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**CONTRACT FOR PROFESSIONAL SERVICES**

**THIS AGREEMENT** made as of the 6th day of May, 2020 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 – Division of Paternity and Child Support, (hereinafter referred to as "PCSD" or "Government") and Shumaker Consulting, LLC (hereinafter referred to as "Contractor").

**WITNESSETH**

**WHEREAS**, the PCSD is in the process of modernizing the Child Support Territorial Reporting System [CSTARS] an automated child support system, at the Department of Justice – Division of Paternity and Child Support pursuant to Contract No. P038DOJT19, approved by the Governor on July 1, 2019; and

**WHEREAS**, in the interim, the Government is in need of the services of a developer to serve as programmer for the development and maintenance of the current CSTARS system, and to support the integrity of the code during the modernization process and the post-implementation stage; and

**WHEREAS**, CSTARS performs its functions using Natural Language Processing ("NLP"), and

**WHEREAS**, the sole member of the Contractor is only Natural Language programmer that has participated in the development of the CSTARS application from the inception of its implementation, and

**WHEREAS**, the Contractor was selected in accordance with 31 V.I.C. § 239(a)(8) and V.I. R.& Reg. § 239-12(a)(1); and

**WHEREAS**, the Contractor represents that it is willing 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 Addendum I (Scope of Services) attached hereto.

### **2. TERM AND EFFECTIVE DATE**

This Contract shall be effective upon the date of execution of this Contract by the Commissioner of the Department of Property and Procurement and shall terminate three-hundred and sixty-five (365) days thereafter. The Government in its sole discretion, shall have the option to renew this Contract for two (2) additional periods of three-hundred and sixty-five (365) days each subject to the same terms noted herein, by providing the Contractor with sixty (60) days written notice of the Government's election to renew.

### **3. COMPENSATION**

The Government, in consideration of the satisfactory performance of the services described in Addendum I (Scope of Services), agrees to pay the Contractor the sum not to exceed **ONE HUNDRED AND TWENTY-SIX THOUSAND NINE HUNDRED SIXTY-FOUR AND 75/100 DOLLARS (\$126,964.75)**, in accordance with the provisions set forth in Addendum II (Compensation) attached hereto and made a part of this Contract.

### **4. TRAVEL EXPENSES**

Inclusive of the compensation for services as specified in Paragraph 3 (Compensation) above, the Government agrees to pay documented transportation, subsistence, lodging and other travel expenses, while in travel status, for trips which have been authorized in writing, in advance, by the Government. These costs shall be advanced or reimbursed on the same basis as is applicable to non-contract employees of the Government, or as agreed to by an addendum to this Contract, however, said costs and expenses shall not exceed **NINE THOUSAND SIX HUNDRED AND 00/100 DOLLARS (\$9,600.00)**.



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## **5. RECORDS**

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

## **6. PROFESSIONAL STANDARDS**

The Contractor agrees to maintain the professional standards applicable to a programmer doing business in the United States Virgin Islands.

## **7. DOCUMENTS, PRINTOUTS, ETC.**

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

## **8. LIABILITY OF OTHERS**

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

## **9. ASSIGNMENT**

The Contractor shall not subcontract or assign any part of the services under this contract without the prior written approval of the Government.

## **10. INDEMNIFICATION**

Contractor agrees to indemnify, defend and hold harmless the Government from and against any and all loss, damage, liability, claims, demands, detriments, cost, charges and expenses (including





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attorney's fees) and causes of action of whatsoever character which the Government may incur, sustain or be subjected to, arising out of or in any way connected to the services to be performed by Contractor under this Contract and arising from any cause, except the sole negligence of Government.

#### **11. INDEPENDENT CONTRACTOR**

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

#### **12. GOVERNING LAW**

This Contract shall be governed by the laws of the United States Virgin Islands and jurisdiction is exclusive in the United States Virgin Islands.

#### **13. WAIVERS AND AMENDMENTS**

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

#### **14. ENTIRE AGREEMENT**

This Contract constitutes the entire agreement between the parties hereto, and all prior understandings or communications, written or oral, with respect to the subject matter of this Contract, are merged herein.

#### **15. RIGHT TO WITHHOLD**

If work under this Contract is not performed in accordance with the terms hereof, Government will have the right to withhold out of any payment due to Contractor, such sums as the Government may deem ample to protect it against loss or to assure payment of claims arising therefrom, and, at its option, the Government may apply such sums in such manner as the Government may deem proper



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to secure itself or to satisfy such claims. The 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 the Government if and while Contractor gives satisfactory assurance to the Government that such claims will be paid by the Contractor or its insurance carrier, if applicable, in the event that such contest is not successful.

#### **16. CONDITION PRECEDENT**

This Contract shall be subject to the availability and appropriation of funds and to the approval of the Commissioner of the Department of Property and Procurement.

#### **17. TERMINATION**

Either party will have the right to terminate this contract with or without cause on thirty (30) days written notice to the other party specifying the date of termination.

#### **18. PARTIAL TERMINATION**

The performance of work under this Contract may be terminated by the Government, in part, whenever the Government shall deem such termination advisable by providing thirty (30) days written notice to the Contractor. This partial termination shall be effected by delivering to the Contractor a Notice of Partial Termination specifying the extent to which the term and/or duties under this Contract are terminated and the date upon which such termination becomes effective. The Contractor shall be entitled to receive payment for services provided to the date of termination, including payment for the period of the thirty (30) day notice.

#### **19. NON-DISCRIMINATION**

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



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## 20. CONFLICT OF INTEREST

(a) Contractor covenants that it has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract.

(b) Contractor further covenants that it is:

- (1) Not a territorial officer or employee (i.e., the Governor, Lieutenant Governor, member of the Legislature or any other elected territorial official; or an officer or employee of the legislative, executive or judicial branch of the Government or any agency, board, commission or independent instrumentality of the Government, whether compensated on a salary, fee or contractual basis); or
- (2) a territorial officer or employee and, as such, has:
  - (i) familiarized itself with the provisions of Title 3, Chapter 37, 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.

## 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

Anthony D. Thomas  
Commissioner



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**Department of Property and Procurement  
8201 Subbase, Suite 4  
St. Thomas, VI 00802**

**Denise N. George, Esq.  
Attorney General  
Department of Justice  
34-38 Kronprindsens Gade  
2<sup>nd</sup> Floor  
St. Thomas, VI 00802**

**CONTRACTOR**

**Pamela M. Shumaker  
Shumaker Consulting, LLC  
6510 Wailea Dr.  
Grand Blanc, MI 48439**

**22. LICENSURE**

The Contractor covenants that it has:

- a. obtained all of the applicable licenses or permits, temporary or otherwise, as required by Title 27 of the Virgin Islands Code and by the laws of the state of Michigan; and
- b. familiarized itself with the applicable provisions of Title 27 of the Virgin Islands Code pertaining to professions and occupations.

**23. OTHER PROVISIONS**

Addenda I and II attached hereto is a part of this Contract and is incorporated herein by reference.





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## **24. DEBARMENT CERTIFICATION**

By execution of this contract, the contractor certifies that the Contractor 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 sub-contracts hereunder and shall furnish its subcontractors with the current "LIST OF PARTIES EXCLUDED FROM FEDERAL PROCUREMENT OR NON-PROCUREMENT." In the event the contractor or sub-contractor misrepresents its eligibility to receive contract awards using federal funds, the contractor or sub-contractor agrees that it shall not be entitled to payment for any work performed under this contract or sub-contract and that the contractor or sub-contractor 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 offence under 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 offence.

## **27. 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 its employees with the following requirements:

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





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- 2) Contractor and Contractor's employees with access to or who use federal tax information as defined in Internal Revenue Service (IRS) Publication 1075 ("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 Contractor shall be prohibited.
- 4) All returns or 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) Contractor certifies that the data processed during the performance of this Contract will be completely purged from all data storage components of its computer facility, and no output will be retained by Contractor at the time the work is completed. If immediate purging of all data components is not possible, 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 Government. When this is not possible, Contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts and will provide the Government 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



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

**B. Criminal/Civil Sanction.**

- 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 persons 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 disclosures 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 \$5000 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 in an award of civil damages against the officer or employee in an amount not less than \$1000 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



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anyone without an official need-to-know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1000 or imprisonment for as long as 1 year, or both, together with the cost 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 in an amount equal to the sum of the greater of \$1000 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 disclosures plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages plus the cost of the action. These penalties are prescribed by IRCs 7213A and 7431 and set forth at 26 CFR § 301.6103(n)-1.

- 3) Additionally, it is incumbent upon 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 \$5000.
- 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 recertification. The initial certification and recertification must be documented and placed in the agency's file 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





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and the annual certification, Contractor must sign either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

**C. Inspection.**

- 1) The IRS and the Government, with 24 hours-notice, shall have the right to send its inspectors to the offices and plants of 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 action may be required in cases where Contractor is found to be noncompliant with the Contract safeguards.

**28. CONFIDENTIALITY**

A. All material and information concerning the Government provided to Contractor by the Government or acquired by 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 Contractor to safeguard the confidentiality of such material or information in conformity with Federal and Virgin Islands statutes and regulations.

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

C. For the purposes of this Contract, "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 Contractor considers confidential, in whatever form that it is disclosed, whether or not marked as confidential. Contractor Confidential Information includes,





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without limitation, such information relating to software, hardware, computer programs, system codes, technical drawings, algorithms, know-how, formulas, processes, ideas, inventions (whether patentable or not) schematics, proofs and other technical, business, financial, customer and product development plans, and information received from others that Contractor is obliged to treat as confidential.

D. The Government undertakes to Contractor that in respect of Contractor Confidential Information it will: treat Contractor Confidential Information as confidential; 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 Contractor; not use Contractor's 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 of Contractor's 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 Contractor without violation of this section; (iii) is independently known to Contractor at the time of receipt through no unlawful act of Contractor; (iv) is disclosed by Contractor with written approval of the Government; (v) becomes known to 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 Contractor.

## 29. SECURITY BREACH

A breach of Personally Identifiable Information (PII) 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. Contractor agrees to be liable for any unauthorized disclosure of PII in its possession as if it were the owner of the data. Contractor acknowledges that any breach of PII is a material breach of this Contract. Contractor shall notify the Government immediately



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of any breach or suspected breach but in no event later than twenty-four (24) hours after Contractor learns of the suspected breach. The Government may establish reasonable required remediation procedures and Contractor shall comply as directed by the Government unless prohibited by law. Contractor shall bear all reasonable costs of such remediation.

### **30. DUTY TO SAFEGUARD INFORMATION**

A. Contractor shall comply with Code of Federal Regulations, Title 45, Part 307.13. 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, Contractor agrees that the data supplied by Paternity and Child Support Division 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.

B. Contractor acknowledges that in the course of exercising its duties under this Contract that it will receive highly sensitive "personally identifying information" (PII). Contractor shall not allow this information to be disclosed except to individuals 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. 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 Contractor's possession to the extent caused by Contractor.

C. The work to be performed under this Contract may require the Government to supply data that contains PII. 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. Contractor shall insure that the data is not retained beyond the life of Contractor's relationship with the Government





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as established by this Contract. Contractor agrees to dispose of the data in a secure manner as approved by the Government.

D. Contractor agrees to inspect and audit the security of its organization that is used to deliver services under this Contract annually to ensure 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.

E. With prior reasonable notice to 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 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.

### **31. 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 by Contractor 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 and 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 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.



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### **32. INSURANCE**

Contractor shall maintain the following insurance coverages during the term of this Contract

- (a) **COMMERCIAL GENERAL LIABILITY:** Commercial general liability insurance, in a form acceptable to the Government, on a "per occurrence" basis with a minimum limit of not less than one million dollars (\$1,000,000.00) for any one person per occurrence for death or personal injury and one million dollars (\$1,000,000.00) for any one occurrence for property damage. Insurance policy(ies) shall name the Government of the Virgin Islands as the certificate holder and additional insured via an endorsement.
- (b) **PROFESSIONAL LIABILITY:** Professional liability insurance, in a form acceptable to the Government, which covers the services being performed under this Contract, with policy limits of not less than one million dollars (\$1,000,000.00) per claim. The Government shall be listed thereon as a certificate holder.
- (c) **WORKERS' COMPENSATION:** If required, Contractor shall supply current coverage under the Government Insurance Fund or other form of coverage.





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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]  
[Signature]

[Signature]  
 Denise N. George, Esq.  
 Attorney General  
 Department of Justice

4/29/2020  
 Date

Magdalena A. Pearce  
Wayne E. Carlsson

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

5/6/2020  
 Date

CONTRACTOR

[Signature]  
[Signature]

[Signature]  
 Shumaker Consulting, LLC  
 Pamela M. Shumaker  
 Sole Member

4-2-2020  
 Date

APPROVED AS TO LEGAL SUFFICIENCY  
 DEPARTMENT OF JUSTICE BY:

[Signature]  
 Ian S.A. Clement, Esq.  
 Assistant Attorney General

5/6/2020  
 Date

PURCHASE ORDER No. \_\_\_\_\_