

**CONTRACT FOR PROFESSIONAL SERVICES**

**THIS AGREEMENT** is made this 4th day of November, 2019, 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 Human Services (hereinafter referred to as "GOVERNMENT") and **Mercer Health & Benefits, LLC** (hereinafter referred to as "Contractor").

**WITNESSETH:**

**WHEREAS**, the GOVERNMENT is in need of the services of a Contractor to provide ongoing technical assistance to optimize Medicaid and the Children's Health Insurance Program which duties and responsibilities are more particularly described in Addendum I (Scope of Services) attached hereto; and

**WHEREAS**, Contractor performed work under Contract No. P015DHSC17, which expired on November 3, 2019, and Contractor has continued to perform uninterrupted service under 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 Services) attached hereto and made a part of this contract.

**2. TERM AND EFFECTIVE DATE**

Upon the execution of this Contract by the Governor of the U.S. Virgin Islands the Contract shall be effective for a Term beginning from **November 4, 2019 to November 3, 2020**. The GOVERNMENT in its sole discretion, shall have the option to renew this Contract for a period of one additional one-year period 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 Services), agrees to pay Contractor the sum of **One Million Three Hundred Thousand and 00/100 Dollars (\$1,300,000.00)** 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 Seventy-Five Thousand Seventy-Five and 00/100 Dollars (\$75,075.00).

#### **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, instructional materials, programs, printouts and memoranda of every description derived therefrom specifically and exclusively prepared for the GOVERNMENT by Contractor and pertaining to this Contract shall become the property of the GOVERNMENT and shall be turned over to it 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.

Nothing herein shall entitle the GOVERNMENT to pre-existing Contractor's materials. Notwithstanding anything to the contrary in the Agreement, Contractor's materials shall retain all patent, copyright and other intellectual property rights in the methodologies, methods of analysis, ideas, concepts, know-how, models, tools, techniques, skills, knowledge and experience (collectively, "intellectual property") owned or possessed by Contractor before the commencement of, or acquired by Contractor during or after, the performance of the services. Unless Contractor provides its prior written consent, GOVERNMENT will not use, or disclose to any third party, Contractor's advice or Intellectual Property other than as mutually contemplated by the parties when Contractor first was retained to provide such advice or intellectual property as required by law.

#### **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

Contractor agrees to indemnify, defend and hold harmless Government from and against any and all loss, damage, liability, claims, demands, detriments, costs, charges and expenses (including reasonable 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.

Except as expressly provided in other sections of this Agreement, Contractor makes no express or implied representations or warranties with respect to the services, deliverables or intellectual property or their condition, merchantability, fitness for any particular purpose or use by the GOVERNMENT. Notwithstanding any other provision of this Agreement, Contractor shall not be liable for any: (i) special, indirect, incidental, punitive, or consequential damages, including loss of profits, arising from or related to the breach of this Agreement or the operation or use of the system or any services rendered by Contractor, including such damages, without limitation, as damages arising from loss of data or programming, loss of revenue or profits, failure to realize savings or other benefits, damage to equipment, and claims against the GOVERNMENT by any third person, even if Contractor has been advised of the possibility of such damages; or (ii) damages (regardless of their nature) for any delay or failure by Contractor to perform its obligation under this Agreement due to any cause beyond its reasonable control. Notwithstanding any other provision of this Agreement, the aggregate liability of Contractor, its affiliates and any officer, Director or any employee of Contractor, and its affiliates (Contractor Parties) under this Agreement to GOVERNMENT and any official, Director or employee of GOVERNMENT for any and all losses arising out of or relating to the provision of any services under this Agreement by any of the Contractor Parties, whether under contract law, tort law or otherwise, shall not be greater the \$4,000,000.00 Dollars. Contractor shall have no liability for the acts or omissions of any third party (other than its subcontractors). For purposes of this Agreement "Loss" means damages, claims, liabilities, losses, awards, judgments, penalties, third party claims, interest, costs and expenses, including reasonable attorneys' fees whether arising under any legal theory including, but not limited to claims sounding in tort (such as in negligence, misrepresentation or otherwise), contract (whether express or implied), by statute, or otherwise, claims seeking any kind of damages and claims seeking to apply any standard of liability such as negligence, statutory violation, or otherwise. For the avoidance of doubt, multiple claims arising out of or based upon the same act, error or omission, or series of continuous, interrelated or repeated acts, errors or omissions shall be considered a single loss.

## **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.

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 ninety (90) 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 ninety (90) 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 ninety (90) 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:
    - (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

Kimberley Causey-Gomez  
Commissioner  
Department of Human Services  
3011 Estate Golden Rock  
Christiansted, VI 00820

**CONTRACTOR**  
Bill Lasowski  
Principal  
Mercer Health & Benefits, LLC  
Washington Square, 1050 Connecticut Ave. Suite 700  
Washington, DC 20036-5386 USA

**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**

Addenda I and II 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. 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.

#### **27. INSURANCE**

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

- (a) **COMMERCIAL GENERAL LIABILITY:** Commercial general liability insurance, on an ACORD form on a "per occurrence" basis with a minimum limit of not less than two million dollars (\$2,000,000.00) for any one occurrence and four million dollars (\$4,000,000.00) aggregate for death or personal injury, and property damage. Insurance policy(ies) shall include the GOVERNMENT of the Virgin Islands as the certificate holder and additional insured via an endorsement with respect to its vicarious liability arising from Contractor's provision of services pursuant to this Agreement. Insurance coverage will be issued by insurance companies authorized by applicable law to conduct business in the territory of the United States Virgin Islands.
- (b) **PROFESSIONAL LIABILITY:** Professional liability insurance which covers the services being performed under this Contract, with policy limits of not less than two million dollars (\$2,000,000.00) per claim. The GOVERNMENT shall be listed on the certificate of insurance as a certificate holder.

- (c) **WORKERS' COMPENSATION:** Contractor shall supply current coverage under the Government Insurance Fund or other form of coverage in accordance with applicable Statutory, federal or other legal requirements.

## 28. FORCE MAJEURE

Neither party to this contract shall be responsible for delays or failures in performance resulting from acts beyond the control of such party. Such acts shall include, but not be limited to, acts of God, strikes, riots, lockouts, and acts of war, epidemics, fire, earthquakes, hurricanes or other disasters.

## 29. CONFIDENTIALITY

- (a) Each party to this Agreement (the "Disclosing Party") is likely to disclose information to the other party from time to time in the course of the provision of the Services, which is marked or designated as confidential or proprietary at or prior to disclosure or which would appear to a reasonably prudent person to be confidential and/or proprietary in nature ("Confidential Information"). For purposes of clarification, "Confidential Information" shall include, without limitation, all information regarding the pricing of Services to be provided by Contractor and its affiliates and the Intellectual Property. The party receiving the Confidential Information (the "Receiving Party") will not divulge or communicate it to any person other than in connection with the provision of the Services or as otherwise provided for in this Agreement. This restriction does not apply to information which (i) the Receiving Party must by law or legal process disclose, (ii) is either already in the public domain or enters the public domain through no fault of the Receiving Party, (iii) is available to the Receiving Party from a third party who, to the Receiving Party's knowledge, is not under any non-disclosure obligation to the Disclosing party, or (iv) is independently developed by the Receiving Party without reference to any Confidential Information of the Disclosing Party.
- (b) GOVERNMENT also agrees that, notwithstanding any other provision in this Agreement, Contractor may include the identities of those persons who are identified by the GOVERNMENT as contact persons for GOVERNMENT and information about the terms of this Agreement, the Services and the Compensation of Contractor's internal client management financial and conflict checking databases.

## 30. PROVISION OF INFORMATION AND ASSISTANCE

The GOVERNMENT will provide all necessary and reasonably requested information, direction and cooperation to enable Contractor to provide the services, and any direction (whether verbal or written) shall be effective if contained expressly in the Scope of Services or if received (whether verbally or in writing) from a person known to Contractor to be authorized to act on the Government's behalf. Contractor shall be permitted to use all information and data supplied by or



*PSC Mercer Health & Benefits, LLC  
GVI Department of Human Services*

on behalf of the GOVERNMENT without having independently verified the accuracy or completeness of it except to the extent required by generally accepted professional standards and practices. If any documentation or information supplied to Contractor at any time is incomplete, inaccurate or not up-to-date, or its provision is unreasonably delayed, then Contractor shall not be responsible for any delays or liability arising therefrom. In the event that it is necessary or appropriate to perform any additional work as a result, Contractor will obtain the Government's prior approval before commencing such additional work; provided that if the Government does not provide such prior approval, Contractor shall not be obligated to perform such additional work and Contractor shall have no liability for the Services to the extent any loss arises from or is related to the failure to perform such additional work.

Contract No. P101DHST20

Contractor's Initials: BL

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

**WITNESSES: GOVERNMENT OF THE VIRGIN ISLANDS**

Julia Green

Kimberly Causey-Gomez  
Kimberley Causey-Gomez, Commissioner  
Department of Human Services

07.10.2020  
Date

Reginald A. Thomas

Anthony D. Thomas  
Anthony D. Thomas, Commissioner  
Department of Property and Procurement

7/19/2020  
Date

**CONTRACTOR**

Melina Page

Bill Lasowski  
Bill Lasowski, Principal  
Mercer Health & Benefits, LLC

07-06-2020  
Date

(Corporate seal, if Contractor is a corporation)

**APPROVED:**

[Signature]

Date: 9-21-20

**Honorable Albert Bryan Jr.**  
GOVERNOR OF THE VIRGIN ISLANDS

APPROVED AS TO LEGAL SUFFICIENCY  
DEPARTMENT OF JUSTICE BY: Paul J. McDonald

7/23/2020

PURCHASE ORDER NO.

Contract No. P101DHST20

Contractor's Initials: BL