

CONTRACT FOR PROFESSIONAL SERVICES

Between

**GOVERNMENT OF THE VIRGIN ISLANDS
DEPARTMENT OF PROPERTY AND PROCUREMENT**

on behalf of the

DEPARTMENT OF HUMAN SERVICES

**1303 Hospital Ground, Suite 1
Charlotte Amalie, St. Thomas, VI 00802**

and

Public Consulting Group, Inc.

**2150 River Plaza Drive
Suite 380
Sacramento, CA 95833**

Contract No. P034DHST17

Initials: MD

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CONTRACT FOR PROFESSIONAL SERVICES
(Department of Human Services & PCG)

THIS AGREEMENT is made this 20th day of January, 2017 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 **Department of Human Services** (hereinafter referred to as "Government"), 1303 Hospital Ground, Suite 1, Charlotte Amalie, St. Thomas, VI 00802, and **PUBLIC CONSULTING GROUP, INC.** 2150 River Plaza Drive, Suite 380, Sacramento, CA 95833 (hereinafter referred to as "Contractor" or "PCG").

W I T N E S E T H:

WHEREAS, the Government is in need of the services of a Contractor to provide to **Independent Verification and Validation** services of the design, development, and implementation of the Department of Human Services' Integrated Eligibility and Enrollment System (IE&ES) and related systems to ensure compliance with Centers for Medicare and Medicaid Systems (CMS), United States Department of Agriculture (USDA), Food and Nutrition Service (FNS), and Affordable Care Act eligibility requirements, which duties and responsibilities are more particularly described in **Addendum I (Scope of Services)** attached hereto; 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

The Contractor will provide the services described in **Addendum I (Scope of Services)** attached hereto and made a part of this Contract. Additionally, Contractor's response **Government's RFP No. 036-2014(P)** shall be incorporated into this contract. Contractor and Government agrees that this Contract and any amendments to said Contract, if any, are subject to approval by CMS and FNS, and the Governor of the United States Virgin Islands.

The Contractor agrees and acknowledges that this Agreement is in furtherance of the Government of the U. S. Virgin Islands' implementation of the CMS information technology system requirements for Medicaid, and is subject to the certain property rights provisions of the Code of Federal Regulations and

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to the certain property rights provisions of the Code of Federal Regulations and a grant from the U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services (the "Grant").

Contractor represents, warrants and covenants that it:

(a) Has all requisite power and authority to execute, deliver and perform its obligations under this Agreement and the execution, delivery and performance of this Agreement by the Contractor has been duly authorized.

(b) There is no outstanding litigation, arbitrated matter or other dispute to which the Contractor is a party, which if decided unfavorably to the Contractor, would reasonably be expected to have a material adverse effect on the Contractor's ability to fulfill its obligations under this Agreement.

(c) The Contractor will comply with all laws applicable to its performance of the services and otherwise to the Contractor in connection with its obligations under this Agreement.

(d) All deliverables will be free from material errors and shall perform in accordance with the specifications set forth in **Government's RFP No. 036-2014(P)**.

(e) The Contractor owns or has the right to use under valid and enforceable agreements, all intellectual property rights reasonably necessary for and related to delivery of the services and provision of the deliverables as set forth in this Agreement and none of the deliverables or other materials or technology provided by the Contractor to the Government will infringe upon or misappropriate the intellectual property rights of any third party.

(f) Each and all of the services shall be performed in a timely, diligent, professional and work person like manner, in accordance with the highest professional or technical standards applicable to such services, by qualified persons with the technical skills, training and experience to perform such services in the planned environment. At its own expense and without limiting any other rights or remedies of the Government here under, the Contractor shall re-perform any services that the Government has determined to be unsatisfactory in its reasonable discretion.

(g) The Contractor has adequate resources to fulfill its obligations under this Agreement.

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2. TERM

This Contract shall be effective from the later date that it is executed by the Governor of the U. S. Virgin Islands and the Contractor is unconditionally authorized to proceed with the work hereunder, and shall have a term, beginning on such date, of twenty-four (24) months ("Initial Term"). The Government reserves the right to renew this Contract for a maximum of two (2) twelve (12) month periods thereafter ("Renewal Term"). At the end of the contract period Government may at its discretion, exercise the extension options and allow the period of performance to be extended at the rate indicated in **Addendum II, Terms of Compensation.**

3. COMPENSATION

The Government, in consideration of the performance by the Contractor of the services described in **Addendum I (Scope of Work)**, agrees to pay the Contractor a sum not to exceed **ONE MILLION ONE HUNDRED SEVENTY-TWO THOUSAND and EIGHTY 00/100 DOLLARS (\$1,172,080.00)**, in accordance with the provisions set forth in **Addendum II (Terms of Compensation)** attached hereto, and made a part of this Contract.

4. TRAVEL EXPENSES

Travel expenses are inclusive in the compensation for services as specified in **Addendum II (Terms of Compensation).**

5. GOVERNING LAW

This Contract shall be construed in accordance with, and in the order of the applicable provisions of, Title XIX of the Social Security Act, as amended and regulations promulgated thereunder by HHS; any other applicable Federal statutes and regulations; and the laws of the United States Virgin Islands.

6. RECORDS, DOCUMENTS, PRINTOUTS, ETC.

The Contractor, when applicable, will present documented, precise records of time and/or money expended under this Contract. The Contractor shall preserve all books and records for at least five (5) years from date each statement is rendered.

All documents, books, records, instructional materials, programs, printouts and memoranda of every description derived therefrom and pertaining to this

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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 Contractor or by any other person or entity except upon the written permission of the Government.

This Agreement is subject to, and incorporates by reference, 45 CFR 74.36 and 45 CFR 92.34 governing rights to intangible property. Intangible property includes but is not limited to: computer software; patents, inventions, formulae, processes, designs, patterns, trade secrets, or know-how; copyrights and literary, musical, or artistic compositions; trademarks, trade names, or brand names; franchises, licenses, or contracts; methods, programs, systems, procedures, campaigns, surveys, studies, forecasts, estimates, customer lists, or technical data; and other similar items. The Contractor may copyright any work that is subject to copyright and was developed, or for which ownership was purchased under this Agreement. The Contractor must deliver all intangible property, including but not limited to intellectual property, to the Government in a manner that ensures the Centers for Medicare & Medicaid Services, an agency of the U.S. Department of Health and Human Services, obtains a royalty-free, non-exclusive, and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so. Federal purposes include the purpose of administering State exchanges under the Affordable Care Act of 2010. The Contractor is further subject to applicable regulations governing patents and inventions, including those issued by the U.S. Department of Commerce at 37 CFR Part 401.

In performance of this Agreement, and any Addenda hereunder, the Contractor acknowledges that certain Government Data to which the Contractor may have access may contain individual federal tax information, personal protected health information and other individually identifiable information protected by territorial or federal law. In addition to the provisions of this Section, the Contractor shall execute the **HIPAA Business Associate Agreement** incorporated into this Agreement at attached as **Addendum III**.

Before receiving or controlling Government Data, the Contractor will have an information security policy that protects its systems and processes and media that may contain Government Data from internal and external security threats and Government Data from unauthorized disclosure, and a copy of such policy has been provided to the Government. No Government Data will be stored, accessed from, or transferred to any location outside the United States.

The Contractor represents and warrants that it has implemented and it shall maintain during the term of this Agreement industry-standard administrative, technical, and physical safeguards reasonably designed to (i) ensure the security and confidentiality of Government Data; (ii) protect against

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any anticipated security threats or hazards to the security or integrity of the Government Data; and (iii) protect against unauthorized access to or use of Government Data. Such measures include, as applicable: (1) access controls on information systems, including controls to authenticate and permit access to Government Data only to authorized individuals and controls to prevent the Contractor employees from providing Government Data to unauthorized individuals who may seek to obtain this information (whether through fraudulent means or otherwise); (2) industry-standard firewall protection; (3) encryption of electronic State Data while in transit from the Contractor networks to external networks; (4) industry-standard measures to store in a secure fashion all Government Data which shall include multiple levels of authentication; (5) dual control procedures, segregation of duties, and pre-employment criminal background checks for employees with responsibilities for or access to Government Data; (6) industry-standard measures to ensure that the Government Data shall not be altered or corrupted without the prior written consent of the Government; (7) industry-standard measures to protect against destruction, loss or damage of Government Data due to potential environmental hazards, such as fire and water damage; (8) staff training to implement the information security measures; and (9) monitoring of the security of any portions of the Contractor systems that are used in the provision of the services against intrusion on a twenty-four (24) hour a day basis.

7. 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. The personnel the Contractor assigns to perform the services shall be properly trained and qualified for services they are to perform. No costs or expenses of the Contractor associated with replacement or training of personnel shall be passed to the Government.

The Contractor will obtain a written confidentiality agreement from each subcontractor (if any) before that subcontractor provides service. No subcontracting will release the Contractor from its responsibility for its obligations under this Agreement. The Contractor will be responsible for the work and activities of each of its subcontractors, including compliance with the terms of this Agreement and for all payments to its subcontractors.

8. LICENSURE AND PERMITS

The Contractor covenants that it has familiarized itself with the applicable provisions of Title 27 of the Virgin Islands Code pertaining to professions and

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occupations, and has obtained all of the applicable licenses or permits, temporary or otherwise, as may be required under said statute(s) for the conduct of the Contractor's business in the United States Virgin Islands.

9. 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.

10. ASSIGNMENT

The Contractor shall not subcontract or assign any part of the services under this Contract without the prior written consent of the Government.

11. INDEMNIFICATION

The Contractor shall defend the Government of the Virgin Islands and its officers and employees against all claims or suits arising in whole or in part from any act or omission of the Contractor or of any agent of the Contractor. The Contractor shall notify the Government in the event of any such claim or suit, and the Contractor shall immediately provide a complete defense against the entire claim or suit. The Contractor shall notify its insurance company and the Government within 10 days of receiving any claim for damages, notice of claims, pre-claims, or service of judgments or claims, for any act or omissions in the performance of this Agreement.

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 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.

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12. INSURANCE AND LIMITATION OF CONTRACTOR'S LIABILITY

If Contractor's current Comprehensive General Liability Insurance coverage does not name the Government of the United States Virgin Islands and its officers and employees as an additional insured for liability arising out of this Contract, Contractor will obtain excess liability insurance to compensate for the difference in the coverage amounts. Contractor is responsible for any and all deductibles stated in the policies. Insurance will be maintained at all times during the performance of the Contract. Insurance coverage will be issued by insurance companies authorized by applicable law to conduct business in the territory of the United States Virgin Islands, and must name the Government of the United States Virgin Islands and its officers and employees as an additional insured as an additional insured.

The insurance policy will have an extended reporting period of two years. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of work on the Contract. Contractor shall not commence work under this Contract until it has obtained all insurance required herein, including but not limited to Automobile Liability Insurance, (if applicable), Workers' Compensation Insurance and General Liability Insurance. Certificates of Insurance, fully executed by officers of the Insurance Company shall be filed with the Government. The Contractor shall not allow any subcontractor to commence work on subcontract until all similar insurance required for the subcontractor has been obtained and approved. If so requested, the Contractor shall also submit copies of insurance policies for inspection and approval of Government before work by any subcontractor is commenced. Said insurance policies shall not be canceled, permitted to expire, or be changed without thirty (30) days' written notice in advance to the Government and consented to by the Government in writing and the policies shall so provide.

In addition to the insurance required above, Contractor agrees to procure and maintain Professional Liability insurance for any and all services performed under this Contract, with a minimum coverage of Two Million Dollars (\$2,000,000) per occurrence. Professional Liability (Errors & Omissions) insurance covers professional errors, acts, or omissions of the Contractor. Claims-made coverage is acceptable. The date of the inception of the policy must be no later than the first date of the anticipated work under this Contract. It shall provide coverage for the duration of this Contract and shall have an expiration date no later than 30 days after the anticipated completion of the Contract. The Insurance Policy shall provide an extended reporting period of not less than 24 months, with full reinstatement of limits, from the expiration date of the policy.

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The Contractor must obtain, pay for, and keep in force the following minimum insurance coverage and shall furnish a certificate to the Government evidencing that such insurance is in effect:

(1) Comprehensive general liability policy with endorsement to insure contractual liability, personal injury, personal and advertising liability, waiving right of subrogation against the Government;

(2) Liability insurance against bodily injury or death of any one person in any one accident in the amount not less than Five Hundred Thousand Dollars (\$500,000) and in the amount not less than One Million Dollars (\$1,000,000) for the injury or death of more than one person in any accident; and,

(3) Insurance against liability for property damages in the amount not less than Two Million Dollars (\$2,000,000).

It shall be the responsibility of the Contractor to require any subcontractor to secure the same insurance coverage as prescribed herein for the Contractor, and to furnish to the Government a certificate or certificates evidencing that such insurance is in effect. Evidence of insurability under these provisions shall be directed to the Government. In addition, the Contractor must indemnify and save the Government harmless from any liability arising out of the Contractor's or any subcontractor's untimely failure in securing adequate insurance coverage as prescribed herein. All such coverage shall remain in full force and effect during the initial term of these contracts and any renewal thereof.

The insurance specified above will be carried until all services required to be performed under the terms of this Contract are satisfactorily completed. Failure to carry or keep such insurance in force will constitute a violation of the Contract, and Government maintains the right to stop work until proper evidence of insurance is provided.

The insurance will provide for thirty (30) calendar days prior written Notice to be given to Government in the event coverage is substantially changed, canceled, or non-renewed. Contractor must submit a new coverage binder to Government to ensure no break in coverage.

The Parties expressly understand and agree that any insurance coverage and limits furnished by Contractor will in no way expand or limit contractor's liabilities and responsibilities specified within the contract documents or by applicable law.

13. EMPLOYMENT OF GOVERNMENT STAFF

To ensure compliance with Virgin Islands laws, the Contractor shall not knowingly engage on a full-time, part-time, or other basis during the period of this Contract, any professional or technical personnel who is or has been in the employ of the Government of the United States Virgin Islands during the previous 24 months, without first acquiring an Ethics Opinion from the Attorney General of the Government of the United States Virgin Islands.

Any unavailability of the Contractor personnel, discontinuity in the Contractor's Project team or other Contractor personnel-related cause will not excuse the Contractor's failure to perform as specified in this Agreement.

The Contractor agrees that personnel identified as key personnel in the Agreement shall participate in the delivery of the services in the capacity indicated and the Contractor shall ensure that each of the key personnel stays assigned to the performance of the services until completed and that other assignments will not impair the ability of any key personnel to perform such services.

The Contractor warrants and represents that core staff/key personnel including independent Contractors and Contractors assigned by it to the performance of this Contract shall be agents of the Contractor and shall be fully qualified to perform the work required herein. The Contractor must include a similar provision in any contract with any subcontractor selected to perform work there under.

Government shall have the absolute right to approve or disapprove Contractor's staff assigned to this Contract, to approve or disapprove any proposed changes in staff, and to require the removal or reassignment of any Contractor employee or subcontractor employee found unacceptable by Government. The Contractor may terminate any of its personnel assigned to the Project for a violation of law or company policy without Government's prior approval. Upon request, Contractor must provide Government with a resume of any member of its staff or its subcontractor's staff assigned to or proposed to be assigned to any aspect of the performance of this Contract.

Personnel commitments made in Contractor's proposal shall not be changed except as hereinabove provided, or due to a resignation of any named individual. Contractor staffing will include the named individuals at the levels of effort proposed in the Contractor's proposal. Replacement of any personnel will be with personnel of equal ability and qualifications as determined by Government. No diversion of staffing will be made by the Contractor without prior written consent of Government.

The Contractor must provide staff to perform all tasks specified as the Contractor's responsibilities in this Contract and the associated RFP. The staff level must be maintained at the level stated in the proposal or as authorized in writing by Government for the duration of the Contract.

Failure of the Contractor to provide staffing at the contracted and Government approved level may result in liquidated damages.

The Contractor will commit all personnel specified in this proposal to this contract unless Government exercises its option to have a staff person removed. Government will be provided unrestricted access to appropriate Contractor personnel for discussion of problems or concerns.

14. 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. The Contractor will act in an independent capacity and not as officers or employees of the Government of the U. S. Virgin Islands.

15. DRUG FREE WORKPLACE ACT.

The Contractor will assure a drug-free workplace in accordance with 45 CFR Part 76.

16. PRIVACY AND SECURITY STANDARDS

A. Protected Health Information

The Contractor shall maintain the privacy and security of all individually identifiable health information acquired by or provided to it as a part of the performance of this Contract and in accordance with **Addendum III: Business Associate Agreement**. The Contractor shall follow federal and territorial laws relating to privacy and security of individually identifiable health information as applicable, including the Health Insurance Portability and Accountability Act (HIPAA) and its federal regulations.

B. Substance Abuse Treatment Information

The confidentiality of any alcohol and drug abuse treatment information acquired by or provided to the Contractor or subcontractor shall be maintained in compliance with any applicable territorial or federal laws or regulations and specifically set out in 42 CFR Part 2.

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C. Other Confidential Consumer Information

The Contractor agrees to comply with the requirements of Government concerning access to information. The Contractor agrees to comply with any applicable territorial statute, and any applicable Medicaid confidentiality regulations, as well as the Business Associate Agreement in Addendum III that is incorporated into this Contract. The Contractor shall ensure that all of its employees and subcontractors performing services under this Contract understand the sensitive nature of the information that they may have access to and sign an affirmation of understanding regarding the information's confidential and non-public nature.

D. Social Security Numbers

The Contractor agrees to comply with all applicable federal and territorial statutes to assure protection and security of personal information, including protection from identity.

17. INTELLECTUAL PROPERTY/WORK PRODUCT OWNERSHIP

All data, technical information, materials gathered, originated, developed, prepared, or obtained as a condition of this Contract and used in the performance of this Contract, including, but not limited to all reports, surveys, plans, charts, literature, brochures, mailings, recordings (video or audio), pictures, drawings, analyses, graphic representations, software computer programs and accompanying documentation and printouts, notes and memoranda, written procedures and documents, which are prepared for or obtained specifically for this Contract or are a result of the services required under this Contract, shall be considered "work for hire" and remain the property of the Government of the United States Virgin Islands, regardless of the state of completion, unless otherwise specified in this Contract. Such items shall be delivered to the Government upon 30 days-notice by the Government. With respect to software computer programs and/or source codes first developed for the Government all the work shall be considered "work for hire," i.e., the Government, not the Contractor or subcontractor, shall have full and complete ownership of all software computer programs, documentation and/or source codes developed. Additionally, the parties further agree that the federal government reserves a royalty-free, non-exclusive, and irrevocable license to produce, publish, or otherwise use, and to authorize others to use, for federal government purposes, the copyright in any work developed under a grant, sub-grant, or contract under a grant or sub-grant or any rights of copyright to which a contractor purchases ownership.

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The Contractor shall not sell or copyright a work product or item first produced under this Contract without explicit permission from the Government, CMS and FNS.

If the Contractor is operating a system or application on behalf of the Government of the U. S. Virgin Islands, then the Contractor shall not make information entered into the system or application available for uses by any other party than the Government, without prior authorization by the Government. Nothing herein shall entitle the Government to pre-existing Contractor's materials.

18. SECURITY AND DATA TRANSFERS

The Government of the U.S. Virgin Islands shall work with the Contractor to ensure compliance with all applicable territorial, CMS, FNS and DHS policies and standards, especially those related to privacy and security. The Government will advise the Contractor of any new policies, procedures, or protocols developed during the term of this Agreement as they are issued and will work with the Contractor to implement any required.

The Contractor will ensure the physical and data security associated with computer equipment, including desktops, notebooks, and other portable devices, used in connection with this Contract. The Contractor will also assure that any media or mechanism used to store or transfer data to or from the territory includes industry standard security mechanisms such as continually up-to-date malware protection and encryption. The Contractor will make every reasonable effort to ensure media or data files transferred to the territory are virus and spyware free. At the conclusion of this Contract and after successful delivery of any and all data connected with this Contract to the Government, the Contractor shall securely delete data (including archival backups) from the Contractor's equipment that contains individually identifiable records, in accordance with standards adopted by the Government and its Department of Human Services.

19. COMPUTING AND COMMUNICATION

The Contractor shall select, in consultation with the Government's Department of Human Services and the Bureau of Information Technology Office, one of the approved methods for secure access to the Government's systems and data, if required. Approved methods are based on the type of work performed by the Contractor as part of this Agreement. Options include, but are not limited to:

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1. Contractor's provision of certified computing equipment, peripherals and mobile devices, on a separate Contractor's network with separate Internet access. The Government's Department of Human Services' accounts may or may not be provided.

2. Government supplied and managed equipment and accounts to access DHS applications and data, including DHS issued active directory accounts and application specific accounts, which follow the National Institutes of Standards and Technology (NIST) security and the Health Insurance Portability & Accountability Act (HIPAA) standards.

The Government will not supply e-mail accounts to the Contractor.

20. CONTRACT A PUBLIC RECORD

Upon the signing of this Contract by all parties, the terms of the Contract become available to the public pursuant to Virgin Islands law. The Parties agree to allow public access to all documents, papers, letters, or other materials subject to the current Virgin Islands law on disclosure. It is expressly understood that substantial evidence of Contractor's refusal to comply with this provision shall constitute a material breach of contract.

21. PUBLIC INFORMATION

All information received in response to the RFP that is the subject of this Contract, including copyrighted material, is deemed public information and will be made available for public viewing and copying shortly after the signing of contracts. The sole exceptions to this are as follows: (1) trade secrets meeting the requirements of federal Trade Secrets laws that have been properly marked, separated, and documented; and (2) any Contractor financial information requested by Government to determine Contractor's responsibility, unless prior written consent has been given by the Contractor.

22. INITIATION OF WORK UNDER CONTRACT

The Contractor acknowledges and understands that the Contract is not effective until all requisite Government approvals are received, and the Contractor shall not begin performing work under this Contract until notified to do so by Government's Department of Human Services. The Contractor is entitled to no compensation for work performed prior to the effective date of this Contract.

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23. CONTRACT AMENDMENTS

The Contract shall be deemed to include all applicable provisions of the Virgin Islands Medicaid State Plan and all territorial and Federal laws and regulations applicable to the U. S. Virgin Islands Medicaid Program, as they may be amended. In the event of any substantial change in such Plan, laws, or regulations, which materially affect the operation of the Virgin Islands Medicaid Program, or the costs of administering such Program, either party, after written notice and before performance of any related work, may apply in writing to the other for an equitable adjustment in compensation caused by such material change.

24. CHANGES TO THE SCOPE OF WORK

During the Contract period, if the Contractor considers that any written or oral communication, including any order, direction, instruction, interpretation, or determination, received from Government's Department of Human Services and/or its authorized agents or representatives, or that any other act or omission of its agents or representatives (an "*Event*") constitutes a change to the scope of the *Scope of Work* of this Contract but is not plainly identified, labeled, or titled as such, the Contractor shall advise the designated Government's contact person with respect to the services to be provided by Contractor under this Contract in writing within ten (10) business days of the *Event* and shall request written confirmation of the *Event*. The notice shall state the following:

- (1) The nature and pertinent circumstances of the communication, act, or omission regarded as a change in scope of the *Scope of Work* by the Contractor;
- (2) The date of the communication, act, or omission, and the identification of each individual involved in such communication, act, or omission, listing his or her name and function;
- (3) The identification of the documents involved;
- (4) The substance of any oral communications;
- (5) The particular technical requirements or Contract requirements regarded as changed;
- (6) The direct and foreseeable consequential effect of the communication, act, or omission regarded as a change to the *Scope of Work*, including the number of hours required from the staff to accomplish the change and the manner and sequence of performance or delivery of supplies or services, identifying which supplies or services are or shall be affected;

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The Department of Human Services shall respond in writing within 10 days of receipt of the Contractor's notice.

25. ADDITIONS TO PERMANENT STAFF

Both the Contractor and the Government must agree upon additions to contract-required staff or key personnel. The reimbursement of the staff cannot exceed the current Contractor rate being paid for equivalent staff.

26. FORCE MAJEURE

Neither party to this contract shall be responsible for delays or failures in performance resulting from acts beyond the control of such party. Such acts shall include, but not be limited to, acts of God, strikes, riots, lockouts, and acts of war, epidemics, fire, earthquakes, hurricanes or other disasters.

27. NON-ASSIGNMENT

This Contract shall not be assigned without written consent of the Agency. Except under exceptional circumstances, no such consent shall be given.

28. SUBCONTRACTS

The Contractor may subcontract for any services necessary to the completion and duration of this Contract and to the performance of its duties under this contract with advance written approval by the Government of both the subcontracted function and the subcontractor. Subcontractors include those whose services shall be purchased or software licensed by the Contractor, and any business partnerships between the Contractor and others.

Subcontractors shall demonstrate the capability to perform the function to be subcontracted at a level equal or superior to that of the Contractor. All subcontracts shall be in writing, with the subcontractor functions and duties clearly identified, and shall require the subcontractor to comply with all applicable provisions of the RFP and this Contract. The Contractor shall at all times remain responsible for the performance by any subcontractors approved by the Government. The Contractor's responsibility for damages shall apply whether performance or nonperformance was by the Contractor or one of its subcontractors. The Government shall not release the Contractor from any claims or defaults of this Contract, which are predicated upon any action or inaction or default by any subcontractor of the Contractor, even if such subcontractor was approved by the Government as provided above. The Contractor shall give the Government notice in writing by certified or registered

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mail of any action or suit filed against it by any subcontractor and prompt notice of any claim made against the Contractor by any subcontractor or Contractor, which in the opinion of the Contractor may result in litigation related in any way to this contract with the Government of the U. S. Virgin Islands.

29. TERMINATION

This Contract may be terminated by Government for any and all of the following reasons:

(1) In the event of the insolvency of or declaration of bankruptcy by the Contractor. The filing of a petition for voluntary or involuntary bankruptcy or a company or corporate reorganization pursuant to the Bankruptcy Act shall, at the option of the Government, constitute default by the Contractor effective the date of such filing. The Contractor shall inform the Government of any such action(s) immediately upon occurrence by the most expeditious means possible (e.g., telephone, fax, Federal Express (FedEx), USPS mail, etc.).

(2) For any default by the Contractor. The Government may, by written notice, terminate performance under these contracts, in whole or in part, for failure of the Contractor to perform any of the material contract provisions. In the event the Contractor defaults in the performance of any of the Contractor's material duties and obligations, written notice shall be given to the Contractor specifying default.

The Contractor shall have 30 calendar days, or such additional time as agreed to in writing by the Government, after the mailing of such notice to cure any default. In the event the Contractor does not cure a default within 30 calendar days, or such additional time allowed by the Government, the Government at its option may notify the Contractor in writing that performance under the Contract is terminated and proceed to seek appropriate relief from the Contractor. If it is determined, after notice of termination for default, that the Contractor's failure was due to causes beyond the control of and without error or negligence of the Contractor, the termination shall be deemed a termination for convenience.

(3) In the event sufficient appropriated, obligated funds from either territorial or Federal sources no longer exist for the payment of Government's obligation herein. Performance by the Government of any of its obligations under this Contract is subject to and contingent upon the availability of territorial and Federal monies lawfully applicable for such purposes. If the Government, in its

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sole discretion, deems at any time during the term of this Contract that adequate monies lawfully applicable to this Agreement shall not be available for the remainder of the term, the Government shall promptly notify the Contractor to that effect, whereupon the obligations of the parties under this Contract shall end as of the date specified in the notice and the contract shall at such time be canceled without penalty to the Government of the U. S. Virgin Islands or the Federal Government.

(4) For the convenience of Government. The Government may terminate performance of work under the Contract in whole or in part whenever, for any reason, the Government, in its sole discretion determines that such termination is in the best interest of the Government. In the event that the Government elects to terminate the contract pursuant to this provision, it shall so notify the Contractor by certified or registered mail, return receipt requested. The termination shall be effective as of the date specified in the notice. In such event, the Contractor will be entitled only to payment for all work satisfactorily completed and for reasonable, documented costs incurred in good faith for work in progress. "Work in progress" is defined as work that has been properly initiated under the terms of the Agreement, and a documented plan, approved by the GVI, exists for the completion of such work. The Contractor will not be entitled to payment for uncompleted work, or for anticipated profit, unabsorbed overhead, or any other costs. "Uncompleted work" is work that has been terminated by the Government without the scheduled deliverable being completed; no government approved plan exists for finishing the deliverable or reaching the predetermined milestone.

A. The Vendor's Duties upon Expiration/Termination

Prior to the conclusion of this Contract, the Contractor shall follow the procedure outlined below for termination. Contractor shall provide, at no extra charge, full support and assistance in turning over the complete and current deliverables to the Government or its agent. The Government desires a low-risk turnover that is transparent. Specific objectives are to provide for an orderly, complete, and controlled transition to a successor Contractor and to minimize any disruption of processing and services provided.

The Contractor must:

(1) Stop work under this Contract on the date and to the extent specified in the notice of termination.

(2) Place no further orders or subcontracts for materials or services, except as may be necessary for completion of such portion of work under this Contract as is not terminated.

(3) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the notice of termination.

(4) Assign to the Government, in the manner and to the extent directed by the Government, all of the rights, title, and interest of the Contractor under the orders or subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle, pay, or deny any or all claims arising out of the termination of such orders and subcontracts.

(5) With the prior approval or ratification of the Government, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable in whole or in part, in accordance with the provisions of this Contract. Failure to obtain prior approval shall result in loss of the Contract reimbursement.

(6) Complete the performance of such part of the work as shall not have been terminated by the notice of termination.

(7) Take such action as shall be necessary, or as the Government shall direct, for the protection and preservation of any and all property or information related to these contracts which is in the possession of the Contractor and in which the Government has or shall acquire an interest. Upon receipt of notice of termination, Contractor must have no entitlement to receive any amount for lost revenues or anticipated profits or for expenditures associated with this or in any other contract. Contractor shall be paid only by the following upon termination:

- (a) At the contract price(s) for completed deliverables and services delivered to and accepted by Government.
- (b) At a price mutually agreed upon by the Contractor and Government for partially completed deliverables. In the event of the failure of the Contractor or and Government to agree in whole or in part as to the amounts with respect to costs to be paid to the Contractor in connection with the total or partial termination of

work pursuant to this article, Government shall determine on the basis of information available the amount, if any, due to the Contractor by reason of termination and shall pay to the Contractor or the amount so determined.

B. Government's Relief upon Termination of Contractor

In the event that Contractor fails to meet the performance standards specified in the Contract, the liquidated damages include the withholding of payments, as determined by Government. If the liquidated damages exceed amounts due from Government, Contractor shall be required to make monetary payments for the amount in excess. The Government may also delay the assessment of liquidated damages if it is in the best interest of the Government to do so. The Government will give notice to the Contractor of a failure to meet performance standards, but delay the assessment of liquidated damages in order to give the Contractor an opportunity to remedy the deficiency; if the Contractor subsequently fails to remedy the deficiency to the satisfaction of the Government, the Government may reassert the assessment of liquidated damages, even following contract termination.

The decision to impose liquidated damages, and the extent of the damages shall include consideration of all of the following factors:

- (a) The duration of the violation;
- (b) Whether the violation (or one that is substantially similar) has previously occurred;
- (c) The Contractor's history of compliance;
- (d) The severity of the violation and whether it imposes an immediate threat to the health or safety of the clients of Government; and/or
- (e) The "good faith" exercised by the Contractor in attempting to stay in compliance.

Liquidated damages may be asserted by Government as follows:

(1) Late submission of any required report shall be two hundred dollars (\$200) per working day, per report turned in incomplete or late. Penalties will be assessed for each business day that the report is overdue or incomplete as determined by Government.

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(2) Five hundred dollars (\$500) per business day for failure to fill vacant contractually required key personnel positions within 30 days, failure for not having required staff onsite when required in the U. S. Virgin Islands and for not having staff available to the Government to perform duties in the Contract.

30. NONDISCRIMINATION COMPLIANCE

The Contractor shall comply with title VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Executive Order No. 11246, as amended by Executive Order No. 11375, both issued by the President of the United States, the Americans with Disabilities Act of 1990, and with all applicable Federal and territorial laws, rules and regulations implementing the foregoing statutes with respect to nondiscrimination in employment. The Contractor shall not discriminate against any employee or applicant for employment because of a physical or mental disability in regard to any position for which the employee or applicant is qualified. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled individuals without discrimination based on their physical or mental disability in all employment practices.

31. SMALL BUSINESSES, MINORITY-OWNED FIRMS, AND WOMEN'S BUSINESS ENTERPRISES UTILIZATION

In accordance with the provisions of 45 CFR Part 74 and the federal Office of Management and Budget (OMB) Circular A-102, affirmative steps shall be taken to assure that small businesses, minority-owned firms and women's business enterprises are utilized when possible as sources of supplies, equipment, construction, and services.

32. WORKER'S COMPENSATION

The Contractor must take out and maintain during the initial term of these contracts and any renewal thereof, worker's compensation insurance for all of its employees working as part of this Contract; and, in the event any work is subcontracted, the Contractor must require any subcontractor similarly to provide worker's compensation insurance for all the latter's employees working as a part of this Contract.

33. LOBBYING

No federal funds under this Contract may be used to influence or attempt to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, continuation, renewal, amendment or modification of any federal grant or cooperative agreement.

34. WAIVERS AND AMENDMENTS

No waiver, modification or amendment of any term, condition or provision of this Contract, including its Addenda, 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 writings or writings.

35. HEADINGS AND TITLES

Any headings or titles used to help identify any part of this Agreement are for reference purposes only and shall not be deemed as controlling the interpretation or meaning of any provision of this Contract.

36. ENTIRE AGREEMENT

This Agreement, including all *Addenda*, constitutes the entire Agreement between the parties hereto. There are no understandings, agreements, or representations, oral or written, not specified within this Contract. This Contract may not be modified, supplemented or amended, in any manner, except by written agreement signed by both parties.

37. RIGHT TO WITHHOLD

If work under this Contract is not performed in accordance with the terms hereof, including any *Addenda* hereto, 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.

38. CONFLICT OF INTEREST

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Contractor covenants that it, including owners, partners, directors, officers, or primary stockholders 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.

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 familiarized itself with the provisions of Title 3, Chapter 37, Virgin Islands Code, pertaining to conflicts of interest, including the penalties provision set forth in Section 1108 thereof; and not made, negotiated or influenced this Contract, in its official capacity; and no financial interest in the Contract as that term is defined in Section 1101, (1) of said Code Chapter.

39. NO GIFTS OR GRATUITIES

Contractor shall not give title or possession of anything of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.

40. DAMAGES

A. Liquidated Damages

The purpose of liquidated damages is to ensure adherence to the performance requirements in this Contract. No punitive intention is inherent. It is agreed by the Government and the Contractor that, in the event of a failure to meet the Contract requirements, damage shall be sustained by the Government, and that it is and shall be impractical and extremely difficult to ascertain and determine the actual damages which the Government shall sustain in the event of, and by reason of, such failure; and it is therefore agreed that the Contractor shall pay the Government for such failures at the sole discretion of the Government according to the following subsections (unless these damages are waived by Government).

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(1) Government shall assess damages in the amount of Two Hundred Dollars (\$200) per working day or any part thereof after the day identified in the individual sections that the requirement/deliverable is not met. Government may identify any other condition resulting from the Contractor's non-compliance with the RFP and Contract through routine monitoring activities. Government will notify the Contractor in writing of the non-compliance and designate a reasonable time for correction of the non-compliance.

(2) Damages in the amount of Two Hundred Dollars (\$200) per working day shall be assessed for each working day or any part thereof after the designated time for correction until the correction of the noncompliance.

(3) With respect to Contractor's personnel, personnel proposed for the Project must be committed and significantly engaged with the Project. Inexperienced personnel must not be substituted for the proposed personnel. Should specific personnel proposed by the Contractor not be available, or if Government determines that key personnel are not providing an adequate amount of time onsite or are not performing in accordance with Government's expectations, Government reserves the right to cancel the Project and all prior agreements with the Contractor. Government shall allow the Contractor reasonable time to replace key personnel not to exceed four weeks from the date Government was notified of the personnel loss.

(4) Government reserves the right to impose liquidated damages of up to Five Hundred Dollars (\$500) per working day should key personnel proposed by the Contractor not be available, or become materially absent during the course of the Project.

(5) ALL WORK MUST BE COMPLETED WITHIN TWO YEARS OF THE DATE THAT THE CONTRACT IS EXECUTED BY THE GOVERNOR.

(6) Written notification of each failure to meet contractual requirements shall be given to the Contractor. The imposition of liquidated damages is not in lieu of any other remedy available to the Government. The Government shall withhold from the Contractor reimbursements amounts necessary to satisfy any damages imposed. In no event will the total amount of liquidated damages imposed pursuant to this Section exceed twenty percent (20%) of the total amount invoiced to the Government at the date the alleged failure occurs.

A decision by the Government not to exercise this damage clause in a particular instance shall not be construed as a waiver of the Government's right to pursue future assessment of that performance requirement and associated damages. The Government may, at its sole discretion, return all or a portion of

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any liquidated damages collected, as an incentive to the Contractor for prompt and lasting correction of performance problems.

B. Payment of Damages

Amounts owed the Government due to liquidated damages shall be deducted by the Government from any money payable to the Contractor pursuant to this Contract. These amounts may be deducted from any actual damages claimed by the Government in the event of litigation for non-compliance and default.

41. 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: Commissioner
Government of the Virgin Islands
DEPARTMENT OF HUMAN SERVICES
1303 Hospital Ground, Suite 1
St. Thomas, U.S.V.I. 00802
Telephone: (340) 774-1166
Fax: (340) 774-3466
Attention: Richard G. Lacombe
DHS Executive Project Director
Telephone: (340) 774-0930 Ext. 4111

Copy to: Commissioner
DEPARTMENT OF PROPERTY & PROCUREMENT
Sub Base, Building No. 1, Third Floor
St. Thomas, U.S. Virgin Islands 00802
Telephone: (340) 774-0828
Fax: (340) 777-9587

CONTRACTOR: **PUBLIC CONSULTING GROUP, INC.**
2150 River Plaza Drive, Suite 380
Sacramento, California 95833
Telephone: (916) 565-8090

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Fax: (916) 565-5126

42. 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 false, fictitious, or fraudulent claim is a crime under Virgin Islands and federal laws.

43. NOTICE OF FEDERAL FUNDING

Contractor acknowledges that this Contract is funded, in whole or in part, by federal funds and in particular THE 90 PERCENT ENHANCED FEDERAL FUNDING FROM CMS and the cost allocation exception for shared information systems development costs as set forth in Section C.3 of OMB Circular A-87. 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.

44. 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 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 subcontract and that the Contractor or subcontractor shall promptly reimburse the Government of the Virgin Islands for any progress payments heretofore made.

If, during the term of this Contract, the Contractor shall become ineligible to receive contract awards using federal funds, this Contract shall be terminated forthwith for cause and the Contractor shall not be entitled to payment for any work performed under this Contract or sub-contract after the effective date of such ineligibility.

Contractor represents that none of its personnel have been excluded from participating in Medicare, Medicaid, or other federal health care programs. The Contractor shall notify the Government immediately in the event that it learns that either the Contractor or any of its personnel becomes ineligible to participate in Medicare, Medicaid, or any other federal health care program during the term of this Agreement. If any personnel are excluded from participating in Medicare, Medicaid, or any other federal health care program, the Contractor shall immediately replace such personnel. If The Contractor is excluded from participating in Medicare, Medicaid, or any other federal health care program, this Agreement shall terminate automatically effective as of the date of such exclusion.

45. PUBLICITY

No publicity, including press releases, interviews, bulletins, or articles in any public medium concerning this Contract, its terms, execution, implementation, or results, can be released without the written approval of the Government.

46. ORDER OF PRECEDENCE

Addendum I, *Scope of Services*; Addendum II, *Business Associate Agreement*; and, Addendum III, *Terms of Compensation* attached hereto are hereby incorporated and made a part of this Contract. In the event of a conflict between the terms and conditions of the following documents, the order of precedence shall be:

- (1) Any Addendum to this Agreement;
- (2) This Agreement;
- (3) The Proposal submitted by the Contractor in response to the Government's Request for Proposal ("RFP") **No. 036-2014(P)**;
- (4) Any Addenda to the RFP; and,
- (5) The RFP.

47. ALTERNATIVE DISPUTE RESOLUTION

Government does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the

right to enforce their rights and remedies in judicial proceedings. Government does not waive any right to a jury trial.

right to enforce their rights and remedies in judicial proceedings. Government does not waive any right to a jury trial.

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

WITNESSES:

**CONTRACTOR
PUBLIC CONSULTING GROUP, INC**

Leah Richards

9/1/16

Date



Mitch Dobbins
Chief Operating Officer

C. Chastet

GOVERNMENT OF THE VIRGIN ISLANDS

DEPARTMENT OF HUMAN SERVICES:

Annela C. Richards

11.17.2016

Date



Dr. Anita Roberts
Acting Commissioner

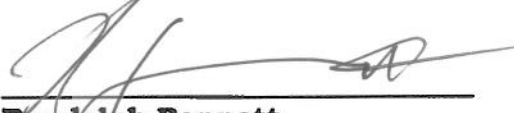
Travisel Chivney

DEPARTMENT OF PROPERTY & PROCUREMENT



12/6/16

Date




Randolph Bennett
Commissioner



Contract No. P034DHST17

Initials: 

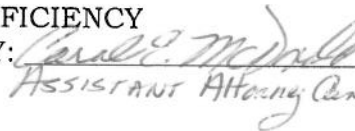
APPROVED:



Kenneth E. Mapp
GOVERNOR OF THE VIRGIN ISLANDS

Date: 01-20-17.

APPROVED AS TO LEGAL SUFFICIENCY
DEPARTMENT OF JUSTICE BY:


Assistant Attorney General Date 1/13/17

PURCHASE ORDER 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
Public Consulting Group, Inc.

Randolph N. Bennett, Commissioner
Department of Property and Procurement

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