

**MEMORANDUM OF UNDERSTANDING REGARDING THE
NIBIN ENFORCEMENT SUPPORT SYSTEM (NESS)**

**Memorandum of Understanding
between

and the

Bureau of Alcohol, Tobacco, Firearms and Explosives**

Article I. Purpose and Authority

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) is extending their on-going commitment to the law enforcement community by providing participating agencies with access to National Integrated Ballistic Information Network (NIBIN) data. The agency will be able to access NIBIN data through the NIBIN Enforcement Support System (NESS) via an Internet connection. The NESS application allows ATF to collect, analyze, refer, and track NIBIN and other crime gun data. Access will facilitate information sharing and provide near real-time intelligence to participating agencies. The mission of the program is to reduce firearms violence through aggressive identification, investigation, and prosecution of shooters and their sources of crime guns.

ATF has made a concerted effort to leverage existing information technology to better assist law enforcement agencies in the investigation of shooters and other armed violent offenders, prohibited persons possessing firearms, and sources of crime guns. This Memorandum of Understanding (MOU) establishes and defines a partnership between the Parties that will result in ATF NESS installation, operation, and administration for the dissemination of crime gun data to enhance the efforts of law enforcement to integrate resources to reduce firearms violence, identify shooters and sources of crime guns, and refer them for prosecution.

This MOU is entered into by the U.S. Department of Justice (DOJ), ATF, and _____, hereinafter collectively referred to as “the Parties,” and with _____ referred to as the “NESS Partner Agency.” This MOU will refer to individuals employed and authorized for NESS access by the NESS Partner Agency as “Users”.

The Parties agree that it is the public interest to enhance cooperation among Federal, State, Tribal, and local enforcement and public safety agencies with regard to reducing firearms violence, identify shooters, and their sources of crime guns. The NESS Partner Agency acknowledges that ATF and the NESS program will assist Federal, State, Tribal, and local law enforcement and public safety agencies in combatting firearms violence.

This MOU is established pursuant to the authority of the participants to engage in activities related to the investigation and suppression of violent crimes involving firearms. ATF’s authority is derived from, among other things, 28 U.S.C. § 599A, 18 U.S.C. § 3051, 27 CFR § 0.130, and, specifically, the Gun Control Act of 1968, 18 U.S.C. Chapter 44 and the National Firearms Act, 26 U.S.C. Chapter 53. The parties enter into this MOU pursuant to 31 U.S.C. § 6305.

Article II. Background

ATF is a law enforcement organization within DOJ with unique responsibilities dedicated to reducing violent crime and protecting the public. ATF recognizes the role that firearms play in violent crimes and pursues an integrated enforcement and regulatory strategy. Investigative priorities focus on armed violent offenders and career criminals, armed narcotics traffickers, violent gangs, and domestic and international arms traffickers.

Article III. Scope

The purpose of this MOU is to establish an interagency agreement governing the access and utilization of NESS. In addition, the MOU will designate a primary and alternate point of contact (POC) for the NESS Partner Agency. The agency POC will ensure adherence to the MOU between ATF and NESS Partner Agency Users. These POCs shall also identify individuals from their respective agencies who will require system access, periodically validate the list of Users, and to notify an ATF POC immediately if it becomes necessary to revoke or suspend a User's account.

This MOU is effective upon the date of the last signature by the authorized representatives of the Parties and shall remain in effect until terminated by either Party.

Article IV. Interagency Communications

The Parties agree that a principal POC within each organization shall coordinate all communications and tasks under this MOU. To ensure access is permitted to all NESS Partner Agency data, an Originating Agency Identifier (ORI Code) must be provided for each ORI code used by the NESS Partner Agency. The ATF POC can assist the NESS Partner Agency in determining what ORI Codes are appropriate. The designated POCs shall be as follows:

ATF Field Division		
Name		
Address		
	Designated ATF Primary POC	Designated ATF Alternate POC
Name:		
Title:		
Email Address:		
Phone #:		

NESS Partner Agency		
Name		
Address		
	Designated NESS Partner Agency Primary POC	Designated NESS Partner Agency Alternate POC
Name:		
Title:		
Phone #:		
Email Address:		
Date of Birth:		
Signature:		
Date:		
NESS Partner Agency ORIs		

Article V. Responsibilities and Procedures

In becoming an approved NESS Partner Agency of the NESS application, the involved Parties hereby acknowledge and accept the following responsibilities and procedures:

1. **Responsibilities of the NESS Partner Agency.** The NESS Partner Agency shall:
 - a. Appoint primary and alternate POCs within your agency (see table above). The appointed individuals will be responsible for creating, coordinating, and maintaining a list of all personnel, and determining the access levels for Users within the Partner Agency who will require access to NESS.
 - b. The designated POC(s) will immediately notify ATF in the event that a User's account needs to be suspended or revoked for any number of reasons, including (but not limited to) employee transfer, retirement, or release from employment.
 - c. Complete a Request for Change of Agency Point of Contact Form if the POC changes.
 - d. Agree to make every effort to provide complete and accurate information including investigative reports and data related to NIBIN linked shootings and gun recoveries, to the fullest extent allowed by law. This includes general event data including case numbers, dates,

locations, associated persons, etc. Partner Agencies that make a commitment to comprehensive data sharing with ATF will be provided an information platform for developing the best local investigative strategies for their community in the reduction of firearm related crime and violence.

- e. Share the results of NIBIN leads/hits including arrest and prosecution data with ATF via the NESS application.
- f. Provide a list of ORI numbers for the NESS Partner Agency (see table above), which will allow NESS to associate Users to the correct NESS Partner Agency NIBIN data. If the NESS Partner Agency needs to add or remove ORI numbers, it shall submit a completed Amendment of Originating Agency Identifier Form.
- g. Use information generated and retrieved pursuant to this MOU, only for the purpose(s) identified in the Agreement.

2. Responsibilities of the Bureau of Alcohol, Tobacco, Firearms and Explosives:

a. The ATF Field Division shall:

- 1) Appoint primary and alternate ATF POCs.
- 2) Coordinate all communications and tasks listed under this MOU and serve as a liaison between the NESS Partner Agency POC and ATF's Firearms Operations Division (FOD).
- 3) Ensure data sharing processes between ATF and the NESS Partner Agency.

b. FOD shall:

- 1) Maintain the NESS application and share NIBIN Leads with the NESS Partner Agency.
- 2) Upon receipt of this signed MOU, provide detailed instructions to the field division POCs on the process of requesting and receiving NESS User access for the NESS Partner Agency.
- 3) Maintain a copy of this MOU along with any associated User agreements.
- 4) Review all applications for NESS User access in a timely manner and facilitate the provisioning of accounts.
- 5) Upon receipt of a request for account revocation, FOD will immediately deactivate said User account.

Article VI. Conditions

Both ATF and the NESS Partner Agency acknowledge their understanding that the NESS application is “LAW ENFORCEMENT SENSITIVE” and intended “FOR OFFICIAL LAW ENFORCEMENT USE ONLY.” Failure to protect and safeguard such data from loss, misuse, or unauthorized access could adversely affect law enforcement operations, including those areas related to officer safety, as well as, the fair and equitable administration of justice, and the privacy of individuals.

Information within NESS is to be used for investigative purposes only. NESS data reflects a compilation of information from multiple data sources and should not be relied upon as evidence. Investigators must collect original reports for any evidentiary purposes. NESS information should not be used to develop statistics or for reporting purposes. By providing your agency with NESS, ATF is not waiving any privileges that prevent further disclosure of the materials. No information contained therein may be duplicated, reproduced, or disseminated without the express authorization of ATF and/or the Originating Partner Agency, except as may be required by State or Federal law or court of competent jurisdiction. In accordance with Paragraph 10, Article XII, the NESS Partner Agency agrees to notify ATF prior to such a release.

The Federal government may monitor and audit usage of this system, and all persons are hereby notified that use of this system constitutes consent to such monitoring and auditing. Unauthorized attempts to upload information and/or change information on NESS are strictly prohibited and are subject to prosecution under the Computer Fraud and Abuse Act of 1986 and Title 18 U.S.C. §§ 1001 and 1030.

The Parties agree that premature disclosure of NESS data can reasonably be expected to interfere with pending or prospective law enforcement proceedings. It is agreed that the law enforcement sensitive firearms information generated pursuant to this Agreement shall not be disclosed to a third party without the consent of both Parties of this Agreement, subject to Federal and any applicable non-conflicting state law. The Parties agree to notify all other Parties to the MOU prior to the release of any sensitive firearms information to a third party under State or Federal law. The Parties acknowledge that NESS shall only be used for law enforcement purposes.

The Parties agree to define a “crime gun” as “any firearm illegally possessed, used in a crime, or suspected by law enforcement officials of having been used in a crime.”

Article VII. Applicable Laws

The applicable statutes, regulations, directives, and procedures of the United States, DOJ, and ATF shall govern this MOU and all documents and actions pursuant to it. Nothing in this MOU will prevail over any Federal law, regulation, or other Federal rule recognized by ATF. This MOU is not a funding document. All specific actions agreed to herein shall be subject to funding and administrative or legislative approvals.

Article VIII. Modifications and Terminations

This MOU shall not affect any pre-existing or independent relationships or obligations between the Parties. If any provision of this MOU is determined to be invalid or unenforceable, the remaining provisions shall remain in force and unaffected to the fullest extent permitted by law and regulation.

Amendments to this MOU are effective upon the date of the last signature on the Amendment, by the authorized representative(s) of the Parties. This MOU may be amended or modified only by written agreement and mutual consent of the Parties. Parties to this MOU may terminate their participation at any time upon a seven (7) day written notification of their intent to withdraw to the other Party. If either Party terminates this MOU, ATF will retain all of its interest in the electronically stored information contained in the NESS database.

Termination of the MOU by either Party will result in the revocation of all NESS accounts established under this Agreement. However, after termination, ATF agrees to provide to the NESS Partner Agency continued access to the NIBIN data associated with only cases originating from the NESS Partner Agency, subject to Federal law and regulations.

Article IX. Liability

Each Party shall assume the responsibility and liability for the acts and omissions of its own employees or agents in connection with the performance of their obligations under this Agreement that are executed within the scope of their employment, including claims for injury, loss or damage to personal property or death, except in the case of the federal Government, liability shall be determined pursuant to the Federal Tort Claims Act (FTCA – 28 U.S.C. § 1346).

No third party is intended to benefit or otherwise claim any rights whatsoever under this MOU. The rights and obligations set out in the MOU run between the signatories to this MOU only.

Article X. User Access

Prior to gaining NESS access, each User shall execute a User Agreement and Rules of Behavior, acknowledging that the operations described in this Agreement are subject to audit by the ATF; the U.S. Department of Justice; Office of the Inspector General; the General Accounting Office; and other auditors designated by the U.S. Government.

Article XI. Costs

The use of the NESS system is provided without charge to the NESS Partner Agency. ATF is not responsible for costs associated with the NESS Partner Agency's computer hardware, computer software (other than the NESS application), Internet connection(s), or other communications requirements associated with their use of the NESS application. ATF will maintain access to the NESS application furnished to the NESS Partner Agency and shall facilitate repairs to the NESS application in an expeditious manner, subject to availability and funding, but no guarantees as to when repairs will be completed. However, ATF will not assume maintenance or repairs required as the result of improper use of the NESS application or enhancements to the NESS application, as well as repairs to local computer hardware, computer software, or communications problems. ATF will not

fund the costs associated with a NESS Partner Agency who chooses to manipulate their internal data structure for data communication and transfer reasons.

Article XII. Limitations of the Agreement

1. **Relationship between the Parties:** The relationship between the Parties to this Agreement is and shall remain that of independent departments and entities. Nothing herein shall be construed to imply that either Party's employees are employees of the other.

2. **Resources:** This MOU does not require that the Parties are to contribute resources (financial or otherwise) to each other.

3. **Letters of Understanding:** The Parties are responsible for establishing relevant letters of understanding or interagency agreements initiated or required as a consequence of this MOU.

4. **No Guarantee:** The NESS Partner Agency acknowledges that information is input into the NESS system based on data collected and available at the time, and that ATF makes no guarantee that said information will always be 100% accurate or up to date.

5. **Anti-Deficiency Act:** The obligations in this MOU are subject to the availability of the necessary resources to the Parties. No provision of this MOU shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. Section 1341, or other applicable laws.

6. **Entire Agreement:** The mutual covenants and terms represent the entire Agreement and understanding of the Parties with respect to the subject matter hereof and supersede all prior and contemporaneous agreements and understandings relative to such subject matters. No representations or statements of any kind made by either Party, which are not expressly stated herein, shall be binding on such Party.

7. **Waiver:** Failure or delay on the part of any Party to exercise any right, remedy, power or privilege hereunder shall not operate as a waiver thereof. A waiver, to be effective, must be in writing and signed by the Party making the waiver. A written waiver of a default shall not operate as a waiver of any other default or of the same type default on a future occasion.

8. **Severability:** A determination that any term of this MOU is invalid for any reason shall not affect the validity of the remaining terms.

9. **Governing Law:** The terms and provisions in this Agreement shall be construed under the applicable federal laws, in conjunction with state and local laws that do not conflict with the federal mandates.

10. **Release of Information:** Releases to the media or third parties, judicial demands, public announcements, Freedom of Information Act/Privacy Act/Open Records requests, and communications with Congress concerning information generated and retrieved pursuant to this MOU shall be addressed by the Parties following coordination by authorized representatives of each Party.

Article XIII. Conclusion

It is the intent of the signatories that this MOU ensures coordination, cooperation and the mutual conduct of enforcement and research activities relative to the NESS application. The result of this cooperation and coordination will be the successful prosecution of illegal firearm crimes in State and Federal jurisdictions as well as the development of an accurate picture of violent crime and the inception of new strategies to effectively disrupt the cycle of violence.

ATF and the NESS Partner Agency hereby agree to abide by the terms and conditions of this MOU, including any appendices, and all policies of the NESS Program. In witness whereof, the parties have hereby executed this MOU.

Signature _____ Date _____
(Chief Law Enforcement or Public Safety Official)

Signature (ATF - Special Agent in Charge)	Date
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Name _____

Name _____

Title

Special Agent in Charge
Title

NESS Partner Agency

ATF Field Division

Signature
Date

Name

Chief, Firearms Operations Division
Title