

**STATE OF TEXAS** §  
§  
**COUNTY OF FORT BEND** §

**ADDENDUM TO IDEMIA IDENTITY & SECURITY USA LLC  
AGREEMENT FOR MAINTENANCE SERVICES FOR LIVE SCAN PRODUCT LINES**

THIS ADDENDUM ("Addendum") is entered into by and between Fort Bend County, ("County"), a body corporate and politic under the laws of the State of Texas, and Idemia Identity & Security USA LLC ("IDEMIA"), a company authorized to conduct business in the State of Texas (hereinafter collectively referred to as the "parties").

WHEREAS, the parties have executed and accepted IDEMIA's Quotation (Reference No. IDTX-A051518-01CD), IDEMIA's Biometrics Products and System Sales Agreement, and the Maintenance and Support Agreement No. SA#002028-003-REV1 (collectively the "Agreement"), attached hereto as Exhibit "A" and incorporated by reference, for the purchase of a specified IDEMIA's Latent Workstation with a Printer, Installation and On-site Training, and Annual Maintenance, (collectively the "Product");

WHEREAS, IDEMIA is the sole source provider of the Product as indicated by the letter attached hereto as Exhibit "B" and incorporated by reference; and

WHEREAS, the following changes are incorporated as if a part of the Agreement:

1. **Scope of Service.** Subject to this Addendum, IDEMIA shall render Product to County as described in Exhibit A, and also provide Year 2 – Annual Maintenance Latent Workstation & Printer services in the amount of \$9,736.00 (which will start after the 1 Year Warranty) as described in Exhibit A. At this time, the County is not purchasing the Year 3 - Annual Maintenance Latent Workstation & Printer services in the amount of \$10,223.00.
2. **Payment; Non-appropriation; Taxes.** Payment shall be made by County within thirty (30) days of receipt of invoice. It is specifically understood and agreed that in the event no funds or insufficient funds are appropriated by Fort Bend County under this Agreement, Fort Bend County shall notify all necessary parties that this Agreement shall thereafter terminate and be null and void on the last day of the fiscal period for which appropriations were made without penalty, liability or expense to Fort Bend County. County is a body corporate and politic under the laws of the State of Texas and claims exemption from sales and use taxes. A copy of a tax-exempt certificate will be furnished upon request.
3. **Limit of Appropriation.** IDEMIA's fees shall be calculated at the rates set forth in the Quotations attached as Exhibit A. IDEMIA clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of One Hundred Four Thousand, Nine Hundred Seventy-Nine Dollars and 00/100 cents (\$104,979.00), specifically allocated to fully discharge any and all liabilities County may incur. IDEMIA does further understand and agree, said understanding an agreement also being of the absolute essence of this Agreement, that the total maximum compensation that IDEMIA may become entitled to and the total maximum sum that County may become liable to pay to IDEMIA shall not under any conditions,

circumstances, or interpretations thereof exceed One Hundred Four Thousand, Nine Hundred Seventy-Nine Dollars and 00/100 cents (\$104,979.00). In no event will the amount paid by the County for all services under this Agreement exceed this Limit of Appropriation without an amendment executed by the parties.

4. **Modifications.** The parties may not amend or waive this Agreement, except by a written agreement executed by both parties.
5. **Public Information Act and Open Meetings Act.** IDEMIA expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by IDEMIA shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed. The terms and conditions of the Agreement are not proprietary or confidential information.

IDEMIA expressly acknowledges that County is subject to the Texas Open Meetings Act, TEX. GOV'T CODE ANN. §§ 551.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will comply the provisions of the Texas Open Meetings Act in relation to the Agreement.

6. **Performance Warranty.** IDEMIA warrants to County that IDEMIA has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession practicing in the greater Houston metropolitan area and IDEMIA will apply that skill and knowledge with care and diligence to ensure that the Services provided hereunder will be performed and delivered in accordance with the highest professional standards.
7. **Product Assurance.** IDEMIA represents and warrants that its hardware, software and any related systems and/or services related to its software and/or hardware (collectively, the "Product") furnished by IDEMIA to County will not infringe upon or violate any patent, copyright, trademark, trade secret, or any other proprietary right of any third party. IDEMIA will, at its expense, defend any suit brought against County and will indemnify County against an award of damages and costs (including reasonable attorney fees, court costs and appeals), made against County by settlement or final judgment of a court that is based on a claim that the use of the IDEMIA's Product infringes an intellectual property right of a third party. Such defense and indemnity shall survive termination or expiration of the Agreement and the IDEMIA's liability for the above is not limited by any limitation of liability clauses that may appear in any document executed by the Parties.
8. **Indemnity.** The parties agree that under the Constitution and laws of the State of Texas, County cannot enter into an agreement whereby County agrees to indemnify or hold harmless another party; therefore, all references of any kind to County defending, indemnifying, holding or saving harmless IDEMIA for any reason are hereby deleted. IDEMIA shall Indemnify and defend County against all losses, liabilities, claims, causes of

action, and other expenses, including reasonable attorney's fees, arising from activities of IDEMIA, its agents, servants or employees, performed under this agreement that result from the negligent act, error, or omission of IDEMIA or any of IDEMIA's agents, servants or employees.

9. **Applicable Law; Arbitration; Attorney Fees.** The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity. County does not agree to submit disputes arising out of the Agreement to binding arbitration. Therefore, any references to binding arbitration or the waiver of a right to litigate a dispute are hereby deleted. County does not agree to pay any and/or all attorney fees incurred by IDEMIA in any way associated with the Agreement.
10. **County Data.** Nothing in this Agreement will be construed to waive the requirements of § 205.009 of the Texas Local Government Code.
11. **Confidential Information.** IDEMIA acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to County. Any and all information of any form obtained by IDEMIA or its employees or agents from County in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by IDEMIA shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by IDEMIA) publicly known or is contained in a publicly available document; (b) is rightfully in IDEMIA's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (c) is independently developed by employees or agents of IDEMIA who can be shown to have had no access to the Confidential Information.

IDEMIA agrees to hold Confidential Information in strict confidence, using at least the same degree of care that IDEMIA uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to County hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. IDEMIA shall use its best efforts to assist County in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, IDEMIA shall advise County immediately in the event IDEMIA learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and IDEMIA will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or IDEMIA against any such person. IDEMIA agrees that, except as directed by County, IDEMIA will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential

Information to any person, and that upon termination of this Agreement or at County's request, IDEMIA will promptly turn over to County all documents, papers, and other matter in IDEMIA's possession which embody Confidential Information.

IDEMIA acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to County that is inadequately compensable in damages. Accordingly, County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. IDEMIA acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of County and are reasonable in scope and content.

IDEMIA in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.

12. **Personnel.** IDEMIA represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for the timely performance of the services required under this Agreement and that IDEMIA shall furnish and maintain, at its own expense, adequate and sufficient personnel, in the opinion of County, to perform the Services when and as required and without delays.

All employees of IDEMIA shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of IDEMIA or agent of IDEMIA who, in the opinion of County, is incompetent or by his conduct becomes detrimental to providing Services pursuant to this Agreement shall, upon request of County, immediately be removed from association with the Services required under this Agreement

When performing services on-site at the County, IDEMIA shall comply with, and ensure that all IDEMIA Personnel comply with, all rules, regulations and policies of County that are communicated to IDEMIA in writing, including security procedures concerning systems and data and remote access thereto, building security procedures, including the restriction of access by County to certain areas of its premises or systems for security reasons, and general health and safety practices and procedures provided to IDEMIA as of the Effective Date, and thereafter as mutually agreed to by the parties. In the event any such rules, regulations, or policies are communicated to IDEMIA, or change following the date hereof and increase IDEMIA's cost to provide the services, the parties agree to discuss the negotiation of additional compensation for IDEMIA, subject to Section 3 of this Addendum.

13. **Insurance.** Prior to commencement of the services under this Agreement, IDEMIA shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. IDEMIA shall provide certified copies of insurance endorsements and/or policies if requested by County. IDEMIA shall maintain such insurance coverage from the time services commence until services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of services. IDEMIA shall obtain such insurance written on an Occurrence form from such companies having Bests rating of A/VII or better, licensed or approved to transact

business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

- (a). Workers' Compensation insurance. Substitutes to genuine Workers' Compensation Insurance will not be allowed. Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.
- (b). Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.
- (c). Business Automobile Liability insurance with a combined Bodily Injury/Property Damage limit of not less than \$1,000,000 each accident. The policy shall cover liability arising from the operation of licensed vehicles by policyholder.
- (d). Professional Liability insurance with limits not less than \$1,000,000.

County and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation. All Liability policies including Workers' Compensation written on behalf of IDEMIA shall contain a waiver of subrogation in favor of County and members of Commissioners Court.

If required coverage is written on a claims-made basis, IDEMIA warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of two years beginning from the time that work under the Agreement is completed.

- 14. **Limitations.** Limitations for the right to bring an action, regardless of form, must be governed by the laws of the State of Texas, Texas Civil Practice and Remedies Code § 16.070, as amended, and any provision to the contrary is hereby deleted.
- 15. **Certain State Law and County Requirements for Contracts.** The contents of this Section are required by Texas Law and are included by County regardless of content.
  - (a). Agreement to Not Boycott Israel Chapter 2271 Texas Government Code. By signature below, IDEMIA verifies IDEMIA does not boycott Israel and will not boycott Israel during the term of this Agreement.
  - (b). Texas Government Code § 2252.152 Acknowledgment. By signature below, IDEMIA represents pursuant to § 2252.152 of the Texas Government Code, that IDEMIA is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under § 806.051, § 807.051 or § 2252.153.
- 16. **Human Trafficking.** BY ACCEPTANCE OF CONTRACT, IDEMIA ACKNOWLEDGES THAT FORT BEND COUNTY IS OPPOSED TO HUMAN TRAFFICKING AND THAT NO COUNTY FUNDS WILL BE USED IN SUPPORT OF SERVICES OR ACTIVITIES THAT VIOLATE HUMAN TRAFFICKING LAWS.
- 17. **No Waiver of Jury Trial.** The County does not agree that all disputes (including any claims or counterclaims) arising from or related to this Agreement shall be resolved without a jury. Therefore, any references to waiver of jury trial are hereby deleted.

18. **Conflict.** In the event there is a conflict between this Addendum and the attached Exhibit A, this Addendum controls. Notwithstanding the foregoing, nothing in this Addendum, with the exception of Section 7 hereof, shall limit the application of the limitations on liability in Section 14 of the Biometric Product and System Sales Agreement.
19. **Maintenance and Support Agreement No. SA#002028-003-REV1.** The parties acknowledge that the inclusion of Maintenance and Support Agreement No. SA#002028-003-REV1 into this Agreement will cause Node HCSOLCS003 to be removed from maintenance coverage under Maintenance and Support Agreement No. SA#002028-009 – REV1, incorporated by reference.
20. **Understanding, Fair Construction.** By execution of this Addendum, the parties acknowledge that they have read and understood each provision, term and obligation contained in this Addendum. This Addendum, although drawn by one party, shall be construed fairly and reasonably and not more strictly against the drafting party than the nondrafting party.
21. **Electronic and Digital Signatures.** The Parties to this Agreement agree that any electronic and/or digital signatures of the Parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as the use of manual signatures.

(Execution Page Follows)

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, this Addendum is signed, accepted, and agreed to by all parties by and through the parties or their agents or authorized representatives. All parties hereby acknowledge that they have read and understood this Addendum and the exhibits and attachments hereto. All parties further acknowledge that they have executed this legal document voluntarily and of their own free will.

**FORT BEND COUNTY**

\_\_\_\_\_  
KP George, County Judge

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Laura Richard, County Clerk

**IDEMIA IDENTITY & SECURITY USA LLC**

  
\_\_\_\_\_  
Authorized Agent – Signature

Michael Hash  
\_\_\_\_\_  
Authorized Agent – Printed Name

Vice President  
\_\_\_\_\_  
Title

January 6, 2021  
\_\_\_\_\_  
Date

**AUDITOR'S CERTIFICATE**

I hereby certify that funds in the amount of \$ \_\_\_\_\_ are available to pay the obligation of Fort Bend County within the foregoing Agreement.

\_\_\_\_\_  
Robert E. Sturdivant, County Auditor

Exhibit A: IDEMIA's Quotation (Reference No. IDTX-A051518-01CD), and Biometrics Products and System Sales Agreement; the Maintenance and Support Agreement No. SA#002028-003-REV1; and  
Exhibit B: Sole Source Letter

# Exhibit A





October 29, 2020

Investigator Glenn St. Hilaire  
Fort Bend County Sheriff's Office  
CID / Crime Scene Unit  
1410 Williams Way  
Richmond, TX 77469

Tel: 281-341-4629

Email: [Glenn.StHilaire@fortbendcountytx.gov](mailto:Glenn.StHilaire@fortbendcountytx.gov)

**Reference No. IDTX-A051518-01CD**

*This proposal replaces the previous proposal Reference No. MTTX-A051518-01B.*

IDEMIA is pleased to provide Fort Bend County Sheriff's Office with the following quotation for the IDEMIA Latent Workstation for submission to the Harris County AFIS (HCSO) Database.

**The IDEMIA Latent Workstation has the following features:**

- ◆ Stores descriptive data such as case ID, user, location, agency, category, etc.
- ◆ Provides charting tools to point out similarities between prints.

**Solution Description and Pricing**

IDEMIA proposes the equipment, software, and services described below.

**Latent Workstation**

Table 1. Pricing and Maintenance

Description	Qty	Unit Price	Total
<b>IDEMIA Latent Workstation</b> , including <ul style="list-style-type: none"> <li>◆ Latent Station Software for latent capture encoding and searching</li> <li>◆ Illumination Capture Station (Left-desk Console-Latent Camera, Lighting)</li> <li>◆ Control Computer*, Monitor, Keyboard</li> <li>◆ Review Software</li> </ul>	1	\$73,800	\$73,800
<b>Printer:</b> Color Laser Printer	1	\$1,599	\$1,599
Installation and On-site Training <b>Warranty:</b> 1 Year On-site <b>Advantage</b> Solution warranty, 9X5, Next-day on-site response and parts replacement Freight		Included	Included
<b>Upgrade</b> to next generation MBIS Latent Expert Workstation Software* (includes installation & testing)	1	\$10,000	\$10,000
<b>Year 2 - Annual Maintenance Latent Workstation &amp; Printer</b> (to start after 1 Year Warranty) On-site <b>Advantage</b> Solution, 9X5, Next day on-site response and parts replacement			<b>\$9,736</b>
<b>Year 3 - Annual Maintenance Latent Workstation &amp; Printer</b> (to start after 1 Year Warranty) On-site <b>Advantage</b> Solution, 9X5, Next day on-site response and parts replacement			<b>10,223</b>
<b>GRAND TOTAL</b>			<b>\$105,358</b>

*Standard shipping is 60-90 days after receipt of order, or as otherwise scheduled.*

*\*Control Computer provided as part of the IDEMIA Latent Workstation solution may be refurbished and will include a 1 Year On-site Advantage Solution warranty.*

*\*This upgrade will be available after the upgrade of the HCSO AFIS to a new IDEMIA MBIS system*

## Customer Responsibilities

Fort Bend County Sheriff's Office is responsible for the following:

- ◆ Providing necessary facility resources required for equipment installation and operation including access, space, environmental control, electrical power and networking.
- ◆ To obtain and maintain the required transmission lines and hardware for remote communications to and from the necessary agencies.
- ◆ Obtaining all required authorizations for connecting to the central AFIS at Harris County, Texas.

## Assumptions

In developing this proposal, IDEMIA has made the following assumptions:

- ◆ With the exception of the State AFIS, there are no external interfaces to support which includes but is not limited to records management system, booking system, mugshot system, etc.
- ◆ An inter-agency agreement between Fort Bend County Sheriff's Office and Harris County will be in place.
- ◆ Fort Bend County Sheriff's Office will provide all necessary communication to connect to Harris County. This includes, but is not limited to hubs, routers, modems, etc.
- ◆ NOTE: Performance may be affected by network bandwidth. IDEMIA requires a minimum 10Mbps dedicated network connection with a maximum latency of 25 milliseconds for each remote workstation running the Latent Expert application. If the remote site has three or more workstations, a 30Mbps connection is recommended.
- ◆ On-site Installation Services will be scheduled after network connectivity to Harris County has been established and verified.

Additional engineering effort by IDEMIA beyond the scope of the standard product will be quoted based on current service rates in effect at the time of the change, plus any related travel or administrative expenses. Assistance with training and questions for the Fort Bend County Sheriff's Office database or any programming, scripting, or review of programs beyond work quoted above are excluded from this offer.

Prices are exclusive of any and all state, or local taxes, or other fees or levies. Customer payments are due to IDEMIA within 20 days after the date of the invoice. Product purchase will be governed by the IDEMIA Agreement, a copy of which is attached for your convenience. Firm delivery schedules will be provided upon receipt of a purchase order. No subsequent purchase order can override such terms. Nothing additional shall be binding upon IDEMIA unless a subsequent agreement is signed by both parties.

IDEMIA reserves the right to substitute hardware of equal value with equal or better capability, based upon market availability. If, however such equipment is unavailable, IDEMIA will make its best effort to provide a suitable replacement.

## Proposal Expiration: February 28, 2021

Purchase orders should be sent to IDEMIA by electronic mail, facsimile or U.S. mail. Please direct all question and order correspondence, including Purchase Order, to:

**Noemi Islas**  
**IDEMIA**  
 5515 East La Palma Avenue, Suite 100  
 Anaheim, CA 92807  
 Email: [noemi.islas@us.idemia.com](mailto:noemi.islas@us.idemia.com) | Tel: (714) 238-2082

We look forward to working with you.

Sincerely,



Michael Kato  
 Vice President of Public Security, State & Local Government - IDEMIA

## Advantage Solution Support

The following table provides a summary of the maintenance services and support available during warranty and following warranty expiration. Initial warranty period is 1 year from the date of installation.

Support Features	Warranty	Post Warranty
<b>Software Support 9X5*</b>	<b>Included in Warranty</b>	<b>Available for purchase</b>
Unlimited Telephone Technical Support	√	√
2 Hour Telephone Response Time	√	√
Remote Dial-in Analysis	√	√
Software Standard Releases	√	√
Software Supplemental Releases	√	√
Automatic Call Escalation	√	√
Software Customer Alert Bulletins	√	√
<b>Hardware Support - On-site 9X5*</b>	<b>Included in Warranty</b>	<b>Available for purchase</b>
On-Site Response	24-hours	√
On-Site Corrective Maintenance	√	√
On-Site Parts Replacement	√	√
Preventive Maintenance	√	√
Escalation Support	√	√
Hardware Service Reporting	√	√
Hardware Customer Alert Bulletins	√	√
<b>Parts Support</b>	<b>Included in Warranty</b>	<b>Available for purchase</b>
Advanced Exchange Parts Replacement	√	√
Telephone Technical Support for Parts Replacement	√	√
Parts Customer Alert Bulletins	√	√
<b>Software Uplifts</b>		
Hours of Coverage Available up to 24 Hours Per Day, 7 Days/Week	Optional	Optional
1 Hour Telephone Response	Optional	Optional
<b>Hardware Uplifts</b>		
Hours of Coverage Available up to 24 Hours Per Day, 7 Days/Week	Optional	Optional
Up to 4 Hours On-site Response	Optional	Optional

\*Customer local time

**Signature**

Name

Date \_\_\_\_\_

**Total Purchase Price (including any Options): \$**

**Please provide Billing Address:**

### Billing Contact name

Telephone number ( )

**Check if Billing Address is same as Shipping Address:** ☐

**Please provide Shipping Address (if different from Billing Address):**

### Technical Contact name

Telephone number ( )

## **Idemia Identity & Security USA LLC Biometrics Products and System Sales Agreement**

Idemia Identity & Security USA LLC, ("IDEMIA" or "Seller") having a place of business at 5515 East La Palma Avenue, Suite 100, Anaheim CA 92807 and \_\_\_\_\_, ("Customer"), having a place of business at \_\_\_\_\_,

\_\_\_\_\_ enter into this Biometrics Products and System Sales Agreement ("Agreement"), pursuant to which Customer will purchase and Seller will sell the System or Products, as described below. Seller and Customer may be referred to individually as "party" and collectively as "parties." For good and valuable consideration, the parties agree as follows:

### **SECTION 1. EXHIBITS**

The Exhibits listed below are incorporated into and made a part of this Agreement. In interpreting this Agreement and resolving any ambiguities, the main body of this Agreement will take precedence over the Exhibits and any inconsistency between Exhibits A through E will be resolved in the order in which they are listed.

Exhibit A - IDEMIA "Software License Agreement"

Exhibit B - "Payment Schedule"

### **SECTION 2. DEFINITIONS**

Capitalized terms used in this Agreement shall have the following meanings:

2.1 "Acceptance Tests" means those tests described in the Acceptance Test Plan.

"Beneficial Use" means when Customer first uses the System or a Subsystem for operational purposes (excluding training or testing).

2.2 "Contract Price" means the price for the System or Products, exclusive of any applicable sales or similar taxes and freight charges.

2.3 "Effective Date" means that date upon which the last party to sign this Agreement has executed it.

2.4 "Equipment" means the equipment listed in the List of Deliverables or List of Products that Customer is purchasing from Seller under this Agreement.

2.5 "Infringement Claim" means a third party claim alleging that the Equipment manufactured by IDEMIA or the IDEMIA Software infringes upon the third party's United States patent or copyright.

2.6 "IDEMIA" means IDEMIA Identity & Security USA LLC, a Delaware limited liability company.

2.7 "IDEMIA Software" means Software that IDEMIA or Seller owns.

2.8 "Non-IDEMIA Software" means Software that a party other than IDEMIA or Seller owns.

2.9 "Open Source Software" means software that has its underlying source code freely available to evaluate, copy, and modify. Open Source Software and the terms "freeware" or "shareware" are sometimes used interchangeably.

2.11 "Products" means the Equipment and Software provided by Seller under this Agreement.

2.12 "Proprietary Rights" means the patents, patent applications, inventions, copyrights, trade secrets, trademarks, trade names, mask works, know-how, and other intellectual property rights in and to the Equipment and Software, including those created or produced by IDEMIA or Seller under this Agreement and any corrections, bug fixes, enhancements, updates or modifications to or derivative works from the Software whether made by IDEMIA or another party.

2.13 "Software" means the IDEMIA Software and Non-IDEMIA Software in object code format that is furnished with the System or Equipment and which may be listed on the List of Deliverables or List of Products.

2.14 "Specifications" means the functionality and performance requirements described in the Technical and Implementation Documents.

2.15 "Subsystem" means a major portion of the entire System that performs specific functions or operations as described in the Technical and Implementation Documents.

2.16 "System" means the Equipment, Software, services, supplies, and incidental hardware and materials combined together into a system as more fully described in the Technical and Implementation Documents.

2.17 "System Acceptance" means the Acceptance Tests have been successfully completed.

### **SECTION 3. SCOPE OF AGREEMENT AND TERM**

3.1. **SCOPE OF WORK.** For System sales, Seller will provide, ship, install and test the System, and perform its other contractual responsibilities, all in accordance with this Agreement. Customer will perform its contractual responsibilities in accordance with this Agreement. For Product sales, Seller will provide, ship, and install (if applicable) the Products, and perform its other contractual responsibilities, all in accordance with this Agreement. Customer will perform its contractual responsibilities in accordance with this Agreement.

3.2. **CHANGE ORDERS.** Either party may request changes within the general scope of this Agreement. If a requested change causes an increase or decrease in the cost or time required to perform this Agreement, Seller and Customer will agree to an equitable adjustment of the Contract Price, Performance Schedule, or both, and will reflect such adjustment in a change order. Neither party is obligated to perform requested changes unless both parties execute a written change order.

3.3. **TERM.** For System sales: Unless otherwise terminated in accordance with the provisions of this Agreement or extended by mutual agreement of the parties, the term of this Agreement shall begin on the Effective Date and shall continue until the date of System Acceptance or expiration of the warranty period as set forth in Section 9, whichever occurs last. For Product sales: Unless otherwise terminated in accordance with the provisions of this Agreement or extended by mutual agreement of the parties, the term of this Agreement shall begin on the Effective Date and shall continue until the expiration of the warranty period or three (3) years from the Effective Date, whichever occurs last.

3.4. **ADDITIONAL EQUIPMENT, SOFTWARE, OR SERVICES.** For three (3) years after the Effective Date of this Agreement, Customer may order additional Equipment, Software, or services provided they are then available. Each order must refer to this Agreement and must specify the pricing and delivery terms. Notwithstanding any additional or contrary terms in the order, the applicable provisions of this Agreement (except for pricing, delivery, passage of title and risk of loss to Equipment, warranty commencement, and payment terms) will govern the purchase and sale of the additional Equipment, Software, or services. Title and risk of loss to additional Equipment will pass at shipment; warranty will commence upon delivery; and payment is due within twenty (20) days after the invoice date. Seller will send Customer an invoice as the additional Equipment is shipped, Software is licensed, or services are performed.

#### **3.5. MAINTENANCE SERVICE.**

3.5.1. **System Sales** After the warranty period, Customer may purchase maintenance and support services for the Equipment and IDEMIA Software by executing the Maintenance and Support Agreement.

3.5.2. **Product Sales** This Agreement does not cover maintenance or support of the Products except as provided under the warranty. If Customer wishes to purchase maintenance or support, Seller will provide a separate maintenance and support proposal upon request.

3.6. **IDEMIA SOFTWARE.** Any IDEMIA Software, including subsequent releases, is licensed to Customer solely in accordance with the Software License Agreement. Customer hereby accepts and agrees to abide by all of the terms and restrictions of the Software License Agreement.

3.7. **NON-IDEMIA SOFTWARE.** Any Non-IDEMIA Software is licensed to Customer in accordance with the standard license, terms, and restrictions of the copyright owner on the Effective Date unless the copyright owner has granted to IDEMIA the right to sublicense the Non-IDEMIA Software pursuant to the Software License Agreement, in which case it applies and the copyright owner will have all of Licensor's rights and protections under the Software License Agreement. IDEMIA makes no representations or warranties of any kind regarding Non-IDEMIA Software. Non-IDEMIA Software may include Open Source Software. All Open Source Software is licensed to Customer in accordance with, and Customer agrees to abide by, the provisions of the standard license of the copyright owner and not the Software License Agreement. Upon request by Customer, IDEMIA will use commercially reasonable efforts to (i) determine whether any Open Source Software will be provided under this Agreement; and if so, (ii) identify the Open Source Software and provide to Customer a copy of the applicable standard license (or specify where such license may be found); and (iii) provide to Customer a copy of the Open Source

Software source code if it is publicly available without charge (although a distribution fee or a charge for related services may be applicable).

3.8. **SUBSTITUTIONS.** At no additional cost to Customer, Seller reserves the right to substitute any Equipment, Software, or services to be provided by Seller, provided that the substitute meets or exceeds the Specifications and is of equivalent or better quality to the Customer. Any such substitution will be reflected in a change order.

3.9. **OPTIONAL EQUIPMENT OR SOFTWARE.** This paragraph applies only if a "Priced Options" exhibit is shown in Section 1 of this Agreement, or if the Parties amend this Agreement to add a Priced Options exhibit. During the term of the option as stated in the Priced Options exhibit (or if no term is stated, then for one (1) year after the Effective Date), Customer shall have the right and option to purchase the equipment, software, and related services that are described and listed in the Priced Options exhibit. Customer may exercise this option by giving written notice to Seller which must designate what equipment, software, and related services Customer is selecting (including quantities, if applicable). To the extent they apply, the terms and conditions of this Agreement will govern the purchase of the selected equipment, software, and related services. However, the parties acknowledge that certain contractual provisions must be agreed upon, and they agree to negotiate those in good faith promptly after Customer delivers to Seller the option exercise notice. Examples of provisions that may need to be negotiated are: specific lists of deliverables, statements of work, acceptance test plans, delivery and implementation schedules, payment terms, maintenance and support provisions, additions to or modifications of the Software License Agreement, hosting terms, and modifications to the acceptance and warranty provisions.

#### **SECTION 4. PERFORMANCE SCHEDULE**

Seller and Customer agree that they will perform their respective responsibilities substantially in accordance with the Performance Schedule. By executing this Agreement, Customer authorizes Seller to proceed with performance of this Agreement.

#### **SECTION 5. CONTRACT PRICE, PAYMENT, AND INVOICING**

5.1. **CONTRACT PRICE.** The Contract Price in U.S. dollars is SPELL OUT PRICE (\$ ), or if applicable, the Contract Price is as stated in the Payment Schedule. A pricing summary may be included with the Payment Schedule. If there is a reduction in the services, Software, and/or Equipment quantities, it may affect the overall Contract Price, including discounts if applicable.

5.2. **INVOICING AND PAYMENT.** Seller will submit invoices to Customer according to the Payment Schedule. Except for a payment that is due on the Effective Date, Customer will make payments to Seller within twenty (20) days after the date of each invoice. Customer will make payments when due in the form of a wire transfer, check, or cashier's check from a U.S. financial institution. Overdue invoices will bear simple interest at the rate of ten percent (10%) per annum, unless such rate exceeds the maximum allowed by law, in which case it will be reduced to the maximum allowable rate. For Customer's reference, the Federal Tax Identification Number for IDEMIA Identity & Security USA LLC is 04-3320515.

5.3. **FREIGHT, TITLE, AND RISK OF LOSS.** Unless otherwise stipulated with the Buyer when an Order is accepted, the Equipment will be delivered by Seller "FCA (Free Carrier), with named place being the Seller's premises where the Goods are being dispatched, (Incoterms 2010). Title to the Equipment will pass to Customer upon payment in full of the Contract Price as outlined in Section 5.1 above, except that title to Software will not pass to Customer at any time. Risk of loss will pass to Customer upon delivery of the Equipment to the Customer at the agreed named place of delivery in accordance with the Incoterm in the contract. Seller will pack and ship all Equipment in accordance with good commercial practices.

5.4. **INVOICING AND SHIPPING ADDRESSES.** Invoices will be sent to the Customer at the following address:

The city which is the ultimate destination where the Equipment will be delivered to Customer is: \_\_\_\_\_

The Equipment will be shipped to the Customer at the following address (insert if this information is known): \_\_\_\_\_

Customer may change this information by giving written notice to IDEMIA.

#### **SECTION 6. SITES AND SITE CONDITIONS**

6.1. **ACCESS TO SITES.** In addition to its responsibilities described elsewhere in this Agreement, Customer will provide (i) a

designated project manager; (ii) all necessary construction and building permits, zoning variances, licenses, and any other approvals that are necessary to develop or use the sites; and (iii) access to the work sites identified in the Technical and Implementation Documents as reasonably requested by Seller so that it may perform its duties in accordance with the Performance Schedule and Statement of Work.

6.2. **SITE CONDITIONS.** Customer will ensure that all work sites it provides will be safe, secure, and in compliance with all applicable industry and OSHA standards. To the extent applicable and unless the Statement of Work specifically states to the contrary, Customer will ensure that these work sites will have (i) adequate physical space for the installation, use and maintenance of the System; (ii) adequate air conditioning and other environmental conditions; (iii) adequate electrical power outlets, distribution and equipment for the installation, use and maintenance of the System; and (iv) adequate telephone or other communication lines for the installation, use and maintenance of the System, including modem access, and adequate interfacing networking capabilities. Before installing the Equipment or Software at a work site, Seller will inspect the work site and advise Customer of any apparent deficiencies or non-conformities with the requirements of this Section.

6.3. **SITE ISSUES.** If Seller or Customer determines that the sites identified in the Technical and Implementation Documents are no longer available or desired, or if subsurface, structural, adverse environmental or latent conditions at any site differ from those indicated in the Technical and Implementation Documents, Seller and Customer will promptly investigate the conditions and will select replacement sites or adjust the installation plans and Specifications as necessary. If such change in sites or adjustment to the installation plans and Specifications causes a change in the cost or time to perform, the parties will equitably amend the Contract Price or Performance Schedule, or both, by a change order.

#### **SECTION 7. TRAINING**

Any training to be provided by Seller to Customer under this Agreement will be described in a written training plan that is part of the Statement of Work. Customer will notify Seller immediately if a date change for a scheduled training program is required. If Seller incurs additional costs because Customer reschedules a training program less than thirty (30) days before its scheduled start date, Seller is entitled to recover these additional costs.

#### **SECTION 8. ACCEPTANCE**

##### **8.1 SYSTEM ACCEPTANCE**

8.1.1 **COMMENCEMENT OF ACCEPTANCE TESTING.** Seller will provide to Customer at least ten (10) days notice before the Acceptance Tests commence. System testing will occur only in accordance with the Acceptance Test Plan.

8.1.2. **SYSTEM ACCEPTANCE.** System Acceptance will occur upon successful completion of the Acceptance Tests described in the Acceptance Test Plan. Upon System Acceptance, the parties will memorialize this event by promptly executing a System Acceptance Certificate. If the Acceptance Test Plan includes separate tests for individual Subsystems or phases of the System, acceptance of the individual Subsystem or phase will occur upon the successful completion of the Acceptance Tests for such Subsystem or phase, and the parties will promptly execute an acceptance certificate for the Subsystem or phase. If Customer believes that the System has failed the completed Acceptance Tests, Customer will provide to Seller a written notice that includes the specific details of such failure. If Customer does not provide to Seller such notice within ten (10) business days after completion of the Acceptance Tests, System Acceptance will be deemed to have occurred as of the completion of the Acceptance Tests. Minor omissions or variances in the System that do not materially impair the operation of the System as a whole will not postpone System Acceptance or Subsystem acceptance, but will be corrected according to a mutually agreed schedule.

8.1.3 **BENEFICIAL USE.** Customer acknowledges that Seller's ability to perform its implementation and testing responsibilities under this Agreement may be impeded if Customer begins using the System before System Acceptance. Therefore, Customer will not commence Beneficial Use before System Acceptance without Seller's prior written authorization, which Seller will not unreasonably withhold. Seller is not responsible for System performance deficiencies that occur during unauthorized Beneficial Use. Upon commencement of Beneficial Use, Customer assumes responsibility for the use and operation of the System and payment in full is due.

##### **8.2 PRODUCT ACCEPTANCE**



8.2.1. Acceptance of the Products will occur upon delivery to Customer unless the Statement of Work provides for acceptance verification or testing, in which case acceptance of the Products will occur upon successful completion of the acceptance verification or testing. Notwithstanding the preceding sentence, Customer's use of the Products for their operational purposes will constitute acceptance.

## **SECTION 9. REPRESENTATIONS AND WARRANTIES**

9.1. **SYSTEM FUNCTIONALITY** (System sales only). Seller represents that the System will perform in accordance with the Specifications in all material respects. Upon System Acceptance or Beneficial Use, whichever occurs first, this System functionality representation is fulfilled. Seller is not responsible for System performance deficiencies that are caused by ancillary equipment not furnished by Seller attached to or used in connection with the System or for reasons beyond Seller's control, such as (i) an earthquake, adverse atmospheric conditions, or other natural causes; (ii) Customer changes to load usage or configuration outside the Specifications; or (iii) any acts of parties who are beyond Seller's control.

### **9.2. EQUIPMENT WARRANTY.**

9.2.1. **System Sales** For one (1) year from the date of System Acceptance or Beneficial Use, whichever occurs first, Seller warrants that the Equipment under normal use and service will be free from material defects in materials and workmanship. If System Acceptance is delayed beyond six (6) months after shipment of the Equipment by events or causes within Customer's control, this warranty expires eighteen (18) months after the shipment of the Equipment.

9.2.2. **Product Sales** For one (1) year from the date of shipment, Seller warrants that the Equipment under normal use and service will be free from material defects in materials and workmanship.

### **9.3. IDEMIA SOFTWARE WARRANTY.**

9.3.1 **System Sales** Unless otherwise stated in the Software License Agreement, for one (1) year from the date of System Acceptance or Beneficial Use, whichever occurs first, Seller warrants the IDEMIA Software in accordance with the terms of the Software License Agreement and the provisions of this Section 9 that are applicable to the IDEMIA Software. If System Acceptance is delayed beyond six (6) months after shipment of the IDEMIA Software by events or causes within Customer's control, this warranty expires eighteen (18) months after the shipment of the IDEMIA Software.

9.3.2. **Product Sales** Unless otherwise stated in the Software License Agreement, for one (1) year from the date of shipment, Seller warrants the IDEMIA Software in accordance with the terms of the Software License Agreement and the provisions of this Section that are applicable to the IDEMIA Software.

9.4. **EXCLUSIONS TO EQUIPMENT AND IDEMIA SOFTWARE WARRANTIES.** These warranties do not apply to: (i) defects or damage resulting from use of the Equipment or IDEMIA Software in other than its normal, customary, and authorized manner; (ii) defects or damage occurring from misuse, accident, liquids, neglect, or acts of God; (iii) defects or damage occurring from testing, maintenance, disassembly, repair, installation, alteration, modification, or adjustment not provided or authorized in writing by Seller; (iv) breakage of or damage to antennas unless caused directly by defects in material or workmanship; (v) defects or damage caused by Customer's failure to comply with all applicable industry and OSHA standards; (vi) Equipment that has had the serial number removed or made illegible; (vii) batteries (because they carry their own separate limited warranty); (viii) freight costs to ship Equipment to the repair depot; (ix) scratches or other cosmetic damage to Equipment surfaces that does not affect the operation of the Equipment; and (x) normal or customary wear and tear.

9.5. **WARRANTY CLAIMS.** For Customer to assert a claim that the Equipment or IDEMIA Software does not conform to these warranties, Customer must notify Seller in writing of the claim before the expiration of the warranty period. Upon receipt of such notice, Seller will investigate the warranty claim. If this investigation confirms a valid warranty claim, Seller will (at its option and at no additional charge to Customer) repair the defective Equipment or IDEMIA Software, replace it with the same or equivalent product, or refund the price of the defective Equipment or IDEMIA Software. Such action will be the full extent of Seller's liability hereunder. If this investigation indicates the warranty claim is not valid, then Seller may invoice Customer for responding to the claim on a time and materials basis using Seller's current labor rates. Repaired or replaced product is warranted for the balance of the original applicable warranty period. All replaced products or parts will become the property of Seller.

9.6. **ORIGINAL END USER IS COVERED.** These express limited warranties are extended by Seller to the original user purchasing the System or Products for commercial, industrial, or governmental use only, and are not assignable or transferable.

9.7. **DISCLAIMER OF OTHER WARRANTIES.** THESE WARRANTIES ARE THE COMPLETE WARRANTIES FOR THE EQUIPMENT AND IDEMIA SOFTWARE PROVIDED UNDER THIS AGREEMENT AND ARE GIVEN IN LIEU OF ALL OTHER WARRANTIES. SELLER DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## **SECTION 10. DELAYS**

10.1. **FORCE MAJEURE.** Neither party will be liable for its non-performance or delayed performance if caused by a "Force Majeure" which means an event, circumstance, or act of a third party that is beyond a party's reasonable control, such as an act of God, an act of the public enemy, an act of a government entity, strikes or other labor disturbances, hurricanes, earthquakes, fires, floods, epidemics, embargoes, war, riots, or any other similar cause. Each party will notify the other if it becomes aware of any Force Majeure that will significantly delay performance. The notifying party will give such notice promptly (but in no event later than fifteen days) after it discovers the Force Majeure. If a Force Majeure occurs, the parties will execute a change order to extend the Performance Schedule for a time period that is reasonable under the circumstances.

10.2. **PERFORMANCE SCHEDULE DELAYS CAUSED BY CUSTOMER** (System Sales Only). If the Performance Schedule is delayed because of Customer (including any of its other contractors), (i) Customer will make the promised payments according to the Payment Schedule as if no delay occurred; and (ii) the parties will execute a change order to extend the Performance Schedule and, if requested by Seller, compensate Seller for all reasonable charges incurred because of such delay. Delay charges may include costs incurred by Seller or its subcontractors for additional freight, warehousing and handling of Equipment; extension of the warranties; travel; suspending and re-mobilizing the work; additional engineering, project management, and standby time calculated at then current rates; and preparing and implementing an alternative implementation plan.

## **SECTION 11. DISPUTES**

11.1. **SETTLEMENT PREFERRED.** Seller and Customer, through their respective project managers, will attempt to settle any dispute arising from this Agreement (except for a claim relating to intellectual property or breach of confidentiality provisions) through consultation and negotiation in good faith and a spirit of mutual cooperation. The dispute will be escalated to appropriate higher-level managers of the parties, if necessary. If cooperative efforts fail, the dispute will be mediated by a mediator chosen jointly by Seller and Customer within thirty (30) days after notice by one of the parties demanding non-binding mediation. Seller and Customer will not unreasonably withhold consent to the selection of a mediator, and they will share the cost of the mediation equally. The parties may postpone mediation until they have completed some specified but limited discovery about the dispute. The parties may also replace mediation with some other form of non-binding alternative dispute resolution ("ADR").

11.2. **LITIGATION.** Any claim relating to intellectual property or breach of confidentiality provisions and any dispute that cannot be resolved between the parties through negotiation or mediation within two (2) months after the date of the initial demand for non-binding mediation as described above in Section 11.1 may be submitted by either party to a court of competent jurisdiction in the state in which the System or Product is installed. Each party consents to jurisdiction over it by such a court. The use of ADR procedures will not be considered under the doctrine of laches, waiver, or estoppel to affect adversely the rights of either party. Either party may resort to the judicial proceedings described in this section before the expiration of the two-month ADR period if (i) good faith efforts to resolve the dispute under these procedures have been unsuccessful; or (ii) interim relief from the court is necessary to prevent serious and irreparable injury to such party or any of its affiliates, agents, employees, customers, suppliers, or subcontractors.

## **SECTION 12. DEFAULT AND TERMINATION**

12.1. **DEFAULT BY A PARTY.** If either party fails to perform a material obligation under this Agreement, the other party may consider the non-performing party to be in default (unless a Force Majeure causes such failure) and may assert a default claim by giving the non-performing party a written and detailed notice of default. Except for a

default by Customer for failing to pay any amount when due under this Agreement which must be cured immediately, the defaulting party will have thirty (30) days after receipt of the notice of default to either (i) cure the default or (ii) if the default is not curable within thirty (30) days, to provide a written cure plan. The defaulting party will begin implementing the cure plan immediately after receipt of notice by the other party that it approves the plan. If Customer is the defaulting party, IDEMIA may stop work on the project until it approves the Customer's cure plan.

**12.2. FAILURE TO CURE.** If a defaulting party fails to cure the default as provided above in Section 12.1, unless otherwise agreed in writing, the non-defaulting party may terminate any unfulfilled portion of this Agreement. In the event of such termination, the defaulting party will promptly return to the non-defaulting party any of its Confidential Information (as defined in Section 15.1).

**For System sales:** If Customer is the non-defaulting party, terminates this Agreement as permitted by this Section, and completes the System through a third party, Customer may as its exclusive remedy recover from Seller either (i) the diminution of value of the System due to the breach if it does not complete the System through a third party, or (ii) the reasonable costs incurred to complete the System to a capability not exceeding that specified in this Agreement less the unpaid portion of the Contract Price if it completes the System through a third party. In either case, Customer agrees to use its best efforts to mitigate damages and to provide Seller with detailed records substantiating the damages claim.

## **SECTION 13. INDEMNIFICATION**

**13.1. GENERAL INDEMNITY BY SELLER.** Seller will indemnify and hold Customer harmless from any and all liability, expense, judgment, suit, cause of action, or demand for personal injury, death, or direct damage to tangible property which may accrue against Customer to the extent it is caused by the negligence of Seller, its subcontractors, or their employees or agents, while performing their duties under this Agreement, provided that Customer gives Seller prompt, written notice of any such claim or suit. Customer shall cooperate with Seller in its defense or settlement of such claim or suit. This section sets forth the full extent of Seller's general indemnification of Customer from liabilities that are in any way related to Seller's performance under this Agreement.

### **13.2. PATENT AND COPYRIGHT INFRINGEMENT.**

**13.2.1.** Seller will defend at its expense any suit brought against Customer to the extent that it is based on an Infringement Claim, and Seller will indemnify Customer for those costs and damages finally awarded against Customer for an Infringement Claim. Seller's duties to defend and indemnify are conditioned upon: (i) Customer promptly notifying Seller in writing of such Infringement Claim; (ii) Seller having sole control of the defense of such suit and all negotiations for its settlement or compromise; (iii) Customer providing to Seller cooperation and, if requested by Seller, reasonable assistance in the defense of the Infringement Claim.

**13.2.2.** If an Infringement Claim occurs, or in Seller's opinion is likely to occur, Seller may at its option and expense procure for Customer the right to continue using the Equipment or IDEMIA Software, replace or modify it so that it becomes non-infringing while providing functionally equivalent performance, or grant Customer a credit for such Equipment or IDEMIA Software as depreciated and accept its return. The depreciation amount will be calculated based upon generally accepted accounting standards for such Equipment and IDEMIA Software.

**13.2.3.** Seller will have no duty to defend or indemnify for any Infringement Claim that is based upon (i) the combination of the Equipment or IDEMIA Software with any software, apparatus or device not furnished by Seller; (ii) the use of ancillary equipment or software not furnished by Seller and that is attached to or used in connection with the Equipment or IDEMIA Software; (iii) any Equipment that is not Seller's design or formula; (iv) a modification of the IDEMIA Software by a party other than Seller; or (v) the failure by Customer to install an enhancement release to the IDEMIA Software that is intended to correct the claimed infringement. The foregoing states the entire liability of Seller with respect to infringement of patents and copyrights by the Equipment and IDEMIA Software or any parts thereof.

## **SECTION 14. LIMITATION OF LIABILITY**

This limitation of liability provision shall apply notwithstanding any contrary provision in this Agreement. Except for personal injury or death, Seller's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, indemnification, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the price of the Equipment, Software, or services with respect to which losses or damages are claimed. **ALTHOUGH THE PARTIES**

**ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT SELLER WILL NOT** be liable for any commercial loss; inconvenience; loss of use, time, data, goodwill, revenues, profits or savings; or other SPECIAL, incidental, INDIRECT, OR consequential damages IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT, THE SALE OR USE OF THE EQUIPMENT OR SOFTWARE, OR THE PERFORMANCE OF SERVICES BY SELLER PURSUANT TO THIS AGREEMENT. This limitation of liability will survive the expiration or termination of this Agreement. No action for breach of this Agreement or otherwise relating to the transactions contemplated by this Agreement may be brought more than one (1) year after the accrual of such cause of action, except for money due upon an open account.

## **SECTION 15. CONFIDENTIALITY AND PROPRIETARY RIGHTS**

### **15.1. CONFIDENTIAL INFORMATION.**

**15.1.1.** During the term of this Agreement, the parties may provide each other with Confidential Information. For the purposes of this Agreement, "Confidential Information" is any information disclosed in written, graphic, verbal, or machine-recognizable form, and is marked, designated, labeled or identified at the time of disclosure as being confidential or its equivalent; or if in verbal form is identified as confidential or proprietary at the time of disclosure and confirmed in writing within thirty (30) days of such disclosure. Notwithstanding any other provisions of this Agreement, Confidential Information shall not include any information that: (i) is or becomes publicly known through no wrongful act of the receiving party; (ii) is already known to the receiving party without restriction when it is disclosed; (iii) is, or subsequently becomes, rightfully and without breach of this Agreement, in the receiving party's possession without any obligation restricting disclosure; (iv) is independently developed by the receiving party without breach of this Agreement; or (v) is explicitly approved for release by written authorization of the disclosing party.

**15.1.2.** Each party will: (i) maintain the confidentiality of the other party's Confidential Information and not disclose it to any third party, except as authorized by the disclosing party in writing or as required by a court of competent jurisdiction; (ii) restrict disclosure of Confidential Information to its employees who have a "need to know" and not copy or reproduce such Confidential Information; (iii) take necessary and appropriate precautions to guard the confidentiality of Confidential Information, including informing its employees who handle such Confidential Information that it is confidential and not to be disclosed to others, but such precautions shall be at least the same degree of care that the receiving party applies to its own confidential information and shall not be less than reasonable care; and (iv) use such Confidential Information only in furtherance of the performance of this Agreement. Confidential Information is and shall at all times remain the property of the disclosing party, and no grant of any proprietary rights in the Confidential Information is hereby given or intended, including any express or implied license, other than the limited right of the recipient to use the Confidential Information in the manner and to the extent permitted by this Agreement.

### **15.2. PRESERVATION OF PROPRIETARY RIGHTS.**

**15.2.1.** IDEMIA, the third party manufacturer of any Equipment, and the copyright owner of any Non-IDEMIA Software own and retain all of their respective Proprietary Rights in the Equipment and Software. Nothing in this Agreement is intended to restrict the Proprietary Rights of IDEMIA, any copyright owner of Non-IDEMIA Software, or any third party manufacturer of Equipment. All intellectual property developed, originated, or prepared by IDEMIA in connection with providing to Customer the Equipment, Software, or related services remain vested exclusively in IDEMIA, and this Agreement does not grant to Customer any shared development rights of intellectual property.

**15.2.2.** Except as explicitly provided in the Software License Agreement, nothing in this Agreement will be deemed to grant, either directly or by implication, estoppel, or otherwise, any right, title or interest in the Proprietary Rights of IDEMIA or Seller. Customer agrees not to modify, disassemble, peel components, decompile, otherwise reverse engineer or attempt to reverse engineer, derive source code or create derivative works from, adapt, translate, merge with other software, reproduce, or export the Software, or permit or encourage any third party to do so. The preceding sentence shall not apply to Open Source Software which is governed by the standard license of the copyright owner.

## **SECTION 16. MISCELLANEOUS**

**16.1. TAXES.** The Contract Price does not include any amount for federal, state, or local excise, sales, lease, service, rental, use, property, occupation, or other taxes, assessments or duties (other than federal, state, and local taxes based on Seller's income or net worth),



all of which will be paid by Customer except as exempt by law. If Seller is required to pay or bear the burden of any such taxes, it will send an invoice to Customer and Customer will pay to it the amount of such taxes (including any applicable interest and penalties) within twenty (20) days after the date of the invoice. Customer will be solely responsible for reporting the Equipment for personal property tax purposes.

16.2. **ASSIGNABILITY.** Neither party may assign this Agreement without the prior written consent of the other party, except that Seller may assign this Agreement to any successor of Seller's biometrics business or to any party acquiring the assets used by Seller in conducting such biometrics business or otherwise performing Seller's obligations under this Agreement.

16.3. **SUBCONTRACTING.** Seller may subcontract any portion of the work, but such subcontracting will not relieve Seller of its duties under this Agreement.

16.4. **WAIVER.** Failure or delay by either party to exercise any right or power under this Agreement will not operate as a waiver of such right or power. For a waiver of a right or power to be effective, it must be in writing signed by the waiving party. An effective waiver of a right or power shall not be construed as either (i) a future or continuing waiver of that same right or power, or (ii) the waiver of any other right or power.

16.5. **SEVERABILITY.** If a court of competent jurisdiction renders any provision of this Agreement (or portion of a provision) to be invalid or otherwise unenforceable, that provision or portion of the provision will be severed and the remainder of this Agreement will continue in full force and effect as if the invalid provision or portion of the provision were not part of this Agreement.

16.6. **INDEPENDENT CONTRACTORS.** Each party shall perform its activities and duties hereunder only as an independent contractor. The parties and their personnel shall not be considered to be employees or agents of the other party. Nothing in this Agreement shall be interpreted as granting either party the right or authority to make commitments of any kind for the other. This Agreement shall not constitute, create, or in any way be interpreted as a joint venture, partnership or formal business organization of any kind.

16.7. **HEADINGS AND SECTION REFERENCES.** The section headings in this Agreement are inserted only for convenience and are not to be construed as part of this Agreement or as a limitation of the scope of the particular section to which the heading refers. This Agreement will be fairly interpreted in accordance with its terms and conditions and not for or against either party.

16.8. **GOVERNING LAW.** This Agreement and the rights and duties of the parties will be governed by and interpreted in accordance with the laws of the State in which the System is installed or the State where the Product is delivered, to the extent they do not conflict with the laws of the United States.

16.9. **ENTIRE AGREEMENT.** This Agreement, including all Exhibits, constitutes the entire agreement of the parties regarding the subject matter hereof and supersedes all previous agreements, proposals, and understandings, whether written or oral, relating to such subject matter. This Agreement may be altered, amended, or modified only by a written instrument signed by authorized representatives of both parties. The preprinted terms and conditions found on any Customer purchase order, acknowledgment or other form will not be considered an amendment or modification of this Agreement, even if a representative of each party signs such document.

16.10. **NOTICES.** Notices required under this Agreement to be given by one party to the other must be in writing and either delivered in person or sent to the address shown below by certified mail, return receipt requested and postage prepaid (or by a recognized courier service with an asset tracking system, such as Federal Express, UPS,

#### **EXHIBIT A - SOFTWARE LICENSE AGREEMENT**

In this Exhibit A, the term "Licensor" means IDEMIA Identity & Security USA LLC, ("IDEMIA"); "Licensee," means the Customer; "Primary Agreement" means the agreement to which this exhibit is attached (Biometrics Products and System Sales Agreement); and "Agreement" means this Exhibit and the applicable terms and conditions contained in the Primary Agreement. The parties agree as follows:

For good and valuable consideration, the parties agree as follows:

#### **SECTION 1. DEFINITIONS**

1.1 "Designated Products" means products provided by IDEMIA to Licensee with which or for which the Software and Documentation is licensed for use.

or DHL), or by facsimile with correct answerback received, and shall be effective upon receipt:

Customer

IDEMIA

5515 East La Palma Avenue, Suite 100, Anaheim CA 92807

with copy to:

IDEMIA Identity & Security USA LLC, Legal Department, ATTN: General Counsel, 1255 23rd Street NW, Suite 100, Washington, DC 20037

16.11. **COMPLIANCE WITH APPLICABLE LAWS.** Each party will comply with all applicable federal, state, and local laws, regulations and rules concerning the performance of this Agreement or use of the System or Product, to the extent they do not conflict with the laws of the United States.

16.12. **AUTHORITY TO EXECUTE AGREEMENT.** Each party represents to the other that (i) it has obtained all necessary approvals, consents and authorizations to enter into this Agreement and to perform its duties under this Agreement; (ii) the person executing this Agreement on its behalf has the authority to do so; (iii) upon execution and delivery of this Agreement by the parties, it is a valid and binding contract, enforceable in accordance with its terms; and (iv) the execution, delivery, and performance of this Agreement does not violate any bylaw, charter, regulation, law or any governing authority of the party.

16.13. **PREVAILING PARTY.** In the event of any dispute arising out of the subject matter of this Agreement, the prevailing party shall recover, in addition to any other damages assessed, its reasonable attorneys' fees and court costs incurred in arbitrating, litigating, or otherwise settling or resolving such dispute.

16.14. **SURVIVAL OF TERMS.** The following provisions shall survive the expiration or termination of this Agreement for any reason: Section 3.6 (IDEMIA Software); Section 3.7 (Non-IDEMIA Software); if any payment obligations exist, Sections 5.1 and 5.2 (Contract Price and Invoicing and Payment); Section 11 (Disputes); Section 14 (Limitation of Liability); Section 15 (Confidentiality and Proprietary Rights); and all of the General provisions in Section 16.

#### **17. SECTION 17. AGREEMENT EXECUTION**

The parties hereby enter into this Agreement as of the Effective Date.

**IDEMIA Identity & Security USA LLC ("SELLER"):**

Signed \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**NAME ("CUSTOMER")**

Signed \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

1.2 "Documentation" means product and software documentation that specifies technical and performance features and capabilities, and the user, operation and training manuals for the Software (including all physical or electronic media upon which such information is provided).

1.3 "Open Source Software" means software with either freely obtainable source code, license for modification, or permission for free distribution.

1.4 "Open Source Software License" means the terms or conditions under which the Open Source Software is licensed.

1.5 "Primary Agreement" means the agreement to which this exhibit is attached (Biometrics Products and System Sales Agreement).

1.6 "Security Vulnerability" means a flaw or weakness in system security procedures, design, implementation, or internal controls that could be exercised (accidentally triggered or intentionally exploited) and result in a security breach such that data is compromised, manipulated or stolen or the system damaged.

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11.4. **THIRD PARTY BENEFICIARIES.** This Agreement is entered into solely for the benefit of IDEMIA and Licensee. No third party has the right to make any claim or assert any right under this Agreement, and no third party is deemed a beneficiary of this Agreement. Notwithstanding the foregoing, any licensor or supplier of third party software included in the Software will be a direct and intended third party beneficiary of this Agreement.

11.5. **PREVAILING PARTY.** In the event of any dispute arising out of the subject matter of this Agreement, the prevailing party shall recover, in addition to any other damages assessed, its reasonable attorneys' fees and court costs incurred in arbitrating, litigating, or otherwise settling or resolving such dispute.

11.6. **SURVIVAL.** Sections 4, 5, 6.3, 7, 8, 9, 10, and 11 survive the termination of this Agreement.

**EXHIBIT B - PAYMENT SCHEDULE**

This quote is subject to the following

1. One hundred percent (100%) of the purchase price of a subsystem will be invoiced upon acceptance of each subsystem site location.
2. Payment net twenty (20) days from receipt of invoice.<sup>1</sup>

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Customer's payment shall be due and payable no later than twenty (20) days after date of IDEMIA's invoice. IDEMIA will accept a check payable to IDEMIA Identity & Security USA LLC or a wire transfer drawn on a United States financial institution. Any payment not received by

IDEMIA on the twenty-first day shall accrue interest compounded at one and one-half percent (1-1/2%) per month. Any collection or attorney's fees incurred by IDEMIA seeking to enforce payment under this Agreement shall be reimbursed by Customer.



5515 E. La Palma Ave., Suite 100  
Anaheim, CA 92807  
Tel: (714) 238-2000  
Fax: (714) 238-2049

December 2, 2020

Investigator Glenn St. Hilaire  
Fort Bend County Sheriff's Office  
1410 Williams Way Blvd.  
Richmond, TX 77469  
Tel: 281-341-4629  
Glenn.StHilaire@fortbendcountytx.gov

**RE: Extension to Maintenance and Support Agreement**

**MAINTENANCE AND SUPPORT AGREEMENT NO. SA # 002028-003 – REV1**

By means of this letter, Idemia Identity & Security USA LLC ("IDEMIA" or "Seller") hereby extends **Fort Bend County Sheriff's Office** Maintenance and Support Agreement as referenced above.

Please find enclosed updated Exhibit-A: *Description of Covered Products* and Exhibit-C: *Support Plan Options and Pricing Worksheet*, for the period: **10/1/20** through **3/31/21**.

Pursuant to Section 3.2 of the original agreement, all terms and conditions shall remain in full force and effect.

Please indicate acceptance of this extension by signing in the acceptance block below and returning it to my attention via Email at jenny.pelayo@idemia.com at your soonest convenience.

If you have any questions or need further clarification, please contact me at (714) 575-2964 or e-mail jenny.pelayo@idemia.com. Thank you in advance.

Sincerely,

Jenny Pelayo  
Contracts Administration Specialist II

**Accepted by:**

**IDEMIA IDENTITY & SECURITY USA LLC**

**FORT BEND COUNTY SHERIFF**

Signed by: 

Signed by: \_\_\_\_\_

Printed Name: Michael Kato

Printed Name: \_\_\_\_\_

Title: Vice President

Title: \_\_\_\_\_

Date: 12/2/2020

Date: \_\_\_\_\_

---

**Exhibit-A: Description of Covered Products**

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**MAINTENANCE AND SUPPORT AGREEMENT NO.** SA # 002028-003**CUSTOMER:** Fort Bend County Sheriff's Office - Enforcement

The following table lists the Products under maintenance coverage:

Product	Description	Node	Qty
Latent Station	Latent Case Station - Latent Station Application Software for latent capture encoding and searching -Latent Case Database Software/Latent Case Management (LCM) Software including Adobe Photoshop -Control Computer, Monitor, Keyboard -Flatbed scanner -AFP Software -Review Software	HCSOLCS003	1

## Exhibit-C: Support Plan Options and Pricing Worksheet

Maintenance and Support Agreement # 002028-003Date December 2, 2020New Term Effective Start 10/1/20End 3/31/21

<b>Customer:</b>	Fort Bend County Sheriff Office	<b>Billing Agency:</b>	
Address (1):	1410 Williams Way Blvd.	Address (1):	
Address (2):		Address (2):	
City/State/Zip:	Richmond, TX 77469	City/State/Zip:	
<b>Contact Name:</b>	<b>Investigator Glenn St. Hilaire</b>	<b>Contact Name:</b>	
Telephone:	(281) 341-4629	Telephone:	
Fax:	(281) 341-3890	Fax:	
Email:	Glenn.StHilaire@fortbendcountytexas.gov	Email:	

☒ **AFIS System**☐ **LiveScan™ Station**☐ **MORPHO BIS System**

### STANDARD SUPPORT

#### ☒ **Advantage – Software Support**

- |                               |                                     |  |
|-------------------------------|-------------------------------------|--|
| ◆ Telephone Response: 2 Hour  | ◆ Standard Releases & Updates       | ◆ Supplemental Releases & Updates      |
| ◆ Remote Dial-In Analysis     | ◆ Software Customer Alert Bulletins | ◆ 8 a.m. – 5 p.m. Monday to Friday PPM |
| ◆ Unlimited Telephone Support | ◆ Automatic Call Escalation         |  |

#### ☒ **On-Site Hardware Support**

- |  |                                     |   |
|--|-------------------------------------|---|
| ◆ 8 a.m. – 5 p.m. Monday to Friday PPM | ◆ Defective Parts Replacement       | ◆ Hardware Service Reporting            |
| ◆ Next Day PPM On-site Response        | ◆ Escalation Support                | ◆ Product Repair                        |
| ◆ Hardware Vendor Liaison              | ◆ Hardware Customer Alert Bulletins | ◆ Equipment Inventory Detail Management |

#### ☒ **Parts Support**

- |   |                                  |
|---|----------------------------------|
| ◆ Parts Ordered & Shipped Next Business Day | ◆ Parts Customer Alert Bulletins |
|---|----------------------------------|

*\* If customer is providing their own on-site hardware support, the following applies:*

- |                                    |   |
|------------------------------------|---|
| ➤ Customer Orders & Replaces Parts | ➤ Telephone Technical Support for Parts Replacement Available |
|------------------------------------|---|

**GRAND TOTAL****\$ 9,844.00**

**PLEASE PROVIDE A COPY OF YOUR CURRENT TAX EXEMPTION CERTIFICATE (if applicable)**

**Please note: This is not an invoice. An Invoice will be provided after receipt of the signed document.**

# Exhibit B





December 30, 2020

Melissa Stavinoha  
Fort Bend County  
Purchasing | Buyer II  
301 Jackson St, Suite 201  
Richmond, TX 77469  
P: 281.341.8648 | F: 281.341.8645  
Email: [Melissa.Stavinoha@fortbendcountytexas.gov](mailto:Melissa.Stavinoha@fortbendcountytexas.gov)

IDEMIA's Automated Fingerprint Identification System (AFIS) is currently installed at Harris County Sheriff's Office (HCSO). IDEMIA is the owner of the software and design, sole developer and sole provider for the AFIS.

The proposed IDEMIA Latent Expert Workstation and the existing LiveScan Fingerprint Systems are specifically designed to work with the existing AFIS located at HCSO.

As the manufacturer of the existing HCSO AFIS and software application, only IDEMIA can provide the Workstation / Systems that use the same Software processing, searching and matching technology used by the HCSO AFIS. These devices use a proprietary software application that incorporates specific encoding algorithms and search routines developed and patented by IDEMIA.

***Specifically:***

IDEMIA does not have other sales channels, partners or resellers. The proposed solution (hardware, software, and support) can only be procured and implemented directly from IDEMIA.

Should you require further assistance, please contact Jayne Goodall, IDEMIA Senior Sales Manager, Mobile (951) 833-2311 Email [jayne.goodall@us.idemia.com](mailto:jayne.goodall@us.idemia.com)

Sincerely

A handwritten signature in blue ink, appearing to read "Michael Kato", with a stylized flourish at the end.

Michael Kato  
Vice President of Public Security, State & Local Government  
IDEMIA