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9 Attorneys for Appellant  
10 *Data Management Resources, LLC.*

**RECEIVED**  
OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS

DATE: 11/24/16  
TIME: 9:30  AM  PM BY: ZL  
FILE NO OPA-PA: 12-077

11 **THE OFFICE OF PUBLIC ACCOUNTABILITY – GUAM**  
12 **HAGÁTÑA, GUAM**

13 In the Appeal of ) DOCKET NUMBER. OPA-PA-12-007  
14 )  
15 )  
16 DATA MANAGEMENT RESOURCES, LLC., )  
17 ) **ORDER OF DISMISSAL**  
18 ) **BY STIPULATION**  
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28 )  
Appellant.

29 COMES NOW Appellant, DATA MANAGEMENT RESOURCES, LLC. (“DMR”) and the  
30 GOVERNMENT OF GUAM, through undersigned counsel, to stipulate and agree to dismissal of the  
31 procurement appeal herein on the following terms and conditions as set forth herein:

- 32 (i) The Parties acknowledge that subsequent to the filing of this Procurement Appeal, the  
33 Parties by the Government of Guam have entered into a Settlement Agreement affecting  
34 this matter.
- 35 (ii) The Parties have agreed to a resolution of the procurement in the substantial interest of the  
36 Government of Guam.

**ORIGINAL**

1 (iii) Pursuant to § 5216(e) of Title 5 of the Guam Code Annotated, the Government of Guam  
2 confirms that the Best and Final Offer submitted by DMR on February 10, 2012, is a fair  
3 and reasonable amount for the scope of services requested in RFP/DOA-014-11. The  
4 Government of Guam agrees and confirms after negotiation that One Million, Three  
5 Hundred Thousand and 00/100 USD (\$1,300,000.00) for the procurement of services, with  
6 no provision for hardware, as set forth in RFP/DOA-014-11-11.

7  
8 (iv) The Government of Guam hereby certifies the availability of funds in

9  
10 Account 5100A120800GA001 for the payment of services for RFP/DOA-  
11 014-11.

12 (v) The Contract for Services is attached hereto as Exhibit A.

13 (vi) The Parties agree that each shall bear their respective attorney's fees and costs.

14 (vii) The Parties agree to dismiss this matter with prejudice.  
15

16 NOW THEREFORE, the Parties agree and request the Office of Public Accountability to dismiss  
17 with prejudice the above-captioned appeal.

18 EXECUTED ON THIS \_\_\_\_ day of November, 2012.

19 GOVERNMENT OF GUAM

LAW OFFICE

JACQUELINE TAITANO TERLAJE, P.C.

20  
21   
22 \_\_\_\_\_  
23 **MARIA CENZON**

Legal Counsel, Office of the Governor

By: 

24 \_\_\_\_\_  
25 **JACQUELINE TAITANO TERLAJE**

Attorney for Data Management Resources, LLC.

**CONTRACT  
FOR  
SERVICES  
REQUEST FOR PROPOSAL DOA/RFP-014-11**

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This Contract made on this \_\_\_ day of November, 2012, by and between the GOVERNMENT OF GUAM through the DEPARTMENT OF ADMINISTRATION and the DEPARTMENT OF REVENUE AND TAXATION (collectively referred to as "GovGuam" herein), whose addresses are P.O. Box 884, Hagatna, Guam 96932 and P.O. Box 23607, GMF, Guam 96921, respectively, and Data Management Resources, LLC. (referred to as the "Contractor" herein), a Guam corporation whose address is 284 Chalan Santo Papa, Hagatna, Guam 96910.

The term "Contract" in this agreement refers to this agreement and the attachments:

- (i) "Attachment A" is the Request for Proposal for Point of Sale, DOA/RFP-014-11
- (ii) "Attachment B" is the Contractor's response to DOA/RFP-014-11
- (iii) "Attachment C" is the Contractor's Best and Final Offer for DOA/RFP-014-11 dated February 10, 2012
- (iv) "Attachment D" is a copy of the Contractor's business license

WITNESSETH, that it is mutually agreed between GovGuam and the Contractor as follows:

I. STATEMENT OF WORK TO BE PERFORMED.

This Contract is to design, develop and implement a fully integrated payment system (referred to as "application" herein) for all Treasurer of Guam transactions. The application shall include Point-of-Sale (POS) credit card and check processing services, lock box processing for checks received by mail, and real-time account reconciliation made possible through a back end software solution.

The Contractor agrees to maintain and update the above listed application, documentation and user manuals for services performed by the Contractor, and train persons designated by GovGuam in the use of the applications.

The work which the Contractor agrees to perform under this Contract also includes all the services mentioned by the Contractor in its Response to DOA/RFP-014-11, and as amended and modified by the acceptance of terms and conditions in the Settlement Agreement dated October 18, 2012; specifically, no hardware shall be provided, as previously requested in the DOA/RFP-014-11.

The work which the Contractor agrees to perform under this Contract shall be accomplished via the fiber optic connection Contractor maintains with the Government of Guam, as authorized by the Department of Administration, GovGuam on May 6, 2009 Memorandum to the Department of Public Works. GovGuam hereby ratifies, confirms, authorizes and consents to the continued operation and connection of the fiber optic cable by Contractor referenced herein.

All costs related to the Contractor's performance of its duties under this Contract, including but not limited to travel and lodging expenses for personnel, shall be borne by Contractor. In this Contract, the term "deliverables" refers to all the services and duties to be performed by the Contractor pursuant to this Contract or to any number of services and duties specifically listed or referred to in this Contract; and the term "deliverable" refers to any specific service or duty to be performed by the Contractor at any particular time during the term of this Contract.

## II. CONTRACT PERIOD.

The Contract shall be for a period of three (3) years commencing on the date the Contract is signed by the Governor of Guam. All deliverables referenced in "Attachment B" (the Contractor's response to DOA/RFP-014-11, and as modified by "Attachment C," Contractor's Best and Final Offer dated February 8, 2012, and excluding all hardware, as set forth in the Settlement Agreement dated October 18, 2012, shall be completed and delivered according to the time lines as set by GovGuam. Any waiver of any of these time lines or any acquiescence in the enforcement of these time lines for a listed deliverable shall not be a waiver in the enforcement of the time lines for any other deliverable; provided, however, that all deliverables which are scheduled to be completed in any given year of this Contract shall be completed and delivered on or before the last day of that year; and further, provided that all deliverables shall be successfully completed and delivered on or before ninety (90) calendar days after the date the Contract is signed by the Governor of Guam.

## III. CONTRACT PRICE AND PAYMENT SCHEDULE.

### A. Pricing.

As set forth in the Settlement Agreement dated October 18, 2012, the fair and reasonable amount agreed upon for the scope of services requested is ONE MILLION, THREE HUNDRED THOUSAND AND 00/100 USD (\$1,300,000.00).

In the event that GovGuam determines additional hardware is needed for the POS stations, cost negotiations, at a mutual time agreed upon, shall be made between the Contractor and GovGuam, if GovGuam requests additional POS stations, not covered by this Contract.

### B. Cost Schedule.

Payment in full shall be due upon the completion and delivery of the application, but no later than ninety (90) days after the date the Contract is signed by the Governor of Guam.

### C. Release of Claims.

At least ten (10) calendar days prior to completion of the Contract period, the Contractor shall execute and deliver to GovGuam a release, in a form approved by GovGuam, of any claims of the Contractor against GovGuam and its employees and officers thereof which may have arisen or which may in the future arise under and by virtue of this Contract.

### D. Delivery.

The Contractor shall be deemed to have successfully completed and delivered a deliverable upon the completion of all acts and the delivery of all documents reasonably related to the successful implementation of that deliverable. When a deliverable includes the creation of new system code or the updating of systems codes, completion of the deliverable also includes delivery of the software~ a document, report and/or detail; vendor documentation; the completion of on-site training; a user's guide, manual and/or methodology; and recommendations and/or implementation plans. Provided, however, that GovGuam must determine that all the aspects of the deliverable are comprehensive and of an acceptable professional quality and fulfill all the requirements of that particular deliverable.

### E. Additional/Less Work.

GovGuam may at any time, or from time to time, by written order, make any change or changes to the package(s) and/or deliverable(s). If such order decreases the scope of Contractor's obligations under this Contract, an equitable reduction to the Purchase Price shall be negotiated and this Contract shall be modified in writing accordingly. If such order increases the scope of the Contractor's obligations under this Contract, an equitable increase to the Purchase Price shall be negotiated and this Contract shall be modified in writing.

## IV. EARLY TERMINATION.

### A. In General.

GovGuam reserves the right to terminate all or part of this Contract prior to its completion ("Early Termination") as follows:

- (i) for any reason, upon the delivery of written notice to the Contractor specifying the deliverable(s) being terminated at least ten (10) calendar days prior to the intended date of termination;
- (ii) upon GovGuam's determination that such termination is in the best interests of GovGuam, upon the delivery of written notice to the Contractor specifying the deliverable(s) being terminated and the effective date of such termination; and
- (iii) upon the Contractor's (A) refusal or failure to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, (B) failure to otherwise satisfy the provisions of this Contract, or (C) commission of any other substantial breach of this Contract, if the Contractor does not cure such refusal, failure or breach within ten (10) calendar days after delivery of written notice to Contractor

from GovGuam (which ten (10) calendar day period may be extended by GovGuam in such written notice) specifying the nature of such refusal, failure or breach.

In the event of an Early Termination, the Contractor agrees to use all reasonable efforts to mitigate expenses and obligations hereunder with respect to such event. Subject to the limitations set forth in the Payment Schedule, following an Early Termination, GovGuam shall pay the Contractor for all satisfactory services rendered and expenses incurred on work in progress and for commitments reasonably made in performance of the duties prescribed with respect to the terminated Contract, package or deliverable, as applicable, under the terms of this Contract prior to such notice of termination. Furthermore, in the event of an Early Termination by reason of an event described in clause (ii), above, GovGuam shall reimburse Contractor for all reasonable costs associated with the termination of this Contract. However, in no event shall Contractor be reimbursed for any anticipatory profits that have not been earned up to the date of termination.

Notwithstanding any termination of this Contract, and subject to any directions from GovGuam, the Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor in which GovGuam has an interest.

#### B. Additional Provisions.

In the event that GovGuam effects an Early Termination with respect to one or more deliverables or packages hereunder, as a result of the conduct of Contractor as described in Section IV.A.(iii) above, the following provisions shall apply:

- (i) It is expressly provided that GovGuam may issue a new Request for Proposal with respect to such terminated deliverable(s). In the event of an Early Termination by reason of an event described in clause Paragraph IV.A. (iii), above, Contractor shall be liable to GovGuam for any excess costs incurred by GovGuam in procuring goods and/or services under such new Request for Proposal.
- (ii) If GovGuam requests that the Contractor perform additional services with respect to such terminated deliverable(s), payment for such additional services shall be made in accordance with paragraph E of Section III of this Contract.
- (iii) If GovGuam requests that the Contractor perform additional services with respect to such terminated deliverable(s), the Contractor shall comply with such request and make staff available as reasonably required for the performance of such services.

#### V. CONTACT PERSONS IDENTITY OF PERSONNEL.

The Contractor agrees that, during the term of this Contract, it shall maintain a contact person on Guam who shall be an employee, designated representative or subcontractor of the Contractor who is familiar with the deliverables being provided hereunder and who shall be responsive to the questions and directions of GovGuam. The Contractor certifies that the personnel identified in the Proposal are the persons actually assigned to the project. Any additions, deletions, or changes in personnel designated as key personnel in the Proposal must be submitted to GovGuam, with the exception of personnel who have terminated employment. Replacements for personnel are subject

to approval by GovGuam. GovGuam reserves the right to request replacement of any individual working under this Contract.

## VI. OWNERSHIP.

### A. Warranty Regarding Ownership.

The Contractor specifically warrants that all program materials, all computer programs and software, and all other information and materials of any kind whatsoever used by it in performance hereof or delivered to GovGuam by it hereunder (other than the information delivered to it by GovGuam), or services provided hereunder (collectively, the "Materials"), are either the sole proprietary product of the Contractor or subcontractor or are in the public domain, and that the use by GovGuam of the Materials shall in no way infringe on any patent, copyright, trade secret or other proprietary rights of any other person or entity. Provided, however, that the foregoing shall not apply to the extent that GovGuam uses the materials in a manner which is inconsistent with any restrictions expressed by the developer of such materials. In the event of a claim ("Claim") against GovGuam, and/or their respective officials and employees, for use of the Materials, GovGuam shall promptly notify the Contractor. The Contractor shall defend such Claim, at its own expense, in the names of GovGuam, and/or their respective officials and employees, as applicable. The Contractor shall indemnify, defend, and hold harmless GovGuam, and their respective officials and employees, against any loss, expense, or liability arising out of such Claim, whether or not such Claim is successful, including attorney's fees and costs.

### B. Acknowledgment.

The Contractor acknowledges that all briefs, memoranda and other incidental work or materials furnished in conjunction with the RFP shall be and remain the property of GovGuam including all publication rights and copyright interests, and may be used by GovGuam without any additional cost to GovGuam.

### C. System and Documentation Ownership.

System ownership shall be as stipulated in the Settlement Agreement dated October 19, 2012, Attachment B and Attachment C; all source code and design will remain the sole property of the Contractor. Documentation required or produced as a result of the services rendered under this Contract will become the property of GovGuam. Except as provided in the Settlement Agreement dated October 18, 2012, Attachments B and C, ownership rights of GovGuam shall include the right of GovGuam to have a royalty-free, non-exclusive and irrevocable license. GovGuam understands that the rights to a license rights granted under this section do not apply to distribution of said system code and documentation outside of the Government of Guam.

## VII. CONFIDENTIALITY.

### A. Information.

The Contractor hereby warrants that neither it nor its employees shall disclose any documents, materials or information, whether verbal, written, recorded magnetic media or otherwise (collectively, the "Information"), made available or acquired for the purpose of carrying out this

Contract. Only those employees who are authorized by GovGuam and required to use the Information shall have access to them, and then only for the period such access is required to perform services under this Contract or to perform additional services required by GovGuam. All necessary steps shall be taken by Contractor to safeguard the confidentiality of the Information in conformance with any applicable federal, local and/or governmental statutes and regulations. The Contractor shall keep copies of the Information for as long as GovGuam requests and the provisions of this Section shall remain in effect as long as GovGuam authorizes the Contractor to keep such Information. At the request of GovGuam, all of the Information shall be returned promptly after use and all copies or derivations of the Information shall be physically and/or electronically destroyed. The Contractor shall include a letter attesting to the complete return of Information and documenting the destruction of copies and derivations with the returned Information. The Contractor shall not enter into any agreements or discussions with a third party concerning such Information without the prior written consent of GovGuam, which consent shall be given only for purposes that will enable Contractor to discharge its responsibilities under this Contract.

It is specifically provided that the limitations contained in this paragraph A shall not apply (i) to the extent required by applicable law, (ii) to the extent that any Information is now or hereafter becomes part of the public domain, but only to the limited extent that such Information, or any portion thereof, is in the public domain not as a result of any breach or violation of this Contract, or (iii) to the extent that Contractor is directed otherwise under the terms of a valid and effective court order, issued by a court of competent jurisdiction.

#### B. Liability.

Failure to comply with the provisions of this Section VII may subject the Contractor to liability, both criminal and civil, including all damages to GovGuam and/or to third parties. GovGuam and its duly authorized representatives shall hereby be authorized to inspect and verify the above.

### VIII. TRAINING PROVISIONS.

The Contractor agrees to provide at least fourteen calendar days of on-site training prior to the installation of the deliverables. In addition, training shall include any functional changes to the applications, in the manner mutually agreed upon in writing as agreed by GovGuam and the Contractor.

#### IX. Acceptance, Corrections and Verification.

##### A. In General.

Prior to the expiration of the Contract period, GovGuam shall notify the Contractor of any errors or shortcomings in such deliverable. If such notification is made, the Contractor agrees to correct such problems within ten (10) working days from the date of notification; provided, however, that if the Contractor believes, in good faith, that it shall take a longer period of time to correct such problems, then such ten (10) working day period shall be appropriately extended with the consent of GovGuam, which consent shall not be unreasonably withheld. GovGuam agrees to determine



whether such problems have been corrected within a reasonable amount of time upon receipt of the corrected deliverable. In addition, in the event that GovGuam or Contractor discovers any material omission in one or more deliverables, each party shall so inform the other in writing and GovGuam and the Contractor shall promptly negotiate in good faith with respect to such omission for the purpose of making reasonable adjustments as may be necessary in order for Contractor to satisfactorily perform its obligations under this Contract. The Contractor agrees to correct, at the Contractor's own cost and expense, any deficiencies in a deliverable (at no additional cost to GovGuam) for a period ending ninety (90) calendar days after the date of termination of this Contract. GovGuam shall acknowledge that the Contractor successfully delivered a deliverable by sending a "Notice of Acceptance" letter to the Contractor. Following such acknowledgment, the Contractor shall remain available to make additional changes at the direction of GovGuam. Subject to the preceding provisions of this paragraph A, payment for such additional services shall be made in accordance with paragraph D of Section III of this Contract. Notwithstanding the foregoing, Contractor shall not be responsible to correct any errors caused by the data manipulation by GovGuam employees or agents from November 30, 2011 through the execution of this Contract.

#### B. Responsibility of Contractor.

Notwithstanding any other provision herein, it is expressly provided that the Contractor warrants the professional and technical accuracy of all work and the fitness and quality of all materials furnished under this contract. GovGuam's review, approval, acceptance of, and payment of any part of all of the Purchase Price shall not be construed to operate as a waiver of any rights under the Contract or of any cause of action arising out of the Contractor's failure of performance and the Contractor shall be and remain liable to GovGuam for all direct and indirect costs which may be incurred by GovGuam as a result of the Contractor's failure to perform, in whole or in part, of any of the deliverables in accordance with this Contract.

#### X. WAIVER.

No waiver by any party of any right on any occasion shall be construed as a bar to or waiver of any right or remedy on any future occasion.

#### XI. SEVERABILITY.

If any provision of this Contract shall be held or deemed by a court of competent jurisdiction to be invalid, inoperative or unenforceable, the remaining provisions herein contained shall nonetheless continue to be valid, operative and enforceable as though the invalid, inoperative or unenforceable provision had not been included in the Contract, unless to do so would result in a material failure of consideration under the Contract.

#### XII. SURVIVAL OF WARRANTIES.

All representations, warranties, agreements, covenants and obligations in this Contract shall be deemed to have been relied upon by the other party, shall survive the completion of all deliverables and shall not merge in the performance of any obligation by any party hereto.

XIII. NOTICES.

All reports, correspondence, notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given when delivered or mailed by registered or certified mail, postage prepaid, addressed as follows:

TO GOVERNMENT OF GUAM:

Director  
Department of Administration  
P.O. Box 884  
Hagatna, Guam 96932

Director  
Department of Revenue and Taxation  
P.O. Box 23607  
GMF, Guam 96921

TO DATA MANAGEMENT RESOURCES, LLC.

Richard C. Taitano  
Chief Executive Officer  
Data Management Resources, LLC.  
284 Chalan Santo Papa  
Hagatna, Guam 96910

or to such other address as a party hereto may hereafter designate in a writing sent to the other party hereto.

XIV. ASSIGNMENT.

It is expressly acknowledged that Contractor is solely responsible for the fulfillment of its duties and obligations under this Contract, regardless of whether or not Contractor utilizes one or more subcontractors for such purpose. The right and interest of Contractor under this Contract (including, but not limited to, Contractor's right to or interest in any part or all of the Purchase Price) may not be assigned, transferred or subcontracted to any other person, firm, corporation or other entity, whether by contract, merger, operation of law or otherwise, without the prior, express written consent of GovGuam.

XV. SUCCESSORS AND ASSIGNS.

Subject to Section XIV, this Contract shall be binding upon, and inure to the benefit of the parties hereto and their respective successors, assigns and transferees.

#### XVI. SCOPE OF CONTRACT.

This Contract shall: (i) supersede any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and (ii) contain all of the covenants and agreements between the parties with respect to such subject matter in any manner whatsoever. The Contractor and GovGuam each acknowledge that no representation, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise not contained in the agreement shall be valid or binding. For the purposes of this Contract, the signature of the Governor of Guam ("Governor") is the only signature that will bind GovGuam.

#### XVII. CAPTIONS.

All Section and paragraph titles or captions contained in this Contract are for convenience only and shall not be deemed part of the content of the Contract.

#### XVIII. GOVERNING LAW.

The validity of this Contract and of any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of Guam.

#### XIX. CONSENT TO JURISDICTION.

The Contractor hereby specifically consents to the jurisdiction of and the forum of the Superior Court of Guam with respect to any and all claims which may arise hereunder and waives any and all rights it may otherwise have had to contest the same or to proceed in a different jurisdiction or forum.

#### XX. AMENDMENTS.

This Contract may not be amended, modified, waived, discharged or terminated, except by a written instrument signed by all parties hereto.

#### XXI. WRITTEN NOTICE OF CLAIMS.

The contract fees shall be paid on a transactional basis therefore the Contractor shall not institute any suit or action against GovGuam in any court or tribunal in any jurisdiction based on any claim. No action or suit on any claim shall also include any item or matter not specifically mentioned in the proof of claim above specified. It is agreed that if such action or suit is instituted, proof by the Contractor of its compliance with the provisions of this Section shall be a condition precedent to any recovery, and that this Section does not constitute a waiver of any applicable statutes of limitations.

## XXII. COMPLIANCE WITH LAWS.

### A. In General.

The Contractor shall be required to comply with all federal and local laws and ordinances applicable to this Contract. The Contractor represents and warrants that it is fully licensed to do business in Guam. Attached to this Contract, as Attachment D, is a copy of Contractor's business license or a statement of exemption in accordance with Guam law.

### B. Nondiscrimination in Employment.

The Contractor agrees: (a) not to discriminate in any manner against an employer or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or physical or mental handicap unrelated in nature and extent so as reasonably to preclude the performance of such employment; (b) to include a provision similar to that contained in subsection (a) above in any subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

### C. Immigration Reform and Control Clause.

The Contractor will verify identity and work authorization of employees assigned to perform services for GovGuam under this Contract who are hired after November 6, 1986 and of any persons newly hired and assigned to perform services hereunder within three (3) days of hire.

## XXIII. RETENTION AND ACCESS TO RECORDS AND OTHER REVIEW.

The Contractor, including subcontractors, if any, shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and to make such materials available at their respective offices at all reasonable times during the contract period and for three (3) years from the date of the final payment under the contract, for inspection by GovGuam. Each subcontract by the Contractor pursuant to this Contract shall include a provision containing the conditions of this Section.

## XXIV. LIABILITY.

### A. Indemnification.

The Contractor agrees to save, defend, and hold harmless GovGuam, and its respective officials and employees, from any and all claims, suits, actions, judgments, or settlements of every nature and kind, which may be brought forth, or on account of, any injury, death, or damage arising or growing out of the acts or omissions of the Contractor and/or the Contractor's officers, agents, servants and/or employees under the Contract.

B. GovGuam Not Liable.

GovGuam assumes no liability for any accident or injury that may occur to the Contractor and/or the Contractor's officers, agents, servants and/or employees, and/or to the personal property of any such person or entity, while enroute to or from GovGuam or during any travel mandated by the terms of this Contract. GovGuam shall not be liable to the Contractor for any work performed by the Contractor prior to the approval of this Contract by the Governor, and the Contractor hereby expressly waives any and all claims for service performed in expectation of the Contract prior to its approval by the Governor.

XXV. EFFECTIVE DATE OF CONTRACT.

This Contract shall take effect upon the date it is signed by the Governor. For all purposes hereunder, the date of the Contract shall be the date upon which the Governor affixes his signature.

XXVI. DELAYS, EXTENSIONS AND SUSPENSIONS.

A. Delays and Extensions of Time.

Time extensions to the Contractor may be granted by GovGuam only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of GovGuam or the Government of the United States in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the GovGuam, fires, floods, epidemics, quarantine restrictions, strikes freight embargoes or delays of subcontractors or suppliers beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

B. Suspension of Work.

If, at any time during the term of the Contract, GovGuam determines that the best interests of the GovGuam would be served by temporarily suspending the development of one or more deliverables, it shall do so by providing the Contractor with a written notice to that effect. The Contractor shall, immediately upon receipt of the notice, cease all affected operations for the period specified in such notice, said notice not to be unreasonably invoked. The intent of this clause is to provide GovGuam with a right to suspend development of one or more deliverables in the event that a significant deficiency is discovered and to hold the progress of systems development in suspense pending a cure satisfactory to GovGuam of any such deficiency. All payments shall also be suspended pending the cure of such deficiency satisfactory to GovGuam.

XXVII. ACKNOWLEDGMENT OF DISCLAIMER.

The Contractor expressly acknowledges that all statistical and fiscal information contained in this Contract reflects the information available to GovGuam at the time of the preparation of the documents which comprise the Contract. GovGuam does not warrant the accuracy of any such information and shall not be liable for any errors or the results of errors, which may be discovered, at any time, to exist in those statements.

## XXVIII. INDEPENDENT CONTRACTOR AND ITS EMPLOYEES.

### A. Status of Contractor.

The Contractor and its officers, agents, servants and employees are independent contractors performing professional services for GovGuam, and are not employees of GovGuam. The Contractor and its officers, agents, servants and employees shall not accrue vacation or sick leave, participation in the GovGuam retirement system, insurance coverage, bonding, use of government vehicles or any other benefits accorded to GovGuam employees as a result of this Contract. In addition, there shall be no withholding of taxes by GovGuam.

### B. Liability.

The Contractor assumes responsibility for its personnel providing services hereunder and will make all deductions for social security and withholding taxes and for contributions to employment compensation funds and shall maintain at the Contractor's expense all necessary insurance for its employees including but not limited to Worker's Compensation and liability insurance for each employee.

## XXIX. PAYMENT OF TAXES.

The Contractor agrees that the responsibility for payment of taxes from the funds received by it under this Contract shall be the Contractor's obligation and shall be identified under the Contractor's actual Federal Government tax identification number(s).

## XXX. WARRANTY REGARDING CONFLICT OF INTEREST.

The Contractor hereby warrants that it has no interest, and shall not acquire any interest, direct or indirect, which conflicts in any manner or degree with the performance of this Contract and that the Contractor has not retained any person to solicit this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. The Contractor warrants that it has not received or agreed to receive any payment, gratuity, or offer of employment to be made by, or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

## XXXI. SAVINGS.

GovGuam and the Contractor hereby acknowledge the possibility that changes in federal and/or local regulations applicable to this Contract could occur, and they expressly agree to renegotiate in good faith this Contract as necessary to comply with such changes.

XXXII. DEDUCTION OF DAMAGES FROM PAYMENTS.

Amounts due to GovGuam as liquidated damages pursuant to Section XXXIII may be deducted by GovGuam from any money payable to the Contractor pursuant to this Contract. GovGuam shall notify the Contractor in writing of any claim for liquidated damages pursuant to this Section at least thirty (30) calendar days prior to the date GovGuam deducts such sums from money payable to the Contractor.

XXXIII. LIQUIDATED DAMAGES; PERFORMANCE BOND.

A. Liquidated Damages - Failure to Meet Performance Requirements.

Contractor shall not be liable to GovGuam for liquidated damages.

B. No Performance Bond Required.

Contractor hereby recognizes that strict liquidated damages will be utilized to hold it accountable and liable for timely completion of all deliverables and packages and that no performance bond shall be required.

IN WITNESS WHEREOF, the parties have signed this Contract on the day and year appearing below their respective signatures.

GOVERNMENT OF GUAM

DATA MANAGEMENT  
RESOURCES, LLC.

\_\_\_\_\_  
**HONORABLE EDWARD BAZA CALVO**  
GOVERNOR OF GUAM

Date:

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**RICHARD C. TAITANO**  
Chief Executive Officer

Date:

**APPROVAL AND CONCURRENCE:**

GOVERNMENT OF GUAM  
DEPARTMENT OF REVENUE AND TAXATION

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**JOHN CAMACHO**

Date:

GOVERNMENT OF GUAM  
DEPARTMENT OF ADMINISTRATION

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**BENITA MANGLONA**

Date:

**CERTIFIED FUNDS AVAILABLE**  
**FOR DOA/RFP-14-11:**

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**BERNADETTE F. ARTERO**

GOVERNMENT OF GUAM

Chief Financial Officer

Date:

APPROVED AS TO FORM AND LEGALITY:

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ASSISTANT ATTORNEY GENERAL OF GUAM

Date: