

DRAFT

**MEMORANDUM OF AGREEMENT BETWEEN
THE STATE OF MARYLAND DEPARTMENT OF LABOR, LICENSING
AND REGULATION AND**

I. BACKGROUND

The United States Department of Labor (USDOL) has awarded funds to the State of Maryland, Department of Labor, Licensing and Regulation (DLLR) for the purpose of developing a new consolidated federal employment data exchange capability for state access and use. This new data exchange capability is needed to provide states and federal agencies an efficient way to include federal employment information in support of performance and evaluation reports required by federal and state laws or regulations.

II. PARTIES AND PURPOSE

The purpose of this Agreement, hereafter referred to as the "Agreement," is to establish procedures whereby _____ will provide social security numbers to DLLR and its authorized operations contractor, the University of Baltimore Jacob France Institute (UB-JFI), a public institution, for the purpose of obtaining specified employment data from certain federal agencies, including the United States Office of Personnel Management ("OPM"), the United States Postal Service ("USPS") and the United States Department of Defense, the Defense Manpower Data Center ("DMDC"). DLLR has entered into Data Sharing Agreements with OPM, USPS, and DMDC. DLLR and UB-JFI shall serve as the single point of contact for purposes of this data exchange project. Procedures for the return or destruction of any records upon the completion of the authorized uses, or upon prior termination of the Agreement by either party, are contained herein. All states and public entities participating in this Data Exchange project are listed in Exhibit A.

[new paragraph for states who had OPM agreement]
_____ and DLLR previously entered into an agreement regarding OPM data only. That prior agreement is hereby rescinded and replaced with this Agreement.

III. PROVISION OF DATA

_____ agrees to provide DLLR and UB-JFI with social security numbers and any other required information within the timeframes and in the format set forth by DLLR and UB-JFI. DLLR and UB-JFI will forward the social security numbers to the participating federal agencies for the purpose of matching the social security numbers provided by _____ against the individuals active in the participating federal agencies' Personnel Data Files. The information will be provided on a quarterly basis. Exhibit B contains a listing of the specific data elements to be provided by the participating federal agencies. The Parties agree to develop a Federal Employment Data Exchange System (FEDES) Operational Plan that will provide detailed specifications regarding how the actual exchange of confidential client and employee data between DLLR, participating states and the participating federal agencies will be conducted.

IV. APPROVED USES OF DATA

Personally identifiable employment records that are matched upon the request from the DLLR on behalf of the public entities identified below are limited to the following uses:

(A) OFFICE OF PERSONNEL MANAGEMENT AND UNITED STATES POSTAL SERVICE:

- Satisfying, or contributing to, Federal performance measurement and consumer report activities required by the United States Office of Management and Budget (OMB) or Federal law or regulation;
- Satisfying, or contributing to, State performance measurement and reporting requirements authorized under state law or regulation; and
- Satisfying, or contributing to, other federal and state performance measurement or evaluation research requirements that must be specified in advance and approved by both Parties.

(B) DEPARTMENT OF DEFENSE:

- Satisfying, or contributing to, Federal performance measurement and consumer report activities required by the United States Office of Management and Budget (OMB) or Federal law or regulation; and
- Satisfying, or contributing to, other federal or state performance measurement or evaluation research requirements that must be specified in advance and approved by both Parties.

Any use of matched employment data not covered by this Agreement must be approved in writing by the Parties even when disclosure does not occur. Under no circumstances shall employment records provided pursuant to this Agreement be used to deny any right, privilege, or benefit an individual might be receiving from either a federal, state, or local government or administered program, and will not be used in any manner to detect fraud.

Because each Party's individual client data remain its exclusive property, no loss of control or ownership over such data will be relinquished through this Agreement as a result of accomplishing the purposes described above.

V. CONFIDENTIALITY PROVISIONS RELATED TO THE TRANSMITTAL AND USE OF DATA

The Parties to this Agreement mutually agree that the confidentiality and safeguarding of federal government employment records are of paramount importance and must be observed as required by law. Accordingly, _____ agrees to take all necessary steps to protect such confidentiality and safeguarding by complying with the following provisions governing their handling of the information:

- A. _____ agrees that access to personally identifiable employment records shall be limited to the minimum number of individuals necessary to achieve the purposes of this Agreement. _____ agrees that only the individuals listed in Exhibit C will have access to the employment records. _____ also agrees that all computer files, disks or any other media containing the employment records will be stored in a locked or secured environment when not in use.
- B. Except for the employees listed under Exhibit C, no further release or access to personally identifiable employment records will be granted without the express concurrence in writing by DLLR, UB-JFI and the participating federal agencies.
- C. The Parties mutually agree that the following named individuals will be designated as point of contact for the Agreement on behalf of each Party.

_____ : [FIRST NAME][LAST NAME], [TITLE]
[DIVISION NAME]
[DEPARTMENT NAME]
[ADDRESS]
[CITY], [STATE] [ZIPCODE]
[PHONE NUMBER]

[EMAIL ADDRESS]

DLLR: Bo Szczepaniak
Office of Labor Market Analysis and Information
Department of Labor, Licensing and Regulation
State of Maryland
1100 North Eutaw Street, Room 316
Baltimore, MD 21201
410-767-2250
bszczepaniak@dllr.state.md.us

D. The Parties mutually agree that the following named individual is designated as "Custodian" of the personally identifiable employment records received by _____ from DLLR and UB-JFI.

[FIRST NAME][LAST NAME], [TITLE]
[DIVISION NAME]
[DEPARTMENT NAME]
[ADDRESS]
[CITY], [STATE] [ZIPCODE]
[PHONE NUMBER]
[EMAIL ADDRESS]

The "Custodian" will be personally responsible for the observance of all conditions of use and for establishment and maintenance of security arrangements as specified in the Agreement to prevent unauthorized use.

_____ recognizes that DLLR has entered into Data Sharing Agreements with the participating federal agencies whereby DLLR has agreed to safeguard and maintain the confidentiality of data provided to _____. _____ agrees to indemnify and hold harmless DLLR and UB-JFI from any and all claims, costs, liabilities, expenses or judgments, including attorneys' fees and court costs, arising from _____'s improper use or dissemination of data provided pursuant to this Agreement. To the extent permitted by Maryland law, DLLR agrees to indemnify and hold harmless _____ from any and all claims, costs, liabilities, expenses or judgments, including attorneys' fees and court costs, arising from DLLR's improper use or dissemination of data provided pursuant to this Agreement.

VI. RETENTION OF ORIGINAL DATA

The DLLR and UB-JFI shall retain original data files, and any derivative files that contain identifiable individual information only for the period of time required to fulfill its responsibilities. When the purpose of this Agreement is completed, the authorized person for the DLLR will immediately notify the participating federal agencies. At such time, the

federal agencies will notify the DLLR to either return the data files or certify destruction of the data files in writing within 30 days of such notice.

The Parties mutually agree that no data from the original files, or any parts thereof, shall be retained when the aforementioned files are returned or destroyed unless authorization in writing for the retention of such files has been received from the appropriate authorized person designated by the participating federal agencies.

VII. AMENDMENT OF THE AGREEMENT

This Agreement shall take effect upon the date on which it is fully executed by both parties, and it shall continue in force and effect until terminated or amended by the Parties. This Agreement may be amended in writing when signed by both ____ and DLLR. Where a written amendment is used for this purpose, such amendments shall not become effective until the written amendment has been fully executed by all parties to the Agreement.

VIII. TERMINATION OF THE AGREEMENT

The Parties recognize that changes in governing state or federal laws or regulations may render performance hereunder illegal, impracticable, or impossible, thereby requiring termination of the Agreement. Any party may terminate this Agreement with thirty (30) days advance written notice. If DLLR and the participating federal agency determine that there has been a breach of confidentiality, DLLR may unilaterally terminate this Agreement.

All provisions of this Agreement governing confidentiality and non-disclosure of employment records shall survive termination of this Agreement.

IX. GOVERNING LAW

This Agreement shall be governed and construed in accordance with Maryland Law.

X. ENTIRE AGREEMENT

This Agreement is complete and contains the entire understanding between the Parties relating to the subject matter contained herein, including all the terms and conditions of the Agreement. The Agreement supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties relating hereto, whether written or oral.

XI. SIGNATURES

On behalf of the Parties the undersigned individuals hereby attest that s/he is authorized to enter into this Agreement and agrees to all the terms specified herein.

WITNESS:

FOR DLLR:

By: _____

Name: Thomas E. Perez

Title: Secretary

Date: _____

WITNESS:

FOR _____:

By: _____

Name: _____

Title: _____

Date: _____

APPROVED AS TO LEGAL FORM AND SUFFICIENCY

Assistant Attorney General for DLLR