

**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY**

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Meeting Date: **March 14, 2023**                      **Consent**            **Regular**  
     **Ordinance**            **Public Hearing**

Department:             **Department of Public Safety**  
 Submitted By:          **Department of Public Safety**  
 Submitted For:         **Division of Victim Services**

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**I. EXECUTIVE BRIEF**

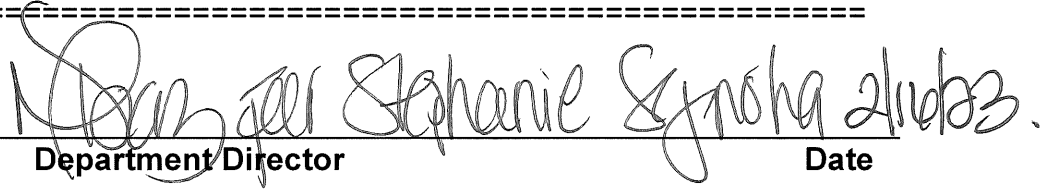
**Motion and Title:** **Staff recommends motion to approve:** Memorandum of Agreement (Agreement) #A5261 with Florida Department of Corrections (DOC) to provide advocacy services to incarcerated victims of sexual assault for a five (5) year term beginning March 14, 2023 through January 9, 2028 with no financial obligations.

**Summary:** DOC is a state agency that operates five (5) correction facilities in Palm Beach County to include a prison, release center, and reentry sites. In order to comply with the Prison Rape Elimination Act (PREA) standards, in 2017, DOC executed an agreement with the Department of Public Safety Division of Victim Services (DVS) (R2017-0107) for advocacy services and crisis intervention to incarcerated victims of sexual assault. In 2019, pursuant to the original agreement, DOC exercised its final three (3) year renewal option with an expiration date of January 9, 2023 (R2019-1808). DOC is seeking to execute a new agreement with DVS to outline the respective duties, responsibilities, policies and procedures that will be undertaken by DOC and the County when providing sexual assault services. The Agreement addresses notification, access procedures, provision of service, confidentiality, logistical and security needs of the County. The Agreement aligns with the PREA standards established by the U.S. Department of Justice (DOJ), best practices in the field of sexual assault victim services and is commensurate with sexual assault services available to the community at large. **Countywide** (RS)


**Background and Justification:** In September 2003, the PREA of 2003 was signed into law. PREA is aimed to curb prison rape in adult and juvenile correction facilities. Following the passage of the law, standards and processes for the response to sexual assault to incarcerated juvenile victims by the DOJ and other federal agencies have evolved. As the certified rape crisis center for Palm Beach County, the Division of Victim Services is charged with providing sexual assault victim services to all persons including incarcerated victims. This agreement formalizes the cooperative arrangements between DOC and the County to ensure an appropriate response is provided to incarcerated victims of sexual assault.

**Attachments:**  
1) Memorandum of Agreement #A5261 with Florida Department of Corrections (w/ Exhibit "A")

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<b>Recommended By:</b>		Date
	<b>Department Director</b>	

<b>Approved By:</b>		Date
	<b>Assistant County Administrator</b>	3/13/2023

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact**

Fiscal Years	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>	<u>2027</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>Net Fiscal Impact</b>	* =====	=====	=====	=====	=====
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	0	0	0	0	0

Is Item Included In Current Budget? Yes \_\_\_\_\_ No \_\_\_\_\_  
 Does this item include the use of federal funds? Yes \_\_\_\_\_ No \_\_\_\_\_  
 Budget Account Exp No: Fund \_\_\_\_\_ Department \_\_\_\_\_ Unit \_\_\_\_\_ Object \_\_\_\_\_  
 Rev No: Fund \_\_\_\_\_ Department \_\_\_\_\_ Unit \_\_\_\_\_ RevSc \_\_\_\_\_

**B. Recommended Sources of Funds/Summary of Fiscal Impact:**

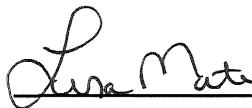
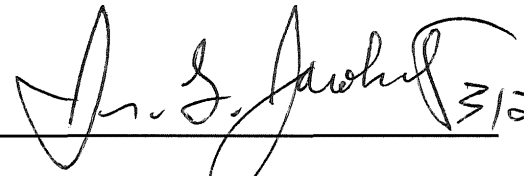
Grant:  
Fund:  
Unit:

\*The fiscal impact is indeterminable. This Agreement is not intended to create financial obligations between the County and DOC. In the event that costs are incurred as a result of either or both of the parties performing their duties or responsibilities under this Agreement, each party will be responsible for their own costs.

C. Departmental Fiscal Review: \_\_\_\_\_  


**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Dev. and Control Comments:**

<p> 2/24/2023                  OFMB                  QA 2/15                  ESW                  2-15-23</p>	<p> 3/2/23                  Contract Administration                  TMA 2/28/23</p>
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**B. Legal Sufficiency:**

 3/3/23  
 Assistant County Attorney

**C. Other Department Review:**

\_\_\_\_\_  
 Department Director

This summary is not to be used as a basis for payment.

AGREEMENT #A5261

**MEMORANDUM OF AGREEMENT****BETWEEN****THE FLORIDA DEPARTMENT OF CORRECTIONS****AND****PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS**

This Memorandum of Agreement (“Agreement”) is between the Florida Department of Corrections (“Department”) and the Palm Beach County Board of County Commissioners (“Agency”), which are the parties hereto.

**WITNESSETH**

WHEREAS, the Department is responsible for the Inmates and 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.); and

WHEREAS, this Agreement establishes the general conditions and collaborative processes that will enable the Department and the Agency to provide advocacy services for incarcerated victims of sexual assault.

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 January 10, 2023, or the date it is signed by both parties, whichever is later, and shall end on January 9, 2028. 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, in whole or in part, for up to an additional five (5) year period beyond the initial Agreement term, or portions thereof, upon written agreement of both parties, and upon the same terms and conditions contained herein. Exercise of the renewal option shall be conditioned, at minimum, on the Agency’s performance of the Agreement. Either party, if it desires to exercise the renewal option, will provide written notice to the other party no later than 30 calendar days prior to the Agreement’s 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 Agency.
2. **Agreement Manager:** The Department or Agency 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 who is incarcerated by the Department.

B. Overview

The Department and the Agency agree to provide victim advocacy services to incarcerated victims of sexual violence in Palm Beach County, Florida, in a manner that aligns with the Prison Rape Elimination Act (PREA) standards established by the U.S. Department of Justice, best practice standards in the field of sexual violence victim services, and commensurate with services available to sexual violence victims in the community at large.

C. Responsibilities of the Department

1. The Department will contact the Agency to request a victim advocate to accompany the Inmate during a sexual assault forensic exam, if requested by the victim or deemed necessary by Department staff, any time an incident or allegation of sexual abuse is discovered or reported that requires the Inmate to have a forensic medical exam.
2. The Department will ensure the victim receives the Agency's appropriate contact information, including the hotline number and mailing address any time an incident or allegation of sexual abuse is discovered or reported that does not require a forensic medical exam.
3. The Department will assume all financial and programmatic responsibilities related to the sexual assault forensic exam that includes, but is not limited to, the examiner's notification, collection and processing of evidence, ensuring evidence chain of custody, storage of evidence, dispositions and testimony coordination with the examiner, and any fees associated with the forensic exam.
4. The Department will provide orientation and training regarding facility operations to the Agency's staff and volunteers working in the facility with Inmates.
5. The Department will provide the Agency a directory listing the facility name, physical address, and phone number of each facility operated in Palm Beach County.
6. The Department will ensure the crisis hotline phone number and mailing address are available to Inmates and information is placed in prominent areas.
7. The Department will provide logistical support to Inmates so they may contact the Agency.
8. The Department will provide, at its expense and judgment, supervision of the Inmate receiving services from the Agency.

9. The Department will abide by all State and federal laws governing confidentiality with regard to the communication between rape crisis center staff or volunteers and victims.
10. The Department will communicate any questions or concerns regarding any matter arising out of this Agreement to the Agency.

**D. Responsibilities of the Agency**

1. The Agency shall provide a rape crisis hotline staffed 24 hours per day, seven (7) days per week by certified victim advocates.
2. The Agency shall provide a mailing address for Inmate victims to send correspondence.
3. The Agency shall provide a certified victim advocate to respond to requests for advocacy and to accompany victims during sexual assault forensic exams and investigatory interviews.
4. The Agency shall provide follow-up services and crisis intervention to Inmate victims of sexual assault, as resources allow.
5. The Agency shall provide the Department with the advocate's name responding to a forensic exam, investigatory interview, individual counseling, advocacy, and follow-up sessions.
6. The Agency shall maintain communication with victims as required by State and federal law and the Agency's policies.
7. The Agency shall terminate the hotline call or individual service session(s) if an Inmate's need for services is not primarily motivated by a desire to heal from sexual violence.
8. The Agency shall provide Inmates with referrals for treatment after release or upon transfer to another facility.
9. The Agency shall provide Inmates with information about reporting sexual abuse, including the correctional institution's responsibility to investigate each report and to protect Inmates and staff who report from retaliation.
10. The Agency shall communicate any questions or concerns to the Agreement Manager.
11. The Agency shall ensure advocates receive background screenings in accordance with Section VII., C., Background Checks.

**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. Agreement Administrator

The title, address, and telephone number of the Agreement Administrator are:

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

B. Agreement Managers

The parties have identified the following individuals as Agreement Managers.

**FOR THE DEPARTMENT**

Judy Cardinez-Harris  
PREA Coordinator  
Florida Department of Corrections  
501 South Calhoun Street  
Tallahassee, Florida 32399-2500  
Telephone: (850) 717-3252  
Email: [Judy.Cardinez@fdc.myflorida.com](mailto:Judy.Cardinez@fdc.myflorida.com)

**FOR THE AGENCY**

Carol Messam-Gordon  
Program Coordinator  
Palm Beach County Board of County Commissioners  
4210 North Australian Avenue  
West Palm Beach, Florida 33407  
Telephone: (561) 625-2568  
Email: [CMESSAMG@pbcgov.org](mailto:CMESSAMG@pbcgov.org)

**V. REVIEW AND MODIFICATION**

Upon request of either party, both parties will review this Agreement 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 for either party to agree to amend the Agreement terms.

Upon execution of this Agreement, with the exception of changes to Section IV. AGREEMENT MANAGEMENT, modifications shall be valid only through execution of a formal written amendment to the Agreement. Any changes to the information contained in Section IV. AGREEMENT MANAGEMENT, may 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**

A. Termination at Will

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' written notice. Notice shall be delivered by express mail or other method whereby a receipt of delivery may be obtained.

B. Termination for Cause

This Agreement may be terminated with 24 hours' written notice by the Department or the Agency for any failure of either party to comply with the terms of this Agreement or any applicable Florida law.

C. Termination for Unauthorized Employment of Transport

Violation of the provisions of the Immigration and Naturalization Act related to Unauthorized Employment in Section 274A (8 U.S.C. 1324a) or Transport in Section 274 (8 U.S.C. 1324) shall be grounds for unilateral cancellation of this Agreement.

**VII. OTHER CONDITIONS**

A. Public Records Law

The Agency agrees to allow the Department and the public access to any documents, papers, letters, or other materials subject to the provisions of Chapter 119 and Section 945.10, F.S., made or received by the Agency in conjunction with this Agreement. The Agency's refusal to comply with this provision shall constitute sufficient cause for termination of this Agreement.

B. Sovereign Immunity

The Agency and the Department are State agencies or political subdivisions as defined in Section 768.28, F.S., and agree to be fully responsible for acts and omissions of their own agents or employees to the extent permitted by law. Nothing herein serves as a waiver of sovereign immunity by either party to which sovereign immunity may be applicable. Further, nothing herein constitutes consent by a State agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of this Agreement.

C. Background Checks

The Agency's staff assigned to this Agreement and any other person performing services pursuant thereto, are 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 the Agency 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 is restricted pursuant to Section 943.054, F.S. The Department agrees not to disclose any information regarding the records check findings or criteria for disqualification or removal to the Agency. The Department will not confirm to the Agency the existence or nonexistence of any criminal history record information. In order to carry out this records check, the Agency 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.

When providing services within a correctional setting, the Agency shall obtain a Level II background screening (which includes fingerprinting to be submitted to the Federal Bureau of Investigation [FBI]), and results must be submitted to the Department prior to any current or new Agency staff being hired or assigned to work under the Agreement. The Agency shall bear all costs associated with this background screening. The Agency shall not consider new employees to be on permanent status until a favorable report is received by the Department from the FBI.

D. Confidentiality

The Agency shall ensure all staff assigned to this Agreement maintain confidentiality with reference to individuals receiving services in accordance with applicable local, State, and federal laws, rules, and regulations. The Department and the Agency 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.

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

E. Independent Contractor Status

The Agency shall be an independent contractor in the performance of its duties and responsibilities under this Agreement. The Department will neither have nor exercise any control or direction over the methods by which the Agency shall perform its work and functions other than as provided herein. This Agreement does not constitute a partnership or a joint venture between the parties.

F. Disputes

Any dispute arising from 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 Assistant Deputy Secretary of Institutions. The Assistant Deputy Secretary of Institutions will decide the dispute, reduce the decision to writing, and delivers a copy to the Agency, the Agreement Managers, and the Agreement Administrator.

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. 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, by written notice given to the other party as provided above.

H. Health Insurance Portability and Accountability Act

The Agency shall comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and all applicable regulations promulgated thereunder. Agreement to comply with HIPAA is evidenced by the execution of this Agreement, which includes and incorporates **Attachment A**, Business Associate Agreement, as part of this Agreement.

I. Prison Rape Elimination Act (PREA)

The Agency shall report any violations of the Prison Rape Elimination Act (PREA), Federal Rule 28 C.F.R. Part 115, to the Agreement Manager.



J. No Third-Party Beneficiaries

Except as otherwise expressly provided herein, neither this Agreement, nor any amendment, addendum or exhibit attached hereto, nor term, provision or clause contained therein, shall be construed as being for the benefit of, or providing a benefit to, any party not a signatory hereto.

K. Cooperation with Inspector General

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

L. Institutional Security

In carrying out the provisions of this Agreement, the Agency shall comply with all security procedures for vendors doing business in the Department's facilities as contained in Department Procedure 602.016, "Entering and Exiting Department of Corrections Institutions." Any non-law enforcement personnel must also complete Department Form #DC6-264, "Security Requirements for Contractors," included as **Attachment B**.

M. 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, insurrections, pandemics, strikes, or labor disputes.

N. Americans with Disabilities Act

The Agency shall comply with the Americans with Disabilities Act. In the event of the Agency'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 the Agency may be declared ineligible for further Agreements.

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

In accordance with Section 287.058(7), F.S., the Agency 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. The Agency is strictly prohibited from enforcing any nondisclosure clauses conflictive with this requirement.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

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

**PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS**

**ATTEST: JOSEPH ABRUZZO  
CLERK AND COMPTROLLER**

**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS**

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Gregg K. Weiss, Mayor

**APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY**

By: \_\_\_\_\_  
County Attorney

**APPROVED AS TO TERMS  
AND CONDITIONS**

By: \_\_\_\_\_  
Stephanie Sejnoha  
Director of Public Safety

FEIN#: 596000785

**FLORIDA DEPARTMENT OF CORRECTIONS**

Approved as to form and legality, subject to execution.

SIGNED BY: \_\_\_\_\_  
NAME: J. Olyn Long  
TITLE: Procurement Director  
DATE: 1/18/23

SIGNED BY: \_\_\_\_\_  
NAME: Dorothy M. Burnsed  
TITLE: BAC 1/11/23  
Deputy General Counsel  
DATE: 1/17/23

**BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement supplements and is made a part of this Agreement between the Florida Department of Corrections (“Department”) and Palm Beach County Board of County Commissioners (“Contractor/Agency/Agency”), (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;

- (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:

- 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 of 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.

Firm Representing: \_\_\_\_\_

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.

- (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