

E-VERIFY MEMORANDUM OF UNDERSTANDING

ARTICLE I

PURPOSE AND AUTHORITY

This Memorandum of Understanding (MOU) sets forth the points of agreement between the Social Security Administration (SSA), the Department of Homeland Security (DHS) and _____ (Employer) regarding the Employer's participation in E-Verify. E-Verify is a pilot program in which the employment eligibility of all newly hired employees will be confirmed after the Employment Eligibility Verification Form (Form I-9) has been completed.

Authority for the E-Verify is found in Title IV, Subtitle A, of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, 110 Stat. 3009, as amended (8 U.S.C. § 1324a note).

ARTICLE II

FUNCTIONS TO BE PERFORMED

A. RESPONSIBILITIES OF THE SSA

1. Upon completion of the Form I-9 by the employee and the Employer, and provided the Employer complies with the requirements of this MOU, SSA agrees to provide the Employer with available information that allows the Employer to confirm the accuracy of Social Security Numbers provided by all newly hired employees and the employment authorization of U.S. citizens.
2. The SSA agrees to provide to the Employer appropriate assistance with operational problems that may arise during the Employer's participation in E-Verify. The SSA agrees to provide the Employer with names, titles, addresses, and telephone numbers of SSA representatives to be contacted during E-Verify.
3. The SSA agrees to safeguard the information provided by the Employer through the E-Verify procedures, and to limit access to such information, as is appropriate by law, to individuals responsible for the verification of Social Security Numbers and for evaluation of the E-Verify or such other persons or entities who may be authorized by the SSA as governed by the Privacy Act (5 U.S.C. § 552a), the Social Security Act (42 U.S.C. 1306(a)), and SSA regulations (20 CFR Part 401).
4. SSA agrees to establish a means of automated verification that is designed (in conjunction with the Department of Homeland Security's automated system if necessary) to provide confirmation or tentative nonconfirmation of US citizens' employment eligibility and accuracy of SSA records for both citizens and aliens within 3 Federal Government work days of the initial inquiry.
5. SSA agrees to establish a means of secondary verification (including updating SSA records as may be necessary) for employees who contest SSA tentative nonconfirmations that is designed to provide final confirmation or nonconfirmation US citizens' employment eligibility and accuracy of SSA records for both citizens and aliens within 10 Federal Government work days of the date of referral to SSA, unless SSA determines that more than 10 days may be necessary. In such cases, SSA will provide additional verification instructions.

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B. RESPONSIBILITIES OF THE DEPARTMENT OF HOMELAND SECURITY

1. Upon completion of the Form I-9 by the employee and the Employer and completion of SSA verification procedures required prior to initiation of Department of Homeland Security verification procedures by the Employer, the Department of Homeland Security agrees to provide the Employer access to selected data from the Department of Homeland Security's database to enable the Employer to conduct:

- Automated verification checks on newly hired alien employees by electronic means, and
- Photographic verification checks (when available) on newly hired alien employees.

2. The Department of Homeland Security agrees to provide to the Employer appropriate assistance with operational problems that may arise during the Employer's participation in E-Verify. The Department of Homeland Security agrees to provide the Employer names, titles, addresses, and telephone numbers of Department of Homeland Security representatives to be contacted during E-Verify.

3. The Department of Homeland Security agrees to provide to the Employer a manual containing instructions on E-Verify policies, procedures and requirements for both SSA and Department of Homeland Security, including restrictions on use of E-Verify procedures (the E-Verify Manual). The Department of Homeland Security agrees to provide training materials on E-Verify.

4. The Department of Homeland Security agrees to provide to the Employer a notice, which indicates the Employer's participation in E-Verify. The Department of Homeland Security also agrees to provide to the Employer anti-discrimination notices issued by the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), Civil Rights Division, and U.S. Department of Justice.

5. The Department of Homeland Security agrees to issue the Employer a user identification number and password that permits the Employer to verify information provided by alien employees with the Department of Homeland Security's database.

6. The Department of Homeland Security agrees to safeguard the information provided to the Department of Homeland Security by the Employer, and to limit access to such information to individuals responsible for the verification of alien employment eligibility and for evaluation of the E-Verify, or to such other persons or entities as may be authorized by applicable law. Information will be used only to verify the accuracy of Social Security Numbers and employment eligibility, to enforce the INA and federal criminal laws, and to ensure accurate wage reports to the SSA.

7. The Department of Homeland Security agrees to establish a means of automated verification that is designed (in conjunction with SSA verification procedures) to provide confirmation or tentative nonconfirmation of employees' employment eligibility within 3 Federal Government work days of the initial inquiry.

8. The Department of Homeland Security agrees to establish a means of secondary verification (including updating Department of Homeland Security records as may be necessary) for employees who contest Department of Homeland Security tentative nonconfirmations and

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photographic non-match tentative nonconfirmations that is designed to provide final confirmation or nonconfirmation of the employees' employment eligibility within 10 Federal Government work days of the date of referral to the Department of Homeland Security, unless DHS determines that more than 10 days may be necessary. In such cases, the Department of Homeland Security will provide additional verification instructions.

C. RESPONSIBILITIES OF THE EMPLOYER

1. The Employer agrees to display the notices supplied by the Department of Homeland Security in a prominent place that is clearly visible to prospective employees.

2. The Employer agrees to provide to the SSA and the Department of Homeland Security the names, titles, addresses, and telephone numbers of the Employer representatives to be contacted regarding E-Verify.

3. The Employer agrees to become familiar with and comply with the E-Verify Manual.

4. The Employer agrees that any Employer Representative who will perform employment verification queries will complete the E-Verify Tutorial before that individual initiates any queries.

5. The Employer agrees to comply with established Form I-9 procedures, with two exceptions:

- If an employee presents a "List B" identity document, the Employer agrees to only accept "List B" documents that contain a photograph. (List B documents identified in 8 C.F.R. § 274a.2(b)(1)(B)) can be presented during the Form I-9 process to establish identity).
- If an employee presents a DHS Form I-551 (Permanent Resident Card) or Form I-766 (Employment Authorization Document) to complete the Form I-9, the Employer agrees to make a photocopy of the document and to retain the photocopy with the employee's Form I-9. The employer will use the photocopy to verify the photograph and to assist the Department with its review of photographic non-matches that are contested by employees. Note that employees retain the right to present any List A, or List B and List C, documentation to complete the Form I-9. DHS may in future designate other documents for the photographic screening tool.

6. The Employer understands that participation in E-Verify does not exempt the Employer from the responsibility to complete, retain, and make available for inspection Forms I-9 that relate to its employees, or from other requirements of applicable regulations or laws, except for the following modified requirements applicable by reason of the Employer's participation in E-Verify: (1) identity documents must have photographs, as described in paragraph 5 above; (2) a rebuttable presumption is established that the Employer has not violated section 274A(a)(1)(A) of the Immigration and Nationality Act (INA) with respect to the hiring of any individual if it obtains confirmation of the identity and employment eligibility of the individual in compliance with the terms and conditions of E-Verify ; (3) the Employer must notify the Department of Homeland Security if it continues to employ any employee after receiving a final nonconfirmation, and is subject to a civil money penalty between \$500 and \$1,000 for each failure to notify the Department of Homeland Security of continued employment following a final nonconfirmation; (4) the Employer is subject to a rebuttable presumption that it has knowingly employed an unauthorized alien in violation of section 274A(a)(1)(A) if the Employer continues

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to employ any employee after receiving a final nonconfirmation; and (5) no person or entity participating in E-Verify is civilly or criminally liable under any law for any action taken in good faith on information provided through the confirmation system. The Department of Homeland Security reserves the right to conduct Form I-9 compliance inspections during the course of E-Verify, as well as to conduct any other enforcement activity authorized by law.

7. The Employer agrees to initiate E-Verify verification procedures within 3 Employer business days after each employee has been hired (but after both sections 1 and 2 of the Form I-9 have been completed), and to complete as many (but only as many) steps of the E-Verify process as are necessary according to the E-Verify Manual. The Employer is prohibited from initiating verification procedures before the employee has been hired and the Form I-9 completed. If the automated system to be queried is temporarily unavailable, the 3-day time period is extended until it is again operational in order to accommodate the Employer's attempting, in good faith, to make inquiries during the period of unavailability. In all cases, the Employer must use the SSA verification procedures first, and use the Department of Homeland Security verification procedures and photo screening tool only as directed by the SSA verification response.

8. The Employer agrees not to use E-Verify procedures for pre-employment screening of job applicants, support for any unlawful employment practice, or any other use not authorized by this MOU. The Employer will not verify selectively; it agrees to use the E-Verify procedures for all new hires as long as this MOU is in effect. The Employer agrees not to use E-Verify procedures for re-verification, or for employees hired before the date this MOU is in effect. The Employer understands that if the Employer uses E-Verify procedures for any purpose other than as authorized by this MOU, the Employer may be subject to appropriate legal action and the immediate termination of its access to SSA and Department of Homeland Security information pursuant to this MOU.

9. The Employer agrees to follow appropriate procedures (see Article IIIB below) regarding tentative non-confirmations, including notifying employees of the finding, providing written instructions to employees, allowing employees to contest the finding, and not taking adverse action against employees if they choose to contest the finding. Further, when employees contest a tentative non-confirmation based upon a photographic non-match, the Employer is required to take affirmative steps (see Article IIIB below) to contact the Department of Homeland Security with information necessary to resolve the challenge.

10. The Employer agrees not to take any adverse action against an employee based upon the employee's employment eligibility status while SSA or the Department of Homeland Security is processing the verification request unless the Employer obtains knowledge (as defined in 8 C.F.R. § 274a.1(l)) that the employee is not work authorized. The Employer understands that an initial inability of the SSA or Department of Homeland Security automated verification to verify work authorization, a tentative nonconfirmation, or the finding of a photo non-match, does not mean, and should not be interpreted as, an indication that the employee is not work authorized. In any of the cases listed above, the employee must be provided the opportunity to contest the finding, and if he or she does so, may not be terminated until secondary verification by SSA or the Department of Homeland Security has been completed to determine the final confirmation or non-confirmation. If the employee does not choose to contest the Employer's initial finding, then the Employer can find the employee is not work authorized and take the appropriate action.

11. The Employer agrees to comply with section 274B of the INA by not discriminating unlawfully against any individual in hiring, firing, or recruitment practices because of his or her national origin or, in the case of a protected individual as defined in section 274B(a)(3) of the

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INA, because of his or her citizenship status. The Employer understands that such illegal practices can include discharging or refusing to hire eligible employees because of their foreign appearance or language, and that any violation of the unfair immigration-related employment practices provisions of the INA could subject the Employer to civil penalties pursuant to section 274B of the INA and the termination of its participation in the E-Verify. If the Employer has any questions relating to the anti-discrimination provision, it should contact OSC at 1-800-255-7688 or 1-800-237-2515 (TDD).

12. The Employer agrees to record the case verification number on the employee's Form I-9 or to print the screen containing the case verification number and attach it to the employee's Form I-9.

13. The Employer agrees that it will use the information it receives from the SSA or the Department of Homeland Security pursuant to E-Verify and this MOU only to confirm the employment eligibility of newly-hired employees after completion of the Form I-9. The Employer agrees that it will safeguard this information, and means of access to it (such as PINS and passwords) to ensure that it is not used for any other purpose and as necessary to protect its confidentiality, including ensuring that it is not disseminated to any person other than employees of the Employer who need it to perform the Employer's responsibilities under this MOU.

14. The Employer acknowledges that the information which it receives from SSA is governed by the Privacy Act (5 U.S.C. § 552a(i)(1) and (3)) and the Social Security Act (42 U.S.C. 1306(a)), and that any person who obtains this information under false pretenses or uses it for any purpose other than as provided for in this MOU may be subject to criminal penalties.

15. The Employer agrees to allow the Department of Homeland Security and SSA, or their authorized agents or designees, to make periodic visits to the Employer for the purpose of reviewing E-Verify -related records, i.e., Forms I-9, SSA Transaction Records, and Department of Homeland Security verification records, which were created during the Employer's participation in the E-Verify Program. In addition, for the purpose of evaluating the E-Verify, the Employer agrees to allow the Department of Homeland Security and SSA or their authorized agents or designees, to interview it regarding its experience with E-Verify, to interview employees hired during E-Verify concerning their experience with the pilot, and to make employment and E-Verify related records available to the Department of Homeland Security and the SSA, or their designated agents or designees.

ARTICLE III

REFERRAL OF INDIVIDUALS TO THE SSA AND THE DEPARTMENT OF HOMELAND SECURITY

A. REFERRAL TO THE SSA

1. If the Employer receives a tentative nonconfirmation issued by SSA, the Employer must print the tentative nonconfirmation notice as directed by the automated system and provide it to the employee so that the employee may determine whether he or she will contest the tentative nonconfirmation.

2. The Employer will refer employees to SSA field offices only as directed by the automated system based on a tentative nonconfirmation, and only after the Employer records the

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case verification number, reviews the input to detect any transaction errors, and determines that the employee contests the tentative nonconfirmation. The Employer will transmit the Social Security Number to SSA for verification again if this review indicates a need to do so. The Employer will determine whether the employee contests the tentative nonconfirmation as soon as possible after the Employer receives it.

3. If the employee contests an SSA tentative nonconfirmation, the Employer will provide the employee with a referral letter and instruct the employee to visit an SSA office to resolve the discrepancy within 8 Federal Government work days. The Employer will make a second inquiry to the SSA database using E-Verify procedures on the date that is 10 Federal Government work days after the date of the referral in order to obtain confirmation, or final nonconfirmation, unless otherwise instructed by SSA.

4. The Employer agrees not to ask the employee to obtain a printout from the Social Security Number database (the Numident) or other written verification of the Social Security Number from the SSA (other than the Social Security Number Card).

B. REFERRAL TO THE DEPARTMENT OF HOMELAND SECURITY

1. If the Employer receives a tentative nonconfirmation issued by the Department of Homeland Security, the Employer must print the tentative nonconfirmation notice as directed by the automated system and provide it to the employee so that the employee may determine whether he or she will contest the tentative nonconfirmation.

2. If the Employer finds a photographic non-match for an alien who provides a document for which the automated system has transmitted a photograph, the employer must print the photographic non-match tentative non-confirmation notice as directed by the automated system and provide it to the employee so that the employee may determine whether he or she will contest the finding.

3. The Employer agrees to refer individuals to the Department of Homeland Security only when the employee chooses to contest a tentative nonconfirmation received from the Department of Homeland Security automated verification process or when the Employer issues a tentative non-confirmation based upon a photo non-match. The Employer will determine whether the employee contests the tentative nonconfirmation as soon as possible after the Employer receives it.

4. If the employee contests a tentative nonconfirmation issued by the Department of Homeland Security, the Employer will provide the employee with a referral letter and instruct the employee to contact the Department through its toll-free hotline within 8 Federal Government work days.

5. If the employee contests a tentative nonconfirmation based upon a photographic non-match, the Employer will provide the employee with a referral letter to the Department of Homeland Security. The Department of Homeland Security will electronically transmit the result of the referral to the Employer within 10 Federal Government work days of the referral unless it determines that more than 10 days may be necessary.

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6. The Employer agrees that if an employee contests a tentative non-confirmation based upon a photograph non-match, the Employer will send a copy of the employee's Form I-551 or Form I-766 to DHS for review by:

- Scanning and uploading the document, or
- Sending a photocopy of the document by an express mail account (furnished and paid for by DHS).

7. The Employer understands that if it cannot determine whether there is a photo match/non-match, the Employer is required to forward the employee's documentation to DHS by scanning and uploading, or by sending the document as described in the preceding paragraph, and resolving the case as specified by the Immigration Services Verifier at DHS who will determine the photo match or non-match.

ARTICLE IV

SERVICE PROVISIONS

The SSA and the Department of Homeland Security will not charge the Employer for verification services performed under this MOU. The Employer is responsible for providing equipment needed to make inquiries. To access E-Verify, an Employer will need a personal computer with Internet access.

ARTICLE V

PARTIES

This MOU is effective upon the signature of all parties, and shall continue in effect for as long as the SSA and the Department of Homeland Security conduct E-Verify unless modified in writing by the mutual consent of all parties, or terminated by any party upon 30 days prior written notice to the others. Termination by any party shall terminate the MOU as to all parties. The SSA or the Department of Homeland Security may terminate this MOU without prior notice if deemed necessary because of the requirements of law or policy, or upon a determination by SSA or the Department of Homeland Security that there has been a breach of system integrity or security by the Employer, or a failure on the part of the Employer to comply with established procedures or legal requirements. Some or all SSA and Department of Homeland Security responsibilities under this MOU may be performed by contractor(s), and SSA and the Department of Homeland Security may adjust verification responsibilities between each other as they may determine.

Nothing in this MOU is intended, or should be construed, to create any right or benefit, substantive or procedural, enforceable at law by any third party against the United States, its agencies, officers, or employees, or against _____ (Employer), its agents, officers, or employees.

Each party shall be solely responsible for defending any claim or action against it arising out of or related to E-Verify or this MOU, whether civil or criminal, and for any liability wherefrom, including (but not limited to) any dispute between the Employer and any other person or entity regarding the applicability of Section 403(d) of IIRIRA to any action taken or allegedly taken by the Employer.

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The employer understands that the fact of its participation in E-Verify is not confidential information and may be disclosed as authorized or required by law and Department of Homeland Security or SSA policy, including but not limited to, Congressional oversight, E-Verify publicity and media inquiries, and responses to inquiries under the Freedom of Information Act (FOIA).

The foregoing constitutes the full agreement on this subject between the SSA, the Department of Homeland Security, and the Employer.

The individuals whose signatures appear below represent that they are authorized to enter into this MOU on behalf of the Employer, SSA, and the Department of Homeland Security respectively.

To be accepted as a participant in E-Verify, you should only sign the Employer’s Section of the signature page. If you have any questions, contact E-Verify at 888-464-4218.

Employer

Name (Please type or print)

Title

Signature

Date

Social Security Administration

Name (Please type or print)

Title

Signature

Date

Department of Homeland Security - Verification Division

Name (Please type or print)

Title

Signature

Date

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**INFORMATION REQUIRED
FOR E-VERIFY**

Information relating to your Company:

Company Name: _____

Company Facility Address: _____

Company Alternate Address: _____

County or Parish: _____

Employer Identification Number: _____

North American Industry
Classification Systems Code: _____

Parent Company: _____

Number of Employees: _____ Number of Sites Verified for: _____

Are you verifying for more than 1 site? If yes, please provide the number of sites verified for in each State.
• _____
site(s)

Information relating to the Program Administrator(s) for your Company on policy questions or operational problems:

Name:
Telephone Number:
E-mail Address:

Fax Number: