

Asset Site Agreement for Applicant Processing Services

This Asset Site Agreement for Applicant Processing Services (the "Agreement") is made and entered into this day of _____ by and between Gemalto Cogent, Inc. ("Gemalto Cogent"), with its principal place of business located at 639 North Rosemead Boulevard, Pasadena, CA 91107 and Cochise County, through the County School Superintendent ("Customer"), whose principal place of business is located at 100 Clawson Avenue, 3rd Floor, Bisbee, AZ, individually a "Party" and collectively, the "Parties."

ARTICLE 1. SCOPE

(a) Customer agrees to provide the fingerprinting services set forth in attached Exhibit A ("Statement of Work").

(b) Gemalto Cogent agrees to provide Gemalto Cogent Livescan equipment ("Livescan Equipment") and license Gemalto Cogent Livescan software ("Livescan Software") to Customer, configured to support fingerprint submission transactions to the Repository, and provide maintenance and support, all as set forth herein in this Agreement and its attached Exhibits. The Repository is the authority, either law enforcement or other, legally entitled to receive electronic fingerprint submissions from the Customer by way of Gemalto Cogent.

ARTICLE 2. PRODUCT PRICING AND SERVICE FEES; PAYMENT

(a) Product pricing and service fees are as set forth in attached Exhibit B ("Product Pricing and Service Fees").

(b) Customer's payment terms are net thirty (30) days from date of Gemalto Cogent's invoice unless otherwise set forth in Exhibit A or Exhibit B.

ARTICLE 3. WARRANTY

(a) Gemalto Cogent hereby represents and warrants to Customer that: (i) each piece of Livescan Equipment will be free from defects in materials and workmanship under normal use for a period of one (1) year from the delivery of the equipment; and (ii) Livescan Software will substantially operate in accordance with Gemalto Cogent's written specifications for a period of one (1) year from the delivery of the Livescan Software. GEMALTO COGENT EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ARISING FROM OR RELATING TO THIS CONTRACT, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT, AND ALL WARRANTIES THAT MAY ARISE FROM A COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. Gemalto Cogent does not warrant that the Livescan Equipment and Livescan Software will operate in combination with hardware, software, systems or data not provided by Gemalto Cogent or that the operation of the equipment or software will be uninterrupted or error-free.

(b) Customer must report to Gemalto Cogent any breach of the warranties during the warranty period. Customer's sole and exclusive remedies, and Gemalto Cogent's entire liability, will be: (i) for a breach of the Livescan Equipment warranty, the correction of the error or defect that caused the breach of warranty, or if Gemalto Cogent is unable to make the Livescan Equipment operate as warranted, the replacement of the defective Livescan Equipment; and (ii) for a breach of the Livescan Software warranty, to correct or provide a reasonable workaround for the Livescan Software errors that caused the breach of warranty, or

if Gemalto Cogent is unable to make the Livescan Software operate as warranted, Customer will be entitled to terminate this agreement and return both the Livescan Equipment and Livescan Software to Gemalto Cogent.

(c) Gemalto Cogent will have no liability or obligations under this Article 3 where a breach of warranty is attributable in whole or in part to (i) abuse, misuse (including use of Livescan Equipment or Livescan Software for purposes other than that for which it was designed), alteration, relocation, neglect, accidental damage or unauthorized repair, modification or installation of Livescan Equipment or Livescan Software; (ii) Customer's failure to continually provide and maintain a suitable installation and operation environment (including, without limitation, proper electrical power, air conditioning, and humidity control), or (iii) the use or attempted use of software, hardware, supplies or services other than that supplied and supported by Gemalto Cogent.

(d) Replacement or repair of Livescan Equipment or Livescan Software does not extend its warranty period beyond the original warranty expiration date.

ARTICLE 4. LIVESCAN SOFTWARE LICENSE

(a) Subject to Customer's compliance with the terms and conditions of this Agreement, Gemalto Cogent hereby grants to Customer a non-exclusive, non-transferable license (without the right to sublicense): to use the Livescan Software solely at the installation site and on the equipment on which the Livescan Software is first installed (or, on a temporary basis, on a backup system at the installation location if such equipment is inoperative), consistent with the limitations specified or referenced in this Agreement and in the Livescan Software documentation; to use the documentation provided with the Livescan Software in support of Customer's authorized use of the Livescan Software; and to make one copy of the Livescan Software solely for archival or backup purposes, provided that all titles and trademark, copyright and restricted rights notices are reproduced on all such copies.

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

(c) Customer hereby acknowledges and agrees that all Livescan Software is licensed and not sold to Customer.

ARTICLE 5. USE OF LIVESCAN EQUIPMENT AND LIVESCAN SOFTWARE

Customer understands that in all cases, the Livescan Equipment and Livescan Software shall only be used in conjunction with the collection and submission of data to Gemalto Cogent and shall not be used for any other purpose without Gemalto Cogent's express prior written permission.

ARTICLE 6. INDEPENDENT CUSTOMERS

The relationship between the Parties under this Agreement shall be one of independent Customers. Neither Customer nor any of its employees shall be deemed employees or agents of Gemalto Cogent for any purpose.

ARTICLE 7. FINGERPRINTING REQUIREMENTS

(a) Customer shall provide to Gemalto Cogent the names of all employees assigned to perform work under this Agreement if requested. Compliance with standard Livescan operations as defined by Gemalto Cogent in its Livescan training curriculum is a condition of this Agreement, and Gemalto Cogent reserves the right to suspend or terminate this Agreement at any time for noncompliance.

ARTICLE 8. MAINTENANCE AND SUPPORT

(a) Maintenance of the Livescan Equipment shall consist of the physical 'swap out' of any defective Livescan Equipment. Gemalto Cogent reserves the right to determine if the Livescan Equipment is defective.

(b) Support of the Livescan Software will consist of 8x5 on-line diagnostic support. Maintenance and support may be renewed on an annual basis by written agreement of both Parties.

(c) Gemalto Cogent shall have no maintenance or support obligation in the following instances: (i) abuse, misuse (including use of Livescan Equipment or Livescan Software for purposes other than that for which it was designed), alteration, relocation, neglect, accidental damage or unauthorized repair, modification or installation of Livescan Equipment or Livescan Software; (ii) Customer's failure to continually provide and maintain a suitable installation and operation environment (including, without limitation, proper electrical power, air conditioning, and humidity control), or (iii) the use or attempted use of software, hardware, supplies or services other than that supplied and supported by Gemalto Cogent; (iv) service required due to failure of computer hardware, equipment, or software not supplied or supported by Gemalto Cogent; (v) negligence of Customer or any third party; (vi) a cause or causes beyond the reasonable control of Gemalto Cogent; or (vii) Customer has not installed and implemented any error corrections provided by Gemalto Cogent. Gemalto Cogent is not responsible for maintaining compatibility of Livescan Equipment or Livescan Software with third party software or third party software updates.

ARTICLE 9. LIMITATION OF LIABILITY

In no event shall Gemalto Cogent be liable for any indirect, consequential, special, or incidental damages, or for lost time, lost revenues or profits, or lost data related to or arising under this Agreement, however caused. Gemalto Cogent's liability for direct damages related to or arising under this Agreement shall not exceed a sum equal to the amount paid by Customer to Gemalto Cogent under the Agreement, except that in the case of third party bodily injury or personal property damages caused solely and directly by Gemalto Cogent in Gemalto Cogent's performance of its obligations under this Agreement there shall be no cap on Gemalto Cogent's liability for direct damages.

ARTICLE 10. TERMINATION

(a) Either Party may terminate this Agreement with or without cause upon thirty (30) days advance written notice to the other Party.

(b) When this Agreement is terminated the Livescan equipment and Livescan Software must be returned to Gemalto Cogent. Gemalto Cogent will provide Customer with a Return Material Authorization (“RMA”) number and packing materials for Customer’s return shipment of the Livescan equipment and Livescan Software to Gemalto Cogent. If the Livescan equipment and Livescan Software are not returned to Gemalto Cogent within thirty (30) days of Customer receiving the RMA and packing materials, Customer will be billed for the non-returned items.

ARTICLE 11. ASSIGNMENT

Neither this Agreement nor any rights or obligations under it may be assigned or delegated in whole or in part by Customer without Gemalto Cogent’s advance written permission.

ARTICLE 12. COMPLIANCE WITH LAWS

The Customer shall abide by all applicable state, local, and federal laws and regulations related to its performance under this Agreement.

ARTICLE 13. NONSOLICITATION

Customer shall not hire any officer or employee of Gemalto Cogent during the term of this Agreement and for twelve (12) months after this Agreement’s termination or expiration.

ARTICLE 14. SEVERABILITY

Should any term or provision of this Agreement be determined to be illegal or in conflict with applicable laws, the validity of the remaining provisions shall not be affected thereby and the Agreement shall continue in effect so long as the result is not materially adverse to either Party.

ARTICLE 15. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard for its conflicts of law provisions.

ARTICLE 16. ENTIRE AGREEMENT

This Agreement and its Exhibits and any documents referenced herein contain the entire agreement between the Parties and supersede all prior understandings, oral or written, between the Parties with respect to the subject matter of this Agreement. This Agreement may not be modified, supplemented or terminated, nor may any obligations under this Agreement be waived, except by written amendment signed by the Parties.

The Parties hereby agree to the terms of this Agreement through their duly authorized representatives.

CUSTOMER

Gemalto Cogent, Inc.

Signature _____

Signature _____

Printed Name Thomas E. Borer

Printed Name _____

Title Chairman, Board of Supervisors

Title _____

Date _____

Date _____

EXHIBIT A – STATEMENT OF WORK

Customer will not provide competitive electronic fingerprint services.

Customer will facilitate an applicant's background check transaction in the following ways:

1. Customer will provide the internet connection required for operation of the Livescan system, which includes the availability of internet ports required for incoming and outgoing communications with the Livescan.
2. Customer will review the applicant's state-accepted form of ID before processing the applicant's transaction. Positive ID for the applicant must be determined before moving forward. If positive ID cannot be established, the applicant transaction must not be completed. Customer will be provided a list of valid forms of state-accepted IDs.
3. If required, Customer will type/enter into the Livescan the unique identifier associated with the applicant's state-accepted form of ID.
4. Customer will ask the applicant to review his/her demographic information for correctness before proceeding with the collection of the applicant's fingerprints.
5. Customer will facilitate the collection of the applicant's fingerprints via the "hands on" fingerprinting method. Applicants shall not fingerprint themselves. Customer will collect applicant fingerprints, including one each of a Left and Right hand four finger "flats" scan; one each of Left and Right thumb "flats" scan; and eight "roll" scans of the remaining fingers.
6. Customer will maintain a fingerprint rejection rate of less than 2%. Rejection rates are available to Customer via Gemalto Cogent's online site administration web page. Gemalto Cogent has the right to terminate this Agreement if Customer cannot maintain a fingerprint rejection rate of less than 2%, or if law enforcement deems Customer noncompliant for three (3) consecutive months or for more than six (6) months in a year.
7. Where applicants pay for their own fingerprinting, Customer will accept guaranteed payment (money order or cashiers check) to be noted and placed in a pre-addressed stamped envelope provided by Gemalto Cogent. No cash transactions will be accepted by the Customer. Guaranteed payments must be batched in a single envelope by Customer and mailed to Gemalto Cogent on a weekly basis.
8. No additional fees may be established or charged by Customer for the service of applicant fingerprinting unless specifically provided for by addendum to this Agreement.
9. Customer employees associated with the collection of applicant fingerprints are subject to a fingerprint-based background check paid for by Gemalto Cogent.
10. Customer may be required to electronically correct applicant registration errors present on the Livescan system so as to prevent the applicant from being turned away for fingerprinting.

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EXHIBIT B – PRODUCT PRICING AND SERVICE FEES

Product Pricing

<u>DESCRIPTION</u>	<u>UNIT PRICE</u>	<u>QUANTITY</u>	<u>EXTENDED PRICE</u>
Gemalto Cogent Livescan Equipment Purchase	\$0.00 (No Cost)		
Gemalto Cogent Livescan Software Seat License	Included in above price		Included in above price
Microsoft Windows Operating System Seat License	Included in above price		Included in above price
Annual Gemalto Cogent Livescan Equipment Maintenance and Gemalto Cogent Livescan Software Support Fee	\$0.00/year (No Cost)		
			TOTAL PRICE:

The above pricing includes:

- 12 months of warranty commencing upon Gemalto Cogent Livescan system delivery
- Telephone or webinar training (45 minutes – 1 hour), including Users Guide and other training materials
- Freight charges
- Installation and configuration of Gemalto Cogent Livescan system

Customer shall provide the appropriate internet connection, electrical power, facility cabling and other network equipment required for communication. Customer will provide the facility in which the Livescan Equipment will be housed and the personnel to facilitate the transactions.

Service Fees

The following service fee per transaction shall be payable to Contractor by Gemalto Cogent: \$3.00 for each successfully submitted transaction as defined in Exhibit A (Statement of Work). Payments will be made by Gemalto Cogent within thirty (30) days of the last calendar day of the month in which transactions were submitted.