WASHINGTON STATE
UNIVERSITY

DATA USE AGREEMENT
WASHINGTON STATE DATA EXCHANGE FOR PUBLIC SAFETY
ORSO# 143805-009

DRAFT

I.   PARTIES

1.1   THIS DATE USE AGREEMENT ("Agreement") is made and entered into by and between Washington State University ("WSU"), an institution of higher education and an agency of the state of Washington, and (the Public Safety Department) ("Department"). In this Agreement, the above entities are jointly referred to as ("PARTIES").

II.   PURPOSE and AUTHORITY

2.1   The purpose of this Agreement is to provide permission to WSU to allow WSU access to electronic archival data of the Department for the purposes of and in compliance with Senate Bill 5259 (2021). Senate Bill 5259 establishes the statewide Washington State Data Exchange for Public Safety ("WADEPS").

2.2   The WADEPS will serve the interest of increasing the public trust in law enforcement through accountability and transparency.

2.3   WSU successful submitted a successful proposal and was awarded to carry out the development and management of WADEPS.

2.4   The Department has the authority to enable WSU to access the archival and required data under this Agreement. Specifically, under RCW 10.118.40, all law enforcement agencies shall submit the reports required by this section in accordance with the requirements of the statewide use of force data program no later than three months after the office of the attorney general determines that the system procured in RCW 10.118.040 can accept law enforcement agency reports. Reports must be made in the format and time frame established in the statewide use of force data program.[1]

2.5   RCW 10.118.030 (1) requires that, "Each law enforcement agency in the state is required to report each incident where a law enforcement officer employed by the agency used force."[2]

2.6   WSU requests access to the specific types of data identified within RCW 10.118.030 ("DATA"), which is part of the Department's law enforcement records

---

[1] WA RCW 10.118.30 (4)
[2] WA RCW 10.118.030 (1)

owned and retained by the Department and is provided only for use in accordance with the use and storage conditions in this Agreement.

III. DEFINITIONS

3.1 "Agreement" means this Data Use Agreement, including all documents attached or incorporated by reference.

3.2 "Confidential Information" shall mean information in written, graphic, oral, or other tangible form protected by trade secret or other right of nondisclosure, including without limitation algorithms, formulae, techniques, improvements, technical drawings and data, and computer software, subject to applicable law.

3.3 "Copyright" shall mean any work developed under the Scope of Work that is subject to copyright under copyright law.

3.4 "Proprietary Information" means all data, sequences, and any other information obtained or developed during the course of the Scope of Work, subject to applicable law.

3.5 "RCW" shall mean Revised Code of Washington.

3.6 "Scope of Work" shall mean the WADEPS, under the direction of the Project Director.

3.7 "Trademark" shall mean any trade or service marks developed under the Scope of Work whether or not registered under either state or federal trademark law.

3.8 "WADEPS" shall mean the Washington State Data Exchange for Public Safety.

3.9 "WSU / WASDEPS Project Director(s)" shall be Dr. David A. Makin, a WSU employee, designated by WSU to be the primary research contact with the Department.

IV. DESCRIPTION OF DATA

Department shall provide all data sets listed in RCW 10.118.30[3].

In addition to the above data requirements found in RCW 10.118.30, each law enforcement agency must also report any additional incidents and data required by the statewide use of force data program developed above. [4]

V. DATA USE

WSU will make a public-facing informational website known as the WADEPS data system available containing de-identified data associated with the use of force and police interactions with the public. Data on the program's interactive dashboard will be available for download by the public. Departments will retain access to their data in its identifiable form or internal purposes, which will be accessible via the WADEPS data system.

VI. GENERAL TERMS AND CONDITIONS

---

[3] WA RCW 10.118.030 (2)
[4] WA RCW 10.118.030 (3)

In consideration of the mutual promises and covenants contained herein, the PARTIES agree to the following terms and conditions.

5.1   Period of Performance. The period of performance for this Agreement shall be upon the execution of this Agreement to 06/30/2028, unless a time extension is mutually agreed upon in writing between the PARTIES in accordance with Section 5.15, Amendments. Upon the end of the period of performance and if no time extension is executed, this Agreement will be assigned in accordance with Section 5.16, Assignment.

5.2   Confidential Information.

5.2.1   To the extent allowed by law, WSU and the Department agree to use reasonable care to avoid unauthorized disclosure of Confidential Information, including, without limitation, taking measures to prevent creating a premature bar to a United States or foreign patent application. Each party will limit access to Confidential Information received from another party hereto to those persons having a need to know. Each party shall employ the same reasonable safeguards in receiving, storing, transmitting, and using Confidential Information that prudent organizations normally exercise with respect to their own confidential information of significant value.

5.2.2   Confidential Information shall include written, graphic, or oral communication. Confidential Information shall not be disclosed by the receiving party to a third party for a period of five (5) years from receipt of such information or the Confidential Information is published by the disclosing party or unless the disclosing and receiving parties agree otherwise and in writing at the time of disclosure. Third parties shall include all governmental offices.

5.2.3   Confidential Information shall not include information which:

5.2.3.1   was in the receiving party's possession prior to receipt of the disclosed information;

5.2.3.2   is or becomes a matter of public knowledge through no fault of the receiving party.

5.2.3.3   is received from a third party without a duty of confidentiality.

5.2.3.4   is independently developed by the receiving party.

5.2.3.5   is required to be disclosed under operation of law.

5.2.3.6   is reasonably ascertained by WSU or the Department to create a risk to a trial subject or to public health and safety.

5.2.4   It is understood that as an educational institution of the state of Washington, WSU is subject to Washington state laws and regulations, including the Washington Public Records Act, Chapter 42.56 RCW. It is also understood that the Department is subject to the Public Records Act. If a Public Disclosure Act request is made to view Department's Confidential Information, WSU will promptly notify Department of the request, such that Department has the opportunity to seek a court order enjoining disclosure. WSU will work collaboratively Department to identify any applicable exemption(s) to disclosure and appropriately redact the

information to be released. The release of data will be limited to only those records that must be released to comply with the request.

5.3 <u>Security of Data</u>

    5.3.1   WSU will establish a public-facing informational data system that will host de-identified data pertinent to the use of force and police interactions with the public. This data will be anonymized to ensure the utmost protection of individual privacy rights. The data will be available on the program's interactive dashboard for public access and download, adhering to all applicable data protection and privacy laws.

    5.3.2.   Departments will maintain access to their respective data in identifiable form strictly for internal purposes. This identifiable data will be safeguarded with robust security measures to prevent unauthorized access and ensure data security. Access to this identifiable data will be strictly controlled and made available via the data system only to authorized personnel.

    5.3.3   An external security audit will be conducted regularly to enhance data security and integrity. This audit will be performed by a reputable third-party auditor specializing in data security. The auditor will evaluate the effectiveness of our data protection measures, identify potential vulnerabilities, and recommend improvements. The audit findings will be used to improve our data security protocols and practices continually.

    5.3.4   Regular internal audits will also be conducted to ensure data protection and adherence to security protocol. These audits will complement the external security audits, providing a comprehensive approach to maintaining data security and protection.

    5.3.5   According to the approved WSU Institutional Review Board, de-identified data shall refer to the confidential linked ID, which is generated in the data. This confidential linked ID de-identifies the officer.

5.4 <u>Publicity</u>. The Department shall not include the name of Washington State University, WSU, or any of either entity's Trademarks in any advertising, sales promotion, or other publicity matter without prior written approval of the President of WSU or their designee.

5.5 <u>Dispute Resolution</u>. Except as otherwise provided in this Agreement, when a dispute arises between the PARTIES and it cannot be resolved by direct negotiation, any party may request a dispute resolution panel (DRP). A request for a DRP must be in writing, state the disputed issues(s), state the relative positions of the PARTIES, and be sent to all PARTIES. PARTIES must provide a response within thirty (30) days unless the PARTIES mutually agree to an extension of time. Each party shall designate a representative. The representatives shall mutually select an additional member. The DRP shall evaluate the facts, Agreement terms, and applicable statutes and rules and make a determination by majority vote. The decision is binding on the PARTIES.

Nothing in this Agreement shall be construed to limit the PARTIES' choice of a mutually acceptable dispute resolution method in addition to the dispute resolution procedure outlined above.

5.6   Disclaimer. WSU MAKES NO EXPRESS OR IMPLIED WARRANTY AS TO THE CONDITIONS OF THE SCOPE OF WORK, SPONSORED PROJECT OR ANY INTELLECTUAL PROPERTY, GENERATED INFORMATION, OR PRODUCT MADE OR DEVELOPED UNDER THIS AGREEMENT, OR THE OWNERSHIP, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE SPONSORED PROJECT, SCOPE OF WORK, OR RESULTING PRODUCT.

5.7   Indemnity. Each party to this Agreement agrees to be responsible for the liabilities arising out of their own conduct and the conduct of their officers, employees, and agents.

5.8   Amendments. This Agreement may be amended by mutual agreement of the PARTIES. Such amendments shall be in writing and signed by personnel authorized to bind each of the PARTIES.

5.9   Assignment. At the expiration of this Agreement the work to be provided under this Agreement will be unilateral assigned from WSU to Washington State Office of the Attorney General in whole.

5.10   Notices. Any notice or communication required or permitted under this Agreement shall be delivered by overnight courier, or by registered or certified mail, postage prepaid and addressed to the party to receive such notice at the address given below or such other address as may hereafter be designated by notice in writing. Notice given hereunder shall be effective as of the date of receipt of such notice:

WSU:
Name/Title: David A. Makin   Phone: (509) 335-2455
Address: Washington State University
                Department of Criminal Justice
                719 Johnson Tower   Email: dmakin@wsu.edu
City/State/Zip: Pullman, WA 99164-3140

DEPARTMENT:

Name/Title:

Address:

City/State/Zip:

5.11   Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the state of Washington and the venue of any action brought hereunder shall be in the Superior Court of Whatcom County.

5.12   Compliance with Laws. The Parties understand that WSU and the Department are subject to United States laws and federal regulations, including the export of technical data, computer software, laboratory prototypes and other commodities (including the Arms Export Control Act, as amended, and the Export Administration

Act of 1979), and that the Department's and WSU's obligations hereunder are contingent upon compliance with applicable United States laws and regulations, including those for export control.

5.13   Severability. If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

5.14   Order of Precedence. In the event of an inconsistency in this Agreement, the inconsistency shall be resolved by giving precedence in the following order:
1.   Applicable statutes and regulations;
2.   Terms and Conditions contained in this Agreement;
3.   Any other provisions incorporated by reference or otherwise into this Agreement.

5.15   Complete Agreement. This Agreement contains all the terms and conditions agreed upon by the PARTIES. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the PARTIES hereto.

5.16   Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the PARTIES hereto have executed this Agreement as of the signature date included below.

WA LAW ENFORCEMENT DEPARTMENT

_____

Name:
Title:

Date: _____