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CONTRACT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made this 26th day of October, 2023, in the Territory of the Virgin Islands, by and between the Government of the Virgin Islands, Department of Property and Procurement (DPP), on behalf of the Office of Management and Budget (OMB), Department of Finance (DOF), Department of Education (DOE), Department of Health (DOH), and the Department of Human Services (DHS) (hereinafter referred to as "Government") and McConnell & Jones, LLP (hereinafter referred to as "Contractor").

WITNESSETH:

WHEREAS, the Government is in need of the services of a Contractor to provide third-party fiduciary services as a condition of receiving grant funds by the Virgin Islands from the United States Department of Education (USDE/ED) which duties and responsibilities are more particularly described in Addendum I (Scope of Services) attached hereto; and

WHEREAS, the USDE/ED has issued Federal Fiscal Year 2020-2021 Specific Conditions, which requires the Government's continued use of a third-party fiduciary agent; and

WHEREAS, the Government solicited the services under RFP No. 038-T-2020(P), which subsequently resulted in the execution of Contract No. P022OMBT21, for the period of October 19, 2020 through November 30, 2021; and

WHEREAS, Contract No. P022OMBT21 included an option to renew the contract for three (3) successive terms of one (1) year each; and

WHEREAS, pursuant to Paragraph 2, the contract was renewed via Renewal Contract No. P134OMBT22, for the first renewal term for the period of December 1, 2021, through November 30, 2022; and

WHEREAS, as a result of increased grant funding the Government received from USDE/ED, the Contractor requires increased staffing and hours and additional resources, resulting in additional costs, to perform the services required by USDE/ED in managing the Government's USDE/ED grant funding; and

WHEREAS, the Parties seek to enter into a new Contract for the remaining timeframes of the renewals originally provided for under Contract No. P022OMBT21 and said new contract will incorporate the increased staffing, hours, and resources required to perform the services the Government needs; and



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WHEREAS, Contractor was selected in accordance with the provisions of 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

This Contract shall be from December 1, 2022 to November 30, 2023. Upon the date of execution of this Contract by the Governor of the U.S. Virgin Islands, this Contract shall be effective for the Term 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 Addendum I (Scope of Services), agrees to pay Contractor a sum not to exceed Two Million Two Hundred-Twenty Thousand, Three Hundred Six and 00/100 Dollars (\$2,220,306.00) 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 duly authorized, 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,



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however, said costs and expenses shall not exceed One Hundred, Sixty-Eight Thousand, Six Hundred Forty-Six and 00/100 Dollars (\$ 168,646.00).

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 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.

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 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



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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 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 Governor of the U.S. Virgin Islands.

17. TERMINATION

Either party will have the right to terminate this Contract with or without cause on sixty (60) 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 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 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 sixty (60) 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:



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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

Lisa M. Alejandro
Commissioner Nominee
Department of Property and Procurement
8201 Sub Base, Suite 4
St. Thomas, VI 00802

Jenifer C. O'Neal
Director
Office of Management and Budget
5041 Norre Gade
St. Thomas, VI 00802

Dionne Wells-Hedrington, PhD
Commissioner
Department of Education
44-46 Kongens Gade
St. Thomas, VI 00802

Kevin McCurdy
Commissioner Nominee
Department of Finance
2314 Kronprindsens Gade
St. Thomas, VI 00802



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Kimberly Causey-Gomez
Commissioner
Department of Human Services
Knud Hansen Complex- Building A
St. Thomas, VI 00802

Justa E. Encarnacion
Commissioner
Department of Health
48 Sugar Estate
St. Thomas, VI 00802

CONTRACTOR
Sharon E. Murphy, Partner
McConnell & Jones, LLP
4828 Loop Central Drive
Suite 1000
Houston, Texas 77081

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



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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. CONTRACTOR PROJECT PERSONNEL

(a) Contractor shall, in writing, provide the Government with the names and qualifications, which shall include references and curriculum vitae, of all Key Personnel and Operating Personnel that *will* be providing services under this Contract. Key Personnel shall be subject to the approval of the Government. The Government's approval process for Key Personnel may, at the discretion of the Government, include a face-to-face interview. Once approved by the Government, Key Personnel may not be removed from the project without the prior approval of the Government. In the event the Government approves the removal of any Key Personnel, Contractor shall provide the name and qualifications, which shall include references and curriculum vitae, of the replacement Key Personnel. All replacement Key Personnel shall be subject to the approval of the Government, which approval process may, at the discretion of the Government, include a face-to-face interview. Contractor's replacement Key Personnel shall be of similar caliber, and meet the same professional standards, as the members who were part of the Contractor's initial project team.

(b) "Key Personnel" shall mean an employee of the Contractor serving in a supervisory capacity or in a position that includes any responsibility or authority to make discretionary decisions with respect to the services to be performed under this Contract. Key Personnel includes, but is not limited to, all managers.

(c) "Operating Personnel" shall mean any person employed by the Contractor with respect to this Contract who is not in a supervisory capacity with the authority to make discretionary decisions with respect to the services to be performed under this Contract and whose duties involve performing the specific tasks described in the scope of work under this Contract under the supervision and direction of the Contractor's Key Personnel.

(d) All Key Personnel assigned to this Contract shall be employees of the Contractor. Contractor may not subcontract any Key Personnel positions.

(e) Contractor shall assign a Key Personnel employee to act as Contractor Project Manager with respect to this Contract. The Contractor Project Manager shall have the responsibility of managing the project under this Contract on behalf of the Contractor. Also, the parties agree that any performance issues or other issues and concerns that the



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Government may have with respect to the Contract shall first be communicated to the Contractor Project Manager.

(f) The Government shall have the right to request the removal of any Key Personnel and any Operating Personnel that is an employee of the Contractor. Upon such request, Contractor shall, within THIRTY (30) days, remove the subject individual or individuals from the project and present the names and qualifications, including references and curriculum vitae, of replacement Key Personnel or Operating Personnel, as the case may be. Individuals selected to replace Operating Personnel may commence performance of their duties upon the Government's receipt of the names and qualifications of said individuals. In addition, the Government shall have the right to recommend the removal of any Operating Personnel that is a subcontractor of the Contractor. In the event the Contractor acts upon the Government's recommendation, it shall within THIRTY (30) days of the removal of such Operating Personnel subcontractor present the names and qualifications, which shall include references and curriculum vitae, of a replacement subcontractor for review by the Government. Individuals or entities selected to replace an Operating Personnel subcontractor may commence performance of their duties upon the Government's receipt of the names and qualifications of said individuals or entities. In the event any Key Personnel or Operating Personnel is removed from the project, Contractor shall re-allocate the work assignments and duties as necessary among existing personnel in order for services under the Contract to continue without abatement or interruption until replacement personnel is chosen and commences his or her duties.

(g) Notwithstanding any other terms of this Contract to the contrary, the provisions of this Section are not subject to the Dispute Resolution provisions of Section 33 of this Contract.

26. GOVERNMENT PROJECT MANAGER

The Government shall assign an individual to act as Government Project Manager with respect to this Contract. The Government Project Manager shall be responsible for the interaction between the Contractor and the Self-Contained Model (SCM) aka Federal Grants Specialized Processing Unit (FGSPU) of the Office of Management and Budget, who will coordinate efforts and liaison with the Virgin Islands agencies that receive USDE/ED grant funds. The parties agree that any payment issues or other issues and concerns the Contractor may have with respect to the Contract shall first be communicated to the Government Project Manager.

27. 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.



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Contractor acknowledges that making such a false, fictitious or fraudulent claim is an offence under Virgin Islands law.

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.

27. VI THIRD PARTY FIDUCIARY TRANSITION PERIOD

The Contractor will coordinate efforts with any new selected contractor/third party fiduciary agent to transfer processes, files, records and any other pertinent information required for the seamless transition of responsibilities.

28. ORDER OF PRECEDENCE

Except with respect to Addendum I (Scope of Services) - USDE/ED Specific Conditions to this Contract, in the event of a conflict between the provisions of this Contract and the Addenda to the Contract, the provisions of this Contract shall prevail. In the event of a conflict between the provisions of Addendum I (Scope of Services) - USDE/ED Specific Conditions of this Contract and the provisions of this Contract or another Addendum to the Contract, the provisions of Addendum I (Scope of Services) - USDE/ED Specific Conditions shall prevail.

29. FORCE MAJEURE

Contractor and/or Government shall be excused from performance under this Contract for any period that Contractor or the Government is prevented from performing any services in whole or in part as a result of acts of God, actions or inactions of the Government, floods, epidemics, fire, quarantine restrictions, strikes, freight embargoes, unusually severe weather, provided that the Contractor or the Government have prudently and promptly acted



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to take any and all preventive and/or corrective steps that are within the Contractor's or the Government's control to ensure that the Contractor or the Government can promptly perform. Such non-performance (collectively, a Force Majeure Event) shall not be deemed as a breach of the Contract. This clause shall not relieve the Contractor of responsibility for developing and implementing all prudent contingency and disaster recovery measures. Subcontractor interruptions shall not be considered a Force Majeure Event unless agreed upon by both parties.

The party delayed by a Force Majeure Event shall immediately notify the other party by telephone of the occurrence of a Force Majeure Event, all preventive and corrective steps taken, how it affects performance, and the anticipated duration of the inability to perform. This information shall be confirmed in writing, via hand delivery return receipt, within FIVE (5) days of the inception of such delay.

30. PERFORMANCE AND OPERATIONS PROTOCOLS

Contractor shall set forth its recommendations and proposed verification and control protocol in a written report (the "Assessment and Recommendation Report").

In preparing the Assessment and Recommendation Report, Contractor shall consult and coordinate efforts with the Government, specifically the Office of Management and Budget, to identify those particular functions of the Government that are subject to time parameters and the failure of performance, by the user agencies, of which may adversely impact the Government, such as failing to satisfy administrative requirements that results in the lapsing of USDE/ED grant funds. The Recommendation Report shall also verify the duties and functions, as identified, that must be performed in order to permit the Government and the Contractor to satisfactorily perform their duties. The parties agree that, based upon this information, the parties shall amend the Contract to specify performance guarantees by the Contractor.

Notwithstanding the afore-mentioned provisions, the Contractor is under a duty and obligation to continue the performing the duties as the Third-Party Fiduciary Agent and shall adhere to the following protocols regarding communication on this project:

- a) All Communications regarding the Assessment and Recommendations Report by and/or between and/or to Key Personnel shall be in writing and the Contractor shall copy the Government Contract Manager and the Director of the Office of Management and Budget.
- b) The Contractor shall copy the Government Contract Manager and the Director of the Office of Management and Budget (or her designee) on all Communications by and/or between and/or to Key Personnel regarding the Contractor's



performance of this Contract and/or the Governments performance as it pertains to the USDE/ED grants.

- c) Communications include, but are not limited to, electronic mail, reports, status updates and memoranda and is more fully described in Addendum I (Scope of Work).
- d) The Contractor, as it pertains to this paragraph, shall include any subcontractor.
- e) No meetings regarding this project will be conducted without the participation of the Office of Management and Budget.
- f) The Contractor shall give the Office of Management and Budget sufficient notice, as determined by the Government, of any meeting as to facilitate the participation of the Office of Management and Budget.

The parties agree that if any dispute arises between the parties under this Contract, the following dispute resolution procedure shall be followed:

- a) The parties agree to make good faith efforts to resolve any and all disputes themselves relating to the permissible use and application of USDE/ED grant funds before seeking USDE/ED's assistance. If the parties cannot resolve the dispute themselves and seek the assistance of USDE/ED, as noted in USDE/ED FFY 2020-2021 Specific Conditions, dated June 26, 2020, Page 9, Item #3, USDE/ED may issue "decisions or advice" in resolution of the unresolved issues.
- b) In the event any conflict or disagreement arises under this Contract, neither party shall file any claim or suit against the other party until it has first provided written notice to the other party of the alleged dispute and submitted the dispute to mediation in the U.S. Virgin Islands. No-lawsuit, claim or controversy shall be filed until the conclusion of the mediation and certification by the mediator that an impasse has been reached or until 90 days has passed, whichever comes first. The mediation shall be conducted under the rules of the American Mediation Association and any mediator chosen by the parties must be certified by said Association.
- c) Pending any and all dispute resolution during the 90-day mediation period set forth herein and pending any and all resolution of any lawsuit or claim filed in the event mediation is not successful, Contractor shall continue to perform work under the Contract and the Government shall, pursuant to the provisions of Addendum II to this Contract, continue to pay Contractor for such work.



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34. U.S. DEPARTMENT OF EDUCATION SPECIFIC CONDITIONS

The parties acknowledge the USDE/ED may, at its discretion, revise or supplement the Specific Conditions attached as Addendum I to this Contract. In the event USDE/ED revises or supplements the Specific Conditions attached as Addendum I to this Contract, the parties shall, as necessary and pursuant to Section 13 herein, amend the terms and provisions to this Contract so that such terms and provisions correspond with and do not conflict with the new Specific Conditions, and incorporate the new Specific Conditions as a new Addendum to this Contract.

35. PROCUREMENT STANDARDS

With respect to the procurement of goods and services under this Contract, the provisions of all applicable Code of Federal Regulations (CPR) apply. Under those provisions, the Virgin Islands is directed to use its own procurement laws and regulations. Pursuant to Chapter 23 of Title 31, Virgin Islands Code, the Virgin Islands Department of Property and Procurement, through its Commissioner, is charged with purchasing and contracting for all supplies, materials, equipment and contractual services for executive branch agencies. Such agencies include those receiving USDE/ED grant funds. 3 V.I.C. § 62 states that the Commissioners heading the executive departments of the Government shall have the ultimate responsibility for the proper performance of the functions vested in them or their respective departments. Said responsibility may not be delegated. Accordingly, it is the responsibility of the Commissioner of Property and Procurement, as the Chief Negotiating Officer for purchases and contracts relating to Virgin Islands agencies receiving USDE/ED grant funds to assess the needs of such agencies and enter into contracts for goods and services on behalf of said agencies. In all instances, the Commissioner of Property and Procurement shall procure goods and services pursuant to the applicable provisions of Virgin Islands procurement law and regulations.

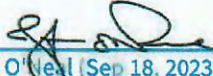
36. FACSIMILE, ELECTRONIC & DIGITAL SIGNATURES

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.




GOVERNMENT OF THE VIRGIN ISLANDS


Jenifer O'Neal (Sep 18, 2023 14:44 PDT)
Jenifer C. O'Neal, Director
Office of Management and Budget

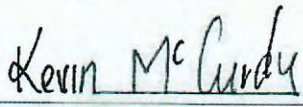
9/18/2023
Date


Dionne Wells-Medrington, PhD, Commissioner
Department of Education


08/25/2023
Date


Justa E. Encarnacion, Commissioner
Department of Health

8/10/2023
Date


Kevin McCurdy, Commissioner Nominee
Department of Finance

9/18/23
Date


Kimberly Causey-Gonzalez, Commissioner
Department of Human Services

08.28.2023
Date


Lisa M. Alejandro, Commissioner Designee
Department of Property & Procurement

10/13/2023
Date

CONTRACTOR

Contract No. P005OMBT24

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Contractor's Initials: 



Sharon E. Murphy, Partner
McConnell & Jones, LLP

06-21-2023

Date



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(Corporate seal, if Contractor is a corporation)

APPROVED AS TO LEGAL SUFFICIENCY

DEPARTMENT OF JUSTICE BY: /s/ Date 10/16/23
ASSISTANT ATTORNEY GENERAL

PURCHASE ORDER NO. _____

APPROVED:

Honorable Albert Bryan, Jr.
Governor of the U.S. Virgin Islands

Date

ADDENDUM I SCOPE OF SERVICES

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Contract No. P005OMBT24

Contractor's Initials: