



West Virginia State Police Criminal Records Section

NCPA/VCA USER/NON-DISCLOSURE AGREEMENT

For Criminal Records Checks by a Qualified Entity under the National Child Protection Act as amended by the Volunteers for Children Act and under authority of § 15-2-24 and § 15-2C-1 et. seq. of West Virginia Code

I. Parties to Agreement

This Agreement, entered by the West Virginia State Police (hereinafter referred to as WVSP), an agency of the State of West Virginia, with headquarters in South Charleston, West Virginia, and Hereinafter referred to User), located at

is intended to set forth the terms and conditions under which criminal history background checks authorized by the National Child Protection Act 1993 as amended by the Volunteers for Children Act (hereafter referred to as the NCPA/VCA), and as implemented by West Virginia Code §15-2-24 and §15-2C-1 et. Seq. shall be conducted.

- A. WVSP has established and maintains intrastate systems for the collection, compilation, and dissemination of state criminal history records and information of state criminal history records and information in accordance with West Virginia Code §15-2-24 and additionally, is authorized and does participate in similar multi-state and federal criminal history records system pursuant to §15-2-24a;
- B. WVSP and its user agencies are subject to and must comply with pertinent state and federal regulations relating to the receipt, use and dissemination of records and record information derived from the systems of the WVSP and the United States Department of Justice (§15-2-24a);

- C. User, otherwise known as qualified entity, is any business or organization that provides care, treatment, education, training, instruction, supervision, or recreation for children, the elderly, or individuals with disabilities and is a public, private or not-for profit entity operating within the State of West Virginia and is eligible to apply for a criminal history check, and review the resultant criminal history records as part of the screening process for its current and/or prospective employees and volunteers (which class of persons shall be understood for purposes of this Agreement to include contractors and vendors who have or may have unsupervised access to the children, disabled, or elderly persons for whom User provides care) pursuant to the NCPA/VCA and forms the legal basis for the User's access to criminal history record information derived systems of the WVSP and the United States Department of Justice (§15-2-24a); and

- D. User is desirous of obtaining and WVSP is required and willing to provide such services so long as proper reimbursement is made and applicable federal and state laws, rules and regulation are strictly complied with. Now, therefore, in light of the foregoing representations and the promises, conditions, terms, and other valuable considerations more fully set forth hereinafter or incorporated by reference and made a part thereof, WVSP and User agree as follows:

II. Service, Compliance, and Processing

- A. WVSP agrees to:
 - 1. Assist User concerning the privacy and security requirements imposed by state and federal law, and regulations; provide User with copies of all relevant laws, rules, and or regulations as well as updates as they occur; offer periodic training for User's personnel;

 - 2. Provide User with such state criminal history records and information as reported to, processed, and contained in its systems and legally available to the User; and

3. Act as an intermediary between User and the United States Department of Justice securing for the use and Benefit of User such federal and multi-state criminal history records of information as may be available to User under federal regulations.

B. User agrees to:

1. User agrees to abide by the laws or regulations of this State and the federal government, any present or future rules, policies, or procedures adopted by the State Central Repository to the extent that they are applicable to the information provided under this agreement;

2. Submit requests to WVSP for criminal history background checks pursuant to this agreement only for User's current and prospective West Virginia employees and volunteers for whom User is not already required to obtain state and national criminal history background checks under any other state or federal statutory provision. User shall comply with all other statutory provisions for all applicable persons;

3. Determine whether the current or prospective employee or volunteer has been convicted of, or is under pending indictment for, a crime that bears upon his or her fitness to have access to or contact with children, the elderly, or individuals with disabilities;

4. To verify eligibility as a "qualified entity", User will submit documentation that briefly describes the User's type of business, agency, organization, etc. The documentation shall also include the basic services, programs, activities, etc. offered and if available; a mission statement or articles of incorporation. The statement shall be on official letterhead and signed by an executive officer, administrator or coordinator. The eligibility request shall also include internal policies and procedures articulating the provisions for physical security of records to be obtained pursuant to the approval of the eligibility statement and the completion of this agreement;

5. Obtain a completed and signed WVSP Form 39C, NCPA/VCA Fingerprint

Authorization, or the electronic equivalent, (provided by WVSP) from every current or prospective employee and volunteer, for whom User submits a request for a criminal history background check **through IdentoGO**. (The signed Fingerprint Authorization allows the release of state and national criminal history record information to the qualified entity). User shall attach the original of every Fingerprint Authorization Form to the submitted fingerprint card and User may retain a copy thereof;

6. Use only fingerprint cards provided by WVSP or submit to electronic fingerprint transfer devices approved by WVSP which are specifically designed for use for criminal history checks under the NCPA; **provide IdentoGO** with a properly completed and executed fingerprint card or electronic fingerprint submission for each current or prospective employee and volunteer for whom User requests a criminal history record check pursuant to this agreement; and indicate either "NCPA/VCA VOLUNTEER" or "NCPA/VCA EMPLOYEE" in the "reason fingerprinted" block of each fingerprint card or electronic transfer of fingerprints submitted. (VCA refers to the Volunteers for Children Act);

7. Keep all records necessary to facilitate a security audit (§15-2-24a) by WVSP and to cooperate in such audits as WVSP or other authorities may deem necessary, Examples of records that may be subject to audit are criminal history records; notification that an individual has no criminal history; internal policies and procedures articulating the provisions for physical security; records of all disseminations of criminal history information; and a current, executed User Agreement with WVSP;

8. ****IF ENTITY IS A GOVERNAMENTAL AGENCY, PRIVATE, FOR PROFIT OR NOT FOR PROFIT QUALIFIED ENTITY**** - If not on a billing account, User shall contact L1 Identity Solutions to set up a billing account agreement in order to receive a West Virginia State Criminal History and Federal Bureau of Investigation background check upon submitting fingerprints and release of authorization. If not on a billing account, User shall pay for services provided by the WVSP and the Federal Bureau of Investigation (FBI) with the submission of the fingerprint card or the electronic submission of the fingerprints through IdentoGO.

9. ****TO SET UP A BILLING ACCOUNT AGREEMENT WITH Identigo- CALL 1-877-766-7746**

10. ****IF ENTITY IS A GOVERNMENTAL AGENCY****- Maintain adequate records and monitor allocated funds for payment of services under this agreement;

11. Insure that the appropriate personnel know to keep the information obtained under this agreement in a secure place and to use it only for the screening as outlined in this agreement;

12. Promptly advise WVSP of any violations of this agreement;

13. Share criminal history information with other qualified entities only after confirming with WVSP that the requesting entity has been designated a "qualified entity" and has signed a User agreement and only after verifying that the current prospective employee or volunteer had authorized the release of his/her criminal history records. In no event shall a criminal history record be shared that is more than six months old. User will respond that it is unable to provide any information to the requesting entity if the current or prospective employee has requested that his/her criminal history record(s) not be released to any other qualified entity;

14. Notify the current or prospective employee or volunteer of his/her right to obtain a copy of the criminal history records, if any contained in the report and of the person's right to challenge the accuracy and completeness of any information contained in such report, and to obtain a determination as to the validity of such challenge before a final determination regarding the person is made by the qualified entity reviewing the criminal history information. (Information on these rights may be obtained by contacting the WVSP, regarding state criminal history information at West Virginia State Police, Attn: Criminal Records Section, 725 Jefferson Road, South Charleston, West Virginia 25309-2968, (304) 746-2170, or by contacting the FBI, regarding federal/national records at FBI, Criminal Justice Information Services Division, Attn: SCU, MOD D-2, 1000 Custer Hollow Road, Clarksburg, West Virginia, 26306, (304) 625-3878).

III. Privacy, Security and Non-Disclosure.

A. User shall use criminal history record information acquired hereunder only to screen User's West Virginia current and/or prospective employees and/or volunteers, and only for purposes(s) of employment and/or determination of suitability for access to children, elderly, or disabled persons pursuant to the terms of the National Child Protection Act as amended by the Volunteers for Children Act and §15-2-24 and §15-2C-1 et. seq., of the West Virginia Code. If User is a governmental agency, such records may additionally be used in administrative hearings associated with one of the enumerated purposes;

B. User shall not commingle criminal history records with other records, whether such records are public or not;

C. User shall not duplicate and/or disseminate criminal history records acquired hereunder for use outside of User entity except as authorized by state and federal law. Sharing of criminal history records with other qualified entities is permitted by the FBI provided that;

1. Such other entity is authorized to receive criminal history record information derived from the systems of the U. S. Department of Justice in the manner specified herein and User has verified the other entity's qualifying status as required herein;

2. The User has verified that the current prospective employee or volunteer had authorized the release of his/her criminal history records to another qualified entity; and

3. User properly listed "NCPA/VCA VOLUNTEER" or "NCPA/VCA EMPLOYEE" in the "reason fingerprinted" block of the fingerprint card User submitted to WVSP for applicable current or prospective employee or volunteer. (VCA represents Volunteers for Children Act);

D. User has been approved to receive criminal history information pursuant to specific statutory authority and shall not use criminal history record information acquired

pursuant to such approval for any other purpose;

E. User shall not use or rely upon a criminal history record or information which is or is likely to be out-of-date (in no instance shall a criminal history record be relied upon that is more than six months old) and, in any event, if criminal activity is pertinent to and considered at the time of an employee or volunteer's service, a current criminal history must be requested and relied upon;

F. User may destroy criminal history records when they are no longer needed and it is recommended that these records are indeed destroyed. Destruction of these records must be accomplished in a secure and thorough manner so information cannot be retrieved, such as with the utilization of a shredding device;

G. User shall keep criminal history records acquired hereunder in a secure file, safe, or other security device, such as a locked file cabinet in an access-controlled area, and shall take such further measures as are necessary to insure that the records are accessible only to those of its employees who have been trained in their proper use and handling and have a need to examine such records; and

H. Pursuant to this agreement, WVSP reserves the right to inspect the security measures utilized by User to prevent unnecessary access to the records obtained through this agreement and to perform security audits on such records in addition to internal policies and procedures articulating the provisions for physical security; records of all disseminations of criminal history information; and a current, executed User Agreement with WVSP.

IV. **Termination**

Either WVSP or User may suspend the performance of Services under, or terminate this agreement in writing, or when, in the reasonable estimation of WVSP or User, the other party has breached any material term of the agreement. Furthermore, upon WVSP becoming aware of a violation of this agreement which might jeopardize West Virginia's access to federal criminal history information, WVSP shall have the option of suspending services under this agreement, pending resolution of the problem. The

violation of any material term of this agreement or of any substantive requirement or limitation imposed by the federal or state statutes, regulations, or rules referred to this agreement shall be deemed a breach of a material term of the agreement.

WVSC §15-2-24 provides that criminal history record information from WVSP is confidential, and may not be disclosed except as specifically in this section." National criminal history information received from the FBI is made confidential by federal law and regulation.

Additionally, this agreement shall terminate automatically following an (18) eighteen month period of inactivity whereby the User does not submit record check requests as outlined in this agreement.

V. Miscellaneous

A. User agrees that

1. User is currently operating a lawful business or other entity within the State of West Virginia, with a physical address in West Virginia;
2. User is legally authorized to operate its business or other entity within the State of West Virginia;
3. User has complied and will continue to comply with all requirements to properly operate its business or other entity within the State of West Virginia;
and
4. User shall promptly notify WVSP upon any change to the above, included but not limited to name, address, and status as a business or other entity operating in West Virginia.

- B. This agreement supersedes any previous agreement concerning the NCPA of 1993, as amended, and/or WVSC §15-2C-1 et. seq., and/or WVSC §15-2-24;**

- C. This agreement may be amended by WVSP as needed, to comply with state or federal laws or regulations, or administrative needs of WVSP;
- D. This agreement is binding upon all User employees, agents, officers, representatives, volunteers, contractors, vendors, successors in interest, beneficiaries, subsidiaries, and assigns;
- E. User agrees to indemnify and save harmless the State of West Virginia, the Department of Military Affairs and Public Safety, the State Police, the State Central Repository, other criminal justice agencies as defined by the Code of Federal Regulations, Title 28, Chapter 1, Part 20, and the employees of any of the above entities (1) from and against any and all causes of action, demands, suits, and other proceedings of whatsoever nature; (2) against all liability to others, including any liabilities or damages by reason of or arising out of any arrest or imprisonment or any cause of action whatsoever, and (3) against any loss, cost, expense, and damage resulting there from, arising out of or involving any negligence on the part of the User in the exercise, use of enjoyment of this agreement.

IN WITNESS HEREOF, the parties hereto have caused this agreement to be executed by the proper officers and officials.

NAME OF USER ENTITY _____

ENTITY HEAD _____ **TITLE** _____

(PLEASE PRINT)

ENTITY HEAD _____ **DATE** _____

(SIGNATURE)

WITNESS _____ **TITLE** _____

WEST VIRGINIA STATE POLICE (WVSP)

BY _____ **TITLE** _____

DATE _____