

REGISTRATION NUMBER

PURCHASING AUTHORITY NUMBER
(if applicable)

AGREEMENT NUMBER
19-13054

1. This Agreement is entered into between the Contracting Agency and the Contractor named below:

CONTRACTING AGENCY NAME

California Department of Technology

CONTRACTOR NAME

Nava Public Benefit Corporation

2. The term of this Agreement is: Start Date: 04/06/2020
End Date: 07/06/2020

3. The maximum amount of this Agreement is: \$ 500000.0

4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement:

EXH	TITLE	PAGES
A	Statement of Work	8
B	Budget Detail and Payment Provisions	2
C	*General Provisions (Information Technology) GSPD 401IT Rev Date:	28
D	CDT Special Terms and Conditions to Safeguard Federal Tax Information	9
E	Security and Data Protection	1

Items shown with an asterisk (*) are hereby incorporated by reference and made part of this agreement as if attached hereto. These documents can be viewed at <https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/Model-Contract-Language>

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR

Department of Technology,
Statewide Technology Procurement
Use Only

CONTRACTOR NAME (If other than an individual, state whether a corporation, partnership, etc.)

Nava Public Benefit Corporation

CONTRACTOR AUTHORIZED SIGNATURE

 Rohan Shailesh Bhobe
Rohan Shailesh Bhobe (Apr 5, 2020)

DATE SIGNED

Apr 5, 2020

PRINTED NAME AND TITLE OF PERSON SIGNING

Rohan Bhobe, CEO

ADDRESS

1 Thomas Cir NW, Washington, DC 20005

STATE OF CALIFORNIA

CONTRACTING AGENCY NAME

California Department of Technology

CONTRACTING AGENCY AUTHORIZED SIGNATURE

 Lea Anne Basco
Lea Anne Basco (Apr 5, 2020)

DATE SIGNED

4/5/2020

PRINTED NAME AND TITLE OF PERSON SIGNING

Lea Anne Basco, Information Technology Supervisor II

CONTRACTING AGENCY ADDRESS

10860 Gold Center Drive, Rancho Cordova, CA 95670

California Department of Technology
APPROVED
DATE _____
Signed _____
Statewide Technology Procurement

*This is for State of CA use in response to COVID-19, not for CDT use only.

☐ Exempt per_ *PCC is exempt.

EXHIBIT A STATEMENT OF WORK (SOW)

1. OBJECTIVE

The current crisis in which unemployed individuals in California are both already eligible for, and in need of, income support as COVID19's impact on the economy grows. The Pandemic Unemployment Assistance (PUA) program is a new iteration of an existing program that will run in parallel with 'traditional' unemployment in the state. Further, the requirements and processes for these two unemployment programs and related services such as California Paid Family Leave and Disability Insurance are evolving, complex, and may be confusing for applicants.

The approach uses the best practices in iterative development and human centered design, as well as Nava's past experiences building benefits services, to rapidly deliver value and promote extensibility. We will prioritize helping Californians' understand which unemployment program they are eligible for and how to access benefits by rapidly building and launching an MVP Eligibility Screener. We will then iterate on the screener' in response to user testing and in collaboration with government stakeholders. This will help us to understand the program and policy requirements needed to build a front end application for PUA.

2. TERM/PERIOD OF PERFORMANCE

- a. The period of performance for the Contract shall be from April 6, 2020 or upon approval, whichever is later, through July 6, 2020.
- b. The Contractor shall not be authorized to deliver or commence the performance of services as described in this SOW until written approval has been obtained from all entities. Any delivery or performance of service that is commenced prior to the signing of the Contract shall be considered voluntary on the part of the Contractor and non-compensable.

3. CONTRACT REPRESENTATIVES

All notices required by, or relating to, this Contract shall be in writing and shall be sent to the parties of the Contract at the address set below unless changed from time to time, in which event each party shall so notify the other in writing, and all such notices shall be deemed duly given if deposited, postage prepaid, in the United States mail or e-mailed and directed to the addresses then prevailing.

The Technical Contract Managers during the term of this contract will be:

State:	California Department of Technology	Contractor:	Nava Public Benefit Corporation
Name:	Tim Issertel	Name:	Cheryl Pierce
Phone:	916-873-7589	Phone:	202 906-0912
e-mail:	Timothy.Issertell@state.ca.gov	e-mail:	contract-ops@navapbc.com

The Business Contract Manager during the term of this contract will be:

State:	California Department of Technology	Contractor:	Nava Public Benefit Corporation
Unit:	Acquisition & IT PMO Branch	Name:	Cheryl Pierce
Name:	Roddy Son	Address:	1 Thomas Circle NW
Address:	P.O. Box 1810 MS Y-18 Rancho Cordova, CA 95741		Washington, District of Columbia 20005, US
Phone:	916-431-5448	Phone:	202 906-0912
e-mail:	rodny.son@state.ca.gov	e-mail:	contract-ops@navapbc.com

4. PROJECT TASKS/DELIVERABLES

Sprint 0 (beginning April 6)

The primary focus of Sprint 0 will be onboarding staff, knowledge transfer from the current team, conducting initial discovery, and collaboratively planning activities and success criteria for Sprints 1 and 2. This may also include aligning on how we will work together to define the tools practices and norms that support quick and productive communication and collaboration.

Sprint 1 (beginning April 13)

The primary focus of Sprint 1 will be rapid development of a plain language eligibility screening tool to guide the public through a series of questions informed by user research, in order to identify which unemployment assistance program they might be eligible for.

Sprint 2 (beginning April 27)

The focus of Sprint 2 will be iteration of the Screener based on user feedback and additional requirements gathering, as well as deeper discovery of technical considerations and business needs for development of a web-based application for PUA.

Future Sprints

Recognizing a rapidly evolving environment, and a need to begin work and add/adjust resources in response to need, we propose iterating on the sprint objectives and resources for sprint 3 and beyond at to-be-determined mutually agreed upon cadence such that Nava is able to understand and plan to deliver resources in response to project needs.

Assumptions

- We will be developing within the state's Azure account or equivalent
- We will work with the state to obtain any needed expedited approvals or other requirements to establish the path to production

5. CONTRACTOR RESPONSIBILITIES

- a. The Contractor will provide its own equipment necessary to perform the required duties.
- b. The Contractor shall designate a primary contact person to whom all project communications may be addressed and who has the authority to act on all aspects of the services.
- c. The Contractor will adhere to the CDT policies and procedures, guidelines and templates including access and security requirements.

6. DEPARTMENT OF TECHNOLOGY RESPONSIBILITIES

- a. Designate a person to whom all Contractor communication may be addressed, and who has the authority to act on all aspects of the services. This person will review the SOW and associated documents with the Contractor to ensure understanding of the responsibilities of both parties.
- b. Provide a timely review and approval of information and documentation provided by the Contractor to perform its obligations.

7. PERFORMANCE

The CDT will be the sole judge of the acceptability of all work performed and all work products produced by the Contractor as a result of this SOW. Should the work performed or the products produced by the Contractor fail to meet the CDT conditions, requirements, specifications, guidelines, or other applicable standards, the following resolution process will be employed, except as superseded by other binding processes:

- a. The CDT will notify the Contractor after completion of each phase (Sprint) of service of any acceptance problems by identifying the specific inadequacies and/or failures in the services performed and/or the products produced by the Contractor. The costs related to rework of unacceptable work products shall not be billed to the CDT.
- b. The Contractor will respond to the CDT by submitting a detailed explanation describing precisely how the identified services and/or products actually adhere to and satisfy all applicable requirements, and/or a proposed corrective action plan to address the specific inadequacies and/or failures in the identified services and/or products. Failure by the Contractor to respond to the CDT's initial problem notification within the required time limits may result in immediate termination of the Contract.

In the event of such termination, the CDT shall pay all amounts due the Contractor for all work accepted prior to termination.

- c. The CDT will notify the Contractor in writing whether it accepts or rejects the explanation and/or plan. If the CDT rejects the explanation and/or plan, the Contractor will submit a revised corrective action plan within three (3) State business days of notification of rejection. Failure by the Contractor to respond to the CDT's notification of rejection by submitting a revised corrective action plan within the required time limits may result in immediate termination of the Contract. In the event of such termination, the CDT shall pay all amounts due the Contractor for all work accepted prior to termination.

- d. The CDT will notify the Contractor in writing whether it accepts or rejects the revised corrective action plan proposed by the Contractor. Rejection of the revised corrective action plan will result in immediate termination of the Contract. In the event of such termination, the CDT shall pay all amounts due the Contractor for all work accepted prior to termination.

8. PROBLEM ESCALATION

The parties acknowledge and agree that certain technical and project related problems or issues may arise, and that such matters shall be brought to the CDT's attention. Problems or issues shall normally be reported in regular status reports. There may be instances, however, where the severity of the problems justifies escalated reporting. To this extent, the Contractor will determine the level of severity and notify the appropriate CDT personnel. The CDT personnel notified, and the time period taken to report the problem or issue, shall be at a level commensurate with the severity of the problem or issue. The CDT personnel include, but are not limited to, the following:

First level:

Tim Issertel - CDT Project Approval & Oversight Manager

Second level:

Andrea Spears - CDT Chief Project Officer

Third level:

Richard Rogers - CDT Chief Deputy Director

9. AMENDMENTS

Consistent with the terms and conditions of the original agreement, and upon mutual consent, the CDT and the Contractor may execute amendments to this Agreement, including revisions to Exhibit A – Statement of Work (i.e. objective, project tasks and deliverables). There shall be options to amend for additional time and funds. No amendment or variation of the terms of this Agreement shall be valid unless made in writing, and agreed upon by both parties and approved, as required. No verbal understanding or agreement not incorporated into the Agreement is binding on any of the parties.

10. CANCELLATION

The CDT may exercise its option to terminate the Contract at any time with 7 calendar days' prior written notice. In the event of such termination, the CDT shall pay all amounts due the Contractor for all tasks/deliverables accepted prior to termination

11. OTHER CONTRACT CONSIDERATIONS

- a. The Contractor will act as prime contractor under this Contract. In addition to identifying all personnel proposed to work under this Contract, the Contractor shall also identify its subcontractor affiliation, as applicable.
- b. The CDT reserves the right to approve all subcontractors prior to the performance of any work by the subcontractor.
- c. Nothing contained in this Contract shall create any conceptual relationship between the State and any subcontractors, and no subcontract shall relieve the Contractor of its responsibilities and obligations hereunder. The Contractor is fully responsible to the

CDT for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them.

- d. If a subcontractor is a California Certified Small Business (SB) and/or Disabled Veteran Business Enterprise (DVBE), then those amounts paid to certified subcontractors shall be identified on the Contractor's invoice(s).
- e. The Contractor's obligation to pay its subcontractors is an independent obligation from the State's obligation to make payments to the Contractor. As a result, the State shall have no obligation to pay or to enforce the payment of any monies to any subcontractor.
- f. Military and Veteran Code (MVC) 999.5(d), Government Code (GC) 14841, and California Code of Regulations (CCR) 1896.78(e) requires all Prime Contractor's that had a DVBE firm preform any element of work for a contract to report DVBE information.

Prime Contractors are required to maintain records supporting the information that all payments to DVBE subcontractor(s) were made. The Prime DVBE Subcontracting form can be found at the following link: https://www.documents.dgs.ca.gov/dgs/fmc/gs/pd/pd_810P.pdf and the instructions can be found at the following link: <https://www.dgs.ca.gov/PD/Services/Page-Content/Procurement-Division-Services-List-Folder/File-a-DVBE-Subcontractor-Report#@ViewBag.JumpTo>. Completed forms are to be e-mailed to: primeDVBE@state.ca.gov.

12. FEDERAL TAX ADMINISTRATION REQUIREMENTS

Subject to the Internal Revenue Service (IRS), federal tax information (FTI) requirements, if an unfavorable response is received by the IRS, this contract will be terminated immediately, per General Provisions – Information Technology (GSPD-401), clause 23, Termination for Default.

13. SECURITY AND DATA PROTECTION REQUIREMENTS

The CDT must ensure agreements with state and non-state entities include provisions, which protect and minimize risk to the state when engaging in the development, use, or maintenance of information systems, products, solutions, or services. In order to comply with the State Administrative Manual (SAM) Section 5305.8, Contractor must comply with Exhibit E, Security and Data Protection.

**EXHIBIT A-1
ACCEPTANCE DOCUMENT**

CONTRACTOR NAME: _____

DEPARTMENT OF TECHNOLOGY CONTRACT NUMBER: _____

ACCEPTANCE DOCUMENT (AD) NUMBER: _____

TITLE: _____

COMPLETION DATE: _____

TOTAL COST: \$ _____

DESCRIPTION:

DEPARTMENT OF TECHNOLOGY ACCEPTANCE OR REJECTION:

AUTHORIZED AND APPROVED:

CONTRACTOR OFFICIAL SIGNATURE / DATE

DEPARTMENT OF TECHNOLOGY
CONTRACT ADMINISTRATOR SIGNATURE /
DATE

Note: Once the Contractor and the Department of Technology have approved the AD as stipulated in the contract, the Contractor may submit an invoice to the Department of Technology. Refer to payment terms in Exhibit B.

EXHIBIT A-2
WORK AUTHORIZATION FORM

The task/deliverable(s) will be performed in accordance with this Work Authorization and the provision of Contract Number:

WORK AUTHORIZATION NUMBER	PAGE(S) of
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TITLE OF TASK/DELIVERABLE

TASK/DELIVERABLE SUMMARY *(Brief description of task/deliverable to be performed under work authorization)*

START DATE	COMPLETION DATE
TOTAL ESTIMATED LABOR HOURS	TOTAL ESTIMATED COST

APPROVALS

CONTRACTOR CONTRACT ADMINISTRATOR NAME	TITLE
SIGNATURE	DATE
DEPARTMENT OF TECHNOLOGY CONTRACT ADMINISTRATOR NAME	TITLE
SIGNATURE	DATE

WORK AUTHORIZATIONS (WA)

- a. Each WA shall consist of a detailed statement of the purpose, objective, or goals to be undertaken by the Contractor and all information requested to be provided per WAform, Exhibit A-2.
- b. All WA must be in writing prior to beginning work and signed by the Contractor and the CDT Technical Contract Manager.
- c. The CDT has the right to require the Contractor to stop or suspend work on any WA.
- d. Personnel resources will not be expended (at a cost to the CDT) on task/deliverable accomplishment in excess of estimated work hours required unless the procedure below is followed:
 - (1) If, in performance of the work, the Contractor determines that a WA to be performed under this Contract cannot be accomplished within the estimated work hours, the Contractor will immediately notify the CDT in writing of the Contractor's estimate of the work hours which will be required to complete the WA in full. Upon receipt of such notification, the CDT may:
 - (a) Authorize the Contractor to expend the estimated additional work hours or service in excess of the original estimate necessary to accomplish the WA;
 - (b) Terminate the WA; or
 - (c) Alter the scope of the WA in order to define tasks that can be accomplished within the remaining estimated work hours.
 - (2) The CDT will notify the Contractor in writing of its decision within seven (7) calendar days after receipt of the notification. If notice of the decision is given to proceed via an amended WA signed by the Contractor and CDT, the Contractor may expend the estimated additional work hours for agreed upon services. The CDT agrees to reimburse the Contractor for such additional work hours.

**EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS**

1. Payment for services performed under this Contract shall be monthly in arrears for services satisfactorily rendered and upon receipt and approval of the invoice. An Acceptance Document, Exhibit A-1 is required from the CDT Technical Contract Manager before processing an invoice for payment.
2. Upon successful completion and acceptance of each project task/deliverable identified in a Contract, the Contractor will submit an invoice for payment associated with the individual payment amounts. All payment shall be based on the Work Authorization Form and must be attached.
3. Invoices shall be submitted, and shall identify labor and costs charged. Invoices shall be submitted monthly, in arrears, however, invoices shall be due and payable, and payment shall be made, only after the CDT acceptance under this Contract.
4. The Contractor costs related to items such as travel and per diem are costs of the Contractor, shall be inclusive of the monthly rate, and **will not be paid separately** as part of this Contract.
5. Submit your invoice using ONE of the following options referencing the Contract Number or Agency Order Number:
 - a. Send via U.S. Mail in **TRIPLICATE** to:
California Department of Technology
Financial Management Branch – Accounting Office
P.O. Box 1810
Rancho Cordova, CA 95741

OR

 - b. Send electronically to: APInvoices@state.ca.gov
6. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Contract does not appropriate sufficient funds for the program, this Contract shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to the Contractor or to furnish any other considerations under this Contract and Contractor shall not be obligated to perform any provisions of this Contract.
7. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Contract with no liability occurring to the State, or offer a contract amendment to the Contractor to reflect the reduced amount.
8. Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927. Payment to small/micro businesses shall be made in accordance with and within the time specified in Chapter 4.5, Government Code 927 et seq.

EXHIBIT B-1 COST WORKSHEET

The Contractor shall provide all labor, materials, and equipment necessary to provide the services for **Pandemic Unemployment Assistance (PUA) program services in response to COVID-19 pandemic** in accordance with the specifications described in the SOW, Exhibit A, at the rates specified below. **Payment for services performed under this contract shall be monthly.** Submission of this information is required.

Staffing

We propose an initial cross-functional team of senior staff experienced in building and launching public benefits services to rapidly design, build, launch, and iterate the MVP Screener. We anticipate additional internal subject matter experts providing targeted, time-limited support on an as needed basis (see 'Advisor' role below). These resources will bring expertise and experience to bear from Nava's HealthCare.gov, Integrated Benefits, and Paid Family and Medical Leave work. This includes but is not limited to: Domenic Fichera (Product Manager), Genevieve Gaudet (Design Lead), and Sawyer Hollenshead (Developer and Designer).

Name	Role	CMAS/GSA LCAT map	Allocation	Hourly Rate
Angela Colter	Program Manager	Program Manager	25%*	\$217.43
Michelle Thong	Product Lead	SME I	100%	\$250.88
Meghana Khandekar	Design Lead	Designer III	100%	\$183.97
Sharon Warner	Technical Lead	SWE IV	100%	\$234.16
Kalvin Wang	Sr. Software Engineer	SWE IV	100%	\$234.16
Tina Nguyen	Sr. Designer/Researcher	Designer III	100%	\$183.97
TBD	Advisor	SME I	20%	\$250.88

*Beginning April 13

We propose a firm-fixed price per sprint structure based on the staffing roles, rates, and allocations as above. Expected payment terms would be NET 45, paid monthly. Effective start date is Monday, April 6, 2020.

Note: The total amount of this contract shall not exceed \$500,000.00

EXHIBIT D
CALIFORNIA DEPARTMENT OF TECHNOLOGY
SPECIAL TERMS AND CONDITIONS TO SAFEGUARD FEDERAL TAX
INFORMATION

Federal statute, regulations and guidelines require that all contracts for services relating to the processing, storage, transmission, or reproduction of federal tax returns or return information, the programming, maintenance, repair, or testing of equipment or other property, or the providing of other services, for tax administration purposes include the provisions contained in this exhibit. (See 26 U.S.C. §6103(n); 26 C.F.R. §301.6103(n)-1(a)(2) and (d); Internal Revenue Service (IRS) Publication 1075, Tax Information Security Guidelines for Federal, State and Local Agencies (Rev. 9-2016), Section 5.5 and Exhibit 7.)

The contractor agrees to comply with 26 U.S.C. §6103(n); 26 C.F.R. §301.6103(n)-1; IRS Publication 1075 (Rev. 9-2016); and all applicable conditions and restrictions as may be prescribed by the IRS by regulation, published rules or procedures, or written communication to the contractor. (See 26 C.F.R. §301.6103(n)-1(d); IRS Publication 1075 (Rev. 9-2016))

I. 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) 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.
- (3) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing.
- (4) In addition, all related output will be given the same level of protection as required for the source material.
- (4) 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.
- (5) 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.
- (6) All computer systems receiving, processing, storing, or transmitting Federal tax information 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.
- (7) No work involving Federal tax information furnished under this contract will be subcontracted without prior written approval of the IRS.
- (8) 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.

- (9) The agency will have the right to void the contract if the contractor fails to provide the safeguards described above.

II. 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 IRC sections 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 section 7213A and 7431.

- (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 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 (see Exhibit 6, *IRC Sec. 7431 Civil Damages for Unauthorized Disclosure of Returns and Return Information* and Exhibit 5, *IRC Sec. 7213 Unauthorized Disclosure of Information*). 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 should sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.¹

III. INSPECTION

The IRS and the Agency shall have the right to send its officers and employees into the offices and plants of the contractor for inspection of the facilities and operations provided for the performance of any work under this contract. On the basis of such inspection, specific measures may be required in cases where the contractor is found to be noncompliant with contract safeguards.

REFERENCES

26 U.S.C. §6103(n)

Pursuant to regulations prescribed by the Secretary, returns and return information may be disclosed to any person, including any person described in section 7513 (a), to the extent necessary in connection with the processing, storage, transmission, and reproduction of such returns and return information, the programming, maintenance, repair, testing, and procurement of equipment, and the providing of other services, for purposes of tax administration.

26 C.F.R. §301.6103(n)-1 Disclosure of returns and return information in connection with procurement of property and services for tax administration purposes.

- (a) *General rule.* Pursuant to the provisions of section 6103(n) of the Internal Revenue Code and subject to the requirements of paragraphs (b), (c), and (d) of this section, officers or employees of the Treasury Department, a State tax agency, the Social Security Administration, or the Department of Justice, are authorized to disclose returns and return information (as defined in section 6103(b)) to any person (including, in the case of the Treasury Department, any person described in section 7513(a)), or to an officer or employee of such person, to the extent

necessary in connection with contractual procurement of—

- (1) Equipment or other property, or
- (2) Services relating to the processing, storage, transmission, or reproduction of such returns or return information, the programming, maintenance, repair, or testing of equipment or other property, or the providing of other services, for purposes of tax administration (as defined in section 6103(b)(4)).

No person, or officer or employee of such person, to whom a return or return information is disclosed by an officer or employee of the Treasury Department, the State tax agency, the Social Security Administration, or the Department of Justice, under the authority of this paragraph shall in turn disclose such return or return information for any purpose other than as described in this paragraph, and no such further disclosure for any such described purpose shall be made by such person, officer, or employee to anyone, other than another officer or employee of such person whose duties or responsibilities require such disclosure for a purpose described in this paragraph, without written approval by the Internal Revenue Service.

- (b) *Limitations.* For purposes of paragraph (a) of this section, disclosure of returns or return information in connection with contractual procurement of property or services described in such paragraph will be treated as necessary only if such procurement or the performance of such services cannot otherwise be reasonably, properly, or economically carried out or performed without such disclosure.

Thus, for example, disclosures of returns or return information to employees of a contractor for purposes of programming, maintaining, repairing, or testing computer equipment used by the Internal Revenue Service or a State tax agency should be made only if such services cannot be reasonably, properly, or economically performed by use of information or other data in a form which does not identify a particular taxpayer. If,

¹ A 30 minute disclosure awareness training video produced by the IRS can be found at

<http://www.irsvideos.gov/Governments/Safeguards/DisclosureAwarenessTrainingPub4711>

however, disclosure of returns or return information is in fact necessary in order for such employees to reasonably, properly, or economically perform the computer related services, such disclosures should be restricted to returns or return information selected or appearing at random. Further, for purposes of paragraph (a), disclosure of returns or return information in connection with the contractual procurement of property or services described in such paragraph should be made only to the extent necessary to reasonably, properly, or economically conduct such procurement activity. Thus, for example, if an activity described in paragraph (a) can be reasonably, properly, and economically conducted by disclosure of only parts or portions of a return or if deletion of taxpayer identity information (as defined in section 6103(b)(6) of the Code) reflected on a return would not seriously impair the ability of the contractor or his officers or employees to conduct the activity, then only such parts or portions of the return, or only the return with taxpayer identity information deleted, should be disclosed.

(c) *Notification requirements.* Persons to whom returns or return information is or may be disclosed as authorized by paragraph (a) of this section shall provide written notice to their officers or employees—

- (1) That returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized by paragraph (a) of this section;
- (2) That further inspection of any returns or return information for a purpose or to an extent unauthorized by paragraph (a) of this section constitutes a 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 costs of prosecution;
- (3) That further disclosure of any returns or return information for a purpose or to an extent unauthorized by paragraph (a) of this section 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;

(4) That any such unauthorized further inspection or disclosure of returns or return information may also result in an award of civil damages against any person who is not an officer or employee of the United States in an amount not less than \$1,000 for each act of unauthorized inspection or disclosure or the sum of actual damages sustained by the plaintiff as a result of such unauthorized disclosure or inspection as well as an award of costs and reasonable attorneys fees; and

(5) If such person is an officer or employee of the United States, a conviction for an offense referenced in paragraph (c)(2) or (c)(3) of this section shall result in dismissal from office or discharge from employment.

(d) *Safeguards.* Any person to whom a return or return information is disclosed as authorized by paragraph (a) of this section shall comply with all applicable conditions and requirements which may be prescribed by the Internal Revenue Service for the purposes of protecting the confidentiality of returns and return information and preventing disclosures of returns or return information in a manner unauthorized by paragraph (a). The terms of any contract between the Treasury Department, a State tax agency, the Social Security Administration, or the Department of Justice, and a person pursuant to which a return or return information is or may be disclosed for a purpose described in paragraph (a) shall provide, or shall be amended to provide, that such person, and officers and employees of the person, shall comply with all such applicable conditions and restrictions as may be prescribed by the Service by regulation, published rules or procedures, or written communication to such person. If the Service determines that any person, or an officer or employee of any such person, to whom returns or return information has been disclosed as provided in paragraph (a) has failed to, or does not, satisfy such prescribed conditions or requirements, the Service may take such actions as are deemed necessary to ensure that such conditions or requirements are or will be satisfied, including—

- (1) Suspension or termination of any duty or obligation arising under a contract with the Treasury Department referred to in this paragraph or suspension of disclosures by the Treasury Department otherwise authorized by paragraph (a) of this section, or
- (2) Suspension of further disclosures of returns or return information by the Service to the State tax agency, or to the Department of Justice, until the Service determines that such conditions and requirements have been or will be satisfied.

(e) *Definitions.* For purposes of this section—

- (1) The term *Treasury Department* includes the Internal Revenue Service and the Office of the Chief Counsel for the Internal Revenue Service;
- (2) The term *State tax agency* means an agency, body, or commission described in section 6103(d) of the Code; and
- (3) The term *Department of Justice* includes offices of the United States Attorneys.

IRS Publication 1075 (Rev. 9-2016) Section 5.5 Control over Processing

Processing of FTI, in an electronic media format, including removable media, microfilms, photo impressions, or other formats (including tape reformatting or reproduction or conversion to punch cards, digital images or hard copy printout) will be performed pursuant to one of the following procedures:

5.5.1 Agency Owned and Operated Facility

Processing under this method will take place in a manner that will protect the confidentiality of the information on the electronic media. All safeguards outlined in this publication also must be followed and will be subject to IRS safeguard reviews.

5.5.2 Contractor or Agency Shared Facility – Consolidated Data Centers

Recipients of FTI are allowed to use a shared facility but only in a manner that does not allow

access to FTI by employees, agents, representatives or contractors of other agencies using the shared facility.

Note: For purposes of applying sections 6103(l), (m) and (n), the term “agent” includes contractors. Access restrictions pursuant to the IRC authority by which the FTI is received continue to apply. For example, since human services agencies administering benefit eligibility programs may not allow contractor access to any FTI received, their data within the consolidated data center may not be accessed by any contractor of the data center.

The requirements in Exhibit 7, Contract Language for General Services, must be included in the contract in accordance with IRC Section 6103(n).

The contractor or agency-shared computer facility is also subject to IRS safeguard reviews.

Note: The above rules also apply to releasing electronic media to a private contractor or other agency office even if the purpose is merely to erase the old media for reuse.

Agencies utilizing consolidated data centers must implement appropriate controls to ensure the protection of FTI, including a service level agreement (SLA) between the agency authorized to receive FTI and the consolidated data center. The SLA should cover the following:

1. The consolidated data center is considered to be a “contractor” of the agency receiving FTI. The agency receiving FTI – whether it is a state revenue, workforce, child support enforcement or human services agency – is responsible for ensuring the protection of all FTI received. However, as the “contractor” for the agency receiving FTI, the consolidated data center shares responsibility for safeguarding FTI as well.

2. Provide written notification to the consolidated data center management that they are bound by the provisions of Publication 1075, relative to protecting all federal tax information within their possession or control. The SLA should also include details concerning the consolidated data center's responsibilities during a safeguard review and support required to resolve identified findings.
3. The agency will conduct an internal inspection of the consolidated data center every eighteen months (see section 6.3). Multiple agencies sharing a consolidated data center may partner together to conduct a single, comprehensive internal inspection. However, care should be taken to ensure agency representatives do not gain unauthorized access to other agency's FTI during the internal inspection.
4. The employees from the consolidated data center with access to FTI, including system administrators and programmers, must receive disclosure awareness training prior to access to FTI and annually thereafter and sign a confidentiality statement. This provision also extends to any contractors hired by the consolidated data center that has access to FTI.
5. The specific data breach incident reporting procedures for all consolidated data center employees and contractors. The required disclosure awareness training must include a review of these procedures.
6. The Exhibit 7 language must be included in the contract between the recipient agency and the consolidated data center, including all contracts involving contractors hired by the consolidated data center.

7. Identify responsibilities for coordination of the 45-day notification of the use of contractors or sub-contractors with access to FTI.

Note: Generally, consolidated data centers are either operated by a separate state agency (example: Department of Information Services) or by a private contractor. If an agency is considering transitioning to either a state owned or private vendor consolidated data center, the Office of Safeguards strongly suggests the agency submit a request for discussions with Safeguards as early as possible in the decision-making or implementation planning process. The purpose of these discussions is to ensure the agency remains in compliance with safeguarding requirements during the transition to the consolidated data center.

26 U.S.C. §7213. Unauthorized disclosure of information

(a) Returns and return information

(1) Federal employees and other persons

It shall be unlawful for any officer or employee of the United States or any person described in section 6103(n) (or an officer or employee of any such person), or any former officer or employee, willfully to disclose to any person, except as authorized in this title, any return or return information (as defined in section 6103(b)). Any violation of this paragraph shall be a felony punishable upon conviction by a fine in any amount not exceeding \$5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution, and if such offense is committed by any officer or employee of the United States, he shall, in addition to any other punishment, be dismissed from office or discharged from employment upon conviction for such offense.

(2) State and other employees

It shall be unlawful for any person (not described in paragraph (1)) willfully to disclose to any person, except as authorized in this title, any

return or return information (as defined in section 6103(b)) acquired by him or another person under subsection (d), (i)(3)(B)(i) or (7)(A)(ii), (l)(6), (7), (8), (9), (10), (12), (15), (16), (19), or (20) or (m)(2), (4), (5), (6), or (7) of section 6103.

Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding \$5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

(3) Other persons

It shall be unlawful for any person to whom any return or return information (as defined in section 6103(b)) is disclosed in a manner unauthorized by this title thereafter willfully to print or publish in any manner not provided by law any such return or return information. Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding \$5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

(4) Solicitation

It shall be unlawful for any person willfully to offer any item of material value in exchange for any return or return information (as defined in section 6103(b)) and to receive as a result of such solicitation any such return or return information. Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding \$5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

(5) Shareholders

It shall be unlawful for any person to whom a return or return information (as defined in section 6103(b)) is disclosed pursuant to the provisions of section 6103(e)(1)(D)(iii) willfully to disclose such return or return information in any manner not provided by law. Any violation of this paragraph shall be a felony punishable by a fine in any amount

not to exceed \$5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution

(b) Disclosure of operations of manufacturer or producer

Any officer or employee of the United States who divulges or makes known in any manner whatever not provided by law to any person the operations, style of work, or apparatus of any manufacturer or producer visited by him in the discharge of his official duties shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution; and the offender shall be dismissed from office or discharged from employment.

(c) Disclosures by certain delegates of Secretary

All provisions of law relating to the disclosure of information, and all provisions of law relating to penalties for unauthorized disclosure of information, which are applicable in respect of any function under this title when performed by an officer or employee of the Treasury Department are likewise applicable in respect of such function when performed by any person who is a "delegate" within the meaning of section 7701(a)(12)(B).

(d) Disclosure of software

Any person who willfully divulges or makes known software (as defined in section 7612(d)(1)) to any person in violation of section 7612 shall be guilty of a felony and, upon conviction thereof, shall be fined not more than \$5,000, or imprisoned not more than 5 years, or both, together with the costs of prosecution.

(e) Cross references

(1) Penalties for disclosure of information by preparers of returns

For penalty for disclosure or use of information by preparers of returns, see section 7216.

(2) Penalties for disclosure of confidential information

For penalties for disclosure of confidential information by any officer

or employee of the United States or any department or agency thereof, see 18 U.S.C. 1905.

26 U.S.C. §7213A. Unauthorized inspection of returns or return information

(a) Prohibitions

(1) Federal employees and other persons
It shall be unlawful for—

(A) any officer or employee of the United States, or

(B) any person described in subsection (l)(18) or (n) of section 6103 or an officer or employee of any such person, willfully to inspect, except as authorized in this title, any return or return information.

(2) State and other employees

It shall be unlawful for any person (not described in paragraph (1)) willfully to inspect, except as authorized in this title, any return or return information acquired by such person or another person under a provision of section 6103 referred to in section 7213 (a)(2) or under section 6104 (c).

(b) Penalty

(1) In general

Any violation of subsection (a) shall be punishable upon conviction by a fine in any amount not exceeding \$1,000, or imprisonment of not more than 1 year, or both, together with the costs of prosecution.

(2) Federal officers or employees

An officer or employee of the United States who is convicted of any violation of subsection (a) shall, in addition to any other punishment, be dismissed from office or discharged from employment.

(c) Definitions

For purposes of this section, the terms “inspect”, “return”, and “return information” have the respective meanings given such terms by section 6103 (b).

26 U.S.C. §7431. Civil damages for unauthorized inspection or disclosure of returns and return information

(a) In general

(1) Inspection or disclosure by employee of United States

If any officer or employee of the United States knowingly, or by reason of negligence, inspects or discloses any return or return information with respect to a taxpayer in violation of any provision of section 6103, such taxpayer may bring a civil action for damages against the United States in a district court of the United States.

(2) Inspection or disclosure by a person who is not an employee of United States

If any person who is not an officer or employee of the United States knowingly, or by reason of negligence, inspects or discloses any return or return information with respect to a taxpayer in violation of any provision of section 6103, such taxpayer may bring a civil action for damages against such person in a district court of the United States.

(b) Exceptions

No liability shall arise under this section with respect to any inspection or disclosure -

(1) which results from a good faith, but erroneous, interpretation of section 6103, or

(2) which is requested by the taxpayer.

(c) Damages

In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the sum of -

(1) the greater of -

(A) \$1,000 for each act of unauthorized inspection or disclosure of a return or return information with respect to which such defendant is found liable, or

(B) the sum of -

(i) the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure, plus

(ii) in the case of a willful inspection or disclosure or an inspection or disclosure which is the result of gross negligence, punitive damages, plus

(2) the costs of the action, plus

(3) in the case of a plaintiff which is described in section [7430\(c\)\(4\)\(A\)\(ii\)](#), reasonable attorneys fees, except that if the defendant is the United States, reasonable attorneys fees may be awarded only if the plaintiff is the prevailing party (as determined under section [7430\(c\)\(4\)](#)).

(d) Period for bringing action

Notwithstanding any other provision of law, an action to enforce any liability created under this section may be brought, without regard to the amount in controversy, at any time within 2 years after the date of discovery by the plaintiff of the unauthorized inspection or disclosure.

(e) Notification of unlawful inspection and disclosure

If any person is criminally charged by indictment or information with inspection or disclosure of a taxpayer's return or return information in violation of -

(1) paragraph (1) or (2) of section [7213\(a\)](#),

(2) section [7213A\(a\)](#), or

(3) subparagraph (B) of section 1030(a)(2) of title 18, United States Code, the Secretary shall notify such taxpayer as soon as practicable of such inspection or disclosure.

(f) Definitions

For purposes of this section, the terms "inspect", "inspection", "return", and "return information" have the respective meanings given such terms by section [6103\(b\)](#).

(g) Extension to information obtained under section [3406](#)

For purposes of this section -

(1) any information obtained under section [3406](#) (including information with respect to any payee certification failure under

subsection (d) thereof) shall be treated as return information, and

(2) any inspection or use of such information other than for purposes of meeting any requirement under section [3406](#) or (subject to the safeguards set forth in section [6103](#)) for purposes permitted under section [6103](#) shall be treated as a violation of section [6103](#). For purposes of subsection (b), the reference to section [6103](#) shall be treated as including a reference to section [3406](#).

(h) Special rule for information obtained under section [6103\(k\)\(9\)](#)

For purposes of this section, any reference to section [6103](#) shall be treated as including a reference to section 6311(e).

EXHIBIT E

SECURITY AND DATA PROTECTION

Contractor shall certify to The National Institute of Standards and Technology (NIST) 800-171 standard and the DGS Cloud Computing Services Special Provisions publication requirements. At a minimum, provision shall cover the following:

1. The Contractor assumes responsibility of the confidentiality, integrity and availability of the data under its control. The Contractor shall implement and maintain all appropriate administrative, physical, technical, and procedural safeguards at all times during the term of the Agreement to secure such data from data breach or loss, protect the data and information assets from breaches, introduction of viruses, disabling of devices, malware and other forms of malicious or inadvertent acts that can disrupt the State's access to its data or affects the integrity of that data.
2. Confidential, sensitive or personal information shall be encrypted in accordance with SAM 5350.1 and SIMM 5305-A.
3. The Contractor shall comply with statewide policies and laws regarding the use and protection of information assets and data. Unauthorized use of data by Contractor or third parties is prohibited.
4. Signed Security and Confidentiality Statement for all personnel assigned during the term of the Agreement.
5. Apply security patches and upgrades, and keep virus protection software up-to-date on all information asset on which data may be stored, processed, or transmitted.
6. The Contractor shall notify the State data owner immediately if a security incident involving the information asset occurs.
7. The State data owner shall have the right to participate in the investigation of a security incident involving its data or conduct its own independent investigation. The Contractor shall allow the State reasonable access to security logs, latency statistics, and other related security data that affects this Agreement and the State's data, at no cost to the State.
8. The Contractor shall be responsible for all costs incurred by the State due to security incident resulting from the Contractor's failure to perform or negligent acts of its personnel, and resulting in an unauthorized disclosure, release, access, review, destruction; loss, theft or misuse of an information asset. If the contractor experiences a loss or breach of data, the contractor shall immediately report the loss or breach to the State. If the State data owner determines that notice to the individuals whose data has been lost or breached is appropriate, the contractor will bear any and all costs associated with the notice or any mitigation selected by the data owner. These costs include, but are not limited to, staff time, material costs, postage, media announcements, and other identifiable costs associated with the breach or loss of data.
9. The Contractor shall immediately notify and work cooperatively with the State data owner to respond timely and correctly to public records act requests.
10. The Contractor will dispose of records of State data as instructed by the State during the term of this agreement. No data shall be copied, modified, destroyed or deleted by the Contractor other than for normal operation or maintenance during the Agreement period without prior written notice to and written approval by the State.
11. Remote access to data from outside the territorial United States, including remote access to data by authorized support staff in identified support centers, is prohibited unless approved in advance by the State.
12. The physical location of Contractor's data center where the Data is stored shall be within the territorial United States.