

**AGREEMENT
BETWEEN
THE STATE OF TEXAS
AND
Williamson County Sheriff's Office (WCSO)
(Booking Agency)**

**FOR
PARTICIPATION IN THE STATE DNA RAPID DNA PROGRAM AND THE
NATIONAL DNA INDEX SYSTEM**

WHEREAS, the Rapid DNA Act of 2017 (34 U.S.C. § 12591 et seq.) authorized the Director of the Federal Bureau of Investigation (hereinafter referred to as "FBI") to issue standards and procedures for the use of Rapid DNA instruments and the resulting DNA analyses; and

WHEREAS, Texas Government Code Chapter 411, Subchapter G, DNA Database System authorizes the collection of DNA samples from persons arrested for felony offenses and the analysis and databasing of the resulting DNA analyses during or immediately following the booking of the arrestee, or at any time thereafter; and

WHEREAS, Texas has implemented the collection, analysis and databasing of DNA samples from arrestees and has received an authority to operate a Rapid DNA Program from the FBI; and

WHEREAS, the WCSO has an approved Rapid DNA Booking System and wishes to participate in the State Rapid DNA Program in accordance with the applicable Federal and State laws, standards, regulations and procedures; and

WHEREAS, the WCSO will collect DNA samples from persons arrested for felony offenses and will analyze the DNA samples using an NDIS approved Rapid DNA Booking System in accordance with Texas Government Code Chapter 411, Subchapter G, DNA Database System, and will have the resulting DNA analyses searched against the DNA Index of Special Concern (DISC) to identify any additional crimes for which that arrestee may be implicated; and

WHEREAS, the Texas Department of Public Safety and WCSO [Booking Agency] will participate in the Rapid DNA Program to search DNA records collected during the booking process in accordance with applicable Federal and State laws and standards/procedures;

NOW, THEREFORE, this **AGREEMENT** (hereinafter referred to as "Agreement"), effective on the date of the last party to sign, is entered into by and between the Texas Department of Public Safety (hereinafter referred to as "DPS") and the following law enforcement Booking Agency, known as Williamson County Sheriff's Office within the State of Texas, which will hereinafter be referred to by proper name, or as "Booking Agency." In consideration of the mutual obligations contained herein, it is agreed by and between the parties as follows:

I. GENERAL TERMS & CONDITIONS

- A. DPS and the State CODIS Administrator shall serve as the central point of contact for access to the National DNA Index System (“NDIS”) administered and operated by the Federal Bureau of Investigation.
- B. DPS and the Booking Agency identified in this Agreement agree to abide by the terms and conditions specified in the following documents:
 - 1. The “Standards for the Operation of Rapid DNA Booking Systems by Law Enforcement Booking Agencies,” attached hereto as Appendix A, which is incorporated in and made a part of this Agreement.
 - 2. The “National Rapid DNA Booking Operational Procedures Manual,” attached hereto as Appendix B, which is incorporated in and made a part of this Agreement.
 - 3. The “Criminal Justice Information Services (CJIS) Security Policy,” attached hereto as Appendix C, which is incorporated in and made a part of this Agreement.
 - 4. The State of Texas DNA Database Law, Government Code Chapter 411, Subchapter G, DNA Database System, attached hereto as Appendix D, which is incorporated in and made a part of this Agreement.
 - 5. The State of Texas Rapid DNA Program Procedures, attached hereto as Appendix E, which is incorporated in and made a part of this Agreement.
- C. The State CODIS Administrator and State designated Rapid DNA Program Administrator shall be responsible for ensuring all Booking Agencies participating in the Rapid DNA Program adhere to and comply with the terms and conditions of this Agreement.

II. LICENSE TO USE COMBINED DNA INDEX SYSTEM (CODIS) SOFTWARE

- A. The FBI has granted DPS an unlimited sublicense to use the CODIS software and CODIS Rapid Enrollment application thereto (hereinafter collectively referred to as the “CODIS software”).
- B. By signing this Agreement, the Booking Agency expressly agrees:
 - 1. The CODIS software, for which the FBI has or will obtain an unrestricted license to use, shall remain the exclusive property of the FBI.
 - 2. The Booking Agency shall not use the CODIS software in any manner until specifically authorized to do so by the FBI.
 - 3. The Booking Agency has no right to distribute or sublicense the CODIS software, and shall not copy the CODIS software for purposes of distribution or distribute the CODIS software to any person or agency outside the Booking Agency without the express written permission of the FBI. The Booking Agency shall not publish or publicly disclose information obtained from or included in the CRE, including, but not limited to: CRE

guidance material, screen shots of CRE, or instructional and/or training materials without the prior written approval of the FBI. Additionally, the Booking Agency shall not use the CODIS software in any manner not authorized by the FBI.

4. The FBI may terminate the Booking Agency's license to use the CODIS software immediately if the Booking Agency is found to be in violation of any of the provisions of the software license. In the event the license to use the CODIS software is terminated, the Booking Agency shall remove the CODIS software from its system(s), including all on-line and backup storage media, within ten (10) business days of receipt of the termination notice, and shall immediately return the CODIS software and all accompanying materials provided by the FBI.
5. The Booking Agency shall take reasonable precautions to prevent unauthorized persons from accessing the CODIS software. For purposes of the software license, unauthorized persons shall mean persons who are **not** Rapid DNA Booking System Lead Operators or Operators. In the event that the FBI determines that such reasonable precautions have not been taken, the sublicense to use the CODIS software will be canceled immediately and will not be restored unless and until the Booking Agency has established that sufficient security procedures have been implemented to protect the CODIS software from unauthorized access. The determination whether sufficient security procedures to protect the CODIS software have been implemented by the Booking Agency shall be in the sole discretion of the FBI. If sufficient security procedures have not been implemented to the satisfaction of the FBI within thirty (30) business days of receipt of the cancellation notice, the FBI may terminate the Booking Agency's license to use the CODIS software and the Booking Agency shall return the CODIS software to the FBI as provided above.

III. ROLES AND RESPONSIBILITIES

- A. This MOU applies to Rapid DNA analysis of arrestee profiles at the Booking Agency for CODIS enrollment and searching provided by the Booking Agency and DPS's responses thereto.
- B. Specifically, DPS will:
 1. Provide technical and IT support for participant use of the Rapid DNA instrument and the CODIS Rapid Enrollment App software.
 2. Facilitate Rapid DNA data transmission via the CJIS WAN.
 3. Provide the Booking Agency with Statewide policies and procedures governing the Rapid DNA booking program and assist with the drafting and implementation of required Booking Agency policies and procedures.
 4. Provide training for certification of Lead Operators and Operators and refresher training as applicable.
 5. Audit the Booking Agency annually or more often, as determined by DPS, to ensure compliance with the "Standards for the Operation of Rapid DNA Booking Systems

by Law Enforcement Booking Agencies” in accordance with state policies and procedures.

C. The Booking Agency acknowledges:

1. Under Texas Government Code Chapter 411, Subchapter G, DNA Database System, DPS is authorized to establish a computerized State DNA identification index for the State of Texas. The Booking Agency expressly agrees that access to the State DNA Index System (SDIS) shall be authorized in accordance with the provisions of State law and this Agreement.
2. DNA records contained in SDIS are the responsibility of and controlled by DPS in accordance with Texas Government Code Chapter 411, Subchapter G, DNA Database System. The Booking Agency shall comply with all State Rapid DNA Program policies and procedures, including but not limited to, the following:
 - a. DNA indicator information associated with computerized criminal history (CCH) records to indicate if the Arrestee already has a DNA profile in SDIS;
 - b. Format and numbering scheme for Arrestee sample specimen ID number (CODIS Specimen ID);
 - c. The number of swabs to be collected from each Arrestee;
 - d. Identification and resolution of Rapid DNA swab and instrument failures;
 - e. Authorized only for use for Arrestee DNA analysis;
 - f. Use of NDIS approved Rapid DNA Booking Systems; and
 - g. Use of Certified Rapid DNA Lead Operators and Rapid DNA Operators.

D. The Booking Agency expressly agrees in this Agreement that it is the Booking Agency’s responsibility for the following:

1. To be integrated with an automated electronic fingerprint process to ensure only qualifying Arrestees are processed to generate the Arrestee Enrollment Format (AEF) information for submission to CODIS;
2. To ensure secure transfer of the AEF information in a manner that maintains the continuity of the swab, the State Identification Number (SID), and the Specimen ID number in accordance with the CJIS Security Policy and the State Rapid DNA Program procedures;
3. To ensure that their information technology (IT) environment has the capability to execute the FBI-provided CODIS Rapid DNA Enrollment application software (CRE)

required for processing the Rapid Common Message Format (Rapid CMF) message and support two-way communication with the State Identification Bureau (SIB)/CJIS Systems Agency (CSA) in compliance with the CJIS Security Policy;

4. To use NDIS approved Rapid DNA Booking Systems to perform Rapid DNA analysis on qualifying Arrestee cheek swabs;
5. To designate a Rapid DNA Lead Operator and back-up Lead Operator and to notify DPS within five (5) calendar days if there is a vacancy in the Lead Operator position, or if the Booking Agency's Rapid DNA operations are suspended;
6. To comply with statewide policy for designation of roles and responsibilities for Rapid DNA Lead Operators and Operators;
7. To provide the Arrestee's resulting DNA profile and DNA data, as applicable, to DPS;
8. To comply with the statewide policy for responding to Unsolicited DNA Notifications (UDN) resulting from Rapid DNA Arrestee hits to crime scene profiles in the DISC;
9. To maintain records of their Rapid DNA Program in accordance with the retention period required by applicable State and local laws, including, but not limited to, this MOU agreement, audit records including corrective action documentation, training records for Lead Operators and Operators, and Rapid DNA Booking System records as required by State procedures;
10. To participate in annual or more frequent audits by DPS to ensure compliance with the policies and procedures of the State's Rapid DNA Program and the FBI's "Standards for the Operation of Rapid DNA Booking Systems by Law Enforcement Booking Agencies;"
11. To safeguard the confidentiality of the DNA samples, resulting DNA profile and DNA data in accordance with the National Rapid DNA Booking Operational Procedures Manual and Federal and State laws, and not to file, maintain, store or database CODIS-eligible DNA profiles in a separate database or any other type of file; and
12. To comply with statewide policy for data security requirements including data deletion.

IV. BOOKING AGENCY TO COMPLY WITH THE FEDERAL DNA IDENTIFICATION ACT OF 1994

- A. As required by 34 U.S.C. § 12592, the Federal DNA Identification Act of 1994 (hereinafter referred to as the "DNA Act"), the Booking Agency shall only contribute DNA identification records and DNA analyses to NDIS which are:
 1. Based on analyses performed by or on behalf of a criminal justice agency in accordance

with publicly available standards that satisfy or exceed the guidelines for a quality assurance program for DNA analysis issued by the Director of the FBI under the DNA Act.

2. Prepared by criminal justice agencies using Rapid DNA instruments approved by the Director of the Federal Bureau of Investigation in compliance with the standards and procedures issued by the Director under section 12591(a)(5) of this title.
 3. Maintained by Federal, State, and local criminal justice agencies (or the Secretary of Defense in accordance with 10 U.S.C. §1565) pursuant to rules that allow disclosure of stored DNA samples and DNA analyses only:
 - a. To criminal justice agencies for law enforcement identification purposes;
 - b. In judicial proceedings, if otherwise admissible pursuant to applicable statutes or rules;
 - c. For criminal defense purposes, to a defendant, who shall have access to samples and analyses performed in connection with the case in which such defendant is charged; or
 - d. If personally identifiable information is removed, to criminal justice agencies for a population statistics database, for forensic identification research and forensic protocol development purposes, or for quality control purposes.
 4. In addition, the DNA Act provides for imposition of a fine of up to \$250,000 or imprisonment for not more than one year or both such fine and imprisonment, if:
 - a. Any person who, by virtue of employment or official position, has possession of, or access to, individually identifiable DNA information indexed in a database created or maintained by any Federal law enforcement agency, and knowingly discloses such information in any manner to any person or agency not authorized to receive it; or
 - b. Any person, without authorization, knowingly obtains DNA samples or individually identifiable DNA information indexed in a database created or maintained by any Federal law enforcement agency.
- B. The Booking Agency expressly agrees to comply with subparagraphs 1 through 4 above.
- C. The Booking Agency expressly acknowledges that participation in the State's Rapid DNA Program shall be governed by the DPS Rapid DNA Program procedures, the "Standards for the Operation of Rapid DNA Booking Systems by Law Enforcement Booking Agencies," the "National Rapid DNA Booking Operational Procedures Manual" and the "Criminal Justice Information Services (CJIS) Security Policy."
- D. The Booking Agency shall ensure secure transmission of DNA profiles and DNA data to DPS. The Booking Agency and DPS agree to abide by the decision of the FBI and grant it the exclusive right to determine the most appropriate method to ensure secure communications from and to SDIS and NDIS, and to alter that method if necessary. As of the date of this

Agreement, the CJIS WAN is the mechanism designated by the FBI for transmittal of DNA data between NDIS, DPS and the Booking Agency.

V. OBLIGATIONS OF THE BOOKING AGENCY IN LEGAL ACTIONS

- A. The Booking Agency, to the extent permitted by Federal and/or State law, agrees to indemnify and save harmless, DPS, its officers and employees, from and against any and all claims, demands, actions, suits and proceedings brought by others arising out of the terms of this Agreement.
- B. The Booking Agency shall notify the CODIS State Administrator and State designated Rapid DNA Program Administrator in writing within seven (2) business days after initial notification to the Booking Agency of any legal actions involving CODIS, NDIS or SDIS. Examples of such legal actions which such notification include, but are not limited to, the following:
 - 1. Discovery requests for CODIS source code;
 - 2. Discovery requests for any aspect of CODIS or the Rapid DNA instrument;
and
 - 3. Discovery requests for any DNA records maintained in SDIS or NDIS.
- C. The Booking Agency shall notify the CODIS State Administrator and State designated Rapid DNA Program Administrator of any criminal actions (such as an arrest and/or conviction for a criminal offense) of a Rapid DNA Operator in their Booking Agency.

VI. SUSPENSION OF THE AUTHORITY OF THE BOOKING AGENCY TO PARTICIPATE IN THE STATE OR NATIONAL DNA INDEX SYSTEMS

- A. DPS may suspend all or part of the rights granted to the Booking Agency by virtue of this Agreement for a violation or a series of violations of any Federal or State law or regulation.
- B. The Booking Agency explicitly acknowledges that violation of various provisions of Federal or State law or their associated regulations may give rise to the following sanctions:
 - 1. Termination of status as a Booking Agency and participation in the State's Rapid DNA Program;
 - 2. Subject the Booking Agency or its employees to fines;
 - 3. Subject employees of the Booking Agency to criminal charges.
- C. If the Booking Agency has been suspended from participating in the State's Rapid DNA Program, the suspension may be lifted upon demonstration to DPS that all violations have been corrected or eliminated. The decision to lift the suspension of a Booking Agency from participation in the Rapid DNA Program shall be in the sole discretion of the CODIS State Administrator and State designated Rapid DNA Program Administrator.

VII. TERMINATION OF THE AGREEMENT

- A. Either party to this Agreement may terminate this Agreement, for any reason, by providing the other party with thirty (30) days written notice of their intent to terminate.
- B. In addition to the termination provisions set forth above, upon thirty (30) days written notice to the Booking Agency, DPS may terminate this Agreement and require removal of the CODIS software from the computer equipment of a Booking Agency and/or return of that software and any accompanying materials if notified by the FBI that funds for the continued support of CODIS and/or NDIS are not appropriated by the United States Congress.
- C. Any unauthorized usage of the Rapid DNA instrument or CODIS software, including but not limited to, the intentional analysis and enrollment of DNA samples other than those obtained from qualifying arrestees, may result in immediate suspension of the Booking Agency's participation in the Rapid DNA Program and the termination of this Agreement.

VIII. MODIFICATIONS TO THE AGREEMENT

- A. Modifications to this Agreement may be made necessary by changes in policies, procedures or technology. Therefore, the Booking Agency agrees that this Agreement may be modified as follows:
 - 1. Modifications to the text of this Agreement (excluding the Appendices) shall only be effective if in writing and signed by all parties.
 - 2. From time to time, however, it may be necessary to revise the FBI's "Standards for the Operation of Rapid DNA Booking Systems by Law Enforcement Booking Agencies" contained in Appendix A, the "National Rapid DNA Booking Operational Procedures Manual" contained in Appendix B, or the "Criminal Justice Information Services (CJIS) Security Policy" contained in Appendix C to reflect changes in law, processes and/or technology. In the event that a revision to any or all of the "Standards for the Operation of Rapid DNA Booking Systems by Law Enforcement Booking Agencies," the "National Rapid DNA Booking Operational Procedures Manual," or the "Criminal Justice Information Services (CJIS) Security Policy" are made, the Booking Agency agrees that the FBI shall provide notice of any such revisions (by posting on the FBI's web site) and that thereafter such revision shall be incorporated in and made a part of this Agreement without the need for both parties to re-execute this Agreement.
 - 3. From time to time, it may also be necessary to revise the State of Texas DNA Database Law, Government Code Chapter 411, Subchapter G, DNA Database System, contained in Appendix D to reflect changes in law, processes and/or technology. In the event that a revision to the State of Texas DNA Database Law, Government Code Chapter 411, Subchapter G, DNA Database System is made, the Booking Agency agrees that the State CODIS Administrator and State designated Rapid DNA Program Administrator shall provide notice of any such revisions (by e-mail) and that thereafter such revision shall be incorporated in and made a part of this Agreement without the need for both parties to re-execute this Agreement.

4. From time to time, it may also be necessary to revise the State Rapid DNA Procedures contained in Appendix E to reflect changes in law, processes and/or technology. In the event that a revision to any or all of the State Rapid DNA Procedures are made, the Booking Agency agrees that the State CODIS Administrator and State designated Rapid DNA Program Administrator shall provide notice of any such revisions (by e-mail) and that thereafter such revision shall be incorporated in and made a part of this Agreement without the need for both parties to re-execute this Agreement.

IX. EFFECTIVE DATE

This Agreement shall become effective when signed by the representatives of DPS and the Booking Agency.

Agreed to by representatives of the parties having the administrative authority to bind the parties to the terms and conditions of this Agreement.

FOR THE STATE CODIS AGENCY – TEXAS DEPARTMENT OF PUBLIC SAFETY

By: _____ Date _____

Brady Mills
Name _____

Chief, Crime Laboratory Division
Title _____

FOR THE BOOKING AGENCY – WILLIAMSON COUNTY SHERIFF'S OFFICE

By: _____ Date _____

Name

Title