written amendment to the Contract. Memoranda of understanding, change orders and correspondence shall not be construed as amendments to the Contract.

Any changes to the specifications of the design documents, following its approval, shall require a change order and comply with *Section 18 Change Order Requests* set forth herein. Any change of performance required by either party shall require a change order and comply with *Section 18 Change Order Requests* set forth herein. All actions to be taken by either party hereunder shall be reasonable and consistent with the purpose of this Contract.

20. ENTIRE CONTRACT

This Contract and all *Addenda* and other documents referenced in Section 1 of this Contract constitute the entire agreement between the parties hereto, and all prior understandings or communications, written or oral, with respect to the Project, which are the subject matter of this Contract, are merged herein.

21. RIGHT TO WITHHOLD

If work under this Contract is not performed in accordance with the terms hereof, Government will have the right to withhold any payment due to Contractor.

Whenever any approval is required to be given by the Government under this Contract, such approval shall not be unreasonably withheld, and shall either be timely given or the reason for the denial of such approval shall be timely given and in sufficient detail to allow the correction of any deficiencies forming the basis for the denial of approval. Whenever a party is authorized, under this Contract, to exercise discretion in making a decision, pursuant to this Contract, such discretion shall be reasonably exercised to realize the purpose of this Contract and its terms and conditions.

22. CONFIDENTIALITY OF INFORMATION

A. Confidential Information

a. The parties acknowledge that in the course of their dealings each may receive (the "Receiving Party") Confidential Information of the other party ("Disclosing Party"). As such, the parties are willing to share

Confidential Information provided that the Receiving Party protects the Confidential Information of the Disclosing Party. Confidential Information will not include information that:

i. Is or becomes generally available to the public without breach of this Contract;
ii. Was available to the Receiving Party on a non-confidential basis prior its disclosure by the Disclosing Party;
iii. Becomes available to the Receiving Party from a Third Party, provided that such Third Party is not subject to an obligation of confidentiality with the Disclosing Party;
iv. Is independently developed by the Receiving Party without reference to or reliance upon the Confidential Information;
v. Is approved by the Disclosing Party for disclosure; or
vi. the Receiving Party is required to disclose under Legal Requirements.

b. In any dispute with respect to these exclusions, the burden of providing that information is not Confidential Information will be on the party making such assertion.

B. Privacy

a. The Receiving Party agrees to protect and hold all Confidential Information in strict confidence and to take all reasonable steps necessary to protect the Confidential Information from unauthorized and/or inadvertent disclosure. Unless in receipt of specific written exemption from the Disclosing Party, the Receiving Party will not:

i. use, reproduce, modify or disclose any of the Confidential Information for any purpose other than to perform its obligations under this Contract for which the Confidential Information is being disclosed;
ii. disclose any of the Confidential Information other than to Representatives of the Receiving Party who have a reasonable need-to-know in order to discharge their obligations under

this Contract, and only to do so when the representatives have agreed to be bound by the confidentiality provisions of this Contract;

iii. remove any proprietary rights legend from the Confidential Information.

b. The prohibition against the disclosure of Confidential Information includes, but is not limited to, disclosing the substance of the negotiations of the Contract and the existence and/or the terms and conditions thereof, as well as the fact that any similarity exists between the Confidential Information and information independently developed by another Person or entity, and the parties understand that such similarity does not excuse it from abiding by its covenant or other obligations under this Contract.

c. The Receiving Party will be fully liable for the acts of its representatives to whom it discloses the Confidential Information.

C. Security of Customer Information

a. To the extent that the personal information of an EBT recipient ("Customer Information") may be subject to the rules or regulations governing the privacy of non-public personal information ("Privacy Regulations"), disclosure of such information will be made only as permitted by such Privacy Regulations (or any other legal requirements). Should FIS receive Customer Information from Government that is subject to the Privacy Regulations and such Customer Information will be in FIS's control or possession, then FIS represents and warrants to Government that it has in place a written information security program that includes administrative, technical and physical safeguards to protect the security, confidentiality and integrity of Customer Information. FIS agrees that Government may, (i) review at a Contractor facility a copy of the aforementioned information security program, and (ii) review, monitor and audit Contractor to confirm it has satisfied its obligations pursuant to this

paragraph. Government will notify and coordinate implementation with Contractor of any changes in the laws or regulations regarding security measures that may apply to Contractor with sufficient time to allow it to be able to comply with such requirements.

b. Government will be responsible for maintaining security on its own systems, servers, and communications and ensuring that they are reasonably designed to (i) protect the security and integrity of the Government's systems and servers on which Confidential Information is stored and/or processed, and (ii) protect against unauthorized access to or use of the Government's systems and servers on which Confidential Information is stored and/or processed.

D. Disclosure of Security Breach

a. In the event of any confirmed security breach involving unauthorized access to Customer Information that Government or FIS, as the case may be, learns of that compromises Confidential Information, including Personal Identifiable Information (PII) (e.g., physical trespass on a secure facility, computing systems intrusion/hacking, loss/theft of a PC (laptop or desktop), loss/theft of printed materials, etc.) (collectively, a "Security Breach"), Government or FIS, as the case may be, will promptly notify the other party. Except as may be strictly required by Legal Requirements, the parties agree not to inform any third party of any such Security Breach without the other party's prior written consent; however, if such disclosure is required by Legal Requirements, the parties agree to cooperate with each other regarding the content of such disclosure so as to minimize any potential adverse impact upon the parties and their respective clients and customers. The Contractor agrees to preserve the confidentiality, integrity and accessibility of Customer or Client PII data with administrative, technical and physical measures that conform to

generally recognized industry standards and best practices that the Contractor applies to its own processing environment.

E. Remedies

a. In the event of any court order or legal action requiring the disclosure of Confidential Information, the Receiving Party agrees to give prompt verbal and written notification of the order or action to the Disclosing Party, and to the extent allowable under the law and at the expense of the Disclosing Party, hold the Confidential Information while the Disclosing Party seeks a protective order. The Receiving Party acknowledges and agrees that it would be difficult to fully compensate the Disclosing Party for damages resulting from the breach or threatened breach of the foregoing provisions and, accordingly, that, in addition to any other remedies that may be available, in law, at equity or otherwise, the Disclosing Party will be entitled to seek injunctive relief, including without limitation temporary restraining orders, preliminary injunctions and permanent injunctions, to enforce such provisions without the necessity of proving actual damages or posting a bond or any other security. This provision with respect to injunctive relief will not, however, diminish the Disclosing Party's right to claim and recover damages.

F. Terms of Obligation

a. Unless indicated otherwise in a Service Addendum and except for Customer Information, the parties' obligations under this Section will survive this Contract for a period of five (5) years following termination hereof. Upon termination of this Contract for any reason, the Receiving Party's rights to possession and use of any Confidential Information in connection with the performance of its obligations hereunder or otherwise will terminate. Upon the request of the Disclosing Party, the Receiving Party will promptly return or

destroy (in either case under certification to said effect) all Confidential Information belonging to the Disclosing Party, including all copies thereof. Should the Receiving Party be required by law to retain any of the Disclosing Party's Confidential Information for a period longer than the Term of this Contract, including any extension thereof, then the Receiving Party's obligations under this Section will remain in full force and effect until the expiration of any such legally mandated retention period.

G. "Confidential Information"

a. Means all confidential or proprietary data, information, know how and documentation not generally known to the public and any and all tangible embodiments thereof, including but not limited to, that which relates to business plans, financial information and projections, agreements with Third Parties, drawings, designs, specifications, estimates, blueprints, plans, data, reports, models, memoranda, notebooks, notes, sketches, artwork, mock-ups, letters, manuals, patents, patent applications, trade secrets, research, products, services, suppliers, customers, markets, software, developments, inventions, processes, technology, Intellectual Property, engineering, hardware configuration, marketing, operations, pricing, distribution, licenses, budgets or finances, and copies of all or portions thereof which in any way related to the business of Contractor or Government, as the case may be, whether or not disclosed, designated or marked as proprietary, confidential or otherwise. Confidential Information will include Contractor's physical security systems, access control systems, and specialized recovery equipment and techniques. Confidential Information will include Government's Customer Information, Client PII, and Government Data.

23. DISPUTE RESOLUTION

A Contract Officer at VI Property and Procurement (P&P), in conjunction with VI DHS representation, shall decide any disputes concerning performance of the contract. This decision shall be final and conclusive unless within thirty (30) calendar days from the date of service the Vendor files a petition for administrative hearings addressed to the Commissioner, Department of Human Services.

24. CONDITION PRECEDENT

This Contract shall be subject to the availability and appropriation of funds by the Legislature of the United States Virgin Islands and to the approval of the Governor.

The Contractor shall not create any obligation on behalf of the Government in excess of such appropriations. In the event that the amount of funds appropriated is such that the Government must restrict or terminate funding for this Contract, the Contract shall be terminated one-hundred and eighty (180) calendar days after written notification from the Government to the Contractor. Without limiting the foregoing, the Government shall endeavor to provide as much advance notice as possible of the budgetary action.

25. TERMINATION

A. **Termination at Will by Contractor.** All or any part by written notice to the Government at least one-hundred and eighty (180) calendar days before effective date of such termination.

B. **Termination for Contractors Default.** Unless otherwise excused, all or any part of this Contract may be terminated by the Government upon thirty (30) calendar days' written notification to the Contractor in the event of a material failure of the Contractor to perform within the time requirements set forth in this Contract; provided the Contractor has not cured the material failure within such thirty-day term or longer as set forth below. The

Government shall also have the right to withhold payments in excess of fair compensation for work completed.

The Government will, by written notice of default to the Contractor, provide that the Contractor may cure a material breach of this Contract within a period of thirty (30) calendar days after receipt of notice to the Contractor specifying such breach or within or such longer period as the Project Manager may authorize in writing. The EBT Project Manager shall determine whether the Contractor's efforts to cure a material breach have been successful. The Government's exercise of this provision allowing the Contractor time to cure a material breach of the Contract in a particular situation does not in any way waive the Government's right to terminate the Contract for the same or different Contract breach which may occur at a different time. In the event the default is not reasonably capable of cure within the thirty (30) days, the EBT Project Manager, with input from the Contractor, shall authorize a longer period of time to affect such cure.

Notwithstanding the above, and except as provided in Section 15 hereunder the Contractor shall not be relieved of liability to the Government for damages sustained by virtue of any breach of this Contract by the Contractor. In addition to any other liabilities provided for in this RFQ, such Contractor liability shall include, but is not limited to, direct costs such as differential between what Contractor has agreed to provide for services and the replacement cost for services.

C. **Termination for Government Best Interest**. All or any part of this Contract may be terminated if the Government deems that termination would be in the best interest of the Government provided that the Government shall give written notice to the Contractor not less than 180 calendar days prior to the date upon which termination shall become effective, such notice to be made via registered or certified mail, return receipt requested or hand-delivered with receipt made. The date of such notice shall be deemed to be the date of

postmark in the case of mail or the date of Contractor's receipt for notice in the case of hand delivery. In the case of termination under this section, the Government agrees to pay the Contractor for contract work performed and reasonable and appropriate expenses incurred in good faith prior to receipt of Government's notice of Termination. The Government will not be obligated to pay the Contractor for lost and/or anticipated profits. The Contractor, on its part, agrees to incur no new obligations after receipt of notification of termination and to cancel as many outstanding obligations as possible.

D. **Termination for Bankruptcy.** This Contract may be deemed terminated immediately at the option of the Government upon the filing of a petition in bankruptcy or insolvency, by or against the Contractor. Such termination shall be immediate and complete, without termination costs or further obligations by the Government to the Contractor.

E. **Effects of Termination.** Except for termination under Section B, the Contractor shall be entitled to (i) receive just and equitable compensation for any work reasonably commenced which complies with an authorization by the Government to proceed and which has been satisfactorily performed as of the termination date.

Upon delivery to the Contractor of a Notice of Termination specifying the nature of the termination, the extent to which performance of work under the Contract is terminated, and the date upon which such termination becomes effective, the Contractor shall:

- Stop work under the Contract on the date and to the extent specified in the Notice of Termination;
- Take such action as may be necessary, or as the EBT Project Manager may direct, for the protection and preservation of the property related to the Contract which is in the possession of the Contractor and in which the Government has or may acquire an interest;

- Terminate all orders to the extent that they relate to the performance of work terminated by the Notice of Termination;
- When reasonably possible, assign to the Government in the manner and to the extent directed by the EBT Project Manager all of the rights, title, and interest of the Contractor under the orders so terminated, in which case the Government shall have the right, at its discretion, to settle or pay any or all claims arising out of the terminations of such orders;
- With the approval or ratification of the EBT Project Manager, settle all outstanding liabilities and all claims, arising out of such termination of orders, the cost of which would be reimbursable in whole or in part, in accordance with the provisions of the Contract.

In the event of termination for any reason, Contractor shall take all reasonable measures to mitigate any damages for which the Government may be liable.

F. **Termination Claims.** After receipt of a Notice of Termination, the Contractor shall submit to the EBT Project Manager any termination claims in the form and with the certification prescribed by the EBT Project Manager. Such claim shall be submitted promptly but in no event later than six months from the effective date of termination, unless the EBT Project Manager grants one or more extensions in writing. However, if the EBT Project Manager determines that the facts justify such action, the EBT Project Manager may receive and act upon any such termination claim at any time after such six-month period or extension thereof.

Subject to the provisions of the previous paragraph, the Contractor and the Government may agree upon the amounts to be paid to the Contractor by reason of the total termination of work. The Contract shall be amended accordingly.

In the event of the failure of the Contractor and the Government to agree, pursuant to this section, in whole or in part as to the amounts with respect to costs to be paid to the Contractor in connection with the total termination of work, the Government shall determine on the basis of information available the amount, if any, due to the Contractor by reason of termination and shall pay to the Contractor the amounts so determined. The amount so paid to the Contractor shall be final and is not open to dispute or further action.

G. **Assurance Before Breach.** If documentation, work products or any other deliverables due under the Contract are rejected according to agreed acceptance criteria, the Contractor shall cure the defect(s) in the deliverable/documentation/work product to the satisfaction of the Government and demonstrate that other project schedules will not be affected.

26. GOVERNMENT PROPERTY

The Contractor shall be responsible for the proper custody and care of any Government owned property furnished for Contractor's use in connection with the performance of this Contract, and the Contractor will reimburse the Government for its loss or damage, except normal wear and tear.

27. INTELLECTUAL PROPERTY/WORK PRODUCT OWNERSHIP

All data, technical information, materials gathered, originated, developed, prepared, or obtained as a condition of this Contract and used solely in the performance of this Contract, including, but not limited to all reports, surveys, plans, charts, literature, brochures, mailings, recordings (video or audio), pictures, drawings, analyses, graphic representations and accompanying documentation and printouts, notes and memoranda, written procedures and documents, which are prepared for or obtained specifically for this Contract or are a result of the services required under this Contract, and are paid in full by the Government shall be considered "work for hire" and remain the property of the Government of the United States Virgin Islands, regardless of the state of completion, unless otherwise specified in this Contract. Such items shall be delivered to the

Government upon 30 days notice by the Government provided the Government invoices have been fully paid.

With respect to customized software computer programs and/or source codes first developed specifically and solely for the Government, which are not derivative work from existing intellectual property of Contractor or any third party ("Custom Content"), all such Custom Content, when paid in full by the Government, shall be considered "work for hire," ***i.e., the Government, not the Contractor or subcontractor, shall have full and complete ownership of the Custom Content. Additionally, the parties further agree that for such "work for hire" the federal government reserves a royalty-free, non-exclusive, and irrevocable license to produce, publish, or otherwise use, and to authorize others to use, for federal government purposes, the copyright in any work developed under a grant, sub-grant, or contract under a grant or sub-grant or any rights of copyright to which a contractor purchases ownership.***

The Contractor shall not sell or copyright Custom Content without explicit permission from the Government and FNS.

If the Contractor is operating a system or application on behalf of the Government of the U. S. Virgin Islands, then the Contractor shall not make information entered into the system or application available for uses by any other party than the Government, without prior authorization by the Government. Nothing herein shall entitle the Government to Contractor's pre-existing materials and/or its intellectual property. For the avoidance of doubt, Contractor shall remain the sole owner of the intellectual property to any modifications to Contractor's pre-existing intellectual property used to perform the services hereunder made during the term of this Contract.

28. FEDERAL INSPECTIONS

During and after this project for a period not to exceed 5 years, the US Department of Agriculture or its authorized representatives shall be allowed access to inspect all Contractor materials, documents, work papers, deliverables, or any such other items which pertain to this project; provided such USDA personnel or authorized representative

comply with Contractor's access policies and procedures and provide reasonable notice to Contractor of any such inspection. The Contractor shall cooperate with any reasonable federal reviews and shall supply copies of any requested materials. This requirement also applies to any Material Subcontractors who may be engaged in the project. Any Material Subcontract permitted by the Government must contain a provision similar to this paragraph.

29. COPYRIGHT OF DATA

The Contractor may not publish or copyright any Government Data without prior approval, unless otherwise stated herein. Unless otherwise prohibited by law, the Government and the federal government shall have the right to publish, duplicate, use and disclose all such Government Data in any manner, and for any purpose whatsoever, and may authorize others to do so.

"Data" shall mean all results, technical information and materials developed and/or obtained in the performance of the services hereunder, including but not limited to, all reports, surveys, plans, charts, recordings (video and/or sound), pictures, drawings, analyses, source and object code, graphic representations, computer programs and printouts, notes and memoranda, regardless of media, and documents whether finished or unfinished, which result from or are prepared in connection with the services performed hereunder.

30. SECURITY OF DATA

The Contractor will ensure the security of data associated with computer equipment, including desktops, notebooks, and other portable devices, used in connection with this Contract. The Contractor will also assure that any media or mechanism used to store or transfer data to or from the Government includes industry standard security mechanisms such as continually up-to-date malware protection and encryption. The Contractor will make commercially reasonable efforts to ensure media or

data files transferred to the Government are virus and spyware free. At the conclusion of this Contract and after successful delivery of any and all data connected with this Contract to the Government, the Contractor shall securely delete data (including archival backups) from the Contractor's equipment that contains PII and individually identifiable records.

31. POLICY DETERMINATION

The Government shall determine all program policy. In the event that the Contractor requests in writing that the Government issue policy determinations or operating guidelines required for proper performance of the Contract, the Government shall do so in writing in a timely manner, and the Contractor shall be entitled to rely upon and act in accordance with such policy determinations and operating guidelines, and shall incur no liability in doing so unless the Contractor acts negligently, maliciously, fraudulently, or in bad faith. The RFQ contained all FNS policy determinations to that date and any changes in policy, affecting the EBT Project, after the date of the RFQ shall be by change order entered into in writing between the parties and must be in agreement with FNS policy determinations.

32. ACCOUNTING REQUIREMENTS

The Contractor shall establish and maintain an accounting system in accordance with Generally Accepted Accounting Principles (GAAP). The accounting system shall maintain records pertaining to the tasks defined in this Contract and all fees charged to the Government hereunder. In the event that the Contractor provides services other than on a fixed fee for services basis, the Contractor shall maintain records pertaining to the costs and expenditures incurred by the Contractor in providing such services.

Accounting procedures, policies, and records shall be reasonably open to Government and federal audit at any time during the Contract period and for five years thereafter.