

SECURITY and MANAGEMENT CONTROL OUTSOURCING STANDARD

The goal of this document is to provide adequate security and integrity for background check information while under the control or management of an outsourced third party, the Contractor.

The intent of this Security and Management Control Outsourcing Standard (Outsourcing Standard) is to require that the Contractor maintain a security program consistent with federal and state laws, and regulations.

This Outsourcing Standard identifies the duties and responsibilities with respect to adequate internal controls within the contractual relationship so that the security and integrity of the background check information is not compromised. The standard security program shall include consideration of site security, dissemination restrictions, personnel security, system security, and data security. The provisions of this Outsourcing Standard apply to all personnel, systems, networks, and facilities supporting and/or acting on behalf of the Authorized Recipient of background check information.

1.0 Definitions

1.01 *Access to Background Check Information* means to use, exchange, retain/store, or view background check information obtained from the Bureau of Criminal Apprehension (BCA).

1.02 *Authorized Recipient* means an entity authorized by statute to receive background check information for noncriminal justice purposes.

1.03 *Background Check Information* means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, or other formal criminal charges, and any disposition arising there from, including acquittal, sentencing, correctional supervision, or release; but does not include identification information such as fingerprint records if such information does not indicate involvement of the individual with the criminal justice system.

1.04 *Background Check*, for purposes of this Outsourcing Standard only, means an authorized noncriminal justice search of the Bureau of Criminal Apprehension's Computerized Criminal History and/or the Predatory Offender Registration System.

1.05 *Compact Officer*, as provided in Minnesota Statutes §299C.58, Article 1, paragraph (2), clause (B) means the chief administrator of the State's criminal history record repository or a designee of the chief administrator who is a regular full-time employee of the repository.

1.06 *Contractor* means a government agency, a private business, non-profit organization or individual, that is not itself an Authorized Recipient with respect to the particular noncriminal justice purpose, who has entered into a contract with an Authorized Recipient to perform noncriminal justice administrative functions requiring access to background check information.

1.07 *Dissemination* means the disclosure of background check information by an Authorized Recipient to an authorized Contractor, or by the Contractor to another Authorized Recipient

consistent with the Contractor's responsibilities and with limitations imposed by federal and state laws, regulations, and standards.

1.08 *Noncriminal Justice Administrative Functions* means the routine noncriminal justice administrative functions relating to the processing of background check information, to include but not limited to the following:

1. Obtaining background check information on behalf of the Authorized Recipient.
2. Making fitness determinations/recommendations
3. Obtaining missing dispositions
4. Disseminating background check information as authorized by State statute
5. Other authorized activities relating to the general handling, use, and storage of background check information

1.09 *Noncriminal Justice Purposes*, means uses of background check information for purposes authorized by federal or state law other than purposes relating to criminal justice activities, including employment suitability, licensing determinations, immigration and naturalization matters, and national security clearances.

1.10 *Outsourcing Standard* means a document drafted by the BCA which is to be incorporated by reference into a contract between an Authorized Recipient and a Contractor. The Outsourcing Standard authorizes access to background check information, limits the use of the information to the purposes for which it is provided, prohibits retention and/or dissemination except as specifically authorized, ensures the security and confidentiality of the information, provides for audits and sanctions, provides conditions for termination of the contract, and contains such other provisions as the BCA may require.

1.11 *Physically Secure Location* means a location where access to background check information can be obtained, and adequate protection is provided to prevent any unauthorized access to background check information.

1.12 *Public Carrier Network* means a telecommunications infrastructure consisting of network components that are not owned, operated, and managed solely by the agency using that network, i.e., any telecommunications infrastructure which supports public users other than those of the agency using that network. Examples of a public carrier network include but are not limited to the following: dial-up and Internet connections, network connections to Verizon, network connections to AT&T, ATM Frame Relay clouds, wireless networks, wireless links, and cellular telephones. A public carrier network provides network services to the public; not just to the single agency using that network.

1.13 *Security Violation* means the failure to prevent or failure to institute safeguards to prevent access, use, retention, or dissemination of background check information in violation of this Outsourcing Standard.

2.0 Responsibilities of the Authorized Recipient

2.01 Prior to engaging in outsourcing any noncriminal justice administrative functions, the Authorized Recipient shall: (a) request and receive written permission from (1) the State

Compact Officer (b) provide the Compact Officer copies of the specific authority for the outsourced work, criminal history record check requirements, and/or a copy of relevant portions of the contract as requested; and (c) inquire of the Compact Officer whether a prospective Contractor has any security violations (See Section 8.04). The Compact Officer will report those findings to the Authorized Recipient.

2.02 The Authorized Recipient shall execute a contract or agreement prior to providing a Contractor access to background check information. The contract shall, at a minimum, incorporate by reference and have appended thereto this Outsourcing Standard.

2.03 The Authorized Recipient shall, in those instances when the Contractor is to perform duties requiring access to background check information, specify the terms and conditions of such access; limit the use of such information to the purposes for which it is provided; limit retention of the information to a period of time not to exceed that period of time the Authorized Recipient is permitted to retain such information; prohibit dissemination of the information except as specifically authorized by federal and state laws, regulations, and standards; ensure the security and confidentiality of the information to include confirmation that the intended recipient is authorized to receive background check information; provide for audits and sanctions; provide conditions for termination of the contract; maintain up-to-date records of Contractor personnel who have access to background check information; and ensure that Contractor personnel comply with this Outsourcing Standard.

- a. The Authorized Recipient shall conduct background checks of Contractor personnel having access to background check information if such checks are required or authorized of the Authorized Recipient's personnel having similar access.
- b. The Authorized Recipient shall ensure that the Contractor maintains site security.
- c. The Authorized Recipient shall ensure that the most current version of the Outsourcing Standard is incorporated by reference at the time of contract and/or Option renewal.

2.04 The Authorized Recipient is responsible for the actions of the Contractor and shall monitor the Contractor's compliance to the terms and conditions of the Outsourcing Standard. The Authorized Recipient shall certify to the Compact Officer that a compliance review was conducted with the Contractor within 90 days of the date the Contractor first receives background check information under the terms of the contract.

2.05 The Authorized Recipient shall provide written notice of any early voluntary termination of the contract to the Compact Officer.

3.0 Responsibilities of the Contractor

3.01 The Contractor and its employees shall comply with all federal and state laws, regulations, and standards.

3.02 The Contractor shall develop and document a security program to comply with the current Outsourcing Standard and any revised or successor Outsourcing Standard. The Security Program shall describe the implementation of the security requirements described in this Outsourcing Standard, the associated Security Training Program, and the reporting guidelines for

documenting and communicating security violations and corrective actions to the Authorized Recipient. The Security Program shall be subject to the approval of the Authorized Recipient.

3.03 The Contractor shall be accountable for the management of the Security Program. The Contractor shall be responsible for reporting all security violations of this outsourcing Standard to the Authorized Recipient.

3.04 Except when the training requirement is retained by the Authorized Recipient, the Contractor shall develop a Security Training Program for all Contractor personnel with access to background check information prior to their appointment/assignment. Immediate training shall be provided upon receipt of notice from the Compact Officer on any changes to federal and state laws, regulations, and standards or procedures, and standards established by the BCA. Annual refresher training shall also be provided. The Contractor shall certify to the Authorized Recipient that the annual refresher training was completed for those Contractor personnel with access to background check information. The Security Training Program shall be subject to the approval of the Authorized Recipient.

3.05 The Contractor shall make its facilities available for announced and unannounced security inspections performed by the Authorized Recipient, or the state. Such facilities may be subject to triennial audits by the state. An audit may also be conducted on a more frequent basis.

3.06 The Contractor's Security Program is subject to review by the Authorized Recipient, and the Compact Officer. During this review, provision will be made to update the Security Program to address security violations and to ensure changes in policies and standards as well as changes in federal and state law are incorporated.

3.07 The Contractor shall maintain background check information only for the period of time necessary to fulfill their contractual obligations but not to exceed the period of time that the Authorized Recipient is authorized to maintain and does maintain the background check information.

3.08 The Contractor shall maintain a log of any dissemination of background check information.

4.0 Site Security

4.01 The Authorized Recipient shall ensure that the Contractor site is a physically secure location at all times to protect against any unauthorized access to background check information.

5.0 Dissemination

5.01 The Contractor shall not disseminate background check information without the consent of the Authorized Recipient, and as specifically authorized by federal and state laws, regulations, and standards as well as with rules, procedures, and standards established by the BCA.

5.02 An up-to-date log concerning dissemination of background check information shall be maintained by the Contractor for a minimum one year retention period. This log must clearly identify: (A) the Authorized Recipient and the secondary recipient with unique identifiers, (B)

the record disseminated, (C) the date of dissemination, (D) the statutory authority for dissemination, and (E) the means of dissemination.

6.0 Personnel Security

6.01 If a local, state, or federal written standard requires or authorizes a background check of the Authorized Recipient's personnel with access to background check information, then a background check shall be required of the Contractor's employees having access to background check information. The background check of Contractor employees at a minimum will be no less stringent than the background check that is performed on the Authorized Recipient's personnel performing similar functions. Background checks must be completed prior to performing work under the contract.

6.02 If a local, state, or federal written standard requires a background check for non-Contractor personnel who work in a physically secure location, then a background check shall be required for these individuals, unless these individuals are escorted by authorized personnel at all times. The background check for these individuals at a minimum will be no less stringent than the background check that is performed on the Authorized Recipient's non-Contractor personnel performing similar functions. Background checks must be completed prior to performing work under the contract.

6.03 The Contractor shall ensure that each employee performing work under the contract is aware of the requirements of the Outsourcing Standard and the state and federal laws governing the security and integrity of background check information. The Contractor shall confirm that each employee understands the Outsourcing Standard requirements and laws that apply to his/her responsibilities.

6.04 If a background check is required, the Contractor shall maintain a list of personnel who successfully completed the background check.

7.0 System Security

7.01 The Contractor's security system shall ensure the security of the background check information.

- a. If background check information can be accessed by unauthorized personnel via Wide Area Network/Local Area Network or the Internet, then the Contractor shall protect the background check information with firewall-type devices to prevent such unauthorized access. These devices shall implement a minimum firewall profile in order to provide a point of defense and a controlled and audited access to background check information, both from inside and outside the networks.
- b. Data encryption shall be required throughout the network passing background check information through a shared public carrier network.

7.02 The Contractor shall provide for the secure storage and disposal of all hard copy and media associated with the system to prevent access by unauthorized personnel.

- a. Background check information shall be stored in a physically secure location.
- b. The Authorized Recipient shall ensure that a procedure is in place for sanitizing all fixed storage media (e.g., disks, drives, backup storage) at the completion of the contract and/or

before it is returned for maintenance, disposal, or reuse. Sanitization procedures include overwriting the media and/or degaussing the media.

8.0 Security Violations

8.01 Duties of the Authorized Recipient and Contractor

- a. The Contractor shall develop and maintain a written policy for discipline of Contractor employees who violate the security provisions of the contract, which includes this Outsourcing Standard that is incorporated by reference.
- b. Pending investigation, the Contractor shall immediately suspend any employee who commits a security violation from assignments in which he/she has access to background check information under the contract.
- c. The Contractor shall immediately notify the Authorized Recipient of any security violation or termination of the contract, to include unauthorized access to background check information made available pursuant to the contract. Within five calendar days of such notification, the Contractor shall provide the Authorized Recipient a written report documenting such security violation, any corrective actions taken by the Contractor to resolve such violation, and the date, time, and summary of the prior notification.
- d. The Authorized Recipient shall immediately notify the State Compact Officer of any security violation or termination of the contract, to include unauthorized access to background check information made available pursuant to the contract. The Authorized Recipient shall provide a written report of any security violation (to include unauthorized access to background check information by the Contractor) to the State Compact Officer within five calendar days of receipt of the written report from the Contractor. The written report must include any corrective actions taken by the Contractor and the Authorized Recipient to resolve such security violation.

8.02 Termination of the contract by the Authorized Recipient for security violations

- a. The contract is subject to termination by the Authorized Recipient for security violations involving background check information obtained pursuant to the contract.
- b. The contract is subject to termination by the Authorized Recipient for the Contractor's failure to notify the Authorized Recipient of any security violation or to provide a written report concerning such violation.
- c. If the Contractor refuses to or is incapable of taking corrective actions to successfully resolve a security violation, the Authorized Recipient shall terminate the contract.

8.03 Suspension or termination of the exchange of background check information for security violations

- a. If the Authorized Recipient fails to provide a written report notifying the State Compact Officer of a security violation, or refuses to or is incapable of taking corrective action to successfully resolve a security violation, the BCA may suspend or terminate the exchange of background check information with the Authorized Recipient.
- b. If the exchange of background check information is suspended, it may be reinstated after satisfactory written assurances have been provided to the BCA, the Authorized Recipient and the Contractor that the security violation has been resolved. If the exchange of background check information is terminated, the Contractor's records (including media)

containing background check information shall be immediately deleted or returned as specified by the Authorized Recipient.

8.04 The Authorized Recipient shall provide written notice to the Compact Officer of the following:

- a. The termination of a contract for security violations.
- b. Security violations involving the unauthorized access to background check information.
- c. The Contractor's name, the nature of the security violation, whether the violation was intentional, and the number of times the violation occurred.

8.05 The Compact Officer and BCA reserve the right to investigate or decline to investigate any report of unauthorized access to background check information.

8.06 The Compact Officer and BCA reserve the right to audit the Authorized Recipient and the Contractor's operations and procedures at scheduled or unscheduled times. The BCA is authorized to perform a final audit of the Contractor's systems after termination of the contract.

9.0 Miscellaneous Provisions

9.01 This Outsourcing Standard does not confer, grant, or authorize any rights, privileges, or obligations to any persons other than the Contractor, the Authorized Recipient, Compact Officer and BCA.

9.02 The terms set forth in this document do not constitute the sole understanding by and between the parties hereto; rather they provide a minimum basis for the security of the system and the background check information accessed there from and it is understood that there may be terms and conditions of the appended contract which impose more stringent requirements upon the Contractor.¹

9.03 The minimum security measures as outlined in this Outsourcing Standard may only be modified by the Compact Officer. Conformance to such security measures may not be less stringent than stated in this Outsourcing Standard without the consent of the Compact Officer.

9.04 This Outsourcing Standard may only be modified by the Compact Officer and may not be modified by the parties to the appended contract without the consent of the Compact Officer.

9.05 Appropriate notices, assurances, and correspondence to the Compact Officer, required by Section 8.0 of this Outsourcing Standard shall be forwarded by First Class Mail to:

Minnesota Bureau of Criminal Apprehension
Compact Officer- CJIS Section
1430 Maryland Ave E
St. Paul, MN 55106

¹Such conditions could include additional audits, fees, or security requirements. The Authorized Recipients have the explicit authority to require more stringent standards than those contained in the Outsourcing Standard.