



**MEMORANDUM OF UNDERSTANDING BETWEEN
THE KENTUCKY STATE POLICE COMMUNICATIONS BRANCH
AND**

(Federal Agency, State, or Local Jurisdiction, Emergency Organization)

THIS MEMORANDUM OF UNDERSTANDING (this “**MOU**”) is entered into as of the Effective Date (as such term is defined in Article III hereof) between the **KENTUCKY STATE POLICE COMMUNICATIONS BRANCH (“KSP”)**, by and through its duly authorized representatives, and _____ (“**JURISDICTION**”) by and through its duly authorized representatives (individually, “**Party**” and collectively, the “**Parties**”).

W I T N E S S E T H:

WHEREAS, the Commonwealth of Kentucky empowered **KSP** to, through Capital Project Funding, promote the efficient use of public resources to ensure that all first responders and public safety officials have effective communications services available for day-to-day operations and emergency situations; and

WHEREAS, **KSP** is implementing Kentucky’s Statewide Emergency Responder Voice System (“**SERVS**”), a 700 MHz digital trunked statewide wireless communications system, to serve wireless users in Kentucky state and local governments; and

WHEREAS, the Commonwealth of Kentucky has authorized **KSP** to enter into agreements among federal, state and local agencies for the use of the **SERVS**; and

WHEREAS, **JURISDICTION** desires to use the **SERVS** communications system for the **JURISDICTION’S** public safety and emergency response agencies; and

WHEREAS, **KSP** and **JURISDICTION** desire to enter into this MOU to allow **JURISDICTION** to use the **SERVS** for public safety purposes, to operate **JURISDICTION’S** portable, mobile, consolettes, or control stations, each a push-to-talk radio device but not including cellular telephones (collectively, “**PTT Devices**”) acquire new PTT Devices, and to use such PTT Devices on the **SERVS**; and

WHEREAS, the **KSP** will issue system identification numbers and assist **JURISDICTION** with the design of a programming template (FLEETMAP) allowing **JURISDICTION**'s PTT Devices to operate on **SERVS**.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

I. General Implementation and Administrative Relationship

A. KSP shall:

1. Allow **JURISDICTION** PTT Devices to operate on the **SERVS** for official public safety purposes;
2. Establish selection guidance and provide an authorized list of equipment to facilitate the procurement by **JURISDICTION** of PTT Devices and other equipment compatible with the **SERVS**, pursuant to terms found in Kentucky Master Agreement or applicable Federal procurement guidelines, provided, however, that **JURISDICTION** receives approval of the Kentucky Wireless Executive Committee (KWIEC) and the Commonwealth Office of Technology (COT) as defined in KRS 42.734 - 42.738;
3. Provide network management as to **SERVS**, including monitoring, maintenance, and repair of the **SERVS**; and

B. JURISDICTION shall:

1. Operate all PTT Devices only for purposes of official public safety and in compliance with Federal Communications Commission and **KSP** policies, standard operating procedures, rules and regulations, including but not limited to any such policies, standard operating procedures, rules and regulations created or amended after the execution of this MOU.
2. Upgrade any P25 compliant FDMA PTT Devices and other equipment operating on the **SERVS** to P25 compliant TDMA devices within 36 months of the **SERVS** initiating system-wide TDMA operation.

C. Communication Liaison Officer

JURISDICTION shall promptly designate an employee to serve as its Communication Liaison Officer (the “**Liaison Officer**”) upon MOU execution and inform the **KSP** within ten (10) days of such designation of the identity. The **JURISDICTION** Liaison Officer will be responsible for obtaining authorization of template modifications, coordination of access for new PTT Devices used on the **SERVS**, providing fleetmapping data to **KSP** for record keeping, providing after-hour emergency telephone numbers, and attending **SERVS** advisory board meetings necessary for the safe and efficient operation of the **SERVS**. **KSP** shall promptly designate an employee to serve as its Liaison Officer to **JURISDICTION** upon MOU execution and inform **JURISDICTION** within ten (10) days of such designation.

D. **SERVS** Design

SERVS is a 700 MHz trunked communication system designed with aspirations of mobile coverage within the borders of the Commonwealth of Kentucky; provided, however, specific levels of coverage vary in geographic areas, and PTT Device users may experience limited or no coverage in certain buildings or other areas. **JURISDICTION** will have the opportunity to evaluate **SERVS** system coverage, specific to their geographic area, to establish a baseline expectation of system availability prior to MOU execution. The cost and expense of any equipment, services, or infrastructure required to increase/augment radio coverage shall be the sole responsibility of **JURISDICTION**, and its procurement and implementation overseen by **KSP**.

E. **JURISDICTION** Equipment

JURISDICTION may use only **KSP**-approved wireless equipment on the **SERVS**, and such equipment shall have authorized and validated serial numbers, talk groups and PTT Device identifications. The authorized list of equipment may be updated from time to time by **KSP** and will be made available to the **JURISDICTION**.

Prior to programming any radio templates, **JURISDICTION** shall provide **KSP** with a list of its radio equipment which shall include, without limitation, the manufacturer, model number and serial number of the item of equipment. Proposed radio template creations or modifications by **JURISDICTION** shall require approval by the **SERVS** personnel prior to implementation.

JURISDICTION operation, maintenance and repair of its communication equipment shall meet or exceed all Federal Communications Commission and other applicable laws, rules and regulations, all applicable equipment manufacturer’s requirements and equipment manufacturer’s preventive maintenance recommendations, and provide and maintain an additional vendor-supplied, hardware maintenance agreement, on hardware defined as infrastructure by **SERVS**.

JURISDICTION shall provide and maintain a vendor-supplied software upgrade agreement on their **SERVS** facing hardware, to ensure compatibility with **SERVS** system software version during the terms of this MOU. The Communication Liaison Officer will be responsible for reviewing and ensuring all required agreements on **SERVS** facing hardware are compatible and up to date.

If **JURISDICTION** detects a PTT Device unit coverage issue, **JURISDICTION** shall first contact **JURISDICTION** hardware maintenance agreement holder for an evaluation of the problem. If the service provider determines the problem does not originate from **JURISDICTION** PTT Device(s) or the installation and/or maintenance of the **JURISDICTION** equipment, **JURISDICTION** shall then notify and provide the details of such problem to the **SERVS** Liaison Officer.

If the PTT Device unit coverage issue is not PTT Device-related, the **SERVS** and **JURISDICTION** Liaison Officers shall research the issue to determine a solution.

F. Operations, Repair and Maintenance of **SERVS**

KSP agrees to use commercially reasonable efforts to maintain the **SERVS** and its communication equipment in good working order at all times. HOWEVER, IN NO EVENT SHALL **KSP**, ITS EMPLOYEES OR OFFICERS, OR THE COMMONWEALTH OF KENTUCKY BE LIABLE FOR ANY DIRECT, INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES OR ANY DAMAGES WHATSOEVER INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF USE, SERVICE DEFECTS, SERVICE LEVELS, DELAYS OR ANY SERVICE ERRORS OR INTERRUPTIONS OR DAMAGES FLOWING FROM SUCH LOSS OF USE, SERVICE DEFECTS, SERVICE LEVELS, DELAYS OR ANY SERVICE ERRORS OR INTERRUPTIONS, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OR PERFORMANCE OF **SERVS**, THE PROVISION OF OR FAILURE TO PROVIDE SERVICES, OR OTHERWISE ARISING OUT OF THE USE OF **SERVS**, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, EVEN IF **KSP**, ITS EMPLOYEES, OFFICERS AND MEMBERS, AND COMMONWEALTH OF KENTUCKY HAVE BEEN ADVISED OF THE POSSIBILITY OF DAMAGES.

KSP will encourage all public safety and general government agencies and other **SERVS** operators to submit written system radio trouble reports to **KSP**. **KSP** shall investigate and, to the extent feasible, provide solutions in response to radio trouble reports. **KSP** shall periodically report to **JURISDICTION** on the status and disposition of radio trouble reports provided by **JURISDICTION**.

G. Compliance with **SERVS** Guidelines, Procedures and Protocols and Prohibition against Release of Sensitive Information

JURISDICTION shall comply with all **SERVS** guidelines, procedures and protocols, and **KSP** regulations governing the operation and use of **SERVS**. The release of the **SERVS** system key, system and radio identifications, radio serial

numbers, encryption key information, if applicable, and all other system- specific and proprietary information to unauthorized third parties is strictly prohibited without the prior written consent of the **KSP** Executive Officer.

JURISDICTION agrees to take appropriate corrective action against any of its employees who violate **SERVS** standards, guidelines, procedures and protocols.

H. System Management

JURISDICTION shall comply with **SERVS** management requirements in order to ensure the safe and efficient operation of the **SERVS** for all users. **KSP** shall be responsible for monitoring the use of all PTT Devices as part of **SERVS** management. **KSP** shall periodically report to **JURISDICTION** on the performance of its communications equipment on the **SERVS** and shall immediately report on any system component or emergency service requirement.

I. Trained Personnel

JURISDICTION will not permit any of its employees or any other person, including volunteers, to use the **SERVS** until such employee or other person has received adequate **SERVS** user training.

J. Decision to Rebuild

In the event of a catastrophic event in which the **SERVS** is materially damaged or destroyed, **KSP** may, in its sole discretion, elect to rebuild, repair or abandon all or part of the damaged **SERVS**. **KSP** shall issue a written notice to **JURISDICTION** within thirty (30) days of any such catastrophic event. Within ninety (90) days of such event, **KSP** shall notify **JURISDICTION** of its decision to rebuild, repair or abandon all or part of the damaged **SERVS**.

II. Resolution of SERVS Performance Issues

If any issue of inadequate or non-performance of the **SERVS** arises, the Parties agree to attempt to resolve the issue through their respective Liaison Officers. The Liaisons shall consider all readily available information which is relevant to such inadequate or non-performance of the **SERVS** and in good faith seek a mutually-agreeable solution. In the event the Liaisons cannot agree on a solution, such inadequate or non-performance of the **SERVS** shall be referred to the KSP Communications Branch leadership and **JURISDICTION** communication manager for resolution. If such issue(s) remains unresolved, the issue(s) shall be referred to the KSP Command Staff for resolution.

III. Effective Date and Term

A. Effective Date

This MOU is effective the last date of execution by the Parties (the “**Effective Date**”).

B. Term

Subject to Article VI below, the initial Term of this MOU shall be five (5) years, commencing on the Effective Date. This MOU shall be automatically renewed for successive five (5) year renewal Terms unless either Party provides written notice to the other Party of its decision to not renew the Term of this MOU at least ninety (90) days prior to the expiration of the Term.

IV. **Modification**

The Parties may propose modifications or amendments to this MOU by providing written notice to the other Party. Such notice shall include a statement and summary of the purpose and reason for the modification or amendment. Any modification or amendment to this MOU shall become effective only upon approval and written execution by both Parties.

V. **Federal and State Licensing Requirements and Upgrades**

A. FCC Licenses

JURISDICTION shall have the right to use the frequencies licensed to the Commonwealth of Kentucky and **KSP** for **SERVS**, including all available channels for current and future use by and expansion of the **SERVS**.

B. Upgrade Costs

In the event that **KSP** is forced or elects to upgrade **SERVS** software and/or hardware, **JURISDICTION** shall be responsible for costs related to any upgrade of its self-owned equipment.

VI. **Termination**

A. Termination by Notice

This MOU will be subject to termination upon thirty (30) days written notice by either Party. In the event either Party terminates this MOU, or if either Party elects to not renew the Term of this MOU, neither Party shall be obligated to pay the other Party any costs, fees, or damages of any kind.

B. Termination Obligations

Upon termination of this MOU by either Party, any obligations of the other Party for maintenance or repair services or for upgrades shall cease.

C. Effect of Termination

In the event of termination, each Party agrees to use reasonable efforts to assist the other Party in separating into two independent wireless communication systems during the 30-day termination notice period, but shall have no obligation to pay any costs, fees, compensation or damages of any kind to the other party resulting from the termination. Notwithstanding the right of termination by either Party, **JURISDICTION** shall have the right to operate its PTT Devices on the **SERVS** for a period of up to 180 days after the effective date of termination, during which period of time **JURISDICTION** agrees to use all reasonable efforts to migrate its PTT Devices to a non-**SERVS** system.

VII. Notices

All notices given under this MOU shall be made in writing and delivered by (i) U.S. Mail, certified and return receipt requested, (ii) overnight courier with delivery receipt, or (iii) messenger with delivery receipt. All notices will be sent to the Parties as follows:

If to (County or City):

Jurisdiction

Attention: _____

If to KSP: Kentucky State Police Communications Branch
 Attention: David Barker
 Communication Commander
 1311 Louisville RD
 Frankfort, KY 40601

VIII. General Terms

A. Confidentiality

All records generated as the result of **JURISDICTION** use of **SERVS** are considered public records, pursuant to the authority of the Kentucky Open Records Act, defined in 1976 through KRS 61.870 to 61.844. However, the KSP shall give reasonable notice to

JURISDICTION of any request for such records, to allow **JURISDICTION** to determine whether such records fall within any of the statutory exceptions/exemptions for the inspection/production of such records under the

Kentucky Open Records Act.

B. Headings

The section headings in this MOU are inserted only for convenience and are not to be construed as part of this MOU or as a limitation of the scope of the particular section to which the heading refers. The Parties agree that this MOU should be fairly interpreted in accordance with its terms and conditions and not for or against either Party, regardless of which Party was primarily responsible for the drafting of this MOU.

C. Severance Clause

If any provision of this MOU or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of the MOU shall not be affected thereby and shall remain valid and enforceable to the fullest extent permitted by law.

D. Independent Entities

Each Party will perform its duties under this MOU as an independent entity. The Parties and their personnel will not be considered to be employees or agents of the other Party. Nothing in this MOU will be interpreted as granting either Party the right or authority to make commitments of any kind for the other. This MOU will not constitute, create, or be interpreted as a joint venture, partnership or formal business organization of any kind.

E. Waiver

Failure or delay by either Party to exercise a right or power under this MOU will not be a waiver of the future exercise of such right or power. For a waiver of a right or power to be effective, it must be in a writing signed by the waiving Party. An effective waiver of a right or power will not be construed as either a future or continuing waiver of that same right or power, or the waiver of any other right or power.

F. Severability

If a court of competent jurisdiction renders any part of this MOU invalid or unenforceable, that part will be severed and the remainder of this MOU will continue in full force and effect.

G. Entire Agreement

This MOU contains the entire and final agreement of the Parties and all prior negotiations and agreements are integrated and merged herein. Neither Party nor its agents has made any representations except those expressly set forth herein.

H. Compliance with all Applicable Laws

Each Party will comply with all applicable federal and state laws, state and federal regulations, including but not limited to Federal Communication Commission and KSP policies, standard operating procedures, rules, and regulations, and other state and federal rules, including any such policies, standard operating procedures, rules, regulations, or laws created or amended after the execution of this MOU, concerning the performance of this MOU or use of **SERVS**.

I. Governing Law and Venue

This MOU shall be governed by, and construed in accordance with, the laws of the Commonwealth of Kentucky. The Parties agree that any claim, action, or lawsuit arising under this MOU must be brought in Franklin Circuit Court in the Commonwealth of Kentucky.

J. Assignment

No Party shall assign its respective rights or obligations under this MOU without prior written consent of the other party. Any purported assignment or delegation in violation of this MOU is void.

K. No Waiver of Rights, Privileges, or Immunities

Nothing in this MOU shall be deemed to waive, or otherwise limit, the rights, privileges, immunities, including sovereign immunity granted under Kentucky Constitution §§ 230 & 231 and the United States Constitution Eleventh Amendment, and matters of defense now available or hereafter made available to the Commonwealth and/or its officers and employees.

IN WITNESS WHEREOF, duly authorized representatives of the Parties hereby execute and approve this Memorandum of Understanding effective as of the latest date set forth below:

KENTUCKY STATE POLICE

JURISDICTION

By:_____

By:_____

Printed Name:_____

Printed Name: _____

Title:_____

Title: _____

Date:_____

Date:_____

County or City MOU