
MEMO

APPROVED
08/24/2020



DATE: August 19, 2020
FROM: Matney M. Ellis
Procurement Director
TO: Board of County Commissioners
SUBJECT: Agreement – BI, Incorporated

A handwritten signature in black ink, appearing to read "Matney M. Ellis", with a long horizontal flourish extending to the right.

Submitted for your approval and execution is the attached Demonstration Electronic Monitoring Services Agreement between the Tulsa County Board of County Commissioners on behalf of Tulsa County Court Services and BI, Incorporated for the purposes of demonstration of fifty (50) BI SmartLink Option C without an EM Device.

Respectfully submitted for your approval and execution.

MME / arh

SUBMITTED FOR: The August 24, 2020 BOCC meeting agenda.

CMF# 20202121

DEMONSTRATION ELECTRONIC MONITORING SERVICE AGREEMENT
Agreement No. 080720MV2

This Demonstration Electronic Monitoring Service Agreement (the "Agreement"), outlining the responsibilities of each Party relative to the demonstration of the operation of an electronic monitoring program, is made between BI INCORPORATED ("BI"), a Colorado corporation with its principal place of business at 6265 Gunbarrel Avenue, Suite B, Boulder, CO 80301 and BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF TULSA, OKLAHOMA ON BEHALF OF TULSA COUNTY COURT SERVICES ("Agency") with its principal place of business at 500 South Denver, Suite 300, Tulsa, OK 74103.

WHEREAS, Agency has determined that a present need exists for the demonstration of the products, services, and applications set forth in this Agreement; and

WHEREAS, Agency is authorized to enter into this Agreement by the laws and regulations to which Agency is subject; and

WHEREAS, Agency and BI agree that the terms and conditions of this Agreement apply to the products, services, and applications to be provided hereunder; and

NOW, THEREFORE, In consideration of the promises contained herein, and for other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto, desiring to be legally bound, hereby agree as follows:

1. DEFINITIONS

- 1.1. "Active Unit": A Unit which is assigned to a Client and is being monitored by BI.
- 1.2. "Active Unit Day": Any day, or any portion thereof, in which there is an Active Unit.
- 1.3. "Authorized Personnel": Those persons selected by Agency who are authorized to enroll Clients and select or adjust notification options.
- 1.4. "Client": A person subject to Agency's electronic monitoring program utilizing BI equipment/applications.
- 1.5. "Confidential Information": Any information which is marked, or should be reasonably understood to be, confidential, proprietary, or trade secrets of BI.
- 1.6. "Documentation": User guides, reference manuals, and other documentation provided by BI in connection with the Equipment provided under this Agreement. Such Documentation will be provided upon the sooner of request by Agency or execution of this Agreement.
- 1.7. "Equipment" or "Unit": Manufactured products and third-party products provided by BI, including, but not limited to, GPS tracking devices, radio frequency monitoring devices, transmitters, Drive-BI Monitors, and alcohol monitoring devices.
- 1.8. "GPS": Global positioning system. Satellite system which operates independently of telephonic or internet reception and provides precise location and time information in all weather conditions.
- 1.9. "Supplies": Straps, latches, and batteries for the BI transmitter.
- 1.10 "Wi-Fi": Wireless networking technology that uses radio waves to provide wireless high-speed internet and network connections to devices.

2. MONITORING SERVICE

- 2.1 **Description.** The Monitoring Service (the "Service") consists of Equipment/Units, Applications, and BI's central host computer system running TotalAccess or similar monitoring software applications (described below). Units are issued to Clients by the Agency. The TotalAccess system is housed in BI's offices. Equipment/Units and Applications communicate with TotalAccess through either cellular telephone service or a Client's landline telephone service, as applicable.
- 2.2 **TotalAccess.** TotalAccess is a secure and password-protected proprietary application that supports the BI continuum of radio frequency, GPS, and alcohol monitoring equipment.

- 2.3 System Maintenance.** Agency acknowledges that BI must perform periodic maintenance on the host computer system. During the performance of this maintenance, the system may be required to be temporarily 'off-line'. BI will exercise commercially reasonable efforts to notify Agency via e-mail or phone in advance of any such maintenance.
- 2.4 SmartLINK™.** SmartLINK™ is a mobile application ("app") designed to be installed on Clients' smartphones. It provides Clients with supervision-related calendaring and community resource information. Clients can also be required to periodically use the app's check-in capabilities to verify their location or report their status. During each check-in, the Client's identity is verified using biometric technology. The SmartLINK™ app's modular design allows officers to control what functionality and information is delivered to the Client's phone from within TotalAccess. SmartLINK™ is compatible with Apple iOS and Android mobile operating systems.

3. BI's SERVICES

3.1 Training.

3.1.1 Initial Training. Prior to the commencement of the Demonstration Term, BI will provide to Agency, at no additional cost, an initial training session regarding the operation and use of the Service provided in this Agreement. This training is a requirement before commencement of Service under this Agreement. No login ID will be activated until and unless the assigned user has successfully completed training certified by BI.

3.1.2 TotalAccess Training. All TotalAccess training sessions shall be conducted via a remote service such as web conferencing.

3.1.3 Additional Training. Additional training is available and may be subject to a training charge.

3.2 Agency Support. BI will make reasonable efforts to provide Agency with answers to specific Agency support requests related to the Service, Equipment, and Applications and overall operation of the electronic monitoring program. BI will supply Agency with an address for e-mail and a 1-800 toll free number for questions and/or feedback.

4. EQUIPMENT

4.1 Supplied by BI. BI shall supply Units and Service/Applications listed in Exhibit A, attached and fully incorporated hereinto, for the purpose of demonstration (collectively "Demonstration Units"), including applicable Supplies and Installation Kits (Unit activator, lead cutter and allen driver).

4.2 Availability: The terms of this Agreement are conditioned upon and subject to the availability of BI's products and services. BI shall not be liable for any delay in performance due to limited availability of products and services.

4.3 Freight. BI will pay for the cost of shipping Demonstration Units and other applicable Equipment, Supplies and Accessories to and from Agency via ground delivery. Agency may request shipping methods other than ground delivery, in which event Agency will pay for the additional cost of such alternative shipping method.

5. AGENCY'S OBLIGATIONS. Agency agrees to be fully responsible for:

- 5.1** Identifying Authorized Personnel;
- 5.2** Performing and authorizing all Client selection, enrollment and alert management;
- 5.3** Conducting all liaison work with the involved courts and/or agencies;
- 5.4** Fulfilling all Agency requirements to access and utilize BI's TotalAccess monitoring system;
- 5.5** Performing or overseeing orientation in compliance with BI policy. Orientation, in accordance with BI policy, establishes Equipment use guidelines.
- 5.6** Ensuring proper use, management and supervision of Equipment; and
- 5.7** Ensuring that users have completed training in access and use of the Monitoring Service, including TotalAccess.

6. **COST OF SERVICES.** There will be no charge to Agency for the Service rendered hereunder, except as per section 7.4.

7. **TERM, TERMINATION**

7.1 **Demonstration Term.** The term of Service under this Agreement (the "Demonstration Term") is set forth in Exhibit A, and shall commence upon confirmation of the first demonstration Unit or SmartLINK™ use or installation by a Client.

7.2 **Termination for Convenience.** This Agreement may be terminated for convenience by either Party prior to the expiration of the Term upon written notification to the other Party.

7.3 **Notice.** All notices with respect to this Agreement shall be in writing and signed by a duly authorized representative of the Party. Notices shall be sent by certified mail or delivered by messenger.

7.4 **Return of Property.** Upon expiration or termination of this Agreement, Agency shall immediately return all Demonstration Units and related Equipment and Accessories to BI, and remove TotalAccess software from all Agency devices. In the event BI's Demonstration Units, unused Supplies and other such property are not returned within seven (7) days of expiration of the Demonstration Term, Agency shall pay to BI ten dollars (\$10.00) per Demonstration Unit per day until BI has all such Demonstration Units and other BI property in its possession. BI shall bill Agency the replacement cost for any Demonstration Units and other BI property not returned within thirty (30) days of expiration of the Demonstration Term.

8. **LIMITATION OF LIABILITY**

8.1 Agency will be responsible for the proper use, management and supervision of the Equipment. Agency agrees that BI will not be liable for any damages caused by Agency's failure to fulfill these responsibilities.

8.2 **Disclaimer of Warranty.** EXCEPT AS SPECIFICALLY PROVIDED HEREIN, BI EXCLUDES THE WARRANTIES OF MERCHANTABILITY AND FITNESS OF THE MONITORING SERVICE OR EQUIPMENT FOR A PARTICULAR PURPOSE. BI EXPRESSLY DISCLAIMS ANY WARRANTY THAT THE MONITORING SERVICE OR EQUIPMENT IS IMPERVIOUS TO TAMPERING. THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. BI EXPRESSLY DISCLAIMS ANY WARRANTY THAT THE SERVICES, EQUIPMENT, OR APPLICATIONS ARE COMPLETE, ACCURATE, RELIABLE, ERROR FREE OR FREE FROM VIRUSES OR OTHER HARMFUL COMPONENTS, THAT PRODUCTS AND SERVICES WILL BE CONTINUOUSLY AVAILABLE, OR THAT DATA ENTERED ARE SECURE FROM UNAUTHORIZED ACCESS.

8.3 **Damages.** BI SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF BI HAS KNOWLEDGE OF THE POSSIBILITY OF THE POTENTIAL LOSS OR DAMAGE, IN CONNECTION WITH OR ARISING OUT OF THE PROVIDING, PERFORMANCE, OR USE OF SERVICES, EQUIPMENT, OR APPLICATIONS PROVIDED UNDER THIS AGREEMENT UNLESS SUCH DAMAGES ARE THE RESULT OF BI'S FRAUD, WILLFUL INJURY TO PROPERTY OR PERSON, OR VIOLATION OF LAW.

8.4 **Acts.** IN NO EVENT DOES BI ASSUME ANY RESPONSIBILITY OR LIABILITY FOR ACTS THAT MAY BE COMMITTED BY PERSONS AND/OR CLIENTS THAT ARE SUBJECT TO AGENCY'S ELECTRONIC MONITORING PROGRAM.

8.5 **Telecom.** Agency recognizes and acknowledges that information is transmitted via third-party telecommunications service providers. BI makes no representations or warranties regarding carriage of information over any communications medium not fully and directly controlled by BI, including, but not limited to, wireless and land-line telecommunications services. Further, BI shall not be liable for any interruption of service or non-transfer of information due to interruptions, temporary downage or other failure to any system that is not fully and directly under BI's control. In the event BI Equipment or Applications are not operational due to any such interruption, BI shall notify Agency as soon as is practicable.

9. INTENTIONALLY OMITTED

10. OWNERSHIP AND CONFIDENTIALITY/NONDISCLOSURE OBLIGATIONS

- 10.1** BI shall retain all ownership interests in all parts of the Services, Equipment, and Applications. All rights owned by BI that are not expressly granted by this Agreement, including the right to derivative works, are reserved to BI. All rights, powers and privileges which arise out of this Agreement are, and shall remain at all times, the sole and exclusive property of BI. Nothing contained in this Agreement shall be deemed to convey to Agency any title or ownership interest in the Equipment, Applications, or Documentation.
- 10.2** Agency, including its employees, agents, and contractors/subcontractors, shall protect the confidentiality of proprietary business information, including but not limited to corporate and financial information, specifications, samples, patterns, designs, plans, drawings, documents, data, and business operations, Client information, fees contained in this Agreement and any other confidential information (collectively, "Confidential Information") disclosed to it by BI under this Agreement, orally, in writing, or by any other form of communication and whether or not marked, designated or otherwise identified as "confidential. Agency shall maintain all such Confidential Information in a confidential manner and shall comply with all applicable state and federal laws and regulations relating to the use and disclosure of such information, and shall use and disclose such information only in accordance with the terms of this Agreement. Agency shall not disclose Confidential Information to any person, firm or entity other than to its own employees or representatives who have a need-to-know and each of whom the Parties agree shall be bound by these provisions on the same terms and conditions as if specifically named a Party hereto. Notwithstanding the foregoing, nothing herein shall prohibit Agency from using, disclosing or transmitting information to the extent necessary under the terms of this Agreement or as required by law. This provision shall not apply to any information which is now in, or subsequently enters the public domain. Upon termination of this Agreement, Agency shall promptly return all documents and other materials received from the BI. BI shall be entitled to injunctive relief for any violation of this Section.
- 10.3** BI will issue Agency a login ID and password for use in accessing Total Access and Agency's specific Client information. The confidentiality of the Services and Client information is dependent upon Agency's careful control of the login ID and password. Agency agrees to maintain its password as private and confidential information and to take all reasonable measures to maintain the careful control and security of the login ID and password. In this regard, Agency agrees that each employee or contractor, to be authorized to work with or to have access in any way to the Documentation or trade secrets hereunder, shall agree to be bound by restrictions on confidentiality, nondisclosure, use, and copying consistent with those of this Agreement as allowed by Oklahoma law. Agency agrees to immediately notify BI of the existence of any circumstances surrounding any unauthorized knowledge, possession, or use of the login ID and password or any part thereof by any person or entity. BI is not responsible for breaches in security resulting from third-party access to Agency's password.
- 10.4** Agency shall not itself and also shall not knowingly permit any of its employees, subcontractors, or sub licensees to alter, maintain, enhance, or otherwise modify any part of the Service, Equipment or Applications, other than strictly to input, access and update information relating to Clients, as permitted by this Agreement. Agency shall not reverse engineer, reverse compile, reverse assemble or do any other operation or analysis with the Service or associated software, hardware, and technology that would reveal any of BI's confidential information, trade secrets, or technology.
- 10.5** Agency agrees not to make any attempt to gain any unauthorized access to any other agency or user account or to the systems, networks or databases of the Service, other than Agency's specific Client information as specifically permitted herein. Violations of the Service security system are prohibited and may result in criminal and/or civil liability.
- 10.6** Agency shall not, and shall take all reasonable actions to cause its employees, agents and subcontractors, if any, to not, during the term of this Agreement or at any time thereafter, divulge, communicate or utilize, other than in the performance of Agency's obligations under

this Agreement, any Confidential Information which Agency or such person has acquired or may acquire, whether technical or non-technical, relating to the business and affairs of BI.

11. INSURANCE. Each Party hereto shall maintain comprehensive general liability insurance, including acts, errors or omissions and contractual liability insurance, in an amount not less than \$1,000,000. Upon request, the parties hereto shall furnish to the other a certificate of insurance or other evidence that the required insurance is in effect. To the extent either of the Parties is self-insured, the provisions of this paragraph do not apply to the self-insured Party.

12. FORCE MAJEURE. BI shall not be liable for any delay in performance or nonperformance which is due to causes beyond BI's control, including, but not limited to, war, fire, floods, sabotage, civil unrest, strikes, embargoes or delays, acts of God, acts of third parties, acts of governmental authority or any agent or commission thereof, accident, breakdown of equipment, telecommunications services (both wireless and wire systems, including cell phones, pagers, and the like), differences with employees or similar or dissimilar causes beyond BI's reasonable control.

13. GENERAL

13.1 This Agreement is limited in its scope to its defined purpose. It in no way implies that either Party has specific knowledge or bears responsibility for the business practices of the other Party. All business practices and contract compliance outside the defined conditions of this Agreement and authorized amendments are the sole responsibility of each Party.

13.2 Any provision of this Agreement which is found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Agreement. Preprinted terms and conditions of any purchase order or other instrument issued by Agency in connection with this Agreement which is in addition to or inconsistent with the terms and conditions of this Agreement will not be binding on BI and will not apply to this Agreement.

14. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Oklahoma. In the event that a dispute arises with respect to any of the provisions herein contained or any other matter affecting the relationship between BI and Agency it shall be resolved by any court having jurisdiction in Tulsa County, Oklahoma. All attorneys' fees and associated expenses (including arbitration and or court costs, witness fees and other reasonable expenses) shall be awarded to the prevailing Party.

15. ENTIRE AGREEMENT. The entire agreement between the parties with respect to the subject matter hereof is contained in this Agreement. No prior or contemporaneous negotiations, understandings, or agreements shall be valid unless in writing and signed by authorized representatives of each Party. This Agreement shall be binding on and inure to the benefit of the parties hereto and their representatives, successors and assigns.

16. ASSIGNMENT AND SUBCONTRACTING. This Agreement may not be transferred or assigned by Agency or by operation of law to any other person, persons, firms, or corporation without the express written approval of BI. BI shall have the right to subcontract any and all services set forth under this Agreement, so long as BI remains primarily responsible hereunder.

17. COUNTERPARTS. This Agreement may be executed in any number of counterparts, and by the different parties hereto on separate counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives.

BI INCORPORATED

**BOARD OF COUNTY COMMISSIONERS OF THE
COUNTY OF TULSA, OKLAHOMA ON BEHALF
OF TULSA COUNTY COURT SERVICES**

Ruth Skerjanec
Signature

Stan Sallee
Signature

Ruth Skerjanec

Stan Sallee, Chairman Pro Tem

Printed Name

Printed Name

Vice President, Financial Planning

Chairman Pro Tem, Board of County Commissioners of the County of Tulsa

Printed Title

Printed Title

08/17/2020

August 24, 2020

Date

Date

Attest: *Michael Willis*
Michael Willis, County Clerk



Approved as to form:

James G. Rea Digitally signed by James G. Rea
Date: 2020.08.17 13:18:53 -05'00'
Assistant District Attorney

EXHIBIT A

TO THE
DEMONSTRATION ELECTRONIC MONITORING SERVICE AGREEMENT
Agreement No. 080720MV2 ("Agreement")
between
BI INCORPORATED ("BI")
and
BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF TULSA, OKLAHOMA
ON BEHALF OF TULSA COUNTY COURT SERVICES ("Agency")

DEMONSTRATION: Fifty (50) BI SmartLINK™ Option C without an EM Device

Included Modules
01. My Info
02. Calendar
03. My Docs (<i>coming soon</i>)
04. Media
05. Resources
06. Messaging
07. Video Conferencing
08. Client Submitted Schedules & Information
09. Facial Biometric Check-in
10. Self-Report (<i>with biometrics</i>)

TO BE PROGRAMMED TO: BI Monitoring Operations

DEMONSTRATION TERM: August 14, 2020 through December 31, 2020