



EXECUTIVE SUMMARY

Pursuant to Broward College Policy 6Hx2-1.14 and Procedure A6Hx2-1.14, Dr. Donald Astrab exercised the authority delegated by the Board to execute the amendment to renew the memorandum of understanding with The Florida Department of Corrections for educational opportunities for the residents at the correctional facility Fiscal Impact: No cost to college

Presenter(s): Steven Tinsley, Vice President, Workforce Education and Strategic Partnerships

What is the purpose of this contract and why is it needed? The goal of this agreement is to have a continued partnership with the Florida Department of Corrections, which allows Broward College access to the inmates and the facilities to fulfill the obligations of the Corrections to College grant. The only change in the initial agreement is adding a current date and new signature of the president. This agreement ends December 7, 2024. By signing this updated agreement the Corrections to College program will continue providing competencies conducive to successful transition and reintegration into the community while enhancing public safety and promoting post release success.

What procurement process or bid waiver was used and why? Not applicable

Is this a budgeted expenditure from the budget established at the last June Board of Trustees meeting? Not applicable. This is a non-monetary agreement granting the College access to participants in the Corrections to College program.

What fund, cost center and line item(s) were used? Not applicable.

Has Broward College used this vendor before for these products or services? Not applicable

Was the product or service acceptable in the past? Not applicable

Was there a return on investment anticipated when entering this contract? Yes, the return on the investment is increased enrollment into Broward College, the opportunity to have students continue their educational goals of obtaining an associate's degree attainable and enroll into credit and non-credit programming and also reducing recidivism while taking a holistic approach to educating opportunities to all populations. All student data is being tracked to ensure benchmarks are being met. If further review is requested all data can be provided.

Was that return on investment not met, met, or exceeded and how? The project is a 42-month grant. The grant still has two (2) years remaining. The return on the investment is currently on track to meet and exceed each contractual key performance indicator.

Does this directly or indirectly feed one of the Social Enterprise tactics and how? Yes, the Corrections to College Program directly aligns with the Social Enterprise Plan by providing educational programming to the returning citizen population. The grant will support and accelerate the into Broward College indirectly by developing and implementing a strategic enrollment pipeline from non-credit to credit programs for the participants while they are incarcerated and after their release from incarceration. This is accomplished by offering educational opportunities through providing the digital equipment needed to complete the course work and earn industry recognized credentials that can lead to non-subsidized employment while earning a livable wage. The program not only offers educational programming but also offers employment readiness, employment opportunities by

partnering with that employment community that are background friendly, supportive services that can help remove any barriers to credential attainment. This is done by creating partnerships with the employment marketplace and working daily with the Florida Department of Corrections, Employment Navigator. These partnerships continue to serve an adverse population earn an opportunity to live a healthy life, crime free.

Did the vendor amend Broward College's legal terms and conditions [to be answered by the Legal Office] if the College's standard contract was used and was this acceptable to the Legal Office?

The General Counsel's office has reviewed the agreement and any deviation to the College's standard terms has been deemed acceptable.

FISCAL IMPACT:














Description: No cost to College

APPROVAL PATH: 12547 Florida Department of Corrections Memorandum of Agreement Renewal

 **Workflow**

 Edit View

 Add Work Item

Stage	Reviewer	Description	Due Date	Status	
1	Steven Tinsley	VP, Workforce Education		 Completed	
2	Natalia Triana-Aristizabal	Contracts Coordinator		 Completed	
3	Legal Services Review Group	Review and Approval for Form and		 Completed	
4	Electronic Signature(s)	Signatures obtained via DocuSig 		 Completed	
5	Pending Counter-Signature(s)	Review		 Completed	
6	Board Clerk	Agenda Preparation		 Pending	
7	District Board of Trustees	Meeting	12/10/24 11:00 AM	 Pending	

MEMORANDUM OF AGREEMENT

BETWEEN

THE FLORIDA DEPARTMENT OF CORRECTIONS

AND

THE DISTRICT BOARD OF TRUSTEES OF BROWARD COLLEGE, FLORIDA

WITNESSETH

WHEREAS, the Florida Department of Corrections (“Department”) and District Board of Trustees of Broward (“Participating Entity”) are the Parties to this Memorandum of Agreement (“Agreement”) #A5254;

WHEREAS, the Parties entered into Agreement #A5254 on December 8, 2022, which expires on December 7, 2024; and

WHEREAS, the Parties desire to amend the terms of the Agreement.

NOW, THEREFORE, the Parties agree to the following changes:

1.0 RENEWAL

In accordance with Section I., B., Agreement Renewal, Agreement #A5254 is hereby renewed for a two (2) year period, ending December 7, 2026. This Agreement renewal shall be under the same terms and conditions indicated in the Agreement.

2.0 CONFLICT

To the extent any of the terms of this Amendment conflict with the terms of the Agreement, the terms of this Amendment shall control. All other terms of the Agreement remain in full force.

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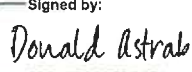


**AGREEMENT #A5254
AMENDMENT #1**

This Amendment shall begin on the date on which it is signed by both Parties. In the event this Amendment is signed by the Parties on different dates, the latest date controls.

IN WITNESS THEREOF, the Parties hereto have caused this Amendment to be executed by their undersigned officials as duly authorized.

**PARTICIPATING ENTITY:
THE DISTRICT BOARD OF TRUSTEES OF
BROWARD COLLEGE, FLORIDA**

SIGNED BY: 
Signed by: Donald Astrab
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NAME: Donald Astrab

TITLE: Interim President

DATE: 11/5/2024

FEIN: 59-126107

FLORIDA DEPARTMENT OF CORRECTIONS


Approved as to form and legality, subject to execution.

SIGNED BY: 

NAME: J. Olyn Long

TITLE: Procurement Director

DATE: 11/19/24

SIGNED BY: 

NAME: Kristen Clemons

TITLE: Deputy General Counsel

DATE: 11/18/24
EH 11/14/24



MEMORANDUM OF AGREEMENT

BETWEEN

THE FLORIDA DEPARTMENT OF CORRECTIONS

AND

THE DISTRICT BOARD OF TRUSTEES OF BROWARD COLLEGE, FLORIDA

This Memorandum of Agreement (“Agreement”) is between the Florida Department of Corrections, (“Department”) and The District Board of Trustees of Broward College, Florida (“Broward College”), which are the parties hereto.

WITNESSETH

WHEREAS, the Department is responsible for the Inmates and for the operation of, and supervisory and protective care, custody, and control of, all buildings, grounds, property, and matters connected with the correctional system in accordance with Section 945.04, Florida Statutes (F.S.);

WHEREAS, this Agreement establishes the general conditions and joint processes that will enable the Department and Broward College to implement programs at agreed upon Department locations; and

WHEREAS, Broward College, as a regionally accredited institution through the Southern Association of Colleges and Schools Commission on Colleges (SACSCOC), is a qualified and willing participant with the Department to provide educational programming services to the Department’s Inmates housed at the Department’s Hollywood Community Release Center (CRC).

NOW THEREFORE, subject to controlling law, rules, regulations, or to other governing policies and procedures, and in consideration of the mutual promises expressed herein, the parties agree as follows:

I. AGREEMENT TERM AND RENEWAL

A. Agreement Term

This Agreement shall begin on the date on which it is signed by both parties, and shall end two (2) years from the date of execution. In the event this Agreement is signed by the parties on different dates, the latter date shall control.

B. Agreement Renewal

The parties have the option to renew this Agreement for up to an additional two (2) year period beyond the initial agreement term, in whole or in part, upon written agreement of both parties, and upon the same terms and conditions contained herein. Exercise of the renewal option shall be conditioned, at a minimum, on Broward College’s performance of this Agreement. The Department, if it desires to exercise its renewal option, will provide written notice to Broward College no later than 30 calendar days prior to the Agreement expiration date.

II. SCOPE OF AGREEMENT

A. Definitions

The capitalized terms used in this Agreement, unless the context otherwise clearly requires a different construction and interpretation, have the following meanings:

1. **Agreement Administrator**: The Department employee, or his/her designee, who will maintain the official Agreement Administration file, develop and maintain the Agreement and all amendments, terminate the Agreement, and maintain the official records of all formal correspondence between the Department and the Participating Entity.
2. **Agreement Manager**: The Department or Broward College employee, or his/her designee, who serves as liaison between each party and the other and is responsible for performance oversight and operational management of the Agreement.
3. **Inmate(s)**: An individual incarcerated by the Department.

B. Overview

The goal of the Program is to provide educational programming (“Program”) to the Inmates (“Participants”) at Hollywood CRC. This Program will provide Participants with competencies conducive to a successful transition and reintegration into the community while enhancing public safety and promoting post-release success.

C. Responsibilities of the Department

1. The Department will provide the following for Broward College’s use at the Program location, so long as sufficient resources are available:
 - a. Internet access;
 - b. Office space;
 - c. Telephone service;
 - d. Office furniture; and
 - e. Computer workstation with access to printing.
2. The Department will provide Broward College with the policies, procedures, and training required by the Department.
3. The Department will assist Broward College, as needed, with Program recruitment and facilitation (i.e. supervision of Participants, maintaining and monitoring the workspace, etc.).
4. The Department will assist, as needed, with Participant screening, recruitment, aspects of the admissions process, and transfers.
5. The Department will designate space at the CRC for Program activities including specific trade lab area(s), so long as sufficient resources are available.
6. The Department will designate staff members, classification and security officers who are trained in reentry concepts to assist with data entry and reporting, monitoring the lab space/classroom, as approved by the Institution and the Department’s Agreement Manager, or designee.

D. Responsibilities of the Broward College

1. Broward College may offer courses and credits, including continuing education, that are recognized and count as undergraduate credit leading to certificates or degrees conferred by Broward College.
2. Broward College shall provide face-to-face instruction and online instruction utilizing a secure Learning Management System. This hybrid learning modality will include instruction by Broward College-approved faculty and presentation of content in text, video, and audio formats conducive to the student population.
3. Broward College shall provide a dedicated staff member for ongoing interaction with Participants and Department staff, who will serve as a liaison between Broward College, the CRC, and the Department's Agreement Manager. When interviewing candidates for the dedicated staff position(s), Broward College will coordinate with the Department's Agreement Manager to ensure the opportunity for a Department representative to attend such interviews. The Department retains the right to reject the placement of any proposed staff for hire where such employment under this Agreement may adversely affect the Department.
4. Broward College shall ensure that the dedicated staff position is filled for the entire length of the Program and that the dedicated staff member is physically present at the CRC in accordance with the work hours agreed upon by the Department and Broward College. Any absence from the CRC (i.e., vacation days, scheduled sick leave, administrative leave such as jury duty or military service), must be coordinated and communicated, in advance, with the immediate supervisor, Broward College, and the designated point of contact at the CRC. Absence from the CRC for purposes of non-Department sponsored meetings or training shall be coordinated and communicated, in advance, with the immediate supervisor, Broward College, and the designated point of contact at the CRC. Broward College's designee shall immediately (no later than the next business day) notify the Department's Agreement Manager in writing, of extreme and systemic personnel issues disrupting daily operations of the Program, i.e., unplanned staffing absences, emergencies, vacancies, terminations, resignations, or investigations resulting in administrative leave or other changes.
5. Broward College shall ensure that prospective Participants meet the admission requirements of Broward College prior to Program enrollment.
6. Broward College shall, if needed and necessary, assist Participants with completing applicable documents such as Application for Admission, Declaration of Florida Residency for Tuition, Free Application for Federal Student Aid (FAFSA), and other required enrollment processes.
7. Broward College shall review all State and industry licensure and certification requirements of the program of study and enroll only those Participants who will not be precluded from receiving such licensure or certification due to legal restrictions or incarceration history.
8. Broward College shall disclose to Participants any portions of a program of study that, by design, cannot be completed while incarcerated, and provide options for Program completion post-release.

AGREEMENT #A5254

9. Broward College shall provide pre-release academic counseling and transition services to Participants that encourage and support continuation in higher education at Broward College or other colleges or universities.
10. Broward College shall monitor the academic progress of each Participant to ensure he/she is maintaining eligibility for Program participation.
11. Broward College shall order, provide, and deliver all reasonable and necessary instructional materials for Participants.
12. Broward College shall provide and administer any required readiness assessments prior to enrollment and, based on results, communicate to the Department approval for Participants to be enrolled in the Program.
13. Broward College shall provide desks, tables, chairs, whiteboards, and appropriate technology equipment which will remain the property of Broward College upon termination of this Agreement. All technology equipment shall be approved by the Department's Office of Information Technology prior to use.
14. Broward College shall build relationships with regional employers to interview qualified Participants for employment prior to or immediately after release.
15. Broward College shall submit to the Department's Agreement Manager within 45 calendar days following the conclusion of the semester, a semester performance report that includes course offerings, class rosters for each course and course section, Participant's schedules, Participant's attendance, Participant's grades, Participant's grade point averages (GPAs), credits accrued, and Participant's course, certification, credential, or degree completions, as applicable, for Department monitoring.

E. Technology Requirements

1. Broward College shall cover all costs related to the technology installation, operation, support, maintenance, program implementation, staffing, training, and instruction.
2. Broward College shall provide adequate network bandwidth to support the recommended solution or provide required bandwidth recommendations to the Department where efficient circuits cannot be acquired.
3. Broward College shall ensure workstations and its network provides an end-to-end secure solution to deploy educational training labs at the CRC.
4. Broward College's technical solution shall consist of a secure and managed workstation. The configuration should use a multilayered security approach, combining workspaces with a secure network strategy, which is preferably cloud-based.
5. Broward College's technical solution shall be locked down with restrictive access to specific Program sites and no other internet sites.
6. Broward College's technical solution shall adhere to Criminal Justice Information Services (CJIS) compliance standards (CJIS Security Policy Version 5.8, June 2019). Broward College must sign and return to the Department's Agreement Manager, or designee, the CJIS Security Addendum, attached hereto, and herein referred to as **Attachment C**.

F. Conduct and Safety Requirements

Broward College shall ensure that all its staff adhere to, and are provided a copy of, the Department's Conduct and Safety requirements. Broward College shall maintain a signed receipt of acknowledgment in each employee's personnel file. The Department reserves the right to disqualify, prevent, or remove any staff from work under this Contract. The Department is under no obligation to inform Broward College of the criteria for disqualification or removal.

In addition, Broward College shall ensure that all Broward College staff adhere to the following requirements:

1. Broward College's staff shall not display favoritism to, or preferential treatment of, one Inmate or group of Inmates over another.
2. Broward College's staff shall not interact with any Inmate, except as related to services provided under this Agreement. Specifically, staff members must never accept for themselves or any member of their family, any personal (tangible or intangible) gift, favor, or service from an Inmate, an Inmate's family, or close associate, no matter how trivial the gift or service may seem. Broward College shall report to the Department's Agreement Manager any violations or attempted violation of these restrictions. In addition, no staff member shall give any gifts, favors, or services to Inmates, their family, or close associates.
3. Broward College's staff shall not enter into any business relationship with Inmates or their families (example – selling, buying, or trading personal property), or personally employ them in any capacity.
4. Broward College's staff shall not have outside contact (other than incidental contact) with an Inmate being served, their family, or close associates, except for those activities that are to be rendered under the Agreement.
5. Broward College's staff shall not engage in any conduct which is criminal in nature or which would bring discredit upon Broward College or the State. In providing services pursuant to this Agreement, Broward College shall ensure that its employees avoid both misconduct and the appearance of misconduct.
6. At no time shall Broward College, or Broward College staff, while delivering services under this Agreement, wear clothing that resembles or could reasonably be mistaken for an Inmate's uniform, or any correctional officer's uniform, or that bears the logo or other identifying words or symbol of any law enforcement, or correctional department, or agency.
7. Any violation or attempted violation of the restrictions referred to in this section regarding employee conduct shall be reported by phone, and in writing, to the Department's Agreement Manager, or designee, including proposed action to be taken by Broward College. Any failure to report a violation or take appropriate disciplinary action against the offending party or parties shall subject Broward College to appropriate action, up to and including termination of this Agreement.
8. Broward College shall report any incident described above, or requiring investigation by the Broward College, in writing, to the Department's Agreement Manager, or designee, within 24 hours of Broward College's knowledge of the incident.

G. Publication Requirements

Prior to the release of any information deduced or derived from this agreement, The Broward College shall provide a draft copy for the Department's review and approval through the Agreement Manager. This applies to speaking notes, presentations, written articles, graphs, charts, or any other material to be used in a forum or publication. The Broward College shall not publish any such information without the Department's express written approval prior to publication.

III. FINANCIAL OBLIGATIONS

The parties acknowledge that this Agreement does not create financial obligations between the parties. If costs are incurred as a result of either, or both, of the parties performing their duties or responsibilities under this Agreement, each party agrees to be responsible for their own costs.

IV. AGREEMENT MANAGEMENT

A. Department's Agreement Administrator

The title, address, and telephone number of the Department's Agreement Administrator is:

Contract Administrator
Bureau of Procurement
Florida Department of Corrections
501 South Calhoun Street
Tallahassee, Florida 32399-2500
Telephone: (850) 717-9773
Fax: (850) 488-7189

B. Agreement Managers

FOR THE DEPARTMENT
April Kalnin, Assistant Chief of Programs
Florida Department of Corrections
501 South Calhoun Street
Tallahassee, Florida 32399
Telephone: (850) 717-3158
Email: April.Kalnin@fdc.myflorida.com

FOR BROWARD COLLEGE
Karlos Barnes
Senior Student Support, Employment
Specialist, and Workforce Education
111 East Lad Olas Blvd.
Fort Lauderdale, Florida 33301
Telephone: (954) 201-8458
Email: Kbarnes1@broward.edu

V. REVIEW AND MODIFICATION

Upon request of either party, both parties will review this Agreement annually in order to determine whether its terms and conditions are still appropriate. The parties agree to renegotiate terms and conditions hereof if it is mutually determined that significant changes in this Agreement are necessary. There are no obligations to agree by either party.

After execution of this Agreement, modifications to the provisions contained herein, with the exception of Section IV., AGREEMENT MANAGEMENT, shall be valid only through execution of a formal written amendment to the Agreement. Any changes in the information contained in Section IV., AGREEMENT MANAGEMENT, will be provided to the other party, in writing, and a copy of the written notification shall be maintained in the official Agreement record.

VI. TERMINATION

This Agreement may be terminated at any time upon the mutual consent of both parties or unilaterally by either party upon no less than 30 calendar days' notice. Notice shall be delivered by express mail or other method whereby a receipt of delivery may be obtained.

In addition, this Agreement may be terminated with 24 hours' notice by either Party for any failure of either Party to comply with the terms of this Agreement or any applicable Florida law.

Should this Agreement be terminated mid-semester, for the benefit of the Program Participants, both parties agree to allow Program Participants to complete the current semester. This will allow for the required instructional completion, final grading, and proper reporting to Participants.

VII. OTHER CONDITIONS

A. Public Records Law

Pursuant to Section 119.0701, Florida Statutes, each party is required to (a) keep and maintain available for public inspection any records that pertain to services rendered under this Agreement; (b) provide the public with access to public records on the same terms and conditions that such party would provide such records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law; (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (d) meet all requirements for retaining public records and transfer, at no cost to the other party, all public records in that party's possession upon termination of its Agreement with the other party and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All of such party's records stored electronically must be provided to the other party, in a format that is compatible with the other party's information technology systems. Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance with that law. Each party acknowledges that this Agreement and all attachments thereto are public records and do not constitute trade secrets.

B. Indemnification

The parties to this Agreement are governmental entities and or agencies per the provisions of Section 768.28, Florida Statutes, and thus, each party agrees to be liable to the limits as set forth in Section 768.28, Florida Statutes, for its acts of negligence or omissions which result in claims or suits against them, and agrees to be liable to the limits set forth in Section 768.28, Florida Statutes, for any damages proximately caused by said acts or omissions. Nothing herein shall be construed as consent by either party to be sued by third parties in any matter arising out of any contract. Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable or of any rights or limits to liability existing under Section 768.28, Florida Statutes. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

C. Background Checks

1. Broward College's Program staff assigned to this Agreement and any other person performing services pursuant thereto, shall be subject, at the Department's discretion and expense, to a Florida Department of Law Enforcement (FDLE) Florida Crime Information Center/National Crime Information Center (FCIC/NCIC) background/criminal records check. This background check will be conducted by the Department and may occur or re-occur at any time during the Agreement term. The Department has full discretion to require Broward College to disqualify, prevent, or remove any staff from any work under the Agreement. The use of criminal history records and information derived from such records checks are restricted pursuant to Section 943.054, F.S. The Department shall not disclose any information regarding the records check findings or criteria for disqualification or removal to Broward College. The Department shall not confirm to Broward College the existence or nonexistence of any criminal history record information. In order to carry out this records check, Broward College shall provide, to the institution(s) at which the Program is offered, prior to the performance of any services under this Agreement, the following data for any individual contractor or subcontractor's staff assigned to the Agreement: Full Name, Race, Gender, Date of Birth, Social Security Number, Driver's License Number, and State of Issue.
2. When providing services within a correctional setting, Broward College Program Staff shall obtain a Level II background screening (which includes fingerprinting to be submitted to the Federal Bureau of Investigation (FBI)). Results must be submitted to the Department prior to any current or new Broward College Program Staff being assigned to work under the Agreement. Broward College shall bear all costs associated with this background screening. Broward College shall not consider new Program Staff to be on permanent status until the Department receives a favorable report from the FBI.

D. Confidentiality

Broward College shall ensure all Program staff maintains confidentiality with reference to individual Participants receiving services in accordance with applicable local, state, and federal laws, rules, and regulations. The Department and Broward College agree that all information and records obtained in the course of providing services under this Agreement shall be subject to confidentiality and disclosure provisions of applicable federal and state statutes and regulations adopted pursuant thereto.

Broward College agrees to keep all Department personnel information (i.e., Department staff telephone numbers, addresses, etc.) strictly confidential and shall not disclose said information to any person, unless released, in writing, by said Department.

Parties acknowledge that many student education records are protected by the Family Educational Rights and Privacy Act ("FERPA"), [20 United States Code sections 1232(g), 1232(h) and 1232(i)], and federal regulations issued pursuant to such act, and by state law in s. 1002.22, F.S., and that generally, written student consent must be obtained before releasing personally identifiable student education records to anyone other than Broward College. Broward College agrees to provide guidance to the Department with respect to complying with the provisions of FERPA and similar state law. The Department agrees to treat all student education records that are specifically identified as such by the parties confidentially and not to disclose such student education records except to Broward College and the Department officials who need the information to fulfill their professional responsibilities, or as required or permitted by law. The parties

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acknowledge that the fact that a Program Student is mentioned in a record or report generated and/or maintained by the Department in the normal course and scope of its operations, and not created or maintained by Broward College, may not cause such record or report to be considered a “student education record” for purposes of this paragraph.

E. Disputes

Any dispute concerning performance of the terms of this Agreement shall be resolved informally by the Agreement Managers. Any dispute that cannot be resolved informally shall be reduced to writing and delivered to the Department’s Assistant Deputy Secretary of Institutions. The Department’s Assistant Deputy Secretary of Institutions shall decide the dispute, reduce the decision to writing, and deliver a copy to The Participating Entity, the Department’s Agreement Manager, and the Department’s Agreement Administrator. Notwithstanding this paragraph, each party shall be afforded the opportunity to seek legal redress as permitted under state and federal law

F. Data Sharing

The Department and Broward College acknowledge their separate obligations to store and disseminate data in compliance with the requirements of Public Records Law, Chapter 119, F.S., and with other applicable statutes that constitute express exceptions to the requirements of Section 119.07(1), F.S., by making certain categories of records confidential, exempt from disclosure, or accessible as prescribed by statute. Broward College acknowledges that the data exchanged between them has been provided for official purposes and that public access to such data is limited and prescribed by statute. Broward College therefore agrees, consistent with public records law, to refer third parties requesting delivery of information to the originating party. Broward College further agrees to disseminate data only in compliance with confidentiality restrictions and in recognition of the exemptions from disclosure provided by law and to provide advance copies of documents involving the other party’s data for review to determine if there has been an inadvertent disclosure of confidential information as described herein prior to publication.

G. Notices

All notices required or permitted by this Agreement shall be given, in writing, and by hand-delivery or email to the respective addresses of the parties as set forth in Section IV., AGREEMENT MANAGEMENT, above. All notices by hand-delivery shall be deemed received on the date of delivery and all notices by email shall be deemed received when they are transmitted and not returned as undelivered or undeliverable. Either party may change the names, addresses, or telephone numbers set forth in Section IV., AGREEMENT MANAGEMENT, above by written notice given to the other party as provided above.

H. Institutional Security

In carrying out the provisions of this Agreement, Broward College must comply with all security procedures for vendors doing business in Department’s facilities as contained in Department Procedure 602.016, “Entering and Exiting Department of Corrections Institutions”, and the Security Requirements for Contractors, attached hereto and herein referred to as **Attachment A**.

I. Health Insurance Portability and Accountability Act

Broward College shall comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (42 U. S. C. 1320d-8), and all applicable regulations promulgated thereunder. Agreement to comply with HIPAA is evidenced by the execution of this Agreement, which includes and incorporates **Attachment B**, Business Associate Agreement, as part of this Agreement.

J. Prison Rape Elimination Act (PREA)

Broward College will comply with the national standards to prevent, detect, and respond to prison rape under the Prison Rape Elimination Act (PREA), Federal Rule 28 C.F.R. Part 115. Broward College will also comply with all Department policies and procedures that relate to PREA.

K. Cooperation with Inspector General

In accordance with Section 20.055(5), F.S., Broward College understands and will comply with its duty to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing.

L. Insurance

Broward College agrees to provide adequate insurance coverage on a comprehensive basis and to hold such insurance at all times during the existence of this Agreement. This shall include, but is not limited to, worker's compensation and general liability coverage. Broward College accepts full responsibility for identifying and determining the type(s) and extent of insurance necessary to provide reasonable financial protection for Broward College and the Department under this Agreement. Upon the execution of this Agreement, Broward College shall furnish the Agreement Manager written verification of such insurance coverage. Such coverage may be provided by a self-insurance program established and operating under the laws of the State of Florida. The Department reserves the right to require additional insurance where appropriate.

If Broward College is a state agency or subdivision as defined in Section 768.28, F.S., Broward College shall furnish the Department, upon request, written verification of liability protection in accordance with Section 768.28, F.S. Nothing herein shall be construed to extend any party's liability beyond that provided in Section 768.28, F.S.

M. Employee Status

This Agreement does not create an employee/employer relationship between the parties. It is the intent of the parties that the Department and Broward College are independent contractors under this Agreement and neither is the employee of the other for all purposes, including, but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Workers Compensation Act, and the State unemployment insurance law. The parties shall each retain sole and absolute discretion in the judgment of the manner and means of carrying out their activities and responsibilities hereunder provided, further those administrative procedures applicable to services rendered under this Agreement shall be those of each individual party. Services provided by each party pursuant to this Agreement shall be subject to the supervision of such party. In providing such services, neither party nor its agents shall act as officers, employees, or agents of the other party.

The parties agree that they are separate and independent enterprises, and that each has the ability to pursue other opportunities.

This Agreement shall not be construed as creating any joint employment relationship between the Parties and neither party will be liable for any obligation incurred by the other party, including, but not limited to, unpaid minimum wages and/or overtime premiums.

N. Force Majeure

Neither party shall be liable for loss or damage suffered as a result of any delay or failure in performance under this Agreement or interruption of performance resulting directly or indirectly from acts of God, fire, explosions, earthquakes, floods, water, wind, lightning, civil or military authority, acts of public enemy, war, riots, civil disturbances, public health emergencies, insurrections, pandemics, strikes, or labor disputes.

O. Americans with Disabilities Act

Broward College shall comply with the Americans with Disabilities Act. In the event of Broward College's noncompliance with the nondiscrimination clauses, the Americans with Disabilities Act, or with any other such rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended, in whole or in part, and Broward College may be declared ineligible for further Agreements.

P. E-Verify

Beginning January 1, 2021, every public employer, contractor, and subcontractor shall register with and use the E-Verify system to verify the work authorization status of all newly hired employees. A public employer, contractor, or subcontractor shall not enter into a contract unless each party to the contract registers with and uses the E-Verify system in accordance with Section 448.095, F.S.

Q. Cooperation with the Florida Senate and the Florida House of Representatives

In accordance with Section 287.058(7), F.S., Broward College agrees to disclose any requested information, relevant to the performance of this Agreement, to members or staff of the Florida Senate or the Florida House of Representatives, as required by the Florida Legislature. Broward College is strictly prohibited from enforcing any nondisclosure clauses conflictive with this requirement.

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AGREEMENT #A5254

IN WITNESS THEREOF, the parties hereto have caused this Agreement to be executed by their undersigned officials as duly authorized.

**THE DISTRICT BOARD OF TRUSTEES OF
BROWARD COLLEGE, FLORIDA**

SIGNED BY: DocuSigned by:
Mildred Coyne
DCAABDE1B7E441

NAME: Mildred Coyne

TITLE: SVP, Workforce Education & Innovation

DATE: 11/1/2022

FEIN: 59-1216107

FLORIDA DEPARTMENT OF CORRECTIONS

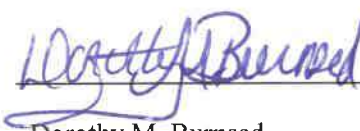
Approved as to form and legality, subject to execution.

SIGNED BY: 

NAME: J. Olyn Long

TITLE: Procurement Director

DATE: 12/18/22

SIGNED BY: 

NAME: Dorothy M. Burnsed

TITLE: 6005
12/6/22
General Counsel

DATE: 12/7/22

Firm Representing: General Counsel Broward College

Contractor/Vendor Employee Name: _____
(Print)

FLORIDA DEPARTMENT OF CORRECTIONS

SECURITY REQUIREMENTS FOR CONTRACTORS

- (1) Section 944.47, F.S.: Except through regular channels as authorized by the officer in charge of the correctional institution, it is unlawful to introduce into or upon the grounds of any state correctional institution, or to take or attempt to take or send or attempt to send therefrom, any of the following articles which are hereby declared to be contraband.
- (a) Any written or recorded communication or any currency or coin given or transmitted, or intended to be given or transmitted, to any Inmate of any state correctional institution.
 - (b) Any article of food or clothing given or transmitted, or intended to be given or transmitted, to any Inmate of any state correctional institution.
 - (c) Any intoxicating beverage or beverage which causes or may cause an intoxicating effect.
 - (d) Any controlled substance as defined in section 893.02(4), marijuana as defined in section 381.986, hemp as defined in section 581.217, industrial hemp as defined in section 1004.4473, or any prescription or nonprescription drug having a hypnotic, stimulating, or depressing effect.
 - (e) Any firearm or weapon of any kind or any explosive substance. (This includes any weapons left in vehicles)
 - (f) Any cellular telephone or other portable communication device intentionally and unlawfully introduced inside the secure perimeter of any state correctional institution without prior authorization or consent from the officer in charge of such correctional institution.
 - (g) Any vapor-generating electronic device as defined in section 386.203, intentionally and unlawfully introduced inside the secure perimeter of any state correctional institution.

A person who violates any provision of this section as it pertains to an article of contraband described in subsections (a), (b), or (f) is guilty of a felony of the third degree. In all other cases, a violation of a provision of this section constitutes a felony of the second degree.

- (2) Absolutely no transactions between contract personnel and Inmates are permitted. This includes, but is not limited to, giving or receiving cigarettes, stamps, or letters.
- (3) No communication with Inmates, verbal or otherwise, is permitted without the authorization of the officer-in-charge.
- (4) Keep all keys in your pockets. Do not leave keys in the ignition locks of motor vehicles. All vehicles must be locked, and windows rolled up when parked on state property. Wheel locking devices may also be required.
- (5) Establish with the Institutional Warden and/or Chief of Security where construction vehicles should be parked and staging area for materials storage.
- (6) Obtain formal identification (driver's license or non-driver's license obtained from the Department of Highway Safety and Motor Vehicles). This identification must be presented each time you enter or depart the institution.

AGREEMENT #A5254
Attachment A

- (7) Strict tool control will be enforced at all times. Tools within the correctional institution are classified as Class AA, A, or B.
 - (a) Class AA tools are defined as any tool that can be utilized to cut chain link fence fiber or razor wire rapidly and effectively.
 - (b) Class A tools are defined as those tools which, in their present form, are most likely to be used in an escape or to do bodily harm to staff or inmates.
 - (c) Class B tools are defined as tools of a less hazardous nature. Every tool is to be geographically controlled and accounted for at all times.
 - (d) At the end of the workday, toolboxes will be removed from the compound or to a secure area as directed by security staff. You must have two copies of the correct inventory with each toolbox; one copy will be used and retained by security staff who will search and ensure a proper inventory of tools each time the toolbox is brought into the facility, the other copy will remain with the toolbox at all times. Tools should be kept to a minimum (only those tools necessary to complete your job). All lost tools must be reported to the Chief of Security (Colonel or Major) **immediately**. No Inmate will be allowed to leave the area until the lost tool is recovered.
- (8) Prior approval must be obtained from the Chief of Security before bringing any powder-activated tools onto the compound. Strict accountability of all powder loads and spent cartridges is required.
- (9) All construction materials will be delivered into the compound on trucks entering through the sallyport gate. As the security check of vehicles is an intensive and time-consuming (10-15 minutes) process, the contractor is requested to minimize the number of deliveries.
- (10) Control end-of-day construction materials and debris. Construction materials and debris can be used as weapons or as a means of escape. Construction material will be stored in locations agreed to by security staff, and debris will be removed to a designated location. Arrange for security staff to inspect the project area before construction personnel leave. This will aid you in assuring that necessary security measures are accomplished.
- (11) Coordinate with the Warden and Chief of Security regarding any shutdown of existing systems (gas, water, electricity, electronics, sewage, etc.). Obtain institutional approval before shutting down any existing utility system. Arrange for alternative service (if required) and expeditious re-establishment of the shutdown system.
- (12) With the intent of maintaining security upon the institution's grounds, a background check will be made upon all persons employed by the contractor or who work on the project. **The Department, represented by the institution's Warden, reserves the right to reject any person whom it determines may be a threat to the security of the institution.**

Contractor/Vendor Signature

Date

FDC Staff Witness Signature

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement supplements and is made a part of this Agreement between the Florida Department of Corrections (“Department”) and Broward College of Florida Board of Trustees (“Contractor”), (individually, a “Party” and collectively referred to as “Parties”).

Whereas, the Department creates or maintains, or has authorized the Contractor to receive, create, or maintain certain Protected Health Information (“PHI,”) as that term is defined in 45 C.F.R. §164.501 and that is subject to protection under the Health Insurance Portability and Accountability Act of 1996, as amended. (“HIPAA”);

Whereas, the Department is a “Covered Entity” as that term is defined in the HIPAA implementing regulations, 45 C.F.R. Part 160 and Part 164, Subparts A, C, and E, the Standards for Privacy of Individually Identifiable Health Information (“Privacy Rule”) and the Security Standards for the Protection of Electronic Protected Health Information (“Security Rule”);

Whereas, the Contractor may have access to Protected Health Information in fulfilling its responsibilities under its contract with the Department;

Whereas, the Contractor is considered to be a “Business Associate” of a Covered Entity as defined in the Privacy Rule;

Whereas, pursuant to the Privacy Rule, all Business Associates of Covered Entities must agree in writing to certain mandatory provisions regarding the use and disclosure of PHI; and

Whereas, the purpose of this Agreement is to comply with the requirements of the Privacy Rule, including, but not limited to, the Business Associate contract requirements of 45 C.F.R. §164.504(e).

Whereas, in regards to Electronic Protected Health Information as defined in 45 C.F.R. § 160.103, the purpose of this Agreement is to comply with the requirements of the Security Rule, including, but not limited to, the Business Associate contract requirements of 45 C.F.R. §164.314(a).

Now, therefore, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

1. Definitions

Unless otherwise provided in this Agreement, any and all capitalized terms have the same meanings as set forth in the HIPAA Privacy Rule, HIPAA Security Rule or the HITECH Act. Contractor acknowledges and agrees that all Protected Health Information that is created or received by the Department and disclosed or made available in any form, including paper record, oral communication, audio recording, and electronic display by the Department or its operating units to Contractor or is created or received by Contractor on the Department’s behalf shall be subject to this Agreement.

2. Confidentiality Requirements

- A. Contractor agrees to use and disclose Protected Health Information that is disclosed to it by the Department solely for meeting its obligations under its agreements with the Department, in accordance with the terms of this agreement, the Department's established policies rules, procedures and requirements, or as required by law, rule or regulation.
- B. In addition to any other uses and/or disclosures permitted or authorized by this Agreement or required by law, Contractor may use and disclose Protected Health Information as follows:
 - (1) if necessary for the proper management and administration of the Contractor and to carry out the legal responsibilities of the Contractor, provided that any such disclosure is required by law or that Contractor obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Contractor of any instances of which it is aware in which the confidentiality of the information has been breached;

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Attachment B

- (2) for data aggregation services, only if to be provided by Contractor for the health care operations of the Department pursuant to any and all agreements between the Parties. For purposes of this Agreement, data aggregation services means the combining of protected health information by Contractor with the protected health information received by Contractor in its capacity as a Contractor of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.
- (3) Contractor may use and disclose protected health information that Contractor obtains or creates only if such disclosure is in compliance with every applicable requirement of Section 164.504(e) of the Privacy relating to Contractor contracts. The additional requirements of Subtitle D of the HITECH Act that relate to privacy and that are made applicable to the Department as a covered entity shall also be applicable to Contractor and are incorporated herein by reference.

C. Contractor will implement appropriate safeguards to prevent use or disclosure of Protected Health Information other than as permitted in this Agreement. Further, Contractor shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of the Department. The Secretary of Health and Human Services and the Department shall have the right to audit Contractor's records and practices related to use and disclosure of Protected Health Information to ensure the Department's compliance with the terms of the HIPAA Privacy Rule and/or the HIPAA Security Rule.

Further, Sections 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards), and 164.316 (policies and procedures and documentation requirements) of the Security Rule shall apply to the Contractor in the same manner that such sections apply to the Department as a covered entity. The additional requirements of the HITECH Act that relate to security and that are made applicable to covered entities shall be applicable to Contractor and are hereby incorporated by reference into this BA Agreement.

D. Contractor shall report to Department any use or disclosure of Protected Health Information, which is not in compliance with the terms of this Agreement as well as any Security incident of which it becomes aware. Contractor agrees to notify the Department, and include a copy of any complaint related to use, disclosure, or requests of Protected Health Information that the Contractor receives directly and use best efforts to assist the Department in investigating and resolving such complaints. In addition, Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of Protected Health Information by Contractor in violation of the requirements of this Agreement.

Such report shall notify the Department of:

- 1) any Use or Disclosure of protected health information (including Security Incidents) not permitted by this Agreement or in writing by the Department;
- 2) any Security Incident;
- 3) any Breach, as defined by the HITECH Act; or
- 4) any other breach of a security system, or like system, as may be defined under applicable State law (Collectively a "Breach").

Contractor will without unreasonable delay, but no later than seventy-two (72) hours after discovery of a Breach, send the above report to the Department.

Such report shall identify each individual whose protected health information has been, or is reasonably believed to have been, accessed, acquired, or disclosed during any Breach pursuant to 42 U.S.C.A. § 17932(b). Such report will:

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- 1) Identify the nature of the non-permitted or prohibited access, use, or disclosure, including the nature of the Breach and the date of discovery of the Breach.
 - 2) Identify the protected health information accessed, used or disclosed, and provide an exact copy or replication of that protected health information.
 - 3) Identify who or what caused the Breach and who accessed, used, or received the protected health information.
 - 4) Identify what has been or will be done to mitigate the effects of the Breach; and
 - 5) Provide any other information, including further written reports, as the Department may request.
- E. In accordance with Section 164.504(e)(1)(ii) of the Privacy Rule, each party agrees that if it knows of a pattern of activity or practice of the other party that constitutes a material breach of or violation of the other party's obligations under the BA Agreement, the non-breaching party will take reasonable steps to cure the breach or end the violation, and if such steps are unsuccessful, terminate the contract or arrangement if feasible. If termination is not feasible, the party will report the problem to the Secretary of Health and Human Services (federal government).
- F. Contractor will ensure that its agents, including a subcontractor, to whom it provides Protected Health Information received from, or created by Contractor on behalf of the Department, agree to the same restrictions and conditions that apply to Contractor, and apply reasonable and appropriate safeguards to protect such information. Contractor agrees to designate an appropriate individual (by title or name) to ensure the obligations of this agreement are met and to respond to issues and requests related to Protected Health Information. In addition, Contractor agrees to take other reasonable steps to ensure that its employees' actions or omissions do not cause Contractor to breach the terms of this Agreement.
- G. Contractor shall secure all protected health information by a technology standard that renders protected health information unusable, unreadable, or indecipherable to unauthorized individuals and is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute and is consistent with guidance issued by the Secretary of Health and Human Services specifying the technologies and methodologies that render protected health information unusable, unreadable, or indecipherable to unauthorized individuals, including the use of standards developed under Section 3002(b)(2)(B)(vi) of the Public Health Service Act, pursuant to the HITECH Act, 42 U.S.C.A. § 300jj-11, unless the Department agrees in writing that this requirement is infeasible with respect to particular data. These security and protection standards shall also apply to any of Contractor's agents and subcontractors.
- H. Contractor agrees to make available Protected Health Information so that the Department may comply with individual rights to access in accordance with Section 164.524 of the HIPAA Privacy Rule. Contractor agrees to make Protected Health Information available for amendment and incorporate any amendments to Protected Health Information in accordance with the requirements of Section 164.526 of the HIPAA Privacy Rule. In addition, Contractor agrees to record disclosures and such other information necessary, and make such information available, for purposes of the Department providing an accounting of disclosures, as required by Section 164.528 of the HIPAA Privacy Rule.
- I. The Contractor agrees, when requesting Protected Health Information to fulfill its contractual obligations or on the Department's behalf, and when using and disclosing Protected Health Information as permitted in this contract, that the Contractor will request, use, or disclose only the minimum necessary in order to accomplish the intended purpose.

3. Obligations of Department

- A. The Department will make available to the Business Associate the notice of privacy practices (applicable to offenders under supervision, not to Inmates) that the Department produces in accordance with 45 CFR 164.520, as well as any material changes to such notice.
- B. The Department shall provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.
- C. The Department shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that impacts the business associate's use or disclosure and that the Department has agreed to in accordance with 45 CFR 164.522 and the HITECH Act.

4. Termination

- A. Termination for Breach - The Department may terminate this Agreement if the Department determines that Contractor has breached a material term of this Agreement. Alternatively, the Department may choose to provide Contractor with notice of the existence of an alleged material breach and afford Contractor an opportunity to cure the alleged material breach. In the event Contractor fails to cure the breach to the satisfaction of the Department, the Department may immediately thereafter terminate this Agreement.
- B. Automatic Termination - This Agreement will automatically terminate upon the termination or expiration of the original contract between the Department and the Contractor.
- C. Effect of Termination
 - (1) Termination of this agreement will result in termination of the associated contract between the Department and the Contractor.
 - (2) Upon termination of this Agreement or the contract, Contractor will return or destroy all PHI received from the Department or created or received by Contractor on behalf of the Department that Contractor still maintains and retain no copies of such PHI; provided that if such return or destruction is not feasible, Contractor will extend the protections of this Agreement to the PHI and limit further uses and disclosure to those purposes that make the return or destruction of the information infeasible.

5. **Amendment** - Both Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary to comply with the requirements of the Privacy Rule, the HIPAA Security Rule, and the HITECH Act.

6. **Interpretation** - Any ambiguity in this Agreement shall be resolved to permit the Department to comply with the HIPAA Privacy Rule and/or the HIPAA Security Rule.

7. **Indemnification** - The Contractor shall be liable for and agrees to be liable for, and shall indemnify, defend, and hold harmless the Department, its employees, agents, officers, and assigns from any and all claims, suits, judgments, or damages including court costs and attorneys' fees arising out or in connection with any non-permitted or prohibited Use or Disclosure of PHI or other breach of this Agreement, whether intentional, negligent or by omission, by Contractor, or any sub-contractor of Contractor, or agent, person or entity under the control or direction of Contractor. This indemnification by Contractor includes any claims brought under Title 42 USC §1983, the Civil Rights Act.

8. **Miscellaneous** - Parties to this Agreement do not intend to create any rights in any third Parties. The obligations of Contractor under this Section shall survive the expiration, termination, or cancellation of this Agreement, or any and all other contracts between the Parties, and shall continue to bind Contractor, its agents, employees, contractors, successors, and assigns as set forth herein for any PHI that is not returned to the Department or destroyed.

**FEDERAL BUREAU OF INVESTIGATION
CRIMINAL JUSTICE INFORMATION SERVICES
SECURITY ADDENDUM**

**Legal Authority for and Purpose and Genesis of the
Security Addendum**

Traditionally, law enforcement and other criminal justice agencies have been responsible for the confidentiality of their information. Accordingly, until mid-1999, the Code of Federal Regulations Title 28, Part 20, subpart C, and the National Crime Information Center (NCIC) policy paper approved December 6, 1982, required that the management and exchange of criminal justice information be performed by a criminal justice agency or, in certain circumstances, by a noncriminal justice agency under the management control of a criminal justice agency.

In light of the increasing desire of governmental agencies to contract with private entities to perform administration of criminal justice functions, the FBI sought and obtained approval from the United States Department of Justice (DOJ) to permit such privatization of traditional law enforcement functions under certain controlled circumstances. In the Federal Register of May 10, 1999, the FBI published a Notice of Proposed Rulemaking, announcing as follows:

1. Access to CHRI [Criminal History Record Information] and Related Information, Subject to Appropriate Controls, by a Private Contractor Pursuant to a Specific Agreement with an Authorized Governmental Agency To Perform an Administration of Criminal Justice Function (Privatization). Section 534 of title 28 of the United States Code authorizes the Attorney General to exchange identification, criminal identification, crime, and other records for the official use of authorized officials of the federal government, the states, cities, and penal and other institutions. This statute also provides, however, that such exchanges are subject to cancellation if dissemination is made outside the receiving departments or related agencies. Agencies authorized access to CHRI traditionally have been hesitant to disclose that information, even in furtherance of authorized criminal justice functions, to anyone other than actual agency employees lest such disclosure be viewed as unauthorized. In recent years, however, governmental agencies seeking greater efficiency and economy have become increasingly interested in obtaining support services for the administration of criminal justice from the private sector. With the concurrence of the FBI's Criminal Justice Information Services (CJIS) Advisory Policy Board, the DOJ has concluded that disclosures to private persons and entities providing support services for criminal justice agencies may, when subject to appropriate controls, properly be viewed as permissible disclosures for purposes of compliance with 28 U.S.C. 534.

We are therefore proposing to revise 28 CFR 20.33(a)(7) to provide express authority for such arrangements. The proposed authority is similar to the authority that already exists in 28 CFR 20.21(b)(3) for state and local CHRI systems. Provision of CHRI under this authority would only be permitted pursuant to a specific agreement with an authorized governmental agency for the purpose of providing services for the administration of criminal justice. The agreement would be required to incorporate a security addendum approved by the Director of the FBI (acting for the Attorney General). The security

addendum would specifically authorize access to CHRI, limit the use of the information to the specific purposes for which it is being provided, ensure the security and confidentiality of the information consistent with applicable laws and regulations, provide for sanctions, and contain such other provisions as the Director of the FBI (acting for the Attorney General) may require. The security addendum, buttressed by ongoing audit programs of both the FBI and the sponsoring governmental agency, will provide an appropriate balance between the benefits of privatization, protection of individual privacy interests, and preservation of the security of the FBI's CHRI systems.

The FBI will develop a security addendum to be made available to interested governmental agencies. We anticipate that the security addendum will include physical and personnel security constraints historically required by NCIC security practices and other programmatic requirements, together with personal integrity and electronic security provisions comparable to those in NCIC User Agreements between the FBI and criminal justice agencies, and in existing Management Control Agreements between criminal justice agencies and noncriminal justice governmental entities. The security addendum will make clear that access to CHRI will be limited to those officers and employees of the private contractor or its subcontractor who require the information to properly perform services for the sponsoring governmental agency, and that the service provider may not access, modify, use, or disseminate such information for inconsistent or unauthorized purposes.

Consistent with such intent, Title 28 of the Code of Federal Regulations (C.F.R.) was amended to read:

§ 20.33 Dissemination of criminal history record information.

- a) Criminal history record information contained in the Interstate Identification Index (III) System and the Fingerprint Identification Records System (FIRS) may be made available:
- 1) To criminal justice agencies for criminal justice purposes, which purposes include the screening of employees or applicants for employment hired by criminal justice agencies.
 - 2) To noncriminal justice governmental agencies performing criminal justice dispatching functions or data processing/information services for criminal justice agencies; and
 - 3) To private contractors pursuant to a specific agreement with an agency identified in paragraphs (a)(1) or (a)(6) of this section and for the purpose of providing services for the administration of criminal justice pursuant to that agreement. The agreement must incorporate a security addendum approved by the Attorney General of the United States, which shall specifically authorize access to criminal history record information, limit the use of the information to the purposes for which it is provided, ensure the security and confidentiality of the information consistent with these regulations, provide for sanctions, and contain such other provisions as the Attorney General may require. The power

and authority of the Attorney General hereunder shall be exercised by the FBI Director (or the Director's designee).

This Security Addendum, appended to and incorporated by reference in a government-private sector contract entered into for such purpose, is intended to insure that the benefits of privatization are not attained with any accompanying degradation in the security of the national system of criminal records accessed by the contracting private party. This Security Addendum addresses both concerns for personal integrity and electronic security which have been addressed in previously executed user agreements and management control agreements.

A government agency may privatize functions traditionally performed by criminal justice agencies (or noncriminal justice agencies acting under a management control agreement), subject to the terms of this Security Addendum. If privatized, access by a private contractor's personnel to NCIC data and other CJIS information is restricted to only that necessary to perform the privatized tasks consistent with the government agency's function and the focus of the contract. If privatized the contractor may not access, modify, use or disseminate such data in any manner not expressly authorized by the government agency in consultation with the FBI.

**FEDERAL BUREAU OF INVESTIGATION
CRIMINAL JUSTICE INFORMATION SERVICES
SECURITY ADDENDUM**

The goal of this document is to augment the CJIS Security Policy to ensure adequate security is provided for criminal justice systems while (1) under the control or management of a private entity or (2) connectivity to FBI CJIS Systems has been provided to a private entity (contractor). Adequate security is defined in Office of Management and Budget Circular A-130 as “security commensurate with the risk and magnitude of harm resulting from the loss, misuse, or unauthorized access to or modification of information.”

The intent of this Security Addendum is to require that the Contractor maintain a security program consistent with federal and state laws, regulations, and standards (including the CJIS Security Policy in effect when the contract is executed), as well as with policies and standards established by the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB).

This Security Addendum identifies the duties and responsibilities with respect to the installation and maintenance of adequate internal controls within the contractual relationship so that the security and integrity of the FBI's information resources are not compromised. The security program shall include consideration of personnel security, site security, system security, and data security, and technical security.

The provisions of this Security Addendum apply to all personnel, systems, networks and support facilities supporting and/or acting on behalf of the government agency.

1.00 Definitions

1.01 Contracting Government Agency (CGA) - the government agency, whether a Criminal Justice Agency or a Noncriminal Justice Agency, which enters into an agreement with a private contractor subject to this Security Addendum.

1.02 Contractor - a private business, organization or individual which has entered into an agreement for the administration of criminal justice with a Criminal Justice Agency or a Noncriminal Justice Agency.

2.00 Responsibilities of the Contracting Government Agency.

2.01 The CGA will ensure that each Contractor employee receives a copy of the Security Addendum and the CJIS Security Policy and executes an acknowledgment of such receipt and the contents of the Security Addendum. The signed acknowledgments shall remain in the possession of the CGA and available for audit purposes. The acknowledgement may be signed by hand or via digital signature (see glossary for definition of digital signature).

3.00 Responsibilities of the Contractor.

3.01 The Contractor will maintain a security program consistent with federal and state laws, regulations, and standards (including the CJIS Security Policy in effect when the contract is executed and all subsequent versions), as well as with policies and standards established by the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB).

4.00 Security Violations.

4.01 The CGA must report security violations to the CJIS Systems Officer (CSO) and the Director, FBI, along with indications of actions taken by the CGA and Contractor.

4.02 Security violations can justify termination of the appended agreement.

4.03 Upon notification, the FBI reserves the right to:

- a. Investigate or decline to investigate any report of unauthorized use;
- b. Suspend or terminate access and services, including telecommunications links. The FBI will provide the CSO with timely written notice of the suspension. Access and services will be reinstated only after satisfactory assurances have been provided to the FBI by the CGA and Contractor. Upon termination, the Contractor's records containing CHRI must be deleted or returned to the CGA.

5.00 Audit

5.01 The FBI is authorized to perform a final audit of the Contractor's systems after termination of the Security Addendum.

6.00 Scope and Authority

6.01 This Security Addendum does not confer, grant, or authorize any rights, privileges, or obligations on any persons other than the Contractor, CGA, CJA (where applicable), CSA, and FBI.

6.02 The following documents are incorporated by reference and made part of this agreement: (1) the Security Addendum; (2) the NCIC 2000 Operating Manual; (3) the CJIS Security Policy; and (4) Title 28, Code of Federal Regulations, Part 20. The parties are also subject to applicable federal and state laws and regulations.

6.03 The terms set forth in this document do not constitute the sole understanding by and between the parties hereto; rather they augment the provisions of the CJIS Security Policy to provide a minimum basis for the security of the system and contained information and it is understood that there may be terms and conditions of the appended Agreement which impose more stringent requirements upon the Contractor.

6.04 This Security Addendum may only be modified by the FBI, and may not be modified by the parties to the appended Agreement without the consent of the FBI.

6.05 All notices and correspondence shall be forwarded by First Class mail to:

Information Security Officer
Criminal Justice Information Services Division, FBI
1000 Custer Hollow Road
Clarksburg, West Virginia 26306

FEDERAL BUREAU OF INVESTIGATION
CRIMINAL JUSTICE INFORMATION SERVICES
SECURITY ADDENDUM

CERTIFICATION

I hereby certify that I am familiar with the contents of (1) the Security Addendum, including its legal authority and purpose; (2) the NCIC Operating Manual; (3) the CJIS Security Policy; and (4) Title 28, Code of Federal Regulations, Part 20, and agree to be bound by their provisions.

I recognize that criminal history record information and related data, by its very nature, is sensitive and has potential for great harm if misused. I acknowledge that access to criminal history record information and related data is therefore limited to the purpose(s) for which a government agency has entered into the contract incorporating this Security Addendum. I understand that misuse of the system by, among other things: accessing it without authorization; accessing it by exceeding authorization; accessing it for an improper purpose; using, disseminating or re-disseminating information received as a result of this contract for a purpose other than that envisioned by the contract, may subject me to administrative and criminal penalties. I understand that accessing the system for an appropriate purpose and then using, disseminating or re-disseminating the information received for another purpose other than execution of the contract also constitutes misuse. I further understand that the occurrence of misuse does not depend upon whether or not I receive additional compensation for such authorized activity. Such exposure for misuse includes, but is not limited to, suspension or loss of employment and prosecution for state and federal crimes.

Printed Name/Signature of Contractor Employee

Date

Printed Name/Signature of Contractor Representative

Date

Organization and Title of Contractor Representative