

**PROFESSIONAL SERVICES CONTRACT**

BY AND BETWEEN  
**GOVERNMENT OF THE VIRGIN ISLANDS,  
DEPARTMENT OF PROPERTY & PROCUREMENT**  
ON BEHALF OF  
**WOMEN, INFANT, AND CHILDREN PROGRAM**  
AND  
**SOLUTRAN, INC.**

THIS PROFESSIONAL SERVICES CONTRACT ("CONTRACT") CON is made this 6<sup>th</sup> day of April, 2015 in the Territory of the Virgin Islands, by and between the Government of the Virgin Islands, Department of Property & Procurement on behalf of the Women, Infant, and Children Program (hereinafter referred to as "Government" or "GOVI") and Solutran, Inc., 3600 Holly Lane, Suite 60, Minneapolis, Minnesota, 55447 (hereinafter referred to as "Contractor").

**WITNESSETH:**

WHEREAS, the Government is in need of the services of a Contractor to provide e-WIC Services (Electronic Benefit Transfer Services) for the GOVI WIC (Women, Infants and Children) Program, which duties and responsibilities are more particularly described in Addendum I (Scope of Services) attached hereto; and

WHEREAS, the Contractor responded to RFP #MD/VI-EWIC-02182015 for e-WIC Processing Services for the Women, Infants and Children Program for the Maryland Department of Health and Mental Hygiene and the Government of the Virgin Islands Department of Property and Procurement, and was selected on July 14, 2015 to perform the services set forth in Addendum 1; and,

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.** Contractor will provide the services described in Addendum I (Scope of Services) attached hereto and made a part of this Contract.
2. **TERM.** This Contract shall be for a term of four (4) years, shall commence upon the execution of this Contract by the Governor of the Virgin Islands and shall terminate

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on July 31, 2019. This contract may be extended for two (2) 1-year options, at the sole discretion of the Governor of the Virgin Islands.

3. **COMPENSATION.** The Government, in consideration of the satisfactory performance of the services described in Addendum I (Scope of Services), agrees to pay Contractor only the fees as described in Contractor's Best and Final Offer dated June 8, 2015, attached hereto as Exhibit C to Addendum I. These fees shall not be adjusted during the term of the Contract including any renewal option periods.
4. **TRAVEL EXPENSES.** Travel expenses are NOT reimbursable under this Contract. The Compensation referenced in paragraph 3 above shall be all-inclusive, and represents the only compensation payable to the Contractor by the GOVI.
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 there-from 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, except above-described materials that relate directly to the Contractor's WIC EBT system. The above-described materials 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.
10. **INDEMNIFICATION.** Contractor agrees to investigate, 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

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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 any cause, except the sole negligence of Government.

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 Contract constitutes the entire agreement between the parties hereto and all written communications, with respect to the Project which is the subject matter of this Contract, are merged herein.
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 Government may deem ample to protect it against loss or to assure payment of claims arising there-from, 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.

16. **CONDITION PRECEDENT.** This Contract shall be subject to the availability and appropriation of funds and to the approval of the Governor.



17. **TERMINATION.** The Contractor does not have the right to terminate this Contract prior to its expiration.
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. 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.
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 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**

Randolph N. Bennett  
Commissioner  
Department of Property and Procurement  
8201 Sub Base, Building #1, Third Floor  
St. Thomas, Virgin Islands 00802  
340.774.0828;

Juan Figueroa -Serville  
Acting Commissioner  
Department of Health  
Charles Harwood Memorial Complex  
3500 Estate Richmond  
Christiansted, St. Croix, USVI 00820-4370  
340.773-6551; and

**CONTRACTOR**

Brenda Berry  
National Account Executive – WIC  
Solutran, Inc.  
3600 Holly Lane, Suite 60  
Minneapolis, Minnesota 55447  
763.559.2225

23. **LICENSURE.** 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. **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 claim to be false, fictitious, or fraudulent. Contractor acknowledges that making such a false, fictitious, or fraudulent claim is an offense under Virgin Islands law.
25. **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 offense. The Contractor acknowledges that Federal funds shall not be used for lobbying activities.

26. **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.
27. **FUNDING RESTRICTIONS/CANCELLATION.** Both parties acknowledge and agree that should Government funding be limited or restricted, it may affect funding for the Contractor. It is agreed that in the event funding is reduced or restricted, Government shall immediately notify Contractor. In this event, Government will only be obligated to reimburse Contractor for costs already incurred and obligated for payment up to the date of termination by Government. In the event that funds are reduced or restricted, Government and Contractor shall negotiate a new scope of services should the Contractor desire to perform the services required by the reduced level of effort.
28. **Non-Appropriation of Funds** - If funds are not appropriated or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be cancelled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the Government's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the Government from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the Contract. The Government shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.



29. **NO THIRD-PARTY BENEFICIARIES.** Except as expressly set forth herein, nothing in this Contract is intended or will be construed to confer upon or to give to any third party any rights or remedies by virtue hereof.
30. **SEVERABILITY.** If any provision of this Agreement or the application thereof to any Party or circumstances shall be declared void, illegal or unenforceable, the remainder of this Contract shall be valid and enforceable to the extent permitted by law. If any provision of this Contract is held to be invalid or unenforceable for any reason, the Parties shall use their best efforts to replace the invalid or unenforceable provision by a provision that, to the extent permitted by the applicable law, achieves the purposes intended under the invalid or unenforceable provision.
31. **Liability** - The Contractor agrees to assume full responsibility for any and all damage to the property of the Government, both real and personal, which results from or arises in connection with, the performance of this Contract. (MD 4.1)
- (a) The Contractor hereby agrees to indemnify and save harmless the State against all claims, damages, costs, losses and liabilities whatsoever, for any and all injury to persons and property that may arise out of the performance of this Contract.
- (b) The Contractor agrees to maintain adequate insurance coverage in order to fulfill its responsibilities under this section.
32. **Tax Exemption** – Government is exempt from Federal Excise Taxes, any sales or use taxes. Exemption certificates shall be completed upon request.
33. **Non-Hiring of Officials and Employees** - No official or employee of Government whose duties as such official or employee include matters relating to or affecting the subject matter of this Contract, shall during the pendency and term of this Contract and while serving as an official or employee of Government become or be an employee of the Contractor or any entity that is a subcontractor on this Contract.
34. **Disputes** – Government has a two stage dispute process:
- (a) Any dispute will be addressed with the Office of Property and Procurement for a determination of validity and resolution. If the dispute is valid, it will be referred to the Association of Mediators who will provide resolution.
- (b) If either party does not accept the proposed resolution, the case will be referred to an Arbitrator who will make the final determination. This determination will be final and binding.
35. **Amendments** - Any amendment to this Contract must first be approved in writing by Government, subject to any additional approvals required by law. No amendment to
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this Contract shall be binding unless so approved and unless it is in writing and signed by the party to be charged.

36. **Contingent Fee Prohibition** - The Contractor, architect, or engineer (as applicable) warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Contractor, architect, or engineer, to solicit or secure this Contract, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this Contract.
37. **Termination for Default** - If the Contractor fails to fulfill its obligation under this Contract properly and on time, or otherwise violates any provision of the Contract, the Government may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at Government's option, become Government property. Government shall pay the Contractor's fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and Government can affirmatively collect damages.
38. **Termination for Convenience** -The performance of work under this Contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part, whenever the Government shall determine that such termination is in the best interest of the Government. The Government will pay all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination and all reasonable costs associated with termination of the Contract. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination.
39. **Delays and Extensions of Time** - The Contractor agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by it for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract.

Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of Government in either its sovereign or contractual capacity, acts of another contractor in the performance of a Contract with Government, fires, floods, epidemics,



quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

40. **Variations in Estimated Quantities** - No equitable adjustment shall be permitted in favor of either the Government or the Contractor in the event that the quantity of any pay item in this Contract is an estimated quantity and the actual quantity of such pay item varies from the estimated quantity stated in the Contract.
41. **Suspension of Work** - Government unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the Office may determine to be appropriate for the convenience of Government.
42. **Retention of Records/Audit** - The Contractor shall retain and maintain all records and documents relating to this Contract for three years after final payment by Government hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the Government, or its designee, at all reasonable times.
43. **Compliance with Laws** - The Contractor hereby represents and warrants that:
  - (a) It is qualified to do business in the US Virgin Islands and that it will take such action as, from time to time, hereafter may be necessary to remain so qualified;
  - (b) It is not in arrears with respect to the payment of any monies due and owing Government or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
  - (c) It shall comply with all federal, State and local laws, regulations and ordinances applicable to its activities and obligations under this Contract; and
  - (d) It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.
44. **Liability for Loss of Data** - In the event of loss of any data or records necessary for the performance of this Contract where such loss is due to the error or negligence of the Contractor, the Contractor shall be responsible, irrespective of cost to the Contractor, for recreating such lost data or records.
45. **Cost and Price Certification** - The Contractor by submitting cost or price information certifies that, to the best of its knowledge, the information submitted is



accurate, complete, and current as a mutually determined specified date prior to the conclusion of any price discussions or negotiations for:

- (a) A negotiated contract, if the total contract price is expected to exceed \$100,000, or a smaller amount set by the procurement officer; or
- (b) A change order or contract modification, expected to exceed \$100,000, or a smaller amount set by the procurement officer.

The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date agreed upon between the parties, was inaccurate, incomplete, or not current.

46. **Ownership of Documents and Materials** - Government shall have the right to use all materials described by paragraph 7 above (Documents, Printouts, Etc.) without restriction or limitation and without compensation to the Contractor other than that provided by this Contract. Government shall be the owner for purposes or copyright, patent or trademark registration, except any such materials relating directly to Contractor's WIC EBT system.

Government and FNS reserve royalty-free, nonexclusive and irrevocable license to reproduce, publish, or otherwise use and authorize others to use for Federal Government purposes, the copyright in any software and associated documentation developed under the resulting contracts.

FNS shall also have access to the EBT systems during design, development, and in operation, and shall have access to the contractor's and any subcontractors cost records as FNS deems necessary.

47. **Patents, Copyrights and Trade Secrets** - If the Contractor furnishes any design, device, material, process or other item, which is covered by a patent, or copyright or which is proprietary to or a trade secret of another, Contractor shall obtain the necessary permission or license to use such item.

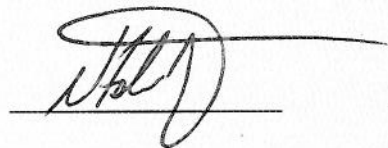
- (a) Contractor will defend or settle, at its own expense, any claim or suit against Government alleging that any such item furnished by Contractor infringes any patent, trademark, copyright, or trade secret. Contractor also will pay all damages and costs that by final judgment may be assessed against Government due to such infringement and all attorney fees and litigation expenses reasonably incurred by Government to defend against such a claim or suit. The obligations of this paragraph are in addition to those stated in sub-paragraph b. below.

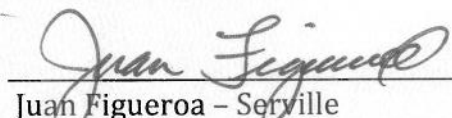
- (b) If any product(s) furnished by Contractor become, or in Contractor's opinion are likely to become, the subject of a claim of infringement, Contractor will, at its option: (1) procure for Government the right to continue using the applicable item; (2) replace the product with a non-infringing product substantially complying with the item's specifications; or (3) modify the item so it becomes non-infringing and performs in a substantially similar manner to the original item.
48. **Confidentiality** - Subject to all applicable laws, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Contractor's computer systems) shall be held in absolute confidence by the other party. Each party shall, however, be permitted to disclose relevant confidential information to its officers, agents and employees to the extent that such disclosure is necessary for the performance of their duties under this Contract, provided the data may be collected, used, disclosed, stored and disseminated only as provided by and consistent with the law and the confidentiality provisions of the RFP. The provisions of this section shall not apply to information that (a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of this Contract; (c) was already in the possession of such party; (d) was supplied to such party by a third party lawfully in possession thereof and legally permitted to further disclose the information; or (e) which such party is required to disclose by law.
49. **Administration** - The work to be accomplished under this Contract shall be performed under the direction of the Department of Property and Procurement. All matters relating to the administration of this Contract shall be referred to Government.
50. **OTHER PROVISIONS.** Addendum I-III attached hereto are made a part of this Contract, and are incorporated herein by reference.

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

WITNESSES:

GOVERNMENT OF THE VIRGIN ISLANDS



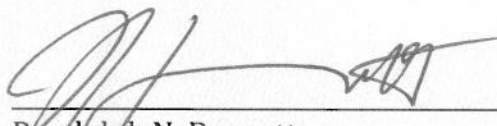
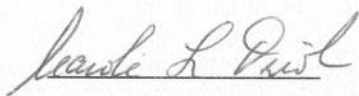
 Date 2/9/ 16  
Juan Figueroa - Serville  
Acting Commissioner  
Department of Health





Contract for Professional Services

GOVERNMENT OF THE VIRGIN ISLANDS, DEPARTMENT OF PROPERTY & PROCUREMENT  
ON BEHALF OF WOMEN, INFANT, AND CHILDREN PROGRAM  
AND SOLUTRAN, INC.  
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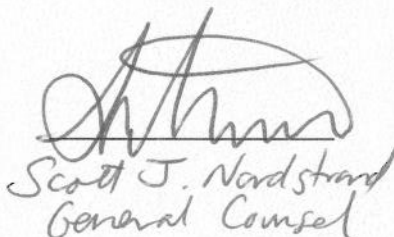


Date 3/17/16

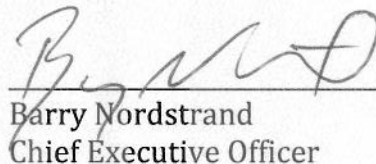
Randolph N. Bennett  
Commissioner  
Department of Property and Procurement

**SOLUTRAN, INC.**

(FEIN: 41-1593424)



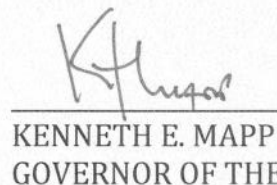
Scott J. Nordstrand  
General Counsel



Barry Nordstrand  
Chief Executive Officer

Date 3-7-16

**APPROVED:**



KENNETH E. MAPP  
GOVERNOR OF THE VIRGIN ISLANDS

Date: 04-06-16

APPROVED AS TO LEGAL SUFFICIENCY

DEPARTMENT OF JUSTICE BY: Jerry Snock Date: 3/16/16

MED. NO.

ACCOUNT CODE NO.

**CERTIFICATE OF APPROVAL**

I hereby certify that this is a true and exact copy of Contract No. \_\_\_\_\_ entered into between The Department of Property and Procurement and Solutran, Inc.

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