

CONTRACT
EXACUTRACK SERVICE AGREEMENT

By and between
CUYAHOGA COUNTY, OHIO
and
BI INCORPORATED

THIS AGREEMENT (the "Contract") is made and entered into this ____ day of _____, 2011 by and between the County of Cuyahoga, Ohio (the "County"), and B.I. Incorporated, a Colorado corporation, with its principal offices located at 6400 Lookout Road, Boulder, CO 80301.

WHEREAS, the County has a present need for electronic monitoring service as offered and quoted in the ExacuTrack Service Agreement attached hereto as Schedule A and the BI Monitoring Service Agreement attached hereto as Schedule B; and

WHEREAS, BI is the sole developer of BI's ExacuTrack system and BI's transdermal alcohol monitoring product and a source of maintenance and support of such systems; and

WHEREAS, the County desires to use terms, conditions and specifications of GSA Contract Number GS-07F-0518N; and

WHEREAS, the County desires to avail itself of the ExacuTrack and BI TAD services and BI is willing to provide such services to the County upon the terms and conditions set forth herein.

NOW THEREFORE, in consideration of mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, BI and the County agree as follows:

ARTICLE I – AGREEMENT AND TERM

1.1 Scope of Agreement. During the term of this Contract, BI shall provide to the County under this agreement the following services as detailed in the attached Schedules A and B, insofar as the terms of Schedules A and B concur with this agreement. In the event that a discrepancy exists between the terms of Schedules A or B and this agreement, the terms of this agreement will be controlling and binding.

1.2 Term. The term of this Contract shall commence as of January 1, 2012, and, unless earlier terminated in accordance with the provisions of this Contract, shall continue in effect through December 31, 2014. This Contract is an amendment in the amount not to exceed \$150,000.00.

ARTICLE II – ADDITIONAL MAINTENANCE SERVICES

2.1 At the request of County, and with the consent of BI, BI may also provide technical, operational or other assistance on a consulting basis to the County but such services would require an amendment to this agreement between the County and BI.

ARTICLE III – PAYMENT AND INVOICING

3.1 Payment. During the term of this Contract, the County shall pay the costs associated with Schedules A and B upon receipt of invoice from BI.

3.2 Invoicing. BI shall invoice the County for services. BI shall submit original invoices to the following address:

Cuyahoga County Sheriff's Office
Beth Supan
1215 West 3rd Street- 2nd Floor
Cleveland, OH 44113

ARTICLE IV – INDEMNITIES AND LIABILITIES

4.1 Subcontracting. This Contract was awarded to BI based upon BI's unique qualifications and skills, and no task required to be performed under this Contract by BI shall be subcontracted to third parties without the express written consent of Cuyahoga County.

4.2 Indemnification. BI shall agree to release, indemnify and hold harmless Cuyahoga County, State of Ohio, and any and all officers, agents, servants or employees thereof, from any and all responsibility or liability under this Contract.

4.3 Condition Precedent to Indemnification. The indemnities in Article IV are conditioned upon the County providing BI prompt written notice of the claim, allegation or action for which indemnification is sought, together with full information and reasonable cooperation and full opportunity to control the response thereto and the defense thereof.

4.4 Indemnification for Infringement. BI warrants that the County will have the full right to use the work product delivered to County and that it will not infringe upon the rights of any third party. In the event a claim is made against County for infringement, BI will defend the claim on County's behalf and indemnify and hold County harmless from all financial liability (including legal fees) provided:

- (a) BI is promptly notified in writing,
- (b) BI is given control of the defense and settlement of the matter,
- (c) County cooperates with BI, and
- (d) The claims shall not have arisen due to County's negligent or improper acts.

In addition, if due to BI fault, County cannot use the system as a result of the infringement, BI, at its option and expense, will either:

- (a) obtain a license for County,
- (b) provide a non-infringing work-around, or
- (c) refund to client the fee relating to the infringing item.

Once BI has done one of the above, it shall have no further liability.

3.5 Warranties. All of BI services will be performed by qualified personnel and will be of a professional quality conforming to best practices of the industry.

The end system shall be fit for the intended use previously identified herein, and shall be capable of processing data without error, and without causing system lock-ups.

If any services do not meet this warranty, BI will do everything necessary, without charge, to bring its services to the specified level. In order to obtain warranty service, the problem must be reported to BI within 90 days of delivery of the system in question.

ARTICLE V – DISPUTE RESOLUTION AND TERMINATION

5.1 Dispute Resolution.

- a) In the event of any dispute or disagreement between BI and the County, either with respect to the interpretation of any provision of this Contract or with respect to the performance by BI or the County hereunder, which cannot be resolved in the normal course of business, then upon written notice of either party, each party will appoint a designated officer whose task it will be to meet for the purpose of endeavoring in good faith to resolve such dispute or negotiate for an adjustment to such section or provision of this Contract. The designated officers shall meet as often as the parties reasonably deem necessary in order to gather and furnish to the other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. Such officers will discuss the problem and/or negotiate the applicable section or provision with the necessity of any formal proceedings relating thereto. During the course of such negotiation, all reasonable requests made by one party to the other for information will be honored in order that each of the parties may be fully advised in the negotiations. The specific format for such discussions will be left to the discretion of the designated officers but may include the preparation of agreed upon statements of fact or written statements of position furnished to the other party. No formal proceedings for the binding arbitration of such dispute may be commenced until (i) resolution as contemplated in this clause has been unsuccessful and (ii) either of the parties concludes in good faith that amicable resolution through continued negotiation of the matter in issue does not appear likely and so notifies the other party.
- b) The rights and obligation of the parties under this provision shall not limit either party's right to terminate this Contract as may be otherwise permitted hereunder.

5.2 Termination for Default. Either party may terminate this Contract, in whole or in part, whenever such party determines that the other has failed satisfactorily to fulfill its obligations and responsibilities hereunder and is unable to cure such failure within a reasonable period of time, not to exceed thirty (30) calendar days or such longer period of time as may be specified in writing by the terminating party, taking into consideration the gravity and nature of the default. Such termination shall be referred to as "Termination for Default". Upon determination by either party hereto that the other has failed to satisfactorily perform its obligations and responsibilities hereunder, the party seeking termination shall notify the defaulting party in writing of the failure and of the time period that has been established to cure such failure, which time period shall be not less than ten (10) days. If the defaulting party is unable to cure the failure within the specified time period, the party seeking to terminate may, by giving written notice thereof to the defaulting party, terminate this Contract, in full or in part, as of the date specified in the notice of termination. BI, however, shall be paid for all services and/or materials provided on or prior to the date of termination.

5.2 Termination for Financial Instability. In the event that BI becomes financially unstable to the point of (i) ceasing to conduct business in the normal course, (ii) making a general assignment for the benefit of creditors, or (iii) suffering or permitting the appointment of a receiver for its business or its

assets, or there is a filing by or against BI of a meritorious petition in bankruptcy under any bankruptcy or debtor's law, the County may, at its option, immediately terminate this Contract under Section 5.2, the "Termination for Default" clause, by giving written notice thereof.

ARTICLE VI – ADHERENCE TO ELECTRONIC SIGNATURE POLICY OF COUNTY

6.1 By entering into this Contract, BI, its officers, employees, subcontractors, sub-grantees, agents or assigns, to conduct this transaction by electronic means by agreeing that all documents requiring county signatures may be executed by electronic means, and that the electronic signatures affixed by Cuyahoga County to said documents shall have the same legal effect as if that signature was manually affixed to a paper version of the document.

6.2 BI further agrees to be bound by the provisions of Chapter 304 and 1306 of the Ohio Revised Code as they pertain to Electronic Transactions and to comply with the electronic signature policy of Cuyahoga County.

ARTICLE VII – MISCELLANEOUS

7.1 Notices. Wherever one party is required or permitted to give notice to the other pursuant to this Contract, such notice shall be deemed given when delivered by hand, via certified mail with return receipt requested, via overnight courier with signature required, and addressed as follows:

In the case of the County:

Cuyahoga County Sheriff's Office
ATTN: Beth Supan
1215 West 3rd Street- 2nd Floor
Cleveland, Ohio 44113

In the case of BI;

Michael Pharris
BI Incorporated
6400 Lookout Road
Boulder, CO 80301

Either party may from time to time change its designated recipient or address for notification purposes by giving the other party written notice of the new designated recipient or address and the date upon which it will become effective.

7.2 Severability. If, and only to the extent that, any provision of this Contract is declared or found to be illegal, unenforceable or void, then both parties shall be relieved of all obligations arising under such provision, it being the intent and agreement of the parties that this Contract shall be deemed amended by modifying such provision to the extent necessary to make it legal and enforceable while preserving its intent. If that is not possible, another provision that is legal and enforceable and achieves the same objective shall be substituted. If the remainder of this Contract is not affected by such

declaration or finding and is capable of substantial performance, then the remainder shall be enforced to the extent permitted by law.

7.3 Waiver. No delay or omission by either party in the exercise of any right or power shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties of any of the covenants, conditions or agreements to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition or agreement herein contained. No change, waiver, or discharge hereof shall be valid unless in writing and signed by an authorized representative of the party against which such change, waiver, or discharge is sought to be enforced.

7.4 Survival of Terms. Termination or expiration of this Contract for any reason shall not release either party from any liabilities or obligations set forth in this Contract which (i) the parties have expressly agreed shall survive any such termination or expiration, or (ii) remain to be performed or by their nature would be intended to be applicable following any such termination or expiration.

7.5 Record Audit Retention. BI agrees to make all pertinent contractual books and records and other documents pertaining to this Contract available to the County and its designated agents for purpose of audit and examination upon reasonable request during the term of this Contract and for a period of two (2) years from the expiration date or final payment under this Contract, whichever is later; provided however, that should BI be notified that an audit has been commenced pursuant to Ohio Revised Code Sec. 117.11 during said period, for which the aforesaid books and records are material, the aforesaid records shall be retained pending the completion of said audit.

7.6 Headings and Interpretation. The article and section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof.

7.7 Governing Law. This Contract shall be subject to interpretation under the laws of the State of Ohio.

7.8 Social Security Act. BI shall be and remain an independent contractor with respect to all services performed hereunder and agrees to and does hereby accept full and exclusive liability for payment of any and all contributions or taxes for social security, unemployment insurance, or old age retirement benefits, pensions, or annuities now or hereafter imposed under any Local, State or Federal Law which are measured by the wages, salaries, or other remuneration paid to persons employed by BI for work performed under the terms of this Contract and further agrees to obey all lawful rules and regulations and to meet all lawful requirements which are now or hereafter issued or promulgated under said respective laws by and duly authorized State or Federal officials; and said BI also agrees to indemnify and save harmless Cuyahoga county from such contributions or taxes or liability.

7.9 Assignment. BI shall not assign, transfer, convey or otherwise dispose of this Contract, its right to execute it, or its right, title or interest in or to it or any part thereof, or assign, by power of attorney or otherwise, any of the monies due or to become due under this Contract without approval of the Cuyahoga County, State of Ohio, by resolution.

7.10 Contract Processing. BI shall submit one (1) original contractual agreement with original signatures to the following:

Cuyahoga County Sheriff's Office

ATTN: Beth Supan
1215 West 3rd Street- 2nd Floor
Cleveland, OH 44113


7.11 Commencement of Contract Performance. In order to protect the interest of Cuyahoga County, State of Ohio, this Contract must be executed by Cuyahoga County, State of Ohio, before compensation for the services or products set forth in this Contract can be provided. In the event that services are provided by BI prior to the execution of this agreement by Cuyahoga County, State of Ohio, the same will be provided at BI's risk, and payment therefore cannot, and will not, be made unless and until this agreement is approved by Cuyahoga County, State of Ohio. Upon approval by Cuyahoga County, State of Ohio, of this Contract, however, any and all prior performance under this Contract shall be deemed ratified and said performance shall be deemed and included in this Contract. Payment(s) for said prior performance shall not increase the amount of the contractual limit.

7.12 Entire Agreement and Modification. This Contract, including any Schedules and documents referred to in this Contract or attached hereto, each of which is incorporated herein, constitutes the entire and exclusive statement of the agreement between the parties with respect to its subject matter and there are no oral or written representations, understandings or agreements relating to this Contract which are not fully expressed herein. The parties agree that any other terms of conditions included in any quotes, acknowledgments, bills of lading or other forms utilized or exchanged by the parties shall not be incorporated herein or be binding unless expressly agreed upon in writing by authorized representatives of the parties. No modification, change or amendment hereof shall be valid unless such is in writing and signed by the authorized representative of the party against which such modification, change or amendment is sought to be enforced.

THIS AGREEMENT shall be subject to interpretation under the laws of the State of Ohio, and is subject to the review of the County Prosecutor's Office as to legal form and correctness.

IN WITNESS WHEREOF, THE County and BI have each caused this Contract to be signed and delivered by its duly authorized representative as of the date first written.

BY ENTERING INTO THIS AGREEMENT, I AGREE ON BEHALF OF BEHAVIORAL INTERVENTIONS, INC., TO CONDUCT THIS TRANSACTION BY ELECTRONIC MEANS BY AGREEING THAT ALL DOCUMENTS REQUIRING COUNTY SIGNATURES MAY BE EXECUTED BY ELECTRONIC MEANS, AND THAT THE ELECTRONIC SIGNATURES AFFIXED BY THE COUNTY TO SAID DOCUMENTS SHALL HAVE THE SAME LEGAL EFFECT AS IF THAT SIGNATURE WAS MANUALLY AFFIXED TO A PAPER VERSION OF THE DOCUMENT. I ALSO AGREE ON BEHALF OF BEHAVIORAL INTERVENTIONS, INC., TO BE BOUND BY THE PROVISIONS OF CHAPTERS 304 AND 1306 OF THE OHIO REVISED CODE AS THEY PERTAIN TO ELECTRONIC TRANSACTIONS, AND TO COMPLY WITH THE ELECTRONIC SIGNATURE POLICY OF CUYAHOGA COUNTY.



Michael Pharris
Assistant Controller

11/24/11

Date

BI INCORPORATED

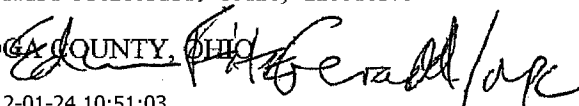
BY: 

Michael Pharris/Assistant Controller


Edward FitzGerald, County Executive

CUYAHOGA COUNTY, OHIO

2012-01-24 10:51:03

BY: 

Edward FitzGerald, County Executive

BY: _____
BOB REID
SHERIFF, CUYAHOGA COUNTY