

ARIZONA AUTOMATED FINGERPRINT IDENTIFICATION SYSTEM (AZAFIS)

USER AGREEMENT

C-50-08-0552-00

THIS AGREEMENT (Agreement) is made and entered into by the ARIZONA DEPARTMENT OF PUBLIC SAFETY, hereinafter referred to as "DPS" and the MARICOPA COUNTY SHERIFF'S OFFICE, hereinafter referred to as "USER AGENCY". DPS, under the authority of ARS §41-2205, ARS §41-1750, ARS §41-1751, and ARS §41-2413, operates the Central State Repository for the Arizona Criminal Justice Information System (ACJIS), and the Arizona Automated Fingerprint Identification System (AZAFIS), and functions as the ACJIS Control Terminal Agency. Per authority of ARS §41-2204, the Director of the Arizona Department of Public Safety serves as the System Manager of ACJIS and AZAFIS.

USER AGENCY is:

☒ A criminal justice agency as defined in 28CFR20.3(g), and ARS §41-1701, and ARS §41-1750,

AND

☒ A criminal justice agency designated as an AZAFIS Full Access System Terminal (FAST) Site by the AZAFIS Advisory Board and agrees (in addition to being responsible for entering and searching its own agency's tenprints, latent prints, and palm prints through the centralized AZAFIS databases at DPS) to process tenprints, latent prints, and palm prints for all other law enforcement agencies within the county in which the FAST Site is located (except AZAFIS Remote Terminal [RT] Site agencies or any other agency that opts to obtain AZAFIS services directly from DPS). DPS will provide to the AZAFIS FAST Site the AZAFIS equipment, software and associated system maintenance, network capability necessary to provide AZAFIS FAST Site services, and staff reimbursement (as described in Section F below).

1. There shall be no charge to law enforcement agencies for AZAFIS services provided by the AZAFIS Fast Site.
2. Each AZAFIS FAST Site shall execute an Intergovernmental Agreement (IGA) with any law enforcement agency for which it provides AZAFIS services. Each IGA shall be approved by the State AZAFIS System Administrator prior to the effective date of the agreement.

OR

☐ A criminal justice agency that is designated as an AZAFIS Remote Terminal (RT) Site acquires its own fully compatible AZAFIS equipment and software that meets the

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AZAFIS System Manager's acceptance requirements and is directly interconnected to the central site AZAFIS computers at DPS. An AZAFIS RT Site is responsible for entering and searching only its own agency's tenprints, latent prints, and palm prints through the centralized AZAFIS databases at DPS. An AZAFIS RT Site has the same tenprint, latent print, and palm print processing capabilities as a FAST Site except an RT Site:

1. Is required to pay all costs associated with AZAFIS processing at the RT Site.
2. Can recover actual operating costs from any law enforcement agency for which it elects to provide AZAFIS services. Charges shall not exceed the actual cost of providing the services. Each AZAFIS RT Site shall execute an Intergovernmental Agreement (IGA) with any law enforcement agency for which it elects to provide AZAFIS services. Each IGA shall be approved by the State AZAFIS System Administrator prior to the effective date of the agreement.

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DPS and USER AGENCY hereby agree to exchange AZAFIS identification information and AZAFIS-quality fingerprint images and palm print images as available in the State of Arizona Central State Fingerprint Repository and/or via the AZAFIS network, subject to the following terms and conditions:

TERMS AND CONDITIONS

- A. Information: In accordance with federal and state regulations, DPS agrees to provide USER AGENCY access to the Arizona Automated Fingerprint Identification System to the extent allowed by the AZAFIS procedures and policies approved by the AZAFIS Advisory Board and the AZAFIS System Manager.
- B. Rules: The exchange of all identification information, fingerprint images, and palm print images covered by the terms of this Agreement shall be in strict compliance with all federal and state laws; with all rules, procedures, and policies adopted by the AZAFIS Advisory Board and the AZAFIS System Manager. USER AGENCY has the burden of giving notice of the requirements of all rules, procedures, and policies to its employees and the other agencies or individuals to whom USER AGENCY might disseminate information derived pursuant to this Agreement.
- C. Privacy and Security.
1. Purpose. USER AGENCY hereby agrees that the use of information received under the terms of this Agreement is to establish the identity of individuals using the science of fingerprint and palm print identification methodology, electronic mug photo technology, and AZAFIS technology.
 2. AZAFIS Site Administrator. USER AGENCY shall appoint an AZAFIS Site Administrator who shall serve as the USER AGENCY's representative on the AZAFIS Operational Procedures Committee, and who shall be the primary contact person within the USER AGENCY regarding AZAFIS matters. USER AGENCY shall allow its designated AZAFIS Site Administrator sufficient time to perform all necessary duties related to AZAFIS responsibilities. The designated AZAFIS Site Administrator shall be responsible for ensuring compliance with Section B above, and

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shall grant AZAFIS access authorization to those employees who have a current AZAFIS Terminal Operator Certification.

3. Secondary Dissemination. USER AGENCY agrees to assume full responsibility for the lawful use of any released information obtained as a result of an AZAFIS transaction.

D. Audits/Inspections.

1. USER AGENCY hereby agrees to make its reports available to DPS for the purpose of conducting periodic audits of USER AGENCY's compliance with all laws and regulations regarding the use of the AZAFIS network and processing and use of information furnished to USER AGENCY under the terms of this Agreement. In order to facilitate such audits, USER AGENCY agrees to keep such records as DPS may direct from time to time. In addition, USER AGENCY will cooperate with directives issued by the AZAFIS System Manager and the State AZAFIS System Administrator to assure reliability of data, fingerprint, and palm print images.
2. Each AZAFIS FAST Site agency shall provide quarterly workload reports to the State AZAFIS System Administrator, detailing the AZAFIS services provided to its FAST Site clients. The quarterly FAST Site workload reports shall include the volume and types of transactions and other services conducted during the reporting period for each FAST Site client, including time required to provide the reported services. Quarterly FAST Site workload reports shall be submitted to the State AZAFIS System Administrator no later than the fifteenth (15th) of the month following the end of each quarter.
3. All terminal agencies having direct access to the Arizona Automated Fingerprint Identification System agree, as a condition of participation, to permit an inspection team from the AZAFIS Advisory Board and/or a team from DPS to conduct necessary site security compliance inspections to insure that required physical, personnel, computer, and communications safeguards are functioning properly.

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4. All books, accounts, reports, files and other records relating to this Agreement shall be subject at all reasonable times to inspection and audit by the State for five (5) years after completion of this Agreement.
- E. Standards for Response Time. Agencies interfaced with the DPS AZAFIS host computers agree to comply with set standards for response time, records entry, and system availability as specified in the *AZAFIS Policies and Procedures Manual*.
 1. AZAFIS FAST Sites shall insure that all work processed on behalf of client sites is given the same priority as it own AZAFIS work.
- F. Staffing. DPS will provide funding to each AZAFIS FAST Site each year in an amount that is equivalent to the salary and associated employee related expenditures (ERE) of one (1) mid-range DPS Fingerprint Technician.
 1. This reimbursement will be reviewed from time to time in conjunction with AZAFIS FAST Site quarterly workload reports by the AZAFIS Advisory Board. Following its review, the AZAFIS Advisory Board will provide recommendations to the State AZAFIS System Manager concerning the level of FAST Site reimbursements. Any changes to the reimbursement level will be incorporated as attachments to this Agreement.
- G. Sanctions.
 1. Cancellation. Either DPS or USER AGENCY may cancel this Agreement upon ninety (90) days notice to the other party in writing. "All parties are hereby put on notice that this Agreement is subject to cancellation by the Governor for conflicts of interest, pursuant to ARS §38-511, the contents of which are hereby incorporated by reference."
 2. Suspension of Service. In addition to the penalties provided by law, DPS reserves the right to immediately suspend furnishing information covered by the terms of this Agreement to USER AGENCY when any terms of this Agreement are violated or reasonably appear to be violated. DPS shall resume furnishing such information upon receipt of satisfactory assurance that such violations did not occur or that such

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violations have been fully corrected or eliminated. In the event that USER AGENCY challenges the ruling of DPS regarding violation(s) or audit results, the AZAFIS Advisory Board shall adjudicate the matter.

3. Indemnification. To the extent permitted by law, USER AGENCY hereby agrees to indemnify and save harmless DPS, its Director and employees, and the FBI, its Director and employees, from and against any and all claims, demands, suits, and proceedings by others and against all liability to others of the use or misuse by the USER AGENCY of any information provided to USER AGENCY pursuant to this Agreement.
 4. Arbitration. This Agreement is subject to arbitration, but only to the extent required by ARS §12-1518.
- H. Non-Discrimination. USER AGENCY hereby agrees that USER AGENCY will comply with the non-discrimination requirements of Executive Order 99-4 (attached), or as subsequently updated.
- I. Executory Clause. It is understood by and between the parties hereto that DPS is obligated to provide services described in Section A above to USER AGENCY only to the extent that public funds are made available to DPS for that purpose. DPS shall incur no liability on account thereof beyond the money made available for such purpose.
- J. Construction. This Agreement shall be liberally construed to apply to both manual and automated information systems for criminal justice purposes wherever and whenever possible.
- K. Dissemination.
1. As to all dissemination of Federal Criminal History Record Information, the terms of such contract shall be superseded by applicable Federal Regulations governing the release of such information.
 2. As to all dissemination of Arizona Criminal History Record Information and other criminal justice information, the terms of such contract shall be governed by ARS §41-1750.

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3. USER AGENCY hereby agrees that DPS may use or disseminate information concerning USER AGENCY transactions on the AZAFIS and ACJIS networks to provide assistance with active criminal investigations or criminal intelligence investigations when such assistance is specifically requested by the investigating agency.
4. USER AGENCY hereby agrees that DPS may generate, use, or disseminate statistical reports based upon data contributed or transactions conducted by USER AGENCY on the Arizona Automated Fingerprint Identification System and/or the AZAFIS network.

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L. This Agreement shall be construed in accordance with the laws of the State of Arizona.

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

ARIZONA DEPARTMENT OF PUBLIC SAFETY

BY:

Pamela S. Hester
Deputy Director

DATE:

6/1/08

TITLE:

, Arizona Department of Public Safety

BY:

BS
Legal Review
Approved as to Form

DATE:

9/26/08

Brian Schneider
(Printed Name)

USER AGENCY:

BY:

Joseph M. Arpaio

DATE:

5-29-08

Joseph M. Arpaio
(Printed Name)

TITLE:

Sheriff, Maricopa County

BY:

(Please See Attached)
USER Agency Legal Review


DATE:

(Printed Name)

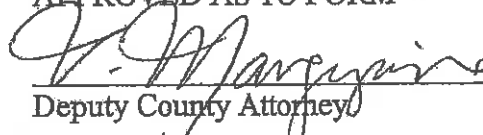
Maricopa County Board of Supervisors


ACTING Chairman of the Board JUN 18 2008
Date

ATTEST:


Clerk of the Board JUN 18 2008
Date

APPROVED AS TO FORM


Deputy County Attorney

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EXECUTIVE ORDERS, PROCLAMATIONS OF GENERAL APPLICABILITY, AND STATEMENTS ISSUED BY THE GOVERNOR PURSUANT TO A.R.S. § 41-1013(B)(3)

The Administrative Procedure Act (APA) requires the full-text publication of all Executive Orders and Proclamations of General Applicability issued by the Governor. In addition, the Register shall include each statement filed by the Governor in granting a commutation, pardon or reprieve, or stay or suspension of execution where a sentence of death is imposed.

EXECUTIVE ORDER 99-4 Amending 75-5

PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS NONDISCRIMINATION IN EMPLOYMENT BY GOVERNMENT CONTRACTORS AND SUBCONTRACTORS

I, Jane Dee Hull, under and by virtue of the authority vested in me as Governor of the State of Arizona by the Constitution and Statutes of the State of Arizona do order and direct:

PART 1 - Non-discrimination in employment by government contractors and subcontractors.

All government contracting agencies shall include in every government contract hereinafter entered into the following provisions:

During the performance of this contract, the contractor agrees as follows:

A. The Contractor will not discriminate against any employee or applicant for employment because of race, age, color, religion, sex or national origin. The contractor will take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, age, color, religion, sex or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places available to employees and applicants for employment notices to be provided by the contracting officer setting forth the provisions of this non-discrimination clause.

A continued Executive Order No. 75-5 is hereby amended to permit government contractors and subcontractors that are religious organizations to provide employment preferences based upon religion when dealing with a bona fide occupational qualification reasonably necessary to the operation of the religious organization, in accordance with the

requirements of Title 41, chapter 9, article 4, Arizona Revised Statutes.

Executive Order No. 75-5 prohibits all government contractors and subcontractors for discriminating against any employee or applicant for employment because of race, age, color, religion, sex or national origin. Executive Order No. 75-5 further requires all government contractors and subcontractors to take affirmative action to insure that applicants are employed and employees are treated during employment without regard to their race, age, color, religion, sex or national origin.

Arizona's Civil Rights Act, Title 41, chapter 9, article 4, does not apply to religious organizations with respect to the employment of individuals of a particular religion to perform work connected with the activities of the employer. It also provides that religious organizations may provide employment preferences based upon religion when dealing with a bona fide occupational qualification reasonable necessary to the operation of the religious organization. This is consistent with the provisions of the Civil Rights Act of 1964 (42 U.S.C. 2000e, et seq.). In addition, in the Personal Responsibility and Work Opportunity Reconciliation Act, P.L. 104-193, Congress provided that religious organizations are eligible for the receipt of federal funds on the same basis as other private organizations.

B. The contractor will in all solicitations or advertisement for employees placed by or on behalf of the contractor state that all qualified applicants will receive consideration for employment without regard of race, age, color, religion, sex or national origin.

C. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding a notice to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under the Executive Order and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

D. The contractor will furnish all information and reports required by the contracting agency and will permit access to his books, records, and accounts by

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the contracting agency and the Civil Rights Division for purposes of investigation to ascertain compliance with such rules, regulations and orders.

K. In the event of the contractor's noncompliance with the non-discrimination clauses of the contract or with any such rules, regulations or orders of the Arizona Civil Rights Division said noncompliance will be considered a material breach of the contract and this contract may be cancelled, terminated or suspended in whole or in part, and the contractor may be declared ineligible for future government contracts until said contractor has been found to be in compliance with the provisions of this order and the rules and regulations of the Arizona Civil Rights Division, and such sanctions may be imposed and remedies invoked as provided in Part II of this order, and the rules and regulations of the Arizona Civil Rights Division.

L. The contractor will include the provisions of paragraphs A through E in every subcontractor purchase order so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to the subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the State of Arizona to enter into such litigation to protect the interest of the State of Arizona.

G. Each contractor having a contract containing the provisions prescribed in the section shall file and shall cause each of his subcontractors to file compliance reports with the contracting agency or the Civil Rights Division, as may be directed. Compliance reports shall be filed within such times and shall contain such information as the practices, policies, programs and employment policies, programs and employment statistics of the contractor and each subcontract and shall be in form as the Arizona Civil Rights Division may prescribe.

H. Bidders or prospective contractors or subcontractors shall be required to state whether they have participated in any previous contract subject to the provisions of this order or any preceding similar Executive Order and in the event to submit on behalf of themselves and the proposed subcontractors compliance reports prior to, or as an initial part of negotiation of a contract.

I. Whenever the contractor or subcontractor has a collective bargaining agreement or other contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the compliance report shall include such information from such labor unions or agency practices and policies affecting compliance as the contracting agency or Civil

Rights Division may prescribe; provided that, to the extent such information is within the exclusive possession of a labor union or an agency referring workers or providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the contractor, the contractor shall so certify the contracting agency as part of its compliance report and shall set forth what efforts he has made to obtain such information.

J. The contracting agency or the Civil Rights Division shall require that the bidder or prospective contractor or subcontractor shall submit as part of his compliance report a statement in writing signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training with which the bidder or prospective contractor deals with supporting information to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this order or that it consents and agrees that recruitment employment and the terms and conditions of employment under the proposed contract shall be in accordance with the purpose and provisions of this order. In the event that the union or the agency shall refuse to execute such a statement, the compliance shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the contracting agency or the Civil Rights Division may require.

PART II - Enforcement

A. Each contracting agency shall be primarily responsible for obtaining compliance with this Executive Order with respect to contracts entered into by such agency or its contractors. All contracting agencies shall comply with the rules of the Civil Rights Division in discharging their primary responsibility for securing compliance with the provisions of contracts and otherwise with the terms of this order and the rules and regulations and orders of the Civil Rights Division issued pursuant to this order. They are directed to cooperate with the Civil Rights Division and to furnish the Division such information and assistance as it may require in the performance and assistance as it may require in the performance of the Division's functions under this order. They are further directed to appoint or designate from among the agency personnel compliance officers. It shall be the duty of such officers to first seek compliance with the objective of this order by conference, conciliation, mediation or persuasion.

B. The Civil Rights Division may investigate the employment practices of any government contractor or subcontractor of initiate such investigation by the appropriate contracting agency or determine whether or not the contractual provisions specified in this order have been violated. Such investigations shall be conducted in accordance with the procedures establishment by the Civil

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Rights Division and the investigating agencies shall report to the Civil Rights Division any action taken or recommended. The Civil Rights Division may receive and investigate or cause to be investigated complaints by employees or prospective employees of a government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in Part I of this order. If the investigation is conducted for the Civil Rights Division by a contracting agency that agency shall report to the Civil Rights Division what action has been taken or its recommended with regard to such complaint.

C. The Civil Rights Division shall use its best efforts directly and through contracting agencies, other interested state and local agencies, contractors and all other available instrumentalities to cause any labor union engaged in work under government contracts or any agency refusing workers or providing, or supervising apprenticeship or training for or in the course of such work or cooperate in the implementation of the purposes of this order.

D. The Civil Rights Division or any agency, officer or employee in the executive branch of the government designated by rule, regulation or order of the Civil Rights Division may hold such hearings, public or private as the Division may deem advisable for compliance, enforcement of educational purposes. The Civil Rights Division may hold or cause to be held hearings in accordance with rules and regulations issued by the Civil Rights Division prior to imposing, ordering or recommending the imposition of penalties and sanctions under this order.

E. No order for debarment of any contractor from further government contracts under this order shall be made without affording the contractor an opportunity for a hearing.

F. Sanctions and Penalties. In accordance with such rules, regulations or orders as the Civil Rights Division may issue or adopt, the Civil Rights Division or the appropriate contracting agency may publish or cause to be published the names of contractors or unions which it has concluded have complied or have failed to comply with the provisions of this order and with the rules, regulations and orders of the Civil Rights Division.

1. Contracts may be cancelled in whole or in

part, terminated, or suspended absolutely, or continuation of contracts may be conditioned upon a program for future compliance approved by the contracting agency or the Civil Rights Division; provided that any contracting agency shall refrain from entering into further contracts, extensions or other modifications of existing contracts with any noncomplying contractor until such contractor has established and will carry out personnel and employment policies in compliance with the provisions of this order.

2. Under rules and regulations prescribed by the Civil Rights Division, each contracting agency shall make reasonable efforts within a reasonable time limitation to secure compliance with the contract provisions of this order by methods of conference, conciliation, mediation and persuasion before proceedings shall be instituted under this order or before a contract shall be cancelled or terminated in whole or in part under this order for failure of a contractor or subcontractor to comply with the contract provisions of this order.

G. This Executive Order shall become effective within (60) days of its issuance.

IN WITNESS WHEREOF, I
have hereunto set my hand and
caused to be affixed the Great Seal
of the State of Arizona.

Jane Dee Hull
Governor

DONE at the Capitol in Phoenix
on this Twenty-Ninth day of
January in the Year of Our Lord
One Thousand Nine Hundred and
Ninety Eight and of the
Independence of the United States
of America the Two Hundred and
Twenty Second.

ATTEST:
Betsey Bayless
Secretary of State