

# Private Schools Criminal History Record Information User Agreement

This User Agreement (Agreement) is entered into between the Commonwealth of Kentucky, Justice and Public Safety Cabinet, Department of Kentucky State Police, (Commonwealth), and \_\_\_\_\_ (User Agency). The purpose of this Agreement is to set forth the User Agency's responsibility when receiving, accessing, and utilizing, fitness determinations and to ensure the confidentiality of this information consistent with applicable guidelines and statutory mandates.

## 1. Definitions

For the purposes of this Agreement, 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.

1.1 "Adequate security" shall mean administrative, technical, and physical, safeguards to ensure the security and confidentiality of fitness determinations, protect against system misuse and any anticipated threats or hazards to the security of fitness determinations.

1.2 "Applicant" shall mean an individual who is the subject of a fitness determination.

1.3 "CJIS" shall mean the Criminal Justice Information Services Division of the FBI.

1.4 "Disclose" and "disclosure" shall mean to reveal, disseminate, or otherwise make fitness determinations known to another person or entity by any means.

1.5 "Employee acknowledgement" shall mean a written statement signed by a User Agency employee, providing that he or she agrees to be subject to the duties and responsibilities required of User Agency by this Agreement.

1.6 "FBI" shall mean the Federal Bureau of Investigation.

1.7 "Fitness determination" shall mean a determination by KSP of whether an applicant is eligible for employment, or access as a contractor, volunteer, or visitor, at a private, parochial, or church school under the standards set forth in KRS 160.151 and Public Law 92-544.

1.8 "Include," "includes" and "including" shall be deemed to be followed by the phrase "but not necessarily limited to."

1.9 "System misuse" is the mishandling, misappropriation or exploitation, with or without financial remuneration, of fitness determinations, and shall include:

- a. access, disclosure, or use, without authorization;
- b. access, disclosure, or use, exceeding authorization;
- c. access, disclosure, or use, for an improper purpose; or
- d. access, disclosure, or use, for a purpose other than that authorized by this Agreement.

## 2. User Agency

2.1 User Agency shall not disclose fitness determinations to any person or entity other than KSP and FBI. Notwithstanding this restriction, User Agency may provide a copy of a fitness determination to the subject applicant. User Agency shall establish policies and procedures for an identity verification process to ensure it is providing the fitness determination to the subject of the record. User Agency shall maintain a written or electronic record showing the information that was released to the applicant and the date of release.

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2.2 User Agency acknowledges that it has received a copy of, is familiar with, and shall comply with and be subject to, the contents of the CJIS Security Policy and CJIS Security Addendum (<https://www.fbi.gov/services/cjis/cjis-security-policy-resource-center>).

2.3 User Agency agrees that it shall apply to fitness determinations the same standards and requirements pertaining to criminal history record information set forth in the CJIS Security Policy and CJIS Security Addendum.

2.4 User Agency shall use adequate security for fitness determinations and maintain a security program consistent with federal and state laws, regulations, and standards, (including Title 28, Code of Federal Regulations, Part 20 and the CJIS Security Policy and Addendum in effect when the Agreement is executed), as well as policies and standards established by the CJIS Advisory Policy Board.

2.5 User Agency shall immediately report to the KSP CJIS Compliance Supervisor, Information Security Officer (ISO), (502) 227-8700, any system misuse, or breach of adequate security, and cooperate with any investigation of it.

2.6 User Agency agrees that KSP is not responsible for any decisions made, or actions taken, by User Agency in reliance on fitness determinations, including hiring, declining to hire, termination, and /or suspension.

2.7 User Agency shall direct its employees to comply with the terms of this Agreement, as well as the contents of the CJIS Security Policy and CJIS Security Addendum.

2.8 User Agency agrees that it shall not allow access to fitness determinations to anyone other than KSP, FBI, and employees that require access for official purposes and have signed an employee acknowledgement. User Agency agrees to retain employee acknowledgements during the term of this Agreement and provide copies of them to KSP upon request.

2.9 User Agency shall cooperate with any Law Information Network of Kentucky (LINK) and CJIS systems audit by KSP, or FBI. User Agency further agrees that KSP and its employees shall not be required to sign or otherwise agree to a confidentiality agreement, acceptable use agreement or any other agreement prior to conducting an audit.

2.10 Prior to fingerprinting, User Agency shall provide to applicants:

- a. notice that their fingerprints will be used to check the criminal history records of KSP and FBI;
- b. opportunity to complete, or challenge the accuracy of, the information contained in the FBI identification record within thirty (30) days;
- c. notice of the procedures for changing, correcting, or updating a FBI identification record as set forth in Title 28, C.F.R., § 16.34; and
- d. notice of the procedures for requesting a review, or challenge, of a KSP identification record as set forth in 502 KAR 30:070.

2.11 User Agency shall promptly destroy an applicant's fitness determinations (including scanned images, photographs, copies or other reproductions) after User Agency has made a final determination of whether an applicant shall be hired. The destruction of fitness determinations shall be performed by User Agency or under its supervision. In lieu of destruction, User Agency may retain fitness determinations in accordance with the CJIS security policy and addendum. User Agency agrees to ensure that its agency retention schedule is revised to accommodate this provision.

2.12 Within thirty (30) days of the effective date of this Agreement, User Agency shall provide the Commander of the KSP Computer Technologies Branch, 1266 Louisville Road, Frankfort, KY 40601 with a copy of:

- a. the User Agency's fitness determinations' storage, sharing, and transmission methodology;

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- b. photographs, and diagrams, of the site where fitness determinations are stored by User Agency, including the placement of any computers and servers; and
- c. the User Agency's network diagram showing the structure, layout, and data flow, of the computer network on which fitness determinations will be stored or transmitted.

## 3. Miscellaneous

3.1 Fitness determinations shall at all times remain the property of KSP, and no grant of any proprietary rights is hereby given or intended, including any express or implied license, other than the limited right of User Agency to use fitness determinations for hiring, employment, and personnel decisions pursuant to KRS 160.151.

3.2 User Agency shall not assign any portion of the work to be performed under this Agreement, execute any contract or amendment thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this Agreement, without the prior written concurrence of KSP. Any purported assignment or delegation in violation of this Agreement is void.

3.3 The section headings in this Agreement are for convenience of reference only and are not intended to be part of, or to affect the meaning or interpretation of, this Agreement. The section headings shall not be construed to limit or extend the meaning of this Agreement.

3.4 Violation of this Agreement by User Agency or its employees may result in the immediate termination of access to fitness determinations. User Agency hereby acknowledges and agrees that disclosure of fitness determinations, or use of fitness determinations, 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, and to seek any other legal or equitable remedies available as a result of violation of the terms of this agreement by user agency or its employees, agents, or contractors.

3.5 User Agency shall comply at all times with the federal and state constitutions; federal, state, and local law; federal and state executive orders; federal and state attorney general opinions; federal and state case law; Commonwealth of Kentucky Executive Department policy and procedures; Commonwealth Office of Technology policy and procedures; and Commonwealth policy and procedures.

3.6 User Agency shall report any and all acts and omissions constituting a violation of applicable federal, state, or local law; applicable Commonwealth policies and procedures; or this Agreement to the Commonwealth in writing within one business day of the discovery of the violation.

3.7 To the extent permitted by law, User Agency agrees to indemnify and hold harmless the KSP against any and all claims, losses, demands, obligations, and litigation, including attorneys' fees, that result from or by any and all bad-faith, erroneous, negligent, reckless, and unlawful acts and omissions of the User Agency, its officers, or employees regarding any and all matters in any way concerning, involving, or regarding this Agreement.

3.8 All notices under this Agreement shall be given in writing. Electronic mail constitutes a writing.

3.9 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.

3.10 The terms and conditions of this Agreement may only be amended by mutual written consent of both parties.

3.11 KSP shall have the right to terminate and cancel this Agreement at any time not to exceed 30 days' written notice served on the User Agency by registered or certified mail.

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3.12 This Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Kentucky.

3.13 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 or the Central Division (Frankfort) of the Eastern District of Kentucky.

3.14 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.

3.15 This Agreement is the final and exclusive agreement between the parties. All prior negotiations and agreements are superseded by this Agreement.

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.

\_\_\_\_\_  
Name and Title of User Agency's Representative (**Please Print**)

\_\_\_\_\_  
Signature of User Agency's Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of KSP CJIS Systems Officer

\_\_\_\_\_  
Date