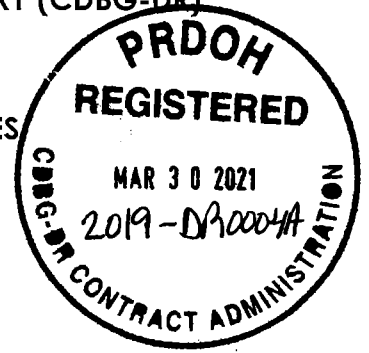




COMMUNITY DEVELOPMENT BLOCK GRANT – DISASTER RECOVERY (CDBG-DR)

**AMENDMENT A TO AGREEMENT FOR
SOFTWARE LICENSING AND PROFESSIONAL SERVICES
BETWEEN THE
PUERTO RICO DEPARTMENT OF HOUSING
AND
YARDI SYSTEMS, INC.
Contract No. 2019-DR0004**



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THIS AMENDMENT A TO AGREEMENT FOR SOFTWARE LICENSING AND PROFESSIONAL SERVICES, (hereinafter referred to as the "Amendment") is entered into in San Juan, Puerto Rico, this 29 day of March, 2021, by and between the **PUERTO RICO DEPARTMENT OF HOUSING** (hereinafter, "PRDOH"), a public agency created under Law No. 97 of June 10, 1972, as amended, 3 L.P.R.A. § 441 *et seq.*, known as the Department of Housing Governing Act with principal offices at 606 Barbosa Avenue, San Juan, Puerto Rico, herein represented by William O. Rodríguez Rodríguez, attorney, of legal age, single, and resident of San Juan, Puerto Rico, in his capacity as Secretary; and **YARDI SYSTEMS, INC.** (hereinafter, the "CONTRACTOR"), with principal offices in 430 South Fairview Avenue, Santa Barbara, California, herein represented by Michael Remorenko, in his capacity as Director of Sales Operations, of legal age, married, and resident of California, United States duly authorized by Resolution by the CONTRACTOR (collectively, the Parties).

I. RECITALS AND GENERAL INFORMATION

WHEREAS, On June 7, 2019 the PRDOH and the Contractor executed an Agreement for software licensing and professional services, registered as Contract No. 2019-DR0004, for a maximum amount not to exceed **ONE MILLION FOUR HUNDRED TWENTY SIX TWO HUNDRED DOLLARS (\$1,426,200.00)** from **Account Number: R01A01ADM-DOH-NA**. The Agreement end date shall be June 30, 2022 (hereinafter, the "Agreement").

WHEREAS, the scope of services and schedule of fees for licenses and services rendered under the Agreement are established in the SaaS Subscription Agreement (Exhibit II of the Agreement).

WHEREAS, the Finance Area requested a quotation from Contractor to acquire additional services, including two (2) additional modules in the Yardi system: (1) Fixed assets-to have register of receipt, custody, control and accounting of fixed assets of the CDBG-DR Program, sub-recipients and partners; and (2) Private Cloud (Share File)- to save the invoices that contractors upload through Vendor Cafe.

WHEREAS, the Parties have agreed to include the aforementioned licenses and services in an additional "Fee Schedule" under the terms of the Agreement, as well as new additional terms as established on an addendum to the SaaS Subscription Agreement. All other terms and conditions of the agreement shall remain in full force and effect.

WHEREAS, the Parties wish to amend the Agreement to add an "Addendum to SaaS Subscription Agreement between Yardi Systems, Inc. and the Puerto Rico Department of Housing" to Exhibit II – SaaS Subscription Agreement, to include the new services to be provided and the agreed upon fees, and become subject to the terms of the Agreement and this Amendment A.

WHEREAS, this Amendment increases the total amount of the Agreement by **THREE HUNDRED AND SIXTY THOUSAND (\$360,000.00)** for an adjusted total amount of **ONE MILLION SEVEN HUNDRED AND EIGHTY SIX THOUSAND TWO HUNDRED DOLLARS (\$1,786,200.00)**.

WHEREAS, On January 31, 2019, the Puerto Rico Department of Housing (PRDOH) received correspondence from the Department of Housing and Urban Development (HUD) which indicated that HUD does not object to the use of the non-competitive Procurement Method in the circumstance indicated in the correspondence mentioned (**Attachment 1 of this Amendment A**) in reference to the Contract.

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WHEREAS, it is the intention of the Parties that this Amendment is not intended to effect nor does it constitute an extinctive novation of the obligations of the Parties under the Agreement, but is rather a modification and amendment of certain terms and conditions under the Agreement.

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NOW THEREFORE, in consideration of the mutual promises and the terms and conditions set forth herein, the PRDOH and the CONTRACTOR agree as follows:

II. SAVINGS CLAUSES

The information included in this **Amendment A** serves the purpose of modifying Agreement exhibits, including Scope of Services and Fee Schedule to add additional licenses/services specified as part of Schedule A (Fee Schedule) on the SaaS Subscription Agreement, in addition to conforming the Agreement to federal and state regulations and statutes as set forth in the sections below. All provisions of the original Agreement shall continue to be in full force and effect.

III. SCOPE OF AMENDMENT

The PRDOH and Yardi have agreed to enter into this Amendment A with the purpose of modifying the Scope of Services and Fee Schedule found on Exhibit II – SaaS Subscription Agreement, and conforming the Agreement to federal and state regulations and statutes.

IV. AMENDMENTS

- A. The Parties agree to amend the Agreement to add an **"Addendum to SaaS Subscription Agreement between Yardi Systems, Inc. and the Puerto Rico Department of Housing"** to **Exhibit II – SaaS Subscription Agreement**, to include the new services and licenses to be provided, their agreed upon fees, new additional terms, and become subject to the terms of the Agreement and this Amendment A, hereto incorporated by reference into the Agreement and this Amendment and made part of the Agreement and Amendment A (**Attachment 2 of this Amendment A**).
- B. The Parties agree to amend **Article II. TYPE OF CONTRACT** to add an **Exhibit V Contractor Certification Requirement** in accordance with the Contract Review Policy of the Financial Oversight and Management Board (FOMB) for Puerto Rico, effective as of November 6, 2017 as amended on October 30, 2020, signed by the Contractor's Executive Director (or another official with an equivalent position or authority to issue such certifications). (**Attachment 3 of this Amendment**)
- C. The Parties agree to add a new Table 2 (Fee Schedule) to include fees for new additional licenses and services agreed upon under this Amendment A to **Article IV. COMPENSATION AND PAYMENT, A. Rates and Fees**, as follows:

SaaS Private Cloud Annual Fees							
License	Unit of Measure (UOM)	Count	\$/UOM	\$/UOM Concession	Net \$/UOM	Annual Fee Increase/Decrease	Prorated Annual Fee Increase
Limited-Use PAYscan DUs	DU	100	\$1,000.00	(\$1,000.00)	\$0.00	\$0.00	\$0.00
Limited-Use PAYscan DUs	DU	200	\$1,000.00	\$0.00	\$1,000.00	\$200,000.00	\$50,000.00
Fixed Assets	DU	5	\$1,000.00	\$0.00	\$1,000.00	\$5,000.00	\$1,250.00
Yardi Document Management for SharePoint	each	1	\$75,000.00	\$0.00	\$75,000.00	\$75,000.00	\$18,750.00
Total Fees						\$280,000.00	\$70,000.00

One-Time Fees				Total Price
Service	UOM	Count	\$/UOM	
Remote Implementation/Training	hour	50	\$200.00	
Total One-Time Fee				\$10,000.00

Total Fees Due	
Prorated Annual Fee Increase through June 30, 2021	\$70,000.00
One-Time Fees	\$10,000.00
Sub-Total	\$80,000.00
Sales Tax	as applicable
Total Due	\$80,000.00

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D. The Parties agree to replace **Article IV. COMPENSATION AND PAYMENT, B. Maximum Contract Amount**, with the following:

B. Maximum Contract Amount: The PRDOH will pay Yardi for all Software Licenses, applications and services agreed to by the parties and performed during the term of this Agreement, up to a maximum amount not to exceed **ONE MILLION SEVEN HUNDRED AND EIGHTY SIX THOUSAND TWO HUNDRED DOLLARS (\$1,786,200.00)** ("Maximum Contract Amount"), from account number **R01A01ADM-DOH-NA / 4190-22-000**. Such payment shall be compensation for all services required, performed and accepted under this Agreement. The PRDOH shall not pay any amount in excess of the limits stated herein, even if Yardi exceeds the same, regardless of the reasons for said excess. Yardi shall not be required to render services without compensation.

E. The Parties agree to replace **Article IV. COMPENSATION AND PAYMENT, D. Invoices, paragraph 4**, with the following:

4. In order for the CONTRACTOR to receive payment for any work performed hereunder, the following certification must be included in each application for payment or invoice submitted to the PRDOH for payment:

"Under penalty of absolute nullity, I hereby certify that no public servant of the government entity is a party to or has an interest of any kind in the profits or benefits to be obtained under the contract which is the basis of this invoice, and should he be a party to, or have an interest in, the profits or benefits to be obtained under the contract, a waiver has been previously issued. The only consideration to provide the contracted goods or services under the contract is the payment agreed upon with the authorized representative of the government entity. The amount that appears in the invoice is fair and correct. The work has been performed, the goods have been delivered, and the services have been rendered, and no payment has been received therefor."

- F. The Parties agree to add **paragraphs 8, 9, 10 and 11** to **Article IV. COMPENSATION AND PAYMENT, D. Invoices**, as follows:

8. Any additional funds to complete the services requested by the PRDOH to the CONTRACTOR will be subject to evaluation before acceptance as well as funds availability and will require an amendment to this Agreement.

9. While providing the services under this Agreement, the CONTRACTOR must adhere to applicable requirements of the CDBG-DR grant. If the CONTRACTOR performs ineligible activities under the CDBG-DR grant or program, the CONTRACTOR cannot include them in the invoice for payment to the CONTRACTOR.

10. CONTRACTOR shall be liable to the PRDOH for any costs disallowed pursuant to financial and/or compliance audit(s) of funds received under this Agreement. CONTRACTOR shall reimburse such disallowed costs from funds other than those CONTRACTOR received under this Agreement.

11. The CONTRACTOR acknowledges and agrees to repay any CDBG-DR funds used for ineligible costs.

- G. The Parties agree to add a new paragraph to **Article V. TERM OF AGREEMENT**, as follows:

The term of this Agreement shall not exceed the lifetime of the initial Grant Agreement between PRDOH and HUD, unless the term of the initial Grant Agreement is extended by HUD, in which case the Agreement shall not exceed said extended period.

- H. The Parties agree to amend **Section E (1)** of **Article VI. INSURANCE**, regarding endorsement requirements to substitute: the Puerto Rico Public Housing Administration for the United States Department of Housing and Urban Development (HUD).

- I. The Parties agree to amend **Article VI. INSURANCE** to add a new **Section G. Related Requirements**, as follows:

*Renewal Certificates of Insurance or such similar evidence is to be received by the Contract Administration of the Legal Division and/or the Finance area of the CDBG-DR program prior to expiration of insurance coverage. At PRDOH's option, non-compliance will result in one or more of the following actions: (1) The PRDOH will purchase insurance on behalf of the CONTRACTOR and will charge back all cost to the CONTRACTOR; (2) all payments due the CONTRACTOR will be held until the CONTRACTOR has complied with the Agreement; and/or (3) The CONTRACTOR will be assessed **Five Thousand Dollars (\$5,000.00) for every day of non-compliance.***

The receipt of any certificate does not constitute agreement by PRDOH that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with the requirements of the Agreement. The insurance policies shall provide for **thirty (30) days** written notice to be given to PRDOH in the event coverage is substantially changed, cancelled or non-renewed.

The CONTRACTOR shall require all subcontractors or consultants to carry the insurance required herein or the CONTRACTOR, may provide the coverage for any or all of its subcontractors and if so, the evidence of insurance submitted shall so stipulate and adhere to the same requirements and conditions as outlined above.

The CONTRACTOR expressly understands and agrees that whenever the CONTRACTOR is covered by other primary, excess, or excess contingent insurance that, any insurance or self-insurance program maintained by PRDOH shall apply in excess of and will not contribute with insurance provided by the CONTRACTOR under this Agreement.

- J. The Parties agree to add the following two paragraphs to **Article VII. OWNERSHIP AND USE OF DOCUMENTS:**

With the exception of the CONTRACTOR's working papers, the CONTRACTOR acknowledges the PRDOH's ownership of all information, drafts, documents, reports, papers, and other materials developed and prepared by the CONTRACTOR, its agents or representatives, for purposes of performing key obligations hereunder. In the event of any termination, the CONTRACTOR shall deliver such information, drafts, reports, papers and other materials to the PRDOH, in document form or as computer program data, and the CONTRACTOR recognizes the PRDOH's right to request such documentation or computer program data. If the CONTRACTOR fails to deliver said information, the PRDOH may seek a judicial order to enforce its rights.

Proof of expenditures incurred by the CONTRACTOR on behalf of PRDOH shall be made available to PRDOH. The CONTRACTOR agrees to maintain accurate records and files of all contract documents, correspondence, book estimates, bills, and other information related to the CONTRACTOR account. These documents shall be open for the PRDOH examination at all reasonable times during the term of this Agreement, and up to five (5) years from closeout of the grant to the state, or the period required by other local applicable laws and regulations.

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K. The Parties agree to replace **paragraph 6** to **Article IX. TERMINATION**, as follows:

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6. Period of Transition: Upon termination of this Agreement, and for **ninety (90) consecutive calendar days** thereafter (the Transition Period), CONTRACTOR agrees to make himself available to assist the PRDOH with the transition of services assigned to CONTRACTOR by the PRDOH. CONTRACTOR shall provide to the PRDOH the assistance reasonably requested to facilitate the orderly transfer of responsibility for performance of the Services to the PRDOH or a third party designated by the PRDOH. PRDOH reserves the right to provide for the execution of a Transition Services Agreement for the Transition Period. In such instance, the CONTRACTOR will be paid at a reasonable, agreed upon, hourly rate for any work performed for the PRDOH during the Transition Period. Moreover, during that Transition Period, all finished or unfinished records (files, data, work product) connected with this Agreement will be turned over to PRDOH.

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L. The Parties agree to add a **paragraph 8** to **Article IX. TERMINATION**, as follows:

8. Suspension: The PRDOH may suspend this Agreement in whole or in part at any time for the PRDOH's convenience. The PRDOH shall give the CONTRACTOR **five (5) days'** written notice of such suspension. Upon receipt of said notice the CONTRACTOR shall immediately discontinue all Services affected.

M. The Parties agree to add the following actions to **Article X. PENALTIES AND LIQUIDATED DAMAGES, A. Penalties, Subsection (1)**:

- iv.* Disallow all or part of the cost of the activity or action not in compliance.
- v.* Initiate suspension or debarment proceedings as authorized under 2 C.F.R. part 180.
- vi.* Withhold further Federal awards for the project or program

N. The Parties agree to replace **Article XI. ADDITIONAL SERVICES** with the following:

XI. ADDITIONAL SERVICES

Should additional services be needed by the PRDOH, such additional services shall be agreed upon by the parties in a written document signed by both parties, prior to the issuance of a notice to proceed with the performance of such additional services.

O. The Parties agree to replace **Article XII. HOLD HARMLESS** with the following:

XII. HOLD HARMLESS

The CONTRACTOR and its affiliates, its successors and assignees will indemnify the PRDOH from any damages and/or losses arising out of any breach of this Agreement by the CONTRACTOR or against personal injuries or property damage resulting from any act of negligence or omission by the CONTRACTOR and its affiliates in connection with this Agreement.

P. The Parties agree to update PRDOH's information on **Article XIV. NOTICES** of the Agreement as follows:

To: PRDOH William O. Rodríguez Rodríguez, Esq.,
Secretary
Puerto Rico Department of Housing
606 Barbosa Ave.
Juan C. Cordero Dávila Bldg.
San Juan, PR 00918

Q. The Parties agree to add the following **paragraphs 11, 12, 13, 14 and 15** to **Article. XV. COMPLIANCE WITH PUERTO RICO'S CONTRACTING REQUIREMENTS:**

11. Compliance with Act No. 45 of April 18, 1935, as amended, 11 L.P.R.A. § 1, et seq.: The CONTRACTOR certifies and guarantees that at the signing of this Agreement has valid insurance issued by the State Insurance Fund Corporation (CFSE, for its Spanish Acronym), as established by Act No. 45, supra, known as the "Puerto Rico Workers' Accident Compensation Act".

12. Compliance with Act No. 168-2000, as amended, 8 L.P.R.A. § 711, et seq.: The CONTRACTOR is in full compliance with Act No. 168-2000, as amended, known as "Act for the Improvement of Elderly Support of Puerto Rico."

13. Clause of Governmental Ethics Certification of Absence of Conflict of Interests - The CONTRACTOR certifies that: (1) No public servant of this executive agency has a pecuniary interest in this contract, purchase or commercial transaction. (2) No public servant of this executive agency has requested me or accepted from me, directly or indirectly, for him (her), for any member of his family unit or for any person, gifts, bonuses, favors, services, donations, loans or anything else of monetary value. (3) No public servant (s) requested or accepted any good of economic value, linked to this transaction, from any person of my entity as payment for performing the duties and responsibilities of their employment. (4) No public servant has requested from me, directly or indirectly, for him (her), for any member of her family unit, or for any other person, business or entity, some of economic value, including gifts, loans, promises, favors or services in exchange for the performance of said public servant is influenced in my favor or of my entity. (5) I have no

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kinship relationship, within the fourth degree of consanguinity and second by affinity, with any public servant who has the power to influence and participate in the institutional decisions of this executive agency.

14. Ethics. CONTRACTOR also acknowledges receipt of the Anticorruption Code for the New Puerto Rico known in Spanish as "Código Anticorrupción para el Nuevo Puerto Rico".

15. Other payments or compensation: The CONTRACTOR certifies that it does not receive payment or compensation for regular services rendered as an official or public employee to another government entity, agency, public corporation or municipality, and knows the ethical standards of his profession and assumes responsibility for his actions.

R. The Parties agree to add the following paragraphs to **Article XVII. CONFLICTS OF INTEREST:**

The CONTRACTOR shall comply with the ethics requirements set forth herein and warrant that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of the work under a PRDOH contract and CONTRACTOR'S organizational, financial, contractual or other interest are such that:

- a) Award of the Agreement may result in an unfair competitive advantage; or
- b) The CONTRACTOR's objectivity in performing the contract work may be impaired.

The CONTRACTOR agrees that if after award he or she discovers an organizational conflict of interest with respect to this Agreement, it shall make an immediate (within the next **seventy-two (72) hours**) and full disclosure in writing to the Contracting Officer, which shall include a description of the action, which the CONTRACTOR has taken or intends to take to eliminate or neutralize the conflict. The CONTRACTOR will disclose the details of any existing or future contract to provide services to third parties participating or for the purpose to participate in disaster recovery programs or projects in Puerto Rico. The PRDOH may, however, terminate the Agreement for the convenience of PRDOH if it would be in its best interest.

In the event the CONTRACTOR was aware of an organizational conflict of interest before the award of this Agreement and did not disclose the conflict to the Contracting Officer, the PRDOH may terminate the Agreement for default.

The provisions of this clause shall be included in all subcontracts and/or consulting agreements wherein the work

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to be performed is similar to the services provided by the CONTRACTOR. The CONTRACTOR shall include in such subcontracts and consulting agreements any necessary provision to eliminate or neutralize conflicts of interest.

- S. The Parties agree to replace **Article XVIII. COMPLIANCE WITH FEDERAL LAW, REGULATIONS AND EXECUTIVE ORDERS** with the following:

XVIII. COMPLIANCE WITH FEDERAL LAW, REGULATIONS AND EXECUTIVE ORDERS

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The CONTRACTOR acknowledges that HUD financial assistance will be used to fund the Agreement only. Also, the CONTRACTOR shall comply with all applicable Federal, state and local laws, rules, regulations, and policies relating to CDBG-DR and CDBG Program services. This includes without limitation, applicable Federal Registers; 2 C.F.R. part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Community Development Act of 1974; 24 C.F.R. part 570 Community Development Block Grant; applicable waivers; Fair Housing Act, 24 C.F.R. § 35, 24 C.F.R. part 58, 24 C.F.R. part 135; National Historic Preservation Act, and any other applicable state laws or regulations, including the requirements related to nondiscrimination, labor standards, and the environment; and Action Plan amendments and HUD's guidance on the funds. Also, CONTRACTOR shall comply, without limitation, those set forth in **Exhibit III**.

- T. The Parties agree to replace **Article XXIII. MODIFICATION OF AGREEMENT** with the following:

XXIII. MODIFICATION OF AGREEMENT

Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if written and signed by both parties, and its authorized representatives. Those amendments shall make specific reference to this Agreement, comply with programmatic policies, procedures, and guidelines. Such amendments shall not invalidate this Agreement, nor relieve or release the Parties from their obligations under this Agreement.

However, PRDOH reserves the right to notify in writing to CONTRACTOR any applicable policies, procedures, regulations, requirements, guidelines, or change in law, whether existing or to be established, as well as changes and/or amendments thereof, and the notified policies, procedures, regulations, requirements, guidelines and laws shall be deemed incorporated by reference to this Agreement without the need of executing a separate written and signed amendment.

U. The Parties agree to replace **Article XXIV. BINDING EFFECT** with the following:

XXIV. BINDING EFFECT

This Agreement shall be binding upon and shall inure to the benefit of PRDOH and the CONTRACTOR, their successors and assigns.

The CONTRACTOR shall not assign this Agreement, in whole or in part, without the prior written consent of PRDOH, and any attempted assignment not in accordance herewith shall be null and void and of no force or effect.

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V. The Parties agree to replace **Article XXVII. GOVERNING LAW JURISDICTION** with the following:

XXVII. GOVERNING LAW JURISDICTION

This Agreement shall be governed by, interpreted, and enforced in accordance with the laws of the Government of Puerto Rico and any applicable federal laws and regulations. The parties further agree to assert any claims or causes of action that may arise out of this Agreement in the Puerto Rico Court of First Instance, Superior Court of San Juan, Puerto Rico.

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W. The Parties agree to rename and replace **Article XXXII. MANDATORY CLAUSES BY MEMORANDUM NO. OSG-2017-001** with the following:

XXXII. MEMORANDUM NO. 2021-003; CIRCULAR LETTER 001-2021 OF THE OFFICE OF THE CHIEF OF STAFF OF THE GOVERNOR (SECRETARÍA DE LA GOBERNACIÓN) & THE OFFICE OF MANAGEMENT AND BUDGET (OFICINA DE GERENCIA Y PRESUPUESTO)

- A. Interagency Services Clause:** *Both contracting parties acknowledge and agree that services retained may be provided to any entity of the Executive Branch with which the contracting entity makes an interagency agreement or by direct provision of the Office of the Chief of Staff of the Governor (Secretaría de la Gobernación). These services will be performed under the same terms and conditions in terms of hours of work and compensation set forth in this Agreement. For purposes of this clause, the term "Executive Branch entity" includes all agencies of the Government of Puerto Rico, as well as public instrumentalities and corporations and the Office of the Governor.*
- B. Termination Clause:** *The Chief of Staff (Secretario de la Gobernación) of the Governor shall have the power to terminate this Agreement at any time.*
- C. Contract Review Policy of the Financial Supervision and Administration Board for Puerto Rico:** *The parties acknowledge that the contractor has submitted the certification entitled "Contractor Certification Requirement"*

required in accordance with the Contract Review Policy of the Financial Oversight and Management Board (FOMB) for Puerto Rico, effective as of November 6, 2017 as amended on October 30, 2020, signed by the Contractor's Executive Director (or another official with an equivalent position or authority to issue such certifications). A signed copy of the "Contractor's Certification Requirement" is included as **Exhibit V** to this contract.

- X. The Parties agree to add a new **Article XXXIII. REIMBURSABLE EXPENSES**, as follows:

XXXIII. REIMBURSABLE EXPENSES

The PRDOH will not reimburse any costs incurred by the CONTRACTOR not included in the approved Proposal or in an executed written amendment.

- Y. The Parties agree to add a new **Article XXXIV. DOCUMENTATION AND RECORDKEEPING**, as follows:

XXXIV. DOCUMENTATION AND RECORDKEEPING

A. Records to be Maintained: The CONTRACTOR shall maintain records of the state and units of general local government, including supporting documentation, which shall be retained for the greater of **five (5) years** from closeout of the grant to the state, or the period required by other local applicable laws and regulations. Such records include but are not limited to: Records providing a full description of each activity undertaken; Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG-DR program; Records required to determine the eligibility of activities; Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG-DR assistance; Records documenting compliance with the fair housing and equal opportunity requirements of the CDBG-DR program regulations; Financial records as required by 24 C.F.R. § 570.502, and 2 C.F.R. part 200, including records necessary to demonstrate compliance with all applicable procurement requirements; and other records necessary to document compliance with this agreement, any other applicable Federal statutes and regulations, and the terms and conditions of PRDOH's Federal award.

B. Access to Records: The CONTRACTOR shall permit the PRDOH and auditors to have access to the CONTRACTOR's records and financial statements as necessary for the PRDOH to meet its audit requirements under the Federal award.

C. Record Retention and Transmission of Records to the PRDOH: Prior to close out of this Agreement, the CONTRACTOR must transmit to the PRDOH records sufficient for the PRDOH to demonstrate that all costs under this Agreement met the requirements of the Federal award.

D. CONTRACTOR's Data and Privileged Information: The CONTRACTOR is required to maintain confidential data demonstrating client eligibility for activities provided under this Agreement. Such data may include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of activities provided.

E. PII Policy: The CONTRACTOR must comply with the PRDOH CDBG-DR Personal Identifiable Information Policy, as found in the CDBG-DR Website (www.cdbg-dr.pr.gov), which is herein included and made integral part of this Agreement, as it may be updated from time to time.

Z. The Parties agree to add a new **Article XXXV. ACCESS TO RECORDS**, as follows:

XXXV. ACCESS TO RECORDS

A. The CONTRACTOR agrees to provide the Government of Puerto Rico, PRDOH, HUD's Secretary, the Comptroller General of the United States, or any of their authorized representative's access to any books, documents, papers, and records of the CONTRACTOR which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.

B. The CONTRACTOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

AA. The Parties agree to add a new **Article XXXVI. PERFORMANCE WARRANTY**, as follows:

XXXVI. PERFORMANCE WARRANTY

(a) CONTRACTOR warrants that it will perform all work and provide all Deliverables under this Contract in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

(b) CONTRACTOR warrants that all Deliverables it completes under this Contract shall: meet or exceed the standards of CONTRACTOR's trade, profession, or industry; meet or exceed the specifications set forth in the Attachments to this Agreement; and be fit for ordinary use, of good quality, and with no material defects.

(c) If CONTRACTOR submits Deliverables that do not meet specifications, fails to complete Deliverables timely, or fails to perform its obligation under this Contract, PRDOH may require CONTRACTOR, at its sole expense, to:

1. repair or replace Deliverables that do not meet specifications;
2. refund payment for Deliverables that do not meet and accept the return of such Deliverables;
3. pay liquidated damages for any past due Deliverable; and

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4. take necessary action to ensure that future performance and Deliverables meet specifications and conform to the Contract.

BB. The Parties agree to add a new **Article XXXVII. LIABILITY**, as follows:

XXXVII. LIABILITY

In no event, the PRDOH shall be liable for any indirect, incidental, special or consequential damages, or damages for loss of profits, revenue, data or use, incurred by either party or any third party, whether in an action in contract or tort, even if the other party or any person has been advised of the possibility of such damages. Third parties operating under this program, with their agency, will have their own general civil and criminal liability imposed by law towards the PRDOH, the CONTRACTOR and any citizen.

The CONTRACTOR shall carry the insurances as are required by law (if applicable), as set forth below. The CONTRACTOR shall furnish PRDOH certificates of insurance.

CC. The Parties agree to add a new **Article XXXVIII. INDEPENDENT CONTRACTOR**, as follows:

XXXVIII. INDEPENDENT CONTRACTOR

The relationship of the CONTRACTOR to PRDOH shall be that of an independent CONTRACTOR rendering professional services. Neither the CONTRACTOR nor any personnel of the CONTRACTOR shall have any authority to execute contracts or make commitments on behalf of PRDOH. Nothing contained herein shall be deemed to create the relationship of employer/employee, principal/agent, joint venture or partner between the CONTRACTOR and PRDOH. Further, the CONTRACTOR recognizes that in view of its status as an independent CONTRACTOR, neither it nor its employees or subcontractors will be entitled to participate in or receive any fringe benefits normally granted to PRDOH employees under such programs, including, but not limited to, worker's compensation, voluntary disability, travel accident insurance, medical/dental insurance, life insurance, long-term disability, holiday pay, sick pay, salary continuation pay, leaves of absence (paid or unpaid), pension plan and savings plan.

The CONTRACTOR shall have exclusive control over its employees and subcontractors (and the CONTRACTOR's employees and subcontractors are herein, collectively, referred to as the "CONTRACTOR Personnel"), its labor and employee relations and its policies relating to wages, hours, working conditions and other employment conditions. The CONTRACTOR has the exclusive right to hire, transfer, suspend, lay off, recall, promote, discipline, discharge and adjust grievances with its CONTRACTOR Personnel. The CONTRACTOR is solely responsible for all salaries and other compensation of its CONTRACTOR Personnel who provide Services.

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The CONTRACTOR is solely responsible for making all deductions and withholdings from its employees' salaries and other compensation and paying all contributions, taxes and assessments, including union payments. The CONTRACTOR shall be responsible for and shall defend, indemnify and hold harmless PRDOH, and its agents, officers, directors, employees, representatives, CONTRACTOR's, successors and assigns against all costs, expenses and liabilities, including without limitation reasonable attorneys' fees relative to the situation, in connection with the CONTRACTOR's employment and/or hiring of any CONTRACTOR Personnel providing any of the Services, including without limitation: (i) payment when due of wages and benefits, (ii) withholding of all payroll taxes, including but not limited to, unemployment insurance, workers' compensation, FICA and FUTA, (iii) compliance with the Immigration Reform Control Act, and (iv) compliance with any other applicable laws relating to employment of any CONTRACTOR Personnel of, and/or hiring by, CONTRACTOR in connection with the Services.

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DD. The Parties agree to add a new **Article XXXIX. THIRD PARTIES**, as follows:

XXXIX. THIRD PARTIES

Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action of a third party against either the PRDOH or the CONTRACTOR.

EE. The Parties agree to add a new **Article XL. SUBCONTRACTS**, as follows:

XL. SUBCONTRACTS

- A. General:** All subcontracts shall contain the applicable provisions described in **Attachment F** (HUD General Provisions), as well as applicable provisions set forth in 2 C.F.R. § 200.101. The PRDOH shall review subcontracts as part of the compliance, monitoring, and oversight process performed by PRDOH or upon request.
- B. Specific Requirements:** All subcontracts shall contain provisions specifying:
- i. That the work performed by the subcontractor be in accordance with the applicable terms of this Agreement between the PRDOH and CONTRACTOR;
 - ii. That nothing contained in such subcontract agreement shall impair the rights of the PRDOH;
 - iii. That nothing contained herein, or under this Agreement will create any contractual relation between the subcontractor and the PRDOH;
 - iv. That the subcontractor specifically agrees to be bound by the confidentiality provision regarding Personal Identifiable Information set forth in this Agreement;
 - v. That CONTRACTOR will be responsible for ensuring all subcontract work is performed consistent with federal and state regulations and/or policies to be eligible for reimbursement of the approved work; and

vi. All Federal flow down provisions are included in the subcontract agreement per Federal guidelines.

C. Monitoring: CONTRACTOR shall diligently monitor all subcontracted services. If CONTRACTOR discovers any areas of noncompliance, CONTRACTOR shall provide the PRDOH summarized written reports supported with documented evidence of corrective action.

D. Content: CONTRACTOR shall cause all the applicable provisions of this Agreement to be included in, and made a part of, any subcontract executed in the performance of this Agreement.

E. Notification: CONTRACTOR shall notify and provide a copy of any and all subcontracts related to this Agreement and CDBG-DR funds to the Contract Administration Area of the PRDOH CDBG-DR Legal Division within **three (3) days** of its execution.

FF. The Parties agree to add a new **Article XLI. CDBG-DR POLICIES AND PROCEDURES**, as follows:

XLI. CDBG-DR POLICIES AND PROCEDURES

In addition to what is established in this Agreement, the CONTRACTOR shall comply with all CDBG-DR program specific and general policies and procedures, including, but not limited to, the Contract and Subrecipient Agreement Manual, OS&H Guideline, MWBE Policy, Procurement Manual and Contractual Requirements, URA & ADP Guidelines, Cross Cutting Guidelines, AFWAM Policy, Section 3 Policy, Personally Identifiable Information, Confidentiality, and Nondisclosure Policy and Conflict of Interest and Standards of Conduct Policy, as found in the CDBG-DR Website (www.cdbg-dr.pr.gov), which are herein included and made integral part of this Agreement, as they may be updated from time to time, and reporting requirements as established by the PRDOH.

GG. The Parties agree to add a new **Article XLII. SECTION 3 CLAUSE**, as follows:

XLII. SECTION 3 CLAUSE

A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or

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other impediment that would prevent them from complying with the part 135 regulations.

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- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- F. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and sub contracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).
- G. The Contractor agrees to submit, and shall cause its subcontractors to submit, quarterly reports to the PRDOH detailing the number of new employees hired, the number of new Section 3 employees hired, and any affirmative efforts

made to direct hiring efforts to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing during the previous quarter.

H. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

HH. The Parties agree to add a new **Article XLIII. BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. § 1352**, as follows:

XLIII. BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. § 1352

The CONTRACTOR certifies, to the best of his or her knowledge, that:

- A.** No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- B.** If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Forms-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C.** The CONTRACTOR shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. §1352 (as amended by the Lobbying Disclosure Act of 1995). The CONTRACTOR acknowledges that any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. The CONTRACTOR certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the CONTRACTOR understands and agrees that the provisions

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of 31 U.S.C. §3801 et seq., apply to this certification and disclosure, if any.

- II. The Parties agree to add a new **Article XLIV. EQUAL OPPORTUNITY**, as follows:

XLIV. EQUAL OPPORTUNITY

- A. The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity or national origin. The CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- B. The CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- C. When applicable, the CONTRACTOR will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the CONTRACTOR's commitments under this Section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. The CONTRACTOR will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and as supplemented by the rules, regulations, and relevant orders of the United States Secretary of Labor.
- E. The CONTRACTOR will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- F. In the event of the CONTRACTOR's noncompliance with the nondiscrimination clauses of this Agreement or with any of the

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said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the CONTRACTOR may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, as amended, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

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- G. The CONTRACTOR will include the portion of the sentence immediately preceding paragraph (A) and the provisions of paragraphs (A) through (F) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The CONTRACTOR will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event a CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

JJ. The Parties agree to add a new **Article XLV. CLEAN AIR ACT**, as follows:

XLV. CLEAN AIR ACT

- A. The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- B. The CONTRACTOR agrees to report each violation to the PRDOH and understands and agrees that the PRDOH will, in turn, report each violation as required to assure notification to the Government of Puerto Rico, HUD, and the appropriate Environmental Protection Agency Regional Office.
- C. The CONTRACTOR agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by HUD.

KK. The Parties agree to add a new **Article XLVI. SOLID WASTE DISPOSAL ACT**, as follows:

XLVI. SOLID WASTE DISPOSAL ACT

- 1) In the performance of this contract, the CONTRACTOR shall make maximum use of products containing recovered materials that are Environmental Protection Agency (EPA)-designated items unless the product cannot be acquired:

- a. Competitively within a timeframe providing for compliance with the contract performance schedule;
- b. Meeting contract performance requirements; or
- c. At a reasonable price.

2) Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

3) Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include:

- a. procuring only items designated in guidelines of the EPA at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds ten thousand dollars (\$10,000) or the value of the quantity acquired during the preceding fiscal year exceeded ten thousand dollars (\$10,000);
- b. procuring solid waste management services in a manner that maximizes energy and resource recovery; and
- c. establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

LL. The Parties agree to add a new **Article XLVII. WATER POLLUTION CONTROL ACT**, as follows:

XLVII. WATER POLLUTION CONTROL ACT

A. The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §1251, et seq.

B. The CONTRACTOR agrees to report each violation to the PRDOH and understands and agrees that the PRDOH will, in turn, report each violation as required to assure notification to the Government of Puerto Rico, HUD, and the appropriate Environmental Protection Agency Regional Office.

C. The CONTRACTOR agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by HUD.

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MM. The Parties agree to add a new **Article XLVIII. SUSPENSION AND DEBARMENT**, as follows:

XLVIII. SUSPENSION AND DEBARMENT

- A. This Agreement is a covered transaction for purposes of 2 C.F.R. part 180 and 2 C.F.R. part 2424. As such, the CONTRACTOR is required to verify that none of the CONTRACTOR, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. §180.905) are excluded (defined at 2 C.F.R. §180.940) or disqualified (defined at 2 C.F.R. §180.935).
- B. The CONTRACTOR must comply with 2 C.F.R. part 180, subpart C and 2 C.F.R. part 2424, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- C. This certification is a material representation of fact relied upon by PRDOH. If it is later determined that the CONTRACTOR did not comply with 2 C.F.R. part 180, subpart C and 2 C.F.R. part 2424, in addition to remedies available to PRDOH, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- D. The CONTRACTOR agrees to comply with the requirements of 2 C.F.R. part 180, subpart C and 2 C.F.R. part 2424, while this Agreement is valid. The CONTRACTOR further agrees to include a provision requiring such compliance in its lower tier covered transactions.

NN. The Parties agree to add a new **Article XLIX. BANKRUPTCY**, as follows:

XLIX. BANKRUPTCY

In the event that CONTRACTOR files for bankruptcy protection, the Government of Puerto Rico and PRDOH may deem this Agreement null and void, and terminate this Agreement without notice.

OO. The Parties agree to add a new **Article L. ORDER OF PRECEDENCE**, as follows:

Article L. ORDER OF PRECEDENCE

In the event of an inconsistency in this Agreement or if a conflict occurs between this Agreement and any Attachment, Appendix, Exhibit, or Schedule, unless otherwise specifically stated in those documents, the order of precedence shall be: Federal laws, regulations, and policies applicable to this Agreement, this Contract and the HUD General Provisions (**Exhibit III**), the Scope of Work and Compensation Schedule (**Exhibit I**) and lastly, the CONTRACTOR's proposal (**Exhibit II**).

PP. The Parties agree to add a new **Article LI. CONSOLIDATIONS, MERGERS, CHANGE OF NAME OR DISSOLUTIONS**, as follows:

LI. CONSOLIDATIONS, MERGERS, CHANGE OF NAME OR DISSOLUTIONS

A. Consolidation or Merger

In the event that the signing party (e.g. Subrecipient, Contractor, or Subcontractor) of the Agreement with the PRDOH moves for a consolidation or merger with another entity (private or public), by its discretion or otherwise, written notice of such decision or event shall be delivered to the PRDOH **at least fifteen (15) days prior to the effective date** of the consolidation or merger. The notice shall include, but not limited to, a description of: the expected effective date of the consolidation or merger; name of each of the constituent entities moving to consolidate or merge into the single resulting or surviving entity; the proposed name of the resulting entity (in case of a consolidation) or the name of the surviving entity (in case of a merger) if necessary; reference to the projected capacity of the resulting or surviving entity to comply with the terms, conditions, obligations, tasks, services, and performance goals or requirements included in the Agreement as well as its Exhibits or Attachments; and a brief summary of the proposed plan to achieve the transition of duties (Scope of Work or Scope of Services), tasks, and performance goals or requirements to the resulting or surviving entity.

Upon the consolidation or the merger becoming effective, and supporting evidence of such event is notified to PRDOH, execution of an Amendment to the Agreement may follow. The Amendment would include, but not limited to, modifications to the clauses that refer to the identity, personal circumstances, address, and any other information related to the signing party deemed relevant by PRDOH for the execution of the Amendment. **No amendment to the Agreement will be necessary if the Subrecipient, Contractor, or Subcontractor becomes the surviving entity following a merger.**

Failure to comply with any of the before mentioned conditions, may result in the activation of the termination clauses provided in the Agreement.

B. Change of Name

In the event that the signing party (e.g. Subrecipient, Contractor, or Subcontractor) of the Agreement with the PRDOH initiates a change of name process, written notice of such decision or event shall be delivered to the PRDOH **at least fifteen (15) days** prior to the effective date of such event. The notice shall include, but not limited to, a description of: the expected effective date of the change of name; the proposed name; inform of any change of address; and reference of any change in the capacity of the entity to comply with the terms, conditions, obligations, tasks, services, and performance goals or requirements included in the Agreement, as well as its Exhibits or Attachments.

Upon the change of name becoming effective, and supporting evidence of such event is notified to PRDOH, execution of an Amendment to the Agreement may follow. The Amendment would include, but not limited to, modifications to the clauses that refer to the identity, personal circumstances, address, and any other information related to

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the signing party deemed relevant by PRDOH for the execution of the Amendment.

Failure to comply with any of the before mentioned conditions, may result in the activation of the termination clauses provided in the Agreement.

C. Dissolution

In the event that the signing party (e.g. Subrecipient, Contractor, or Subcontractor) of the Agreement with the PRDOH moves for dissolution of the entity, written notice of such decision or event shall be delivered to the PRDOH **at least fifteen (15) days** prior to the effective date of such event. The notice shall include, but not limited to, a description of the expected effective date of the dissolution; and contact information of one or more of its directors, officials or agents. Upon dissolution becoming effective, and supporting evidence of such event is notified to PRDOH, termination of the Agreement will follow. Consequently, the signing party acknowledges and agrees to provide to the PRDOH, after termination of the Agreement, the assistance reasonably requested to facilitate the orderly transfer of responsibility for performance of the tasks or services to the PRDOH or a third party designated by the PRDOH. Moreover, all finished or unfinished records (files, data, work product) connected with this Agreement will be turned over to PRDOH following the Agreement termination.

QQ. The Parties agree to add a new **Article LII. FEDERAL FUNDING**, as follows:

LII. FEDERAL FUNDING

The fulfillment of this Agreement is based on those funds being made available to the PRDOH as the lead administrative agency for Recovery. All expenditures under this Agreement must be made in accordance with this Agreement, the policies and procedures promulgated under the CDBG-DR Program, and any other applicable laws. Further, CONTRACTOR acknowledges that all funds are subject to recapture and repayment for non-compliance.

RR. The Parties agree to add a new **Article LIII. RECAPTURE OF FUNDS**, as follows:

LIII. RECAPTURE OF FUNDS

PRDOH may recapture payments it makes to CONTRACTOR that (i) exceed the maximum allowable rates; (ii) are not allowed under applicable laws, rules, or regulations; or (iii) are otherwise inconsistent with this Agreement, including any unapproved expenditures. CONTRACTOR must refund such recaptured payments within thirty (30) days after the PRDOH issues notice of recapture to CONTRACTOR.

SS. The Parties agree to add a new **Article LIV. OVERPAYMENT**, as follows:

LIV. OVERPAYMENT

CONTRACTOR shall be liable to the PRDOH for any costs disallowed pursuant to financial and/or compliance audit(s) of funds received under this Agreement. CONTRACTOR shall reimburse such disallowed costs from funds other than those CONTRACTOR received under this Agreement.

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TT. The Parties agree to add a new **Article LV. SURVIVAL OF TERMS AND CONDITIONS**, as follows:

LV. SURVIVAL OF TERMS AND CONDITIONS

The terms and conditions of this Agreement related to the following subjects shall survive the termination or expiration of this Agreement: interpretive provisions; consideration; warranties; general affirmations, federal assurances, federal and state certifications; CDBG-DR and state funding, recapture of CDBG-DR and/or state funds, overpayment of CDBG-DR and/or state funds; ownership and intellectual property, copyright; records retention methods and time requirements; inspection, monitoring and audit; confidentiality; public records; indemnification and liability; infringement of intellectual property rights; independent CONTRACTOR relationship; compliance with laws; notices; choice of law and venue; severability; dispute resolution; consolidations, merger and dissolution. Terms and conditions that, explicitly or by their nature, evidence the Parties' intent that they should survive the termination or expiration of this Agreement shall so survive.

UU. All other terms and conditions of the Agreement remain unchanged.

VV. Each party represents that the person executing this Amendment A has the necessary legal authority to do so on behalf of the respective party.

V. HEADINGS

The titles to the paragraphs of this Amendment are solely for reference purposes and the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Amendment.

VI. COMPLIANCE WITH LAW

It is the intention and understanding of the Parties hereto that each and every provision of law required to be inserted in the Agreement, as amended, should be and is inserted herein. Furthermore, it is hereby stipulated that every such provision is deemed to be inserted and if, through mistake or otherwise, any such provision is not inserted herein or is not inserted in correct form, then the Agreement, as amended, shall forthwith, upon the application of any Party, be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of any Party.

VII. SUBROGATION

The Contractor acknowledges that funds provided through the Agreement, as amended, are Federal funds administered by HUD under the CDBG-DR Program and that all funds provided by the Agreement, as amended, are subject to audit, disallowance, and repayment. Any disagreement with adverse findings may be challenged and subject to Federal regulation, however, the Contractor shall promptly return any and all funds to the PRDOH, which are found to be ineligible, unallowable, unreasonable, a duplication of benefits, or non-compensable, no matter the cause. This clause shall survive indefinitely the termination of the Agreement, as amended.

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VIII. COMPTROLLER REGISTRY

The PRDOH shall remit a copy of this Amendment to the Office of the Comptroller for registration within **fifteen (15)** days following the date of execution of this Amendment and any subsequent amendment hereto. The services object of this Amendment may not be invoiced or paid until this Amendment has been registered by the PRDOH at the Comptroller's Office, pursuant to Act No. 18 of October 30, 1975, as amended by Act No. 127 of May 31, 2004.

IX. ENTIRE AGREEMENT

The Agreement and this Amendment constitute the entire agreement among the Parties for the use of funds received under the Agreement and this Amended Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written among the Parties with respect to the agreement.

X. SEVERABILITY

If any provision of this Amendment shall operate or would prospectively operate to invalidate the Amendment in whole or in part, then such provision only shall be deemed severed and the remainder of the Amendment shall remain operative and in full effect.

XI. COUNTERPARTS

This Amendment may be executed in any number of counterparts, each of whom shall be deemed to be an original, however, all of which together shall constitute one and the same instrument. If the Amendment is not executed by the PRDOH within **thirty (30) days** of execution by the other party, this Amendment shall be null and void.

IN WITNESS THEREOF, the parties hereto execute this Amendment in the place and on the date first above written.

PUERTO RICO DEPARTMENT OF HOUSING

Yardi Systems, Inc.

William O. Rodríguez Rodríguez

William O. Rodríguez Rodríguez (Mar 29, 2021 17:18 EDT)

William O. Rodríguez Rodríguez, Esq.,
Secretary

Michael Remorenko

Michael Remorenko
Director of Sales Operations
DUNS No. 120975172



ATTACHMENT 3

CERTIFICATION

YARDI SYSTEMS, INC.

I. Contractor (or Subrecipient) Certification Requirement:

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1. Neither the contractor (or subrecipient) nor any of its owners¹, partners, directors, officials or employees, has agreed to share or give a percentage of the contractor's (or subrecipient's) compensation under the contract² to, or otherwise compensate, any third party, whether directly or indirectly, in connection with the procurement, negotiation, execution or performance of the contract.
 2. To the best knowledge of the signatory (after due investigation), no person has unduly intervened in the procurement, negotiation or execution of the contract, for its own benefit or that of a third person, in contravention of applicable law.
 3. To the best knowledge of the signatory (after due investigation), no person has: (i) offered, paid, or promised to pay money to; (ii) offered, given, or promised to give anything of value to; or (iii) otherwise influenced any public official or employee with the purpose of securing any advantages, privileges or favors for the benefit of such person in connection with the contract (such as the execution of a subcontract with contractor, beneficial treatment under the contract, or the written or unwritten promise of a gift, favor, or other monetary or non-monetary benefit).
 4. Neither the contractor (or subrecipient), nor any of its owners, partners, directors, officials or employees or, to the best of its knowledge (after due investigation), its representatives or sub-contractors, has required, directly or indirectly, from third persons to take any action with the purpose of influencing any public official or employee in connection with the procurement, negotiation or execution of the contract, in contravention of applicable law.

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¹ For purposes of this Certification, a contractor's "owner" shall mean any person or entity with more than a ten percent (10%) ownership interest in the contractor.

² As used herein, the term "contract" is inclusive of any amendments, modifications or extensions.

5. Any incorrect, incomplete or false statement made by the contractor's (or subrecipient's) representative as part of this certification shall cause the nullity of the proposed contract and the contractor (or subrecipient) must reimburse immediately to the Commonwealth any amounts, payments or benefits received from the Commonwealth under the proposed contract.

The above certifications shall be signed under penalty of perjury by the Chief Executive Officer (or equivalent highest rank officer) in the following form:

"I hereby certify under penalty of perjury that the foregoing is complete, true and correct."

By: Michael Remorenko

Signature: Michael Remorenko

Date: 03/25/2021

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Amendment A to Software Licensing and Professional Services Agreement Yardi rev 2021.03.25 (002)

Final Audit Report

2021-03-29

Created:	2021-03-25
By:	Radames Comas Segarra (rcomas@vivienda.pr.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAeN7fJlxGIMclCJ5-AK9O4XZtaAMW6H6

"Amendment A to Software Licensing and Professional Services Agreement Yardi rev 2021.03.25 (002)" History

-  Document created by Radames Comas Segarra (rcomas@vivienda.pr.gov)
2021-03-25 - 6:08:53 PM GMT- IP address: 196.28.53.20
-  Document emailed to Michael Remorenko (michael.remorenko@yardi.com) for signature
2021-03-25 - 6:12:31 PM GMT
-  Email viewed by Michael Remorenko (michael.remorenko@yardi.com)
2021-03-25 - 6:13:25 PM GMT- IP address: 64.213.134.4
-  Document e-signed by Michael Remorenko (michael.remorenko@yardi.com)
Signature Date: 2021-03-25 - 6:37:32 PM GMT - Time Source: server- IP address: 35.233.146.218
-  Document emailed to William O. Rodríguez Rodríguez (w.rodriguez@vivienda.pr.gov) for signature
2021-03-25 - 6:37:34 PM GMT
-  Email viewed by William O. Rodríguez Rodríguez (w.rodriguez@vivienda.pr.gov)
2021-03-29 - 9:16:35 PM GMT- IP address: 104.47.64.254
-  Document e-signed by William O. Rodríguez Rodríguez (w.rodriguez@vivienda.pr.gov)
Signature Date: 2021-03-29 - 9:18:07 PM GMT - Time Source: server- IP address: 196.28.53.20
-  Agreement completed.
2021-03-29 - 9:18:07 PM GMT