

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

**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 Lexington-Fayette UCG on behalf of the Division of Police ("User Agency" or "Contractor"). The 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 MOA is effective upon the last signature of the duly authorized representatives of the parties and remains in effect through June 30, 2020.

**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. "Disseminate" shall mean to reveal, disclose, or otherwise make information known to another person or entity by any means.
4. "Destroy" shall mean shredding, burning, or any other method that shall render the information unusable.
5. "Right to know" shall mean that the requestor has an official capacity and statutory authority to receive the information being sought.
6. "Need to know" shall mean that the information requested is pertinent and necessary to the requestor in initiating, furthering, or completing an investigation.
7. "Law Enforcement Entity" shall mean government agencies or any subunit thereof that performs the administration of criminal justice pursuant to a statute or executive order and that exercises law enforcement or criminal investigation authority.
  - 7.1. This definition shall include:
    - 7.1.1. State and federal Inspector Generals;
    - 7.1.2. Kentucky County Attorneys; and
    - 7.1.3. Kentucky Commonwealth Attorneys.
8. "Personal information" shall have the same definition set forth in the KRS 61.931.

**Department of Kentucky State Police Terms and Conditions**

**KSP shall:**

1. Conduct its operations in conformity with 28 C.F.R. Pt. 23 and the LEIU Criminal Intelligence File Guidelines as recommended by the National Criminal Intelligence Sharing Plan (2005 version).
2. Only disseminate CII and Personal Information to User Agency via LEO e-mail, facsimile, or hand-delivery.

**User Agency Terms and Conditions**

**The User Agency shall**

1. Follow procedures regarding receipt, maintenance, and security, of CII and Personal Information, in accordance with 28 C.F.R. 23.20(f).

2. Ensure that User Agency personnel have read and understand the terms included herein prior to requesting support from KSP Intelligence.
3. As a condition precedent to KSP dissemination 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 dissemination is necessary to avoid imminent danger to life or property):
  - 3.1. User Agency's need to know CII and Personal Information;
  - 3.2. User Agency's right to know CII and Personal Information; and
  - 3.3. Sufficient facts to demonstrate a reasonable suspicion of criminal activity by a person or organization.
4. Contact the criminal intelligence analyst at the KSP Post for the county in which the User Agency is located for support.
  - 4.1. The following agencies shall contact the KSP Intelligence Branch for support:
    - 4.1.1. Lexington Police Department;
    - 4.1.2. Louisville Metro Police Department;
    - 4.1.3. Federal law enforcement agencies;
    - 4.1.4. Out of state law enforcement agencies; and
    - 4.1.5. Kentucky state government entities located in Franklin County.
5. Agree and acknowledge that KSP disclaims any warranty as to the validity of the information obtained under this Agreement.
  - 5.1. 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.
  - 5.2. User Agency shall agree and acknowledge that CII and Personal Information provided under this agreement may contain errors.
6. Employ appropriate administrative, physical, and technical, safeguards to protect the confidentiality of CII and Personal Information it receives from KSP.
  - 6.1. 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.
7. User Agency agrees to maintain an audit trail that documents any access by those with a need to know information provided under this agreement. User Agency will allow KSP to inspect the audit trail upon request.
8. Not disseminate CII and Personal Information that it obtains under this agreement with another agency without obtaining permission from KSP.
  - 8.1. User agency understands that KSP will share any information with third party agencies it obtains from User Agency under this agreement unless User Agency informs KSP that its dissemination should be limited.
  - 8.2. User Agency gives its consent for KSP Criminal Intelligence Analysts to access any files that User Agency submits to the KyOPS database.
9. Agree and acknowledge that if there is any question or any confusion regarding the applicability of this agreement to information received from KSP, User Agency shall act as though this agreement is applicable.
10. Agree and acknowledge that KSP shall not be liable to the User Agency, its personnel, agents, or designees, or any other third party for any damages arising from the use of said information obtained under this Agreement.
11. 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.
  - 11.1. User agency will destroy any CII and Personal Information it receives that it subsequently determines to be misleading, obsolete or otherwise unreliable.
  - 11.2. Regardless of the original purpose, User Agency shall destroy any information that it obtains under this agreement at the end of 365 days.

**JUSTICE AND PUBLIC SAFETY CABINET TERMS AND CONDITIONS**

1. Contractor shall comply at all times with all applicable federal, state, and local laws, regulations, executive orders, and attorney general opinions.

2. Contractor shall comply with all applicable Commonwealth of Kentucky Executive Department policies and procedures, and Commonwealth Office of Technology policies and procedures.
3. The Contractor shall report any and all acts and omissions constituting a violation of applicable federal, state, or local laws, policies and procedures, or this Agreement, to the Commonwealth in writing within one business day of the discovery of the violation.
4. Both parties, including any subcontractors or agents of each, agree to comply with all applicable state and federal confidentiality laws, including the Family Educational Rights and Privacy Act and the Health Insurance Portability and Accountability Act, and to protect the security, confidentiality, and integrity of education and health information. The Contractor acknowledges and agrees that the Commonwealth shall be entitled, without waiving any other rights or remedies, to injunctive or equitable relief to enforce the requirements of this provision of this Agreement.
5. To the extent permitted by law, the Contractor agrees to indemnify and hold harmless the Commonwealth against any and all claims, losses, demands, obligations, and litigation, including attorneys' fees, that result from or by: (1) goods tendered and services rendered by the Contractor in connection with performance of this Agreement; (2) any and all bad-faith, erroneous, negligent, reckless, and unlawful acts and omissions of the Contractor, its officers, or employees in the performance of this Agreement; (3) the Contractor's creation of a hazardous condition or exacerbation of a pre-existing hazardous condition; (4) the Contractor's publication, translation, reproduction, delivery, performance, use, or disposition, of any data processed under the contract in a manner not authorized by the contract, or by federal or Commonwealth regulations or statutes (5) the Contractor's employment practices during the term of this Agreement; and (6) any failure of the Contractor, its officers, or employees to observe federal, state, and local laws, including but not limited to labor laws and minimum wage laws.
6. Vendors and other state agencies that receive Personal Information as defined by and in accordance with Kentucky's Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, et seq. ("the Act"), shall secure and protect the Personal Information by, without limitation, complying with all requirements applicable to non-affiliated third parties set for in the Act.
  - 6.1. "Personal Information" is defined in accordance with KRS 61.931(6) as "an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one(1) or more of the following data elements:
    - 6.1.1. An account, credit card number, or debit card number that, in combination with any required security code, access code, or password, would permit access to an account;
    - 6.1.2. A Social Security number;
    - 6.1.3. A taxpayer identification number that incorporates a Social Security number;
    - 6.1.4. A driver's license number, state identification card number, or other individual identification number issued by an agency;
    - 6.1.5. A passport number or other identification number issued by the United States government;
    - or
    - 6.1.6. Individually Identifiable Information as defined in 45 C.F.R. sec. 160.013 (of the Health Insurance Portability and Accountability Act), except for education records covered by the Family Education Rights and Privacy Act, as amended 20 U.S.C. sec. 1232g.
  - 6.2. As provided in KRS 61.931(5), a "non-affiliated third party" means "any person or entity that has a contract or agreement with the Commonwealth and receives (accesses, collects, or maintains) personal information from the Commonwealth pursuant to the contract or agreement."
  - 6.3. The Contractor agrees to cooperate with the Commonwealth in complying with the response, mitigation, correction, investigation, and notification requirements of the Act.
  - 6.4. The Contractor shall notify as soon as possible, but not to exceed seventy-two (72) hours, the Commonwealth, the Commissioner of the Kentucky State Police, the Auditor of Public Accounts, and the Commonwealth Office of Technology, of a determination of, or knowledge of, a breach, unless the exception set forth in KRS 61.932(2) applies and the Contractor abides by the requirements set for in that exception. Notification shall be in writing on a form developed by the Commonwealth Office of Technology
  - 6.5. The Contractor agrees to undertake a prompt and reasonable investigation of any breach as required by KRS 61.933.

- 6.6. Upon conclusion of an investigation of a security breach of Personal Information as required by KRS 61.933, the Contractor agrees to an apportionment of the costs of the notification, investigation, and mitigation of the security breach.
- 6.7. In accordance with KRS 61.932(2)(a), the Contractor shall implement, maintain, and update security and breach investigation procedures that are appropriate to the nature of the information disclosed, that are at least as stringent as the security and breach investigation procedures and practices established by the Commonwealth Office of Technology.
7. The Contractor agrees that it will not distribute, divulge, publish, or release any data or information obtained from or owned by the Commonwealth 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 it receives the Commonwealth's data or information solely for the purposes of this Agreement, and that its receipt of the Commonwealth's data or information in no way creates any ownership interest in the Commonwealth's data or information, unless explicitly provided otherwise within the terms and conditions of this Agreement.
  8. 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.
  9. The Contractor shall not utilize Commonwealth data for the Contractor's benefit except as contemplated within and pursuant to the terms and conditions of this Agreement. The Contractor shall not sell or resell any and all Commonwealth data.
  10. The Contractor shall ensure that any and all data transmitted and received on behalf of and as directed by the Commonwealth is transmitted and received only via secure methods and protocols.
  11. Upon the expiration of the term of this Agreement, unless it is renewed prior to its expiration, the Contractor shall either: (1) return any and all data provided by the Commonwealth, destroy any and all copies of the data in whatever form they occur, complete the attached Data Destruction Certification, and submit the certificate to the Commonwealth no less than 7 calendar days after expiration of this Agreement; (2) destroy the data, including any and all copies of the data in whatever form they occur, without returning the data to the Commonwealth, complete the attached Data Destruction Certification, and submit the certificate to the Commonwealth no less than 7 calendar days after expiration of this Agreement; or (3) retain the data subject to the terms of this Agreement regarding data ownership, privacy, and breach. The Commonwealth retains discretion to choose the option Contractor shall perform. In the event that the Commonwealth has not communicated to the Contractor which option should be followed, the Contractor shall perform the actions listed in option (1).
  12. The parties agree that they receive all information communicated between them before the execution of this Agreement in strict confidence and that the receiving party, its agents, or employees shall not, without prior written consent of the other party, disclose any such information, subject to Commonwealth of Kentucky and federal disclosure laws.
  13. The Contractor shall not represent that a working copy, draft, or the finalized version of this Agreement is identical to a previous iteration of this Agreement if the Contractor has made edits since the last iteration. The Contractor shall clearly present all edits, either through editing functions in word processing software, or as a list provided contemporaneously with the most recently edited iteration.
  14. During the term of this Agreement, Contractor shall be authorized in its sole discretion to discipline, terminate, or take any other personnel action against Contractor personnel. Upon communication by Commonwealth of an issue with Contractor personnel, Contractor shall have the sole authority to take action to effect a solution.
  15. In no event shall any person or entity be deemed to be a third-party beneficiary of this Agreement.
  16. The Contractor acknowledges that the Commonwealth may execute agreements with other vendors for additional or related goods and services that address, interact with, or otherwise regard this Agreement. The Contractor shall fully cooperate with such other vendors and vendor personnel, agents, and designees. The Contractor shall not commit any act, allow any omission, or permit its personnel, agents, or designees to commit any act or allow any omission that will interfere with the performance of work by any other vendor or any other vendor's personnel, agents, or designees.
  17. Each party shall provide a contact to resolve any and all issues related to this Agreement and promptly update the contact information as necessary.
  18. All notices under this Agreement shall be given in writing. Electronic mail constitutes a writing.

**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

Lexington-Fayette Urban County Government

Linda Gorton  
Signature

Mayor  
Title

Linda Gorton  
Printed Name

10/1/2019  
Date

USER AGENCY NAME  
ADDRESS

Lexington Division of Police  
150 E. Main Street

TELEPHONE NUMBER

Lexington, KY 40507  
(859) 258-3600

ORI NUMBER

KY0340200

19. No change, waiver, or discharge of any liability or obligation under this Agreement on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.
20. No party shall assign its respective rights or obligations under this Agreement without prior written consent of the other party. Any purported assignment or delegation in violation of this Agreement is void.
21. The terms and conditions of this Agreement may only be amended by mutual written consent of both parties.
22. The Contractor agrees that any and all violations of this Agreement may result in the immediate termination of this Agreement. The Contractor further agrees that violation of this agreement by User Agency may result in the immediate termination of User Agency's privilege of receiving service from KSP Intelligence as well as the imposition of civil and criminal sanctions against the User Agency and/or its employees for breach of the terms of this Agreement and/or the unlawful use or dissemination of information. User Agency acknowledges and agrees that use or disclosure of information in a manner inconsistent with this agreement will cause irreparable damage and in such event KSP shall have the right to equitable and injunctive relief as well as damages incurred by KSP as a result of the violation of the terms of this agreement by User Agency or its employees.
23. This Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Kentucky.
24. 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.
25. The parties agree that any claim, action, or lawsuit arising under this Agreement must be brought in Franklin Circuit Court in the Commonwealth of Kentucky.
26. If any term or provision or any part of this Agreement is declared invalid or unenforceable, the remainder of this Agreement shall not be affected, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by the law.
27. This Agreement is the final and exclusive agreement between the parties. All prior negotiations and agreements are superseded by this Agreement.