

1.38 SAFEGUARDING OF INFORMATION FROM THE UNITED STATES INTERNAL REVENUE SERVICE (IRS)

a. PERFORMANCE

The Contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

1. All work shall be performed under the supervision of the Contractor or the Contractor's responsible employees.
2. The Contractor and the Contractor's employees with access to or who use FTI must meet the background check requirements defined in IRS Publication 1075.
3. Any Federal Tax Information (FTI) or return information (hereafter referred to as FTI, returns or return information) made available 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 this Contract. Inspection by or disclosure to anyone other than an officer or employee of the Contractor is prohibited.
4. All returns and return information shall be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products 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 Department's Project Manager or 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 Department's Project Manager or 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 FTI.
8. No work involving returns and return information furnished under this Contract shall be subcontracted without prior written approval of the IRS.
9. The Contractor shall maintain a list of employees authorized access. Such list will be provided to the Department and, upon request, to the IRS reviewing office.
10. The Department shall have the right to void the Contract if the Contractor fails to provide the safeguards described above.

b. CRIMINAL/CIVIL SANCTIONS

1. Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing solely by one designated person (from either DHR staff or the Contractor's staff, to be determined) that returns or return information disclosed to each 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 five years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized future 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 Internal Revenue Code (IRC) Sections 7213 and 7431 and set forth at 26 C.F.R. Part 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 this Contract. Inspection 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. The penalties are prescribed by IRC Sections 7213A and 7431 and set forth at 26 C.F.R. 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 United States Code (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 there under, and who 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.
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 shall maintain their authorization to access FTI through annual 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 should be advised of the provisions of IRC Sections 7431, 7213, and 7213A. The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedures for reporting unauthorized disclosures and data breaches. For both the initial certification and the annual certification, the Contractor shall sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the

security requirements. See **Attachment W**.

c. **INSPECTION**

The IRS and the Department, 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 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.