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AdvantageME CT No: 150911*44

STATE OF MAINE
DEPARTMENT OF ADMINSTRATIVE AND FINANCIAL SERVICES
Agreement to Purchase Services

THIS AGREEMENT, made this 4th day of September 2015, is by and between the State of Maine, Department of Administrative and Financial Services hereinafter called "Department," and Mainely Access, Inc located at 91J Auburn St #1182 Portland, ME 04103, telephone number 207-650-8151 hereinafter called "Provider", for the period of September 7, 2015 to October 6, 2016 with an option of three one-year renewals.

The AdvantageME Vendor/Customer number of the Provider is VC#100058118

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

Rider A - Specifications of Work to be Performed
Rider B - Payment and Other Provisions
Rider C – Exceptions to Rider B
Rider D - RFP#201503049 Assistive Technology – IT Equipment and Services
Rider E – Mainely Access Response to RFP#201503049
Rider F - Service Level Agreement
Rider G – Identification of Country in Which Contracted Work will be Performed

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

**DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES**

By: Gregory A McNeal
Gregory McNeal, CTO

And

**MAINELY ACCESS, INC**

By: MBWalsh president,Mainely Access Inc.
Mary Beth Walsh, President

Total Agreement Amount: $_____

Approved: _____
Chair, State Purchases Review Committee
BP54 (Rev 1/12)

The use of this standard form of agreement is controlled by and subject to revision by the Division of Purchases. The current version of this form is available at the Division website (http://www.maine.gov/purchases/info/forms.html ), or at 9 State House Station, Augusta, Maine 04333-0009.

RIDER A

SPECIFICATIONS OF WORK TO BE PERFORMED

The Department of Administrative and Financial Services, Office of Information Technology issued RFP 201503049 seeking proposals to provide Assistive Technology Services on an as needed basis. This contract is entered into with Mainely Access, Inc based on their response to the RFP which is incorporated into this contract as reference.

The initial term of the contract will be for one (1) year, and the Department may opt to renew the contract for three renewal periods of one year each, subject to continued availability of funding and satisfactory performance.

**Service to be Performed:**

Services to be performed on an as-needed basis by the Department requesting services:

- Functional Assistive Technology evaluations for individuals.
- Assessments of State facilities and public spaces.
- Recommend Assistive Technology IT hardware and software based on evaluated need.
- Procurement and implementing recommended hardware and software
- Training for individuals with Assistive Technology needs and other State staff
- Post-implementation support and maintenance.

Governance, roles and responsibilities and service level agreements are contained in Rider F – Service Level Agreement, which was developed and approved by the Contractor and the State of Maine Assistive Technologies Contract Review Team.

**Dispute Resolution**

In the event of any dispute arising during the term of the Contract concerning performance of the Contract, either party shall serve notice of such dispute on the other party and the dispute shall be decided by the State Contract Administrator who shall provide his decision to writing and serve a copy on the Contractor. The decision of the State Contract Administrator shall be final and conclusive. The State Contract Administrator's decision in the event of any written notice of dispute shall be final subject to the Contractor's right to relief under applicable law.

**Confidentiality of Information**

It is the responsibility of the Contractor to safeguard and protect all State data during the life of this Contract. All materials and information provided to the Contractor by the State or acquired by the Contractor on behalf of the State whether verbal, written, magnetic media, or otherwise shall be regarded as confidential information in accordance with the provisions of Federal and State law and ethical standards, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with Federal and State law and ethical standards.

**Invoicing and Payments**

Invoices will be sent to the Agency requesting the service. Payment will be made at the proposed rate of:

| | |
|---|---|
| $250 | Comprehensive assistive technology assessment with report |
| $120 | Per hour of work, |
| $120 | Per hour – one way travel |
| 10% | Markup from vendor invoice price |

This contract, although initiated and contracted by the Office of Information Technology and Maine State Police, may be used by all government agencies of the State of Maine. State boards, quasi-state government entities, political subdivisions of the State of Maine such as towns, cities and counties; Maine educational institutions, such as public school districts, state universities, and public colleges may participate in this Contract at the same prices, terms and conditions. Services furnished to Contract users will be billed directly to and paid for by the agency/board/town/city/county/college. The State of Maine shall have no responsibility for non-State contract agreements. The Department is not responsible for the transactions between the Provider and other states/entities. All other entities using this Contract are expected to negotiate their own terms and conditions with Provider.

This document creates a Master Contract under which assistive technology equipment, software or services will be delivered (Hereinafter, the Master Contract is referred to as the "Agreement" or "Contract"). Individual Delivery Orders (ordering documents) will be initiated by the State of Maine under the terms of this contract for specific products and services.

RIDER B

METHOD OF PAYMENT AND OTHER PROVISIONS

1. **AGREEMENT AMOUNT** $_____

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

Based on contracted pricing after receipt of an invoice for work performed/approved by the State EEO Coordinator or designee.

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

3. **BENEFITS AND DEDUCTIONS** If the Provider is an individual, the Provider understands and agrees that he/she is an independent contractor for whom no Federal or State Income Tax will be deducted by the Department, and for whom no retirement benefits, survivor benefit insurance, group life insurance, vacation and sick leave, and similar benefits available to State employees will accrue. The Provider further understands that annual information returns, as required by the Internal Revenue Code or State of Maine Income Tax Law, will be filed by the State Controller with the Internal Revenue Service and the State of Maine Bureau of Revenue Services, copies of which will be furnished to the Provider for his/her Income Tax records.

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

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

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

Name: Nick Marquis
Title: OIT Director, Client Technology Services
Address: 145 State House Station, Augusta, ME 04333

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12. **STATE EMPLOYEES NOT TO BENEFIT** No individual employed by the State at the time this Agreement is executed or any time thereafter shall be admitted to any share or part of this Agreement or to any benefit that might arise therefrom directly or indirectly that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. No other individual employed by the State at the time this Agreement is executed or any time thereafter shall be admitted to any share or part of this Agreement or to any benefit that might arise therefrom directly or indirectly due to his employment by or financial interest in the Provider or any affiliate of the Provider, without the written consent of the State Purchases Review Committee. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

13. **WARRANTY** The Provider warrants that it has not employed or contracted with any company or person, other than for assistance with the normal study and preparation of a proposal, to solicit or secure this Agreement and that it has not paid, or agreed to pay, any company or person, other than a bona fide employee working solely for the Provider, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon, or resulting from the award for making this Agreement. For breach or violation of this warranty, the Department shall have the right to annul this Agreement without liability or, in its discretion to otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

14. **ACCESS TO RECORDS** As a condition of accepting a contract for services under this section, a contractor must agree to treat all records, other than proprietary information, relating to personal services work performed under the contract as public records under the freedom of access laws to the same extent as if the work were performed directly by the department or agency. For the purposes of this subsection, "proprietary information" means information that is a trade secret or commercial or financial information, the disclosure of which would impair the competitive position of the contractor and would make available information not otherwise publicly available. Information relating to wages and benefits of the employees performing the personal services work under the contract and information concerning employee and contract oversight and accountability procedures and systems are not proprietary information. The Provider shall maintain all books, documents, payrolls, papers, accounting records and other evidence pertaining to this Agreement and make such materials available at its offices at all reasonable times during the period of this Agreement and for such

subsequent period as specified under Maine Uniform Accounting and Auditing Practices for Community Agencies (MAAP) rules. The Provider shall allow inspection of pertinent documents by the Department or any authorized representative of the State of Maine or Federal Government, and shall furnish copies thereof, if requested. This subsection applies to contracts, contract extensions and contract amendments executed on or after October 1, 2009.

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

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

17. **GOVERNING LAW** This Agreement shall be governed in all respects by the laws, statutes, and regulations of the United States of America and of the State of Maine. Any legal proceeding against the State regarding this Agreement shall be brought in State of Maine administrative or judicial forums. The Provider consents to personal jurisdiction in the State of Maine.

18. **STATE HELD HARMLESS** The Provider agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims, costs, expenses, injuries, liabilities, losses and damages of every kind and description (hereinafter in this paragraph referred to as "claims") resulting from or arising out of the performance of this Agreement by the Provider, its employees, agents, or subcontractors. Claims to which this indemnification applies include, but without limitation, the following: (i) claims suffered or incurred by any contractor, subcontractor, materialman, laborer and any other person, firm, corporation or other legal entity (hereinafter in this paragraph referred to as "person") providing work, services, materials, equipment or supplies in connection with the performance of this Agreement; (ii) claims arising out of a violation or infringement of any proprietary right, copyright, trademark, right of privacy or other right arising out of publication, translation, development, reproduction, delivery, use, or disposition of any data, information or other matter furnished or used in connection with this Agreement; (iii) Claims arising out of a libelous or other unlawful matter used or developed in connection with this Agreement; (iv) claims suffered or incurred by any person who may be otherwise injured or damaged in the performance of this Agreement; and (v) all legal costs and other expenses of defense against any asserted claims to which this indemnification applies. This indemnification does not extend to a claim that results solely and directly from (i) the Department's negligence or unlawful act, or (ii) action by the Provider taken in reasonable reliance upon an instruction or direction given by an authorized person acting on behalf of the Department in accordance with this Agreement.

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

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

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

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

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

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

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

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

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

RIDER C

EXCEPTIONS TO RIDER B