

CONTRACT FOR PROFESSIONAL SERVICES

THIS CONTRACT is made this 25th day of April, 2017, effective as of the day of , 2017, in the Territory of the Virgin Islands, by and between the Government of the Virgin Islands, Department of Property and Procurement, on behalf of the Department of Justice (hereinafter referred to as "Government") and RedMane Technology LLC of 8614 Catalpa Ave., Suite 1001, Chicago, Illinois 60656 (hereinafter referred to as "Contractor"). References herein to "this Contract" include the appendices, and any amendments and addenda that are in the future agreed upon in writing by the parties hereto.

WITNESSETH:

WHEREAS, the Government is in need of the services of a Contractor to provide upgrades, enhancements, maintenance and support of its Child Support Territorial Automated Reporting System ("CSTARS") computer program for the Paternity and Child Support Division ("PCSD"), which duties and responsibilities are to be performed in the U.S. Virgin Islands, and are more particularly described in the attached Appendix I hereto, CSTARS Compliance Check List (which was also included as an appendix to the Government's Request for Proposal (RFP-016-2016 (P)), Upgrade, Maintenance and Support of CSTARS, as amended (the "RFP")); Appendix II hereto, Statement of Work (also included as an Appendix to the RFP); Appendix III hereto, Contractor's Revised Cost Proposal submitted July 11, 2016 (the "Revised Cost Proposal"); Appendix IV hereto, the RFP, with attached Appendices A-F; and Appendix V hereto, Contractor's Proposal submitted in response to the RFP (collectively with the Revised Cost Proposal, the "Proposal"),

WHEREAS, the Contractor represents that it is willing to and capable of providing such services;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and intending to be legally bound by this written instrument, the parties hereto do covenant and agree as follows:

1. SERVICES

The Contractor will provide the services described in this Contract ("Services") as set forth in this Contract, including but not limited to Appendices I through V hereto.

2. TERM

This Contract, shall commence upon the execution of this Contract by the Governor of the Virgin Islands and shall terminate 365 days thereafter. This Contract shall be subject to annual renewals, for up to four successive one year terms. Renewal shall be at the sole option of the Government. All terms and conditions of this Contract shall remain the same throughout subsequent renewals except that the support and maintenance cost may be increased by 3% per annum for each additional year, and the hourly change order rates set forth in the Revised Cost

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Proposal ("Change Order Rates") shall be revised as mutually agreed by Contractor and the Government.

3. COMPENSATION

The Government, in consideration of the satisfactory performance of the Services required under this Contract, agrees to pay the Contractor the sum of *One Million Two Hundred Seventy Eight Thousand Eight Hundred and Thirteen Dollars* (\$1,278,813.00) for the total cost of Services provided by the Contractor, which includes the following amounts:

A. General Support and Maintenance Services.

(1) Seven Hundred Ninety Seven Thousand Five Hundred and Fifty-Six Dollars (\$797,556.00) shall be paid annually at the rate of Sixty Six Thousand Four Hundred and Forty Three Dollars (\$66,463.00) per month for the term of this Contract for professional services for general support and maintenance Services as set forth in subsection 3.A(2) for up to 5330 hours (which Contractor represents is equivalent to PCSD's prior level of vendor support of 5930 hours) during the 12 month period effective from the date of the signing of this Contract by the Governor of the Virgin Islands. (Appendix III, Revised Cost Proposal submitted July 11, 2016).

(2) If the Contractor's professional services for general support and maintenance Services provided pursuant to this Contract exceed 5330 hours in a year, then the Contractor shall be compensated for such additional hours at the Change Order Rates set forth in the Revised Cost Proposal submitted July 11, 2016 (See Appendix III).

(3) General Support and Maintenance Services requires the Contractor to provide training(s) to the agency staff for program applications and system use as requested by the Paternity and Child Support Division including whenever enhancements, modifications or upgrades are implemented and/or made to CSTARS, (Appendix I, CSTARS Compliance Checklist). These trainings shall be onsite, unless the parties mutually agree to another venue or method of training.

B. Upgrades/Enhancements. An amount not to exceed Four Hundred Eighty One Thousand Two Hundred and Fifty Seven Dollars (\$481,257.00) per year shall be paid at the rate of Fifty Three Thousand Four Hundred and Seventy Three Dollars (\$53,473.00) per month for upgrades, including placing CSTARS on a web based portal and other enhancements for the aggregate total of not more than 2750 hours, commencing during months 4 through 12 of the first year of the Contract. During months 1 through 3, the Contractor will concentrate all its efforts on support and maintenance and assessing the system; and it is agreed and understood that the Contractor will not utilize the same employees working on the maintenance and support of CSTARS, to work on the Upgrades project without the consent of the Government as provided under subsection 30.F. (Appendix III, Revised Cost Proposal submitted July 11, 2016.) The Contractor and the Government acknowledge and agree that most of the \$481,257.00 and 2750 hours will be used to implement upgrades and placing CSTARS on a web based portal; if the Contractor completes such work in less than 2750 hours, any remaining unused hours of the

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enhancements utilizing previously unused hours within the 2750 hours, any services on enhancements provided in excess of 2750 hours will be billed at the Change Order Rates in the Revised Cost Proposal submitted July 11, 2016 (See Appendix III).

C. Invoicing. The Contractor agrees to submit timely invoices when Services are rendered; and the Contractor specifically agrees that it will submit invoices within 15 days after the end of each calendar month. Undisputed approved invoices will be due and payable by the Government within thirty (30) days of invoice.

4. TRAVEL, EQUIPMENT, SUPPLIES

No compensation shall be paid to the **Contractor**, its agents, employees or any of its subcontractors providing Services under this Contract for travel, any of the equipment, supplies or materials which are part of this project, and/or are to be used to perform the Services provided by the Contractor.

5. RECORDS

The **Contractor**, when applicable, will present records of time and/or money expended under this Contract.

6. PROFESSIONAL STANDARDS

The **Contractor** agrees to maintain the professional standards applicable to its profession and to consultants doing business in the United States Virgin Islands.

7. DOCUMENTS, PRINTOUTS, ETC.

All documents, books, records, instructional materials, programs, printouts and memoranda of every description derived therefrom and prepared by **Contractor** for the **Government** pursuant to this Contract shall become the property of the **Government** and shall be turned over to it at the termination of this Contract. The above described materials shall not be used by **Contractor** or by any other person or entity except upon the written permission of the **Government**.

8. LIABILITY OF OTHERS

Nothing in this Contract shall be construed to impose any liability upon the **Government** to persons, firms, associations, or corporations engaged by **Contractor** as servants, agents, or independent contractors, or in any other capacity whatsoever, or make **Government** liable to any such persons, firms associations, or corporations for the acts, omissions, liabilities, obligations and taxes of **Contractor** of whatsoever nature, including but not limited to unemployment insurance and social security taxes for **Contractor**, its servants, agents or independent contractors.

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9. **ASSIGNMENT**

The **Contractor** shall not subcontract or assign any part of the Services under this Contract without the prior written consent of the **Government**, which consent shall not be unreasonably withheld.

10. **INDEMNIFICATION**

To the extent provided by law, each party shall indemnify, defend and hold harmless the other part and its officers and employees against any and all loss, damage, liability, claims, suits, demands, detriments, cost, charges and expense (including attorney's fees) and causes of action of whatsoever character arising in whole or in part from any act or omission of such party or of any agent of such party, and from any and all third party suits or actions of every nature and kind (collectively, "Claims"), which may be brought for or on account of (i) any personal injury, death, or real or tangible personal property damage arising or growing out of the gross negligence or willful misconduct of **Contractor**, its officers, agents, servants or employees under this Contract; or (ii) any claim for infringement or violation of any patent, copyright, trade secret, or other proprietary right of a third party. Each party shall promptly notify the other in the event of any such claim or suit, and shall immediately provide a complete defense against the entire claim or suit. Each party shall notify its insurance company and other party within 10 days of receiving any claim for damages, notice of claims, pre-claims, or service of judgments or claims, for any act or omissions in the performance of this Contract. In no event shall this agreement to indemnify either part apply to the extent any Claims are caused by the negligent acts or omissions of the other party or any third party.

11. **INDEPENDENT CONTRACTOR**


The **Contractor** shall perform this Contract as an independent contractor and nothing herein contained shall be construed to be inconsistent with this relationship or status.

12. **GOVERNING LAW**

The Contract shall be governed by the laws of the United States Virgin Islands, unless there is a conflict between those laws and any Federal law, in which event Federal law shall prevail. Jurisdiction over this Contract shall remain within the United States Virgin Islands.

13. **WAIVERS AND AMENDMENTS**

No waiver, modification or amendment of any term condition or provision of this Contract shall be valid or of any force or effect unless made in writing, signed by the parties hereto or their duly authorized representatives, and specifying with particularity the nature and extent of such waiver, modification or amendment. Any such waiver, modification or amendment in any instance or instances shall in no event be construed to be a general waiver, modification or amendment of any of the terms, conditions or provisions of this Contract, but the same shall be strictly limited and restricted to the extent and occasion specified in such signed writing or writings.

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14. **ENTIRE AGREEMENT**

This Contract constitutes the entire agreement of the parties relating to the subject matter addressed in this Contract. This Contract supersedes all prior communications, contracts, or agreements between the parties with respect to the subject matter addressed in this Contract, whether written or oral.

15. **CONDITION PRECEDENT**

This Contract shall be subject to the availability and appropriation of funds and to the approval of the **Government**.

16. **CONTRACT TERMINATION**

A. This Contract may be terminated by mutual written agreement of **Government** and **Contractor**.

B. The **Government** may terminate this Contract whenever funding for the project, from whatever source, is withdrawn, reduced, or restricted. To the extent such funding is reduced or restricted, the parties shall use commercially reasonable efforts to negotiate changes and adjustments to this Contract such that it may be continued on its basis consistent with the reduced funding and/or the restrictions thereto.

C. The **Government** may terminate this Contract whenever it determines that **Contractor** has failed to substantially perform its duties and responsibilities under this Contract. **Government** shall give **Contractor** written notice of its intention to terminate this Contract pursuant to this Section, which notice shall specify the duties and responsibilities that **Contractor** has failed to perform. Thereupon **Contractor** shall have thirty (30) days following receipt of said notice to cure such failure or failures or, in the alternative, to provide a Corrective Action Plan to reach such objective. The **Government** must approve this plan. If **Contractor** successfully cures such failure or failures to conform with the requirements set forth in this Contract within the required time period, then the notice of termination shall no longer be effective.

D. In the event of termination of this Contract pursuant to subsection 16.A or 16.B, above, the Contactor will be entitled to payment for all Services completed, reasonable costs incurred in good faith for work in progress, and the reasonable costs incurred as a result of the termination of this Contract, including but not limited to accounting, legal, clerical, and other expenses reasonably necessary for the termination of this Contract, including payment for the period of the 30 day notice.

17. **PARTIAL TERMINATION**

The performance of work under this Contract may be terminated by the **Government**, in part, whenever the **Government** shall deem such termination advisable. This partial termination shall be effected by delivering to the **Contractor** a Notice of Partial Termination specifying the

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extent to which the term and/or duties under this Contract are terminated and the date upon which such termination becomes effective. In the event of a partial termination, **Contractor** shall be entitled to receive payment for all Services completed, reasonable costs incurred in good faith for work in progress, and the reasonable costs incurred as a result of the termination of this Contract, including but not limited to accounting, legal, clerical, and other expenses reasonably necessary for the termination of this Contract, including payment for the period of the 30 day notice.

18. NON-DISCRIMINATION

No person shall be excluded from participating in, be denied the proceeds of or be subject to discrimination in the performance of this Contract on account of race, creed, color, sex, religion, disability or national origin.

19. CONFLICT OF INTEREST

A. **Contractor** covenants that it has no interest and will not acquire any interest direct or indirect, which would conflict in any manner or degree with the performance of the Services.

B. **Contractor** further covenants that it is:

(1) not a territorial officer or employee (i.e., the Governor, Lieutenant Governor, member of the Legislature, or any other elected territorial official; or an officer or employee of the legislative, executive or judicial branch of the **Government** or any agency, board, commission or independent instrumentality of the **Government**, whether compensated on a salary, fee or contractual basis); or

(2) a territorial officer or employee and, as such, has:

(i) familiarized itself with the provisions of Title 3, Chapter 37 of the Virgin Islands Code, pertaining to conflicts of interest, including the penalties provision set forth in section 1108 thereof;

(ii) not made, negotiated or influenced this Contract, in its official capacity;

(iii) no financial interest in the Contract as that term is defined in section 1101(1) of said Code chapter.

20. EFFECTIVE DATE

The effective date of this Contract shall be the day of execution of the Contract by the Governor.

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21. **NOTICE**

Any notice required to be given by the Terms of this Contract shall be deemed to have been given when the same is sent by certified mail, postage prepaid or personally delivered, addressed to the parties as follows:

GOVERNMENT

Lloyd T. Bough, Jr.
Commissioner Nominee
Department of Property and Procurement
Sub Base, Building No. 1, Third Floor
St. Thomas, Virgin Islands 00802

Claude E. Walker
Attorney General
Department of Justice
34-38 Kronprindsens Gade, 2nd Fl.
St. Thomas, Virgin Islands 00802

CONTRACTOR

RedMane Technology LLC
8614 Catalpa Ave., Suite 1001
Chicago, Illinois 60656
Attention: Antony Lakier
Email: tony_lakier@redmane.com
And
Selwyn Buchman
Email: selwyn_buchman@redmane.com

22. **LICENSURE**

The **Contractor** covenants that it has:

A. obtained all of the applicable licenses or permits, permanent, temporary or otherwise as required by Title 27 of the Virgin Islands Code; and

B. Familiarized itself with the applicable provisions of Title 27 of the Virgin Islands Code pertaining to professions and occupations.

23. **OTHER PROVISIONS**

Addenda and other documents attached hereto are a part of this Contract and are incorporated herein by reference.

24. **DEBARMENT CERTIFICATION**

By execution of this Contract, the **Contractor** certifies that it is eligible to receive contract awards using Federally appropriated funds and that it has not been suspended or debarred from entering into contracts with any Federal agency. The **Contractor** shall include this provision in each of its subcontracts hereunder and shall direct its subcontractors to the

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websites regarding the current "LIST OF PARTIES EXCLUDED FROM FEDERAL PROCUREMENT OR NON PROCUREMENT" at <https://www.dol.gov/ofccp/regs/compliance/preaward/debarlst.htm> and https://www.sam.gov/portal/SAM/?portal:componentId=57532328-784f-4065-bceb-801ac648ccba&interactionstate=JBPNS_r00ABXc0ABBfanNmQnJpZGdlVmlld0kAAAAAQATL2pzZi9uYXZpZ2F0aW9uLmpzcAAHX19FT0ZfXw**&portal:type=action#1. In the event the **Contractor** or any subcontractor misrepresents its eligibility to receive contract awards using Federal funds, the **Contractor** or subcontractor agrees that it shall not be entitled to payment for any work performed under this Contract or any subcontract and that the **Contractor** or subcontractor shall promptly reimburse the **Government** of the Virgin Islands for any progress payments heretofore made.

25. **FALSE CLAIMS**

Contractor warrants that it shall not, with respect to this Contract, make or present any claim upon or against the **Government of the Virgin Islands**, or any officer department, board, commission, or other agency thereof, knowing such claims to be false, fictitious or fraudulent. **Contractor** acknowledges that making such a false, fictitious or fraudulent claim is an offense under the Virgin Islands law.

26. **NOTICE OF FEDERAL FUNDING**

Contractor acknowledges that this Contract is funded, in whole or in part, by Federal funds. **Contractor** warrants that it shall not, with respect to this Contract, make or present any claim knowing such claim to be false, fictitious, or fraudulent. **Contractor** acknowledges that making such a false, fictitious, or fraudulent claim is a Federal offense.


27. **TASK ORDERS/AMENDMENTS**

In addition to the maintenance and support Services described in this Contract, **Contractor** shall provide upgrades, enhancements and modifications to CSTARS as set forth in this Contract, any amendment or addendum to this Contract, the Proposal, the Revised Cost Proposal, and the RFP.

Any enhancement and modification Services shall be performed pursuant to individual task orders and/or change orders, each of which shall be in the form of an amendment to this Contract. Task orders entered into by the **Government** and **Contractor** shall be billed as set out in the Hourly Change Order Rates in the Revised Cost Proposal submitted July 13, 2016. All amendments shall be conditioned on funding and approval by the Governor.

The **Contractor** and **Government** will work together to establish time frames and criteria for the acceptance process of deliverables identified in the Contract. Such acceptance process will establish specific time frames for **Government's** approval of deliverables, as well as the criteria for approval, and contain provisions for schedule adjustment or deemed approval should **Government** fail to meet the specified time frames.

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All Task Orders shall be written and governed by the terms of this Contract and shall set out the following information:

A. scope of services

B. specific term for the performance of the scope of services. (c) not-to-exceed compensation for performance of Services.

If additional information is needed to approve a Task Order, the **Government** may request such continuing information and documentation regarding the Task Order from the **Contractor** as the **Government** reasonably deems appropriate. In the event of a conflict between the provisions of a Task Order and this Contract, the provisions of this Contract shall prevail unless the parties specifically identify and agree upon a change to this Contract in the Task Order, All Change Orders/Amendments shall be subject to the appropriation and availability of funds.

28. ULTRA VIRES

In accordance with the laws and regulations regarding the contracting of services, both parties acknowledge they will not provide any type of service under this Contract until this Contract is duly signed by the authorized representative and the conditions set forth in Section 15 above are satisfied.

29. ORDER OF PRECEDENCE

In the event of a contradiction between the provisions of the documents comprising this Contract, such contradiction shall be resolved by giving precedence in the following order:

A. Provisions of this Contract;

B. Revised Cost Proposal submitted July 11, 2016;

C. Proposal (**Contractor's** Response);

D. RFP.

30. GENERAL PERFORMANCE GUIDELINES

The **Contractor** will follow the following performance guidelines during the support and maintenance process:

A. All work will be conducted in a professional and orderly manner;

B. The **Contractor's** maintenance and support staff will be trained substantially as set forth in the Proposal, including but not limited to training or experience in child support enforcement, implementation and use of web based portals, and current and updated versions of

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Windows software and hardware. **Contractor** will provide training of such staff regarding the specifics of CSTARS as part of the work done by **Contractor** pursuant to this Contract.

C. The **Contractor** shall provide a description of the job specifications for all Key Personnel and shall notify the **Government** of any and all modifications.

D. The following **Contractor** key positions are considered essential to this Contract and are hereby designated as key personnel (“Key Personnel”), who may be changed only with the consent of the **Government** as set forth in subsection 30.E below:

- Project Manager
- Lead Developer or Team Leader(s)

E. A change in Key Personnel after award, may only be made with prior written approval by the **Government**. Approval will not be unreasonably withheld. **Contractor** will be able to replace Key Personnel for reasons beyond the **Contractor**’s reasonable control, including illness, disability, death, leave of absence, personal emergency circumstances, resignation, or termination for cause. **Contractor** must submit for the **Government**’s approval, a replacement with the educational and relevant experience qualifications that are substantially similar to initial Key Personnel. The **Government** may require the removal or reassignment of any **Contractor** employee or subcontractor employee reasonably found unacceptable by **Government**. In addition to the foregoing rights, the **Contractor** may terminate any of its personnel assigned to the project for a violation of law or company policy without **Government**’s prior approval.


F. Resources may not be shared among upgrade, maintenance and enhancement teams, without the consent of the **Government**, which consent shall not be unreasonably withheld. If maintenance resources are used for enhancements, **Contractor** will backfill those resources as appropriate. The qualifications of Key Personnel are considered material elements of the performance required of this Contract and may not be replaced without prior written approval of the **Government**.

31. APPROVALS NOT CONSTRUED AS WAIVERS

The **Government**’s review, approval, acceptance of, and payment of fees for Services required under this Contract, shall not be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of **Contractor**’s failure to perform. **Contractor** is and will remain liable to the **Government** for all direct costs and expenses actually incurred by the **Government** as a result of **Contractor**’s gross negligence or willful misconduct in performance of any of the Services performed under this Contract.

32. OPERABILITY GUARANTEE

The **Government** and **Contractor** agree that upgrades, maintenance and support of the CSTARS Application are primary objectives of this Contract. Therefore, the **Government** and **Contractor** agree that the **Contractor** will, on a timely basis, provide all information, data,

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forms, technical modification, documentation, consultation, and training as required by the Statement of Work, as the same may be amended from time to time.

33. NATURE AND EXTENT OF WARRANTY

Contractor shall use commercially reasonable efforts to promptly correct, at no additional cost to **Government**, any error arising solely out of the work performed by **Contractor** which causes material deviations in the software or inoperability of the hardware relating to CSTARS within THIRTY (30) days of the reported error.

Should such errors cause problems in CSTARS data, **Contractor** shall, to the extent reasonably possible, reconstruct any files affected by the error identified and reported, within THIRTY (30) days after performance of the Services giving rise to the error. The **Government** acknowledges its obligation to maintain adequate backup copies of all data files.

34. VOIDANCE OF WARRANTY

The warranty given by **Contractor** hereunder shall become void and unenforceable against the **Contractor** if the **Government** fails to maintain CSTARS (except if **Contractor** is obligated to perform such maintenance), is negligent in the operation of CSTARS, allows a party other than **Contractor** to make changes or modifications to CSTARS, or causes modifications to the application and supporting software covered in this Contract after being advised by **Contractor** that such modifications may cause errors or material deviations in the operational capabilities of the hardware or software, but only with respect to the component or components affected by such modification.

35. LIMITATION OF WARRANTY AND CONTRACTOR'S LIABILITY

EXCEPT AS EXPRESSLY PROVIDED IN OTHER SECTIONS OF THIS CONTRACT, **CONTRACTOR** MAKES NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE SERVICES, DELIVERABLES OR INTELLECTUAL PROPERTY OR THEIR CONDITION, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR USE BY THE **GOVERNMENT**. NOTWITHSTANDING ANY OTHER PROVISION OF THIS CONTRACT, **CONTRACTOR** SHALL NOT BE LIABLE FOR ANY (i) SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, ARISING FROM OR RELATED TO THE BREACH OF THIS CONTRACT OR THE OPERATION OR USE OF THE SYSTEM OR ANY SERVICES RENDERED BY **CONTRACTOR**, INCLUDING SUCH DAMAGES, WITHOUT LIMITATION, AS DAMAGES ARISING FROM LOSS OF DATA OR PROGRAMMING, LOSS OF REVENUE OR PROFITS, FAILURE TO REALIZE SAVINGS OR OTHER BENEFITS, DAMAGE TO EQUIPMENT, AND CLAIMS AGAINST THE **GOVERNMENT** BY ANY THIRD PERSON, EVEN IF **CONTRACTOR** HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; OR (ii) DAMAGES (REGARDLESS OF THEIR NATURE) FOR ANY DELAY OR FAILURE BY **CONTRACTOR** TO PERFORM ITS OBLIGATIONS UNDER THIS CONTRACT DUE TO ANY CAUSE BEYOND ITS REASONABLE CONTROL. NOTWITHSTANDING ANY

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OTHER PROVISION OF THIS CONTRACT, **CONTRACTOR'S LIABILITIES UNDER THIS CONTRACT, WHETHER UNDER CONTRACT LAW, TORT LAW OR OTHERWISE, SHALL IN NO EVENT EXCEED TWO (2) TIMES THE TOTAL COMPENSATION AND PAYMENTS DUE TO CONTRACTOR UNDER THIS CONTRACT FOR THE SPECIFIC CALENDAR YEAR IN WHICH THE SERVICES OR DELIVERABLES DIRECTLY CAUSING THE DAMAGES WERE PROVIDED.**

36. BREACH OF DUTIES BY CONTRACTOR – REMEDIES

Contractor acknowledges that any failure or unreasonable delay on its part in the delivery of Services and/or materials to the **Government** may cause irreparable injury to the **Government**, not adequately compensable by redress of damages, **Contractor** accordingly agrees that the **Government** may, in such event, seek and obtain injunctive relief, as well as monetary damages limited to the amounts set forth in this Contract. Notwithstanding the foregoing, the **Government** acknowledges that **Contractor** shall retain the unfettered right to raise any and all defenses that it deems appropriate under the circumstances.

37. RIGHT TO WITHHOLD

If work under this Contract is not performed in accordance with the terms hereof, **Government** will have the right to withhold out of any payment due to **Contractor**, such sums as the **Government** may reasonably deem ample to protect it against loss or to assure payment of claims arising there from, and at its option, **Government** may secure itself to satisfy such claims; provided that in no event shall such withholding exceed fifty (50%) percent of the amount invoiced for any deliverable to which such withholding relates. Prior to the **Government** exercising its right to withhold payment, **Contractor** must be notified in writing and given THIRTY (30) days to cure performance and provide documentation thereof. The **Government** will not exercise any right to withhold without providing **Contractor** an opportunity to cure. **Government** will immediately notify the **Contractor** in writing in the event that it elects to exercise its right to withhold. No such withholding or application shall be made by **Government** if and while **Contractor** gives satisfactory assurance to **Government** that such failure to perform will be cured. The right of the **Government** to withhold payment pursuant to this Section 37 is in addition and without prejudice to the **Government's** other rights and remedies under this Contract, and its other legal and equitable rights and remedies.

38. STATUS AS INDEPENDENT CONTRACTOR

Contractor and its agents and employees are independent contractors performing professional services for the **Government** and are not agents, representatives, or employees of the **Government**. Accordingly, the **Government** is under no obligation to make withholdings in relation to **Contractor** employees. **Contractor** and its agents and employees shall not accrue vacation or sick leave, retirement, insurance, bonding, use of **Government's** vehicles, or any other benefits afforded to employees of the **Government** as a result of this Contract, except as derived from their employment by **Contractor** and/or its subcontractors and agents.

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39. **GOVERNMENT NOT LIABLE**

A. Nothing in this Contract shall be construed to impose any liability upon **Government** to persons, firms, associations, or corporations engaged by **Contractor** as servants, agents, or independent contractors, or in any other capacity whatsoever, or make **Government** liable to any such persons, firms, associations, or corporations for the acts, omissions, liabilities, obligations and taxes of **Contractor** or whatsoever nature, including but not limited to unemployment insurance and social security taxes for **Contractor**, his servants, agents, or independent contractors.

B. The **Government** assumes no liability for any accident or injury to **Contractor**, its employees, agents, or their depends, or damage to personal property while in route to or from **Government's** facilities or during any travel associated with or mandated by the terms of this Contract.

40. **CONTRACTOR'S LIABILITY**

Contractor shall be liable for all third party claims related to and arising out of the **Contractor's** gross negligence or willful misconduct in the performance of this Contract, including those arising out of its direct contracts or relationships with third parties, except those acts of negligence attributable to the **Government**. This liability also includes all claims arising out of any subcontracts and the direct damages relating thereto.

41. **RESPONSIBILITY FOR PAYROLL AND WITHHOLDINGS**

Contractor shall faithfully and timely observe all legal requirements regarding payroll withholdings and payment of payroll taxes such as, but not limited to, income tax withholdings, social security taxes and unemployment taxes, and shall maintain at its expense Workmen's Accident Compensation insurances where required by law. **Contractor** shall certify to PCSD that these payments are made for each payroll as required by law. The provisions of this paragraph shall apply to each subcontractor as well. There shall be no withholding of taxes by the **Government** other than those mandated by law.

42. **HOLD HARMLESS FOR PATENT OR COPYRIGHT INFRINGEMENT**

Contractor assumes responsibility for any claim brought against the **Government** based on the infringement of any patent or copyright or the use of any software, materials, or information developed and delivered in the execution of this Contract, and in any such suit or claim, satisfy any penalty assessed against the **Government** for such violation. The **Government** shall provide **Contractor** with a copy of any such claim served upon or noticed to the **Government** within not more than THREE (3) workdays of its receipt, and **Contractor** shall have the right and opportunity to defend clear itself from any such allegation at its sole discretion, and the **Government** shall provide full cooperation in respect thereto. In the event that any order of a court of competent jurisdiction shall prevent the **Government** from using all or any part of such software, materials or information, **Contractor** at **Contractor's** sole option, shall either (a) obtain for the **Government**, at **Contractor's** expense, the right for the

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Government to continue using all of such software, materials or information, including the alleged infringing portion, (b) replace such infringing portion of such software, materials or information to make it non-infringing; or (c) refund to the **Government** all amounts paid for such service, materials or information directly causing the infringement.

Notwithstanding the foregoing, the **Contractor** has no obligation to indemnify or defend the **Government** for, or to pay any costs, damages or attorneys' fees related to, any infringement claim based upon: (i) use of the equipment, software, or commodity in a configuration other than implemented or approved by the **Contractor**, including any modification of the same by the **Government**; or (ii) the combination, operation, or use of the equipment, software, or commodity with equipment, software, or commodities not supplied by the **Contractor** under this Contract.

43. [INTENTIONALLY DELETED]

44. **INJURY OR DAMAGES CAUSED BY EMPLOYEES OR AGENTS OF CONTRACTOR**

Contractor shall indemnify and exonerate **Government** for all sums which are legally payable as compensation with respect to accidental loss or damage to **Government's** tangible personal property resulting from negligent or intentionally wrongful actions or omissions of employees or agents of **Contractor** while on **Government's** premises to the extent such actions or omissions were not caused by **Government** or any third party. As used above, the term, "tangible personal property" shall not include software, documentation, data or data files. **Contractor's** liability shall not apply to damages incurred from use of any software.

45. **NEGLIGENCE OR ABANDONMENT OF DUTIES**

The negligent discharge or abandonment of the duties assigned to the **Contractor** or the breach of the confidentiality clause herein below, shall constitute a breach of this Contract by the **Contractor** that shall entitle the **Government** to terminate this Contract after providing written notice and a thirty (30) day opportunity to cure and without limitation of any other rights and remedies under law. Such termination shall release and discharge the **Government** from any further obligations or liabilities under this Contract, except as otherwise set forth in this Section 45. The **Government** is obligated to pay to the **Contractor** for all undisputed Services rendered and expenses incurred prior to such termination. It is further understood and agreed by each party that money damages may not be a sufficient remedy for any breach of this Contract. The other party may, to the extent permitted by law, be entitled to specific performance and injunctive or other equitable relief as remedy for any such breach. Such remedy shall not be deemed to be the exclusive remedy for one party's breach of this Contract, but shall be in addition to all other remedies that may be available at law or equity.

In no event shall either party be liable to the other party for third party damages other than as expressly set forth above, including lost profits or savings; or loss of or damage to, records or data, even if the other party is informed of this possibility.

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46. [INTENTIONALLY DELETED]

47. PROCEDURES FOR TERMINATION

Notice of Termination by **Government** shall be given by certified mail with return receipt requested, addressed to **Contractor** as provided in Section 21 of this Contract, and shall specify with particularity the nature and date of the termination.

Upon receipt by **Contractor** of a Notice of Termination **Contractor** shall:

A. Stop work under this Contract on the date and to the extent specified in the Notice of Termination, except that work deemed necessary to terminate this Contract in an orderly basis shall continue as specified.

B. Place no further orders or subcontracts for materials, services, or facilities.

C. To the extent legally permissible or otherwise feasible, cancel all pending orders and terminate all subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination.

D. Assign to **Government** in the manner, and to the extent directed, all of the rights, titles, and interest of **Contractor** under the orders or subcontracts so canceled or terminated, in which case **Contractor** shall be held harmless for all orders or subcontracts canceled or terminated. Termination of this Contract and/or any Ordering Document or subcontract shall not relieve **Government** of its obligation to pay all charges that accrued prior to such termination. **Contractor** shall settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which is reimbursable to **Contractor**, in whole or in part, in accordance with the provisions of this Contract. Within TEN (10) workdays after the effective date of termination, the **Contractor** shall transfer title to the **Government** (to the extent that title has not already been transferred) and deliver and return to the **Government**, any formal correspondence, reports, forms, or documents that have been provided by the **Government** related to the Services described In this Contract to the extent possible.

E. Complete the performance of such part of the work that has been specified for completion by the Notice of Termination. However, **Contractor** shall not be obligated, without its express consent, to complete the performance of any part of the work contemplated under this Contract or to continue performing on such parts of the work as **Government** may specify following the effective date of termination.

F. Take such action as may be reasonably necessary, as **Government** may direct, for the protection and preservation of the property related to this Contract which is in the possession of **Contractor** and in which **Government** has or may acquire an interest.

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48. **PERFORMANCE OR TERMINATION OF OBLIGATIONS**

A. **Contractor** shall proceed immediately with the performance of the obligations set forth in Section 47 above, notwithstanding any delay in determining or adjusting the amount of any item of reimbursement required by this Contract.

B. Termination of this Contract shall not limit either party from pursuing any other remedies available to it, including injunctive relief, nor shall termination relieve **Government** of its, obligation to pay all charges that accrued prior to such termination.

49. **RETURN OF PROPERTY**

Upon termination of this Contract in full, the **Government** shall require **Contractor** to return to the **Government** any property made available for its use during the term of this Contract.

50. **SUBMISSION OF CLAIMS**


After receipt of a Notice of Termination, **Contractor** shall submit to the PCSD Director any claims for reimbursement related to the termination in the form and with the certifications prescribed by the **Government**. Such claims shall be submitted promptly, but in no event, no later than **THREE (3)** months after the effective date of termination, unless one or more extensions in writing are granted within such three-month period or authorized extension thereof. Within thirty (30) days of forwarding the Notice of Termination, the **Government** shall provide the forms and certifications prescribed for filing claims related to the termination as part of the termination notice. However, if the **Government** determines that the facts justify such action, termination claims may be accepted and acted upon at any time after such three (3) month period or any extension thereof.

51. **REIMBURSEMENT FOR UNCOMPLETED WORK**

If this Contract is terminated or not renewed during any phase, **Contractor** shall be entitled to be paid an amount equal to the sum of direct labor, materials, and overhead costs incurred for uncompleted work performed pursuant to this Contract, as approved by the **Government** but not more than the amount which would have been paid had the subject Services been completed and approved prior to termination, **Contractor** shall not be entitled to be paid for any work performed following receipt of notice of termination, unless such work was previously authorized in writing.

52. **FAILURE TO AGREE**

In the event of a failure to agree in whole or in part as to the amounts to be paid to **Contractor** in connection with the total or partial termination of work pursuant to this Section, the **Government** shall determine on the basis of information available the amount if any, due to **Contractor** by reason of termination and shall pay to **Contractor** the amount so determined.

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Contractor shall have the right to contest any such determination, as set forth in this Contract in Sections 57 through 61.

53. FAILURE TO SUBMIT CLAIMS

Upon failure of **Contractor** to submit its termination claim within the time allowed, the **Government** may determine on the basis of information available the amount, if any, due to **Contractor** by reason of the termination and shall pay to **Contractor** the amount so determined. **Contractor** shall have the right to contest, any such determination as set forth in this Contract in Sections 57 through 61.

54. ANTICIPATORY PROFITS NOT REIMBURSABLE

In no case shall **Contractor's** termination claims include any claim for unrealized anticipatory profits.


55. FORCE MAJEURE

Contractor and the **Government** shall be excused from performance under this Contract for any period that **Contractor** or the **Government** is prevented from performing any Services in whole or in part as a result of facts and circumstances beyond the reasonable control of the party seeking relief, including but not limited to acts of God, actions or inactions of the other party, floods, epidemics, fire, quarantine restrictions, strikes, freight embargoes, unusually severe weather (each, a "Force Majeure Event," and collectively, "Force Majeure Events"), provided that **Contractor** or the **Government** have prudently and promptly acted to take any and all reasonable preventive and/or corrective steps that are within **Contractor's** or the **Government's** reasonable control to ensure that **Contractor** or the **Government** can promptly perform. Such non-performance shall not be deemed breach of this Contract. This clause shall not relieve the **Contractor** of responsibility for developing and implementing all reasonably prudent contingency and disaster recovery measures. Subcontractor interruptions that are not the result of a Force Majeure Event shall not be considered a Force Majeure Event unless agreed upon by **Contractor** and the **Government**.

The party affected by a Force Majeure Event shall immediately notify the other party by telephone (to be confirmed in writing within **FIVE (5)** days after the affected party becomes aware of such Force Majeure Event) of the occurrence of any Force Majeure Event and describe in reasonable detail the nature of the Force Majeure Event, all preventive and corrective steps taken, how it affects performance, and the anticipated duration of the inability to perform.

56. PUBLICITY

Contractor shall secure the **Government's** written approval prior to the release of any information, including press releases, interviews, bulletins, or articles of any kind in any public, private, or trade medium concerning this Contract or project, its terms, execution, implementation; or results, which approval shall not be unreasonably withheld.

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57. NOTICE AND DISPUTE RESOLUTION MECHANISMS

In the event of any dispute arising during the term of this Contract concerning performance under this Contract or the rights of one or another of the parties, either party shall serve notice thereof to the other party.

Said notice shall express clearly and completely the position of the noticing party.

Within TEN (10) workdays of service of such notice, the receiving party shall reply in writing to the noticing party. Said reply shall express clearly and completely the position of the receiving party in respect to each grievance set forth by the noticing party.

58. MEETING BETWEEN PROJECT DIRECTORS

Within TEN (10) workdays after the reply has been served on the noticing party, representatives of the Contractor and the Government shall meet and make a good faith effort to resolve the dispute. If they succeed, they shall set forth their determination in writing, duly signed by them, and such document shall become binding upon the parties and an official record to be appended to this Contract. If they fail to reach agreement; they shall each set forth a signed statement of the controversy in writing, which statement shall be submitted to the Attorney General, the Director of PCSD, and the representative of the Contractor within TWO (2) workdays.

59. HIGH LEVEL MEETING

If the parties fail to reach an agreement, the PCSD Director and the representative of Contractor shall meet as promptly as possible with a third person to be agreed upon by said parties and make a good faith effort to settle or otherwise compromise their differences. Other persons may attend such meeting only upon the express agreement of the three named individuals.

60. RESOLUTION OF DISPUTE

If the meeting specified in Section 59 above does not result in a settlement or compromise of the dispute or disagreement within SEVEN (7) workdays, the parties may pursue whatever legal remedies are available to them.

61. NO INTERRUPTION OF WORK

Pending final determination of any dispute hereunder, Contractor shall proceed diligently with the performance of Services and be compensated for those Services rendered which are not in controversy until a decision is made pursuant to Sections 57 through 61 or this Contract is terminated.

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62. CONTRACT AMENDMENTS

An approved Contract Amendment is defined as a written amendment to this Contract approved by the **Government** and the **Contractor** specifying the substance and effective date of such change.

A. When Required.

(1) A Contract Amendment is required whenever a change affects the terms and conditions, payment provisions, scope of work, schedule, or the term of this Contract. No waiver, modification or amendment of any term, condition or provision of this Contract shall be valid or of any force or effect unless made in writing, signed by the parties hereto or their duly authorized representatives, and specifying with particularity the nature and extent of such waiver, modification or amendment. Any such waiver, modification or amendment in any instance or instances shall in no event be construed to be a general waiver, modification or amendment of any of the terms, conditions or provisions of this Contract, but the same shall be strictly limited and restricted to the extent and occasion specified in such signed writing or writings.

(2) It is understood that minor schedule changes do not require Contract Amendments. Changes to Task Orders that do not affect the terms and conditions, payment provisions, scope of work, schedule, or the term of this Contract shall not require a Contract Amendment. Such changes may be accomplished by the issuance of a revised Task Order, subject to approval of funding.

B. Changes to Cost or Time. The **Government** will use Contract Amendments to reduce or increase costs caused through changes in the scope of work. If any such change affects costs or the time required to perform other parts of this Contract, an equitable adjustment as mutually determined by the **Government** and **Contractor** will be made in the payment provisions or delivery schedule or both. This equitable adjustment shall be based on the Change Order Rates. Failure to agree to an equitable adjustment is considered a dispute under the provisions of this Contract.

C. Change of Scope Request. The parties' agree that any change in Services must be in writing in the form of a Change of Scope Request/Amendment. Any change in the specified Scope of Services must be mutually agreed upon by the parties. **Contractor** consent must be obtained if any change in **Government** requirements, software or hardware will affect **Contractor's** estimates. **Contractor** shall not be obligated to perform tasks described in **Government's** request until the parties agree in writing to the proposed change.

D. Negotiation. The Change of Scope Request shall be the basis for negotiation between the **Government** and **Contractor**. The **Government** and **Contractor** will negotiate Contract Amendments in good faith. Upon agreement by the parties, a Negotiation Memorandum shall be prepared by the **Government** documenting the scope of the change, the negotiated final fixed price, and the corresponding deliverables based payment schedule. The Negotiation Memorandum shall be included as an exhibit to the resulting Contract Amendment, completed through the amendment process.

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E. Change In Law. Any changes, during the term of this Contract, in Federal or Virgin Islands law that materially impact the Services to be provided under this Contract or the cost of said Services, shall be addressed by a Contract Amendment that equitably amends the provisions of this Contract, including compensation, if necessary, in light of such change of law.

F. Accounting System. **Contractor** shall maintain an accounting system that meets generally accepted accounting principles for purposes of audit and examination of any books, documents, papers, and records in support of or in connection with this Contract. All costs under this Contract will be fully accounted for separately and independently from any other costs of **Contractor**. There shall be no loans to employees or others with **Government** funds.

63. RETENTION OF RECORDS AND ACCESS BY GOVERNMENT AGENCIES

Contractor and its subcontractors shall maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred as required by this Contract, and make such materials available at their respective offices at all reasonable times, for inspection by authorized officials of the United States Virgin Islands and concerned Federal agencies. Each subcontract shall include a provision containing the conditions of this Section. This documentation shall be preserved for either a period of SEVEN (7) years from the date of termination of this Contract, or until any audit conducted by the Federal or Territorial government is completed, whichever condition occurs first.

In this regard, the documentation resulting from this Contract will be reviewed by the **Government** and these agencies, and **Contractor** will be required to make any corrections required by these agencies as a result of their evaluations, subject to the terms of this Contract. The **Government** will give **Contractor** reasonable notice of at least FIVE (5) workdays for any inspection of documentation as set forth herein.

64. OWNERSHIP OF DOCUMENTS AND INFORMATION

A. The **Government** shall have unlimited rights to use, disclose, duplicate, and/or publish for any purpose all information and data developed, derived or documented for or and delivered to the **Government** by the **Contractor** under this Contract, and shall have a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, all operational and application software developed and delivered under this Contract, subject to existing copyrights of the **Contractor** and to the terms and conditions of Section 65 below.

B. All technical communications and records originated or prepared by **Contractor** pursuant to this Contract intended as the expression of **Contractor's** findings, analyses, conclusions, opinions and recommendations with respect to the subject matter of this Contract, including papers, reports, charts and other documentation, application software developed and/or transferred in this project, including modifications, enhancements and/or alternatives, but not including **Contractor's** administrative communications, records files and working papers relating to this Contract (all of the foregoing, collectively, the "Work Product") shall be the sole

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and exclusive property of the **Government**, free of any claim or retention of rights by the **Contractor**.

C. Any additional or advanced operations software concepts and/or technologies that may be developed during the term of this Contract and incorporated into the **Contractor's** licensed products shall be and shall remain the exclusive property of the **Contractor**. However, the **Contractor** shall provide such additional or advanced concepts and/or technologies at no additional cost and with no restrictions other than those contained in Section 65 below.

D. The **Government** retains all ownership or licensed rights to the CSTARS system as modified and enhanced under this system maintenance and support Contract, including but not limited to, ownership and licenses for any and all application software of the project; operational codes, and plans. The **Contractor** shall make available to the **Government** at any time the most current versions of all program source code, data dictionary and all relevant documentation on computer readable media, and shall provide interim copies upon request of **Government**. Concurrent with the final delivery of the software, the **Contractor** shall provide the **Government** with at least ONE (1) copy of the source code, in computer readable media, for each application program modified and/or enhanced under this Contract. If the **Contractor** uses or purchases any software or structured methodology product as part of this and/or for use in this project, e.g., to develop, document, modify, test, compile or otherwise assist in the project, the software product becomes the property of the **Government** at the completion of the project without cost.

E. The **Government** retains all ownership rights and warranties to all computer hardware and/or equipment purchased and installed by the **Contractor** on behalf of the **Government** for the operation and maintenance of the software of this project.

F. Excepted from the provisions of this Section are all programs and documentation which are licensed material acquired by **Contractor** and/or its subcontractors in connection with this Contract.

G. Notwithstanding anything to the contrary herein, **Contractor** shall have the right to use and employ its general skills, knowledge, and expertise, and to use, disclose and employ any generalized ideas, concepts, knowledge, methods, techniques, or skills gained or learned during the course of performing the Services hereunder.

65. SOFTWARE LICENSES

A. In the event **Contractor** is required, in the performance of Services to be provided hereunder, to modify or use any third party software licensed to and provided by the **Government**, the **Government** represents and warrants that it has acquired the necessary approvals and license rights for such modification or use by **Contractor**.

B. The **Contractor** shall grant to the **Government** a non-transferable and nonexclusive license to use product(s) owned by the **Contractor**, as required by the Statement of Work, and shall provide technical Services for the product(s), during the term of this Contract,

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within the compensation provided for this Contract, and in accordance with the following terms and conditions:

(1) The product(s) shall be used solely in the conduct of the **Government's** business, and on and for the hardware and central processing units (CPUs) installed for the uses, and at the locations, specified for this project.

(2) Use of the aforementioned product(s) upon other or upgraded CPU(s), by other parties, or at other locations, requires an additional license and fee(s). The **Government** shall notify the **Contractor** at least THIRTY (30) days prior to any such proposed change in users or external distribution or to process data on behalf of others, and the mutual consent of the **Government** and **Contractor** shall be required before such action is taken.

(3) The **Government** acquires only the right to use the product(s) during the term of this Contract and does not acquire the rights of ownership of the product(s). The **Contractor** retains title and intellectual property rights, including, without limitation, patent, trademark, copyright, and trade secrets regarding the: product(s) and related user manuals and all copies, enhancements and reproductions thereof.

(4) The **Government** may move the product(s) to another location only upon prior written approval of the **Contractor**, which shall not be unreasonably withheld. If the designated CPU(s) becomes temporarily inoperative, the license may be extended to another CPU(s) for a period agreed to by both parties.

(5) The **Government** may not assign, sublicense, sell, encumber, or otherwise attempt to transfer these licenses to any other entity, unless approved in writing by the **Contractor**.

(6) The **Contractor** shall provide the **Government** with the product(s) on magnetic media along with associated paper documentation, and shall install the product(s) at the **Government's** location(s) in accordance with the Proposal.


(7) The **Contractor** shall provide, during the term of this Contract, the technical Services set forth in the Statement of Work.

(8) In addition, the **Contractor** agrees to make reasonable efforts to correct any product system errors arising in a current version of the product(s).

(9) At the conclusion of this Contract, the above licensees and Services may be extended and/or amended upon the mutual agreement of both parties.

66. RIGHTS IN DATA, DOCUMENTS AND OTHER INTELLECTUAL PROPERTY

During the term of this Contract, as a result of **Contractor's** efforts under this Contract, **Contractor** may generate ideas, inventions, suggestions, copyrightable materials or other information ("Intellectual Property") which falls into one of two categories:

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A. Intellectual Property created specifically in connection with the subject matter of Contractor's efforts under this Contract, and incorporated into the work product to be produced or utilized to provide Services by Contractor and delivered to the Government under this Contract. Title to Intellectual Property described in this paragraph that is developed jointly by Contractor and the Government, or solely by Contractor and paid for by the Government, shall remain in the Government at all times. Contractor agrees to disclose and assign to the Government, in a form satisfactory to the Government, all such Intellectual Property, and to render such assistance as the Government may reasonably require to perfect such assignments. The parties understand and agree that any such property, if developed from Federal funds, may be the property of the Federal Government. If such be the case, the Government reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and otherwise use and to authorize others to use for the Government's and for the Federal Government's purposes, any such intellectual property; and

B. Intellectual Property of general applicability, whether or not related to or incorporated into, the work product to be produced or utilized to provide Services by Contractor and delivered to the Government under this Contract. Title to Intellectual Property described in this paragraph, including any Intellectual Property developed by Contractor prior to or outside of this Contract, shall remain property of the Contractor. To the extent such Intellectual Property is incorporated into the work product to be produced and delivered to the Government under this Contract, Contractor grants and the Government hereby accepts, a worldwide, royalty-free non-exclusive license to use all such Intellectual Property as incorporated into the Contractor work product until such time as the Government no longer needs or uses such Intellectual Property.

C. The Government will be the owner of the license provided by the Contractor on all third party proprietary operating and Contractor software package(s), which are provided to the Government hereunder.


D. The Contractor may propose software of its own or that of a third party to utilize in the delivery of Services under this Contract. However, the Government retains the right to accept or decline such proposal. Such proposal shall be made in writing to the Government and prior written approval must first be granted by the Government before such software may be used for the delivery of Services under this Contract.

67. PROVISIONS REQUIRED BY IRS PUBLICATION 1075

A. Performance. In performance of this Contract, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

(1) All work will be done under the supervision of the Contractor or the Contractor's employees.

(2) The Contractor and the Contractor's employees with access to or who use federal tax information as defined in Internal Revenue Service (IRS) Publication 1075

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("Federal Tax Information" or "FTI") must meet the background check requirements defined in IRS Publication 1075.

(3) Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Disclosure to anyone other than an officer or employee of the **Contractor** will be prohibited.

(4) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.

(5) The **Contractor** certifies that the data processed during the performance of this Contract will be completely purged from all data storage components of his or her computer facility, and no output will be retained by the **Contractor** at the time the work is completed. If immediate purging of all data storage components is not possible, the **Contractor** certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.


(6) Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the agency or his or her designee. When this is not possible, the **Contractor** will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the agency or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.

(7) All computer systems receiving, processing, storing or transmitting FTI must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Federal Tax Information.

(8) No work involving Federal Tax Information furnished under this Contract will be subcontracted without prior written approval of the IRS.

(9) The **Contractor** will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office.(10) The agency will have the right to void the Contract if the **Contractor** fails to provide the safeguards described above.

(10) (Include any additional safeguards that may be appropriate.)

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B. Criminal/Civil Sanctions.

(1) Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRCs 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

(2) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the Contract. Inspection by or disclosure to anyone without an official need-to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.

(3) Additionally, it is incumbent upon the **Contractor** to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to Contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a **Contractor**, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

(4) Granting a **Contractor** access to FTI must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual

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recertification. The initial certification and recertification must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, Contractors must be advised of the provisions of IRCs 7431, 7213, and 7213A (see Exhibit 4, Sanctions for Unauthorized Disclosure, and Exhibit 5, Civil Damages for Unauthorized Disclosure). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the **Contractor** must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

C. Inspection. The IRS and the Agency, with 24 hour notice, shall have the right to send its inspectors into the offices and plants of the **Contractor** to inspect facilities and operations performing any work with FTI under this Contract for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. On the basis of such inspection, corrective actions may be required in cases where the **Contractor** is found to be noncompliant with Contract safeguards.

68. CONFIDENTIALITY

A. All material and information concerning the **Government** provided to the **Contractor** by the **Government** or acquired by the **Contractor** in performance of this Contract, whether oral, written, recorded magnetic media, or otherwise, which is not known by third parties not involved in the project and which is not readily accessible to such third parties, shall be regarded as confidential information, and all necessary steps shall be taken by the **Contractor** to safeguard the confidentiality of such material or information in conformity with Federal and Virgin Islands statutes and regulations.

B. The **Contractor** agrees not to release any such information provided by the **Government** or any generated by the **Contractor** without the express written consent of the **Government**. Such consent will be given only for purposes that will enable the **Contractor** to discharge its responsibilities hereunder.

C. For the purposes of this Section 68, "**Contractor Confidential Information**" means any information which, given the nature of the information and/or the circumstances of disclosure, the **Government** has reason to know the **Contractor** considers confidential, in whatever form that it is disclosed, whether or not marked as confidential. **Contractor Confidential Information** includes, without limitation, such information relating to software, hardware, computer programs, technical drawings, algorithms, know-how, formulas, processes, ideas, inventions (whether patentable or not) schematics and other technical, business, financial, customer and product development plans, and information received from others that the **Contractor** is obliged to treat as confidential.

D. The **Government** undertakes to the **Contractor** that in respect of **Contractor Confidential Information** it will: treat the **Contractor Confidential Information** as confidential;

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use at least the same degree of care to protect **Contractor Confidential Information** as it uses to protect its own confidential information of a like nature, but in any event it shall not use a standard of care that is less than a reasonable standard of care; not disclose **Contractor Confidential Information** to anyone without the prior written consent of the **Contractor**; not use **Contractor Confidential Information** for any purpose other than the performance of this Contract; and not remove any confidentiality, copyright or other proprietary rights notices from any **Contractor Confidential Information**.

E. The confidentiality provisions of this Contract shall not apply to information that (i) is lawfully in the public domain at the time it was transmitted; (ii) has been independently developed by the **Contractor** without violation of this section; (iii) is independently known to the **Contractor** at the time of receipt through no unlawful act of the **Contractor**; (iv) is disclosed by the **Contractor** with written approval of the **Government**; (v) becomes known to the **Contractor** from a source other than the **Government**, which source legally is entitled to have and to disclose such information without restriction or (vi) is required to be disclosed by law.

F. The **Government** prohibits disclosure of participant or employee records by the **Contractor**.

G. Security Breach. A breach of PII (defined in subsection 68.H below) shall have occurred when there has been unauthorized acquisition of unencrypted PII data (electronic or otherwise) from **Contractor**'s possession which is utilized in the performance of this Contract that compromises the security, confidentiality, or integrity of PII. The **Contractor** agrees to be liable for any unauthorized disclosure of PII in its possession as if it were the owner of the data. The **Contractor** acknowledges that any breach of PII is a material breach of this Contract. The **Contractor** shall notify the **Government** immediately of any breach or suspected breach but in no event later than twenty-four hours after the **Contractor** learns of the suspected breach. The **Government** may establish reasonable required remediation procedures and the **Contractor** shall comply as directed by the **Government** unless prohibited by law. The **Contractor** shall bear all reasonable costs of such remediation.

H. Duty To Safeguard Information.

(1) The **Contractor** shall comply with Code of Federal Regulations, Title 45, Part 307.13. The **Contractor** acknowledges that its automated systems may access or utilize child support program data and that its automated systems are considered a component of the **Government**'s computerized support enforcement systems for purposes of complying with the safeguard provisions set forth in Federal regulation 45 CFR 307.13. Additionally, the **Contractor** agrees that the data supplied by PCSD shall be used for official **Government** business only. Confidentiality of data must be maintained. **Contractor** acknowledges and agrees that violation of confidentiality may result in a fine.

(2) The **Contractor** acknowledges that in the course of exercising its duties under this Contract that it will receive highly sensitive "personal identifying information" ("PII"). The **Contractor** shall not allow this information to be disclosed except to individuals

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who are authorized in order to perform their duties and only for the technologies and methods reasonably selected from all available technologies and abide by prevailing industry standard security practices for such security sensitive environments to secure this data and prevent its unauthorized disclosure. Such technologies and methods shall include, but shall not be limited to, employee criminal background investigation, computer access security, data access security, data storage encryption, and data transmission encryption. The **Contractor** takes full responsibility for the security of all data and hereby agrees to hold the **Government** harmless of any damages and liabilities that may result from unauthorized disclosure or loss of PII from the **Contractor's** possession to the extent caused by **Contractor**.

(3) The work to be performed under this Contract may require the **Government** to supply data that contains PII. The **Contractor** agrees that the **Government** will securely deliver such data directly to the facility where the data is used to perform the work under this Contract. The data is not to be maintained or forwarded to or from any other facility or location except for the authorized and approved purposes of backup and disaster recovery purposes. The **Contractor** shall insure that the data is not retained beyond the life of the **Contractor's** relationship with the **Government** as established by this Contract. The **Contractor** agrees to dispose of the data in a secure manner as approved by the **Government**

(4) The **Contractor** agrees to inspect and audit the security of its organization that is used to deliver Services under this Contract annually to insure compliance with the applicable Federal guidelines including IRS Publication 1075. All applicable guidelines and reports will be mutually agreed upon by the **Government** and **Contractor**.

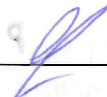
(5) With prior reasonable notice to the **Contractor**, the **Government** may at any time arrange for a security audit to be performed by itself or a third party during **Contractor's** regular business hours to assess the security of the **Contractor's** information technology infrastructure for compliance with these security requirements, including computer systems, networks, security procedures, etc., the cost of which shall be borne by the **Government**.

69. ASSIGNMENT OF CONTRACT

Contractor may not subcontract or assign this Contract, in whole or in part without the prior written consent of the **Government**, which consent shall not be unreasonably denied. The use of personnel from **Contractor's** subsidiaries is permitted and shall not be deemed an assignment.

70. OWNERSHIP MODIFICATION

In the event of any sale or takeover of a majority ownership in **Contractor** by a person or entity that did not have such ownership interest on the day before the effective date of this Contract, **Contractor** shall require that it or its successor organization continues to perform its duties under this Contract. **Contractor** must inform all parties interested in buying or taking majority control of its business of its obligation to continue performing under this Contract until

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the term has expired, and must obtain the agreement of any buyer or taker of majority control to such requirements.

71. SEVERABLE PROVISIONS

If any provision of this Contract is deemed by a court of competent jurisdiction to be invalid, then such provision is to be deemed stricken from this Contract and this Contract shall be enforced according to its valid and subsisting terms and provisions.

72. LIABILITY FOR STATISTICAL AND FISCAL INFORMATION ERRORS

All statistical and fiscal information contained in the RFP and any appendices or attachments to this Contract reflects the information available to the Government at the time of the preparation of the above-cited documents. The Government does not warrant the accuracy of any such information and is not liable for any errors or the results of errors that may be discovered, at any time, to exist in those statements.

73. DUE DILIGENCE RESPONSIBILITY OF THE CONTRACTOR

It is the sole responsibility of the Contractor to exercise due diligence in the performance of this Contract.

74. OMISSIONS

In the event that the Government or Contractor discovers any material omission in the provisions of this Contract that is believed to be essential to the successful performance of this Contract, each must so inform the other in writing. The Government and Contractor will promptly negotiate in good faith with respect to such matters for the purpose of making such reasonable adjustments as may be necessary to attain the objectives of this Contract.

75. SAVING CLAUSE

The Government and Contractor acknowledge the possibility that changes in Federal and Virgin Islands laws or regulations applicable to this Contract could occur and expressly agree to renegotiate this Contract as necessary to comply with such changes:

76. CONTRACTOR'S REPRESENTATIONS

The Contractor represents that it is in compliance with:

- A. U.S. Executive Order 11246, relating to Equal Opportunity Employment; and
- B. 18 US 874, the U.S. Copeland Anti-Kickback Act; and
- C. Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.); and

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- D. The U.S. Immigration Reform Act; and
- E. The U.S. Anti-Lobbying Act.

The **Contractor** further represents that it is not, and has not been, debarred or suspended from doing business with any state, territorial, county or municipal governmental agency, or any Federal agency, within the jurisdiction of the United States.

77. INSURANCE COVERAGE AND LIMITS

Contractor has provided the **Government** evidence of the following insurance coverage:

- A. Professional Liability (Errors and Omissions). Covering all employees associated with the work to be carried out under this Contract with a limit of liability for \$1,000,000 per claim.
- B. Workmen's Compensation Insurance. **Contractor** shall carry Workmen's Compensation Insurance for all employees engaged in work at the site in accordance with applicable laws and regulations.
- C. Other Insurance. **Contractor** hereby agrees to maintain any other coverage required by law or by any applicable regulation.

78. [INTENTIONALLY DELETED]

79. NON-SOLICITATION OF CONSULTANTS AND EMPLOYEES

Without the prior written consent of either party, from the date of this Contract until one year after the termination of this Contract, neither party shall, either directly or indirectly, on behalf of themselves or any other individual, corporation, partnership or other entity, employ, solicit for employment or otherwise assist in the solicitation or employment, of any employee of either party.

80. CONTINGENT FEE PROHIBITION

Contractor warrants that it has not employed or retained any individual, corporation, partnership or other entity, other than a bona fide employee or agent working for **Contractor** to solicit or secure this Contract, and that it has not paid or agreed to pay any individual, corporation, partnership or other entity, other than a bona fide employee or agent any fee or other consideration contingent on the making of this Contract.

81. HEADINGS NOT CONTROLLING

Any headings or titles used to help identify any part of this Contract are for reference purposes only and shall have no binding force or effect and shall not enter into the interpretation of this Contract.

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

WITNESSES:

GOVERNMENT OF THE VIRGIN ISLANDS

[Signature]

By : _____

Claude E. Walker

Name: Claude E. Walker
Title: Attorney General, Department of Justice

Date: FEB. 22, 2017

[Signature]

By : _____

Name: Lloyd T. Bough, Jr.
Title: Commissioner Nominee, Department of Property and Procurement

Date: 4/12/17

DEPARTMENT OF JUSTICE
SOLICITOR GENERAL
2017 JUL 27 11:06 AM

CONTRACTOR

RedMane Technology LLC

[Signature]

By : _____

Name: Anthony Lakier
Title: President

Date: 1/25/2017

APPROVED:

[Signature]
Kenneth E. Mapp
GOVERNOR OF THE VIRGIN ISLANDS

Date

4-25-17

APPROVED AS TO LEGAL SUFFICIENCY
DEPARTMENT OF JUSTICE BY:

[Signature]
Assistant Attorney General

Date

4/20/17

DEPARTMENT OF JUSTICE
SOLICITOR GENERAL
2017 APR 18 PM 4:55

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82. MISCELLANEOUS

Unless otherwise specified, all references in this Contract to "days" refer to calendar days.

GOVERNMENT OF THE VIRGIN ISLANDS

WITNESSES:

Name: Charles E. Walker
 Title: Attorney General, Department of Justice
 Date: 10/25/17

[Signature]

Name: Timothy Lake
 Title: Acting Commissioner, Department of Property and Environment
 Date: 11/2/17

[Signature]

CONTRACTOR

RedTaus Technology LLC

Name: Anthony Baker
 Title: President
 Date: 11/2/2017

[Signature]

Name: [Signature]
 Title: [Signature]
 Date: 11-28-17

[Signature]
 GOVERNOR OF THE VIRGIN ISLANDS

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Initials [Signature]

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