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CONTRACT FOR PROFESSIONAL SERVICES

THIS AGREEMENT ("Contract") is made this 21st day of November, 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 (hereinafter referred to as "Government") and BDO USA, LLP (hereinafter referred to as "Contractor").

WITNESSETH:

WHEREAS, the Government is in need of the services of a Contractor to provide single Audit and Basic Financial Statement audits for the Government for fiscal years September 30, 2020, September 30, 2021, and September 30, 2022, which duties and responsibilities are more particularly described in Addendum I (Scope of Service) attached hereto; and

WHEREAS, the Government solicited the services under RFP No. 053-T-2020(P); 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 Addenda I, III and IV attached hereto and made a part of this Contract.

2. TERM AND EFFECTIVE DATE

The terms of this Contract shall be from September 2, 2021, to April 30, 2024. Upon the execution of this Contract by the Governor of the U.S. Virgin Islands. This Contract shall become effective for the Terms set out herein. 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 Addenda I, III, and IV, agrees to pay Contractor a sum not to exceed Five Million Nine Hundred Ninety-Six Thousand Dollars (\$5,996,000.00) in accordance with the provisions set forth in Addendum II (Compensation) attached hereto and made a part of this contract.

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Contract No. P016DOFT22
RFP-053-T-2020(P)

Contractor's Initials: JBH



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Notwithstanding the foregoing or anything in the Contract to the contrary, Addendum II does not reflect the compensation due to Contractor for Contractor's additional services (if any) for the audits for fiscal years September 30, 2020, September 30, 2021, and September 30, 2022 as may be required by the effects (i) any future standards promulgated by the Government Accounting Standards Board and/or other professional bodies, and (ii) any required procedures that may be necessary as a result of the extraordinary and unusual circumstances which have transpired as a result of the hurricanes. Contractor shall not render any additional services as contemplated herein without the Government's prior written consent and the execution by the Parties of a mutually agreeable amendment to this Contract and/or the applicable addendum. Contractor's invoices for fees for such additional services (if any) will be rendered to the Government in accordance with the invoicing schedules presented in Addendum II here

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 consultants doing business in the United States Virgin Islands

7. DOCUMENTS, PRINTOUTS, ETC.

All final deliverables provided by Contractor derived from documents, books, records, instrumental materials, programs, printouts, and memoranda 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 final deliverables shall not be used by Contractor or by any other person or entity except upon the written permission of the Government. Notwithstanding anything herein to the contrary, the Parties agree that Contractor owns or otherwise has rights in methods, procedures, processes, know-how, techniques, models, templates, tools, and work papers, including any pre-existing materials and other creative and technical content (collectively, the "Contractor Materials") which shall be the sole and exclusive property of Contractor; and all rights



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related thereto, including without limitation any intellectual property rights, are hereby exclusively reserved by Contractor.

The working papers prepared in conjunction with the services set forth in this Contract are the property of Contractor, constitute confidential information, and will be retained by Contractor in accordance with Contractor's policies and procedures. However, pursuant to authority given by law or regulation, Contractor may be requested to make certain working papers available to the Government's oversight agency, or its designee, a federal agency providing direct or indirect funding, or the U.S. Government Accountability Office for purposes of a quality review of the audit, to resolve audit findings, or to carry out oversight responsibilities. Contractor will notify the Government of any such request. If requested, access to such working papers will be provided under the supervision of Contractor personnel and at a location designated by Contractor. Furthermore, upon request, Contractor may provide photocopies of selected working papers to the aforementioned parties. These parties may intend or decide to distribute the photocopies of information contained therein to others, including other governmental agencies. If a working paper access request is received from a regulator, Contractor will ask the Government and the regulator to acknowledge, in writing, the conditions under which Contractor will provide such access; and the Government agrees to provide such written acknowledgment.

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 the 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

Contractor shall have the right to assign its rights to perform a portion of the services described above to any of its independent BDO Alliance USA members, member firms of the international BDO network, or unaffiliated third-party contractors (a "Permitted Assignee"). If such assignment is made, the Government agrees that, unless it enters into an engagement letter directly with the Permitted Assignee, all of the applicable terms and conditions of this Agreement shall apply to the Permitted Assignee. Contractor agrees that Contractor shall not permit the Permitted Assignee to perform any work until it agrees to be bound by the applicable terms and conditions of this Agreement. Contractor further agrees that Contractor will remain primarily responsible for the services described above, unless Contractor and the Government agree otherwise, and Contractor will supervise the work of the Permitted Assignee to ensure that all such services are performed in



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accordance with this Agreement. From time to time, and depending on the circumstances, Permitted Assignees located in other countries may participate in the services Contractor provides to the Government. In some cases, Contractor may transfer information to or from the United States or another country, at all times in compliance with applicable law relating to such transfer. Although applicable privacy laws may vary depending on the jurisdiction, and may provide less or different protection than those of the Government's home country, Contractor requires that all Permitted Assignees agree to maintain the confidentiality of the Government's information and observe Contractor's policies concerning any confidential client information that Contractor provides to them.

10. INDEMNIFICATION

To the fullest extent permitted by applicable law, Contractor shall defend, indemnify and hold harmless the Government and its respective officers, directors, employees, successors and assigns from and against any and all third party claims, demands, losses, expenses, damages, liabilities, fines, and penalties (each a "Claim") arising out of or relating to: (a) Contractor's performance of (or failure to perform) under this Contract; (b) a breach of this Contract by Contractor or any of its affiliates, subcontractors, agents or employees; (c) any negligence or willful misconduct by Contractor or its affiliates, subcontractors, agents or employees; (d) a violation of applicable law by Contractor; or (e) any determination that a relationship, other than that of independent contractor, exists between the Government and/or Agent and Contractor and/or its employees or any other employment-based complaint or grievance in each case, unless caused by the gross negligence, intentional misconduct or knowing misrepresentations of the Government, including but not limited to any claims that the work product under this Contract infringes a patent, copyright, trade secret or other proprietary right of a third party and arising from any other cause, except the sole negligence of the 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. LEGAL PROCESS

If the Contractor is requested or authorized by the Government or is otherwise required by government regulation, subpoena, or other legal process to produce the Contractor's documents or the Contractor's personnel as witnesses with respect to the Contractor's engagements for the Government, the Government will, so long as the Contractor is not a party to the proceeding in which the information is sought, reimburse the Contractor for the Contractor's professional time and expenses incurred in responding to such requests.



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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 and any addenda hereto (including, without limitation, Addenda I, II, III, and IV to this Contract) constitute 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.

No such withholding or application shall be made by Government if and while the Contractor gives satisfactory assurance to Government that such claims will be paid by the 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 the approval of the Governor.



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18. 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. Notwithstanding the foregoing, if a party reasonably determines, based on the advice of counsel, that it is unable to perform its obligations described in this Contract in accordance with the applicable professional standards, laws, or regulations, such party shall be permitted to terminate this Contract with five (5) business days written notice to the other party specifying the date of termination. The Contractor shall be entitled to receive payment for services provided to 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 sixty (60) 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 terms 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 sixty (60) 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:
 - (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;



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- (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 Sub Base, Suite 4
St. Thomas Virgin Islands 00802

Bosede Bruce
Commissioner Designee
Department of Finance
2314 Kronprindsens Gade
St. Thomas, Virgin Islands

CONTRACTOR

BDO USA, LLP
Neena Masih, Partner
12505 Park Potomac Ave., Suite 700
Potomac, MD 20854

23. LICENSURE

The Contractor covenants that it has:

- (a) obtained all 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, III, and IV attached hereto are a part of this Contract and are incorporated herein by reference.



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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. 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.



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- (c) **WORKERS' COMPENSATION:** Contractor shall supply current coverage under the Government Insurance Fund or other forms of coverage.

29. FASCIMILE, ELECTRONIC & DIGITAL SIGNATURES

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

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

WITNESSES:

GOVERNMENT OF THE VIRGIN ISLANDS

1. [Signature]

[Signature]
Bosede Bruce
Commissioner Designee
Department of Finance

10/5/21
Date

1. [Signature]

[Signature]
Anthony D. Thomas, Commissioner
Department of Property and Procurement

11/3/2021
Date

1. [Signature]

CONTRACTOR

[Signature]
Neena Masib, Partner
BDO USA, LLP

9-30-21
Date

(Corporate seal, if Contractor is a corporation)

APPROVED:

[Signature]
Honorable Albert Bryan Jr.

GOVERNOR OF THE U.S. VIRGIN ISLANDS

Date: 11/4/21

APPROVED AS TO LEGAL SUFFICIENCY

DEPARTMENT OF JUSTICE BY:

[Signature]
Assistant Attorney General

Date 11/4/2021

PURCHASE ORDER NO. _____