



Idaho Biometric Identifier Comparison System Memorandum of Agency Agreement

THIS AGREEMENT (“Agreement”) is entered into by and between [Law Enforcement Agency Name], a law enforcement agency of [City or County Name] (collectively, “Agency”) and Idaho State Police, an executive department of the State of Idaho government (“ISP”). Agency and ISP may also individually be referred to as “Party” or collectively as “Parties.”

WHEREAS, ISP has implemented the Idaho Biometric Identifier Comparison System (“BIC Program”) for law enforcement access and use throughout the State of Idaho;

WHEREAS, The Agency desires to access and use the BIC Program for the purposes of forming potential leads in criminal and incapacitated/deceased persons investigations;

WHEREAS, The BIC Program is subject to federal and state laws, regulations, and policies governing its access and use.

WHEREAS, It inures to the benefit of the criminal justice community and the safety of the public for the Agency to have access to the BIC Program;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, it is hereby agreed to and stipulated by and between Agency and ISP as follows:

1. AUTHORIZATION

This Agreement is authorized pursuant to Idaho Code § 50-301, Idaho Code §§ 67-2901(4), 67-2901(5)(b), 67-2901(5)(n), 67-2901(6), 67-2322, 67-2323, 67-2326, 67-2327, 67-2328 and/or 67-2332.

2. GENERAL AGENCY ACKNOWLEDGMENT

The Agency understands that the data accessed through the Idaho State Police BIC system is protected by federal and state laws. The Agency agrees to protect the confidentiality, integrity, and security of all protected data and information to which agency users have access through the Idaho BIC system. The Agency will only access and use the Idaho BIC system in strict conformance to all applicable laws and policies governing confidential information.

3. ORIGINATING AND PARTICIPATING AGENCY RESPONSIBILITIES

- a. BIC system users will be employees of the Agency.
- b. Users will access the Idaho BIC system only for authorized Law Enforcement purposes as outlined in the Idaho BIC Policy.
- c. The Agency will follow the Idaho State Police BIC policy and all applicable state and federal laws governing the use of said system.
- d. Agency users will not in any way access, use, divulge, copy, release, sell, loan, review, alter, or destroy any confidential information except as properly and clearly authorized within the

scope of their job duties and all applicable policies and laws. Unauthorized disclosure or use of this information is strictly prohibited.

- e. The Agency will provide a request type (details of request), case number and agency contact information for each submitted probe image, verifying that the request is part of a valid criminal case or identification of an incapacitated or deceased person.

4. PRIVACY, CIVIL RIGHTS AND CIVIL LIBERTIES (P/CRCL) PROTECTIONS

All Idaho State Police personnel, Agency personnel, and authorized individuals working in direct support of Idaho State Police personnel (such as interns or volunteers), personnel providing information technology services to the Idaho State Police, private contractors, agencies from which Idaho State Police information originates, and other authorized users will comply with applicable laws and policies concerning P/CRCL, including but not limited to:

- a. Idaho Code Title 67, Chapter 30
- b. Federal Bureau of Investigation (FBI) Criminal Justice Information Systems (CJIS) Security Policy (CJISSECPOL)
- c. *Public Records Act – Title 74, Chapter 1, Idaho Code*
- d. Idaho State Police BIC Usage Policy; ISP Handbook, Chapter 11
- e. Applicable Federal Laws outlined in Appendix C of the Idaho BIC Policy

5. BIC SEARCH CRITERIA

In order to submit a probe image for comparison, submissions must comply with the following:

- a. Reasonable suspicion must exist that an identifiable individual:
 - (i) has committed, or is involved in or planning a criminal offense (including terrorism), conduct or activity that presents a threat to any individual, the community, or the nation and that the information is relevant to the criminal conduct or activity and the information would be relevant to the investigation or corroboration of case tips/leads or,
 - (ii) the information would assist a law enforcement agency in the identification of a person who lacks capacity or is otherwise unable to identify him- or herself (such as an incapacitated or deceased person) or,
 - (iii) the information would assist in pursuit of a court order.
- b. Must be identified to assist with an active criminal case briefing held within a criminal justice agency;
- c. Must be identified in the interest of an active or ongoing criminal or homeland security investigation; and
- d. As part of authorized user training, using only publicly available or volunteer images.

6. BIC IMAGE COMPARISON SYSTEM FUNCTIONS, LIMITATIONS AND INTERPRETATION OF RESULTS

The BIC system determines the distinguishable landmarks (nodal points) that make up facial features. Every human face has approximately 80 nodal points including distance between the eyes, width of the nose, depth of the eye sockets, shape of the cheekbones, length of the jaw line, etc. The system translates nodal-point measurements into a numerical code or set of numbers, representing the features on a subject's face that can be compared to faces in a database.

BIC technologies can be limited by:

- a. Poor image quality;
- b. Small image sizes;
- c. Different face angles;
- d. Data processing and storage, among others.

All BIC search responses will be examined by a trained biometric technician in the Idaho State Police Bureau of Criminal Identification. The Agency is cautioned that the resulting candidate images **do not provide positive identification of any subject**, are considered advisory in nature as an investigative lead only, and do not establish probable cause without further investigation and may not be used to obtain an arrest warrant without further investigation.

7. USE OF BIC SEARCH RESULTS

- a. Access to or disclosure of BIC search results will be provided only to individuals within the Agency who are authorized to have access and have completed applicable training or agreements as outlined in the Idaho BIC policy.
- b. Credentialed, role-based access criteria to the Idaho BIC system will be employed by the Idaho State Police, to control assignment of roles, groups or classes of users, and administrative or functional access required to manage the information or system.
- c. The Agency agrees to the following statement which will accompany the released most likely candidate image(s) and any related records:

*“The Idaho State Police is providing this information as a result of a search, utilizing facial image comparison software, of records maintained by the Federal Bureau of Investigation. This information is provided only as an investigative lead and **IS NOT TO BE CONSIDERED A POSITIVE IDENTIFICATION OF ANY SUBJECT**. Any possible connection or involvement of any subject to the investigation must be determined through further investigation and investigative resources.”*

8. MECHANISMS FOR REPORTING VIOLATIONS OF ISP BIC POLICY

Authorized Agency users of the Idaho BIC program shall report errors, malfunctions, or deficiencies of facial image comparison information and suspected or confirmed violations of the Idaho State Police's BIC policy to the Idaho State Police's Major with authority over BCI programs.

9. SECURITY

The Agency is responsible for maintaining appropriate security measures to the physical security of workstations; personnel security to include background screening requirements; technical security to protect against unauthorized use; data security to include system use, dissemination, and logging; and actual security of criminal history records.

10. POLICY VIOLATIONS

If an authorized Agency user or the Agency is found to be in noncompliance with the provisions of the Idaho State Police BIC policy regarding the collection, receipt, access, use, dissemination, retention, or purging, the Director of the Idaho State Police may:

- Suspend or discontinue access to information by the Idaho State Police entity personnel, the Agency, or the authorized Agency user.
- Refer the matter to appropriate authorities for other disciplinary or administrative actions or sanctions to effectuate the purposes of the policy..
- Refer the matter to appropriate authorities for criminal prosecution, as necessary, to effectuate the purposes of the policy.

11. RESPECTIVE LIABILITY

Indemnification. The parties shall be responsible only for the acts, omissions, or negligence of its own officers, employees or agents as provided by the Idaho Tort Claims Act, IDAHO CODE §§ 6-901 through 6-929. Each party will defend against any claims that arise solely from wrongful acts, omissions or negligence of their own employees or officials, agents and volunteers in the course of the performance of this agreement, but do not assume responsibility for the acts, omissions or negligence of the other parties, their employees or officials, agents and volunteers. Each party shall promptly notify the other of any claim arising under this Agreement and shall cooperate fully with the defending party or its representatives in the defense of such claim.

Idaho Tort Claims Act. The parties agree that personnel of the participating agencies acting under this Agreement, are deemed to be acting within the scope of their duties for purposes of the Idaho Tort Claims Act, IDAHO CODE §§ 6-901 through 6-929, subject to final determination of the course and scope of their duties by the State of Idaho's Risk Management program.

Privileges, Immunities and Benefits. All privileges and immunities from liability and other benefits which normally apply to personnel of the participating agencies while acting within performance of their duties shall also apply to them when carrying out the objectives pursuant to this Agreement.

No Waiver. Nothing in this agreement or the parties' actions pursuant to it shall be construed to waive any defense or immunity of any of the parties or their employees or agents that would otherwise apply.

12. ACKNOWLEDGMENT AND CERTIFICATION

As the head of the Agency, I hereby acknowledge the duties and responsibilities as set out in this Agreement. I acknowledge that a failure to comply with these duties and responsibilities may result in loss of Agency access to the Idaho BIC System. The Agency acknowledges receipt of a copy of the ISP BIC Policy and by the undersigned agrees to abide by the policy requirements.

I hereby certify that I am familiar with all applicable documents that are part of this agreement and to all applicable state and federal laws and regulations relevant to the Idaho BIC System. I agree to assign a Point of Contact for the Agency who will be responsible for managing agency usage of the system and act as liaison between the Agency and the Idaho State Police.

13. AMENDMENT, DURATION, EXECUTION, AND NO THIRD PARTY RIGHTS

This agreement is a formal expression of the purpose and intent of both parties and is effective when signed. It may be amended by the deletion or modification of the provisions contained therein, or by the addition of new provisions, after written concurrence of both parties. The Agreement is being executed by the Agency Head in both an individual and representative capacity. Accordingly, this agreement will remain in effect until the Agency Head vacates his/her position or until it is affirmatively amended or rescinded in writing. This agreement does not confer, grant, or authorize rights, privileges, or obligations to any third party.

AGENCY HEAD:

Signature

Date

Printed Name/Title*

Agency

CSA Signatory:

Signature

Date

Colonel Kedrick Wills, Director
Idaho State Police

CSO:

Signature

Date

Leila McNeill, Bureau of Criminal Identification Chief
Idaho State Police

*The CSO must be notified when if the Agency Head vacates his/her position. The name and telephone number of the acting or new Agency Head, when known, must be provided and a new agreement executed.

*Submit completed form to afis@isp.idaho.gov