

ATTACHMENT J.5
Confidentiality and Non-Disclosure Affidavit

This Confidentiality and Non-Disclosure Affidavit ("Affidavit") is entered into by _____ ("Contractor").

1. The Contractor and the Office of Chief Financial Officer of the District of Columbia ("OCFO") have entered into contract _____, as amended (the "Contract").
2. In performance of this contract, the Contractor agrees to comply with and assume responsibility for compliance by officers or employees with the following requirements:
3. In performing these activities, Contractor understands that all information provided to it by the OCFO, including, but not limited to, the Office of Tax and Revenue ("OTR") or any other agency within the OCFO is confidential (1) which are District tax returns or return information (2) which is identified as confidential at the time of disclosure or (3) which is such that a reasonable person would consider, from the nature of the information and circumstances of disclosure, is confidential, with the exception of information that is shown to have been:
 - (a) Rightfully in the possession of Contractor prior to the date of disclosure of such information to Contractor, as evidenced by written documents; or
 - (b) In the public domain prior to the date of disclosure to Contractor; or
 - (c) Supplied to Contractor by a third party who is under no obligation to the OCFO to maintain such information in confidence; or
 - (d) Developed by or for Contractor independently of the disclosure made under this Affidavit.
4. Any Federal tax returns or return information (hereafter referred to as FTI, returns or return information) 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 this contract. Inspection or disclosure of FTI to anyone other than the contractor or the contractor's officers or employees authorized is prohibited.
5. Contractor agrees to handle FTI in accordance with the procedures of IRS Publication 1075, including, but not limited to, the requirement to remove all FTI data from the contractor's system and return it to the OCFO within 7 calendar days prior to contract termination.
6. In order to safeguard District and Federal confidential information from unauthorized disclosure by Contractor in performance of its tasks under the Contract, Contractor agrees to comply with and assume responsibility for compliance by its employees of the following requirements:
 - (a) All work will be performed under the supervision of Contractor.

- (b) The contractor and contractor's officers or employees to be authorized access to FTI must meet background check requirements defined in IRS Publication 1075. The contractor will maintain a list of officers or employees authorized access to FTI. Such list will be provided to the OCFO and, upon request, to the Internal Revenue Service (IRS).
- (c) Any such confidential information made available in any format shall be used only for the purpose of carrying out the provisions of the Contract.
- (d) Such confidential information 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 the Contract or as may be required by law, regulation, or legal process. Thus, Contractor shall limit disclosure of such information within its own organization to only its partners, directors, officers, principals, or employees having a need to know, or partners, directors, officers, principals, or employees of affiliated entities or subcontractors having a need to know. Any personal or tax information protected by law from disclosure inadvertently given to Contractor by the OCFO, OTR, or any other department within the OCFO is protected tax information and is not to be disclosed under the confidentiality provisions of sections 47-820.01(d)(1) and (3), 47-821(d)(2), 47-1805.04, 47-2018, 47-2210, 47-3719, 47-4406 of Title 47 of the D.C. Official Code, sections 508.1 and 608.1 of Title 9 the District of Columbia Municipal Regulations, and I.R.C. § 6103.
- (e) Disclosure to anyone other than such directors, officers, or employees of Contractor, or other than an OCFO official involved in review and evaluation of the functions of the OCFO, is prohibited.
- (f) All such confidential information will be accounted for upon receipt and properly stored before, during, and after processing.
- (g) In addition, all related output will be given the same level of protection as required for the source tax information material.
- (h) FTI will 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.
- (i) All computer systems processing, storing, and transmitting confidential information must meet or exceed reasonable computer access protection controls. To meet these requirements, the operating security features of the system must have the following minimum requirements: a security policy, accountability procedures and documentation. Reasonable security features must be activated to protect against unauthorized use of and access to confidential information.
- (j) 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.

- (k) Contractor agrees that, at the time the work is completed, at the request of the OCFO, any such confidential information processed during the performance of the Contract will be completely purged from all data storage components of Contractor's computer facilities, and no output will be retained by Contractor; provided, however, Contractor may retain a copy of such information to the extent required by professional standards, Contractor's policies or in connection with computer system backups. If immediate purging of all information storage components is not possible, Contractor certifies that any such information, including any Federal Tax Information, remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
- (l) The contractor will certify 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 the contractor at the time the work is completed. If immediate purging of physical and electronic data storage is not possible, the contractor will certify that any FTI in physical or electronic storage will remain safeguarded to prevent unauthorized disclosures.
- (m) Any spoilage or any intermediate hard copy printout that may result during the processing of FTI will be given to the OCFO. 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 OCFO with a statement containing the date of destruction, description of material destroyed, and the destruction method.
- (n) No work involving FTI, returns and return information furnished under the Contract will be subcontracted without prior written approval of the IRS.
- (o) Contractor will ensure that the terms of FTI safeguards described herein are included, without modification, in any approved subcontract for work involving FTI.
- (p) To the extent the terms, provisions, duties, requirements, and obligations of this contract apply to performing services with FTI, the contractor shall assume toward the subcontractor all obligations, duties, and responsibilities that the OCFO under this contract assumes toward the contractor, and the subcontractor shall assume toward the contractor all the same obligations, duties, and responsibilities which the contractor assumes toward the OCFO under this contract.
- (q) In addition to the subcontractor's obligations and duties under an approved subcontract, the terms and conditions of this contract apply to the subcontractor, and the subcontractor is bound and obligated to the contractor hereunder by the same terms and conditions by which the contractor is bound and obligated to the OCFO under this contract.
- (r) For purposes of this contract, the term "contractor" includes any officer or employee of the 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.

- (s) Contractor will be responsible for the destruction of spoilage or any known intermediate hard copy printouts related to the confidential information and will provide the OTR or representative designated by the OCFO with a statement containing the date of destruction, description of material destroyed, and the method used. Contractor may retain a copy of such information to the extent required by professional standards or Contractor's policies. However, any Federal Tax Information processed, as described above in this paragraph, will be given to the OCFO or his or her designee. If this is not possible, Contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts and will provide the above-referenced statement to the OCFO or his or her designee.
- (t) Contractor will maintain a list of employees authorized access to such information. Contractor will provide this list to, OTR, or the designated OCFO agency and provide updates of any changes to that list promptly after they occur. Such list will be provided upon request to the IRS reviewing office. Contractor shall include with each list and update an Affidavit Acknowledgment Form (enclosed) signed by each employee authorized to access to such information.
- (u) This Affidavit shall not be construed as creating, conveying, transferring, granting, or conferring upon Contractor or any other person any rights, license, or authority in or to the information exchanged, except the limited right to use such information for the purposes specified in the Contract.
- (v) No license or conveyance of any intellectual or property rights is granted or implied by this Affidavit or the Contract.
- (w) Neither the OCFO nor its representative agencies have an obligation under this Affidavit to purchase any service, goods, or intangibles from Contractor or any other person.
- (x) Furthermore, Contractor hereby acknowledges and agrees that the exchange of information under the Contract shall not commit or bind the District or its representative agencies and/or employees to any present or future contractual relationship (except as specifically stated herein), nor shall the exchange of information be construed as an inducement to act or not to act in any given manner.
- (y) No specification in this Affidavit of any particular remedy shall be construed as a waiver or prohibition of any other remedies in the event of a breach or threatened breach of this Affidavit.
- (z) This Affidavit is made under and shall be construed according to the laws of the District. In the event that this Affidavit, is breached, any and all disputes must be settled in a court of competent jurisdiction in the District of Columbia. The parties agree to waive any right to a trial by jury.

(aa) If any of the provisions of this Affidavit are found to be unenforceable, the remainder shall be enforced as fully as possible, and the unenforceable provision(s) shall be deemed modified to the limited extent required to permit enforcement of the Contract as a whole.

(bb) The OCFO will have the right to void the contract if the Contractor fails to meet the terms of FTI safeguards described herein.

7. INSPECTION. The IRS and the OCFO, 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 (IT) assets that access, store, process or transmit FTI. Based on the inspection, corrective actions may be required in cases where the contractor is found to be noncompliant with FTI safeguard requirements.

8. CRIMINAL/CIVIL SANCTIONS

(a) Each officer or employee of a 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 herein, and that further disclosure of any FTI for a purpose not authorized 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.

(b) Each officer or employee of a 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 herein, and that access/inspection of FTI without an official need-to-know for a purpose not authorized herein 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.

(c) Each officer or employee of a 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 cost of the action. These penalties are prescribed by IRC sections 7213, 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.

(d) 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 OCFO 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 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.

- (e) Granting a contractor access to FTI must be preceded by certifying that each officer or employee understands the OCFO's security policy and procedures for safeguarding FTI. A contractor and each officer or employee must maintain their authorization to access FTI through annual recertification of their understanding of the OCFO's security policy and procedures for safeguarding FTI. The initial certification and recertifications must be documented and placed in the OCFO's files for review. As part of the certification and at least annually afterwards, a contractor and each officer or employee must be advised of the provisions of IRC sections 7213, 7213A, and 7431 (see IRS Pub. 1075, Exhibit 4, Sanctions for Unauthorized Disclosure, and IRS Pub. 1075, Exhibit 5, Civil Damages for Unauthorized Disclosure). The training on the OCFO'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. (See Section 10) For the initial certification and the annual recertifications, the contractor and each officer or employee must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

WHEREFORE, Contractor acknowledges that they have read and understand this Affidavit and voluntarily accept the duties and obligations set forth herein.

CONTRACTOR:

By: _____ Date: _____

Name: _____

Title: _____