

**CONTRACT FOR NON-CRIMINAL JUSTICE FINGERPRINT
AND RELATED SERVICES PROGRAM**

COPY

I. PARTIES

This Contract is made and entered into by and between Identix Identification Services LLC, (hereinafter, referred to as "Vendor") with its principal place of business located at 1650 Wabash Ave., Suite D, Springfield IL 67204 and the Department of Public Safety, an agency of the State of Texas (hereinafter, referred to as "TXDPS"), pursuant to Request for Proposal 405-C5-9013. Vendor and TXDPS are collectively referred to in this Contract as the "Parties."

WHEREAS, on the basis of the written representations contained in Vendor's proposal, as well as Vendor's presentation, discussions with the Vendor and the Vendor's experience relating to the services contemplated by this Contract, TXDPS desires to engage Contractor to provide the services on the terms and conditions as negotiated herein;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, Vendor and TXDPS hereby covenant and agree as follows:

II. CONTRACT COMPONENTS

- A. This Contract consists of the text herein and the following attachments, which are incorporated herein:
 - a. Service Level Agreement, which is attached as Exhibit "A;"
 - b. Request for Proposal 405-C5-9013, including all addendums, which is attached as Exhibit "B;"
 - c. CJIS Security Addendum (signed by Vendor) and CJIS Security Policy, as they now exist and as thereafter amended, which are attached as Exhibit "C;"
 - d. Vendor's Response to the Request for Proposal 405-C5-9013, including any modifications or clarifications to Vendor's Response, which is attached as Exhibit "D;" and
 - e. Confidentiality and Non-Disclosure Agreement, which is attached as Exhibit "E."
 - f. And the resulting Purchase Order.
- B. In the event of any conflict or contradiction between or among these documents, the documents shall control in the following order of precedence:
 - a. Final executed contract. However, to the extent there is a conflict with the section in the final executed contract entitled "Non-disclosure," the CJIS Security Addendum and/or the CJIS Security Policy govern any information covered by the CJIS Security Addendum and/or the CJIS Security Policy;
 - b. Service Level Agreement;

- c. Request for Proposal 405-C5-9013, including all addendums,
- d. Any modification or clarifications to the Vendor's Proposal, and;
- e. Vendor's original Proposal.

III. INTRODUCTION

The purpose of the Non-Criminal Justice Fingerprint and Related Services program (hereinafter, referred to as "Applicant Fingerprint Service" or "AFS"), is to secure an alternative solution to reduce the potential burden on local law enforcement in meeting the fingerprinting needs of the general public. New legislation at the state and federal level now requires a greater portion of the general public to be fingerprinted in order to conduct criminal history background checks (hereinafter, referred to as "background checks"). The reasons for the checks are generally related to applications for employment, licensure or volunteer activity. It is essential that this program address cultural diversity, geographical locations and population distribution, as it is necessary to provide non-criminal justice fingerprint capture services in rural areas as well as the major metropolitan areas.

IV. DEFINITIONS

Additional definitions are contained in Section 2.6 of the Request for Proposal.

"ADA" refers to the Americans with Disabilities Act.

"AFS" refers to the Applicant Fingerprint Service.

"Custom-Developed Application Software" is defined in the section herein entitled "Ownership of Work Products."

"Customized Pre-Existing Application Software" is defined in the section herein entitled "Ownership of Work Products."

"Department" or "TXDPS" refers to the Texas Department of Public Safety.

"Implementation Date" is defined in Section II (Preliminary Tasks) of the Service Level Agreement.

"Materials" is defined in the section herein entitled "Escrow of Source Code."

"Open Source Software" is defined in the section herein entitled "Ownership of Work Products."

"Pre-Existing Application Software" is defined in the section herein entitled "Ownership of Work Products."

"Proceedings" is defined in the section herein entitled "Disclosure of Litigation."

“Project Plan” is defined in Sections II and III of the Service Level Agreement.

“RFP” refers to Request for Proposal 405-C5-9013.

“State” refers to the State of Texas.

“TAS” refers to Texas Accessibility Standards.

“Third-Party Software” is defined in the section herein entitled “Ownership of Work Products.”

“Vendor” refers to Identix Identification Services, LLC.

V. RESPONSIBILITIES OF THE VENDOR

Vendor is required to provide service to effectuate the development and maintenance of a system that will provide an alternative to law enforcement agencies for the acquisition and electronic submission of applicant fingerprints. Vendor is responsible for the collection and processing of all payments required by AFS and transmitting all funds to the State Comptroller. Each duty and responsibility placed on the Vendor under this contract is set in the Service Level Agreement, which is incorporated by reference for all purposes as if written and copied herein.

VI. SERVICE FEE COLLECTED BY VENDOR

Section 80.001(b) of the Texas Human Resource Code currently authorizes law enforcement agencies to collect a fee not to exceed \$10.00 for providing applicant fingerprint capture services. As an agent of TXDPS for the services listed herein only, Vendor is permitted to collect a service fee for each applicant using the Vendor’s services for fingerprint capture. Vendor’s service fee may not exceed the legally authorized fee per applicant fingerprint capture. However, the Parties have negotiated the Vendor’s service fee to be \$9.95.

Vendor is not authorized to collect fees and costs associated with the capture of the fingerprints that total more than the legally authorized fee per applicant fingerprint capture, excluding the insufficient funds fee and TexasOnline fees. Fees associated with a state or federal background check that result from the fingerprint capture will be collected by the AFS.

VII. TERMS AND CONDITIONS

A. Compliance with State, Federal and Local Laws

The Vendor must comply with all applicable state, federal and local laws, regulations and ordinances in providing services to the State under this Contract. Without limiting the

generality of the foregoing, the Vendor must be able to demonstrate compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with the issuance of W-2s to common law employees. The Vendor is responsible for both federal and state unemployment insurance coverage and standard workers' compensation insurance coverage. The Vendor must comply with all federal and state tax laws and withholding requirements. TXDPS will not be liable to the Vendor or its employees or subcontractors for any unemployment insurance or workers' compensation coverage or federal or state tax withholding requirements. The Vendor may be required to demonstrate compliance with such laws, regulations and ordinances at the written request of TXDPS.

B. Implementation Timeline

Vendor agrees to have full implementation by the project Implementation Date listed in Section II of the Service Level Agreement.

C. Liquidated Damages

TXDPS may assess liquidated damages at an amount equal to \$1,500 per calendar day in the event that a major milestone as specified in the Detailed Project Plan is not met. The Detailed Project Plan will be developed jointly by the Vendor and TXDPS. TXDPS may also assess liquidated damages in the amount of \$1,500 per calendar day if the vendor fails to meet the Service Level requirements listed in Section IV, Subsections 5, 6, and 12 of the Service Level Agreement. The amount of liquidated damages will not exceed \$50,000. The vendor shall not be held responsible for (and liquidated damages will not be assessed due to) any delay:

- Caused by schedule amendments requested by TXDPS;
- Determined to be the result of activity that is the responsibility of the TXDPS project team; or,
- Deemed by TXDPS to be outside the control of the vendor.

Assessments incurred under this provision must be paid to TXDPS within thirty (30) days of receipt of notice of assessment of liquidated damages. The selected Proposer shall be responsible for notifying the TXDPS Project Manager, in writing, of any delays caused by TXDPS personnel. The documentation should reflect the date and nature of the delay and be provided to the TXDPS Project Manager within 5 days of the occurrence.

D. Default

In the event that the Vendor fails to carry out or comply with any of the terms and conditions of this Contract with TXDPS, TXDPS may notify the Vendor of such failure or default in writing and demand that the failure or default be remedied within ten (10) days; and in the event that the Vendor fails to remedy such failure or default within the ten (10) day period, TXDPS has the right to terminate this Contract.

If Vendor defaults on this Contract, TXDPS reserves the right to cancel this Contract and either re-solicit or re-award the contract to the next best responsive and responsible respondent. The defaulting Vendor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work is significantly changed.

E. Termination

This Contract may be terminated as follows:

Termination for Convenience

For Convenience: This Contract may be terminated, without penalty, by TXDPS without cause by giving thirty (30) days written notice of such termination to the Vendor.

Termination for Cause

For Cause: This Contract may be terminated by TXDPS if the Vendor fails to perform as agreed or is otherwise in default, as provided in the section titled "Default" herein.

Termination Liability

In no event will such termination by TXDPS as provided for under this Section give rise to any liability whatsoever on the part of TXDPS whether such claims of Vendor are for compensation, for anticipated profits, unabsorbed overhead, interest on borrowing, or for any other reason.

Following the termination or expiration of this Contract, AFS must remain operational during any transition period. Upon termination or expiration, all records applicable to AFS, including working papers and operational documentation, must be delivered immediately to TXDPS and will become the property of TXDPS if not already such, as indicated in the section titled "Ownership of Work Product" herein.

TXDPS reserves the right to purchase any and all hardware and software components, including all applicable license rights to the intellectual property (to the extent TXDPS does not already own such license rights) that forms the basis of such hardware and software, at contract termination. The cost for the items must not exceed the actual costs of hardware and software included in the Vendor's Proposal, minus any costs reimbursed to the Vendor through the service fee listed in the section herein entitled "Service Fee Collected by Vendor." TXDPS and the Vendor may also negotiate a reasonable amount for depreciation of the items during contract negotiations.

F. Governing Law

This Contract will be construed and governed by the laws of the state of Texas. Venue for any litigation will be Travis County, Texas.

G. Technology Access Clause

The Vendor expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, the Vendor represents and warrants to the Texas Department of Public Safety that the technology provided to the Texas Department of Public Safety for purchase is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of:

- (a) providing equivalent access for effective use by both visual and non-visual means;
- (b) presenting information, including prompts used for interactive communications, in formats intended for both visual and nonvisual use; and
- (c) Being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired.

For purposes of this clause, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services that would constitute reasonable accommodations under federal Americans with Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance.

H. Agreement Amendments

No modifications or amendments to this Contract will become valid unless in writing and signed by both Parties. All correspondence regarding modifications or amendments to this Contract must be forwarded to TXDPS for prior review and approval. Only the TXDPS Director or his designee will be authorized to sign changes or amendments.

I. Independent Contractor Status

Vendor agrees that the Vendor and Vendor's employees and agents have no employer-employee relationship with TXDPS. TXDPS will have no liability or responsibility with respect to payment of Federal Insurance Contribution Act (FICA), federal or state unemployment taxes, income tax withholding, Workers Compensation Insurance payments, or any other insurance payments, nor will TXDPS furnish or be liable for the

provision of any medical or retirement benefits or any paid vacation or sick leave to the Vendor or any of its employees.

J. Right to Audit

Vendor agrees to maintain in an accessible format all records regarding AFS for the duration of this Contract and for a period of four years thereafter, excluding the applicant fingerprints, digital photo and demographic information which Vendor is required to delete in accordance with this Contract. At any time during the term of this Contract and for a period of four (4) years thereafter, TXDPS or duly authorized audit representatives of TXDPS, and the State Auditor at its expense and at reasonable times, reserves the right to audit Vendor's records relevant to all costs and services provided under this Contract. In the event such an audit by TXDPS reveals any errors by TXDPS or the Vendor, the Vendor must re-evaluate the service fee charged the applicants. TXDPS might require the Vendor to adjust service fees collected in the future.

Pursuant to Section 2262.003 of the Texas Government Code, the State Auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under the contract acts as acceptance of the authority of the State Auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

K. Sales and Use Tax

TXDPS and participating state agencies, as agencies of the State of Texas, qualify for exemptions from state and local sales and use taxes pursuant to the provisions of the Texas Limited Sales, Excise, and Use Tax Act. The Vendor may claim exemption from payment of applicable state taxes by complying with such procedures as may be prescribed by the Texas Comptroller of Public Accounts.

L. Observance of State Rules and Regulations

The Vendor agrees that at all times its employees and contractors must observe and comply with all laws and regulations pertaining to state facilities, including but not limited to parking and security regulations. In the event that an employee of the Vendor has failed to comply with such laws or regulations, TXDPS will have the right to require the Vendor to remove such employee from any involvement in this Contract.

Vendor shall provide all labor and equipment necessary to furnish the deliverables and to perform the services under this Contract. All Vendor employees and project personnel shall be a minimum of 17 years of age and experienced in the type of work to be

performed. Absent prior, written permission from TXDPS, no visitors or relatives of Vendor's employees or subcontractors will be allowed on state property unless they are bona fide employees or subcontractors of Vendor performing work under this Contract.

M. Recall Notice

The Vendor must, immediately upon discovery of same, advise TXDPS of any or all required replacements or modifications to equipment or component part thereof or withdrawal of product by reason of safety hazard or recall regardless of the nature of same. Any verbal notification must be confirmed in writing within twenty-four (24) hours of such verbal notification. All such formal notices must be submitted to ordering department.

N. Non-Disclosure

Non-Disclosure of Confidential Information Owned by Parties to this Contract

This subsection is subject to the section herein entitled "Ownership of Work Products."

Unless stated otherwise in the section herein entitled "Ownership of Work Products," the party that provides Confidential Information (as defined herein) to the other party is hereinafter called the "Owner," and the party that receives such Confidential Information from the other party is hereinafter called the "Recipient."

The Vendor and TXDPS acknowledge that they or their employees may, in the performance of this Contract, come into the possession of Confidential Information owned by the other party.

Recipient shall (i) hold Owner's Confidential Information in trust and confidence and avoid the disclosure or release thereof to any other person or entity by using the same degree of care (but not less than reasonable care) as it uses to avoid unauthorized use, disclosure, or dissemination of its own Confidential Information of a similar nature; and (ii) not use Owner's Confidential Information for any purpose whatsoever except as expressly contemplated under this Contract. Recipient shall only disclose Owner's Confidential Information to those of its employees and agents having a need to know such Confidential Information and shall take all reasonable precautions to ensure that its employees and agents comply with the provisions of this subsection entitled "Non-Disclosure of Confidential Information Owned by Parties."

The term "Confidential Information" shall mean any and all information and proprietary material (in every form and media now known or available in the future) not generally known in the relevant trade or industry, and which has been or is hereafter disclosed or made available by Owner to the Recipient in connection with the efforts contemplated hereunder, including, without limitation, (i) all trade secrets; (ii) information relating to

existing or contemplated products, services, designs, technology, processes, technical data, engineering methodologies, techniques and concepts; (iii) information relating to business plans, sales or marketing methods and customer lists or requirements; and (iv) any and all information that may be lawfully characterized as "confidential". "Confidential Information" does not include information that is disclosed by TXDPS in accordance with the legal requirements of the Texas Public Information Act, Chapter 552 of the Texas Government Code.

The obligations of Recipient under this subsection will not apply to information that Recipient can demonstrate (i) has been received from a third party without restriction on disclosure and without breach of agreement or other wrongful act by the Recipient; (ii) is independently developed by the Recipient without regard to the Confidential Information of the Owner; or (iii) is required to be disclosed by law or order of a court of competent jurisdiction or regulatory authority, provided that the Recipient shall furnish prompt written notice of such required disclosure and reasonably cooperate with Owner, at Owner's cost and expense, in any effort made by Owner to seek a protection order or other appropriate protection of its Confidential Information.

Contractor shall abide by all TXDPS policies, as they now exist and as thereafter amended, regarding privacy and security of information.

Recipient agrees to maintain all such Confidential Information in confidence during the term of this Contract and after the expiration or earlier termination of this Contract.

If Recipient has any questions or doubts as to whether particular material or information is Confidential Information, the Recipient shall obtain the prior written approval of the Owner prior to using, disclosing or releasing such information.

The Parties acknowledge that Confidential Information is unique and valuable, and that Owner may have no adequate remedy at law if the Recipient does not comply with its obligations contained in this subsection. Therefore, Owner shall have the right, in addition to any other rights it may have, to obtain in any Travis County court of competent jurisdiction, temporary, preliminary and permanent injunctive relief to restrain any breach, threatened breach, or otherwise to specifically enforce any obligations of Recipient if Recipient fails to perform any of its obligations under this subsection. This paragraph only applies to the extent authorized by law.

The Vendor must immediately notify the TXDPS point of contact if Vendor becomes aware of any unauthorized release of Confidential Information by the Vendor, the Vendor's employees or its subcontractors.

Non-Disclosure of Applicant Information and Images

This subsection applies to information and images regarding an applicant, regardless of whether the information and images were obtained from an applicant, from an applicant's representative and/or from a licensing agency.

Vendor shall not disclose and shall avoid any unauthorized use of all such information and images regarding an applicant, during the term of this Contract and after the expiration or earlier termination of this Contract, except as expressly authorized in this Contract.

Vendor acknowledges that such applicant information and images are sensitive and private, and that applicant and TXDPS may have no adequate remedy at law if the Vendor fails to comply with this subsection entitled "Non-Disclosure of Applicant Information and Images." Therefore, applicant shall have the right, in addition to any other rights it may have, to obtain in any court of competent jurisdiction, temporary, preliminary and permanent injunctive relief to restrain any breach, threatened breach, or otherwise to specifically enforce the obligations of Vendor contained in this subsection entitled "Non-Disclosure of Applicant Information and Images." The applicant is a third-party beneficiary of this subsection regarding the applicant's information and images.

Vendor shall only disclose the applicant information and images to those of its employees and agents having a need to know such information and images to perform work under this Contract and shall take all precautions to ensure its employees, subcontractor(s), and subcontractor's employees review this subsection, execute Exhibit E to this Contract and receive a copy of this Contract and the executed Exhibit E before gaining access to the applicant information and images. The Vendor is obligated to ensure Exhibit E has been executed without unauthorized changes prior to disclosing the applicant information and images. Vendor shall then send the original of the executed Exhibit E to TXDPS at the address listed in section herein entitled "Notification Requirements."

O. Publicity and News Release

The Vendor agrees that it must not publicize any portion of this Contract or its content or disclose, confirm, or deny any details thereof to third parties or use any photographs or video recordings of TXDPS's or the State of Texas' name in connection with any sales promotion, advertisement, publicity event, or for any purpose whatsoever, without the prior express written approval of TXDPS.

The Vendor will not make any news releases, public announcements, or public disclosures, nor will it have any conversations with representatives of the news media, pertaining to this Contract, or the services, study, data, or project to which this Contract relate, without the prior written approval of TXDPS, and then only in accordance with explicit written instructions from TXDPS.

P. Severability

If one or more provisions of this Contract, or the application of any provision to any party or circumstance, is held invalid, unenforceable, or illegal in any respect, the remainder of this Contract and the application of the provision to other parties or circumstances will remain valid and in full force and effect.

Q. Non-Waiver of Defaults

Any failure of TXDPS, at any time, to enforce or require the strict keeping and performance of any of the terms and conditions of this Contract will not constitute a waiver of such terms, conditions, or rights, and will not affect or impair same or the right of TXDPS at any time to avail itself of same.

R. Dispute Resolution

The Texas Government Code, Chapter 2260, prescribes dispute resolution processes for certain breach of contract claims applicable to certain contracts for goods and services. If and to the extent that Chapter 2260 applies to this Contract, the Vendor shall comply with the requirements of Chapter 2260 and the TXDPS administrative rules adopted pursuant to Chapter 2260.

S. Debt Liability

The Vendor agrees that any payments received under this Contract will be applied towards any debt owed by the Vendor, including, but not limited to, delinquent taxes and child support owed to the State of Texas of any and each person with at least 25% ownership of the Vendor, pursuant to Family Code §231.006.

T. Acceptance of Products and Services

All products furnished and all services performed under this Contract must be to the satisfaction of TXDPS and in accordance with the specifications, terms, and conditions of this Contract. TXDPS reserves the right to inspect the products furnished or the services performed, and to determine the quality, acceptability, and fitness of such products or services.

All system hardware, software and accessories that are shipped are to be new. Refurbished or demo equipment will not be accepted. All equipment is to be provided with standard manufacturer's warranty.

U. Historically Underutilized Business (HUB)

Vendor and all subcontractors must comply with all state HUB reporting requirements.

V. Insurance

Vendor must provide the following insurance:

1. Workers' Compensation and Employers' Liability coverage with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Section 401.001 *et. seq.* of the Texas Labor Code) and minimum policy limits

for Employers' Liability of \$250,000 bodily injury per accident, \$500,000 bodily injury disease policy limit and \$250,000 per disease per employee.

2. Commercial General Liability with a combined single limit of \$500,000 per occurrence for coverage AB&C including products and completed operation, where appropriate, with a separate aggregation of \$500,000. The policy must contain the following provisions:
 - a. Contractual liability coverage for liability assumed under this Contract. This requirement can be met by an Errors and Omission Policy that covers all acts by Vendor, subject to exclusions listed in policy;
 - b. Independent contractor coverage;
 - c. State of Texas, TXDPS, listed as an additional insured; and
 - d. 30-day Notice of Cancellation in favor of TXDPS.
3. Business Automobile Liability Insurance for all owned, non-owned, and hired vehicles with a minimum combined single limit of \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy must contain the following endorsement in favor of TXDPS:
 - a. 30-day Notice of Cancellation endorsement.

W. Section 231.006 of Texas Family Law Code

Pursuant to Section 231.006, Texas Family Code, Vendor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified payment and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.

X. Buy Texas

Pursuant to Section 2155.4441 of the Texas Government Code, Vendor shall buy Texas products and materials for use in providing the services authorized in this Contract when such products and materials are available at a comparable price and in a comparable period of time when compared to non-Texas products and materials.

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Z. Handling of Written Complaints

Vendor may direct their written complaints to the following TXDPS office:

Texas Department of Public Safety
ATTN: Oscar Ybarra
5805 North Lamar Boulevard, Building A
Austin, Texas 78752
Telephone: (512) 424-2060
Fax: (512) 424-2816
E-mail: Oscar.Ybarra@txdps.state.tx.us

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BB. Minimum Facility Requirements

The space to be occupied by Vendor, vendor's employees, subcontractors and agents must comply with all applicable federal, state and local laws, statutes, ordinances, codes, rules and regulations. Acceptance of the space does not exonerate the Vendor from meeting all the requirements. No requirement may be waived by the Vendor.

The leased space shall meet all zoning and building code requirements of the local government(s) in which the space is located. Vendor shall comply with all local government(s) rules and regulations regarding land development including, but not limited to, subdivision requirements, zoning ordinances, site reviews, plan reviews, development and building permits, inspections, and certificates of occupancy.

The Texas Department of Licensing and Regulation (TDLR), Architectural Barriers Division, PO BOX 12157, Austin, Texas 78711 administers the Texas Accessibility Standards (TAS) requirements for persons with disabilities. Telephone: 512-463-3211; website: <http://www.license.state.tx.us>.

Vendor must follow Public Law 101-336: Text of the Americans with Disabilities Act, Public Law 336 of the 101st Congress, enacted July 26, 1990. The ADA prohibits discrimination and ensures equal opportunity for persons with disabilities in employment, State and local government services, public accommodations, commercial facilities, and transportation. It also mandates the establishment of TDD/telephone relay services. The U.S. Department of Justice provides free ADA materials. Printed materials may be ordered by calling the ADA Information Line (1-800-514-0301 (Voice) or 1-800-514-0383 (TDD)). Automated service is available 24-hours a day for recorded information and to order publications.

CC. Delegation of Duties

The Vendor must assume full responsibility for all services performed under this Contract. TXDPS will consider the Vendor to be the sole point of contact with regard to contractual matters, including payment of any and all charges under this Contract. If any part of the work is planned to be subcontracted, the Vendor must include a list of subcontractors, including the firm name, address, and contact person of each subcontractor, a complete description of the work to be subcontracted, financial statements for each subcontractor, and descriptive information concerning each subcontractor's qualifications to TXDPS and made a part of this Contract.

Unless specified in this Contract, the Vendor must not delegate any duties under this Contract to a subcontractor unless TXDPS has given written consent to the delegation. TXDPS has the right to approve all subcontractors and to require the Vendor to replace any subcontractor found, in the opinion of TXDPS, either initially or based on performance, to be unacceptable. TXDPS reserves the right to receive copies of and

review all subcontracts. The contract management of any subcontractor will be the sole responsibility of the Vendor, and failure by a subcontractor to perform will be deemed to be failure of the Vendor. The Vendor must make all payments to subcontractors or suppliers. TXDPS will not release the Vendor from having to perform any obligations under this Contract, notwithstanding the fact that a subcontractor may have been engaged by the Vendor to perform those obligations.

DD. Conflict of Interest

By entering this Contract the Vendor has certified that no relationship exists between the Vendor and TXDPS that interferes with fair competition or is a conflict of interest, and no relationship exists between the Vendor and another person or organization that constitutes a conflict of interest with respect to this Contract.

The Vendor certifies that it presently has no interest and will not acquire any interest, either directly or indirectly, which will conflict in any manner or degree with the performance of its services under this Contract. The Vendor also certifies that no person having any such known interests will be employed during the performance of this Contract.

EE. Assignment by the Vendor

The Vendor must not assign or transfer any interest in this Contract without the express prior written consent of TXDPS.

FF. Disclosure of Litigation

Disclosure

The Vendor shall provide TXDPS with a copy of all actual and ongoing "Proceedings" regarding the following on a quarterly basis:

- 1) Criminal or governmental investigation of Vendor or Vendor's subcontractor(s);
- 2) Criminal case against Vendor or Vendor's subcontractor(s); and
- 3) Civil case involving Vendor or Vendor's subcontractor(s), regarding services and/or deliverables that are similar to those provided under this Contract.

Assurances

In the event that any such Proceeding disclosed to TXDPS pursuant to this section, or of which TXDPS otherwise becomes aware, during the term of this Contract, causes TXDPS to be concerned about:

- The Vendor's or its subcontractor's ability to continue to perform this Contract in accordance with its terms and conditions; or
- Whether the Vendor or its subcontractor in performing services for TXDPS is engaged in conduct that is similar in nature to conduct alleged

in such Proceeding, which conduct would constitute a breach of this Contract or a violation of law, regulation or public policy.

The Vendor will be required to provide TXDPS all reasonable assurances requested by TXDPS to demonstrate that:

- The Vendor and/or its subcontractor will be able to continue to perform this Contract in accordance with its terms and conditions; and,
- The Vendor or its subcontractor has not and will not engage in conduct in performing services for TXDPS which is similar in nature to the conduct alleged in such Proceeding.

GG. Failure to Comply

Failure by the Vendor to comply with the terms of this Section VI Terms and Conditions shall constitute a material breach of this Contract.

HH. Indemnity

The Vendor agrees to indemnify and hold TXDPS, the State of Texas and its employees and agents harmless against any and all claims for damages, costs, and expenses to persons or property that may arise from or be caused by any negligence, act or omission of the Vendor or any officer, agent, servant, employee, association of the Vendor or other person acting on behalf of the Vendor in the execution or performance of the services under this Contract; provided, however, that this indemnification shall not apply with respect to any erroneous information furnished to Vendor by TXDPS, to any negligent act or omission caused solely by TXDPS or any change in the law affecting the legality of the AFS.

II. Intellectual Property Infringement Indemnity

The Vendor must indemnify, defend, and hold harmless TXDPS, the State of Texas, and its employees and agents from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties), incurred in connection with any action or proceeding brought against TXDPS, the State of Texas and/or its employees or agents to the extent that such action or proceeding is based on a claim that any piece of equipment or any software supplied by Vendor or its subcontractors, or the operation thereof, or goods or services provided, or the use or reproduction of any documentation provided with such equipment or software, infringes any United States or foreign patent, copyright, trade secret, or other proprietary right of any person or entity. In addition, should the equipment or software, or goods or services provided, become, or in the Vendor's opinion be likely to become, the subject of a claim of infringement, the Vendor, at its own expense, must:

- Procure for TXDPS the right to continue using the equipment, software, goods or services.

Or, if such option is not reasonably available to the Vendor:

- Replace or modify the same with equipment or software, as the case may be, of equivalent function and performance so that it becomes non-infringing.

JJ. Other Indemnities

The Vendor must indemnify, defend and hold harmless the TXDPS, the State of Texas and its employees and agents from and against all losses, liabilities, damages and claims (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest, and penalties), arising from or in connection with any of the following:

- The breach by the Vendor of any representation or warranty made by the Vendor in this Contract;
- Any claims arising out of or related to occurrences that the Vendor is required to insure against as provided above;
- The death or bodily injury of any person, or the damage, loss, or destruction of any real, tangible or intangible personal property in connection with the performance of services by the Vendor, by any of its subcontractors, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable; provided, however, that this indemnification obligation must not apply to the extent, if any, that such death, bodily injury, or property damage is caused solely by the negligence or recklessness or intentional conduct of TXDPS;
- Any claim or demand asserted against TXDPS, the State of Texas and/or its employees or agents, which results from an act or omission of the Vendor or any of its subcontractors in its or their capacity of correctly identifying and capturing the fingerprints of an applicant and assessment of a service fee;
- Any claim or demand asserted against TXDPS, the State of Texas and/or its employees or agents, which results from an act or omission of the Vendor or any of its subcontractors; and
- Any breach of the Vendor's confidentiality obligations set forth in this Contract.

In any and all claims against the state, TXDPS, and/or any of its agents or employees, by any employee of the Vendor or any of its subcontractors, the indemnification obligation under this Contract will not be limited in any way by the amount or type of damages, compensation, or benefits payable by or for the Vendor or any of its subcontractors under workers' disability compensation acts, disability benefits acts, or other employee benefits acts.

KK. Pass-through of Warranties

If, under this Contract, the Vendor procures any materials or products for TXDPS, the Vendor must assign or otherwise transfer to TXDPS, or afford TXDPS the benefits of, any manufacturer's warranty for such materials or products.

LL. Ownership of Work Products

Categories of Software:

1. Custom-Developed Application Software: Any required software functionality, test tools, interface stubs and drivers, and configuration build procedures including all documentation, manuals, and protocols which are not covered by Pre-Existing Application Software products that Vendor will code or unit test.
2. Customized Pre-Existing Application Software: The customized portion of Pre-Existing Application Software and the customized portions of the Open Source Software that Vendor must modify to satisfy required system functionality. The Customized Pre-Existing Application Software does not include any Pre-Existing Application Software.
3. Pre-Existing Application Software: Software that Vendor will select, recommend, and/or transfer from corporate inventories which appropriately satisfy required system functionality without modification.
4. Third-Party Software: Commercially-available software that is required to provide necessary system functionality.
5. Open Source Software: Source code of a program, which is made available to the development community at large and is usually subject to certain restrictions.

Neither TXDPS nor the State of Texas owns source code, object code or any other intellectual property rights (except as licensed herein) associated with Vendor's Custom-Developed Application Software, Customized Pre-Existing Application Software or Pre-Existing Application Software.

However, the State of Texas owns all other work products created or developed by Vendor during the term of this Contract. The Vendor hereby assigns to the State of Texas all rights, title and interest in the work product (other than the Vendor's Custom-Developed Application Software, Customized Pre-Existing Application Software and Pre-Existing Application Software), including but not limited to all copyrights, patents, trade secrets, trademarks and other proprietary rights in the work products. With regard to work performed by the Vendor's subcontractors, the Vendor must require that all agreements with subcontractors provide for the irrevocable assignment of the aforementioned rights to the State of Texas, without additional consideration, of all such work products (other than the Vendor's Custom-Developed Application Software, Customized Pre-Existing Application Software and Pre-Existing Application Software) of the subcontractors.

Notwithstanding the preceding paragraph, the applicant owns the information and images regarding the applicant, regardless of whether the information and images were obtained from an applicant, from an applicant's representative and/or from a licensing agency.

Licenses to TXDPS

Vendor grants to TXDPS a perpetual, paid-up, irrevocable, worldwide, non-exclusive license to use (and allow other agencies of the State of Texas to use) the object code version of Vendor's Custom-Developed Application Software, Customized Pre-Existing Application Software and Pre-Existing Application Software for its internal use for the AFS. TXDPS' and the agencies of the State of Texas' right to use such Vendor software includes the right (in TXDPS' and such agency's own discretion and independently of Vendor) to do the following with such Vendor software, through the services of TXDPS' or such agency's own employees or of independent contractors who sign a confidentiality agreement: modify, manipulate, maintain, enhance, use, display, copy and create derivative works thereof for the AFS. The State of Texas shall be deemed to be the owner of such modifications, manipulations, enhancements and derivative works.

Upon the occurrence of a triggering event for the release of source code from escrow, Vendor must facilitate the transfer of Third-Party Software licenses and Open Source Software licenses to TXDPS, upon TXDPS' request, upon terms and conditions acceptable to TXDPS.

Restrictions on Use of Open Source Software

Use of Open Source Software may only be used to the extent that its use does not cause derivative works to be considered open source or place liability on TXDPS.

MM. Escrow of Source Code

Source Code and Documentation

Within thirty (30) days of the Implementation Date and within thirty (30) days of implementing any changes post-Implementation Date, Vendor must deliver the following in machine readable form to the escrow agent, pursuant to a source code escrow agreement in form and substance acceptable to TXDPS:

- (i) Pre-Existing Application Software,
- (ii) Custom-Developed Application Software,
- (iii) Customized Pre-Existing Application Software,
- (iv) Open Source Software,
- (v) Third-Party Software (if such third party agrees), and
- (vi) All other Materials (as defined below).

"Materials" is defined as follows:

1. Pre-Existing Application Software, Custom-Developed Application

Software, Customized Pre-Existing Application Software, Open Source Software and Third-Party Software (if such third party agrees) as machine readable source files, linkable or executable modules, and installed and operating copies of the programs (baseline software configuration must not be created such that only Vendor can change);

2. The tools required for the modification and compilation of the Pre-Existing Application Software, Custom-Developed Application Software, Customized Pre-Existing Application Software, Open Source Software and Third-Party Software (if such third party agrees);
3. The source code for all Custom-Developed Application Software and Customized Pre-Existing Application Software developed under this Contract with all needed support resources needed to edit, compile, and link these programs on the central processors, including, but not limited to, Computer Aided Software Engineering (CASE) tools, compilers, editors, and function libraries used in the development of the programs; and
4. All documentation concerning protocol for Pre-Existing Application Software, Custom-Developed Application Software, Customized Pre-Existing Application Software, Open Source Software and Third-Party Software (if such third party agrees) source code, commented listings, descriptions of software structure, database utilization, and instructions necessary to convert the source code into an operational system.

Triggering Factors for Release of Materials from Escrow:

The triggering factors for the release of Materials from escrow are as follows:

(i) material breach by Vendor which has not been cured in conformance with the Section herein entitled "Default;"

(ii) five (5) days after termination for cause pursuant to the Section herein entitled "Termination;"

(iii) Vendor becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under any bankruptcy or insolvency law, whether domestic or foreign; or

(iv) Vendor has wound up or liquidated its business voluntarily or otherwise and TXDPS has compelling reasons to believe that such events will cause Vendor to fail to meet its obligations under this Contract in the foreseeable future.

Verification of Materials

TXDPS shall have the right at all times during and after the term of this Contract to inspect, at reasonable times and upon reasonable notice to Vendor and the escrow agent, the Materials held in escrow to ensure that the Materials shall at all times be in a form sufficient to allow the Materials to be understandable and usable by a trained computer programmer of reasonable skill who is generally familiar with source code and documentation that is functionally similar to, though not necessarily identical to, the escrowed Materials. TXDPS may conduct such inspections itself or through a designee working on its behalf, provided such designee shall be required to execute and deliver to TXDPS and Vendor a nondisclosure agreement as a condition of such access.

Certification of Materials

For every copy of the Materials that is delivered to the escrow agent, initially or as a replacement, Vendor must supply TXDPS with a letter of certification regarding the completeness and accuracy of the Materials.

Versions of Materials

TXDPS has the right to obtain copies of all versions of Materials that Vendor delivers to the escrow agent, upon the occurrence of a triggering factor.

Backups of Materials

TXDPS has the right to make backups of the Materials, upon release from escrow.

NN. Right to Reproduce Documentation

TXDPS shall have the right to reproduce at no charge, but at TXDPS's cost for reproduction, for use by state employees, any documentation for software owned by the Vendor or any of its subcontractors that is used to perform services under this Contract. To the extent it is not legally prohibited from doing so by the terms of the applicable license, the Vendor grants TXDPS the right to reproduce at no charge, but at TXDPS's cost for reproduction, for use by state employees, any documentation for software owned by third parties but used by the Vendor or any of its subcontractors to perform services under this Contract. If the Vendor is legally prohibited from granting such rights to TXDPS with respect to any particular software that will be used by the Vendor or any of its subcontractors to perform services under this Contract, the Vendor must so state in express terms.

OO. Personnel

The Vendor must warrant that all persons assigned to the project are employees or subcontractors of the Vendor, and are fully qualified to perform the work required herein.

Personnel commitments made in the Vendor's Proposal and this Contract will not be changed without the prior written approval of TXDPS. Replacement of key personnel, if approved by TXDPS, must be with personnel of equal or greater ability and qualifications. TXDPS will be the arbiter of whether the replacement personnel have equal or greater ability and qualifications than the personnel being replaced.

Key Personnel

The Vendor must assign all key personnel identified in Section 3.2.9 of the RFP, Organizational and Staffing Plan, of its Proposal to complete all of their planned and assigned responsibilities in connection with performance of the obligations of the Vendor under this Contract. TXDPS will have the right to approve the assignment and replacement by the Vendor of all key personnel assigned to provide services or to provide on-site representation of the Vendor, including, without limitation, the project team leader, other individuals named or described in the Vendor's Proposal, and individuals assigned significant managerial responsibilities as mutually agreed by the Parties. Before assigning an individual to any of these positions, the Vendor must notify TXDPS of the proposed assignment, must introduce the individual to the appropriate representatives of TXDPS, and must provide to TXDPS a resume and any other information about the individual reasonably requested by TXDPS. TXDPS reserves the right to interview the individual before granting approval. Additionally, as required by Section 3.2.9.6 of the RFP, Vendor Employee Background Checks, Vendor will certify that all persons proposed to participate in the AFS project have submitted to a TXDPS fingerprint-based background check as required by the CJIS Security Policy Statement. For the purposes of the fingerprint-based background checks referenced in this section, participation in the AFS project includes activities in which a person will have access to an applicant's information and/or images, money, the system, the TXDPS Confidential Information or any other access which could allow a person to jeopardize the AFS or the privacy and/or private information of any applicant. Furthermore, all persons to be assigned will be required to agree to and comply with all relevant TXDPS policies that relate to security of data and confidentiality of information and sign the appropriate documents that indicate their acceptance of these policies.

Replacement of Personnel at TXDPS's Request

TXDPS reserves the right to require the Vendor to replace the Vendor or subcontractor employees whom TXDPS judges to be incompetent, careless, unsuitable or otherwise objectionable, or whose continued use is deemed contrary to the best interests of TXDPS. Before a written request is issued, authorized representatives of TXDPS and the Vendor will discuss the circumstances. Upon receipt of a written request from an authorized representative of TXDPS, the Vendor will be required to proceed with the replacement. The replacement request must include the desired replacement date and the reason for the request.

The Vendor must use its best efforts to effect the replacement in a manner that does not degrade service quality. This provision will not be deemed to give TXDPS the right to require the Vendor to terminate any Vendor employee's employment. Rather, this provision is intended to give TXDPS only the right to require that the Vendor discontinue using an employee in the performance of services for TXDPS.

Unauthorized Removal of Key Personnel

It is critical to the overall success of the project that the Vendor not remove or reassign, without TXDPS's prior written approval (which approval will not be unreasonably withheld) any of the key personnel until such time as the key personnel have completed all of their planned and assigned responsibilities in connection with performance of the Vendor's obligations under this Contract. The unauthorized removal of key personnel by the Vendor will be considered by TXDPS as a material breach of contract and grounds for termination.

PP. Funding Out Clause

The term of this Contract extends for several fiscal years as specifically identified in Section 2.4 of the RFP, Contract Duration. Continuation of this Contract is subject to appropriation of funds and the continuation of the enacting statute. If funds to effect continuation of the program are not appropriated or otherwise made available by law, TXDPS will have the right to terminate this Contract without penalty at the end of the period for which funds have been appropriated or otherwise available by law by giving written notice of termination to the Vendor.

If funding for AFS is reduced by law or the statutory amount of compensation authorized for the Vendor is reduced, TXDPS may, upon thirty days written notice to the Vendor, reduce such level of services in such manner and for such periods of time as TXDPS may elect.

QQ. Contract Modifications and Change Orders

TXDPS may, from time to time, modify contract terms or require changes in the services of the Vendor to be performed under this Contract. Such modifications or changes, which are mutually agreed upon by and between TXDPS and the Vendor, will be incorporated in written amendments to this Contract.

RR. Other Representations and Warranties

The Vendor (and its subcontractors) must make the following representations and warranties, including, without limitation, the following:

1. The Vendor (and its subcontractors) must perform all services in accordance with the highest professional standards in the industry.

2. The Vendor (and its subcontractors) must ensure that all services provided to the public are performed according to the highest standards of courtesy and professionalism.
3. The Vendor (and its subcontractors) must use adequate numbers of qualified individuals with suitable training, education, experience, and skill to perform the services.
4. The Vendor (and its subcontractors) must maintain all equipment and software for which it has maintenance responsibilities in good operating condition and must undertake all repairs and preventive maintenance in accordance with the manufacturers' recommendations.
5. The Vendor (and its subcontractors) must use its best efforts to use efficiently all resources or services necessary to provide the services that are required under this Contract.
6. The Vendor (and its subcontractors) must use its best effort to perform the services in the most cost-effective manner consistent with the required level of quality and performance.
7. The Vendor (and its subcontractors) must perform the services in a manner that does not infringe the proprietary rights of any third party.
8. The Vendor (and its subcontractors) must perform the services in a manner that complies with all applicable laws and regulations.
9. The Vendor (and its subcontractors) has duly authorized execution, delivery, and performance of this Contract.
10. The Vendor (and its subcontractors) has not provided any gifts, payments, or other inducements to any officer, employee or agent of TXDPS.
11. The Vendor (and its subcontractors) must use its best efforts to ensure that no viruses or similar items are coded or introduced into the AFS.
12. The Vendor (and its subcontractors) must not insert or activate any disabling code into the AFs without TXDPS's express prior written approval.

SS. State Exculpation

The Vendor acknowledges and agrees that TXDPS will not be responsible for or liable to the Vendor or its subcontractors for any increased costs or expenses that may be incurred by the Vendor or its subcontractors, or for any other damages that may be suffered by the Vendor or its subcontractors, as a result of any act or omission of any other vendor to TXDPS.

TT. Survival

Any provisions of this Contract that impose continuing obligations on the Parties including, but not limited to, the following, will survive the expiration or termination of this Contract for any reason:

- (i) Indemnity,
- (ii) Work product and license rights,
- (iii) Confidentiality obligations,

- (iv) Audit rights and record-keeping requirements, and
- (v) Dispute resolution.

UU. Employee Non-Solicitation

The Vendor must not, during the term of this Contract and for a period of twelve (12) months thereafter, solicit for employment any person who is a TXDPS employee or was a TXDPS employee during the previous six months with whom the Vendor had substantial contact in the course of performing its obligations under this Contract. Indirect solicitations, such as newspaper and internet announcements, are not prohibited by this section.

VV. Responsibility for State Property

The Vendor must assume full responsibility for and must indemnify TXDPS for any and all loss or damage of whatsoever kind and nature to any and all state property, including any equipment, supplies, accessories, or parts furnished, while in the Vendor's custody and care for storage, repairs, or services to be performed under the terms of this Contract, resulting from the acts or omissions of Vendor or any employee, agent, or representative of Vendor or subcontractor.

WW. Legislative Action

TXDPS is a state agency whose authority is subject to the actions of the Texas Legislature and the United States Congress. If TXDPS and/or the subject matter of this Contract become subject to a legislative or regulatory change or the revocation of the statutory or regulatory authority that would render the services to be provided under this Contract impossible, unnecessary, void or substantially amended or that would terminate the appropriations for this Contract, TXDPS may terminate this Contract without penalty to, or any liability whatsoever on the part of, TXDPS, the State of Texas, and the United States. This Contract does not grant the Vendor a franchise or any other vested property right.

XX. Non-incorporation Clause

This Contract embodies the entire agreement between the Parties hereto with relation to the services contemplated hereby, and there have been and are no oral or written covenants, agreements, understandings, representations, warranties or restrictions between the Parties hereto with regard thereto other than those specifically set forth herein.

VIII. DURATION OF CONTRACT

This Contract will remain in full force and effect for a period of three (3) years from the date of execution. The date of execution is the date on which the last of the two Parties signs this Contract.

This Contract may be extended beyond its initial term for up to six (6) years (3 two-year increments) under the same terms and conditions upon approval of both Parties. However, upon renewal, the Parties reserve the right to increase the Vendor's service fee, as long as such increase does not exceed the legal cap for such fee at the time of the renewal.

IX. NOTIFICATION REQUIREMENTS

Any notice required or permitted under this Contract shall be directed to the respective Parties at the addresses shown below and shall be deemed given: (1) when delivered in hand and a receipt granted; (2) when received if sent by certified mail, return receipt requested; or (3) when received if sent by confirmed facsimile:

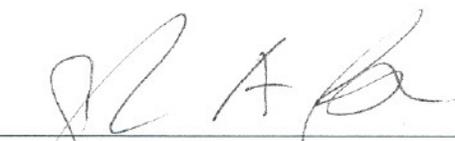
Notices to Vendor: Identix Incorporated
 5600 Rowland Road
 Minnetonka, MN 55343
 Attention: General Counsel

Notices to TXDPS: Texas Department of Public Safety
 ATTN: AFS Project Manager
 Crime Records Service, MSC0230
 5805 North Lamar Boulevard, Building G
 Austin, Texas 78730-0300

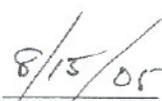
Either of the Parties may change its address or designated individual(s) to receive notices by giving the other Party written notice as provided above, specifying the new address and/or individual and the date upon which it shall become effective.

IN WITNESS WHEREOF, the Parties to this Contract have signed and delivered this Contract.

Identix Identification Services:



By: Chris Brown



Date

Its General Manager and representative duly authorized to execute this Contract.

TXDPS:

Oscar Ybarra

8-22-05

By: Oscar Ybarra

Date

Its Chief of Finance and representative duly authorized to execute this Contract.