

PROFESSIONAL SERVICES CONTRACT

[JPMorgan Electronic Financial Services – Department of Human Services]

THIS CONTRACT made as of the 1st day of August, 2017 in the Territory

of the United States Virgin Islands, by and between the Government of the Virgin Islands, DEPARTMENT OF PROPERTY AND PROCUREMENT, on behalf of the DEPARTMENT OF HUMAN SERVICES with the address of 1303 Hospital Ground, Knud Hansen Complex, Building A, St. Thomas, U. S. Virgin Islands 00802 (hereinafter referred to collectively as "Government") and JPMORGAN ELECTRONIC FINANCIAL SERVICES, INC. ("JPMorgan") with the address of 270 Park Avenue New York, NY 10017 (hereinafter referred to as "Contractor").

Both parties witness to being duly authorized to execute this Contract and will attest accordingly when and where necessary.

WITNESSETH

WHEREAS, the Government is in need of the services for the Contractor to continue providing Electronic Benefit Transfer ("EBT") System in the U. S. Virgin Islands for the Supplemental Nutrition Assistance Program ("SNAP") on behalf of the Department of Human Services, which duties and responsibilities are more particularly described in the USDA May 8, 2017, approved Letter of Agreement (included in "Addendum I"); and

WHEREAS, the Contractor was awarded the Contract **PC-DHS-044-2009** in response to the U.S. Virgin Islands Request for Proposal (RFP) No. 0022-2007 for a total duration of Ninety (90) months including invoked options on February 1, 2009, expiring on July 31, 2016;

WHEREAS, the Contractor has been processing monthly SNAP benefits for more than 13,000 active accounts in the United States Virgin Islands since entering into Contract No. PC-DHS-044-2009 on January 30, 2009;

Contract No. ~~PC-DHS-044-2009~~ 570 H S I 17

Contractor's Initial: _____



WHEREAS, the Contractor notified the Government of its intent to leave the EBT business on January 9, 2014;

WHEREAS, the Government selected another contractor, in its final stages of its contract negotiations with such new contractor, Fidelity Information Systems, Inc. (FIS). The Government has begun its EBT program implementation activities with FIS and will fully convert the operation of its EBT program with FIS no later than November 12, 2017. Prior to contracting with FIS, the Government selected another contractor, Evertec Group, LLC of Puerto Rico ("Evertec") in response to its RFP No. 011-2015 (P); however, Evertec was released from its obligations because it could not implement the Government's EBT program in a timely manner. As a result, the procurement process was delayed for more than two years through no fault of Contractor;

WHEREAS, the Contractor and the Government amended and restated contract No. PC-DHS-044-2009 by letter agreement through July 31, 2017. The Government desires to continue Contractor's services beyond the Contract termination date of July 31, 2017 in order to effect the systems and operations conversion of its EBT program to FIS. The Government and Contractor agree with the amendment of its ongoing agreement and to the restatement of such terms as are necessary to ensure that there is no interruption of SNAP benefits to the United States Virgin Islands;

WHEREAS, upon termination of Contract No. PC-DHS-004-2009 the Government failed to secure a Contractor in response to the U.S. Virgin Islands RFP No. 011-2015 (P). As a result of the delay of the new Contract, the Government desired to have Contractor's services continued beyond its termination date of July 30, 2016;

WHEREAS, the Contractor and the Government agreed to extended services by executing the August 2, 2016 Letter of Agreement (hereinafter referred to as "Exhibit A") on August 1, 2016, which will expire on July 31, 2017, that was previously approved by the United States Department of Agriculture's (USDA) Food and Nutrition Service (FNS) as a Sole Source Contract; and

P057DHS17

Contract No.

Contractor's Initial:



WHEREAS, the Government awarded a new contract to Fidelity Information Services, LLC ("FIS") as a result of its response to the U.S. Virgin Islands Request for Quotation ("RFQ") No. 001-2017(P) dated November 10, 2016 and as a result Government will need Contractor to continue to provide services through November 30, 2017 as the Government transitions its EBT services from Contractor to FIS.

NOW THEREFORE, in consideration of the mutual covenants contained in this Contract, and intending to be legally bound by the same, Government and Contractor agree to the following:

TERMS AND CONDITIONS

1. SERVICES

The Contractor will provide services described in *Addendum I* attached hereto and made part of this contract.

2. TERM

Upon the execution of this Contract by the Governor of the Virgin Islands, this Contract shall commence on August 1, 2017 and terminate on November 30, 2017.

3. ASSURANCES

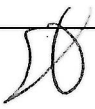
During the performance of this Contract, Contractor agrees as follows:

A. Contractor and all Material Subcontractors shall comply with the requirements, conditions, and standards of all of the following:

1. Title VI of Civil Rights Act of 1964 (42 USC § 2000d et seq.);
2. Section 504 of the Rehabilitation Act of 1973, as amended (29 USC);
3. Non-discrimination under Federal Grants and Programs (29 USC §794);

Contract No. P057DHS117

Contractor's Initial:



4. 7 CFR 3021, Drug-free Workplaces;
5. Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented in Department of Labor Regulations (29 CFR, Part 60);
6. (40 USC §327-330) as supplemented by the Department of Labor Regulations (29 CFR, Part 5);
7. The United States Environmental Protection Agency (EPA) 40 CFR, Part 15, pursuant to the Clean Air Act, as amended, (42 USC §7401 et seq.);
8. The Federal Water Pollution Control Act, as amended ("Water Act"), (33 USC §1251 et seq.); and Executive Order 11738; and,
9. The United States Department of Health and Human Services Regulations found in 45 CFR, parts 80 and 84;

4. FEDERAL APPROVAL

This Contract and any amendments to said Contract, if any, shall be contingent upon approval by the United States Department of Agriculture, Food and Nutrition Services ("FNS").

5. COMPENSATION

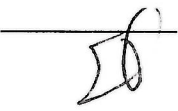
The Government, in consideration of the satisfactory performance of the services described in *Addendum I*, agrees to pay the Contractor the following "Cost Per Case Month" or CPCM as follows:

(a) SNAP Case at the cost of Four and 55/100 Dollar per case month (\$4.55/case month)

The Terms of Compensation are more fully described in *Addendum I*.

Contract No. P057DHS117

Contractor's Initial: _____



6. TRAVEL EXPENSES

There are no additional expenses other than those specifically authorized by

Addendum I.

7. BILLING

The Government shall pay monthly the invoice(s) submitted by the Contractor for the period covered under this agreement.

8. 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.

9. LIABILITY OF OTHERS

Nothing in this Contract shall be construed to impose any liability upon 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 Virgin Islands gross receipts taxes, unemployment insurance and social security taxes for Contractor, it's 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. The Government has approved all subcontractors in use by the contractor as of the contract effective date.

11. INDEMNIFICATION

Contractor agrees to 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

Contract No.

PO57DHS17

Contractor's Initial:



to the services to be performed by Contractor under this Contract and arising from any cause, except the sole negligence of Government.

12. 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.

13. GOVERNING LAW

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

14. WAIVERS AND AMENDMENTS

No waiver, modification or amendment of any term, condition or provision of this Contract shall be valid or of any force or effect unless made in writing, signed by the parties hereto or their duly authorized representatives, and specifying with particularity the nature and extent of such waiver, modification or amendment. Any such waiver, modification or amendment 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.

15. ENTIRE CONTRACT

This Contract and *Addendum I* and Exhibit A constitute the entire agreement between the parties hereto with respect to the Project.

16. RIGHT TO WITHHOLD

If work under this Contract is not performed in accordance with the terms hereof, Government will have the right to withhold out of any payment due to Contractor, such sums as Government may deem ample to protect it against loss or to assure payment of claims arising therefrom, and, at its option, Government may deem appropriate to secure

itself or to satisfy such claims. The Government will immediately notify the Contractor in writing in the event that it elects to exercise its right to withhold.

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

17. DISPUTE RESOLUTION

The EBT Project Manager shall decide any disputes concerning performance of the contract. This decision shall be final and conclusive unless within thirty (30) calendar days from the date of service the Contractor files a petition for administrative hearings addressed to the Commissioner, Department of Human Services.

18. CONDITION PRECEDENT

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

19. TERMINATION

Either party will have the right to terminate this Contract with or without cause on sixty 60 days' written notice to the other party specifying the date of termination.

20. GOVERNMENT PROPERTY

The Contractor shall be responsible for the proper custody and care of any Government owned property furnished for Contractor's use in connection with the performance of this Contract, and the Contractor will reimburse the Government for its loss or damage, except normal wear and tear.

POSTDHST17

Contract No.

Contractor's Initial:



21. INTELLECTUAL PROPERTY/WORK PRODUCT OWNERSHIP

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 Contractor's pre-existing materials and/or its intellectual property. For the avoidance of doubt, Contractor shall remain the sole owner of its intellectual property including any modifications thereto.

22. FEDERAL INSPECTIONS

During and after this project for a period not to exceed 5 years, the US Department of Agriculture or its authorized representatives shall be allowed access to inspect all Contractor materials, documents, work papers, deliverables, or any such other items which pertain to this project; provided such USDA personnel or authorized representative comply with Contractor's policies and procedures and provide reasonable advance notice to Contractor of any such inspection. The Contractor shall cooperate with any reasonable federal reviews and shall supply copies of any requested materials.

23. COPYRIGHT OF DATA

The Contractor may not publish or copyright any Government Data without prior approval, unless otherwise stated herein. Unless otherwise prohibited by law, the Government and the federal government shall have the right to publish, duplicate, use and disclose all such Government Data in any manner, and for any purpose whatsoever, and may authorize others to do so.

"Government Data" shall mean all results, technical information and materials developed and/or obtained in the performance of the services hereunder, including but not limited to, all reports, surveys, plans, charts, recordings (video and/or sound), pictures, drawings, analyses, source and object code, graphic representations, computer programs and printouts, notes and memoranda, regardless of media, and documents whether finished or unfinished, which result from or are prepared in connection with the services performed hereunder.

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Contract No.

Contractor's Initial:

24. SECURITY OF DATA

The Contractor will make commercially reasonable efforts to ensure media or data files transferred to the Government are virus and spyware free.

25. ACCOUNTING REQUIREMENTS

The Contractor shall establish and maintain an accounting system in accordance with Generally Accepted Accounting Principles (GAAP). The accounting system shall maintain records pertaining to the tasks defined in this Contract and all fees charged to the Government hereunder. In the event that the Contractor provides services other than on a fixed fee for services basis, the Contractor shall maintain records pertaining to the costs and expenditures incurred by the Contractor in providing such services.

Accounting procedures, policies, and records shall be reasonably open to Government and federal audit at any time during the Contract period and for five years thereafter.

26. AUDIT REQUIREMENTS

In the event that the Contractor provides services on other than a fixed fee for services basis, the Contractor shall maintain books, records, documents, and other evidence pertaining to the administrative costs and expenses of the Contract to the extent and in such detail as shall properly reflect all revenues, all net costs, direct and apportioned, and other costs and expenses of whatever nature as relating to such services. The Contractor's accounting procedures and practices shall conform to Generally Accepted Accounting Principles (GAAP) and the costs properly applicable to the Contract shall be readily ascertainable therefrom.

For work to be performed on an hourly reimbursement rate or cost reimbursement basis, the reimbursement of direct and indirect costs shall be governed by 7 CFR 277.17.

Contract No. P 0 5 7 D H S T 1 7

Contractor's Initial: _____



27. AUDIT LIABILITIES

In addition to, and not in any way in limitation of the obligation of the Contract, it is understood and agreed by the Contractor that the Contractor shall be held liable for any Government or federal audit exceptions arising from the fault or negligence of the Contractor, provided that the Contractor is given the opportunity to cure the cause of the exceptions. If such exceptions are not cured pursuant to the terms of the Contract, the Contractor shall return to the Government all payments made under the Contract to which exception has been taken or which has been disallowed because of such an exception.

28. TAXES

The Government is not required to pay taxes of any nature, however if Contractor is required to pay sales, use, value-added, or other federal, Government, or local taxes based on the licenses or services provided in this Contract, **except taxes based on Contractor's income or property tax for software**, then such taxes shall be billed to and paid by the Government upon evidence of payment by Contractor.

To support the Internal Revenue Service Information reporting requirements, the EBT contractor must ensure they are in compliance with the Department of Treasury – Internal Revenue Service reporting outlined in 26 CFR Parts 1, 31 and 301. The final regulation implemented section 6050W and related statutory changes enacted by the Housing Assistance Tax Act of 2008 that require payment settlement organizations to report payments settled for credit, debit and EBT cards each calendar year. The EBT contractor must create and distribute IRS-1099 forms to EBT-only retailers and third party processors (TPP) that perform more than 200 transactions totaling \$20,000 or more during any calendar year.

29. SEVERABILITY

If any term or condition of this Contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions,

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Contract No. _____

Contractor's Initial: _____



or applications which can be given effect without the invalid term, condition, or application; to this end the Terms and Conditions of this Contract are declared severable.

30. LOBBYING CERTIFICATION

Section 1352 of Title 31 of the U.S. Code requires that funds appropriated to a federal agency be subject to a requirement that any federal Contractor or grantee (such as the Government) must be required to certify that no federal funds will be used to lobby or influence a federal officer or member of Congress. The certification the Government has been required to sign provides that the language of this certification (shall) be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and Contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall verify and disclose accordingly. The certification also requires the completion of federal lobbying reports and the imposition of a civil penalty of \$10,000 to \$100,000 for failing to make a required report. As a sub-recipient, the Contractor understands and agrees to the federal requirements for certification and disclosure.

31. FORCE MAJEURE

The Contractor shall not be liable for any damages if the failure to perform the Contract arises out of causes without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, telecommunications outages and unusually severe weather; but in every case the failure to perform must be without the fault or negligence of either the Contractor or its Material Subcontractor(s). When such a cause arises, the Contractor shall notify the Government immediately in writing of its failure to perform, describing the cause of failure and how it affects performance, and the anticipated duration of the inability to perform.

32. FAILURE TO PERFORM

In the event Contractor, has failed to perform any substantial obligation under this agreement, the Government may withhold thirty-five (35%) of monies due for the month



that the failure has occurred and payable to the Contractor without penalty, until such failure is cured or otherwise adjudicated, provided such failure to perform directly results from the Contractor's sole or substantial negligence.

33. NONDISCRIMINATION

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, national origin or handicap.

34. CONFLICT OF INTEREST

(a) Contractor covenants that it (includes owners' partners, directors, and/or officers) 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 himself/herself with the provisions of Title 3, Chapter 37, Virgin Islands Code, pertaining to conflicts of interests, including the penalties provision set forth in Title 3, Section 1108 thereof;

(ii) not made, negotiated or influenced this contract, in (his/her official capacity;

(iii) no financial interest in the contract as that term is defined in Title 3, Section 1101, (1) of the V. I. Code.

35. 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 certified mail, postage prepaid or personally delivered, addressed to the parties as follows:

GOVERNMENT:

GOVERNMENT OF THE VIRGIN ISLANDS
Department of Human Services
1303 Hospital Ground, Suite 1
St. Thomas, U.S. Virgin Islands 00802
Attention: *Richard Lacombe – EBT Project Manager*
Telephone: (340) 774-0930 x4111

cc:

Government of the Virgin Islands
Department of Property and Procurement
No. 1 Sub Base, Third Floor
St. Thomas, U.S. Virgin Islands 00802
Attention: *Commissioner*
Telephone: (340) 774-0828
Fax: (340) 777-9587

CONTRACTOR:

JP Morgan Electronic Financial Services
10420 Highland Manor Drive
Tampa, FL 33610
Attention: *John R. Simoneone*
Executive Director
Telephone: (813) 432-4710

Either party may change its address for notification purposes by giving written notice of the change and setting forth the new address and an effective date.

36. FALSE CLAIMS

Contractor warrants that, to the best of its knowledge, 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, knowingly such claim to be false, fictitious, or fraudulent. Contractor acknowledges that knowingly making such a false, fictitious, or fraudulent claim is an offense under Virgin Islands law.

Contract No.

PO57DHS17

Contractor's Initial:



37. NOTICE OF FEDERAL FUNDING

Contractor acknowledges that this Contract is funded, in whole or in part, by federal funds.

38. PUBLICITY

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

39. OTHER PROVISIONS

Addendum I (April 25, 2017 Letter of Agreement, May 8, 2017 Letter from USDA to Natalie Bailey, May 8, 2017 USDA letter to Felicia Blyden, May 23, 2017 USDA letter to Felicia Blyden), and Exhibit A (2016 Letter of Agreement) attached to this Contract are incorporated into and made a part of this Contract.

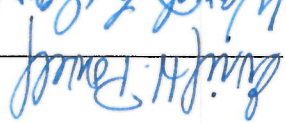
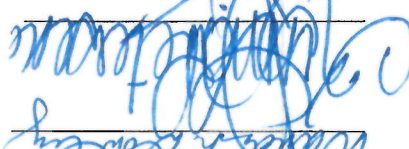

40. ORDER OF PRECEDENCE

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

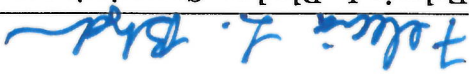
1. Federal Standards;
2. Addendum I; and
3. This Contract including all Addenda, which are incorporated herein;

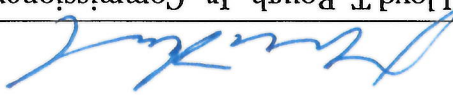
IN WITNESS WHEREOF, the parties have hereunto set their hands on the day and year above written.

WITNESSES:

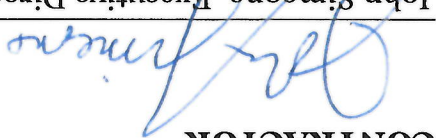

 Knight H. Powell

 Wayne S. Lawrence

 Robert S. Lawrence

GOVERNMENT OF THE VIRGIN ISLANDS


 Felicia L. Blyden, Commissioner
 Department of Human Services
 Date: 7/28/2017


 Lloyd T. Bough, Jr., Commissioner
 Department of Property and Procurement
 Date: 7/28/17

CONTRACTOR

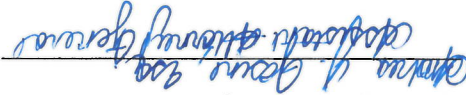

 John Simeone, Executive Director
 JPMorgan Electronic Financial Services
 Date: 7/30/17

APPROVED:


 Kenneth E. Mapp
 GOVERNOR OF THE VIRGIN ISLANDS

Date: 08-15-17

APPROVED AS TO LEGAL SUFFICIENCY


 Cynthia J. George, Attorney General
 DEPARTMENT OF JUSTICE BY:

Date: 8/09/17

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 JPMorgan Electronic Financial Services

Lloyd T. Bough, Jr., Commissioner
 Department of Property and Procurement

