

CONTRACT
By and Between
County of Cuyahoga, Ohio
and
Microgenics Corporation

On-Site Drug Detection Services

THIS CONTRACT made and entered into this ____ day of _____ 20__, by and between the County of Cuyahoga, Ohio (the "COUNTY"), on behalf of the Cuyahoga County Common Pleas Court, Adult Probation Department, (hereinafter referred to as the "COURT"), **and Microgenics Incorporated** (hereinafter referred to as "Microgenics"), a **California corporation with principal offices located at 46360 Fremont Boulevard, Fremont, CA 94538, (the "Provider")**.

WITNESSETH

WHEREAS, Court is desirous of retaining certain on-site drug detection services from Provider described and listed in the attached Exhibit A ("RFP 23380"); and

WHEREAS, Provider is willing and able to provide Court the Services;

NOW, THEREFORE, in consideration of the foregoing statements and the mutual promises made in this Contract and for other valuable consideration (the receipt and sufficiency of which are hereby acknowledged), Provider and Court (herein collectively called the "Parties") agree as follows:

Section I. Term.

This Contract shall commence on July 1, 2012 ("Effective Date") and continue for a period of 3 years thereafter ("Initial Term") for fees and costs set forth herein.

Thereafter, Court shall have the option of renewing the Contract for additional terms of not less than one year each (each a "Renewal Term") unless the Contract is terminated as provided herein.

Section II. Construction and Non-exclusivity.

- A. The attached Exhibit A ("RFP 23380") and Exhibit B ("Section V Catalog Price Addendum") is incorporated herein and shall be a part of this Contract.
- B. Nothing in this Contract contemplates an exclusive arrangement.

Section III. Fees; Payment Terms.

- A. Court will pay to Provider fees for the Services at the rates described and listed in Exhibit B, subject to the following:
 - 1. The parties acknowledge that Provider may only use annual appropriations funds for the Services under this agreement (the "Annual Fee Limit"). Fees for any term under this Contract shall not exceed the applicable Annual Fee Limit; and,
 - 2. During any term of this Contract, when the applicable Annual Fee Limit is reached, all Services and payments under this Contract shall cease for the balance of such term, unless the Parties mutually agree otherwise.
- B. The Annual Fee Limit for the Initial Term shall be One Hundred and Fifty-five Thousand Dollars (\$155,000.00).
- C. Provider shall submit a monthly invoice to Court for the accrued fees, and payment shall be due within 45 days of Court's receipt of the monthly invoice.

Section IV. Certifications, Representations, Warranties.

- A. Provider represents and warrants that:
 - (1) All Services will be rendered in a competent manner, by appropriately qualified staff, and consistent with applicable standards.
- B. The terms contained in attached Exhibit C ("Mutual Confidentiality and Non-Disclosure Terms") are incorporated herein and shall be a part of this Contract, and shall survive any termination of this Contract by three (3) calendar years.

Section V. Termination.

- A. During any active term, the Court may terminate the Contract, without cause, by giving the other party at least sixty (60) days prior written notice, provided that such notice may be withdrawn at any time before the effective date of such termination.
- B. The Court may terminate the Contract in the event of any breach or material default by the other party, by giving the other party thirty (30) days prior written notice of its intention to terminate.
- C. Notwithstanding the foregoing, or any other provision herein to the contrary, either party may at its discretion either immediately suspend all pending and future obligations under this Contract, or in the alternative, immediately terminate this Contract, upon the occurrence of any of the following:
 - (1) The other party's breach of its representations and warranties under Section VI above;
 - (2) The insolvency or bankruptcy of the Provider, or cessation of operations or assignment of assets for the benefit of creditors by the Provider; or

Section VI. Controlling Laws; Severability of Provisions; Jurisdiction; Dispute Resolution.

- A. This Contract is signed, executed and consummated in the State of Ohio, and Ohio's laws shall govern all disputes, controversies, and litigation arising hereunder. Provider and Court hereby agree that proper venue for all disputes, controversies and litigation arising under this Contract lies exclusively with the Courts of Ohio. For all disputes, controversies and litigation arising under this Contract, Provider and Court hereby (jointly and individually) submit to the personal jurisdiction of the Ohio Courts.
- B. If any provision herein is subsequently determined to be illegal or otherwise unenforceable, all other provisions hereof shall remain in full force and effect and fully enforceable notwithstanding such determination of partial illegality or unenforceability.
- C. If there is a dispute arising out of the Contract, the Parties:
 - (1) Shall attempt in good faith to amicably resolve such dispute;
 - (2) Agree to mediation as further defined; and,

- (3) If an amicable resolution is not reached with 60 days, and subject to subsection D below of this section, may pursue any and all remedies available at law and equity.
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- D. Proper venue for all unresolved disputes, controversies and litigation arising under the Contract shall be exclusively with the Courts of Ohio and each hereby agree to submit to the personal jurisdiction of the Ohio Courts.

Section VII. Notice.

Notice shall be deemed to have been given when delivered or upon receipt when mailed by Certified Mail, Return Receipt Requested to the applicable Party at the address(es) shown below:

To Provider:

Microgenics Corporation
46360 Fremont Boulevard
Fremont, CA 94538
Attention: Craig Osbourne, Director of Finance

To Court:

Cuyahoga County Court of Common Pleas
1200 Ontario St.
Cleveland, Ohio 44113
Attention: Vincent D. Holland, Chief Probation Officer
Adult Probation Department

Section VIII. Non-Discrimination.

The Parties agree that they shall not engage in any discriminatory practices prohibited by state or Federal law.

Section IX. Miscellaneous.

- A. This Contract constitutes the entire agreement between the Parties regarding the subject matter hereof and all prior written or oral negotiations, representations, arrangements and/or agreements regarding the subject matter hereof are merged into and superseded by this Contract. The Parties acknowledge that there are no verbal or other written understandings, arrangements and/or agreements between the Parties relating to the subject matter of this Contract.
- B. Notwithstanding anything in this Contract, the parties shall not amend this Contract during the Initial Term except to correct drafting errors and defects in form.

Thereafter this Contract may be amended, altered or changed only through a written document, clearly designated as an amendment to this specific Contract and only if Provider and Court sign such written document, and provided that any such amendment shall not occur prior to the expiration of one (1) full calendar year after any prior amendment

- C. The parties agree and assert that this Contract and the fees in Exhibit B were negotiated at arms length, and are intended to reflect the fair market value for the Services contemplated herein
- D. No waiver by Provider or Court and no refusal or neglect of Provider or Court to exercise any right hereunder or to enforce compliance with the terms of this Contract shall constitute a waiver of any provision herein with respect to any violations, actions or omissions hereunder, unless such waiver is expressed in writing by the waiving Party.
- E. Neither party may assign or transfer this Contract, or any part hereof, without the other party's prior written consent, which shall not be arbitrarily withheld. Nothing in this Contract contemplates the creation of any third party beneficiaries of or to this Contract.

Section X. Electronic Signature

The parties agree to conduct this transaction by electronic means by agreeing that all documents requiring the Court's signatures may be executed by electronic means, and that the electronic signatures affixed by the Court to said documents shall have the same legal effect as if that signature was manually affixed to a paper version of the document. The parties also agree 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 any electronic signature policy applicable to the Court.

[[Signature Page Follows]]

IN WITNESS WHEREOF, the Parties hereto have executed this Contract as of the day and year first above written.

County of Cuyahoga, Ohio

Microgenics Corporation

Edward FitzGerald, County Executive

By: Ed FitzGerald
Edward FitzGerald
County Executive

Date

7/25/2012
Date

By: Nancy A. Fuerst
Honorable Nancy A. Fuerst
Presiding and Administrative Judge
Cuyahoga County Common Pleas Court

Date

8/1/12

By: Vincent D. Holland
Vincent D. Holland
Chief Probation Officer
Cuyahoga County Adult Probation Department

Date

July 31, 2012

MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE TERMS

1. **Confidential Information.** As used in this Exhibit, "Confidential Information" means any information disclosed, either orally or in writing, by one party to the other party, unless the disclosing party indicates otherwise.
2. **Exclusions.** Confidential Information does not, however, include information that the receiving party can demonstrate:
 - (a) Is now, or hereafter becomes, through no act or failure to act on the part of the receiving party, generally known or available to the public;
 - (b) Was known by the receiving party before receiving such information from the disclosing party;
 - (c) Is hereafter rightfully obtained by the receiving party from a third party, without breach of any obligation to the disclosing party; or
 - (d) Is independently developed by the receiving party without use of or reference to the Confidential Information by persons who had no access to the Confidential Information.
3. **Obligations.** Each party agrees:
 - (a) To hold the other party's Confidential Information in strict confidence;
 - (b) Not to disclose such Confidential Information to any third party except as specifically authorized herein or as specifically authorized by the other party in writing;
 - (c) To use all reasonable precautions, consistent with such party's treatment of its own Confidential Information of a similar nature, to prevent the unauthorized disclosure of the other party's Confidential Information; and
 - (d) Not to use any Confidential Information for any purpose other than the Business Purpose.
4. **Permitted Disclosures.** Each party may disclose the other party's Confidential Information to its responsible employees and professional advisers with a bona fide need to know such Confidential Information, but only to the extent necessary to carry out the business Purpose and only if such employees are advised of the confidential nature of such Confidential Information and the terms of this Addendum and are bound by a written agreement or by a legally enforceable code of professional responsibility to protect the confidentiality of such Confidential Information.

5. **Required Disclosures.** Each party may disclose the other party's Confidential Information if and to the extent that such disclosure is required by applicable law, provided that the receiving party uses reasonable efforts to limit the disclosure by means of a protective order or a request for confidential treatment and provides the disclosing party a reasonable opportunity to review the disclosure before it is made and to interpose its own objection to the disclosure.
6. **Copies and Abstracts.** To the extent necessary to carry out the Business Purpose, the receiving party may make copies or abstracts of the disclosing party's Confidential Information provided that all such copies and abstracts are themselves marked as confidential and provided that the receiving party maintains a written record of the distribution of all such copies and abstracts.
7. **Return of Confidential Information.** Upon the disclosing party's request, the receiving party will promptly return to the disclosing party all copies of the Confidential Information, will destroy all notes, abstracts, and other documents that contain Confidential Information, and will provide to the disclosing party a written certification of an officer of the receiving party that it has done so.
8. **No Implied Licenses.** Nothing in this Addendum will be construed as granting any rights to the receiving party, by license or otherwise, to any of the disclosing party's Confidential Information, except as specifically stated in this Addendum.
9. **Injunctive Relief.** Each party acknowledges that the unauthorized use or disclosure of the other party's Confidential Information would cause irreparable harm to the other party. Accordingly, each party agrees that the other party will have the right to obtain an immediate injunction against any breach or threatened breach of this Contract, as well as the right to pursue any and all other rights and remedies available at law or in equity for such a breach.