

CONTRACT FOR PROFESSIONAL SERVICES

THIS CONTRACT made the 6th day of June, 2018, in the Territory of the U. S. Virgin Islands by and between the Government of the Virgin Islands, **DEPARTMENT OF PROPERTY AND PROCUREMENT**, on behalf of the **DEPARTMENT OF EDUCATION**, 1834 Kongens Gade, St. Thomas, Virgin Islands 00802-6746 (hereinafter referred to as "Government"), and **Otis Educational Systems, Inc., dba Otis Educational Systems** 3845 Powder Springs Road, Suite 202 Power Springs, Georgia 30127 (hereinafter referred to as "Contractor" or "OtisEd").

WITNESSETH:

WHEREAS, the Parties entered into a Contract for Professional Services, PC093DOE13 ("Contract"), executed June 5, 2013 as amended by Contract No. PO47DOET16 and renewed by PC067DOE15 and PO49DOET17 wherein the Contractor performed services to develop a State Longitudinal Data System ("SLDS"), referred to as the Virgin Islands Virtual Information System ("VIVIS") to provide usable, timely, accurate data that is accessible to other agencies of the Government ("GVI") to capture a continuum of critical data such as early warning indicators, to improve educational standards so that students successfully advance through their educational careers to become productive citizens; and

WHEREAS the Contractor built the SLDS to extract, transform, load and store data from participating government agencies using an exclusive web-based solution (iMart Technology System) to design and engineer the VIVIS data system;

WHEREAS, in 2015 the GVI launched and relies on Virgin Islands Virtual Information System ("VIVIS") to provide agencies and the public with usable, timely, accurate data;

WHEREAS, the Department is in need of a Contractor to provide specific iMart technology software solutions (iMart Analytics/Nimble) to continue to operate, update and host the State Longitudinal Data System, VIVIS and to supply technical assistance services;

WHEREAS, the Contractor, having sole propriety rights is in sole possession of the iMart technology system required to host, maintain and improve the State Longitudinal Data System; and

WHEREAS, the Contract No. PC093DOE13 expired on June 5, 2018, prior to the completion of Deliverable No. 8—*System Construction*, which included the extraction, transformation and loading (ETL) of the shared data from the Department of Finance; and

WHEREAS, as a result of the Contractor's propriety interest in the iMart technology system these services 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

WHEREAS, the Contractor represents that it has complied with all applicable local and federal laws and rules and regulations, as they apply to the implementation of this Contract and it is willing and capable of assisting the VIDE in the continued development of VIVIS which duties and responsibilities are more particularly described in Addendum I (Scope of Work) attached hereto; and

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 Work) attached hereto and made a part of this Contract.

2. TERM

This Contract shall commence on June 6, 2018, however shall be made effective upon the execution by the Governor of the Virgin Islands and shall terminate one (1) year after its commencement on June 5, 2019. The Government shall have the option to renew the Contract for four (4) additional one (1) year periods subject to the appropriation and availability of funds, and provided that the Government serve written notice of its decision to exercise said option(s) prior to the expiration of the Contract term.

3. COMPENSATION

The Government, in consideration of the satisfactory performance by the Contractor of the services described in Addendum I (Scope of Work), agrees to pay the Contractor the sum of **SIX HUNDRED FORTY-SIX THOUSAND, THREE HUNDRED FIFTY-FOUR DOLLARS AND SIXTY CENTS (\$646,354.60)**, in accordance with the provisions set forth in ADDENDUM II (Compensation) attached hereto and made a part of this Contract. Should the Government decide to exercise a renewal option as specified in Paragraph 2, the Contract cost for each additional one year period shall be the sum of **THREE HUNDRED SIXTY-ONE THOUSAND, FOUR HUNDRED FORTY DOLLARS AND ZERO CENTS (\$361,440.00)**.

4. TRAVEL EXPENSES

Inclusive of the compensation for services as specified in Paragraph 3 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 **FIFTEEN THOUSAND DOLLARS AND ZERO CENTS (\$15,000.00) for Year One** and FIVE THOUSAND DOLLARS (\$5,000.00) for each renewal year, subject to the appropriation and availability of funds.

5. RECORDS

The Contractor, when applicable, will present documented precise records of time and/or money expended under this Contract.

6. PROFESSIONAL STANDARDS

The Contractor agrees to maintain the professional standards applicable to its profession and to consultants doing business in the United States Virgin Islands.

7. DOCUMENTS, PRINTOUTS, ETC.

All documents, books, records, programs, printouts, and memoranda of every description derived therefrom 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 materials shall not be used by Contractor or by any other person or entity except upon the written permission of the Government.

8. LIABILITY OF OTHERS

Nothing in this Contract shall be construed to impose any liability upon the Government to persons, firms, associations, or corporations engaged by Contractor as servants, agents, or independent contractors, or in any other capacity whatsoever, or make Government liable to any such persons, firms, associations or corporations for the acts, omissions, liabilities, obligations and taxes of Contractor of whatsoever nature including, but not limited to, unemployment insurance and social security taxes for Contractor, its servants, agents or independent contractors.

9. ASSIGNMENT

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

10. INDEMNIFICATION

The 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 particularly the nature and extent of such waiver, modification or amendment. Any such waiver, modification or amendment in any instance or instances shall in no event be construed to be a general waiver, modification or amendment of any of the terms, conditions or provisions of this Contract, but the same shall be strictly limited and restricted to the extent and occasion specified in such signed writing or writings.

14. ENTIRE AGREEMENT

This Contract constitutes the entire agreement between the parties hereto, and all prior understanding or communications, written or oral, with respect to the Project, which is the subject matter of this Contract, are merged herein.

15. RIGHT TO WITHHOLD

If work under this Contract is not performed in accordance with the terms hereof, Government will have the right to withhold out of any payment due to Contractor, such sums as Government may deem ample to protect it against loss or to assure payment of claims arising 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 contests are not successful.

16. CONDITION PRECEDENT

This Contract is subject to the availability of funds appropriated for such purpose and to the approval of the Governor of the Virgin Islands.

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.

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 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 District or any agency, board, commission or independent instrumentality of the District, 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, 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; and
 - (iii) no financial interest in this 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 of the Virgin Islands.

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 & PROCUREMENT
Sub Base, Building No. 1
St. Thomas, Virgin Islands 00802

Sharon Ann McCollum, Ph.D. Commissioner
DEPARTMENT OF EDUCATION
1834 Kongens Gade
St. Thomas, Virgin Islands 00802-6746

CONTRACTOR: Timothy H. Nall
Chief Operating Officer and Treasurer
3845 Powder Springs Road, Suite 202
Power Springs, Georgia 30127

23. LICENSURE

The Contractor covenants that it has:

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

24. FALSE CLAIMS

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

25. NOTICE OF FEDERAL FUNDING

The Contractor acknowledges that this Contract is funded, in whole or in part, by federal funds. The 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. The Contractor acknowledges that making such a false, fictitious, or fraudulent claim is a federal offense.

26. DEBARMENT CERTIFICATION

By execution of this Contract, the Contractor certifies that it is eligible to receive contract awards using federally appropriated funds and that it has not been suspended or debarred from entering into contracts with any federal agency. The contractor shall include this provision in each of its subcontracts hereunder and shall furnish it 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 any subcontract and that the Contractor or subcontractor shall promptly reimburse the Government of the Virgin Islands for any progress payments heretofore made.

27. LIABILITY INSURANCE

The Contractor shall provide the Government with proof of commercial general liability insurance and professional liability coverage for the entire period of this Contract. The Contractor shall be insured under a general liability policy in the amount of not less than **One Million Dollars and Zero Cents (\$1,000,000.00)** per occurrence; and professional liability policy (Errors and Omissions) in the amount not less than **One Million Dollars (\$1,000,000.00)** per claim. In the event that the Contractor's existing coverage will expire before the end of the term of this Contract, 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 Government, and the Contractor shall submit a Certificate of Liability Insurance and Declaration/Endorsement pages naming the Government as an additional insured and certificate holder on the commercial general liability policy.

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, which may or may not include time logs, work schedules, reports, plans, and any other deliverables due for the invoice period.

Payment shall be considered timely if made by the Government within forty-five (45) 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 Government 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 Government.

29. 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.

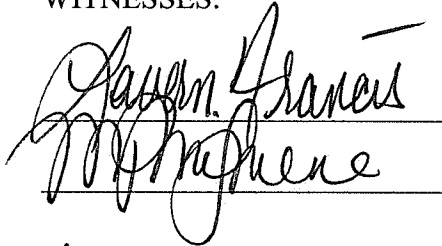
30. OTHER PROVISIONS

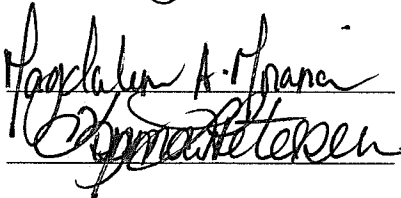
ADDENDUM I, ADDENDUM II, ADDENDUM III, and Contractor's eligibility documents attached hereto, are a part of this Contract and are incorporated herein by reference. In the event of a conflict between the terms and conditions of the general provisions of this Contract as set out in Sections 1 through 30 of this Contract, and the terms and provisions of any Addendum or Attachment to this Contract, the terms and conditions of said general provisions of the Contract shall prevail.

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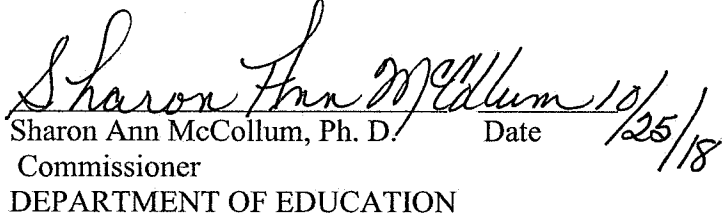
IN WITNESS WHEREOF, the parties intending to be legally bound have hereunto set their hands on the day and year first above written.

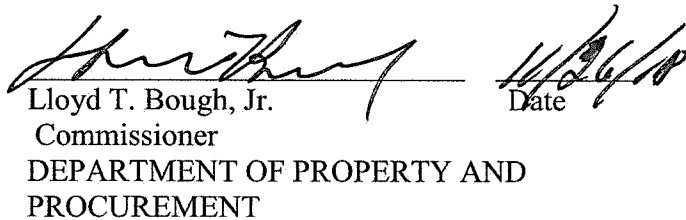
WITNESSES:


Dawn Francis
Commissioner


Hazelton A. Francis
Commissioner

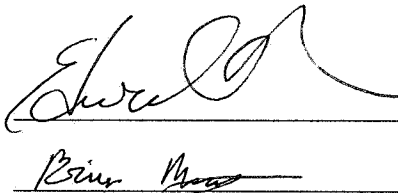
GOVERNMENT OF THE VIRGIN ISLANDS

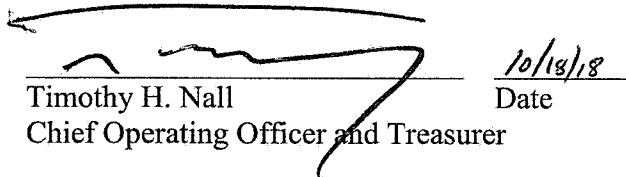

Sharon Ann McCollum, Ph. D. Date 10/25/18
Commissioner
DEPARTMENT OF EDUCATION


Lloyd T. Bough, Jr. Date 11/26/18
Commissioner
DEPARTMENT OF PROPERTY AND
PROCUREMENT

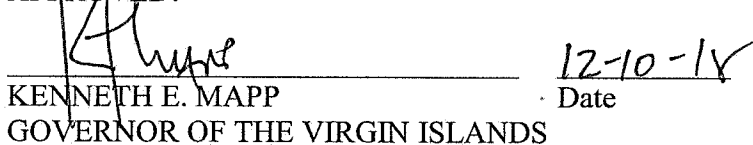
CONTRACTOR

Otis Educational Systems, Inc. d/b/a
Otis Educational Systems

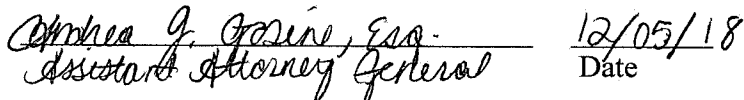

Brian


Timothy H. Nall Date 10/18/18
Chief Operating Officer and Treasurer

APPROVED:


KENNETH E. MAPP Date 12-10-18
GOVERNOR OF THE VIRGIN ISLANDS

APPROVED FOR LEGAL SUFFICIENCY
DEPARTMENT OF JUSTICE:


Cynthia J. Gosine, Esq. Date 12/05/18
Associate Attorney General

Account Code No. _____

Purchase Order No. _____