

IDENTIX INCORPORATED

SYSTEM MAINTENANCE TERMS AND CONDITIONS

I. GENERAL SCOPE OF COVERAGE

Following the IDENTIX one year parts and labor warranty and subject to payment in full of the applicable maintenance fees for the system ("System") described in Identix Incorporated's ("Identix") current Maintenance Agreement Addendum ("Addendum") with customer ("Customer"), Identix, 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 Identix are those services selected by Customer from one or more of the following maintenance services programs:

Enhancement means any modification or addition that, when made or added to the Program(s) materially changes its or their utility, efficiency, functional capability, or application, but that does not constitute solely an Error Correction. Identix may designate Enhancements as minor or major, depending on its assessment of their value and of the function added to the Program(s),

Error means any failure of the system to conform in any material respect to its or their published specifications.

Error Correction. Identix shall be responsible for using all reasonable diligence to correct verifiable and reproducible Errors when reported to Identix in accordance with its standard reporting procedures. The Error Correction, when completed, may be provided in the form of a "temporary fix" consisting of sufficient programming and operating instructions to implement the Error Correction.

Releases means new versions of the Program(s), which may include Error Corrections and/or Enhancements.

Identix will maintain a trained staff capable of rendering the services set forth in this Agreement.

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 Identix TouchCare Support Center via Identix toll free telephone number.

- TouchCare Support Center managed problem escalation, as required, to Identix' technical support staff to resolve unique problems.
- Identix shall promptly furnish all parts and components necessary for the service and maintenance of the System. Replacement parts shall be promptly sent to the Customer. All replaced defective parts shall become Identix' property. Identix shall determine if a replacement part is necessary. Replacement parts and components may be new or refurbished.
- Identix shall promptly 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 Identix and for which Identix, in its sole discretion, elects to develop and generally make available to customers whose Systems are under warranty or under a current Identix Maintenance Agreement Addendum. Customer shall provide Identix with continuous network or dial-up access to the System (whether stand alone or connected to a central site), and Identix 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 Identix shall install the Update during any subsequently scheduled on-site visit by Identix for service of the System. An "Update" means a new release of such System software components that are developed by Identix 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. Identix' *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 Identix' Help Desk.
- Identix' Help Desk will use all reasonable diligence problem resolution via telephonic verbal and dial-in troubleshooting prior to dispatching an Identix 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. Identix shall

use its best efforts to have an Identix' field service engineer at the Customer's facility within four (4) hours from the time the engineer is dispatched by Identix' Help Desk for customers located within a 100 mile radius of an authorized Identix' service location and within 24 hours for customers located outside such 100 mile radius.

- At no additional charge, Identix will provide Customer with up to four (4) Customer-requested new type of transaction applications and up to two (2) changes to type of transaction applications that are mandated by the applicable State government agency for state-wide or interstate implementation; provided, however, that any such type of transaction application or State mandated change does not, in Identix' sole opinion, require a significant development effort. In such event, Identix 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. Identix' 9/5 Maintenance Services are as follows:

- Customer will receive a prompt telephone response to service calls within one (1) hour from the time Customer places a service call with Identix' Help Desk.
- Identix' Help Desk will use all reasonable diligence on problem resolution via telephonic verbal and dial-in troubleshooting prior to dispatching an Identix 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. Identix shall use its best efforts to have an Identix' field service engineer at Customer's facility within eight (8) working hours from the time the service call is received by Identix' Help Desk if Customer's facility is located within a 100 mile radius of an authorized Identix' service location and within 24 clock hours if Customer's facility is located outside such 100 mile radius.
- Upon Identix' acceptance of Customer's request for after hours service, Customer shall pay for such after hours service on a time and materials basis at Identix' then current rates.
- At no additional charge, Identix will provide Customer with up to four (4) Customer-requested new type of transaction applications and up to two (2) changes to type of transaction applications that

are mandated by the applicable State government agency for state-wide or interstate implementation; provided, however, that any such type of transaction application or State mandated change does not, in Identix' reasonable opinion, require a significant development effort (defined as 20 hours of dedicated effort by a single programmer). In such event, Identix 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.

CUSTOMER HAS SELECTED 9/5 MAINTENANCE SERVICES, OPTION C.

D. Help Desk Maintenance Services. Identix' Help Desk Maintenance Services are as follows:

- The Services do not include any Identix on-site maintenance services. The Customer agrees to provide the on-site personnel to assist the Identix Help Desk with troubleshooting, module replacement, and installation of Updates, as required.
- Customer shall maintain at least one (1) Identix 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 Identix' periodic requirements (what are these requirements?). Unless otherwise agreed in writing by Identix, 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 Identix' Help Desk.
- Identix shall furnish all parts and components necessary for the maintenance of the System. Identix' shipment of a replacement part to Customer will be initiated promptly after the Identix' Help Desk uses all reasonable diligence to determine 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 Identix to be returned to Identix, 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 Identix within two (2) weeks after receipt of the replacement part. Identix 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 Identix on-site service, Identix shall use its best efforts to have an Identix field service engineer at the Customer's facility within 48 hours from the time any such request is received by Identix' Help Desk. Customer shall pay for such on-site service on a time and travel basis at Identix' then current rates and travel policies, respectively. . Identix will provide a copy of its current rates and travel policies with the execution of this agreement and promptly send to Customer any revised policies. Prior to dispatch of an Identix engineer, Customer shall either provide Identix with a purchase order ("P.O."), , or provide Identix with a valid credit card number.

E. Preventive Maintenance Services. Identix' *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 Identix' specifications for such System. Identix 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 Identix' 24/7 Maintenance Services and Identix' 9/5 Maintenance Services offerings. Preventive maintenance service calls are priced on a per call basis in accordance with Identix' then current published prices for such Services. . Identix shall provide its current pricing for said services upon execution of this agreement. Preventive Maintenance Services may not be available for certain System components which are:

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
- Maintenance required due to the System being modified, damaged, altered, or serviced by personnel other than Identix' authorized service representatives, or if parts, accessories, or components not authorized by Identix 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 Identix to Customer.
- Providing or installing updates or upgrades to any third party (i.e., Microsoft, Oracle, etc.) software.
- 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 Identix' System documentation.

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

Major Enhancements. Identix may, from time to time, offer Major Enhancements to its customers, generally for an additional charge. To the extent Identix offers such Enhancements, it shall permit Customer to obtain up to one (1) copy of each major Enhancement for each copy of the Program(s) being maintained under this Agreement for fifteen percent (15%) off the retail list rate offered to customers who do not subscribe for maintenance from Identix.

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 Identix before being

added to the Addendum and this Agreement. This inspection will also be required if this Agreement has expired by more than sixty (60) days. Identix' inspection will be billed at Identix' current inspection rate plus actual and reasonable travel expenses and parts (if any required).

IV. SERVICE CALLS

Customer may contact Identix' 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

The term of this Agreement shall commence upon Identix' 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 Identix' 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. . In the event of a termination prior to the renewal date, Identix shall refund Customer's maintenance fees prorated up to the date of termination.

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 Identix' current rates in effect at the time of renewal, which shall be provided to Customer 30 days in advance of any such renewal date. Customer agrees to pay the total of all charges for Services annually in advance within thirty (30) days of the date of Identix' invoice for such charges.

B. Failure to Pay Fees. If Customer does not pay undisputed Identix' fees for Services or parts as provided hereunder when due after 30 days notice and opportunity to cure any such nonpayment: (i) Identix may suspend performance of its obligation to provide Services until the account is brought current; and (ii) Identix may, at its discretion, provide the Services at current "non contract/per call" rates on a COD basis which rates shall be provided in

writing to Customer in advance of providing said services or payment shall be at the contract rate .

VII. LIMITED WARRANTY / DISCLAIMER / LIMITATION OF LIABILITY

Identix shall provide the Services hereunder in a prompt professional and workmanlike manner by duly qualified personnel. EXCEPT FOR THIS LIMITED WARRANTY, IDENTIX 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 EITHER PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY ARISING OUT OF, OR RELATED TO, THIS AGREEMENT, UNDER ANY CAUSE OF ACTION OR THEORY OF RECOVERY, EXCEED THE NET FEES FOR IDENTIX' SERVICES ACTUALLY PAID BY CUSTOMER TO IDENTIX 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 EITHER PARTY BE LIABLE TO THE OTHER PARTY 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 THE OTHER PARTY'S REASONABLE CONTROL, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

VIII. LIMITED LICENSE TO UPDATES

Identix may deliver Identix-developed Updates to Customer. The terms of Identix' end user license for the Identix' 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 State of Texas 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 Identix and the Customer. This Agreement may not be assigned by

Customer without the prior express written consent of
Identix.

MAINTENANCE AGREEMENT ADDENDUM

Your System ID# is: _____ **Please reference this number when placing a service call.**

EQUIPMENT LOCATION

City of College Station
1101 Texas Ave
College Station, TX 77842

The "System" that is the subject of this Addendum is as follows:

<u>Model</u>	<u>Description</u>	<u>Qty</u>	<u>9/5** Cost/Yr.</u>
TP-3800XCH	Touch Print TM Live Scan® S/N	1	\$5,250.00
TP-PRT-DUP	TP Duplex Printer	1	315 00
TP-PRT-SW	TP Appendix Cert Printer SW	1	00
TP-PRT-MEM	Touchprint Printer Memory Upgrade	1	.00
TP-HWOX-FOTOSYS, XFOTO-IMREP1, XFOTO-INVSU1	Integrated Photo Capture System, Image Repository, Investigative S/W W/5 seat lic	1	5,200.00
TP-CSTX-TX201	Texas State Customization and Validation	1	.00
TP-CSTX-FB270H	FBI Hand Card Customization	1	.00
TP-COMX-AFIX	AFIX Tracker AFIS Protocol	1	.00
TP-COMX-PRINTRK	Transport Deamon to Send NIST Record	1	.00
	Total (Annual except for Preventative)		\$10,765.00

PERIOD OF COVERAGE:

**Parts plus on site support 9 hours a day, 5 days a week, except nationally observed holidays.

***Parts plus on site support 24 hours a day, 7 days a week

****Preventative maintenance is a scheduled periodic visit between 9.00 a.m. and 5:00 p.m. Monday – Friday. Preventative maintenance is quoted on a per time basis, and can be performed 1, 2, 3, 4, 6, or 12 times per year

EFFECTIVE DATE:

Upon expiration of warranty maintenance for a 1 year term.

PRICE: "Please choose coverage": (Sales Tax additional if applicable to your state)

9/5 price = \$10,765.00 per year - Annual prepayment.

Please check type of preferred billing: Annual Invoice or Quarterly Invoice or Monthly Invoice

IDENTIX INCORPORATED

5600 Rowland Road
Minnetonka, MN 55343-4315
Attn Contracts Administration

BY:

NAME:


5/19
PAUL SKRIP

CITY OF COLLEGE STATION

Billing Address:

1101 Texas Ave.

College Station, TX 77842

P.O. #: _____

BY: _____

NAME: _____

TITLE: Contracts Administrator *DIR*
DATE _____

TITLE _____
DATE _____

The terms and conditions of Identix's current Maintenance Agreement Terms and Conditions are hereby incorporated into this Addendum by this reference. If your agency requires a Purchase Order, please attach or include the P.O.#. If neither is given, we will invoice from the signed addendum. THIS IS NOT AN INVOICE.

[INSERT NAME OF CONTRACTOR]

CITY OF COLLEGE STATION

BY: _____
Printed Name: _____
Title: _____
Date: _____

BY: _____
Ron Silvia, Mayor

Date: _____

ATTEST:

Connie Hooks, City Secretary
Date: _____

APPROVED:

Thomas E. Brymer, City Manager
Date: _____

Roxanne Harnick
City Attorney
Date: _____

Jeff Kersten, Finance & Strategic
Planning Director
Date: _____

STATE OF TEXAS)
)
COUNTY OF BRAZOS)

ACKNOWLEDGMENT

This instrument was acknowledged before me on the ____ day of _____, 200__
by _____ in his/her capacity as _____ of
_____ **Error! Reference source not found., a Error!**
Bookmark not defined. corporation, on behalf of said corporation.

Notary Public in and for
the State of Texas

STATE OF TEXAS)
)
COUNTY OF BRAZOS)

ACKNOWLEDGMENT

This instrument was acknowledged before me on the ____ day of _____,
200__, by _____, in the capacity as Mayor of the **City of**
College Station, a Texas home-rule municipality, on behalf of said municipality.

Notary Public in and for
the State of Texas