

CONTRACT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made this 19th day of September, 2018, 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 EDUCATION of 1834 Kongens Gade, St. Thomas, U.S. Virgin Islands, 00802 (hereinafter referred to as "VIDE" or "Government") and **THE NATIONAL CENTER FOR THE IMPROVEMENT OF EDUCATIONAL ASSESSMENT, INC.** (hereinafter referred to as "Contractor" or "Center for Assessment") of 31 Mount Vernon St. Dover, New Hampshire 03820

WITNESSETH:

WHEREAS, the U.S. Department of Education funded Florida and the Islands Regional Comprehensive Center (FLICC) to provide technical assistance to the Virgin Islands Department of Education ("VIDE") to design a school and district accountability system that will identify and support low performing schools towards improving educational outcomes; and

WHEREAS, during the 2017-2018 School Year, FLICC's support to the VIDE focused on four areas: Employee Effectiveness System (EES), Strategic Performance Management (SPM) system, the Consolidated Grant Application (CGA) and the Every Student Succeeds Act (ESSA) Accountability State Plan; and

WHEREAS, FLICC selected and executed an agreement with the Center for Assessment to provide technical assistance to the VIDE to design the theory of action, guiding principles, and to select indicators for its accountability system; and


WHEREAS, the VIDE is in need of additional assistance for the continued development and completion of the accountability system to include expansion of the foundational components (i.e. theory of action, guiding principles and decision rules); and

WHEREAS, the VIDE must cover the cost for the additional services not provided under the agreement with FLICC in order to meet the projected goal of having an operational accountability system for the 2018-2019 school year;

WHEREAS, the Center for Assessment represents that it is willing and capable of assisting the VIDE in the continued development and completion of the schools accountability system which duties and responsibilities are more particularly described in Addendum I (Scope of Work) attached hereto; and

WHEREAS, the services of Center for Assessment is authorized pursuant to Title 31 V.I.C. § 239(8) which permits the Government to purchase or contract for services for which it is impracticable to obtain competition; and

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Contractor's Initials 

1. SERVICES

The Contractor will provide the services described in Addendum I (Scope of Work) attached hereto and made a part of this contract.

2. TERM

This Contract shall commence upon the execution of this Contract by the Governor of the U.S. Virgin Islands and shall terminate on December 1, 2018.

3. COMPENSATION

The Government, in consideration of the satisfactory performance of the services described in Addendum I (Scope of Work), agrees to pay Contractor the sum of **ONE HUNDRED FIFTEEN THOUSAND DOLLARS AND ZERO CENTS (\$115,000.00)** in accordance with the provisions set forth in Addendum II (Compensation) attached hereto and made a part of this contract.

4. TRAVEL EXPENSES

Inclusive of the compensation for services as specified in Paragraph 3 (Compensation) above, the Government agrees to pay documented transportation, subsistence, lodging and other travel expenses, while in travel status, for trips which have been authorized in writing, in advance, by the Government. These costs shall be advanced or reimbursed on the same basis as is applicable to non-contract employees of the Government, 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 maintain the professional standards applicable to its profession and to consultants doing business in the United States Virgin Islands.

7. DOCUMENTS, PRINTOUTS, ETC.

Any works and materials created, developed, and purchased under this contract (collectively the "Works and Materials") shall be owned by and remain the property of the Center for Assessment. The Center for Assessment agrees that all ideas, discoveries, inventions, works and materials, including but not limited to reports, studies, specifications, estimates, computations, systems, computer programs, methods, graphic representations, correspondence, and any other materials created, developed, conceived, reduced to practice or purchased under this Agreement or that result from the Services performed by or on behalf of the Center for Assessment (collectively the "Works and Materials" specified under the Scope of Work) shall be delivered to the VIDE upon termination or completion of the applicable work. The Center for Assessment grants to the VIDE, a co-exclusive, unlimited, royalty-free, world-wide license to use, reproduce, modify, prepare derivative versions of, and display the Works and Materials. No Works and Materials produced in whole or in part under this Agreement shall be the subject of an application for copyright or patent by or on behalf of the VIDE, or the Center for Assessment.

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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 Government liable to any such persons, firms associations, or corporations for the acts, omissions, liabilities, obligations and taxes of Contractor of whatsoever nature, including but not limited to unemployment insurance and social security taxes for Contractor, its servants, agents or independent contractors.

9. ASSIGNMENT

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

10. INDEMNIFICATION

Contractor agrees to indemnify, 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.

11. INDEPENDENT CONTRACTOR

The Contractor shall perform this Contract as an independent contractor and nothing herein contained shall be construed to be inconsistent with this relationship or status.

12. GOVERNING LAW

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

13. WAIVERS AND AMENDMENTS

No waiver, modification or amendment of any term condition or provision of this Contract shall be valid or of any force or effect unless made in writing, signed by the parties hereto or their duly authorized representatives, and specifying with particularity the nature and extent of such waiver, modification or amendment. Any such waiver, modification or amendment in any instance or instances shall in no event be construed to be a general waiver, modification or amendment of any of the terms, conditions or provisions of this Contract, but the same shall be strictly limited and restricted to the extent and occasion specified in such signed writing or writings.

14. ENTIRE AGREEMENT

This agreement constitutes the entire agreement of the parties relating to the subject matter addressed in this agreement. This agreement supersedes all prior communications, contracts, or agreements between the parties with respect to the subject matter addressed in this Agreement, whether written or oral.

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15. RIGHT TO WITHHOLD

If work under this Contract is not performed in accordance with the terms hereof, Government will have the right to withhold out of any payment due to Contractor, such sums as Government may deem ample to protect it against loss or to assure payment of claims arising therefrom, and, at its option, Government may apply such sums in such manner as Government may deem proper to secure itself or to satisfy such claims. Government will immediately notify the Contractor in writing in the event that it elects to exercise its right to withhold.

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

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 will 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.

18. PARTIAL TERMINATION

The performance of work under this Contract may be terminated by the Government, in part, whenever the Government shall deem such termination advisable. This partial termination shall be effected by delivering to the Contractor a Notice of Partial Termination specifying the extent to which the term and/or duties under this Contract are terminated and the date upon which such termination becomes effective. The Contractor shall be entitled to receive payment for services provided to the date of termination, including payment for the period of the thirty [30] day notice.

19. NON-DISCRIMINATION

No person shall be excluded from participating in, be denied the proceeds of or be subject to discrimination in the performance of this Contract on account of race, creed, color, sex, religion, disability or national origin.

20. CONFLICT OF INTEREST

(a) Contractor covenants that it has no interest and will not acquire any interest direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract.

(b) Contractor further covenants that it is:

(1) not a territorial officer or employee (i.e., the Governor, Lieutenant Governor, member of the Legislature, or any other elected territorial official; or an officer or employee of the legislative, executive or judicial branch of the Government or any agency, board, commission or independent instrumentality of the Government, whether compensated on a salary, fee or contractual basis); or

(2) a territorial officer or employee and, as such, has:

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(Signature)

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

21. EFFECTIVE DATE

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

22. NOTICE

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

GOVERNMENT

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

Sharon Ann McCollum, PhD.,
Commissioner
Department of Education
1834 Kongens Gade
St. Thomas, U.S. Virgin Islands 00802

CONTRACTOR

Christopher Domaleski
Associate Director
The National Center for the Improvement
of Educational Assessment, Inc.
31 Mount Vernon St.
Dover, NH 03820

23. LICENSURE

The Contractor covenants that it has:

- (a) obtained all of the applicable licenses or permits, permanent, temporary or otherwise as required by Title 27 of the Virgin Islands Code; and

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- (b) familiarized itself with the applicable provisions of Title 27 of the Virgin Islands Code pertaining to professions and occupations.

24. OTHER PROVISIONS

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

25. DEBARMENT CERTIFICATION

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

26. FALSE CLAIMS

Contractor warrants that it shall not, with respect to this Contract, make or present any claim upon or against the Government of the Virgin Islands, or any officer, department, board, commission, or other agency thereof, knowing such claims to be false, fictitious or fraudulent. Contractor acknowledges that making such a false, fictitious or fraudulent claim is an offence under Virgin Islands law.

27. NOTICE OF FEDERAL FUNDING

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

28. LIABILITY INSURANCE: The Contractor shall provide the Department with proof of General Liability Insurance coverage for the entire period of this Contract. The Contractor shall be insured under each policy in an amount of not less than **ONE HUNDRED THOUSAND DOLLARS AND ZERO CENTS (\$100,000.00)** for each occurrence. In the event that the Contractor's existing coverage will expire before the end of the term of this Contract, the Contractor shall provide proof of the renewal of coverage within ten (10) days after beginning of the new period of the insurance. The policies shall be maintained with insurer(s) and in a form satisfactory to the Department, and the Contractor shall submit a Certificate of Liability Insurance and Declaration/Endorsement pages naming the Department as an additional insured and certificate holder on the commercial General Liability Policy.

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(B)

29. BILLING PROCEDURES and PAYMENT: The Department will pay Contractor upon receipt of properly completed invoices that shall describe and document to the Department's satisfaction, and shall contain information, including but not limited to, the period of services covered by the invoice, description of the services performed, and the amount of fees in accordance with the compensation schedule in ADDENDUM II attached hereto and made a part of this Contract. Each invoice must be accompanied by applicable supporting documents, including but not limited to any reports/results due for the applicable invoice period.

Payment shall be considered timely if made by the Department within thirty (30) days after receipt of properly completed invoices, and verification that the services invoiced were provided in accordance with the Contract and all applicable federal and local laws and regulations, including all applicable policies, rules, and procedures pertaining to this Contract or the services provided hereunder. Payment shall be sent to the address designated by the Contractor. The Department may, at its sole discretion, withhold payments claimed by the Contractor for services rendered if the Contractor fails to satisfactorily comply with any term or condition of this Contract. No payments in advance or in anticipation of services or supplies to be provided under this Contract shall be made by the Department.

30. FORCE MAJEURE: Neither Party shall be liable to the other for any delays or failure to perform under this Contract, as a result of conditions reasonably beyond the Party's control including but not limited to war, terrorist acts, riot, strikes, fire, earthquakes, hurricanes, floods, or any act of God.

31. DEFAULT AND FAILURE TO PERFORM: In the event of any failure or refusal of the Contractor to perform its obligations under this Contract, except as defined in Paragraph 30, all costs, charges, and expenses that the Department suffers shall be a part of the damages to be paid by the Contractor to the Department, as a result of such failure or refusal to perform.

32. SEVERABILITY: If any of the provisions of this contract are determined to be invalid, such invalidity shall not affect or impair the validity of the other provisions, which shall be considered severable and shall remain in full force and effect.

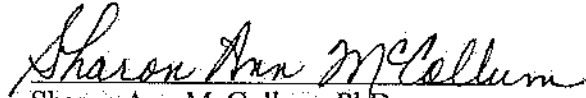
33. OTHER PROVISIONS: Addendum I, Addendum II, and the Contractor's eligibility documents are attached hereto, made a part of this Contract and are incorporated herein by reference.

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

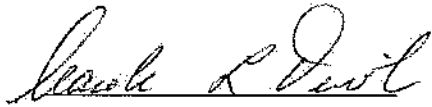
WITNESSES:


GOVERNMENT OF THE VIRGIN ISLANDS



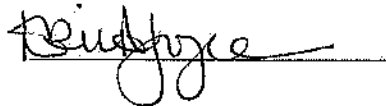

Sharon Ann McCollum, PhD.
Commissioner
Department of Education

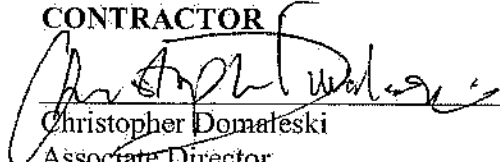
7/12/18
Date




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

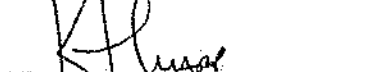
9/12/18
Date



CONTRACTOR

Christopher Domaleski
Associate Director
The National Center for the Improvement
of Educational Assessment, Inc.

6/19/18
Date

APPROVED:


Kenneth E. Mapp
GOVERNOR OF THE VIRGIN ISLANDS

Date 09-19-18

APPROVED AS TO LEGAL SUFFICIENCY

DEPARTMENT OF JUSTICE BY:


AAG

Date 9/14/18

PURCHASE ORDER NO.

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