

ICAC MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is made and entered into by and between the Department of Kentucky State Police (KSP), and _____, (Affiliate Agency).

The purpose of this MOU is to establish guidelines and requirements for Affiliate Agency in its participation in the Task Force. KSP is the law enforcement grant administrator for the Commonwealth of Kentucky for OJJDP. KSP provides funding for training and equipment to qualifying affiliate agencies throughout the Commonwealth to enable these agencies to assist the Task Force in deterring, preventing, investigating, and prosecuting predators who seek to exploit or engage minors in sexual activity via electronic means. Affiliate Agency seeks funding to train its officers to deter, prevent, investigate and prosecute predators who seek to exploit or engage minors in sexual activity via electronic means.

1. Definitions

For the purposes of this MOU, the definitions listed in this section should be presumed to represent the common and exclusive understanding of the parties hereto. The singular and plural form, as well as the small or upper case, of any defined term can be used interchangeably regardless of whether the definition refers to the singular or plural term, or uses the small or upper case.

- 1.1 "Adequate security" shall mean administrative, technical, and physical safeguards to:
 - a. insure the security and confidentiality of confidential information;
 - b. protect against system misuse and any anticipated threats or hazards to the security or integrity of confidential information;
 - c. protect against unauthorized access to, or use of, confidential information; and
 - d. protect against unauthorized access to, or use of, login information and passwords.
- 1.2 "Commander" is the KSP officer designated by KSP, and recognized by OJJDP, as the leader of the Task Force.
- 1.3 "Confidential information" shall mean data and information pertaining to ICAC investigations, ICAC standards, investigative practices, or information provided by the Task Force.
- 1.4 "Crime" means any crime, or offense, that involves the exploitation or victimization of children facilitated by technology.
- 1.5 "Deconflict" or "deconfliction" means the process whereby affiliate agencies submit investigative information to each other, the Task Force, or ICAC related databases in order to determine whether other law enforcement agencies have information concerning the same targets or crimes.

ICAC MEMORANDUM OF UNDERSTANDING

- 1.6 “Disclose” shall mean to reveal, disseminate, or otherwise make information known to another person or entity by any means.
- 1.7 “Equipment” means any machine, or tool, including vehicles, safety devices, telephones, communication devices, printers, scanners, computers, computer hardware, middleware, software, software licenses, applications, data storage, networking devices, and network access services.
- 1.8 “Herein”, “hereto”, “hereof” and “hereunder” shall be deemed to refer to this MOU generally, and not to any particular provision of the MOU, unless expressly stated otherwise.
- 1.9 “ICAC” means the Internet Crimes Against Children Program, a national program composed of state and regional task forces.
- 1.10 “ICAC standards” means the National ICAC Program Operational and Investigative Standards.
- 1.11 “IDS” means the ICAC Data System.
- 1.12 “Include” and “including” shall be deemed to be followed by the phrase “but not necessarily limited to”.
- 1.13 “NCMEC” means the National Center for Missing and Exploited Children.
- 1.14 “Officer” means a sworn law enforcement officer with authority to make arrests, including state troopers, sheriffs, deputy sheriffs, and police officers.
- 1.15 “Officer acknowledgement” shall mean a written statement signed by an officer of affiliate agency, providing that he or she has read the ICAC standards, and agrees to be subject to the duties and responsibilities required of affiliate agency by this MOU.
- 1.16 “OJJDP” means the Office of Juvenile Justice and Delinquency Prevention of the United States Department of Justice.
- 1.17 “Physically secure location” means a facility, a police vehicle, or an area, a room, or a group of rooms within a facility with both the physical and personnel security controls sufficient to protect, and restrict access to, confidential information.
- 1.18 “Task Force” means the ICAC Task Force for the Commonwealth of Kentucky.

ICAC MEMORANDUM OF UNDERSTANDING

2. Task Force

- 2.1 The Task Force shall consist of the Commander, the KSP Electronic Crime Branch, and all law enforcement agencies and officers selected by KSP for participation in the Task Force.
- 2.2 The Commander, or his designee, shall be responsible for:
 - a. coordinating the daily operations of the Task Force;
 - b. ensuring compliance with the policies and procedures of the OJJDP;
 - c. ensuring compliance with ICAC standards;
 - d. ensuring compliance with this MOU; and
 - e. administering the ICAC grant.
- 2.3 The Task Force shall meet at least semi-annually at a time and location established by the Commander.
- 2.4 The Task Force shall not constitute a separate legal or administrative entity.

3. Affiliate Agency

- 3.1 Affiliate agency shall use adequate security.
- 3.2 Affiliate agency shall not disclose confidential information.
- 3.3 Notwithstanding the provisions of Section 3.2 herein, affiliate agency may disclose confidential information to other law enforcement agencies when necessary for law enforcement purposes.
- 3.4 Affiliate agency shall make all requests and recommendations pertaining to the Task Force through the Commander.
- 3.5 Affiliate agency shall comply with ICAC standards (Attachment "A").
- 3.6 Affiliate agency shall direct its officers to comply with ICAC standards.
- 3.7 Affiliate agency agrees that ICAC standards are proprietary to the National ICAC, contain confidential information, and are not for public release. Affiliate agency further agrees that any Freedom of Information Act (FOIA) request, Open Records Request pursuant to KRS 61.870, et seq. (ORA), or similar request under the laws of another state seeking access to confidential information shall be referred to the Task Force as the official custodian of said information. Affiliate agency additionally agrees that it will make all efforts permitted by the FOIA, ORA or other pertinent law, to preserve the confidentiality of the information. The right of KSP to intervene in any litigation relating to disclosure of confidential information is hereby recognized.

ICAC MEMORANDUM OF UNDERSTANDING

3.8 Affiliate agency shall propose specific officers to be assigned to the Task Force based on the officer's technical skill level and investigative background.

3.9 Affiliate agency agrees to retain officer acknowledgements during the term of this MOU and provide copies of them to the Commander upon request.

4. Investigations

4.1 ICAC investigations shall be conducted only by officers who have executed an officer acknowledgment.

4.2 Each officer involved with undercover operations must receive ICAC training prior to initiating, or conducting, proactive investigations.

4.3 Affiliate agency shall coordinate all undercover activity by its officers with Task Force for deconfliction.

4.4 Officers shall conduct reactive child sexual exploitation investigations based on:

- a. CyberTip referrals from NCMEC;
- b. internet service provider and law enforcement referrals; and
- c. citizen complaints.

4.5 Affiliate agency shall submit case information to the NCMEC Child Victim Identification Program (CVIP) when a victim of child pornography is identified.

4.6 Affiliate agency shall utilize IDS to deconflict proactive and reactive investigations, receive CyberTips, and report case dispositions.

4.7 Upon identification of a common target, affiliate agency shall contact the other law enforcement agency targeting the suspect for deconfliction.

4.8 Affiliate agency shall contact the Commander for assistance in coordinating an investigation that requires referral outside affiliate agency's jurisdictional boundaries.

4.9 Affiliate agency shall coordinate with Task Force all media release information regarding joint operations. Media releases shall not include confidential information.

5. Supervision and Reporting

5.1 Affiliate agency agrees that its officers shall:

- a. remain employees of affiliate agency while engaged in Task Force activities;
- b. adhere to affiliate agency's policies;
- c. adhere to ICAC standards;

ICAC MEMORANDUM OF UNDERSTANDING

- d. conduct education and prevention programs to foster public awareness of crime;
- e. using a process outlined by the Task Force, shall submit all requested statistics to the Task Force via available and designated electronic databases, including IDS, by the tenth day of each month;
- f. submit all electronic evidence to the KSP Electronic Crime Branch, or Kentucky Regional Computer Forensics Laboratory, for examination, unless affiliate agency employs an inter-agency trained, and experienced, forensic examiner;
- g. timely submit all criminal case information to the KSP centralized criminal history record information system, utilizing a certified National Incident Based Reporting System;
- h. maintain all cases consistent with properly accepted law enforcement practices and pursuant to the policy of the affiliate agency; and
- i. be subject to the duties and responsibilities of affiliate agency as provided in this MOU.

5.2 Neither KSP, nor the Task Force, shall be responsible for:

- a. payment of salaries, or other forms of compensation, of any of affiliate agency's officers;
- b. procurement of insurance for affiliate agency or its officers;
- c. payment of any insurance premiums of affiliate agency or its officers;
- d. payment of any worker's compensation, disability, or similar benefits due any of affiliate agency's officers for any reason, including as a result of injury or death incurred while assigned to, or participating in, the Task Force;
- e. payment of unreimbursed, or uncovered, death, disability or health-related expenses of affiliate agency or its officers; or
- f. defending, or indemnifying, affiliate agency or its officers, for any claims of loss, damage, or injury, because of an act or omission occurring while affiliate agency or its officers are assigned to, or participating in, the Task Force.

5.3 Each party shall perform its activities and duties hereunder only as an independent contractor. Nothing in this MOU shall be deemed to create, or in any way establish, a joint venture, partnership, employer-employee relationship, or formal business organization of any kind.

5.4 Nothing in this MOU shall be interpreted as granting either party the right or authority to make commitments of any kind for the other.

6. Training and Equipment

6.1 Affiliate agency shall purchase and maintain any equipment required for participation in the Task Force.

6.2 Affiliate agency agrees to make equipment available in support of Task Force investigations.

ICAC MEMORANDUM OF UNDERSTANDING

- 6.3 Affiliate agency shall make reasonable efforts to place confidential information and officers in a physically secure location.
- 6.4 Affiliate agency agrees to seek internal funding for any needed equipment and training for investigations prior to requesting equipment or funding from the ICAC grant. Any resources supplied by and through the ICAC grant shall be used solely for Task Force purposes.
- 6.5 The Task Force shall provide affiliate agency with advanced training for approved, designated officers to enable the officers to conduct Task Force investigations effectively.
- 6.6 The Task Force shall make every effort to provide continuing training in ICAC specific law enforcement subjects with ICAC grant funding.
- 6.7 The Commander shall utilize discretion in administering ICAC grant funding and determining which agencies receive funding.

7. Section Headings

The section headings in this MOU are for convenience of reference only and are not intended to be part of, or to affect the meaning or interpretation of, this MOU. The section headings shall not be construed to limit or extend the meaning of this MOU.

8. Interpretation

This MOU constitutes the entire agreement and understanding between the parties and supersedes and replaces any and all prior or contemporaneous proposals, agreements, understandings, commitments or representations of any kind, whether written or oral, relating to the subject matter hereof or the services to be performed hereunder. Both parties have read and agree to the specific language of this MOU; therefore, no conflict, ambiguity, or doubtful interpretation shall be construed against the drafter.

9. Applicable Law

This MOU shall be governed by, construed and interpreted in accordance with the laws of the Commonwealth of Kentucky. The parties agree that the proper jurisdiction and venue for any legal action that is initiated by any of the parties hereto against any of the other parties, which is based, either in whole or in part, on this MOU, shall be the Franklin County Circuit Court of the Commonwealth of Kentucky.

10. Waiver

The failure or delay of either party to insist upon performance of any provision of this MOU, or to exercise any right, remedy or option provided herein, shall neither be construed as a waiver of

ICAC MEMORANDUM OF UNDERSTANDING

the right to assert any of the same or to rely on any such terms or conditions at any time thereafter, nor in any way affect the validity of this MOU.

11. Effective date, modification, and termination

- 11.1 This MOU is effective upon the last signature of the duly authorized representatives of the parties hereto, and remains in effect until and including June 30, 2018, and shall automatically be renewed for two (2) additional years on its expiration date.
- 11.2 This MOU may be modified by a separate writing executed and approved in the same manner as this MOU.
- 11.3 Notwithstanding the provisions of Section 11.1, KSP may terminate this MOU at any time for cause, or may terminate this MOU without cause, with thirty (30) days prior written notice.
- 11.4 Notwithstanding the provisions of Section 11.1, this MOU may be terminated by mutual agreement in writing thirty (30) days prior to such termination.
- 11.5 Notwithstanding the provisions of Section 11.1, this MOU shall terminate upon the termination of the ICAC grant.
- 11.6 Upon termination of this MOU, affiliate agency shall return all equipment purchased with ICAC grant funding to the Commander within thirty (30) days.
- 11.7 Unless otherwise expressly provided herein, all communications required, pertaining to, or permitted by, this MOA, including modification and termination, shall be in writing and shall be deemed given to a party when:
- a. delivered to the appropriate address by United States Postal Service or by a nationally recognized overnight courier service (costs prepaid);
 - b. sent by facsimile with confirmation of transmission by the transmitting equipment; or
 - c. received or rejected by the addressee if sent by certified mail, return receipt requested.
- 11.8 A communication by mail or courier shall be deemed effective three (3) business days after it is placed in the mail or with the courier service.

12. Violation of MOU

- 12.1 Failure to adhere to applicable state and federal law, ICAC standards, provisions outlined in this MOU, or individual agency policies shall be grounds to remove the assigned officer from the Task Force.

ICAC MEMORANDUM OF UNDERSTANDING

- 12.2 Violation of this MOU by affiliate agency or its officers shall constitute cause for termination of this MOU, and be grounds for the imposition of civil and criminal sanctions.
- 12.3 Affiliate agency agrees that violation of this MOU by affiliate agency or its officers shall cause irreparable damage, and in such event, KSP shall have the right to equitable and injunctive relief, as well as seek any other legal remedies available.

13. Authority

Each party represents to the other that:

- a. it has obtained all necessary approvals, consents and authorizations to enter into this MOU and to perform its duties under this MOU;
- b. the person executing this MOU on its behalf has the authority to do so;
- c. upon execution and delivery of this MOU by the parties, it is a valid and binding contract, enforceable in accordance with its terms; and
- d. the execution, delivery, and performance of this MOU does not violate any bylaw, charter, regulation, law or any other governing authority of the party.

IN WITNESS WHEREOF, the parties hereto caused this MOU to be executed by the proper officers and officials:

AFFILIATE AGENCY

Name and Title of Representative of Affiliate Agency (please print)

Signature of Representative of Affiliate Agency

Date

KENTUCKY STATE POLICE

Commissioner of the Kentucky State Police or Designee

Date