

The National Center For Missing And Exploited Children

LOCATER™ **Agency User Agreement***

IMPORTANT READ CAREFULLY: This Agency User Agreement (hereinafter referred to as "Agreement") is legal agreement between you (law enforcement agency) (hereinafter referred to as "Agency") and The National Center for Missing and Exploited Children (hereinafter referred to as "NCMEC"), a nonprofit corporation having its principal place of business at 699 Prince Street, Alexandria, Virginia 22314-3175, for access to and use of LOCATER web-based software (hereinafter referred to as "LOCATER"). By accessing or otherwise using LOCATER, Agency agrees to be bound by the terms of this Agreement. If Agency does not agree to the terms of this Agreement, Agency is not authorized to use LOCATER and shall immediately return to NCMEC all physical embodiments of LOCATER, including, but not limited to, all disks, user guides, documentation, and other information and materials that may have been provided by NCMEC.

RECITALS

NCMEC has developed LOCATER, which enables law enforcement agencies to create, disseminate, and view posters of missing persons. NCMEC is offering access to and use of LOCATER at no charge to law enforcement agencies whose responsibilities include investigating cases of missing or abducted children, so long as they agree to the Terms and Conditions of the LOCATER Agency User Agreement.

TERMS & CONDITIONS FOR ACCESS TO AND USE OF LOCATER

1. Security Certificate and Password

- 1.1 NCMEC has or will provide to Agency a Security Certificate and a Password, which will allow Agency to access and use LOCATER.
- 1.2 Agency shall safeguard such Security Certificate and Password and shall not share it with any other person or agency.
- 1.3 **If at anytime Agency has reason to believe that the confidentiality of its Security Certificate and/or Password has been breached (including, but not limited to, when/if the computer equipment containing the Security Certificate is lost, stolen, disposed of or replaced), Agency shall immediately notify NCMEC by calling the LOCATER program at 1-877-446-2632 ext. 6389 and reporting such breach or possible breach. Agency will then also provide NCMEC with written notice. Email shall be sufficient written notice for purposes of this paragraph.**

2. Term and Termination

- 2.1 This Agreement is effective as of the date Agency first accesses LOCATER via its Security Certificate and Password or by any other means and shall continue in effect until terminated by either party.

- 2.2 Either party may terminate this Agreement at any time for any reason without fault upon notice to the other party.
- 2.3 Upon termination of this Agreement by either party for any reason, Agency will immediately return to NCMEC all physical embodiments of LOCATER, including, but not limited to, all disks, user guides, documentation, and other information and materials that may have been provided by NCMEC.

3. License

- 3.1 NCMEC grants Agency a non-exclusive, non-transferable, non-assignable, limited right to access and use LOCATER only for the purposes defined below under "Acceptable Use" and subject to the Terms and Conditions of this Agreement.
- 3.2 Agency must only access LOCATER via the Security Certificate and Password provided to Agency by NCMEC.
- 3.3 Only Authorized Users within Agency may access and use LOCATER.

4. Authorized Users

- 4.1 Authorized Users shall be employees, independent contractors and/or consultants of Agency, with a legitimate need to access LOCATER to accomplish an Acceptable Use.
- 4.2 All Authorized Users shall have executed a written undertaking requiring them to safeguard the Security Certificate and Password, to agree that they will only use LOCATER for Acceptable Uses, and to maintain the confidentiality of the LOCATER intellectual property in a manner consistent with the provisions of this Agreement, prior to any access or use of LOCATER.
- 4.3 Agency shall keep records showing the number of Authorized Users and the operation and use of LOCATER sufficient to enable NCMEC to verify Agency's compliance with the Terms and Conditions of this Agreement. NCMEC shall have the right to verify such compliance, including by entering Agency's premises during business hours, for the sole purpose of examining Agency's records and other information relating the Agency's use of LOCATER, including but not limited to interviewing users of LOCATER.

5. Acceptable Use

- 5.1 Acceptable Use is defined as creating, disseminating, and viewing posters for any legitimate law enforcement purpose.
- 5.2 Any other use is an Unauthorized Use.

6. Unauthorized Use Indemnification

- 6.1 Agency acknowledges and agrees that its Security Certificate and Password are specific to the Agency, and Agency will safeguard such and only allow use of such by Authorized Users of Agency.
- 6.2 Agency further agrees that it shall ensure that LOCATER is only used in compliance with Acceptable Use, as defined above, and not for any ill, improper, or unauthorized purpose.
- 6.3 **Agency agrees to immediately notify NCMEC, in accordance with the provisions of paragraph 1.3 of this Agreement, if at anytime Agency has reason to believe that any of its Authorized Users or any other person(s) has or might attempt to use LOCATER for any**

Unauthorized Use; and Agency agrees to work with NCMEC to prevent such Unauthorized Use.

- 6.4 Agency shall indemnify, defend, and hold NCMEC harmless against any damages, losses, liabilities, and costs (including, but not limited to, attorneys' fees) resulting from any claim (including, but not limited to, slander, libel, defamation, or injury) asserted against NCMEC by any third party because of an Unauthorized Use of LOCATER by Agency, Agency's Authorized Users, or any person(s) using Agency's Security Certificate and Password to gain access to LOCATER.

7. Reservation of Rights

- 7.1 NCMEC reserves all rights not expressly granted herein.
- 7.2 Agency may use LOCATER only for Acceptable Uses and may not copy, modify, adapt or create derivative works.
- 7.3 In no event shall Agency: (a) use, or permit any third party to use, directly or indirectly, LOCATER for time-sharing, rental or service bureau purposes, or (b) decompile, reverse assemble, or otherwise reverse engineer LOCATER or cause or permit any third party (including Authorized Users) to do so.
- 7.4 Agency shall not use LOCATER (or any user guides, documentation, or other information or materials that may be provided by NCMEC) to make, use or sell a product that is functionally equivalent to LOCATER for distribution to any third party.

8. Intellectual Property

- 8.1 Agency acknowledges and agrees that NCMEC and/or its third party suppliers own(s) all rights, title, and interest in and to LOCATER, and any and all user guides, documentation, and other information and materials that may be provided by NCMEC (and all rights in copies and derivative works thereof), including, but not limited to, all worldwide copyrights, trade secrets, trademarks, patents, inventions, confidential information and materials, and proprietary rights therein.
- 8.2 Agency does not acquire any rights, express or implied, in LOCATER other than those expressly stated in this Agreement.
- 8.3 To the extent that LOCATER is adapted or derivative works are created pursuant to the parties' performance under this Agreement, Agency hereby assigns to NCMEC all rights, including intellectual property rights worldwide in and to such materials, and any derivative works, improvements, modifications or enhancements thereto.
- 8.4 If Agency becomes aware of any unauthorized use or infringement by a third party of NCMEC's intellectual property subject to this Agreement, Agency shall promptly notify NCMEC of such use. NCMEC may take any action that it deems necessary to protect its rights and Agency will assist NCMEC to the extent reasonably necessary in order to protect NCMEC's rights in its intellectual property. Any litigation regarding NCMEC's rights in and to its intellectual property shall be at the sole cost and expense of NCMEC, and NCMEC shall be entitled solely to any recovery there under.

9. Confidentiality

- 9.1 Agency acknowledges that LOCATER (and/or the user guides, documentation, and other information and materials that may be provided by NCMEC) consists of published and/or unpublished copyrighted works and embodies trade secrets of NCMEC including without limitation proprietary methods, processes, and other information, which Agency shall hold in strictest confidence (“Confidential Information”). Agency shall not use Confidential Information except as expressly permitted in this Agreement and shall not cause or permit disclosure of Confidential Information or make or provide copies of Confidential Information, in whole or in part, to any person. Agency shall not enable or otherwise permit any person to have access to Confidential Information other than an Authorized User of Agency for an Acceptable Use under this Agreement.
- 9.2 Should Agency seek to use or disclose any portion of the Confidential Information on the basis that such matter is not a trade secret or otherwise protected as confidential matter, it may only do so if it can first prove, through convincing documentary evidence submitted to NCMEC, as part of a written notice of its proposed use or disclosure, that the information or material was either: (a) publicly known in unitary form without breach of any obligation of confidentiality by any person, or (b) had been independently developed by Agency without any use or knowledge of any of the Confidential Information. Upon receipt of such written notice and documentary evidence, NCMEC shall have thirty (30) days to determine, in its sole discretion, whether or not to permit Agency’s proposed use or disclosure, during which time Agency shall maintain its obligations of confidentiality set forth in this Agreement. If NCMEC fails to authorize such proposed use or disclosure in writing prior to the expiration of that thirty (30) day period, then Agency shall continue to maintain the confidentiality of such information and material until it has obtained an order from a court of competent jurisdiction, binding on NCMEC, specifically authorizing the use or disclosure proposed by Agency.

10. Maintenance and Support Services

- 10.1 NCMEC may, in its sole discretion, make Maintenance and Support Services available to Agency. NCMEC shall be under no obligation to provide any Maintenance and Support Services.
- 10.2 Any additional charges or expenses incurred as a result of NCMEC provided Maintenance and Support Services, such as reasonable travel and transportation expenses, lodging and meals, and the cost of any courier services, photocopying, facsimile transmissions, communications charges, telephone calls and other related expenses, shall be paid by Agency within thirty (30) days of NCMEC’s invoice.

11. Upgrades and New Versions

- 11.1 NCMEC may, in its sole discretion, periodically upgrade or produce new versions of LOCATER, which Agency may have access to via its Security Certificate and Password.
- 11.2 Upgrades and new versions shall be subject to the same Terms and Conditions under this Agreement.

12. Limited Warranties

- 12.1 NCMEC warrants to Agency that LOCATER does not infringe upon the intellectual property rights of any other party. In the event that any third party alleges infringement, NCMEC may, in its sole discretion, terminate this Agreement or make available to Agency a non-infringing alternative to LOCATER. Any such alternative shall be governed by the Terms and Conditions of this Agreement.
- 12.2 THE WARRANTY SET FORTH ABOVE IN SECTION 12.1 IS THE ONLY WARRANTY MADE BY NCMEC WITH RESPECT TO LOCATER. NCMEC DOES NOT MAKE, AND HEREBY EXCLUDES AND DISCLAIMS, ALL OTHER WARRANTIES OR REPRESENTATIONS OF ANY KIND WHETHER EXPRESS OR IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), TO AGENCY, ANY OF ITS AFFILIATES OR ANY OTHER PARTY, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, SYSTEMS INTEGRATION, TITLE, NON-INFRINGEMENT OF THIRD PARTIES' RIGHTS, NON-INTERFERENCE, EXCLUSIVITY, AND SECURE, ERROR-FREE OR UNINTERRUPTED OPERATION. NCMEC DOES NOT WARRANT THAT LOCATER WILL MEET THE AGENCY'S REQUIREMENTS OR EXPECTATIONS, THAT LOCATER WILL OPERATE IN THE COMBINATIONS WHICH AGENCY MAY SELECT FOR USE, THAT THE OPERATION OF LOCATER WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT ALL ERRORS IN LOCATER WILL BE CORRECTED. LOCATER IS PROVIDED WITH ALL FAULTS, AND THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY, AND EFFORT IS WITH AGENCY.

13. Remedies and Limitations of Liability

- 13.1 NCMEC's liability to Agency is limited to the remedies set forth above in Section 12.1, and without enlarging NCMEC's liability under this Agreement, or otherwise, any other loss or damage arising from or resulting out of this Agreement or any product, service, or documentation provided hereunder, shall be limited to damages actually sustained by Agency as a result of the unremedied defect or alleged breach and shall in no event exceed the amount paid to NCMEC by Agency for use of LOCATER and/or any Maintenance and Support Services fees, as applicable, received by NCMEC as of the date when the claim is first made.
- 13.2 Agency waives and NCMEC disclaims all remedies with respect to LOCATER and all other items or services provided under this Agreement except as provided in paragraph 13.1.
- 13.3 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL NCMEC OR ITS SUPPLIERS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND WHATSOEVER (INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES) ARISING OUT OF THE USE OF OR INABILITY TO USE LOCATER (AND/OR THE USER GUIDES, DOCUMENTATION, AND OTHER INFORMATION AND MATERIALS THAT MAY BE PROVIDED BY NCMEC), INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, LOST PROFITS, LOSS OF DATA, COMPUTER FAILURE OR MALFUNCTION, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES, EVEN IF NCMEC IS ADVISED OF OR IN FACT SHALL KNOW OF THE POSSIBILITY THEREOF, AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT,

TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED. IN ANY CASE, NCMEC'S ENTIRE LIABILITY UNDER ANY PROVISION OF THIS AGREEMENT SHALL NOT EXCEED THE AGGREGATE SUM OF ANY AMOUNTS PAID TO NCMEC BY AGENCY FOR USE OF LOCATER AND/OR ANY MAINTENANCE AND SUPPORT SERVICES, NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

- 13.4 Agency shall provide no warranties or representations, express or implied, that give any third party any rights or remedies against NCMEC, and Agency shall indemnify, defend and hold NCMEC harmless against any damages, losses, liabilities and costs (including, without limitation, attorneys' fees) resulting from any claim asserted against NCMEC by such third party.

14. Injunctive Relief & Attorneys' Fees

- 14.1 If Agency violates or threatens to violate any of the terms or conditions of this Agreement relating to the use of LOCATER, including but not limited to exceeding the scope of the license granted, and/or violating or threatening to violate the confidentiality provisions, NCMEC may, in addition to any other rights or remedies it may have under this Agreement, or otherwise, seek and Agency hereby consents to, the entry of temporary, preliminary and permanent injunctive relief, restraining and enjoining Agency from any further or threatened violations of any of NCMEC's intellectual property rights, without requiring NCMEC to post a bond or make any other undertaking as a condition to such injunctive relief.
- 14.2 If NCMEC commences litigation to enforce any provision of or to declare a breach of this Agreement, NCMEC shall be entitled to recover its attorneys' fees and costs, in addition to any other amounts to which NCMEC may be entitled.

15. Post-Termination Obligations & Survival of Terms

- 15.1 Upon expiration or termination of this Agreement, all rights in LOCATER shall immediately revert to NCMEC, and Agency shall discontinue all use of LOCATER. At the direction of NCMEC, Agency shall immediately turn over to NCMEC all physical embodiments of LOCATER, including without limitation, any and all user guides, documentation, and other information and materials that may have been provided by NCMEC and any copies of such materials. Agency's failure to do so shall entitle NCMEC to immediate injunctive relief in accordance with the provisions of paragraph 14.1.
- 15.2 Upon termination of this Agreement, the provisions of this Agreement, including rights, interests and obligations of the parties shall continue to survive in full force and effect, including without limitation, those set forth in Sections 1.3, 2.3, 4.3, 6.3, 6.4, 8, 9, 12, 13, and 14.

16. Computer Requirements for LOCATER

- 16.1 Agency must provide its own computer hardware, software, and Internet connection necessary to access LOCATER.
- 16.2 Agency must provide its own office supplies, such as diskettes, printer paper, and ink cartridges.

16.3 In order to access LOCATER, Agency's computer operating system must be Windows 95 or later.

17. General Provisions

- 17.1 It is not the intent of the parties to create a partnership, joint venture, master-servant, principal-agent, or other relationship. This Agreement should not be construed as establishing any of these relationships between the parties. Neither party may be held liable for any act of omission or commission of the other party, and neither party is authorized to nor has the power to obligate the other party by contract, agreement, warranty, representation, or otherwise in any manner whatsoever except as may be expressly provided in this Agreement.
- 17.2 Publicity. Agency grants NCMEC the right to use Agency's name, trademark(s) or trade name(s) in NCMEC's promotional or marketing material and on its customer list.
- 17.3 Binding Effect. This Agreement shall be binding upon, and inure to the benefit of the parties, their legal representatives, transferees, successors and assigns as permitted by this Agreement.
- 17.4 Assignment. This Agreement and all rights and obligations may not be assigned in whole or in part by either party without the prior written consent of the other, except the rights and obligations of NCMEC may be assigned to another entity in connection with a reorganization, merger, consolidation, acquisition or other restructuring involving all or substantially all of the voting securities and/or assets of NCMEC.
- 17.5 Force Majeure. Neither NCMEC nor Agency shall be liable for failure to perform any of its respective obligations hereunder if such failure is caused by an event outside its reasonable control, including but not limited to, an act of God, war or natural disaster.
- 17.6 No Waiver. No delay or failure in exercising any right hereunder and no partial or single exercise thereof shall be deemed to constitute a waiver of such right or any other rights hereunder. No consent to a breach of any express or implied term of this Agreement shall constitute consent to any prior or subsequent breach.
- 17.7 Severability. If any provision hereof is declared invalid by a court of competent jurisdiction, such provision shall be ineffective only to the extent of such invalidity, so that the remainder of that provision and all remaining provisions of this Agreement shall be valid and enforceable to the fullest extent permitted by applicable law.
- 17.8 Notices. Except as otherwise expressly stated in the provisions of this Agreement, all notices required to be given hereunder shall be given in writing and shall be delivered either by hand or by certified mail with proper postage affixed thereto (with confirmation copy sent by registered mail) addressed to LOCATER at the NCMEC address given above or to the Agency Head at the address given to NCMEC on the LOCATER Application Form, or to such other person and address as may be designated from time to time in writing.
- 17.9 Compliance with Laws. The parties will comply with all applicable laws, regulations and ordinances relating to or with respect to this Agreement.
- 17.10 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without regard to the conflict of laws rules of any jurisdiction. The courts located in the Commonwealth of Virginia shall have exclusive jurisdiction over all claims relating to this Agreement.

17.11 Entire Agreement. This Agreement represents the entire contract between the parties hereto with respect to the subject matter set forth herein and supersedes all prior and contemporaneous negotiations, agreements, contracts, commitments and understandings, both verbal and written between NCMEC and Agency. The provisions of this Agreement shall supersede any provisions in any other document, Schedule, exhibit or agreement between the parties, including but not limited to any Statement of Work issued under this Agreement. Other than as expressly stated in Section 18, no modifications, additions or amendments to this Agreement shall be effective unless made in writing as an addendum to this Agreement and signed by duly authorized representative of the parties. In the event this Agreement is translated, the English version shall control.

17.12 Headings. The headings in this Agreement are for convenience purposes only and should not be used in interpreting this Agreement.

18. Copy of and Periodic Updates to LOCATER Agency User Agreement

18.1 A copy of this LOCATER Agency User Agreement is available for viewing on the LOCATER Website, www.locaterposters.org.

18.2 NCMEC reserves the right to amend the Terms and Conditions of this LOCATER Agency User Agreement at anytime at its sole discretion and without direct notice to Agency. Whenever this Agreement is changed, altered, modified, or otherwise amended, such amended version will replace the older version of this Agreement on the LOCATER Website. Posting of the amended Agreement on the LOCATER Website will constitute notice to Agency of any such changes. (The new version number located at the bottom of the Agreement will alert Agency that the Agreement has been amended.) Agency's continued use of LOCATER shall constitute its agreement to be bound by any and all changes to this Agreement.

Agency has read and understands this Agreement and agrees to be bound by its terms.

AGREE

* LOCATER™ Agency User Agreement, v. 001 (last modified January 20, 2004)