STATE PLAN OF OPERATION BETWEEN

THE STATE OF MASSACHUSETTS

AND THE

_____

I. PURPOSE

This State Plan of Operation (SPO) is entered into between the State of Massachusetts and the_____, to set forth the terms and conditions which will be binding on the parties with respect to excess Department of Defense (DOD) personal property which is transferred pursuant to Title 10 USC § 2576a and to promote the efficient and expeditious transfer of the property and to ensure accountability of the same.

II. AUTHORITY

The Secretary of Defense is authorized by Title 10 USC § 2576a to transfer to Federal and State Agencies, personal property that is excess to the needs of the DOD and that the Secretary determines is suitable to be used by such agencies in law enforcement activities, with emphasis on counter-drug/counter-terrorism activities, under such terms prescribed by the Secretary. The authorities granted to the Secretary of Defense have been delegated to the DLA in determining whether property is suitable for use by agencies in law enforcement activities. DLA defines law enforcement activities as activities performed by government agencies whose primary function is the enforcement of applicable Federal, State, and local laws and whose compensated law enforcement officers have powers of arrest and apprehension.

III. GENERAL TERMS AND CONDITIONS

A. Operational Authority.

The Governor of the State of Massachusetts has designated in writing Colonel Richard D. McKeon with an effective date of July 27, 2015 to implement this program statewide as well as conduct management and oversight of this program. Funding to administer this program is provided by the Massachusetts State Police. The funding is used to administer the program and to provide support and assistance to the Law Enforcement Agencies (LEAs), via computer/telephone assistance and occasional physical visits to the LEAs. The facilities, staffing to provide the support to the LEAs within the State of Massachusetts are as follows:

State Coordinator (SC): Colonel Richard D. McKeon

State Point of Contact (SPOC): Captain Thomas Donoghue

State Point of Contact (SPOC): Mr. Joseph Kelly

The State Coordinator contact information is:

Agency Address/Location: State Police Headquarters
470 Worcester Road, Framingham, Massachusetts 01702
Contact Phone Numbers: 508-820-2134

Fax Number: 508-820-2359

Hours of Operation: MONDAY-FRIDAY 0800-1600

The DLA LESO has final authority to determine the type, quantity, and location of excess DOD personal property suitable for conditional transfer to law enforcement activities.

B. This agreement creates no entitlement to the LEA to receive excess DOD personal property.

C. Property available under this agreement is for the current use of authorized program participants; it will not be requested nor issued for speculative use/possible future use. Property will not be obtained for the purpose of sale, lease, loan, personal use, rent, exchange, barter, to secure a loan, or to otherwise supplement normal LEA or State/local governmental entities budgets. All requests for property will be based on bona fide law enforcement requirements. Under no circumstances will property be sold or otherwise transferred to non-U.S. persons or exported. Loaning to non-participants of the DLA LESO Program is not authorized.

D. Requests for property solely for the purpose of cannibalization, and cannibalization of DOD property currently on an LEA inventory, must be submitted in writing thru the State Coordinators office to DLA Disposition Services LESO for approval. The DLA Disposition Services LESO will consider cannibalization requests on a case-by-case basis. Any transportation, repair, maintenance, insurance, disposal or other expenses associated with these assets is the sole responsibility of the LEA.

E. The DLA Disposition Services LESO reserves the right to recall any and all property issued through the LESO Program.

F. The DLA Disposition Services LESO conditionally transfers excess DOD property to States/LEAs enrolled in the LESO Program. DLA Disposition Services LESO retains permanent title to property with Demilitarization (DEMIL) Codes of B, C, D, E, F, G and Q (with an Integrity Code of 3 and 6), property with these DEMIL codes is also known as controlled property. Once the State/ LEA no longer have use for property in these DEMIL codes the property must either be transferred to another LEA with State approval first or returned to DLA Disposition Services for disposal.

G. The DLA Disposition Services LESO permanently passes title to property with DEMIL Code of "A" to the State/LEA after one year from the initial transfer to the State/LEAs property book from the DLA Disposition Services inventory.

1. Property with DEMIL Code of "A" will be systematically archived upon meeting the one year mark and will no longer be on the LEAs inventory. Prior to this property being archived, the State and/or LEAs are still responsible for the accountability and physical control of the item (s).

2. Archived property is not subject to annual inventory requirements, and will not be inventoried during State or DLA Disposition Services LESO Program Compliance Review (PCR).

3. The State and/or LEA may dispose or sell DEMIL "A" items that have been archived from the property book, in accordance with applicable Federal, State and local laws.

H. State and LEAs are not authorized to transfer or turn-in property issued under the LESO Program without State and DLA Disposition Services LESO approval. Property will not physically move until the approval process is complete.

I. Property obtained under this SPO must be placed into use within one (1) year of receipt, unless the condition of the property renders it unusable, in which case the property can be returned to the nearest DLA Disposition Services Site. If property is not put into use by the LEA within one (1) year, the State/LEA must coordinate a transfer of property to another LEA or request a turn-in to return the property to the nearest DLA Disposition Services Site.

IV. ENROLLMENT

A. For the purposes of this program, law enforcement activities are defined as Government agencies whose primary function is the enforcement of applicable Federal, State, Local laws, and whose compensated officers have powers of arrest and apprehension.

B. The State and LEA's shall:

1. LEA submits the Application for Participation to the State Coordinator along with a letter from the Chief Executive Official of the City/Town or College/University authorizing the LEA to acquire 1033 Program equipment. The State Coordinator will approve the application if all criteria is met.

2. Ensure only authorized LEA applications for LESO Program enrollment are submitted.

3. Approve/disapprove applicants in the LESO Program. The State Coordinator will only certify LEAs that are government agencies whose primary function is the enforcement of applicable Federal, State, and local laws and whose compensated officers have the powers of arrest and apprehension.

4. Ensure LEAs enrolled in the LESO Program update their account information annually in the current property accounting system. Annual update is defined as 365 days from initial date of enrollment and/or last update.

5. Provide a comprehensive overview of the LESO Program to all LEAs once they are approved for enrollment.

V. ANNUAL INVENTORY REQUIREMENT

A. Per the DLA Memorandum of Agreement (MOA) between DLA and the State, it is required to conduct an annual inventory certification of controlled property.

B. The State and LEA's shall:

1. Receive and validate incoming certified inventories and reconcile inventories with the LEA.

2. Ensure the LEAs provide serial numbers identified in annual inventory process for inclusion in the DLA Disposition Services property accounting system, for Aircraft, Watercraft, Tactical Vehicles and Weapons and other unique items, as required.

3. Send confirmation, to the State Coordinator, when the LEAs inventory is reconciled in the DLA Disposition Services LESO property accounting system. This will serve as the State's confirmation that LESO Program controlled property within his/her State has been reconciled in the accounting system of record.

4. The State may suspend/terminate an LEA, as a result of the LEAs failure to properly conduct and/or certify and submit certified inventories, according to the aforementioned requirements.

a. The LEA will complete inventories for their agency by January 31st of each year. The Fiscal Year (FY) is defined as October 1st through September 30th of each year. This provides the LEAs four months to physically inventory LESO Program property in their possession, and submit their certified inventories to their State Coordinators.

b. In addition to the certifying inventories, the State requires photographs for all Aircraft, Watercraft, Tactical Vehicles, NVGs and Weapons received through the LESO Program.

(1) The State requires front, side and data plate photos for Aircraft, Watercraft, Tactical Vehicles and other unique items as required that are received through the LESO Program.

(2) The State requires submission of serial number photos for each Aircraft, Watercraft, Tactical Vehicles, NVGs, Weapons and other unique items as required that are received through the LESO Program.

c. LEAs that fail to comply with the inventory by January 31st may be suspended/terminated from operations within the LESO Program. Further failure to submit the inventory may result in a LEA termination.

d. Validate the accountability of all High Profile (Aircraft, Watercraft, Tactical Vehicles, NVGs and Weapons), High Awareness (Demilitarization required) property with each LEA following a domestic disaster within 60 days by having them conduct a physical inventory.

e. The LEA is aware that High Profile Commodities (Aircraft, Watercraft, Tactical Vehicles, NVGs and Weapons), High Awareness (Demilitarization required) property is subject to additional controls.

VI. PROGRAM COMPLIANCE REVIEWS

A. The State of Massachusetts in accordance with the DLA Disposition Services Memorandum of Agreement is subject to Biannual Program Compliance Reviews. This review includes Law Enforcement Agencies that have DLA LESO issued property in their possession. Law Enforcement Agencies that may be selected by the DLA LESO will be subject to a DLA LESO Property and documentation review. As a participant in the DLA LESO Program your Law Enforcement Agency may be subject to selection in these reviews. In addition to this requirement, the State will conduct annual internal 5% Program Compliance Reviews of LEAs participating in the LESO program in order to ensure accountability, program compliance and validate annual inventory submissions are accurate. Results of internal PCRs in terms of LEA non- compliance with terms and conditions of the LESO Program will be kept on-file at the State Coordinator's Office.

1. The State internal review will include, at minimum:

(a) A review of each selected LEAs LESO Program files.

(b) A review of the signed State Plan of Operation.

(c) A review of the LEA application and screener(s) letter.

(d) A physical inventory and/or approved custody card verification of LESO Program property at each selected LEA.

(e) A review of property accountability procedures to include the following criteria;

1.The proper security and storage of assets. (Secure controlled area with limited access).
2. Asset tracking and sign out procedures in place for LESO assets.
3. Prior approval of any transfer of high visibility assets.
4. Reporting of all lost, missing or stolen assets.
5. Identification of all unused property**

**The State and/or LEA will bear all expenses related to the repossession, transfer or turn-in of LESO Program property to a different LEA or the nearest DLA Disposition Service site.

(f) A specific review of each selected LEAs files for the following: DD Form

1348-1A for each item currently on inventory, weapons documentation, transfer documents, turn-in documents, inventory adjustment documents, exception to policy letters (if any), approved cannibalization requests (if any) and other pertinent documentation as required.

VII. REPORTING REQUIREMENTS FOR LOST, MISSING, STOLEN, DAMAGED OR DESTROYED LESO PROGRAM PROPERTY

A. All property missing, lost, stolen, damaged, or destroyed must be reported to the State and DLA Disposition Services LESO.

1. Excess DOD personal property with a Demilitarization Code of B, C, D, E, F, G and Q (with an Integrity Code of 3 and 6) must be reported to the State and DLA Disposition Services LESO within twenty-four (24) hours.

2. Excess DOD personal property with a Demilitarization Code of A must be reported to the State and DLA Disposition Services LESO within seven (7) days.

3. All reports are subject to the DLA Office of the Inspector General (OIG) inspection.

B. The DLA Disposition Services LESO may grant extensions to the reporting requirements listed above, on a case by case basis.

VIII. AIRCRAFT AND WEAPONS

A. Aircraft (fixed wing and rotary wing), may be transferred to the LEA for its use in law enforcement activities. The State Plan of Operation must ensure that all LEAs and all subsequent users are aware of and agree to provide all required controls and documentation in accordance with applicable laws and regulations for these items.

Additionally, the following conditions apply:

Aircraft acquired *prior to* September 30, 1996, under the 1208 Program *were* considered "1208 Aircraft". Public Law 104-201, Section 1033 (b) (1) repealed all Section 1208. Therefore, all aircraft and/or aircraft parts are considered LESO Program aircraft and/or aircraft parts as of September 30, 1996. [As repealed by Pub. L. 104-201 Sec. 1033 (b) (1)]. Sale, trade or transfer of aircraft and/or aircraft parts (acquired prior to September 30, 1996) may be authorized by the DLA Disposition Services LESO, on a case by case basis. The DLA Disposition Services LESO reserves the right to approve or deny requests for sale, trade or transfer of all LESO Program aircraft and/or aircraft parts, regardless of when the aircraft was originally acquired.

B. Law Enforcement Agencies no longer requiring LESO Program weapons must request authorization to transfer or return weapons. Transfers and turn-ins of weapons must be approved by the State Coordinator and the DLA Disposition Services LESO. Weapons will not physically move until the approval process is complete. Weapons that are issued must have a documented chain of custody, with the chain of custody including a signature of the receiving officer indicating that he/she has received the appropriate weapon(s) with the correct, specific serial number(s).

IX. RECORDS MANAGEMENT

A. State Coordinator and LEAs enrolled in the LESO Program, must maintain all records in accordance with the DLA Records Schedule. Records for property acquired through the LESO Program have retention controls based on the properties DEMIL codes. All documents concerning a property record must be retained.

1. Property records for items with a DEMIL code of A must be retained for two calendar years (CY) from approval date and then may be destroyed.

2. Property records for items with DEMIL codes of B, C, D, E, F, G and Q must be retained for 5 years or for the life span of the property, whichever is longer.

3. Environmental Property records must be retained for fifty years, regardless of DEMIL code (Chemicals, Batteries, Hazardous Material/Hazardous Waste).

4. LESO Program files must be segregated from all other records.

5. All property records must be filed, retained, and destroyed in accordance with the DLA Records Schedule. These records include, but are not limited to the following: DRMS Form 103, DD Form 1348-1A, requests for transfer, turn-in, or disposal, approved Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE) Forms 10 and 5, Certificate of Aircraft Registration (AC Form 8050-3), Aircraft Registration Application (AC 8050-1) and any other pertinent documentation and/or records associated with the LESO Program.

X. PROPERTY ALLOCATION

A. The State and LEA's shall:

1. Ensure LEAs submit appropriate justifications when requesting excess DOD property via the LESO Program, and will ensure LESO Program property will be used for law enforcement purposes only. The Massachusetts Executive Office of Public Safety and Security will be advised of all requests for equipment.

2. Access the DLA Disposition Services LESO Website on a weekly basis for timely and accurate guidance, information and links concerning the LESO Program and ensure that all relevant information is passed on to participating LEAs.

3. Encourage and assist the Law Enforcement Agencies in the use of electronic screening of property via the DLA Disposition Services Reutilization, Transfer and Donation (RTD) Web.

4. Upon receipt of a valid LEA request for property, submit requests that ensure fair and equitable distribution of property to the greatest extent possible based on current LEA inventory and LEA justification for property. Generally no more than one of any item per officer will be allocated.

5. Maintain access to the DLA Disposition Services RTD Website to approve/ disapprove transfers, turn-ins and disposal requests from an LEA or to generate these requests at the State level and forward all approvals to the DLA Disposition Services LESO for action.

6. Assist the LEAs with enrollment, property request, transfer, turn-in and disposal procedures.

7. Review property requests in the DLA Disposition Services RTD Website and property receipts and conduct monthly reconciliations of property records.

8. Access the DLA Disposition Services RTD Web at a minimum of once daily (Monday thru Friday) to process LEAs requests for excess DOD property.

XI. PROGRAM SUSPENSION & TERMINATION

A. The LEA is required to abide by the terms and conditions of the State Plan of Operation in order to maintain active status.

B. The State and/or DLA LESO shall suspend or terminate an LEA:

1. Suspend LEAs in all situations relating to the suspected or actual abuse of LESO Program property or requirements and/or repeated failure to meet the terms and conditions of the SPO. Suspension may lead to TERMINATION.

2. Suspend or terminate an LEA(s) and/or LEA POC(s) based upon their findings during internal program compliance reviews and/or spot checks at the State level.

3. Require the LEAs to complete and submit results regarding all completed police investigations and/or reports regarding lost, missing, stolen and/or damaged LESO Program property. The LEA must submit all documentation to the State and DLA Disposition Services LESO upon receipt.

4. Initiate corrective action to rectify suspensions and/or terminations placed upon the LEAs for failure to meet the terms and conditions of the LESO Program.

5. The State Coordinator will maintain contact (until resolved) with suspended LEA(s) within his/her State to ensure corrective actions are rectified by timeframe provided by the DLA Disposition Services LESO.

6. Provide documentation to the State and DLA Disposition Services LESO when actionable items are rectified by the LEA.

7. In the event of a LEA termination, the State Coordinator will make every attempt to transfer the LESO Program property of the terminated LEA to an authorized LEA, as applicable, prior to requesting a turn-in of the property to the nearest DLA Disposition Services Site.

8. In cases relating to an LEA termination, the LEA will have 60 days to complete the transfer or turn-in of all LESO Program property in their possession.

9. Request reinstatement via the State Coordinator or SPOC(s) to full participation status at the conclusion of a suspension period.

10. The DLA Disposition Services LESO Program Manager has final discretion on reinstatement requests. Reinstatement to full participation from a suspension and/or termination is not automatic.

XII. COSTS & FEES

A. All costs associated with the transportation, turn-in, transfer, repair, maintenance, insurance, disposal, repossession or other expenses related to property obtained through the LESO Program, is the sole responsibility of the LEA.

XIII. NOTICES

A. The State or DLA Disposition Services LESO, may, from time to time, propose modifications or amendments to the provisions of this SPO. In such cases, reasonable opportunity will, insofar as practicable, be afforded the State Coordinator or LEA to conform changes affecting their operations.

XIV. ANTI-DISCRIMINATION

A. By signing this SPO or accepting excess DOD personal property under this SPO, the State pledges that it and each LEA agrees to comply with applicable provisions of the following national policies prohibiting discrimination:

1. On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) as implemented by DOD regulations 32 CR Part 195.

2. On the basis of age, in the Age Discrimination Act of 1975 (42 USC 6101, et seq) as implemented by Department of Health and Human Services regulations in 45 CFR Part 90.

3. On the basis of handicap, in Section 504 of the Rehabilitation Act of 1973, P.L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, P.L. 93-516 (29 U.S.C. 794), as implemented by Department of Justice regulations in 28 CFR Part 41 and DOD regulations at 32 CFR Part 56.

B. These elements are considered the minimum essential ingredients for establishment of a satisfactory business agreement between the State and the LEA.

XV. INDEMNIFICATION CLAUSE

A. To the extent permitted by law, the State Coordinator/LEA shall indemnify and hold the U.S. Government harmless from any and all actions, claims, debts, demands, judgments, liabilities, cost, and attorney's fees arising out of, claimed on account of, or in any manner predicated upon loss of, or damage to property and injuries, illness or disabilities to, or death of any and all persons whatsoever, including members of the general public, or to the property of any legal or political

entity including states, local and interstate bodies, in any manner caused by or contributed to by the State/LEA, its agents, servants, employees, or any person subject to its control while in, upon or about the sale site and/or the site on which the property is located, or while the property is in the possession of, used by, or subject to the control of the State/LEA, its agents, servants, or employees after the property has been removed from U.S. Government control. The State will maintain or assure that the LEA maintains adequate insurance to cover damages or injuries to persons or property relating to the use of the property. Self-insurance by the State/LEA is considered acceptable. The U.S. Government assumes no liability for damages or injuries to any person(s) or property arising from the use of the property.

XVI. TERMINATION

A. This State Plan of Operation may be terminated by either party, provided the other party receives thirty (30) days' notice, in writing, or as otherwise stipulated by Public Law.

B. The undersigned Chief Executive Official for the LEA hereby agrees to comply with all provisions set forth herein and acknowledges that any violation of the terms and conditions of this SPO may be grounds for immediate termination and possible legal consequences, to include pursuit of criminal prosecution if so warranted.

XVII. IN WITNESS THEREOF, the parties hereto have executed this agreement as of the last date written below.

_____
Type/Print Chief Executive Official Name

_____ _____
Chief Executive Official Signature Date (MM/DD/YYYY)

Colonel Richard D. McKeon
_____
Type/Print State Coordinator

_____ 09/17/2015
State Coordinator Signature Date (MM/DD/YYYY)

DEFENSE LOGISTICS AGENCY
DISPOSITION SERVICES
74 WASHINGTON AVENUE NORTH
BATTLE CREEK, MICHIGAN 49037-3092

J-4 November 7, 2014

MEMORANDUM FOR THE LESO PROGRAM STATE COORDINATOR

SUBJECT: DLA Memorandum of Agreement (MOA), 1033 Program changes

This memorandum amends the State's responsibilities within the existing MOA between DLA and MASSACHUSETTS. This amendment is effective immediately.
(Insert state name)

The State will adhere to the following program changes.

1. With all requests for Tactical Vehicles, Aircraft and Weapons, the State and/or LEAs must certify that they have a training plan which covers the use of the requested equipment. Requests without this documentation will not be approved.

2. The Demilitarization Code of "Q" with Integrity Code of "6" has been considered to be Commerce Control List items (cannot be exported) and is considered controlled property by the Department of Defense and DLA. This replaces any language of the current MOA that refers to property with a DEMIL code of Q6 .

Mr. Carlos S. Torres, Law Enforcement Support Office Branch Chief, DLA Disposition Services, J-413, is available to assist you as needed. Mr. Torres may be reached at (269) 961-4285, or via e-mail at Carlos.S.Torres@dla.mil.

State of: MASSACHUSETTS

State Coordinator (*Print*) RICHARD D. McKEON

State Coordinator (*Signature*)

Date: 09/21/2015