Board of Equalization
Proposed Contracts
Over $1 Million

| Contractor | Start Date | Expire Date | Estimated Total Cost | Purpose |
|---|---|---|---|---|
| Technology Services Department of | 7/1/2008 | 6/30/2009 | $10,000,000 | Multiple data processing services from the consolidated data center for FY 08-09 (Routine Renewal).<br><br>Mainframe data processing services to run application programs; UNIX data processing services to run the ACMS systems; network services to interconnect BOE users statewide; network services to connect the BOE to other state agencies and the internet; BOE website services; operations recovery services; equipment leasing.<br><br>A copy of the 08-09 Interagency Agreement is attached for your review and approval. Once approved, signatures will be obtained for a fully executed Agreement. |

3STATE OF CALIFORNIA
**STANDARD AGREEMENT**
STD. 213 (NEW 06/03)

FOR I.T. GOODS/SERVICES ONLY

| REGISTRATION NUMBER |
|---|
| |

| PURCHASING AUTHORITY NUMBER | AGREEMENT NUMBER |
|---|---|
| | 08-003 |
| 9I-1008-BOE-HQ1 | CONTRACTOR NUMBER |
| | |

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

STATE AGENCY'S NAME
STATE BOARD OF EQUALIZATION (hereafter called State)

CONTRACTOR'S NAME
DEPARTMENT OF TECHNOLOGY SERVICES (hereafter called Contractor)

2. The term of this Agreement is: 07/01/2008 through 6/30/2009

3. The maximum amount of this Agreement is: $ 10,000,000.00 Ten Million dollars and no cents.

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

| | | |
|---|---|---|
| Exhibit A – Statement of Work | | 1 page |
| Exhibit B – Budget Detail and Payment Provisions | | 2 pages |
| Exhibit C – General Provisions for Information Technology Interagency Agreements | | 1 page |
| Exhibit D – Special Terms and Conditions | | 3 pages |
| Exhibit E – Alterations to Terms and Conditions (if applicable) | ☒ Check box if attached | 8 pages |
| Exhibit F – Certification of Compliance With Policies | | 1 page |
| Exhibit G – Security Compliance Statement | | 1 page |
| Exhibit H – Customer Completion Form | | 2 pages |
| Exhibit I* – Service Standards and Service Level Agreements | | |

This document can be viewed at: http://www.dts.ca.gov/Customers/pdf/sla.pdf

*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 www.ols.dgs.ca.gov/Standard+Language*

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

| **CONTRACTOR** | | CALIFORNIA **Department of General Services** Use Only |
|---|---|---|
| CONTRACTOR'S NAME *(If other than an individual, state whether a corporation, partnership, etc.)* | | |
| Department of Technology Services | | |
| BY *(Authorized Signature)* | DATE SIGNED | **Agreements over $50,000 are exempt from DGS approval per Delegation DIA-003.** |
| PRINTED NAME AND TITLE OF PERSON SIGNING | | |
| M. Scruggs, Chief, Administrative Services Branch | | |
| ADDRESS | | **Agreements under $50,000 are exempt from DGS approval per SCM 4.04.5.A.** |
| P. O .Box 1810<br>Rancho Cordova, CA 95741-1810 | | |
| **STATE OF CALIFORNIA** | | |
| AGENCY NAME | | |
| State Board of Equalization | | |
| BY (Authorized Signature) | DATE SIGNED | |
| PRINTED NAME AND TITLE OF PERSON SIGNING | | |
| Roberta Hinchman, Contract Manager | | |
| ADDRESS | | |
| 450 N Street, MIC: 24; Sacramento, CA 95814 | | |

**Exhibit A**
**Page 1 of 1**

## STATEMENT OF WORK

1. This Interagency Agreement (IAA) is entered into by and between the Board of Equalization (hereinafter referred to as the "State of California" or "Customer") and the Contractor (hereinafter referred to as the "Department of Technology Services" or "the DTS") for the purpose of obtaining information technology services, materials or equipment. This IAA specifies by whom the work shall be performed and the time for performance including the date of completion, if applicable. If not set forth in the IAA with sufficient specificity, this IAA shall be augmented through the DTS Service Request (SR) process with any resulting mutually agreed upon contractual terms becoming a part of this IAA as if fully set forth herein. The IAA also provides for payment for these services pursuant to State Administration Manual (SAM) 8752-8752.1 and Section 3.03 of the State Contracting Manual.

2. The DTS agrees to:

   A. Provide efficient and effective services to the above-named Customer. In addition, the DTS is committed to providing a high level of quality services. In order to achieve these goals and to ensure a clear understanding of the Customer's business requirements, the DTS provides Customer Representatives to:

      1) Maintain a continual working relationship with the Customer.
      2) Coordinate joint development of work plans.
      3) Develop partnerships to reach shared objectives.

   B. The DTS management is also available to consult with customers in developing strategies for future information technology projects.

3. The contract managers during the term of this IAA are listed within Exhibit H.

**Exhibit B**
**Page 1 of 2**

## BUDGET DETAIL AND PAYMENT PROVISIONS

1. GENERAL CUSTOMER OBLIGATIONS

   A. Return completed Fiscal Year Interagency Agreement (IAA) renewal package to the Department of Technology Services (DTS) no later than June 1, 2008. For IAAs expiring on a date different than Fiscal Year end, the renewal must be received no later than 30 calendar days prior to the expiration date of the IAA. In the event a Customer does not return a completed IAA renewal package during the required time frame, the DTS will escalate the matter with Customer agency. Any costs incurred by the DTS on behalf of the Customer after the expiration date will be billed to the Customer with full payment due within 30 calendar days.

   B. Customers must provide 45 calendar days cancellation notice for specific services to be terminated. Lead-time for cancellation of services is vendor-dependent and may require additional lead-time for processing termination documents. Notification to terminate services must be submitted to the DTS via a Service Request form (DTS 098) which is available on DTS' web site at: http://www.dts.ca.gov/custguide/DTS_Customer_Guide.htm. The targeted completion date noted on the Service Request must allow time for the lead-time required to cancel services. Due to the daily accumulation of system utilization and cost activity within the billing system, retroactive termination of services will not be considered. For additional information regarding lead-times for canceling services, please contact your Customer Representative.

   C. Customers are required to submit payments or request direct transfer for services billed at the specified rates. Payments must be received within 90 calendar days of receipt of invoice. After 90 calendar days, the DTS will escalate payment issues with Customer agencies. Use of services and goods provided by the DTS to the Customer constitutes an obligation, which must be paid.

   D. In the event the Customer utilizes, requires, accepts or requests services that exceed the amount authorized by this Agreement, the Customer is responsible for all charges incurred, and shall agree to amend this Agreement, in writing, to provide payment to the DTS to the extent services have been provided. Such payment for services incurred beyond the amount authorized by this Agreement shall be made payable on or before the Agreement expiration date. If, after the conclusion of the subject Agreement period, it is determined that monies above and beyond that which was authorized by this Agreement are owed to the DTS for services received by the Customer, the Customer shall amend the Agreement, agreeing to pay the outstanding amount in full, no later than 60 calendar days from discovery of the outstanding payment due.

2. INVOICING

   A. Upon receipt of appropriate invoices for services rendered in accordance with this IAA, the Customer agrees to compensate the DTS for services billed incurred in accordance with the rates specified herein.

   B. Invoices shall include the DTS IAA number and shall be submitted in duplicate not more frequently than monthly in arrears to the billing address identified in Exhibit H.

3. BUDGET CONTINGENCY CLAUSE

   A. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this IAA does not appropriate sufficient funds for the program, this IAA shall be of no further force and effect. In this event, the Customer shall have no liability to pay any funds whatsoever to the DTS, or to furnish any other considerations under this IAA, and the DTS shall not be obligated to perform any provisions of this IAA.

   B. If funding for any Fiscal Year is reduced or deleted by the Budget Act for purposes of this program, the Customer shall have the option to either cancel this IAA with no further liability except as otherwise specified herein, or submit an amendment to reflect the reduced amount.

**Exhibit B**
**Page 2 of 2**

## BUDGET DETAIL AND PAYMENT PROVISIONS (Continued)

4. PAYMENT TERMS

   A. Costs for this IAA shall be computed in accordance with SAM Sections 8752 and 8752.1.

   B. The cost of performance is based upon the DTS' Billing Rate Schedule. The rates are subject to change upon 30 calendar days' prior written notice from the DTS. These rates may be viewed on the DTS' web site at: http://www.dts.ca.gov/customers/rates.asp?key=23.

   C. The Customer agrees to a Direct Transfer or Monthly payment schedule. In the event a payment type is not designated by checking an appropriate box, the payment type will automatically default to Direct Transfer. (*See Exhibit H for department information.)*

5. CUSTOMER RESPONSIBILITY

   It will be the responsibility of the Customer to notify the DTS in writing within five (5) State business days after receipt/installation of goods or services from another agency/vendor (i.e., equipment, telecommunication lines, software products). Such notification should be sent to:

   Department of Technology Services
   Warehouse Receiving at:
   warehousereceiving@dts.ca.gov

**Exhibit C**
**Page 1 of 1**

## GENERAL PROVISIONS FOR INFORMATION TECHNOLOGY INTERAGENCY AGREEMENTS

1. Approval: This Agreement is not valid until signed by both parties and approved by the Department of General Services, if required.

2. Audit: The department performing work under this Agreement agrees that the awarding department, the Department of General Services, the Bureau of State Audits (BSA), or their designated representative, shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement if it exceeds $10,000.00. The department performing work agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of record retention is stipulated.

3. Payment: Costs for this Agreement shall be computed in accordance with State Administrative Manual Sections 8752 and 8752.1.

4. Amendment: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties, and approved as required. No verbal understanding or agreement not incorporated in the Agreement is binding on any of the parties.

5. Sub-contracting: All sub-contracting must comply with the requirements of the State Contracting Manual Section 3.06.

6. Advance Payment: The parties to this interagency agreement may agree to the advancing of funds as provided in Government Code sections 11257 through 11263.

7. Disputes: The department performing work under this Agreement shall continue with the responsibilities under this Agreement during any dispute.

8. Timeliness: Time is of the essence in this Agreement.

**Exhibit D**
**Page 1 of 3**

## SPECIAL TERMS AND CONDITIONS

1. AUTHORITY TO ENTER INTO AGREEMENT

The Customer hereby warrants and represents that it has the budget and project approvals necessary for the DTS' services covered under this IAA. The Customer further warrants and represents that sufficient monies have been approved by the state or federal governmental agencies, and are available to the Customer to fund the expenditures for the DTS' services covered under this IAA. The Customer acknowledges that it is acting in an independent capacity in signing this IAA, and not as agents or employees of the DTS.

2. CONFIDENTIALITY

Based on the specific requirements and intent of Government Code sections 11792-11794, et seq., and sections 4840, et seq., of the State Administrative Manual, the DTS hereby agrees to provide required security to ensure the confidentiality, integrity, availability (within the resources that the DTS manages), physical security, and safekeeping of all data, information, files and documents while in its possession. All sensitive data, documentation or other information, which are designated confidential by the Customer and is made available to the DTS in order to carry out this IAA, will be protected by the DTS from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as used by the Customer. The identification of all such confidential data and information, as well as the Customer's procedural requirements for protection of such data and information from unauthorized use and disclosure, will be provided in writing to the DTS by the Customer. The Customer will have the opportunity to review security procedures that are relevant to its data. Upon written request from the Customer, the DTS will provide instructions and limited assistance to implement the necessary level of data security without charge. If the Customer does not provide the DTS with any unique or special procedural requirements for the protection of its data, the Customer will be deemed to have accepted the security procedures used by the DTS. Instructions and/or assistance in excess of four (4) hours in any one month will be charged at the consultant rate itemized in the rate schedule for the DTS services.

3. EXAMINATION AND AUDIT

In accordance with Government Code section 8546.7, the DTS and the Customer jointly agree that the BSA will have the right to review, obtain and copy all records pertaining to performance of the IAA. The DTS and the Customer agree to provide, or otherwise make available to the BSA any relevant information requested and shall permit the BSA access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts and other material that may be relevant to this IAA. The DTS and the Customer further agree to maintain such records for a period of three (3) years after final settlement under the IAA.

4. COPYRIGHT INFRINGEMENT

Pursuant to Executive Order S-16-04 and section 4841.7 of the State Administrative Manual, the Customer acknowledges that the use of licensed products in violation of a valid licensing agreement could subject the DTS to third-party lawsuits. The Customer, therefore, agrees that it will not duplicate, copy or otherwise reproduce any proprietary software products supplied pursuant to this IAA without the express written consent of the owner of the software. The Customer further agrees that it will use any such software products in strict compliance with the terms of any license provided by the owner of the software. The Customer further agrees that its use of any such licensed software products will not violate any applicable copyright, trademark, trade name, patent or similar legal right.

In the event the DTS is sued by a third-party as a result of the Customer's misuse of any proprietary materials or products supplied under this IAA, the Customer agrees to indemnify, defend and hold harmless the DTS from any and all claims and losses regarding the Customer's violation of software licenses, copyrights, trademarks, trade names or any proprietary data, information or materials designated as confidential and supplied under this IAA. If litigation arises as a result of the Customer's breach of these obligations, the Customer will pay all litigation expenses, including reasonable attorney and expert witness fees (as permitted by law), incurred by the DTS in defense or settlement of the legal action or proceeding.

## SPECIAL TERMS AND CONDITIONS (Continued)

5. UNSUPPORTED SOFTWARE

The DTS is not responsible for license, service, and/or support issues related to software in the Customer systems, unless the DTS is the licensee of the software products. The Customer agrees to maintain appropriate licenses and service and support arrangements for the systems or applications owned or maintained by the Customer's department; all enterprise-wide systems, which include hardware, operating systems; application software (if applicable); security systems; and, software licenses for all systems and services. The DTS is neither responsible nor liable for damages resulting from the Customer's decision to use unlicensed or unsupported software.

6. LIMITATION OF LIABILITY

The DTS shall not be liable for any activity involving the Customer's installation of the product, the Customer's use of the product, or the results obtained from such use. The DTS shall not be liable for any unauthorized access to Customer data or any unauthorized disclosure of Customer data resulting from the Customer's use of any product. The limitation of liability provided for by this section shall not apply to any unauthorized access to Customer data or any unauthorized disclosure of Customer data that is caused by the negligent or intentional misconduct of the DTS, its officers, employees or agents.

In no event shall the DTS be liable to the Customer for consequential damages, even if notification has been given as to the possibility of such damages.

7. DIGITAL CERTIFICATE SERVICES INDEMNITY

To the extent that this IAA involves digital certificate services, the Customer shall be solely liable for any loss, damage or claim of loss or damage resulting from the acquisition, installation, provision or use of any digital certificate services provided by the DTS. The Customer acknowledges that the DTS has made no representations or warranties of any type regarding the use of digital certificates or the possible level of information security provided by such certificates. The Customer is a third-party beneficiary of the underlying contracts and the DTS vendor contracts provide that, as a third party beneficiary, the Customer has the right to sue the service vendor for any default or breach in the performance of the contract. In the event the Customer wishes to pursue a legal claim against the service vendor and the Customer elects to have the DTS represent it in any legal proceedings, the Customer shall indemnify, defend and hold the DTS harmless from any and all claims for invasion of privacy, improper release, dissemination, or any other similar claim for injury or loss, arising from the Customer's use of any digital certificate services provided by the DTS under this IAA. The limitation of liability provided for by this section shall not apply to any unauthorized access to Customer data or any unauthorized disclosure of Customer data that is caused by the negligent or intentional misconduct of the DTS, its officers, employees or agents.

8. VIRTUAL PRIVATE NETWORK SERVICES INDEMNITY

To the extent that this IAA involves Virtual Private Network (VPN) services, the Customer shall be solely liable for any loss, damage, or claim of loss or damage resulting from the acquisition, installation, provision or use of any VPN services received under this IAA. The Customer acknowledges that the DTS has made no representations or warranties of any type regarding the use of VPN or the possible level of information security provided by such VPN. The Customer is a third-party beneficiary of the underlying contracts and the DTS vendor contracts provide that, as a third party beneficiary, the Customer has the right to sue the service vendor for any default or breach in the performance of the contract. In the event the Customer wishes to pursue a legal claim against the service vendor and the Customer elects to have the DTS represent it in any legal proceedings, the Customer shall indemnify, defend and hold the DTS harmless from any and all claims for invasion of privacy, improper release, dissemination, or any other similar claim for injury or loss, arising from the Customer's use of any VPN services provided by the DTS under this IAA. The limitation of liability provided for by this section shall not apply to any unauthorized access to Customer data or any unauthorized disclosure of Customer data that is caused by the negligent or intentional misconduct of the DTS, its officers, employees or agents.

9. FUNDING INQUIRY

The DTS is required by the Department of Finance and the Federal Department of Health and Human Services to maintain funding information for state and federal audits. *(See Exhibit H for department information.)*

## SPECIAL TERMS AND CONDITIONS (Continued)

### 10. OPERATIONAL RECOVERY INQUIRY

The DTS offers Operational Recovery Hot Site Services. Quotations for this service will be provided by the DTS's Operational Recovery Coordinator and are based on agency individual requirements.

In order to provide for the emergency restoration of the Customer's systems in the event of a disaster, the Customer must separately subscribe to the Operational Recovery Services offered by the DTS. If the Customer has not subscribed to these Operational Recovery Services, the Customer's operations may not be restored for a significant length of time and the DTS will not be responsible for the proper operation of the Customer's systems in the event of a disaster. *(See Exhibit H for department information.)*

### 11. RETENTION AND PURGING OF ELECTRONIC DATA FOR PURPOSES OF DISCOVERY

The Customer shall contact the DTS, in writing, with instructions regarding the retention and purging of electronic data. As the repository of the Customer's electronic data, the DTS has no control over the retention and purging of said data, beyond that which the Customer specifically directs.

Should the Customer become involved in litigation, or the Customer informs the DTS that litigation is reasonably foreseeable and that all electronic data from that point forward must be retained (and/or any previous electronic data restored), it is the Customer's sole responsibility to give written instructions to the DTS including, but not limited to, a clear and concise description of the data to be stored; the manner in which the electronic data is to be stored; the period for which the electronic data is to be stored, and whether or not back up tapes are to be made. Further, it is the Customer's sole responsibility to contact the DTS, in writing, and advise when said documentation is to be destroyed. Upon completion of said purging, the DTS shall send a letter to the Customer confirming destruction of the described data.

Should the Customer's electronic data be subject to a Public Records Act (PRA) request to produce electronic data or to produce documents in an electronic format it is (as set forth in Government Code section 6250 et seq.), the Customer's sole responsibility to communicate with the requestor, and to produce said documents at its own costs and expense. It is in the Customer's discretion to determine if the DTS' services are desired or necessary to extract information responsive to the PRA request that may be stored electronically and, therefore, to retain the DTS for such services in a separate agreement.

### 12. AFTER-HOURS SITE CONTACT INFORMATION

In an effort to better serve you, the DTS requests that your organization provide after-hours site contact information. This information will be used by the DTS 24/7 Service Desk in the event that an after-hours outage occurs at your site and it becomes necessary to dispatch a vendor to the site to restore service or to have someone from your organization check on your equipment.

Customer Responsibilities – If the Customer has mission critical operations that may require service during off hours, the Customer will provide primary and backup after-hours site contact information for each site to which the DTS provides system or network services. The Customer will include cell, pager and/or home numbers for these contacts and the contacts' email addresses. The Customer will additionally provide the same contact information for the CIO in the customer department. In the event the DTS is unable to connect with the primary and secondary contacts, the DTS will contact the organization's CIO. Upon any changes to this information, the Customer will provide updates to the DTS within five (5) State business days.

DTS Responsibilities – The DTS will maintain customer contact lists in a secured environment. The DTS will not release any customer contact information to other organizations or vendors. When necessary, the DTS 24/7 Service Desk will connect customers with other organization's staff or vendors, but will not provide the telephone numbers. The DTS 24/7 Service Desk will contact the organization site contacts after-hours only in the event that is necessary to arrange a vendor dispatch or to have the customer check on their equipment as part of the incident resolution. The regular customer contacts (telephone and email) defined in the DTS Remedy ticket system will be used for the normal, non-afterhours ticket communications.

By not supplying the requested after-hours contact information, the customer accepts responsibility for a delayed restoration in services in the event that an after-hours outage requires DTS to dispatch a vendor and/or the customer to the customer's site.

**EXHIBIT E**
**PAGE 1 OF 8**

## ALTERATIONS TO IAA TERMS AND CONDITIONS

1. Exhibit D, Pages 2 - 3, Item 7, Digital Certificate Services Indemnity and Item 8, Virtual Private Network Services Indemnity, delete the following sentence:

   The Customer shall indemnify, defend and hold the DTS harmless from any and all claims for invasion of privacy, improper release, dissemination, or any other similar claim for injury or loss, arising from the Customer's use of any [digital certificate] [VPN] services provided by the DTS under this IAA.

   Substitute the following in lieu of the deleted sentence in Items 7 and 8:
   The Customer is a third-party beneficiary of the underlying contracts and the DTS vendor contracts provide that, as a third party beneficiary, the Customer has the right to sue the service vendor for any default or breach in the performance of the contract. In the event the Customer wishes to pursue a legal claim against the service vendor and the Customer elects to have the DTS represent it in any legal proceedings, the Customer shall indemnify, defend and hold the DTS harmless from any and all claims for invasion of privacy, improper release, dissemination, or any other similar claim for injury or loss, arising from the Customer's use of any [digital certificate][VPN] services provided by the DTS under this IAA.

2. The BOE can disclose FTI only as authorized by Title 26 U.S.C. Section 6103.

   The provisions of Exhibit E to this interagency agreement (IAA) constitute the BOE's written request specifying BOE's special procedural requirements for the protection of federal tax information from unauthorized disclosure, inspection and use.

## COMPLIANCE WITH MANDATORY FEDERAL LAW REQUIREMENTS FOR SAFEGUARDING FEDERAL TAX INFORMATION

The Department of Technology Services ("the DTS") agrees to adhere to the requirements of Section 6103(n) of the Internal Revenue Code (IRC §6103(n)), and as set forth in Internal Revenue Service (IRS) Publication 1075, Tax Information Security Guidelines for Federal, State, and Local Agencies and Entities (February 2007), Sections 5.5 and Exhibit 6. Pursuant to federal regulations (26 CFR § 301.6103(n)-1), IRC § 6103(n) authorizes a state tax agency, such as the Board of Equalization, to disclose federal tax returns and return information (federal tax information) to "any other person or to an officer or employee of such person" to the extent necessary in connection with the contractual procurement of services, equipment or other property for tax administration purposes. The phrase, "any other person," can mean a state government agency such as the DTS, as well as any private firm providing 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. (26 CFR §301.6103(n)-1(a)(2))

1. The Board of Equalization ("the BOE") receives, processes, stores and transmits federal tax information (FTI) for tax administration purposes, as authorized by the "Agreement on Coordination of Tax Administration between the Board of Equalization and the Internal Revenue Service," effective April 17, 1997, and updated "Memorandum of Implementation," effective July 7, 2004. These agreements require the BOE to adhere to the requirements of Section 6103 of the Internal Revenue Code, to ensure the confidentiality of FTI. IRC § 6103 requires the BOE to have adequate programs in place involving policies, practices, controls and safeguards, to protect the FTI from unauthorized use, access, inspection and disclosure within/by the BOE, as well as within/by the DTS, as an agency-shared facility providing data processing services to the BOE.

2. IRC § 6103(n) requires the BOE to include in this IAA with the DTS for data processing services, the requirements set forth in Exhibit 6 of the Internal Revenue Service Publication 1075, (Publication 1075).

3. The requirements of IRC § 6103(n) also apply when magnetic media containing FTI is released to a private contractor. The DTS contracts with a private contractor which, on behalf of the DTS, provides off-site data storage for the BOE's magnetic media and/or documents containing FTI. The DTS agrees to adhere to IRC § 6103(n) requirements to include the IRS requirements for safeguarding FTI in its 2007-2008 Agreement (and any subsequent Agreements) with private contractors, on behalf of the BOE, for storage of BOE's magnetic media containing FTI, as set forth in Exhibit 6 of IRS Publication 1075. This agreement shall contain language that is specific to the services that will be provided and that clearly restricts any access to the FTI to ensure that disclosures and inspections of the FTI do not occur unless there is an express need for said disclosures and inspections in order to perform the contract. Additionally, the contract shall include the criminal/civil sanctions and the inspections language in Exhibit 6 of Publication 1075, which are items II and III, respectively.

4. The DTS agrees that the requirements of IRC § 6103(n) and 26 CFR 301.6103(n)-1 apply to any private contractor with whom it contracts to provide Operational Recovery Hot Site Services. The agreement with the contractor providing Operational Recovery Hot Site Services to the BOE shall include all the language in Exhibit 6 of Publication 1075 since that contractor will have the same access to FTI as DTS and will be performing essentially the same work for hotsite services.

5. The DTS agrees that the requirements of IRC § 6103(n) and 26 CFR 301.6103(n)-1 apply to any other private contractor, which provides any other services to the BOE wherein the contractors will have access to FTI including, but not limited to, Digital Certificate Services and Virtual Private Network Services. These agreements shall contain language that is specific to the services that will be provided and that clearly restricts any access to the FTI to ensure that disclosures and inspections of the FTI do not occur unless there is an express need for said disclosures and inspections in order to perform the contract. Additionally, the contract shall include the criminal/civil sanctions and the inspections language in Exhibit 6 of Publication 1075, which are items II and III, respectively

6. The DTS agrees to ensure that the language of Exhibit 6, as applicable, in IRS Publication 1075 and as specified herein, are contained in any contracts between DTS and any private contractor where FTI is involved. Copies of the contracts will be made available to BOE upon request.

## I. PERFORMANCE

In the performance of this Agreement between the BOE and the DTS, the Contractor (DTS) agrees to comply with and assume responsibility for compliance by the DTS' employees with the following requirements:

1. All work will be done under the supervision of the DTS or its 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 Agreement. 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 Agreement and except as authorized by federal and state statutory law. Disclosure to anyone other than an officer or employee of the DTS will be prohibited.

3. All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.

4. The DTS certifies that the data processed during the performance of this Agreement will be completely purged from all data storage components of the DTS' computer facility, and no output will be retained by the DTS at the time the work is completed. If immediate purging of all data storage components is not possible, the DTS 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 BOE's specified designee(s). When this is not possible, the DTS will be responsible for the destruction of the spoilage or any intermediate hardcopy printouts, and will provide the BOE's specified designee(s) with a statement containing the date of destruction, description of material destroyed and the method used.

6. All computer systems processing, storing, or transmitting Federal tax information must meet the requirements defined in NIST SP 800-53. 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 Agreement (contract) will be subcontracted without prior written approval of the IRS.

8. The DTS will maintain a list of employees with authorized access. Such list will be provided to the BOE and, upon request, to the IRS reviewing office.

9. The BOE will have the right to void this Agreement if the DTS fails to provide the safeguards described above.

## II. CRIMINAL/CIVIL SANCTIONS

1. Each officer or employee of the DTS to whom returns or return information is or may be disclosed will be notified in writing by the DTS 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 five (5) years, or both, together with the costs of prosecution. The DTS 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 §§ 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1. These provisions are attached hereto as part of this Exhibit.

2. Each officer or employee of the DTS to whom returns or return information is or may be disclosed shall be notified in writing by the DTS 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 IAA. 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 IAA. 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. The DTS shall also notify 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 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 §§ 7213A and 7431.

3. Additionally, it is incumbent upon the DTS 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 the DTS by 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. DTS' written notifications to their officers and employees of the applicable criminal and civil penalties for unlawful disclosure and inspection of FTI discussed in numbers 1, 2 and 3 above are subject to inspection by BOE and upon request, by the IRS for verification of compliance with this requirement.

**EXHIBIT E**
**PAGE 4 OF 8**

## III. INSPECTION

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

**EXHIBIT E**
**PAGE 5 OF 8**

**AS REQUIRED BY PART II, CRIMINAL/CIVIL SANCTIONS, PARAGRAPH 1.**

TITLE 26--INTERNAL REVENUE CODE

Subtitle F--Procedure and Administration

CHAPTER 75--CRIMES, OTHER OFFENSES, AND FORFEITURES

Subchapter A--Crimes

PART I--GENERAL PROVISIONS

Sec. 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.

**EXHIBIT E**
**PAGE 6 OF 8**

**AS REQUIRED BY PART II, CRIMINAL/CIVIL SANCTIONS, PARAGRAPH 1. (continued)**

(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.

**EXHIBIT E**
**PAGE 7 OF 8**

**AS REQUIRED BY PART II, CRIMINAL/CIVIL SANCTIONS, PARAGRAPH 1.(continued)**

TITLE 26--INTERNAL REVENUE CODE

Subtitle F--Procedure and Administration

CHAPTER 76--JUDICIAL PROCEEDINGS

Subchapter B--Proceedings by Taxpayers and Third Parties

Sec. 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)).

**EXHIBIT E**
**PAGE 8 OF 8**

**AS REQUIRED BY PART II, CRIMINAL/CIVIL SANCTIONS, PARAGRAPH 1.(continued)**

(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 F**
**Page 1 of 1**
**SAM – Information Technology**

Certification Requirements

4832 Illustration 1

# CERTIFICATION OF COMPLIANCE WITH POLICIES

SAM SECTIONS 4819.41 and 4832

I hereby certify that I am the agency Director or designee; that the matters described herein are in compliance with the criteria and procedures for information technology prescribed in the State Administrative Manual (SAM); any acquisitions of new or enhanced information technology capabilities are consistent with project justification approved by Department of Finance, myself or my designee; and, that the foregoing statements are true to the best of my knowledge and belief.

(Date)

Signature and Title
(Specify Director or designee)

## JUSTIFICATION AND APPROVAL REFERENCE INFORMATION

____ Finance approved FSR

DOF Project # _____ Approval Date _____

____ Agency approved FSR

Agency Project # _____ Approval Date _____

____ DMCP

DMCP # _____ Approval Date _____

Project Title _____

_X_ Data Center IAA - This is an Interagency Agreement; it involves multiple projects, the funding level is appropriate, and the nature and scope of services to be supplied by the department are consistent with the various approved FSRs and PIERs of this agency, and the required project reporting associated with each active project is current.

**Exhibit G**
**Page 1 of 1**

## SECURITY COMPLIANCE STATEMENT

**The customer Information Security Officer or designee is required to complete and sign the Security Compliance Statement.**

The DTS provides for the integrity and security of customer information assets, and complies with the policies as set forth in the State Administrative Manual sections 4840-4845. Entities requesting to connect their networks or their network devices to the DTS network or resources accessible on the DTS' network, must comply with the following basic information security requirements. These requirements will be included in any Agreement or contract with an entity that includes the provision of connectivity to the DTS or a resource accessible on the DTS' network.

A. **Firewalls** - This requirement provides a reliable mechanism to help protect the DTS and its customers' information and information processing resources from unauthorized access to, and denial/disruption of services or systems.

- **Definition** - A firewall is a computer or system of computers designed to restrict network traffic in order to prevent unauthorized access to or from a private network. Firewalls can be implemented in both hardware and software, but are strongest when implemented as a hardware/software combination.

- **Requirements** - Any network used by a Customer to connect to the DTS information resources will be protected by at least one firewall system properly situated to examine traffic between the network and each external network entry point. The customer shall ensure that firewalls include, at a minimum, provisions for packet filtering, application gateway security mechanisms, and circuit-level gateways.

B. **Physical Security** - This requirement ensures that the hardware that permits network access to the DTS is adequately protected to prevent harm to the physical components that enable connectivity between the customer's network and the DTS.

- **Definition** - Physical security involves measures taken to prevent physical access which may allow loss of or damage to the system or the information stored on it.

- **Requirements** - Physical access to network components, servers, and data storage components used in conjunction with access to DTS' information resources should be limited to the appropriate designated staff responsible for implementing and maintaining the components.

C. **Access Control** - This requirement ensures that policies, procedures and technology mechanisms are in place for the DTS' customers only to limit access to the DTS' network and the information resources in the DTS' custody to those authorized individuals or entities.

- **Definition** - Access control includes processes and systems to determine which system resources, application functions and information must be restricted to certain customers, business partners, and contractors and to allow access by those customers while preventing access by others.

- **Requirements** - Access to information designated as private or confidential must be limited to those individuals or entities specifically authorized to access that information. Access to system functions and processes under the DTS' custody that can affect the availability, functionality or security of departmental information or information resources should be restricted to those individuals who require that access in order to perform duties essential to the operation and maintenance or use of that system.

**The DTS is requiring Security Compliance for audit purposes.**

☐ Customer is in full compliance with the aforementioned security requirements.

☐ Customer is not in full compliance; however, it will contact the DTS' Information Security Officer at (916) 739-7697 to develop a plan of action for compliance with the security requirements.

☐ Not Applicable – Customer does not have a network connection to the DTS.

_____ _____

Information Security Officer Signature Date

**EXHIBIT H**
**PAGE 1 OF 2**

**CUSTOMER COMPLETION FORM**

**DEPARTMENT OF TECHNOLOGY SERVICES: (See Exhibit A, Page 1, Item 3)**

| CONTRACT ADMINISTRATOR: | CUSTOMER REPRESENTATIVE: |
|---|---|
| DTS IAA COORDINATOR – Y - 18<br>ADMINISTRATIVE SERVICES BRANCH | CUSTOMER RELATIONS BRANCH |
| P.O. BOX 1810<br>RANCHO CORDOVA, CA 95741-1810 | P.O. BOX 1810<br>RANCHO CORDOVA, CA 95741-1810 |
| PHONE: (916) 739-7514<br>FAX (916) 451-0780<br>EMAIL: iaacoordinator@dts.ca.gov | PHONE: (916) 454-7225<br>FAX: (916) 454-7273 |

**STATE OF CALIFORNIA:**

| CONTRACT ANALYST: | BILLING CONTACT: |
|---|---|
| Suzan Sturgill | Sandra Kennedy |
| ADDRESS: 450 N Street, MIC 24<br>Sacramento, CA 95814 | ADDRESS: 450 N Street, MIC 23<br>Sacramento, CA 95814 |
| PHONE: (916) 327-9517<br>FAX: (916) 322-3184<br>EMAIL: Suzan.Sturgill@boe.ca.gov | PHONE: (916) 327-9629<br>FAX: (916) 445-2884<br>EMAIL: Tam.Huynh@boe.ca.gov |
| CONTRACT ADMINISTRATOR: | TECHNICAL CONTACT: |
| Mark Peletta | Claudia Neal |
| ADDRESS: 450 N Street, MIC 24<br>Sacramento, CA 95814 | ADDRESS: 450 N Street, MIC 26<br>Sacramento, CA 95814 |
| PHONE: (916) 323-1089<br>FAX: (916) 327-3483<br>EMAIL: Mark.Peletta@boe.ca.gov | PHONE: (916) 323-1671<br>FAX: (916) 327-3483<br>EMAIL: Claudia.Neal@boe.ca.gov |

**PAYMENT TERMS (See Exhibit B, Page 2 of 2, Item 4, C)**

The Customer agrees to one of the following payment schedules. In the event a payment type is not designated by checking an appropriate box, the payment type will automatically default to Number 1 (Direct Transfer), below.

1) ___ Direct Transfer, or

Appropriation Data Required to Process Direct Transfer:

Fund Number: _____ Category: _____

Sub Fund: _____ Program: _____

Agency Code: _____ Element: _____

Fiscal Year: _____ Component: _____

Reference: _____ Task: _____

2) _X_ The Customer agrees to pay DTS monthly in arrears upon receipt of DTS invoice.

**Exhibit H**
**Page 2 of 2**

**FUNDING INQUIRY (See Exhibit D, Page 2 of 3, Item 9)**

The DTS is mandated by the Department of Finance and the Department of Health and Human Services to maintain funding information for state and federal audits.

A. Does your agency receive any federal funds? Yes __X__ No _____
B. If yes, does funding for this IAA contain any federal funds? Yes _____ No __X__
C. If yes, what dollar amount received by the DTS is federal money? $_____
D. From which fund will the money for this IAA be encumbered?
General __X__, or Special Fund Name/Fund Code _____

**OPERATIONAL RECOVERY INQUIRY (See Exhibit D, Page 2 of 3, Item 10)**

The DTS offers Operational Recovery Hot Site Services. Quotations for this service will be provided by the DTS's Operational Recovery Coordinator and are based on agency individual requirements.

A. Does your agency plan to use this service during the term of this Agreement? Yes __X__ No _____
B. If yes, are funds included in this IAA for these services? Yes __X__ No _____
C. If no, when will the IAA be amended to add funds for these services? Date _____

In order to provide for the emergency restoration of the Customer's systems in the event of a disaster, the Customer must separately subscribe to the Operational Recovery Services offered by the DTS. If the Customer has not subscribed to these Operational Recovery Services, the Customer's operations may not be restored for a significant length of time and the DTS will not be responsible for the proper operation of the Customer's systems in the event of a disaster.