

EXHIBIT ___, SAFEGUARDING REQUIREMENTS FOR FEDERAL TAX INFORMATION

This Exhibit regarding Safeguarding Requirements for Federal Tax Information (“Exhibit”) is an essential part of the agreement between the State and Contractor as described in the Contract to which this Exhibit is attached. Unless the context clearly requires a distinction between the Contract and this Exhibit, all references to “Contract” shall include this Exhibit.

The language of this Exhibit is, in part, derived from Internal Revenue Service (IRS) Publication 1075, *Tax Information Security Guidelines For Federal, State and Local Agencies, Safeguards for Protecting Federal Tax Returns and Return Information (Rev. 11-2021)*, Exhibit 7 – Safeguarding Contract Language. This Exhibit is not exhaustive of all requirements contained in IRS Publication 1075. By agreeing to this Exhibit, Contractor also agrees to comply with all applicable requirements in IRS Publication 1075 or described on the website of the IRS Safeguards Program, located at www.irs.gov/privacy-disclosure/safeguards-program.

1. PERFORMANCE

In performance of the Contract, Contractor agrees to comply with and assume responsibility for compliance by Contractor’s officers or employees with the following requirements:

- 1.1. All Work will be performed under the supervision of Contractor.
- 1.2. Contractor and Contractor’s officers or employees to be authorized to access FTI must meet background check requirements defined in Internal Revenue Services (IRS) Publication 1075 and §24-50-1002, C.R.S. Contractor will maintain a list of officers or employees authorized to access FTI. Such list will be provided to the State and, upon request, to the IRS.
- 1.3. FTI in hardcopy or electronic format shall be used only for the purpose of carrying out the provisions of this Contract. FTI in any format 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 or disclosure of FTI to anyone other than Contractor or Contractor’s authorized officers or employees is prohibited.
- 1.4. FTI shall be accounted for upon receipt and properly stored before, during, and after processing. In addition, any related output and products require the same level of protection as required for the source material.
- 1.5. By signing the Contract, which includes this Exhibit, Contractor certifies that FTI processed during the performance of this Contract will be completely purged from all physical and electronic data storage with no output to be retained by Contractor at the time the Work is completed. If immediate purging of physical and electronic data storage is not possible, Contractor certifies that any FTI in physical or electronic storage will remain safeguarded to prevent unauthorized disclosures.
- 1.6. Any spoilage or any intermediate hard copy printout that may result during the processing of FTI shall be given to the State. When this is not possible, Contractor shall be responsible for the destruction of the

spoilage or any intermediate hard copy printouts and will provide the State with a statement containing the date of destruction, description of material destroyed, and the destruction method.

- 1.7. All computer systems receiving, processing, storing, or transmitting FTI must meet the requirements 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 FTI.
- 1.8. No Work involving FTI furnished under this Contract will be subcontracted without the prior written approval of the State and the Governor's Office of Information Technology, and the IRS.¹
- 1.9. Contractor will ensure that the terms of FTI safeguards described in this Exhibit are included, without modification, in any approved subcontract for Work involving FTI.
- 1.10. To the extent the terms, provisions, duties, requirements, and obligations of the Contract apply to performing services with FTI, Contractor shall assume toward each Subcontractor all obligations, duties and responsibilities that the State under the Contract assumes toward Contractor, and each Subcontractor shall assume toward Contractor all the same obligations, duties and responsibilities which Contractor assumes toward the State under the Contract.
- 1.11. In addition to the Subcontractor's obligations and duties under an approved subcontract, the terms and conditions of the Contract apply to the Subcontractor, and the Subcontractor is bound and obligated to the Contractor hereunder by the same terms and conditions by which Contractor is bound and obligated to the State under this Contract.
- 1.12. For purposes of this Contract, the term "Contractor" includes any officer or employee of Contractor with access to or who uses FTI, and the term "Subcontractor" includes any officer or employee of the Subcontractor with access to or who uses FTI.
- 1.13. Contractor will not use live FTI in a test environment or utilize a cloud computing model that receives processes, stores, or transmits FTI without express written authorization from the State.²
- 1.14. Contractor will maintain the confidentiality of all Tax Information provided by the State or learned in the course of Contractor's duties under the Contract in accordance with safeguards set forth under §39-21-113(4), C.R.S., as amended.
- 1.15. Contractor agrees to comply with the following additional requirements in performance of this Contract:

None

- 1.16. The State will have the right to void the Contract if Contractor fails to meet the terms of FTI safeguards described in this Exhibit.

¹ see IRS Publication 1075, Exhibit 6 Contractor 45-Day Notification Procedures.

² see IRS Publication 1075, Section 2.0 Physical Security Requirements, subsections 2.E.6.1 Cloud Computing and 2.E.6.4 Live Data Testing.

2. CRIMINAL/CIVIL SANCTIONS

- 2.1. Each officer or employee of Contractor to whom FTI is or may be disclosed shall be notified in writing that FTI disclosed to such officer or employee can be used only for a purpose and to the extent authorized in this Exhibit, and that further disclosure of any FTI for a purpose not authorized in this Exhibit 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.
- 2.2. Each officer or employee of Contractor to whom FTI is or may be accessible shall be notified in writing that FTI accessible to such officer or employee may be accessed only for a purpose and to the extent authorized in this Exhibit, and that access/inspection of FTI without an official need-to-know for a purpose not authorized in this Exhibit 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.
- 2.3. Each officer or employee of Contractor to whom FTI is or may be disclosed shall be notified in writing that any such unauthorized access, inspection, or disclosure of FTI 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 \$1,000 for each unauthorized access, inspection, or disclosure, or the sum of actual damages sustained as a result of such unauthorized access, inspection, or disclosure, plus in the case of a willful unauthorized access, inspection, or disclosure or an unauthorized access, inspection, or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by Internal Revenue Code (IRC) §§7213, 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.
- 2.4. Additionally, Contractor shall 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 Contractor by 5 U.S.C. 552a(m)(1), provides that any officer or employee of Contractor, who (i) by virtue of his/her employment or official position, has possession of or access to State records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and (ii) knowing that disclosure of the specific material is so 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.
- 2.5. Granting Contractor access to FTI must be preceded by certifying that each officer or employee understands the State's security policy and procedures for safeguarding FTI. Contractor and each officer or employee must maintain their authorization to access FTI through annual recertification of their understanding of the State's security policy and procedures for safeguarding FTI. The initial certification and recertifications must be documented and placed in the State's files for review. As part of the certification and at least annually afterwards, Contractor and each officer and employee must be advised of the provisions of IRC §§7213, and 7213A, and 7431 (see *Exhibit 4, Sanctions for Unauthorized Disclosure*, and *Exhibit 5, Civil Damages for Unauthorized Disclosure* of IRS Publication 1075). The training on the State's security policy and procedures provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches.³ For the initial certification and the annual certifications, Contractor and each officer or employee must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

³ see IRS Publication 1075, Section 1.0 Federal Tax Information, Reviews and Other Requirements, subsection 1.8 Reporting Improper Inspections or Disclosures and www.irs.gov/privacy-disclosure/reporting-improper-inspections-or-disclosures.

3. INSPECTION

The IRS and the State, with 24-hour notice, shall have the right to send its inspectors into 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's 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. Based on the inspection, corrective actions may be required in cases where Contractor is found to be noncompliant with FTI safeguard requirements.