



# SERVICE AGREEMENT

Idemia Identity and Security USA LLC (“IDEMIA”), (formerly MorphoTrak, LLC) a Delaware limited liability corporation, having a principal place of business at 5515 E. La Palma Ave., Ste 100, Anaheim, CA 92807, and THE CITY OF LEE’S SUMMIT, MISSOURI (“Customer”), a Missouri Charter City organized and operating under the laws of the State of Missouri, having a place of business at 220 S.E. Green Street, Lee’s Summit, MO 64063, enter into this Service Agreement (“Agreement”), pursuant to which Customer will purchase and IDEMIA will sell the services as described below and in the attached exhibits. IDEMIA 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 the Exhibits will be resolved in the order in which they are listed below.

Exhibit A	“Description of Covered Products”
Exhibit B	“Statement of Work”
Exhibit C	“Payment Schedule”
Exhibit D	“Software License Agreement”

## Section 2. DEFINITIONS

“Contract Price” means the price for the Services, exclusive of any applicable sales or similar taxes and freight charges.

“Default” means failure by either party to perform a material obligation under this Agreement.

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

“Equipment” means the physical hardware supplied by IDEMIA as outlined in the attached Description of Covered Products, and any related goods or material used by the IDEMIA to provide the Services.

“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.

“IDEMIA” means IDEMIA, LLC.

“IDEMIA Software” means Software that IDEMIA owns. The term includes Product Releases, Standard Releases, and Supplemental Releases.

“Non-IDEMIA Software” means Software that a party other than IDEMIA owns.

“Operational Use” means when Customer first uses the System to perform functions as outlined in the attached Statement of Work.

“Optional Technical Support Services” means fee-based technical support services that are not covered as part of the standard 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, as set forth in the Statement of Work, that Services will be provided under this Agreement.

“Products” means the Equipment (if applicable as indicated in the Description of Covered Products) and Software provided by IDEMIA.

“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 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.

“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: “1.2.3”. 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: “1.2.3”. 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: “1.2.3”. 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 services described in the Statement of Work and provided under this Agreement.

“Site” means the premises where Products are delivered and/or installed, or where the Services are performed, not including IDEMIA’s premises from which it performs remote Services.

“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.

“Start Date” means the date on which the term of this Agreement begins on Effective Date. This is the date when Services commence and Service Fees are due.

“System” means the Products and Services provided by IDEMIA as a system as more fully described in the Statement of Work.

“System Acceptance” means the date on which installation and training has been completed at Customer site. Customer will sign an acceptance letter at this time.

“Technical Support Services” means the remote telephonic support provided by IDEMIA 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. **SCOPE OF SERVICES.** In accordance with the provisions of this Agreement and in consideration of payment by Customer of the Service Fee, IDEMIA will provide, ship, and install (if applicable) the Equipment described in the Description of Covered Products, and perform its other contractual responsibilities, all in accordance with this Agreement and the attached Statement of Work. As explained in further detail below, notwithstanding the placement of the Equipment in the Customer’s facility, title to and ownership of the Equipment shall remain in IDEMIA’s name, and Customer shall act as a responsible bailee for the Equipment. Customer will perform its contractual responsibilities in accordance with this Agreement and the attached Statement of Work.

3.2. **CHANGE ORDERS.** IDEMIA will provide the products as outlined in the attached Description of Covered Products and perform the Services as outlined in the attached Statement of Work. Either party may request changes outside the scope of work detailed in this Agreement. If a requested change causes an increase or decrease in the annual Service Fee or time required to perform this Agreement, IDEMIA and Customer will agree to an equitable adjustment of the Contract Price, 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.** 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 for a period of five (5) years from the date of Initial System Acceptance (the “Term”). Upon expiration of this Term, the Customer shall have the following options:

- Agency may renew the LSaaS contract at the end of year 5 at the same rate and receive new systems with the same configuration.
- Purchase the systems outright for \$3,200.00 each at the end of year 5 and optionally enter into a maintenance agreement at the current maintenance rates at the time of “buy out”; maintenance options available for 9x5 and 24x7.
- Let the contract expire at the end of year 5; IDEMIA will remove the equipment.

3.4. **IDEMIA SOFTWARE.** Any IDEMIA Software, including subsequent Releases, is licensed to Customer for the Term of this Agreement solely in accordance with the Software License Agreement, attached hereto as Exhibit D. Customer hereby accepts and agrees to abide by all of the terms and restrictions of the Software License Agreement.

3.5. **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.

3.6. **SUBSTITUTIONS.** At no additional cost to Customer, IDEMIA reserves the right to substitute any Equipment, Software, or services to be provided by IDEMIA, provided that the substitute meets or exceeds the specifications outlined in the Statement of Work and is of equivalent or better quality to the Customer. Any such substitution will be reflected in a written change order signed by both parties.

3.7. When IDEMIA performs Services at the Customer Site, Customer agrees to provide to IDEMIA, 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. The Customer shall cooperate to provide all information pertaining to the hardware and software with which the Products are interfacing to enable IDEMIA to perform its obligations under this Agreement.

3.8. IDEMIA will provide to Customer Technical Support Services and Releases as follows:

3.8.1. IDEMIA will provide Technical Support Services and correction of Residual Errors during the PPM in accordance with the Statement of Work. Any Technical Support Services that are performed by IDEMIA outside the contracted PPM and any Residual Error corrections that are outside the scope shall be billed at the then current hourly rates. 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.

3.8.2. IDEMIA will provide Customer, without additional license fees, an available Supplemental or Standard Release after receipt of a request from Customer, but Customer must pay for any installation or other services and any necessary Equipment or Non-IDEMIA Software provided by IDEMIA in connection with such Supplemental or Standard Release. Any services will be performed in accordance with a mutually agreed schedule.

3.8.3. IDEMIA 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 IDEMIA in connection with such Product Release. Any services will be performed in accordance with a mutually agreed schedule.

3.8.4. IDEMIA 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 on a time and materials basis at IDEMIA's then current rates for professional services.

3.8.5. IDEMIA'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, IDEMIA will provide Technical Support Services for a Severity Level 1 or 2 (defined in the Statement of Work) 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).

3.9. The Services described in this Agreement are the only covered services. These Services specifically exclude and IDEMIA shall not be responsible for:

3.9.1. Any service work required due to environmental conditions, 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.

3.9.2. 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 IDEMIA's representatives.

3.9.3. 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.

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

3.9.5. Accessories, custom or special products; modified units; or modified Software.

3.9.6. The repair or replacement of parts resulting from the tampering by persons unauthorized by IDEMIA or the failure of the System due to extraordinary uses.

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

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

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

3.9.10. 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.

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

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

3.9.13. Non-IDEMIA software unless specifically listed on the Description of Covered Products.

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

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

3.9.16. 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.

3.10. The Customer hereby agrees to:

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

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

3.10.3. 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.

3.10.4. Appoint one or more qualified employees to perform system administration duties, including acting as a primary point of contact to IDEMIA's customer support organization for reporting and verifying problems, and performing System backup. At least one member of the system administrator group should have completed IDEMIA's training. The combined skills of this system administrator 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 standalone 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, as defined in the Statement of Work. Customer agrees to use reasonable efforts to ensure that all problems are reported and verified by the system administrator before reporting them to IDEMIA. Customer shall assist IDEMIA 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 IDEMIA's Customer Support Center by telephone, but the System administrator must follow up with IDEMIA's Customer Support as soon as practical thereafter.

3.11. Customer shall permit and cooperate with IDEMIA so that IDEMIA may periodically conduct audits of Customer's records and operations pertinent to the Services, Products, and usage of application and data base management software. IDEMIA will limit the number of audits to no more than one (1) per year; provided that the IDEMIA may audit more frequently to the extent necessary to ensure the Operational Use of the System.

3.12. If Customer replaces, upgrades, or modifies software that interfaces with the covered Products, IDEMIA and Customer will agree to an equitable adjustment to the annual Service Fee to reflect any changes necessary to the IDEMIA provided Equipment or related Services.

3.13. 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 IDEMIA.

#### **Section 4. PRICING, PAYMENT AND TERMS**

4.1. **CONTRACT PRICE.** The total Contract Price in U.S. dollars is (\$52,736), and shall be paid on an annual Service Fee basis as outlined in the Exhibit C, Payment Schedule. The first annual Service Fee payment has been paid by the Missouri State Highway Patrol under PO PG812HP099000038.

4.2. INVOICING AND PAYMENT. IDEMIA 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 IDEMIA 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 IDEMIA Federal Tax Identification Number for is 27-4388807.

4.3. FREIGHT, TITLE, AND RISK OF LOSS. All freight charges will be pre-paid by IDEMIA and added to the invoices. Title to the Equipment and Software shall not pass to Customer at any time. Risk of loss will pass to Customer upon delivery of the Equipment to the Customer Site. IDEMIA will pack and ship all Equipment in accordance with good commercial practices.

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

City of Lee's Summit, Missouri  
Attn: Accounts Payable Contract #  
220 S.E. Green Street  
Lee's Summit, Missouri 64063

The city which is the ultimate destination where the Equipment will be delivered to Customer is:  
City of Lee's Summit, Missouri

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

Adult Booking  
Lee's Summit Police Department  
10 N.E. Tudor Rd.  
Lee's Summit, Missouri 64086

Juvenile Booking  
Lee's Summit Police Department  
10 N.E. Tudor Rd.  
Lee's Summit, Missouri 64086

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

4.5 CUSTOMER AS BAILEE. IDEMIA makes available for use to Customer, and Customer accepts such bailment from IDEMIA, the Equipment for the duration of the Term, and subject to the conditions, of this Agreement. For the avoidance of doubt, title to the Equipment is and will remain vested in IDEMIA, and Customer will not (i) acquire any title or other interest in the Equipment, or any right except the limited and conditional right to use as expressly set forth herein, (ii) permit any lien, encumbrance or security interest of any kind and in any amount to attach to the Equipment, (iii) permit the Equipment to be subjected to any interchange or pooling agreement, or (iv) permit the Equipment to be operated by or to be in the possession of any person other than Customer. Upon the expiration of this Agreement for any reason whatsoever, Customer shall return the Equipment to IDEMIA and assist IDEMIA in any actions reasonably required for IDEMIA to obtain physical possession of the Equipment.

4.6. AUTHORIZING FILING OF UCC STATEMENTS. Customer authorizes IDEMIA to file UCC-1 statements, and any other financing statements or related documents naming Customer as "Debtor" and describing the Equipment in all appropriate jurisdictions and, if applicable, to notify, in

accordance with applicable law, any existing creditors of Customer with respect to the consignment arrangements contemplated hereby. Such documents will be filed for the purpose of providing notice of Customer's limited and conditional right to use the Equipment hereunder. The cost of such filing will be paid by the Customer.

## **SECTION 5. SITES AND SITE CONDITIONS**

5.1. **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 Sites identified in the Statement of Work or as reasonably requested by IDEMIA so that it may perform its duties in accordance with the Statement of Work.

5.2. **SITE CONDITIONS.** Customer will ensure that all 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 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 Site, IDEMIA will inspect the work site and advise Customer of any apparent deficiencies or non-conformities with the requirements of this Section 5.

5.3. **SITE ISSUES.** If IDEMIA or Customer determines that the Sites identified in the Statement of Work are no longer available or desired, or if subsurface, structural, adverse environmental or latent conditions at any site differ from those indicated in the Statement of Work, IDEMIA and Customer will promptly investigate the conditions and will select replacement sites or adjust the installation plans and Statement of Work as necessary. If such change in Sites or adjustment to the installation plans and Statement of Work causes a change in the cost or time to perform, the parties will equitably amend the annual Service Fee or schedule, or both, by a change order.

## **SECTION 6. TRAINING**

Any training to be provided by IDEMIA to Customer under this Agreement will be included as part of system installation. Customer will notify IDEMIA immediately if a date change for a scheduled training program is required. If IDEMIA incurs additional costs because Customer reschedules a training program less than thirty (30) days before its scheduled start date, IDEMIA is entitled to recover these additional costs.

## **SECTION 7. ACCEPTANCE**

### **7.1. SYSTEM ACCEPTANCE**

System Acceptance will occur upon completion of installation, training and testing indicating that the system is ready for Operational Use. Operational Use occurs when the System has been fully-implemented and the Customer may begin use of the System in the operational environment. 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. These minor omissions or variances will be corrected according to a mutually agreed schedule by Customer and IDEMIA.

## **SECTION 8. LIMITED WARRANTY AND DISCLAIMERS OF WARRANTY**



8.1. IDEMIA warrants to Customer that the Equipment: (a) upon System Acceptance will be operable, and (b) when properly installed, operated, and maintained in accordance with IDEMIA's and manufacturer's recommendations and the terms of the Agreement, will remain operable. As more fully set forth in Article 4 of this Agreement, ownership of the Equipment shall remain with IDEMIA throughout the Term of the Agreement. IDEMIA also warrants to Customer that any Services IDEMIA is required to perform pursuant to the Agreement will be performed in a competent manner. If any failure to meet these warranties appears during the Term, or any failure to meet the Services warranty described above appears within thirty (30) days of performance of the particular Services and during the Term of the Agreement, Customer shall promptly notify IDEMIA in writing and IDEMIA shall within a reasonable amount of time under the circumstances, in its own discretion: (i) repair or replace, at IDEMIA's option, Equipment that does not meet the Equipment warranty and/or (ii) re-perform the defective Service to the extent practicable. This Section 8 sets forth the sole and exclusive remedies for all claims based on failure of or defect in Equipment or Services whether a claim, however instituted, is based on contract, indemnity, warranty, tort (including negligence), or other contractual or extra contractual liability of any nature, strict liability or otherwise, and under any system, theory or principle of law.

8.2. THE FOREGOING WARRANTIES ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES AND GUARANTEES WHETHER WRITTEN, ORAL, IMPLIED OR STATUTORY. EXCEPT FOR THE WARRANTIES SET FORTH IN THIS SECTION, IDEMIA MAKES NO REPRESENTATIONS OR WARRANTIES TO CUSTOMER OR ANY OTHER PERSON, INCLUDING, WITHOUT LIMITATION, WARRANTIES REGARDING THE SIZE, DESIGN, CAPACITY, CONDITION, QUALITY, DURABILITY, SUITABILITY, MANUFACTURE OR PERFORMANCE OF THE EQUIPMENT OR SERVICES, OR PATENT OR INTELLECTUAL PROPERTY INFRINGEMENT OR THE LIKE. NO IMPLIED STATUTORY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE SHALL APPLY.

## **SECTION 9. DELAYS**

9.1. 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.

9.2. PERFORMANCE SCHEDULE DELAYS CAUSED BY CUSTOMER. 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 schedule and, if requested by IDEMIA, compensate IDEMIA for all reasonable charges incurred because of such delay. Delay charges may include costs incurred by IDEMIA 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 10. DISPUTES**

10.1. **SETTLEMENT PREFERRED.** IDEMIA 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 IDEMIA and Customer within thirty (30) days after notice by one of the parties demanding non-binding mediation. IDEMIA and Customer will not unreasonably withhold consent to the selection of a mediator, and they will share the cost of the mediation equally. If the dispute is of technical nature, either party may request for the matter to be referred to a panel of subject matter experts, using as guidelines characteristics of similar systems or technology, as well as industry standards.

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”).

10.2. **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 10.1 may be submitted by either party to a court of competent jurisdiction in the state of Missouri. Each party consents to jurisdiction over it by such a court, and specifically waives any right to raise a jurisdictional or venue related defense to 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 11. DEFAULT AND TERMINATION**

11.1. **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. For technical matters, the determination of failure to perform a material obligation may be referred by either party to a panel of subject matter experts, using as guidelines characteristics of similar systems or technology, as well as industry standards.

11.2. **FAILURE TO CURE.** If, within thirty (30) days of receiving notice of a claim of Default, a defaulting party fails to cure the Default, or fails to provide a written cure plan as provided in Section 11.1 above, unless otherwise agreed to 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 14.1).

11.3. **FAILURE TO CURE BY CUSTOMER.** In the event that Customer fails to immediately cure any past due Service Fee when due; or cure any Default, or provide a written cure plan, each as provided in Section 11.1 above then IDEMIA may terminate this Agreement and Customer will

indemnify the IDEMIA for the Service Fee due up to the date of termination. In addition, Customer must immediately return, at Customer's expense, all IDEMIA provided Equipment to IDEMIA.

11.4. **TERMINATION BY CUSTOMER.** Customer may terminate this Agreement for IDEMIA's Default, failure to cure, or failure to provide a written cure plan, as outlined in Section 11.1 above only. Customer will indemnify the IDEMIA for costs incurred up to the point of termination.

11.5. **EFFECT OF TERMINATION.**

11.5.1. In the event that IDEMIA terminates this Agreement for Customer's Default as in this Section 11.1 above, IDEMIA may, in addition to the rights listed in 11.3 above, require Customer, at Customer's expense, to promptly return all or any portion of Equipment provided by IDEMIA to Customer. In addition, IDEMIA may enter the Customer's Site(s) where the Equipment is located and take immediate possession and remove some or all of it, all without any IDEMIA liability to Customer; or IDEMIA may exercise any other right or remedy available to it under any applicable law. No right or remedy of IDEMIA referred to in this Section 11 is exclusive, but each is cumulative and in addition to any other right or remedy otherwise available to IDEMIA at law or in equity.

11.5.2. In the event that Customer terminates this Agreement for IDEMIA's Default as outlined in Section 11.1 above, Customer will allow IDEMIA to immediately remove and take possession of all IDEMIA provided Equipment located at the Customer's Site(s). Title to IDEMIA provided Equipment will not pass to Customer in the event of IDEMIA Default. No right or remedy of Customer referred to in this Section 11 is exclusive, but each is cumulative and in addition to any other right or remedy otherwise available to Customer at law or in equity.

11.6 **BUYOUT OPTION.** Upon expiration of this Agreement after the Term and any subsequent renewals as outlined in Section 3.3 above, the Customer shall have the option to purchase the IDEMIA provided Equipment at a discounted rate upon the agreement of IDEMIA. If Customer elects this Buyout Option, Customer and IDEMIA will enter into a separate agreement for the provision of maintenance services related to the Equipment. The Buyout option at the end of the initial 5 year term is \$3,200. If at the end of the initial 5 year term the Customer does not extend this Agreement or exercise the Buyout option IDEMIA will remove the items listed in Exhibit A Description of Covered Products.

## **SECTION 12. INDEMNIFICATION**

12.1. **GENERAL INDEMNITY BY CUSTOMER.** To the extent permitted by law, and in no event in excess of limitations established by Section 537.610 of the Missouri Revised Statutes; Customer will indemnify and hold IDEMIA 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 IDEMIA to the extent it is caused by the Customer's mishandling of the Equipment or the System, or the Customer's negligence or willful misconduct, or any of those actions by the Customer's subcontractors, or their employees or agents, while performing their duties under this Agreement, provided that IDEMIA gives Customer prompt, written notice of any such claim or suit. IDEMIA shall cooperate with Customer in its defense or settlement of such claim or suit. This section sets forth the full extent of Customer's general indemnification of IDEMIA from liabilities that are in any way related to this Agreement.

12.3. **PATENT AND COPYRIGHT INFRINGEMENT.**

12.3.1. IDEMIA will defend at its expense any suit brought against Customer to the extent that it is based on an Infringement Claim, and IDEMIA will indemnify Customer for those costs and damages finally awarded against Customer for an Infringement Claim. IDEMIA's duties to defend and indemnify are conditioned upon: (i) Customer promptly notifying IDEMIA in writing of such

Infringement Claim; (ii) IDEMIA having sole control of the defense of such suit and all negotiations for its settlement or compromise; (iii) Customer providing to IDEMIA cooperation and, if requested by IDEMIA, reasonable assistance in the defense of the Infringement Claim.

12.3.2. If an Infringement Claim occurs, or in IDEMIA's opinion is likely to occur, IDEMIA 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.

12.3.3. IDEMIA 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 IDEMIA; (ii) the use of ancillary equipment or software not furnished by IDEMIA and that is attached to or used in connection with the Equipment or IDEMIA Software; (iii) any Equipment that is not IDEMIA's design or formula; (iv) a modification of the IDEMIA Software by a party other than IDEMIA; 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 IDEMIA with respect to infringement of patents and copyrights by the Equipment and IDEMIA Software or any parts thereof.

## **SECTION 13. LIMITATION OF LIABILITY**

13.1. IDEMIA LIABILITY. This limitation of liability provision shall apply notwithstanding any contrary provision in this Agreement. Except for personal injury or death, IDEMIA'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 IDEMIA WILL NOT be liable for any commercial loss; inconvenience; loss of use, time, data, goodwill, revenues, profits or savings; or other SPECIAL, incidental, punitive, 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 IDEMIA 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.

13.2. CUSTOMER LIABILITY. To the extent permitted by law, and in no event in excess of limitations established by Section 537.610 of the Missouri Revised Statutes; Customer shall be liable to IDEMIA for all loss of or damage to Equipment, as described in the attached Description of Covered Products, during the term of this Agreement. Customer shall give IDEMIA prompt notification of any such loss or damage. In the event of such loss or damage and upon demand by IDEMIA, Customer shall pay to IDEMIA the cost either, at IDEMIA's option, to repair or to replace the Equipment. Customer shall also be liable for the total value of the System in the event that this Agreement is terminated for any reason prior to the Term of the Agreement as outlined in Section 3.3.

## **SECTION 14. INSURANCE REQUIREMENTS**

14.1. LIABILITY INSURANCE. Customer shall obtain, at its expense, and shall at all times during which Equipment is at the Customer's Site or otherwise in Customer's possession or control maintain, comprehensive commercial general/public liability insurance, in broad form including coverage for liability assumed under contract, providing coverage for bodily injury, including death, and property damage of any person or persons, including, but not limited to, agents or employees of Buyer, arising

from Equipment or its possession, use, operation, maintenance, storage, transportation, installation, dismantling or servicing, with a combined single limit of not less than \$1,000,000.00.. IDEMIA shall be named as an additional insured, and the liability insurance shall be primary with respect to any other liability insurance maintained by IDEMIA.

14.2. **PROPERTY INSURANCE.** Customer shall obtain, at its expense, and shall at all times during which the Equipment is at the Customer's Site or otherwise in Customer's possession or control maintain, property insurance covering Equipment against all risks, loss or damage, in such form and with such insurers as shall be satisfactory to or specified by IDEMIA, in an amount not less than the full replacement cost of all Equipment. IDEMIA shall be named as an additional named insured and loss payee as IDEMIA's interests may appear upon the property insurance and the property insurance shall be primary with respect to any other property insurance maintained by IDEMIA.

14.4. Customer shall, at least two business days prior to the arrival of Equipment at the Customer's Site, and upon demand by IDEMIA from time to time thereafter, furnish IDEMIA with a certificate of insurance demonstrating that the required insurance coverages are in effect.

14.5. **SUBROGATION.** In the event of any loss or damage to Equipment, in addition to its other rights, IDEMIA will be subrogated to any right of Customer to recover against any person or entity with respect to such loss or damage. Customer will cooperate fully in the prosecution of such rights and will neither take nor permit to be taken any action to prejudice such rights.

## **SECTION 15. CONFIDENTIALITY, PROPRIETARY RIGHTS, AND RIGHTS IN DATA**

### **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. 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.

## 15.3 RIGHTS IN DATA

15.3.1. All materials, documents, data or information obtained from the Customer data files or any Customer medium furnished to the IDEMIA in the performance of this Contract will at all times remain the property of the Customer. Such data or information may not be used or copied for direct or indirect use by the IDEMIA after completion or termination of this Agreement without the express written consent of the Customer. All materials, documents, data or information, including copies, must be returned to the Customer at the end of this Agreement.

## **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 IDEMIA's income or net worth), all of which will be paid by Customer except as exempt by law. If IDEMIA 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.

16.2. ASSIGNABILITY. Customer may not assign this Agreement without the prior written consent of IDEMIA. Any attempted assignment in contravention of this Section 16.2 shall be null and void. IDEMIA may assign this Agreement without the prior written consent of Customer. ,

16.3. SUBCONTRACTING. IDEMIA may subcontract any portion of the work, but such subcontracting will not relieve IDEMIA 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 any issues relating hereto or disputes arising hereunder, and the rights and duties of the parties will be governed by and interpreted in accordance with the laws of the state of Missouri.

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

Customer  
Commander of Support Services  
Lee's Summit Police Department  
10 N.E. Tudor Road  
Lee's Summit, MO 64086

IDEMIA  
5515 E. LaPalma Ave., suite 100  
Anaheim, CA  
92807

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 Equipment.

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. APPROPRIATION: Any party to this Agreement's obligations under this Agreement shall cease immediately, without penalty of further payment being required, in any year for which funding for the subject of this Agreement fails to be appropriated and that party's obligations under this

Agreement shall cease immediately without penalty of further payment being required at any time where there are not sufficient authorized funds lawfully available to meet such obligations. Any such party shall give notice of such termination of funding as soon as practicable after it becomes aware of the failure of funding.

16.14. COUNTERPARTS. This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which shall constitute one and the same document.

16.15. 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.

16.16. SURVIVAL OF TERMS. The following provisions shall survive the expiration or termination of this Agreement for any reason: Section 3.4 (IDEMIA Software); Section 3.5 (Non-IDEMIA Software); if any payment obligations exist, Sections 4.1, 4.2 (Contract Price and Invoicing and Payment), 4.5 (Customer as Bailee) and 4.6 (Authorizing Filing of UCC Statements); Section 10 (Disputes); Section 13 (Limitation of Liability); Section 15 (Confidentiality, Proprietary Rights, and Rights in Data); and all of the provisions in Section 16.

**SECTION 17. AGREEMENT EXECUTION**

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

**IDEMIA :**

**NAME ("CUSTOMER")**

Signed \_\_\_\_\_

Signed \_\_\_\_\_

Name \_\_\_\_\_

Name Stephen Arbo

Title \_\_\_\_\_

Title City Manager

Date \_\_\_\_\_

Date \_\_\_\_\_

Phone \_\_\_\_\_

Phone 816-969-1023

Email \_\_\_\_\_

Email Stephen.Arbo@cityofls.net



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**Exhibit A DESCRIPTION OF COVERED PRODUCTS**

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Lee's Summit PD will receive two (2) livescan systems under this agreement. The following table lists the Products that will be provided by IDEMIA and covered under the Agreement:

**Adult Booking**

Morpho LiveScan Station Application Software
FBI Appendix F Certified Tenprint/Palmprint 500PPI Scanner
Computer, monitor, keyboard
Mug Photo Capture
FBI Certified Duplex Card printer (Finger & Palm)
Foot pedal for hands free advancement
Standard Missouri Workflows and Profiles
2-Finger FAST ID
Installation / On-site Training
Freight

**Juvenile Booking**

Morpho LiveScan Station Application Software
FBI Appendix F Certified Tenprint/Palmprint 500PPI Scanner
Computer, monitor, keyboard
Mug Photo Capture
FBI Certified Duplex Card printer (Finger & Palm)
Foot pedal for hands free advancement
Standard Missouri Workflows and Profiles
2-Finger FAST ID
Installation / On-site Training
Freight

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**Exhibit B STATEMENT OF WORK**

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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 Seller 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 by Customer, 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.

*(The below listed terms are applicable only when the Maintenance and Support Agreement includes (a) Equipment which is shown on the Description of Covered Products, Exhibit A to the Maintenance.)*

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 PPM. 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

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### Exhibit C Payment Schedule

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5 year contract with 9 x 5 (Monday thru Friday, excluding holidays) On-site Advantage Solution Maintenance for two (2) Livescan systems:

- Year 1 payment of \$0 (paid by Missouri State Highway Patrol)
- Year 2 payment of \$13,184 due 12 months after Effective Date of this contract
- Year 3 payment of \$13,184 due 12 months after Year 2 payment
- Year 4 payment of \$13,184 due 12 months after Year 3 payment
- Year 5 payment of \$13,184 due 12 months after Year 4 payment
  
- Cumulative 5 year cost to Customer for service provided by this contract = \$52,736

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## Exhibit D SOFTWARE LICENSE AGREEMENT

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In this Exhibit D, the term "Licensor" means IDEMIA, LLC, ("IDEMIA"); "Licensee," means the Customer; "Primary Agreement" means the agreement to which this exhibit is attached (Service 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.

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 (Service 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.

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 Agreement in connection with IDEMIA's delivery of certain proprietary Software or products containing embedded or pre-loaded proprietary Software, or both. This Agreement 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 Agreement 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 Agreement does not grant any rights to source code.

3.2 If the Software licensed under this Agreement contains or is derived from Open Source Software, the terms and conditions governing the use of such Open Source Software are in the Open Source Software Licenses of the copyright owner and not this Agreement. If there is a conflict between the terms and conditions of this Agreement and the terms and conditions of the Open Source Software Licenses governing Licensee's use of the Open Source Software, the terms and conditions of the license grant of the applicable Open Source Software Licenses will take precedence over the license grants in this Agreement. If requested by Licensee, IDEMIA will use commercially reasonable efforts to: (i) determine whether any Open Source Software is provided under this Agreement; (ii) identify the Open Source Software and provide Licensee a copy of the applicable Open Source Software License (or specify where that license may be found); and, (iii) provide Licensee a copy of the Open Source Software source code, without charge, if it is publicly available (although distribution fees may be applicable).

#### **SECTION 4 LIMITATIONS ON USE**

4.1 Licensee may use the Software only for Licensee's internal business purposes and only 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

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## **SECTION 6 LIMITED WARRANTY; DISCLAIMER OF WARRANTY**

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