

CONTRACT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made this _____ day of December, 2018, in the Territory of the Virgin Islands, by and between the Government of the Virgin Islands, Department of Property and Procurement, on behalf of the **Virgin Islands Police Department, the Virgin Islands Territorial Emergency Management Agency, the Virgin Islands Fire Services, the Bureau of Corrections, the Department of Health-Emergency Medical Services and the Virgin Islands Bureau of Information Technology** (hereinafter referred to as "Government") and **Spillman Technologies, Inc.** (hereinafter referred to as "Contractor").

WITNESSETH:

WHEREAS, the Government is in need of the services of a Contractor to provide public safety solutions that includes a record management system along with call taking abilities, which duties and responsibilities are more particularly described in Addendum I (Scope of Work) attached hereto; and

WHEREAS, the Government solicited the services under RFP-015-2017(P);

WHEREAS, the Contractor represents that it is willing and capable of providing such services;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and intending to be legally bound by this written instrument, the parties hereto do covenant and agree as follows:

1. SERVICES

The Contractor will provide the services described in Addendum I (Scope of Work) attached hereto and made a part of this contract. The software deliverables described in Addendum I are licensed to the Government under the terms of Addendum III (Purchase and License Agreement) (the "License Agreement") attached hereto and made a part of this Contract.

2. TERM

This Contract shall commence upon the execution of this Contract by the Governor of the US Virgin Islands and shall terminate seven (7) years thereafter.

3. COMPENSATION

The Government, in consideration of the satisfactory performance of the services described in Addendum I (Scope of Work) for the term, agrees to pay Contractor the sum not to exceed **Three Million, Seven Hundred Fifty-Five Thousand, Eight Hundred Forty-Seven Dollars and No Cents (\$3,755,847.00)**, including travel expenses in accordance with the provisions of Addendum II (Compensation) attached hereto and made a part hereof.

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4. TRAVEL EXPENSES

Inclusive of the compensation for services as specified in Paragraph 3 (Compensation) above, the Government agrees to pay documented transportation, subsistence, lodging and other travel expenses, while in travel status, for trips which have been authorized in writing, in advance, by the Government. These costs shall be advanced or reimbursed on the same basis as is applicable to non-contract employees of the Government, or as agreed to by an addendum to this Contract, however, said costs and expenses shall not exceed One Hundred Thirty Thousand One Hundred Fifteen Dollars and No Cents (\$130,115.00).

5. RECORDS

The Contractor when applicable, will present documented precise records of time and/or money expended under this Contract.

6. PROFESSIONAL STANDARDS

The Contractor agrees to maintain the professional standards applicable to its profession and to consultants doing business in the United States Virgin Islands.

7. DOCUMENTS, PRINTOUTS, ETC.

All Software and related Documentation (as defined in the License Agreement), any other general documents and pre-existing materials provided by Contractor (e.g., training materials) shall remain the sole property of Contractor, and are licensed to the Government pursuant to the terms of the License Agreement. All other documents, books, records, instructional materials, programs, printouts and memoranda of every description derived therefrom and pertaining to this Contract shall become the property of the Government and shall be turned over to it at the termination of this Contract. The above described materials that are the property of the Government shall not be used by Contractor or by any other person or entity except upon the written permission of the Government.

8. LIABILITY OF OTHERS

Nothing in this Contract shall be construed to impose any liability upon the Government to persons, firms, associations, or corporations engaged by Contractor as servants, agents, or independent contractors, or in any other capacity whatsoever, or make Government liable to any such persons, firms associations, or corporations for the acts, omissions, liabilities, obligations and taxes of Contractor of whatsoever nature, including but not limited to unemployment insurance and social security taxes for Contractor, its servants, agents or independent contractors.

9. ASSIGNMENT

The Contractor shall not subcontract or assign any part of the services under this Contract without the prior written consent of the Government. The parties acknowledge that Solutions II and ERS will be performing certain services under this Contract as subcontractors of the Contractor, as outlined in Addenda I and III, and the Government hereby consents to such subcontracts. Additionally, Contractor may assign this Contract to a third party in connection with an acquisition of all or substantially all of the Contractor's assets or ownership interests by such third party, subject to the Government's consent, which shall not be unreasonably withheld. If the

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Government objects to such assignment, its sole remedy shall be to terminate this Agreement pursuant to Paragraph 17.

10. INDEMNIFICATION

Contractor agrees to indemnify, defend and hold harmless Government from and against any and all loss, damage, liability, claims, demands, detriments, cost, charges and expense (including attorney's fees) and causes of action of whatsoever character which Government may incur, sustain or be subjected to, arising out of or in any way connected to the services to be performed by Contractor under this Contract and arising from Contractor's negligent or wrongful acts or omissions or any other wrongdoing of Contractor, its employees or subcontractors, subject to any applicable liability limitations in the Purchase and License Agreement. The defense shall be coordinated by Contractor with the Office of the Attorney General when Government is a named defendant in any such lawsuit and Contractor may not agree to any settlement without first obtaining the concurrence from the Office of the Attorney General, which consent shall not be unreasonably withheld. Contractor and Government agree to furnish timely written notice to each other of any such claim. Contractor shall pay any final judgment or amounts agreed in settlement by Contractor, subject to any liability limitations in the Purchase and License Agreement.

11. INDEPENDENT CONTRACTOR

The Contractor shall perform this Contract as an independent contractor and nothing herein contained shall be construed to be inconsistent with this relationship or status.

12. GOVERNING LAW

This Contract shall be governed by the laws of the United States Virgin Islands and jurisdiction shall remain in the United States Virgin Islands.

13. WAIVERS AND AMENDMENTS

No waiver, modification or amendment of any term condition or provision of this Contract shall be valid or of any force or effect unless made in writing, signed by the parties hereto or their duly authorized representatives, and specifying with particularity the nature and extent of such waiver, modification or amendment. Any such waiver, modification or amendment in any instance or instances shall in no event be construed to be a general waiver, modification or amendment of any of the terms, conditions or provisions of this Contract, but the same shall be strictly limited and restricted to the extent and occasion specified in such signed writing or writings.


14. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement of the parties relating to the subject matter addressed in this Agreement. This Agreement supersedes all prior communications, contracts, or agreements between the parties with respect to the subject matter addressed in this Agreement, whether written or oral.

15. RIGHT TO WITHHOLD

If work under this Contract is not performed in accordance with the terms hereof, Government will have the right to withhold out of any payment due to Contractor, such sums as are reasonably adequate to protect it against loss or to assure payment of claims arising therefrom,

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and, at its option, Government may apply such sums in such manner as Government may reasonably deem proper to secure itself or to satisfy such claims. Government will immediately notify the Contractor in writing in the event that it elects to exercise its right to withhold, and of any application of withheld sums to secure the Government or satisfy claims. The Government will use reasonable efforts to mitigate its losses and damages.

No such withholding or application shall be made by Government if and while Contractor gives satisfactory assurance to Government that such claims will be paid by Contractor or its insurance carrier, if applicable in the event that such contest is not successful.

16. CONDITION PRECEDENT

This Contract shall be subject to the availability and appropriation of funds and to the approval of the Governor.

17. TERMINATION

Either party will have the right to terminate this Contract with or without cause on thirty (30) days written notice to the other party specifying the date of termination. The Contractor shall be entitled to receive payment for services and goods provided prior to termination.

18. PARTIAL TERMINATION

The performance of work under this Contract may be terminated by the Government, in part, whenever the Government shall deem such termination advisable, by providing thirty (30) days written notice to the Contractor. If Contractor believes that such partial termination may adversely affect the project, Contractor shall notify the Government and the parties shall reasonably discuss the matter and use good faith efforts to reach a mutually agreeable resolution. If the Government still elects to make a partial termination against Contractor's recommendation, the Government agrees that Contractor is not responsible for the adverse effects of such partial termination, provided that the Contractor acts reasonably and in good faith. This partial termination shall be effected by delivering to the Contractor a Notice of Partial Termination specifying the extent to which the term and/or duties under this Contract are terminated and the date upon which such termination becomes effective. The Contractor shall be entitled to receive payment for services provided to the date of termination, including payment for the period of the 30-day notice.

19. NON-DISCRIMINATION

No person shall be excluded from participating in, be denied the proceeds of or be subject to discrimination in the performance of this Contract on account of race, creed, color, sex, religion, disability or national origin.


20. CONFLICT OF INTEREST

(a) Contractor covenants that it has no interest and will not acquire any interest direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract.

(b) Contractor further covenants that it is:

(1) not a territorial officer or employee (i.e., the Governor, Lieutenant Governor, member of the Legislature, or any other elected territorial official); or an

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officer or employee of the legislative, executive or judicial branch of the Government or any agency, board, commission or independent instrumentality of the Government, whether compensated on a salary, fee or contractual basis); or

- (2) a territorial officer or employee and, as such, has:
 - (i) familiarized itself with the provisions of Title 3, Chapter 37 of the Virgin Islands Code, pertaining to conflicts of interest, including the penalties provision set forth in section 1108 thereof;
 - (ii) not made, negotiated or influenced this Contract, in its official capacity;
 - (iii) no financial interest in the Contract as that term is defined in section 1101(1) of said Code chapter.

21. EFFECTIVE DATE

The effective date of this Contract shall be the day of execution of the Contract by the Governor.

22. NOTICE

Any notice required to be given by the Terms of this Contract shall be deemed to have been given when the same is sent by certified mail, postage prepaid or personally delivered, addressed to the parties as follows:

GOVERNMENT

Lloyd T. Bough, Jr.
Commissioner
Department of Property and Procurement
Sub Base, Building No. 1, Third Floor
St. Thomas, VI 00802

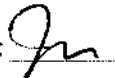
Delroy Richards, Sr., Police Commissioner
Virgin Islands Police Department
5400 Veteran Drive
Criminal Justice Complex
St. Thomas, VI 0082

Rick Mullgrav, Director
Bureau of Corrections
R.R.1
Box 9909
Kingshill, STX 00851

Mona L. Barnes, Director
Virgin Islands Territorial Emergency
Management Agency
8221 Estate Nisky
St. Thomas, VI 00802

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Contractor's Initials: 

Clifford Joseph, Director
Virgin Islands Fire Services
3019 Orange Grove
Christiansted, VI 00820

Michelle S. Davis, PhD, Commissioner
Department of Health- EMS
1303 Hospital Ground, Suite 10
St. Thomas, VI 00802

Angelo Riddick, Director
Bureau of Information Technology
9059 Estate Castle Coakley
Christinasted, VI 00820

CONTRACTOR

Joe Lunt
Director of Sales
Spillman Technologies, Inc.
4625 Lake Park Blvd.
Salt Lake City, UT 84120

23. LICENSURE

The Contractor covenants that it has:

- (a) obtained all of the applicable licenses or permits, permanent, temporary or otherwise as required by Title 27 of the Virgin Islands Code; and
- (b) familiarized itself with the applicable provisions of Title 27 of the Virgin Islands Code pertaining to professions and occupations.


24. ORDER OF PRECEDENCE

In the event of any inconsistency in or conflict among the document elements of this Contract identified in this Agreement, such inconsistency or conflict shall be resolved by giving precedence to the document elements in the following order:

- 1. Any Amendment to this Contract;
- 2. This Contract including all Addenda, which are incorporated herein;
- 3. The Proposal submitted by the Contractor in response to the RFP;
- 4. The RFP Addenda; and
- 5. The RFP.

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25. OTHER PROVISIONS

Addendum I (Scope of Work), Addendum II (Compensation), and Addendum III (Spillman Purchase and License Agreement), attached hereto are a part of this Contract and are incorporated herein by reference.

26. FALSE CLAIMS

Contractor warrants that it shall not, with respect to this Contract, make or present any claim upon or against the Government of the Virgin Islands, or any officer, department, board, commission, or other agency thereof, knowing such claims to be false, fictitious or fraudulent. Contractor acknowledges that making such a false, fictitious or fraudulent claim is an offence under Virgin Islands law.

28. INSURANCE

Contractor shall maintain the following insurance coverages during the term of this Contract

- (a) **COMMERCIAL GENERAL LIABILITY:** Commercial general liability insurance, in a form acceptable to the Government, on a "per occurrence" basis with a minimum limit of not less than **Three Million, Seven Hundred Fifty-Five Thousand, Eight Hundred Forty-Seven Dollars and No Cents (\$3,755,847.00)** for anyone per occurrence for property damage, death or personal injury. Insurance policy(ies) shall name the Government of the Virgin Islands as the certificate holder and additional insured via an endorsement.
- (b) **PROFESSIONAL LIABILITY:** Professional liability insurance, in a form acceptable to the Government, which covers the services being performed under this Contract, with policy limits of not less than **Three Million, Seven Hundred Fifty-Five Thousand, Eight Hundred Forty-Seven Dollars and No Cents (\$3,755,847.00)** per claim. The Government shall be listed thereon as a certificate holder.
- (c) **WORKERS' COMPENSATION:** Contractor shall supply current coverage under the Government Insurance Fund or other form of coverage.

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IN WITNESS WHEREOF, the parties have hereunto set their hands on the day and year first above written.

WITNESSES:

GOVERNMENT OF THE VIRGIN ISLANDS

 _____	 _____ Delroy Richards, Sr., Commissioner Virgin Islands Police Department	<u>12/18/18</u> Date
 _____	 _____ Clifford Joseph, Director Virgin Islands Fire Services	<u>12-18-18</u> Date
 _____	 _____ Rick Mullgrav, Director Bureau of Corrections	<u>12/19/2018</u> Date
 _____	 _____ Mona L. Barnes, Director Virgin Islands Territorial Emergency Management Agency	<u>12/18/2018</u> Date
 _____	 _____ Michelle S. Davis, PhD, Commissioner Department of Health-EMS	<u>12/18/18</u> Date
 _____	 _____ Angelo Riddick, Director Bureau of Information Technology	<u>12/18/18</u> Date
 _____	 _____ Lloyd T. Bough, Jr., Commissioner Department of Property and Procurement	<u>12/18/18</u> Date

