

TIPS VENDOR AGREEMENT

Between Gemalto Cogent, Inc. and

THE INTERLOCAL PURCHASING SYSTEM (TIPS),
a Department of Texas Education Service Center Region 8
for

RFP 190302 Technology Solutions Products and Services (3)

General Information

The Vendor Agreement ("Agreement") made and entered into by and between The Interlocal Purchasing System (hereinafter referred to as "TIPS" respectfully) a government cooperative purchasing program authorized by the Region 8 Education Service Center, having its principal place of business at 4845 US Hwy 271 North, Pittsburg, Texas 75686. This Agreement consists of the provisions set forth below, including provisions of all Attachments referenced herein. In the event of a conflict between the provisions set forth below and those contained in any Attachment, the provisions set forth shall control unless otherwise agreed by the parties in writing and by signature and date on the attachment.

The vendor Agreement shall include and incorporate by reference this Agreement, the terms and conditions, special terms and conditions, any agreed upon amendments, as well as all of the sections of the solicitation as posted, including any addenda and the awarded vendor's proposal. Once signed, if an awarded vendor's proposal varies or is unclear in any way from the TIPS Agreement, TIPS, at its sole discretion, will decide which provision will prevail unless otherwise specifically agreed in writing by the parties.

A Purchase Order, Agreement or Contract is the TIPS Member's approval providing the authority to proceed with the negotiated delivery order under the Agreement. Special terms and conditions as agreed to between the vendor and TIPS Member should be added as addendums to the Purchase Order, Agreement or Contract. Items such as certificate of insurance, bonding requirements, small or disadvantaged business goals are some of the addendums possible.

Terms and Conditions

Freight

All quotes to members shall provide a line item for cost for freight or shipping regardless if there is a charge or not. If no charge for freight or shipping, indicate by stating "No Charge" or "\$0", "included in price" or other similar indication. Otherwise, all shipping, freight or delivery changes shall be passed through to the TIPS Member at cost with no markup and said charges shall be agreed by the TIPS Member.

Warranty Conditions

All new supplies equipment and services shall include manufacturer's minimum standard warranty unless otherwise agreed to in writing. Vendor shall be legally permitted to sell all products offered for sale to TIPS Members. All goods proposed and sold shall be new unless clearly stated in writing.

Customer Support

The Vendor shall provide timely and accurate customer support for orders to TIPS Members as agreed by the Parties. Vendors shall respond to such requests within a commercially reasonable time after receipt of the request. If support and/or training is a line item sold or packaged with a sale, support shall be as agreed with the TIPS Member.

Agreements

Agreements for purchase will normally be put into effect by means of a purchase order(s) executed by authorized agents of the TIPS Member participating government entities, but other means of placing an order may be used at the Member's discretion.

Tax exempt status

Most TIPS Members are tax exempt and the related laws and/or regulations of the controlling jurisdiction(s) of the TIPS Member shall apply.

Assignments of Agreements

No assignment of Agreement may be made without the prior notification of TIPS. Written approval of TIPS shall not be unreasonably withheld. Payment for delivered goods and services can only be made to the awarded Vendor, Vendor designated reseller or vendor assigned company.

Disclosures

1. Vendor and TIPS affirms that he/she or any authorized employees or agents has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with this Agreement.

2. Vendor shall attach, in writing, a complete description of any and all relationships that might be considered a conflict of interest in doing business with the TIPS program.
3. The Vendor affirms that, to the best of his/her knowledge, the offer has been arrived at independently, and is submitted without collusion with anyone to obtain information or gain any favoritism that would in any way limit competition or give an unfair advantage over other vendors in the award of this Agreement.

Renewal of Agreements

The Agreement with TIPS is for one (1) year with an option for renewal for an additional one (1) consecutive year if both parties agree. TIPS may or may not exercise the one-year extension beyond the base one-year term and whether or not to offer the extension is at the sole discretion of TIPS. The scheduled Agreement termination date shall be the last date of the month of the last month of the agreement's legal effect. **Example:** *If the agreement is scheduled to end on May 23, the anniversary date of the award, it would actually be extended to May 31 in the last month of the last year the contract is active.*

Automatic Renewal Clauses Incorporated in Awarded Vendor Agreements with TIPS Members Resulting from the Solicitation and with the Vendor Named in this Agreement.

No Agreement for goods or services with a TIPS Member by the awarded vendor named in this Agreement that results from the solicitation award named in this Agreement, may incorporate an automatic renewal clause with which the TIPS Member must comply. All renewal terms incorporated in an Agreement by the vendor with the TIPS Member shall only be valid and enforceable when the vendor receives written confirmation by purchase order or executed Agreement issued by the TIPS Member for any renewal period. The purpose of this clause is to avoid a TIPS Member inadvertently renewing an Agreement during a period in which the governing body of the TIPS Member has not properly appropriated and budgeted the funds to satisfy the Agreement renewal. This term is not negotiable and any Agreement between a TIPS Member and a TIPS awarded vendor with an automatic renewal clause that conflicts with these terms is rendered void and unenforceable.

Shipments

The Vendor shall ship, deliver or provide ordered products or services within a commercially reasonable time after the receipt of the order from the TIPS Member. If a delay in said delivery is anticipated, the Vendor shall notify TIPS Member as to why delivery is delayed and shall provide an estimated time for completion of the order. TIPS or the requesting entity may cancel the order if estimated delivery time is not acceptable or not as agreed.

Invoices

The awarded vendor shall submit invoices or payment requests to the TIPS Member participating entity clearly stating "Per TIPS Agreement # xxxxxxxx or similarly identifying the Agreement. Each invoice or pay request shall include the TIPS Member's purchase order number or other identifying designation as provided in the order by the TIPS Member. If applicable, the shipment tracking number or pertinent information for verification of TIPS Member receipt shall be made available upon request.

Payments

The TIPS Member will make payments directly to the Vendor or vendor assigned dealer after receiving invoice or in compliance with applicable statute, whichever is the greater time or as otherwise provided by an agreement of the parties.

Pricing

Price increases will be honored according to the terms of the solicitation. All pricing submitted to TIPS shall include the participation fee, as provided in the solicitation, to be remitted to TIPS by the Vendor. Vendor will not show adding the fee to the invoice presented to TIPS Member customer. Failure to render the participation fee to TIPS shall constitute a breach of this agreement and shall be grounds for termination of this agreement and any other agreement held with TIPS.

Participation Fees

The Participation Fee that was published as part of the Solicitation and the fee published is the legally effective fee, along with any Fee conditions stated in the RFP. Collection of the fees by TIPS is required under Texas Government Code §791.011 Et seq. Vendor or vendor assigned dealer agrees to pay the participation fee for all Agreement sales to TIPS on a monthly scheduled report or as otherwise agreed by the parties. Vendor must login to the TIPS database and use the "Submission Report" section to report sales. The Vendor or vendor assigned dealers are responsible for keeping record of all sales that go through the TIPS Agreement and submitting same to TIPS.

Failure to pay the participation fee will result in termination of Agreement and possible legal action. Please contact TIPS at tips@tips-usa.com or call (866) 839-8477 if you have questions about paying fees.

Indemnity

The Vendor agrees to indemnify and hold harmless and defend TIPS, TIPS Member(s), officers and employees from and against all claims and suits by third parties for damages, injuries to persons (including death), property damages, losses, and expenses including court costs and reasonable attorney's fees, arising out of, or resulting from, Vendor's work under this Agreement, including all such causes of action based upon common, constitutional, or statutory law, or based in whole or in part, upon allegations of negligent or intentional acts on the part of the Vendor, its officers, employees, agents, subcontractors, licensees, or invitees. Parties found liable shall pay their proportionate share of damages as agreed by the parties or as ordered by a court of competent jurisdiction over the case. **NO LIMITATION OF LIABILITY FOR DAMAGES FOR PERSONAL INJURY OR PROPERTY DAMAGE ARE PERMITTED OR AGREED BY TIPS/ESC Region 8.** Per Texas Education Code §44.032(f), and pursuant to its requirements only, reasonable Attorney's fees are recoverable by the prevailing party in any dispute resulting in litigation.

State of Texas Franchise Tax

By signature hereon, the bidder hereby certifies that he/she is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171, Tax Code.

Miscellaneous

The Vendor acknowledges and agrees that continued participation in TIPS is subject to TIPS sole discretion and that any Vendor may be removed from the participation in the Program at any time with or without cause. Nothing in the Agreement or in any other communication between TIPS and the Vendor may be construed as a guarantee that TIPS or TIPS Members will submit any orders at any time. TIPS reserves the right to request additional proposals for items or services already on Agreement at any time.

Purchase Order Pricing/Product Deviation

If a deviation of pricing/product on a purchase order or contract modification occurs, TIPS is to be notified within 48 hours of receipt of order.

Termination for Convenience

TIPS reserves the right to terminate this agreement for cause or no cause for convenience with a thirty-day written notice. Termination for convenience is required under Federal Regulations 2 CFR part 200. All purchase orders presented to the Vendor by a TIPS Member prior to the actual termination of this agreement shall be honored at the option of the TIPS Member. The awarded vendor may terminate the agreement with ninety (90) days written notice to TIPS 4845 US Hwy North, Pittsburg, Texas 75686. The vendor will be paid for goods and services delivered prior to the termination provided that the goods and services were delivered in accordance with the terms and conditions of the terminated agreement.

TIPS Member Purchasing Procedures

Purchase orders or their equal are issued by participating TIPS Member to the awarded vendor and should indicate on the order that the purchase is per the applicable TIPS Agreement number. Orders are typically emailed to TIPS at tipspo@tips-usa.com.

- Awarded vendor delivers goods/services directly to the participating member.
- Awarded vendor invoices the participating TIPS Member directly.
- Awarded vendor receives payment directly from the participating member.
- Awarded vendor reports sales monthly to TIPS (unless prior arrangements have been made with TIPS for an alternative submission schedule).

Licenses

Awarded vendor shall maintain in current status all federal, state and local licenses, bonds and permits required for the operation of the business conducted by awarded vendor. Awarded vendor shall remain fully informed of and in compliance with all ordinances and regulations pertaining to the lawful provision of goods or services under the Agreement. TIPS and TIPS Members reserves the right to stop work and/or cancel Agreement of any awarded vendor whose license(s) have expired, lapsed, or are suspended or terminated subject to a 30-day cure period unless prohibited by applicable statute or regulation.

Novation

If awarded vendor sells or transfers all assets or the entire portion of the assets used to perform this Agreement, a successor in interest must guarantee to perform all obligations under this Agreement. A simple change of name agreement will not change the Agreement obligations of awarded vendor.

Site Requirements (only when applicable to service or job)

Cleanup: Awarded vendor shall clean up and remove all debris and rubbish resulting from their work as required or directed by TIPS Member. Upon completion of work, the premises shall be left in good repair and an orderly, neat, clean and unobstructed condition.

Preparation: Awarded vendor shall not begin a project for which TIPS Member has not prepared the site, unless awarded vendor does the preparation work at no cost, or until TIPS Member includes the cost of site preparation in a purchase order.

Site preparation includes, but is not limited to: moving furniture, installing wiring for networks or power, and similar pre-installation requirements.

Registered sex offender restrictions: For work to be performed at schools, awarded vendor agrees that no employee of a sub-contractor who has been adjudicated to be a registered sex offender will perform work at any time when students are, or reasonably expected to be, present. Awarded vendor agrees that a violation of this condition shall be considered a material breach and may result in the cancellation of the purchase order at the TIPS Member's discretion.

Awarded vendor must identify any additional costs associated with compliance of this term. If no costs are specified, compliance with this term will be provided at no additional charge.

Safety measures: Awarded vendor shall take all reasonable precautions for the safety of employees on the worksite, and shall erect and properly maintain all necessary safeguards for protection of workers and the public. Awarded vendor shall post warning signs against all hazards created by the operation and work in progress. Proper precautions shall be taken pursuant to state law and standard practices to protect workers, general public and existing structures from injury or damage.

Smoking

Persons working under Agreement shall adhere to the TIPS Member's or local smoking statutes, codes or policies.

Marketing

Awarded vendor agrees to allow TIPS to use their name and logo within TIPS website, marketing materials and advertisement subject to any reasonable restrictions provided to TIPS in the Proposal to the Solicitation. The Vendor may submit an acceptable use directive for Vendor's names and logos with which TIPS agrees to comply. Any use of TIPS name and logo or any form of publicity, inclusive of press release, regarding this Agreement by awarded vendor must have prior approval from TIPS which will not be unreasonably withheld. Request may be made by email to TIPS@TIPS-USA.COM.

Supplemental agreements

The TIPS Member entity participating in the TIPS Agreement and awarded vendor may enter into a separate supplemental agreement or contract to further define the level of service requirements over and above the minimum defined in this Agreement i.e. invoice requirements, ordering requirements, specialized delivery, etc. Any supplemental agreement or contract developed as a result of this Agreement is exclusively between the participating entity and awarded vendor. TIPS, its agents, TIPS Members and employees shall not be made party to any claim for breach of such agreement unless named and agreed by the Party in question in writing in the agreement. If a vendor submitting a Proposal requires TIPS and/or TIPS Member to sign an additional agreement, those agreements shall comply with the award made by TIPS to the Vendor. Supplemental Vendor's Agreement documents may not become part of TIPS's Agreement with vendor unless and until an authorized representative of TIPS reviews and approves it. TIPS permits TIPS Members to negotiate additional terms and conditions with the Vendor for the provision of goods or services under the Vendor's TIPS Agreement.

Survival Clause

All applicable agreements, contracts, software license agreements, warranties or service agreements that were entered into between Vendor and TIPS or the TIPS Member Customer under the terms and conditions of this Agreement shall survive the expiration or termination of this Agreement. All Orders, Purchase Orders issued or contracts executed by TIPS or a TIPS Member and accepted by the Vendor prior to the expiration or termination of this agreement, shall survive expiration or termination of the Agreement, subject to previously agreed terms and conditions agreed by the parties or as otherwise specified herein relating to termination of this agreement.

Legal obligations

It is the responding vendor's responsibility to be aware of and comply with all local, state and federal laws governing the sale of products/services identified in this Solicitation and any awarded Agreement thereof. Applicable laws and regulations must be followed even if not specifically identified herein.

Audit rights

Due to transparency statutes and public accountability requirements of TIPS and TIPS Members', the awarded Vendor shall, at their sole expense, maintain appropriate due diligence of all purchases made by TIPS Member that utilizes this Agreement. TIPS and Region 8 ESC each reserve the right to audit the accounting of TIPS related purchases for a period of three (3) years from the time such purchases are made. This audit right shall survive termination of this Agreement for a period of one (1) year from the effective date of termination. In order to ensure and confirm compliance with this agreement, TIPS shall have authority to conduct audits of Awarded Vendor's pricing that is offered to TIPS Members with 30 days' notice unless the audit is ordered by a Court Order or by a Government Agency with authority to do so without notice. Notwithstanding the foregoing, in the event that TIPS is made aware of any pricing

being offered to eligible entities that is materially inconsistent with the pricing under this agreement, TIPS shall have the ability to conduct the audit internally or may engage a third-party auditing firm to investigate any possible non-complying conduct or may terminate the Agreement according to the terms of this Agreement. In the event of an audit, the requested materials shall be reasonably provided in the time, format and at the location acceptable to Region 8 ESC or TIPS.

Force Majeure

If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement then such party shall give notice and full particulars of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

Project Delivery Order Procedures

The TIPS Member having approved and signed an interlocal agreement, or other TIPS Membership document, may make a request of the awarded vendor under this Agreement when the TIPS Member desires goods or services awarded to the Vendor. Notification may occur via phone, the web, courier, email, fax, or in person. Upon notification of a pending request, the awarded vendor shall acknowledge the TIPS Member's request as soon as possible, but must make contact with the TIPS Member within two working days.

Status of TIPS Members as Related to This Agreement

TIPS Members stand in the place of TIPS as related to this agreement and have the same access to the proposal information and all related documents. TIPS Members have all the same rights under the awarded Agreement as TIPS.

Vendor's Resellers as Related to This Agreement

Vendor's Named Resellers under this Agreement shall comply with all terms and conditions of this agreement and all addenda or incorporated documents. All actions related to sales by Authorized Vendor's Resellers under this Agreement are the responsibility of the Awarded Vendor.

Support Requirements

If there is a dispute between the awarded vendor and TIPS Member, TIPS or its representatives will assist in conflict resolution or third party if requested by either party. TIPS, or its representatives, reserves the right to inspect any project and audit the awarded vendors TIPS project files, documentation and correspondence related to the requesting Member's order. If there are confidentiality requirements by either party, TIPS shall comply to the extent permitted by law.

Incorporation of Solicitation

The TIPS Solicitation, whether a Request for Proposals, the Request for Competitive Sealed Proposals or Request for Qualifications solicitation, or other, the Vendor's response to same and all associated documents and forms made part of the solicitation process, including any addenda, that resulted in the execution of this agreement are hereby incorporated by reference into this agreement as if copied verbatim.

SECTION HEADERS OR TITLES

THE SECTION HEADERS OR TITLES WITHIN THIS DOCUMENT ARE MERELY GUIDES FOR CONVENIENCE AND ARE NOT FOR CLASSIFICATION OR LIMITING OF THE RESPONSIBILITIES OF THE PARTIES TO THIS DOCUMENT.

NEW STATUTORY REQUIREMENT EFFECTIVE SEPTEMBER 1, 2017.

Texas governmental entities are prohibited from doing business with companies that fail to certify to this condition as required by Texas Government Code Sec. 2270.

By executing this agreement, you certify that you are authorized to bind the undersigned Vendor and that your company (1) does not boycott Israel; and (2) will not boycott Israel during the term of the Agreement.

You certify that your company is not listed on and does not and will not do business with companies that are on the Texas Comptroller of Public Accounts list of Designated Foreign Terrorists Organizations per Texas Gov't Code 2270.0153 found at <https://comptroller.texas.gov/purchasing/docs/foreign-terrorist.pdf>

You certify that if the certified statements above become untrue at any time during the life of this Agreement that the Vendor will notify TIPS within 1 business day of the change by a letter on your letterhead from an authorized representative of the Vendor stating the non-compliance decision and the TIPS Agreement number and description at:

Attention: General Counsel
ESC Region 8/The Interlocal Purchasing System (TIPS)
4845 Highway 271 North
Pittsburg, TX, 75686
And by an email sent to bids@tips-usa.com

Insurance Requirements

The undersigned Vendor agrees to maintain the below minimum insurance requirements for TIPS Contract Holders.

General Liability	\$1,000,000 each Occurrence/ Aggregate
Automobile Liability	\$300,000 Includes owned, hired & non-owned
Workers' Compensation	Statutory limits
Umbrella Liability	\$1,000,000

When the contractor or its subcontractors are liable for any damages or claims, the contractors'

policy, when the Vendor is responsible for the claim, must be primary over any other valid and collectible insurance carried by the District. Any immunity available to TIPS or TIPS Members shall not be used as a defense by the contractor's insurance policy. The coverages and limits are to be considered minimum requirements and in no way limit the liability of the Contractor(s). Insurance shall be written by a carrier with an A-; VII or better rating in accordance with current A.M. Best Key Rating Guide. Only deductibles applicable to property damage are acceptable, unless proof of retention funds to cover said deductibles is provided. "Claims made" policies will not be accepted. Vendor's required minimum coverage shall not be suspended, voided, cancelled, non-renewed or reduced in coverage or in limits unless replaced by a policy that provides the minimum required coverage except after thirty (30) days prior written notice by certified mail, return receipt requested has been given to TIPS or the TIPS Member if a project or pending delivery of an order is ongoing. Upon request, certified copies of all insurance policies shall be furnished to the TIPS or the TIPS Member.

Special Terms and Conditions

- **Agreements:** All vendor orders received from TIPS Members must be emailed to TIPS at tipspo@tips-usa.com. Should a TIPS Member send an order direct to vendor, it is the vendor's responsibility to forward a copy of the order to TIPS at the email above within 3 business days and confirm its receipt with TIPS.
 - **Vendor Encouraging Members to bypass TIPS agreement:** Encouraging entities to purchase directly from the Vendor or through another agreement, when the Member has requested using the TIPS cooperative Agreement or price, and thereby bypassing the TIPS Agreement is a violation of the terms and conditions of this Agreement and will result in removal of the Vendor from the TIPS Program.
 - **Order Confirmation:** All TIPS Member Agreement purchase orders are approved daily by TIPS and sent to vendor. The vendor should confirm receipt of orders to the TIPS Member (customer) within 3 business days.
 - **Vendor custom website for TIPS:** If Vendor is hosting a custom TIPS website, updated pricing when effective. TIPS shall be notified when prices change in accordance with the award.
 - **Back Ordered Products:** If product is not expected to ship within the time provided to the TIPS member by the Vendor, customer is to be notified within 3 business days and appropriate action taken based on customer request.
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Page 11 of 11 will be the TIPS Vendor Agreement Signature Page

TIPS Vendor Agreement Signature Form

RFP 190302 Technology Solutions Products and Services (3)

Company Name Gemalto Cogent, Inc. (A Thales Company)

Address 9442 North Capital of Texas Hwy #400

City Austin State TX Zip 78759

Phone (512)257-3900 Fax (626)325-9700

Email of Authorized Representative robert.cimperman@thalesgroup.com

Name of Authorized Representative Robert Cimperman

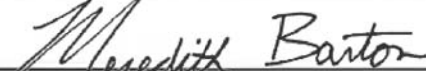
Title VP Sales and Marketing North America

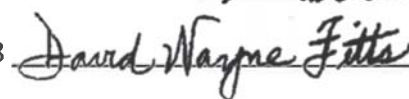
Signature of Authorized Representative 

Date 9/30/19

TIPS Authorized Representative Name Meredith Barton

Title Chief Operating Officer

TIPS Authorized Representative Signature 

Approved by ESC Region 8 

Date 9/30/19

The following pages 12 -73 of 73 total pages represent an addendum to this vendor agreement and represent the supplementary agreements and forms to be used with TIPS member entities when they purchase through the TIPS contract 190302.

TIPS
HARDWARE AND SOFTWARE MAINTENANCE AND SUPPORT AGREEMENT
(FOR BIOMETRIC SYSTEMS CUSTOMERS)

This TIPS Hardware and Software Maintenance and Support Agreement (the “**Agreement**”) is made and entered into as of [add contract effective date, ____] (the “**Effective Date**”), between Gemalto Cogent, Inc., a Delaware corporation having its principal place of business at 639 North Rosemead Boulevard, Pasadena, California 91107 (“**Gemalto Cogent**”), and [add customer’s company name], a [add state or province of incorporation for customer’s company] corporation having its principal place of business at [add customer’s principal business address] (“**Licensee**”).

WHEREAS, the parties have entered into the Supply Agreement (as defined below), pursuant to which Gemalto Cogent has granted to Licensee certain license rights in the Software (as defined below);

WHEREAS, the Licensee has purchased the Hardware (as defined below) from Gemalto Cogent; and

WHEREAS, Licensee desires to obtain and Gemalto Cogent agrees to provide maintenance and support services for such Hardware and Software, in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree to the following terms and conditions, which set forth the rights, duties and obligations of the parties:

NOTE: This Agreement does not contain any license terms and, accordingly, should be executed in connection with a license agreement for the applicable Software, which agreement should contain license terms governing the use of the Software.

I. DEFINITIONS

1.1 “**Additional Support Term**” has the meaning set forth in Section 8.1.

1.2 “**Documentation**” means the written materials, including instructions, rules, guidelines, manuals, and/or procedures, associated with the Software that Gemalto Cogent generally makes available to its licensees of such Software.

1.3 “**Error**” means a reproducible defect or combination of defects in the Software that results in a failure of the Software, when used in accordance with Gemalto Cogent’s instructions (including, without limitation, the applicable Documentation), to function substantially in accordance with the Specifications. As used hereunder, a reproducible defect will mean a defect that Gemalto Cogent can reproduce using the most recent version of the Software, as delivered by Gemalto Cogent to Licensee, in accordance with the terms of the Supply Agreement and the terms set forth herein.

1.4 “**Error Correction**” means either (a) a bug fix, patch, or other modification or addition that, when made or added to the Software, corrects an Error, or (b) a procedure or routine that, when observed in the regular operation of the Software, eliminates the practical adverse effect of an Error on Licensee.

1.5 “**Hardware**” means the hardware purchased by Licensee from Gemalto Cogent for use in connection with the Software as such hardware is further described on Exhibit C (Support Fees).

1.6 “**Initial Support Term**” has the meaning set forth in Section 8.1.

1.7 “**Software**” means the computer program(s) licensed by Gemalto Cogent to Licensee pursuant to the Supply Agreement as further described on Exhibit C (Support Fees).

1.8 “**Specifications**” means the technical specifications for the Software as set forth in the applicable Documentation.

1.9 “**Supply Agreement**” means that certain agreement or purchase order entered into by and between Gemalto Cogent and Licensee, dated [add date of Supply Agreement or purchase order for hardware purchase and software license], which agreement or purchase order addresses the purchase of Hardware and the license of Software from Gemalto Cogent and which is hereby incorporated herein by reference.

1.10 “**Support Fees**” has the meaning set forth in Section 5.1.

1.11 “**Support Services**” means the support and maintenance services provided by Gemalto Cogent pursuant to this Agreement, as further described herein.

1.12 “**Support Services Term**” has the meaning set forth in Section 8.1.

1.13 “**Technical Contact**” means the person or persons designated by Licensee on Exhibit A (Licensee’s Primary Service Engineer(s)), attached hereto, as the initial interface for Error reporting for the Software and fault reporting for the Hardware.

1.14 “**Update**” means a revision of the Software which is released by Gemalto Cogent during the Term of this Agreement and which contains an Error Correction. Unless agreed otherwise in writing, any Updates provided to Licensee during the Term of this Agreement will be provided by Gemalto Cogent to Licensee at no extra charge so long as Licensee is in compliance with the terms and conditions of the Agreement. Any revision of the Software that is not an Update shall be deemed an Upgrade.

1.15 “**Upgrade**” means a revision of the Software released by Gemalto Cogent during the Term of this Agreement which adds new and different functions to the Software or increases the capacity of the Software to process information. Gemalto Cogent is under no obligation to provide any Upgrades under this Agreement, but if any Upgrades are made available to Licensee under this Agreement, each Upgrade will generally require Licensee’s payment of an additional charge.

2. **HARDWARE MAINTENANCE AND SUPPORT**

2.1 **Fault Reporting and Correction.** During the Support Services Term, on the terms and conditions of this Agreement, Gemalto Cogent shall repair or replace without charge to Licensee any part of the Hardware found to be faulty by reason of defective material, design or workmanship. Hardware problems will be reported by Licensee through Licensee’s Technical Contact to Gemalto Cogent at the support number set forth on Exhibit B (Technical Support Contact Information), as it may be revised by Gemalto Cogent from time to time. Each such report will be accompanied or followed by sufficient information to enable Gemalto Cogent to determine the cause of the Hardware problem. Gemalto Cogent will acknowledge each such report via telephone, facsimile transmission, or electronic mail to the Technical Contact and will use commercially reasonable efforts consistent with the severity of the problem to repair or replace the Hardware. Any Hardware replaced by Gemalto Cogent shall be replaced with hardware of comparable functionality, which may be new or reconditioned hardware. Gemalto Cogent will determine, in its sole discretion, the manner in which it will repair or replace the Hardware. Gemalto Cogent will pay all shipping costs required to ship the faulty Hardware to and from Gemalto Cogent.

2.2 **On-site Support.** Gemalto Cogent, may, in its sole discretion, provide emergency on-site support to Licensee beyond the support described in Section 2.1 above. If Gemalto Cogent provides on-site support, such support will in all cases be subject to the availability of appropriate Gemalto Cogent personnel.

2.3 **Exclusions from Hardware Maintenance and Support.** Except as provided in Sections 2.1 and 2.2 above, Gemalto Cogent shall have no responsibility to provide Hardware maintenance or support. By way of example, but not as a limitation to the scope of the foregoing statement, Gemalto Cogent shall not be required to repair or replace any Hardware where Gemalto Cogent determines, in its sole and reasonable discretion, that the Hardware requires such repair or replacement to the extent arising from:

2.3.1 any changes or modifications to the Hardware or Software included on the Hardware in each case that were not made by Gemalto Cogent;

- 2.3.2 damage to the Hardware (other than normal wear and tear);
- 2.3.3 the failure of computer hardware, equipment, or software not supplied by Gemalto Cogent;
- 2.3.4 the negligence of Licensee or any third party;
- 2.3.5 the use of operating systems or auxiliary devices (e.g., third party hardware components) in conjunction with Hardware or Software which have not been approved in writing by Gemalto Cogent for use with Hardware and Software;
- 2.3.6 attempted maintenance by unauthorized persons; or
- 2.3.7 Licensee's use or improper use of the Hardware, or merging or combining the Hardware with any hardware or software not authorized by Gemalto Cogent to be so merged or combined.
- 2.3.8 Gemalto Cogent shall not be required to repair, replace, or upgrade any Hardware for the purpose of maintaining compatibility with third party hardware or software or updates thereof (including but not limited to third party operating systems), or where requested due to changes in Licensee's IT policies (including but not limited to security policies).

3. SOFTWARE MAINTENANCE AND SUPPORT

3.1 Error Reporting and Correction. Gemalto Cogent will provide Licensee with Software support by telephone 24 hours a day, 7 days a week. Each Error experienced by Licensee related to Licensee's use of the Software will be reported by Licensee through Licensee's Technical Contact to Gemalto Cogent at the support number set forth on Exhibit B (Technical Support Contact Information), as it may be revised by Gemalto Cogent from time to time. Each such Error report will be accompanied or followed by sufficient information to enable Gemalto Cogent to reproduce and verify the Error. Gemalto Cogent will acknowledge each such reported Error via telephone, facsimile transmission, or electronic mail to the Technical Contact and will use commercially reasonable efforts consistent with the severity of the Error to reproduce and verify reported Errors and provide Error Corrections therefor. Gemalto Cogent will determine, in its sole discretion, the priority level of each reported Error.

3.2 On-Site Support. Gemalto Cogent, may, in its sole discretion, provide emergency on-site support to Licensee beyond the support described in Section 3.1, above. If Gemalto Cogent provides on-site support, such support will in all cases be subject to the availability of appropriate Gemalto Cogent personnel.

3.3 Exclusions from Software Maintenance and Support. Except as provided in Sections 3.1 and 3.2 above, Gemalto Cogent shall have no responsibility to provide Software maintenance or support. By way of example, but not as a limitation to the scope of the foregoing statement, Gemalto Cogent shall not be obligated to provide Software Maintenance and Support Services where:

- 3.3.1 the Software has been changed, modified, or damaged (excluding modifications made by Gemalto Cogent);
- 3.3.2 the Software Maintenance and Support Services are necessary due to: (a) failure of computer hardware, equipment, or software not supplied by Gemalto Cogent; (b) the negligence of Licensee or any third party; (c) a cause or causes beyond the reasonable control of Gemalto Cogent; (d) attempted maintenance by unauthorized persons; (e) Licensee's use or improper use of the Software, or the use, merging or combining of the Software with any hardware or software not authorized by Gemalto Cogent to be so merged or combined;
- 3.3.3 Licensee has not installed and implemented any Error Corrections provided by Gemalto Cogent; or
- 3.3.4 Licensee has not paid the Support Fees, or any related fees or amounts, when due.

- 3.3.5 Gemalto Cogent shall not be required to (i) repair, replace, or upgrade any Software to a subsequent version for the purpose of maintaining compatibility with third party software or updates thereof (including but not limited to third party operating systems), or where requested due to changes in Licensee's IT policies (including but not limited to security policies); or (ii) provide Updates to third party software that is no longer supported by the third party vendor.

4. LICENSEE RESPONSIBILITIES

4.1 Licensee will be responsible for allowing Gemalto Cogent to implement all Error Corrections furnished by Gemalto Cogent and for paying all costs in connection with any Upgrades offered to Licensee by Gemalto Cogent under this Agreement.

4.2 Licensee will be responsible for performing all data backups and Gemalto Cogent shall have no obligation to perform data backups for Licensee nor any liability for Licensee's failure to perform them.

4.3 Licensee acknowledges that all Documentation, Software, Error Corrections, and Upgrades provided by Gemalto Cogent are subject to the conditions of the Supply Agreement, and Licensee agrees to comply with those conditions.

4.4 Licensee will fully cooperate and assist Gemalto Cogent in the provision of the Support Services, including allowing full and free access, including, but not limited to remote access, to relevant hardware, software, and other information if reasonably required by Gemalto Cogent.

5. FEES AND PAYMENTS

5.1 **Support Fees.** Licensee will pay annual support fees for the Support Services based on Gemalto Cogent's then current annual rate for Support Services ("**Support Fees**"). Gemalto Cogent's current annual Support Fees are set forth in the attached Exhibit C (Support Fees). Payment for the Initial Support Term will be due and payable on the Effective Date. Payment for each Additional Support Term will be due and payable by Licensee in advance of the commencement of such Additional Support Term. Gemalto Cogent will provide a proforma invoice thirty (30) days prior to the expiration of the then current Support term. Gemalto Cogent reserves the right to increase the annual Support Fees for any Additional Support Terms and will give Licensee advance notice of such increases. If Licensee fails to purchase Support Services concurrently with Licensee's purchase of the Hardware and/or Software to be supported, or fails to renew Support Services upon termination of the Initial Support Term or any Additional Support Term, and Licensee subsequently desires to commence Support Services for the Hardware and/or Software, Gemalto Cogent may, at its option, commence Support Services in accordance with Gemalto Cogent's then-current policies and upon payment by Licensee of the then-applicable annual Support Fee and reinstatement fee for the period between Gemalto Cogent's original delivery of the Hardware and/or Software or termination of the Initial Support Term or any Additional Support Term (whichever is later) and Licensee's purchase of the Support Services.

5.2 **Taxes.** All taxes and duties attributable to this Agreement (except taxes relating to Gemalto Cogent's net income), including sales, use, and any other tax assessed by local, state, or federal authorities, will be borne by Licensee. Licensee will reimburse Gemalto Cogent for any such taxes and duties.

5.3 **Late Payment.** Any sums not paid when due will automatically accrue interest from the date when due until actually paid at a rate of eighteen percent (18%) per annum or the highest rate allowed by law, whichever is less.

6. DISCLAIMER OF WARRANTIES

GEMALTO COGENT DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WITH REGARD TO SERVICES PROVIDED UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES THAT MAY ARISE FROM A COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. WITH RESPECT TO ANY HARDWARE FAULTS

REPORTED BY LICENSEE TO GEMALTO COGENT, LICENSEE AGREES THAT GEMALTO COGENT'S SOLE AND EXCLUSIVE OBLIGATION AND LICENSEE'S SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT IS FOR GEMALTO COGENT TO USE COMMERCIALY REASONABLE EFFORTS TO REPAIR OR REPLACE THE HARDWARE IN ACCORDANCE WITH GEMALTO COGENT'S MAINTENANCE OBLIGATIONS PURSUANT TO SECTION 2 ABOVE. WITH RESPECT TO ANY ERRORS REPORTED BY LICENSEE TO GEMALTO COGENT, LICENSEE AGREES THAT GEMALTO COGENT'S SOLE AND EXCLUSIVE OBLIGATION AND LICENSEE'S SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT IS FOR GEMALTO COGENT TO USE COMMERCIALY REASONABLE EFFORTS TO CORRECT SUCH ERRORS IN ACCORDANCE WITH GEMALTO COGENT'S SUPPORT OBLIGATIONS PURSUANT TO SECTION 3 ABOVE.

7. LIMITATION OF LIABILITY

EXCEPT IN THE CASE OF BODILY INJURY OR DAMAGE TO TANGIBLE PROPERTY RESULTING SOLELY AND DIRECTLY FROM GEMALTO COGENT'S NEGLIGENT ACTS OR OMISSIONS IN ITS PERFORMANCE UNDER THE AGREEMENT, IN WHICH CASE GEMALTO COGENT'S LIABILITY FOR DIRECT DAMAGES SHALL BE UNLIMITED, GEMALTO COGENT'S AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENT (WHETHER ARISING FROM CONTRACT OR OTHERWISE) FOR DIRECT DAMAGES IS LIMITED TO THE TOTAL AMOUNT OF FEES PAID BY LICENSEE UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING GEMALTO COGENT'S RECEIPT OF NOTICE OF SUCH CLAIM. GEMALTO COGENT SHALL NOT IN ANY CASE BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, WHETHER BASED UPON CONTRACT, TORT, OR ANY OTHER LEGAL THEORY, ARISING FROM ITS PERFORMANCE OR NONPERFORMANCE UNDER THIS AGREEMENT.

8. TERM AND TERMINATION

8.1 Term. This Agreement will commence on the Effective Date and, unless earlier terminated pursuant to the terms hereof, will continue for a period of one (1) year (the "**Initial Support Term**"). At the expiration of the Initial Support Term, the Agreement will automatically renew on a month-to-month basis (each an "**Additional Support Term**") with payments to be prorated at a monthly rate based on the TIPS contract pricing unless a longer term renewal is mutually agreed upon by the parties. Either party may notify the other party in writing of its intent not to renew this Agreement prior to the end of the Initial Support Term, anytime during a month-to-month Additional Support Term, or at the end of a multi-month Additional Support Term. The Initial Support Term and any Additional Support Terms are collectively referred to herein as the "**Support Services Term**."

8.2 Discontinuance of Support Services. Gemalto Cogent reserves the right to discontinue provision of the Support Services and terminate this Agreement should Gemalto Cogent, in its sole discretion, determine that the continued provision of Support Services for any Hardware or Software is no longer economically feasible, considering such factors as possible obsolescence and other factors Gemalto Cogent deems relevant. Gemalto Cogent will give Licensee at least three (3) months prior written notice of any such discontinuance of Support Services and will refund any unaccrued Support Fees that Licensee may have prepaid with respect to the affected Software. In all cases, Gemalto Cogent will have no obligation to support or maintain any version of the Software or operating system except (a) the then-current version of the Software, and (b) the immediately preceding version of the Software for a period of six (6) months after it is first superseded.

8.3 Termination for Cause. If either party materially defaults in any of its obligations under this Agreement, the non-defaulting party, at its option, will have the right to terminate this Agreement by written notice to the other party unless, within thirty (30) calendar days after receiving written notice of such default, the defaulting party remedies the default. Without limiting the foregoing, Gemalto Cogent will have the right to terminate this Agreement, immediately upon written notice to Licensee, if Licensee fails to pay any overdue Support Fees within fifteen (15) days of written notice and demand from Gemalto Cogent.

8.4 Effect of Termination. Sections 1, 5 (to the extent fees or amounts due have accrued prior to expiration or termination), 6, 7, 8.4 and 13 will survive the expiration or termination of this Agreement for any reason.

9. INTEGRATION EFFORTS NOT INCLUDED.

THIS AGREEMENT DOES NOT INCLUDE ANY INSTALLATION OR DEPLOYMENT ACTIVITIES OR ANYTHING RELATED TO HARDWARE OR SOFTWARE OUTSIDE THE PROJECT DELIVERY SCOPE. THIS AGREEMENT COVERS ONLY THOSE PRODUCTS LISTED ON EXHIBIT C (SUPPORT FEES).

10. DATA BACKUP

Gemalto Cogent is not responsible for executing or validating data backup for the System unless specific pricing for such activities is set forth in Exhibit C (Support Fees). Notwithstanding the foregoing statement, if requested by Licensee, Gemalto Cogent will suggest recommended data backup practices for Licensee to following regarding the System. In the event of a need by Licensee for data restoration, Gemalto Cogent may provide reasonable assistance to Licensee in Licensee's efforts to recover data with data backup provided by Licensee. Gemalto Cogent is not responsible for any data lost if data is not backed up properly.

11. SERVICE LEVEL AGREEMENT

The Service Level Agreement applicable to Support Services offered under this Agreement is attached hereto and incorporated herein by reference as Exhibit D (Service Level Agreement).

12. USER GROUP CONFERENCE

Licensee attendance at Gemalto Cogent User Group Conferences shall be as provided for Exhibit C (Support Fees) or the Statement of Work applicable to this Agreement.

13. GENERAL

13.1 Force Majeure. Except with respect to Licensee's obligation to make timely payments, neither party will be responsible for any delay or failure in performance to the extent that such delay or failure is caused by fires, strikes, embargoes, explosion, earthquakes, floods, wars, labor disputes, terrorism, government requirements, civil or military authorities, acts of God or by the public enemy, inability to secure raw materials or transportation facilities, acts or omissions of carriers or suppliers, or other causes beyond its reasonable control. Gemalto Cogent's inability to supply Hardware, Software, Support Services or other materials or services of whatever nature due to the inability to obtain or maintain required export authorization shall not constitute a breach of this Agreement and Customer hereby acknowledges this risk.

13.2 Severability. If any provision of this Agreement is declared or found to be illegal, unenforceable, or void, then each provision not so affected will remain in full force and effect.

13.3 Assignment. Licensee may not assign this Agreement or any of its rights or delegate any of its obligations under this Agreement, by operation of law or otherwise, without the prior written consent of Gemalto Cogent. Gemalto Cogent may assign this Agreement and any of its rights and delegate any of its obligations under this Agreement. This Agreement will bind each party and its permitted successors and assigns.

13.4 Disputes. This Agreement is to be construed in accordance with and governed by the internal laws of the State where Licensee's principal place of business is located without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of such State to the rights and duties of the parties. Any legal suit, action, or proceeding arising out of or relating to this Agreement shall have venue in the appropriate state court in the county where the Customer's principal place of business is located, or, if filed in federal court, in the federal court district where the Customer's principal place of business is located. Each

party hereto irrevocably submits to the exclusive jurisdiction and venue of any such court in any such suit, action, or proceeding. Neither party may bring any action arising out of or relating to this Agreement more than three (3) years after the cause of action accrues. In the event mediation is selected or required by a court of competent jurisdiction as a dispute resolution method, the mediation shall have venue in the county where the Customer's principal place of business is located and the selection of the mediator, if not specified by the Court of competent jurisdiction, shall be agreed upon by the Parties and the costs shall be shared equally.

13.5 No Waiver. No course of dealing, course of performance, or failure of either party strictly to enforce any term, right, or condition of this Agreement will be construed as a waiver of any other term, right, or condition. No waiver or breach of any provision of this Agreement will be construed to be a waiver of any subsequent breach of the same or any other provision.

13.6 Relationship of the Parties. This Agreement will not be construed as creating an agency, partnership, joint venture, or any other form of association, for tax purposes or otherwise, between the parties, and the parties will at all times be and remain independent contractors. Except as expressly agreed by the parties in writing, neither party will have any right or authority, express or implied, to assume or create any obligation of any kind, or to make any representation or warranty, on behalf of the other party or to bind the other party in any respect whatsoever.

13.7 Notices. Gemalto Cogent will deliver all notices and communications concerning support and maintenance matters to the attention of Licensee's Technical Contact at the address set forth in Exhibit A (Licensee's Primary Service Engineer(s)). Any other notice, request, demand, or other communication required or permitted hereunder will be in writing, will reference this Agreement, and will be deemed to be properly given: (a) when delivered personally; (b) when sent by facsimile, with written confirmation of receipt by the sending facsimile machine; (c) five (5) business days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (d) two (2) business days after deposit with an express courier, with written confirmation of receipt. All notices will be sent to the address specified on the signature page of this Agreement (or to such other address as may be designated by a party by giving written notice to the other party pursuant to this Section).

13.8 Complete Agreement. This Agreement, any exhibits and schedules attached to it, and any agreements or terms and conditions incorporated by reference herein, contain the entire understanding of the parties with respect to the subject matter hereof and supersede any and all prior related understandings, agreements, representations, negotiations, and discussions, whether oral or written. This Agreement cannot be modified or amended except in a writing signed by both parties.

GEMALTO COGENT, INC.

[ADD CUSTOMER COMPANY NAME] (LICENSEE)

Authorized Signature

Authorized Signature

Name (Type or Print)

Name (Type or Print)

Title

Title

Address

Address

Date

Date

EXHIBIT A

LICENSEE'S PRIMARY SERVICE ENGINEER(S)

Licensee's Primary Service Engineer(s):

NAME: _____

PHONE: _____

EMAIL: _____

NAME: _____

PHONE: _____

EMAIL: _____

EXHIBIT B

TECHNICAL SUPPORT CONTACT INFORMATION

Phone: 1-866-500-AFIS (or 1-866-500-2347)

Email: CgtHelpdesk@gemalto.com

Web Portal: <https://gemalto-cogent.force.com>

Escalations

If for any reason your service items are not being addressed appropriately and in a timely fashion, please use the following email addresses to escalate your concern to Gemalto Cogent Leadership directly.

2nd Level Escalation

Helpdesk Management and Account Management

Please escalate your concerns to your Assigned Account Manager and [**CGTServiceDeskEscalation@gemalto.com**](mailto:CGTServiceDeskEscalation@gemalto.com).

3rd Level Escalation

Business Management

If you are unable to resolve your concerns with 2nd level escalation, please escalate to

[**CGTServiceDeskMgmt@gemalto.com**](mailto:CGTServiceDeskMgmt@gemalto.com).

EXHIBIT C

SUPPORT FEES

[PLEASE LIST COVERED HARDWARE AND SOFTWARE AND RELATED FEES]

EXHIBIT D

SERVICE LEVEL AGREEMENT

Severity	Severity Definition	Detail Description	Example(s)	Response Time
Critical	Full System Outage, or Critical Impact to System Usability	Problems that cause total failure of the full system (unscheduled) or stop a user from completing a business critical function. There are no work-arounds available. Licensee must be available to work toward a resolution.	Entire AFIS system is inoperable.	1 business hour
Major	Partial System Outage or Major Impact to System Usability >50%+ of licensees or critical functionality	Problems that cause total failure of a critical system component (unscheduled). There are no work-arounds available. Licensee must be available to work toward a resolution.	Critical AFIS components are inoperable (ten-print searching).	2 business hours
Significant	Significant Impact to Usability >25% of licensees or daily used functionality	Problems that cause a significant performance impact to any system component (unscheduled), or impacting more than 50% of the system's transactions. A short-term work-around is available. Licensee must be available to work toward a resolution.	Multiple workstations are completely inoperable (Livescan Booking, Tenprint Analysis, Latent Analysis) -OR- System response is not meeting contractual obligations	2 business hours
Medium	Moderate Impact to Usability <25% of users or moderately used functionality	Problems that cause a moderate impact on licensee's productivity, system performance or system functionality. A mid-term work-around is available. Licensee must be available to work toward a resolution.	Workstation or device is not functioning within designed specifications	4 business hours
Low	Low impact to licensees	Problems that cause little to no effect to licensee's productivity, system functionality or system performance.	Inconvenient error message -OR- Intermittent problem	8 business hours

TIPS
HARDWARE SALE AND SOFTWARE LICENSE AGREEMENT
(FOR BIOMETRIC SYSTEMS CUSTOMERS)

This TIPS Hardware Sale and Software License Agreement (“**Agreement**”) is entered into as of _____, 20__ (“**Effective Date**”) by and between Gemalto Cogent, Inc. (“**Gemalto Cogent**”) and the customer identified below (“**Customer**”).

This Agreement consists of this signature page, the Basic Terms and Conditions and the following Exhibits, which are part of this Agreement and are incorporated herein by reference:

Exhibit A: Initial Order Schedule

Exhibit B: Form of Order Schedule for Future Orders

Each party has read, understands and agrees to the terms and conditions of this Agreement.

Accepted and agreed by:

GEMALTO COGENT:

Gemalto Cogent, Inc.

Signature

Print Name

Title

Address for Formal Notice:

Gemalto Cogent, Inc.

639 N. Rosemead Boulevard

Pasadena, CA 91107

ATTN: Contract Administrator

CUSTOMER:

Company/Entity Name

Signature

Print Name

Title

Address for Formal Notice

ATTN:

HARDWARE SALE AND SOFTWARE LICENSE AGREEMENT

BASIC TERMS AND CONDITIONS

The terms and conditions of this Agreement will apply to all Systems and Services identified on one or more Order Schedules.

1. DEFINITIONS

As used in this Agreement, the following capitalized terms shall have the meanings ascribed to such terms set forth below:

- 1.1 **"Acceptance Date"** has the meaning set forth in Section 3.3.
- 1.2 **"Cooperation"** has the meaning set forth in Section 5.5(a).
- 1.3 **"Documentation"** means such manuals, documentation and other supporting materials relating to the Systems as are currently maintained by Gemalto Cogent and provided to Customer hereunder.
- 1.4 **"Effective Date"** has the meaning set forth on the signature page hereto.
- 1.5 **"Hardware"** means the Gemalto Cogent hardware provided to Customer hereunder as part of a System.
- 1.6 **"Installation Date"** means: (a) for a System that Gemalto Cogent is responsible for installing pursuant to an Installation SOW, the business day that Gemalto Cogent installs such System in accordance with the relevant Documentation; (b) for all other Systems, the date that Gemalto Cogent ships such System to Customer; or (c) if no delivery is necessary, the effective date of the relevant Order Schedule.
- 1.7 **"Installation Services"** has the meaning set forth in Section 5.1.
- 1.8 **"Installation Site"** means the installation location for a System, as specified in the applicable Order Schedule.
- 1.9 **"Installation SOW"** means a statement of work attached to an Order Schedule specifying installation and customization services to be provided by Gemalto Cogent, if any.
- 1.10 **"Intellectual Property Rights"** means on a world-wide basis, any and all now known or hereafter known tangible and intangible (a) rights associated with works of authorship including, without limitation, copyrights, moral rights and mask-works, (b) rights associated with trademarks, service marks, trade names and similar rights, (c) trade secret rights, (d) patents, designs, algorithms and other industrial property rights, (e) rights in domain names; (f) all other intellectual and industrial property rights of every kind and nature and however designated, whether arising by operation of law, contract, license or otherwise, and (g) all registrations, applications, renewals, extensions, continuations, divisions or reissues thereof now or hereafter existing, made or in force (including any rights in any of the foregoing).
- 1.11 **"Licensed Software"** means the Gemalto Cogent software, in object code form only, provided to Customer hereunder as part of a System, and any Documentation and Updates for such software provided to Customer hereunder.
- 1.12 **"Order Schedule"** means a document that specifies the System and Services to be provided hereunder and that is executed by both parties and attached hereto as an exhibit. The initial Order Schedule that specifies the initial System and Services to be provided hereunder is attached as Exhibit A. Each subsequent Order Schedule shall be completed in the form attached as Exhibit B hereto.
- 1.13 **"Services"** means, collectively, Installation Services, Support, Training and other services provided to Customer hereunder.
- 1.14 **"Support"** has the meaning set forth in Section 5.3.
- 1.15 **"Support Services Term"** means the first year after the Acceptance Date with respect to the applicable Order Schedule, plus any respective renewal terms.
- 1.16 **"System"** means the Hardware and the Licensed Software designated in an Order Schedule for delivery to Customer.

1.17 "Technical Contact" has the meaning set forth in Section 5.5(b).

1.18 "Training" has the meaning set forth in Section 5.2.

1.19 "Update" means a subsequent release of or error corrections or bug fixes related to the Licensed Software that Gemalto Cogent makes generally available to its licensees of the Licensed Software for no additional license fee. Updates do not include any release, option or future product that Gemalto Cogent separately licenses.

2. ORDERS

2.1 **Orders and Order Acceptance.** During the term of this Agreement, Customer may request Systems and Services by signing and submitting to Gemalto Cogent a proposed Order Schedule in the form attached hereto as Exhibit B. Such requests shall be subject to System and Service availability, Gemalto Cogent's fees and policies in effect when such proposed Order Schedule is submitted, and acceptance by Gemalto Cogent. The terms and conditions set forth in this Agreement and in any Order Schedule will control in the event that there are different or additional terms set forth in any other ordering document submitted by Customer. Except as expressly provided in herein, the terms and conditions of any Order Schedule will control over any conflicting terms and conditions set forth in this Agreement.

2.2 **Order Changes.** Unless otherwise specified in this Agreement or an Order Schedule, any changes to an Order Schedule must be mutually agreed upon by the parties in writing, and may require a change in fees (including changes to reflect the inclusion, deletion or substitution of Systems or Services and Gemalto Cogent's costs for processing such change).

3. DELIVERY

3.1 **Delivery.** Gemalto Cogent will make commercially reasonable efforts to meet any delivery date specified in the relevant Order Schedule. All Systems provided hereunder will be shipped to the Customer address designated in the relevant Order Schedule. In the absence of specific routing instructions, Gemalto Cogent reserves the right to select the common carrier and method of shipment for the Systems.

3.2 **Title and Risk of Loss.** All Systems provided hereunder will be delivered to Customer on an EXW (Origin) basis (INCOTERMS 2000), at which point title and risk of loss to Hardware and media will pass to Customer.

3.3 **Acceptance.** Acceptance of the System will occur upon the date (the "Acceptance Date") which is the earlier of (a) Customer's execution of a written certificate of acceptance, (b) 10 days after receipt of the System unless Customer provides Gemalto Cogent with a written statement of rejection, (c) the date that Gemalto Cogent demonstrates to Customer, by the successful completion of acceptance testing or otherwise, that the System substantially conforms to the specifications set forth in the applicable Order Schedule, and (d) the date Customer uses any part of the System for any purpose other than performing acceptance tests. In the event that the System fails to conform substantially to the acceptance criteria set forth in the applicable specifications, Gemalto Cogent will have a reasonable time to remedy such non-conformance following Gemalto Cogent's receipt of written notice from Customer specifying in reasonable detail the nature of such non-conformance. In the event that Gemalto Cogent is unable to remedy such non-conformance, (i) Customer may accept the System on an "AS IS" basis, subject to a reasonable price adjustment, or (ii) Customer may return the System to Gemalto Cogent and receive a refund of amounts paid to Gemalto Cogent for the System. Acceptance will not be delayed for any minor non-conformance with the specification. Following acceptance, Gemalto Cogent will use reasonable efforts to correct any minor non-conformance that appeared during acceptance testing.

4. CHARGES AND PAYMENTS

4.1 **Fees and Charges.** Customer agrees to pay the fees and charges for Systems and Services specified on the Order Schedules. Gemalto Cogent reserves the right to modify its prices at any time during the term of this Agreement. Fees may include one-time or installment payments (for example, for Hardware, Installation Services and Licensed Software licenses) and recurring fees (for example, periodic charges for Support). Customer will additionally pay any additional charges outlined in an Order Schedule.

4.2 **Invoicing and Payment.** Fees and purchase prices are set forth on the applicable Order Schedule. Except as otherwise provided in Exhibit A, any amounts payable by Customer hereunder that remain unpaid after the due date will be subject to a late charge equal to the lesser of one and one-half percent (1.5%) per month and the maximum rate allowable by law from the due date until such amount is paid. Restrictive endorsements or other statements on checks accepted by Gemalto Cogent will not apply. If any invoice remains unpaid for a period of ninety (90) days after the

due date, Gemalto Cogent may, without incurring liability of any sort and without limitation of any other available remedies, suspend performance hereunder. If any invoice remains unpaid for a period of one hundred and eighty (180) days or more after the due date, Gemalto Cogent may, without incurring liability of any sort and without limitation of any other available remedies, terminate this Agreement. Customer agrees to reimburse Gemalto Cogent for reasonable attorneys' fees and any other costs associated with collecting delinquent payments.

4.3 Currency. Customer will pay all amounts due to Gemalto Cogent in the currency of the relevant Order Schedule, unless otherwise agreed. Gemalto Cogent and Customer will arrange for such payment to be made in a mutually convenient manner as agreed between them from time to time.

4.4 Security Interest. Intentionally deleted.

4.5 Taxes. All amounts payable under this Agreement are exclusive of tax. Customer will pay or reimburse Gemalto Cogent for all value-added, sales, use, property and similar taxes, and all other mandatory payments to government agencies of whatever kind imposed with respect to products or services provided by Gemalto Cogent under this Agreement or with respect to transactions under this Agreement, except taxes imposed on the net income of Gemalto Cogent. If a transaction is exempt from tax, Customer will provide Gemalto Cogent with a valid exemption certificate or other evidence of such exemption in a form acceptable to Gemalto Cogent. If Customer is required by law to deduct or withhold any taxes, levies, imposts, fees, assessments, deductions or charges from or in respect of any amounts payable hereunder to Gemalto Cogent, (a) Customer shall pay the relevant taxation authority the minimum amounts necessary to comply with the applicable law, (b) Customer shall make such payment prior to the date on which interest or penalty is attached thereto, and (c) the amounts payable hereunder shall be increased as may be necessary so that after Customer makes all required deductions or withholdings, Gemalto Cogent shall receive amounts equal to the amounts it would have received had no such deductions or withholdings been required

5. SERVICES AND CUSTOMER COOPERATION

5.1 Installation. Gemalto Cogent will provide System installation and customization services at the Installation Site to the extent specified in an Installation SOW (the "**Installation Services**"). Installation Services will be provided under Gemalto Cogent's standard installation and customization procedures for Systems in effect on the date of the applicable Order Schedule. Any installation or customization services requested by Customer beyond those specified in an Installation SOW shall be subject to the negotiation and execution of a separate Order Schedule and Gemalto Cogent's then-current policies and pricing.

5.2 Training. Any training services specified in an Order Schedule ("**Training**") will be provided under and subject to Gemalto Cogent's training offerings as of the date of such Order Schedule.

5.3 Support. Subject to the payment of applicable Support fees, Gemalto Cogent shall provide the support services specified in this Section 5.3 for the Licensed Software during the Support Services Term ("**Support**"). At the expiration of the initial Support Services Term, the Support Services Term shall be automatically renewed for successive one (1) year periods unless Customer notifies Gemalto Cogent in writing of its intent not to renew at least sixty (60) days prior to the end of the then-current Support Services Term. In the event that Customer elects not to renew Support, reinstatement fees may apply if Support is reinstated hereunder, which reinstatement shall be at Gemalto Cogent's then-current rates.

(a) **Updates.** During the Support Services Term, Gemalto Cogent will provide Customer with Updates if, as, and when Gemalto Cogent makes any such Updates generally available to its end user customers receiving support services from Gemalto Cogent; provided that Gemalto Cogent shall not be required to provide any Update that is not compatible with the System delivered to Customer hereunder. Any customization and installation services required to implement an Update shall be subject to Gemalto Cogent's then current per man-hour rates.

(b) **Telephone Support.** Gemalto Cogent will provide general telephone support to the Technical Contact during Gemalto Cogent's regular business hours, which will consist of answering questions regarding the proper operation of the System and rendering general information, advice, and instructions in connection with the use of the System.

(c) **Exclusions from Support.** Gemalto Cogent is not obligated to provide Support in the following situations:

- (i) the Licensed Software has been changed, modified or damaged (excluding modifications made under the direct supervision of Gemalto Cogent);

(ii) the issues resulting from or relating to: (a) computer hardware, equipment, or software not supplied by Gemalto Cogent; (b) the negligence of Customer or any third party; (c) a cause or causes beyond the reasonable control of Gemalto Cogent; or (d) attempted maintenance by unauthorized persons;

(iii) Customer has not installed and implemented all Update(s); or

(iv) Customer has not paid the applicable Support fees when due.

(d) **Termination of Support.** Gemalto Cogent reserves the right to discontinue the provision of the Support should Gemalto Cogent, in its sole discretion, determine that continued Support for any Licensed Software is no longer economically feasible, considering such factors as possible obsolescence and other factors it deems relevant. Gemalto Cogent shall provide Customer at least thirty (30) days prior written notice of any such discontinuance of Support and shall refund any unaccrued Support fees Customer may have prepaid with respect to the affected Licensed Software.

5.4 Additional Services, Contractors. Any additional or supplemental services requested by Customer beyond those specified in an Order Schedule shall be subject to the negotiation and execution of a separate Order Schedule and Gemalto Cogent's then-current policies and pricing. Gemalto Cogent may use consultants or other contractors in connection with the performance of its obligations under this Agreement.

5.5 Customer Cooperation.

(a) Customer acknowledges that Customer's timely provision of (and Gemalto Cogent's access to) Customer facilities, equipment, assistance, cooperation, and complete and accurate information and data from Customer's officers, agents and employees ("**Cooperation**") is essential to Gemalto Cogent's performance under this Agreement, and that Gemalto Cogent shall not be liable for any deficiency in performing hereunder if such deficiency results any delay or failure in Customer's provision of Cooperation or Customer's failure to perform an obligation hereunder.

(b) Customer shall designate one of its technical employees to coordinate all activities with Gemalto Cogent under this Agreement (the "**Technical Contact**"). The Technical Contact shall be available at all reasonable times to provided and coordinate the provision of Cooperation and to make decisions on behalf of Customer.

(c) Without limitation of the foregoing, Customer shall provide Gemalto Cogent and its suppliers and contractors with free and safe access to the Installation Site and the Systems as reasonably necessary for Gemalto Cogent to perform its obligations under this Agreement. If Customer is aware of, or becomes aware of, the existence of any unsafe condition or hazardous material at the Installation Site, Customer shall promptly notify Gemalto Cogent of such condition in writing. The Installation Site shall be located in a secure area of Customer's facilities and, except as expressly provided in an Installation SOW, Customer shall be responsible for all site improvements, equipment, and services necessary to operate the Systems at the Installation Site (including, without limitation, air conditioning, electrical equipment/service and communication services (phone and network)). Notwithstanding anything to the contrary in this Agreement or any Order Schedule, Customer shall abate and remove any asbestos, hazardous material or other unsafe conditions at the Installation Site prior to the provision of any Services by Gemalto Cogent. Except to the extent required by law, Gemalto Cogent's employees and contractors shall not be required to sign any waivers, releases or other documents to gain access to Customer's premises in connection with the performance under this Agreement and any such waivers, releases or other documents shall be invalid and shall have no effect.

(d) To the extent permitted under applicable law and notwithstanding anything in this Agreement to the contrary, Customer shall indemnify, defend and hold harmless Gemalto Cogent, its employees and agents, from and against any and all claims, damages, liabilities and court awards (including costs, expenses, and attorney fees) arising from any alleged wrongful arrest, detainment, or other confinement by Customer or its employees, agents, subcontractors, or assignees.

6. LICENSED SOFTWARE

6.1 Limited License. Subject to Customer's compliance with the terms and conditions of this Agreement, Gemalto Cogent hereby grants and agrees to grant to Customer a non-exclusive, non-transferable license (without the right to sublicense):

(a) to use the Licensed Software solely for Customer's own business operations, solely at the Installation Site and on the Hardware on which the Licensed Software is first installed (or, on a temporary basis, on a

backup system at the Installation Location if such equipment is inoperative), consistent with the limitations specified or referenced in this Agreement, an Order Schedule and the Documentation;

(b) to use the Documentation provided with the Licensed Software in support of Customer's authorized use of the Licensed Software; and

(c) to make one copy of the Licensed Software solely for archival or backup purposes, provided that all titles and trademark, copyright and restricted rights notices are reproduced on all such copies.

6.2 Restrictions. Customer will not copy or use the Licensed Software (including the Documentation) except as expressly permitted by this Agreement. Customer will not modify the Licensed Software, except to the extent expressly approved in advance by Gemalto Cogent in writing. Customer may not sublicense, sell, lend, give, transfer, assign, rent or lease the Licensed Software or use the Licensed Software for third-party training, commercial time-sharing or service bureau use. Customer will not, and will not permit any third party to, reverse engineer, disassemble or decompile any Licensed Software, except to the extent expressly permitted by applicable law, and then only after (i) Customer has notified Gemalto Cogent in writing of its intended activities and the information sought and (ii) Gemalto Cogent fails to provide Customer with such information within a reasonable period of time following such notice. Customer will not remove, obscure, or alter any notice of patent, copyright, restricted rights, trade secret, trademark, or other proprietary right related to the Licensed Software. Customer hereby acknowledges and agrees that all Licensed Software is licensed and not sold to Customer.

6.3 Transfer. If the Hardware purchased hereunder is sold or assigned to a third party, Customer will remove all Licensed Software from such Hardware prior to delivery to the third party. Gemalto Cogent may grant the new owner or assignee a license to the relevant Licensed Software, provided that the new owner or assignee agrees to Gemalto Cogent's then-current Licensed Software license terms and conditions (including Gemalto Cogent's then-current fees) and such other terms as Gemalto Cogent may reasonably require.

6.4 Verification. At Gemalto Cogent's written request, and not more frequently than is reasonable under the circumstances, (a) Customer will verify in writing that the Licensed Software is being used pursuant to the provisions of this Agreement and the relevant Order Schedule, and (b) Gemalto Cogent may audit Customer's use of the Licensed Software electronically or at Customer's facilities. Any such audit at Customer's facilities will be conducted during regular business hours and no audit will unreasonably interfere with Customer's business activities.

7. OWNERSHIP

Gemalto Cogent will retain all rights, title and interest in and to the Intellectual Property Rights in the Systems and any derivative works thereof, subject only to the limited license set forth herein. Customer does not acquire any other rights, express or implied, in the Systems.

8. WARRANTIES AND REMEDIES

8.1 Warranties. Gemalto Cogent hereby represents and warrants to Customer that:

(a) each piece of Hardware will be free from defects in materials and workmanship under normal use for a period of one (1) year from the Acceptance Date; and

(b) the Licensed Software will substantially operate in accordance with the specifications set forth in the applicable Order Schedule for a period of one (1) year from the Acceptance Date.

8.2 Disclaimer. THE WARRANTIES IN THIS SECTION 8 ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES, AND GEMALTO COGENT EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ARISING FROM OR RELATING TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT AND ALL WARRANTIES THAT MAY ARISE FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. Gemalto Cogent does not warrant that the Systems will operate in combination with hardware, software, systems or data not provided by Gemalto Cogent or that the operation of the Systems will be uninterrupted or error-free. ALL EVALUATION, "BETA," AND PRE-PRODUCTION RELEASES OF EQUIPMENT OR SOFTWARE PROVIDED BY GEMALTO COGENT TO CUSTOMER WILL BE PROVIDED UNDER THE TERMS OF A SEPARATE BETA AGREEMENT, BUT IN ANY CASE ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND AND USE OF ANY SUCH RELEASE IN A PRODUCTION ENVIRONMENT IS AT CUSTOMER'S SOLE RISK.

8.3 Exclusive Remedies. Customer must report to Gemalto Cogent, pursuant to the notice provision of this Agreement, any breach of the warranties contained in Section 8.1 during the relevant warranty period. Customer's sole and exclusive remedies, and Gemalto Cogent's entire liability, will be:

(a) for a breach of the warranty in Section 8.1(a), the correction of the error or defect that caused the breach of warranty or, if Gemalto Cogent is unable to make the Hardware operate as warranted, the replacement of the defective Hardware; and

(b) for a breach of the warranty in Section 8.1(b), to correct or provide a reasonable workaround for Licensed Software errors that caused the breach of warranty or, if Gemalto Cogent is unable to make the Licensed Software operate as warranted, Customer will be entitled to terminate the license of the Licensed Software and recover the fees paid to Gemalto Cogent for such license.

8.4 Warranty Claim Process. All requests for warranty services hereunder must be submitted by Customer's Technical Contact. Before requesting warranty services hereunder, Customer shall exercise commercially reasonable efforts to determine the cause of the problem using Documentation, problem analysis procedures, and service request procedures provided by Gemalto Cogent. If Customer requests warranty services hereunder and Gemalto Cogent reasonably determines that there is no failure or that the services are outside the scope of the warranty, Customer shall pay for Gemalto Cogent's labor for such services at Gemalto Cogent's current price list per call and per man-hour rates then in effect and travel expenses as allowed by Customer's state or local government per diem. Customer shall maintain one or more detailed logs of all System failures, malfunctions, defects and other problems. Upon the completion of any warranty service hereunder, Customer shall update the logs to describe and reflect the warranty service performed. Customer shall allow Gemalto Cogent to inspect such logs at any time during normal business hours.

8.5 Limitations. Gemalto Cogent will have no liability or obligations under this Section 8 if (a) a breach of warranty is attributable in whole or in part to (i) abuse, misuse (including use of a System for purposes other than those for which it was designed), alteration, relocation, neglect, accidental damage or unauthorized repair, modification or installation of a System, (ii) Customer's failure to continually provide and maintain a suitable installation and operation environment (including, without limitation, proper electrical power, air conditioning, and humidity control), or (iii) the use or attempted use of software, hardware, supplies or services other than that supplied and supported by Gemalto Cogent or (b) Customer fails to comply with Section 8.4. Replacement or repair of a System does not extend its warranty period beyond the original warranty expiration date.

9. INFRINGEMENT INDEMNITY AND REMEDIES

9.1 Infringement Indemnity. Gemalto Cogent will defend Customer against a claim that a System, as provided by Gemalto Cogent to Customer and used within the scope of this Agreement, infringes any United States copyright or incorporates any misappropriated trade secret (a "Claim"). Gemalto Cogent will pay any liabilities, costs, damages or expenses, including reasonable attorneys' fees, attributable to such a Claim that are awarded against Customer in a final judgment or settlement approved in advance and in writing by Gemalto Cogent, provided that Customer: (a) notifies Gemalto Cogent in writing within thirty (30) days of commencement of the Claim; (b) grants Gemalto Cogent sole control of the defense and settlement of the Claim; and (c) provides Gemalto Cogent with all timely assistance, information and authority required for the defense and settlement of the Claim. Customer may retain its own counsel, at its expense, to monitor the defense and settlement of the Claim.

9.2 Exclusions. Gemalto Cogent will have no obligations under Section 9.1 if (a) the infringement is caused by the use of any non-Gemalto Cogent product, information, design, specification, instruction, software, data or material in combination with the System where such infringement would not have arisen but for such combination; (b) the infringement is caused by the modification of the System by a party other than Gemalto Cogent where such infringement would not have arisen but for such modification; or (c) the infringement is caused by the use of other than the current version of a Licensed Software, if the current version would be non-infringing and had been offered by Gemalto Cogent to Customer.

9.3 Remedies. If a System becomes, or Gemalto Cogent believes is likely to become, subject to a Claim, Gemalto Cogent will have the option, at its expense, to (a) modify the System to be noninfringing, or (b) obtain for Customer a license to continue using the System. If in Gemalto Cogent's sole judgment it is not commercially reasonable to perform either of the above options, then Gemalto Cogent may terminate any license for the allegedly infringing System and refund to Customer any purchase price or one-time software license fee paid for the System less an amount equal to the depreciated portion of such price or fee calculated on a five (5) year straight-line basis.

THIS SECTION 9.3 SETS FORTH GEMALTO COGENT'S SOLE OBLIGATIONS, AND CUSTOMER'S SOLE REMEDIES, IN THE EVENT OF ANY INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS BY GEMALTO COGENT OR THE PRODUCTS.

10. TERM AND TERMINATION

10.1 Term. This Agreement shall commence on the Effective Date and, unless earlier terminated pursuant to the terms hereof, shall continue for a period of three (3) years. Thereafter, this Agreement shall automatically renew on a month-to-month basis with payments based on the TIPS contract pricing, unless either party provides the other party with written notice of its intent not to renew at the end of the initial base term or anytime during the month-to-month renewal term.

10.2 Termination of Agreement. Either party may terminate this Agreement, any Order Schedule (or portion thereof) or any Licensed Software license upon written notice if:

(a) the other party materially breaches any material term or condition of this Agreement or the relevant Order Schedule and (i) fails to correct the breach within sixty (60) days following written notice specifying the breach or (ii) if such breach cannot reasonably be cured with such sixty (60) day period, has not commenced efforts to cure such breach within such sixty (60) day period;

(b) the other party applies for or consents to the appointment of a receiver, trustee or liquidator for substantially all of its assets or such a receiver, trustee or liquidator is appointed; or the other party has filed against it an involuntary petition for bankruptcy that has not been dismissed within thirty (30) days thereof, or files a voluntary petition for bankruptcy, or a petition or answer seeking reorganization, becomes or is adjudicated insolvent or bankrupt, admits in writing its inability to pay its debts as they mature, makes an assignment for the benefit of creditors or seeks to take advantage of any law relating to relief of debtors; or

(c) Customer materially breaches its obligations under Section 6 or 11.

10.3 Effect of Termination. Termination of this Agreement, any Order Schedule (or portion thereof) or any Licensed Software license will not limit either party from pursuing other remedies available to it, including injunctive relief, nor will such termination relieve Customer's obligation to pay all fees that have accrued or are otherwise owed by Customer under any Order Schedule. The parties' rights and obligations under Sections 4 ("Charges and Payments"), 5.5(d) ("Customer Cooperation" indemnity), 6.2 ("Restrictions"), 6.3 ("Transfer"), 6.4 ("Verification"), 7 ("Ownership"), 8.2 ("Disclaimer"), 8.3 ("Exclusive Remedies"), 8.4 ("Warranty Claim Process"), 8.5 ("Limitations"), 9 ("Infringement Indemnity and Remedies"), 10 ("Term and Termination"), 11 ("Confidentiality"), 12 ("Limitation of Liability") and 13 ("General") will survive termination or expiration of this Agreement or any Order Schedule. Upon any termination arising out of Customer's breach of its payment obligations, Gemalto Cogent will have all the rights of a secured creditor, including, without limitation, the right to repossess the Systems, wherever found, and the right to enter the premises where the Systems are located and disconnect, render unusable and remove it. Gemalto Cogent shall not be responsible for the cost of restoring the location to its original condition.

10.4 Perpetual License. Notwithstanding Section 10.3, each license of Licensed Software granted pursuant to Section 6.1 will survive expiration of this Agreement subject to Customer's continued compliance with the restrictions and conditions contained herein and Gemalto Cogent's rights of termination under Sections 4.2, 8.3(b), 9.3, 10.2(a) and 10.2(c). Upon any termination of any license of Licensed Software, Customer will cease using, and will return to Gemalto Cogent or destroy, all copies of such Licensed Software.

11. CONFIDENTIALITY.

Customer shall treat and hold the Licensed Software, Documentation, the terms and pricing of this Agreement, and any other information, data or documents of a confidential nature relating to the Systems or business of Gemalto Cogent (the "**Confidential Information**") in strict confidence and shall not make the Confidential Information available in any form to any third party for any purpose except to the extent necessary to perform an obligation hereunder. Customer shall treat and protect the Confidential Information with the same degree of care with which it would treat its own confidential information of a like nature, and in no case with less than a reasonable degree of care. Customer shall not use the Confidential Information for any purpose other than as expressly authorized under this Agreement and shall limit the disclosure of Confidential Information to those of its employees who have a need to know such Confidential Information and shall take all reasonable steps to ensure that the Confidential Information is not disclosed or distributed by its employees in violation of the terms of this Agreement. It will not be a breach of this section if the Confidential Information is disclosed pursuant to subpoena or other compulsory judicial or

administrative process, provided that Customer promptly notifies the Gemalto Cogent and provides reasonable assistance to Gemalto Cogent so that Gemalto Cogent may seek a protective order against disclosure.

12. LIMITATION OF LIABILITY

To the extent permitted by applicable law, in no event will Gemalto Cogent be liable for any indirect, incidental, special, consequential or punitive damages, or damages for loss of profits, revenue, business, savings, data, incurred by Customer or any third party, whether in an action in contract or tort, even if Gemalto Cogent has been advised of the possibility of such damages or if such damages are foreseeable. Except in the case of bodily injury or damage to tangible property resulting solely and directly from Gemalto Cogent's negligent acts or omission in its performance under the Agreement in which case Gemalto Cogent's liability for direct damages shall be unlimited, in no event will Gemalto Cogent's liability for direct damages hereunder exceed the amounts actually paid by Customer to Gemalto Cogent under this Agreement. Customer acknowledges that the limitations of liability in this Agreement and the allocation of risk herein are an essential element of the bargain between the parties, without which Gemalto Cogent would not have entered into this Agreement. Gemalto Cogent's pricing reflects this allocation of risk and the limitation of liability specified herein.

13. GENERAL

13.1 Relationship Between the Parties. This Agreement shall not be construed as creating an agency, partnership, joint venture or any other form of association, for tax purposes or otherwise, between the parties; the parties shall at all times be and remain independent contractors. Except as expressly agreed by the parties in writing, neither party shall have any right or authority, express or implied, to assume or create any obligation of any kind, or to make any representation or warranty, on behalf of the other party or to bind the other party in any respect whatsoever.

13.2 Governing Law; Venue; Mediation. This Agreement is to be construed in accordance with and governed by the internal laws of the State where Customer's principal place of business is located without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of such State to the rights and duties of the parties. Any legal suit, action, or proceeding arising out of or relating to this Agreement shall have venue in the appropriate state court in the county where the Customer's principal place of business is located, or, if filed in federal court, in the federal court district where the Customer's principal place of business is located. Each party hereto irrevocably submits to the exclusive jurisdiction and venue of any such court in any such suit, action, or proceeding. Neither party may bring any action arising out of or relating to this Agreement more than three (3) years after the cause of action accrues. In the event mediation is selected or required by a court of competent jurisdiction as a dispute resolution method, the mediation shall have venue in the county where the Customer's principal place of business is located and the selection of the mediator, if not specified by the Court of competent jurisdiction, shall be agreed upon by the Parties and the costs shall be shared equally.

13.3 Force Majeure. Neither party will be liable under this Agreement because of any failure or delay in the performance of its obligations (except for payment of money) on account of strikes, shortages, riots, fire, flood, storm, earthquake, acts of God, hostilities or any other cause beyond its reasonable control. Gemalto Cogent's inability supply Hardware, Software, materials, products, technical data or services due to the inability to obtain or maintain required export authorization shall not constitute a breach of this Agreement and Customer hereby acknowledges this risk.

13.4 Notice. Any notice, request, demand or other communication required or permitted hereunder will be in writing and will be deemed to be properly given upon the earlier of (a) actual receipt by the addressee, (b) five (5) business days after deposit in the mail, postage prepaid, when mailed by registered or certified airmail, return receipt requested, or (c) two (2) business days after being sent via private industry courier to the respective parties at the addresses first set forth on the signature page above or to such other person or address as the parties may from time to time designate in a writing delivered pursuant to this Section.

13.5 Severability and Waiver. In the event that any provision of this Agreement (or any portion hereof) is determined by a court of competent jurisdiction to be illegal, invalid or otherwise unenforceable, such provision (or portion thereof) will be enforced to the extent possible consistent with the stated intention of the parties, or, if incapable of such enforcement, will be deemed to be severed and deleted from this Agreement, while the remainder of this Agreement will continue in full force and remain in effect according to its stated terms and conditions. The waiver by either party of any default or breach of this Agreement will not constitute a waiver of any other or subsequent default or breach.

13.6 No Assignment. Customer may not assign, sell, transfer, delegate or otherwise dispose of, whether voluntarily or involuntarily, by operation of law or otherwise, this Agreement or any rights or obligations under this Agreement without the prior written consent of Gemalto Cogent. Gemalto Cogent shall be entitled to assign, transfer, delegate or otherwise dispose of its rights or obligations under this Agreement. Any purported assignment, transfer, delegation or other disposition by Customer will be null and void. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns.

13.7 Export Administration. Customer agrees to comply fully with all relevant export laws and regulations (collectively, “Export Controls”). Without limiting the generality of the foregoing, Customer expressly agrees not to, and will require its representatives to agree not to, export, direct or transfer Systems, or any direct product thereof, to any destination, person or entity restricted or prohibited by the Export Controls.

13.8 Injunctive Relief. Customer acknowledges that the breach of any provision of Sections 6 (“Licensed Software”), 7 (“Ownership”) or 11 (“Confidentiality”) shall cause irreparable injury to Gemalto Cogent, and agrees that Gemalto Cogent shall have the right to temporary, preliminary and permanent injunctive relief, without the necessity of proving actual damages or posting a bond, to prevent any such breach. In the event Gemalto Cogent is required to file a lawsuit or court action against Customer to prevent such breach, Customer agrees to pay Gemalto Cogent's reasonable attorney fees, expenses and court costs if so ordered by a court of competent jurisdiction.

13.9 Headings. The captions and section and paragraph headings used in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement.

13.10 Entire Agreement. This Agreement and the Exhibits hereto constitutes the complete agreement between the parties and supersedes all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of this Agreement. This Agreement may not be modified or amended except in a writing signed by a duly authorized representative of each party; no other act, document, usage or custom will be deemed to amend or modify this Agreement. It is expressly agreed that the terms of this Agreement and any Order Schedule will supersede the terms in any Customer purchase order or other ordering document. Notwithstanding the foregoing, any restrictions on the use or exploitation of any Licensed Software in addition to those contained herein that are set forth in any unsigned or “shrinkwrap” license included in any package, media or electronic version of Gemalto Cogent-furnished software will, as to such Licensed Software, supplement the restrictions contained herein.

END OF PAGE

EXHIBIT A
INITIAL ORDER SCHEDULE

CUSTOMER INFORMATION

Customer Name: _____

Installation Site/Shipping Address: _____

SYSTEMS

System	Hardware Purchase Price and Serial Number	Software License Fee	Number of Licensed Users, Workstations and/or Server CPUs	Annual Support Fee
	TOTAL:	TOTAL:		TOTAL:

DELIVERY DATE

INSTALLATION AND CUSTOMIZATION SERVICES

- Description: See Installation SOW attached hereto as Attachment 1.
- Fees: _____

SPECIFICATIONS See Specifications attached hereto as Attachment 2

EXHIBIT A – ATTACHMENT A.1
INSTALLATION STATEMENT OF WORK (SOW)

EXHIBIT A – ATTACHMENT A.2
SPECIFICATIONS

EXHIBIT B

FORM OF ORDER SCHEDULE FOR FUTURE ORDERS

This Order Schedule, entered into and effective as of _____, 200__, is governed by the Master Hardware Sale and Software License Agreement between Gemalto Cogent and Customer dated _____.

CUSTOMER INFORMATION

Customer Name: _____

Installation Site/Shipping Address: _____

SYSTEMS

System	Hardware Purchase Price and Serial Number	Software License Fee	Number of Licensed Users, Workstations and/or Server CPUs	Annual Support Fee
	TOTAL	TOTAL:		TOTAL:

DELIVERY DATE

INSTALLATION AND CUSTOMIZATION SERVICES

- Description: See Installation SOW attached hereto as Attachment 1.
- Fees: _____

SPECIFICATIONS See Specifications attached hereto as Attachment 2

CUSTOMER

GEMALTO COGENT

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT B – ATTACHMENT B.1
INSTALLATION STATEMENT OF WORK (SOW)

EXHIBIT B – ATTACHMENT B.2
SPECIFICATIONS

TIPS
LFIS SOFTWARE LICENSE AGREEMENT
(FOR END USER CUSTOMERS)

This TIPS LFIS Software License Agreement (“**Agreement**”) is entered into as of _____, 20____
 (“**Effective Date**”) by and between Gemalto Cogent, Inc. (“**Gemalto Cogent**”) and the customer identified below
 (“**Customer**”).

This Agreement consists of this signature page, the Basic Terms and Conditions and the attached Exhibits, all of which
 are part of this Agreement and are incorporated herein by reference:

Each party has read, understands and agrees to the terms and conditions of this Agreement.

Accepted and agreed by:

GEMALTO COGENT:

CUSTOMER:

Gemalto Cogent, Inc.

Company/Entity Name

Signature

Signature

Print Name

Print Name

Title

Title

Address for Formal Notice:

Address for Formal Notice

Gemalto Cogent, Inc.

639 N. Rosemead Boulevard

Pasadena, CA 91107

ATTN: CONTRACT ADMINISTRATOR

ATTN: _____

BASIC TERMS AND CONDITIONS FOR LFIS SOFTWARE LICENSE AGREEMENT

The terms and conditions of this Agreement will apply to all Software and Services identified on one or more Order Schedules.

1. DEFINITIONS

As used in this Agreement, the following capitalized terms shall have the meanings ascribed to such terms set forth below:

- 1.1 **"Acceptance Date"** has the meaning set forth in Section 3.2.
- 1.2 **"Cooperation"** has the meaning set forth in Section 5.5(a).
- 1.3 **"Documentation"** means such manuals, documentation and other supporting materials relating to the Software as provided to Customer hereunder.
- 1.4 **"Effective Date"** has the meaning set forth on the signature page hereto.
- 1.5 **"Installation Services"** has the meaning set forth in Section 5.1.
- 1.6 **"Intellectual Property Rights"** means on a world-wide basis, any and all now known or hereafter known tangible and intangible (a) rights associated with works of authorship including, without limitation, copyrights, moral rights and mask-works, (b) rights associated with trademarks, service marks, trade names and similar rights, (c) trade secret rights, (d) patents, designs, algorithms and other industrial property rights, (e) rights in domain names; (f) all other intellectual and industrial property rights of every kind and nature and however designated, whether arising by operation of law, contract, license or otherwise, and (g) all registrations, applications, renewals, extensions, continuations, divisions or reissues thereof now or hereafter existing, made or in force (including any rights in any of the foregoing).
- 1.7 **"Licensed Software"** means the Gemalto Cogent software, in object code form only, provided to Customer hereunder, and any Documentation and Updates for such software provided to Customer hereunder.
- 1.8 **"Order Schedule"** means a document that specifies the Software and Services to be provided hereunder and that is executed by both parties and attached hereto as an exhibit.
- 1.9 **"Services"** means, collectively, Installation Services, Support, Training and other services provided to Customer hereunder.
- 1.10 **"Support"** has the meaning set forth in Section 5.3.
- 1.11 **"Support Services Term"** means the first year after the Acceptance Date with respect to the applicable Order Schedule, plus any respective renewal terms.
- 1.12 **"Software"** means the Licensed Software and Third Party Software designated in an Order Schedule for delivery to Customer.
- 1.13 **"Technical Contact"** has the meaning set forth in Section 5.5(b).
- 1.14 **"Third Party Software"** means the software that is developed by and for which a third party holds the Intellectual Property Rights, if any, and which is included with the Licensed Software.
- 1.15 **"Training"** has the meaning set forth in Section 5.2.
- 1.16 **"Update"** means a subsequent release of or error corrections or bug fixes related to the Licensed Software that Gemalto Cogent makes generally available to its licensees of the Licensed Software for no additional license fee. Updates do not include any release, option or future product that Gemalto Cogent separately licenses.

2. ORDERS

2.1 **Orders and Order Acceptance.** During the term of this Agreement, Customer may request Software and Services by signing and submitting to Gemalto Cogent a proposed Order Schedule. Such requests shall be subject to Software and Service availability, Gemalto Cogent's fees and policies in effect when such proposed Order Schedule

is submitted, and acceptance by Gemalto Cogent. The terms and conditions set forth in this Agreement and in any Order Schedule will control in the event that there are different or additional terms set forth in any other ordering document submitted by Customer. Except as expressly provided in herein, the terms and conditions of any Order Schedule will control over any conflicting terms and conditions set forth in this Agreement.

2.2 Order Changes. Unless otherwise specified in this Agreement or an Order Schedule, any changes to an Order Schedule must be mutually agreed upon by the parties in writing, and may require a change in fees (including changes to reflect the inclusion, deletion or substitution of Software or Services and Gemalto Cogent's costs for processing such change).

3. DELIVERY

3.1 Delivery. Gemalto Cogent will make commercially reasonable efforts to meet any delivery date specified in the relevant Order Schedule. All Software provided hereunder will be shipped to the Customer address designated in the relevant Order Schedule. In the absence of specific routing instructions, Gemalto Cogent reserves the right to select the carrier and method of delivery of the Software.

3.2 Acceptance of Licensed Software. Acceptance of the Licensed Software will occur upon the date (the "Acceptance Date") which is the earlier of (a) Customer's execution of a written certificate of acceptance, (b) 10 days after receipt of the Licensed Software unless Customer provides Gemalto Cogent with a written statement of rejection, (c) the date that Gemalto Cogent demonstrates to Customer, by the successful completion of acceptance testing or otherwise, that the Licensed Software substantially conforms to the specifications set forth in the applicable Order Schedule, and (d) the date Customer uses any part of the Licensed Software for any purpose other than performing acceptance tests. In the event that the Licensed Software fails to conform substantially to the acceptance criteria set forth in the applicable specifications, Gemalto Cogent will have a reasonable time to remedy such non-conformance following Gemalto Cogent's receipt of written notice from Customer specifying in reasonable detail the nature of such non-conformance. In the event that Gemalto Cogent is unable to remedy such non-conformance, (i) Customer may accept the Licensed Software on an "AS IS" basis, subject to a reasonable price adjustment, or (ii) Customer may return the Licensed Software to Gemalto Cogent and receive a refund of amounts paid to Gemalto Cogent for the Licensed Software. Acceptance will not be delayed for any minor non-conformance with the specification. Following acceptance, Gemalto Cogent will use reasonable efforts to correct any minor non-conformance that appeared during acceptance testing.

4. CHARGES AND PAYMENTS

4.1 Fees and Charges. Customer agrees to pay the fees and charges for Software and Services specified on the Order Schedules. Gemalto Cogent reserves the right to modify its prices at any time during the term of this Agreement. Fees may include one-time or installment payments (for example, for Licensed Software licenses) and recurring fees (for example, periodic charges for Support). Customer will additionally pay any additional charges outlined in an Order Schedule.

4.2 Invoicing and Payment. Fees and purchase prices are set forth on the applicable Order Schedule. Except as otherwise provided in the Order Schedule, any amounts payable by Customer hereunder that remain unpaid after the due date will be subject to a late charge equal to the lesser of one and one-half percent (1.5%) per month and the maximum rate allowable by law from the due date until such amount is paid. Restrictive endorsements or other statements on checks accepted by Gemalto Cogent will not apply. If any invoice remains unpaid for a period of ninety (90) days after the due date, Gemalto Cogent may, without incurring liability of any sort and without limitation of any other available remedies, suspend performance hereunder. If any invoice remains unpaid for a period of one hundred and eighty (180) days or more after the due date, Gemalto Cogent may, without incurring liability of any sort and without limitation of any other available remedies, terminate this Agreement. Customer agrees to reimburse Gemalto Cogent for reasonable attorneys' fees and any other costs associated with collecting delinquent payments.

4.3 Currency. Customer will pay all amounts due to Gemalto Cogent in the currency of the relevant Order Schedule, or United States currency if not otherwise set forth, unless otherwise agreed. Gemalto Cogent and Customer will arrange for such payment to be made in a mutually convenient manner as agreed between them from time to time.

4.4 Security Interest. Intentionally deleted.

4.5 Taxes. All amounts payable under this Agreement are exclusive of tax. Customer will pay or reimburse Gemalto Cogent for all value-added, sales, use, property and similar taxes, and all other mandatory payments to government agencies of whatever kind imposed with respect to products or services provided by Gemalto Cogent under this Agreement or with respect to transactions under this Agreement, except taxes imposed on the net income of Gemalto Cogent. If a transaction is exempt from tax, Customer will provide Gemalto Cogent with a valid exemption certificate or other evidence of such exemption in a form acceptable to Gemalto Cogent. If Customer is required by law to deduct or withhold any taxes, levies, imposts, fees, assessments, deductions or charges from or in respect of any amounts payable hereunder to Gemalto Cogent, (a) Customer shall pay the relevant taxation authority the minimum amounts necessary to comply with the applicable law, (b) Customer shall make such payment prior to the date on which interest or penalty is attached thereto, and (c) the amounts payable hereunder shall be increased as may be necessary so that after Customer makes all required deductions or withholdings, Gemalto Cogent shall receive amounts equal to the amounts it would have received had no such deductions or withholdings been required.

5. SERVICES AND CUSTOMER COOPERATION

5.1 Installation. Gemalto Cogent will provide Licensed Software installation and customization services at the Installation Site to the extent specified in an Order Schedule (the “**Installation Services**”). Installation Services will be provided under Gemalto Cogent’s standard installation and customization procedures for Licensed Software in effect on the date of the applicable Order Schedule. Any installation or customization services requested by Customer beyond those specified in an Order Schedule shall be subject to the negotiation and execution of a separate Order Schedule and Gemalto Cogent’s then-current policies and pricing.

5.2 Training. Any training services specified in an Order Schedule (“**Training**”) will be provided under and subject to Gemalto Cogent’s training offerings as of the date of such Order Schedule.

5.3 Support. Subject to the payment of applicable Support fees as provided in an Order Schedule, Gemalto Cogent shall provide the support services specified in this Section 5.3 for the Licensed Software during the Support Services Term (“**Support**”). At the expiration of the initial Support Services Term, the Support Services Term shall be automatically renewed for successive one (1) year periods unless Customer notifies Gemalto Cogent in writing of its intent not to renew at least sixty (60) days prior to the end of the then-current Support Services Term. In the event that Customer elects not to renew Support, reinstatement fees may apply if Support is reinstated hereunder, which reinstatement shall be at Gemalto Cogent’s then-current rates.

(a) Installation Assistance. Gemalto Cogent will provide remote support, during ordinary business hours, to assist the customer in setting up the Licensed Software on customer’s software. Installation Assistance shall be provided for the number of hours specified in the Order Schedule. Should Customer desire additional Installation Assistance, or other installation services on an on-site basis, Gemalto Cogent reserves the right to charge for such services at its ordinary time and materials rates and on other terms to be agreed by the parties.

(b) Updates. During the Support Services Term, Gemalto Cogent will provide Customer with Updates if and when Gemalto Cogent makes any such Updates generally available to its end user customers receiving support services from Gemalto Cogent; provided that Gemalto Cogent shall not be required to provide any Update that is not compatible with the Licensed Software delivered to Customer hereunder. Any customization and installation services required to implement an Update shall be subject to Gemalto Cogent’s then current per man-hour rates. Support does not include providing additional functionality or major software releases and upgrades as solely determined by Gemalto Cogent.

(c) Support. Gemalto Cogent will provide general telephone support to the Technical Contact during Gemalto Cogent’s regular business hours, which will consist of answering questions regarding the proper operation of the Licensed Software and rendering general information, advice, and instructions in connection with the use of the Licensed Software.

(d) Exclusions from Support. Gemalto Cogent is not obligated to provide Support in the following situations:

(i) the Licensed Software has been changed, modified or damaged (excluding modifications made under the direct supervision of Gemalto Cogent);

(ii) the issues resulting from or relating to: (a) computer hardware, equipment, or software not supplied by Gemalto Cogent (including but limited to changes in third party operating software and other utilities); (b) the negligence of Customer or any third party; (c) a cause or causes beyond the reasonable control of Gemalto Cogent; or (d) attempted maintenance by unauthorized persons;

(iii) Customer has not installed and implemented all Update(s); or

(iv) Customer has not paid the applicable Support fees when due.

(e) Termination of Support. Gemalto Cogent reserves the right to discontinue the provision of the Support should Gemalto Cogent, in its sole discretion, determine that continued Support for any Licensed Software is no longer economically feasible, considering such factors as possible obsolescence and other factors it deems relevant. Gemalto Cogent shall provide Customer at least thirty (30) days prior written notice of any such discontinuance of Support and shall refund any unaccrued Support fees Customer may have prepaid with respect to the affected Licensed Software.

5.4 Additional Services; Contractors. Any additional or supplemental services requested by Customer beyond those specified in an Order Schedule shall be subject to the negotiation and execution of a separate Order Schedule and Gemalto Cogent's then-current policies and pricing. Gemalto Cogent may use consultants or other contractors in connection with the performance of its obligations under this Agreement.

5.5 Customer Cooperation.

(a) Customer acknowledges that Customer's timely provision of (and Gemalto Cogent's access to) Customer facilities, equipment, assistance, cooperation, and complete and accurate information and data from Customer's officers, agents and employees ("**Cooperation**") is essential to Gemalto Cogent's performance under this Agreement, and that Gemalto Cogent shall not be liable for any deficiency in performing hereunder if such deficiency results from any delay or failure in Customer's provision of Cooperation or Customer's failure to perform an obligation hereunder.

(b) Customer shall designate one of its technical employees to coordinate all activities with Gemalto Cogent under this Agreement (the "**Technical Contact**"). The Technical Contact shall be available at all reasonable times to provided and coordinate the provision of Cooperation and to make decisions on behalf of Customer.

(c) Without limitation of the foregoing, Customer shall provide Gemalto Cogent and its suppliers and contractors with free and safe access to the Installation Site and the Software as reasonably necessary for Gemalto Cogent to perform its obligations under this Agreement. If Customer is aware of, or becomes aware of, the existence of any unsafe condition or hazardous material at the Installation Site, Customer shall promptly notify Gemalto Cogent of such condition in writing. The Installation Site shall be located in a secure area of Customer's facilities and, except as expressly provided in an Order Schedule, Customer shall be responsible for all site improvements, equipment, and services necessary to operate the Software at the Installation Site (including, without limitation, air conditioning, electrical equipment/service and communication services (phone and network)). Except to the extent required by law, Gemalto Cogent's employees and contractors shall not be required to sign any waivers, releases or other documents to gain access to Customer's premises in connection with the performance under this Agreement and any such waivers, releases or other documents shall be invalid and shall have no effect.

(d) To the extent permitted under applicable law and notwithstanding anything in this Agreement to the contrary, Customer shall indemnify, defend and hold harmless Gemalto Cogent, its employees and agents, from and against any and all claims, damages, liabilities and court awards (including costs, expenses, and attorney fees) arising from any alleged wrongful arrest, detainment, or other confinement by Customer or its employees, agents, subcontractors, or assignees.

6. LICENSED SOFTWARE

6.1 Limited License to use Licensed Software. Subject to Customer's compliance with the terms and conditions of this Agreement, Gemalto Cogent hereby grants and agrees to grant to Customer a non-exclusive, non-transferable license (without the right to sublicense):

(a) to use the Licensed Software solely for Customer's own business operations, solely at the Installation Site and on the equipment on which the Licensed Software is first installed (or, on a temporary basis, on

a backup system at the Installation Location if such equipment is inoperative), consistent with any additional limitations specified or referenced in this Agreement, an Order Schedule and the Documentation;

(b) to use the Documentation provided with the Licensed Software in support of Customer's authorized use of the Licensed Software; and

(c) to make one copy of the Licensed Software solely for archival or backup purposes, provided that all titles and trademark, copyright and restricted rights notices are reproduced on all such copies.

(d) to use the Licensed Software on additional equipment or at additional Installation Sites only upon the prior written approval of Gemalto Cogent, which approval may require the payment of an additional fee.

6.2 Restrictions. Customer will not copy or use the Licensed Software (including the Documentation) except as expressly permitted by this Agreement. Customer will not modify the Licensed Software, except to the extent expressly approved in advance by Gemalto Cogent in writing. Customer may not sublicense, sell, lend, give, transfer, assign, rent or lease the Licensed Software or use the Licensed Software for third-party training, commercial time-sharing or service bureau use. Customer will not, and will not permit any third party to, reverse engineer, disassemble or decompile any Licensed Software, except to the extent expressly permitted by applicable law, and then only after (i) Customer has notified Gemalto Cogent in writing of its intended activities and the information sought and (ii) Gemalto Cogent fails to provide Customer with such information within a reasonable period of time following such notice. Customer will not remove, obscure, or alter any notice of patent, copyright, restricted rights, trade secret, trademark, or other proprietary right related to the Licensed Software. Customer hereby acknowledges and agrees that all Licensed Software is licensed and not sold to Customer.

6.3 Transfer. If the equipment on which the Licensed Software is installed is sold or assigned to a third party, Customer will remove all Software from such equipment prior to delivery to the third party. Gemalto Cogent may grant the new owner or assignee a license to the relevant Licensed Software, provided that the new owner or assignee agrees to Gemalto Cogent's then-current Licensed Software license terms and conditions (including Gemalto Cogent's then-current fees) and such other terms as Gemalto Cogent may reasonably require.

6.4 Verification. At Gemalto Cogent's written request, and not more frequently than is reasonable under the circumstances, (a) Customer will verify in writing that the Licensed Software is being used pursuant to the provisions of this Agreement and the relevant Order Schedule, and (b) Gemalto Cogent may audit Customer's use of the Licensed Software electronically or at Customer's facilities. Any such audit at Customer's facilities will be conducted during regular business hours and no audit will unreasonably interfere with Customer's business activities.

6.5 Legal Use. Customer will, under all circumstances, use the Licensed Software only for a lawful purpose and not in violation of any applicable laws or regulations pertaining to the use of facial or other biometric recognition technology.

6.6 Use of Third Party Software. Customer's use of Third Party Software shall be subject to the respective third party's license terms included with the Third Party Software.

7. OWNERSHIP

7.1 Gemalto Cogent will retain all rights, title and interest in and to the Intellectual Property Rights in the Licensed Software and any derivative works thereof, subject only to the limited license set forth herein. Customer does not acquire any other rights, express or implied, in the Licensed Software.

7.2 Rights, title and interest in and to the Intellectual Property Rights, if any, in Third Party Software shall be as set forth in the third party's license terms included with the respective Third Party Software.

8. WARRANTIES AND REMEDIES

8.1 Warranties. Gemalto Cogent hereby represents and warrants to Customer that the Licensed Software will substantially operate in accordance with the specifications set forth in the applicable Order Schedule for a period of one year from the Acceptance Date.

8.2 Disclaimer. THE WARRANTIES IN THIS SECTION 8 ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES, AND GEMALTO COGENT EXPRESSLY DISCLAIMS ALL OTHER

WARRANTIES, WHETHER EXPRESS OR IMPLIED, ARISING FROM OR RELATING TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT AND ALL WARRANTIES THAT MAY ARISE FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. Gemalto Cogent does not warrant that the Software will operate in combination with hardware, software, Software or data not provided by Gemalto Cogent or that the operation of the Software will be uninterrupted or error-free. ALL EVALUATION, "BETA," AND PRE-PRODUCTION RELEASES OF SOFTWARE PROVIDED BY GEMALTO COGENT TO CUSTOMER WILL BE PROVIDED UNDER THE TERMS OF A SEPARATE BETA AGREEMENT, BUT IN ANY CASE ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND AND USE OF ANY SUCH RELEASE IN A PRODUCTION ENVIRONMENT IS AT CUSTOMER'S SOLE RISK.

8.3 Exclusive Remedies. Customer must report to Gemalto Cogent, pursuant to the notice provision of this Agreement, any breach of the warranty contained in Section 8.1 during the relevant warranty period. Customer's sole and exclusive remedy, and Gemalto Cogent's entire liability, will be for Gemalto Cogent to correct or provide a reasonable workaround for Licensed Software errors that caused the breach of warranty or, if Gemalto Cogent is unable to make the Licensed Software operate as warranted, Customer will be entitled to terminate the license of the Licensed Software and recover the fees paid to Gemalto Cogent for such license.

8.4 Warranty Claim Process. All requests for warranty services hereunder must be submitted by Customer's Technical Contact. Before requesting warranty services hereunder, Customer shall exercise commercially reasonable efforts to determine the cause of the problem using Documentation, problem analysis procedures, and service request procedures provided by Gemalto Cogent. If Customer requests warranty services hereunder and Gemalto Cogent reasonably determines that there is no failure or that the services are outside the scope of the warranty, Customer shall pay for Gemalto Cogent's labor for such services at Gemalto Cogent's current price list per call and per man-hour rates then in effect and travel expenses as allowed by Customer's state or local government per diem. Customer shall maintain one or more detailed logs of all Software failures, malfunctions, defects and other problems. Upon the completion of any warranty service hereunder, Customer shall update the logs to describe and reflect the warranty service performed. Customer shall allow Gemalto Cogent to inspect such logs at any time during normal business hours.

8.5 Limitations. Gemalto Cogent will have no liability or obligations under this Section 8 if (a) a breach of warranty is attributable in whole or in part to (i) abuse, misuse (including use of Software for purposes other than that for which it was not designed), alteration, relocation, neglect, accidental damage or unauthorized repair, modification or installation of Software, (ii) Customer's failure to continually provide and maintain a suitable installation and operation environment (including, without limitation, proper electrical power, air conditioning, and humidity control), or (iii) the use or attempted use of software, hardware, supplies or services other than that supplied and supported by Gemalto Cogent or (b) Customer fails to comply with Section 8.4. Replacement or repair of Licensed Software does not extend its warranty period beyond the original warranty expiration date.

9. INFRINGEMENT INDEMNITY AND REMEDIES

9.1 Infringement Indemnity. Gemalto Cogent will defend Customer against a claim that Licensed Software, as provided by Gemalto Cogent to Customer and used within the scope of this Agreement, infringes any United States copyright or incorporates any misappropriated trade secret (a "Claim"). Gemalto Cogent will pay any liabilities, costs, damages or expenses, including reasonable attorneys' fees, attributable to such a Claim that are awarded against Customer in a final judgment or settlement approved in advance and in writing by Gemalto Cogent, provided that Customer: (a) notifies Gemalto Cogent in writing within thirty (30) days of commencement of the Claim; (b) grants Gemalto Cogent sole control of the defense and settlement of the Claim; and (c) provides Gemalto Cogent with all timely assistance, information and authority required for the defense and settlement of the Claim. Customer may retain its own counsel, at its expense, to monitor the defense and settlement of the Claim.

9.2 Exclusions. Gemalto Cogent will have no obligations under Section 9.1 if (a) the infringement is caused by the use of any non-Gemalto Cogent product, information, design, specification, instruction, software, data or material in combination with the Licensed Software where such infringement would not have arisen but for such combination; (b) the infringement is caused by the modification of the Licensed Software by a party other than Gemalto Cogent where such infringement would not have arisen but for such modification; or (c) the infringement is

caused by the use of other than the current version of Licensed Software, if the current version would be non-infringing and had been offered by Gemalto Cogent to Customer.

9.3 Remedies. If Licensed Software becomes, or Gemalto Cogent believes is likely to become, subject to a Claim, Gemalto Cogent will have the option, at its expense, to (a) modify the Software to be noninfringing, or (b) obtain for Customer a license to continue using the Licensed Software. If in Gemalto Cogent's sole judgment it is not commercially reasonable to perform either of the above options, then Gemalto Cogent may terminate any license for the allegedly infringing Licensed Software and refund to Customer any purchase price or one-time software license fee paid for the Licensed Software less an amount equal to the depreciated portion of such price or fee calculated on a five (5) year straight-line basis. THIS SECTION 9.3 SETS FORTH GEMALTO COGENT'S SOLE OBLIGATIONS, AND CUSTOMER'S SOLE REMEDIES, IN THE EVENT OF ANY INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS BY GEMALTO COGENT OR THE PRODUCTS.

10. TERM AND TERMINATION

10.1 Term. This Agreement shall commence on the Effective Date and, unless earlier terminated pursuant to the terms hereof, shall continue for a period of three (3) years. Thereafter, this Agreement shall automatically renew on a month-to-month basis at the TIPS contract pricing, unless either party provides the other party with written notice of its intent not to renew prior to the end of the initial base term or anytime during the month-to-month renewal term.

10.2 Termination of Agreement. Either party may terminate this Agreement, any Order Schedule (or portion thereof) or any Software license upon written notice if:

(a) the other party materially breaches any material term or condition of this Agreement or the relevant Order Schedule and (i) fails to correct the breach within sixty (60) days following written notice specifying the breach or (ii) if such breach cannot reasonably be cured with such sixty (60) day period, has not commenced efforts to cure such breach within such sixty (60) day period;

(b) the other party applies for or consents to the appointment of a receiver, trustee or liquidator for substantially all of its assets or such a receiver, trustee or liquidator is appointed; or the other party has filed against it an involuntary petition for bankruptcy that has not been dismissed within thirty (30) days thereof, or files a voluntary petition for bankruptcy, or a petition or answer seeking reorganization, becomes or is adjudicated insolvent or bankrupt, admits in writing its inability to pay its debts as they mature, makes an assignment for the benefit of creditors or seeks to take advantage of any law relating to relief of debtors; or

(c) Customer materially breaches its obligations under Section 6 or 11.

10.3 Effect of Termination. Termination of this Agreement, any Order Schedule (or portion thereof) or any Licensed Software license will not limit either party from pursuing other remedies available to it, including injunctive relief, nor will such termination relieve Customer's obligation to pay all fees that have accrued or are otherwise owed by Customer under any Order Schedule. The parties' rights and obligations under Sections 4 ("Charges and Payments"), 5.5(d) ("Customer Cooperation" indemnity), 6.2 ("Restrictions"), 6.3 ("Transfer"), 6.4 ("Verification"), 6.6 ("Use of Third Party Software"), 7 ("Ownership"), 8.2 ("Disclaimer"), 8.3 ("Exclusive Remedies"), 8.4 ("Warranty Claim Process"), 8.5 ("Limitations"), 9 ("Infringement Indemnity and Remedies"), 10 ("Term and Termination"), 11 ("Confidentiality"), 12 ("Limitation of Liability") and 13 ("General") will survive termination or expiration of this Agreement or any Order Schedule. Upon any termination arising out of Customer's breach of its payment obligations, Gemalto Cogent will have all the rights of a secured creditor, including, without limitation, the right to repossess the Software, wherever found, and the right to enter the premises where the Software are located and disconnect, render unusable and remove it. Gemalto Cogent shall not be responsible for the cost of restoring the location to its original condition.

10.4 Perpetual License. Notwithstanding Section 10.3, each license of Licensed Software granted pursuant to Section 6.1 will survive expiration of this Agreement subject to Customer's continued compliance with the restrictions and conditions contained herein and Gemalto Cogent's rights of termination under Sections 4.2, 9.3, 10.2(a) and 10.2(c). Upon any termination of any license of Licensed Software, Customer will cease using and will return to Gemalto Cogent or destroy all copies of Software.

11. CONFIDENTIALITY.

Customer shall treat and hold the Licensed Software, Documentation, the terms and pricing of this Agreement, and any other information, data or documents of a confidential nature relating to the Licensed Software or business of Gemalto Cogent (the “**Confidential Information**”) in strict confidence and shall not make the Confidential Information available in any form to any third party for any purpose except to the extent necessary to perform an obligation hereunder. Customer shall treat and protect the Confidential Information with the same degree of care with which it would treat its own confidential information of a like nature, and in no case with less than a reasonable degree of care. Customer shall not use the Confidential Information for any purpose other than as expressly authorized under this Agreement and shall limit the disclosure of Confidential Information to those of its employees who have a need to know such Confidential Information and shall take all reasonable steps to ensure that the Confidential Information is not disclosed or distributed by its employees in violation of the terms of this Agreement. It will not be a breach of this section if the Confidential Information is disclosed pursuant to subpoena or other compulsory judicial or administrative process, provided that Customer promptly notifies Gemalto Cogent and provides reasonable assistance to Gemalto Cogent so that Gemalto Cogent may seek a protective order against disclosure.

12. LIMITATION OF LIABILITY

To the extent permitted by applicable law, in no event will Gemalto Cogent be liable for any indirect, incidental, special, consequential or punitive damages, or damages for loss of profits, revenue, business, savings, data, incurred by Customer or any third party, whether in an action in contract or tort, even if Gemalto Cogent has been advised of the possibility of such damages or if such damages are foreseeable. Except in the case of bodily injury or damage to tangible property resulting solely and directly from Gemalto Cogent’s negligent acts or omissions in its performance under the Agreement, in which case Gemalto Cogent’s liability for direct damages shall be unlimited, in no event will Gemalto Cogent’s liability for direct damages hereunder exceed the amounts actually paid by Customer to Gemalto Cogent under this Agreement. Customer acknowledges that the limitations of liability in this Agreement and the allocation of risk herein are an essential element of the bargain between the parties, without which Gemalto Cogent would not have entered into this Agreement. Gemalto Cogent’s pricing reflects this allocation of risk and the limitation of liability specified herein.

13. GENERAL

13.1 Relationship between the Parties. This Agreement shall not be construed as creating an agency, partnership, joint venture or any other form of association, for tax purposes or otherwise, between the parties; the parties shall at all times be and remain independent contractors. Except as expressly agreed by the parties in writing, neither party shall have any right or authority, express or implied, to assume or create any obligation of any kind, or to make any representation or warranty, on behalf of the other party or to bind the other party in any respect whatsoever.

13.2 Governing Law; Venue; Mediation. This Agreement is to be construed in accordance with and governed by the internal laws of the State where Customer’s principal place of business is located without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of such State to the rights and duties of the parties. Any legal suit, action, or proceeding arising out of or relating to this Agreement shall have venue in the appropriate state court in the county where the Customer’s principal place of business is located, or, if filed in federal court, in the federal court district where the Customer’s principal place of business is located. Each party hereto irrevocably submits to the exclusive jurisdiction and venue of any such court in any such suit, action, or proceeding. Neither party may bring any action arising out of or relating to this Agreement more than three (3) years after the cause of action accrues. In the event mediation is selected or required by a court of competent jurisdiction as a dispute resolution method, the mediation shall have venue in the county where the Customer’s principal place of business is located and the selection of the mediator, if not specified by the Court of competent jurisdiction, shall be agreed upon by the Parties and the costs shall be shared equally.

13.3 Force Majeure. Neither party will be liable under this Agreement because of any failure or delay in the performance of its obligations (except for payment of money) on account of strikes, shortages, riots, fire, flood, storm, earthquake, acts of God, hostilities or any other cause beyond its reasonable control.

13.4 Notice. Any notice, request, demand or other communication required or permitted hereunder will be in writing and will be deemed to be properly given upon the earlier of (a) actual receipt by the addressee, (b) five (5)

business days after deposit in the mail, postage prepaid, when mailed by registered or certified airmail, return receipt requested, or (c) two (2) business days after being sent via private industry courier to the respective parties at the addresses first set forth on the signature page above or to such other person or address as the parties may from time to time designate in a writing delivered pursuant to this Section.

13.5 Severability and Waiver. In the event that any provision of this Agreement (or any portion hereof) is determined by a court of competent jurisdiction to be illegal, invalid or otherwise unenforceable, such provision (or portion thereof) will be enforced to the extent possible consistent with the stated intention of the parties, or, if incapable of such enforcement, will be deemed to be severed and deleted from this Agreement, while the remainder of this Agreement will continue in full force and remain in effect according to its stated terms and conditions. The waiver by either party of any default or breach of this Agreement will not constitute a waiver of any other or subsequent default or breach.

13.6 No Assignment. Customer may not assign, sell, transfer, delegate or otherwise dispose of, whether voluntarily or involuntarily, by operation of law or otherwise, this Agreement or any rights or obligations under this Agreement without the prior written consent of Gemalto Cogent. Gemalto Cogent shall be entitled to assign, transfer, delegate or otherwise dispose of its rights or obligations under this Agreement. Any purported assignment, transfer, delegation or other disposition by Customer will be null and void. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns.

13.7 Export Administration. Customer agrees to comply fully with all applicable export laws and regulations (collectively, "Export Controls"). Without limiting the generality of the foregoing, Customer expressly agrees not to, and will require its representatives to agree not to, export, direct or transfer Software, or any direct product thereof, to any destination, person or entity restricted or prohibited by the Export Controls.

13.8 Injunctive Relief. Customer acknowledges that the breach of any provision of Sections 6.1 through 6.4 ("Licensed Software"), 7.1 ("Ownership") or 11 ("Confidentiality") shall cause irreparable injury to Gemalto Cogent, and agrees that Gemalto Cogent shall have the right to temporary, preliminary and permanent injunctive relief, without the necessity of proving actual damages or posting a bond, to prevent any such breach. In the event Gemalto Cogent is required to file a lawsuit or court action against Customer to prevent such breach, Customer agrees to pay Gemalto Cogent's reasonable attorney fees, expenses and court costs if so ordered by a court of competent jurisdiction.

13.9 Headings. The captions and section and paragraph headings used in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement.

13.10 Entire Agreement. This Agreement and the Exhibits hereto constitute the complete agreement between the parties and supersede all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of this Agreement. This Agreement may not be modified or amended except in a writing signed by a duly authorized representative of each party; no other act, document, usage or custom will be deemed to amend or modify this Agreement. It is expressly agreed that the terms of this Agreement and any Order Schedule will supersede the terms in any Customer purchase order or other ordering document. Notwithstanding the foregoing, any restrictions on the use or exploitation of any Licensed Software in addition to those contained herein that are set forth in any unsigned or "shrinkwrap" license included in any package, media or electronic version of Gemalto Cogent-furnished software will, as to such Licensed Software, supplement the restrictions contained herein.

END OF PAGE

EXHIBIT A
ORDER SCHEDULE

CUSTOMER INFORMATION

Customer Name _____

Project Name _____

Installation Site (i.e., location of server) _____

Shipping/Delivery Address (if different from site location above) _____

SOFTWARE

Software	Software License Fee	Number of Permitted Clients/ Cameras	Number of Permitted Records in Database	Annual Support Fee (after warranty)
TOTAL:				TOTAL:

REQUESTED DELIVERY DATE _____

INSTALLATION AND CUSTOMIZATION SERVICES

- Description _____
- Fees _____

SOFTWARE SPECIFICATIONS

CUSTOMER

GEMALTO COGENT

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

TIPS
LIVESCAN HARDWARE AND SOFTWARE MAINTENANCE AND SUPPORT AGREEMENT
(LAW ENFORCEMENT)

This TIPS Livescan Hardware and Software Maintenance and Support Agreement (the “**Agreement**”) is made and entered into as of [Agreement start date] (the “**Effective Date**”), between Gemalto Cogent, Inc., a Delaware corporation having its principal place of business at 639 North Rosemead Boulevard, Pasadena, California 91107 (“**Gemalto Cogent**”), and [Legal name of Licensee] , having its principal place of business at [License’s primary address] (“**Licensee**”).

WHEREAS, the parties have entered into the Supply Agreement (as defined below), pursuant to which Gemalto Cogent has granted to Licensee certain license rights in the Software (as defined below);

WHEREAS, the Licensee has purchased the Hardware (as defined below) from Gemalto Cogent; and

WHEREAS, Licensee desires to obtain and Gemalto Cogent agrees to provide maintenance and support services for such Hardware and Software, in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree to the following terms and conditions, which set forth the rights, duties and obligations of the parties:

NOTE: This Agreement does not contain any license terms and, accordingly, should be executed in connection with a license agreement for the applicable Software, which agreement should contain license terms governing the use of the Software.

1. DEFINITIONS

1.1 “**Additional Support Term**” has the meaning set forth in Section 8.1.

1.2 “**Documentation**” means the written materials, including instructions, rules, guidelines, manuals, and/or procedures, associated with the Software that Gemalto Cogent generally makes available to its licensees of such Software.

1.3 “**Error**” means a reproducible defect or combination of defects in the Software that results in a failure of the Software, when used in accordance with Gemalto Cogent’s instructions (including, without limitation, the applicable Documentation), to function substantially in accordance with the Specifications. As used hereunder, a reproducible defect will mean a defect that Gemalto Cogent can reproduce using the most recent version of the Software, as delivered by Gemalto Cogent to Licensee, in accordance with the terms of the Supply Agreement and the terms set forth herein.

1.4 “**Error Correction**” means either (a) a bug fix, patch, or other modification or addition that, when made or added to the Software, corrects an Error, or (b) a procedure or routine that, when observed in the regular operation of the Software, eliminates the practical adverse effect of an Error on Licensee.

1.5 “**Hardware**” means the hardware purchased by Licensee from Gemalto Cogent for use in connection with the Software as such hardware is further described on Exhibit C (Support Fees).

1.6 “**Initial Support Term**” has the meaning set forth in Section 8.1.

1.7 “**Software**” means the computer program(s) licensed by Gemalto Cogent to Licensee pursuant to the Supply Agreement as further described on Exhibit C (Support Fees).

1.8 “**Specifications**” means the technical specifications for the Software as set forth in the applicable Documentation.

1.9 “**Supply Agreement**” means that certain agreement or purchase order entered into by and between Gemalto Cogent and Licensee, dated [Purchase Agreement/Order date] , which agreement or

purchase order addresses the purchase of Hardware and the license of Software from Gemalto Cogent and which is hereby incorporated herein by reference.

1.10 “**Support Fees**” has the meaning set forth in Section 5.1.

1.11 “**Support Services**” means the support and maintenance services provided by Gemalto Cogent pursuant to this Agreement, as further described herein.

1.12 “**Support Services Term**” has the meaning set forth in Section 8.1.

1.13 “**Technical Contact**” means the person or persons designated by Licensee on Exhibit A (Licensee’s Primary Service Engineer(s)), attached hereto, as the initial interface for Error reporting for the Software and fault reporting for the Hardware.

1.14 “**Update**” means a revision of the Software which is released by Gemalto Cogent during the Term of this Agreement and which contains an Error Correction. Unless agreed otherwise in writing, any Updates provided to Licensee during the Term of this Agreement will be provided by Gemalto Cogent to Licensee at no extra charge so long as Licensee is in compliance with the terms and conditions of the Agreement. Any revision of the Software that is not an Update shall be deemed an Upgrade.

1.15 “**Upgrade**” means a revision of the Software released by Gemalto Cogent during the Term of this Agreement which adds new and different functions to the Software or increases the capacity of the Software to process information. Gemalto Cogent is under no obligation to provide any Upgrades under this Agreement, but if any Upgrades are made available to Licensee under this Agreement, each Upgrade will generally require Licensee’s payment of an additional charge.

2. HARDWARE MAINTENANCE AND SUPPORT

2.1 Fault Reporting and Correction. During the Support Services Term, on the terms and conditions of this Agreement, Gemalto Cogent shall repair or replace without charge to Licensee any part of the Hardware found to be faulty by reason of defective material, design or workmanship. Hardware problems will be reported by Licensee through Licensee’s Technical Contact to Gemalto Cogent at the support number set forth on Exhibit B (Technical Support Contact Information), as may be revised by Gemalto Cogent from time to time. Each such report will be accompanied or followed by sufficient information to enable Gemalto Cogent to determine the cause of the Hardware problem. Gemalto Cogent will acknowledge each such report via telephone, facsimile transmission, or electronic mail to the Technical Contact and will use commercially reasonable efforts consistent with the severity of the problem to repair or replace the Hardware. Any Hardware replaced by Gemalto Cogent shall be replaced with hardware of comparable functionality, which may be new or reconditioned hardware. Gemalto Cogent will determine, in its sole discretion, the manner in which it will repair or replace the Hardware. Gemalto Cogent will pay all shipping costs required to ship the faulty Hardware to and from Gemalto Cogent.

2.2 On-site Support. Gemalto Cogent, may, in its sole discretion, provide emergency on-site support to Licensee beyond the support described in Section 2.1 above. If Gemalto Cogent provides on-site support, such support will in all cases be subject to the availability of appropriate Gemalto Cogent personnel. Additional charges may apply for on-site support in accordance with Gemalto Cogent’s then current TIPS price list and Licensee’s allowable state or local government per diem rates for travel expenses.

2.3 Exclusions from Hardware Maintenance and Support. Except as provided in Sections 2.1 and 2.2 above, Gemalto Cogent shall have no responsibility to provide Hardware maintenance or support. By way of example, but not as a limitation to the scope of the foregoing statement, Gemalto Cogent shall not be required to repair or replace any Hardware where Gemalto Cogent determines, in its sole and reasonable discretion, that the Hardware requires such repair or replacement to the extent arising from:

2.3.1 any changes or modifications to the Hardware or Software included on the Hardware in each case that were not made by Gemalto Cogent;

- 2.3.2 damage to the Hardware (other than normal wear and tear);
- 2.3.3 the failure of computer hardware, equipment, or software not supplied by Gemalto Cogent;
- 2.3.4 the negligence of Licensee or any third party;
- 2.3.5 the use of operating systems or auxiliary devices (e.g., third part hardware components) in conjunction with Hardware or Software which have not been approved in writing by Gemalto Cogent for use with Hardware and Software;
- 2.3.6 attempted maintenance by unauthorized persons; or
- 2.3.7 Licensee's use or improper use of the Hardware, or merging or combining the Hardware with any hardware or software not authorized by Gemalto Cogent to be so merged or combined.
- 2.3.8 Gemalto Cogent shall not be required to repair, replace, or upgrade any Hardware for the purpose of maintaining compatibility with third party hardware or software or updates thereof (including but not limited to third party operating systems), or where requested due to changes in Licensee's IT policies (including but not limited to security policies).

3. SOFTWARE MAINTENANCE AND SUPPORT

3.1 Error Reporting and Correction. Gemalto Cogent will provide Licensee with Software support by telephone 24 hours a day, 7 days a week. Each Error experienced by Licensee related to Licensee's use of the Software will be reported by Licensee through Licensee's Technical Contact to Gemalto Cogent at the support number set forth on Exhibit B (Technical Support Contact Information), as may be revised by Gemalto Cogent from time to time. Each such Error report will be accompanied or followed by sufficient information to enable Gemalto Cogent to reproduce and verify the Error. Gemalto Cogent will acknowledge each such reported Error via telephone, facsimile transmission, or electronic mail to the Technical Contact and will use commercially reasonable efforts consistent with the severity of the Error to reproduce and verify reported Errors and provide Error Corrections therefor. Gemalto Cogent will determine, in its sole discretion, the priority level of each reported Error.

3.2 On-Site Support. Gemalto Cogent, may, in its sole discretion, provide emergency on-site support to Licensee beyond the support described in Section 3.1, above. If Gemalto Cogent provides on-site support, such support will in all cases be subject to the availability of appropriate Gemalto Cogent personnel. Additional charges may apply for on-site support in accordance with Gemalto Cogent's then current TIPS price list and Licensee's allowable state or local government per diem rates for travel expenses.

3.3 Exclusions from Software Maintenance and Support. Except as provided in Sections 3.1 and 3.2 above, Gemalto Cogent shall have no responsibility to provide Software maintenance or support. By way of example, but not as a limitation to the scope of the foregoing statement, Gemalto Cogent shall not be obligated to provide Software Maintenance and Support Services where:

- 3.3.1 the Software has been changed, modified, or damaged (excluding modifications made by Gemalto Cogent);
- 3.3.2 the Software Maintenance and Support Services are necessary due to: (a) failure of computer hardware, equipment, or software not supplied by Gemalto Cogent; (b) the negligence of Licensee or any third party; (c) a cause or causes beyond the reasonable control of Gemalto Cogent; (d) attempted maintenance by unauthorized persons; (e) Licensee's use or improper use of the Software, or the use, merging or combining of the Software with any hardware or software not authorized by Gemalto Cogent to be so merged or combined;

- 3.3.3 Licensee has not installed and implemented any Error Corrections provided by Gemalto Cogent; or
- 3.3.4 Licensee has not paid the Support Fees, or any related fees or amounts, when due.
- 3.3.5 Gemalto Cogent shall not be required to (i) repair, replace, or upgrade any Software to a subsequent version for the purpose of maintaining compatibility with third party software or updates thereof (including but not limited to third party operating systems), or where requested due to changes in Licensee's IT policies (including but not limited to security policies); or (ii) provide Updates to third party software that is no longer supported by the third party vendor.

4. LICENSEE RESPONSIBILITIES

4.1 Licensee will be responsible for allowing Gemalto Cogent to implement all Error Corrections furnished by Gemalto Cogent and for paying all costs in connection with any Upgrades offered to Licensee by Gemalto Cogent under this Agreement.

4.2 Licensee will be responsible for performing all data backups and Gemalto Cogent shall have no obligation to perform data backups for Licensee nor any liability for Licensee's failure to perform them.

4.3 Licensee acknowledges that all Documentation, Software, Error Corrections, and Upgrades provided by Gemalto Cogent are subject to the conditions of the Supply Agreement, and Licensee agrees to comply with those conditions.

4.4 Licensee will fully cooperate and assist Gemalto Cogent in the provision of the Support Services, including allowing full and free access, including, but not limited to remote access, to relevant hardware, software, and other information if reasonably required by Gemalto Cogent.

5. FEES AND PAYMENTS

5.1 **Support Fees.** Licensee will pay annual support fees for the Support Services based on Gemalto Cogent's then current annual rate for Support Services ("**Support Fees**"). Gemalto Cogent's current annual Support Fees are set forth in the attached Exhibit C (Support Fees). Payment for the Initial Support Term will be due and payable on the Effective Date. Payment for each Additional Support Term will be due and payable by Licensee in advance of the commencement of such Additional Support Term. Gemalto Cogent will provide a proforma invoice thirty (30) days prior to the expiration of the then current Support term. Gemalto Cogent reserves the right to increase the annual Support Fees for any Additional Support Terms and will give Licensee advance notice of such increases. If Licensee fails to purchase Support Services concurrently with Licensee's purchase of the Hardware and/or Software to be supported, or fails to renew Support Services upon termination of the Initial Support Term or any Additional Support Term, and Licensee subsequently desires to commence Support Services for the Hardware and/or Software, Gemalto Cogent may, at its option, commence Support Services in accordance with Gemalto Cogent's then-current policies and upon payment by Licensee of the then-applicable annual Support Fee and reinstatement fee for the period between Gemalto Cogent's original delivery of the Hardware and/or Software or termination of the Initial Support Term or any Additional Support Term (whichever is later) and Licensee's purchase of the Support Services.

5.2 **Taxes.** All taxes and duties attributable to this Agreement (except taxes relating to Gemalto Cogent's net income), including sales, use, and any other tax assessed by local, state, or federal authorities, will be borne by Licensee. Licensee will reimburse Gemalto Cogent for any such taxes and duties.

5.3 **Late Payment.** Any sums not paid when due will automatically accrue interest from the date when due until actually paid at a rate of eighteen percent (18%) per annum or the highest rate allowed by law, whichever is less.

6. DISCLAIMER OF WARRANTIES

GEMALTO COGENT DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WITH REGARD TO SERVICES PROVIDED UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES THAT MAY ARISE FROM A COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. WITH RESPECT TO ANY HARDWARE FAULTS REPORTED BY LICENSEE TO GEMALTO COGENT, LICENSEE AGREES THAT GEMALTO COGENT'S SOLE AND EXCLUSIVE OBLIGATION AND LICENSEE'S SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT IS FOR GEMALTO COGENT TO USE COMMERCIALY REASONABLE EFFORTS TO REPAIR OR REPLACE THE HARDWARE IN ACCORDANCE WITH GEMALTO COGENT'S MAINTENANCE OBLIGATIONS PURSUANT TO SECTION 2 ABOVE. WITH RESPECT TO ANY ERRORS REPORTED BY LICENSEE TO GEMALTO COGENT, LICENSEE AGREES THAT GEMALTO COGENT'S SOLE AND EXCLUSIVE OBLIGATION AND LICENSEE'S SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT IS FOR GEMALTO COGENT TO USE COMMERCIALY REASONABLE EFFORTS TO CORRECT SUCH ERRORS IN ACCORDANCE WITH GEMALTO COGENT'S SUPPORT OBLIGATIONS PURSUANT TO SECTION 3 ABOVE.

7. LIMITATION OF LIABILITY

EXCEPT IN THE CASE OF BODILY INJURY OR DAMAGE TO TANGIBLE PROPERTY RESULTING SOLELY AND DIRECTLY FROM GEMALTO COGENT'S NEGLIGENT ACTS OR OMISSIONS IN ITS PERFORMANCE UNDER THE AGREEMENT, IN WHICH CASE GEMALTO COGENT'S LIABILITY FOR DIRECT DAMAGES SHALL BE UNLIMITED, GEMALTO COGENT'S AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENT (WHETHER ARISING FROM CONTRACT OR OTHERWISE) FOR DIRECT DAMAGES IS LIMITED TO THE TOTAL AMOUNT OF FEES PAID BY LICENSEE UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING GEMALTO COGENT'S RECEIPT OF NOTICE OF SUCH CLAIM. GEMALTO COGENT SHALL NOT IN ANY CASE BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, WHETHER BASED UPON CONTRACT, TORT, OR ANY OTHER LEGAL THEORY, ARISING FROM ITS PERFORMANCE OR NONPERFORMANCE UNDER THIS AGREEMENT.

8. TERM AND TERMINATION

8.1 Term. This Agreement will commence on the Effective Date and, unless earlier terminated pursuant to the terms hereof, will continue for a period of one (1) year (the "**Initial Support Term**"). At the expiration of the Initial Support Term, the Agreement shall automatically renew on a month-to-month basis ("**Additional Support Term**") with payments to be prorated at a monthly rate based on the TIPS contract pricing, unless either party provides the other party with written notice of its intent not to renew at the end of the Initial Support Term or anytime during the Additional Support Term. The Initial Support Term and any Additional Support Terms are collectively referred to herein as the "**Support Services Term**."

8.2 Discontinuance of Support Services. Gemalto Cogent reserves the right to discontinue provision of the Support Services and terminate this Agreement should Gemalto Cogent, in its sole discretion, determine that the continued provision of Support Services for any Hardware or Software is no longer economically feasible, considering such factors as possible obsolescence and other factors Gemalto Cogent deems relevant. Gemalto Cogent will give Licensee at least three (3) months prior written notice of any such discontinuance of Support Services and will refund any unaccrued Support Fees that Licensee may have prepaid with respect to the affected Software. In all cases, Gemalto Cogent will have no obligation to support or maintain any version of the Software or operating system except (a) the then-current version of the Software, and (b) the immediately preceding version of the Software for a period of six (6) months after it is first superseded.

8.3 Termination for Cause. If either party materially defaults in any of its obligations under this Agreement, the non-defaulting party, at its option, will have the right to terminate this Agreement by written notice to the other party unless, within thirty (30) calendar days after receiving written notice of such default, the defaulting

party remedies the default. Without limiting the foregoing, Gemalto Cogent will have the right to terminate this Agreement, immediately upon written notice to Licensee, if Licensee fails to pay any overdue Support Fees within fifteen (15) days of written notice and demand from Gemalto Cogent.

8.4 Effect of Termination. Sections 1, 5 (to the extent fees or amounts due have accrued prior to expiration or termination), 6, 7, 8.4, 10, and 12 will survive the expiration or termination of this Agreement for any reason.

9. INTEGRATION EFFORTS NOT INCLUDED.

This Agreement does not include any installation or deployment activities or anything related to Hardware or Software outside the project delivery scope. This Agreement covers only those Products listed on Exhibit C (Support Fees).

10. DATA BACKUP

Gemalto Cogent is not responsible for executing or validating data backup for the System unless specific pricing for such activities is set forth in Exhibit C (Support Fees). Notwithstanding the foregoing statement, if requested by Licensee, Gemalto Cogent will suggest recommended data backup practices for Licensee to follow regarding the System. In the event of a need by Licensee for data restoration, Gemalto Cogent may provide reasonable assistance to Licensee in Licensee's efforts to recover data with data backup provided by Licensee. Gemalto Cogent is not responsible for any data lost if data is not backed up properly.

11. SERVICE LEVEL AGREEMENT

The Service Level Agreement applicable to Support Services offered under this Agreement is attached hereto and incorporated herein by reference as Exhibit D (Service Level Agreement).

12. GENERAL

12.1 Force Majeure. Except with respect to Licensee's obligation to make timely payments, neither party will be responsible for any delay or failure in performance to the extent that such delay or failure is caused by fires, strikes, embargoes, explosion, earthquakes, floods, wars, labor disputes, terrorism, government requirements, civil or military authorities, acts of God or by the public enemy, inability to secure raw materials or transportation facilities, acts or omissions of carriers or suppliers, or other causes beyond its reasonable control. Gemalto Cogent's inability to supply Hardware, Software, Support Services or other materials or services of whatever nature due to the inability to obtain or maintain required export authorization shall not constitute a breach of this Agreement and Customer hereby acknowledges this risk.

12.2 Severability. If any provision of this Agreement is declared or found to be illegal, unenforceable, or void, then each provision not so affected will remain in full force and effect.

12.3 Assignment. Licensee may not assign this Agreement or any of its rights or delegate any of its obligations under this Agreement, by operation of law or otherwise, without the prior written consent of Gemalto Cogent. Gemalto Cogent may assign this Agreement and any of its rights and delegate any of its obligations under this Agreement. This Agreement will bind each party and its permitted successors and assigns.

12.4 Disputes. This Agreement is to be construed in accordance with and governed by the internal laws of the State where Licensee's principal place of business is located without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of such State to the rights and duties of the parties. Any legal suit, action, or proceeding arising out of or relating to this Agreement shall have venue in the appropriate state court in the county where the Customer's principal place of business is located, or, if filed in federal court, in the federal court district where the Customer's principal place of business is located. Each party hereto irrevocably submits to the exclusive jurisdiction and venue of any such court in any such suit, action, or proceeding. Neither party may bring any action arising out of or relating to this Agreement more than three (3)

years after the cause of action accrues. In the event mediation is selected or required by a court of competent jurisdiction as a dispute resolution method, the mediation shall have venue in the county where the Customer's principal place of business is located and the selection of the mediator, if not specified by the Court of competent jurisdiction, shall be agreed upon by the Parties and the costs shall be shared equally.

12.5 No Waiver. No course of dealing, course of performance, or failure of either party strictly to enforce any term, right, or condition of this Agreement will be construed as a waiver of any other term, right, or condition. No waiver or breach of any provision of this Agreement will be construed to be a waiver of any subsequent breach of the same or any other provision.

12.6 Relationship of the Parties. This Agreement will not be construed as creating an agency, partnership, joint venture, or any other form of association, for tax purposes or otherwise, between the parties, and the parties will at all times be and remain independent contractors. Except as expressly agreed by the parties in writing, neither party will have any right or authority, express or implied, to assume or create any obligation of any kind, or to make any representation or warranty, on behalf of the other party or to bind the other party in any respect whatsoever.

12.7 Notices. Gemalto Cogent will deliver all notices and communications concerning support and maintenance matters to the attention of Licensee's Technical Contact at the address set forth in Exhibit A (Licensee's Primary Service Engineer(s)). Any other notice, request, demand, or other communication required or permitted hereunder will be in writing, will reference this Agreement, and will be deemed to be properly given: (a) when delivered personally; (b) when sent by facsimile, with written confirmation of receipt by the sending facsimile machine; (c) five (5) business days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (d) two (2) business days after deposit with an express courier, with written confirmation of receipt. All notices will be sent to the address specified on the signature page of this Agreement (or to such other address as may be designated by a party by giving written notice to the other party pursuant to this Section).

12.8 Complete Agreement. This Agreement, any exhibits and schedules attached to it, and any agreements or terms and conditions incorporated by reference herein, contain the entire understanding of the parties with respect to the subject matter hereof and, except with respect to the Supply Agreement, supersede any and all related prior understandings, agreements, representations, negotiations, and discussions, whether oral or written. This Agreement cannot be modified or amended except in a writing signed by both parties.

GEMALTO COGENT, INC.

LEGAL NAME OF LICENSEE

Authorized Signature

Authorized Signature

Name (Type or Print)

Name (Type or Print)

Title

Title

Address

Address

Date

Date

EXHIBIT A

LICENSEE'S PRIMARY SERVICE ENGINEER(S)

Licensee's Primary Service Engineer(s):

[NAME] _____

[ADDRESS] _____

[NAME] _____

[ADDRESS] _____

EXHIBIT B

TECHNICAL SUPPORT CONTACT INFORMATION

Phone: 1-866-500-2347

Email: CgtHelpdesk@gemalto.com

EXHIBIT C

SUPPORT FEES

[LIST COVERED HARDWARE AND SOFTWARE AND RELATED FEES]

EXHIBIT D

SERVICE LEVEL AGREEMENT

Severity	Severity Definition	Detail Description	Example(s)	Response Time *
Significant	Significant Impact to Usability >25% of licensees or daily used functionality	Problems that cause a significant performance impact on any system component (unscheduled), or impacting more than 50% of the system's transactions. Licensee must be available to work toward a resolution.	Multiple workstations are completely inoperable -OR- System response is not meeting contractual obligations	2 business hours
Medium	Moderate Impact to Usability <25% of users or moderately used functionality	Problems that cause a moderate impact on licensee's productivity, system performance or system functionality. A mid-term work-around is available. Licensee must be available to work toward a resolution.	Workstation or device is not functioning within designed specifications	4 business hours
Low	Low impact to licensees	Problems that cause little to no effect on licensee's productivity, system functionality or system performance.	Inconvenient error message -OR- Intermittent problem	8 business hours

**after being contacted by licensee*

TIPS
LIVESCAN MASTER EQUIPMENT SALE AND SOFTWARE LICENSE AGREEMENT
(LAW ENFORCEMENT)

This TIPS Livescan Master Equipment Sale and Software License Agreement (“**Agreement**”) is entered into as of _____, 20____ (“**Effective Date**”) by and between Gemalto Cogent, Inc. (“**Gemalto Cogent**”) and the customer identified below (“**Customer**”).

This Agreement consists of this signature page, the Basic Terms and Conditions and the following Exhibits, which are part of this Agreement and are incorporated herein by reference:

Exhibit A: Initial Order Schedule

Exhibit B: Form of Order Schedule for Future Orders

Each party has read, understands and agrees to the terms and conditions of this Agreement.

Accepted and agreed by:

Gemalto Cogent:

Gemalto Cogent, Inc.

Signature

Print Name

Title

Address for Formal Notice:

Gemalto Cogent, Inc.

639 Rosemead Boulevard

Pasadena, CA 91107

ATTN: Contract Administrator

CUSTOMER:

Company/Entity Name

Signature

Print Name

Title

Address for Formal Notice

ATTN:

**BASIC TERMS AND CONDITIONS
FOR LIVESCAN MASTER EQUIPMENT SALE AND SOFTWARE LICENSE AGREEMENT**

The terms and conditions of this Agreement will apply to all Systems and Services identified on one or more Order Schedules.

1. DEFINITIONS

As used in this Agreement, the following capitalized terms shall have the meanings ascribed to such terms set forth below:

1.1 "Acceptance Date" has the meaning set forth in Section 3.3.

1.2 "Approved Auxiliary Devices" means hardware components approved by Gemalto Cogent for use with Licensed Software. A list of Approved Auxiliary Devices, including both approved Gemalto Cogent products and approved third party products, is available by calling the Gemalto Cogent Technical Support number: 1-866-500-2347.

1.3 "Approved Operating Systems" means those third party operating systems approved by Gemalto Cogent for use with Licensed Software. The list of Approved Operating Systems is available by calling the Gemalto Cogent Technical Support number: 1-866-500-2347.

1.4 "Cooperation" has the meaning set forth in Section 5.5(a).

1.5 "Documentation" means such manuals, documentation and other supporting materials relating to the Systems as are currently maintained by Gemalto Cogent and provided to Customer hereunder.

1.6 "Effective Date" has the meaning set forth on the signature page hereto.

1.7 "Equipment" means the Gemalto Cogent hardware provided to Customer hereunder as part of a System.

1.8 "Installation Date" means: (a) for a System that Gemalto Cogent is responsible for installing pursuant to an Installation SOW, the business day that Gemalto Cogent installs such System in accordance with the relevant Documentation; (b) for all other Systems, the date that Gemalto Cogent ships such System to Customer; or (c) if no delivery is necessary, the effective date of the relevant Order Schedule.

1.9 "Installation Services" has the meaning set forth in Section 5.1.

1.10 "Installation Site" means the installation location for a System, as specified in the applicable Order Schedule.

1.11 "Installation SOW" means a statement of work attached to an Order Schedule specifying installation and customization services to be provided by Gemalto Cogent, if any.

1.12 "Intellectual Property Rights" means on a world-wide basis, any and all now known or hereafter known tangible and intangible (a) rights associated with works of authorship including, without limitation, copyrights, moral rights and mask-works, (b) rights associated with trademarks, service marks, trade names and similar rights, (c) trade secret rights, (d) patents, designs, algorithms and other industrial property rights, (e) rights in domain names; (f) all other intellectual and industrial property rights of every kind and nature and however designated, whether arising by operation of law, contract, license or otherwise, and (g) all registrations, applications, renewals, extensions, continuations, divisions or reissues thereof now or hereafter existing, made or in force (including any rights in any of the foregoing).

1.13 "Licensed Software" means the Gemalto Cogent Livescan software, in object code form only, provided to Customer hereunder either as part of a System or by itself for use with Gemalto Cogent hardware, other Approved Auxiliary Devices, and Approved Operating Systems, and any Documentation and Updates for such software provided to Customer hereunder.

1.14 "Order Schedule" means a document that specifies the System and Services to be provided hereunder and that is executed by both parties and attached hereto as an exhibit. The initial Order Schedule that specifies the initial

System and Services to be provided hereunder is attached as Exhibit A. Each subsequent Order Schedule shall be completed in the form attached as Exhibit B hereto.

1.15 “Services” means Installation Services, Training, and other services provided to Customer hereunder.

1.16 “System” means the Equipment and the Licensed Software designated in an Order Schedule for delivery to Customer.

1.17 “Technical Contact” has the meaning set forth in Section 5.5(b).

1.18 “Training” has the meaning set forth in Section 5.2.

1.19 “Update” means a revision of the Software which is released by Gemalto Cogent during the Term of this Agreement and which contains an Error Correction. Unless agreed otherwise in writing, any Updates provided to Licensee during the Term of this Agreement will be provided by Gemalto Cogent to Licensee at no extra charge so long as Licensee is in compliance with the terms and conditions of the Agreement. Any revision of the Software that is not an Update shall be deemed an Upgrade.

1.20 “Upgrade” means a revision of the Software released by Gemalto Cogent during the Term of this Agreement which adds new and different functions to the Software or increases the capacity of the Software to process information. Gemalto Cogent is under no obligation to provide any Upgrades under this Agreement, but if any Upgrades are made available to Licensee under this Agreement, each Upgrade will generally require Licensee’s payment of an additional charge.

2. ORDERS

2.1 Orders and Order Acceptance. During the term of this Agreement, Customer may request Systems and Services by signing and submitting to Gemalto Cogent a proposed Order Schedule in the form attached hereto as Exhibit B. Such requests shall be subject to System and Service availability, Gemalto Cogent’s fees and policies in effect when such proposed Order Schedule is submitted, and acceptance by Gemalto Cogent. The terms and conditions set forth in this Agreement and in any Order Schedule will control in the event that there are different or additional terms set forth in any other ordering document submitted by Customer. Except as expressly provided in herein, the terms and conditions of any Order Schedule will control over any conflicting terms and conditions set forth in this Agreement.

2.2 Order Changes. Unless otherwise specified in this Agreement or an Order Schedule, any changes to an Order Schedule must be mutually agreed upon by the parties in writing, and may require a change in fees (including changes to reflect the inclusion, deletion or substitution of Systems or Services and Gemalto Cogent’s costs for processing such change).

3. DELIVERY

3.1 Delivery. Gemalto Cogent will make commercially reasonable efforts to meet any delivery date specified in the relevant Order Schedule. All Systems provided hereunder will be shipped to the Customer address designated in the relevant Order Schedule. In the absence of specific routing instructions, Gemalto Cogent reserves the right to select the common carrier and method of shipment for the Systems.

3.2 Title and Risk of Loss. All Systems provided hereunder will be delivered to Customer on an EXW (Origin) basis (INCOTERMS 2000), at which point title and risk of loss to Equipment and media will pass to Customer.

3.3 Acceptance. Acceptance of the System will occur upon the date (the “**Acceptance Date**”) which is the earlier of (a) Customer’s execution of a written certificate of acceptance, (b) 10 days after receipt of the System unless Customer provides Gemalto Cogent with a written statement of rejection, (c) the date that Gemalto Cogent demonstrates to Customer, by the successful completion of acceptance testing or otherwise, that the System substantially conforms to the specifications set forth in the applicable Order Schedule, and (d) the date Customer uses any part of the System for production purposes. In the event that the System fails to conform substantially to the acceptance criteria set forth in the applicable specifications, Gemalto Cogent will have a reasonable time to remedy such non-conformance following Gemalto Cogent’s receipt of written notice from Customer specifying in reasonable detail the nature of such non-conformance. In the event that Gemalto Cogent is unable to remedy such non-conformance, (i) Customer may accept the System on an “AS IS” basis, subject to a reasonable price adjustment, or

(ii) Customer may return the System to Gemalto Cogent and receive a refund of amounts paid to Gemalto Cogent for the System. Acceptance will not be delayed for any minor non-conformance with the specification. Following acceptance, Gemalto Cogent will use reasonable efforts to correct any minor non-conformance that appeared during acceptance testing.

4. CHARGES AND PAYMENTS

4.1 Fees and Charges. Customer agrees to pay the fees and charges for Systems and Services specified on the Order Schedules. Gemalto Cogent reserves the right to modify its prices at any time during the term of this Agreement. Fees may include one-time or installment payments (for example, for Equipment, Installation Services and Licensed Software licenses) and recurring fees (for example, periodic charges for support). Customer will additionally pay any additional charges outlined in an Order Schedule.

4.2 Invoicing and Payment. Fees and purchase prices are set forth on the applicable Order Schedule. Except as otherwise provided in Exhibit A, any amounts payable by Customer hereunder that remain unpaid after the due date will be subject to a late charge equal to the lesser of one and one-half percent (1.5%) per month and the maximum rate allowable by law from the due date until such amount is paid. Restrictive endorsements or other statements on checks accepted by Gemalto Cogent will not apply. If any invoice remains unpaid for a period of ninety (90) days after the due date, Gemalto Cogent may, without incurring liability of any sort and without limitation of any other available remedies, suspend performance hereunder. If any invoice remains unpaid for a period of one hundred and eighty (180) days or more after the due date, Gemalto Cogent may, without incurring liability of any sort and without limitation of any other available remedies, terminate this Agreement. Customer agrees to reimburse Gemalto Cogent for reasonable attorneys' fees and any other costs associated with collecting delinquent payments.

4.3 Currency. Customer will pay all amounts due to Gemalto Cogent in the currency of the relevant Order Schedule, unless otherwise agreed. Gemalto Cogent and Customer will arrange for such payment to be made in a mutually convenient manner as agreed between them from time to time.

4.4 Security Interest. Intentionally deleted.

4.5 Taxes. All amounts payable under this Agreement are exclusive of tax. Customer will pay or reimburse Gemalto Cogent for all value-added, sales, use, property and similar taxes, and all other mandatory payments to government agencies of whatever kind imposed with respect to products or services provided by Gemalto Cogent under this Agreement or with respect to transactions under this Agreement, except taxes imposed on the net income of Gemalto Cogent. If a transaction is exempt from tax, Customer will provide Gemalto Cogent with a valid exemption certificate or other evidence of such exemption in a form acceptable to Gemalto Cogent. If Customer is required by law to deduct or withhold any taxes, levies, imposts, fees, assessments, deductions or charges from or in respect of any amounts payable hereunder to Gemalto Cogent, (a) Customer shall pay the relevant taxation authority the minimum amounts necessary to comply with the applicable law, (b) Customer shall make such payment prior to the date on which interest or penalty is attached thereto, and (c) the amounts payable hereunder shall be increased as may be necessary so that after Customer makes all required deductions or withholdings, Gemalto Cogent shall receive amounts equal to the amounts it would have received had no such deductions or withholdings been required.

5. SERVICES AND CUSTOMER COOPERATION

5.1 Installation. Gemalto Cogent will provide System installation and customization services to the extent specified in an Installation SOW (the "**Installation Services**"). Installation Services will be provided under Gemalto Cogent's standard installation and customization procedures for Systems in effect on the date of the applicable Order Schedule. Any installation or customization services requested by Customer beyond those specified in an Installation SOW shall be subject to the negotiation and execution of a separate Order Schedule and Gemalto Cogent's then-current policies and pricing.

5.2 Training. Any training services specified in an Order Schedule ("**Training**") will be provided under and subject to Gemalto Cogent's training offerings as of the date of such Order Schedule.

5.3 Equipment Maintenance and Software Support. Should Customer wish to contract for Equipment maintenance and Software support, those services would be offered pursuant to the terms, including pricing, set forth in Gemalto Cogent's Livescan Hardware and Software Maintenance and Support Agreement, which document Customer would need to execute to receive Equipment maintenance and Software support.

5.4 Additional Services; Contractors. Any additional or supplemental services requested by Customer beyond those specified in an Order Schedule shall be subject to the negotiation and execution of a separate Order Schedule and Gemalto Cogent's then-current policies and pricing. Gemalto Cogent may use consultants or other contractors in connection with the performance of its obligations under this Agreement.

5.5 Customer Cooperation.

(a) Customer acknowledges that Customer's timely provision of (and Gemalto Cogent's access to) Customer facilities, equipment, assistance, cooperation, and complete and accurate information and data from Customer's officers, agents and employees ("**Cooperation**") is essential to Gemalto Cogent's performance under this Agreement, and that Gemalto Cogent shall not be liable for any deficiency in performing hereunder if such deficiency results from a delay or failure in Customer's provision of Cooperation or Customer's failure to perform an obligation hereunder.

(b) Customer shall designate one of its technical employees to coordinate all activities with Gemalto Cogent under this Agreement (the "**Technical Contact**"). The Technical Contact shall be available at all reasonable times to provide and coordinate the provision of Cooperation and to make decisions on behalf of Customer.

(c) Without limitation of the foregoing, Customer shall provide Gemalto Cogent and its suppliers and contractors with free and safe access to the Installation Site and the Systems as reasonably necessary for Gemalto Cogent to perform its obligations under this Agreement. If Customer is aware of, or becomes aware of, the existence of any unsafe condition or hazardous material at the Installation Site, Customer shall promptly notify Gemalto Cogent of such condition in writing. The Installation Site shall be located in a secure area of Customer's facilities and, except as expressly provided in an Installation SOW, Customer shall be responsible for all site improvements, equipment, and services necessary to operate the Systems at the Installation Site (including, without limitation, air conditioning, electrical equipment/service and communication services (phone and network)). Notwithstanding anything to the contrary in this Agreement or any Order Schedule, Customer shall abate and remove any asbestos, hazardous material or other unsafe conditions at the Installation Site prior to the provision of any Services by Gemalto Cogent. Except to the extent required by law, Gemalto Cogent's employees and contractors shall not be required to sign any waivers, releases or other documents to gain access to Customer's premises in connection with the performance under this Agreement and any such waivers, releases or other documents shall be invalid and shall have no effect.

(d) To the extent permitted under applicable law and notwithstanding anything in this Agreement to the contrary, Customer shall indemnify, defend and hold harmless Gemalto Cogent, its employees and agents, from and against any and all claims, damages, liabilities and court awards (including costs, expenses, and attorney fees) arising from any alleged wrongful arrest, detainment, or other confinement by Customer or its employees, agents, subcontractors, or assignees.

6. LICENSED SOFTWARE

6.1 Limited License. Subject to Customer's compliance with the terms and conditions of this Agreement, Gemalto Cogent hereby grants and agrees to grant to Customer a non-exclusive, non-transferable license (without the right to sublicense):

(a) to use the Licensed Software solely for Customer's own business operations, solely at the Installation Site and on the Equipment on which the Licensed Software is first installed (or, on a temporary basis, on a backup system at the Installation Location if such equipment is inoperative), consistent with the limitations specified or referenced in this Agreement, an Order Schedule and the Documentation;

(b) to use the Documentation provided with the Licensed Software in support of Customer's authorized use of the Licensed Software; and

(c) to make one copy of the Licensed Software solely for archival or backup purposes, provided that all titles and trademark, copyright and restricted rights notices are reproduced on all such copies.

6.2 Restrictions. Customer will not copy or use the Licensed Software (including the Documentation) except as expressly permitted by this Agreement. Customer will not modify the Licensed Software, except to the extent expressly approved in advance by Gemalto Cogent in writing. Customer may not relicense, sublicense, sell, lend, give, transfer, assign, rent or lease the Licensed Software or use the Licensed Software for third-party training, commercial time-sharing or service bureau use. Customer will not, and will not permit any third party to, reverse engineer, disassemble or decompile any Licensed Software, except to the extent expressly permitted by applicable

law, and then only after (i) Customer has notified Gemalto Cogent in writing of its intended activities and the information sought and (ii) Gemalto Cogent fails to provide Customer with such information within a reasonable period of time following such notice. Customer will not remove, obscure, or alter any notice of patent, copyright, restricted rights, trade secret, trademark, or other proprietary right related to the Licensed Software. Customer hereby acknowledges and agrees that all Licensed Software is licensed and not sold to Customer.

6.3 Transfer. If the Equipment purchased hereunder is sold or assigned to a third party, Customer will remove all Licensed Software from such Equipment prior to delivery to the third party. Gemalto Cogent may grant the new owner or assignee a license to the relevant Licensed Software, provided that the new owner or assignee agrees to Gemalto Cogent's then-current Licensed Software license terms and conditions (including Gemalto Cogent's then-current fees) and such other terms as Gemalto Cogent may reasonably require.

6.4 Verification. At Gemalto Cogent's written request, and not more frequently than is reasonable under the circumstances, (a) Customer will verify in writing that the Licensed Software is being used pursuant to the provisions of this Agreement and the relevant Order Schedule, and (b) Gemalto Cogent may audit Customer's use of the Licensed Software electronically or at Customer's facilities. Any such audit at Customer's facilities will be conducted during regular business hours and no audit will unreasonably interfere with Customer's business activities.

7. OWNERSHIP

Gemalto Cogent will retain all rights, title and interest in and to the Intellectual Property Rights in the Systems and any derivative works thereof, subject only to the limited license set forth herein. Customer does not acquire any other rights, express or implied, in the Systems.

8. WARRANTIES AND REMEDIES

8.1 Warranties. Gemalto Cogent hereby represents and warrants to Customer that:

(a) each piece of Equipment will be free from defects in materials and workmanship under normal use for a period of one (1) year from the Acceptance Date; and

(b) the Licensed Software will substantially operate in accordance with the specifications set forth in the applicable Order Schedule for a period of thirty (30) days from the Acceptance Date.

8.2 Disclaimer. THE WARRANTIES IN THIS SECTION 8 ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES, AND GEMALTO COGENT EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ARISING FROM OR RELATING TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT AND ALL WARRANTIES THAT MAY ARISE FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. Gemalto Cogent does not warrant that the Systems will operate in combination with hardware, software, systems or data not provided by Gemalto Cogent or that the operation of the Systems will be uninterrupted or error-free. ALL EVALUATION, "BETA," AND PRE-PRODUCTION RELEASES OF EQUIPMENT OR SOFTWARE PROVIDED BY GEMALTO COGENT TO CUSTOMER WILL BE PROVIDED UNDER THE TERMS OF A SEPARATE BETA AGREEMENT, BUT IN ANY CASE ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND AND USE OF ANY SUCH RELEASE IN A PRODUCTION ENVIRONMENT IS AT CUSTOMER'S SOLE RISK.

8.3 Exclusive Remedies. Customer must report to Gemalto Cogent, pursuant to the notice provision of this Agreement, any breach of the warranties contained in Section 8.1 during the relevant warranty period. Customer's sole and exclusive remedies, and Gemalto Cogent's entire liability, will be:

(a) for a breach of the warranty in Section 8.1(a), the replacement of the defective Equipment; and

(b) for a breach of the warranty in Section 8.1(b), to correct or provide a reasonable workaround for Licensed Software errors that caused the breach of warranty or, if Gemalto Cogent is unable to make the Licensed Software operate as warranted, Customer will be entitled to terminate the license of the Licensed Software and recover the fees paid to Gemalto Cogent for such license.

8.4 Warranty Claim Process. All requests for warranty services hereunder must be submitted by Customer's Technical Contact. Before requesting warranty services hereunder, Customer shall exercise commercially reasonable efforts to determine the cause of the problem using Documentation, problem analysis procedures, and service request

procedures provided by Gemalto Cogent. Gemalto Cogent reserves the right to determine if Systems under warranty are defective. Defective Equipment covered by warranty will be physically 'swapped out.' Replacement equipment may be refurbished rather than new. If Customer requests warranty services hereunder and Gemalto Cogent reasonably determines that there is no failure or that the services are outside the scope of the warranty, Customer shall pay for Gemalto Cogent's labor for such services at Gemalto Cogent's TIPS current price list per call and per man-hour rates then in effect and travel expenses as allowed by Customer's state or local government per diem. Customer shall maintain one or more detailed logs of all System failures, malfunctions, defects and other problems. Upon the completion of any warranty service hereunder, Customer shall update the logs to describe and reflect the warranty service performed. Customer shall allow Gemalto Cogent to inspect such logs at any time during normal business hours.

8.5 Limitations. Gemalto Cogent will have no liability or obligations under this Section 8 if (a) a breach of warranty is attributable in whole or in part to (i) abuse, misuse (including use of a System for purposes other than those for which it was designed), alteration, relocation, neglect, accidental damage or unauthorized repair, modification or installation of a System, (ii) Customer's failure to continually provide and maintain a suitable installation and operation environment (including, without limitation, proper electrical power, air conditioning, and humidity control), (iii) the use or attempted use of software, hardware, supplies or services other than that supplied and supported by Gemalto Cogent, or (iv) the use or attempted use of other than Approved Auxiliary Devices or Approved Operating Systems, or (b) Customer fails to comply with Section 8.4. Replacement or repair of a System does not extend its warranty period beyond the original warranty expiration date.

8.6 Software Warranty Support. Support of Gemalto Cogent Software under warranty will consist of on-line diagnostic support, and work arounds and error corrections as deemed necessary by Gemalto Cogent.

8.7 Service Level Agreement. Gemalto Cogent will respond to Customer's System issues which are covered by warranty in the time frames set forth in attached Exhibit C (Service Level Agreement).

9. INFRINGEMENT INDEMNITY AND REMEDIES

9.1 Infringement Indemnity. Gemalto Cogent will defend Customer against a claim that a System, as provided by Gemalto Cogent to Customer and used within the scope of this Agreement, infringes any United States copyright or incorporates any misappropriated trade secret (a "Claim"). Gemalto Cogent will pay any liabilities, costs, damages or expenses, including reasonable attorneys' fees, attributable to such a Claim that are awarded against Customer in a final judgment or settlement approved in advance and in writing by Gemalto Cogent, provided that Customer: (a) notifies Gemalto Cogent in writing within thirty (30) days of commencement of the Claim; (b) grants Gemalto Cogent sole control of the defense and settlement of the Claim; and (c) provides Gemalto Cogent with all timely assistance, information and authority required for the defense and settlement of the Claim. Customer may retain its own counsel, at its expense, to monitor the defense and settlement of the Claim.

9.2 Exclusions. Gemalto Cogent will have no obligations under Section 9.1 if (a) the infringement is caused by the use of any non-Gemalto Cogent product, information, design, specification, instruction, software, data or material in combination with the System where such infringement would not have arisen but for such combination; (b) the infringement is caused by the modification of the System by a party other than Gemalto Cogent where such infringement would not have arisen but for such modification; or (c) the infringement is caused by the use of other than the current version of a Licensed Software, if the current version would be non-infringing and had been offered by Gemalto Cogent to Customer.

9.3 Remedies. If a System becomes, or Gemalto Cogent believes is likely to become, subject to a Claim, Gemalto Cogent will have the option, at its expense, to (a) modify the System to be noninfringing, or (b) obtain for Customer a license to continue using the System. If in Gemalto Cogent's sole judgment it is not commercially reasonable to perform either of the above options, then Gemalto Cogent may terminate any license for the allegedly infringing System and refund to Customer any purchase price or one-time software license fee paid for the System less an amount equal to the depreciated portion of such price or fee calculated on a five (5) year straight-line basis. THIS SECTION 9.3 SETS FORTH GEMALTO COGENT'S SOLE OBLIGATIONS, AND CUSTOMER'S SOLE REMEDIES, IN THE EVENT OF ANY INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS BY Gemalto Cogent OR THE PRODUCTS.

10. TERM AND TERMINATION

10.1 Term. This Agreement shall commence on the Effective Date and, unless earlier terminated pursuant to the terms hereof, shall continue for a period of three (3) years. Thereafter, this Agreement shall automatically renew on a month-to-month basis with payments to be prorated at a monthly rate based on the TIPS contract pricing, unless either party provides the other party with written notice of its intent not to renew at the end of the initial base term or anytime during the month-to-month renewal term.

10.2 Termination of Agreement. Either party may terminate this Agreement, any Order Schedule (or portion thereof) or any Licensed Software license upon written notice if:

(a) the other party materially breaches any material term or condition of this Agreement or the relevant Order Schedule and (i) fails to correct the breach within sixty (60) days following written notice specifying the breach or (ii) if such breach cannot reasonably be cured with such sixty (60) day period, has not commenced efforts to cure such breach within such sixty (60) day period;

(b) the other party applies for or consents to the appointment of a receiver, trustee or liquidator for substantially all of its assets or such a receiver, trustee or liquidator is appointed; or the other party has filed against it an involuntary petition for bankruptcy that has not been dismissed within thirty (30) days thereof, or files a voluntary petition for bankruptcy, or a petition or answer seeking reorganization, becomes or is adjudicated insolvent or bankrupt, admits in writing its inability to pay its debts as they mature, makes an assignment for the benefit of creditors or seeks to take advantage of any law relating to relief of debtors; or

(c) Customer materially breaches its obligations under Section 6 or 11.

10.3 Effect of Termination. Termination of this Agreement, any Order Schedule (or portion thereof) or any Licensed Software license will not limit either party from pursuing other remedies available to it, including injunctive relief, nor will such termination relieve Customer's obligation to pay all fees that have accrued or are otherwise owed by Customer under any Order Schedule. The parties' rights and obligations under Sections 4 ("Charges and Payments"), 5.5(d) ("Customer Cooperation" indemnity), 6.2 ("Restrictions"), 6.3 ("Transfer"), 6.4 ("Verification"), 7 ("Ownership"), 8.2 ("Disclaimer"), 8.3 ("Exclusive Remedies"), 8.4 ("Warranty Claim Process"), 8.5 ("Limitations"), 9 ("Infringement Indemnity and Remedies"), 10 ("Term and Termination"), 11 ("Confidentiality"), 12 ("Limitation of Liability") and 13 ("General") will survive termination or expiration of this Agreement or any Order Schedule. Upon any termination arising out of Customer's breach of its payment obligations, Gemalto Cogent will have all the rights of a secured creditor, including, without limitation, the right to repossess the Systems, wherever found, and the right to enter the premises where the Systems are located and disconnect, render unusable and remove it. Gemalto Cogent shall not be responsible for the cost of restoring the location to its original condition.

10.4 Perpetual License. Notwithstanding Section 10.3, each license of Licensed Software granted pursuant to Section 6.1 will survive expiration of this Agreement subject to Customer's continued compliance with the restrictions and conditions contained herein and Gemalto Cogent's rights of termination under Sections 4.2, 8.3(b), 9.3, 10.2(a) and 10.2(c). Upon any termination of any license of Licensed Software, Customer will cease using, and will return to Gemalto Cogent or destroy, all copies of such Licensed Software.

11. CONFIDENTIALITY.

Customer shall treat and hold the Licensed Software, Documentation, the terms and pricing of this Agreement, and any other information, data or documents of a confidential nature relating to the Systems or business of Gemalto Cogent (the "**Confidential Information**") in strict confidence and shall not make the Confidential Information available in any form to any third party for any purpose except to the extent necessary to perform an obligation hereunder. Customer shall treat and protect the Confidential Information with the same degree of care with which it would treat its own confidential information of a like nature, and in no case with less than a reasonable degree of care. Customer shall not use the Confidential Information for any purpose other than as expressly authorized under this Agreement and shall limit the disclosure of Confidential Information to those of its employees who have a need to know such Confidential Information and shall take all reasonable steps to ensure that the Confidential Information is not disclosed or distributed by its employees in violation of the terms of this Agreement. It will not be a breach of this section if the Confidential Information is disclosed pursuant to subpoena or other compulsory judicial or administrative process, provided that Customer promptly notifies Gemalto Cogent and provides reasonable assistance to Gemalto Cogent so that Gemalto Cogent may seek a protective order against disclosure.

12. LIMITATION OF LIABILITY

To the extent permitted by applicable law, in no event will Gemalto Cogent be liable for any indirect, incidental, special, consequential or punitive damages, or damages for loss of profits, revenue, business, savings, data, incurred by Customer or any third party, whether in an action in contract or tort, even if Gemalto Cogent has been advised of the possibility of such damages or if such damages are foreseeable. Except in the case of bodily injury or damage to tangible property resulting solely and directly from Gemalto Cogent's negligent acts or omissions in its performance under the Agreement, where Gemalto Cogent's liability for direct damages shall be unlimited, in no event will Gemalto Cogent's liability for direct damages hereunder exceed the amounts actually paid by Customer to Gemalto Cogent under this Agreement. Customer acknowledges that the limitations of liability in this Agreement and the allocation of risk herein are an essential element of the bargain between the parties, without which Gemalto Cogent would not have entered into this Agreement. Gemalto Cogent's pricing reflects this allocation of risk and the limitation of liability specified herein.

13. GENERAL

13.1 Relationship Between the Parties. This Agreement shall not be construed as creating an agency, partnership, joint venture or any other form of association, for tax purposes or otherwise, between the parties; the parties shall at all times be and remain independent contractors. Except as expressly agreed by the parties in writing, neither party shall have any right or authority, express or implied, to assume or create any obligation of any kind, or to make any representation or warranty, on behalf of the other party or to bind the other party in any respect whatsoever.

13.2 Governing Law. This Agreement is to be construed in accordance with and governed by the internal laws of the State where Customer's principal place of business is located without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of such State to the rights and duties of the parties. Any legal suit, action or proceeding arising out of or relating to this Agreement will be commenced in the appropriate state or federal court in the State where Customer's principal place of business is located, and each party hereto irrevocably submits to the exclusive jurisdiction and venue of any such court in any such suit, action or proceeding.

13.3 Force Majeure. Neither party will be liable under this Agreement because of any failure or delay in the performance of its obligations (except for payment of money) on account of strikes, shortages, riots, fire, flood, storm, earthquake, acts of God, hostilities or any other cause beyond its reasonable control. Gemalto Cogent's inability to supply Equipment, Software, materials, products, technical data or services due to the inability to obtain or maintain required export authorization shall not constitute a breach of this Agreement and Customer hereby acknowledges this risk.

13.4 Notice. Any notice, request, demand or other communication required or permitted hereunder will be in writing and will be deemed to be properly given upon the earlier of (a) actual receipt by the addressee, (b) five (5) business days after deposit in the mail, postage prepaid, when mailed by registered or certified airmail, return receipt requested, or (c) two (2) business days after being sent via private industry courier to the respective parties at the addresses first set forth on the signature page above or to such other person or address as the parties may from time to time designate in a writing delivered pursuant to this Section.

13.5 Severability and Waiver. In the event that any provision of this Agreement (or any portion hereof) is determined by a court of competent jurisdiction to be illegal, invalid or otherwise unenforceable, such provision (or portion thereof) will be enforced to the extent possible consistent with the stated intention of the parties, or, if incapable of such enforcement, will be deemed to be severed and deleted from this Agreement, while the remainder of this Agreement will continue in full force and remain in effect according to its stated terms and conditions. The waiver by either party of any default or breach of this Agreement will not constitute a waiver of any other or subsequent default or breach.

13.6 No Assignment. Customer may not assign, sell, transfer, delegate or otherwise dispose of, whether voluntarily or involuntarily, by operation of law or otherwise, this Agreement or any rights or obligations under this Agreement without the prior written consent of Gemalto Cogent. Gemalto Cogent shall be entitled to assign, transfer, delegate or otherwise dispose of its rights or obligations under this Agreement. Any purported assignment, transfer, delegation or other disposition by Customer will be null and void. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns.

13.7 Export Administration. Customer agrees to comply fully with all relevant export laws and regulations (collectively, “Export Controls”). Without limiting the generality of the foregoing, Customer expressly agrees not to, and will require its representatives to agree not to, export, direct or transfer Systems, or any direct product thereof, to any destination, person or entity restricted or prohibited by the Export Controls.

13.8 Injunctive Relief. Customer acknowledges that the breach of any provision of Sections 6 (“Licensed Software”), 7 (“Ownership”) or 11 (“Confidentiality”) shall cause irreparable injury to Gemalto Cogent, and agrees that Gemalto Cogent shall have the right to temporary, preliminary and permanent injunctive relief, without the necessity of proving actual damages or posting a bond, to prevent any such breach. In the event Gemalto Cogent is required to file a lawsuit or court action against Customer to prevent such breach, Customer agrees to pay Gemalto Cogent's reasonable attorney fees, expenses and court costs if so ordered by a court of competent jurisdiction.

13.9 Headings. The captions and section and paragraph headings used in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement.

13.10 Entire Agreement. This Agreement and the Exhibits hereto constitutes the complete agreement between the parties and supersedes all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of this Agreement. This Agreement may not be modified or amended except in a writing signed by a duly authorized representative of each party; no other act, document, usage or custom will be deemed to amend or modify this Agreement. It is expressly agreed that the terms of this Agreement and any Order Schedule will supersede the terms in any Customer purchase order or other ordering document. Notwithstanding the foregoing, any restrictions on the use or exploitation of any Licensed Software in addition to those contained herein that are set forth in any unsigned or “shrinkwrap” license included in any package, media or electronic version of Gemalto Cogent-furnished software will, as to such Licensed Software, supplement the restrictions contained herein.

END OF PAGE

EXHIBIT A
INITIAL ORDER SCHEDULE

CUSTOMER INFORMATION

Customer Name: _____

Installation Site/Shipping Address: _____

SYSTEMS

System	Equipment Purchase Price and Serial Number	Software License Fee
	TOTAL:	TOTAL:

DELIVERY DATE

INSTALLATION AND CUSTOMIZATION SERVICES

- Description: See Installation SOW attached hereto as Attachment 1.
- Fees: _____

SPECIFICATIONS See Specifications attached hereto as Attachment 2

EXHIBIT A – ATTACHMENT A.1
INSTALLATION STATEMENT OF WORK (SOW)

EXHIBIT A – ATTACHMENT A.2
SPECIFICATIONS

EXHIBIT B

FORM OF ORDER SCHEDULE FOR FUTURE ORDERS

This Order Schedule, entered into and effective as of _____, 200__, is governed by the Master Equipment Sale and Software License Agreement between Gemalto Cogent and Customer dated _____.

CUSTOMER INFORMATION

Customer Name: _____

Installation Site/Shipping Address: _____

SYSTEMS

System	Equipment Purchase Price and Serial Number	Software License Fee
	TOTAL:	TOTAL:

DELIVERY DATE

INSTALLATION AND CUSTOMIZATION SERVICES

- Description: See Installation SOW attached hereto as Attachment 1.
- Fees: _____

SPECIFICATIONS See Specifications attached hereto as Attachment 2

CUSTOMER

By: _____

Name: _____

Title: _____

GEMALTO COGENT

By: _____

Name: _____

Title: _____

EXHIBIT B – ATTACHMENT B.1
INSTALLATION STATEMENT OF WORK (SOW)

EXHIBIT B – ATTACHMENT B.2
SPECIFICATIONS

EXHIBIT C
SERVICE LEVEL AGREEMENT

Severity	Severity Definition	Detail Description	Example(s)	Response Time *
Significant	Significant Impact to Usability >25% of Customer's users or daily used functionality	Problems that cause a significant performance impact on any System component (unscheduled), or impacting more than 50% of the System's transactions. Customer must be available to work toward a resolution.	Multiple workstations are completely inoperable -OR- System response is not meeting contractual obligations	2 business hours
Medium	Moderate Impact to Usability <25% of users or moderately used functionality	Problems that cause a moderate impact on Customer's productivity, System performance or system functionality. A mid-term work-around is available. Customer must be available to work toward a resolution.	Workstation or device is not functioning within designed specifications	4 business hours
Low	Low impact to Customer's users	Problems that cause little to no effect on Customer's productivity, System functionality or System performance.	Inconvenient error message -OR- Intermittent problem	8 business hours

**after being contacted by Customer*

System support is provided to Customer by Gemalto Cogent on a 24 x 7 x 365 basis during the warranty period.

The Interlocal Purchasing System (TIPS Cooperative) Supplier Response

Bid Information		Contact Information		Ship to Information
Bid Creator	Rick Powell General Counsel/Procurement Compliance Officer	Address	Region 8 Education Service Center 4845 US Highway 271 North Pittsburg, TX 75686	Address
Email	rick.powell@tips-usa.com	Contact	Kristie Collins	Contact
Phone	(903) 575-2689			Department
Fax				Building
Bid Number	190302 Addendum 1	Department		Floor/Room
Title	Technology Solutions Products and Services (3)	Building		Telephone
Bid Type	RFP	Floor/Room		Fax
Issue Date	3/7/2019 08:01 AM (CT)	Telephone	+1 (866) 839-8477	Email
Close Date	5/7/2019 09:00:00 AM (CT)	Fax	+1 (866) 839-8472	
		Email	bids@tips-usa.com	

Supplier Information

Company Gemalto Cogent, Inc.
 Address 639 North Rosemead Blvd.
 Pasadena, CA 91107
 Contact Shoshanna Bector
 Department
 Building
 Floor/Room
 Telephone (626) 325-9600
 Fax
 Email CogentRFPTTracking@gemalto.com
 Submitted 5/3/2019 02:23:33 PM (CT)
 Total \$0.00

By submitting your response, you certify that you are authorized to represent and bind your company.

Signature Robert Cimperman

Email robert.cimperman@thalesgroup.com

Supplier Notes

Bid Notes

Bid Activities

Bid Messages

Bid Attributes

Please review the following and respond where necessary

#	Name	Note	Response
1	Yes - No	Disadvantaged/Minority/Women Business Enterprise - D/M/WBE (Required by some participating governmental entities) Vendor certifies that their firm is a D/M/WBE? Vendor must upload proof of certification to the "Response Attachments" D/M/WBE CERTIFICATES section.	NO
2	Yes - No	Historically Underutilized Business - HUB (Required by some participating governmental entities) Vendor certifies that their firm is a HUB as defined by the State of Texas at https://comptroller.texas.gov/purchasing/vendor/hub/ or in a HUBZone as defined by the US Small Business Administration at https://www.sba.gov/offices/headquarters/ohp Proof of one or both may be submitted. Vendor must upload proof of certification to the "Response Attachments" HUB CERTIFICATES section.	No
3	Yes - No	The Vendor can provide services and/or products to all 50 US States?	Yes
4	States Served:	If answer is NO to question #3, please list which states can be served. (Example: AR, OK, TX)	
5	Company and/or Product Description:	This information will appear on the TIPS website in the company profile section, if awarded a TIPS contract. (Limit 750 characters.)	Founded in 1990 with the US Headquarters located in Austin, Texas, Gemalto is an industry leader of biometric products. Gemalto Cogent's core technology is currently used in 150+ countries with hundreds of Livescan, Mobile Identification and Facial Recognition Solutions deployed in North America and utilized daily by Law Enforcement Agencies and other Government entities.
6	Primary Contact Name	Primary Contact Name	John McCall
7	Primary Contact Title	Primary Contact Title	Regional Sales Manager
8	Primary Contact Email	Primary Contact Email	john.mccall@thalesgroup.com
9	Primary Contact Phone	Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477	912-282-6531
10	Primary Contact Fax	Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477	
11	Primary Contact Mobile	Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477	912-282-6531
12	Secondary Contact Name	Secondary Contact Name	Amy McKeown
13	Secondary Contact Title	Secondary Contact Title	North America Marketing Manager, Biometrics
14	Secondary Contact Email	Secondary Contact Email	amy.mckeown@thalesgroup.com
15	Secondary Contact Phone	Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477	512-215-7285

16	Secondary Contact Fax	Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477	
17	Secondary Contact Mobile	Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477	651-592-1752
18	Admin Fee Contact Name	Admin Fee Contact Name. This person is responsible for paying the admin fee to TIPS.	Xu Chen
19	Admin Fee Contact Email	Admin Fee Contact Email	xu.chen@thalesgroup.com
20	Admin Fee Contact Phone	Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477	626-325-9746
21	Purchase Order Contact Name	Purchase Order Contact Name. This person is responsible for receiving Purchase Orders from TIPS.	John McCall
22	Purchase Order Contact Email	Purchase Order Contact Email	john.mccall@thalesgroup.com
23	Purchase Order Contact Phone	Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477	912-282-6531
24	Company Website	Company Website (Format - www.company.com)	https://gemalto.com/govt/biometrics
25	Federal ID Number:	Federal ID Number also known as the Employer Identification Number. (Format - 12-3456789)	52-1674023
26	Primary Address	Primary Address	9442 Capital of Texas Hwy. N. Suite 400
27	Primary Address City	Primary Address City	Austin
28	Primary Address State	Primary Address State (2 Digit Abbreviation)	Texas
29	Primary Address Zip	Primary Address Zip	78759
30	Search Words:	Please list search words to be posted in the TIPS database about your company that TIPS website users might search. Words may be product names, manufacturers, or other words associated with the category of award. YOU MAY NOT LIST NON-CATEGORY ITEMS. (Limit 500 words) (Format: product, paper, construction, manufacturer name, etc.)	biometrics, fingerprint, scanners, AssureTec, Document Readers, Facial Recognition, face search, ACE-V, Live scan, Livescan, mugshot, mug photo, mobile, ID verification, ID authentication, booking station, finger print
31	Do you want TIPS Members to be able to spend Federal grant funds with you if awarded? Is it your intent to be able to sell to our members regardless of the fund source, whether it be local, state or federal?	Most of our members receive Federal Government grants and they make up a significant portion of their budgets. The members need to know if your company is willing to sell to them when they spend federal budget funds on their purchase. There are attributes that follow that are provisions from the federal regulations in 2 CFR part 200. Your answers will determine if your award will be designated as Federal or Education Department General Administrative Regulations (EDGAR)compliant. Do you want TIPS Members to be able to spend Federal grant funds with you if awarded and is it your intent to be able to sell to our members regardless of the fund source, whether it be local, state or federal?	Yes
32	Yes - No	Certification of Residency (Required by the State of Texas) The vendor's ultimate parent company or majority owner: (A) has its principal place of business in Texas; OR (B) employs at least 500 persons in Texas?	Yes
33	Company Residence (City)	Vendor's principal place of business is in the city of?	Austin

34	Company Residence (State)	Vendor's principal place of business is in the state of?	Texas
35	Discount Offered - CAUTION READ CAREFULLY BECAUSE VENDORS FREQUENTLY MAKE MISTAKES ON THIS ATTRIBUTE QUESTION	Remember this is a MINIMUM discount percentage so, be sure the discount percentage inserted here can be applied to ANY OFFERING OF GOODS OR SERVICES THROUGH OUT THE LIFE OF THE CONTRACT CAUTION: BE CERTAIN YOU CAN HONOR THIS MINIMUM DISCOUNT PERCENTAGE ON ANY OFFERED SERVICE OR GOOD. What is the MINIMUM percentage discount off of any item or service you offer to TIPS Members that is in your regular catalog (as defined in the RFP document), website, store or shelf pricing? The resulting price of any goods or services Catalog list prices after this discount is applied is a ceiling on your pricing and not a floor because, in order to be more competitive in the individual circumstance, you may offer a larger discount depending on the items or services purchased and the quantity at time of sale. Must answer with a number between 0% and 100%.	5%
36	TIPS administration fee	By submitting a proposal, I agree that all pricing submitted to TIPS shall include the participation fee, as designated in the solicitation or as otherwise agreed in writing and shall be remitted to TIPS by the Vendor as agreed in the Vendor agreement. I agree that the fee shall not and will not be added by the vendor as a separate line item on a TIPS member invoice, quote, proposal or any other written communications with the TIPS member.	(No Response Required)
37	Yes - No	Vendor agrees to remit to TIPS the required administration fee? Region 8 is required by Texas Government Code § 791 to be compensated for its work and thus, failure to agree shall render your response void and it will not be considered.	Yes
38	Yes - No	Do you offer additional discounts to TIPS members for large order quantities or large scope of work?	Yes
39	Years Experience	Company years experience in this category? This is an evaluation criterion worth a maximum of 10 points. See RFP for more information.	29
40	Resellers:	Does the vendor have resellers that it will name under this contract? Resellers are defined as other companies that sell your products under an agreement with you, the awarded vendor of TIPS. BIGmart is a reseller of ACME brand televisions. If ACME were a TIPS awarded vendor, then ACME would list BIGmart as a reseller. applicable, vendor should download the Reseller/Dealers spreadsheet from the Attachments section, fill out the form and submit the document in the "Response Attachments" RESELLERS section.	No
41	Pricing discount percentage are guaranteed for?	Does the vendor agrees to honor the proposed pricing discount percentage off regular catalog (as defined in the RFP document), website, store or shelf pricing for the term of the award?	YES
42	Right of Refusal	Does the proposing vendor wish to reserve the right not to perform under the awarded agreement with a TIPS member at vendor's discretion?	No

43	NON-COLLUSIVE BIDDING CERTIFICATE	By submission of this bid or proposal, the Bidder certifies that: 1) This bid or proposal has been independently arrived at without collusion with any other Bidder or with any Competitor; 2) This bid or proposal has not been knowingly disclosed and will not be knowingly disclosed, prior to the opening of bids, or proposals for this project, to any other Bidder, Competitor or potential competitor: 3) No attempt has been or will be made to induce any other person, partnership or corporation to submit or not to submit a bid or proposal; 4) The person signing this bid or proposal certifies that he has fully informed himself regarding the accuracy of the statements contained in this certification, and under the penalties being applicable to the Bidder as well as to the person signing in its behalf. Not a negotiable term. Failure to agree will render your proposal non-responsive and it will not be considered.	(No Response Required)
44	CONFLICT OF INTEREST QUESTIONNAIRE - FORM CIQ - Do you have any CONFLICT OF INTEREST TO REPORT OR DISCLOSE under this statutory requirement?	Do you have any CONFLICT OF INTEREST TO REPORT OR DISCLOSE under this statutory requirement? YES or NO you have a conflict of interest as described in this form or the Local Government Code Chapter 176, cited therein- you are required to complete and file with TIPS. may find the Blank CIQ form on our website at: Copy and Paste the following link into a new browser or tab: https://www.tips-usa.com/assets/documents/docs/CIQ.pdf There is an optional upload for this form provided if you have a conflict and must file the form.	No
45	Filing of Form CIQ	If yes (above), have you filed a form CIQ by uploading the form to this RFP as directed above?	
46	Regulatory Standing	I certify to TIPS for the proposal attached that my company is in good standing with all governmental agencies Federal or state that regulate any part of our business operations. If not, please explain in the next attribute question.	Yes
47	Regulatory Standing	Regulatory Standing explanation of no answer on previous question.	

48 Antitrust Certification Statements (Tex.
Government Code § 2155.005)

By submission of this bid or proposal, the Bidder certifies (No Response Required)
that:

I affirm under penalty of perjury of the laws of the State of
Texas that:

(1) I am duly authorized to execute this contract on my
own behalf or on behalf of the company, corporation, firm,
partnership or individual (Company) listed below;

(2) In connection with this bid, neither I nor any
representative of the Company has violated any provision
of the Texas Free Enterprise and Antitrust Act, Tex. Bus.
& Comm. Code Chapter 15;

(3) In connection with this bid, neither I nor any
representative of the Company has violated any federal
antitrust law;

(4) Neither I nor any representative of the Company has
directly or indirectly communicated any of the contents of
this bid to a competitor of the Company or any other
company, corporation, firm, partnership or individual
engaged in the same line of business as the Company.

Instructions for Certification: By answering yes to the next Attribute question below, the vendor and prospective lower tier participant is providing the certification set out herein in accordance with these instructions. (No Response Required)

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and / or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participants," "person," "primary covered transaction," "principal," "proposal" and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this form that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and / or debarment.

50 Suspension or Debarment Certification

By answering yes, you certify that no federal suspension or debarment is in place, which would preclude receiving a federally funded contract as described above. Yes
and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive
Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
By answering yes, you certify that no federal suspension or debarment is in place, which would preclude receiving a federally funded contract as described above.

51 Non-Discrimination Statement and Certification

In accordance with Federal civil rights law, all U.S. Departments, including the U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Yes

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at How to File a Program Discrimination Complaint and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov. VI of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Title 7 CFR Parts 15, 15a, and 15b; the Americans with Disabilities Act; and FNS Instruction 113-1, Civil Rights Compliance and Enforcement – Nutrition Programs and Activities) U.S. Departments, including the USDA are equal opportunity provider, employer, and lender. Not a negotiable term. Failure to agree by answering YES will render your proposal non-responsive and it will not be considered. I certify that in the performance of a contract with TIPS or its members, that our company will conform to the foregoing anti-discrimination statement and comply with the cited and all other applicable laws and regulations.

52 2 CFR PART 200 Contract Provisions Explanation

Required Federal contract provisions of Federal Regulations for Contracts for contracts with ESC Region 8 and TIPS Members: following provisions are required to be in place and agreed if the procurement is funded in any part with federal funds.

(No Response Required)

The ESC Region 8 and TIPS Members are the subgrantee or Subrecipient by definition. Most of the provisions are located in 2 CFR PART 200 - Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards at 2 CFR PART 200. Others are included within 2 CFR part 200 et al.

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the

non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

53 2 CFR PART 200 Contracts

Contracts for more than the simplified acquisition threshold Yes
currently set at \$150,000, which is the inflation adjusted
amount determined by the Civilian Agency Acquisition
Council and the Defense Acquisition Regulations Council
(Councils) as authorized by 41 U.S.C. 1908, must address
administrative, contractual, or legal remedies in instances
where contractors violate or breach contract terms, and
provide for such sanctions and penalties as appropriate.

Notice: Pursuant to the above, when federal funds are
expended by ESC Region 8 and TIPS Members, ESC
Region 8 and TIPS Members reserves all rights and
privileges under the applicable laws and regulations with
respect to this procurement in the event of breach of
contract by either party.

Does vendor agree?

54 2 CFR PART 200 Termination

Termination for cause and for convenience by the grantee Yes
or subgrantee including the manner by which it will be
effected and the basis for settlement. (All contracts in
excess of \$10,000)

Pursuant to the above, when federal funds are expended
by ESC Region 8 and TIPS Members, ESC Region 8 and
TIPS Members reserves the right to terminate any
agreement in excess
of \$10,000 resulting from this procurement process for
cause after giving the vendor an appropriate opportunity
and up to 30 days, to cure the causal breach of terms and
conditions. ESC Region 8 and
TIPS Members reserves the right to terminate any
agreement in excess of \$10,000 resulting from this
procurement process for convenience with 30 days notice
in writing to the awarded vendor. The vendor
would be compensated for work performed and goods
procured as of the termination date if for convenience of
the ESC Region 8 and TIPS Members. Any award under
this procurement process is not exclusive and the ESC
Region 8 and TIPS reserves the right to purchase goods
and services from other vendors when it is in the best
interest of the ESC Region 8 and TIPS.

Does vendor agree?

55 2 CFR PART 200 Clean Air Act

Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Yes
Water Pollution Control Act (33 U.S.C. 1251-1387), as
amended—Contracts and subgrants of amounts in excess
of \$150,000 must contain a provision that requires the
non-Federal award to agree to comply with all applicable
standards, orders or regulations issued pursuant to the
Clean Air Act (42 U.S.C. 7401-7671q) and the Federal
Water Pollution Control Act as amended (33 U.S.C.
1251-1387). Violations must be reported to the Federal
awarding agency and the Regional Office of the
Environmental Protection Agency (EPA).

Pursuant to the Clean Air Act, et al above, when federal
funds are expended by ESC Region 8 and TIPS Members,
ESC Region 8 and TIPS Members requires that the
proposer certify that during the term of
an award by the ESC Region 8 and TIPS Members
resulting from this procurement process the vendor agrees
to comply with all of the above regulations, including all of
the terms listed and referenced therein.

Does vendor agree?

56 2 CFR PART 200 Byrd Anti-Lobbying Amendment

Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

Yes

Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members requires the proposer certify that during the term and during the life of any contract with ESC Region 8 and TIPS Members resulting from this procurement process the vendor certifies to the terms included or referenced herein.

Does vendor agree?

57 2 CFR PART 200 Federal Rule

Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000)

Yes

Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members requires the proposer certify that in performance of the contracts, subcontracts, and subgrants of amounts in excess of \$100,000, the vendor will be in compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).

Does vendor certify that it is in compliance with the Clean Air Act?

58 2 CFR PART 200 Procurement of Recovered Materials

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Yes

Does vendor certify that it is in compliance with the Solid Waste Disposal Act as described above?

59 Certification Regarding Lobbying

Applicable to Grants, Subgrants, Cooperative Agreements, and Contracts Exceeding \$100,000 in Federal Funds I HAVE NOT Lobbied per above

Submission of this certification is a prerequisite for making or entering into this transaction and is imposed by section 1352, Title 31, U.S. Code. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. undersigned certifies, to the best of his or her knowledge and belief, that:

(1)No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.

(2)If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "disclosure Form to Report Lobbying," in accordance with its instructions.

(3)The undersigned shall require that the language of this certification be included in the award documents for all covered subawards exceeding \$100,000 in Federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.

60 If you answered "I HAVE lobbied per above to the previous question.

IF you answered "I HAVE lobbied" per above Attribute question, you must download the Lobbying Report "Standard From LLL, disclosure Form to Report Lobbying" which includes instruction on completing the form, complete and submit it in the Response Attachments section as a report of the lobbying activities you performed or paid others to perform.

(No Response Required)

61 Subcontracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

Do you ever anticipate the possibility of subcontracting any of your work under this award if you are successful? NO

IF NO, DO NOT ANSWER THE NEXT ATTRIBUTE QUESTION. . IF YES, and ONLY IF YES, you must answer the next question YES if you want a TIPS Member to be authorized to spend Federal Grant Funds for Procurement.

62 ONLY IF YES TO THE PREVIOUS QUESTION
OR if you ever do subcontract any part of your
performance under the TIPS Agreement, do you
agree to comply with the following federal
requirements?

ONLY IF YES TO THE PREVIOUS QUESTION OR if you
ever do subcontract any part of your performance under
the TIPS Agreement,
do you agree to comply with the following federal
requirements?

Federal Regulation 2 CFR §200.321 Contracting with
small and minority businesses, women's business
enterprises, and labor surplus area firms. (a)The
non-Federal entity must take all necessary affirmative
steps to assure that minority businesses, women's
business enterprises, and labor surplus area firms are
used when possible.

(b)Affirmative steps must include:(1)Placing qualified small
and minority businesses and women's business
enterprises on solicitation lists;

(2)Assuring that small and minority businesses, and
women's business enterprises are solicited whenever they
are potential sources;

(3)Dividing total requirements, when economically feasible,
into smaller tasks or quantities to permit maximum
participation by small and minority businesses, and
women's business enterprises;

(4)Establishing delivery schedules, where the requirement
permits, which encourage participation by small and
minority businesses, and women's business enterprises;

(5)Using the services and assistance, as appropriate, of
such organizations as the Small Business Administration
and the Minority Business Development Agency of the
Department of Commerce ; and

(6)Requiring the prime contractor, if subcontracts are to be
let, to take the affirmative steps listed in paragraphs(1)
through (5) of this section.

63 Indemnification

The ESC Region 8 and TIPS is a Texas Political
Subdivision and a local governmental entity; therefore, is
prohibited from
indemnifying third parties pursuant to the Texas
Constitution (Article 3, Section 52) except as specifically
provided by law or as
ordered by a court of competent jurisdiction. A provision in
a contract to indemnify or hold a party harmless is a
promise to pay for
any expenses the indemnified party incurs, if a specified
event occurs, such as breaching the terms of the contract
or negligently
performing duties under the contract. Article III, Section 49
of the Texas Constitution states that "no debt shall be
created by or on
behalf of the State ... " The Attorney General has
counseled that a contractually imposed obligation of
indemnity creates a "debt" in
the constitutional sense. Tex. Att'y Gen. Op. No. MW-475
(1982). Contract clauses which require the System or
institutions to
indemnify must be deleted or qualified with "to the extent
permitted by the Constitution and Laws of the State of
Texas." Liquidated
damages, attorney's fees, waiver of vendor's liability, and
waiver of statutes of limitations clauses should also be
deleted or qualified
with "to the extent permitted by the Constitution and laws

Yes

of State of Texas."

Not a negotiable term. Failure to agree will render your proposal non-responsive and it will not be considered. Do you agree to these terms?

64 Remedies

The parties shall be entitled to exercise any right or remedy available to it either at law or in equity, subject to the choice of law, venue and service of process clauses limitations agreed herein. Nothing in this agreement shall commit the TIPS to an arbitration resolution of any disagreement under any circumstances. Any Claim arising out of or related to the Contract, except for those specifically waived under the terms of the Contract, may, after denial of the Board of Directors, be subject to mediation at the request of either party. Any issues not resolved hereunder MAY be referred to non-binding mediation to be conducted by a mutually agreed upon mediator as a prerequisite to the filing of any lawsuit over such issue(s). The parties shall share the mediator's fee and any associated filing fee equally. Mediation shall be held in Camp or Titus County, Texas. Agreements reached in mediation shall be reduced to writing, and will be subject to the approval by the District's Board of Directors, signed by the Parties if approved by the Board of Directors, and, if signed, shall thereafter be enforceable as provided by the laws of the State of Texas.

Yes, I Agree

Do you agree to these terms?

65 Remedies Explanation of No Answer

66 Choice of Law

The agreement between the Vendor and TIPS/ESC Region 8 and any addenda or other additions resulting from this procurement process, however described, shall be governed by, construed and enforced in accordance with the laws of the State of Texas, regardless of any conflict of laws principles. THIS DOES NOT APPLY to a vendor's agreement entered into with a TIPS Member, as the Member may be located outside Texas.

Yes

Not a negotiable term. Failure to agree will render your proposal non-responsive and it will not be considered. Do you agree to these terms?

67	Jurisdiction and Service of Process	Any Proceeding arising out of or relating to this procurement process or any contract issued by TIPS resulting from or any contemplated transaction shall be brought in a court of competent jurisdiction in Camp County, Texas and each of the parties irrevocably submits to the exclusive jurisdiction of said court in any such proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the Proceeding shall be heard and determined only in any such court, and agrees not to bring any proceeding arising out of or relating to this procurement process or any contract resulting from or any contemplated transaction in any other court. The parties agree that either or both of them may file a copy of this paragraph with any court as written evidence of the knowing, voluntary and freely bargained for agreement between the parties irrevocably to waive any objections to venue or to convenience of forum. Process in any Proceeding referred to in the first sentence of this Section may be served on any party anywhere in the world. Venue clauses in contracts with TIPS members may be determined by the parties. Not a negotiable term. Failure to agree will render your proposal non-responsive and it will not be considered. Do you agree to these terms?	Yes
68	Infringement(s)	The successful vendor will be expected to indemnify and hold harmless the TIPS and its employees, officers, agents, representatives, contractors, assignees and designees from any and all third party claims and judgments involving infringement of patent, copyright, trade secrets, trade or service marks, and any other intellectual or intangible property rights attributed to or claims based on the Vendor's proposal or Vendor's performance of contracts awarded and approved. Do you agree to these terms?	Yes, I Agree
69	Infringement(s) Explanation of No Answer		
70	Contract Governance	Any contract made or entered into by the TIPS is subject to and is to be governed by Section 271.151 et seq, Tex Loc Gov't Code. Otherwise, TIPS does not waive its governmental immunities from suit or liability except to the extent expressly waived by other applicable laws in clear and unambiguous language.	Yes

71 Payment Terms and Funding Out Clause

Payment Terms:

Yes

TIPS or TIPS members shall not be liable for interest or late payment fees on past due balances at a rate higher than permitted by the laws or regulations of the jurisdiction of the TIPS Member.

Funding Out Clause:

Vendor agrees to abide by the laws and regulations, including Texas Local Government Code § 271.903, or any statutory or regulatory limitations of the jurisdiction of any TIPS Member which governs contracts entered into by the Vendor and TIPS or a TIPS Member that requires all contracts approved by TIPS or a TIPS Member are subject to the budgeting and appropriation of currently available funds by the entity or its governing body.

See statute(s) for specifics or consult your legal counsel.

Not a negotiable term. Failure to agree will render your proposal non-responsive and it will not be considered.

Do you agree to these terms?

72 Insurance and Fingerprint Requirements Information

Insurance

(No Response Required)

If applicable and your staff will be on TIPS member premises for delivery, training or installation etc. and/or with an automobile, you must carry automobile insurance as required by law. You may be asked to provide proof of insurance.

It is possible that a vendor may be subject to Chapter 22 of the Texas Education Code. The Texas Education Code, Chapter 22, Section 22.0834. Statutory language may be found at: <http://www.statutes.legis.state.tx.us/>

If the vendor has staff that meet both of these criterion: will have continuing duties related to the contracted services; and

(2) has or will have direct contact with students you have "covered" employees for purposes of completing the attached form.

TIPS recommends all vendors consult their legal counsel for guidance in compliance with this law. If you have questions on how to comply, see below. If you have questions on compliance with this code section, contact the Texas Department of Public Safety Non-Criminal Justice Unit, Access and Dissemination Bureau, FAST-FACT at

NCJU@txdps.state.tx.us and you should send an email identifying you as a contractor to a Texas Independent School District or ESC Region 8 and TIPS. Texas DPS phone number is (512) 424-2474. form in the next attribute to complete entitled:

Texas Education Code Chapter 22 Contractor Certification for Contractor Employees

73 Texas Education Code Chapter 22 Contractor
Certification for Contractor Employees

Introduction: Texas Education Code Chapter 22 requires entities that contract with school districts to provide services to obtain criminal history record information regarding covered employees. Contractors must certify to the district that they have complied. Covered employees with disqualifying criminal histories are prohibited from serving at a school district.

Definitions: Covered employees: Employees of a contractor or subcontractor who have or will have continuing duties related to the service to be performed at the District and have or will have direct contact with students. The District will be the final arbiter of what constitutes direct contact with students. Disqualifying criminal history: Any conviction or other criminal history information designated by the District, or one of the following offenses, if at the time of the offense, the victim was under 18 or enrolled in a public school:

(a) a felony offense under Title 5, Texas Penal Code; (b) an offense for which a defendant is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure; or (c) an equivalent offense under federal law or the laws of another state. certify that: (Section A) of the employees of Contractor and any subcontractors are covered employees, as defined above. If this box is checked, I further certify that Contractor has taken precautions or imposed conditions to ensure that the employees of Contractor and any subcontractor will not become covered employees. Contractor will maintain these precautions or conditions throughout the time the contracted services are provided. (Section B) or all of the employees of Contractor and any subcontractor are covered employees. If this box is checked, I further certify that:

(1) Contractor has obtained all required criminal history record information regarding its covered employees. None of the covered employees has a disqualifying criminal history.

(2) If Contractor receives information that a covered employee subsequently has a reported criminal history, Contractor will immediately remove the covered employee from contract duties and notify the District in writing within 3 business days.

(3) Upon request, Contractor will provide the District with the name and any other requested information of covered employees so that the District may obtain criminal history record information on the covered employees.

(4) If the District objects to the assignment of a covered employee on the basis of the covered employee's criminal history record information, Contractor agrees to discontinue using that covered employee to provide services at the District.

Noncompliance or misrepresentation regarding this certification may be grounds for contract termination.

- 74 Texas Business and Commerce Code § 272 Requirements as of 9-1-2017 SB 807 prohibits construction contracts to have provisions requiring the contract to be subject to the laws of another state, to be required to litigate the contract in another state, or to require arbitration in another state. A contract with such provisions is voidable. Under this new statute, a "construction contract" includes contracts, subcontracts, or agreements with (among others) architects, engineers, contractors, construction managers, equipment lessors, or materials suppliers. "Construction contracts" are for the design, construction, alteration, renovation, remodeling, or repair of any building or improvement to real property, or for furnishing materials or equipment for the project. The term also includes moving, demolition, or excavation. BY RESPONDING TO THIS SOLICITATION, AND WHEN APPLICABLE, THE PROPOSER AGREES TO COMPLY WITH THE TEXAS BUSINESS AND COMMERCE CODE § 272 WHEN EXECUTING CONTRACTS WITH TIPS MEMBERS THAT ARE TEXAS GOVERNMENT ENTITIES. (No Response Required)
- 75 Texas Government Code 2270 Verification Form Texas Government Code 2270 Verification Form YES
Texas 2017 House Bill 89 has been signed into law by the governor and as of September 1, 2017 will be codified as Texas Government Code § 2270 and 808 et seq.
The relevant section addressed by this form reads as follows:
Texas Government Code Sec. 2270.002. PROVISION REQUIRED IN CONTRACT. A governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract.engaged by
ESC Region 8/The Interlocal Purchasing System (TIPS)
4845 Highway 271 North
Pittsburg,TX,75686
verify by this writing that the above-named company affirms that it (1) does not boycott Israel; and (2) will not boycott Israel during the term of this contract, or any contract with the above-named Texas governmental entity in the future. I further affirm that if our company's position on this issue is reversed and this affirmation is no longer valid, that the above-named Texas governmental entity will be notified in writing within one (1) business day and we understand that our company's failure to affirm and comply with the requirements of Texas Government Code 2270 et seq. shall be grounds for immediate contract termination without penalty to the above-named Texas governmental entity.
AND
our company is not listed on and we do not do business with companies that are on the the Texas Comptroller of Public Accounts list of Designated Foreign Terrorists Organizations per Texas Gov't Code 2270.0153 found at <https://comptroller.texas.gov/purchasing/docs/foreign-terrorist.pdf>
I swear and affirm that the above is true and correct.

76 Logos and other company marks	Please upload your company logo to be added to your individual profile page on the TIPS website. If any particular specifications are required for use of your company logo, please upload that information under the "Logo and Other Company Marks" section under the "Response Attachment" tab. Preferred Logo Format: 300 x 225 px - .png, .eps, .jpeg preferred Potential uses of company logo: Your Vendor Profile Page of TIPS website Potentially on TIPS website scroll bar for Top Performing Vendors TIPS Quarterly eNewsletter sent to TIPS Members Co-branding Flyers and or email blasts to our TIPS Members (Permission and approval will be obtained before publishing)	(No Response Required)
77 Solicitation Deviation/Compliance	Does the vendor agree with the General Conditions Standard Terms and Conditions or Item Specifications listed in this proposal invitation?	Yes
78 Solicitation Exceptions/Deviations Explanation	If the bidder intends to deviate from the General Conditions Standard Terms and Conditions or Item Specifications listed in this proposal invitation, all such deviations must be listed on this attribute, with complete and detailed conditions and information included or attached. TIPS will consider any deviations in its proposal award decisions, and TIPS reserves the right to accept or reject any bid based upon any deviations indicated below or in any attachments or inclusions. In the absence of any deviation entry on this attribute, the proposer assures TIPS of their full compliance with the Standard Terms and Conditions, Item Specifications, and all other information contained in this Solicitation.	
79 Agreement Deviation/Compliance	Does the vendor agree with the language in the Vendor Agreement?	No

If the proposing Vendor desires to deviate from the Vendor Agreement language, all such deviations must be listed on this attribute, with complete and detailed conditions and information included. TIPS will consider any deviations in its proposal award decisions, and TIPS reserves the right to accept or reject any proposal based upon any deviations indicated below. In the absence of any deviation entry on this attribute, the proposer assures TIPS of their full compliance with the Vendor Agreement.

We respectfully request TIPS' consideration of the following revised language for the Indemnity and Insurance Requirement paragraphs of the TIPS Vendor Agreement Terms and Conditions. We are willing to further negotiate this proposed language to reach mutual agreement.

Indemnity

The Vendor agrees to indemnify and hold harmless and defend TIPS, TIPS Member(s), officers and employees from and against all claims and suits by third parties for bodily injuries to persons (including death) and damage to tangible physical property, including court costs and reasonable attorney's fees, to the extent arising directly from Vendor's negligent or intentional acts in Vendor's performance of its obligations under this Agreement, whether such causes of action are based upon common, constitutional, or statutory law. Parties found liable shall pay their proportionate share of damages as agreed by the parties or as ordered by a court of competent jurisdiction over the case. NO LIMITATION OF LIABILITY FOR DAMAGES FOR PERSONAL INJURY OR PROPERTY DAMAGE ARE PERMITTED OR AGREED BY TIPS/ESC Region 8. Per Texas Education Code Section 44.032(f), and pursuant to its requirements only, reasonable Attorney's fees are recoverable by the prevailing party in any dispute resulting in litigation.

Insurance Requirements

Vendors' note: We accept the Agreement's stated minimum insurance coverage limits for TIPS Contract Holders. However, we propose the following revised language for the second paragraph of the Insurance Requirements section of the TIPS Vendor Agreement Terms and Conditions.

Where the Vendor is solely and directly at fault in causing damages or claims in Vendor's performance of its obligations under the Agreement, the Vendor's policy shall be primary over any other valid and collectible insurance carried by the District. Any immunity available to TIPS or TIPS Members shall not be used as a defense by the Vendor's insurance policy. Insurance shall be written by a

carrier with an A-; VII or better rating in accordance with current A.M. Best Key Rating Guide. Vendor's required minimum coverage shall not be suspended, voided, cancelled, non-renewed or reduced in coverage or in limits unless replaced by a policy that provides at least the same minimum coverage limits as set forth above in this Insurance Requirements section of the Agreement. Upon written request, insurance certificates shall be furnished by Vendor to TIPS or the TIPS Member.

81 Felony Conviction Notice

Texas Education Code, Section 44.034, Notification of Criminal History, Subsection (a), states "a person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony." Subsection (b) states "a school district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (a) or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the contract." (c) This section does not apply to a publicly held corporation. The person completing this proposal certifies that they are authorized to provide the answer to this question.

A. Firm is a publicly held corporation.

Select A., B. or C.

A. My firm is a publicly held corporation; therefore, this reporting requirement is not applicable.

OR B. My firm is not owned nor operated by anyone who has been convicted of a felony, OR

C. My firm is owned or operated by the following individual(s) who has/have been convicted of a felony. (if you answer C below, you are required to provide information in the next attribute.

82 If you answered C. My Firm is owned or operated by a felon to the previous question, you are REQUIRED TO ANSWER THE FOLLOWING QUESTIONS.

If you answered C. My Firm is owned or operated by a felon to the previous question, you must provide the following information.

1. Name of Felon(s)
2. The named person's role in the firm, and
3. Details of Conviction(s).

83 Long Term Cost Evaluation Criterion # 4.

READ CAREFULLY and see in the RFP document under "Proposal Scoring and Evaluation". Points will be assigned to this criterion based on your answer to this Attribute. Points are awarded if you agree not increase your catalog prices (as defined herein) more than X% annually over the previous year for years two and three and potentially year four, unless an exigent circumstance exists in the marketplace and the excess price increase which exceeds X% annually is supported by documentation provided by you and your suppliers and shared with TIPS, if requested. If you agree NOT to increase prices more than 5%, except when justified by supporting documentation, you are awarded 10 points; if 6% to 14%, except when justified by supporting documentation, you receive 1 to 9 points incrementally. Price increases 14% or greater, except when justified by supporting documentation, receive 0 points.

increases will be 5% or less annually per question

84 Required Confidentiality Claim Form

Required Confidentiality Claim Form

(No Response Required)

This completed form is required by TIPS. By submitting a response to this solicitation you agree to download from the Attachments section, complete according to the instructions on the form, then uploading the completed form, with any confidential attachments, if applicable, to the Response Attachments section titled Confidentiality Form in order to provide to TIPS the completed form titled, CONFIDENTIALITY CLAIM FORM. By completing this process, you provide us with the information we require to comply with the open record laws of the State of Texas as they may apply to your proposal submission. If you do not provide the form with your proposal, an award will not be made if your proposal is qualified for an award, until TIPS has an accurate, completed form from you.

Read the form carefully before completing and if you have any questions, email Rick Powell at TIPS at rick.powell@tips-usa.com

Line Items		
Response Total:		\$0.00

REFERENCES

Please provide three (3) references, preferably from school districts or other governmental entities who have used your services within the last three years. Additional references may be required. DO NOT INCLUDE TIPS EMPLOYEES AS A REFERENCE.

You may provide more than three (3) references.

[illegible]

Required Confidential Information Status Form

CONFIDENTIAL INFORMATION SUBMITTED IN RESPONSE TO COMPETITIVE PROCUREMENT REQUESTS OF EDUCATION SERVICE CENTER REGION 8 AND TIPS (ESC8) IS GOVERNED BY TEXAS GOVERNMENT CODE, CHAPTER 552

If you consider any portion of your proposal to be confidential information and not subject to public disclosure pursuant to Chapter 552 Texas Gov't Code or other law(s), you **must attach a copy of all claimed confidential materials within your proposal and put this COMPLETED form as a cover sheet to said materials then scan, name "CONFIDENTIAL" and upload with your proposal submission.** (You must include all the confidential information in the submitted proposal. The copy uploaded is to indicate which material in your proposal, if any, you deem confidential in the event the receives a Public Information Request.) ESC8 and TIPS will follow procedures of controlling statute(s) regarding any claim of confidentiality and shall not be liable for any release of information required by law. Upon your claim and your defense to the Office of Texas Attorney General is required to make the final determination whether the information submitted by you and held by ESC8 and TIPS is confidential and exempt from public disclosure.

Gemalto

Name of company

Rob Cimperman, VP of Sales and Marketing North America

Printed Name and Title of authorized company officer declaring below the confidential status of material

9442 Capital of Texas Highway North, Suite 100 Austin TX 78759 512-257-3900

Address

City

State

ZIP

Phone

I DO CLAIM parts of my proposal to be confidential and DO NOT desire to expressly waive a claim of confidentiality of all information contained within our response to the solicitation. The attached contains material from our proposal that I classify and deem confidential under Texas Gov't Code Sec. 552 or other law(s) and I invoke my statutory rights to confidential treatment of the enclosed materials.

ATTACHED ARE COPIES OF eleven PAGES OF CLAIMED CONFIDENTIAL MATERIAL FROM OUR PROPOSAL THAT WE DEEM TO BE NOT PUBLIC INFORMATION AND WILL DEFEND THAT CLAIM TO THE TEXAS ATTORNEY GENERAL IF REQUESTED WHEN A PUBLIC INFORMATION REQUEST IS MADE FOR OUR PROPOSAL.

Signature Robert Thomas Cimperman
10051527

Digitally signed by Robert Thomas Cimperman
10051527
Date: 2019.04.26 11:37:15 -05'00'

Date 04/26/19

OR

I DO NOT claim any of my proposal to be confidential, complete the section below only.

Express Waiver: I desire to expressly waive any claim of confidentiality as to any and all information contained within our response to the competitive procurement process (e.g. RFP, CSP, Bid, RFQ, etc.) by completing the following and submitting this sheet with our response to Education Service Center Region 8 and TIPS.

Signature

Date 04/26/19