

MEMORANDUM OF UNDERSTANDING
Between the
NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES
And LAW ENFORCEMENT AGENCY (NAME)

Whereas, the Division of Criminal Justice Services (“DCJS”) is authorized, pursuant to Executive Law §837(4), (6) & (14), to create and maintain the New York State Data Exchange (“NY-DEX”), a central data repository of incident arrest and warrant data provided to DCJS by participating state, regional, local, and tribal law enforcement agencies (“LEA”) and to allow participating LEA to have access to information contained in the NY-DEX; and

Whereas, the “LEA Name” is a qualified participating agency, and pursuant to this Memorandum of Understanding (“MOU”) is authorized to submit information to and access information in the NY-DEX maintained by DCJS; and

Whereas, DCJS is willing to provide such information from the NY-DEX via a Search/Query facility in order to assist the LEA in the performance of its law enforcement responsibilities; and

Whereas, the federal Law Enforcement National Data Exchange (N-DEX) operated by the Federal Bureau of Investigation’s (FBI) Criminal Justice Information Services (CJIS) Division, is a repository for criminal incident, offense, and/or case report information from state, local, tribal, and federal law enforcement entities, which will provide the capability to make potential linkages between law enforcement information contained in crime incidents, criminal investigations, arrests, bookings, incarcerations, parole and/or probation in order to help solve, deter and prevent crimes; and

Whereas, in addition to maintaining the NY-DEX, DCJS has agreed to forward the data contained in NY-DEX to N-DEX and has entered a MOU with the FBI concerning its participation in N-DEX. Participation in N-DEX by the local agencies, however, is voluntary and DCJS will only forward data when the LEA has authorized the submission of its data to N-DEX; and

NOW, THEREFORE, the parties agree as follows:

A. Purpose

1. The NY-DEX Mission: "To provide law enforcement agencies with a powerful new investigative tool to search, link, analyze and share criminal justice information such as, incidents, arrests, warrants, etc. on a local, statewide and national basis to a degree never before possible."
2. The vision of the NY-DEX is to share complete, accurate, timely and useful criminal justice information across jurisdictional boundaries and to

provide new investigative tools that enhance the ability of the LEA to fight crime.

3. The major components of this program will:
 - a. Provide the law enforcement officials with a variety of criminal investigation tools.
 - b. Enable local to state to federal data exchanges conforming to the National Information Exchange Model (NIEM) structures for the NY-DEX system and the N-DEx system
 - c. Enable cross jurisdictional data sharing between local, state and federal programs.
 - d. Create a central NY-DEX data repository and accompanying "User Access" environment with inherent data security and data integrity. Security will be set at the local level at the point of data submission and will follow the federal three tier standard "Green, Yellow, and Red" record level security structures already in place within the N-DEx System.
 1. Green: All N-DEx and NY-DEX users can view the record.
 2. Yellow: All N-DEx and NY-DEX users can view the incident number and contact info. Users from the owning agency can view the entire record.
 3. Red: No one can view the record except for the agency that owns the record.
 - e. Provide single sign on to both the NY-DEX and N-DEx Search System via the eJusticeNY portal
4. NY-DEX is operated as a "Give-to-Get" data sharing system, thus, LEA is able to access data similar to the type or content of the data they submit. DCJS, as the system operator, reserves the right to increase system capabilities to enforce the "Give-to-Get" environment and encourage open sharing without guaranteeing a given level of enforcement until deemed necessary for the success of the system by DCJS.
5. Submitted incidents within a given jurisdiction will credit prosecution/investigative agencies, such as District Attorney's offices, the State of New York's Office of the Attorney General, and the United States Department of Justice's United States Attorney's office, etc., as submitters to NY-DEX based on their duty to further investigate and file criminal charges within the jurisdiction. This credited access as a submitter will allow these prosecution agencies to search incidents as users of NY-DEX and N-DEx through their EjusticeNY account.

B. Parties

1. The parties to this MOU are legally authorized state, regional, local, or tribal law enforcement agencies who volunteer to participate in the NY-DEX program.
2. The parties agree that maximum participation by all eligible agencies will strengthen the purposes of this MOU. Accordingly, the parties anticipate and desire that other eligible agencies will join this MOU in the future. A joining agency shall also be considered a party and shall have the same rights, privileges, obligations, and responsibilities as the original parties.

C. Points of Contact

1. Each party shall designate an individual as the party's point-of-contact (POC) for representing that party in regard to this MOU. A party may change its POC at any time upon providing written notification thereof to the POC of all other parties.

D. Local Administrator

1. Each party shall designate an individual as the party's Local Administrator (LA) (this may be the same person as the POC). The LA will be responsible for exception processing and maintenance of the NY-DEX Extract, Transform and Load (ETL) process. This individual should possess some technical background.

E. Concept

1. The NY-DEX program is a cooperative endeavor of state, regional, local, and tribal law enforcement agencies, in which each agency is participating under its own individual legal status, jurisdiction, and authorities. All NY-DEX operations will be based upon the legal status, jurisdiction, and authorities of individual participants. The NY-DEX is not intended, and shall not be deemed, to have any independent legal status.

F. Ownership, Entry, and Maintenance of Information

1. Each party retains sole responsibility and exclusive control and disposition over the content of the information it contributes, and may at any time update or correct any of the information it transmits to the NY-DEX program, or delete it from the NY-DEX entirely. The content of the contributed information remains the sole responsibility of the contributing party and is under that party's exclusive control and contributed under an express promise of confidentiality.

2. Each party will retain sole responsibility and control of the content of the information it contributes to the NY-DEX. The NY-DEX has established a policy that each data contributor will have an obligation to maintain “system discipline”; that is to maintain, timely, accurate, complete, and relevant information in the NY-DEX. In an effort to maintain system discipline, contributors shall submit data, including any updates or changes to the original submission, on at least a weekly basis. Updates and changes are encouraged as often as a contributor can feasibly execute them. To enable updates to the NY-DEX in a timely manner, it is the responsibility of the LA to check the daily error logs at the local server to identify records that failed in the daily transmission to NY-DEX for correction and resubmission purposes.

3. The contributing party has the sole responsibility and accountability for ensuring that information entered into the NY-DEX was not obtained in violation of any state, local, tribal, and federal law applicable to the contributor.

4. Because information entered will be limited to duplicates and summaries of information obtained and separately managed by the entering party within its own record system(s), and for which the contributing party is solely responsible and accountable, information submitted by the participating parties shall not be altered or changed in any way, except by the contributing party. Annotations to the NY-DEX record may be permitted in the future for investigative analysis purposes, when deemed appropriate by DCJS and requested by the LEA.

5. A party that desires to incorporate in its own separate records information contributed by another party, including any analytical products based on another party's information, must first obtain the entering party's express permission. The NY-DEX information may not be used in the preparation of judicial process such as affidavits, warrants, or subpoenas, without the permission of the party that initially provided the information and corroboration of the information.

6. Commercially available references, public source information, and software applications, such as commercial directories, census data, mapping applications, and analytical applications are considered to be non-record material and should be maintained in accordance with applicable contracts and/or licensing agreements. To the extent that any such information is relevant and appropriate for preservation as independent records, it will be the responsibility of the accessing party to incorporate such information as records of the accessing party in the

party's own official records management systems(s), in accordance with that party's records management processes, and any applicable contract or licensing agreement.

7. The NY-DEX system will thus only be populated with information derived from each contributing party's own records. The system is not in any manner intended to be an official repository of original records or to be used as a substitute for one, nor is the information in the system to be accorded any independent record status. Rather, this system is merely an application to facilitate the sharing of copies of certain information that may be contributed from pre-existing records management systems of the parties and to make correlations against such information.

8. Any system submitting data to the NY-DEX retains sole ownership of the technology or system design associated with that system. It has the sole responsibility and accountability for ensuring that it is not constrained from sharing this information for these authorized purposes by any laws, regulations, policies, and procedures applicable to the submitting party, and making reasonable efforts to ensure the accuracy upon entry, and continuing accuracy thereafter, of any information contributed.

G. Access to and Disclosure and Use of Information

1. All disclosures of Federal records from the N-DEx system must be in accordance with federal law, including the Privacy Act of 1974. Disclosure of any nonfederal records will be left to the submitting agencies under applicable jurisdictional law. Participating state and local agencies agree to treat information, including any private proprietary information which is marked as such, as confidential to the extent authorized by law, including the Freedom of Information Act, 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a and the New York State Freedom of Information Law (FOIL), Public Officers Law §§84-90.

2. Each party will contribute information to the NY-DEX and agrees to permit the access, dissemination, and/or use of such information by every other party under the provisions of this MOU. The access levels permitted within NY-DEX are set at the local level as described in A.3.d. The contributing party has the sole responsibility and accountability for ensuring that it is not constrained from permitting this by any laws, regulations, policies, and procedures applicable to the submitting party, and ensuring that an access comports with any laws, regulations, policies, and procedures applicable to the accessing party.

3. A party may only access the NY-DEX system when it has a legitimate need-to-know the information for an authorized law enforcement,

counterterrorism, public safety, and/or national security purpose, after receiving appropriate training. Specifically, the system may be used to develop criminal investigations and local crime trends, verify links between criminals in the community, and other criminal law enforcement purposes. The system cannot be used for general licensing and employment purposes, background investigations of state, local, or federal employees, or any other non-law enforcement purpose. An accessing party may use information from the NY-DEX system only for a legal law enforcement purpose.

4. Training on user access into the NY-DEX System will be provided at the discretion of DCJS as appropriate. DCJS will conduct train-the-trainer sessions and provide documentation on the systems it creates for user access purposes.

5. All monitoring of successful and unsuccessful NY-DEX logon attempts, file access, correlations, type of transaction, and password changes will be established and maintained by the NY-DEX system regardless of access means. All audit trail files shall be protected to prevent unauthorized changes or destruction. No additional requirements are being imposed by the NY-DEX upon participating agencies.

6. Information in the system, including any analytical products, may be disseminated subject to the following requirements:

a. Hard or electronic copies of documents retrieved from the system may not be provided to a participating or nonparticipating agency without the approval of the contributing agency.

b. Information or summaries of information from the system may be shared with a non-participating law enforcement agency in the furtherance of a legitimate law enforcement investigation or for development of community crime analysis.

c. Immediate dissemination of information can be made if the recipient of the information determines that an emergency involving an actual or potential threat of terrorism, immediate danger of death or serious physical injury to any person, or imminent harm to the national security requires dissemination without delay. The owner of the information shall be promptly notified of all disseminations made under this exception.

7. Sanctions for misuse of the system will be established by DCJS. The NY-DEX will adopt the current FBI CJIS Sanctions policy. Sanctions for misuse of the system may include removal from the system. This does not

include other penalties by law.

H. Security

1. Each party will be responsible for designating those employees who should have access to the NY-DEX system. This system has been developed with the capability to record each use of the system, including the identity of the individual accessing the system, time of access to the system, and the information entered and/or queried. This system was developed with security in mind, and each participating member should ensure that access to system information is on a strictly need-to-know basis, and that all information is treated as law enforcement sensitive.
2. Each party agrees to use the same degree of care in protecting information accessed under this MOU as it exercises in respect to its own sensitive information. Each party agrees to restrict access to such information to only those of it's (and its governmental superiors) officers, employees, agents, representatives, task force members, contractors/subcontractors, consultants, or advisors with a "need-to-know" of such information.
3. Each party is responsible for training those employees authorized to access the NY-DEX system regarding the use and dissemination of information obtained from the system. Specifically, employees should have a clear understanding of the need to verify the reliability of information with and obtain the permission of the contributing party when using the information for purposes such as obtaining search and arrest warrants, affidavits, subpoenas, etc. Parties should also fully brief accessing employees regarding the proscriptions for using third party information as described in section F above.

I. Property

1. The equipment purchased by DCJS to support this effort will remain the property of the DCJS which will also remain responsible for maintenance of any equipment owned by DCJS that is being used to support the NY-DEX system.
2. Ownership of all property purchased by parties other than DCJS will remain the property of the purchasing party. The accessing party is responsible for configuring its computers to conform to the access requirements of the Integrated Justice portal servers. Maintenance of the equipment purchased by the accessing party shall be the responsibility of that party.

J. Costs

1. Unless otherwise provided herein, or in a supplementary writing, each party shall bear its own costs in relation to this MOU. Even where a party has verbally agreed to assume a particular financial responsibility, the party's express written approval must be obtained before another party incurs an expense associated with the agreement. All obligations of and expenditures by the parties will be subject to their respective budgetary and fiscal processes and availability of funds pursuant to all laws, regulations, and policies applicable thereto. The parties acknowledge that there is no intimation, promise, or guarantee that funds will be available in future years.

K. Liability

1. The NY-DEX is not a separate legal entity capable of maintaining an employer-employee relationship and, as such, all personnel assigned by a party to perform NY-DEX functions shall not be considered employees of DCJS or of any other party for any purpose. The assigning party thus remains solely responsible for supervision, work schedules, performance appraisals, compensation, overtime, vacations, retirement, expenses, disability, and all other employment-related benefits incident to assignment of its personnel to the NY-DEX functions.

2. Unless specifically addressed by the terms of this MOU (or other written agreement), the parties agree to only be responsible for the negligent or wrongful acts or omissions of their respective officers and employees, but only to the extent they would be liable under the laws of the jurisdiction to which they are subject.

L. Governance

1. The parties recognize that the success of this project requires close cooperation by all parties. *To this end, the NY-DEX system will be operated under a shared management concept in which the parties will be involved in formulating operating policies and procedures.* The parties agree to comply with all future policies and procedures developed by DCJS. Additionally, the parties agree this document is subject to change by DCJS by the adoption of policies pursuant to their authorized duty. The verbiage of any policy, subsequently adopted by DCJS, will override any existing inconsistent verbiage contained in this MOU.

2. Disagreements among the parties arising under or relating to this MOU shall be resolved only via consultation at the lowest practicable level by and between the affected parties and their sponsoring agencies (or as otherwise may be provided under any separate governance procedures) and will not be referred to any court, person or entity for settlement.

3. The parties may establish additional procedures for governance of the NY-DEX system and in furtherance, thereof, may enter into one or more separate formal or informal agreements, provided that any such agreement does not conflict with the spirit, intent, or provisions of this MOU, and is sufficiently memorialized to meet the business purposes of the NY-DEX governance (including adequately informing current and future parties). Such governance agreement(s) may, for instance, address: organizational structure and control; executive management and administration; delegation of authority; operating policies, procedures, rules, and practices; meetings, quorums, and voting procedures; audits; and sanctions (including involuntary termination of a party's participation in this MOU).

4. Since participation in the N-DEX program is voluntary, the LEA agrees to allow DCJS to act as the broker for submission of their data to the Federal N-DEX System by indicating N-DEX participation in the check box as follows:

- Yes**, I want to participate in the N-DEX program and agree to allow DCJS to act as the broker for submission of our data to N-DEX.
- No**, I don't want to participate in the N-DEX program.

M. No Rights in Non-Parties

1. This MOU is an agreement among the parties and is not intended, and should not be construed, to create or confer on any other person or entity any right or benefit, substantive or procedural, enforceable at law or otherwise against DCJS, a party, or any state, locality, or other sponsor under whose auspices a party is participating in the NY-DEX program, or the officers, directors, employees, agents, representatives, task force members, contractors, subcontractors, consultants, advisors, successors, assignees, or other agencies thereof.

N. Effective Date/Duration/Modification/Termination

1. This MOU shall become effective when all duly authorized representatives of each party have signed the document.
2. This MOU shall continue in force indefinitely for so long as it continues to advance the participants' mission purposes, contingent upon approval and availability of necessary funding.
3. This MOU may be modified upon the mutual written consent of the duly authorized representatives of all parties. However, the parties may, without the need of formal MOU modification, cooperatively address and

resolve administrative, technical, and operational details relating to this MOU, provided that any such resolution does not conflict with the spirit, intent, or provisions of this MOU; could not reasonably be viewed as particularly sensitive, controversial, or objectionable by one or more parties; and is sufficiently memorialized to meet the business purposes of the NY-DEX (including adequately informing current and future parties).

4. This MOU may be terminated at any time by the mutual written agreement of the duly authorized representatives of all parties. A party's duly authorized representative may also terminate the party's participation in the MOU upon written notice to all other parties of not less than thirty (30) days. A party's participation may also be terminated involuntarily as may be provided in any applicable governance agreement.

5. Upon termination of this MOU, all property being used under its purview will be returned to the respective supplying parties. Similarly, if an individual party's participation in this MOU is terminated, the party will return any property to supplying parties, and the remaining parties will return any property supplied by the withdrawing party.

6. All information contributed to the NY-DEX system by a terminating party will be destroyed in the NY-DEX system, unless the agency offers no objections and provides permission to retain the data.

7. As to information in the NY-DEX system during a party's participation under this MOU, the rights, obligations, responsibilities, limitations, and other understandings with respect to the disclosure and use of such information shall survive any termination. This applies both as to a terminating party's disclosure and use of the other parties' information, and to the other parties' disclosure and use of a terminating party's information.

IN WITNESS WHEREOF, the parties have executed this MOU by the signatures of the duly authorized representative of each on the dates indicated. A photocopy or faxed signature is as valid as the original.

**FOR: NYS Division of Criminal Justice
Service, NY-DEX**

_____ Anne Roest

Signature Name

Deputy Commissioner/CIO

NYS Division of Criminal Justice Services

Title Date

FOR: (Local)

Signature Name

Title Date