MEMORANDUM OF UNDERSTANDING

BETWEEN

THE FEDERAL BUREAU OF INVESTIGATION
CRIMINAL JUSTICE INFORMATION SERVICES DIVISION

AND

THE ARKANSAS DEPARTMENT OF FINANCE AND ADMINISTRATION

CONCERNING THE SEARCH OF PROBE PHOTOS AGAINST THE ARKANSAS DEPARTMENT OF FINANCE AND ADMINISTRATION FACIAL RECOGNITION DATABASE

I. PURPOSE

The purpose of this Memorandum of Understanding (MOU) is to document the agreed responsibilities and functions of the Parties with respect to conducting searches of the Arkansas Department of Finance and Administration (DFA) facial recognition (FR) photo database, which contains driver's license (DL) photos. These searches will be performed for the purpose of comparing FBI Facial Analysis, Comparison, and Evaluation (FACE) Services Unit probe photos against photos housed in the Arkansas DFA FR photo database and obtaining information that will advance active FBI investigations, apprehend wanted fugitives or known or suspected terrorists, and locate missing persons nationwide. A probe photo refers to the photo of the subject of an active FBI investigation that is submitted for search against a photo repository. The anticipated result of that search will be a photo gallery of potential matches. These potential matches (candidates) will be forwarded to the FBI, along with any associated information stored with the photo in the Arkansas DFA FR system. The FBI FACE Services Unit will then perform comparisons of the candidate photo(s) against the probe photo(s) to determine their value as investigative leads.

II. PARTIES

A. The FBI, Criminal Justice Information Services (CJIS) Division, Biometric Services Section (BSS), FACE Services Unit provides investigative support to FBI field offices and headquarters divisions. The CJIS Division, through its Assistant Director, is the FBI's point of contact (POC) for this MOU. For certain day-to-day operations of the activities described by this MOU, the FBI's POC with the Arkansas DFA will be the FACE Services' Management Unit and its Management and Program Analysts.

B. DFA Office of Driver Services Facial Recognition Section (FR Section) provides facial recognition background reviews on every DL and identification

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card issued in Arkansas. The FR Section also provides investigative support to law enforcement when requested.

For the purposes of this MOU, the Arkansas DFA POC is the Administrator of the Office of Driver Services. For certain day-to-day operations of the activities described by this MOU, the FACE Services Unit will contact the Arkansas DFA Office of Driver Services Administrator, [redacted]

III. AUTHORITIES

A. The FBI enters into this MOU pursuant to Title 28, United States Code (U.S.C.) Sections 533 and 534; Title 28, Code of Federal Regulations Section 0.85; Title 42, U.S.C. Section 3771; and Title 18, U.S.C. Chapter 123.

B. The State of Arkansas is authorized to share DL information with the FBI for authorized law enforcement purposes pursuant to Title 18, U.S.C. Section 2721 (b)(1).

IV. BACKGROUND INFORMATION

A. The FACE Services Unit provides a facial recognition service in which FBI Special Agents, or other authorized FBI personnel, submit to the FBI CJIS Division a photo of the subject of an active FBI investigation. These probe photos are compared to photographs in databases authorized for use by the FBI (i.e., FR databases maintained by state motor vehicle departments/agencies, law enforcement, or other government agencies). In this case, a probe photo is sent to the Arkansas DFA. The Arkansas DFA compares the probe photo to its databases, and candidates produced as a result of the searches are sent by the Arkansas DFA to the FACE Services Unit. The FACE Services Unit compares Arkansas DFA candidate list against the submitted probe photo in an effort to narrow it down to the one or two most-likely candidates. These candidates are then provided to the requesting FBI contributor for use as an investigative lead. The number of candidates produced and provided to the FACE Services Unit as a result of these searches is dependent upon the searching threshold set by the Arkansas DFA.

B. The intent of this service is not to provide a positive identification, but to provide the FBI Special Agent with an investigative lead and analysis to support that lead. The FBI will utilize the Arkansas DFA FR photo database to supplement information provided by existing FBI photo database searches.

V. SPECIFIC RESPONSIBILITIES

A. The FBI will:

1. Submit probe photos via Law Enforcement Online (LEO)-to-LEO e-mail, to the Arkansas DFA for the purposes of comparing the probe photos with photos in the Arkansas DFA FR photo database. The LEO is accredited and approved by the FBI for Sensitive-but-Unclassified law enforcement information. Any submission beyond three in a given week will be addressed on a case by case basis.

2. Manually analyze, compare, and evaluate the returned candidate photo gallery against the probe photo to determine the most-likely candidate.

3. If necessary, request additional biographical information associated with each photo determined to be a most-likely candidate via a secure email communication.

4. Submit the photo(s) of the most-likely candidate(s) to be searched against the Next Generation Identification Interstate Photo System in order to:

    a. Locate any additional photos and associated arrest information relating to the "most likely" candidate(s).

    b. Identify additional potential candidates and associated information.

    The results of this search will be compared and analyzed against the original probe photo(s). Once the analysis is complete, the one or two most-likely candidate photos, along with their associated information, will be provided to the requesting FBI Special Agent as an investigative lead.

5. Store photo images and text associated with the driver's license of the most-likely candidate(s) to the probe in the FBI case management system for record keeping purposes.

6. Immediately destroy all other gallery photos and associated information.

B. The Arkansas DFA will:

1. Apply for a LEO e-mail account through the LEO Operations Unit.

2. Compare the FACE Services Unit-submitted probe photo against the Arkansas DFA FR photo database.

3. Return electronic photos, DL number, and/or personal identification card number of all possible candidates to the FACE Services Unit via LEO e-mail in a timely and prompt manner.

4. Upon request, return additional biographical information associated with each photo determined to be a most-likely candidate.

5. Ensure that only authorized Arkansas DFA personnel will handle requests submitted by the FBI CJIS Division. Authorized Arkansas DFA personnel refer to personnel who are currently trained to perform FR queries against the Arkansas DFA FR photo database for law enforcement purposes. Names of these predetermined Arkansas DFA personnel will be submitted to the FBI CJIS Division for the purpose of the FACE Services Unit establishing and maintaining communications contact with those Arkansas DFA personnel who will be providing services to the FACE Services Unit.

6. Destroy all probe photo images, and any associated data submitted from the FACE Services Unit, once the search has been completed and the response has been sent to the FACE Services Unit via LEO.

7. Ensure that photos received from the FACE Services Unit will not be electronically transmitted by any internal or external Arkansas DFA system except as necessary to effectuate this agreement.

8. Prohibit the sharing and/or dissemination of any information associated with FBI FACE Services' requests beyond the authorized Arkansas DFA personnel unless required by Arkansas state law. If sharing or dissemination is required, the Arkansas DFA will notify FBI FACE Services Unit as soon as possible and before the release of the information.

VI. PRIVACY AND SECURITY

A. The information involved in the MOU may identify U.S. persons, whose information is protected by the Privacy Act of 1974. The FBI will ensure that all such information will be handled lawfully pursuant to the provisions thereof. Conversely, the Arkansas DFA will comply with its own state's privacy laws.

B. For purposes of this MOU, Personally Identifiable Information (PII) is defined as information which can be used to distinguish or trace an individual's identity, including any personal information which is linked or linkable to a specific individual. Examples of PII are name, social security number, date of birth, place of birth, citizenship, mother's maiden name, and photographs, fingerprints, and other biometrics.

C. Each party that discloses PII is responsible for making reasonable efforts to ensure that the information disclosed is accurate, complete, timely, and relevant.

D. Each party will immediately report to the other party each instance in which information received from the other party is used, disclosed, or accessed in an unauthorized manner (including any information losses or breaches).

E. All transmissions of probe photos submitted by the FACE Services Unit to the Arkansas DFA and responses returned to the FACE Services Unit will be made through a LEO-to-LEO e-mail connection.

F. The Arkansas DFA will ensure user accounts and authorities granted to its personnel are maintained in a current and secure "need-to-know" status.

G. Both FBI requests and Arkansas DFA responses will contain PII, and LEO e-mail is approved and authorized to ensure security of information contained in these transmissions.

H. All hardcopy facial images determined by the FACE Services Unit not to be a most-likely candidate, along with all associated textual information, will be disposed via confidential trash. All electronic facial images, including those saved on thumb drives, determined by the FACE Services Unit not to be a most-likely candidate, along with all associated textual information, will be deleted.

I. Photo images of the most-likely candidate will be retained by the FACE Services Unit in the FBI case management system for record-keeping purposes. All others will be destroyed by the FACE Services Unit.

J. The information and/or documents provided by Arkansas DFA to the FACE Services Unit will contain PII about persons retained in the Arkansas DFA FR system. The FACE Services Unit will use this information for lawful/authorized purposes only.

K. Each party shall be responsible for the safeguarding of any equipment used by it to access records and shall limit access to authorized users with a need to know the information and who have been properly instructed as to their duties and responsibilities under this MOU.

L. Each party shall implement procedures to ensure that such equipment is located in a secure area and to prevent information, including any printed copies of records, from being viewed by individuals not authorized to use the equipment and from being viewed by individuals not authorized to see or have access to this information.

VII. EFFECT OF THIS AGREEMENT

A. This MOU is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable by law or otherwise against any of the parties, their parent agencies, the United States, or the officers, employees, agents, or other associated personnel thereof. The parties will seek to resolve any disputes regarding this MOU by mutual consultation.

B. This MOU is not an obligation or commitment of funds, nor a basis for transfer of funds, but rather is a basic statement of the understanding between the parties of the matters described herein. Unless otherwise agreed in writing, each party shall bear its own costs in relation to this MOU. Expenditures by each party will be subject to its budgetary processes and to the availability of funds and resources pursuant to applicable laws, regulations, and policies. The parties expressly acknowledge that the language in this MOU in no way implies that funds will be made available for such expenditures.

C. This MOU does not constitute an agreement for any party to assume or waive any liability or claim under any applicable law.

D. Each party is responsible for ensuring that information it discloses was not knowingly obtained or maintained in violation of any law or policy applicable to the disclosing party, and that information is only made available to the receiving party as may be permitted by laws, regulations, policies, or procedures applicable to the disclosing party.

E. Each party will provide appropriate training regarding the responsibilities under this MOU to individuals whose information-sharing activities are covered by the provisions of this MOU.

VIII. EFFECTIVE DATE, MODIFICATION, AND TERMINATION

A. This agreement shall be effective when executed by all of the parties and will continue in effect until terminated. This agreement may be modified at any time by written consent of all parties.

B. This MOU may be terminated, with respect to any party, at any time upon written notice of withdrawal to all other parties. Any party desiring to withdraw from this MOU will endeavor to provide such written notification to all parties at least thirty (30) days prior to withdrawal. This MOU will be reviewed annually to ensure that the terms remain current, complete, and relevant.

C. This MOU, in eight distinct sections, is the exclusive statement of the parties with respect to its subject matter and supersedes any and all prior

agreement, negotiations, representations, and/or proposals, written or verbal, relating to its subject matter.

FOR THE FEDERAL BUREAU OF INVESTIGATION

David Cuthbertson
Assistant Director
Criminal Justice Information
Services Division

9/4/13
Date

FOR THE ARKANSAS DEPARTMENT OF FINANCE AND ADMINISTRATION

David Foster
Assistant Commissioner Operations
and Administration
Arkansas Department of Finance and
Administration

9/12/13
Date