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ACRO

Criminal Records Office

Information Sharing Agreement

Between

National Police Chiefs' Council
ACRO Criminal Records Office

And

Edmonds Marshall McMahon (EMM)



ACRO Criminal Records Office



ACRO Criminal Records Office

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Summary Sheet

Freedom of Information Act Publication Scheme	
Security Classification (GSC)	OFFICIAL
Publication Scheme Y/N	Yes
Title	A purpose specific Information Sharing Agreement between ACRO Criminal Records Office (ACRO), acting on behalf of the National Police Chiefs' Council (NPCC), and the Edmonds Marshall McMahon (EMM)
Version	0.4
Summary	<p>This Information Sharing Agreement (hereafter referred to as the Agreement) formalises the arrangements for the ACRO Criminal Records Office (ACRO), acting on behalf of UK police forces that are subject to the ACRO collaboration agreement, to provide EMM with access to relevant information held on the Police National Computer (PNC), specifically: convictions, cautions, reprimands and final warnings, for prosecuting Fraud, unauthorised trademarks and offences contrary to Tobacco Regulations under the Prosecution of Offences Act 1985, which require them to be bound by the Criminal Procedure and Investigations Act 1996 (S21(1)) and rule 8.3 (b) iv) of the Criminal Procedure Rules and para 8A.1 of the Criminal Practice Directions 2015.</p> <p>Under this Agreement, EMM can request criminal conviction information held outside of the UK via ACRO when there is a lawful basis to do so.</p>
Author	***
Renewal date	28/06/2022
Date Issued	28/06/2021
ISA Reference	ACRO/053
Location of Agreement	ACRO ISA Library
ACRO DPIA Reference	DPIA 053

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Version control

Version No.	Date	Amendments Made	Authorisation
0.1	09/09/2020	Annual Renewal and template updates.	KN, ACRO
0.2	21/09/2020	International Requests added as a Service at EMM request	KN, ACRO
0.3	14/01/2021	Brexit updates	KN, ACRO
0.4	25/05/2021	DPO review updates	KN, ACRO

1. Partners to the Agreement

1.1. ACRO Criminal Records Office

PO Box 481
Fareham
PO14 9FS

1.2. Edmonds Marshall McMahon (EMM)

35 Cock Lane
London
EC1A 9BW

Companies House registration: 07787065 – incorporated 26th September 2011

2. Agreed Terms

2.1. Interpretation

The following definitions and rules of interpretation apply in this Agreement.

2.1.1. Definitions:

ACRO: ACRO Criminal Records Office

Agreed Purpose: has the meaning given to it in clause 3.2 of this Agreement.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Business Hours: 9:00 am to 5:00 pm Monday to Friday on a day, that is not a public holiday.

CEO: Chief Executive Officer

Criminal Offence Data is personal data relating to criminal convictions and offences or related security measures and includes personal data relating to the alleged commission of offences by the data subject, or proceedings for an offence committed or alleged to have been committed by the data subject or the disposal of such proceedings, including sentencing. (DPA 2018 S11 (2)).

Data Protection Legislation: the UK General Data Protection Regulation as enacted into English law (**UK GDPR**) as revised and superseded from time to time; the Data Protection Act 2018 (**DPA**); and any other laws and regulations relating to the processing of personal data and privacy which apply to a party and, if applicable, the guidance and codes of practice issued by the relevant data protection or supervisory authority.

EIR: Environmental Information Regulations 2004

EMM: Edmonds Marshall McMahon

FOIA: Freedom of Information Act 2000. Freedom of Information (FOI).

GSCP: Government Security Classification Policy

NPA: Non Police Agency

NPPA: Non Police Prosecuting Agency

Offences: a breach of a law or rule; an illegal act.

Personal Data means any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person (UK GDPR 2018 Article 4).

Personal Data Breach: a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Shared Personal Data.

s22a Agreement: An agreement is made pursuant to Section 22A Police Act 1996 (as amended) which enables police forces, local policing bodies as defined in that Act and other parties as defined in that Act to make an agreement about the discharge of functions by officers and staff, where it is in the interests of the efficiency or effectiveness of their own and other police force areas. By entering into this Agreement, the Parties have taken account of the statutory guidance for police collaboration published by the Home Office in October 2012 in exercise of the Home Secretary's power under s23F Police Act 1996, to provide guidance about collaboration agreements and related matters.

Shared Personal Data: the personal data to be shared between the parties under clause 5.1.2 and 5.2.2 of this Agreement.

SIRO: Senior Information Risk Owner

Special categories of personal data is data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation shall be prohibited (UK GDPR 2018 Article 9)

Subject Information Rights: means the exercise by a data subject of his or her rights under Articles 13-22 of the UK GDPR.

Supervisory Authority: the Information Commissioner or country equivalent.

2.1.2. **Controller, Processor, Data Subject and Personal Data, Special Categories of Personal Data, Processing** and "appropriate technical and organisational measures" shall have the meanings given to them in the Data Protection Legislation.

2.1.3. Clause and paragraph headings shall not affect the interpretation of this Agreement.

2.1.4. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

2.1.5. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

2.1.6. Any words following the terms **including, include, in particular** or **for example** or any similar phrase shall be construed as illustrative and shall not limit the generality of the related general words.

2.1.7. A reference to **writing** or **written** includes email.

2.1.8. Unless the context otherwise requires the reference to one **gender** shall include a reference to the other genders.

3. Purpose and background of the Agreement

3.1. Background

3.1.1. ACRO is a national police unit under the NPCC working for safer communities.

ACRO is the national police unit responsible for exchanging criminal conviction information between the UK and other countries. ACRO provides access to information held on the PNC to support the criminal justice work of some non-police prosecuting agencies; and assist safeguarding processes conducted by relevant agencies.

3.1.2. Edmonds Marshall McMahon (EMM) Solicitors is a law firm specialising in private prosecutions and conducts prosecutions arising from a variety of organisations. EMM are registered with Companies House and have a website clearly stating their investigatory and prosecutorial action.

3.2. Purpose

3.2.1. This Agreement sets out the framework for the sharing of Personal Data when one Controller discloses Personal Data to another Controller. It defines the principles and procedures that the parties shall adhere to and the responsibilities the parties owe to each other.

3.2.2. The purpose of this Agreement is to formalise the arrangements for the ACRO Criminal Records Office (ACRO), acting on behalf of UK police forces that are subject to the ACRO collaboration agreement, to provide EMM with access to relevant information held on the Police National Computer (PNC), specifically convictions, cautions, reprimands and final warnings. It is necessary for EMM to have access to such information for prosecuting offences under s.1 Fraud Act 2006, s.92 Trade Marks Act 1994 and the Tobacco and Related Products Regulations 2016. The nature of the information needed by EMM includes both recordable and relevant non-recordable offences. EMM for general / regulatory purposes will be provided with data only in instances where EMM are bringing private prosecutions under the Prosecution of Offences Act 1985, which require them to be bound by the Criminal Procedure and Investigations Act 1996 (S21(1)) and rule 8.3 (b) iv) of the Criminal Procedure Rules and para 8A.1 of the Criminal Practice Directions 2015.

3.2.3. Under this Agreement, EMM can request criminal conviction information held outside of the UK via ACRO when there is a lawful basis to do so.

3.2.4. The aim of the data sharing initiative is to enable EMM to prosecute fraudulence, by creating Arrest Summons Numbers for court purposes, required by EMM, for recordable and non-recordable offences. It will serve to benefit society by preventing and detecting unlawful acts.

- 3.2.5. This Agreement will be used to assist in ensuring that:
- a) Personal Data is shared in a secure, confidential manner with designated points of contact;
 - b) Personal Data is shared only on a 'need to know' basis;
 - c) Shared Personal Data will not be irrelevant or excessive with regards to the Agreed Purpose;
 - d) There are clear procedures to be followed with regard to Shared Personal Data;
 - e) Personal Data will only be used for the reason(s) it has been obtained;
 - f) Data quality is maintained and errors are rectified without undue delay;
 - g) Lawful and necessary reuse of Personal Data is done in accordance with Data Protection Legislation, and
 - h) Subject information rights are observed without undue prejudice to the lawful purpose of either party.
- 3.2.10 The parties agree to only process Shared Personal Data, (i) in the case of EMM discharge of its statutory functions, and (ii) in the case of ACRO, for maintenance of centralised records on the police national computer. The parties shall not process Shared Personal Data in a way that is incompatible with the purposes described in this clause ("**Agreed Purpose**").

4. Powers

4.1. EMM Legal Basis

4.1.1. EMM carries out private prosecution functions which requires access to criminal conviction information, to satisfy their requirements within the Prosecution of Offences Act 1985 and under Rule 8.3 (b)(iv) of the Criminal Procedure Rules, and Paragraph 8A.1 of the Criminal Practice Directions 2015, and under provisions outlined in the Criminal Procedure and Investigations Act 1996. The right to bring about private prosecutions derives from common law and is preserved by s.6 Prosecution of Offences Act 1985. EMM will use the common law power to prosecute offences under the Fraud Act 2006, Trade Marks Act 1994, Tobacco and Related Products Regulations 2016, Theft Act and Proceeds of Crime Act 2002.

4.1.2. The processing of these data meets a condition of Article 6(1) of UK GDPR. Conditions under 6(1)(e) are further described at section 8 of the Data Protection Act (DPA) 2018. The conditions met are:

- Legal Obligation
- Performance of a public task in the public interest or official authority

4.1.3. The processing of these data meets a condition of Article 9(2) of UK GDPR and Section 10 of the DPA 2018, the processing of special categories of personal data. The conditions met are:

- Legal claims

4.1.4. The processing of these data meets a condition under schedule 1 of DPA 2018 (special categories of personal data and criminal convictions). The conditions met are:

- Preventing/detecting unlawful acts
- Preventing fraud (anti-fraud organisations)
- Legal claims

4.2. ACRO Legal Basis

4.2.1. Section 22a of the Police Act 1996 enables police forces to discharge functions of officers and staff where it is in the interests of efficiency or effectiveness of their own and other police force areas. Schedule 7 paragraph 17 of the DPA 2018 establishes bodies created under section 22a of the Police Act 1996 as Competent Authorities.

4.2.2. ACRO is established through the National Police Collaboration Agreement relating to the ACRO Criminal Records Office (ACRO) under section 22a of the Police Act 1996. This agreement gives ACRO the authority to act on behalf of the chief constables to provide PNC enquiry, update and disclosure services to non-police agencies and non-police prosecuting agencies.

4.2.3. ACRO is a competent authority, by virtue of the s22a agreement, processing data for a law enforcement purpose.

4.2.4. ACRO have been delegated responsibility for managing the UK Central Authority for the Exchange of Criminal Records. As such, ACRO discharge the UK's responsibilities under 1959 Convention on Mutual Assistance in Criminal Matters supplemented by the Co-operation agreement between the European Union and the United Kingdom, Part 3, Title IX.

4.2.5. ACRO also exchange conviction information with countries outside of the EU via Interpol channels, subject to Interpol Protocols.

4.2.6. Under the first data protection principle, processing of personal data for any of the law enforcement purposes is lawful only if and to the extent that it is based on law. Under section 35 (2) of the Data Protection Act 2018 (DPA) the following applies;

- The processing is necessary for the performance of a task.

4.2.7. Under section 35(3-5) and schedule 8 of the DPA ACRO meets the conditions for sensitive processing as follows;

- Administration of Justice

4.3. Code of Practice for the Management of Police Information

4.3.1. This Agreement outlines the need for the Police and Partners to work together to share information in line with the Policing Purposes as set out in the Management of Police Information Code of Practice. In line with section 39A of the Police Act 1996, Chief Officers are required to give "due regard" to this statutory code. The Policing Purposes summarise the statutory and common law duties of the police service for which personal data may be processed and are described as:

- Protecting life and property;
- Preserving order;
- Preventing the commission of offences;
- Bringing offender to justice, and
- Any duty or responsibility arising from common or statute law.

4.4. Human Rights Act 1998

4.4.1. Under Article 8 of the Human Rights Act 1998, all data subjects have a right to respect for their private and family life, home and correspondence.

4.4.2. Interference with this right may be justified when lawful and necessary and in the interests of;

- Discharging the common law police duties
- Preventing/detecting unlawful acts
- Protecting public against dishonesty, etc.
- Preventing fraud

- Terrorist finance / money laundering
- Safeguarding children and adults at risk
- Safeguarding economic wellbeing of vulnerable adults

4.5. Common law Police Disclosure

4.5.1. Whereby a legislation provides the organisation with a power to process for their specific purpose, but there is no explicit gateway for disclosure into the purpose disclosure may be carried out on the grounds of Common Law police Disclosure, i.e only where there is a pressing social need.

4.6 Crime and Disorder Act 1998

4.6.1 Under Section 17 the Relevant Authority has the duty to consider crime and disorder implications and the need to do all that it reasonably can to prevent:

- crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment); and
- the misuse of drugs, alcohol and other substances in its area; and
- re-offending in its area

4.6.2 Under Section 115(1) - Any person who would not have power to disclose information to a relevant authority or to a person acting on behalf of such an authority shall have power to do so in any case where the disclosure is necessary or expedient for the purposes of any provision of this Act.

4.7 The Policing Protocol Order 2011

4.7.1 The Chief Constable is responsible for maintaining the Queen's Peace and is accountable to the law for the exercising of police powers and to the PCC for delivering of efficient and effective policing, management of resourcing and expenditure by the police force.

5. Process

5.1. Overview

5.1.1. ACRO, in response to requests made by EMM, will conduct PNC searches and provide a PNC print to meet the information needs of EMM, once a record of the prosecution is created on PNC, by ACRO, with the information supplied by EMM. A Prosecutors and Court Multiple print can then be supplied. The record creation has to be completed before PNC data is supplied to EMM, as the lawful basis has only been established for the purpose of prosecution.

5.1.2. The PNC data will comprise of:

- a) A Disclosure PNC print. The personal data disclosed under this print includes (if available): name, date of birth, birth place, sex (not colour), address, occupation, aliases (including DVLA name) and alias date of births. The home address that is printed in the ID part of the print is decided by the following rules:
 - If there is more than one home address on the record, the most recent address is used,
 - If there is no home address present, the most recent 'no fixed abode' address type will be used,
 - If neither of the above address types are present, the most recent 'Other' address is printed.
- b) A Prosecutors and Court Multiple print. The personal data disclosed under this print includes (if available): name, date of birth, birth place, address, driver number, aliases (including DVLA name) and alias date of births. The home address that is printed in the ID part of the print is decided by the following rules:
 - If there is more than one home address on the record, the most recent address is used,
 - If there is no home address present, the most recent 'no fixed abode' address type will be used,
 - If neither of the above address types are present, the most recent 'Other' address is printed.

5.1.3. ACRO shall provide to EMM for onward provision to the court a PNC Prosecutor's Multi Print showing the subject's previous convictions, warnings and reprimands, if any exist. This information shall only be provided as part of the ASN creation process in relation to a current prosecution.

5.1.4. The EMM caseworker will review all referred information and may ask for additional information to aid decision making.

5.1.5. Where an offence has been committed resulting in a conviction in court, ACRO will record this information on the PNC as required by The National Police Records (Recordable Offences) Regulations 2000 (SI 2000/1139), on behalf of the EMM.

5.2. PNC Searches

5.2.1. Requests for a PNC search are to be made by EMM on a 'Names Enquiry' form which will be supplied by ACRO separately.

5.2.2. The following Personal Data is to be provided in support of each request (where known):

- First name
- Any middle names
- Surname /family name
- Date of Birth (dd/mm/yyyy)
- Any alias details (names, DoB)
- Place of birth (where known)
- Address
- EMM case reference

5.2.3. In the event that no convictions are found on the PNC or the subject of the enquiry is 'No Trace', a response stating 'no relevant information held on PNC in relation to the subject of your enquiry' will be sent to EMM. This response will also indicate that in the absence of fingerprints the identity of the subject cannot be verified. Similar wording will apply to 'Trace' returns i.e. when a record is found and a PNC print provided.

5.3. Additional Information Requirements

5.3.1. Other personal data, which the EMM caseworker may be aware of - e.g. National Insurance Number, passport or driving licence number etc., may be provided to aid identification. This additional information will be used to confirm identity and is of particular value where the name or other personal details are identical on the PNC.

5.3.2. It is not necessary to obtain the additional information as a matter of course particularly if it is not currently recorded as part of EMM normal administrative procedures.

5.3.3. If required, ACRO will seek additional information from EMM to verify the identity of the subject of the request via the following EMM mailbox: ***@emmlegal.cjsm.net or ***@emmlegal.cjsm.net

5.3.4. All email communication containing personal and conviction data will be exchanged using password protected WinZip files if a secure email is not available.

5.3.5. No other mailbox is to be used unless this Agreement is updated to reflect a change of 'nominated' point of contact for EMM.

5.3.6. Where appropriate, EMM will make contact with the subject of the enquiry to seek the additional information required by ACRO.

5.4 Contingency Backup

5.4.1 In an event where EMM require ACRO to provide a contingency service for PNC requirements, a discussion would be needed, prior to any checks, in order to establish volumes and expected turnaround times. This is necessary in order to ensure ACRO can cope with the demand.

6. Submission

6.1. Names Enquiry Forms

6.1.1. Completed 'Names Enquiry' forms are to be sent via secure email to the following email address: ***@acro.pnn.police.uk

6.1.2. Erroneous/incomplete 'Names Enquiry' forms will not be processed. They will be returned to EMM as invalid and a reason provided.

6.2. Telephone Requests

6.2.1. Requests may be made by telephone in cases of emergency and 'Names Enquiry' form submitted retrospectively. Only a limited number of the EMM staff can make such requests.

6.2.2. As at the date of this Agreement, the EMM staff who will have the ability to make telephone requests shall be: ***, ***, *** and ***. EMM may update this list by notice to ACRO from time to time.

7. Provision of Information

7.1. Response to a PNC Names Enquiry Search

7.1.1. In response to a formal application, written or verbal, ACRO will provide the relevant Prints to EMM with the following information – derived from the PNC in response to applications made in accordance with this Agreement:

- All convictions, cautions, warnings and reprimands.
- Additional information as deemed relevant by ACRO where there is a pressing social need to do so (via a Force Disclosure Unit as appropriate).

7.1.2. If EMM require an additional copy of the 'Prosecutors Multi Print' then this should be made clear in the correspondence submitted by EMM. Such requests will be charged in accordance with the letter of charges provided separately to EMM.

7.1.3. PNC Warning Signals will not be disclosed.

7.1.4. It should be noted that the service provided under this Agreement only covers the provision of certain PNC prints depending on the request submitted by EMM.

7.1.5. If EMM has a secondary query or wishes to follow-up on the PNC information provided, a formal request is to be made through the nominated ACRO mailbox: ***@acro.pnn.police.uk

7.1.6. EMM will need to liaise directly with forces to obtain further explanation of specific information regarding the offending revealed in the prints provided under this Agreement or to gain access to statements, interviews under caution etc. relating to any previous offending. Forces may apply their own charges in respect of any information they disclose.

8. Recording Convictions on the PNC

8.1. Creating Records on the PNC

- 8.1.1. The process for creating records and assigning Arrest Summons Numbers (ASN) to prosecutions brought by Non Police Prosecuting Agencies (NPPA) is contained in the 'National Standard for Recording NPPA Prosecutions on the Police National Computer' (the 'National Standard').
- 8.1.2. EMM undertakes to adhere to the requirements of the National Standard including the requirement to complete and submit the required NPA form in the agreed format together with a copy of the relevant information to the court in order for a record to be created on the PNC. Court dates are to be provided if known at the time of submission.
- 8.1.3. EMM will supply a duly completed NPA form in respect of every person for whom a PNC record is to be created. An ASN will be provided by ACRO in return. A delay in the process is likely to occur if the information provided on the NPA form by EMM is incomplete or inaccurate.
- 8.1.4. As part of the record creation service provided by ACRO, EMM will be sent a PNC multi print for each ASN created. The multi prints consists of a Prosecutor's Print plus a Court/Defence/Probation Print. The content of each type of print is defined in the list of PNC Printer Transactions which will be supplied by ACRO separately.
- 8.1.5. Covering emails from ACRO under which the PNC prints will be returned to EMM will state that in the absence of fingerprints the subject's identity cannot be verified.
- 8.1.6. When a prosecution by EMM leads to a court appearance, ACRO will update the PNC with the required details of any adjournment or disposal. These details are provided to ACRO through automated processes when the prosecution occurs at a Magistrates Court. However, these processes do not extend to prosecutions through the Crown Court and therefore EMM is to advise ACRO of any adjournments or disposal handed down by the court using the form which will be supplied by ACRO separately.
- 8.1.7. If, once a PNC record has been created by ACRO and an ASN issued to EMM, a decision is taken to deal with the offender by way of an 'Out of Court disposal' or proceedings are otherwise concluded by way of a discontinuance or 'No Further Action' (NFA) disposal, for instance on the advice of the CPS, EMM will inform ACRO as soon as reasonably practical in order that the PNC record can be updated.

9. International Requests

9.1. Process

- 9.1.1. If the subject of an impending criminal prosecution, to be conducted by EMM, is a foreign national, a request may be made via the International Services team at ACRO to obtain, if available, details of the subject's conviction history in his/her country of nationality.
- 9.1.2. The purpose of this process is to enable the subject's full criminal history to be made available to the relevant Judicial Authority e.g. the court at which the case is being heard. EMM shall act as representatives of the Judicial Authority in this process.
- 9.1.3. ACRO can submit requests to EU and Non-EU countries for criminal conviction information. The process of this is detailed in sections 9.2-9.3
- 9.1.4. Requests should be made using the International Request form which will be supplied by ACRO separately; and sent, one request per email, from the nominated EMM mailbox to the ACRO International Requests Mailbox: ***@acro.pnn.police.uk. Erroneous or incomplete forms may delay the processing of the request.
- 9.1.5. ACRO will forward the request to the relevant national authority/ies for a response as per the instances set out in section 9.2-9.3.
- 9.1.6. Requests may be rejected if there is insufficient information to enable the receiving country to verify the identity of the subject, or if the mandatory nominal information is not supplied. Requests may not be sent if the destination country does not have a criminal register or is categorised as an extreme/severe risk country. Guidance on the required information will be sent to the EMM separately, and ACRO will send updated copies if this information changes.
- 9.1.7. Once a response has been received from the country of nationality, ACRO shall forward the conviction/non-conviction information, including any necessary translation, to the nominated EMM mailbox. If this mailbox is not .pnn, .gsi or .cjsm secure, then additional security protections may be required.
- 9.1.8. Notifications of conviction to the country of nationality of foreign nationals convicted as a result of EMM prosecutions will take place automatically and no request is required. Such notifications may be subject to a risk assessment depending on the destination country.

9.2. Exchange of Criminal Records within the EU – 1959 Convention on Mutual Assistance in Criminal Matters supplemented by the Co-operation agreement between the European Union and the United Kingdom, Part 3, Title IX.

9.2.1. If the subject is an EU national, then ACRO shall deal with the request under 1959 Convention on Mutual Assistance in Criminal Matters supplemented by the Co-operation agreement between the European Union and the United Kingdom, Part 3, Title IX.

9.2.2. There is a mandated response time of 20 working days for the requested country to respond.

9.2.3. ACRO shall forward the information as soon as possible after it has been received from the requesting country and any necessary translation has taken place.

9.3. Exchange of Criminal Records with Non-EU Countries

9.3.1. If the subject is a non-EU national, a request shall be submitted through Interpol to the destination country.

9.3.2. Under Interpol protocols, countries are not mandated to respond to requests for criminal conviction information. Therefore ACRO are unable to provide a turnaround time for responses or guarantee a response will be received.

9.3.3. ACRO shall forward the information as soon as possible after it has been received from the requesting country and any necessary translation has taken place.

9.4. Specific Data Handling

9.4.1. Any conviction information that is supplied by ACRO with regards to foreign convictions cannot be held on any system outside of ACRO/EMM ownership (such as local information systems) and can only be used for the purposes (i.e. the specific case) for which it was requested.

10. Information Security

10.1. Government Security Classification Policy

10.1.1. Parties to this Agreement are to ensure that personal data is handled, stored and processed at OFFICIAL level as defined by the Government Security Classification Policy (GSCP) and may carry the security marking OFFICIAL – SENSITIVE, in which case specific handling conditions will be provided.

10.1.2. Documents marked using GSCP will describe specific handling conditions to mitigate the risks necessitating such marking. These may include:

- a) Any specific limitations on dissemination, circulation or intended audience
- b) Any expectation to consult should reuse be anticipated
- c) Additional secure handling and disposal requirements

10.2. Security Standards

10.2.1. It is expected that partners of this agreement will have in place baseline security measures compliant with or be equivalent to ISO/IEC 27001:2013 and HMG standards in relation to information security. Partners are at liberty to request copies of each other's:

- a) Information Security Policy
- b) Records Management Policy
- c) Data Protection Policy

10.2.2. Each partner will implement and maintain appropriate technical and organisational measures to:

- Prevent:
 - i. unauthorised or unlawful processing of the Personal Data; and
 - ii. the accidental loss or destruction of, or damage to, the Shared Personal Data; and
- ensure a level of security appropriate to:
 - i. the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and
 - ii. the nature of the Shared Personal Data to be protected.

10.2.3. Any further specific security measures sought by one party shall be notified to the other party from time to time, which shall implement them where reasonably practicable. The parties shall keep such security measures under review and shall carry out updates as they agree are appropriate throughout the Term.

10.2.4. It is the responsibility of each party to ensure that its staff members are appropriately trained to handle and process the Shared Personal Data in accordance with the technical and organisational security measures together with any other applicable data protection laws and guidance, and have entered into confidentiality agreements relating to the processing of personal data.

10.2.5. Each partner will ensure that employees or agents who have access to personal data have undergone appropriate data protection training to be competent to comply with the terms of this agreement.

10.3. Volumes

10.3.1. It is estimated that for the year 2021/22, EMM will request up to c50 PNC checks, require up to c100 PNC records to be created and make up to c5 International Requests.

10.3.2. EMM will advise ACRO if the number of PNC checks and PNC updates is likely to be exceeded.

10.3.3. ACRO will audit requests against the lawful basis and these volumes to ensure that personal data is not being disclosed contrary to the lawful basis and that the agreement is fit to meet any increase in lawful demand.

10.4. Transmission

10.4.1. With the exception of telephone requests in cases of emergency, contact between ACRO and EMM should only be made over a secure communication network (Criminal Justice Secure Mail (CJSM)) agreed on the part of EMM and an equivalent method on the part of ACRO, and care must be taken where personal information is shared or discussed.

10.4.2. Emails must not otherwise be password protected, contain personal data or contain the descriptor 'Private and Confidential' in subject field, or be over 6MB in file size.

10.4.3. EMM reference number must be included in the subject field of every email sent to ACRO.

10.4.4. Where email transmission is unavailable, records may be transferred by post via encrypted media only, where encryption meets current industry standards.

10.5. Retention and disposal

10.5.1. Information shared under this Agreement will be securely stored and disposed by secure means when no longer required for the purpose for which it is provided as per each parties' Information Security Policy, unless otherwise agreed in a specific case, and legally permitted. Each party will determine and maintain their own retention schedule.

11. Information Management

11.1. Accuracy of Personal Data

11.1.1. The parties will take every reasonable step to ensure that personal data that is inaccurate, having regard to the purpose for which it is processed, is erased or rectified without delay and will notify the partners to this agreement of the erasure or rectification.

11.1.2. Where a partner rectifies personal data, it must notify any competent authority from which the inaccurate personal data originated, and should notify any other data controller of the correction, unless a compelling reason for not doing so exists.

11.1.3. It is the responsibility of all parties to ensure that the information is of sufficient quality for its intended purpose, bearing in mind accuracy, validity, reliability, timeliness, relevance and completeness.

11.2. Accuracy Disputes

11.2.1. Should the validity of the information disclosed be disputed by EMM or a third party, EMM will contact ACRO to determine a suitable method to resolve the dispute.

11.3. Turnaround

11.3.1. This Agreement requires a 7 working day turnaround (not including day of receipt or response) on all cases submitted to ACRO except where ACRO requires further information from EMM to make a positive match. In these circumstances, ACRO will process the enquiry when the required information has been supplied by EMM.

11.3.2. The above stated 7 day turn around will stand in absence of an 'urgent requests' marker and, where ACRO cannot facilitate an urgent request. EMM may submit requests to ACRO marked urgent, and ACRO will endeavour to expedite the processing of such requests when the capacity of the business can facilitate the workload.

11.3.2.1. EMM must telephone the ACRO nominated point of contact (14.1) in advance of submission to request that a case is expedited. This can be done in advance of the Court Date to inform ACRO that an urgent request – due to obtaining the defendants Date of Birth on the first attendance at court – will be made on a specific day. This will aid ACRO's ability to turn around urgent requests within a targeted 2 hour period, where capacity allows.

11.3.2.2. Should an urgent request be received after 14:30, ACRO will endeavour to complete the request by the end of the day, although ACRO cannot guarantee this.

11.3.2.3. As the lawful basis has been established for the specific task of prosecutions, it is accepted that EMM will be aware of the court date in advance of the ASN creation and PNC disclosures being required. Therefore any delay in gathering defendant data can be mitigated to ensure requests to ACRO are submitted on time, or awareness of an urgent request can be prearranged.

11.3.3. Responses to requests for additional information must be made by EMM within 10 working days (not including day of receipt or response). If ACRO do not receive the information, the request will be closed.

11.3.4. Information will be exchanged without undue delay. In the event of a delay outside of either party's control, this will be informed to the other party as soon as practical.

11.3.5. An exception to 7 working day turnaround are those occasions where the conviction data is held on microfiche in the national police microfiche library at Hendon. In these cases, ACRO will provide a response when the required information has been supplied by the custodians of the microfiche.

11.3.6. ACRO will complete/update a record on the PNC within 10 working days (not including day of receipt or response) of the receipt of a completed NPA form from EMM in respect of every person for whom a PNC record is to be created.

11.4. Quality Assurance and Control

11.4.1. ACRO employ strict quality control procedures and staff undertaking this work are all appropriately trained.

11.4.2. On a monthly basis ACRO can, if required, provide regular management information to EMM including:

- Number of PNC 'Names Enquiry' forms received
- Number of PNC Prints provided
- Details of any cases that fall outside agreed 'Service Levels'
- Number of issues and/or disputes
- Number of International Requests

12. Complaints and Breaches

12.1. Complaints

12.1.1. Complaints from data subjects, or their representatives, regarding information held by any of the parties to this agreement will be investigated first by the organisation receiving the complaint. Each data controller will consult with other parties where appropriate.

12.2. Breaches

12.2.1. Each party shall comply with its obligation to report a Personal Data Breach to the appropriate Supervisory Authority and (where applicable) data subjects under Articles 33 and 34 of the UK GDPR and shall inform the other party of any Personal Data Breach irrespective of whether there is any requirement to notify any Supervisory Authority or data subject(s).

12.2.2. The parties agree to provide reasonable assistance as is necessary to each other to facilitate handling of any Personal Data Breach in any expeditious and compliant manner.

12.2.3. In the event of a dispute or claim brought by a data subject or the Supervisory Authority concerning the processing of Shared Personal Data against either or both parties, the parties will inform each other about any such disputes or claims, and will cooperate with a view to settling them amicably in a timely fashion.

12.2.4. The parties agree to respond to any generally available non-binding mediation procedure initiated by a data subject or by the Supervisory Authority. If they do participate in the proceedings, the parties may elect to do so remotely (such as by telephone or other electronic means). The parties also agree to consider participating in any other arbitration, mediation or other dispute resolution proceedings developed for data protection disputes.

12.2.5. All security incidents and breaches involving police data shared under this agreement must be reported immediately to the SPOCs designated in this agreement.

13. Information Rights

13.1. Freedom of Information Act 2000

13.1.1. Where a party to this agreement is subject to the requirements of the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR) all parties shall assist and co-operate with the other to enable the other party to comply with its obligations under FOIA and the EIR. This is in line with the requirements laid out in the Lord Chancellor's Code of Practice issued under section 45 of FOIA.

13.1.2. Where a party receives a request for information in relation to information which it received from another partner, it shall (and shall procure that its sub-contractors shall):

- Contact the other party within two working days after receipt and in any event within two working days of receiving a Request for Information;
- The originating authority will provide all necessary assistance as reasonably requested by the party to enable the other party to respond to a request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the EIR.

13.1.3. On receipt of a request made under the provisions of the FOIA in respect of information provided by or relating to the information provided by ACRO, the EMM representative is to ascertain whether the NPCC wishes to propose the engagement of any exemptions via the NPCC FOI mailbox: npcc.foi.request@cru.pnn.police.uk

13.1.4. The decision as to whether to disclose the information remains with EMM, but will be made with reference to any proposals made by the NPCC.

13.2. Data Subject Information Rights

13.2.1. For the purpose of either party handling information rights under Chapter III of both the DPA 2018 and UK GDPR, it is necessary to ensure neither party causes prejudice to the lawful activity of the other by releasing personal data disclosed by one party to the other, or indicating by the method or content of their response that such data exists. The parties agree that consultation between the parties is necessary to identify relevant prejudice and ensure it is both substantial and proportionate to the exemption which is to be applied.

13.2.2. A relevant request requiring consultation includes those requests exercised under the rights to access, erasure, rectification, restriction or objection which requires consideration of data provide to one party by the other.

13.2.3. Consultation will occur without undue delay and no later than 72 hours after identification of the relevant request.

13.2.4. Where EMM receives a relevant request, the EMM representative is to contact the ACRO Data Protection Officer at: dataprotectionofficer@acro.pnn.police.uk to ascertain whether ACRO wishes to propose to EMM that they apply any relevant exemptions when responding to the applicant.

13.2.5. Where ACRO receives a relevant request, the ACRO Data Protection Officer is to contact the EMM representatives to ascertain whether EMM wishes to propose to ACRO that they apply any relevant exemptions prior to responding to the applicant.

13.2.6. Both parties will otherwise handle such requests in accordance with the Data Protection Legislation.

13.3. Fair processing and privacy notices

13.3.1. Each partner will take all reasonable steps to comply with the obligation to notify the data subject of the processing activity, unless an exemption applies.

13.3.2. ACRO will maintain a general notice, describing the mandatory privacy information at Articles 13 and 14 of UK GDPR and s.44(1) and (2) DPA 2018. ACRO will not contact the data subjects directly with this privacy information on the basis that EMM has already taken steps to inform the individual, or has exercised an appropriate exemption to article 13 or 14, or exercised an exemption at s44(4) DPA 2018.

13.3.3. EMM will take all reasonable steps to inform the data subject that checks will be conducted through ACRO, except where doing so would prejudice the purpose of the check in a way which would allow use of an exemption to this obligation. Where EMM does not provide this information to the data subject, ACRO agrees to rely upon the correct use of an exemption by EMM and will not contact the data subject to avoid the same prejudice.

14. Reuse of Personal Data Disclosed under this Agreement

14.1. Personal data shall be collected for the specified, explicit and legitimate purposes stated in this document and cannot be further processed in a manner that is incompatible with those purposes without the written consent of the data subject that provided the information in the first instance, unless required to by law.

15. Roles and responsibilities

15.1. Single point of contact

15.1.1. ACRO and EMM will designate Single Points of Contact (SPOC) who will work together to jointly solve problems relating to the sharing of information under this Agreement and act as point of first contact in the event of a suspected breach by either party.

- ACRO (UK PNC enquiries and updates): *** and ***

ACRO PNC Services Head of Section

***@acro.pnn.police.uk

- ACRO (International requests): *** and ***

ACRO International Services Head of Section

***@acro.pnn.police.uk

- EMM: ***

Associate

***@emmlegal.cism.net

15.1.2. Initial contact should be made by email with the subject heading:

FAO ACRO/EMM ISA SPOC Ref no: XXXX

15.1.3. The above designated SPOCs will have joint responsibility of resolving all day to day operating issues and initiating the escalation process set out if/when necessary.

15.2. Escalation

15.2.1. In the event that the nominated SPOC cannot agree on a course of action or either party appears not to have met the terms and conditions of this Agreement, the matter should initially be referred jointly to the following:

- ACRO (UK PNC enquiries and updates):

ACRO National Services Deputy Manager: ***

***@acro.pnn.police.uk

- ACRO (International requests): *** and ***

ACRO International Services Deputy Manager

***@acro.pnn.police.uk

- ACRO (Information Sharing Agreement)

OFFICIAL

ACRO Information Management

***@acro.pnn.police.uk

- EMM: ***

Partner

***@emmlegal.com

15.2.2. Both ACRO and EMM SPOCs have a responsibility to create a file in which relevant information and decisions can be recorded. The file should include details of the data accessed and notes of any correspondence, meeting attended, or phone calls made or received relating to this Agreement.

16. Charges

16.1. Price and Rates

16.1.1. EMM shall pay ACRO for the provision of services set out in this Agreement and in line with the “Letter of Charges” provided to EMM separately and are reviewed annually.

16.2. Invoices

16.2.1. Invoices shall contain the following information:

- Purchase Order Number
- The Agreement Reference Number
- The period the service charge refers to
- All applicable service charges
- The name and address of both Parties (ACRO and EMM)

16.2.2. The Purchase Order Number is to be provided by EMM for the appropriate financial year to ensure payment of invoices can be made. If a Purchase Order Number is not in hand prior to receiving enquiries ACRO reserves the right to suspend the processing of services covered under this Agreement until one has been provided.

16.2.3. EMM shall pay all monies owed to ACRO within a period of 30 days from receipt of the original invoice unless the amount shown on the invoice is disputed by EMM.

16.2.4. If EMM is in default of this condition, ACRO reserves the right to withdraw the service by advising in writing.

17. Review

17.1. Frequency

17.1.1. This ISA will be reviewed annually.

17.1.2. This renewal makes up the annual 2021/22 Agreement.

18. Warranties and Indemnities

18.1. Warranties

18.1.1. Each party warrants and undertakes that it will:

- Process the Shared Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments that apply to its personal data processing operations;
- In particular, use all reasonable efforts to ensure the accuracy of any Personal Data shared;
- Publish or otherwise make available on request a copy of this, unless the Clause contains confidentiality information;
- Respond within a reasonable time and as far as reasonably possible to enquiries from the relevant Supervisory Authority in relation to the Shared Personal Data;
- Respond to Subject Access Requests in accordance with the Data Protection Legislation;
- Where applicable, pay their own appropriate fees with all relevant Supervisory Authorities to process all Shared Personal Data for the Agreed Purpose; and
- Take all appropriate steps to ensure compliance with the security measures set out in Clause 10.2.2 above.

18.2. Indemnity

18.2.1. The parties undertake to indemnify each other and hold each other harmless from any cost, charge, damages, expense or loss which they cause each other as a result of their breach of any of the provisions of this Agreement, except to the extent that any such liability is excluded under Clause 18.3.2.

18.2.2. Indemnification hereunder is contingent upon:

- The party to be indemnified (the **indemnified party**) promptly notifying the other party (the **indemnifying party**) of a claim,
- The indemnifying party having sole control of the defence and settlement of any such claim, and
- The indemnified party providing reasonable co-operation and assistance to the indemnifying party in defence of such claim.

18.3. Limitation of liability

18.3.1. Neither party excludes or limits liability to the other party for:

- Fraud or fraudulent misrepresentation;
- Death or personal injury caused by negligence;
- A breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- Any matter for which it would be unlawful for the parties to exclude liability.

18.3.2. Subject to clause 18.3.1, neither party shall in any circumstances be liable whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:

- a) Any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill;
- b) Loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or
- c) Any loss or liability (whether direct or indirect) under or in relation to any contract.

18.3.3. Clause 18.3.2 shall not prevent claims, for:

- Direct financial loss that are not excluded under any of the categories set out in clause 18.3.2(a); or
- Tangible property or physical damage.

19. Variation

19.1. No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

20. Waiver

20.1. No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

21. Severance

21.1. If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

21.2. If any provision or part-provision of this Agreement is deemed deleted under clause 21.1, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

22. Changes to the applicable law

22.1. If during the Term the Data Protection Legislation change in a way that the Agreement is no longer adequate for the purpose of governing lawful data sharing exercises, the Parties agree that the SPOCs will negotiate in good faith to review the Agreement in the light of the new legislation.

23. No partnership or agency

23.1. Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

24. Rights and remedies

24.1. The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

25. Notice

25.1. Any notice given to a party under or in connection with this Agreement shall be in writing, addressed to the SPOC and shall be:

- Delivered by hand or by pre-paid first-class post or other next working day delivery service at its principal place of business; or
- Sent by email to the SPOC.

25.2. Any notice shall be deemed to have been received:

- If delivered by hand, on signature of a delivery receipt; and
- If sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second business day after posting or at the time recorded by the delivery service; and
- If sent by fax or email, at the time of transmission, or if this time falls outside business hours in the place of receipt, when business hours resume.

25.3. In this clause, 24 business hours means 9:00 am to 5:00 pm Monday to Friday on a day that is not a public holiday in the place of receipt, and 'business day' shall be construed accordingly.

25.4. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

26. Governing law and Jurisdiction

26.1. This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales, and subject to the jurisdiction of the courts of England and Wales.

27. Signature

27.1. Undertaking

27.1.1. By signing this Agreement, all signatories accept responsibility for its execution and agree to ensure that staff for whom they are responsible are trained so that requests for information and the process of sharing is sufficient to meet the purpose of this Agreement.

27.1.2. Signatories must ensure compliance with all relevant legislation.

Signed on behalf of ACRO	Signed on behalf of EMM
Position Held: Chief Supt – Head of ACRO	Position Held: Partner
Date: 06/07/2021	Date: 28/06/2021