MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENT OF JUSTICE AND THE NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY IN SUPPORT OF THE NATIONAL COMMISSION ON FORENSIC SCIENCE AND THE ORGANIZATION OF SCIENTIFIC AREA COMMITTEES

I. Participants

This Memorandum of Understanding (MOU) is entered into by the Department of Justice (DOJ) and the National Institute of Standards and Technology (NIST), of the United States Department of Commerce, hereinafter referred to individually as "Party" and jointly as "the Parties."

II. Purpose

The purpose of this Memorandum of Understanding (MOU) is to outline the framework for cooperation and collaboration between DOJ and NIST in support of the objectives of the National Commission on Forensic Science (Commission), which will develop national forensic science guidance and policy recommendations for consideration by the Attorney General, and the Organization of Scientific Area Committees (OSAC), which will facilitate the development of voluntary consensus standards for forensic practitioners. The activities described below are intended to strengthen the validity and reliability of forensic science by enhancing oversight and improving coordination across a broad range of forensic disciplines.

III. Legal Authorities

This MOU is entered into under the following authorities:

DOJ: This MOU is established pursuant to DOJ's general authority to secure evidence for litigation on behalf of the United States (28 U.S.C. § 516), and to prosecute all offenses against the United States (28 U.S.C. § 547).

NIST: This MOU is established pursuant to the NIST Organic Act, *see* Title 15 U.S.C. § 272 (b)(10) and (b)(11), which authorizes NIST to cooperate with other departments and agencies of the Federal Government, with industry, with State and Local governments, with the governments of other nations and international organizations, and with private organizations, in establishing standard practices, codes specifications, and voluntary consensus standards; and, to advise government and industry on scientific and technical problems.

These authorizations define the authority of these organizations to enter into this MOU for the support of the objectives of the Commission and its subcommittees and the Organization of Scientific Area Committees.

This MOU is not intended to, and does not create, any legal obligations binding under any law of the United States.

IV. Background

Forensic science is an essential tool in the enforcement of Federal, State, and Tribal criminal laws and the administration of justice. Techniques used by forensic scientists often serve as the keystone for criminal, atrocity, and homeland security investigations, civil litigation, and mass disaster victim identification. Indeed, forensic science uses cutting edge scientific technology and expertise to discover, expose, and explain physical evidence that identifies culpability, holds criminals accountable, exonerates the innocent, and protects the public from further harm.

Scientifically valid and accurate forensic science strengthens all aspects of our justice system. Public safety often depends on law enforcement's ability to use science to help identify the true perpetrators of crimes and dispel suspicion of innocent persons. Similarly, criminal prosecutions rely, in part, on science-based evidence to prove guilt beyond a reasonable doubt. And judges and juries rely on scientific tests and the objective interpretation of those tests by forensic science experts to reach informed and just decisions. Thus, we must continually seek to improve the practice of forensic science as both the science and the related technology evolve.

Given the critical role of forensic science in the justice system, and the all-important need for confidence in its application, DOJ and NIST will continue their history of successful collaboration in this field and draw upon their individual core strengths to accomplish the purposes set forth in this and related documents.

V. Cooperative and Collaborative Activities

A. Federal Advisory Committee: DOJ and NIST support the objectives of the Commission and the management framework set forth in the Commission's Charter. The Attorney General and the Director of NIST will each appoint a co-chair of the Commission, who shall be senior officials of the respective agencies. The Commission will consist of approximately 30 members appointed by the Attorney General in consultation with the Director of NIST and the co-chairs. Among other things, the Commission may advise the Attorney General regarding the voluntary consensus standards and best practices developed by the Scientific Area Committees for the user community.

B. Scientific Area Committees: The Director of NIST, in consultation with the Attorney General, will approve the creation of Scientific Area Committees (formerly Guidance Groups), and modify or approve the agendas proposed by those groups for the development of scientific guidance for the user community. The Director of NIST will consult with the Attorney General on general composition of the Scientific Area Committees. The Scientific Area Committees will not provide advice to the Attorney General, the NIST Director, or the Commission, but, instead, their findings will be provided to the public user community. The objective is to assist in the development of voluntary consensus standards and best practices for the user community, as described in Section VI.B.2 below.

VI. Agency Responsibilities

A. Department of Justice:

1. Will establish the Commission under Agency authority in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. 2. The Commission will:

    a. advise the Attorney General on priorities for standards development;

    b. obtain proposed guidance released by Scientific Area Committees to the public, and, in transmitting such proposals to the Attorney General, review and recommend whether the Attorney General should endorse the guidance;

    c. develop proposed guidance concerning the intersection of forensic science and the courtroom;

    d. develop policy recommendations, including a uniform code of professional responsibility and requirements for training, accreditation, and/or certification;

2. Will provide all necessary support for the Commission through the Office of the Deputy Attorney General.

3. Will appoint a Senior DOJ official to serve as the Co-Chair of the Commission.

B. National Institute of Standards and Technology:

1. Will appoint a Senior NIST Official to serve as the Co-Chair of the Commission;

2. Will administer and coordinate all necessary support for the Scientific Area Committees, subject to the following provisions;

    a. Scientific Area Committees have no authority to make decisions on behalf of either Party or the Commission and may not provide advice directly to the federal government, any federal agency or officer, or any other entity.

    b. Scientific Area Committees may collaborate with relevant voluntary standards development organizations or professional organizations for the development of consensus guidance before releasing their proposed guidance to the public.

    c. Scientific Area Committees do not report to the Commission and are not federal advisory committees in accordance with the Federal Advisory Committee Act, as amended, 5 U.S.C. App.2.

3. Will conduct research supporting the development and dissemination of methods, standards, and technical guidance for forensic science measurements;

4. Will test and validate select existing forensic science practices and standards as appropriate.

Each respective Party is responsible for its own personnel, administrative, and travel costs associated with this MOU unless as provided otherwise in an understanding or agreement memorialized by a letter signed by the Parties.

VII. Limitations of Agreement

A. The relationship between the Parties to this agreement is and shall remain that of independent Departments and agencies. Nothing herein shall be construed to imply that either Party's employees are employees of the other.

B. Only by letter of understanding or agreement between the Parties may a Party communicate with the other Party concerning any issues or developments arising out of this MOU.

C. This MOU does not require that the Parties are to contribute resources (financial or otherwise) to each other.

D. The Parties are responsible for establishing relevant letters of understanding or interagency agreements initiated or required as a consequence of this MOU.

E. This MOU is an agreement between DOJ and NIST. It does not intend to and does not create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by a third party against the United States, its agencies, its officers, or any person.

F. A determination that any term of this MOU is invalid for any reason shall not affect the validity of the remaining terms.

G. The headings used in this MOU are for convenience only and shall not affect its meaning or construction.

H. Any notices that are required or suggested to be provided to the Commission under this MOU shall be delivered in-person or by e-mail followed by express mailing to the Commission co-chairs. Notices shall be effective upon receipt of the express mail.

I. The obligations in this MOU are subject to the availability of funds and other necessary resources to the Parties. No provision of this MOU shall be interpreted to require obligation or payment of funds in violation of the Anti-deficiency Act, 31 U.S.C. §1341, or other applicable laws.

J. This MOU may be executed in counterparts (equivalent copies), each of which will be deemed one original and which, taken together, shall constitute one complete instrument.

VIII. Commencement, Modification, and Termination

A. This MOU commences on the date on which it is signed by the Parties or, if it is signed on different dates, the date of the last signature. This MOU is to remain in effect for a

period of two years from the date the Charter for the Commission is filed with Congress, and it may be renewed in writing for subsequent two-year periods, consistent with any renewal of the Commission's Charter.

B. This MOU may be modified at any time by way of a letter of understanding or agreement signed by the Parties.

C. Either Party may terminate this MOU at any time. The terminating Party should give the other Party at least 14 days written notice of its intent to cease its participation under this MOU.

D. By subscription of their signatures below, the Parties acknowledge that they have read, understand and intend to abide by the terms of this MOU.

IX. Press Releases and Other Public Announcements Concerning Joint Programs

Releases to the press, public announcements, and communications with Congress concerning joint activities pursuant to this MOU will be made by the Parties following coordination by authorized representatives of each. Credit will be given to DOJ and NIST as appropriate.

X. Signatures:

For the Department of Justice:

Date: 4 August 2015

For the National Institute of Standards and Technology:

Date: 05 August 2015