

Private Entity Criminal History Record Information User Agreement

This User Agreement (Agreement) is entered into between the Department of Kentucky State Police, (KSP), and _____ (User Agency). The purpose of this Agreement is to set forth the User Agency's responsibility when receiving, accessing, and utilizing, criminal history record information 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 CHRI, protect against system misuse and any anticipated threats or hazards to the security of CHRI.

1.2 "Applicant" shall mean an individual who is the subject of a fitness determination by User Agency pursuant to a criminal record background check authorized by state or federal law.

1.3 "Approved employee" shall mean a User Agency employee that requires access to CHRI to make fitness determinations, and has signed an employee acknowledgement.

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

1.5 "Criminal history record information" or "CHRI" shall mean any of the following:

- a. KSP and FBI rap sheets provided to User Agency pursuant to a criminal record background check authorized by state or federal law;
- b. Cover letters/documents attached to KSP and FBI rap sheets; and
- c. Information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, including acquittal, sentencing, correctional supervision, and release. The term does not include identification information such as fingerprint records if such information does not indicate the individual's involvement with the criminal justice system.

1.6 "Disclose" and "disclosure" shall mean the sale, lease, circulation, release, publication, distribution, dissemination, broadcast or other means of making CHRI known, or available, to any individual, entity, or group, other than KSP, FBI, and User Agency.

1.7 "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.

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

1.9 "Fitness determination" shall mean a determination by User Agency of whether an applicant is eligible for employment, licensing, or to be approved as a foster or adoptive parent.

1.10 "Herein," "hereto," "hereof" and "hereunder" shall be deemed to refer to this Agreement generally, and not to any particular provision of the Agreement.

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1.11 “Include,” “includes” and “including” shall be deemed to be followed by the phrase “but not necessarily limited to.”

1.12 “System misuse” is the mishandling, misappropriation or exploitation, with or without financial remuneration, of CHRI, 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 CHRI.

2.2 User Agency hereby 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 shall use adequate security for CHRI 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.

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

2.5 User Agency agrees that KSP is not responsible for any fitness determinations, hiring, or other decisions made, or actions taken, by User Agency in reliance on CHRI.

2.6 User Agency shall use CHRI only for fitness determinations.

2.7 User Agency agrees that it shall not allow access to CHRI to anyone other than KSP, FBI, or an approved employee.

2.8 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.

2.9 User Agency agrees to retain employee acknowledgements during the term of this Agreement and provide copies of them to KSP upon request.

2.10 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.

2.11 Notwithstanding the provisions of this Agreement, User Agency may provide a copy of an applicant’s KSP and FBI rap sheets to the applicant upon completion of the fitness determination. User Agency shall establish policies and procedures for an identity verification process to ensure they are providing the KSP and FBI rap sheets 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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2.12 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.

2.13 Except as otherwise provided in this Agreement, User Agency shall not disclose any CHRI other than stating that the denial of employment, licensing, or foster/adoptive parent application, is due to disqualifiers found during a criminal record background check.

2.14 User Agency shall promptly destroy an applicant's CHRI (including scanned images, photographs, copies or other reproductions) after his or her final fitness determination is completed. The destruction of CHRI shall be performed by User Agency or under its supervision. In lieu of destruction, User Agency may retain CHRI 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.

2.15 To the extent permitted by the laws of the Commonwealth of Kentucky, User Agency agrees that KSP shall not be liable in tort, contract, or otherwise, to User Agency or any other person for any damages or losses sustained, directly or indirectly, from use of CHRI.

2.16 Within thirty (30) days of the effective date of this Agreement, User Agency shall provide KSP with a copy of:

- a. its CHRI storage, sharing, and transmission methodology;
- b. photographs, and diagrams, of the site where CHRI is stored, including the placement of any computers and servers; and
- c. its network diagram showing the structure, layout, and data flow, of the computer network on which CHRI will be stored or transmitted.

3. Miscellaneous

3.1 CHRI 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 CHRI for fitness determinations.

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.

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 This Agreement constitutes the entire agreement and understanding between the parties and supersedes and replaces any and all prior or contemporaneous proposals, agreements, understandings, commitments or representations of any kind, whether written or oral, relating to the subject matter hereof or

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the services to be performed hereunder. Both parties have read and agree to the specific language of this Agreement. Therefore, no conflict, ambiguity, or doubtful interpretation, shall be construed against the drafter.

3.5 Violation of this Agreement by User Agency or its employees may result in the immediate termination of access to CHRI. User Agency hereby acknowledges and agrees that disclosure of CHRI, or use of CHRI, 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.

3.6 This Agreement shall commence on the date of the last signature of the duly authorized representatives of KSP and User Agency and remain in effect until terminated by either party.

4. Justice and Public Safety Cabinet Terms and Conditions

4.1 User Agency shall comply with all applicable federal, state, and local laws. User Agency shall also comply with all applicable Commonwealth policies and procedures unless a specific exemption has been granted by the Commonwealth to the User Agency.

4.2 To the extent permitted by law, User Agency agrees to indemnify and hold harmless KSP and the Commonwealth against any and all claims, losses, demands, obligations, and litigation, including attorneys' fees, that result from or by: (1) fitness determinations, (2) the erroneous or negligent acts or omissions of User Agency, its officers, employees, contractors, or agents in the performance of this Agreement, (3) the disclosure of CHRI by User Agency in a manner not authorized by this Agreement, or by federal or Commonwealth law, and (4) any failure of User Agency, its officers, employees, contractors, or agents to observe federal, state, and local laws, including but not limited to labor laws and minimum wage laws.

4.3 User Agency, including any if its officers, employees, subcontractors, or agents, agree to comply with all applicable state and federal confidentiality laws, including the Health Insurance Portability and Accountability Act, and to protect the security, confidentiality, and integrity of health information. The User Agency 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.

4.4 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.

- a. "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:
 - i. 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;
 - ii. A Social Security number;
 - iii. A taxpayer identification number that incorporates a Social Security number;
 - iv. A driver's license number, state identification card number, or other individual identification number issued by an agency;
 - v. A passport number or other identification number issued by the United States government; or
 - vi. 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.

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- b. 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.”
- c. The User Agency agrees to cooperate with the Commonwealth in complying with the response, mitigation, correction, investigation, and notification requirements of the Act.
- d. The User Agency 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 User Agency abides by the requirements set for in that exception. Notification shall be in writing on a form developed by the Commonwealth Office of Technology.
- e. The User Agency agrees to undertake a prompt and reasonable investigation of any breach as required by KRS 61.933.
- f. Upon conclusion of an investigation of a security breach of Personal Information as required by KRS 61.933, the User Agency agrees to an apportionment of the costs of the notification, investigation, and mitigation of the security breach.
- g. In accordance with KRS 61.932(2)(a), the User Agency 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.
- h. The parties acknowledge that CHRI, records, statistical information, and/or data provided by the Commonwealth to the User Agency are the property of the Commonwealth. In order for the Commonwealth to maintain control and integrity of its records, the User Agency agrees that any Freedom of Information Act request, Kentucky Open Records request, or other request seeking access to information or data provided by the Commonwealth will be reported to the Commonwealth, and if the requestor will agree to do so, the request will be forwarded to the Commonwealth. If the requester will not agree to withdraw the request and instead submit it to the Commonwealth, then the Commonwealth shall direct the User Agency in answering the request.

4.5 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.

4.6 The User Agency 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 User Agency has made edits since the last iteration. The User Agency 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.

4.7 During the term of this Agreement, User Agency shall be authorized in its sole discretion to discipline, terminate or take any other personnel action against User Agency personnel. Upon communication by Commonwealth of an issue with User Agency personnel, User Agency shall have the sole authority to take action to effect a solution.

4.8 At no point shall any User Agency personnel be considered an employee of the Justice and Public Safety Cabinet, for any purpose, including but not limited to unemployment, taxes, withholding, health insurance, liability, retirement, workers' compensation, vacation, sick or other leave, the Family Medical

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Leave Act, accrued benefits, evaluations, or any other purpose. At all times, any such individual shall be considered and deemed to be an employee of the User Agency.

4.9 Nothing in this Agreement shall be construed, in any way, as granting to any individual providing services under this Agreement any of the claims, privileges, or rights established or recognized under KRS Chapter 18A or KAR Title 101.

4.10 In no event shall any User Agency personnel be deemed to be a third-party beneficiary of this Agreement.

4.11 Pursuant to the Executive Branch Code of Ethics, Kentucky Revised Statutes Chapter 11A, and in order to avoid conflicts of interest more generally, dual-status personnel may not manage or administer this Agreement or any of its individual terms and conditions. Dual-status personnel is defined as any and all individuals who are employed by or receive a tangible benefit from the Commonwealth and the User Agency simultaneously.

4.12 Dual-status personnel shall be considered Commonwealth personnel and shall not be considered User Agency personnel for the purposes of this Agreement, except for the terms and conditions of this Agreement that apply to dual-status personnel by virtue of their dual status.

4.13 Each party shall provide a contact to resolve any and all issues related to this Agreement and promptly update the contact information as necessary.

4.14 All notices under this Agreement shall be given in writing. Electronic mail constitutes a writing. Notice by KSP of termination of this Agreement shall be provided in writing by the KSP Commissioner or his designee to User Agency. Notice by User Agency of termination of this Agreement shall be provided in writing by User Agency to the KSP Commissioner.

4.15 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.

4.16 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.

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

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

4.19 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.

4.20 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.

4.21 Either party may cancel this Agreement at any time for cause or may cancel without cause upon thirty (30) days written notice to the other party.

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

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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 of Signature

Signature of KSP Representative

Date of Signature