

**Memorandum of Understanding Between a State Agency
and Other Governmental Body or Political Subdivision
Terms and Conditions**

I. Scope of Services

This Memorandum of Understanding ("MOU" or "Agreement") is entered into, by and between the Commonwealth of Kentucky, Justice and Public Safety Cabinet, Department of Kentucky State Police ("Commonwealth" or "KSP") and _____ ("User Agency" or "Contractor"). This Agreement outlines the terms that govern the receipt, usage, and security, of criminal intelligence information and personal information delivered to User Agency by KSP.

This MOU is effective upon the last signature of the duly authorized representatives of the parties and remains in effect until terminated by either party.

II. Definitions

For the purposes of this MOU, the definitions listed in this section shall represent the common and exclusive understanding of the parties hereto. The singular and plural form, as well as the small or upper case, of any defined term can be used interchangeably regardless of whether the definition refers to the singular or plural term, or uses the small or upper case, and pronouns shall be deemed to include all genders. As used in this MOU, the following terms shall mean:

1. "Agreement" or "MOU" shall mean this Memorandum of Understanding (as more fully described in the above Scope of Services section), including the Justice and Public Safety Cabinet Terms and Conditions.
2. "Criminal Intelligence Information" or "CII" shall mean data which has been evaluated to determine that it:
 - 2.1. Is relevant to the identification of and the criminal activity engaged in by an individual who or organization which is reasonably suspected of involvement in criminal activity, and
 - 2.2. Meets criminal intelligence system submission criteria.
3. "Data" shall mean recorded information, regardless of form or characteristic.
4. "Destroy" shall mean physical or logical techniques that render data unusable, unreadable, or indecipherable.
5. "Disclose" or "disclosure" shall mean to sell, lease, license, transfer, donate, exchange, assign, publish, reveal, disseminate, make available, furnish, permit access, or otherwise make data known, to another person or entity by any means.
6. "Law enforcement agency" means any lawfully organized investigative agency, sheriff's office, police unit, or police force of federal, state, county, urban-county government, charter county, city, consolidated local government, unified local government, or any combination of these entities, responsible for the detection of crime and the enforcement of the general criminal federal and state laws and that performs the administration of criminal justice pursuant to a statute or executive order. This definition shall include, but is not limited to:
 - 6.1. State and federal Inspector Generals;
 - 6.2. Kentucky County Attorneys;
 - 6.3. Kentucky Commonwealth Attorneys; and
 - 6.4. U.S. Attorneys.
7. "Need to know" shall mean that the information requested is pertinent and necessary to the requestor in initiating, furthering, or completing an investigation.
8. "Personal information" shall have the same definition set forth in the KRS 61.931.

9. "Right to know" shall mean that the requestor has an official capacity and statutory authority to receive the information being sought.

III. Department of Kentucky State Police Terms and Conditions

A. KSP shall:

1. Conduct its operations in conformity with 28 C.F.R. Pt. 23 and the current version of the Law Enforcement Intelligence Units (LEIU) Criminal Intelligence File Guidelines.
2. Only disclose CII and Personal Information to User Agency via Law Enforcement Online (LEO) e-mail, facsimile, or hand-delivery.

B. The User Agency shall

1. Comply with 28 C.F.R. Pt. 23, including but not limited to, procedures regarding receipt, maintenance, and security, of CII and Personal Information.
2. Comply with the current version of the LEIU Criminal Intelligence File Guidelines.
3. Ensure that User Agency personnel have read and understand the terms included herein prior to requesting support from KSP Intelligence.
4. As a condition precedent to KSP disclosure of CII and Personal Information to User Agency, establish to the KSP's satisfaction (the conditions in this section need not be met for KSP to share Personal Information or CII with User Agency if disclosure is necessary to avoid imminent danger to life or property):
 - 4.1. User Agency's need to know CII and Personal Information;
 - 4.2. User Agency's right to know CII and Personal Information; and
 - 4.3. Sufficient facts to demonstrate a reasonable suspicion of criminal activity by a person or organization.
5. Contact the criminal intelligence analyst at the KSP Post for the county in which the User Agency is located for support.
 - 5.1. The following agencies shall contact the KSP Intelligence Branch for support:
 - 5.1.1. Lexington Police Department;
 - 5.1.2. Louisville Metro Police Department;
 - 5.1.3. Federal law enforcement agencies;
 - 5.1.4. Out of state law enforcement agencies; and
 - 5.1.5. Kentucky state government entities located in Franklin County.
6. Agree and acknowledge that KSP disclaims any warranty as to the validity of the data obtained under this Agreement.
 - 6.1. User Agency shall agree and acknowledge that CII and Personal Information provided under this agreement is "lead information" only and must be corroborated before taking any action.
 - 6.2. User Agency shall agree and acknowledge that CII and Personal Information provided under this agreement may contain errors.
7. Employ appropriate administrative, physical, and technical, safeguards to protect the confidentiality of CII and Personal Information it receives from KSP.
 - 7.1. For purposes of this agreement, User Agency agrees to extend to CII the same duties and responsibilities associated with personal information, including those set forth in the Personal Information Security and Breach Investigation Procedures and Practices Act.
8. Agree and acknowledge that it will maintain an audit trail that documents any access by those with a need to know data provided under this agreement. User Agency will allow KSP to inspect the audit trail upon request.
 - 8.1. User Agency shall not require KSP to sign, or consent to, an additional, supplemental, or modified, agreement including but not limited to a confidentiality or licensing agreement, prior to having access to and inspecting the audit trail.

9. Not disclose CII and Personal Information that it obtains under this agreement to another agency without obtaining written permission from KSP.
 - 9.1. If KSP grants written permission for disclosure, the Contractor shall only disclose CII and Personal Information to an authorized recipient via Law Enforcement Online (LEO) e-mail, facsimile, or hand-delivery.
10. Agree and acknowledge that if there is any question or any confusion regarding the applicability of this agreement to data received from KSP, User Agency shall act as though this agreement is applicable.
11. Agree and acknowledge that KSP shall not be liable to the User Agency, contractor employees, or any third party, for any damages arising from the use of Commonwealth data.
12. Destroy CII and Personal Information that User Agency receives under this agreement when the purpose for which it was originally requested is complete. This provision shall be narrowly construed.
 - 12.1. User agency will destroy any CII and Personal Information it receives that it subsequently determines to be misleading, obsolete or otherwise unreliable.
 - 12.2. Regardless of the original purpose, User Agency shall destroy any data that it obtains under this agreement at the end of 365 days.
13. Agree and acknowledge that KSP will disclose to third party agencies any data that KSP obtains from User Agency under this agreement unless User Agency informs KSP that its disclosure should be limited.
14. Agree and acknowledge that User Agency gives its consent for KSP Criminal Intelligence Analysts to access any files that User Agency submits to the KyOPS database.

IV. Justice and Public Safety Cabinet Terms and Conditions

1. The Contractor shall comply with all applicable federal, state, and local laws, regulations, and ordinances, including but not limited to, KRS 61.931, et seq.
2. Except where necessary in the performance of the Contractor's responsibilities set forth in this Agreement, the Contractor shall maintain the confidentiality of Commonwealth data and shall not disclose any Commonwealth data without the prior written approval of the Commonwealth unless compelled to do so by law or by a judicially signed order from a court of competent jurisdiction. The Contractor acknowledges that they receive Commonwealth data solely for the purposes of this Agreement, and that their receipt of Commonwealth data in no way creates any ownership interest in Commonwealth data, unless expressly provided otherwise within the terms and conditions of this Agreement.
 - 2.1. For purposes of this Agreement, "Commonwealth data" shall mean any data or information, regardless of form or characteristic, including but not limited to CII and personal information, collected, received, or obtained by the Contractor pursuant to this Agreement.
 - 2.2. The Contractor shall implement reasonable measures, at least as protective as the Contractor uses to safeguard the Contractor's own confidential information, to prevent unauthorized access to, or unauthorized disclosure of, Commonwealth data.
 - 2.3. To the fullest extent allowed by law, the Contractor shall report and forward to the Commonwealth within two business days any Kentucky Open Records Act request, Freedom of Information Act request, or other request seeking access to Commonwealth data. The Contractor shall notify the requester: (1) that the Contractor is not authorized to accept such requests; (2) that the Commonwealth is the sole entity authorized to accept such requests; and (3) the point of contact for such requests.
 - 2.4. The Contractor shall ensure that any access to Commonwealth data by contractor employees is limited to only those contractor employees with a necessary and essential purpose to fulfill the terms and conditions of this Agreement.

2.4.1. For purposes of this Agreement, "contractor employees" shall mean agents, employees, subcontractors, volunteers, or any other individuals or entities acting on behalf of the Contractor.

2.5. The Contractor shall not utilize Commonwealth data for the benefit of the Contractor or third parties except as expressly authorized by this Agreement.

2.6. These data confidentiality requirements set forth herein survive the expiration or termination of this Agreement and bind the Contractor and their legal representatives, heirs and assigns.

3. The Contractor shall ensure that any and all access to Commonwealth data by Contractor personnel is limited to only those Contractor personnel with a necessary and essential purpose to fulfill the terms and conditions within this Agreement.
4. The Contractor shall ensure that any data transmitted and received on behalf of and/or as directed by the Commonwealth is transmitted and received only via secure methods and protocols that comply with the requirements of this Agreement.
5. The Contractor shall ensure that all contractor employees comply with all applicable provisions of this Agreement, including but not limited to data confidentiality requirements.
6. Each party shall provide a contact to resolve any issues related to this Agreement and promptly update the contact information as necessary.
7. Except as otherwise required by law or expressly provided herein, all notices, requests, or other communications pertaining to this Agreement will be made in writing either: (a) by personal delivery, (b) by facsimile or electronic mail with confirmation of receipt, (c) by mailing in the United States mail or (d) by nationally recognized express courier service. The notice, request, or other communication will be deemed to be received upon personal delivery, upon confirmation of receipt of facsimile or electronic mail transmission or upon receipt by the party it is sent to if by United States mail or express courier service; provided, however, that if a notice, request, or other communication is not received during regular business hours, it will be deemed to be received on the next succeeding business day.
8. The descriptive headings in this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the terms and conditions within this Agreement or any materials incorporated by reference into this Agreement.
9. Failure or delay by either party to exercise any right or power under this Agreement will not operate as a waiver of such right or power. Any waiver of any provision of this Agreement or of any right by any party to this Agreement at any time shall not be construed as a waiver or bar of any such right or provision at any future time, unless expressly stated in writing and signed by the party making the waiver.
10. Where no Federal law is applicable, this Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. The parties agree that any claim, action, or lawsuit arising under this Agreement must be brought in the court of appropriate jurisdiction in Franklin County, Kentucky.
11. Both parties shall have the right to terminate and cancel this Agreement at any time not to exceed thirty (30) days' written notice served on the other party by registered or certified mail.
12. Nothing in this Agreement shall be deemed to waive, or otherwise limit, the rights, privileges, immunities, and matters of defense, now available or hereafter made available, to the Commonwealth of Kentucky, and any of its cabinets, departments, bureaus, agencies, officers, agents, or employees.
13. This Agreement is the final and exclusive agreement between the parties. All prior negotiations and agreements are superseded by this Agreement.

APPROVALS

This agreement is subject to the terms and conditions stated herein. By affixing signatures below, the parties verify that they are authorized to enter into this agreement and that they accept and consent to be bound by the terms and conditions stated herein. In addition, the parties agree that (i) electronic approvals may serve as electronic signatures, and (ii) this agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute a single agreement.

Commonwealth

Signature

Title

Printed Name

Date

Contractor/User Agency

Signature

Title

Printed Name

Date

USER AGENCY NAME
ADDRESS

TELEPHONE NUMBER

ORI NUMBER

