

**Agreement between the Government of the United States of America
and the Government of the Republic of Korea
on Enhancing Cooperation to Prevent and Combat Crime**

The Government of the United States of America and the Government of the Republic of Korea (hereinafter referred to as the "Parties"),

Prompted by the desire to cooperate as partners to combat crime, particularly terrorism, more effectively,

Recognizing that information-sharing is an essential component in the fight against crime, including terrorism,

Recognizing the importance of preventing and combating crime while respecting fundamental rights and freedoms, notably privacy,

Recognizing that enhancing cooperation between the border control and law enforcement agencies of both countries can facilitate more efficient and effective cross-border movement of legitimate travelers,

Recognizing the importance of understanding the difference in judicial and legal frameworks of the Parties, and

Seeking to enhance and encourage cooperation between the Parties in the spirit of partnership and the principle of reciprocity,

Have agreed as follows:

**Article 1
Definitions**

For the purposes of this Agreement,

1. "Crime" shall mean conduct constituting an offense punishable by a maximum deprivation of liberty of more than one year or a more serious penalty.
2. "Criminal justice purpose" shall include activities defined as the administration of criminal justice, which means the performance of any of the following activities: criminal identification, detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation activities of accused persons or criminal offenders.

3. "Reference data" shall mean any data to be used to positively identify an individual in the identification systems established by each country for the prevention and investigation of crimes in accordance with its respective national laws and regulations.

4. "Personal data" shall mean any information relating to an identified or identifiable natural person (the "data subject").

5. "Processing of personal data" means any operation or set of operations which is performed on personal data, whether or not by automated means, such as collection, recording, organization, storage, adaptation or alteration, sorting, retrieval, consultation, use, disclosure by supply, dissemination or otherwise making available, combination or alignment, blocking, or deletion through erasure or destruction of personal data.

Article 2 Purpose of this Agreement

The purpose of this Agreement is to enhance the cooperation between the Parties in preventing and combating crime.

Article 3 Fingerprinting data

For the purpose of implementing this Agreement, the Parties shall ensure the availability of the reference data from the file for the national automated fingerprint identification systems established for the prevention and investigation of criminal offenses. The reference data shall only include fingerprinting data and a reference.

Article 4 Automated searching of fingerprint data

1. For the prevention and investigation of crime, each Party shall allow the other Party's national contact points, as referred to in Article 7, access to the reference data referred to in Article 3, with the power to conduct automated searches by comparing fingerprinting data to obtain a positive or negative result.

2. The search powers shall be exercised only in individual cases and in compliance with the Parties' national laws. The search powers provided for under this Agreement shall be used only for a criminal justice purpose, which shall apply at the border when an individual for whom additional data is sought has been identified for further inspection.

Article 5
Alternative means to search using identifying data

Until the Republic of Korea is prepared to provide the United States of America with access to its automated fingerprint identification system, it shall provide an alternative means to conduct a search using other identifying data to determine a clear match linking the individual to additional data. Search powers shall be exercised in the same manner as provided in Article 4 and a clear match shall be treated the same as a firm match of fingerprinting data to allow for the supply of additional data as provided for in Article 6.

Article 6
Supply of further personal and other data

Should the procedure referred to in Article 4 show a match between fingerprinting data, the supply of any available further personal data and other data relating to the reference data required to implement this Agreement shall be governed by the national law, including legal assistance rules, of the requested Party.

Article 7
National contact points

1. For the purpose of information exchange as referred to in Articles 4 and 5, each Party shall designate one or more national points of contact. The powers of the contact points shall be governed by the national law applicable.
2. The details for the searching conducted pursuant to Articles 4 and 5 shall be set forth through working level consultations between the Parties.
3. The Parties shall consult regarding implementation of the following aspects of the Agreement:
 - a. the technical and procedural details for searches conducted pursuant to Articles 4 and 5; and
 - b. identification of crimes to be disclosed under this Agreement, which shall include the crimes set forth in the Annex.

Article 8
Supply of information in order to prevent and combat crime, including terrorism

1. For the prevention and combating of crime, including terrorism, the Parties may, in compliance with their respective national law, in individual cases, supply the other Party's points of contact with the personal data specified in paragraph 2 in so far as

necessary because particular circumstances give reason to believe that the data subject(s):

a. will commit or has committed a criminal offense, or participates in an organized criminal group or association; or

b. will commit or has committed terrorist or terrorism-related offenses in the other country, or offenses related to a terrorist group or an association in the other country, as those offenses are defined under the transmitting Party's national law; or

c. is undergoing or has undergone training to commit the offenses referred to in sub-paragraph (b) for the purpose of committing terrorist or terrorism-related offenses in the other country.

2. The personal data to be supplied shall include, if available, surname, first names, former names, other names, aliases, alternative spelling of names, sex, date and place of birth, current and former nationalities, passport number, numbers from other identity documents, and fingerprinting data, as well as a description of any conviction or of the circumstances giving rise to the belief referred to in paragraph 1.

3. The supplying Party may, in compliance with its national law, impose conditions on the use made of such data by the receiving Party. If the receiving Party accepts such data, it shall be bound by any such conditions.

4. Generic restrictions with respect to the legal standards of the receiving Party for processing personal data may not be imposed by the transmitting Party as a condition under paragraph 3 to providing data.

5. In addition to the personal data referred to in paragraph 2, the Parties may provide each other with non-personal data related to the offenses set forth in paragraph 1.

6. Each Party shall designate one or more national contact points for the exchange of personal and other data under this Article with the other Party's contact points. The powers of the national contact points shall be governed by the national law applicable.

Article 9

Privacy and data protection

1. The Parties recognize that the proper handling and processing of personal data that they acquire from each other is of critical importance to preserving confidence in the implementation of this Agreement.

2. The Parties commit themselves to processing personal data fairly and in accordance with their respective laws and:

- a. ensuring that the personal data provided are adequate and relevant in relation to the specific purpose of the transfer;
- b. retaining personal data only so long as necessary for the specific purpose for which the data were provided or further processed in accordance with this Agreement; and
- c. ensuring that possibly inaccurate personal data are timely brought to the attention of the receiving Party in order that appropriate corrective action is taken.

3. This Agreement shall not give rise to rights on the part of any private person, including the rights to obtain, suppress, or exclude any evidence, or to impede the sharing of personal data. Rights existing independently of this Agreement, however, are not affected.

Article 10 Limitation on processing data

1. Each Party may process the data obtained under this Agreement:
 - a. for the purpose of its criminal investigations;
 - b. for preventing a serious threat to its public security;
 - c. in its non-criminal judicial or administrative proceedings directly related to investigations set forth in subparagraph (a); or
 - d. for any other purpose, only with the prior consent of the Party which has transmitted the data.
2. The Parties shall not communicate data provided under this Agreement to any third State, international body, or private entity, without the consent of the Party that provided the data and without appropriate safeguards.

Article 11 Correction, blockage and deletion of data

1. At the request of the supplying Party, the receiving Party shall be obliged to correct, block, or delete, consistent with its national law, data received under this Agreement that are incorrect or incomplete or if its collection or further processing contravenes this Agreement or the rules applicable to the supplying Party.
2. Where the receiving Party becomes aware that data it has received from the supplying Party under this Agreement are not accurate, it shall take all appropriate measures to safeguard against erroneous reliance on such data, which shall include in particular supplementation, deletion, or correction of such data.
3. Each Party shall notify the other if it becomes aware that material data it has

transmitted to the other Party or received from the other Party under this Agreement are inaccurate or unreliable, or are subject to significant doubt.

Article 12 Documentation

1. Each Party shall maintain a record of the transmission and receipt of data communicated to the other Party under this Agreement. This record shall serve to:

- a. ensure effective monitoring of data protection in accordance with the national law of the respective Party;
- b. enable the Parties to effectively make use of the rights granted to them according to Articles 11 and 15; and
- c. ensure data security.

2. The record shall include:

- a. information on the data supplied;
- b. the date of supply; and
- c. the recipient of the data in case the data were supplied to other entities.

3. The recorded data must be protected with suitable measures against inappropriate use and other forms of improper use and must be kept for two years. After the conservation period the recorded data must be deleted immediately, unless this is inconsistent with its national law, including applicable data protection and retention rules.

Article 13 Data security

The Parties shall ensure that the necessary technical measures and organizational arrangements are utilized to protect personal data against accidental or unlawful destruction, accidental loss or unauthorized disclosure, alteration, access or any unauthorized form of processing. The Parties in particular shall ensure that only those authorized to access personal data can have access to such data.

Article 14 Provision of information to data subjects

1. Nothing in this Agreement shall be interpreted to interfere with the Parties' legal obligations, as set forth by their respective laws, to provide data subjects with information as to the purposes of the processing and the identity of the data controller, the recipients or categories of recipients, the existence of the right of access to and the

right to rectify the data concerning him or her and any further information such as the legal basis of the processing operation for which the data are intended, the time limits for storing the data and the right of recourse, in so far as such further information is necessary, having regard for the purposes and the specific circumstances in which the data are processed, to guarantee fair processing with respect to data subjects.

2. Such information may be denied in accordance with the respective laws of the Parties, including if providing this information may jeopardize:

- a. the purposes of the processing;
- b. investigations or prosecutions conducted by the competent authorities in the Republic of Korea or by the competent authorities in the United States of America; or
- c. the rights and freedoms of third parties.

Article 15 Information

Upon request, the receiving Party shall inform the supplying Party of the processing of supplied data and results obtained. The receiving Party shall ensure that its answer is communicated to the supplying Party in a timely manner.

Article 16 Relation to other agreements

Nothing in this Agreement shall be construed to limit or prejudice the provisions of any treaty, other agreement, working law enforcement relationship, or domestic law allowing for information sharing between the Republic of Korea and the United States of America.

Article 17 Consultations

1. The Parties shall consult each other regularly on the implementation of the provisions of this Agreement.
2. In the event of any dispute regarding the interpretation or application of this Agreement, the Parties shall consult each other in order to facilitate its resolution.

Article 18
Expenses

Each Party shall bear the expenses incurred by its authorities in implementing this Agreement. In special cases, the Parties may agree on different arrangements.

Article 19
Termination of the Agreement

This Agreement may be terminated by either Party with three months' notice in writing to the other Party. The provisions of this Agreement shall continue to apply to data supplied prior to such termination.

Article 20
Amendments

1. The Parties shall enter into consultations with respect to the amendment of this Agreement at the request of either Party.
2. This Agreement may be amended by written agreement of the Parties at any time.

Article 21
Entry into force

This Agreement, of which the Annex forms an integral part, shall enter into force on the date of the later note completing an exchange of diplomatic notes between the Parties indicating that each has taken any steps necessary to bring the Agreement into force.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

Done at Washington, this 2nd day of November, 2008, in duplicate, in the English and Korean languages, both texts being equally authentic.

FOR THE GOVERNMENT OF
THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF
THE REPUBLIC OF KOREA:

Paula A. Schwan

이은하

Julia

Annex

The crimes to be disclosed for purposes of this Agreement include the following, as well as the offenses of conspiracy to commit such offenses, or attempt to commit such offenses, when authorized by statute:

1. Serious Crimes Against a Person: genocide, torture, murder, manslaughter and associated offenses, trafficking in persons, rape and other sex offenses, alien smuggling, peonage, slavery, involuntary servitude, offenses against children, kidnapping or unlawful restraint, ransom, domestic violence offenses, prostitution and commercialized vice, and violations of religious freedom.
2. Serious Crimes Against the State: terrorism and associated offenses, material support to a terrorist or terrorist organization, terroristic threats, sabotage, treason and sedition, espionage, threats against a government official, arms trading, and obstruction of justice.
3. Serious Weapons Offenses: firearms offenses, including but not limited to trafficking, offenses relating to destructive devices or explosive materials.
4. Serious Crimes of Theft/Fraud: burglary, extortion, perjury, money laundering, falsely passing a bad check, robbery, armed robbery, and counterfeiting.
5. Serious Crimes Involving Controlled Substances
6. Serious Crimes Against Property: arson

The Parties shall consult regarding the possible scope of the following offenses included under this Agreement: assault, battery, blackmail, breaking and entering, bribery, embezzlement, racketeering, fraud-related offenses (forgery, uttering a forged instrument, mail fraud, fraudulent and illegal use of documents, including but not limited to credit cards and passports), tax evasion, theft and larceny offenses, and malicious destruction of property.