



Amendment No. 1
to
Contract No. 8700 NA180000178
for
LiveScan and Printer Maintenance
between
Morpho USA, Inc., d/b/a Idemia Identity & Security USA, LLC
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be August 1, 2019 through July 31, 2020. Three (3) options will remain.
- 2.0 The total contract amount is increased by \$6,042.00 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 08/21/2018 – 08/20/2019	\$6,042.00	\$6,042.00
Amendment No. 1: Option 1 – Extension 08/01/2019 – 07/31/2020	\$6,042.00	\$12,084.00

- 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: June 19, 2019

Printed Name: Michael Kato
Authorized Representative

Idemia Identity & Security USA LLC
296 Concord Rd., Ste. 300
Billerica, MA 01821

Sign/Date: 7/19/19

Printed Name: Ken Bragdon
Authorized Representative

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

**CONTRACT BETWEEN THE CITY OF AUSTIN
AND
Morpho USA, Inc. dba. Idemia Identity & Security USA, LLC
For
LiveScan and Printer Maintenance**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Morpho USA, Inc. ("Contractor"), having offices at 296 Concord Road, Suite 300, Billerica, MA 01821.

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 Colleen Haney, Phone: (952) 945-3338, Email Address: colleen.haney@us.IDEMIA.com. The City's Contract Manager for the engagement shall be Juanita Fonseca, Phone: (512) 974-5067, Email Address: Juanita.fonseca@austintexas.gov. The City and the Contractor resolve 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 \$30,210.00 for all fees and expenses.

Initial term 12 months	\$6,042.00
Extension Option 1	\$6,042.00
Extension Option 2	\$6,042.00
Extension Option 3	\$6,042.00
Extension Option 4	\$6,042.00

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:

	City of Austin
Department	Austin Police
Attn:	Financial Management
Address	P.O. Box 1629
City, State, Zip Code	Austin, TX 78767

3.2.2 Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.

3.2.3 Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.

3.2.4 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 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.

3.3.4 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 **Reimbursable Expenses.** None

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 defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and

3.5.1.2 a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

SECTION 4. TERM AND TERMINATION

4.1 **Term of Contract.** The Contract shall commence upon execution, unless otherwise specified, and shall remain in effect for an initial term of 12 months.

The Contract may be extended automatically beyond the initial term for up to four additional 12 month periods at the City's sole option unless the Contractor is notified in writing no less than 30 days prior to the contract's expiration.

4.1.1 If the City exercises any extension option, all terms, conditions, and provisions of the Contract shall remain in effect for that extension period, subject only to any economic price adjustment otherwise allowed under the Contract.

4.1.2 Upon expiration of the initial term or any 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 for the City to re-solicit and/or complete the deliverables due under this Contract (not 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 ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) 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 damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

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 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.

5.1.2 **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.

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 **Significant Event.** The Contractor shall immediately notify the City's Contract Manager of any current or prospective "significant event" on an ongoing basis. All notifications shall be submitted in writing to the Contract Manager. As used in this provision, a "significant event" is any occurrence or anticipated occurrence which might reasonably be expected to have a material effect upon the Contractor's ability to meet its contractual obligations. Significant events may include but not be limited to the following:

7.3.1 disposal of major assets;

7.3.2 any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this Contract;

7.3.3 any significant termination or addition of provider contracts;

7.3.4 the Contractor's insolvency or the imposition of, or notice of the intent to impose, a receivership, conservatorship or special regulatory monitoring, or any bankruptcy proceedings, voluntary or involuntary, or reorganization proceedings;

7.3.5 strikes, slow-downs or substantial impairment of the Contractor's facilities or of other facilities used by the Contractor in the performance of this Contract;

7.3.6 reorganization, reduction and/or relocation in key personnel;

- 7.3.7 known or anticipated sale, merger, or acquisition;
- 7.3.8 known, planned or anticipated stock sales;
- 7.3.9 any litigation against the Contractor; or
- 7.3.10 significant change in market share or product focus.

7.4 **Audits and Records.**

7.4.1 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 the performance 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.

7.4.2 Records Retention:

7.4.2.1 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.

7.4.2.2 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.

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

7.5 **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.

7.6 **Indemnity.**

7.6.1 Definitions:

7.6.1.1 "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:

7.6.1.1.1 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;

7.6.1.1.2 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),

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

7.6.2 **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.

7.7 **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 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

7.8 **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: Contract Administrator

P O Box 1088

Austin, TX 78767

To the Contractor:

Morpho USA, Inc., Contractor's Name

ATTN: Colleen Haney, Contract Manager

296 Concord Road, Suite 300

Billerica, MA 01821

7.9 **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.

7.10 **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.

7.11 **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.

7.12 **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.

7.13 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.

7.14 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.

7.15 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. 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.

7.16 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.

7.17 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.

7.18 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.

7.19 Dispute Resolution.

7.19.1 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.

7.19.2 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.

7.20 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.

7.21 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.

7.22 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.

7.23 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.

7.24 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.

7.25 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

7.26 **Order of Precedence.** The Contract includes, without limitation, the Solicitation, the Offer submitted in response to the Solicitation, the Contract award, the Standard Purchase Terms and Conditions, Supplemental Terms and Conditions if any, Specifications, and any addenda and amendments thereto. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order.


7.26.1 This contract;

7.26.2 Morpho USA, Inc.'s Offer;

7.26.3 Exhibit A Morpho USA, Inc.'s Terms and Conditions.

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

Morpho USA, Inc.

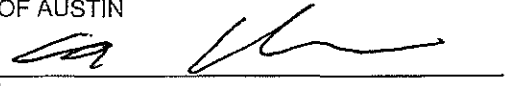
By: 
Signature

Name: Matthew J. Diederich
Printed Name

Title: V.P. of Customer Service

Date: 8/21/18

CITY OF AUSTIN

By: 
Signature

Name: Sai Purcell
Printed Name

Title: Procurement Specialist IV

Date: 8/23/18

List of Exhibits

Exhibit A	Morpho USA, Inc.'s Offer
Exhibit B	Morpho USA, Inc.'s Terms and Conditions
Exhibit C	Non Discrimination Certification, Section 0800

**Idemia Identity & Security**

5705 W. Old Shakopee Road
Suite 100
Bloomington, MN 55437-3107
USA
Phone (800) 932-0890
FAX (952) 932-7181

**MAINTENANCE AGREEMENT ADDENDUM
QUOTATION****QUOTE ID:** 15700**QUOTE DATE:** 03/20/18**CUSTOMER ID:** BD-7981**PRICE LIST:** SL-LAWENF**COVERAGE****START DATE:** 08/01/18**END DATE:** 07/31/23

BILL TO: CITY OF AUSTIN
ACCOUNTS PAYABLE
PO BOX 1088
AUSTIN, TX 78767
United States

COVERAGE TYPE	DESCRIPTION	SERIAL NUMBER	QTY	PRICE
EQUIPMENT LOCATION: AUSTIN POLICE DEPARTMENT - 715 EAST 8TH STREET AUSTIN, TX 78701				
5900-TPE-ED-M95	ANNUAL 9/5 MAINTENANCE			
TPE-5900-ED	YEAR 1	AEZ075001103	1	\$5,700.00
PRT- DUP- M95	ANNUAL 9/5 MAINTENANCE			
TPE-PRT-DUP	YEAR 1	53063-002	1	\$342.00
5900-TPE-ED-M95	ANNUAL 9/5 MAINTENANCE			
TPE-5900-ED	YEAR 2	AEZ075001103	1	\$5,700.00
PRT- DUP- M95	ANNUAL 9/5 MAINTENANCE			
TPE-PRT-DUP	YEAR 2	53063-002	1	\$342.00
5900-TPE-ED-M95	ANNUAL 9/5 MAINTENANCE			
TPE-5900-ED	YEAR 3	AEZ075001103	1	\$5,700.00
PRT- DUP- M95	ANNUAL 9/5 MAINTENANCE			
TPE-PRT-DUP	YEAR 3	53063-002	1	\$342.00
5900-TPE-ED-M95	ANNUAL 9/5 MAINTENANCE			
TPE-5900-ED	YEAR 4	AEZ075001103	1	\$5,700.00
PRT- DUP- M95	ANNUAL 9/5 MAINTENANCE			
TPE-PRT-DUP	YEAR 4	53063-002	1	\$342.00
5900-TPE-ED-M95	ANNUAL 9/5 MAINTENANCE			
TPE-5900-ED	YEAR 5	AEZ075001103	1	\$5,700.00

EQUIPMENT LOCATION: AUSTIN POLICE DEPARTMENT - 715 EAST 8TH STREET AUSTIN, TX 78701

PRT- DUP- M95 ANNUAL 9/5 MAINTENANCE YEAR 5

TPE-PRT-DUP

1 \$342.00

TOTAL: \$30,210.00

PLEASE CHECK PREFERRED BILLING:	<input type="checkbox"/> ANNUAL INVOICE	OR	<input type="checkbox"/> QUARTERLY INVOICE	OR	<input type="checkbox"/> MONTHLY INVOICE
--	--	-----------	---	-----------	---

NAME: COLLEEN HANEY

PO NUMBER: _____

TITLE: Maintenance Contract Admin

SIGNATURE BY: _____

PHONE: (952) 945-3338

NAME(Print) / DATE _____

FAX: (952) 852-8747

TITLE: _____

EMAIL: CHaney@morphotrust.com

PHONE / FAX: _____

EMAIL: _____

The terms and conditions of MORPHOTRUST USA maintenance services agreement are hereby incorporated into this Addendum by reference. Please sign and date this Maintenance Agreement Addendum. If a purchase order is required, please attach or include the purchase order number on this addendum. Some of the terms set out herein may differ from those in the buyer's purchase order and some may be new. Acceptance is conditional on the buyer's assent to the terms set out herein in lieu of those in the buyer's purchase order. Seller's failure to object to provisions contained in any communication from the buyer shall not be deemed a waiver of the provisions of this acceptance. Any changes in the terms contained herein must be specifically agreed to in writing by an officer of the seller before becoming binding on either seller or buyer.

AN INVOICE WILL BE ISSUED UPON RECEIPT OF A SIGNED MAINTENANCE AGREEMENT ADDENDUM

IDEMIA IDENTITY & SECURITY USA LLC
SYSTEM MAINTENANCE TERMS AND CONDITIONS
for use with
U.S. End User Customers
covering
Idemia® Live Scan Product Line

I. GENERAL SCOPE OF COVERAGE

Subject to payment in full of the applicable maintenance fees for the system ("System") described in Idemia Identity & Security USA LLC's ("Idemia") current Maintenance Agreement Addendum ("Addendum") with customer ("Customer"), Idemia, or its authorized agents or subcontractors, shall provide the System maintenance services ("Services") set forth and in accordance with the terms herein (this "Agreement") and the Addendum. The terms of the Addendum are hereby incorporated into this Agreement by this reference.

II. MAINTENANCE SERVICES

The Services provided by Idemia are those services selected by Customer from one or more of the following maintenance services programs:

A. Included With All Remedial Maintenance Services. *Included With All Remedial Maintenance Services* are as follows:

- Unlimited 24/7 telephone technical support for System hardware and software from the Idemia TouchCare Support Center via Idemia toll free telephone number.
- TouchCare Support Center managed problem escalation, as required, to Idemia's technical support staff to resolve unique problems.
- Idemia shall furnish all parts and components necessary for the service and maintenance of the System. Replacement parts shall be sent to the Customer. All replaced defective parts shall become Idemia's property. Idemia shall determine if a replacement part is necessary. Replacement parts and components may be new or refurbished. Unless otherwise agreed by Idemia, replacement parts and components needed at international destinations shall be shipped by Idemia to the Customer-specified United States destination, and the Customer shall arrange for shipment of the parts and components to the final international destination. In the event Idemia ships replacement parts and components to an international destination, the Customer shall be responsible for all shipping expenses, duties, tariffs, taxes, and all other delivery related charges.

- Idemia shall make available to Customer one copy (in electronic or other standard form) of each Update (defined herein) for those System components that are developed by Idemia and for which Idemia, in its sole discretion, elects to develop and generally make available to customers whose Systems are under warranty or under a current Idemia Maintenance Agreement Addendum. Customer shall provide Idemia with continuous network or dial-up access to the System (whether stand alone or connected to a central site), and Idemia shall deliver the Update via this remote means of delivery. In the event continuous network or dial-up access is not available for *24/7 Maintenance Services* and *9/5 Maintenance Services* Customers, then Idemia shall install the Update during any subsequently scheduled on-site visit by Idemia for service of the System. An "Update" means a new release of such System software components that are developed by Idemia which contain (i) bug fixes, corrections, or a work-around of previously identified errors with such software, or (ii) minor enhancements, improvements, or revisions with substantially similar (but not new) functionality to the original licensed System software.

B. 24/7 Maintenance Services. Idemia's *24/7 Maintenance Services* are as follows:

- Customer will receive a telephone response to service calls within one (1) hour from the time the Customer places a service call with Idemia's Help Desk.
- Idemia's Help Desk will attempt problem resolution via telephonic verbal and dial-in troubleshooting prior to dispatching a Idemia field service engineer to Customer's facility for on-site service.
- If on-site service is necessary, such service shall be provided 24/7, including holidays. Idemia shall use its best efforts to have a Idemia field service engineer at the Customer's facility within four (4) hours from the time the engineer is dispatched by Idemia's Help Desk for customers located within a 100 mile radius of an authorized Idemia's service location and within 24 hours for customers located outside such 100 mile radius.

- At no additional charge (provided Customer has granted Idemia with continuous network or dial-up access to the System, whether stand alone or connected to a central site), Idemia will provide Customer with up to four (4) Customer-requested type of transaction changes to existing type of transaction applications; **provided further, however, that any such type of transaction change does not, in the sole opinion of Idemia's Development Management Team, require a significant development or deployment effort.** Generally, a *significant development effort* is one that takes Idemia more than one full business day to develop, and a *significant deployment effort* is one that requires Idemia's deployment of one or more of its field service engineers to more than five (5) Customer locations or Idemia's field service engineer(s) collectively traveling a distance greater than 250 miles in order to complete the installations. In any such events, Idemia will provide such services on a time and materials basis and Idemia will provide Customer with a quote for developing and providing Customer with any such applications and changes. Table updates are treated as Updates and will be made available to Customer in accordance with Section II.A. of this Agreement.

C. 9/5 Maintenance Services. Idemia's 9/5 Maintenance Services are as follows:

- Customer will receive a telephone response to service calls within one (1) hour from the time Customer places a service call with Idemia's Help Desk.
- Idemia's Help Desk will attempt problem resolution via telephonic verbal and dial-in troubleshooting prior to dispatching a Idemia field service engineer to Customer's facility for on-site service.
- If on-site service is necessary, such service shall be provided nine (9) business hours (that is, 8:00 a.m. to 5:00 p.m.) per day, five business days per week. Idemia shall use its best efforts to have an Idemia's field service engineer at Customer's facility within eight (8) working hours from the time the engineer is dispatched by Idemia's Help Desk if Customer's facility is located within a 100 mile radius of an authorized Idemia's service location and within 24 hours if Customer's facility is located outside such 100 mile radius.
- Upon Idemia's acceptance of Customer's request for after hours service, Customer shall

pay for such after hours service on a time and materials basis at Idemia's then current rates.

- At no additional charge (provided Customer has granted Idemia with continuous network or dial-up access to the System, whether stand alone or connected to a central site), Idemia will provide Customer with up to four (4) Customer-requested type of transaction changes to existing type of transaction applications; **provided further, however, that any such type of transaction change does not, in the sole opinion of Idemia's Development Management Team, require a significant development or deployment effort.** Generally, a *significant development effort* is one that takes Idemia more than one full business day to develop, and a *significant deployment effort* is one that requires Idemia's deployment of one or more of its field service engineers to more than five (5) Customer locations or Idemia's field service engineer(s) collectively traveling a distance greater than 250 miles in order to complete the installations. In any such events, Idemia will provide such services on a time and materials basis and Idemia will provide Customer with a quote for developing and providing Customer with any such applications and changes. Table updates are treated as Updates and will be made available to Customer in accordance with Section II.A. of this Agreement.

D. Help Desk Maintenance Services. Idemia's Help Desk Maintenance Services are as follows:

- The Services do not include any Idemia on-site maintenance services. The Customer agrees to provide the on-site personnel to assist the Idemia Help Desk with troubleshooting, module replacement, and installation of Updates, as required.
- Customer shall maintain at least one (1) Idemia trained System manager on the Customer's System support staff during the term of such Services period contained in the applicable Addendum, and such Customer System manager shall be responsible for periodically backing-up System software in accordance with Idemia's periodic requirements. Unless otherwise agreed in writing by Idemia, the Customer shall be responsible for the installation of each Update.
- Customer will receive a telephone response to service calls within one (1) hour from the time the Customer places a service call with Idemia's Help Desk.

- Idemia shall furnish all parts and components necessary for the maintenance of the System. Idemia's shipment of a replacement part to Customer will be initiated promptly after the Idemia's Help Desk determines the need for such item. Replacement part orders initiated prior to 3:00 p.m. Central shall be shipped the same business day, where orders initiated after 3:00 p.m. Central shall be shipped the next business day. All shipments are made via next day priority air.
- If a defective part is required by Idemia to be returned to Idemia, the packaging material used in shipment of the replacement part must be reused to return the defective part. [Note: defective parts are not repaired and returned to Customer. Customer will be invoiced for any defective parts that are not returned to Idemia within two (2) weeks after receipt of the replacement part. Idemia is not responsible for any markings (i.e., asset tags) that Customer may place on System components. It is Customer's responsibility to remove such markings.]
- Upon Customer's request for Idemia on-site service, Idemia shall use its best efforts to have a Idemia field service engineer at the Customer's facility within 48 hours from the time the engineer is dispatched by Idemia's Help Desk. Customer shall pay for such on-site service on a time and travel basis at Idemia's then current rates and travel policies, respectively. Prior to dispatch of a Idemia engineer, Customer shall provide Idemia with a purchase order ("P.O."), complete Idemia's P.O. Waiver form, or provide Idemia with a valid credit card number.

E. Preventive Maintenance Services. Idemia's *Preventive Maintenance Services* are as follows:

- Preventive maintenance service calls consist of System cleaning, verification of calibration, and verification of proper System configuration and operation in accordance with Idemia's specifications for such System. Idemia and Customer will seek to agree upon the scheduling of the preventive maintenance service call promptly after commencement of the term of this Agreement and the commencement of any renewal term.
- Preventive maintenance service calls are only available in connection with Idemia's 24/7 Maintenance Services and Idemia's 9/5 Maintenance Services offerings. Preventive maintenance service calls are priced on a per

call basis in accordance with Idemia's then current published prices for such Services. Preventive Maintenance Services may not be available for certain System components.

III. EXCLUSIONS FROM SERVICES

A. Exclusions. The Services do not include any of the following:

- System relocation.
- Additional training beyond that amount or level of training originally ordered by Customer.
- Maintenance support or troubleshooting for Customer provided communication networks.
- Maintenance required to the System or its parts arising out of misuse, abuse, negligence, attachment of unauthorized components (including software), or accessories or parts, use of sub-standard supplies, or other causes beyond Idemia's control.
- Maintenance required due to the System being modified, damaged, altered, moved or serviced by personnel other than Idemia's authorized service representatives, or if parts, accessories, or components not authorized by Idemia are fitted to the System.
- Maintenance required due to failures caused by Customer or Customer's software or other software, hardware or products not licensed by Idemia to Customer.
- Providing or installing updates or upgrades to any third party (i.e., Microsoft, Oracle, etc.) software.
- Providing consumable parts and components (i.e., platens, toner cartridges, etc.); such items are replaced at the Customer's expense.
- Maintenance required due to failures resulting from software viruses, worms, Trojans, and any other forms of destructive or interruptive means introduced into the System.
- Maintenance required due to failures caused by Customer facility issues such as inadequate power sources and protection or use of the System in environmental conditions outside of those conditions specified in Idemia's System documentation.

B. Availability of Additional Services. At Customer's request, Idemia may agree to perform the excluded services described immediately above in accordance with Idemia's then current rates. Other excluded services that may be agreed to be performed by Idemia shall require Idemia's receipt of a Customer P.O., Customer's completion of Idemia's P.O. Waiver form, or Customer providing Idemia with a valid credit card number before work by Idemia is commenced.

C. Non-Registered System Components. Any System components not registered in the Addendum for which Services are requested by Customer may be required to have a pre-maintenance inspection by Idemia before being added to the Addendum and this Agreement. This inspection will also be required if this Agreement has expired by more than thirty (30) days. Idemia's inspection will be billed at Idemia's current inspection rate plus travel expenses and parts (if any required).

D. Third Party Hardware and Software. Customer shall be solely responsible for obtaining from Idemia or an Idemia authorized or identified vendor, at Customer's sole expense: (i) all Idemia and third party software that may be required for use in connection with any Updates, major enhancements or new versions; and (ii) all hardware that may be required for the use of any Updates, major enhancements or new versions. Idemia will specify the hardware and third party software requirements for any Updates.

IV. SERVICE CALLS

Customer may contact Idemia's TouchCare Support Center by calling 1-888-HELP-IDX (888-435-7439). Service calls under this Agreement will be made at the installation address identified in the Addendum or as otherwise agreed to in writing.

V. TERM AND TERMINATION

This term of this Agreement shall commence upon Idemia's receipt of the annual maintenance fee reflected in the Addendum and shall continue for a period of one (1) year. This Agreement may be renewed for additional one (1) year terms upon the parties' mutual agreement and Customer's execution of an updated Addendum and Idemia's receipt of the applicable annual maintenance fee reflected in the updated Addendum. Either party may terminate this Agreement in the event of a material breach by the other party that remains uncured for a period of thirty (30) days from the date the non-breaching party provided the other with written notice of such breach.

VI. FEES FOR SERVICES

A. Fees. The initial fee for Services under this Agreement shall be the amount set forth in the Addendum. The annual maintenance fee during any renewal term will be Idemia's current rates in effect at the time of renewal. Customer agrees to pay the total of all charges for Services annually in advance within thirty (30) days of the date of Idemia's invoice for such charges. Customer understands that alterations,

attachments, specification changes, or use of sub-standard supplies that cause excessive service calls, may require an increase in Service fees during the term of this Agreement at the election of Idemia, and Customer agrees to promptly pay such charges when due.

B. Failure to Pay Fees. If Customer does not pay Idemia's fees for Services or parts as provided hereunder when due: (i) Idemia may suspend performance of its obligation to provide Services until the account is brought current; and (ii) Idemia may, at its discretion, provide the Services at current "non contract/per call" rates on a COD basis. Customer agrees to pay Idemia's costs and expenses of collection including the maximum attorneys' fee permitted by law (said fee not to exceed 25% of the amount due hereunder).

VII. LIMITED WARRANTY / DISCLAIMER / LIMITATION OF LIABILITY

Idemia shall provide the Services hereunder in a professional and workmanlike manner by duly qualified personnel. EXCEPT FOR THIS LIMITED WARRANTY, IDEMIA HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE IN REGARD TO THE SERVICES, SOFTWARE, AND ANY OTHER GOODS PROVIDED HEREUNDER. IN NO EVENT SHALL IDEMIA'S AGGREGATE LIABILITY TO CUSTOMER ARISING OUT OF, OR RELATED TO, THIS AGREEMENT, UNDER ANY CAUSE OF ACTION OR THEORY OF RECOVERY, EXCEED THE NET FEES FOR IDEMIA'S SERVICES ACTUALLY PAID BY CUSTOMER TO IDEMIA UNDER THE APPLICABLE ADDENDUM TO THIS AGREEMENT DURING THE TWELVE (12) MONTHS PRIOR TO THE DATE THE CUSTOMER'S CAUSE OF ACTION AROSE. IN NO EVENT SHALL IDEMIA BE LIABLE TO CUSTOMER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR REVENUE; LOSS, INACCURACY, OR CORRUPTION OF DATA OR LOSS OR INTERRUPTION OF USE; OR FOR ANY MATTER BEYOND IDEMIA'S REASONABLY CONTROL, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NO ACTION, REGARDLESS OF FORM, MAY BE BROUGHT BY CUSTOMER MORE THAN TWO (2) YEARS AFTER THE DATE THE CAUSE OF ACTION AROSE.

VIII. LIMITED LICENSE TO UPDATES

Idemia may deliver Idemia-developed Updates to Customer. The terms of Idemia's end user license for the Idemia's software delivered as part of the System shall govern Customer's use of the Updates.

IX. MISCELLANEOUS

This Agreement shall be governed by and construed according to the laws of the Commonwealth of Massachusetts, excluding its conflict of laws provisions. This Agreement constitutes the entire agreement between the parties regarding the subject matter described herein and may not be modified except in writing signed by duly authorized representatives of Idemia and the Customer. This Agreement may not be assigned by Customer without the prior express written consent of Idemia.

EXHIBIT C
City of Austin, Texas
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.

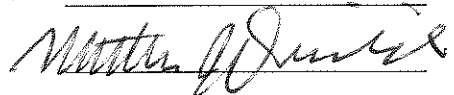
Term:

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 _____ day of _____, _____

CONTRACTOR

Authorized
Signature



Title

V.P. of Customer Service



City of Austin Purchasing Office

Sole Source Certificate of Exemption

DATE: 8/03/2018

DEPT: AUSTIN POLICE DEPT

TO: Purchasing Officer or Designee

FROM: JUANITA FONSECA

PURCHASING POC:

PHONE: (512) 974-5067

Chapter 252 of the Local Government Code requires that municipalities comply with certain competitive solicitation procedures before entering into a contract requiring an expenditure greater than \$50,000, unless the expenditure falls within an exemption listed in Section 252.022 or other applicable law.

Refer to Local Government Code 252.022 for a complete list of exemptions:

[Link to Local Government Code](#)

This Certificate of Exemption must be complete, fully executed, and filed with the City Purchasing Office.

The City has deemed this procurement to be exempt from the competitive solicitation requirements of LGC Chapter 252 based on the following facts:

1. The undersigned is authorized and certifies that the following exemption is applicable to this procurement.

Please check the criteria listed below that applies to this sole source request:

- ☒ Items that are available from only one source because of patents, copyrights, secret process, or natural monopolies.
- ☐ Films, manuscripts or books that are available from only one source.
- ☐ Gas, water and other utilities that are available from only one source.
- ☐ Captive replacement parts or components for equipment that are only available from one source.
- ☐ Books, papers and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials.
- ☐ Management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits.

2. Describe this procurement including the following information as applicable:

- **What it is for and why it is needed?** electronic fingerprint scanning system for the Sex Offender Apprehension and Registration (SOAR) Unit
- **What is the municipal purpose that this procurement addresses or furthers?** Utilized by SOAR Unit
- **Why is the procurement a sole source?** Proprietary hardware designs and proprietary application and customization software
- **Has this procurement or a similar procurement been competitively solicited in the past?** No
- **Why is the vendor the only viable solution?** Due to proprietary designs
- **Are there any other alternative solutions? If so, why are those alternatives unacceptable?** No
- **Is there a concern regarding warranty, compatibility, and/or routine safety?** No
- **Are there territorial or geographic restrictions for the product distribution and sale?** No
- **Are there other resellers, distributors, or dealers in the market?** No
- **What other suppliers or products/services were considered?** No other products, APD has utilized the system since 2015
- **If the product is designed to be compatible with existing equipment/item/system, describe the age, value and useful life remaining of the current equipment/item/system. What is the estimated cost of buying new equipment/item/system? What is value of buying the addition versus buying all new?** N/A
- **Is there a way to retrofit another brand? What is this estimated associated cost?** No, maintenance for current system in place
- **What specialized training or certifications are necessary to maintain or repair the equipment/item/system? Is it specific to the proposed vendor? Both hardware and software functionality of these systems are maintained only by vendor engineers due to the proprietary nature of their design. Any unauthorized work or tampering of the system will result in the vendor charging APD to correct the issues resulting from unauthorized work.**
- **Prices were determined to be reasonable based on the following (select all that apply):**
 - ☒ **Prices are the same or similar to current City contract.**
Notes: At a minimum, note the City of Austin contract number and title.
 - ☐ **Prices are the same or similar to current contract with another government.**
Notes: At a minimum, note the contract number, title and government that created the contract.
 - ☐ **Prices are on a current and publicly available list price, for the same or similar products, available to all government and commercial customers.**
Notes: At a minimum, note the list price title, source of the list price (catalog and catalog publish date or web address and download date).
 - ☐ **Prices are established by law or regulation.**
Notes: At a minimum, note the legal or regulatory reference that established the prices.
 - ☐ **Other means of determining Price Reasonableness.**
Notes: Describe any other source that was used to establish Price Reasonableness.

* The questions in the form are designed to justify why this purchase should be exempt from a competitive procurement process. Failure to provide adequate documentation to substantiate the request may lead to the request being rejected.

This exemption is to request the purchase of annual maintenance for the Safran MorphoTrust TPE-5900-ED-M95 LiveScan electronic fingerprint scanning system for the Sex Offender Apprehension and Registration (SOAR) Unit. Safran MorphoTrust systems are highly specialized containing proprietary hardware designs and application software. The software functionality can only be maintained by MorphoTrust software engineers due to the proprietary nature of its design and MorphoTrust possession of the source materials. The maintenance was purchased on 5/9/2016 with CT 5600 16050900597 as a sole source procurement. The most recent maintenance was purchased on 4/24/2017 with CT 5600 17042700483 as a sole source procurement.

3. Forward the completed and signed Certificate of Exemption to the Purchasing Office along with the following documentation:

- ☐ Scope of Work or Statement of Work or Vendor Proposal
- ☒ Vendor's Quote
- ☐ Project timeline with associated tasks, schedule of deliverables or milestones, and proposed payment schedule
- ☒ Vendor's or Manufacturer's (if vendor is a sole authorized distributor) sole source letter: less than 6 months old, signed by an authorized representative, and on company letterhead, should clearly state they are the sole provider and explain why

4. Based on the above facts and supporting documentation, the City of Austin has deemed this procurement to be exempt from competitive procurement requirements pursuant to Texas Local Government Code section 252.022(7) and will contract with:

(Vendor Name): MorphoTrust USA LLC for

(Description of Procurement): Annual Maintenance Contract for LiveScan Fingerprint

5. Check the contract type (one-time or multi-term) and fill in the dollar amount and term as applicable:

- ☐ This is a one-time request for _____
- ☒ This is a multi-term contract request for 12 (# months for base term) in the amount of \$ 6042.00 with 4 (# of renewal options) for \$ 6042.00 each for a total contract amount of \$ 30,210.00.

Recommended
Certification

J. S. Sause 8/03/2018
Originator Date

Approved
Certification

Alicia Thomas 8/6/18
Department Director or designee Date

Assistant City Manager / General Manager Date
(procurements requiring Council approval)

Purchasing Office
Review

[Signature] 8/7/18
Authorized Purchasing Office Staff Date

Purchasing Office
Management Review

Purchasing Officer or designee Date
(procurements requiring Council approval)