County of Santa Clara

Office of the County Executive
Procurement Department
150 W. Tasman Dr., First Floor
San Jose, CA 95134-1700
Telephone 408-491-7400 ● Fax 408-491-7496

Approved: 06/23/2020

FIRST AMENDMENT TO AGREEMENT CW2233126
BY AND BETWEEN THE COUNTY OF SANTA CLARA AND
IDEMIA IDENTITY & SECURITY USA LLC.

This is the First Amendment to the Agreement between the County of Santa Clara and Idemia Identity & Security USA LLC entered into on October 1, 2019 for the Automated Fingerprint Identification System (AFIS) including AFIS Disaster Recovery and Live Scan maintenance and support for the County.

On, June 23, 2020, the Board of Supervisors approved the Agreement.

This Agreement is amended as follows, effective June 23, 2020:

1. Key Provision, **TOTAL VALUE**, is revised to read: "The total not to exceed value of this Agreement is $2,488,000, which represents an increase of $28,000 from the prior not to exceed value of $2,460,000."

   Contractor understands that this not to exceed value does not represent a commitment by County to Contractor.

2. Key Provision, **PURPOSE**, is revised to read "To provide annual maintenance and support services for Automated Fingerprint Identification System (AFIS) including AFIS Disaster Recovery System and LiveScan and to provide the goods and services described on Exhibit J."

3. Add **EXHIBIT B-1, MAINTENANCE FEES SCHEDULE**, to include Latent Expert Workstation Software License attached hereto and incorporated herein by this reference.

4. Replace **EXHIBIT G, PRIVATE CONTRACTOR MANAGEMENT CONTROL AGREEMENT**, to incorporate the signed document attached hereto by this reference.

5. Replace **EXHIBIT I-1, BIOMETRIC PRODUCTS AND SYSTEM SALES AGREEMENT,** with **EXHIBIT I-1, BIOMETRIC PRODUCTS AND SYSTEM SALES**, attached hereto and incorporated herein by this reference.

6. Replace **EXHIBIT I-2, SOFTWARE LICENSE AGREEMENT**, with **EXHIBIT I-2,**

SOFTWARE LICENSE, attached hereto and incorporated herein by this reference.

7. Add **EXHIBIT J, IDEMIA STATEMENT OF WORK,** to incorporate the signed document attached hereto by this reference.

8. Add **EXHIBIT K-1, MAINTENANCE AND SUPPORT PLAN**, attached hereto and incorporated herein by this reference.

9. Add **EXHIBIT K-2, MAINTENANCE AND SUPPORT TERMS AND CONDITIONS**, attached hereto and incorporated herein by this reference.

10. **EXHIBIT A, COUNTY OF SANTA CLARA TERMS AND CONDITIONS,** is revised to add or replace the following provisions:

    Section 19: "Immediate Termination for Cause" replaced as follows:

    Notwithstanding any other provision in this Agreement:

    (1) Contractor's failure to comply with all terms and conditions set forth in Section 63 (Information Security Compliance) and Exhibits E (IT User Responsibility Statement for Third Parties), F (Vendor Remote Access Agreement), G (Private Contractor Management Control Agreement), G-1 (CLETS Employee/Volunteer Statement), and H (FBI CJIS Security Addendum), or failure to require such compliance of its officers, employees, contractors, subcontractors, and agents ("Contractor's personnel") engaged in the performance of this Agreement, shall constitute a material breach of this Agreement and the County may immediately terminate this Agreement for cause.

    (2) Contractor shall not allow Contractor's personnel to access County systems or County Data unless and until its employees sign Exhibits E (IT User Responsibility Statement for Third Parties), F (Vendor Remote Access Agreement) if applicable, G-1 (CLETS Employee/Volunteer Statement), and H (FBI CJIS Security Addendum). If Contractor's employees access County systems or County Data without first signing, that will constitute a material breach of this Agreement and the County may immediately terminate this Agreement for cause.

    (3) Contractor shall monitor the compliance of Contractor's personnel with the terms in Section 63 (Information Security Compliance) and Exhibits E (IT User Responsibility Statement for Third Parties), F (Vendor Remote Access Agreement), G (Private Contractor Management Control Agreement), G-1 (CLETS Employee/Volunteer Statement), and H (FBI CJIS Security Addendum), and shall notify County immediately or no later than 24 hours after learning of any violations. Failure to monitor Contractor's employees or timely notify the County shall constitute a material breach of this Agreement and the County may immediately terminate this Agreement for cause.

    In the event of Immediate Termination for Cause, the rights and obligations in Section 18 (Termination for Cause) apply, except for the thirty (30) day notice period and ten (10) day cure period.

    Section 67: "Click-Through Agreements and Contractor Policies" added as follows:
    (1) No provisions of any shrink-wrap or any click-through agreement (or other form of "click to accept" agreement) that may routinely accompany any products or services acquired under this Agreement shall apply in place of, or serve to modify any provision of this Agreement, even if a user or authorized officer of County purports to have affirmatively accepted such shrink-wrap or click through provisions. Without limiting the foregoing, no

"terms of use," "privacy policy" or other policy on Contractor's website or application (collectively, "Policies") or another website that may routinely accompany any products or services acquired under this Agreement shall apply in place of or serve to modify any provision of this Agreement.

(2) For the avoidance of doubt and without limiting the foregoing, in the event of a conflict between any such shrink-wrap, click-through provisions or Policies (irrespective of the products or services that such provisions attach to) and any term or condition of this Agreement, the relevant term or condition of this Agreement shall govern to the extent of any such conflict. Only the provisions of this Agreement as amended from time to time, and executed by the parties, shall apply to County and or authorized user.

(3) The parties acknowledge that the County and or authorized users may be required to click "Accept" as a routine condition of access to services through the Contractor's website or other application. Such click-through provisions or Policies on Contractor's website shall be null and void for County and/or each such authorized user and shall only serve as a mechanical means for accessing such services."

All other terms and conditions of the Agreement remain in full force and effect. In the event of a conflict between the original Agreement and this Amendment, this Amendment controls.

Administered by David Strausser, Strategic Sourcing Officer, at (408) 491-7447 or david.strausser@prc.sccgov.org

Prepared by Christopher Eglesia, Buyer I, at (408) 491-7489 or christopher.eglesia@prc.sccgov.org

The Agreement as amended constitutes the entire agreement of the parties concerning the subject matter herein and supersedes all prior oral and written agreements, representations and understandings concerning such subject matter.
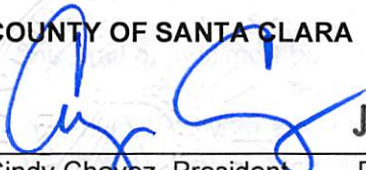

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By signing below, signatory warrants and represents that he/she executed this Amendment in his/her authorized capacity, that he/she has the authority to bind the entity listed below to contractual obligations and that by his/her signature on this Amendment, the entity on behalf of which he/she acted, executed this Amendment.

COUNTY OF SANTA CLARA

JUN 2 3 2020

Cindy Chavez, President   Date
Board of Supervisors

~~Signed and certified that a copy of this Document has been delivered by electronic Or other means to the President, Board of Supervisors.~~

ATTEST:

JUN 2 3 2020

Megan Doyle   Date
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY

DocuSigned by:
Tara Lundstrom   6/9/2020

Tara Lundstrom   Date
Deputy County Counsel

CONTRACTOR

DocuSigned by:
By: Michael Kato
    7F92A97CA3E84F6...
Print: Michael Kato

Title: Vice President

Date: 6/9/2020

Attachments:
Exhibit B-1, Maintenance Fees Schedule
Exhibit G, Private Contractor Management Control Agreement
Exhibit I-1, Biometric Products and System Sales
Exhibit I-2, Software License
Exhibit J, IDEMIA Statement of Work
Exhibit K-1, Maintenance and Support Plan
Exhibit K-2, Maintenance and Support Terms and Conditions

Latent Expert Workstation Software License

Description	Unit Price
MorphoBIS Latent Expert Workstation Software, including: ❖ Latent Expert Software for latent capture encoding and searching ❖ Installation ❖ **Warranty**: 1year *Advantage* Solution warranty, 9X5 ❖ **Freight**	$15,000
*Annual Maintenance *Advantage* solution, 9X5 for Year 2 (July 1, 2020–June 30, 2021)	$2,700
*Annual Maintenance *Advantage* solution, 9X5 for Year 3 (July 1, 2021–June 30, 2022)	$2,835
*Annual Maintenance *Advantage* solution, 9X5 for Year 4 (July 1, 2022–June 30, 2023)	$2,977
*Annual Maintenance *Advantage* solution, 9X5 for Year 5 (July 1, 2023–June 30, 2024)	$3,126

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

*Principal Period of Maintenance (PPM) means the specified days, and times during the days, that maintenance and support services will be provided under this Agreement

EXHIBIT G

**PRIVATE CONTRACTOR
MANAGEMENT CONTROL AGREEMENT**

Agreement to allow the California Law Enforcement Telecommunications System (CLETS) access by
<u>. Santa Clara County Sheriffs Office</u>   <u>CA0430000</u>
      (Public law enforcement/criminal justice agency)   (ORI)

to   <u>Idemia Identity & Security USA LLC</u>
                                   (Private Contractor)

to perform maintenance & support of automated fingerprint identification system (AFIS) and county Live Scans services on its behalf.

Access to the CLETS is authorized to public law enforcement and criminal justice agencies only (hereinafter referred to as the *CLETS subscribing agency),* which may delegate the responsibility of performing the administration of criminal justice functions (e.g., dispatching functions or data processing/information services) in accordance with the Federal Bureau of Investigation's (FBI) Criminal Justice Information Services (CJIS) Security Addendum to a private contractor. The private contractor may access systems or networks that access the CLETS on behalf of the CLETS subscribing agency to accomplish the above-specified service(s). This Agreement must be received by the California Department of Justice (CA DOJ) prior to the subscribing agency permitting access to the CLETS. The performance of such delegated services does not convert that agency into a public criminal justice agency, nor automatically authorize access to state summary criminal history information. Information from the CLETS is confidential and may be used only for the purpose(s)for which it is authorized. Violation of confidentiality requirements or access authorizations may be subject to disciplinary action or criminal charges.

Pursuant to the policies outlined in the *CLETS Policies, Practices and Procedures (PPP)* and the FBI's *CJ/S Security Policy,* it is agreed the CLETS subscribing agency will maintain responsibility for security control as it relates to the CLETS access. Security control is defined as the ability of the CLETS subscribing agency to set, maintain and enforce:

1. Standards for the selection, supervision and termination of personnel. This does not grant hiring/firing authority to the CLETS subscribing agency, only the authority to grant the CLETS systems access to personnel who meet these standards and deny it to those who do not; and

2. Policies governing the operation of computers, access devices, circuits, hubs, **boundary protection devices** and other components that make up and support a telecommunications network and related CA DOJ criminal justice databases used to process, store or transmit criminal justice information, guaranteeing the priority, integrity and availability of service needed by the criminal justice community.

Security control includes, but is not limited to, the supervision of applicable equipment, systems design, programming and operating procedures associated with the development, implementation and operation of any computerized message-switching or database systems utilized by the served law enforcement agency or agencies. Computer sites must have adequate physical security to protect against any unauthorized viewing or access to computer terminals, access devices or stored/printed data.

(continued)

Additionally, it is the responsibility of the CLETS subscribing agency to ensure all private contractors receiving information from the CLETS meet the minimum training, certification and background requirements that are also imposed on the CLETS subscribing agency's staff. The minimum requirements are applicable also to staff having access to record storage areas containing information from the CLETS. The minimum requirements include, but are not limited to:

1. Prior to allowing the CLETS access, train, functionally test and affirm the proficiency of the CLETS computer operators to ensure compliance with the CLETS and the FBI's National Crime Information Center (NCIC) policies and regulations, if applicable. Biennially, provide retesting and reaffirm the proficiency of all the CLETS operators, if applicable;

2. State and FBI criminal offender record information searches must be conducted prior to allowing access to the CLETS computers, equipment or information. If the results of criminal offender record information search reveal a record of any kind, access will not be granted until the CLETS subscribing agency can review the matter to decide if access is appropriate. If a felony conviction of any kind is found, access shall not be granted; and

3. Each individual must sign an Employee/Volunteer Statement Form prior to operating or having access to the CLETS computers, equipment or information.

In accordance with the CLETS/NCIC policies, the CLET.S subscribing agency has the responsibility and authority to monitor, audit and enforce the implementation of this agreement by the private contractor. The private contractor agrees to cooperate with the CLETS subscribing agency in the implementation of this agreement and to accomplish the directives for service under the provisions of this agreement. The Management Control Agreement shall be updated when the head of either agency changes or immediately upon request from the CA DOJ.

By signing this agreement, the vendors and private contractors certify they have read and are familiar with the contents of (1) the FBI's CJIS Security Addendum; (2) the NCIC 2000 Operating Manual; (3) the FBI's CJIS Security Policy; (4) Title 28, Code of Federal Regulations, Part 20; and (5) the CLETS PPP and agree to be bound by their provisions. Criminal offender record information and related data, by its very nature, is sensitive and has potential for great harm if misused. Access to criminal offender record information and related data is therefore limited to the purpose(s) for which the CLETS subscribing agency has entered into the contract. Misuse of the system by, among other things: accessing it without authorization; accessing it by exceeding authorization; accessing it for an improper purpose; using, disseminating or secondary dissemination of information received as a result of this contract for a purpose other than that envisioned by the contract, may subject me to administrative and criminal penalties. Accessing the system for an appropriate purpose and then using, disseminating or secondary dissemination of information received for another purpose other than execution of the contract also constitutes misuse. Such exposure for misuse includes, but is not 1mited. o, suspension o loss of employment and prosecution for state and federal crimes.

Laurie Smith (signature)	_signature_
Signature (CLETS Subscribing Agency)	Signature (private contractor)
Laurie Smith, Sheriff, Santa Clara County	Michael Kato, Vice President
Print Name and Title	Print Name and Title
06/25/2019	July 3, 2019
Date	Date
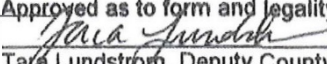
Approved as to form and legality

Tara Lundstrom (signature)
Tara Lundstrom, Deputy County **Counsel**
Office of the County Counsel
Date 6/24/2019 _ ___

EXHIBIT J

IDEMIA STATEMENT OF WORK

MorphoBIS Latent Expert Workstation Software

The Latent Expert Workstation provides capabilities to capture, process, and manage evidence images. The user-friendly interface allows operators to manage their assigned latent case work and efficiently make identifications. At the Latent Expert workstation, operators can quickly create a new case, or search for an existing case. Once a case has been created, the operator can capture evidence images with a digital camera or flatbed scanner, or import images from a digital file. To improve the chances for getting a Hit, the proposed scanner captures images at 1000 ppi. Next, the operator enters evidence descriptors pertinent to the image; for example, where the evidence was found, or any processing performed to obtain the evidence.


Benefits

Key benefits of the Latent Expert include:

♦ Secure Relational Database Management System (RDBMS) – The Latent Expert application uses a secure Relational Database Management System (RDBMS) for latent case management, and role- based access control to limit user access to the workstation capabilities.

♦ Extensive Assortment of Image Enhancement Tools – The Latent Expert provides filters and image enhancement tools to help operators accurately and efficiently encode the extracted latent prints.

♦ Latent Case Management System (LCM) – The LCM provides a complete set of data elements for crime case management. All case data, including evidence images, evidence descriptors, latent prints extracted from the evidence, latent descriptors, and a comprehensive search history, is stored in the RDBMS. The LCM uses a criminal case data model. Evidence images are stored so that all latent prints captured within a lift are visible, allowing operators to see the physical relationship between the latent prints. The case data model retains each encoding of a print, including feature data, classification, image enhancements, and the descriptor and filter values. In this way, operators can review the difference between each subsequent search of the latent print.

♦ Supports Case Access by Multiple, Simultaneous Users – Criminal case records can be accessed simultaneously by multiple Latent Expert operators, significantly reducing the time it takes to process searches based on a variety of filters and enhancements. Operators can independently capture evidence, define latent prints, encode prints, initiate searches, and verify search results. Each latent search is processed independently, allowing operators to launch a latent search while a search for the same latent, using different filters, is still in progress.

Customer Responsibilities

County of Santa Clara's Office of the Sheriff ("SCCSO") is responsible for the following:

♦ Providing necessary facility resources required for equipment installation and operation including access, space, environmental control, electrical power, and
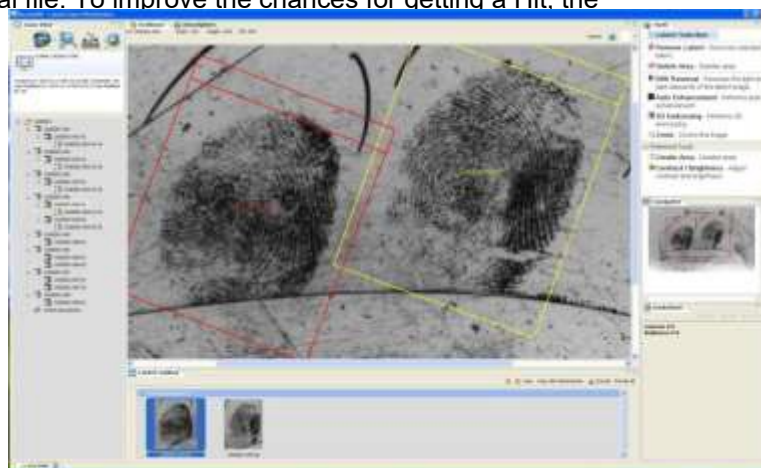
networking.

♦ To obtain and maintain the required transmission lines and hardware for remote communications to and from the necessary agencies.
♦ Obtaining all required authorizations for connectivity.
♦ On-site Installation Services will be scheduled after network connectivity has been established and verified.

Assumptions

The following assumptions apply:

♦ With the exception of the SCCSO AFIS, there are no external interfaces to support which includes but is not limited to records management system, booking system, mugshot system, etc.
♦ The network bandwidth will be at least the same as what is in place today to support the existing SCCSO MBIS Latent Workstation(s).

Additional engineering effort by IDEMIA beyond the scope of the standard product is not included in this Agreement and will require a written amendment to this Agreement or a new written agreement. Assistance with training and questions for the Santa Clara County Sheriff's Office's database or any programming, scripting, or review of programs beyond work quoted above are excluded from this Agreement.

Product purchase will be governed by the Agreement (including this First Amendment and all exhibits). Firm delivery schedules will be provided upon receipt of a contract release purchase order. No subsequent purchase order can override the terms of the Agreement. Nothing additional shall be binding upon IDEMIA unless a written amendment to this Agreement or a subsequent agreement is signed by both parties.

Advantage Solution Support

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

Support Features	Warranty	Post Warranty
Software Support 9X5*	**Included in Warranty**	**Included in Agreement**
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	√	√
Hardware Support – On-site 9X5*	**Included in Warranty**	**Included in Agreement**
On-Site Response	24-hours	√
On-Site Corrective Maintenance	√	√
On-Site Parts Replacement	√	√
Preventive Maintenance	√	√
Escalation Support	√	√
Hardware Service Reporting	√	√
Hardware Customer Alert Bulletins	√	√
Parts Support	**Included in Warranty**	**Included in Agreement**
Advanced Exchange Parts Replacement	√	√
Telephone Technical Support for Parts Replacement	√	√
Parts Customer Alert Bulletins	√	√

*Customer local time

EXHIBIT I-1

BIOMETRIC PRODUCTS AND SYSTEM SALES

Idemia Identity & Security USA LLC
Biometrics Products and System Sales Exhibit
Idemia Identity & Security USA LLC may be referred to as "IDEMIA" or "Seller" and County of Santa Clara may be referred to as "County" or "Customer". "Agreement" means the agreement, including all exhibits and any amendments, to which this Exhibit is attached.

SECTION 1. EXHIBITS
Intentionally omitted.

SECTION 2. DEFINITIONS
Capitalized terms used in this Exhibit shall have the following meanings:

2.1 Intentionally Omitted.

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

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.

2.18 "Technical and Implementation Documents" means the written technical detailed documentation(s) of the functional and performance requirements for the System(s) and/or Subsystem(s), such as a requirements definition document, and/or interface control document, and/or data dictionary, and/or system design document.

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.

3.5. <u>MAINTENANCE SERVICE</u>.
3.5.1. <u>System Sales</u> After the warranty period, Customer has purchased maintenance and support services for the Equipment and IDEMIA Software set forth in Exhibit K-1 (Maintenance and Support Plan) and Exhibit K-2 (Maintenance and Support Terms and Conditions).

3.5.2. <u>Product Sales</u> This Exhibit does not cover maintenance or support of the Products except as provided under the warranty.

3.6. IDEMIA SOFTWARE. Any IDEMIA Software, including subsequent releases, is licensed to Customer solely in accordance with Exhibit I-2 (Software License). Customer hereby accepts and agrees to abide by all of the terms and restrictions of Exhibit I-2 (Software License).

3.7. NON-IDEMIA SOFTWARE. County is <u>not</u> purchasing any third-party software in this Agreement, including this First Amendment; however, IDEMIA will provide maintenance and support services to third-party software purchased under a separate Agreement with the County under the terms in Exhibits K-1 (Maintenance and Support Plan) and Exhibit K-2 (Maintenance and Support Terms and Conditions). All open source software has been fully compiled into IDEMIA Software and is covered by the license terms in Exhibit I-2 (Software License Exhibit). .

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. Intentionally omitted.

SECTION 4. PERFORMANCE SCHEDULE
INTENTIONALLY OMITTED

SECTION 5. CONTRACT PRICE, PAYMENT, AND INVOICING
INTENTIONALLY OMITTED

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
Intentionally omitted.

SECTION 8. ACCEPTANCE
Intentionally omitted.

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 and meet the requirements set forth in this Agreement. 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 and meet the requirements set forth in this Agreement.

9.3.   IDEMIA SOFTWARE WARRANTY.

9.3.1   System Sales   Unless otherwise stated in Exhibit I-2 (Software License), 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 Exhibit I-2Exhibit I-2 ((Software License) and the provisions of this Section 9 that are applicable to the IDEMIA Software and will meet the requirements set forth in this Agreement. 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 Exhibit I-2 (Software License), for one (1) year from the date of shipment, Seller warrants the IDEMIA Software in accordance with the terms of Exhibit I-2 (Software License) and the provisions of this Section that are applicable to the IDEMIA Software and will meet the requirements set forth in this Agreement.

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. 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 end 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   Intentionally Omitted

10.2.   PERFORMANCE SCHEDULE DELAYS CAUSED BY CUSTOMER (System Sales Only). If the Performance Schedule is delayed solely 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
INTENTIONALLY OMITTED

SECTION 12. DEFAULT AND TERMINATION
INTENTIONALLY OMITTED

SECTION 14. LIMITATION OF LIABILITY
This limitation of liability provision shall apply notwithstanding any contrary provision in this Exhibit. Except for personal injury or death, each party's total liability to the other party, 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 A PARTY 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. This section shall not apply to fraud, gross negligence, willful misconduct, indemnity obligations in the Agreement, privacy breaches or security breaches.

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 Exhibit, "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 Exhibit, 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.   Subject to the California Public Records Act and Section 43 of the Agreement, 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.   <u>PRESERVATION OF PROPRIETARY RIGHTS</u>.

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 Exhibit I-2 (Software License) 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.

EXHIBIT I-2 -

SOFTWARE LICENSE EXHIBIT

In this Exhibit I-2, the term "Licensor" means IDEMIA Identity & Security USA LLC, ("IDEMIA"); "Licensee," means the County of Santa Clara; "Agreement" means the agreement, including all exhibits and any amendments, to which this exhibit is attached; and "SLA" means this Exhibit and the applicable terms and conditions contained in the 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.

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 Intentionally omitted.

1.4 Intentionally omitted.

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.

1.7 "Software" (i) means proprietary software in object code format, and adaptations, translations, de-compilations, disassemblies, emulations, or derivative works of such software; (ii) means any modifications, enhancements, new versions and new releases of the software provided by IDEMIA; and (iii) may contain one or more items of software owned by a third party supplier. The term "Software" does not include any third party software provided under separate license or third party software not licensable under the terms of this Agreement.

SECTION 2. SCOPE
IDEMIA and Licensee enter into this SLA in connection with IDEMIA's delivery of certain proprietary Software or products containing embedded or pre-loaded proprietary Software, or both. This SLA contains the terms and conditions of the license IDEMIA is providing to Licensee, and Licensee's use of the Software and Documentation.

SECTION 3. GRANT OF LICENSE
3.1. Subject to the provisions of this SLA and the payment of applicable license fees, IDEMIA grants to Licensee a personal, limited, non-transferable (except as permitted in Section 7) and non-exclusive license under IDEMIA's copyrights and Confidential Information (as defined in the Primary Agreement) embodied in the Software to use the Software, in object code form, and the Documentation solely in connection with Licensee's use of the Designated Products. This SLA does not grant any rights to source code.

3.2. Intentionally omitted.

SECTION 4. LIMITATIONS ON USE
4.1. Licensee may use the Software only for Licensee's internal business purposes and only (which includes fulfilling its mission of providing services to the public) in accordance with the Documentation. Any other use of the Software is strictly prohibited. Without limiting the general nature of these restrictions, Licensee will not make the Software available for use by third parties on a "time sharing," "application service provider," or "service bureau" basis or for any other similar commercial rental or sharing arrangement.

4.2. Licensee will not, and will not allow or enable any third party to: (i) reverse engineer, disassemble, peel components, decompile, reprogram or otherwise reduce the Software or any portion to a human perceptible form or otherwise attempt to recreate the source code; (ii) modify, adapt, create derivative works of, or merge the Software; (iii) copy, reproduce, distribute, lend, or lease the Software or Documentation to any third party, grant any sublicense or other rights in the Software or Documentation to any third party, or take any action that would cause the Software or Documentation to be placed in the public domain; (iv) remove, or in any way alter or obscure, any copyright notice or other notice of IDEMIA's proprietary rights; (v) provide, copy, transmit, disclose, divulge or make the Software or Documentation available to, or permit the use of the Software by any third party or on any machine except as expressly authorized by this Agreement; or (vi) use, or permit the use of, the Software in a manner that would result in the production of a copy of the Software solely by activating a machine containing the Software. Licensee may make one copy of Software to be used solely for archival, back-up, or disaster recovery purposes; provided that Licensee may not operate that copy of the Software at the same

time as the original Software is being operated. Licensee may make as many copies of the Documentation as it may reasonably require for the internal use of the Software.

4.3. Unless otherwise authorized by IDEMIA in writing, Licensee will not, and will not enable or allow any third party to: (i) install a licensed copy of the Software on more than one unit of a Designated Product; or (ii) copy onto or transfer Software installed in one unit of a Designated Product onto another device. Licensee may temporarily transfer Software installed on a Designated Product to another device if the Designated Product is inoperable or malfunctioning, if Licensee provides written notice to IDEMIA of the temporary transfer and identifies the device on which the Software is transferred. Temporary transfer of the Software to another device must be discontinued when the original Designated Product is returned to operation and the Software must be removed from the other device. Licensee must provide prompt written notice to IDEMIA at the time temporary transfer is discontinued.

SECTION 5. OWNERSHIP AND TITLE
IDEMIA, its licensors, and its suppliers retain all of their proprietary rights in any form in and to the Software and Documentation, including, but not limited to, all rights in patents, patent applications, inventions, copyrights, trademarks, trade secrets, trade names, and other proprietary rights in or relating to the Software and Documentation (including any corrections, bug fixes, enhancements, updates, modifications, adaptations, translations, de-compilations, disassemblies, emulations to or derivative works from the Software or Documentation, whether made by IDEMIA or another party, or any improvements that result from IDEMIA's processes or, provision of information services).

No rights are granted to Licensee under this SLA by implication, estoppel or otherwise, except for those rights which are expressly granted to Licensee in this Agreement. All intellectual property developed, originated, or prepared by IDEMIA in connection with providing the Software, Designated Products, Documentation or related services, remains vested exclusively in IDEMIA, and Licensee will not have any shared development or other intellectual property rights.

SECTION 6. LIMITED WARRANTY; DISCLAIMER OF WARRANTY
6.1. If Licensee is not in breach of any of its obligations under this SLA, IDEMIA warrants that the unmodified Software, when used properly and in accordance with the Documentation and this SLA, will be free from a reproducible defect that eliminates the functionality or successful operation of a feature critical to the primary functionality or successful operation of the Software. Whether a defect occurs will be determined by IDEMIA solely with reference to the Documentation. IDEMIA does not warrant that Licensee's use of the Software or the Designated Products will be uninterrupted, error-free, completely free of Security Vulnerabilities, or that the Software or the Designated Products will meet Licensee's particular requirements. IDEMIA makes no representations or warranties with respect to any third party software included in the Software.

6.2 IDEMIA's sole obligation to Licensee and Licensee's exclusive remedy under this warranty is to use reasonable efforts to remedy any material Software defect covered by this warranty. These efforts will involve either replacing the media or attempting to correct significant, demonstrable program or documentation errors or Security Vulnerabilities. If IDEMIA cannot correct the defect within a reasonable time, then at IDEMIA's option, IDEMIA will replace the defective Software with functionally-equivalent Software, license to Licensee substitute Software which will accomplish the same objective, or terminate the license and refund the Licensee's paid license fee.

6.3. Warranty claims are described in the Agreement.

6.4. The express warranties set forth in this Section 6 are in lieu of, and IDEMIA disclaims, any and all other warranties (express or implied, oral or written) with respect to the Software or Documentation, including, without limitation, any and all implied warranties of condition, title, non-infringement, merchantability, or fitness for a particular purpose or use by Licensee (whether or not IDEMIA knows, has reason to know, has been advised, or is otherwise aware of any such purpose or use), whether arising by law, by reason of custom or usage of trade, or by course of dealing. In addition, IDEMIA disclaims any warranty to any person other than Licensee with respect to the Software or Documentation.

SECTION 7. TRANSFERS
Licensee will not transfer the Software or Documentation to any third party without IDEMIA's prior written consent. IDEMIA's consent may be withheld at its discretion and may be conditioned upon transferee paying all applicable license fees and agreeing to be bound by this SLA.

SECTION 8. TERM AND TERMINATION

8.1   Licensee's right to use the Software and Documentation will begin when the Agreement is signed by both parties and will continue for the life of the Designated Products with which or for which the Software and Documentation have been provided by IDEMIA, unless Licensee breaches this SLA, in which case this SLA and Licensee's right to use the Software and Documentation may be terminated if not cured by Licensee within thirty (30) days of notice by IDEMIA.

8.2   Within thirty (30) days after termination of this Agreement, Licensee must certify in writing to IDEMIA that all copies of the Software have been removed or deleted from the Designated Products and that all copies of the Software and Documentation have been returned to IDEMIA or destroyed by Licensee and are no longer in use by Licensee.

8.3   Licensee acknowledges that IDEMIA made a considerable investment of resources in the development, marketing, and distribution of the Software and Documentation and that Licensee's breach of this SLA will result in irreparable harm to IDEMIA for which monetary damages would be inadequate. If Licensee breaches this Agreement, IDEMIA may terminate this SLA and be entitled to all available remedies at law or in equity (including immediate injunctive relief and repossession of all non-embedded Software and associated Documentation unless Licensee is a Federal agency of the United States Government).

SECTION 9. UNITED STATES GOVERNMENT LICENSING PROVISIONS & RESTRICTED RIGHTS LEGEND

Intentionally omitted because Licensee is not the United States Government or a United States Government agency.

SECTION 10. CONFIDENTIALITY

Licensee acknowledges that the Software and Documentation contain IDEMIA's valuable proprietary and Confidential Information and are IDEMIA's trade secrets, and that the provisions in the Agreement concerning Confidential Information apply.

SECTION 11. GENERAL

11.1.   COPYRIGHT NOTICES. The existence of a copyright notice on the Software will not be construed as an admission or presumption of publication of the Software or public disclosure of any trade secrets associated with the Software.

Exhibit K-1
Maintenance and Support Plan

This Support Plan is a Statement of Work that provides a description of the support to be performed.

1.   Services Provided. The Services provided are based on the Severity Levels as defined herein. Each Severity Level defines the actions that will be taken by Idemia Identity and Security USA LLC ("Seller" or "Idemia") for Response Time, Target Resolution Time, and Resolution Procedure for reported errors. Because of the urgency involved, Response Times for Severity Levels 1 and 2 are based upon voice contact the County of Santa Clara ("Customer" or "County"), as opposed to written contact by facsimile or letter. Resolution Procedures are based upon Seller's procedures for Service as described below.

Severity Level	Definition	Response Time	Target Resolution Time
1	Total System Failure - occurs when the System is not functioning and there is no workaround; such as a Central Server is down or when the workflow of an entire agency is not functioning.	Telephone conference within 1 hour of initial voice notification	Resolve within 24 hours of initial notification
2	Critical Failure - Critical process failure occurs when a crucial element in the System that does not prohibit continuance of basic operations is not functioning and there is usually no suitable work-around. Note that this may not be applicable to intermittent problems.	Telephone conference within 3 Standard Business Hours of initial voice notification	Resolve within 7 Standard Business Days of initial notification
3	Non-Critical Failure - Non-Critical part or component failure occurs when a System component is not functioning, but the System is still useable for its intended purpose, or there is a reasonable workaround.	Telephone conference within 6 Standard Business Hours of initial notification	Resolve within 180 days in a Seller-determined Patch or Release.
4	Inconvenience - An inconvenience occurs when System causes a minor disruption in the way tasks are performed but does not stop workflow.	Telephone conference within 2 Standard Business Days of initial notification	At Seller's discretion, may be in a future Release.
5	Customer request for an enhancement to System functionality is the responsibility of Seller's Product Management.	Determined by Seller's Product Management.	If accepted by Seller's Product Management, a release date will be provided with a fee schedule, when appropriate.

1.1   Reporting a Problem. Customer shall assign an initial Severity Level for each error reported, either verbally or in writing, based upon the definitions listed above. Because of the urgency involved, Severity Level 1 or 2 problems must be reported verbally to the Seller's call intake center. Seller will notify the Customer if Seller makes any changes in Severity Level (up or down) of any Customer-reported problem.

1.2   Seller Response. Seller will use best efforts to provide Customer with a resolution within the appropriate Target Resolution Time and in accordance with the assigned Severity Level when Customer allows timely access to the System and Seller diagnostics indicate that a Residual Error is present in the Software. Target Resolution Times may not apply if an error cannot be reproduced on a regular basis on either Seller's or Customer's Systems. Should Customer report an error that Seller cannot reproduce, Seller may enable a detail error capture/logging process to monitor the System. If Seller is unable to correct the reported Residual Error within the specified Target Resolution Time, Seller will escalate its procedure and assign such personnel or designee to correct such Residual Error promptly. Should Seller, in its sole discretion, determine that such Residual Error is not present in its Release, Seller will verify:
(a) the Software operates in conformity to the System Specifications, (b) the Software is being used in a manner for which it was intended or designed, and (c) the Software is used only with approved hardware or software. The Target Resolution Time shall not commence until such time as the verification procedures are completed.

1.3   Error Correction Status Report. Seller will provide verbal status reports on Severity Level 1 and 2 Residual Errors. Written status reports on outstanding Residual Errors will be provided to System Administrator on a monthly basis.

2.   Customer Responsibility.

2.1   Customer is responsible for running any installed anti-virus software.

2.2   Operating System ("OS") Upgrades. Unless otherwise stated herein, Customer is responsible for any OS upgrades to its System. Before installing any OS upgrade, Customer should contact Seller to verify that a given OS upgrade is appropriate.

3.   Seller Responsibility.

3.1   Anti-virus software. At Customer's request, Seller will make every reasonable effort to test and verify specific anti-virus, anti-worm, or anti-hacker patches against a replication of Customer's application. Seller will respond to any reported problem as an escalated support call.

3.2   Customer Notifications. Seller shall provide access to (a) Field Changes; (b) Customer Alert Bulletins; and (c) hardware and firmware updates, as released and if applicable.

3.3   Account Reviews. Seller shall provide annual account reviews to include (a) service history of site; (b) downtime analysis; and (c) service trend analysis.

3.4   Remote Installation. At Customer's request, Seller will provide remote installation advice or assistance for Updates.

3.5   Software Release Compatibility. At Customer's request, Seller will provide: (a) current list of compatible hardware operating system releases, if applicable; and (b) a list of Seller's Software Supplemental or Standard Releases

3.6   On-Site Correction. Unless otherwise stated herein, all suspected Residual Errors will be investigated and corrected from Seller's facilities. Seller shall decide whether on-site correction of any Residual Error is required and will take appropriate action.

4.   Compliance to Local, County, State and/or Federal Mandated Changes. *(Applies to Software and interfaces to those Products)* Unless otherwise stated herein, compliance to local, county, state and/or federally mandated changes, including but not limited to IBR, UCR, ECARS, NCIC and state interfaces are not part of the covered Services.

5.   On-site Product Technical Support Services. Seller shall furnish labor and parts required due to normal wear to restore the Equipment to good operating condition.

5.1   Seller Response. Seller will provide telephone and on-site response to Central Site, defined as the Customer's primary data processing facility, and Remote Site, defined as any site outside the Central Site, as shown in Support Plan Options and Pricing Worksheet.

5.2   At Customer's request, Seller shall provide continuous effort to repair a reported problem beyond the Principal Period of Maintenance ("PPM") as defined in Exhibit K-2 (Maintenance and Support Terms and Conditions). Provided Customer gives Seller access to the Equipment before the end of the PPM, Seller shall extend a two (2) hour grace period beyond PPM at no charge. Following this grace period, any additional on-site labor support shall be invoiced on a time and material basis at Seller's then current rates for professional services.

Exhibit K-2
Maintenance and Support
Terms & Conditions

Idemia Identity & Security USA LLC, ("IDEMIA" or "Seller") having a principal place of business at 5515 East La Palma Avenue, Suite 100, Anaheim, CA 92807, and County of Santa Clara ("County or Customer") on behalf of its Office of the Sheriff , having a place of business at 55 W. Younger St., San Jose, CA 95110, have entered into an Agreement, which includes this Maintenance and Support Exhibit ("Agreement"), pursuant to which Customer will purchase and Seller will sell the maintenance and support services 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
Intentionally omitted.

Section 2.   DEFINITIONS

"Equipment" means the physical hardware purchased by Customer from Seller pursuant Agreement No. 5500002447.
"IDEMIA" means Idemia Identity & Security USA LLC.

"IDEMIA Software" means Software that IDEMIA or Seller owns. The term includes Product Releases, Standard Releases, and Supplemental Releases.
"Non-IDEMIA Software" means Software that a party other than IDEMIA or Seller owns.

"Optional Technical Support Services" means fee-based technical support services that are not covered as part of the standard Technical Support Services.

"Patch" means a specific change to the Software that does not require a Release.

"Principal Period of Maintenance" or "PPM" means the specified days, and times during the days, that maintenance and support services will be provided under this Agreement. The PPM selected by Customer is indicated in the Support Plan Options and Pricing Worksheet Exhibit K-1 (Maintenance and Support Plan) and Exhibits B and B-1 (Maintenance Fees Schedule).

"Products" means the Equipment (if applicable as indicated in the Exhibits B and B-1 (Maintenance Fees Schedule) and Exhibit J (IDEMIA Statement of Work) and Software provided by Seller.
"Releases" means an Update or Upgrade to the IDEMIA Software and are characterized as "Supplemental Releases," "Standard Releases," or "Product Releases." A "Supplemental Release" is defined as a minor release of IDEMIA Software that contains primarily error corrections to an existing Standard Release and may contain limited improvements that do not affect the overall structure of the IDEMIA Software. Depending on Customer's specific configuration, a Supplemental Release might not be applicable. Supplemental Releases are identified by the third digit of the three-digit release number, shown here as underlined: "1.2.<u>3</u>". A "Standard Release" is defined as a major release of IDEMIA Software that contains product enhancements and improvements, such as new databases, modifications to databases, or new servers. A Standard Release may involve file and database conversions, System configuration changes, hardware changes, additional training, on-site installation, and System downtime. Standard Releases are identified by the second digit of the three-digit release number, shown here as underlined: "1.<u>2</u>.3". A "Product Release" is defined as a major release of IDEMIA Software considered to be the next generation of an existing product or a new product offering. Product Releases are identified by the first digit of the three-digit release number, shown here as underlined: "<u>1</u>.2.3". If a question arises as to whether a Product offering is a Standard Release or a Product Release, IDEMIA's opinion will prevail, provided that IDEMIA treats the Product offering as a new Product or feature for its end user customers generally.

"Residual Error" means a software malfunction or a programming, coding, or syntax error that causes the Software to fail to conform to the Specifications.
"Services" means those maintenance and support services described in Exhibit K-1 (Maintenance and Support Plan) and Exhibits B and B-1 (Maintenance Fees Schedule) and provided under this Agreement.

"Software" means the IDEMIA Software and Non-IDEMIA Software that is furnished with the System or Equipment.

"Specifications" means the design, form, functionality, or performance requirements described in published descriptions of the Software, and if also applicable, in any modifications to the published specifications as expressly agreed to in writing by the parties.

"Standard Business Day" means Monday through Friday, 8:00 a.m. to 5:00 p.m. local time, excluding established IDEMIA holidays.

"Standard Business Hour" means a sixty (60) minute period of time within a Standard Business Day(s).

"Start Date" means the date upon which this Agreement begins
"System" means the Products and services provided by Seller as a system as more fully described in Exhibit B and B-1 (Maintenance Fees Schedule) and Exhibit J (IDEMIA Statement of Work)

"Technical Support Services" means the remote telephonic support provided by Seller on a standard and centralized basis concerning the Products, including diagnostic services and troubleshooting to assist Customer in ascertaining the nature of a problem being experienced by the Customer, minor assistance concerning the use of the Software (including advising or assisting the Customer in attempting data/database recovery, database set up, client-server advice), and assistance or advice on installation of Releases provided under this Agreement.
"Update" means a Supplemental Release or a Standard Release.

"Upgrade" means a Product Release.

Section 3.   SCOPE AND TERM OF SERVICES

3.1.   In accordance with the provisions of this Agreement and in consideration of the payment by Customer of the price for the Services, Seller will provide to Customer the Services in accordance with Customer's selections as indicated in the Exhibit K-1 (Maintenance and Support Plan), and Exhibits B and B-1 (Maintenance Fees Schedule), and such Services will apply only to the Products described in Exhibits B and B-1 (Maintenance Fees Schedule) and Exhibit J (IDEMIA Statement of Work).

3.2.   Intentionally omitted.

3.3.   This Exhibit covers all copies of the specified Software listed in Exhibits B and B-1 (Maintenance Fees Schedule) that are licensed by Seller to Customer. The price for Services is set forth in the Agreement. The parties will enter into a written amendment of the Agreement or a new written agreement to add or renew Services.

3.4.   When Seller performs Services at the location of installed Products, Customer agrees to provide to Seller, at no charge, a non-hazardous environment for work with shelter, heat, light, and power, and with full and free access to the covered Products. Customer will provide all information pertaining to the hardware and software with which the Products are interfacing to enable Seller to perform its obligations under this Agreement.

3.5.   All Customer requests for covered Services will be made initially with the call intake center identified in the Exhibits B and B-1 (Maintenance Fees Schedule).

3.6.   Seller will provide to Customer Technical Support Services and Releases as follows:

3.6.1.   Seller will provide unlimited Technical Support Services and correction of Residual Errors during the PPM in accordance with

Exhibit K-1. The level of Technical Support depends upon the Customer's selection as indicated in Exhibits K-1 (Maintenance and Support Plan) and Exhibits B and B-1 (Maintenance Fees Schedule). Technical Support Services will be to investigate specifics about the functioning of covered Products to determine whether there is a defect in the Product and will not be used in lieu of training on the covered Products.

3.6.2.   Seller will provide to Customer without additional license fees an available Supplemental or Standard Release after receipt of a request from Customer. Seller will also provide to Customer any installation or other services and any necessary Equipment or third party software provided by Seller in connection with such Supplemental or Standard Release. However, for any third-party software or equipment provided by Customer, Customer will pay for any installation or other services and any necessary equipment or third party software in connection with such Supplemental or Standard Release. Any services will be performed in accordance with a mutually agreed schedule.

3.6.3 Seller will provide to Customer an available Product Release after receipt of a request from Customer, but Customer must pay for all additional license fees, any installation or other services, and any necessary Equipment provided by Seller in connection with such Product Release pursuant to a written amendment to this Agreement or a new written agreement . Any services will be performed in accordance with a mutually agreed schedule.

3.6.4.   Seller does not warrant that a Release will meet Customer's particular requirement, operate in the combinations that Customer will select for use, be uninterrupted or error-free, be backward compatible, or that all errors will be corrected. Full compatibility of a Release with the capabilities and functions of earlier versions of the Software may not be technically feasible. If it is technically feasible, services to integrate these capabilities and functions to the updated or upgraded version of the Software may be purchased at Customer's request under a written amendment to this Agreement or a new written agreement.

3.6.5.   Seller's responsibilities under this Agreement to provide Technical Support Services shall be limited to the current Standard Release plus the two (2) prior Standard Releases (collectively referred to in this section as "Covered Standard Releases."). Notwithstanding the preceding sentence, Seller will provide Technical Support Services for a Severity Level 1 or 2 error concerning a Standard Release that precedes the Covered Standard Releases unless such error has been corrected by a Covered Standard Release (in which case Customer shall install the Standard Release that fixes the reported error or terminate this Agreement as to the applicable Software).

3.7.   The maintenance and support Services described in this Agreement are the only covered services. Unless Optional Technical Support Services are purchased, these Services specifically exclude and Seller shall not be responsible for:

3.7.1.   Any service work required due to incorrect or faulty operational conditions, including but not limited to Equipment not connected directly to an electric surge protector, or not properly maintained in accordance with the manufacturer's guidelines.

3.7.2.   The repair or replacement of Products or parts resulting from failure of the Customer's facilities, Customer's personal property and/or devices connected to the System (or interconnected to devices) whether or not installed by Seller's representatives.

3.7.3.   The repair or replacement of Equipment that has become defective or damaged due to physical or chemical misuse or abuse, Customer's negligence, or from causes such as lightning, power surges, or liquids.

3.7.4.   Any transmission medium, such as telephone lines, computer networks, or the worldwide web, or for Equipment malfunction caused by such transmission medium.

3.7.5.   Accessories, custom or Special Products; modified units; or modified Software.

3.7.6.   The repair or replacement of parts resulting from the tampering by persons unauthorized by Seller or the failure of the

System due to extraordinary uses.

3.7.7.   Operation and/or functionality of Customer's personal property, equipment, and/or peripherals and any application software not provided by Seller.

3.7.8.   Services for any replacement of Products or parts directly related to the removal, relocation, or reinstallation of the System or any System component.

3.7.9.   Services to diagnose technical issues caused by the installation of unauthorized components or misuse of the System.

3.7.10.   Services to diagnose malfunctions or inoperability of the Software caused by changes, additions, enhancements, or modifications in the Customer's platform or in the Software.

3.7.11.   Services to correct errors found to be caused by Customer-supplied data, machines, or operator failure.

3.7.12.   Operational supplies, including but not limited to, printer paper, printer ribbons, toner, photographic paper, magnetic tapes and any supplies in addition to that delivered with the System; battery replacement for uninterruptible power supply (UPS); office furniture including chairs or workstations.

3.7.13.   Third-party software unless that third-party software was installed by Seller.

3.7.12.   Support of any interface(s) beyond Seller-provided port or cable, or any services that are necessary because third party hardware, software or supplies fail to conform to the specifications concerning the Products.

3.7.13.   Services related to customer's failure to back up its data or failure to use an UPS system to protect against power interruptions

3.7.14.   Any design consultation such as, but not limited to, configuration analysis, consultation with Customer's third-party provider(s), and System analysis for modifications or Upgrades or Updates which are not directly related to a Residual Error report.

3.8.   The Customer hereby agrees to:

3.8.1.   Maintain any and all electrical and physical environments in accordance with the System manufacturer's specifications.

3.8.2.   Provide standard industry precautions (e.g. back-up files) ensuring database security, per Seller's recommended backup procedures.

3.8.3.   Ensure System accessibility, which includes physical access to buildings as well as remote electronic access. Remote access can be stipulated and scheduled with customer; however, remote access is required and will not be substituted with on-site visits if access is not allowed or available.

3.8.4.   Appoint one or more qualified employees to perform System Administration duties, including acting as a primary point of contact to Seller's Customer Support organization for reporting and verifying problems, and performing System backup. At least one member of the System Administrators group should have completed Seller's End-User training and System Administrator training (if available). The combined skills of this System Administrators group should include proficiency with: the Products, the system platform upon which the Products operate, the operating system, database administration, network capabilities such as backing up, updating, adding, and deleting System and user information, and the client, server and stand alone personal computer hardware. The System Administrator shall follow the Residual Error reporting process described herein and make all reasonable efforts to duplicate and verify problems and assign a Severity Level according to definitions provided herein. Customer agrees to use reasonable efforts to ensure that all problems are reported and verified by the System Administrator before reporting them to Seller. Customer shall assist Seller in determining that errors are not the product of the operation of an external system, data links between system, or network administration issues. If a Severity Level 1 or 2 Residual Error occurs, any Customer representative may contact Seller's Customer Support Center by telephone, but the System Administrator must follow up with Seller's Customer Support as soon as practical thereafter.

3.9.   In performing repairs under this Agreement, Seller may

use parts that are not newly manufactured but which are warranted to be equivalent to new in performance. Parts replaced by Seller shall become Seller's property.

3.10. Customer shall permit and cooperate with Seller so that Seller may periodically conduct audits of Customer's records and operations pertinent to the Services, Products, and usage of application and data base management software. If the results of any such audit indicate that price has been understated, Seller may correct the price and immediately invoice Customer for the difference (as well as any unpaid but owing license fees). Seller will limit the number of audits to no more than one (1) per year except Seller may conduct quarterly audits if a prior audit indicated the price had been understated.

3.11. If Customer replaces, upgrades, or modifies equipment, or replaces, upgrades, or modifies hardware or software that interfaces with the covered Products, Seller will have the right to adjust the price for the Services to the appropriate current price for the new configuration.

3.12. Customer shall agree not to attempt or apply any update(s), alteration(s), or change(s) to the database software without the prior approval of the Seller.

Section 4.   RIGHT TO SUBCONTRACT AND ASSIGN

INTENTIONALLY OMITTED.

Section 5.   PRICING, PAYMENT AND TERMS

INTENTIONALLY OMITTED

Section 6.   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 (including any of its affiliated companies) each party's total liability to the other party arising from this Agreement will be limited to the direct damages recoverable under law, but not to exceed the price of the maintenance and support services being provided under this Agreement. ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT A PARTY WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS; INCONVENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, 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 SYSTEM, 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. This section shall not apply to the Seller's fraud, gross negligence, willful misconduct, indemnity obligations in the Agreement, privacy breaches, or security breaches.

Section 7.   DEFAULT/TERMINATION

INTENTIONALLY OMITTED.

7.1. See Agreement for termination terms governing IDEMIA default.

7.2. If Customer breaches a material obligation under this Agreement (unless IDEMIA or a Force Majeure causes such failure of performance) that governs the Software covered by this Agreement; or if Customer fails to pay any amount when due under this Agreement, indicates that it is unable to pay any amount when due, indicates it is unable to pay its debts generally as they become due, files a voluntary petition under bankruptcy law, or fails to have dismissed within ninety (90) days any involuntary petition under bankruptcy law, IDEMIA may consider Customer to be in default. If IDEMIA asserts a default, it will give Customer written and detailed notice of the default and Customer will have thirty (30) days thereafter to (i) dispute the assertion, (ii) cure any monetary default , or (iii) provide a written plan to cure the default that is acceptable to IDEMIA. If Customer provides a cure plan, it will begin implementing the cure plan immediately after receipt of IDEMIA's approval of the plan.

7.3. If a defaulting party fails to cure the default as provided above in Sections 7.1 or 7.2, unless otherwise agreed in writing, the non-defaulting party may terminate any unfulfilled portion of this Agreement and may pursue any legal or equitable remedies available to it subject to the provisions of Section 6 above.

7.4. Upon the expiration or earlier termination of this Agreement, Customer and Seller shall immediately deliver to the other Party, as the disclosing Party, all Confidential Information of the other, including all copies thereof, which the other Party previously provided to it in furtherance of this Agreement, except for fully paid perpetual software licenses purchased under the Agreement. Confidential Information shall include: (a) proprietary materials and information regarding technical plans; (b) any and all other information, of whatever type and in whatever medium regarding developments, trade secrets and improvements, that is disclosed by Seller to Customer in connection with this Agreement; (c) all geographic information system, address, telephone, or like records and data provided by Customer to Seller in connection with this Agreement that is required by law to be held confidential.

Section 8.   GENERAL TERMS AND CONDITIONS

INTENTIONALLY OMITTED

Section 9.   CERTIFICATION DISCLAIMER

INTENTIONALLY OMITTED

Section 10.   COMPLIANCE WITH APPLICABLE LAWS

The Parties shall at all times comply with all applicable regulations, licenses and orders of their respective countries relating to or in any way affecting this Agreement and the performance by the Parties of this Agreement. Each Party, at its own expense, shall obtain any approval or permit required in the performance of its obligations. Neither Seller nor any of its employees is an agent or representative of Customer.