of May 30, 2008, Vermont had 126,158 full-benefit members eligible for an incontinent supply benefit.

#### 5.1.3. Provider Participation

The MaineCare Program has approximately 200 providers of Incontinent Care Supplies (DME and pharmacy providers) enrolled to provide services to MaineCare members.

Vermont has 195 in-state, 5 border, and 205 out-of-state providers of Incontinent Care Supplies (DME and pharmacy providers) enrolled to provide services to Vermont program enrollees.

#### 5.1.4. Utilization Data

Appendix A gives utilization data for Maine and Vermont.

### 5.2 Material Requirements

The Distributor shall offer the range of diapers with various fits described in Appendix B. MaineCare and Vermont Medicaid members should have at least two options in their size. For each product offered, the Distributor shall list the product’s current ISO test score as tested by Vermont or as updated since. (See Appendix B.)

### Testing Requirements for Incontinence Products as Applied

The following disposable incontinence products are classified by performance: youth, adult, and bariatric sized tabbed briefs, youth and adults pull-on style underwear, liners, shields, guards, and pads.

The performance categories are:

- 1) Standard
- 2) Maximum
- 3) Moderate/Added/Maximum (for liners, guards, pads, shields only)

The measures of quality include

- \* High performing absorbency capacity
- \* A moisture barrier to maximize skin protection
- \* Breathable fabric
- \* A proper fit to assure there is no leakage

ISO Test Method 11948-1:1996 was and will continue to be used as the standard measurement for assessing and utilizing quality incontinence products. Products were and will continue to be classified in each performance category based on results submitted by an independent laboratory. There were and will continue to be three qualifying tests:

- 1) Total Absorbent Capacity
- 2) Rate of Acquisition Test (ROA)
- 3) Rewet Test

Briefs and pull-on style undergarments must be able to undergo all three tests. Liners, guards, pads, and shields must be able to undergo only the total absorbent capacity test. Wipes were and will continue to be tested on thickness, strength, absorbency, and effectiveness. Gloves were and will continue to be tested on fit and strength.

	<b>Standard Performance Briefs</b>			<b>Maximum Performance Briefs</b>		
	Youth size; Adult size small	Adult size medium, large	Adult sizes extra large, bariatric	Youth size; Adult size small	Adult size medium, large	Adult sizes extra large, bariatric
Total Absorbent Capacity	At least 900 ml	At least 1000 ml	At least 1600 ml	At least 1300 ml	At least 1800 ml	At least 2100 ml
ROA	At least <70 seconds			At least <65 seconds		
Rewet	< 2.5 grams			< 2.5 grams		

	<b>Standard Performance Disposable Pull-on Style Underwear</b>			<b>Maximum Performance Disposable Pull-on Style Underwear</b>		
	Youth size; Adult size small	Adult size medium, large	Adult sizes extra large, bariatric	Youth size; Adult size small	Adult size medium, large	Adult sizes extra large, bariatric
Total Absorbent Capacity	At least 700 ml	At least 900 ml	At least 1100 ml	At least 1000 ml	At least 1200 ml	At least 1400 ml
ROA	At least <70 seconds			At least <65 seconds		
Rewet	< 2.5 grams			< 2.5 grams		

	Moderate Performance liners, shields, guards, pads	Added Performance liners, shields, guards, pads	Maximum Performance liners, shields, guards, pads
Total Absorbent Capacity	At least 100 ml	At least 400 ml	At least 1000 ml

5.2.2.

Sample Kits

On behalf of this procurement, the State of Vermont solicited samples from manufacturers that were evaluated and tested for quality and effectiveness. Preferred brands and their reviewed products are identified in Appendix B. Bidder distributors must provide a current sample of any alternative brand and size at the approved performance level to the State of Maine.

5.2.3. Distributor Responsibilities

The Distributor shall be responsible for the timely processing and fulfillment of all orders from each State’s program enrolled providers of incontinence supplies.

Orders shall be issued directly from Participating Providers to the Distributor. The form and format of these orders are at the discretion of the Distributors and Participating Providers and may include the provision of the Distributor direct shipping to enrollees on behalf of the Participating Provider. In all cases the Participating Providers shall be considered the entity responsible for providing the service even if that provision is the act of arranging for delivery by the Distributor. In all cases the Participating Provider shall bill the State and the Participating Provider may only bill the preferred products identified by the State.

Providing and billing alternative products without the express permission of the State will be considered fraud. Approved prior authorizations shall constitute express permission. The State will audit to assure compliance with this provision.

Indicate the site or sites from which the Supplier will distribute the products identified in the proposal

Describe the process whereby local medical supply providers will place orders for the supplies that will be covered by the Rebate Agreement. Describe any quantity or other ordering limitations or requirements. Identify the turn around time from the time the order is received to the ship date.

The Distributor shall also:

Notify the States, in writing, of any changes in the person or persons authorized to sign amendments to the contract/provider agreement on behalf of the Distributor.

Effect and maintain liaison and cooperate fully with designated State staff with respect to the direction and the performance of Distributor's contractual/provider agreement responsibilities.

Assume complete financial responsibility and liability for payment to creditors for costs incurred by Distributor in the performance of contractual/provider agreement obligations.

Notify the States in writing of a problem no later than three (3) working days from the date of discovery of any problem which may jeopardize the successful or timely completion of its obligations. To be included in such notice will be the Distributor's recommendation for expeditious resolution of the problem.

Refer to the States any suspected fraudulent or abusive practice it encounters in the performance of its contractual/provider agreement activities.

Produce, on a timely basis, reports, print-outs, and other documentation reflecting information or data possessed by the Distributor which is needed to investigate or document suspected instances of fraud or abuse. Please provide samples of reports that would be provided to the Medicaid programs.

#### 5.2.3.1 Service Authorization

It will be the responsibility of the Participating Provider to verify the eligibility of the persons for whom services are rendered. It is also the Participating Provider's responsibility to verify if the person is eligible for commercial insurance coverage, and to submit the claim to that commercial insurer if indicated. If the Participating Provider submits a claim to the Medicaid programs that is denied due to eligibility status, the Participating Provider will not receive reimbursement from the States if the product is dispensed to the individual. If there is a primary commercial insurance available to the client, the Participating Provider should bill its usual and customary charge for those items to the primary insurance company.

#### 5.2.3.2. Delivery

The Distributor shall fill orders for Participating Providers to assure access to necessary products within seven (7) working days. The Participating Provider shall be notified within three (3) working days in writing or by telephone with written documentation to follow, in those instances when an order will require more than seven (7) working days for completion. The States will solicit periodic feedback from Participating Providers to assure compliance with this provision.



5.2.3.3. Responsibility for Materials Lost in Transit

The sender, either the Distributor or the Participating Provider, shall be responsible for replacing materials lost in transit, at no additional charge to the States over and above the agreed upon rates.

5.2.3.4. Telephone Accessibility

The Distributor shall either have a toll-free number for use by Participating Providers statewide or shall accept collect calls from Participating Providers. The Distributor shall assure that Participating Providers can place orders to assure access to necessary products within seven (7) working days. The State will solicit periodic feedback from Participating Providers to assure compliance with this provision.

5.2.3.5. Confidentiality

The disclosure of information regarding Medicaid members is strictly limited to purposes directly connected with administration of the contract/provider agreement. Publication or the sale of names and lists of recipients identified as such is strictly prohibited. All matters pertaining to confidentiality shall be in accordance with the provisions of 42 CFR §431, Subpart F of the Medicaid regulations and 42 USC 1396r-8(b) (3) (D) of the Social Security Act.

5.2.3.6. Distributor's Liability

The State and Distributor agree that Distributor is an independent contractor/provider, and not an employee of the States of Maine or Vermont. The Distributor agrees to indemnify the Department of Health and Human Services of the State of Maine and the Office of Vermont Health Access of the State of Vermont for any losses the States may sustain when such losses result from claims of any person or organization injured by the negligent acts or omissions of Distributor, its officers, agents, or employees.

The distributor agrees to indemnify, defend and save harmless the States, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, material men, laborers, and any other person, firm or corporation furnishing or supplying services, materials or supplies utilized by the Distributor in connection with the performance of contractual/provider agreement obligations, and from all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Distributor in the performance of its duties under the contract/provider agreement and against any liability, including costs and expenses, for violation of proprietary rights, copyrights, or rights of privacy, arising out of publication, translation, reproduction, delivery, performance, use or disposition of any data furnished under the contract/provider agreement or predicated on any libelous or other unlawful matter contained in such data.

5.2.3.7. Guarantee

The Distributor shall complete all orders according to the Participating Provider's instructions. If within five (5) working days after delivery, an article furnished under the contract/provider agreement is found by the Participating Provider to be unsatisfactory due to Distributor error, defective workmanship and/or materials, the same shall be corrected, adjusted or replaced by the Distributor, as necessary, at the Distributor's expense.

Such articles will be returned by the Participating Provider to the Distributor. Corrected and/or replacement articles shall be mailed to the Participating Provider within seven (7) working days of receipt by the Distributor of the unsatisfactory materials.

5.2.3.8. Performance Bond

Bids shall include proof of capability of the bidding firm to carry out the performance requirements of the States and suitable evidence of financial ability to perform. Such evidence must include at least three (3) business letters of recommendation, annual financial reports for each of the last two (2) years, and a list of seven (7) references, including at least three (3) customers, three (3) manufacturers/suppliers, and one (1) lending institution. A performance bond in the amount of ten thousand dollars (\$10,000) will be required.

5.2.4. Departmental/State Responsibilities

The Maine Department of Health & Human Services, the State of Vermont, and any future participating state shall reimburse Participating Providers for all Incontinent Care Supplies referenced in Appendix B and that are covered under the scope of benefits provided by the States' programs.

The States shall notify the Distributor of any policy changes that could significantly affect the volume of materials to be provided under the contract/provider agreement at least thirty (30) days before such a change.

The States will inform Participating Providers of the appropriate procedures for ordering materials from the Distributor.

The States shall provide the Distributor with a complete list of services/materials requiring prior authorization. Maine shall also forward a copy of all prior authorization letters to the Distributor as verification of Participating Providers' approved prior authorization requests. Vermont shall hold the Participating Provider solely responsible for obtaining documentation of any prior authorizations.

The States will provide the Distributor with a list of Participating Providers certified to furnish services under each State's programs. The States will also maintain toll-free telephone numbers that the Distributor may use to check the status of an ordering provider.

The State shall provide the Participating Providers with an approved billing **format** and procedures in order to obtain reimbursement for covered services under this contract/provider agreement. The Participating Providers may submit bills electronically.



## **6.0 Facility Standards and Reporting Requirements**

The Distributor shall have the physical plant and equipment in one or more locations, which are constructed and maintained in a safe and sanitary manner, and are adequate and appropriate for provision of the items specified in the contract/provider agreement. The Distributor shall comply with all applicable Federal, State, and local laws and regulations, including construction, fire, health, and safety laws and regulations.

If the Distributor is found to be materially deficient in meeting any of the above standards, the Distributor shall so notify the States and the States shall set a date by which time such material deficiency will be corrected. If the material deficiency is not corrected, and the Distributor has made no effort to meet the standards provided in this contract/provider agreement, by the set date, the States shall have the option to terminate the contracts/provider agreements no later than sixty (60) days following the set date.

### **6.1. Fiscal Records**

The Distributor shall establish and maintain on a current basis fiscal records that are accurate and sufficient in detail to substantiate the cost data provided under the contract/provider agreement. The States shall have the right to audit and inspect all fiscal records of the Distributor, as provided in applicable Federal regulations. All records shall be maintained for five (5) years after a final settlement with the States. If an audit is initiated within the required retention period, the records must be retained until the audit is completed and a settlement has been made.

### **6.2. Inspection of Premises**

The States may make inspections, periodic reviews, and audits of records as provided in applicable Federal and State Regulations. All records shall be made available to representatives from the States. The purpose of this type of review is to assure the appropriateness, quality, and timeliness of the materials delivered.

Findings of such reviews will be shared with the Distributor and appropriate recommendations and plans for action, if any, will be discussed with appropriate Distributor administrative and professional staff.

Additional inspections may be used to verify the adequacy of the Distributor's facilities to process the orders and to produce the volume of materials required under the Medicaid programs.

### **6.3 Reporting**

The Distributor shall provide such reports with respect to materials and services provided hereunder as the States may reasonably require. Please provide sample reports with the proposal.

## Appendix A - Utilization Data

**Maine - July 1, 2007 through June 30, 2008**

<b>Procedure Code</b>	<b>Procedure Description</b>	<b>Sum of Payment Amount</b>	<b>Sum of Paid Service Units</b>	<b># of Distinct Members</b>
A4335	Incontinent Care Supply	\$240,146.10	1,156,584	1,892
A4927	Non-sterile gloves	\$183,287.19	2,419,167	2,488
T4521	Adult size brief/diaper sm	\$50,634.12	111,461	179
T4522	Adult size brief/diaper med	\$134,465.39	283,757	401
T4523	Adult size brief/diaper lg	\$188,887.98	294,729	452
T4524	Adult size brief/diaper xl	\$24,266.90	40,825	110
T4525	Adult size pull-on sm	\$80,504.04	119,162	282
T4526	Adult size pull-on med	\$453,283.31	646,207	1,412
T4527	Adult size pull-on lg	\$597,089.25	745,745	1,581
T4528	Adult size pull-on xl	\$322,835.75	356,394	722
T4529	Ped size brief/diaper sm/med	\$758.24	1,856	4
T4530	Ped size brief/diaper lg	\$47,171.82	129,632	126
T4531	Ped size pull-on sm/med	\$39,187.28	60,801	68
T4532	Ped size pull-on lg	\$88,952.77	138,671	197
T4533	Youth Size Brief/Diaper	\$11,008.75	17,664	19
T4534	Youth size pull-on	\$286,206.57	362,904	500
T4535	Disposable liner/shield/guard/pad/undergarment for incontinence, each	\$310,721.04	879,308	1,246
T4536	Reusable pull-on any size	\$352.83	242	9
T4537	Reusable underpad bed size	\$23,552.85	4,096	470
T4541	Large disposable underpad	\$148,894.53	707,367	1,171
T4542	Incontinence product, disposable under pad, small size, each	\$6,583.30	30,192	67
T4543	Bariatric brief/ diaper	\$0.00	0	0

## Appendix A - Utilization Data (Continued)

**Vermont - July 1, 2007 through June 30, 2008**

<b>Procedure Code</b>	<b>Procedure Description</b>	<b>Sum of Payment Amount</b>	<b>Sum of Paid Service Units</b>	<b># of Distinct Members</b>
A4520	Incontinence Garment, Any Type, (E.G. Brief, Diaper), Each	\$210,007.21	340,340	444
A4534	Youth-Sized Incontinence Product, Brief, Each	\$40,379.16	83,991	104
A4554	Disposable Underpads, All Sizes	\$55,211.39	249,888	396
T4521	Adult size brief/diaper sm	\$45,714.52	76,333	216
T4522	Adult size brief/diaper med	\$168,029.71	266,191	480
T4523	Adult size brief/diaper lg	\$139,465.63	214,297	503
T4524	Adult size brief/diaper xl	\$111,274.61	60,907	335
T4525	Adult size pull-on sm	\$13,804.99	22,330	93
T4526	Adult size pull-on med	\$36,153.90	56,917	175
T4527	Adult size pull-on lg	\$27,241.98	41,314	145
T4528	Adult size pull-on xl	\$37,365.88	42,396	142
T4529	Ped size brief/diaper sm/med	\$10,589.32	24,151	64
T4530	Ped size brief/diaper lg	\$17,512.63	44,316	84
T4531	Ped size pull-on sm/med	\$14,412.27	21,664	42
T4532	Ped size pull-on lg	\$2,233.33	5,648	36
T4533	Youth Size Brief/Diaper	\$83,436.92	154,442	209
T4534	Youth size pull-on	\$6,302.64	11,467	67
T4535	Disposable liner/shield/guard/pad/undergarment for incontinence, each	\$69,651.13	187,069	354
T4536	Reusable pull-on any size	\$320.40	26	2
T4537	Reusable underpad bed size	\$227.29	306	6
T4540	Incontinence product / reusable, chair size, each	\$39.00	3	2
T4541	Large disposable underpad	\$27,973.14	115,898	216
T4542	Incontinence product, disposable under pad, small size, each	\$111.00	444	5

## Appendix B Preferred Products and Bid Computations

All Bidders are required to complete the bid computations for each preferred product line in Excel and to submit this as part of the proposal. Bidders are asked to provide a bid price on each procedure code, including those that have zero units, where a product is available in the product line. Bidders should identify a bid price based on the number of covered lives that may ultimately be part of this procurement. Please use the format of the bid worksheet found below but include applicable procedure codes.

### Preferred Products List (PPL)

- SCA
- Invacare (house brand)
- Whitestone
- Kimberly Clark

### Bid Worksheet

	Procedure Code	Up to 350,000 covered lives	350,000 up to 500,000 covered lives	500,000 up to 750,000 covered lives	750,000 up to 1,000,000 covered lives	1,000,000 up to 1,250,000 covered lives	1,250,000 up to 1,500,000 covered lives
Adult size brief/diaper small	T4521						
Adult size brief/diaper medium	T4522						
Adult size brief/diaper large	T4523						
Adult size brief/diaper extra large	T4524						
Adult size pull-on small	T4525						
Adult size pull-on medium	T4526						
Adult size pull-on large	T4527						
Adult size pull-on extra large	T4528						
Pediatric size brief/diaper small/medium	T4529						
Pediatric size brief/diaper large	T4530						
Pediatric size pull-on small/medium	T4531						
Pediatric size pull-on large	T4532						
Youth size brief/diaper	T4533						
Youth size pull-on	T4534						
Disposable liner/shield/guard/pad/undergarment for incontinence	T4535						
Large disposable underpad	T4541						
Incontinence product, disposable under pad, small size	T4542						

Bariatric brief/diaper	T4543						
Bariatric pull-on	TBD						
Gloves	TBD						
Wipes	TBD						

## **Appendix C Summary of Bid Requirements**

### **A. Distributor Identification & Qualifications**

1. Name, address, history of company
2. Ownership (and ownership changes)
3. Subcontractors
4. Relationships with the state
5. Contract performance
6. Qualifications and experience
7. Staff qualifications

### **B. Project Management Plan**

1. How and when product will be provided
2. Quality assurance plan
3. Customer service plan
4. Problem identification and resolution
5. Status and progress reports

### **C. References**

1. Seven references, including three customers and one lending institution

### **D. Bid Computations**

1. Sample kit

**Appendix D - State Of Maine Standard Contract with RIDERS B, C, D and G**

**(Provided for your reference, only)**

**RIDER B**  
**METHOD OF PAYMENT AND OTHER PROVISIONS**

1. **AGREEMENT AMOUNT**           \$
  2. **INVOICES AND PAYMENTS** The Department will pay the provider as follows:
- 
- 

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

3. **BENEFITS AND DEDUCTION** 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: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_

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: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
E-mail address: \_\_\_\_\_



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 Provider 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** The Provider shall maintain all books, documents, payrolls, papers, accounting records and other evidence pertaining to this Agreement and make such materials available at its offices at all reasonable times during the period of this Agreement and for such subsequent period as specified under Maine Uniform Accounting and Auditing Practices for Community Agencies (MAAP) rules. The Provider shall allow inspection of pertinent documents by the Department or any authorized representative of the State of Maine or Federal Government, and shall furnish copies thereof, if requested.

15. **TERMINATION** The performance of work under the Agreement may be terminated by the Department in whole, or in part, whenever for any reason the Agreement Administrator shall determine that such termination is in the best interest of the Department. Any such termination shall be effected by delivery to the Provider of a Notice of Termination specifying the extent to which performance of the work under the Agreement is terminated and the date on which such termination becomes effective. The Agreement shall be equitably adjusted to compensate for such termination, and modified accordingly.

16. **GOVERNMENTAL REQUIREMENTS** The Provider warrants and represents that it shall 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 contract 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 contract; 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 Agreement 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. Dealers 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 moneys 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, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Controller.

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

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

No Exceptions to Rider B are granted under this agreement.

## **RIDER D**

### **Additional Requirements**

FY 08 Rev. 03/07

**1. Audit.** Funds provided under this Agreement to community agencies for social services are subject to the audit requirements contained in the Maine Uniform Accounting and Auditing Practices for Community Agencies (MAAP-III), Federal OMB Circular A-110, and may further be subject to audit by authorized representatives of the Federal Government, according to the Agreement Settlement Form (pro forma) contained in Rider F (if applicable). This provision does not apply to contracts that provide only MaineCare seed funds. Please see <http://www.maine.gov/sos/cec/rules/10/chaps10.htm> for details on this requirement.

**2. Reporting Suspected Abuse/Neglect.** The Provider shall comply with the DHHS rules for reporting abuse or neglect of children or adults pursuant to 22 MRSA §§ 3477 and 4011-A. In addition, the Provider agrees to follow the DHHS rules on reportable events pursuant to 14-197 CMR ch. 9.

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

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

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

If any other funds have been or will be paid to any person in connection with any of the covered actions specified in this provision, the Provider shall complete and submit a "Disclosure of Lobbying Activities" form available at <http://www.whitehouse.gov/omb/grants/#forms>.

**5. Drug-Free Workplace.** By signing this agreement, the Provider certifies that it shall provide a drug-free workplace by: publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited

in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition; establishing a drug-free awareness program to inform employees about the dangers of drug abuse in the workplace, the grantee's policy of maintaining a drug-free workplace, available drug counseling and rehabilitation programs, employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace; providing a copy of the drug-free workplace statement to each employee to be engaged in the performance of this agreement; notifying the employees that as a condition of employment under the agreement the employee will abide by the terms of the statement and notify the employer of any criminal drug conviction for a violation occurring in the workplace no later than five days after such conviction.

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

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

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

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

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

**8. Medicare and MaineCare Anti-Kickback.** By signing this agreement, the Provider agrees that it shall comply with the dictates of 42 U.S.C. 1320a-7b(b), which prohibits the solicitation or receipt of any direct or indirect remuneration in return for referring or arranging for the referral

of an individual to a provider of goods or services that may be paid for with Medicare, MaineCare, or state health program funds. <http://www.gpoaccess.gov/uscode/index.html>

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

**10. Motor Vehicle Check.** The Provider shall complete a check with the Bureau of Motor Vehicles on all of Provider's staff and volunteers who transport clients or who may transport clients. This check must be completed before the Provider allows the staff person or volunteer to transport clients, and at least every two years thereafter. If the record of a staff member or volunteer contains an arrest or conviction for Operating under the Influence or any other violations which, in the judgment of the Provider, indicate an unsafe driving history within the previous three (3) years, the Provider shall not permit the staff member or volunteer to transport clients. The Provider shall implement appropriate procedures to ensure compliance with the requirements of this section.

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

**12. Software Ownership.** Upon request, the State and all appropriate federal agencies shall receive a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to do so, all application software produced in the performance of this Agreement, including, but not limited to, all source, object, and executable code, data files, and job control language, or other system instructions. This requirement applies only to software that is a specific deliverable under this Agreement, or is integral to the program or service funded under this Agreement, and is primarily financed with funding provided under this Agreement.

**13. Exceptions to OMB Circulars for non-Federally-funded activities.**

a. Bad Debt. Bad debt is defined as the operating expense incurred because of the failure to collect receivables, and the related costs to collect. Bad debts must be offset against identified non-State, non-Federal, unrestricted revenue. The provider must make a good faith effort to collect the receivable (e.g. through billing, pursuing through a collection agency, etc.)

b. Interest Expense

i. Per A-122, paragraph 23: costs incurred for interest on borrowed capital are unallowable. Interest on debt incurred after 9/29/95 to acquire or replace capital assets is allowable.

ii. DHHS exception allows interest on borrowed capital on or before 9/29/95 to be prorated and offset against DHHS agreement State revenue and other unrestricted non-Federal revenue.

(Note: interest incurred for short term cash flow loans can be offset using non-State, non-Federal unrestricted revenue).

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



d. Any other exceptions to OMB Circular A-122 are allowable only with prior written approval from the Department, and must be offset against identified unrestricted non-Federal revenue.

**14. MaineCare Regulations.** Dealers who receive MaineCare funds will assure that their programmatic and financial management policies and procedures are in accordance with applicable MaineCare regulations and that their staff are familiar with the requirements of the applicable MaineCare service they are providing. Dealers will ensure that they are in compliance with the applicable MaineCare regulation prior to billing for the service.

**15. Revenue Maximization.** The Provider shall conduct its services in such a way as to maximize revenues from MaineCare and other third-party sources such as private insurance as may be available to reduce the need for funds from the Department. Contract funds may not be used to pay for services that are reimbursable by other third party sources, such as private health insurance and MaineCare, under any circumstances. It is the Provider's obligation to seek and obtain reimbursement from other third party sources for any reimbursable services provided to covered individuals.

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

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

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

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

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

a. Sub-agreements

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.

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

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

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

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

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

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

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

- United States. Please identify state: \_\_\_\_\_**
- Other. Please identify country: \_\_\_\_\_**

Notification of Changes to the Information

The Provider agrees to notify the Division of Purchases<sup>1</sup> of any changes to the information provided above.

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<sup>1</sup> Resolve, Chapter 16, First Special Session-2005.

**APPENDIX E**

**VERMONT APPENDICES**

**Appendix 1: Medicaid Provider Agreement**

*[Link to be provided]*

**Appendix 2: DRAFT Distributor Addendum**

## Appendix 2

### DRAFT

#### VERMONT PROVIDER AGREEMENT DISTRIBUTOR ADDENDUM FOR INCONTINENT CARE SUPPLIES

1.1 This Distributor Addendum ("Addendum") is made and entered into on the \_\_\_ day of \_\_\_\_\_, 2009, by and between the State of Vermont, Office of Vermont Health Access (the "State") and \_\_\_\_\_ (the "Distributor"), Identification Number \_\_\_\_\_. The parties, in consideration of the covenants, conditions, agreements, and stipulations expressed in this Addendum, do agree as follows:

#### PURPOSE

2.1 It is the intent of this Addendum that the Distributor shall provide Covered Incontinent Care Supplies to Participating DME and pharmacy providers for Members enrolled in the State's publicly funded programs in which there is federal financial participation.

2.2 No payments will be made to the Distributor. Payments to Participating Providers of Incontinent Care Supplies are subject to the Participating Providers' compliance with all items set forth in the Participating Provider agreements with the State, and subject to the availability of funds. The State will process approved payments within the time period set forth in those Participating Provider Agreements. Maximum reimbursement to Participating Providers shall be at the rates agree to by the State and Distributor as set forth in Attachment A of this Addendum.

2.3 The parties also intend for this Addendum to meet the requirements of federal law.

#### DEFINITIONS

3.1 'Addendum' means this Distributor Addendum, including all documents attached or incorporated by reference.

3.2 'Covered Product' means the products of the Distributor, as detailed in Attachment A, for which a Participating Provider will be paid pursuant to this Agreement.

3.3 'Covered Product Category' or 'Product Category' means a defined group of Incontinent Care Supplies considered to compete with one another in the market and that are also thought to be equivalent products in terms of an alternative in many or most situations. The State has determined and defined the Product Categories in which Distributors will bid. The Product Categories may be changed as deemed appropriate by the State.

3.4 'Covered Product Reimbursement Amount Per Unit' means the total amount per unit agreed to by the State, specific to each Covered Product, that the State reimburses Incontinent Supply Providers per unit under Medicaid, in accordance with applicable state and federal laws and regulations.

**3.5** ‘Distributor’ means, for purposes of this Agreement, the party identified as such in Section 1.1 of this Agreement, which may be an Incontinent Supply Distributor or other entity not prohibited by law from entering into this Agreement.

**3.6** ‘Incontinent Supply Provider’ means an entity licensed or permitted by law to dispense Incontinent Care Supplies, and enrolled as a State Medicaid Provider.

**3.7** ‘Incontinent Supply’ means any product used for the care and management of incontinence including liners, diapers and undergarments, disposable under pads, wipes, and gloves.

**3.8** ‘Medicaid Member’ shall mean any person enrolled in the State Medicaid Program and eligible to Medicaid benefits under a fee-for-service arrangement.

**3.9** ‘Participating Provider’ shall have the same meaning as ‘Incontinent Supply Provider’ as defined in Section 3.7 above.

**3.10** ‘Participation Commencement Date’ means the date a Distributor’s Covered Product is effectively placed in the State’s Preferred Product List by distribution of it (via website or otherwise) to Medicaid providers. It is the date when the State’s entitlement to the agreed upon rate commences

**3.11** ‘Preferred Product List or PPL’ shall mean a document listing various Incontinent Care Supplies covered by the State Medicaid Program for the purpose of guiding the prescribing, dispensing and acquisition of Incontinent Care Supplies. Incontinent Care Supplies that are Non-Preferred will require Prior Authorization.

**3.12** ‘Preferred Product List Program’ shall mean a process by which the State designates and maintains the list of Incontinent Care Supplies that are preferred over others in the same category (the PPL), for the purpose of guiding the prescribing, dispensing and acquisition of those Incontinent Care Supplies.

**3.13** ‘State’ means the State of Vermont or any agent or agents that the State designates to perform the State of Vermont’s responsibilities as set forth in the terms and conditions of this Agreement.

**3.14** ‘State Medicaid Program’ shall mean the joint federal and state medical assistance program as established and defined pursuant to Title 42 U.S.C. 1396, et seq., that provides reimbursement for or coverage of Incontinent Care Supplies to Medicaid members.

**3.15** ‘State Utilization Data’ means the data used by the State to reimburse Participating Providers under the State’s Medicaid Program (and other state funded approved programs). State Utilization Data excludes data from covered entities identified in Title 42 U.S.C. §256b (a) (4) in accordance with Title 42 V.S.C. §256b (a) (5) (A) and 1396r-8(a) (5) (C).

**3.16** ‘USC’ means the United States Code. All references in this agreement to the USC chapters or sections shall include any successor, amended, or replacement statute.

## **DISTRIBUTOR'S RESPONSIBILITIES**

### ***4.1 [Insert final terms and conditions/scope of work here]***

**4.2** The Supplier's obligation under the Provider Agreement and this Addendum will begin \_\_\_\_\_ 1, 2009 (even if this Agreement is not fully executed by such date) and will continue through \_\_\_\_\_, subject to the Participation Commencement Date as described in Section 3.10, supra. Notwithstanding the above, the State reserves the right to solicit annually more favorable terms from Distributor by giving written notice thereof no less than ninety (90) days prior to the yearly anniversary of the effective date of this Agreement.

**4.3** The duration of the Distributor Provider Agreement and this Addendum is annual for two (2) years with the option of an additional two (2) one-year extensions at the discretion of the State. Thus, the maximum term of the Agreement is annually up to four (4) years.

## **STATE'S RESPONSIBILITIES**

### ***5.1 [Insert final terms and conditions/scope of work here]***

**5.2** The State will consider the Distributor's Covered Product(s) for inclusion in the State's Preferred Product List Program. The State reserves the right to select the products that will be in its Preferred Product List Program. The State also reserves the right to determine, as a result of a Product Category review, that prior authorization is required for any or all preferred products in a Product Category. If the State determines that prior authorization is required for any Covered Product, then the State will comply with the provisions of the Social Security Act applicable to Prior Authorization programs.

**5.3** The State shall notify the Distributor whenever the State adds one of Distributor's Covered Products to its Preferred Product List or when one of Distributor's Covered Products are moved to a prior authorization status.

**5.4** The State shall maintain electronic claims records for the most recent four quarters that will permit Distributor to verify the State Utilization Data of their products to assess the value of this Addendum.

**5.5** Upon implementation of the Provider Agreement and this Addendum, and from time to time thereafter, the State and Distributor will meet to discuss any data or data system improvements which are necessary or desirable to ensure that the data and any information provided by the State to the Distributor are adequate for the purposes of the Provider Agreement and this Addendum.

## **CONFIDENTIALITY PROVISIONS**

**6.1** The parties agree that confidential information will not be released to any person or entity not a party to this Addendum. Confidential information, including trade secrets, will not be disclosed or used except in connection with this Addendum or as may be required by law or judicial order.

**6.2** The Distributor will hold the State's State Utilization Data confidential. If the Distributor audits this information or receives further information on such data from the State, that information shall also be held confidential. The Distributor shall have the right to disclose the State's State Utilization Data to auditors who agree to keep such information confidential.

**6.3** In the same manner as 42 USC 1396r-8(b) (3) (D) applies to drug information, and other comparative applicable state or federal laws, the parties agree that this Addendum and all information provided pursuant to this Addendum will not be disclosed and that the parties will not duplicate or use the information, except in connection with this Addendum or as may be required by judicial order. The parties further agree that any information provided by Distributor to the State, pursuant to this Addendum and this Addendum itself constitute trade secrets and/or confidential or proprietary commercial and financial information not subject to public disclosure. Furthermore, the parties agree that any Distributor information received by the State shall constitute trade secrets and/or confidential or proprietary commercial and financial information of the Distributor not subject to public disclosure, except as otherwise provided for herein. If the services of a third party are used to administer any portion of this Addendum, Sections 6.1 through 6.4 of this Addendum shall apply to the third party. In the event that either party is required by law to disclose any provision of this Addendum or pricing information to any person, such party shall provide advance written notice to the other party sufficiently in advance of the proposed disclosure to allow the other party to seek a protective order or other relief.

**6.4** Notwithstanding the non-renewal or termination of this Addendum for any reason, these confidentiality provisions will remain in full force and effect.

## **NON-RENEWAL OR TERMINATION**

**7.1** The Provider Agreement and this Addendum shall be effective as of \_\_\_\_\_, 2009, and shall have the term indicated in Section 4.2, supra.

**7.2** The State may terminate its participation in the Provider Agreement and this Addendum by giving Distributor written notice at least sixty (60) days' prior to the anniversary date of the Provider Agreement and this Addendum, in which case termination shall become effective on the anniversary date of the date of execution of the Provider Agreement and this Addendum. Distributor may terminate the Provider Agreement and this Addendum and all of its attachments by giving the State written notice at least sixty (60) days prior to the anniversary date of the Provider Agreement and this Addendum, in which case termination shall become effective on the anniversary date of the date of execution of the Provider Agreement and this Addendum. Distributor's right of termination is limited to the right to terminate the entire Provider Agreement and this Addendum. Distributor may not terminate specific attachments.

## **GENERAL PROVISIONS**

**8.1** The Provider Agreement and this Addendum will be governed and construed in accordance with all applicable federal and state law and regulations.



**8.2** Any notice required to be given pursuant to the terms and provisions of the Provider Agreement and this Addendum will be in writing and will be sent by certified mail, return receipt requested. Notice will be mailed to the addressees set forth below.

Notice to the State shall be sent to:

State of Vermont  
Office of Vermont Health Access  
Attn: Mary Day, Program Integrity Manager  
312 Hurricane Lane, Suite 201  
Williston, VT 05495

Notice to Distributor will be sent to:

[Insert information here]

**8.3** The Distributor agrees to be bound by the laws of the United States of America and with the law of the State of Vermont. Proper venue in any legal action shall be the venue of the State of Vermont.

**8.4** Nothing herein shall be construed or interpreted as limiting or otherwise affecting the State's ability to pursue its rights arising out of the terms and conditions of the Provider Agreement and this Addendum in the event that a dispute between the parties is not otherwise resolved.

**8.5** Distributor and the agents and employees of Distributor in the performance of the Provider Agreement and this Addendum, will act in an independent capacity and not as officers, employees or agents of the State.

**8.6** Distributor may not assign the Provider Agreement and this Addendum, either in whole or in part, without the written consent of the State. However, in the event of a transfer in ownership of the Distributor, the Provider Agreement and this Addendum is automatically assigned to the new owner subject to the conditions in the Provider Agreement and this Addendum. If the Provider Agreement and this Addendum is assigned pursuant to this Section, Distributor shall provide the State with an update of the information contained in Section 8.2, supra.

**8.7** Nothing in the Provider Agreement and this Addendum will be construed so as to require the commission of any act contrary to law. If any provision of the Provider Agreement and this Addendum is found to be invalid or illegal by a court of law, or inconsistent with federal requirements, the Provider Agreement and this Addendum will be construed in all respects as if any invalid, unenforceable, or inconsistent provision were eliminated, and without any effect on any other provision.

**8.8** The State and Distributor declare that the Provider Agreement and this Addendum, including all attachments and schedules, contains a total integration of all rights and obligations of the parties. There are no extrinsic conditions, collateral agreements or undertakings of any kind. In regarding the Provider Agreement and this Addendum as the full and final expression of their agreement, it is the express intention of the parties that any and all prior or contemporaneous

agreements, promises, negotiations or representations, either oral or written, relating to the subject matter and period of time governed by the Provider Agreement and this Addendum which are not expressly set forth herein are to have no force, effect, or legal consequences of any kind.

**8.9** The Provider Agreement and this Addendum will not be altered except by an amendment in writing signed by the parties. Other than as stated herein, no individual is authorized to alter or vary the terms or make any representation or inducement relative to it, unless the alteration appears by way of a written amendment, signed by duly appointed representatives of the State and the Distributor.

**8.10** The parties do not contemplate any circumstances under which indemnification of the other parties would arise. Nevertheless, should such circumstances arise, Distributor agrees to indemnify, defend and hold harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Distributor in the performance of the Provider Agreement and this Addendum.

**8.11** As evidence of the Provider Agreement and this Addendum to the foregoing terms and conditions, the parties have signed below.

**STATE OF VERMONT, OFFICE OF VERMONT HEALTH ACCESS**

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

Name: Mary Day

Title: Program Integrity Manager

**DISTRIBUTOR NAME**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_