

CITY OF EL PASO, TEXAS  
AGENDA ITEM  
DEPARTMENT HEAD'S SUMMARY FORM

**DEPARTMENT:** Police

**AGENDA DATE:** October 16, 2018

**CONTACT PERSON/PHONE:** Gregory Allen, Chief of El Paso Police Department - (915) 212-4305  
Bruce D. Collins, Director of Purchasing and Strategic Sourcing - (915) 212-1182

**DISTRICT(S) AFFECTED:** All

**STRATEGIC GOAL: NO. 2: Set the Standard for a Safe and Secure City**

**SUBJECT:**

Discussion and action on the request that the Director of the Purchasing and Strategic Sourcing Department be authorized to issue a Purchase Order(s) to Idemia Identity & Security USA LLC. Idenua Identity & Security USA LLC is the sole source and the leader in Automated Fingerprint Identification Systems Worldwide. This software supports and stores records (fingerprint cards) that are currently being processed by the AFIS.

**BACKGROUND / DISCUSSION:**

This purchase is justified as a sole source to standardize the current City of El Paso Maintenance and Support Agreement for A.F.I.S.

**SELECTION SUMMARY:**

N/A

**PROTEST**

No protest received for this requirement.

D Protest received.

**PRIOR COUNCIL ACTION:**

NA

**AMOUNT AND SOURCE OF FUNDING:**

\$213,014.10  
999-1000-15240-P1506-522020-General Fund- Non-Departmental (Schedule E)

**BOARD/ COMMISSION ACTION:**

N/A

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:** \_\_\_\_\_



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

October 8, 2018

Paula Salas  
El Paso Police Department  
300 N. Campbell  
El Paso, TX 79901

RE: Sole Source

Dear Paula Salas,

Idemia Identity & Security USA LLC is the leader in Automated Fingerprint Identification Systems Worldwide. Our equipment is manufactured and integrated at 5515 E. La Palma Ave. Suite 100, Anaheim, CA 92807.

By nature of the proprietary hardware and software components and the overall system design, there are currently no other companies authorized to perform maintenance services on our systems. Therefore, our support contracts must be considered a sole source item of procurement for the El Paso Police Department and any other agency that requires support services to be performed on their AFIS products.

Thank you for your continued support of MorphoTrak. We look forward to a long partnership with you.

Sincerely,

Jenny Pelayo  
Contracts Administration Specialist II  
Idemia Identity & Security USA LLC

**COUNCIL PROJECT FORM  
(SOLE SOURCE)**

\*\*\*\*\***POSTING LANGUAGE BELOW**\*\*\*\*\*

Please place the following item on the **REGULAR** agenda under for the Council Meeting of **OCTOBER 16, 2018.**

**Strategic Goal No. 2 - Set the Standard for a Safe and Secure City**

Discussion and action on the request that the Director of the Purchasing and Strategic Sourcing Department be authorized to issue a Purchase Order(s) to Morpho USA, Inc. dba Idemia Identity & Security USA LLC. Morpho USA, Inc. dba Idemia Identity & Security USA LLC is the sole source and the leader in Automated Fingerprint Identification Systems Worldwide. This software supports and stores the data necessary to analyze, match, and retrieve fingerprint images.

|                        |  |
|------------------------|--|
| Department:            | Police   |
| Award to:              | Morpho USA, Inc. dba Idemia Identity & Security USA LLC<br>Billerica, MA |
| Total Estimated Award: | \$213,014.10   |
| Account No.:           | 999-1000-15240-P1506-522020  |
| Funding Source:        | General Fund – Non-Departmental (Schedule E)                             |
| District(s):           | All  |
| Reference No.:         | 2019-320   |

This is a Sole Source, requirements contract.

Additionally, it is requested that the City Attorney's Office review and that the City Manager be authorized to execute any related contract documents and agreements necessary to effectuate this award.

\*\*\*\*\***ADDITIONAL INFO BELOW**\*\*\*\*\*



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

CITY CLERK DEPT.  
2018 OCT 15 AM 10:55

October 5, 2018

Bruce D. Collins  
300 N. Campbell  
El Paso, TX 79901  
Orndorfbw@elpasotexas.gov  
(915) 212-1181

**RE: Maintenance and Support Agreement # 004500-000 (REV4) – A.F.I.S., MARS, Mobile I.D. System, and the VPN Connections with New Mexico and Texas Department of Public Safety**

By means of this letter, Idemia Identity & Security USA LLC ("IDEMIA" or "Seller") hereby extends City of El Paso Maintenance and Support Agreement as referenced above.

Please find enclosed the Exhibit A, B and C and the Terms and Conditions for the period **October 1, 2018 through September 30, 2019**.

Please indicate acceptance of this agreement by signing in the acceptance block below and returning it to my attention via Email at [jenny.pelayo@idemia.com](mailto:jenny.pelayo@idemia.com) at your soonest convenience.

Once again, if you have any questions or need further clarification, please contact me at (714) 575-2964 or e-mail [jenny.pelayo@idemia.com](mailto:jenny.pelayo@idemia.com). Thank you in advance.

Sincerely,

Jenny Pelayo  
Contracts Administration Specialist II  
Idemia Identity & Security USA LLC

**Accepted by:**

**IDEMIA IDENTITY & SECURITY USA LLC**

**CITY OF EL PASO**

Signed by: 

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

Printed Name: Michael Kato

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

Title: Vice President

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

Date: 10/5/18

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

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

*Approved as to Form  
Sol M. Cortez  
Assistant City Attorney*

## Exhibit-A: Description of Covered Products

**MAINTENANCE AND SUPPORT AGREEMENT NO.** SA # 004500-000 REV4

**CUSTOMER:** City of El Paso

The following table lists the Products under maintenance coverage:

| Product                          | Description  | Node              | Qty |
|----------------------------------|--|-------------------|-----|
| <b>AFIS System</b>               |  |                   |     |
| AUX – Auxiliary – Remote Cluster | Database/Process server that supports and stores records (fingerprint cards/latent cases) that are currently being processed by the AFIS. It is the central workflow queue.  | TXEPPDCLU         | 1   |
| Biometric Server                 | Process server that is used to introduce 2 finger fast ID searches into the AFIS's matcher subsystem.  | TXEPPDMASS        | 1   |
| Central Site AFIS                | Core AFIS servers that comprise the AFIS backend in it's entirety.   | TXEPPDAFIS        | 1   |
| Coder                            | Server that is responsible for encoding minutia detail for all finger print cards introduced into the AFIS for search and identification.  | TXEPPDIPSO        | 1   |
| Database Machine                 | Also called the ODB is a unix based server that host the central oracle databases that are used to store all data including the permanent database, work in progress database, reporting database and temporary database structures. It provides a central database service to the other workflow servers providing a single location for all AFIS related database storage needs. | TXEPPDODB         | 1   |
| External Interface               | A server that is responsible for the movement of data into and out of the AFIS system. Provides the interface mechanism between the FDR/IM and AFIS system.  | TXEPPDEXTI        | 1   |
| Oracle Standard Edition One      | Oracle database software used on the ODB database machine, AUX and remote cluster  | TXEPPDOR1         | 2   |
| Report Server                    | This is the reporting server responsible for the production of reports on system utilization, user activity and record processing.   | TXEPDMAP          | 1   |
| UL matcher                       | Server that is responsible for the search and matching of ten print and latent records submitted into the system.  | TXEPPDMMC1<br>- 2 | 2   |
| V3Palm matcher controller        | Server that is responsible for the search and processing of ten print and latent records submitted into the system.  | TXEPPDMCH         | 1   |
| Network-Attached Storage         | Disk storage device that is used to provide long term retention of database backups, server images and workstation images. Approximately 10 TB of storage. This is the device where all databases and files are backed up.   | TXEPPDNAS         | 1   |
| Database SAN                     | First of two disk storage devices that physically house the AFIS Oracle and MARS (Archive) databases.  | TXEPPDSAN         | 1   |
| Morpho Mobile Gateway            | Server that provides two finger ID interface. It routes 2 finger submissions from the FiiS server and 2 finger submissions from the El Paso County Livescans to the EPPD AFIS, State AFIS and FBI RISC. It is also responsible for routing the search results back to the submitting device.   | TXEPPDGTWY        | 1   |

|                                    |   |                   |   |
|------------------------------------|---|-------------------|---|
| FiiS - Fast ID Server              | Server the provides the communications and reporting interfaces between the 2 finger Mobile Ident devices located in the police vehicles and the Morpho Mobile Gateway.   | TXEPPDFIIS        | 1 |
| WFM – Workflow Manager             | Responsible for controlling the movement of records to ensure that each record type has the correct processes performed on them from introduction to the AFIS, through search identification and retention. Also allows an administrative view into the system to monitor record movement and location within the workflow.   | TXEPPDWFM         | 1 |
| SAN2 – IBM V3700 Raid Storage unit | The second of two disk storage devices that physically house the AFIS Oracle and MARS (Archive) databases.  | TXEPPDNAS2        | 1 |
| FDR/IM – Fingerprint Data Router   | Interface device. It provides the interface between the Livescans in the field, the core AFIS and the archive system. It also provides fundamental reporting in inbound records from the field and allows for the monitoring of system performance.   | TXEPPDFDR         | 1 |
| Lexmark T-650 B&W Printer          | Centralized printer located in the AFIS tenprint section used by AFIS ten print operators to print out fingerprint cards as needed.   | TXEPPDT640        | 1 |
| Color Printer                      | Centralized printer located in the AFIS latent print section used by Latent Operators to print out latent images as needed.   | TXEPPDC32         | 1 |
| Tripplite UPS 2 KVA                | There are three of these devices. 2 are located in the bottom of the tall AFIS cabinet and one is located at the bottom of the small AFIS cabinet. These three devices are used to provide the power to all of the AFIS core servers (listed above) in the event of a power outage until the generator can kick in. The devices are a short term power outage solution only and are capable of keeping the system up only for the time necessary to gracefully shut down the AFIS in the event that the generator is unable to provide power to the facility. Since the introduction of these devices they have prevented six (6) uncontrolled shutdowns of the AFIS. | TXEPPDUPS1<br>- 3 | 3 |

|   |  |                    |     |
|---|--|--------------------|-----|
| <b>MARS System</b>  |  |                    |     |
| Morpho Archive and Retrieval System   | Also known as MARS. This is a server that provides web based services that allow for the retention and viewing of all fingerprint cards that are submitted into the AFIS. It is a record archival system.  | TXEPPDMARS         | 1   |
| Point to Point VPN across the internet to State of New Mexico               | VPN based network connection between El Paso PD and New Mexico DPS used to allow the El Paso PD Latent Examiners to submit latent prints/cases for search against records in the New Mexico AFIS hosted by New Mexico DPS in Santa Fe, New Mexico.   | TXEPPDNM           | 1   |
| Point to Point VPN across the internet to Texas Department of Public Safety | VPN network connection between El Paso PD and Texas DPS used to allow for 2 finger ID's to be search by the state AFIS and FBI Texas Department of Public Safety/  | TXEPPDDPS          | 1   |
| <b>Mobile ID System</b>   |  |                    |     |
| Mobile ID System  | MorphoIdent Solution   | TXEPRAPID001 - 113 | 113 |
| <b>MetaMorpho AFIS Expert Workstation</b>                                   |  |                    |     |
| MM AFIS WS  | MetaMorpho AFIS Expert Workstation - These are the PC based workstations that are used by the TenPrint and Latent technicians to perform record searches, verifications and comparisons for person ID and latent case lifts. There are 7 of these workstations located in the TenPrint and Latent Record location. There are also off line workstations set up as 'hot spares' in case of a workstation failure. | TXEPPDWS1 - 7      | 7   |

## Exhibit-B: Maintenance and Support Agreement - Number SA # 004500-000

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.

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

Maintenance and Support Agreement # 004500-000 REV4

Date October 5, 2018

New Term Effective

Start October 1, 2018

End September 30, 2019

|  |   |
|--|---|
| <b>Customer:</b> City of El Paso<br><b>Address (1):</b> 300 N. Campbell<br><b>Address (2):</b><br><b>City/State/Zip:</b> El Paso, TX 79901<br><b>Contact Name:</b> Bruce D. Collins, CPPO - Purchasing Director<br><b>Telephone:</b> (915) 212-1181<br><b>Fax:</b><br><b>Email:</b> Omdorfbw@elpasotexas.gov | <b>Billing Agency:</b><br><b>Address (1):</b><br><b>Address (2):</b><br><b>City/State/Zip:</b><br><b>Contact Name:</b><br><b>Telephone:</b><br><b>Fax:</b><br><b>Email:</b> |
|--|---|

☒ AFIS System

☐ LiveScan™ Station

☐ MORPHO BIS System

### STANDARD SUPPORT

☒ **Advantage – Software Support**

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

☒ **On-Site Hardware Support**

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

☒ **Parts Support**

- ◆ Parts Ordered & Shipped Next Business Day      ◆ Parts Customer Alert Bulletins
- \* If customer is providing their own on-site hardware support, the following applies:*
- Customer Orders & Replaces Parts      ➢ Telephone Technical Support for Parts Replacement Available

### ADDITIONAL OPTIONS

- ☒ **Users Conference Attendance (\$3,415 per Attendee)**      Year: 2019      Number Attendees Requested: 2
- Registration fee      • Roundtrip travel for event
  - Daily meals      • Ground transportation to/from the conference airport to the conference hotel
  - Hotel accommodations

**Additional Options: Sub-TOTAL**

**\$ Included**

|  |                    |                      |
|--|--------------------|----------------------|
|  | <b>AFIS</b>        | <b>\$149,109.87</b>  |
|  | <b>MARS</b>        | <b>\$40,472.68</b>   |
|  | <b>MOBILE</b>      | <b>\$23,431.55</b>   |
|  | <b>GRAND TOTAL</b> | <b>\$ 213,014.10</b> |

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

## Maintenance and Support Agreement - Number SA # 004500-000

### 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 City of El Paso ("Customer"), having a place of business at 300 N. Campbell, El Paso, TX 79901, enter into this Maintenance and Support Agreement ("Agreement"), pursuant to which Customer will purchase and Seller will sell the maintenance and support services as described below and in the attached exhibits. Seller and Customer may be referred to individually as "party" and collectively as "parties."

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

#### Section 1. EXHIBITS

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

Exhibit-A "Description of Covered Products"

Exhibit-B "Support Plan"

Exhibit-C "Support Plan Options and Pricing Worksheet"

#### Section 2. DEFINITIONS

"Equipment" means the physical hardware purchased by Customer from Seller pursuant to a separate System Agreement, Products Agreement, or other form of agreement.

"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.

"Products" means the Equipment (if applicable as indicated in the Description of Covered Products) 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: "1.2.3". 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 maintenance and support services described in the Support Plan 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. The Start Date is specified in the Support Plan Options and Pricing Worksheet.

"System" means the Products and services provided by Seller as a system as more fully described in the Technical and Implementation Documents attached as exhibits to a System Agreement between Customer and Seller (or IDEMIA).

"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 Support Plan Options and Pricing Worksheet, and such Services will apply only to the Products described in the Description of Covered Products.

3.2. Unless the Support Plan Options and Pricing Worksheet expressly provides to the contrary, the term of this Agreement is one (1) year, beginning on the Start Date. This annual maintenance and support period can be renewed upon the anniversary date for successive one (1) year periods unless either party notifies the other of its intention to not renew the Agreement (in whole or part) not less than thirty (30) days before the anniversary date or this Agreement is terminated for default by a party.

3.3. This Agreement covers all copies of the specified Software listed in the Description of Covered Products that are licensed by Seller to Customer. If the price for Services is based upon a per unit fee, such price will be calculated on the total number of units of the Software that are licensed to Customer as of the beginning of the annual maintenance and support period. If, during an annual maintenance and support period, Customer acquires additional units of the Software that is covered by this Agreement, the price for maintenance and support services for those additional units will be calculated and added to the total price either (1) if and when the annual maintenance and support period is renewed or (2) immediately when Customer acquires the additional units, as IDEMIA determines. Seller may adjust the price of the maintenance and support services effective as of a renewal if it provides to Customer notice of the price adjustment at least forty-five (45) days before the expiration of the annual maintenance and support period. If Customer notifies Seller of its intention not to renew this Agreement as permitted by Section 3.2 and later wishes to reinstate this Agreement, it may do so with Seller's consent provided (a) Customer ensures that all applicable Equipment is in good operating conditions at the time of reinstatement, and (b) all copies of the specified Software listed in the Description of Covered Products are covered.

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 Support Plan Options and Pricing Worksheet.

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 the exhibits. The level of Technical Support depends upon the Customer's selection as indicated in the Support Plan Options and Pricing Worksheet. Any Technical Support Services that are performed by Seller 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.

3.6.2. Unless otherwise stated in paragraph 3.6.3 or if the Support Plan Options and Pricing Worksheet expressly provides to the contrary, Seller will provide to 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 third party software provided by Seller 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. 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 on a time and materials basis at Seller's then current rates for professional services.

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 specifically listed on the Description of Covered Products.

3.7.14. 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.

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

3.7.16. 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.

3.8. 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

Seller may assign its rights and obligations under this Agreement and may subcontract any portion of Seller's performance called for by this Agreement.

#### Section 5. PRICING, PAYMENT AND TERMS

5.1 Prices in United States dollars are shown in the Support Plan Options and Pricing Worksheet and are subject to a 5% escalation fee for each subsequent support year. Unless this exhibit expressly provides to the contrary, the price is payable annually in advance. Seller will provide to Customer an invoice, and Customer will pay all invoices pursuant to Section 2251 of the Texas Government Code. During the term of this Agreement, Customer will make payments when due in the form of a check, cashier's check, or wire transfer drawn on a United States financial institution.

5.2. 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.

5.3 If Customer requests, Seller may provide services outside the scope of this Agreement or after the termination or expiration of this Agreement and Customer agrees to pay for those services. These terms and conditions and the prices in effect at the time such services are rendered will apply to those services.

5.4 Price(s) are exclusive of any taxes, duties, export or customs fees, including Value Added Tax or any other similar assessments imposed upon Seller. If such charges are imposed upon Seller, Customer shall reimburse Seller upon receipt of proper documentation of such assessments.

#### 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) total liability 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 for one (1) year under this Agreement. ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT SELLER (INCLUDING ANY OF ITS AFFILIATED COMPANIES) 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. No action for breach of this Agreement or otherwise relating to the transactions contemplated by this Agreement may be brought more than one (1) year after the accrual of such cause of action, except for money due upon an open account.

#### Section 7. DEFAULT/TERMINATION

7.1. If IDEMIA breaches a material obligation under this Agreement (unless Customer or a Force Majeure causes such failure of performance), Customer may consider IDEMIA to be in default. If Customer asserts a default, it will give IDEMIA written and detailed notice of the default. IDEMIA will have thirty (30) days thereafter either to dispute the assertion or provide a written plan to cure the default that is acceptable to Customer. If IDEMIA provides a cure plan, it will begin implementing the cure plan immediately after receipt of Customer's approval of the plan.

7.2. If Customer breaches a material obligation under this Agreement (unless IDEMIA or a Force Majeure causes such failure of performance); if Customer breaches a material obligation under the Software License Agreement 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 (including interest), 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. 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 including data, 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**

8.1. 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), or by facsimile with correct answerback received, and shall be effective upon receipt

**Customer:** City of El Paso  
**Attn:** Chief Greg Allen  
300 N. Campbell  
El Paso, TX 79901  
Phone: 915-212-4747

**Seller:** Idemia Identity & Security USA LLC  
**Attn:** Maintenance Agreements  
5515 East La Palma Avenue, Suite 100  
Anaheim, CA 92807  
Phone: (714)238-2000 Fax: (714)632-2158

8.2. Neither party will be liable for its non-performance or delayed performance if caused by an event, circumstance, or act of a third party that is beyond such party's reasonable control.

8.3. 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 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 a future or continuing waiver of that same right or power, or the waiver of any other right or power.

8.4. Customer or Idemia may not assign any of its rights under this Agreement without prior written consent.

8.5. This Agreement, including the exhibits, constitutes the entire agreement of the parties regarding the covered

maintenance and support services and supersedes all prior and concurrent agreements and understandings, whether written or oral, related to the services performed. Neither this Agreement nor the Exhibits may not be altered, amended, or modified except by a written agreement signed by authorized representatives of both parties. Customer agrees to reference this Agreement on all purchase orders issued in furtherance of this Agreement. Neither party will be bound by any terms contained in Customer's purchase orders, acknowledgements, or other writings (even if attached to this Agreement).

8.6. This Agreement will be governed by the laws of the United States to the extent that they apply and otherwise by the laws of the State to which the Products are shipped if Licensee is a sovereign government entity or the laws of the State of Texas if Licensee is not a sovereign government entity.

#### **Section 9. CERTIFICATION DISCLAIMER**

Seller specifically disclaims all certifications regarding the manner in which Seller conducts its business or performs its obligations under this Agreement, unless such certifications have been expressly accepted and signed by an authorized signatory of Seller.

#### **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.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the day and year first written above.

#### **Section 11. CUSTOMER REQUESTS**

11.1. All payments by the City of El Paso under this Agreement are payable only out of current City of El Paso revenues. In the event that funds relating to this Agreement do not become available, such as by City Council not appropriating the funds, the City shall have no obligation to pay or perform any services related herein to IDEMIA for the City's fiscal year during which time such funding is not available or appropriated. Should City experience a funding unavailability, either party may choose to terminate for convenience.

11.2. Notwithstanding anything in this Agreement, IDEMIA acknowledges that City is a governmental entity subject to the Public Information Act, Chapter 552, Texas Government Code (the "Act"). City will maintain the confidentiality of the proposed confidential and proprietary information to the extent permitted by law and agrees that, as required by the Act, it will notify IDEMIA if a request relating to such proprietary information is received. IDEMIA represents that it understand that the Act excepts from disclosure trade secrets and confidential commercial information and that it will need to assert its own proprietary interest as a basis for nondisclosure."

11.3. Seller will defend, indemnify and hold Customer, harmless, including applicable directors, officers, employees, agents and Affiliates from and against any person (including Customer's employees), property, or operation, in each case arising out of or in connection with the Seller's performance or non-performance of this Agreement or the manufacture, sale, delivery, use or other dealings with the Products or Services contemplated hereunder.