Indiana State and Federal Surplus
STATE OF INDIANA 1033 PROGRAM, POLICIES & PROCEDURES

ARTICLE I: PURPOSE

This State Plan is entered into by and between the State of Indiana, through Indiana State and Federal Surplus (hereafter "State"), located at 601 West McCarty Street, Suite 100, Indianapolis, IN 46225, and_____ (hereafter "law enforcement agency" or LEA") located at _____ (collectively referred to hereafter as "parties" or "LEA") to set forth the terms and conditions which will be binding on the parties with respect to excess Department of Defense (DOD) property which is transferred to law enforcement agencies within the State pursuant to the National Defense Authorization Act of 1997, as amended, (hereafter "Act") and the designation of authority by the Governor of the State of Indiana. Failure of the parties to abide by this agreement shall result in revocation of privileges to participate in the program as well as any other remedies provided for under the law. This PLAN amends, modifies, and replaces the previous PLAN executed between the State and LEA. This PLAN is effective as of the date of signature by the chief executive officer of the law enforcement agency and applies to all property received by the LEA since October 1, 1996. The designated LEA representative identified below represents that he/she is authorized by State and local law to enter into this agreement on behalf of the LEA.

ARTICLE II: AUTHORITY

The Secretary of Defense is authorized by Section 1033 of the Act, to transfer to State agencies, personal property that is in excess to the needs of the DOD and the Secretary determines is suitable to be used by such agencies in law enforcement activities, including counterdrug and counterterrorism activities, under such terms prescribed by the Secretary. On October 1, 1995 the Secretary of Defense transferred this responsibility to the Defense Logistics Agency (DLA). The Law Enforcement Support Office (LESO) is presently facilitating the program. Law enforcement agencies are defined as government agencies whose primary function is the enforcement of applicable Federal, state, and local laws and who's compensated law enforcement officers have powers of arrest and apprehension. Counterdrug activities are defined as a wide range of activities in support of Counterdrug objectives. The State of Indiana will act as a sponsor for the LEAs that desire excess personal property through this program.

ARTICLE III: TERMS AND CONDITIONS

A. PROPERTY

1. Requisition/Use

a) Property is for use by LEAs authorized to participate in the program; authorization is to be controlled by the State. (Indiana)

b) Requests must be based on bona fide law enforcement activities, including counterdrug requirements. Requests shall not be based on speculative or possible future use of equipment; rather it must be based on current needs. DLA will give preference to LEAs for transferred property used in counterdrug or counterterrorism activities.

c) Property may not be obtained for the purpose of sale, lease, rent, exchange, barter, giving it away, or to secure a loan or to otherwise supplant or supplement normal law enforcement agency budgets.
d) Requisitioning of code "A" property, for the purpose of cannibalization is not allowed. "Cannibalization" shall include dismantling of equipment for parts. Or screening 2 of the same Item for the purpose of making one.
e) Property must be placed into use within one year of receipt and utilized for a minimum of one year, unless the condition of the property renders it unusable. (IE: 2 years)
f) Inventory of all property received must be maintained by LEA. If the LEA no longer has in its possession, an item received through the program, the LEA's inventory must indicate where that item went and under what authority it was transferred/disposed of, etc. Failure to dispose of/transfer property as set forth in the agreement can result in the LEA being precluded from further participation in the program.
g) Theft, illegal or misappropriation of equipment can and will lead to suspension from program.
h) All equipment received from this program falls under the Single Audit Act of 1984. It is the responsibility of the parties (LEA) to enforce this in their respected departments.
i) OVERAGES: Overages must be reported to the Counterdrug Office ASAP. Overages will be transferred to other departments, or returned to the DRMO.

2. Disposal

a) LEAs are only permitted to transfer, exchange, sell, or otherwise dispose of property in the manner required by this PLAN and the procedures and controls incorporated into the State's 1033 SOP.
b) Aircraft (fixed-wing and rotary), Flight Safety Critical Aircraft Parts (FSCAP), http://www.drms.dla.mil/drms/internal/demil/FSCAP.pdf Military Critical Technologies List (MCTL), http://www.dtic.mil/mctl/ and Munitions List Items (MLI) (both requiring and not requiring demilitarization), must be returned to and received by DLA, through the closest Defense Reutilization Marketing Office (DRMO), when no longer needed for law enforcement activities or in the event the LEA ceases to exist. The LESO will coordinate such action. The LEA must provide written proof of return and receipt by the DLA to the State.

Exceptions to above rule:

(i) Aircraft -- if the LEA provides evidence to the DLA that aircraft are/will be maintained under Federal Aviation Administration (FAA) maintenance and repair guidance, it will be allowed to permanently retain the aircraft after a period of five years.
(ii) Aircraft and FSCAP -- can be exchanged, upon approval by the State**,** by and between other LEAs authorized to participate in the program provided the aircraft and components are maintained under FAA maintenance and repair guidelines and provided further that the LEAs perpetuate repair and maintenance documentation. LEAs are permitted to retain reasonable quantities of aircraft components for existing aircraft for future use.
c) Property may be transferred to other LEAs authorized to participate in the program when no longer needed by the LEA having possession or in the event the LEA ceases to exist. Such transfer must be preceded by a written request for approval to the State. State approval or denial will then be given in writing to the LEA before such property can be transferred. If the request is denied, the LEA must coordinate with the State to decide on what other methods are available for disposal of the property.
d) Except as otherwise indicated; disposal of all other types of property, except for property requiring demilitarization, must be in accordance with State and local laws when no longer needed for law enforcement activities or in the event the LEA ceases to exist. The LEA must contact the State and Federal Surplus Office in writing with this request. LEA must wait for final approval from State before disposal of said property. During a yearly inventory the LEA must provide the State with documentation and certify which items have been disposed of and the manner in which they have been disposed.
e) Costs of shipping, repossession, transfer and/or disposal of the property will be borne by the LEA.
f) It is the responsibility of the LEA to return demilitarized property and other property so designated by the DLA to the DRMO.

3. Title
a) The State accepts title to excess DOD property for the sole purpose of compliance with the Act in the transfer of said property from the DOD to LEAs within the State. Certain property listed herein remains the property of the DOD, title to which never changes.
4. Liability
a) The State shall at no time and under no circumstances be physically, financially or legally responsible or accountable for the transport, storage, use, repair, maintenance, return, insurance, misuse, or disposal of excess DOD property transferred to the LEA from the DOD.
b) The LEA shall indemnify and hold the State harmless for any and all suits, actions, demands or claims of any nature arising out of the use of the property. The State assumes no liability for damages or injuries to any person or property arising from the use of the property.
c) Risk of Loss shifts to the LEA upon receipt (defined either as an authorizing signature on Form 1348 or physical receipt of the property) of property acquired under this PLAN.
5. Insurance
a) The LEA agrees to maintain, at no expense to the State, adequate insurance to cover damages or injuries to persons or property relating to the use of the property. The insurance shall include liability and property damage insurance as well as workman's compensation. Self-insurance coverage is considered acceptable.
b) The LEA shall produce proof of coverage to the State.
6. Warranties
The LEA understands that at no time does the State ever have in its physical possession any excess DOD property transferred to LEAs within the State. The LEA acknowledges that all property is transferred "AS IS" with no warranty of any kind, including implied warranties and no warranties as to title, fitness for a particular purpose or use.
B. General Procedure
1. The DOD through the DLA shall:
a) Receive and approve applications for participation in the program that have been certified by the State as having law enforcement activities.
b) Encourage and assist in the use of electronic screening capability to locate property.
c) Upon receipt of a properly executed requisition (presently via Form 103), issue excess property (presently via Form 1348), free of charge, to the State or designee for further transfer to authorized LEAs at the DRMO.
d) Identify Munitions and Strategic List Items (MLFSLI), FSCAP and/or any other property requiring special controls and/or return to DOD custody through the DLA.
e) FSCAP components -- provide the LEA with the available flight historical records and related documentation. This documentation will be available for inspection by LEAs prior to transfer. The documentation will be sufficient to be acceptable by an FAA authorized repair facility for evaluation and possible documentation for use on an aircraft. DOD makes no representation as to the property's conformance with FAA requirements. The LEA must subject the assets to safety inspection, repair, and/or overhaul by a competent manufacturer or other entity such as those certified by the FAA prior to placing into use. The property that is provided to the LEA may not meet FAA design standards, and/or may have been operated outside the limitations required by the Federal Aviation Requirements.
2. The State shall:
a) Receive applications for participation in this program from LEAs within the State of Indiana and validate their law enforcement mission prior to forwarding to DLA for approval as an authorized law enforcement agency.
b) Forward and approve requests (IE: Form 103 or Electronically) for excess property which are necessary to meet requirement for LEA law enforcement activities, including counterdrug and counterterrorism efforts. The State’s signature shall constitute transfer authority. Assure the recipient LEA is identified on all requisitions.
c) Be responsible for the Transfer of property to qualified LEAs.

d) Allow a maximum of four (4) screeners per LEA to physically screen at any DRMO. The screeners must be named in a **"L**etter of Authorization" provided to the LESO, and approved by the State. The authorization is to be updated annually by the LEA, or as changes occur.
e) Identify to LEAs the property requiring demilitarization and the special controls on MLI/SLI and FSCAP.
f) Identify to DLA the requisitions, which indicate transferred property that will be used in counterdrug or counterterrorism activities of the LEA.
3. The LEA shall:
a) Once authorized to participate in the program, requisition property (via Form 103 or Electronically), and submit said requisition to the State and upon notification, pick-up approved property at the designated DRMO. The property is to be used for counterdrug or counterterrorism activities, LEA must indicate such on Form 103. At the DRMO, the LEA shall sign Form 1348 for each piece of property received. The LEA must provide a copy of each Form 1348 signed to the State. The signature of the LEA on Form 1348 shall simultaneously transfer title from the DOD to the State and from the State to the LEA, except for those items listed in this PLAN that always remain property of the DOD.
b) Identify on all requisitions which transferred property will be used in counterdrug or counter terrorism activities. To the extent practical by the DLA, preference will be given to those requisitions that indicate that the transferred property will be used in counterdrug or counter terrorism activities of the LEA.
c) The property received through the 1033 program must be placed into use within one (1) year of receipt, and utilized the property for a minimum of one (1) year, unless the condition of said property renders it unusable. That is total of TWO (2) years.
d) It is the responsibility of the LEA to safeguard all Property received through the 1033 Program. Should any property become lost due to Theft, Destruction, or Unauthorized sale, this information should be forwarded to the State within 1 working day of the incident.
e) Control and maintain accurate records on all property obtained under this PLAN in accordance with pertinent State and local property laws and regulations. The records must at least identify the property received by the LEA from the State, and its disposition and must be available for review by the State upon request. If copies of records are requested, these must be provided to the State within fourteen (14) days.
f) Be solely responsible for any transportation, repair, maintenance, insurance, licensing, registering or other expenses associated with property received, returned, and/or disposed of pursuant to this PLAN.
g) Dispose of all environmentally regulated property in accordance with applicable Federal, State and local environmental laws and regulations. LEA must show proof in writing when requested.
h) Upon receipt of weapons, immediately register all of them with the U.S. Treasury Department's Bureau of Alcohol, Tobacco and Firearms. (Form 10) (Weapons that need registered are: M-16's, M-14's, M-21's, and M-79's) A copy of registration (Complete form 10) must be provided to the State immediately or the weapons must be returned to the DRMO.
i) Responsible for obtaining audits in accordance with (IAW) the SINGLE AUDIT ACT of 1984, as amended. (31 U.S.C. 7501-7) Copies may be provided to the state if LEA deems necessary.
j) Provide the following information:

_____	_____	_____
Agency Head	Title	Phone Number
_____		_____
Address		Fax Number
_____		
E-mail Address		

ARTICLE IV: NOTICES

Any notices, requests, correspondence or other communications related to this PLAN shall be in writing and shall be deemed duly given if personally delivered or sent by the United States Postal Service, express service or facsimile to the addresses set forth below:

1) In case of the State to:
Bob Flake
State and Federal Surplus
601 W. McCarty Street, Suite 100
Indianapolis, IN 46225
Fax: 317-234-3699
e-mail: bflake@idoa.in.gov

2) In case of the law enforcement agency to:
Name: _____

Agency: _____

Address: _____

County in which LEA is located: _____

Phone Number: _____

Fax Number: _____

E-mail: _____

ARTICLE V: MODIFICATIONS

The State may, from time to time, propose written modifications or amendments to the provisions of this PLAN. In such cases, reasonable opportunity will be afforded the LEA to review and approve any changes and to conform their operations as may be required.

ARTICLE VI: TIME OF PERFORMANCE

This Agreement shall be binding upon both parties, and shall remain in effect for one year after approval to participate in the program. LEAs must reapply annually to participate in the program based upon the date of their screening authorization approval letter or until the agreement is terminated as otherwise set forth herein.

ARTICLE VII: TERMINATION

The LEA may terminate its participation in the program by giving the State written notice. Upon receiving notice the State will cease all processing of requests for property. The LEA shall comply with the requirements of this PLAN so long as it has, in its possession, any property received under this program. If parties have Demil Items, These Item will be returned to the State that is to include Weapons, HumVees, Peacekeepers, and such. The State shall immediately terminate the participation of the LEA in the program at any time where the State determines this PLAN has been violated or the LEA is in violation of the 1033 Operating Plan. If a violation of this PLAN or 1033 SOP is perceived, the State may suspend the LEA's participation in the program pending further investigation.

ARTICLE VIII: NONFORBEARANCE

No act of forbearance or failure to insist on the prompt performance by the Contractor of its obligations under this Agreement, either express or implied, shall be construed as a waiver by the State of any of its rights hereunder.

ARTICLE IX: PLAN OF OPERATION

The LEA agrees to abide by the terms of the State of Indiana, 1033 Operating Plan that is hereby incorporated herein by reference. Should terms of this Plan conflict with terms as stated in the Plan of Operation, this Plan shall be controlling. WHEREAS the above-named parties agree to the terms as set forth herein, the parties have executed the MOU as set forth below.

STATE:

State of Indiana, through
State and Federal Surplus

By: _____
Bob Flake, Director
State and Federal Surplus

Date: _____

LAW ENFORCEMENT AGENCY:

_____
(name of agency)

By: _____
(signature of agency head)

_____
(printed name of agency head)

Date: _____