MEMORANDUM OF AGREEMENT FOR THE

NATIONAL INFORMATION EXCHANGE MODEL (NIEM) PROGRAM

PREAMBLE

This Memorandum of Agreement (MOA) is entered into by the Department of Homeland Security (DHS) and the Department of Justice (DOJ). This MOA outlines a cooperative effort to commit resources to support development and implementation of the National Information Exchange Model (NIEM), to actively support the NIEM Program Management Office (NIEM PMO), and to jointly promote: (1) efficient and expansive information sharing between federal agencies and between federal agencies and state, local, and tribal jurisdictions, as well as select international organizations, and private industry, (2) cost effective development and deployment of information systems, (3) better quality decision making as a result of more timely, accurate and complete information, and (4) as a consequence, enhanced public safety, homeland security and improved operations.

NIEM facilitates the development of reusable data components and information sharing standards. NIEM consists of a set of standards and tools, federated data models, processes and methods, documentation, training, technical assistance, communications and outreach support/activities, and robust governance structures and processes. The vision is that NIEM will be the standard, by choice, for cross-government information exchange.

ARTICLE 1: INTRODUCTION

A. PARTICIPATING PARTIES

The participating parties to this MOA are DHS and DOJ. This MOA anticipates that other organizations will become participating parties as described in ARTICLE 2.

B. MUTUAL INTEREST OF THE PARTIES

This MOA is in the mutual interest to the Parties because it is designed to enable each Party to apply its capabilities and expertise in cooperation with the other Parties to provide a consistent, single source of data exchange standards for shareable data of interest to these Parties and other agencies necessary to protect the citizens and interests of the United States.

C. AUTHORITIES

 Executive Order, EO 13356, dated Aug 27, 2004, directs the U.S. Government agencies to strengthen the sharing of terrorism information through the interchange of terrorist information between agencies and appropriate authorities of States and local governments, and the protection of the ability of agencies to acquire additional such information.

- 2. Executive Order, EO 13388, dated October 25, 2005; Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA); supersedes EO 13356 (August 27, 2004) and amends EO 13311 (July 29, 2003), created the Information Sharing Council (ISC) to provide advice and information concerning the "establishment of an interoperable terrorism information sharing environment to facilitate automated sharing of terrorism information among appropriate agencies." IRPTA was designed to assist the Program Manager for the Information Sharing Environment (PM-ISE) in expediting the establishment of the ISE and appointed the PM as chair of the Council. IRPTA required that "[t]o the maximum extent consistent with applicable law, agencies shall... give the highest priority to... the interchange of terrorism information among agencies... [and shall] protect the freedom, information privacy, and other legal rights of Americans in the conduct of [such] activities...."
- 3. Federal Advisory Committee Act (FACA), PL 92-463; The FACA was enacted in 1972 to ensure that advice by the various advisory committees formed over the years is objective and accessible to the public. The Act formalized a process for establishing, operating, overseeing, and terminating these advisory bodies and created the Committee Management Secretariat to monitor compliance with the Act.
- 4. 31 USC Sec. 1535, The Economy Act, which provides that an agency may place an order with a major organizational unit within the same agency or another federal agency for goods or services if (a) a MOAs are available; (b) the ordering agency decides the order is in the best interest of the U.S. Government; (c) the agency filling the order is able to provide or obtain by contract the ordered goods or services; and (d) the agency decides the ordered goods or services cannot be obtained by contract as conveniently or economically by a commercial enterprise.

D. BACKGROUND

Recognizing the need to develop common standards for information sharing among justice agencies, DOJ Office of Justice Programs (OJP) led the 2001 effort supporting the reconciliation of eXtensible Markup Language (XML) specifications under development among justice stakeholder groups. Global Justice XML Data Model (Global JXDM) was the result of this reconciliation. Global JXDM development was guided by the Infrastructure/Standards Working Group of the Global Justice Information Sharing Initiative, the FACA organization associated with DOJ.

Global JXDM provides a common semantic framework and has enabled data inter-operability across the extended justice and public safety communities. Global JXDM successes and operational implementations of the Global JXDM include: Amber Alert notifications, sex offender registries, criminal history records reporting,

case management systems, terrorism screening, and multiple information sharing initiatives that span federal, state, local, tribal and international arenas.

Recognizing the need for common standards for the exchange of data, DOJ and DHS signed on April 19, 2005 a MOA entitled, *Expansion of the Global JXDM to Include Homeland Security Information*. This MOA was designed to (1) capitalize on the success of the Global JXDM, (2) enable data architecture best practices and support implementation of both the Federal Enterprise Architecture Data Reference Model and Data Management Strategy, and (3) to provide the critical links for national priority information exchanges at all levels of government. Through the MOA, DHS and DOJ established the NIEM vision and the NIEM PMO. The PMO is responsible for the execution of the NIEM vision. In October 2006, NIEM 1.0 was delivered and Global Justice recognized NIEM as the natural evolution of the Global JXDM and pledged ongoing support and participation in the expansion and adoption of the program.

In parallel, the Intelligence Community (IC) working through the Intelligence Community Metadata Working Group (ICMWG) developed a set of metadata standards of documents, security and the exchange of data related to people associated with terrorism (the Terrorist Watchlist Personnel Data Exchange Standard – TWPDES). The IC began efforts to harmonize these standards with NIEM.

The Office of the PM-ISE, in consultation with the ISC, is responsible for the development of standards that foster proper operation of the ISE, and to assist the implementation of the ISE by Federal departments and agencies. This development ensures technological consistency in support of enhanced intelligence operations and in the prevention of terrorism. The ISE provides and facilitates the means for sharing terrorism information among all appropriate federal, state, local and tribal entities, the private sector, and foreign partners through the use of policy guidelines and technologies.

The Common Information Sharing Standards (CISS) Working Group of the ISC has selected NIEM as the primary ISE technical standard and governance approach for developing functional (data exchange in a business context) standards given its broad constituency of users from the federal, state, local, and tribal governments. PM-ISE has adopted the TWWPDES in the first CISS set of functional standards, as well as the Data Discover Metadata Standard (DDMS) developed by the Department of Defense as a complementary technical standard to NIEM.

E. PURPOSE

This MOA establishes and delineates the party's rights and obligations with respect to their participation in NIEM. This MOA is not intended, nor should it be construed, to create any right or benefit, substantive or procedural, enforceable at law or otherwise by any third party to this MOA against the parties, the United States, or the officers, employees, agents, or other associated personnel thereof.

F. SCOPE

This MOA will not affect any pre-existing, independent relationships or obligations between and/or among the participating parties or between the participating parties and any third parties. DHS and DOJ agree that this MOA supersedes the previous MOA between the two Agencies dated April 19, 2005. This MOA does not affect authorities of the participating parties specific to budgetary and grant making processes.

ARTICLE 2: GOVERNANCE

A. EXECUTIVE STEERING COUNCIL

NIEM is governed by an Executive Steering Council (ESC) that is comprised of the Participating Parties. The ESC sets the program policy and strategy, secures funding, appoints key personnel to the NIEM PMO, approves the NIEM Charter, and makes other decisions as required. Participation on the ESC is conditioned upon (1) the signing of this MOA and (2) completing the required financial investment and personnel contributions.

The ESC shall meet quarterly or as often as needed to successfully conduct business. The NIEM PMO shall organize, facilitate, and document meetings of the ESC. The ESC shall meet annually to review performance, set target outcomes for the coming year, and ensure provision of adequate resources.

Participating parties shall identify a primary and an alternate person to represent their interests on the ESC. The primary person shall sign the MOA on behalf of the participating party, and either the primary or the alternate will represent the participating party on the ESC.

The ESC shall attempt to operate by consensus. If consensus on a particular issue is not possible, each participating party shall have a single vote and decisions shall be made by a simple majority of votes cast.

B. CHARTER

By entering into this MOA, the participating parties agree to and incorporate by reference the NIEM Charter signed on June 4th, 2010. The Charter sets the program vision for the development and implementation of NIEM including: guiding principles, desired attributes, target outcomes, organizational structure, and governance processes. The Charter and supporting documents that outline the operational processes for the program are developed by the NIEM PMO and subject to change based on the strategic direction of the ESC or based on guidance from the NIEM PMO. Any changes to these documents must be reviewed and approved by the ESC.

C. FUTURE PARTICIPATING PARTIES

Cabinet-level federal agencies are eligible to apply to be participating parties and execute this MOA. FACAs are also eligible to apply to be participating parties and execute this MOA upon condition that (1) their primary mission is to represent state, local and/or tribal government entities, (2) they are currently working on information sharing, and (3) the associated federal agency is joining or has already joined NIEM. All requests to

join NIEM must be approved by the ESC. Once approved, applicants become participating parties holding all rights and obligations with respect to their participation in NIEM, and will execute an addendum to this Agreement.

D. NIEM JOINT PROGRAM MANAGEMENT OFFICE

The ESC shall establish one of the signing federal agencies to serve as the lead agency for the NIEM Joint PMO. The primary duties of the lead agency, as directed by the ESC under the provisions of this MOA and the NIEM Charter is to (1) provide an Executive Director for the NIEM PMO, (2) lead the NIEM PMO and support its operation, 3) coordinate financial investments and contributions of other participating parties, and (4) at the direction of the ESC enter into agreements and partnerships with other parties in furtherance of the NIEM mission.

The role of the lead agency may shift between participating parties on the ESC from time to time based on resources available, operational priorities and other business considerations. The authority to extend the term of the lead agency or to designate a new lead agency remains at the discretion of the ESC.

ARTICLE 3: RESPONSIBILITIES

A. PARTICIPATING PARTIES

All participating parties agree to the following:

- Accept membership and responsibilities associated with NIEM as described in this MOA, and the NIEM Charter.
- Recognize and support the NIEM PMO as the operational arm for NIEM.
- Accept and support the Domain Management and Data Model Maturity lifecycles, including the federated universal and common core and federated domain model, as outlined in the Concept of Operations (ConOps),
- 4. Accept and support the issue resolution and support lifecycles, as outlined in the ConOps.
- Encourage private sector and international partners to consider use of NIEM.
- Encourage the formation of communities of interests around classes of information exchanges.

B. FEDERAL AGENCIES

All participating federal agencies additionally agree to:

- Provide resource support, including both financial investment and personnel for the NIEM PMO, associated committees, and all personnel commitments as described in ARTICLE 4.
- Adopt use of NIEM (where appropriate to support system to system information exchanges) in internal information technology activities, including procurements of products or services from private industry, as outlined in the Charter or supporting documents.

3. Require use of NIEM (where appropriate to support system to system information exchanges) in grant language with state, local, and/or tribal governments.

C. FACA ORGANIZATIONS

All participating FACA organizations additionally agree to:

- Provide personnel support for the NIEM PMO, associated committees, and panels as described in ARTICLE 4.
- Encourage member organizations, either directly or through their membership, to adopt use
 of NIEM in internal and external information technology activities including: (1)
 procurements of products or services from private industry, (2) grant activities with other
 government entities, or (3) through setting standards, as outlined in the Charter or
 supporting documents.
- 3. Encourage private sector and international partners to consider use of NIEM.

ARTICLE 4: CONTRIBUTIONS

A. FINANCIAL INVESTMENT

- 1. All participating federal agencies agree to provide financial resources to sustain the NIEM PMO consistent with a funding formula to be developed and approved by the ESC and in accordance with the provisions of the Economy Act. Resources will include monetary and material in-kind support, such as personnel and/or equipment. The financial investment shall be sufficient to cover the entire cost of core NIEM activities as set forward by the NIEM PMO and approved by the ESC. The formula for allocating these costs to participating federal agencies shall be proportional to the benefit.
- 2. The participating parties expressly acknowledge that this MOA in no way implies that Congress will appropriate funds for such expenditure. The MOA does not serve to obligate funds. The participating parties acknowledge that there is no intimation, promise, or guarantee that funds will be available in future years.

B. PERSONNEL CONTRIBUTIONS

1. All participating parties agree to provide personnel resources as they deem appropriate to support the NIEM mission. All participating parties agree to appoint a primary point of contact for the exchange of information with the NIEM PMO and to designate project representatives to serve as individual organizational points of contact (POC). The participating parties understand these POCs are responsible for (1) bringing together required stakeholders and decision makers, (2) providing expertise and timely decisions, and (3) participating in governance structures and decisions made by the NIEM PMO, associated committees, and panels.

- 2. Participating party representatives detailed to the NIEM PMO will report to his or her respective agency or organization for personnel administrative matters. Each participating party shall be responsible for the pay, overtime, leave, performance appraisals, and other personnel matters relating to its detailed representatives. Each participating party is responsible for all personnel compensation, travel, reasonable business expenses and benefits in accord with the participating party's policies, processes and procedures.
- 3. Participating party representatives in NIEM are subject to removal for violation of any provision of this MOA, Supplemental Standards of Ethical Conduct for employees of the NIEM Lead Agency or other applicable agreements, rules, and regulations. These representatives should in no way, and at no time be construed as personnel permanently assigned to the NIEM PMO.

ARTICLE 5: INFORMATION SHARING

A. SECURITY

The NIEM standard and associated documentation is intended to be open and within the public domain. All finished materials and products created and released by the NIEM PMO will be posted to www.niem.gov. NIEM is not to be construed as a system of records. The Privacy Impact Assessment (PIA) and or System of Record Notice (SORN) are not applicable to NIEM. Users of NIEM, including communities of interest within domains represented by participating parties to this MOA, are under no obligation to share their work products if doing so would violate applicable security standards and or policies.

B. DISCLOSURE OF DATA

To the extent that any information is subject to a Freedom of Information Act, Privacy Act, or a Congressional inquiry, any disclosure may only be made after all parties that contributed data to the product have been consulted.

C. PRIVACY AND CIVIL LIBERTIES

The participating parties acknowledge that this MOA may be subject to guidelines now or hereafter issued for the protection of privacy, civil liberties, and other rights in the ISE, and that the MOA will conform to any such guidelines.

D. MEDIA

Press releases will developed in consultation with the NIEM PMO and conform to NIEM Branding guidelines regarding press releases.

ARTICLE 6: DURATION AND LIABILITY

A. DURATION

The term of this MOA shall be for an indefinite period. The MOA may be terminated at will by any party, provided written notice is provided to the ESC of not less than one hundred eighty (180) days. It is understood that the termination of this agreement by any one of the participating parties will have no effect on the agreement between the remaining participating parties. All rights, obligations, responsibilities, limitations, and other understandings with respect to the disclosure and use of all information received during a party's participation in this MOA shall survive any termination of this MOA.

B. LIABILITY

Each participating party acknowledges that financial and civil liability, if any and in accordance with applicable law, for the acts and omissions of each representative detailed to NIEM remains vested with his or her employing party. However, the DOJ may, in its discretion, determine on a case-by-case basis that an individual should be afforded legal representation, legal defense, or indemnification of a civil judgment, pursuant to federal law and DOJ policy and regulations.

ARTICLE 7: RESOLUTION OF DISAGREEMENTS

- To ensure consistency, annexes will follow a format similar to this MOA and will be subject to all applicable statutory, regulatory, and other legal and administrative clearance requirements of the Parties.
- 2. Nothing herein is intended to conflict with current department or agency directives. If the terms of this MOA are inconsistent with existing directives of any of the Parties entering into the MOA, then those portions of this MOA which are determined to be inconsistent shall be invalid, but the remaining terms and conditions not affected by the inconsistency shall remain in full force and effect. At the opportunity of review, all necessary changes will be accomplished by either an amendment to this MOA or by entering into a new MOA, whichever is deemed expedient to the interests of the Parties.
- 3. Should disagreement arise on the interpretation of the provisions of this MOA, or amendments and/or revisions thereto that cannot be resolved at the operating level, the area(s) of disagreement shall be stated in writing by each Party and presented to the other Parties for consideration. If agreement on interpretation is not reached with 30 days, the Parties shall forward the written presentation of the disagreement of the respective higher officials for appropriate resolution.
- 4. In case of a conflict between an annex and this MOA, the terns and conditions of this MOA will govern and prevail.

SIGNATORIES

This agreement between DHS and DOJ, and future participating parties may be executed by each participating party signing a separate signature page.

Executed this 4th day of June, 2010:

RICHARD A. SPIRES

CHIEF INFORMATION OFFICER

U.S. DEPARTMENT OF HOMELAND SECURITY

VANCE HITCH

CHIEF INFORMATION OFFICER

U.S. DEPARTMENT OF JUSTICE

ADDENDUM TO

MEMORANDUM OF AGREEMENT

FOR THE

NATIONAL INFORMATION EXCHANGE MODEL (NIEM) PROGRAM

This addendum to the Memorandum of Agreement (MOA) for the National Information Exchange (NIEM) Program signed on June 4th, 2010 serves to add additional parties to the Agreement. This hereby modifies Article 1 to add the following agency as a participating party to the Agreement:

Department of Health and Human Services (HHS)

The first sentence of Article 1 (a) is now modified to read:

"The participating parties to this MOA are DHS, DOJ and HHS. "

SIGNATORIES

HHS agrees to be added as a party to the Agreement, including Articles1, 2, 3, 4, 5, 6, and 7 therein, and is executed by this separate signature page.

10/25/2010

Executed this 25th day of October, 2010:

MICHAEL CARLETON

CHIEF INFORMATION OFFICER

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES