

**COVER LETTER
MEMORANDUM OF AGREEMENT
RESOURCE PROVIDER**

Please complete the information below and send an executed copy electronically to [insert email address here]. An executed copy will be returned to you for your files. Questions regarding this MOA may be directed to [legal contact info].

Contact Information for Person Signing Document

Name	_____		
Title	_____		
Organization	_____		
Address	_____		
Address 2	_____		
City	State/Province	Postal Code	
Country	Email		_____
Phone	Alt Phone	Fax	_____

MEMORANDUM OF AGREEMENT ICC AND RESOURCE PROVIDER

This Memorandum of Agreement (“MOA” or “Agreement”) is between [Coordinating Center name and address], which is contracted to serve as the IMPACT Coordinating Center (“ICC”) and [Provider name] having offices at [Provider address] (“Resource Provider” or “RP”), (collectively referred to as “the Parties” or individually as “Party”). This Agreement is effective when signed by the RP and [Coordinating Center name]. References throughout this document to the “ICC” shall be deemed to refer to [Coordinating Center name]. By initialing below, the RP designates whether they are acting as a Data provider and/or a Data Host under this Agreement:

_____ RP is a Data Provider (“DP”) and/or Decision Analytics-as-a-Service Provider (“DASP”)

_____ RP is a Data Host

The ICC supports the Information Marketplace for Policy and Analysis of Cyber-risk & Trust (“IMPACT”) Program sponsored by the United States Department of Homeland Security (“DHS”). The ICC facilitates interaction between IMPACT participants, processes applications from Researchers for access to Resources, develops a metadata catalog, and develops policies and procedures for IMPACT operations and the use of IMPACT Resources. The parties involved in the IMPACT Program are described below and their relationships are depicted in the Appendix for reference.

General Terms and Conditions

Resource Provider and the ICC agree to the following:

This Agreement consists of: the General Terms and Conditions, and any subsequent Amendment(s) to the Agreement, if executed. In the case of any conflict, the General Terms and Conditions shall prevail unless an Amendment to this Agreement is separately executed by both Parties and expressly amends particular provisions of the General Terms and Conditions, in which case such Amendment shall prevail over such particular provisions of the General Terms and Conditions.

In this Agreement, the following definitions shall apply:

Data means all data provided by the RP or DASP to IMPACT Users.

Data Provider (“DP”) means an entity that provides data that it owns or has a right to control and disclose to Researchers subject to the terms and conditions in this memorandum of agreement between it and the ICC.

Decision Analytics-as-a-Service Provider (“DASP”) means an entity that provides a research platform, service, technology or tool capable of accessing or provisioning data, tools, or analytic techniques that it owns or has a right to make available to Users, subject to the terms and conditions in an MOA between it and the ICC.

DHS means the U.S. Department of Homeland Security.

ICC means the IMPACT Coordinating Center that manages the IMPACT data catalog and operations, processes applications for IMPACT Resources, and handles administrative matters. The ICC does not store, maintain, or have access to any of the Resources.

IMPACT Program Management means the DHS IMPACT Program Manager, and the ICC when it acts under the direction of the IMPACT Program Manager.

IMPACT Team shall mean:

1. ICC personnel;
2. RPs;
3. Contractors and third parties supporting or interacting with DHS IMPACT and/or other Cyber Division programs; and
4. The DHS, Cyber Security Division.

IMPACT User means an individual or organization who has been designated by the ICC as having a legitimate Research need for the Resource. A User who is an individual may also be a Lead Researcher.

Lead Researcher means the person who (a) requests the desired IMPACT Resource, (b) is the principal investigator or researcher leading the project using the Resource, and (c) is responsible for ensuring that all responsibilities for the receipt, security, oversight, and handling of the Resource are met.

Metadata is descriptive information about the Resource that is provided by the RP and recorded in the IMPACT Resource Metadata catalog.

Research means basic and applied research, and development supporting knowledge or operational and strategic advancement.

Resource means all Data and/or tools made available by Resource Provider to IMPACT Users for Research.

Resource Category is the designation given to a grouping of all Resources of a certain type.

Resource Class is a designation chosen by the RP that describes the level of approval and oversight associated with the sharing of the Resource. The Class is determined by the level of risk/sensitivity associated with the Resource. The Class determines the terms and conditions associated with the Resource, and the associated level of approval. IMPACT has three (3) Resource Classes:

- (1) Unrestricted – click-through agreement between the ICC and the Requester
- (2) Quasi-Restricted - click-through agreement between the ICC and the Requester that allows the RP to reject the Resource request; and
- (3) Restricted - bilateral signed agreement between the ICC and the Requester that allows the RP to reject the Resource request.

Only data provided in the Restricted category may include Provider-added terms and conditions, other than commercial licensing restrictions, and require the execution of a memorandum of agreement between the Researcher and the ICC. For all Restricted and Quasi-Restricted Resources, the RP and the ICC must approve requests prior to the provision of Resource to Researchers by a Resource Host. Unrestricted Resources may be provided to Researchers without the approval of the relevant RP(s) of the requested Resource.

Resource Host means an entity that maintains computing infrastructure to store resources received from one or more DP or DASP, and provides IMPACT Users access to such Resource.

Resource Identifier means a serial number or character string used to uniquely identify a particular Resource. It is generated by the ICC.

Resource Provider (“RP”) means an entity that is a Data Provider and/or a Decision Analytics-as-a-Service Provider, or a Resource Host.

Resource Provider Obligations and License

1. A MOA between the ICC and the RP shall be entered into before the RP transfers Resource to the Resource Host. A Researcher agreement will be entered into before the RP allows any Researcher access to any Restricted Resource provided by the RP.

2. The RP acknowledges that this is a research and development effort, and that the Resources it provides will be used for academic, commercial, or governmental research and development purposes, as it permits, and will be released by the Resource Host to approved Researchers and listed members of their research teams in accordance with this Agreement. All terms and conditions for provision of resources by RPs, in addition to those contained in the Researcher Agreement, shall be specified when submitting the Metadata to IMPACT. The RP hereby grants to the ICC and the Resource Host, the right and authority to extend to an approved Researcher the right to use Resource solely for the purposes and under the terms and conditions provided to IMPACT Program Management and described in the Resource Metadata catalog record provided by the RP, if any. Resource Hosts hereby agree to accept Resources from RPs and provide Resources only in compliance with the required data security and access control requirements specified by the RPs.

3. The RP shall provide the ICC with Metadata for each Resource that it makes available to IMPACT, in accordance with standard IMPACT Metadata catalog schema. The RP agrees to maintain accurate and complete Metadata for the Resource. RP acknowledges that Metadata will be made available publicly via the IMPACT portal. The RP shall NOT provide actual Resources to the ICC, and the ICC shall have no liability to the RP for any Metadata or other Resource that is provided by the RP to the ICC or Researchers, except to the extent that the ICC materially breaches its obligations herein.
4. The RP hereby grants the ICC a perpetual, royalty-free, world-wide, non-exclusive, paid-in-full license to use Metadata submitted to IMPACT in accordance with this Agreement.
5. (a) Prior to listing Resource in the Metadata catalog, or hosting data, the RP shall provide to the ICC information requested on the then-current Resource Submission Form, and shall obtain written approval from Program Management to list any new or substantially revised Resource.

(b) The RP shall not provide a Resource with restrictions, except for commercial license restrictions or the requirement for Researchers to be authorized before receipt of the Resource, unless that Resource is placed in the Restricted Resource Class. By providing a Resource in a Resource Class other than Restricted, the RP certifies that no restrictions, other than those allowed by this section, may be placed on that Resource by the RP.
6. The RP shall not supply any Resource other than that which is approved by Program Management. The RP is responsible for the release of the Resource to authorized Researchers, and is solely responsible for reviewing the Resource and ensuring (a) that any Resource it releases complies with (i) this Agreement; (ii) all applicable legal requirements (laws, regulations, orders, etc.) and/or compliance requirements of governing or administrative bodies, and (iii) any third party intellectual property rights or any contractual agreement between the RP and a third party; and (iv) does not violate or infringe on any third party intellectual property and (b) that any Resource it makes available is safeguarded consistent and in compliance with the RP's privacy, security, or other policies, procedures, or agreements applicable to the Resource, including any required IRB approval for release of Resource to third party researchers. The RP certifies that Resource provided for use in the IMPACT program is in compliance with the foregoing. The RP certifies that Metadata provided is accurate and appropriate for each Resource.
7. The RP shall have the absolute right to reject any application for access to its Resources in all of the Quasi-Restricted and Restricted Resource Classes. Resources designated by the RP in the Unrestricted Resource Classes shall be provided to Researchers without approval from the RP.
8. The RP further acknowledges and consents that the names, organization, and contact information of the RP collected by the ICC, either via the portal or through any other means, may be disclosed to IMPACT Team Members, to Researchers, and/or publicly posted unless specifically agreed otherwise by the ICC.
9. The RP agrees that, in the event of actual or threatened legal action against the ICC, upon reasonable notice, the RP shall comply with all reasonable discovery requests related to this Agreement.
10. The RP shall implement appropriate physical, technical, and administrative safeguards and controls to maintain the required level of security and access control to comply with its obligations under this Agreement. Such safeguards and controls shall be consistent with accepted information security best practices and standards and applicable rules, laws, and regulations. The RP shall implement reasonable measures to periodically assess the effectiveness of the controls and shall report any breaches or suspected breaches of the controls or unauthorized access to or disclosure of the Resource to the ICC within 24 hours of knowledge of same.
11. The RP shall provide approved IMPACT Users with all required Resource security and access control requirements to allow approved IMPACT Users access to Resources.
12. The RP shall comply with all applicable federal, state, and local laws and contractual obligations.

13. The Terms and Conditions of this Agreement are for the primary benefit of the ICC and the RP; however, a violation by the RP of these obligations may create harm to IMPACT Users of the Resources to which access has been granted. IMPACT Users are therefore deemed, to the extent permitted by law, third party beneficiaries under this Agreement only with respect to such harm, and the RP hereby acknowledges the third party beneficiary rights of such IMPACT Users for whom access to Resources provided by the RP is granted under the IMPACT project.

Resource Host Additional Obligations

1. A Resource Host is obligated to make the Resources it provides available to IMPACT participants per the terms of the IMPACT program, including hosting the Resource and providing access to it to qualifying parties.
2. The RP may be its own Resource Host. A Resource Host does not have to be an RP for IMPACT.
3. The Resource Host is solely responsible for providing the necessary security and infrastructure to serve as a Resource Host. The Resource Host shall implement appropriate physical, technical, and administrative safeguards and controls to maintain the required level of security and access control for the Resources. Such safeguards and controls shall comply with any requirements communicated by the RP, but in any case, shall be consistent with accepted information security best practices and standards and applicable rules, laws, and regulations. The RP shall implement reasonable measures to periodically assess the effectiveness of the controls and shall report any breaches or suspected breaches of the controls or unauthorized access to or disclosure of the Resource to the ICC within 24 hours of knowledge of same.
4. The Resource Host must promptly comply with any applicable changes in DHS and/or the IMPACT program or inform the ICC that it can no longer serve in this capacity. The terms for amending or terminating this Agreement herein apply the same for a Resource Host as the RP.
5. The RP shall host the Data itself or allow a Resource Host that has been approved by DHS to host the Data and Tools. The Resource Host shall not subcontract with a third party to host the Data and Tools. The Resource Host shall provide the ICC with Data and Tool access, usage, and request statistics regarding the Data and Tools it hosts and consents to the public release of such statistics.
6. The Host shall not provide any IMPACT User access to any Resource through the IMPACT Program other than those approved for each IMPACT User as evidenced by notification thereof by the ICC.

The ICC Obligations

1. An MOA between the ICC and the RP shall be entered into before the RP transfers Resource to the Resource Host. A Researcher agreement will be entered into before the RP allows any Researcher access to any Restricted Resource provided by the RP.
2. The ICC shall notify the RP of:
 - a. Applications received for access to and use of its Resource;
 - b. FOIA or other legal requests or actions that the ICC receives for access to Resource, Metadata, or other records pertaining to the RP;
 - c. A Researcher's violation of any terms and conditions associated with Restricted Resource within a reasonably expedient time of becoming aware of the violation;
 - d. Any safeguards and controls that the Data Provider requires of the Resource Host; and,
 - e. Termination of a Researcher's right to access and/or use a Resource prior to the stated date of termination.
3. The ICC shall provide statistics related to requests to access the Resource on a monthly basis to DHS and the Rps.
4. The ICC shall comply with all applicable federal, state, and local laws and contractual obligations: (a) in facilitating interactions between IMPACT participants and processing applications from Researchers for access to

Resources, (b) in assisting with the development and maintenance of the Metadata catalog that contains current and accurate terms and conditions for access to, transfer, handling, and storage of the Resource, and (c) in administering the policies and procedures for IMPACT operations and the use of IMPACT datasets.

5. The ICC shall provide to the Researcher the current and complete terms and conditions for access to and use of Resources for all Resource Classes. This includes any modifications to a Restricted Resource as communicated to the ICC by the RP. The ICC shall relay the information provided by the RP to an IMPACT User regarding the right to use a Resource solely for the purposes, and under the terms and conditions in effect at the time of request, prior to approving Resource access.

6. The terms and conditions of this Agreement are for the primary benefit of the ICC and the RP, however, a violation by a Researcher of the RP terms and conditions and the Researcher agreement may create harm to the RP. ICC agrees that the RP is therefore deemed, to the extent permitted by law, a third party beneficiary under the Researcher agreement, only with respect to such harm, and the ICC hereby acknowledges the third party beneficiary rights of the RP and shall include a provision extending those rights therein. Notwithstanding the above, the RP's third party rights shall be in effect only for Researcher agreements signed after the execution of this Agreement.

7. The ICC shall provide to the RP the Resource Identifier for the respective Resource, as relevant.

Joint Obligations – The Resource Provider and the ICC

1. All transfers and licenses of a Resource under the terms of this Agreement shall at all times be subject to the applicable laws and regulations of the United States. All state law issues shall be governed by Arizona law (where [Coordinating Center name]'s lawyers are located). The Parties agree that all disputes regarding this Agreement shall be resolved in the Superior Court of Maricopa County, Arizona. The Parties hereby consent to this venue and the personal jurisdiction of this court.

2. There is no agency relationship between the ICC and the RP created under this Agreement. Personnel retained or assigned by one Party to perform services or obligations covered by this Agreement will at all times be considered agents or employees of the Party with whom such personnel have a contractual relationship, and not agents, representatives, or employees of the other Party.

3. (a) Either Party may terminate this Agreement at any time by providing written notice of termination to the other. Except as otherwise mutually agreed, termination shall be effective thirty (30) days from receipt of the notice. Unless otherwise agreed to in writing, any such termination shall not affect the obligations of either Party with respect to any Resource previously provided to and in the possession of a Researcher, and such obligations shall continue through the disposition of all such Resources. No new Resource approvals shall be granted by the ICC after notice of termination has been received. The RP shall provide the ICC with any instructions for Researcher(s) regarding termination of access to and disposal of a Resource. In the event of termination by either Party, except for termination by the RP under 3(d) below, the RP shall not communicate with Researcher(s) regarding a Resource. The ICC shall communicate with Researcher(s) and Resource Host regarding such termination.

(b) Either Party may decide to terminate offering to Researchers' Resources provided by the RP; however, the ICC shall not unreasonably terminate any offering of Resources. The terminating Party shall immediately provide electronic written notification of such termination to the other Party. Upon receipt of the RP's notice of termination, the ICC shall not process any further applications to use such Resources after notice of termination is received. The ICC shall notify the Resource Host regarding termination of access to such Resources. The RP shall not communicate with any Researcher(s) impacted by such termination. The RP shall provide the ICC with any instructions for the Researcher(s) and/or Resource Host regarding disposal of the Resource, and the ICC shall communicate such instructions to the Researcher(s) and/or Resource Host.

(c) The Parties agree that both Parties have the right to unilaterally terminate this Agreement immediately upon written notification to the other Party if the respective primary agreement with DHS is terminated or otherwise concluded. In the case of termination of [Coordinating Center name] from IMPACT, the IMPACT Program shall provide written notification to all impacted parties in the IMPACT program with information regarding changes and procedures until a new ICC is designated.

(d) In the event of action or inaction by one Party constituting a failure to comply (default) with the provisions of this Agreement, the non-defaulting Party may, by written notice to the defaulting Party, demand that the defaulting Party cure such default within ten (10) business days thereof. Should the defaulting Party fail to cure the default, the non-defaulting Party may terminate this Agreement and the Resources held by Resource Host shall no longer be made available to Researchers through the Resource Host. Termination under this provision shall be handled pursuant to paragraphs 3(a) and 3(b) above.

4. To the extent permitted by law, the RP shall indemnify, defend, and hold harmless the ICC, and its employees, officers, directors, and agents (“ICC Indemnified Parties”), from any loss, damage, liability, claims, costs, demands, suits, or judgments, including reasonable attorney’s fees, as a result of any damage or injury to the ICC Indemnified Parties, including death or injury to property or to third parties, which is directly or indirectly caused by the RP or the employees, officers, directors, or agents of the RP, including any liability incurred by the ICC through Researcher’s use of a Resource provided by the RP. To the extent permitted by law, the RP shall hold the ICC Indemnified Parties harmless from any misuse of Resource or Metadata by a party other than the ICC Indemnified Parties, but any such liability shall be reduced by the comparative extent that misuse results from the negligent or willful acts or omissions of the ICC Indemnified Party, a breach of this Agreement by the ICC Indemnified Party, or any act or omission performed at the direction of the ICC. The RP shall not look to the ICC Indemnified Parties as an agent to protect the RP from misuses of its Resource by Researchers, and the ICC Indemnified Parties do not agree to serve in that capacity. The ICC Indemnified Parties shall promptly notify the RP of any claim against it of which they become aware and that is covered by this provision and the RP shall, to the extent permitted by law, authorize representatives to settle or defend any such claim or suit and to reimburse the ICC Indemnified Parties for their attorneys’ fees, costs, and any damages assessed against them.

Notwithstanding the foregoing, if the RP is a federal, state, or local government entity in the United States, its obligations shall be limited in substance by statutes and constitutional provisions designed to protect the RP’s exposure and liability as an instrumentality of the government (e.g., actions and conditions as to which the RP is immunized for tort claims, dollar limits stated in such provisions, exemption from punitive damages, the continued ability to defeat a claim by reason of contributory negligence or fault of claimant, or sovereign immunity), so that the RP’s liability to indemnify, defend, and hold harmless shall not exceed what might have been its liability to a claimant if sued directly in the RP’s jurisdiction by the claimant and all appropriate defenses had been raised by the RP.

5. EXCEPT FOR ANY HARM OR DAMAGES ARISING PURSUANT TO WILLFUL MISCONDUCT OR INDEMNIFICATION, TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL EITHER PARTY BE RESPONSIBLE TO THE OTHER FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND (INCLUDING LOST REVENUES OR PROFITS, OR LOSS OF BUSINESS) IN ANY WAY RELATED TO THIS AGREEMENT, REGARDLESS OF WHETHER IT WAS ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY THEREOF.

6. Failure of either Party to enforce any of its rights hereunder shall not constitute a waiver of such rights. If any provision herein is, becomes, or is held invalid, illegal, or unenforceable, such provision shall be deemed modified only to the extent necessary to conform with applicable laws or so as to be valid and enforceable. If it cannot be so amended without materially altering the intent of the Parties as indicated herein, it shall be stricken and the remainder of this Agreement shall remain in full force and effect and shall be enforced and construed as if such provision had not been included.

7. Neither this Agreement nor any interest herein may be assigned, in whole or in part, by either Party without the prior written consent of the other Party; provided, however, that without securing such prior consent, either Party shall have the right to assign this Agreement (i) to any successor of such Party by way of merger or consolidation or the acquisition of substantially all of the assets of such Party relating to the subject matter of this Agreement; or (ii) to an entity granted the right and authority by agreement with DHS to perform a similar role for IMPACT, provided further, that such successor or entity shall expressly assume all of the rights, obligations, and liabilities of the assigning Party under this Agreement.

8. This Agreement shall not be considered accepted or effective until signed below by an authorized representative of the ICC and the RP. This Agreement shall remain in force for a period of one (1) year commencing from the effective date of this Agreement or as amended, and shall automatically renew for

successive one (1) year terms provided either Party may terminate this Agreement according to Clause 3(a) above.

9. The ICC may unilaterally modify this Agreement, upon reasonable written notice to the RP, solely for the purpose of ensuring IMPACT Program compliance with changes in policy or law. If the RP disagrees with a unilateral mandatory change to the Agreement, the RP may terminate this Agreement as stated herein. All other Amendments to this Agreement, to be effective, shall be in writing and signed by an authorized Representative of each Party.)

10. This Agreement contains the entire agreement of the Parties hereto and supersedes all prior agreements, negotiations, and discussions between the Parties hereto. Any representation, inducement, or agreement that is not contained in this Agreement shall not be of any force or effect.

11. The Parties may execute two copies of this Agreement, each of which shall constitute an original copy of this Agreement. A scanned, imaged, facsimile, or photocopy of this Agreement or amendment to this Agreement as executed by the Parties shall be deemed to be an original executed copy for all purposes.

12. Each Party represents that the person signing this Agreement has full authority to legally bind their organization.

ACCEPTED AND AGREED TO BY:

[Coordinating Center name and address]
IMPACT Coordinating Center

Signature

Name

Title

Date

RESOURCE PROVIDER

Signature

Name

Title

Date

APPENDIX
IMPACT Program Relationship Between Parties

[diagram of your process]