

**AUTHORIZING THE PURCHASE OF LIVESCAN EQUIPMENT FOR THE DEKALB POLICE DEPARTMENT FROM IDEMIA FOR ELECTRONIC FINGERPRINTING IN AN AMOUNT NOT TO EXCEED \$25,000.**

**WHEREAS**, the City of DeKalb (the "City") is a home rule unit of local government and may exercise any power and perform any function pertaining to its government and affairs pursuant to Article VII, Section 6, of the Illinois Constitution of 1970; and

**WHEREAS**, the City's Police Chief recommend the purchase of electronic fingerprinting equipment from IDEMIA in the amount of \$21,851.00 pursuant to the quote attached and incorporated as Exhibit A (the "Quote"); and

**WHEREAS**, the City's corporate authorities find that approving the Quote is in the City's best interests for the protection of the public health, safety and welfare; and

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF DEKALB, ILLINOIS:**

**SECTION 1:** The recitals to this resolution are true, correct, adopted and incorporated as Section One to this resolution.

**SECTION 2:** The City's corporate authorities approve, authorize, and direct the City Manager to execute an agreement, in a form acceptable to the City Manager, with IDEMIA to purchase LiveScan Equipment for electronic fingerprinting pursuant to the Quote in a total amount not to exceed \$25,000 and to take all necessary actions to effectuate said purchase.

**SECTION 3:** This resolution and each of its terms shall be the effective legislative act of a home rule municipality without regard to whether such resolution should (a) contain terms contrary to the provision of current or subsequent non-preemptive state law, or (b) legislate in a manner or regarding a matter not delegated to municipalities by state law. It is the intent of the City's corporate authorities that to the extent that the terms of this resolution should be inconsistent with any non-preemptive state law, that this resolution shall supersede state law in that regard within its jurisdiction.

**SECTION 4:** This resolution shall be in full force and effect from and after its passage and approval as provided by law.

**PASSED BY THE CITY COUNCIL** of the City of DeKalb, Illinois at a Regular meeting thereof held on the 10<sup>th</sup> day of April 2023, and approved by me as Mayor on the same day. Passed by an 8-0 roll call vote. Aye: Morris, Larson, Smith, Perkins, McAdams, Verbic, Faivre, Barnes. Nay: None.



  
COHEN BARNES, Mayor

ATTEST:



Ruth A. Scott, Executive Assistant



6615 East La Palma Avenue, Suite 100  
Anaheim CA 92807

March 29, 2023

Commander Craig Woodruff  
DeKalb Police Department  
700 W Lincoln Hy.  
DeKalb IL 60115

Email: [Craig.Woodruff@CITYOFDEKALB.com](mailto:Craig.Woodruff@CITYOFDEKALB.com)  
Tel: 815-748-8400

Reference No. IDIL-L021623-03B

IDEMIA is pleased to provide DeKalb Police Department with the following price quote for the IDEMIA LiveScan System with the accepted standard State of Illinois software and workflows.

**IDEMIA's fully integrated LiveScan solution provides DeKalb Police Department the following features and benefits:**

- ◆ Single-source vendor for all components of the LiveScan solution, including the AFIS interface for records submission to the State.
- ◆ Certification to the FBI's Electronic Fingerprint Transmission Specifications
- ◆ "Hit/No Hit" Response from the State AFIS Search
- ◆ Automatic fingerprint sequencing and duplicate print checking before scanning is completed, ensuring data integrity
- ◆ Quick check, review, and edit can be performed on each print
- ◆ All LiveScan Systems include on-site installation, training, and 1 year on-site warranty

## Solution Description and Pricing

IDEMIA proposes the equipment and services described below.

Tenprint/Palm Capture – Cabinet Fixed Height		Table 1. Pricing	Price source: 3L-LAWENF
	Description	Unit Price	
TPE-5300D-ED BCAB- <del>32</del> TPE-CSTX-ILLINOIS TPE-CSTX-ILPALM TPE-COMX-FTP-SSH TP-IAT-CUSTOM 47FRT	<b>IDEMIA LiveScan System Cabinet FH Tenprint/Palm Capture, including:</b> <ul style="list-style-type: none"><li>• IDEMIA LiveScan System Software</li><li>• FBI Appendix F Certified Tenprint/Palm 500PPI Scanner with Moisture Discriminating Optics Scanner™ (MDO) Block Technology</li><li>• Computer, Monitor, keyboard</li><li>• Ruggedized Cabinet – Fixed Height</li><li>• Standard Illinois defined Workflows and profiles</li><li>• Installation / On-site Training</li><li>• <b>Warranty: 1 Year On-site Advantage</b> Solution warranty, 9X5, Next day on-site response and parts replacement</li><li>• Freight</li></ul>	\$18,282	
	<b>Optional Annual Maintenance: 1 Year On-site Advantage</b> Solution, 9X5, Next day on-site response and parts replacement	\$3,240	

Current shipping is ~~30~~ days after receipt by IDEMIA of DeKalb Police Department completed pre-install documentation, or as otherwise scheduled.

Note: State of Illinois requires capture and submission of Photos for submission FEE APP transactions (Applicant).

## Options and Pricing

IDEMIA equipment options and pricing described in Table 2. Options Pricing

	Description	Unit Price	Annual Maintenance
TPE-HWGX-DIGCAP TP-HWGX-DIGCAPC	Cabinet System - Digital Photo Capture to include: Digital Camera, Digital Photo Capture Software, Cabinet mounting hardware	\$1,701	\$212
TPE-PRC-UP	Printer Black & White Tenprint Card, Duplexer	\$1,489	\$212
TP-HWGX-ADLNIC2**	Cabinet - PCI based 10/100 Ethernet LAN adapter	\$168	
TPE-SWGX-DI-OFCS-BPUSH**	Demographic Interface (DI) receives B.TXT files from external system via FTP or Windows File Share. Records pushed to system show in LiveScan Inventory View available for edit.	\$658	--
TPE-SWGX-DDXML**	Demographic Interface (DI) allows XML files to be imported into LiveScan - XML format specific to IDEMIA. XML files can be pushed to LiveScan or pulled down by LiveScan via FTP, SMTP, or Windows File Share.	\$850	--
TPE-SWGX-DIEXAD**	Demographic Interface (DI) for external DI.	\$850	--

\*\*Demographic Interface (DI): Illinois State Police requires the DI to be on a separate network for transmission; purchase of ADDLNIC / ADDLNIC2 (NIC Card) is required.\*\*

## IDEMIA LiveScan System – Details

Table 3. Details

Item	Description
Illinois Enterprise Customization	<ul style="list-style-type: none"> <li>Capture Types: APP, ARR, CUR, FAP, FPQ, JUV, RAR, UFP</li> <li>Cards: Criminal Justice Applicant, Arrest Card, Custodial Card, FEE Applicant Card, Fingerprint Inquiry Card, Juvenile Arrest Card, Access and Review Card, Conviction Information Request Card, FD884, FD249 and FD258.</li> <li>Transmits: to Illinois NATMS</li> <li>Return Messages: Yes via NATMS Protocol</li> <li>Client Plugin Importers: CJIS_Query, DBI_Flat, XML_File</li> <li>Server Importers: OFCS, XML</li> <li>Touch Print Enterprise Illinois palm customization (for Palm Capture Systems)</li> </ul>
TPE-COMX-FTP-SSH	<ul style="list-style-type: none"> <li>Touch Print Enterprise Fingerprint Record Transmission via FTP over SSH (SFTP)</li> <li>Provides secure FTP Communication using SSH (Secure Shell)</li> </ul>

### Customer Responsibilities

DeKalb Police Department is responsible for the following:

- ♦ Providing necessary facility resources required for equipment installation and operation including access, space, environmental control, electrical power and networking.
- ♦ Providing a technical point of contact for IDEMIA who will be the primary person responsible for providing and/or coordinating obtainment of site installation pre-requisite information such as network information, IP addresses, power information, etc.
- ♦ To obtain and maintain the required transmission lines and hardware for remote communication and from the necessary agencies.
- ♦ Installation, testing and troubleshooting any network communication connections, lines and/ or DeKalb Police Department network devices.
- ♦ Providing the necessary local area and wide area networking (LAN and WAN) including service and backend connectivity as well as any required VPN authorizations
- ♦ Compliance with receiving agency requirements using receiving agency approved method for electronic transfer
- ♦ Obtaining all required authorizations for connecting to the receiving agency.
- ♦ Completion and return of IDEMIA pre-install documentation to IDEMIA Program Team.
- ♦ Printer supplies such as ink and toner cartridges (consumables) are DeKalb Police Department responsibility. IDEMIA does not offer or resell these items.

### Assumptions

In developing this price quote, IDEMIA has made the following assumptions:

- ♦ The proposed IDEMIA LiveScan System shall conform to the existing IDEMIA LiveScan configuration. Any additional functional requirements may be treated as change orders.
- ♦ An inter-agency agreement between DeKalb Police Department and applicable receiving agencies will be in place.
- ♦ DeKalb Police Department will provide all necessary communication for connectivity. This includes, but is not limited to hubs, routers, modems, etc.
- ♦ LiveScan System shipment and on-site Installation Services will be scheduled after network connectivity has been established and verified and IDEMIA's Program team has received the DeKalb Police Department completed pre-install documentation.

The following items are not included in the scope of IDEMIA's pricing and will be quoted based on current service rates in effect at the time of request: (a) requests for IDEMIA assistance / completion of any agency or governing body required security documentation, surveys or questionnaires; (b) requests for IDEMIA support and potential resolution of issues resulting from agency vulnerability assessments, penetration testing and/or security audits.

Additional engineering effort by IDEMIA beyond the scope of the standard product will be quoted based on current service rates in effect at the time of the change, plus any related travel or administrative expenses. Assistance with training and questions for the DeKalb Police Department database or any programming, scripting, or review of programs beyond work quoted above are excluded from this offer.

Prices are exclusive of any and all state, or local taxes, or other fees or levies. Customer payments are due to IDEMIA within 20 days after the date of the invoice.

Product purchase will be governed by the IDEMIA Agreement, a copy of which is attached. No subsequent purchase order can override such terms. Nothing additional shall be binding upon IDEMIA unless a subsequent agreement is signed by both parties.

Firm delivery schedules will be provided upon receipt of a purchase order and IDEMIA receipt of completed pre-install documentation.

IDEMIA reserves the right to substitute hardware of equal value with equal or better capability, based upon market availability. If, however such equipment is unavailable, IDEMIA will make its best effort to provide a suitable replacement.

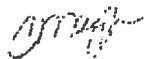
**Pricing valid through: May 15, 2023**

Purchase orders should be sent to IDEMIA by electronic mail or U.S. postal mail. Please direct all order correspondence, including Purchase Order, to:

Noemi Islas  
IDEMIA  
5515 East La Palma Avenue, Suite 100  
Anaheim, CA 92807  
Email: [noemi.islas@us.idemia.com](mailto:noemi.islas@us.idemia.com) | Mobile: (657) 652-4447

We look forward to working with you.

Sincerely,



Casey Mayfield  
Vice President Justice and Public Safety - IDEMIA Identity & Security USA LLC

### Advantage Solution Support

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

Support Features	Warranty	Post Warranty
<b>Software Support 9X5*</b>	<b>Included in Warranty</b>	<b>Available for purchase</b>
Unlimited Telephone Technical Support	√	√
2 Hour Telephone Response Time	√	√
Remote Dial-in Analysis	√	√
Software Standard Releases	√	√
Software Supplemental Releases	√	√
Automatic Call Escalation	√	√
Software Customer Alert Bulletins	√	√
<b>Hardware Support – On-site 9X5*</b>	<b>Included in Warranty</b>	<b>Available for purchase</b>
On-Site Response	24-hours	√
On-Site Corrective Maintenance	√	√
On-Site Parts Replacement	√	√
Preventive Maintenance	√	√
Escalation Support	√	√
Hardware Service Reporting	√	√
Hardware Customer Alert Bulletins	√	√
<b>Parts Support</b>	<b>Included in Warranty</b>	<b>Available for purchase</b>
Advanced Exchange Parts Replacement	√	√
Telephone Technical Support for Parts Replacement	√	√
Parts Customer Alert Bulletins	√	√
<b>Software Uplifts</b>		
Hours of Coverage Available up to 24 Hours Per Day, 7 Days/Week	Optional	Optional
<b>Hardware Uplifts</b>		
Hours of Coverage Available up to 24 Hours Per Day, 7 Days/Week	Optional	Optional

\*Customer local time

By signing this signature block below, DeKalb Police Department agrees to the terms and pricing stated in this price quote for the product and services as referenced above. My signature below constitutes the acceptance of this offer and authorizes IDEMIA to ship and provide these product and services:

Signature Authorization for Order:

Signature

Name

Date



Bill Nicklas

4/10/23

Total Purchase Price (including any Options): \$ 21,851

**PLEASE ENTER TOTAL ORDER AMOUNT ON ABOVE LINE**

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

**Please provide Billing Address:**

DeKalb Police Department

700 W Lincoln Hwy

DeKalb, IL 60115

Billing Contact name

Commander Craig Woodruff

Telephone number (815 ) 748-8400

Email craig.woodruff@cityofdekalb.com

Check if Billing Address is same as Shipping Address: ☒

**Please provide Shipping Address (if different from Billing Address):**

Technical Contact name Commander Craig Woodruff

Telephone number ( 815 ) 748-8400

Email craig.woodruff@cityofdekalb.com

**Idemia Identity & Security USA LLC Short Form Sales Agreement**

1. **Scope.** Idemia Identity & Security USA LLC, ("IDEMIA" or "Seller") having a place of business at 5515 East La Palma Avenue, Suite 100, Anaheim, California 92807 and DeKalb Police Department ("Customer"), having a place of business at 700 W Lincoln Hwy, DeKalb IL 60115

enter into this Sales Agreement ("Agreement"), pursuant to which IDEMIA will sell to Customer and Customer will purchase from Seller the equipment, parts, software, or services related to the equipment (e.g., installation) described in Seller's Proposal or Letter Quote dated 3/29/23. These terms and conditions, together with the Proposal or Quote, comprise the "Agreement." Customer may indicate its acceptance of this Agreement by signing below or by issuing a purchase order that refers to either the Proposal/Quote or to a Customer solicitation to which the Proposal/Quote responds. Only these terms and conditions apply to the transaction, notwithstanding any inconsistent or additional terms and conditions contained in the purchase order or Customer solicitation.

2. **Price, Payment and Sales Terms.** The Contract Price is U.S. \$ 21,851 excluding applicable sales, use, or similar taxes. Seller will submit invoices to Customer for products when they are shipped and, if applicable, for services when they are performed. Customer will make payments to Seller within twenty (20) days after the invoice date. Unless otherwise stipulated with the Seller when an Order is accepted, the Equipment will be delivered by Seller "FCA" (Free Carrier), with named place being the Seller's premises where the Goods are being dispatched, (Incoterms 2010). Title to the Equipment will pass to Customer upon payment in full of the Contract Price as outlined above, except that title to Software will not pass to Customer at any time. Risk of loss will pass to Customer upon delivery of the Equipment to the Customer at the agreed named place of delivery in accordance with the Incoterm in the contract. Seller will pack and ship all Equipment in accordance with good commercial practices.

3. **Software.** If this transaction involves software, any software owned by Seller ("IDEMIA Software") is licensed to Customer solely in accordance with Seller's Software License Agreement ("SLA"), which is attached as Exhibit A and incorporated herein by this reference. Any software owned by a third party ("Non-IDEMIA Software") is licensed to Customer in accordance with the standard license, terms, and restrictions of the copyright owner unless the owner has granted to Seller the right to sublicense its software pursuant to the SLA, in which case the SLA applies and the owner will have all rights and protections under the SLA as the Licensor. Seller makes no representations or warranties of any kind regarding Non-IDEMIA Software.

4. **Express Limited Warranty and Warranty Disclaimer.** IDEMIA Software is warranted in accordance with the SLA.

5. **Delays and Disputes.** Neither party will be liable for its non-performance or delayed performance if caused by an event, circumstance, or act of a third party that is beyond a party's reasonable control (a "Force Majeure"). Each party will notify the other if it becomes aware of a Force Majeure that will significantly delay performance. The parties will try to settle any dispute arising from this Agreement (except for a claim relating to intellectual property or breach of confidentiality) through good faith negotiations. If necessary, the parties will escalate the dispute to their appropriate higher-level managers. If negotiations fail, the parties will jointly select a mediator to mediate the dispute and will share equally the mediation costs. Neither party will assert a breach of this Agreement without first giving the other party written notice and a thirty (30) day period to cure the alleged breach.

6. **LIMITATION OF LIABILITY.** Except for personal injury or death, Seller's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the purchase price of the products or services for which losses or damages are claimed. SELLER WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS; INCONVENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT, THE SALE OR USE OF THE PRODUCTS, OR THE PERFORMANCE OF SERVICES BY SELLER PURSUANT TO THIS AGREEMENT. No action for contract breach or otherwise relating to the transactions contemplated by this

Agreement may be brought more than one year after the accrual of the cause of action. This limitation of liability survives the expiration or termination of this Agreement.

7. **Confidential Information and Preservation of Proprietary Rights.** The SLA governs software confidentiality. As to any other information marked "Confidential" and provided by one party to the other, the receiving party will maintain the confidentiality of the information and not disclose it to any third party; take necessary and appropriate precautions to protect the information; and use the information only to further the performance of this Agreement. Confidential information is and will remain the property of the disclosing party, and no grant of proprietary rights in the confidential information is given or intended. Seller, any copyright owner of Non-IDEMIA Software, and any third party manufacturer own and retain all of their proprietary rights in the equipment, parts and software, and nothing herein is intended to restrict their proprietary rights. Except as explicitly provided in the SLA, this Agreement does not grant any right, title or interest in Seller's proprietary rights, or a license under any Seller patent or patent application.

8. **Miscellaneous:** Each party will comply with all applicable laws, regulations and rules concerning the performance of this Agreement or use of the products to the extent they do not conflict with the laws of the United States. This Agreement and the rights and duties of the parties will be governed by and interpreted in accordance with the laws of the State in which the products are installed to the extent they do not conflict with the laws of the United States. This Agreement constitutes the entire agreement of the parties regarding this transaction, supersedes all previous agreements and proposals relating to this subject matter, and may be amended only by a written instrument executed by both parties. Seller is not making, and Customer is not relying upon, any representation or warranty except those expressed herein. There are no certifications or commitments binding Seller applicable to this transaction unless they are in writing and signed by an authorized signatory of Seller.

Idemia Identity & Security USA LLC ("SELLER"):

Signed \_\_\_\_\_

Name Casey Mayfield

Title VP State & Local Enrollment Services

Date \_\_\_\_\_

4/19/23  
NAME ("CUSTOMER")

Signed \_\_\_\_\_

Name Bill Nicklas

Title City manager

Date \_\_\_\_\_

4/10/23



#### EXHIBIT A - SOFTWARE LICENSE AGREEMENT

In this Exhibit A, the term "Licensor" means Idemia Identity & Security USA LLC, ("IDEMIA"); "Licensee," means the Customer; "Primary Agreement" means the agreement to which this exhibit is attached (IDEMIA Short Form Sales Agreement); and "Agreement" means this Exhibit and the applicable terms and conditions contained in the Primary Agreement. The parties agree as follows:

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

#### SECTION 1. DEFINITIONS

1.1 "Designated Products" means products provided by IDEMIA to Licensee with which or for which the Software and Documentation is licensed for use.

1.2 "Documentation" means product and software documentation that specifies technical and performance features and capabilities, and the user, operation and training manuals for the Software (including all physical or electronic media upon which such information is provided).

1.3 "Open Source Software" means software with either freely obtainable source code, license for modification, or permission for free distribution.

1.4 "Open Source Software License" means the terms or conditions under which the Open Source Software is licensed.

1.5 "Primary Agreement" means the agreement to which this exhibit is attached (IDEMIA Short Form Sales Agreement).

1.6 "Security Vulnerability" means a flaw or weakness in system security procedures, design, implementation, or internal controls that could be exercised (accidentally triggered or intentionally exploited) and result in a security breach such that data is compromised, manipulated or stolen or the system damaged.

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

#### SECTION 2. SCOPE

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

#### SECTION 3. GRANT OF LICENSE

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

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

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

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

#### SECTION 5. OWNERSHIP AND TITLE

IDEMIA, its licensors, and its suppliers retain all of their proprietary rights in any form in and to the Software and Documentation, including, but not limited to, all rights in patents, patent applications, inventions, copyrights, trademarks, trade secrets, trade names, and other proprietary rights in or relating to the Software and Documentation (including any corrections, bug fixes, enhancements, updates, modifications, adaptations, translations, de-compilations, disassemblies, emulations to or derivative works from the Software or Documentation, whether made by IDEMIA or another party, or any improvements that result from IDEMIA's processes or, provision of information services). No rights are granted to Licensee under this Agreement by implication, estoppel or otherwise, except for those rights which are expressly granted to Licensee in this Agreement. All intellectual property developed, originated, or prepared by IDEMIA in connection with providing the Software, Designated Products, Documentation or related services, remains vested exclusively in IDEMIA, and Licensee will not have any shared development or other intellectual property rights.

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

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

6.2. IDEMIA's sole obligation to Licensee and Licensee's exclusive remedy under this warranty is to use reasonable efforts to

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

6.3. Warranty claims are described in the Primary Agreement.

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

#### SECTION 7. TRANSFERS

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

#### SECTION 8. TERM AND TERMINATION

8.1 Licensee's right to use the Software and Documentation will begin when the Primary Agreement is signed by both parties and will continue for the life of the Designated Products with which or for which the Software and Documentation have been provided by IDEMIA, unless Licensee breaches this Agreement, in which case this Agreement and Licensee's right to use the Software and Documentation may be terminated immediately upon notice by IDEMIA.

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

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

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

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#### SECTION 10. CONFIDENTIALITY

Licensee acknowledges that the Software and Documentation contain IDEMIA's valuable proprietary and Confidential Information and are

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11.3. **GOVERNING LAW.** This Agreement is governed by the laws of the United States to the extent that they apply and otherwise by the internal substantive laws of the State to which the Software is shipped if Licensee is a sovereign government entity, to the extent they do not conflict with the laws of the United States, or the internal substantive laws of the State of Delaware if Licensee is not a sovereign government entity. The terms of the U.N. Convention on Contracts for the International Sale of Goods do not apply. In the event that the Uniform Computer Information Transaction Act, any version of this Act, or a substantially similar law (collectively "UCITA") becomes applicable to a party's performance under this Agreement, UCITA does not govern any aspect of this Agreement or any license granted under this Agreement, or any of the parties' rights or obligations under this Agreement. The governing law will be that in effect prior to the applicability of UCITA.

11.4. **THIRD PARTY BENEFICIARIES.** This Agreement is entered into solely for the benefit of IDEMIA and Licensee. No third party has the right to make any claim or assert any right under this Agreement, and no third party is deemed a beneficiary of this Agreement. Notwithstanding the foregoing, any licensor or supplier of third party software included in the Software will be a direct and intended third party beneficiary of this Agreement.

11.5. **PREVAILING PARTY.** In the event of any dispute arising out of the subject matter of this Agreement, the prevailing party shall recover, in addition to any other damages assessed, its reasonable attorneys' fees and court costs incurred in arbitrating, litigating, or otherwise settling or resolving such dispute.

11.6. **SURVIVAL.** Sections 4, 5, 6.3, 7, 8, 9, 10, and 11 survive the termination of this Agreement.