

UPDATED ITDS/ACE PGA MOU Template – 11/9/07

**MEMORANDUM OF UNDERSTANDING
FOR THE EXCHANGE OF ACE DATA
BETWEEN
THE UNITED STATES CUSTOMS AND BORDER PROTECTION
ON BEHALF OF
THE DEPARTMENT OF HOMELAND SECURITY
AND
{INSERT NAME OF AGENCY}**

1. PARTIES

The parties to this Memorandum of Understanding (MOU) are U.S. Customs and Border Protection (CBP) and **{INSERT NAME OF AGENCY.}**

2. AUTHORITY

This Agreement is authorized under the provisions of the Security and Accountability For Every Port Act of 2006, (“SAFE Port Act”), Public Law 109-347, Executive Order 13439, July 18, 2007 and **{INSERT AGENCY’S PRIMARY STATUTORY AUTHORITY TO OBTAIN REQUESTED DATA.}**

{INSERT PARAGRAPH WHY THIS AGENCY REQUIRES SUBJECT INFORMATION, e.g. TO FULFILL ITS STATUTORY MISSION.}

3. PURPOSE

The objective of this MOU is to establish procedures and guidelines between CBP and **{INSERT NAME OF AGENCY OR ACRONYM}** to accommodate and facilitate the exchange of applicable data between the agencies via CBP’s Automated Commercial Environment (ACE) and the International Trade Data System (ITDS) interface. A further objective of this MOU is to consolidate all existing commercial trade and transportation data exchange MOU’s, and similar information sharing agreements, between CBP and **{INSERT NAME OF AGENCY OR ACRONYM}**, so that CBP can furnish, exchange and transfer information from the appropriate electronic systems to **{INSERT NAME OF AGENCY OR ACRONYM}**. The consolidation of the transfer of ACE DATA directly to **{INSERT NAME OF AGENCY OR ACRONYM}**, will conserve resources, decrease duplication, curtail expenses, and ensure compliance with the SAFE Ports Act.

This MOU supersedes all prior MOU’s between the parties with respect to the exchange of trade and transportation data and to the extent that the language of other previous agreements is inconsistent with the terms of this MOU.

To accomplish the objectives of the MOU, the two agencies will refer to the Standard Data Set (SDS) of ACE to define the data elements containing

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information subject to this exchange. A detailed list of those identified data elements will be listed in Appendix A.

4. RESPONSIBILITIES

4.1 CBP Agrees:

- 4.1.1 To provide ***{INSERT NAME OF AGENCY OR ACRONYM}*** with access to information that fulfills the stated purpose of this MOU; in particular, ACE DATA that assists ***{INSERT NAME OF AGENCY OR ACRONYM}*** in the execution of its trade, transportation and statistical reporting duties as required by ***{INSERT AGENCY'S STATUTORY AUTHORITY AND REGULATIONS AS WELL AS TYPE OF ACCESS, I.E. PORTAL OR SYSTEM-to-SYSTEM}***
- 4.1.2 To develop a mechanism for the electronic exchange of information with ***{INSERT NAME OF AGENCY OR ACRONYM}*** on importation of ***{LIST GENERAL TYPES OF PRODUCTS AGENCY IS INTERESTED IN OBTAINING DATA ON. Note: if list is extensive add as an appendix and notate accordingly. List of products should include HTSUS number}*** (See Appendix B)
- 4.1.3 To coordinate with ***{INSERT NAME OF AGENCY OR ACRONYM}*** regarding request made under the Freedom of Information Act (5 U.S.C. 552) and Privacy Act (5 U.S.C. 552(a)), for ACE DATA which may be jointly owned between CBP and ***{INSERT NAME OF AGENCY OR ACRONYM}***. If the information sought is exclusively owned by ***{INSERT NAME OF AGENCY OR ACRONYM}***, CBP will refer the request to ***{INSERT NAME OF AGENCY OR ACRONYM}*** for processing.
- 4.1.4 To not disclose to third parties any information received from ***{INSERT NAME OF AGENCY OR ACRONYM}***, for which ***{INSERT NAME OF AGENCY OR ACRONYM}*** is the owner, unless ***{INSERT NAME OF AGENCY OR ACRONYM}*** approves, in advance, its disclosure in writing.
- 4.1.5 To assume responsibility for any unauthorized release of ***{INSERT NAME OF AGENCY OR ACRONYM}*** owned information that is the result of the intentional or negligent conduct of CBP's agents or its employees.
- 4.1.6 To the extent possible, notify ***{INSERT NAME OF AGENCY OR ACRONYM}*** of discrepancies identified in applicable ACE DATA for which CBP becomes aware.
- 4.1.7 To engage in timely exchanges of security-related information with ***{INSERT NAME OF AGENCY OR ACRONYM}*** related to critical infrastructure vulnerabilities,

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threat intelligence, and commercial security activities, such as with the Customs and Border Protection Targeting Center and/or the Customs Trade Partnership Against Terrorism and related initiatives.

- 4.2 **{INSERT NAME OF AGENCY OR ACRONYM}** Agrees:
- 4.2.1 To use CBP provided ACE DATA to ensure compliance with ***{INSERT NAME OF AGENCY OR ACRONYM}*** laws and regulations, as listed in section 2 above (“AUTHORITY”).
 - 4.2.2 To ensure, in accordance with the Privacy Act (5 U.S.C. §552a), that, if applicable, a System of Records Notice (“SORN”) will be timely published for any systems that will maintain ACE DATA received from CBP. Furthermore, in accordance with the E-Government Act of 2002 (Pub.L.No. 107-347, 116 Stat. 2899), to confirm that a proper Privacy Impact Assessment (“PIA”) is published. Lastly, to accept that personally identifiable information pertaining to persons engaged in trade and trade related activities must not be used prior to achieving compliance with the Privacy and E-Government Acts.
 - 4.2.3 To assist CBP, to the degree applicable, in the development of a mechanism for the electronic exchange of information with ***{INSERT NAME OF AGENCY OR ACRONYM}*** on importation of the following items: ***{LIST TYPES OF PRODUCTS AGENCY IS INTERESTED IN. Note: if list is extensive add as an appendix and notate accordingly.}***
 - 4.2.4 To coordinate with CBP regarding request made under the Freedom of Information Act (5 U.S.C. 552) and Privacy Act (5 U.S.C. 552(a)) for information that may be jointly owed between CBP and ***{INSERT NAME OF AGENCY OR ACRONYM}***. If the information sought is exclusively owned by CBP, ***{INSERT NAME OF AGENCY OR ACRONYM}***, will refer the request to CBP for processing.
 - 4.2.5 To not disclose to third parties information received from CBP, for which CBP is the owner, unless CBP approves, in advance, its disclosure in writing.
 - 4.2.6 To assume responsibility for any unauthorized release of CBP information that is the result of the intentional or negligent conduct of ***{INSERT NAME OF AGENCY OR ACRONYM}*** agents or its employees.
 - 4.2.7 To the extent possible, notify CBP of discrepancies identified in ACE DATA received by ***{INSERT NAME OF AGENCY OR ACRONYM}***.

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- 4.2.8 To reimburse CBP for any applicable administrative fees and expenses incurred in procuring and maintaining the necessary equipment, developing software and programming on behalf of **{INSERT NAME OF AGENCY OR ACRONYM}**. (See Appendix D for details on applicable fees.)
- 4.2.9 To provide CBP with an annually updated list of **{INSERT NAME OF AGENCY OR ACRONYM}** field locations and personnel accessing CBP generated information from ACE.
- 4.2.10 To ensure that all **{INSERT NAME OF AGENCY OR ACRONYM}** employees or qualified contractors that access CBP information, either via the ACE Portal or system-to-system access, shall have a qualified background investigation as determined by CBP. (See Appendix C.)
- 4.2.11 To ensure that adequate security measures are in place and utilized to protect access to CBP information. (See Appendix C.)
- 4.2.12 To allow CBP to periodically audit security measures utilized by **{INSERT NAME OF AGENCY OR ACRONYM}** for accessing ACE and related ACE DATA. (See Appendix C.)
- 4.2.13 To provide CBP with information to fulfill the stated purpose of this MOU, in particular, product-specific data elements for all products regulated by **{INSERT NAME OF AGENCY OR ACRONYM}**.
- 4.2.14 To engage in timely exchanges of security-related information with CBP related to critical infrastructure vulnerabilities, threat intelligence, and commercial security activities, such as with the Customs and Border Protection Targeting Center and on the Customs Trade Partnership Against Terrorism and related initiatives.

5. OTHER PROVISIONS

5.1 Confidentiality:

- 5.1.1 The information described in this MOU is transferred to **{INSERT NAME OF AGENCY OR ACRONYM}** from CBP under the authority of 44 U.S.C. §3510(a) and the SAFE Port Act, Public Law 109-347 with the express understanding that **{INSERT NAME OF AGENCY OR ACRONYM}** is subject to and responsible for implementation of the Computer Security Act of 1987 (40 U.S.C. §759), the Privacy Act (5 U.S.C. §552a), the E-

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- Government Act of 2002 (Pub.L.No. 107-347, 116 Stat. 2899) and the Office of Management and Budget (OMB) regulations, and any other regulations concerning information security that are in effect at the time of transfer.
- 5.1.2 **{INSERT NAME OF AGENCY OR ACRONYM}** personnel are subject to the Trade Secrets Act (18 U.S.C. §1905), which imposes personal liability upon Federal employees who disclose confidential commercial information contrary to the commercial provisions of that Act.
- 5.1.3 **{INSERT NAME OF AGENCY OR ACRONYM}** understands and acknowledges that CBP considers the information collected under its authority and maintained in CBP's systems to be highly sensitive commercial, financial and proprietary information, exempt from disclosure pursuant to the Freedom of Information Act (FOIA)(5 U.S.C. §552(b)(4)) and prohibited from disclosure by the Trade Secrets Act (18 U.S.C. §1905).
- 5.1.4 **{INSERT NAME OF AGENCY OR ACRONYM}** agrees that the information obtained from CBP will only be used for the purposes of enforcing **{INSERT NAME OF AGENCY OR ACRONYM}** laws and regulations and will not be disseminated to third parties outside of the **{INSERT NAME OF AGENCY OR ACRONYM}** without the express written permission of CBP. **{INSERT NAME OF AGENCY OR ACRONYM}** further agrees that any request pursuant to the FOIA (5 U.S.C. §552) for the CBP information transferred to **{INSERT NAME OF AGENCY OR ACRONYM}** will be sent to CBP for response.
- 5.1.5 The information should only be reviewed by authorized **{INSERT NAME OF AGENCY OR ACRONYM}** personnel on a need-to-know basis and should be kept secure.
- 5.1.6 In accordance with 44 U.S.C. §3510 (b), in the event that CBP and/or **{INSERT NAME OF AGENCY OR ACRONYM}** are sued or held liable in a civil action arising from an unlawful release by either CBP or **{INSERT NAME OF AGENCY OR ACRONYM}** of the ACE DATA which is related to this MOU, each agency acknowledges its own responsibility for assisting the Department of Justice in defending such lawsuit. However, under no circumstances will CBP be held financially responsible for any such release of the ACE data by **{INSERT NAME OF AGENCY OR ACRONYM}**, and **{INSERT NAME OF AGENCY OR ACRONYM}** will not be held financially responsible for any such release of the ACE data by CBP.
- 5.1.7 Unauthorized disclosure of CBP information may result in denial of future access to the information.

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5.2 It is Mutually Understood and Agreed That:

- 5.2.1 The above provisions will be exercised to the extent authorized by law, Department of Homeland Security (“DHS”), CBP, Department of ***{INSERT AGENCY’S DEPARTMENT, OR APPROPRIATE TITLE}*** and ***{INSERT NAME OF AGENCY OR ACRONYM}*** directives, statutes, and regulations, and consistent with the respective agencies’ missions.
- 5.2.2 This MOU is a formal expression of the purpose and intent of both parties concerned.
- 5.2.3 Parties to this MOU may jointly develop and implement additional agreements and plans to help fulfill the stated purpose of this MOU.
- 5.2.4 Transfers of funds contemplated by this MOU will be made in accordance with an Interagency Agreement. (See Appendix D for details on applicable fees.)
- 5.2.5 Public release of any data on the value or volume of imports is subject to the requirements of Office of Management and Budget Statistical Policy Directive Number 3. Agencies authorized to access and/or release information obtained under this MOU are responsible for ensuring that no covered data, in any form, is released prior to the official release of the international trade statistics without the approval of OMB.

6. ADMINISTRATION

- 6.1 The terms of this MOU may be modified upon the mutual written consent of the signatories or their statutory successors.
- 6.2 Amendments to the Standard Data Set (See Appendix A) concerning information subject to the data exchanged may be made through the issuance of an amended SDS defining the amended fields.
- 6.3 Request for amendments to the Standard Data Set, should be submitted to the CBP Point of Contact listed at the end of this document
- 6.4 The general guidelines of this MOU may be supplemented by specific guidelines in accordance with local needs, subject to approval by both parties hereto, and to the degree necessary, with the guidance of the ITDS Board of Directors or its successor entity.

7. DATE EFFECTIVE

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This MOU shall become effective upon the date of signature by the authorized agency representatives and is intended to be in force until terminated by either party upon one hundred twenty (120) days notice or amended by mutual agreement of the undersigned.

8. TERMINATION

Either party may revoke this MOU upon one hundred twenty (120) days written notice.

9. SEVERABILITY CLAUSE

Nothing in this MOU is intended to conflict with the current laws, regulations, or directives of DHS and CBP or ***{INSERT NAME OF AGENCY OR ACRONYM}***. If a term of this MOU is inconsistent with such authority, then that term shall be invalid, but the remaining terms and conditions of this MOU shall remain in full force and effect.

10. EMERGENCY SITUATIONS

In the event that a national or regional disaster disrupts communications between ***{INSERT NAME OF AGENCY OR ACRONYM}*** and CBP, an emergency contingency plan shall become operational. The procedures of that system are to be agreed upon in Appendix F to this MOU.

CBP reserves the right to suspend, interrupt or modify as necessary any information sharing operations that are the result of this MOU during times of national emergency as indicated by changes in the Homeland Security Advisory System.

11. NO PRIVATE RIGHT OF ACTION CREATED

This MOU is an internal government agreement and does not confer, grant or authorize any rights, privileges or obligations on any persons other than the undersigned parties and their official representatives.

12. RELATIONSHIP TO OTHER AUTHORITIES

Nothing in this MOU is intended to restrict CBP or ***{INSERT NAME OF AGENCY OR ACRONYM}*** from taking any action that the agencies would otherwise be authorized to take under law.

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Appendix A = PGA's Standard Data Set with legal authority to receive data.

Appendix B = List of Products PGA is interested in obtaining ACE data on.
(List should include HTSUS Number with accompanying
Description)

Appendix C = Background Investigation - Security Agreement

Appendix D = Details on any applicable Fees.

Appendix E = Glossary of Terms

Appendix F = Emergency Situations

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Appendix E GLOSSARY

“Jointly Owned” – jointly owned data is information which both CBP and the PGA have both statutory authority and regulatory authority (with OMB approval) to collect.