

## CONTRACT FOR PROFESSIONAL SERVICES

**THIS AGREEMENT** is made this 19 day February of 2020, 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 Office of Management and Budget (hereinafter referred to as "Government") and Moody's Analytics, Inc. (hereinafter referred to as "Contractor").

### WITNESSETH:

**WHEREAS**, the Government is in need of the services of a Contractor to build and develop econometric revenue forecasting models to project major tax revenues in the U.S. Virgin Islands, and deliver those models to staff at OMB with training on use of the models and the development of a five-year projection of revenue collections under baseline and alternative economic scenarios, which duties and responsibilities are more particularly described in Addendum I (Scope of Services) attached hereto; and

**WHEREAS**, the Contractor was selected in accordance with 31 V.I.C. § 239(a) (8); and

**WHEREAS**, the Contractor represents that it is willing and capable of providing such services; 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 AND EFFECTIVE DATE

This Contract shall be effective upon the date of execution of this Contract by the Commissioner of the Department of Property and Procurement and shall terminate one (1) year thereafter. The Government in its sole discretion, shall have the option to renew this Contract for a period of one (1) additional year subject to the same terms noted herein, by providing the Contractor with sixty (60) days written notice of the Government's election to renew.

### 3. COMPENSATION

The Government, in consideration of the satisfactory performance of the services described in Addendum I (Scope of Work), agrees to pay Contractor a sum not to exceed Ninety Thousand, Eight Hundred Dollars and Zero Cents (\$90,800), in accordance with the provisions set forth in Addendum II (Compensation) attached hereto and made a part of this contract.

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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. These expenses are for one (1) person for up to two (2) in-person presentations at dates and sites mutually agreed upon by Contractor and Government.

#### 5. RECORDS

The Contractor when applicable, will present documented precise records of time and/or money expended under this Contract upon thirty (30) days written notice.

#### 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.

7.1 Government will own all written reports, analyses, presentations, documents, papers and other tangible documents delivered by Contractor to Government in the performance of the Services (as hereinafter defined in Addendum III), exclusive of any Intellectual Property (as hereinafter defined in Addendum III) embodied therein. Government will also own the Intellectual Property in any Deliverables (as hereinafter defined in Addendum III) supplied by Contractor that are specifically identified in a Scope of Work as "Client Property" to be owned by Government (excluding any Moody's Materials, as defined below). Notwithstanding the foregoing, Government agrees that the Deliverables are for Government's own internal use and information, and Government must not distribute, disclose, sell or license any Deliverable to any third party. Contractor reserves all other rights in the Deliverables, and shall retain ownership of all Intellectual Property embodied in all Deliverables other than the Client Property.

7.2 Government shall obtain no rights in the Moody's Materials other than those limited, express license rights granted under the Contract. To the extent that any Moody's Materials are embodied in or incorporated into the Deliverables, and effective upon full and final payment by Government for the relevant Services or Deliverables as required by the Scope of Work, Contractor hereby grants to Government, subject to the terms and conditions of this Contract, a royalty-free, non-exclusive, nontransferable, non-sublicensable license to use such Moody's Materials (in object code only, as applicable) internally, solely as necessary for Government's internal use of the Deliverables. Except as otherwise set forth in the Scope of Work, the term of such license is perpetual, unless the Deliverables consist of software customizations to be used in connection with other products provided to Government by Contractor on a subscription or limited term basis, in which case the term of such license for such Moody's Materials will be for the same limited term or subscription period as such other products. Notwithstanding anything in the Contract to the

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contrary, Government must not (and must not permit, enable or facilitate any third party to) disclose, provide access to, sublicense, disassemble, decompile, reverse engineer, modify or create derivative works of any Moody's Materials, or transfer any Moody's Materials to any third party, in each case without the prior express written consent of Contractor.

7.3 Government acknowledges that Moody's provides consulting and development services to other clients and agrees that nothing in the Agreement will be deemed or construed to restrict or limit Moody's from conducting such business or developing for itself or others any materials that are competitive with Government or Government's products or services. Notwithstanding anything to the contrary set forth in this Contract: (i) Contractor shall have the right to retain a copy of each of the Deliverables for its records; (ii) as part of Contractor's provision of the Services hereunder, Contractor may utilize proprietary works of authorship, pre-existing or otherwise, including without limitation models and modeling techniques, data, scores, indices, computer programs, methodologies, scorecards, templates, flowcharts, architecture designs, tools, specifications, drawings, sketches, models, samples, records and documentation, as well as copyrights, trademarks, service marks, ideas, concepts, know-how, techniques, knowledge or data, and any derivatives thereof, which have been originated, developed or purchased by a Contractor, its affiliates or a third party retained by Contractor or its affiliate(s) (all of the foregoing, collectively, the "Moody's Materials"); (iii) the Moody's Materials shall include any improvements thereto or new works of authorship created during the provision of Services hereunder; and (iv) any and all of the Moody's Materials and Contractor's administrative communications, records, files and working papers relating to the Services shall remain the sole and exclusive property of Contractor.

## 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, gross receipt, excise, 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

10.1 Contractor shall (i) defend, at its expense, any third party action, suit or proceeding brought against Government, its permitted successors and assigns, and each of their respective officers, directors, employees, legal representatives, and agents, (together, the "Government Indemnified Parties") to the extent such action, suit or proceeding is based upon an allegation that the Deliverables as provided to Government by Contractor and as used by Government in compliance

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with the terms of this Contract infringe any valid patent or copyright, or misappropriate a trade secret of a third party, and (ii) will pay any damages, liabilities or costs (excluding consequential and exemplary damages) finally awarded against the Government Indemnified Parties pursuant to any such action, suit or proceeding, or agreed to by Contractor as settlement or compromise; provided however, that (A) Government shall have promptly provided Contractor with written notice of any relevant actions, suits, proceedings or claims or demands related thereto and reasonable cooperation, information, and assistance in connection therewith; and (B) Contractor shall have sole control and authority with respect to the defense, settlement, or compromise thereof, provided that Government's reasonable consent to any such settlement or compromise shall be required unless it includes a full release of liability for all the Government Indemnified Parties.

10.2 In the event that any Deliverable becomes, or in Contractor opinion is likely to become, the subject of a claimed intellectual property infringement or other claim, Contractor may, at its option, (i) procure for Government the right to continue using the affected Deliverable; or (ii) replace or modify such Deliverable to be non-infringing, without incurring a material diminution in performance or function; or (iii) if neither of the foregoing is, in Contractor judgment, available on reasonably commercial terms, Contractor may terminate the grant to Government of rights in the affected Deliverable upon notice to Government, in which case Government shall cease use of and return all copies of the Deliverables and related materials, and Contractor shall refund to Government the portion of the fees paid by Government that are attributable to the returned Deliverable.

10.3 In no event will Contractor have any liability or indemnification obligation under this Contract for any claim or action to the extent the claim or action is caused by, or results from: (i) the combination or use of Deliverables with non-Contractor software, services or data, if such claim or action would have been avoided by the non-combined or exclusive use of the Deliverables, (ii) modification of the Deliverables by anyone other than Contractor if such claim or action would have been avoided by use of the unmodified Deliverables, (iii) Government continuing the allegedly infringing activity after notification or after receiving modifications that would have avoided the alleged infringement, (iv) use of the Deliverables in a manner that is not authorized by this Contract; or (v) Government's breach of Section 3.2 of Addendum III.

10.4 Except to the extent that Contractor is obligated to indemnify the Government Indemnified Parties under Section 10.1, Government shall indemnify, defend, and hold harmless Contractor, its successors and assigns, and each of their respective officers, directors, employees, shareholders, legal representatives, and agents (the "Contractor Indemnified Parties"), from and against any damages, liabilities, costs and expenses (including reasonable attorneys' and professionals' fees and court costs) arising out of any third party claims based on Government's use or dissemination of the Services or Deliverables to the extent allowable by law; provided however, that (i) Contractor shall have promptly provided Government with written notice thereof and reasonable cooperation, information, and assistance in connection therewith; and (ii) Government shall have sole control and authority with respect to the defense, settlement, or compromise thereof; provided that Contractor reasonable consent to any such settlement or compromise shall be required unless it includes a full release of liability for all the Contractor Indemnified Parties. Contractor shall be entitled, at its own expense, to participate in the defense of any claim subject to this Section 10.4

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through counsel of its own choosing, and Government shall provide Contractor with reasonable cooperation and assistance in such defense.

10.5 The defense and indemnification described in this Section 10 and Contractor obligations under the provisions of this Section 10 are Contractor's exclusive liability and the Government Indemnified Parties' exclusive remedy for claims of an intellectual property infringement or other third party claim as set forth above based upon or related to any materials provided by Contractor.

#### **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.

#### **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.

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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 Commissioner of the Department of Property and Procurement.

#### 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 by providing thirty (30) days written notice to the Contractor. 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) days' 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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- (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; and
- (iii) no financial interest in the Contract as that term is defined in section 1101(1) of said Code chapter.

## 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

Anthony D. Thomas  
Commissioner  
Department of Property and Procurement  
8201 Sub Base, Suite 4  
St. Thomas Virgin Islands 00802

Jenifer O'Neal  
Director  
Office of Management and Budget  
5041 Norre Gade 2<sup>nd</sup> Floor  
St. Thomas, VI 00802

### CONTRACTOR

Moody's Analytics, Inc.  
7 World Trade Center  
250 Greenwich Street  
New York, NY 10007 USA  
(attention: General Counsel, Moody's Analytics)

## 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. OTHER PROVISIONS

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

#### **24. 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.

#### **25. 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.

#### **26. INSURANCE**

Contractor shall maintain the following insurance coverages during the term of this Contract

- (a) **COMMERCIAL GENERAL LIABILITY:** Commercial general liability insurance, in a form acceptable to the Government, on a "per occurrence" basis with a minimum limit of not less than two million dollars (\$2,000,000.00) for any one person per occurrence for death or personal injury and one million dollars (\$1,000,000.00) for any one occurrence for property damage. The Insurance policy shall include the Government of the Virgin Islands as an additional insured via a blanket additional insured endorsement. The certificate of insurance issued as evidence of coverage will include Government of the Virgin Islands as the certificate holder.
  
- (b) **PROFESSIONAL LIABILITY:** Professional liability insurance, in a form acceptable to the Government, which covers the services being performed under this Contract, with policy limits of not less than one million dollars (\$1,000,000.00) per occurrence. The certificate of insurance issued as evidence of coverage will include Government of the Virgin Islands as the certificate holder.

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