



14 Crosby Dr., 2nd Flr.,  
Bedford, MA 01730  
Tel: (978) 215-2400

June 11, 2024

Jennifer Claudel  
Monterey County Sheriff  
1414 Natividad Road  
Salinas, CA 93906  
ClaudelJ@co.monterey.ca.us  
(831)755-3710

**RE: Maintenance and Support Agreement # 002768-003**

By means of this letter, IDEMIA Identity & Security USA LLC ("IDEMIA" or "Seller") hereby extends **Monterey County Sheriff** Maintenance and Support Agreement for the period **July 1, 2024** through **June 30, 2027** per the Terms and Conditions below.

Please indicate acceptance of this agreement by signing in the acceptance block below and returning it to my attention via Email at susan.noisseau@us.idemia.com at your soonest convenience.

If you have any questions or need further clarification, please contact me at (518) 428-6681 or e-mail susan.noisseau@us.idemia.com. Thank you in advance.

Thank you,

Susan Noisseau  
Contracts Administrator III  
IDEMIA Identity & Security USA LLC

**Accepted by:**

**IDEMIA IDENTITY & SECURITY USA LLC**

Signed by:

Printed Name: Casey Mayfield

Title: Sr. Vice President

Date: June 11, 2024

**IDEMIA IDENTITY & SECURITY USA LLC**

Signed by:

Printed Name: Krista L. Crawley

Title: Secretary

Date: June 11, 2024

**COUNTY OF MONTEREY**

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

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

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

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

DocuSigned by:

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County Counsel

DocuSigned by:

6/12/2024 | 11:22 AM PDT

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Auditor-Controller

## Exhibit A: Description of Covered Products

**MAINTENANCE AND SUPPORT AGREEMENT NO. SA # 002768-003**

**CUSTOMER: Monterey County Sheriff**

The following table lists the Products under maintenance coverage:

### Sales Contract # 82000 – Pro-rated 02/03/2025 to 6/30/2025

Product	Description	Node	Qty	24-25	25-26	26-27
License	MBIS Reviewer / Tenprint Software License, Reviewer Software	N/A	1	\$210.00	\$550.00	\$580.00

### Sales Contract # 71211-2

Product	Description	Node	Qty	24-25	25-26	26-27
Livescan Del Ray Oaks PD	Livescan, Desktop, MTOP scanner, 22" monitor	LSID-BD8	1	\$1,900.00	\$1,995.00	\$2,095.00

### Sales Contract # 82210 – Pro-rated 02/12/2025 to 6/30/2025

Product	Description	Node	Qty	24-25	25-26	26-27
IDENT*	IDent 2.0 Solution, IDent 2.0 Device, Mobile Connection Windows Software, USB 2.0 Data Cable, IDent 2.0 Quick Start Guide, Black Device Sleeve	674 1349 1344 1345 1581 1775 1778	7	\$666.00	\$1,750.00	\$5,250.00

\* **IDENT 2.0 Solution Support:** Access to IDEMIA Technical Help Desk: Ph: 1-800-734-6241. Regular Business Hours are 8:00 am – 5:00 pm, local time at Customer site. After hours calls receive a response next business day from an IDEMIA Customer Service Technician. Unit Failure: IDEMIA will only repair or replace failed unit(s) that exhibit normal wear and tear. IDEMIA will not repair or replace units which fail due to abuse or improper operation and handling. If unit fails and Customer contacts IDEMIA by 3:00 pm local time (at Customer Site), IDEMIA will ship a replacement unit to the Customer Site via two-day air.

### Sales Contract # 71211-1

Product	Description	Node	Qty	24-25	25-26	26-27
Workstation	Multimodal Expert Workstation, Win 10, Flatbed Scanner, HP Z2 SFF G5, (2) LED Monitor 24"	Scanner serial: US5W031660 HP serial: MXL21554ZX Monitors serial: CNK20112KN CNK20112L2	1	\$4,290.00	\$4,505.00	\$4,730.00

## Exhibit B: Maintenance and Support Agreement - Number SA # 002768-003

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 # 002768-003 Date June 11, 2024  
 New Term Effective Start July 1, 2024 End June 30, 2027

For support on covered products, please contact Technical Help Desk at (800) 734-6241  
 or email at: AnaheimCSCenter@us.idemia.com

**STANDARD SUPPORT – SEE EXHIBIT A FOR IDENT 2.0 SUPPORT PLAN**

**Advantage – Software Support**

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

**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

<b>ANNUAL INVOICE AMOUNT FOR PERIOD 7/1/2024 TO 6/30/2025*:</b>	<b>\$ 7,066.00</b>
<b>ANNUAL INVOICE AMOUNT FOR PERIOD 7/1/2025 TO 6/30/2026*:</b>	<b>\$ 8,800.00</b>
<b>ANNUAL INVOICE AMOUNT FOR PERIOD 7/1/2026 TO 6/30/2027*:</b>	<b>\$ 12,655.00</b>
<b>GRAND TOTAL*:</b>	<b>\$28,521.00</b>

\*Exclusive of taxes if applicable

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

## Maintenance and Support Agreement - Number SA # 002768-003

### Terms & Conditions

IDEMIA Identity & Security USA LLC, ("IDEMIA" or "Seller") having a principal place of business at 14 Crosby Dr., 2nd Flr., Bedford, MA 01730, and Monterey County Sheriff ("Customer"), having a place of business at 1414 Natividad Road, Salinas, CA 93906, 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 will automatically renew 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 pays to Seller the amount that it would have paid if Customer had kept this Agreement current, (b) Customer ensures that all applicable Equipment is in good operating conditions at the time of reinstatement, and (c) 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. Unless this exhibit expressly provides to the contrary, the price is payable annually in advance. The County shall certify the invoice, either in the requested amount or in such other amount as the County approves in conformity with this Agreement and shall promptly

submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice. 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. REMOVED**

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.

5.5. Price Protection. On the Effective Date of each year during the Term, either Party may notify the other in writing of any desired change in the price of any of the Products as a result of an increase or decrease in IDEMIA's actual costs in the maintenance and support of the Products. After a Party has received such notice, if such Party does not accept any or all of such price changes, IDEMIA and Customer shall negotiate in good faith for a period not to exceed ten (10) days. In the absence of agreement regarding any proposed price changes, the prices shall remain unchanged pending resolution pursuant the executive escalation. Any mutually agreed-upon change in the price for the Products will be documented in writing signed by Customer and IDEMIA and will be implemented on the date agreed by the Parties.

5.6. Inflation Adjustment. The Price Per Service/Other Basis identified above shall be adjusted for inflation on an annual basis during the term of this Agreement based upon the Consumer Price Index (CPI) published for the appropriate Product/Service as of the Effective Date of the parties' Agreement.

#### **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.

7.5. IDEMIA develops, manufactures, licenses and offers high technology products and services. In the ordinary course of its product development life cycle, IDEMIA will declare certain products as obsolete and end-of-life ("EOL"). In the event that IDEMIA determines that a product is EOL, IDEMIA shall endeavor to provide its customer with at least twelve (12) months advanced notice of the EOL date. Such notice shall include the planned last purchase order date and last shipment date for the EOL product. At the time that IDEMIA provides its customers with such EOL notice, IDEMIA shall further endeavor to provide its customer with notice of IDEMIA's intent to offer a next version of the product, or a new or substitute product or service with the same or similar functionality to the EOL product. IDEMIA's product EOL notice shall also include the planned period for any continued technical support of the EOL product. During any continued technical support period, IDEMIA will continue to use commercially reasonable efforts to repair the EOL product based on availability of parts and availability of trained technical support, however, IDEMIA does not warrant performance of the EOL product and IDEMIA will not prepare any further updates or maintenance fixes for the EOL product.

#### **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:** Monterey County Sheriff

Attn: Jennifer Claudel

1414 Natividad Road

Salinas, CA 93906

Phone: (831)755-3710

**Seller:** IDEMIA Identity & Security USA LLC

Attn: Maintenance Agreements

14 Crosby Dr., 2nd Flr.

Bedford, MA 01730

Phone: (978)215-2400

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 may not assign any of its rights under this Agreement without IDEMIA's 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 Delaware 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.