

CONTRACT FOR PROFESSIONAL SERVICES

THIS AGREEMENT (this "CONTRACT") is made this 21 day of August, 2018, in the Territory of the Virgin Islands, by and between the Government of the Virgin Islands, **DEPARTMENT OF PROPERTY & PROCUREMENT**, on behalf of the **DEPARTMENT OF FINANCE** (hereinafter referred to as "GOVERNMENT") and **BDO USA, LLP** (hereinafter referred to as "CONTRACTOR").

WITNESSETH:

WHEREAS, the Government is in need of the services of a Contractor to provide Single Audit and Basic Financial Statement audits for the Government for the fiscal years ended September 30, 2017 and September 30, 2018, which duties and responsibilities are more particularly described in Addenda I, III, and IV to this Contract; 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 Addenda I, III, IV to this Contract, which are attached hereto and made a part of this contract.

2. TERM

This Contract shall commence on January 1, 2018 and shall terminate on June 30, 2020.

3. COMPENSATION

The Government, in consideration of the satisfactory performance of the services described in Addenda I, III, IV to this Contract, agrees to pay Contractor an amount not to exceed FIVE MILLION THREE HUNDRED THIRTY-SIX THOUSAND AND 00/100 DOLLARS (\$5,336,000.00) as provided for in Addendum II (Compensation) attached hereto and made a part of this contract, based on anticipated cooperation from the Government's personnel. Notwithstanding the foregoing or anything in the Contract to the contrary, Addendum II does not reflect the compensation due to Contractor for Contractor's additional services (if any) for the 2017 and 2018 Audits as may be required by the effects that (i) any required procedures, as promulgated by the prescribed accounting and auditing standards and/or other regulatory bodies, will have on Contractor's audit procedures due to the extraordinary and unusual circumstances which have transpired as a result of the recent hurricanes, and (ii) any future standards promulgated by the Governmental Accounting Standards Board and/or other professional bodies will have on Contractor's audit procedures. Contractor's invoices for fees for such additional services (if any) will be rendered to the Government in accordance with the invoicing schedules presented in Addendum II hereto. Contractor's invoices are payable within forty-five (45) days of the Government's receipt of the Contractor's undisputed invoice.

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4. TRAVEL EXPENSES

Inclusive of the compensation for services as specified in Paragraph 3 (Compensation) above, the Government agrees to pay documented transportation, subsistence, lodging and other travel expenses, while in travel status, for trips which have been authorized in writing, in advance, by the Government. These costs shall be advanced or reimbursed on the same basis as is applicable to non-contract employees of the Government, or as agreed to by an addendum to this Contract, however, said costs and expenses shall not exceed N/A (\$ N/A).

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 provide services in accordance with the generally accepted auditing standards (GAAS). The audit will also be conducted in accordance with the standards for financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States and Title 2 U.S. Code of Federal Regulations (CFR) Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance or UG).

7. DOCUMENTS, PRINTOUTS, ETC.

All final deliverables provided by Contractor derived from documents, records, reports, invoices, printouts and memoranda and pertaining to this Contract shall become the property of the Government and shall be turned over to the Government at the termination of this Contract. The above-described final deliverables shall not be used by Contractor or by any other person or entity except upon the written permission of the Government.

Incorporated herein and made part of this Contract are the terms and conditions set forth in Addenda, I, II, III, IV to this Contract. Notwithstanding anything herein to the contrary, the Parties agree that Contractor owns or otherwise has rights in methods, procedures, processes, know-how, techniques, models, templates, tools and work papers, including any pre-existing materials and other creative and technical content (collectively, the "Contractor Materials") which shall be the sole and exclusive property of Contractor; and all rights related thereto, including without limitation any intellectual property rights, are hereby exclusively reserved by Contractor.

The working papers prepared in conjunction with the services set forth in this Contract are the property of Contractor, constitute confidential information, and will be retained by Contractor in accordance with Contractor's policies and procedures. However, pursuant to authority given by law or regulation, Contractor may be requested to make certain working papers available to the Government's oversight agency, or its designee, a federal agency providing direct or indirect funding, or the U.S. Government Accountability Office for purposes of a quality review of the audit, to resolve audit findings, or to carry out oversight responsibilities. Contractor will notify the Government of any such request. If requested, access to such working papers will be provided under the supervision of Contractor personnel and at a location designated by Contractor. Furthermore, upon request, Contractor may provide photocopies of selected working papers to the aforementioned parties. These parties may intend or decide to distribute the photocopies of information contained therein to others, including other governmental agencies.

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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 the 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

Contractor shall have the right to assign its rights to perform a portion of the services described above to any of its independent Alliance members, affiliates (including, where applicable, member firms of the international BDO network), agents, or contractors (a "Permitted Assignee") without the Government's prior consent. If such assignment is made, the Government agrees that, unless it enters into an engagement letter directly with the Permitted Assignee, all of the applicable terms and conditions of this Contract shall apply to the Permitted Assignee. Contractor agrees that it shall not permit the Permitted Assignee to perform any work until it agrees to be bound by the applicable terms and conditions of this Contract. Contractor further agrees that it will remain primarily responsible for the services described above, unless Contractor and the Government agree otherwise, and Contractor will properly supervise the work of the Permitted Assignee to ensure that all such services are performed in accordance with applicable professional standards. From time to time, and depending on the circumstances, Permitted Assignees located in other countries may participate in the services provided to the Government. In some cases, Contractor may transfer information to or from the United States or another country. Although applicable privacy laws may vary depending on the jurisdiction, and may provide less or different protection than those of the Government's home country, Contractor requires that all Permitted Assignees enter into contractual agreements to maintain the confidentiality of the Government's information and observe its policies concerning any confidential client information that Contractor provides to them.

10. INDEMNIFICATION

To the fullest extent permitted by applicable law, Contractor shall defend, indemnify and hold harmless the Government and its respective officers, directors, employees, successors and assigns from and against any and all claims, demands, losses, expenses, damages, liabilities, fines, and penalties (each a "Claim") arising out of or relating to: (a) Contractor's performance of (or failure to perform) under this Contract; (b) a breach of this Contract by Contractor or any of its affiliates, subcontractors, agents or employees; (c) any negligence or willful misconduct by Contractor or its affiliates, subcontractors, agents or employees; (d) a violation of applicable law by Contractor; or (e) any determination that a relationship, other than that of independent contractor, exists between the Government and/or Agent and Contractor and/or its employees or any other employment-based complaint or grievance; in each case, unless caused by the gross negligence, intentional misconduct or knowing misrepresentations of the Government, including but not limited to any claims that the work product under this Contract infringes a patent, copyright, trade secret or other proprietary right of a third party and arising from any other cause, except the sole negligence of the 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.

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12. GOVERNING LAW

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

13. 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 and any addenda hereto (including, without limitation, Addenda I, II, III, and IV to this Contract) constitutes the entire agreement between the parties hereto.

15. RIGHT TO WITHHOLD

If work under this Contract is not performed in accordance with the terms hereof, the Government will have the right to withhold out of any payment due to Contractor, such sums as the Government may deem ample to protect it against loss or to assure payment of claims arising therefrom, and, at its option, the Government may apply such sums in such manner as the Government may deem proper 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 the Government if and while Contractor gives satisfactory assurance to the Government that such claims will be paid by Contractor or its insurance carrier, if applicable in the event that such contest is not successful.

16. CONDITION PRECEDENT

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

17. TERMINATION

Either party shall have the right to terminate this Contract with or without cause on thirty (30) days written notice to the other party specifying the date of termination. Notwithstanding the foregoing, if a party reasonably determines, based on the advice of counsel, that it is unable to perform its obligations described in this Contract in accordance with applicable professional standards, laws, or regulations, such party shall be permitted to terminate this Contract with five (5) business days written notice to the other party specifying the date of termination. The Contractor shall be entitled to receive payment for services provided to the date of termination.

18. 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.

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19. 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.

20. EFFECTIVE DATE

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

21. NOTICE

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

GOVERNMENT

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

Valdamier O. Collens
Commissioner
Department of Finance
2314 Kronprindsens Gade
St. Thomas, V.I. 00802

CONTRACTOR

BDO USA, LLP
Neena Masih, Partner
8401 Greensboro Drive, Suite 800
McLean, Virginia 22102

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22. LICENSURE

The Contractor covenants that it has:

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

23. 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.

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 claims to be false, fictitious or fraudulent. Contractor acknowledges that making such a false, fictitious or fraudulent claim is an offence under Virgin Islands law.

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.

26. OTHER PROVISIONS

Addenda I through IV to this Contract, which are attached hereto, are a part of this Contract and are incorporated herein by reference.

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

WITNESSES:

GOVERNMENT OF THE VIRGIN ISLANDS

5/10/18
Date

#17 Valdamier O. Collens
Commissioner of Finance

5/16/18
Date

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

BDO USA, LLP

4-30-18
Date

Neena Masih, Partner
BDO USA, LLP
(Corporate seal, if Contractor is a corporation)

APPROVED:

Date: 6-8-21-18

Kenneth E. Mapp
GOVERNOR OF THE VIRGIN ISLANDS

APPROVED AS TO LEGAL SUFFICIENCY

DEPARTMENT OF JUSTICE BY: Date 8/17/18
AAG

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 on behalf of the Department of Finance and BDO USA, LLP

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

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