

**A G R E E M E N T**

**BETWEEN THE COUNTY OF FRESNO AND GEMALTO COGENT, INC.**

THIS AGREEMENT is made and entered into this 11th day of September, 2018, by and between the COUNTY OF FRESNO, a Political Subdivision of the State of California, hereinafter referred to as "COUNTY", and GEMALTO COGENT, INC., a Delaware Corporation, whose address is 639 North Rosemead Boulevard, Pasadena, California 91107, hereinafter referred to as "CONTRACTOR".

W I T N E S S E T H:

WHEREAS, CONTRACTOR is the sole vendor of the regional Automated Fingerprint Identification System and integrated Mug Photo System (the "AFIS") installed within Fresno County; and

WHEREAS, the AFIS consists of: 1) computer hardware such as workstation and server equipment, mug photo cameras, fingerprint scanners, printers and cabinetry (collectively, the "Equipment"); 2) AFIS software licenses (the "Software"); 3) hardware and software maintenance and upgrades (collectively, "Maintenance"); 4) support services such as installation and customization ("Services"); and 5) training and operating documentation regarding the AFIS (the "Documentation"); and

WHEREAS, COUNTY's previous agreement with CONTRACTOR (Agreement number 12-623) to provide and maintain the AFIS expired on December 10, 2017; and

WHEREAS, COUNTY desires to enter into an exclusive agreement with CONTRACTOR to provide for continued maintenance of the AFIS in full working condition and allow for the purchase of additional Equipment, Software, Maintenance, Services and Documentation to enhance its capabilities, as needed; and

WHEREAS, CONTRACTOR is willing and able to provide such AFIS-related products and services as needed by COUNTY, subject to the terms and conditions of this Agreement; and

WHEREAS, approval of this Agreement is recommended by the regional CAL-ID/Remote Access Network (RAN) Board whose authority in such matters is granted by California Vehicle Code Section 9250.19.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties hereto agree as follows:

1. OBLIGATIONS OF THE CONTRACTOR

1 A. CONTRACTOR represents that it has clear title to and the right to sell or license  
2 the AFIS. CONTRACTOR certifies that any permission required to manufacture, sell,  
3 and license the AFIS has been obtained and CONTRACTOR is authorized to  
4 manufacture, sell and license the AFIS.

5 B. CONTRACTOR agrees that it and its personnel shall preserve as confidential any  
6 records or information that it is required to examine, views, accesses (either intentionally  
7 or not), or in any way encounters, in the performance of Services, Maintenance, or  
8 Documentation under this Agreement, including but not limited to, the types of records  
9 exempt or privileged from public disclosure pursuant Federal Law, California Law,  
10 including the Public Records Act (Government Code § 6250, et seq.). CONTRACTOR  
11 promises, covenants, and represents that CONTRACTOR, and anyone employed by, an  
12 agent of, or otherwise contracting with, CONTRACTOR, is aware of the sensitive and  
13 confidential nature of the data, documentation, and other information that is obtained and  
14 stored by the COUNTY, including that which is obtained and stored through the  
15 COUNTY's use of the AFIS, and CONTRACTOR promises, covenants, and represents  
16 that CONTRACTOR, and anyone employed by, an agent of, or otherwise contracting with  
17 CONTRACTOR, will not and cannot keep, possess, acquire, store, or in any way obtain,  
18 any such data, documentation, or other information, and CONTRACTOR will prevent  
19 other persons, not specifically identified and authorized by County to access such  
20 information, either intentionally or unintentionally, from doing so. Without limiting this  
21 Section 1.B, data, documentation, and other information includes, but is not limited to, all  
22 information that is processed through the AFIS.

23 C. Purchases

24 1) CONTRACTOR shall provide to COUNTY, within a mutually agreed upon  
25 period of time following CONTRACTOR's receipt of an authorized purchase order  
26 from COUNTY (each an "Order") in accordance with Section 3 hereinbelow, the  
27 Equipment, Software, Services, Maintenance, and/or Documentation specified  
28 under each Order. All Equipment, hardware, or other physically tangible items

provided by CONTRACTOR to COUNTY become the property of COUNTY upon their respective provision and CONTRACTOR retains no right to ownership in any Equipment, hardware, or other physically tangible item that CONTRACTOR provides to COUNTY.

2) Should CONTRACTOR encounter issues unforeseeable to both parties, which may alter any Order made under this Agreement, CONTRACTOR shall immediately advise and seek written approval from the COUNTY's Contract Administrator (as defined in Section 2-A hereinbelow) to reevaluate the tasks to be performed. The reevaluation of tasks shall apply only to the specific Order in question and is limited in scope to such things as product substitution, project timelines and project specific issues not known at the time the Order is placed. In no event shall such reevaluation alter the terms of this Agreement.

D. Maintenance and Support

During the term of this Agreement, CONTRACTOR shall provide Maintenance, which includes supporting the day-to-day operation of the AFIS to keep it in or restored to normal operating condition, as part of the annual Maintenance specified in Section 6 of this Agreement, and the following services:

1) Perform preventative Maintenance on a regular basis to minimize the probability of any failure to the system including but not limited to software updates within the same major version when available, firmware updates to the hardware systems, battery replacement to the hardware systems where relevant and testing of the backup and disaster recovery procedures.

2) Upon notification by COUNTY to CONTRACTOR of any failure in the proper operation of the AFIS, CONTRACTOR shall provide 24/7 emergency service with no more than a four (4) hour response time to the installed system and make a continuous effort to correct the error or to resolve the problem by providing a circumvention. Emergency service can be provided remotely or on-site as warranted by the nature of the failure.

1                   3)       Provide for two (2) County employees, selected by the Sheriff-Coroner or  
2                   her/his designee, at each annual Cogent User Group conference for training and  
3                   updates on CONTRACTOR products and services.

4       2.       OBLIGATIONS OF THE COUNTY

5       A.       COUNTY appoints the Sheriff-Coroner of Fresno County or her/his designee as  
6       COUNTY's Contract Administrator for this Agreement, who will coordinate all activities  
7       with CONTRACTOR. The Contract Administrator shall have full authority to make  
8       decisions on behalf of the COUNTY concerning this Agreement with the exception of  
9       amending or terminating this Agreement, or increasing the County's fiscal year or total  
10       compensation maximums.

11       B.       COUNTY shall provide all infrastructure elements necessary and reasonable for  
12       successful deployment of AFIS, including but not limited to telecommunication lines and  
13       equipment, installation site preparation, and all licensing and permitting which may be  
14       required for such site preparation.

15       C.       COUNTY shall, at all times, exercise reasonable care for the security of the AFIS.  
16       Until such time that this Agreement is expired, the AFIS equipment will be accessible to  
17       CONTRACTOR'S authorized personnel, agents and designees who have passed  
18       COUNTY'S security and background checks, and to such personnel of the COUNTY who  
19       currently have unrestricted access to the area.

20       D.       COUNTY agrees that CONTRACTOR will retain all rights, title and interest in and  
21       to the Intellectual Property Rights in the AFIS and any derivative works thereof, subject  
22       only to the limited license set forth herein. COUNTY does not acquire any other rights,  
23       express or implied, in the Intellectual Property Rights in the AFIS. "Intellectual Property  
24       Rights" means on a world-wide basis, any and all now known or hereafter known tangible  
25       and intangible (a) rights associated with works of authorship including, without limitation,  
26       copyrights, (b) rights associated with trademarks, service marks, trade names and similar  
27       rights, (c) trade secret rights, (d) patents, designs, algorithms and other industrial  
28       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).

3. QUOTATIONS AND ORDERS

The parties agree that all quotations and orders for AFIS Hardware, Software, Maintenance, Documentation and Services shall be subject to the following terms:

A. Processing Quotations and Orders – The Contract Administrator will request a written quote from CONTRACTOR for specified items related to the AFIS.

CONTRACTOR shall return a written quotation that includes the price for the specified items, as well as the length of time the quotation will remain valid. Orders shall be placed by the Contract Administrator and shall only be in writing based upon a written quotation received from CONTRACTOR. CONTRACTOR shall only accept a written Order placed by the Contract Administrator or her/his designee.

B. Terms Of the Purchase – All purchases made by COUNTY under this Agreement shall be subject to the terms set forth in this Agreement. Should any terms set forth in a quotation or order form hereunder conflict with any term of this Agreement, this Agreement shall control.

C. Minimum Orders – COUNTY and CONTRACTOR agree that there shall be no minimum order quantity, nor any minimum monetary expenditures, either during any fiscal year or during the entire term of the Agreement, subject to the annual limitation of seven-hundred-fifty-thousand-dollars (\$750,000.00) per fiscal year.

4. TERM

This Agreement shall be effective for an initial term, with a commencement date retroactive to July 1, 2018 and an expiration date of June 30, 2021. This Agreement may be extended for no more than two (2) additional one (1) year periods, upon the same terms and conditions set forth herein, upon written approval by both parties, no later than 30 days prior to expiration of the initial term or then current renewal period. COUNTY's Sheriff or her/his designee is hereby authorized to execute such written approval based

on CONTRACTOR'S satisfactory performance.

5. TERMINATION

A. Non Allocation of Funds – The terms of this Agreement, and the services to be provided hereunder, are contingent on the approval of funds by the appropriating government agency. Should sufficient funds not be allocated, the services provided may be modified, or this Agreement terminated, at any time by giving the CONTRACTOR thirty (30) days advance written notice.

B. Breach of Contract by CONTRACTOR – The COUNTY may immediately suspend or terminate this Agreement in whole or in part, where in the determination of the COUNTY there is:

- 1) An illegal or improper use of funds;
- 2) A failure to comply with any term of this Agreement;
- 3) A substantially incorrect or incomplete report submitted to the COUNTY;
- 4) Improperly performed service.

Should the COUNTY, through its Sheriff-Coroner or her/his designee, determine that the any such breach could be remedied or cured by CONTRACTOR, COUNTY shall give CONTRACTOR thirty (30) days' notice of said breach, and CONTRACTOR will have thirty (30) days from receipt of said notice to cure or remedy the breach, and any failure of CONTRACTOR to do so, in the discretion of COUNTY, through its Sheriff-Coroner or her/his designee, may result in the expiration of this Agreement.

In no event shall any payment by the COUNTY constitute a waiver by the COUNTY of any breach of this Agreement or any default which may then exist on the part of the CONTRACTOR. Neither shall such payment impair or prejudice any remedy available to the COUNTY with respect to the breach or default. The COUNTY shall have the right to demand of the CONTRACTOR the repayment to the COUNTY of any funds disbursed to the CONTRACTOR under this Agreement, which in the judgment of the COUNTY were not expended in accordance with the terms of this Agreement. The CONTRACTOR shall promptly refund any such funds upon demand.

1 C. Without Cause – Notwithstanding the foregoing, this Agreement may be terminated  
2 by COUNTY for any reason, or no reason at all, upon giving of thirty (30) days advance  
3 written notice of an intention to terminate to CONTRACTOR.

4 6. COMPENSATION/INVOICING

5 A. Prior to May 1st of each year preceding a fiscal year that this Agreement is active,  
6 COUNTY and CONTRACTOR will discuss annual Maintenance needs and projected costs  
7 of same. After the foregoing discussions, CONTRACTOR shall submit one invoice to  
8 COUNTY for prepaid Maintenance, the amount and breadth of which will be agreed upon by  
9 the parties and for which the parties believe will be necessary in the next fiscal year. This  
10 invoice will be provided by CONTRACTOR, to COUNTY, no later than May 1st each year.  
11 COUNTY shall render payment to CONTRACTOR on July 1st or the first business day  
12 immediately thereafter. Following COUNTY's payment for prepaid Maintenance,  
13 CONTRACTOR shall provide Maintenance of the AFIS, at no further charge to COUNTY,  
14 for the entire fiscal year. In the event that there is a gap in Maintenance, during a time  
15 period where there is a pending invoice and where COUNTY is processing payment,  
16 CONTRACTOR will provide all Maintenance necessary to ensure the AFIS functions  
17 properly. Given that this Agreement is retroactive, during the fiscal year of 2018-2019,  
18 CONTRACTOR may submit an invoice after May 1st, 2018, for the advanced payment for  
19 the 2018-2019 fiscal year and COUNTY will make every effort to pay on this invoice as soon  
20 as reasonably possible.

21 B. In accordance with Section 3 – Quotations and Orders hereinabove, COUNTY may  
22 submit orders to CONTRACTOR. Upon successful delivery and implementation by  
23 CONTRACTOR and acceptance by COUNTY of the Equipment, Software, Services, and/or  
24 Documentation described in the Order, CONTRACTOR will then issue an invoice based  
25 upon and in accordance with the respective quotation and order. COUNTY shall render  
26 payment to CONTRACTOR within forty-five (45) days of receipt of such an invoice.

27 C. In no event shall compensation owed or paid to CONTRACTOR from COUNTY be  
28 in excess of Seven Hundred Fifty Thousand Dollars (\$750,000.00) in any single fiscal year

1 period of this Agreement. "Fiscal year" for purposes of this Agreement means July 1<sup>st</sup>  
2 through June 30<sup>th</sup>. In no event shall the total compensation owed to CONTRACTOR from  
3 COUNTY be in excess of Three Million Seven Hundred Fifty Thousand Dollars  
4 (\$3,750,000.00) for the time period of July 1, 2018, through to the expiration of this  
5 Agreement. The maximums described in this paragraph are inclusive of all taxes, fees,  
6 tariffs, duties and/or sales or use tax, or any tax in lieu thereof, imposed by any government  
7 or governmental agency with respect to the services rendered by CONTRACTOR under this  
8 agreement.

9 D. Upon any subsequent termination of this Agreement by either party, in accordance  
10 with Sections 4 or 5 hereinabove, CONTRACTOR will refund any unused or unearned  
11 portions of any and all payments made by COUNTY during the duration of this Agreement,  
12 including prepaid Maintenance payments. Should a portion of a payment be due, owed, or  
13 already paid to CONTRACTOR, CONTRACTOR shall return any unused portion on a pro-  
14 rated basis from the date termination becomes effective. For example, if COUNTY makes a  
15 payment pursuant to Section 6.A of this Agreement, for prepaid Maintenance, and this  
16 Agreement is terminated or expires six (6) months later, then CONTRACTOR would return  
17 to COUNTY 50% of the amount paid for prepaid Maintenance.

18 E. It is understood that all expenses incidental to CONTRACTOR's performance of  
19 services under this Agreement shall be borne by CONTRACTOR.

20 F. Any payment rendered by COUNTY, or the receipt thereof by CONTRACTOR, shall  
21 in no way imply COUNTY's acceptance of work by CONTRACTOR for any Order or lessen  
22 the liability of CONTRACTOR to replace work, equipment, or materials which do not  
23 materially conform to the specifications set forth in this Agreement.

24 G. CONTRACTOR warrants, promises, and covenants that all charges, fees, costs and  
25 other requested payments invoiced to COUNTY under this Agreement include all taxes,  
26 fees, tariffs, duties and/or sales or use tax, or any tax in lieu thereof, imposed by any  
27 government or governmental agency with respect to the AFIS provided by CONTRACTOR  
28 under this agreement (except for taxes on CONTRACTOR'S income).



1           7.     LICENSE

2           A.     Subject to COUNTY's compliance with the terms and conditions of this Agreement,  
3           CONTRACTOR hereby grants to COUNTY a non-exclusive, non-transferable license during  
4           the term of this Agreement (without the right to sublicense):

5                 1)     To use the Software solely for COUNTY's own business operations,  
6                 including use by any law enforcement agency supported by COUNTY, solely on the  
7                 Equipment on which the Software is first installed (or, on a temporary basis, on a  
8                 backup system if such equipment is inoperative), and in a manner consistent with  
9                 the limitations specified or referenced in this Agreement and the Documentation;

10                2)     Notwithstanding these licensing terms, COUNTY shall have the right to  
11                install those portions of the client software that are deemed redistributable on any  
12                client used by a law enforcement agency that COUNTY supports. Examples of such  
13                client software include the mug photo retrieval software and mobile fingerprint  
14                software;

15                3)     To reproduce a reasonable number of copies of the Documentation as  
16                reasonably necessary to support COUNTY's authorized use of the AFIS; and

17                4)     To internally use the Documentation in support of COUNTY's authorized use  
18                of the AFIS.

19           B.     COUNTY will not copy or use the Software or Documentation except as expressly  
20           permitted by this Agreement. COUNTY will not modify the Software or Documentation,  
21           except to the extent expressly approved in advance by CONTRACTOR in writing. COUNTY  
22           may not relicense, sublicense, sell, lend, give, disclose, transfer, assign, rent or lease the  
23           Software or Documentation to any third party or use the Software for third party training,  
24           commercial time-sharing or service bureau use. COUNTY will not intentionally permit any  
25           third party to reverse engineer, disassemble or decompile any Software. COUNTY will not  
26           remove, obscure, or alter any notice of patent, copyright, restricted rights, trade secret,  
27           trademark or other proprietary right related to the Software. COUNTY hereby  
28           acknowledges and agrees that all Software is licensed and not sold to COUNTY.

1 C. If the Equipment purchased hereunder is sold or assigned to a third party, COUNTY  
2 will remove all Software from such Equipment prior to delivery to the third party.  
3 CONTRACTOR may grant the new owner or assignee a license to the relevant Software,  
4 provided that the new owner or assignee agrees to CONTRACTOR's then-current Software  
5 license terms and conditions (including CONTRACTOR's then-current fees) and such other  
6 terms as CONTRACTOR may reasonably require.

7 8. INDEPENDENT CONTRACTOR: In performance of the work, duties and obligations  
8 assumed by CONTRACTOR under this Agreement, it is mutually understood and agreed that  
9 CONTRACTOR, including any and all of the CONTRACTOR'S officers, agents, and employees will at all  
10 times be acting and performing as an independent contractor, and shall act in an independent capacity and  
11 not as an officer, agent, servant, employee, joint venturer, partner, or associate of the COUNTY.  
12 Furthermore, COUNTY shall have no right to control or supervise or direct the manner or method by which  
13 CONTRACTOR shall perform its work and function. However, COUNTY shall retain the right to administer  
14 this Agreement so as to verify that CONTRACTOR is performing its obligations in accordance with the  
15 terms and conditions thereof.

16 CONTRACTOR and COUNTY shall comply with all applicable provisions of law and the rules and  
17 regulations, if any, of governmental authorities having jurisdiction over matters the subject thereof.

18 Because of its status as an independent contractor, CONTRACTOR shall have absolutely no right  
19 to employment rights and benefits available to COUNTY employees. CONTRACTOR shall be solely liable  
20 and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In  
21 addition, CONTRACTOR shall be solely responsible and save COUNTY harmless from all matters relating  
22 to payment of CONTRACTOR'S employees, including compliance with Social Security withholding and all  
23 other regulations governing such matters. It is acknowledged that during the term of this Agreement,  
24 CONTRACTOR may be providing services to others unrelated to the COUNTY or to this Agreement.

25 9. MODIFICATION: Any matters of this Agreement may be modified from time to time by the  
26 written consent of all the parties without, in any way, affecting the remainder.

27 10. NON-ASSIGNMENT: Neither party shall assign, transfer or sub-contract this Agreement  
28 nor their rights or duties under this Agreement without the prior written consent of the other party.

1           11.    SEVERABILITY: Should the application of any provision of this Agreement to any particular  
2 facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a)  
3 the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such  
4 provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall  
5 be reformed without further action by the parties to the extent necessary to make such provision valid and  
6 enforceable.

7           12.    HOLD HARMLESS: CONTRACTOR agrees to indemnify, save, hold harmless, and at  
8 COUNTY'S request, defend the COUNTY, its officers, agents, and employees from any and all costs and  
9 expenses (including attorney's fees and costs), damages, liabilities, claims, and losses related to claims of  
10 bodily injury or tangible property damage occurring or resulting to COUNTY in connection with the  
11 performance, or failure to perform, by CONTRACTOR, its officers, agents, or employees under this  
12 Agreement, and from any and all costs and expenses (including attorney's fees and costs), damages,  
13 liabilities, claims, and losses related to claims of bodily injury or tangible property damage occurring or  
14 resulting to any person, firm, or corporation who may be injured or damaged by the performance, or  
15 failure to perform, of CONTRACTOR, its officers, agents, or employees under this Agreement.

16           13.    PATENT AND COPYRIGHT INDEMNITY: CONTRACTOR shall defend or settle any suit or  
17 proceeding brought against COUNTY, its employees, officers, representatives and directors, based on a  
18 claim that the acquisition, possession or use of the AFIS or any part thereof by COUNTY, consistent with  
19 this Agreement, constitutes an infringement of any patent or copyright or other proprietary right, provided  
20 CONTRACTOR is notified promptly in writing and is given authority and information required for the  
21 defense of same, and CONTRACTOR shall pay all damages, costs, expenses, suits, settlements, awards  
22 and legal fees, including attorney's fees, incurred by COUNTY, its employees, officers, representatives and  
23 directors and awarded against COUNTY in a final judgment or settlement approved in advance in writing by  
24 CONTRACTOR. In the event that any item of the AFIS becomes the subject of a proceeding or claim for  
25 patent or copyright or other proprietary rights infringement, CONTRACTOR shall forthwith either procure for  
26 the COUNTY the right to continue using same, or modify or replace such item to become non-infringing to  
27 result in a system with the same functionality and performance but without diminishing CONTRACTOR's  
28 obligations under this section. COUNTY shall, with respect to any claim by a third party of infringement of a

1 patent, copyright, or other proprietary rights, cease use of the AFIS, or part thereof which is the subject of  
2 such claim, only upon COUNTY becoming the subject of an order of a court of proper jurisdiction to such  
3 effect.

4 This Section 13 shall survive the termination of this Agreement.

5 14. INSURANCE

6 With regard to CONTRACTOR's performance of its obligations under this Agreement, and without  
7 limiting the COUNTY's right to obtain indemnification from CONTRACTOR or any third parties,  
8 CONTRACTOR, at its sole expense, shall maintain in full force and effect, the following insurance policies  
9 or a program of self-insurance, including but not limited to, an insurance pooling arrangement or Joint  
10 Powers Agreement (JPA) throughout the term of the Agreement:

11 A. Commercial General Liability

12 Commercial General Liability Insurance with limits of not less than Two Million Dollars  
13 (\$2,000,000.00) per occurrence and an annual aggregate of Four Million Dollars (\$4,000,000.00). This  
14 policy shall be issued on a per occurrence basis. COUNTY may require specific coverages including  
15 completed operations, products liability, contractual liability, Explosion-Collapse-Underground, fire legal  
16 liability or any other liability insurance deemed necessary because of the nature of this contract.

17 B. Automobile Liability

18 Comprehensive Automobile Liability Insurance with limits of not less than One Million Dollars  
19 (\$1,000,000.00) per accident for bodily injury and for property damages. Coverage should include any auto  
20 used in connection with this Agreement.

21 C. Professional Liability

22 If CONTRACTOR employs licensed professional staff, (e.g., Ph.D., R.N., L.C.S.W., M.F.C.C.) in  
23 providing services, Professional Liability Insurance with limits of not less than One Million Dollars  
24 (\$1,000,000.00) per occurrence, Three Million Dollars (\$3,000,000.00) annual aggregate.

25 D. Worker's Compensation

26 A policy of Worker's Compensation insurance as may be required by the California Labor Code.

27 E. Technology Professional Liability (Errors and Omissions)

1 Technology professional liability (errors and omissions) insurance with limits of not less than Two  
2 Million Dollars (\$2,000,000) per occurrence. Coverage shall encompass all of the CONTRACTOR's  
3 obligations under this agreement, including but not limited to claims involving Cyber Risks.

4 F. Cyber Liability.

5 Cyber liability insurance with limits of not less than Two Million Dollars (\$2,000,000) per  
6 occurrence. Coverage shall include, but not be limited to, claims involving Cyber Risks. The cyber  
7 liability policy shall be endorsed to cover the full replacement value of damage to, alteration of, loss of,  
8 or destruction of intangible property (including but not limited to information or data) that is in the care,  
9 custody, or control of the CONTRACTOR.

10 G. Definition of Cyber Risks.

11 "Cyber Risks" include but are not limited to (i) security breaches, which may include disclosure of  
12 any information in County's possession that is not public record; (ii) breach of any of the CONTRACTOR's  
13 obligations under Section 1.B of this agreement; (iii) invasion of privacy, including release of private  
14 information; (iv) information theft; (v) damage to or destruction or alteration of electronic information; (vi)  
15 extortion related to the CONTRACTOR's obligations under this agreement regarding electronic information,  
16 including information obtained by COUNTY or in COUNTY's possession that is not public record; (vii)  
17 network security; (viii) data breach response costs, including responses costs related to any breach or loss  
18 of information that is not public record; (ix) regulatory fines and penalties related to the CONTRACTOR's  
19 obligations under this agreement regarding electronic information, including information that is not public  
20 record; and (x) credit monitoring expenses. For purposes of this Section 14.G, the phrase "not public  
21 record" means information that is in COUNTY's possession or control that is exempt or privileged from  
22 public disclosure pursuant Federal Law or California Law, including the Public Records Act (Government  
23 Code § 6250, et seq.)

24 H. Additional Requirements Relating to Insurance

25 CONTRACTOR shall obtain endorsements to the Commercial General Liability insurance naming  
26 the County of Fresno, its officers, agents, and employees, individually and collectively, as additional  
27 insured, but only insofar as CONTRACTOR's performance obligations under this Agreement are  
28 concerned. Such coverage for additional insured shall apply as primary insurance and any other insurance,

1 or self-insurance, maintained by COUNTY, its officers, agents and employees shall be excess only and not  
2 contributing with insurance provided under CONTRACTOR's policies herein.

3 CONTRACTOR hereby waives its right to recover from COUNTY, its officers, agents, and  
4 employees any amounts paid by the policy of worker's compensation insurance required by this  
5 Agreement. CONTRACTOR is solely responsible to obtain any endorsement to such policy that may be  
6 necessary to accomplish such waiver of subrogation, but CONTRACTOR's waiver of subrogation under  
7 this paragraph is effective whether or not CONTRACTOR obtains such an endorsement.

8 Once every calendar month during the term of this Agreement CONTRACTOR will provide  
9 COUNTY with a current, to the date such is provided, certificate(s) of insurance and endorsement as stated  
10 above for all of the foregoing policies, as required herein, to the County of Fresno Contract Administrator for  
11 this Agreement specified in Section 18 entitled "Notices", hereinbelow, showing that such insurance  
12 coverage have been obtained and are in full force; that the County of Fresno, its officers, agents and  
13 employees will not be responsible for any premiums on the policies; that such Commercial General Liability  
14 insurance names the County of Fresno, its officers, agents and employees, individually and collectively, as  
15 additional insured, but only insofar as regards CONTRACTOR's performance of CONTRACTOR's  
16 obligations under this Agreement are concerned; and that such coverage for additional insured shall apply  
17 as primary insurance and any other insurance, or self-insurance, maintained by COUNTY, its officers,  
18 agents and employees, shall be excess only and not contributing with insurance provided under  
19 CONTRACTOR's policies herein.

20 In the event CONTRACTOR fails to keep in effect at all times insurance coverage as herein  
21 provided, the COUNTY may, in addition to other remedies it may have, suspend or terminate this  
22 Agreement upon the occurrence of such event.

23 All policies shall be issued by admitted insurers licensed to do business in the State of California,  
24 and such insurance shall be purchased from companies possessing a current A.M. Best, Inc. rating of A  
25 FSC VII or better.

26 15. WARRANTIES; WARRANTY DISCLAIMERS

27 A. Warranties: CONTRACTOR hereby represents and warrants to COUNTY that:

28 1) Each piece of Equipment provided by CONTRACTOR to COUNTY under

1 this Agreement will be free from defects in materials and workmanship under normal  
2 use for a period of one (1) year from shipment; and

- 3 2) CONTRACTOR's Software provided under this Agreement will substantially  
4 operate in accordance with the CONTRACTOR's written specifications for a period  
5 of one (1) year from the date that the software is both installed and fully useable by  
6 the COUNTY.

7 B. Warranty Disclaimer: THE WARRANTIES IN THIS SECTION 15 ARE EXCLUSIVE  
8 AND ARE IN LIEU OF ALL OTHER WARRANTIES, AND CONTRACTOR EXPRESSLY  
9 DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ARISING  
10 FROM OR RELATING TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION,  
11 THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR  
12 PURPOSE AND NONINFRINGEMENT AND ALL WARRANTIES THAT MAY ARISE  
13 FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.  
14 CONTRACTOR does not warrant that CONTRACTOR's Equipment and Software will  
15 operate in combination with hardware, software, systems or data not provided by  
16 CONTRACTOR or that the operation of CONTRACTOR's Equipment or Software will be  
17 uninterrupted or error-free.

18 C. Exclusive Warranty Remedies: COUNTY must report to CONTRACTOR, in  
19 accordance with the Notices provision of this Agreement, any breach of the warranties  
20 contained in this Section 15 during the relevant warranty period. COUNTY's sole and  
21 exclusive remedies, and CONTRACTOR's entire liability, will be:

- 22 1) For a breach of the Equipment warranty in Section 15.A(1) above, the  
23 correction of the error or defect that caused the breach of warranty or, if  
24 CONTRACTOR is unable to make the Equipment operate as warranted, the  
25 replacement of the defective Equipment, all at no charge or cost to  
26 COUNTY; and

- 27 2) For a breach of the Software warranty in Section 15.A(2) above, to  
28 correct or provide a mutually agreeable workaround for Software errors that

1 caused the breach of warranty, all at no charge or cost to COUNTY, or, if  
2 CONTRACTOR is unable to make the Software operate as warranted,  
3 COUNTY will be entitled to terminate the license of the Software and recover  
4 the fees paid to CONTRACTOR for such license.

5 D. Warranty Claim Process: All requests for warranty services hereunder must be  
6 submitted by COUNTY's Technical Contacts, who will be appointed by the Sheriff-Coroner  
7 or her/his designee. Before requesting warranty services hereunder, COUNTY shall  
8 attempt to determine the cause of the problem. COUNTY shall maintain one or more  
9 detailed logs of all Equipment and Software failures, malfunctions, defects and other  
10 problems. Upon the completion of any warranty service hereunder, COUNTY shall update  
11 the logs to describe and reflect the warranty service performed. COUNTY shall allow  
12 CONTRACTOR to inspect such logs at any time during normal business hours.

13 E. Limitations: CONTRACTOR will have no liability or obligations under this Section 15  
14 if (a) a breach of warranty is attributable in whole or in part to (i) COUNTY's abuse, misuse  
15 (including use of Equipment or Software for purposes other than those for which it was  
16 designed), alteration, relocation, neglect, or unauthorized repair, modification or installation  
17 of Equipment or Software, (ii) COUNTY's failure to continually provide and maintain a  
18 suitable installation and operation environment (including, without limitation, proper electrical  
19 power, air conditioning, and humidity control), (iii) COUNTY's use or attempted use of  
20 software, hardware, supplies or services other than that supplied and supported by Gemalto  
21 Cogent, or (iv) COUNTY's use or attempted use of other than approved auxiliary devices or  
22 approved operating systems, or (b) COUNTY fails to comply with Section 15.D above.  
23 Replacement or repair of Equipment or Software does not extend its warranty period  
24 beyond the original warranty expiration date.

25 16. LIMITATION ON LIABILITY: To the extent permitted by applicable law, in no event will  
26 CONTRACTOR's cumulative liability to COUNTY for damages related to this Agreement exceed the  
27 amounts actually paid by COUNTY to CONTRACTOR under this Agreement.

28 17. AUDITS AND INSPECTIONS: The CONTRACTOR shall at any time during business



hours, and as often as the COUNTY may deem necessary, make available to the COUNTY for examination all of its records and data with respect to the matters covered by this Agreement. The CONTRACTOR shall, upon request by the COUNTY, permit the COUNTY to audit and inspect all of such records and data necessary to ensure CONTRACTOR'S compliance with the terms of this Agreement.

If this Agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR shall be subject to the examination and audit of the Auditor General for a period of three (3) years after final payment under contract (Government Code Section 8546.7).

18. NOTICES: The persons and their addresses having authority to give and receive notices under this Agreement include the following:

COUNTY

County of Fresno

Attention: Patrick Stevens

Contract Administrator

2200 Fresno Street

Fresno, CA 93721

[patrick.stevens@fresnosheriff.org](mailto:patrick.stevens@fresnosheriff.org)

CONTRACTOR

Gemalto Cogent, Inc.

Attention: Ramsey Billups

Operations Site Manager

639 North Rosemead Boulevard

Pasadena, CA 91107

[ramsey.billups@gemalto.com](mailto:ramsey.billups@gemalto.com)

All notices between the COUNTY and CONTRACTOR provided for or permitted under this Agreement must be in writing and delivered either by personal service, by first-class United States mail, by an overnight commercial courier service, or by electronic mail. A notice delivered by personal service is effective upon service to the recipient. A notice delivered by first-class United States mail is effective three COUNTY business days after deposit in the United States mail, postage prepaid, addressed to the recipient. A notice delivered by an overnight commercial courier service is effective one COUNTY business day after deposit with the overnight commercial courier service, delivery fees prepaid, with delivery instructions given for next day delivery, addressed to the recipient. A notice delivered by electronic mail is effective when transmission to the recipient is completed (but, if such transmission is completed outside of COUNTY business hours, then such delivery shall be deemed to be effective at the next beginning of a COUNTY business day), provided that the sender maintains a machine record of the completed transmission. For all claims arising out of or related to this Agreement, nothing in this section establishes,

1 waives, or modifies any claims presentation requirements or procedures provided by law, including but not  
2 limited to the Government Claims Act (Division 3.6 of Title 1 of the Government Code, beginning with  
3 section 810).

4 19. GOVERNING LAW: Venue for any action arising out of or related to this Agreement shall  
5 only be in Fresno County, California.

6 The rights and obligations of the parties and all interpretation and performance of this Agreement  
7 shall be governed in all respects by the laws of the State of California.

8 20. COMPLIANCE WITH THE LAW: CONTRACTOR and COUNTY shall comply with all  
9 applicable provisions of law and the rules and regulations, if any, of governmental authorities having  
10 jurisdiction over matters the subject thereof. CONTRACTOR acknowledges public funds are used for  
11 payments made by COUNTY under this AGREEMENT and for "public works" projects. Accordingly, if any  
12 work is undertaken under this Agreement by or on behalf of COUNTY, CONTRACTOR shall comply with,  
13 and shall ensure compliance by all contractors and subcontractors with, all applicable laws and regulations,  
14 including the payment of prevailing wages pursuant to Section 1770 et. seq. of the Labor Code.

15 21. DISCLOSURE OF SELF-DEALING TRANSACTIONS: This provision is only applicable if  
16 the CONTRACTOR is operating as a corporation (a for-profit or non-profit corporation) or if during the  
17 term of the agreement, the CONTRACTOR changes its status to operate as a corporation.

18 Members of the CONTRACTOR's Board of Directors shall disclose any self-dealing transactions  
19 that they are a party to while CONTRACTOR is providing goods or performing services under this  
20 agreement. A self-dealing transaction shall mean a transaction to which the CONTRACTOR is a party  
21 and in which one or more of its directors has a material financial interest. Members of the Board of  
22 Directors shall disclose any self-dealing transactions that they are a party to by completing and signing a  
23 Self-Dealing Transaction Disclosure Form, attached hereto as Exhibit A and incorporated herein by  
24 reference, and submitting it to the COUNTY prior to commencing with the self-dealing transaction or  
25 immediately thereafter.

26 22. ENTIRE AGREEMENT: This Agreement, including Exhibit A, constitutes the entire  
27 agreement between the CONTRACTOR and COUNTY with respect to the subject matter hereof and  
28 supersedes all previous Agreement negotiations, proposals, commitments, writings, advertisements,

publications, and understanding of any nature whatsoever unless expressly included in this Agreement.

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*SIGNATURES ON FOLLOWING PAGE*

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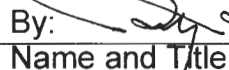
1 IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and  
2 year first hereinabove written.

3  
4 **GEMALTO COGENT, INC.**

5 By:   
6 Name and Title

7 Date: 8/17/2018  
8 1 Imation Way, Bldg. 4-2A W232  
9 Oakdale, MN 55128

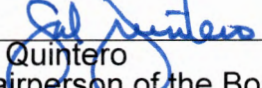
10 Mailing Address

11 By:   
12 Name and Title

13 Date: 8/17/18  
14 1 Imation Way, Bldg. 4-2A-W232  
15 Oakdale, MN 55128

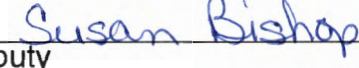
16 Mailing Address

**COUNTY OF FRESNO**

By:   
Sal Quintero  
Chairperson of the Board of Supervisors  
County of Fresno, State of California

**ATTEST:**

Bernice E. Seidel  
Clerk to the Board of Supervisors  
County of Fresno, State of California

By:   
Deputy

22 **FOR ACCOUNTING USE ONLY:**

23 FUND No 4000  
24 ORG No.: 9052  
25 Subclass: 40430  
26 Account No.: 8300  
27  
28

## EXHIBIT A

### SELF-DEALING TRANSACTION DISCLOSURE FORM

In order to conduct business with the County of Fresno (hereinafter referred to as "County"), members of a contractor's board of directors (hereinafter referred to as "County Contractor"), must disclose any self-dealing transactions that they are a party to while providing goods, performing services, or both for the County. A self-dealing transaction is defined below:

*"A self-dealing transaction means a transaction to which the corporation is a party and in which one or more of its directors has a material financial interest"*

The definition above will be utilized for purposes of completing this disclosure form.

#### INSTRUCTIONS

- (1) Enter board member's name, job title (if applicable), and date this disclosure is being made.
- (2) Enter the board member's company/agency name and address.
- (3) Describe in detail the nature of the self-dealing transaction that is being disclosed to the County. At a minimum, include a description of the following:
  - a. The name of the agency/company with which the corporation has the transaction; and
  - b. The nature of the material financial interest in the Corporation's transaction that the board member has.
- (4) Describe in detail why the self-dealing transaction is appropriate based on applicable provisions of the Corporations Code.
- (5) Form must be signed by the board member that is involved in the self-dealing transaction described in Sections (3) and (4).

<b>(1) Company Board Member Information:</b>			
<b>Name:</b>		<b>Date:</b>	
<b>Job Title:</b>			
<b>(2) Company/Agency Name and Address:</b>			
<b>(3) Disclosure (Please describe the nature of the self-dealing transaction you are a party to):</b>			
<b>(4) Explain why this self-dealing transaction is consistent with the requirements of California Corporations Code § 5233 (a):</b>			
<b>(5) Authorized Signature</b>			
<b>Signature:</b>		<b>Date:</b>	