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CONTRACT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made this 24th day of June, 2022, 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 Office of Management and Budget (hereinafter referred to as "Government or "GVI") and Ernst & Young Puerto Rico, LLC (hereinafter referred to as "Contractor" or "EY"). The GVI and the Contractor shall be collectively referred to herein as the "Parties".

WITNESSETH:

WHEREAS, the Government of the Virgin Islands is in need of services to efficiently and adequately process and distribute the funds managed by the Office of Management and Budget (OMB), which were received by the Government of the Virgin Islands (GVI) through the Coronavirus Aid, Relief, and Economic Security (CARES) Act (2020), the Coronavirus Response and Consolidate Appropriations Act (2021) and the American Rescue Plan Act (ARPA) (2021), which duties and responsibilities are more particularly described in Addendum I (Scope of Services) attached hereto; and

WHEREAS, the Government solicited the services under RFP No.055-T-2021 (P); and

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

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 Services) attached hereto and made a part of this contract.

2. TERM AND EFFECTIVE DATE

This Contract shall be effective from December 3, 2021, in accordance with the issued Notice to Proceed, and terminate one (1) year thereafter. Upon the date of execution of this Contract by the Governor of the U.S. Virgin Islands, this contract shall become effective for the term set-out herein. The Government in its sole discretion shall have the option to renew this Contract for a period of one (1) additional year, subject to the same terms noted herein, by providing the Contractor with sixty (60) days written notice of the Government's election to renew.



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3. COMPENSATION

The Government, in consideration of the satisfactory performance of the services described in Addendum I (Scope of Services), agrees to pay Contractor a sum not to exceed Eight Hundred Seventy-Five Thousand, and 00/100 Dollars (\$875,000.00) in accordance with the provisions set forth in Addendum II (Compensation) attached hereto and made a part of this contract.

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, however, said costs and expenses shall not exceed Fifteen thousand and 00/100 dollars (\$15,000.00).

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 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 shall not be used by the Contractor or by any other person or entity except upon the written permission of the Government. The contractor is allowed to retain workpapers required to comply with all rules of professional conduct and licensing requirements governing such profession according to applicable retention guidelines.

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



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and taxes of Contractor of whatsoever nature, including but not limited to unemployment insurance, gross receipt, excise, 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 Contractor may subcontract portions of the services to other members of the Ernst & Young global network ("EY Firms"). Notwithstanding that the Contractor may subcontract portions of the services to other EY Firms, the Contractor shall remain fully responsible for the services and for all of its other responsibilities, covenants and obligations under this Contract. The Government may not make a claim or bring proceedings relating to the services or otherwise under this Contract against any other EY Firm and EY shall not contest its responsibility for the services on the basis that services were performed by another EY Firm. The Government shall make any claim or bring proceedings only against the Contractor. This paragraph is intended to benefit the other EY Firms, which shall be entitled to enforce it.

10. INDEMNIFICATION: LIMITATION OF LIABILITY

Contractor agrees to indemnify, defend and hold harmless Government from and against any and all loss, damage, liability, claims, demands, detriments, costs, charges and expenses (including attorney's fees) and causes of action of whatsoever character which Government may incur, sustain or be subjected to due to third party claims that are based upon damage to (including loss or destruction of) tangible property or bodily injury (including death) arising out of negligence or intentional misconduct Contractor, including its employees, agents, and subcontractors

Notwithstanding any contrary provision in this agreement, Contractor's liability for any and all claims arising out of or in connection with the Contract or the services shall not exceed in aggregate the total fees paid by per year Government to Contractor for performance of the services under this Contract. In no event shall Contractor be liable for indirect, consequential, punitive, or special damages in connection with claims arising out of or in connection with the Contract or the services. However, the foregoing limitation of liability terms shall not apply if the liability asserted is based in fraud or willful misconduct or to the extent prohibited by applicable law or professional regulations.

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.



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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. DISPUTE RESOLUTION

(a) Any claims limited solely to seeking non-monetary or equitable relief, any dispute or claim arising out of or relating to the Services, this Agreement or any other services provided by or on behalf of the Consultant or any of its subcontractors or agents to the Government's or at the Government's request, shall be resolved by mediation as follows:

(1) **Mediation.** A party shall submit a dispute to mediation by written notice to the other Party. The mediator shall be selected by the Parties. If the Parties cannot agree on a mediator, the Internal Institute of conflict Prevention and Resolution ("CPR") shall designate a mediator at the request of a Party. Any mediator must be acceptable to all Parties and must confirm in writing that he or she is not, and will not become during the term of mediation, an employee, partner, executive officer, or any substantial equity in Ernst and Young.

The mediator shall conduct the mediation as he/she determines, with the agreement of the Parties. The Parties shall discuss their differences in good faith and attempt, with the mediator's assistance, to reach an amicable resolution of the dispute. The mediation shall be treated as a settlement discussion and shall therefore be confidential. The mediator may not testify for either party in any later proceeding relating to the dispute. The mediation proceedings shall not be recorded or transcribed.

Each Party shall bear its own costs in the mediation. The Parties shall share equally the fees and expenses of the mediator.

If a dispute is not resolved through mediation, the Government will proceed with legal remedies.

14. 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.



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15. 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.

16. 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 Government may deem ample to protect it against loss or to assure payment of claims arising therefrom, and, at its option, Government may apply such sums in such manner as Government may 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.

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.

17. CONDITION PRECEDENT

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

18. TERMINATION

This Agreement may be terminated at any time by either Party, for cause or for convenience or for any reason, provided that the terminating Party provides the other with thirty (30) days' written notice. In addition, GVI has the right to terminate this Agreement on 3 days' notice if the services are no longer necessary. Either Party may also immediately terminate this Agreement upon a material breach of this Agreement, with no further payment or service obligation from either Party past the date of termination. A material breach is defined as one that frustrates the purpose of the contract. In any event of termination, GVI shall pay for services rendered through the date of termination. Upon receiving a notice of termination from GVI (a "Notice of Termination"), Contractor shall:

(a) Stop work under this Agreement on the date and to the extent specified in the Notice of Termination.



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(b) Complete the performance of such part of the work that has been specified for completion by the Notice of Termination. However, the Contractor shall not be obligated without its express consent to complete the performance of any part of the work contemplated under this Agreement, or to continue performing on such parts of the work as GVI may specify following the effective date of termination.

Upon termination of this Agreement in full, GVI may require the Consultant to return to GVI any property made available for its use during the term of this Agreement

19. 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. 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 thirty (30) day notice.

20. 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.

21. 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 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;



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- (iii) no financial interest in the Contract as that term is defined in section 1101(1) of said Code chapter.

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

Anthony D. Thomas
Commissioner
Department of Property and Procurement
8201 Sub Base, Suite 4
St. Thomas VI 00802

Jenifer C. O’Neal
Director
Office of Management and Budget
5041 Norre Gade
St. Thomas, VI 00802

CONTRACTOR

Alex Rodriguez, Manager
Ernst & Young Puerto Rico LLC
Parque De Las Americas I
Suite 410
235 Federico Costa St
San Juan, PR 00918

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. OTHER PROVISIONS

Addenda I and II attached hereto, are a part of this Contract and are incorporated herein by reference.



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25. DEBARMENT CERTIFICATION

By execution of this contract, the contractor certifies that it is eligible to receive contract awards using federally appropriated funds and that it has not been suspended or debarred from entering into contracts with any federal agency. The Contractor shall include this provision in each of its subcontracts hereunder and shall furnish its subcontractors with the current "LIST OF PARTIES EXCLUDED FROM FEDERAL PROCUREMENT OR NON PROCUREMENT". In the event the Contractor or any subcontractor misrepresents its eligibility to receive contract awards using federal funds, the Contractor or subcontractor agrees that it shall not be entitled to payment for any work performed under this contract or any subcontract and that the Contractor or subcontractor shall promptly reimburse the Government of the Virgin Islands for any progress payments heretofore made.

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.

27. NOTICE OF FEDERAL FUNDING

Contractor acknowledges that this Contract is funded, in whole or in part, by federal funds. Contractor warrants that it shall not, with respect to this Contract, make or present any claim knowing such claim to be false, fictitious, or fraudulent. Contractor acknowledges that making such a false, fictitious, or fraudulent claim is a federal offence.

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 one million dollars (\$1,000,000.00) for any one person per occurrence for death or personal injury and one million dollars (\$1,000,000.00) for any one occurrence for property damage. 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



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not less than one million dollars (\$1,000,000.00) 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.

29. FORCE MAJEURE

Neither Party shall be responsible for any delay or failure in performance, other than the obligation to make payments for work previously performed, to the extent that such delay or failure was caused by a force majeure event including Act of God, war, civil disturbance, governmental action, labor dispute unrelated to and without fault or negligence of the Party claiming the force majeure event, computer virus, or denial of access to the site or any other event beyond the reasonable control of the claiming Party. Performance under this Agreement shall resume promptly once the cause of delay or failure ceases and an equitable adjustment shall be made to the price and/or schedule of the Services including any mobilization or demobilization costs of the Contractor.

30. FACSIMILE, ELECTRONIC & DIGITAL SIGNATURES

A facsimile, electronic or digital signature on this Contract shall be deemed an original and binding upon the Parties hereto.

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

WITNESSES:

GOVERNMENT OF THE VIRGIN ISLANDS

Jenifer C. O'Neal, Director
Office of Management and Budget

May 9, 2022
Date

Anthony D. Thomas, Commissioner
Department of Property and Procurement

5/28/2022
Date



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CONTRACTOR

Alga Pate

[Signature]

May 6, 2022

Date

Alex Rodriguez, Manager
ERNST & YOUNG, Puerto Rico LLC

(Corporate seal, if Contractor is a corporation)

APPROVED AS TO LEGAL SUFFICIENCY
DEPARTMENT OF JUSTICE BY:

[Signature]

Date 05/31/2022

Kenneth R. Case, Esq., AAG

PURCHASE ORDER NO. 4368

APPROVED

[Signature]
Albert Bryan Jr.
Governor, US Virgin Islands

Date: 6/24/22