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## CONTRACT FOR PROFESSIONAL SERVICES

**THIS AGREEMENT** is made this 28th day of May, 2021, 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 Finance (collectively hereinafter referred to as "Government") and Buck Global, LLC (hereinafter referred to as "Contractor"). Government and Contractor, each, a "Party" and together the "Parties".

### WITNESSETH:

**WHEREAS**, the Government is in need of the services of a Contractor to provide actuarial valuation of liabilities for post-employment benefits (other than pension), which duties and responsibilities are more particularly described in Addendum I (Scope of Services) (itself sometimes referred to herein as "Addendum I (Scope of Services)," "Addendum I," or "SOW"), attached hereto; and

**WHEREAS**, the Contractor was selected in accordance with 31 VIC 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

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 Seven Hundred Thirty (730) days thereafter (the "Initial Term"). The Government in its sole discretion, shall have the option to renew this Contract for a period of one (1) additional year thereafter (the "Renewal Term"), subject to the same terms noted herein, by providing the Contractor with sixty (60) days written notice of the Government's election to renew.



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### 3. COMPENSATION

The Government, in consideration of the satisfactory performance of the services described in Addendum I (Scope of Services), agrees to pay Contractor a sum not to exceed Fifty-Four Thousand Five Hundred and 00/100 Dollars (\$54,500.00) 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.

### 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. & PROPRIETARY RIGHTS

7.1 Other than as provided in this Section 7, all documents, books, records, instructional materials, programs, printouts and memoranda of every description derived from the Services provided under this Contract shall become the property of the Government and shall be turned over to it at the termination of this Contract (the "Deliverables"). 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.

7.2 Contractor Knowledge Capital. "Contractor Knowledge Capital" means materials or tools existing prior to commencement of Contractor's performance of the relevant Services, that are proprietary to Contractor or to third parties, and all associated intellectual property rights and any enhancements and modifications to such materials, whether or not such enhancements and modifications are developed as part of the Services. Government will have no rights in any Contractor Knowledge Capital other than: (i) to the extent to Contractor Knowledge Capital is incorporated into a Deliverable, to use it as part of the Deliverable for purposes of Government's internal business only, or (ii) in the case of Contractor Knowledge Capital owned by third parties, pursuant to terms acceptable to the

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applicable third party. If any Contractor Knowledge Capital is made available to Government under 7.1 above, it will be made available in an "AS IS" condition and without express or implied warranties of any kind; and any Contractor Knowledge Capital made available under (ii) above will be subject only to applicable terms of the applicable license. Contractor Knowledge Capital is Confidential Information of Contractor for purposes of Section 8 [CONFIDENTIALITY].

**7.3 Residuals.** In no event will Contractor be precluded from developing for itself, or for others, anything, whether in tangible or non-tangible form, which is competitive with, or similar to, the Deliverables. In addition, Contractor will be free to use its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques that are acquired or used in the course of providing the Services.

**7.4 Use of Work.** All Deliverables and Contractor work product shall be used only for the specific purposes for which it is intended as shown in the Deliverable itself. The actuarial valuation shall be used for no purposes other than budgeting and determination of contributions to Government OPEB plan. Without limitation of the above, Government shall not, without Contractor's prior written consent, use any Deliverable or Contractor work product for the purpose of any financing or sale transaction, including, but not limited to, the following: (i) use in any debt covenant; (ii) the determination of the sale price associated with the sale of assets or stock of Government or any subsidiary of Government; (iii) the amount of a transfer of assets from one OPEB plan to another.

## **8. CONFIDENTIALITY**

**8.1 Use and Protection.** During Contractor's performance of the Services, or discussions between Contractor and Government regarding potential Services under this Agreement, each Party may be given access Confidential Information belonging to the other Party. "Confidential Information" means information that relates to the other Party's past, present, and future research, development, business activities, products, services, and technical knowledge, which is identified by the discloser as confidential. A Party may use or make copies of the Confidential Information of the other Party only to the extent reasonably necessary for purposes of this Agreement, an addendum, or for the Parties' discussions regarding potential Services under this Agreement. Each Party will use at the least the same degree of care to safeguard and prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure or publication of its own information of a similar nature, and in any event, no less than reasonable care. Each Party will restrict access in the Confidential Information to those of its personnel (including such personnel employed by its Affiliates) and subcontractors engaged in the performance, management, receipt or use of the Services under this Agreement, provided that such Parties are bound by obligations of confidentiality substantially similar to the terms of this Agreement.



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**8.2 Return.** Each Party will return or destroy the other Party's Confidential Information in its possession upon request by the other Party, unless otherwise allowed to retain such Confidential Information. Each Party may retain copies of the other Party's Confidential Information required for compliance with its recordkeeping or quality assurance requirements (subject to the terms of this Agreement).

**8.3 Exceptions.** Nothing in this Agreement will prohibit or limit a Party's use of information (including, but not limited to, ideas, concepts, know-how, techniques, and methodologies) (a) previously known to it without an obligation not to disclose such information, (b) independently developed by or for it without use of the information, (c) acquired by it from a third party which was not, to the receiver's knowledge, under an obligation not to disclose such information, or (d) which is or becomes publicly available through no breach of this Agreement.

**8.4 Compelled Disclosure.** If the receiver receives a subpoena or other validly issued administrative or judicial process requesting Confidential Information of the other Party, it will promptly notify the other Party of such receipt and tender to the other Party the defense of such subpoena or process. If requested by the other Party, the receiver will cooperate (at the expense of the other Party) in opposing such subpoena or process. Unless the subpoena or process is timely limited, quashed or extended, the receiver will then be entitled to comply with such request to the extent permitted by law.

## **9. 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.

## **10. ASSIGNMENT**

Other than in the event of a change in control, the Contractor shall not subcontract or assign any part of the services under this Contract without the prior written consent of the Government. Notwithstanding the foregoing, Contractor shall notify the Government of any events resulting in a change in control so that the appropriate amendment may be processed.





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## 11. INDEMNIFICATION LIMITATION OF LIABILITY

11.1 Indemnification. Contractor agrees to indemnify, defend and hold harmless Government from and against any and all third-party losses, damage, liability, claims, demands, detriments, costs, charges and expenses (including attorney's fees) and causes of action of whatsoever character arising out of or in any way connected to the negligence or willful misconduct of Contractor in performing the services under this Contract.

11.2 Limitation of Liability. Notwithstanding the foregoing, the sole liability of Contractor and any of its Affiliates (whether in contract, tort, negligence, strict liability in tort, by statute or otherwise) for any and all claims in any manner related to this Contract will be the payment of direct damages, not to exceed (in the aggregate) the fees received by Contractor with respect to the services or deliverables involved under the applicable SOW. In no event will either Party be liable for any consequential, incidental, indirect, special or punitive damage, loss or expenses (including, but not limited to, business interruption, reputational damages, lost business, lost profits or lost savings) even if it has been advised of their possible existence.

11.3 Overpayments. In the event that excessive benefit amounts are paid to one or more Participants as a result of an error by Contractor, and Contractor is determined to be liable for all or part of such excess, or if Contractor reimburses Government for such excess amount, Contractor shall have a subrogated right to any claim that may otherwise be held by Government or Government OPEB plan for repayment of such excess benefits from such Participants. Government shall cooperate with Contractor's right to collect such repayment from such Participants.

11.4 Errors. Contractor shall not be liable to Government for any errors that are entirely or partially the result of Contractor's use of incorrect or incomplete data provided to Contractor by Government or, at Government's direction, by any employee, contractor or agent of Government, regardless of whether Contractor could have or should have noticed that such data was incomplete or erroneous. Government acknowledge that all actuarial calculations are estimates and that methods of estimation are appropriate with respect to actuarial valuations. Differing methods of estimation inherently produce results that are slightly different from the results of more precise calculations. Government may not reasonably rely on any actuarial valuation being totally precise. Accordingly, the following shall not be considered errors giving rise to damages: (i) any result in an actuarial valuation that differs from a more precise calculation by an amount less than 1% of the actuarial accrued liability of the plan or program to which the valuation relates, or (ii) if greater, 1% of the assets held by, or in trust for such plan or program.



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## **12. 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.

## **13. 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.

## **14. 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.

## **15. 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.

## **16. 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.

#### **17. 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.

#### **18. 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.

#### **19. 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.

#### **20. 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.

#### **21. 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:

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- (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.

## 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

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

Clarina Modeste Elliott  
Acting Commissioner  
Department of Finance  
2314 Kronprindsens Gade  
St. Thomas, V.I. 00802

### CONTRACTOR

Barry J. Goldberg  
Buck Global, LLC  
420 Lexington Ave., Suite 2200  
New York, New York 10170





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### 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. OTHER PROVISIONS

Addenda I, II and III 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.

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## 28. 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 one million dollars (\$1,000,000.00) 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. Insurance policy(ies) shall name the Government of the Virgin Islands as the certificate holder and additional insured via an endorsement.
- (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 claim. The Government shall be listed thereon as a certificate holder.
- (c.) **WORKERS' COMPENSATION:** Contractor shall supply current coverage under the Government Insurance Fund or other form of coverage.

## 29. FACSIMILE, ELECTRONIC & DIGITAL SIGNATURES

A facsimile, electronic or digital signature on this Contract shall be deemed an original and binding upon the Parties hereto.

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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

[Signature]

[Signature]

5/7/2021  
Date

Clarina Modeste Elliott, Acting  
Commissioner Department of Finance

[Signature]

[Signature]

5/28/2021  
Date

Anthony D. Thomas, Commissioner  
Department of Property and Procurement

[Signature]

CONTRACTOR

[Signature]

[Signature]  
Barry J. Goldberg, Principal  
Buck Global, LLC

4/27/2021  
Date

(Corporate seal if Contractor is a corporation)

APPROVED AS TO LEGAL SUFFICIENCY  
DEPARTMENT OF JUSTICE BY:

[Signature]

5/27/2021  
Date

PURCHASE ORDER NO. \_\_\_\_\_