



Amendment No. 6  
to  
Contract No. MA 5600 NS170000041  
for  
Maintenance, Support and System Upgrades  
between  
Gemalto Cogent, Inc.  
and the  
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be effective June 06, 2020 to June 05, 2021. One option will remain.
- 2.0 The total contract amount is increased by \$44,284 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 06/06/2017 – 06/05/2018	\$198,942.00	\$198,942.00
Amendment No. 1: Replace Exhibit A, SOW 08/07/2017	\$0.00	\$198,942.00
Amendment No. 2: Administrative Increase 11/14/2017	\$23,361.36	\$222,206.36
Amendment No. 3: Option 1 – Extension 06/06/2018 – 06/05/2019	\$41,742.00	\$263,948.36
Amendment No. 4: Administrative Increase 08/07/2018	\$24,072.00	\$288,020.36
Amendment No. 5: Option 2 – Extension 06/06/2019 – 06/05/2020	\$42,993.00	\$331,013.36
Amendment No. 6: Option 3 – Extension 06/06/2020 – 06/05/2021	\$44,284.00	\$345,297.36

- 3.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 4.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Sign/Date:

A handwritten signature in blue ink, appearing to read "Robert Cimperman".

6-25-20

Printed Name: Robert Cimperman, VP Sales  
Authorized Representative

Gemalto Cogent, Inc.  
2964 Bradley Street  
Pasadena, California 91107  
[John.mccall@thalesgroup.com](mailto:John.mccall@thalesgroup.com)  
91-282-6531

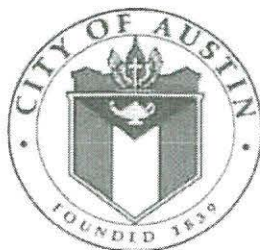
Sign/Date:

**JAMES T  
HOWARD**

Jim Howard  
Procurement Manager

City of Austin Purchasing Office  
124 West 8<sup>th</sup> Street  
Austin, Texas 78701

Digitally signed by JAMES T HOWARD  
DN: cn=JAMES T HOWARD, o=CITY OF AUSTIN,  
ou=FINANCE,  
email=JIM.HOWARD@AUSTINTEXAS.GOV,  
c=US  
Date: 2020.06.30 15:08:32 -05'00'



Amendment No. 5  
to  
Contract No. 5600 NS170000041  
for  
Maintenance, Support, and System Upgrades  
between  
Gemalto Cogent, Inc.  
and the  
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be June 6, 2019 through June 5, 2020. Two (2) options will remain.
- 2.0 The total contract amount is increased by \$42,993.00 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 06/06/2017 – 06/05/2018		
	\$198,942.00	\$198,942.00
Amendment No. 1: Replace Exhibit A., Statement of Work	\$0.00	\$198,942.00
Amendment No. 2 Administrative Increase and additional work	\$23,261.36	\$222,206.36
Amendment No. 3: Option 1 – Extension 06/06/2018 – 06/05/2019	\$41,742.00	\$263,948.36
Amendment No. 4: – Administrative Increase 08/07/2018	\$24,072.00	\$288,020.36
Amendment No. 5: Option 2 – Extension 06/06/2019 – 06/05/2020	\$42,993.00	\$331,013.36

- 3.0 MBE/WBE goals do not apply to this contract.
- 4.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Sign/Date:

*[Signature]* 5-24-19

Printed Name:

Authorized Representative

*Robert Cimperman*  
*JP Sales*

Sign/Date:

*[Signature]* 5/24/19

Printed

Name:

Authorized Representative

*Ken Bragdon*

Gemalto Cogent, Inc.  
639 N Rosemead Blvd  
Pasadena, CA 91107

City of Austin  
Purchasing Office  
124 W. 8<sup>th</sup> Street, Ste. 310  
Austin, Texas 78701

*[Signature]* 5/24/19



Amendment No. 4  
to  
Contract No. NS170000041  
for  
Maintenance, Support, and System Upgrades  
between  
Gemalto Cogent, Inc.  
and the  
City of Austin

1.0 The City hereby exercises an administrative increase to the above-referenced contract in the amount of \$24,072.00 per Attachment A, Scope of Work. Effective date of this change is August 7, 2018.

2.0 The total Contract authorization is recapped below:

Term	Action Amount	Contract Amount
Basic Term: 06/06/2017 – 06/05/2018	\$198,942.00	\$ 198,942.00
Amendment No. 1: Replace Exhibit A., Statement of Work	\$ 0.00	\$ 198,942.00
Amendment No. 2: Administrative increase and additional work 11/01/2017	\$23,261.36	\$ 222,206.36
Amendment No. 3: Extension option 1	\$41,742.00	\$263,948.36
Amendment No. 4: Administrative increase and additional work 08/07/2018	\$24,072.00	\$ \$288,020.36

3.0 MBE/WBE goals were not established for this contract.

4.0 By signing this Amendment, the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

5.0 All other terms and conditions remain the same.

By the signature affixed below, this amendment is hereby incorporated into and made a part of the above referenced contract.

Authorized Representative:  
3M Cogent, Inc.

Art Ortega  
Printed Name:  
Authorized Representative  
Art Ortega  
Signature:

City of Austin

Sai Purcell 9/5/18  
Printed Name:  
City of Austin  
[Signature]  
Signature:



Amendment No. 3  
to  
Contract No. 5600 NS170000041  
for  
Maintenance, Support, and System Upgrades  
between  
Gemalto Cogent, Inc.  
and the  
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be June 6, 2018 through June 5, 2019. Three (3) options will remain.
- 2.0 The total contract amount is increased by \$41,742.00 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 06/06/2017 – 06/05/2018	\$198,942.00	\$198,942.00
Amendment No. 1: Replace Exhibit A., Statement of Work	\$0.00	\$198,942.00
Amendment No. 2 Administrative Increase and additional work	\$23,261.36	\$222,206.36
Amendment No. 3: Option 1 – Extension 06/06/2018 – 06/05/2019	\$41,742.00	\$263,948.36

- 3.0 MBE/WBE goals do not apply to this contract.
- 4.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Sign/Date:

Printed Name:

Authorized Representative

Robert Cimperman  
5/22/18

Sign/Date:

Printed Name:

Authorized Representative

James T. Howard

Gemalto Cogent, Inc.  
639 N Rosemead Blvd  
Pasadena, CA 91107

City of Austin  
Purchasing Office  
124 W. 8<sup>th</sup> Street, Ste. 310  
Austin, Texas 78701



Amendment No. 2  
to  
Contract No. NS170000041  
for  
Maintenance, Support, and System Upgrades  
between  
Gemalto Cogent, Inc.  
and the  
City of Austin

1.0 The City hereby exercises an administrative increase to the above-referenced contract in the amount of \$23,261.36 per scope of work as listed in the Attachment A. Maintenance on existing AFIS that will be phased out upon completion of Phase 2 upgrade. Effective date of this change is November 2, 2017.

2.0 The above referenced contract is hereby amended to change the invoice address to the following:

	City of Austin
Department	Austin Police Department
Attn:	Account Payable
Address	P.O. Box 1088
City, State, Zip Code	Austin, TX 78767

3.0 The total Contract authorization is recapped below:

Term	Action Amount	Contract Amount
Basic Term: 06/06/2017 – 06/05/2018	\$198,942.00	\$ 198,942.00
Amendment No. 1: Replace Exhibit A., Statement of Work	\$ 0.00	\$ 198,942.00
Amendment No. 2: Administrative Increase and additional work	\$23,261.36	\$222,206.36

4.0 MBE/WBE goals were not established for this contract.

5.0 By signing this Amendment, the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

6.0 All other terms and conditions remain the same.

By the signature affixed below, this amendment is hereby incorporated into and made a part of the above referenced contract.



Authorized Representative:  
Gernalto Cogent, Inc.

Robert Cuperman

Printed Name:  
Authorized Representative

[Signature]

Signature:

11/14/17

Date:

City of Austin

Gai Purcell

Printed Name:  
City of Austin

[Signature]

Signature:

11/14/17

Date:

EXHIBIT A

**QUOTATION**

Gemalto Cogent, Inc.  
639 North Rosemead Blvd  
Pasadena, CA 91107  
(626)325-9600 (Main)  
(626)325-9700 (Fax)

Quotation Ref No.: 31770  
Quotation Date: 10/17/17  
Expiration Date: 11/17/17

QUOTED FOR:	Customer #: C0058
City of Austin Charles Dean P.O. Box 1629 Austin TX 78767-1629 USA	

Quoted By	Terms	FOB	Ship Via
Lisa Wideman	Net 30	Origin	

ITEM NO.	ITEM DESCRIPTION	QTY	PRICE	EXTENSION
75060122219	- No longer using (1) unit Mobile ID Interface Server Hardware -	-1.00	1,035.0000	USD -1,035.00
75060122219	Maintenance - (1) unit Mobile ID Interface Server Software (Orig law 45826)	1.00	2,501.2500	USD 2,501.25
75060122219	- No longer using (1) unit Mobile ID Interface Server Software -	-1.00	2,501.2500	USD -2,501.25
MISC	Any unused mons will be credited upon AFIS upgrade completion	1.00	0.0000	USD 0.00
POP	Period of Performance: 09/24/2017 - 06/23/2018 (Qtr 2, 3 & 4)	1.00	0.0000	USD 0.00

Subtotal	Tax	Discount	Freight	Quotation Total:	USD 23,261.36
USD -1,035.00	USD 0.00	USD 0.00	USD 0.00		

Authorized signature

Printed PLU-800 QUOTE

# QUOTATION



Gemalto Cogent, Inc.  
630 North Rosemead Blvd  
Pasadena, CA 91107  
(626)325-9600 (Main)  
(626)325-9700 (Fax)

Quotation Ref No.: 31770  
Quotation Date: 10/17/17  
Expiration Date: 11/17/17

QUOTED FOR:	Customer #:
City of Austin Charles Dean P.O. Box 1629 Austin TX 78767-1629 USA	C0056

Quoted By Lisa Wideman	Terms Net 30	FOB Origin	Ship Via
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ITEM NO.	ITEM DESCRIPTION	QTY	PRICE	EXTENSION
AFIS-Maint-24X7-1YR	Annual 24X7 AFIS Maintenance	1.00	0.0000	USD 0.00
POP	Maintenance Period: 6/24/2017- 6/23/2018	1.00	0.0000	USD 0.00
75060122219	Maintenance - (2) units Card Scanning Software (Orig Inv 13317)	1.00	2,587.5000	USD 2,587.50
75060122219	Maintenance - (1) unit AFFIS Software Upgrade from 4.0 to 5.1 (Orig Inv 29475)	1.00	12,937.5000	USD 12,937.50
75060122219	Maintenance - (1) unit Printer Software (Orig Inv 80773)	1.00	89.0000	USD 89.00
75060122219	Maintenance - (1) unit Tenprint Workstation License/Software (Orig Inv 40086)	1.00	778.2500	USD 778.25
75060122219	Maintenance - (1) unit ID Workstation Software with Printer (Orig Inv 80773)	1.00	1,750.8750	USD 1,750.88
75060122219	Maintenance - (7) units CAFIS View License/Software (Orig Inv 151927)	1.00	3,018.7500	USD 3,018.75
75060122219	Maintenance - (1) unit Cogent PMA Elite-Lite (Orig Inv 39885) (\$6037.50 pro-rated 12 days)	1.00	804.9900	USD 804.99
75060122219	Maintenance - (1) unit Cogent PMA Elite-Lite (Orig Inv 80773) (\$6037.50 pro-rated 12 days)	1.00	804.9900	USD 804.99
MISC	-Pro-rated days for 2 lines above: 9/24/17 to 10/5/17	1.00	0.0000	USD 0.00
75060122219	Maintenance - (1) Software & Scanner (Orig Inv 305216, 4/2016)	1.00	337.5000	USD 337.50
75060122219	Maintenance - (1) CAFIS Software Upgrade (Orig Inv 312280, 6/2016)	1.00	174.0000	USD 174.00
75060122219	Maintenance - (100) units Bluecheck Mobile ID Devices (Orig Inv 39885)	1.00	12,498.0000	USD 12,498.00
75060122219	- No longer using ( 100) units Bluecheck Mobile ID Devices	-1.00	12,498.0000	USD -12,498.00
75060122219	Maintenance - (1) unit Mobile ID Interface Server Hardware (Orig Inv 50228)	1.00	1,035.0000	USD 1,035.00
Subtotal	Tax	Discount	Freight	Quotation Total:
USD 24,296.36	USD 0.00	USD 0.00	USD 0.00	USD 23,261.36

Authorized signature

Form: PLS-001-00078





Amendment No. 1  
to  
Contract No. NS170000041  
for  
Maintenance, Support, and System Upgrades  
between  
3M Cogent, Inc.  
and the  
City of Austin

1.0 The City hereby replaces Exhibit A, 3M Cogent's Offer (Quotation and Statement of Work) of this Contract with attached Exhibit A.R, Austin Police Department Statement of Work, Version 1.8. The updated Exhibit A.R. include correction of software/hardware version and revision of payment schedule. Effective date of this change is July 27, 2017.

2.0 The total Contract authorization is recapped below:

Term	Action Amount	Contract Amount
Basic Term: 06/06/2017 – 06/05/2018	\$ 198,942.00	\$ 198,942.00
Amendment No. 1: Replace Exhibit A, Statement of Work	\$ 0.00	\$ 198,942.00

4.0 All other terms and conditions remain the same.

By the signature affixed below, this amendment is hereby incorporated into and made a part of the above referenced contract.

Authorized Representative:  
3M Cogent, Inc.  
now known as Gemalto Cogent, Inc.

Rob Cimperman

Printed Name:  
Authorized Representative

[Signature]

Signature:  
August 4, 2017

Date:

City of Austin

Sai Ruggell

Printed Name:  
City of Austin

[Signature]

Signature:  
8/7/17

Date:

**CONTRACT BETWEEN THE CITY OF AUSTIN  
AND  
3M COGENT, INC., now known as GEMALTO COGENT, INC.  
FOR  
MAINTENANCE, SUPPORT AND SYSTEM UPGRADES**

This Contract is made by and between the City of Austin ("City"), a municipality incorporated by the State of Texas, and 3M Cogent, Inc., now known as Gemalto Cogent, Inc. ("Contractor"), having offices at 639 North Rosemead Blvd, Pasadena, CA 91107.

**SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES**

1.1 **Engagement of the Contractor.** Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor is engaged to provide the services set forth in Section 2, Scope of Work.

1.2 **Responsibilities of the Contractor.** The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Scope of Work. In the event that the need arises for the Contractor to perform services beyond those stated in the Scope of Work, the Contractor and the City shall negotiate mutually agreeable terms and compensation for completing the additional services.

1.3 **Responsibilities of the City.** The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in completing the Scope of Work. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Contractor, and shall approve all invoices for payment, as appropriate. The City's Contract Manager shall give the Contractor timely feedback on the acceptability of progress and task reports.

1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Lisa M. Wideman, Phone: 512-507-1733, Email Address: lisa.wideman@gemalto.com. The City's Contract Manager for the engagement shall be Daniel Dellemonache, Phone: (512) 974-5057, Email Address: Daniel.Dellemonache@austintexas.gov. The City and the Contractor resolve to try to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

**SECTION 2. SCOPE OF WORK**

2.1 **Contractor's Obligations.** The Contractor shall fully and timely provide all deliverables described herein and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

**SECTION 3. COMPENSATION**

3.1 **Contract Amount.** The Contractor will be paid as indicated herein upon the successful completion of the Scope of Work. In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not-to-exceed \$198,942, with four 12-month extension options in an estimated amount of \$41,742 for the first extension option, \$42,993 for the second extension option, \$44,284 for the third extension option, and \$45,612 for the fourth extension option, for a total contract amount not to exceed \$373,573.

3.2 **Invoices.**

3.2.1 **Invoices shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Contractor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be mailed to the below address:

A handwritten signature, possibly 'Re', is written above the initials 'JTH'.

	City of Austin
Department	Communication Technology Management
Attn:	Accounts Payable
Email Address	CTMAPinvoices@austintexas.gov

3.2.2 Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

### 3.3 **Payment.**

3.3.1 All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.

3.3.2 **If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**

3.3.3 The City may withhold or off set the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:

3.3.3.1 delivery of defective or non-conforming deliverables by the Contractor related to the payment due;

3.3.3.2 failure of the Contractor to submit an accurate invoice; or

3.3.3.3 failure of the Contractor to materially comply with any material provision of the Contract which is related to the payment due.

3.3.4 Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.

3.3.5 Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic transfer of funds.

3.4 **Non-Appropriation.** The awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this Contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

### 3.5 **Final Payment and Close-Out.**

3.5.1 The making and acceptance of final payment will constitute:

3.5.1.1 a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled; (2) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations; or (3) arising under the City's right to audit.

## SECTION 4. TERM AND TERMINATION

4.1 **Term of Contract.** The Contract shall be in effect for an initial term of 12 months and may be extended thereafter for up to four additional 12 month periods, subject to the approval of the Contractor and the City Purchasing Officer or his designee.

4.1.1 Upon expiration of the initial term or period of extension, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 calendar days unless mutually agreed on in writing).

4.2 **Right To Assurance.** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

4.3 **Default.** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under the "Right to Assurance paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by Contractor to the City.

4.4 **Termination For Cause.** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective thirty (30) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such thirty (30) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual direct damages, costs, losses and expenses, incurred by the City which are solely the result of the Contractor's default. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law; provided, however, that the City is not entitled to double recovery in any event, and Contractor's cumulative liability under the Contract shall not exceed the total amount paid by City to Contractor under the Contract.

4.5 **Termination Without Cause.** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

4.6 **Fraud.** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

## **SECTION 5. OTHER DELIVERABLES**

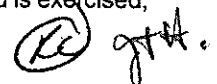
5.1 **Insurance:** The following insurance requirements apply.

### **5.1.1 General Requirements.**

5.1.1.1 The Contractor shall at a minimum carry insurance in the types and amounts indicated herein for the duration of the Contract.

5.1.1.2 The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to Contract execution and within fourteen (14) calendar days after written request from the City, but no more frequently than once a year during the term of the Contract.

5.1.1.3 The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.

 KE JTH.

5.1.1.4 The Contractor shall not commence work until the required insurance is obtained and has been reviewed by City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.

5.1.1.5 The City may request that the Contractor submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.

5.1.1.6 The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.

5.1.1.7 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall be mailed to the following address:

City of Austin  
Purchasing Office  
P. O. Box 1088  
Austin, Texas 78767

5.1.1.8 The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.

5.1.1.9 If insurance policies are not written for amounts specified in Paragraph 5.1.2, Specific Coverage Requirements, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

5.1.1.10 The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.

5.1.1.11 The Contractor shall not cause or permit insurance required under the Contract to lapse during the term of the Contract.

5.1.1.12 The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies.

5.1.2 **Specific Coverage Requirements.** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

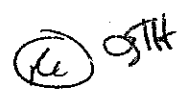
5.1.2.1 **Commercial General Liability Insurance.** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements.

5.1.2.1.1 Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.

5.1.2.1.2 Products/Completed Operations Liability

5.1.2.1.3 Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage.

5.1.2.1.4 The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.





5.1.2.2 **Business Automobile Liability Insurance.** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements:

5.1.2.2.1 Waiver of Subrogation, Endorsement CA0444, or equivalent coverage.

5.1.2.2.2 The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.

5.1.2.3 **Worker's Compensation and Employers' Liability Insurance.** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee. The policy shall contain the following provisions and endorsements:

5.1.2.3.1 The Contractor's policy shall apply to the State of Texas.

5.1.2.3.2 Waiver of Subrogation, Form WC420304, or equivalent coverage.

5.1.2.5 **Professional Liability/Technology Errors and Omissions Insurance:** The Contractor shall provide coverage, at a minimum limit of \$1,000,000 per claim, to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, omission, or breach of security (including but not limited to any confidential or private information) arising out of the performance of professional services under this Agreement. The required coverage shall extend to technology licensed and/or purchased, including any Software licensed or Hardware purchased under this Contract.

If coverage is written on a claims-made basis, the retroactive date shall be prior to or coincident with the date of the Contract and the certificate of insurance shall state that the coverage is claims-made and indicate the retroactive date. This coverage shall be continuous and will be provided for 24 months following the completion of the contract.

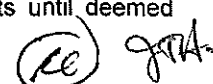
5.1.2.6 **Cyber Liability Insurance** coverage of not less than \$2,000,000 each claim and \$4,000,000 annual aggregate providing coverage for damages and claims expenses, including notification expenses, arising from (1) breach of network security, (2) alteration, corruption, destruction or deletion of information stored or processed on a computer system, (3) invasion of privacy, including identity theft and unauthorized transmission or publication of personal information, (4) unauthorized access and use of computer systems, including hackers (5) the transmission of malicious code, and (6) website content, including claims of libel, slander, trade libel, defamation, infringement of copyright, trademark and trade dress and invasion of privacy.

Policy shall be endorsed to name City of Austin, its Affiliates, and their respective directors, officers, employees, and agents, as additional insureds.

5.1.2.7 **Endorsements.** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

## 5.2 **Equal Opportunity.**

5.2.1 **Equal Employment Opportunity.** No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.



5.2.2 **Americans With Disabilities Act (ADA) Compliance.** No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

5.3 **Interested Parties Disclosure.** As a condition to entering the Contract, the Business Entity constituting the Offeror must provide the following disclosure of Interested Parties to the City prior to the award of a contract with the City on Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission for any contract award requiring council authorization. The Certificate of Interested Parties Form must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will submit the "Certificate of Interested Parties" to the Texas Ethics Commission within 30 days of receipt from the Offeror. Link to Texas Ethics Commission Form 1295 process and procedures below:

[https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)

5.4 **Acceptance of Incomplete or Non-Conforming Deliverables.** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are mutually agreed upon by the parties to be necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such agreed upon amount will be refunded to the City by the Contractor.

5.5 **Delays.**

5.4.1 The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified herein. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

5.5.2 Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in Contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

## SECTION 6. WARRANTIES

6.1 **Warranty – Price.**

6.1.1 The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

6.2 **Warranty – Services.** The Contractor warrants and represents that all services to be provided to the City under the Contract will be performed in a good and workmanlike manner in accordance with generally accepted industry standards, the terms of the Contract, and all applicable Federal, State and local laws, rules or regulations.

6.2.1 The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.

6.2.2 Unless otherwise specified in the Contract, the warranty period shall be sixty (60) days from the performance of services. If during the warranty period, one or more of the warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above

standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but in no event later than the end of the warranty period.

## **SECTION 7. MISCELLANEOUS**

### **7.1 Workforce.**

7.1.1 The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.

7.1.2 The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property:

7.1.2.1 use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the Contract; and

7.2.2.2 use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

7.1.3 If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

7.2 **Compliance with Health, Safety, and Environmental Regulations.** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

### **7.3 Audits and Records.**

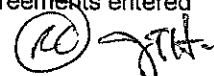
7.3.1 The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to amounts billed to the City under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

#### **7.3.2 Records Retention:**

7.3.2.1 Contractor is subject to City Code chapter 2-11 (Records Management), and as it may subsequently be amended. For purposes of this subsection, a Record means all books, accounts, reports, files, and other data recorded or created by a Contractor in fulfillment of the Contract whether in digital or physical format, except a record specifically relating to the Contractor's internal administration.

7.3.2.2 All Records are the property of the City. The Contractor may not dispose of or destroy a Record without City authorization and shall deliver the Records, in all requested formats and media, along with all finding aids and metadata, to the City at no cost when requested by the City.

7.3.3 The Contractor shall include sections 7.5.1 and 7.5.2 above in all subcontractor agreements entered into in connection with this Contract.



7.4 **Stop Work Notice.** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

7.5 **Indemnity.**

7.5.1 Definitions:

7.5.1.1 "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

7.5.1.1.1 damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or;

7.5.1.1.2 death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),

7.5.1.2 "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

7.5.2 THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

7.6 **Claims.** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2<sup>nd</sup> Street, 4<sup>th</sup> Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

7.7 **Notices.** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City:

City of Austin, Purchasing Office

ATTN: Sai Purcell, Procurement Specialist IV

P O Box 1088

Austin, TX 78767

To the Contractor:

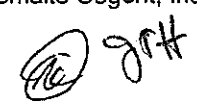
Gemalto Cogent, Inc.

ATTN: Lisa M Wideman, Regional Sales Manager

639 North Rosemead Boulevard

Pasadena, CA 91107

With a copy to General Counsel for Gemalto Cogent, Inc. at the same address as shown above



7.8 **Confidentiality.** In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

7.9 **Advertising.** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.

7.10 **No Contingent Fees.** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

7.11 **Gratuities.** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

7.12 **Prohibition Against Personal Interest in Contracts.** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

7.13 **Independent Contractor.** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

7.14 **Assignment-Delegation.** The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City such consent not to be unreasonably withheld. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.

7.15 **Waiver.** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations



under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

**7.16 Modifications.** The Contract can be modified or amended only in writing signed by both parties. No pre-printed or similar terms on any Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

**7.17 Interpretation.** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

**7.18 Dispute Resolution.**

7.18.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

7.18.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

**7.19 Minority And Women Owned Business Enterprise (MBE/WBE) Procurement Program.**

7.19.1 All City procurements are subject to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapters 2-9A, 2-9B, 2-9C and 2-9D of the City Code. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) full opportunity to participate in all City contracts.

7.19.2 The City of Austin has determined that no goals are appropriate for this Contract. **Even though no goals have been established for this Contract, the Contractor is required to comply with the City's MBE/WBE Procurement Program, Chapters 2-9A, 2-9B, 2-9C and 2-9D, of the City Code, as applicable, if areas of subcontracting are identified.**

7.19.3 If any service is needed to perform the Contract and the Contractor does not perform the service with its own workforce or if supplies or materials are required and the Contractor does not have the supplies or materials in its inventory, the Contractor shall contact the Department of Small and Minority Business Resources (DSMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Contractor must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

*Re* *9/14*

## 7.20 Subcontractors.

7.20.1 If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan, the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.

7.20.2 Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:

7.20.2.1 require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract.

7.20.2.2 prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;

7.20.2.3 require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;

7.20.2.4 require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and

7.20.2.5 require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

7.20.3 The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

7.20.4 The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

7.21 Jurisdiction And Venue. The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

7.22 Invalidity. The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken



provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

7.23 **Holidays.** The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

7.24 **Survivability of Obligations.** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

7.25 **Non-Suspension or Debarment Certification.** The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

7.26 **Incorporation of Documents.** Section 0100, **Standard Purchase Definitions**, is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address:  
[https://assets.austintexas.gov/purchase/downloads/standard\\_purchase\\_definitions.pdf](https://assets.austintexas.gov/purchase/downloads/standard_purchase_definitions.pdf)

7.27 **Order of Precedence.** The Contract includes the Exhibits attached hereto. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order.

7.27.1 Base part of Contract and Exhibit C (Non Discrimination Certification, Section 0800);

7.27.2 Exhibit A (3M Cogent's Offer – Quotation and Statement of Work);

7.27.3 Exhibits B (Hardware and Software Maintenance and Support Agreement) and D (Equipment Sale and Software License Agreement).

In witness whereof, the parties have caused duly authorized representatives to execute this Contract on the dates set forth below.

SIGNATURES ON FOLLOWING PAGE



3M Cogent, Inc. now known as Gemalto Cogent, Inc.

By: X [Signature]  
Signature

Name: ROBERT CIMPENMAN  
Printed Name

Title: DIRECTOR SALES + MARKETING

Date: 5-25-17

City of Austin

By: [Signature]  
Signature

Name: JAMES T. HOWARD  
Printed Name

Title: PROCUREMENT MGR

Date: 5.26.17

@ JTH

## List of Exhibits

Exhibit A	3M Cogent's Offer (Quotation and Statement of Work)
Exhibit B	Hardware and Software Maintenance and Support Agreement
Exhibit C	Non Discrimination Certification, Section 0800
Exhibit D	Equipment Sale and Software License Agreement





EXHIBIT A TO CITY OF AUSTIN CONTRACT

**3M COGENT'S OFFER (QUOTATION AND STATEMENT OF WORK)**

(copy attached)





3M Cogent, Inc.  
639 N. Rosemead Blvd.  
Pasadena, CA 91107

### Quotation

Quotation Number LW-032417-01  
Quotation Date 3/24/2017  
Expiration Date 5/24/2017

#### Quoted For

Bill Gibbens  
Austin Police Department  
P.O. Box 1629  
Austin, Texas 78767  
512-974-5118  
bill.gibbens@austintexas.gov

#### Quoted By

Lisa Wideman  
3M Cogent, Inc.  
639 N. Rosemead Blvd  
Pasadena CA 91107  
(512) 507-1733  
lmwideman@mmm.com

Terms

FOB

Net 30

Pasadena, CA

Item Number	Item Description	Qty	Unit Price	Extended Price
1	Automated Fingerprint Identification System Upgrade			
	<b>3M Software</b>			
	CAFIS 6.x License	1	\$15,000.00	\$15,000.00
	User Group Manager 2.x License	1	\$1,500.00	\$1,500.00
	System Monitoring Module License	1	\$900.00	\$900.00
	System Monitoring Client for PMA	1	\$250.00	\$250.00
	CABIS Series 6.x Module-AFIS Client Software	13	\$7,462.50	\$97,013.00
	<b>3M Software Total</b>			<b>\$114,663.00</b>
	<b>3M Hardware</b>			
	3M Cogent PMA M5 Module	1	\$140,000.00	
	<b>3M Hardware Total</b>			<b>\$140,000.00</b>
	Professional Services including Travel	1	\$75,486.00	\$75,486.00
	One Time Customer Discount	1	-\$131,207.00	-\$131,207.00
	Maintenance - Year 1	1	No Charge	No Charge
	Maintenance - Year 2	1	\$41,741.38	\$41,741.38
	Maintenance - Year 3	1	\$42,993.62	\$42,993.62
	Maintenance - Year 4	1	\$44,283.42	\$44,283.42
	Maintenance - Year 5	1	\$45,611.93	\$45,611.93
	<b>Total Project Cost</b>			<b>\$373,572.35</b>

#### Scope of Work

##### 3M Cogent's Responsibilities

Provide Austin PD with instructions and offer assistance, if needed, to upgrade 13 workstations to CAFIS Client 6.x (remote site upgrade excluded)  
Upgrade CAFIS software to be compatible with Oracle 12C (PMA upgrade and WebID/Mobile excluded)  
Ensure all 3M Cogent applications are installed as service in server  
Train Austin PD tenprint and latent users on new software

##### Austin Police Department's Responsibilities

Install/Upgrade CAFIS Client workstations to CAFIS 6.x per 3M Cogent's instructions

Provide and maintain the hardware/3rd party software license (OS, Oracle, etc.) associated with CAFIS frontend and backend  
Provide the necessary hardware components per 3M Cogent's specification; hardware specs are included in the Statement of Work  
Provide training for remote site personnel

**Note:** Cost for CAFIS Client upgrade of remote workstations at remote customer's expense is as follows:

Travis County Sheriff's Office - \$8,526.34  
Round Rock Police Department - \$4,726.54  
Williamson County Sheriff's Office - \$4,726.54  
Hays County Sheriff's Office - \$4,726.54

3M Cogent Authorization Signature

*Lisa Wideman*

Authorization Date

3/24/2017

<u>Subtotal</u>	<u>Tax (0%)</u>	<u>Freight</u>		
\$373,572.35				
			QUOTATION TOTAL	\$373,572.35

Purchaser Authorization

*[Signature]*

Date

5.26.17

*(re) gret.*

Version 2.0

# Austin Police Department Statement of Work

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**3M**

@ JTH

## EXHIBIT B TO CITY OF AUSTIN CONTRACT

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

This Hardware and Software Maintenance and Support Agreement (the "**Agreement**") is made and entered into as of \_\_\_\_\_, \_\_\_\_\_ (the "**Effective Date**"), between 3M COGENT, INC., now known as GEMALTO COGENT, INC., with a principal place of business at 639 North Rosemead Boulevard, Pasadena, California 91107 ("**Provider**"), and the City of Austin, Texas, a municipality incorporated by the State of Texas ("**Licensee**").

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

**WHEREAS**, the Licensee has purchased the Hardware (as defined below) from Provider; and

**WHEREAS**, Licensee desires to obtain and Provider 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 Provider 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 Provider'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 Provider can reproduce using the most recent version of the Software, as delivered by Provider to Licensee, in accordance with the terms of the Supply Agreement and the terms set forth herein.

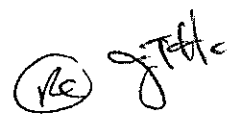
**1.4** "**Error Correction**" means either (a) a bug fix, patch, or other modification or addition that, when made or added to the Software, corrects an Error, or (b) a procedure or routine that, when observed in the regular operation of the Software, eliminates the practical adverse effect of an Error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

**1.5** "**Hardware**" means the hardware purchased by Licensee from Provider 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 Provider 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.

Handwritten signature and initials, possibly "J. T. H." and "Kc", in the bottom right corner.



1.9 "Supply Agreement" means that certain agreement or purchase order entered into by and between Provider 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 Provider 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 Provider 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 Provider 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 Provider 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 Provider 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. Provider 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.

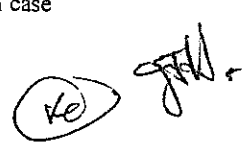
## 2. **HARDWARE MAINTENANCE AND SUPPORT**

2.1 **Fault Reporting and Correction.** During the Support Services Term, on the terms and conditions of this Agreement, Provider 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 Provider at the support number set forth on Exhibit B (Technical Support Contact Information), as may be revised by Provider from time to time. Each such report will be accompanied or followed by sufficient information to enable Provider to determine the cause of the Hardware problem. Provider 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 Provider shall be replaced with hardware of comparable functionality, which may be new or reconditioned hardware. Provider will determine, in its sole discretion, the manner in which it will repair or replace the Hardware. Provider will pay all shipping costs required to ship the faulty Hardware to and from Provider.

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

2.3 **Exclusions from Hardware Maintenance and Support.** Except as provided in Sections 2.1 and 2.2 above, Provider 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, Provider shall not be required to repair or replace any Hardware where Provider 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 Provider;



- 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 Provider;
- 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 Provider 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 Provider to be so merged or combined.
- 2.3.8 Provider 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.** Provider 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 Provider at the support number set forth on Exhibit B (Technical Support Contact Information), as may be revised by Provider from time to time. Each such Error report will be accompanied or followed by sufficient information to enable Provider to reproduce and verify the Error. Provider 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. Provider will determine, in its sole discretion, the priority level of each reported Error.

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

**3.3 Exclusions from Software Maintenance and Support.** Except as provided in Sections 3.1 and 3.2 above, Provider 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, Provider 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 Provider);
- 3.3.2 the Software Maintenance and Support Services are necessary due to: (a) failure of computer hardware, equipment, or software not supplied by Provider; (b) the negligence of Licensee or any third party; (c) a cause or causes beyond the reasonable control of Provider; (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 Provider to be so merged or combined;
- 3.3.3 Licensee has not installed and implemented any Error Corrections provided by Provider; or
- 3.3.4 Licensee has not paid the Support Fees, or any related fees or amounts, when due.

- 3.3.5 Provider 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 Provider to implement all Error Corrections furnished by Provider and for paying all costs in connection with any Upgrades offered to Licensee by Provider under this Agreement.

4.2 Licensee will be responsible for performing all data backups and Provider 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 Provider 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 Provider 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 Provider.

#### 5. FEES AND PAYMENTS

5.1 **Support Fees.** Licensee will pay annual support fees for the Support Services based on Provider's then current annual rate for Support Services ("**Support Fees**"). Provider'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. Provider will provide a proforma invoice thirty (30) days prior to the expiration of the then current Support term. Provider 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, Provider may, at its option, commence Support Services in accordance with Provider's then-current policies and upon payment by Licensee of the then-applicable annual Support Fee and reinstatement fee for the period between Provider'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 Provider'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 Provider 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

Provider 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 Provider, LICENSEE AGREES THAT PROVIDER'S SOLE AND EXCLUSIVE

Handwritten signature and initials in the bottom right corner of the page.

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

## 7. LIMITATION OF LIABILITY

PROVIDER'S AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENT (WHETHER ARISING FROM CONTRACT OR OTHERWISE) IS LIMITED TO THE TOTAL AMOUNT OF FEES PAID BY LICENSEE UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING PROVIDER'S RECEIPT OF NOTICE OF SUCH CLAIM. PROVIDER SHALL NOT 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, Licensee may renew this Agreement for successive one (1) year periods (each an "**Additional Support Term**") by payment of the then-applicable rates prior to the commencement of the Additional Support Term. Either party may notify the other party in writing of its intent not to renew this Agreement at least sixty (60) days prior to the end of the Initial Support Term or any Additional Support Term (as applicable). 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.** Provider reserves the right to discontinue provision of the Support Services and terminate this Agreement should Provider, 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 Provider deems relevant. Provider 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, Provider 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, Provider 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 Provider.

**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 10 will survive the expiration or termination of this Agreement for any reason.

Handwritten signature and initials, possibly "JTH", with a circled "10" next to it.

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

Provider 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, Provider will suggest recommended data backup practices for Licensee to following regarding the System. In the event of a need by Licensee for data restoration, Provider may provide reasonable assistance to Licensee in Licensee's efforts to recover data with data backup provided by Licensee. Provider 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 Provider User Group Conferences shall be as provided for Exhibit C (Support Fees) or the Statement of Work applicable to this Agreement.

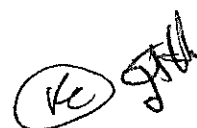
13. GENERAL

**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. Provider'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 Provider. Provider 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 of California (as permitted by Section 1646.5 of the California Civil Code or any similar successor provision) 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 the State of California 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 a federal court in the Central District of California or in state court in the County of Los Angeles, California, and 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.



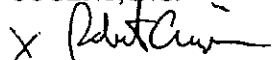
**13.5 No Waiver.** No course of dealing, course of performance, or failure of either party strictly to enforce any term, right, or condition of this Agreement will be construed as a waiver of any other term, right, or condition. No waiver or breach of any provision of this Agreement will be construed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

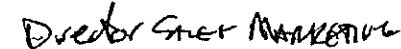
3M COGENT, INC., NOW KNOWN AS GEMALTO  
COGENT, INC.

X 

Authorized Signature



Name (Type or Print)



Title

3M Center, St. Paul, MN

Address

5-25-17

Date

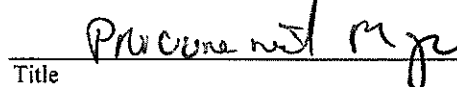
CITY OF AUSTIN, TEXAS (LICENSEE)



Authorized Signature

JAMES T. HOWARD

Name (Type or Print)



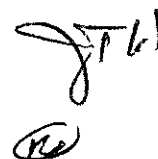
Title

1124 S. 1435, AUSTIN, TX

Address

5.26.17

Date



**EXHIBIT A**

**LICENSEE'S PRIMARY SERVICE ENGINEER(S)**

Licensee's Primary Service Engineer(s):

NAME: \_\_\_\_\_

PHONE: \_\_\_\_\_

EMAIL: \_\_\_\_\_

NAME: \_\_\_\_\_

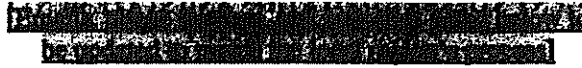
PHONE: \_\_\_\_\_

EMAIL: \_\_\_\_\_

*(w) JAH.*

## EXHIBIT B

### TECHNICAL SUPPORT CONTACT INFORMATION



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

Email: [CgtHelpdesk@mmm.com](mailto:CgtHelpdesk@mmm.com)

Web Portal: <https://3mtssd.force.com/3MCogent/login>

### 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 Provider Leadership directly.

#### **2<sup>nd</sup> Level Escalation**

Helpdesk Management and Account Management

Please escalate your concerns to your Assigned Account Manager and [US-CGT-SupportEscalation@mmm.com](mailto:US-CGT-SupportEscalation@mmm.com)

#### **3<sup>rd</sup> Level Escalation**

Business Management

If you are unable to resolve your concerns with 2<sup>nd</sup> level escalation, please escalation to

[CGTHelpDeskMGMT@mmm.com](mailto:CGTHelpDeskMGMT@mmm.com)

ke JTA



**EXHIBIT C**

**SUPPORT FEES**

**SEE EXHIBIT A -- 3M COGENT'S OFFER (QUOTATION AND STATEMENT OF WORK) TO CITY OF  
AUSTIN CONTRACT**

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## EXHIBIT D

### SERVICE LEVEL AGREEMENT

Severity	Severity Definition	Detail Description	Example(s)	Response Time
<b>Critical</b>	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
<b>Major</b>	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
<b>Significant</b>	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-arounds 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
<b>Medium</b>	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
<b>Low</b>	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

(e) JTA.

**EXHIBIT C TO CITY OF AUSTIN CONTRACT**

**NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION**

**City of Austin, Texas**

**Equal Employment/Fair Housing Office**

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

- (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Non-Discrimination and Non-Retaliation Policy set forth below.

**City of Austin**

**Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy**

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion,



recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and non-retaliation employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, **OR** THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

**Sanctions:**

Our firm understands that non-compliance with Chapter 5-4 and the City's Non-Retaliation Policy may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4 and the Non-Retaliation Policy.

**Term:**

The Contractor agrees that this Section 0800 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 25<sup>th</sup> day of May, 2017

CONTRACTOR  
Authorized  
Signature

Gernatto Cogent, Inc.  
f/k/a 3m Cogent, Inc.

X [Signature]

(26) [Signature]

Title

Director SALES & MARKETING  
5-25-17



**EXHIBIT D TO CITY OF AUSTIN CONTRACT**

**MASTER EQUIPMENT SALE AND SOFTWARE LICENSE AGREEMENT**

This Master Equipment Sale and Software License Agreement ("Agreement") is entered into as of \_\_\_\_\_, 20\_\_ ("Effective Date") by and between 3M Cogent, Inc., now known as Gemalto Cogent, Inc. ("Provider") 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



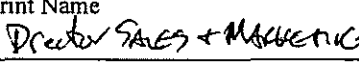
Exhibit B: Form of Order Schedule for Future Orders

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

Accepted and agreed by:

**PROVIDER:**

3M Cogent, Inc., now known as Gemalto Cogent, Inc.

  
\_\_\_\_\_  
Signature  
  
\_\_\_\_\_  
Print Name  
  
\_\_\_\_\_  
Title

Address for Formal Notice:

Gemalto Cogent, Inc.

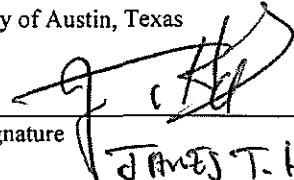
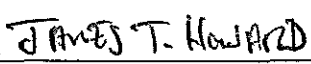
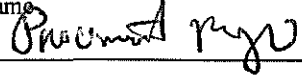
639 Rosemead Boulevard

Pasadena, CA 91107

ATTN: Contract Administrator

**CUSTOMER:**

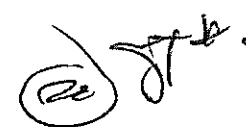
City of Austin, Texas

  
\_\_\_\_\_  
Signature  
  
\_\_\_\_\_  
Print Name  
  
\_\_\_\_\_  
Title

Address for Formal Notice

  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ATTN:   
\_\_\_\_\_




**BASIC TERMS AND CONDITIONS  
FOR 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 "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 Provider and provided to Customer hereunder.
- 1.4 "Effective Date" has the meaning set forth on the signature page hereto.
- 1.5 "Equipment" means the Provider hardware provided to Customer hereunder as part of a System.
- 1.6 "Installation Date" means: (a) for a System that Provider is responsible for installing pursuant to an Installation SOW, the business day that Provider installs such System in accordance with the relevant Documentation; (b) for all other Systems, the date that Provider 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 Provider, 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 Provider 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 Equipment and the Licensed Software designated in an Order Schedule for delivery to Customer.

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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 Provider 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 Provider 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 Provider a proposed Order Schedule in the form attached hereto as Exhibit B. Such requests shall be subject to System and Service availability, Provider's fees and policies in effect when such proposed Order Schedule is submitted, and acceptance by Provider. 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 Provider's costs for processing such change).

## 3. DELIVERY

3.1 **Delivery.** Provider 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, Provider 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 Provider with a written statement of rejection, (c) the date that Provider 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, Provider will have a reasonable time to remedy such non-conformance following Provider's receipt of written notice from Customer specifying in reasonable detail the nature of such non-conformance. In the event that Provider 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 Provider and receive a refund of amounts paid to Provider for the System. Acceptance will not be delayed for any minor non-conformance with the specification. Following acceptance, Provider 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. 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 Cogent will not apply. If any invoice remains unpaid for a period of ninety (90) days after the due date, 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, Cogent may, without incurring liability of any sort and without limitation of any other available remedies, terminate this Agreement. Customer agrees to reimburse Cogent for reasonable attorneys' fees and any other costs associated with collecting delinquent payments.

**4.3 Currency.** Customer will pay all amounts due to Cogent in the currency of the relevant Order Schedule, unless otherwise agreed. Provider 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.** Customer hereby grants Provider a purchase money security interest in the Systems, and in any proceeds thereof, including insurance proceeds, to secure payment of any amounts due until they are paid in full. Provider will retain the rights and remedies of a secured creditor until payment in full is received for the purchased Systems. Customer agrees to execute and deliver all documents reasonably requested by Provider to protect and maintain Provider's security interest.

**4.5 Taxes.** All amounts payable under this Agreement are exclusive of tax. Customer will pay or reimburse Provider 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 Provider under this Agreement or with respect to transactions under this Agreement, except taxes imposed on the net income of Provider. If a transaction is exempt from tax, Customer will provide Provider with a valid exemption certificate or other evidence of such exemption in a form acceptable to Provider. 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 Provider, (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, Provider 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.** Provider 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 Provider'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 Provider'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 Provider's training offerings as of the date of such Order Schedule.

**5.3 Support.** Subject to the payment of applicable Support fees, Provider 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 Provider 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 Provider's then-current rates.

**5.4 Updates.** During the Support Services Term, Provider will provide Customer with Updates if, as, and when Provider makes any such Updates generally available to its end user customers receiving support services from Provider; provided that Provider 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 Provider's then current per man-hour rates.

(a) **Telephone Support.** Provider will provide general telephone support to the Technical Contact during Provider'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.

(b) **Exclusions from Support.** Provider is not obligated to provide Support in the following situations:

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- (i) the Licensed Software has been changed, modified or damaged (excluding modifications made under the direct supervision of Provider);
- (ii) the issues resulting from or relating to: (a) computer hardware, equipment, or software not supplied by Provider; (b) the negligence of Customer or any third party; (c) a cause or causes beyond the reasonable control of Provider; 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.

(c) Termination of Support. Provider reserves the right to discontinue the provision of the Support should Provider, 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. Provider 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.

**5.5 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 Provider's then-current policies and pricing. Provider may use consultants or other contractors in connection with the performance of its obligations under this Agreement.

#### **5.6 Customer Cooperation.**

(a) Customer acknowledges that Customer's timely provision of (and Provider'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 Provider's performance under this Agreement, and that Provider 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 Provider 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 Provider and its suppliers and contractors with free and safe access to the Installation Site and the Systems as reasonably necessary for Provider 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 Provider 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 Provider. Provider'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 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, Provider 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 Provider 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 Provider in writing of its intended activities and the information sought and (ii) Provider 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. Provider may grant the new owner or assignee a license to the relevant Licensed Software, provided that the new owner or assignee agrees to Provider's then-current Licensed Software license terms and conditions (including Provider's then-current fees) and such other terms as Provider may reasonably require.

**6.4 Verification.** At Provider'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) Provider 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**

Provider 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.** Provider 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 PROVIDER 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. Provider does not warrant that the Systems will operate in combination with hardware, software, systems or data not provided by Provider 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 PROVIDER 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 Provider, 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 Provider'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 Provider is unable to make the Equipment operate as warranted, 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 Provider 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 Provider 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 Provider. If Customer requests warranty services hereunder and Provider reasonably determines that there is no failure or that the services are outside the scope of the warranty, Customer shall pay for Provider's travel expenses and labor for such services at Provider's applicable per call and per man-hour rates then in effect. 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 Provider to inspect such logs at any time during normal business hours.

**8.5 Limitations.** Provider 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 that for which it was not 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 Provider 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.** Provider will defend Customer against a claim that a System, as provided by Provider to Customer and used within the scope of this Agreement, infringes any United States copyright or incorporates any misappropriated trade secret (a "Claim"). Provider 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 Provider, provided that Customer: (a) notifies Provider in writing within thirty (30) days of commencement of the Claim; (b) grants Provider sole control of the defense and settlement of the Claim; and (c) provides Provider 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.** Provider will have no obligations under Section 9.1 if (a) the infringement is caused by the use of any non-Provider 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 Provider 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 Provider to Customer.

**9.3 Remedies.** If a System becomes, or Provider believes is likely to become, subject to a Claim, Provider 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 Provider's sole judgment it is not commercially reasonable to perform either of the above options, then Provider 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 PROVIDER'S SOLE OBLIGATIONS, AND CUSTOMER'S SOLE REMEDIES, IN THE EVENT OF ANY INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS BY PROVIDER 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 for successive one (1) year periods, unless either party provides the other party with written notice of its intent not to renew at least sixty (60) days prior to the end of the then-current 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, Provider 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. Provider 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 Provider'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 Provider 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 Provider (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,

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

## **12. LIMITATION OF LIABILITY**

To the extent permitted by applicable law, in no event will Provider 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 Customer has been advised of the possibility of such damages or if such damages are foreseeable. To the extent permitted by applicable law, in no event will Provider's liability for damages hereunder exceed the amounts actually paid by Customer to Provider 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 Provider would not have entered into this Agreement. Provider'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 of California 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 the State of California 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 a federal court in the Southern District of California or in state court in the County of Los Angeles, California, 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. Provider's inability 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 Provider. Provider 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

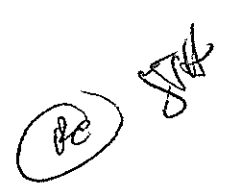
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to, and will require its representatives to agree not to, export, direct or transfer Systems, or any direct product thereof, to any destination, person or entity restricted or prohibited by the Export Controls.

**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 Provider, and agrees that Provider 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 Provider is required to file a lawsuit or court action against Customer to prevent such breach, Customer agrees to pay Provider's reasonable attorney fees, expenses and court costs.

**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 Provider-furnished software will, as to such Licensed Software, supplement the restrictions contained herein.



**EXHIBIT A**  
**INITIAL ORDER SCHEDULE**

**CUSTOMER INFORMATION**

Customer Name: \_\_\_\_\_

Installation Site/Shipping Address: \_\_\_\_\_

**SYSTEMS**

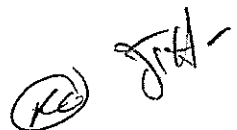
System	Equipment Purchase Price and Serial Number	Software License Fee	Number of Licensed Users, Workstations and/or Server CPUs	Annual Support Fee
	TOTAL:	TOTAL:		TOTAL:

**DELIVERY DATE**

**INSTALLATION AND CUSTOMIZATION SERVICES**

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

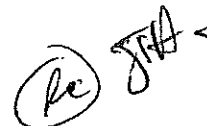
**SPECIFICATIONS** See Specifications attached hereto as Attachment 2

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**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 Provider and Customer dated \_\_\_\_\_.

#### CUSTOMER INFORMATION

Customer Name: \_\_\_\_\_

Installation Site/Shipping Address: \_\_\_\_\_

#### SYSTEMS

System	Equipment 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

By: \_\_\_\_\_

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

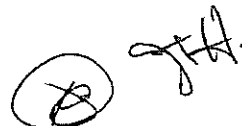
Title: \_\_\_\_\_

#### PROVIDER

By: \_\_\_\_\_

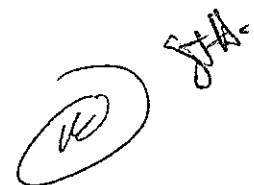
Name: \_\_\_\_\_

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

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

**EXHIBIT B – ATTACHMENT B.2**  
**SPECIFICATIONS**

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# CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.  
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

## OFFICE USE ONLY CERTIFICATION OF FILING

Certificate Number:  
2017-214142

Date Filed:  
05/25/2017

Date Acknowledged:

**1 Name of business entity filing form, and the city, state and country of the business entity's place of business.**

Gemalto Cogent, Inc. f/k/a 3M Cogent, Inc.  
Dover, DE United States

**2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.**

City of Austin

**3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.**

MA 5600NS170000041  
Automated Fingerprint Identification Services/Biometrics.

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Pattinson, Neville	Austin, TX United States		X
	Johnston, Heather	Austin, TX United States		X
	Beverly, Paul	Austin, TX United States		X
	Gemalto, Inc.	HN Amsterdam Netherlands	X	

5 Check only if there is NO Interested Party. ☐

**6 AFFIDAVIT**

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.



Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said \_\_\_\_\_, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, to certify which, witness my hand and seal of office.

Signature of officer administering oath

Printed name of officer administering oath

Title of officer administering oath

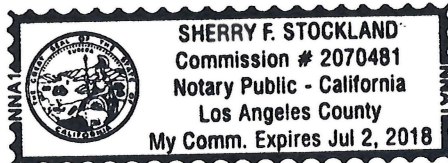
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of LOS ANGELES

Subscribed and sworn to (or affirmed) before me on this 25<sup>th</sup>  
day of MAY, 2017, by XU CHEN, TREASURER

proved to me on the basis of satisfactory evidence to be the  
person(s) who appeared before me.



(Seal)

Signature

Sherry F. Stockland