

**CONTRACTUAL SERVICES AGREEMENT NO. 13314 WITH BI INCORPORATED
FOR ELECTRONIC MONITORING SERVICES**

This Agreement is entered into on _____, between Alachua County, Florida, a political subdivision and Charter County of the State of Florida, by and through its Board of County Commissioners, hereinafter referred to as “County” and BI Incorporated, a for profit corporation with a principle business address of 6265 Gunbarrel Ave, Boulder CO, 80301 hereinafter referred to as "Contractor". Collectively hereinafter County and Contractor referred to as “Parties”).

WITNESSETH

WHEREAS, the Parties have been signatories to a long-term contract through which BI provided Electronic Monitoring Services to the County, based upon a cooperative procurement and contract through a U.S. Communities Government Purchasing Alliance procurement and contract; and

WHEREAS, the U.S. Communities Government Purchasing Alliance contract expires on January 2022; and

WHEREAS, the County continues to require Electronic Monitoring Services and has designated BI as a Single Source provider pursuant to Section 22.3-301 (27) of the Alachua County Procurement Code and therefore from the County’s competitive procurement processes; and

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

1. Term.

- 1.1. This Agreement is effective upon execution by both Parties and continues through September 30, 2022 unless earlier terminated as provided herein. The County has the option of renewing this Agreement for additional one year periods at the same terms and conditions outlined herein.
- 1.2. The County's performance and obligation to pay under this Agreement is contingent upon a specific annual appropriation by the Alachua County Board of County Commissioners (“Board”). The Parties hereto understand that this Agreement is not a commitment of future appropriations. Therefore, the continuation of this Agreement beyond the end of any fiscal year shall be subject to both the appropriation and the availability of funds in accordance with Chapter 129, Florida Statutes, and that the failure of the Board to do so shall not constitute a breach or default of this Agreement.

2. Duties of the Contractor

- 2.1. The Contractor vendor will provide equipment designed to electronically monitor approximately 50 offenders per month on RF (Radio Frequency) or a GPS (Global Positioning System) as designated by the County. The Contractor shall also provide for the remote alcohol usage monitoring of approximately 50 offenders per month in

conjunction with or independent of house arrest monitoring.

2.2. A 24 HR/7Day monitoring center will be staffed by the County trained professionals to forward alerts to Probation or Pretrial staff.

3. **Representations and Warranties.** By executing this Agreement, the BI makes the following express representations and warranties:

3.1. The Contractor is a professional qualified to perform the services described.

3.2. The Contractor warrants all the work performed by the BI is adequate and sufficient to meet the requirements and accomplish the purposes of this Agreement.

3.3. The Contractor acknowledges that the County's review of the work performed in no way diminishes the Contractor's warranty pertaining to the work performed.

4. **Method of Payment.** For all services actually, timely and faithfully performed, the Contractor will be paid as follows:

4.1. The Contractor shall be paid a sum Not to Exceed \$179,000.00 (ONE HUNDRED AND SEVENTY NINE THOUSAND DOLLARS), for the initial term of this Agreement, through September 30 2022, in accordance with the following rate schedule”

Equipment	Cost per day/per Individual	Monitoring	Lost Damaged Allowance	Spare Shelf Allowance
LOC8 / LOC8 XT (GPS)	\$3.65	24/7 Monitoring - 1.30.W5.C30.ZX service level	Lost and Damaged Equipment Allowance – 0%	Spare Shelf Allowance – 30%
ExacuTrack One (GPS)	\$3.50	24/7 Monitoring - 1.30.A30.ZX service level	Lost and Damaged Equipment Allowance – 0%	Spare Shelf Allowance – 30%
SL2/SL3 (Alcohol)	\$5.45	24/7 Monitoring	Lost and Damaged Equipment Allowance – 0%	Spare Shelf Allowance – 30%
TAD Cellular with RF (Alcohol)	\$7.70	24/7 Monitoring	Lost and Damaged Equipment Allowance – 0%	Spare Shelf Allowance – 30%

Additional Services	Cost per Client/per Day
BI Analytics: Proximity Analytics Priority Analytics	\$0.25
BI SmartLINK:	
CONNECT w/ EM Device	\$0.00
CONNECT Only	\$0.25
REPORT w/ EM Device	\$0.25
REPORT Only	\$0.50
VERIFY w/ EM Device	\$0.50

VERIFY Only	\$0.75
Video Conferencing	\$0.35

4.2. As a condition precedent for any payment, the Contractor shall submit monthly, an invoice to the County requesting payment for services properly rendered and expenses due. The Contractor's invoice shall describe with reasonable particularity each service rendered, the date thereof, the time expended if such services were rendered pursuant to a fee and the person(s) rendering such service. The Contractor's invoice shall be accompanied by such documentation or data in support of expenses for which payment is sought as the County may require. Each invoice shall constitute the Contractor's representation to the County that the services indicated in the invoice have reached the level stated, have been properly and timely performed as required herein, that the expenses included in the invoice have been reasonably incurred in accordance with this Agreement, that all services provided have served a public purpose, that all obligations of the Contractor covered by prior invoices have been paid in full, and that the amount requested is currently due and owing, there being no reason known to the Contractor that payment of any portion thereof should be withheld. Submission of the Contractor's invoice for final payment shall further constitute the Contractor's representation to the County that, upon receipt by the Contractor of the amount invoiced, all obligations of the Contractor to others, including its consultants, incurred in connection with the Project, will be paid in full. The Contractor shall submit invoices to the County at the following address:

ATTN: Anthony Louise
 Alachua County Dept. of Court Services
 35 N. Main St.
 Gainesville, FL 32601
 alouise@alachuacounty.us

4.3. All applications for payment shall be processed and paid in accordance with the provisions of Chapter 218, Part VII Florida Statutes ("Local Government Prompt Payment Act"), and shall be remitted to:

BI, Inc.
 Bank of America Lockbox Services
 Lockbox 744952
 6000 Feldwood Road
 College Park, GA 30349

4.4. Except as otherwise authorized in Section 4.1, the County shall not pay or reimburse the Contractor for any expenses incurred by the Contractor to perform the Work.

5. **Notice.** Except as otherwise provided in this Agreement, all notices to be provided under this Agreement from either party to the other party must be by one of the following methods: (i) in writing and sent by certified mail, return receipt requested, (ii) by personal delivery with receipt, or (iii) via electronic mail. All notices shall be deemed two (2) business days after mailing, unless deliver is by personal deliver in which case delivery shall be deemed to occur upon actual receipt by the other party. For purposes of all notices, Contractor's and County's

representatives are:

County:

Michael Arizmendi, Department Director
Alachua County Dept. of Court Services
35 N. Main St.
Gainesville, FL 32601
marizmendi@alachuacounty.us

Contractor:

Todd Porter
6265 Gunbarrel Avenue, Suite B
Boulder, CO 80301
Todd.Porter@bi.com

A copy of any notice, request or approval to the County must also be sent to:

J.K. "Jess" Irby, Esq.
Clerk of the Court
12 SE 1st Street
Gainesville, FL 32602
ATTN: Finance and Accounting
dmw@alachuaclerk.org

And

Procurement Division
12 SE 1st Street
Gainesville, Florida 32601
Attn: Contracts
Procurement@alachuacounty.us

6. Default and Termination.

- 6.1. The failure of the Contractor to comply with any provision of this Agreement will place the Contractor in default. Prior to terminating this Agreement, the County will notify the Contractor in writing. This notification will make specific reference to the provision which gave rise to the default. The County will give the Contractor seven (7) days to cure the default. The Director of Court Services is authorized to provide written notice of default on behalf of the County, and if the default situation is not corrected within the allotted time the County Manager is authorized to provide final termination notice on behalf of the County to the Contractor.
- 6.2. The County may also terminate this Agreement without cause by providing written notice to the Contractor (hereinafter, "Termination for Convenience"). The County Manager is authorized to provide written notice of Termination for Convenience on behalf of the County. Upon such notice, Contractor will immediately discontinue all Work affected (unless the notice directs otherwise) and deliver to the County all data, drawings, specifications, reports, estimate, summaries, and such other information and materials as may have been accumulated by the Contractor in performing this Agreement, whether completed or in process. In the event of such Termination for Convenience, Contractor's recovery against County shall be limited to that portion of the Annual Contract Price

- earned through the date of termination, but Contractor shall not be entitled to any other or further recovery against County, including, but not limited to, damages, consequential or special damages, or any anticipated fees or profit on portions of the Work not performed.
- 6.3. If funds to finance this Agreement become unavailable, the County may terminate this Agreement with no less than twenty-four (24) hours' notice in writing to the Contractor. The County will be the final authority as to the availability of funds. The County will pay the Contractor for all Work completed prior to delivery of notice of termination. In the event of such Termination, Contractor's recovery against County shall be limited to that portion of the Annual Contract Price earned through the date of termination, but Contractor shall not be entitled to any other or further recovery against County, including, but not limited to, damages, consequential or special damages, or any anticipated fees or profit on portions of the Work not performed.

7. **Project Records.**

7.1. **General Provisions:**

- 7.1.1. Any document submitted to the County may be a public record and is open for inspection or copying by any person or entity. "Public records" are defined as all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency per §119.011(12), Florida Statutes. Any document is subject to inspection and copying unless exempted under Chapter 119, Florida Statutes, or as otherwise provided by law.
- 7.1.2. In accordance with §119.0701, Florida Statutes, the Contractor (referred hereinafter in all of the "Project Records" section collectively as "Contractor"), *when acting on behalf of the County*, as provided under §119.011(2), Florida Statutes, shall keep and maintain public records as required by law and retain them as provided by the General Record Schedule established by the Department of State. Upon request from the County's custodian of public records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time unless exempted under Chapter 119, Florida Statutes, or as otherwise provided by law. Additionally, the Contractor shall provide the public records at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- 7.1.3. Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion of this Agreement if the Contractor does not transfer the records to the County.

7.2. **Confidential Information:**

- 7.2.1. During the term of this Agreement or license, the Contractor may claim that some or all of Contractor's information, including, but not limited to, software documentation, manuals, written methodologies and processes, pricing, discounts, or other considerations (hereafter collectively referred to as "Confidential Information"), is, or has been treated as confidential and proprietary by Contractor in accordance with §812.081, Florida Statutes, or other law, and is exempt from disclosure under the Public Record Act. Contractor shall clearly identify and mark Confidential Information as "Confidential Information" or "CI" and the County shall

use reasonable efforts to maintain the confidentiality of the information properly identified by the Contractor as “Confidential Information” or “CI.”

7.2.2. The County shall promptly notify the Contractor in writing of any request received by the County for disclosure of Contractor’s Confidential Information and the Contractor may assert any exemption from disclosure available under applicable law or seek a protective order against disclosure from a court of competent jurisdiction. Contractor shall protect, defend, indemnify, and hold the County, its officers, employees and agents free and harmless from and against any claims or judgments arising out of a request for disclosure of Confidential Information. Contractor shall investigate, handle, respond to, and defend, using counsel chosen by the County, at Contractor’s sole cost and expense, any such claim, even if any such claim is groundless, false, or fraudulent. Contractor shall pay for all costs and expenses related to such claim, including, but not limited to, payment of attorney fees, court costs, and expert witness fees and expenses. Upon completion of this Agreement or license, the provisions of this paragraph shall continue to survive. Contractor releases County from claims or damages related to disclosure by County.

7.3. **Project Completion:** Upon completion of, or in the event this Agreement is terminated, the Contractor, *when acting on behalf of the County* as provided under §119.011(2), Florida Statutes, shall transfer, at no cost, to the County all public records in possession of the Contractor or keep and maintain public records required by the County to perform the service. If the Contractor transfers all public records to the County upon completion or termination of this Agreement, it must destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon the completion or termination of this Agreement all applicable requirements for retaining public records shall be met. All records stored electronically shall be provided to the County, upon request from the Counties custodian of public records, in a format that is compatible with the information technology systems of the County.

7.4. **Compliance:** A Contractor who fails to provide the public records to the County within a reasonable time may be subject to penalties under §119.10, Florida Statutes.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE COUNTY REPRESENTATIVE AT E-MAIL: publicrecordsrequest@alachuacounty.us; PHONE: (352) 384-3132; ADDRESS: 12 SE 1ST STREET, GAINESVILLE, FL 32601.

8. **Permits.** The Contractor will obtain and pay for all necessary permits, permit application fees, licenses, or any fees required.

9. **Laws & Regulations.** The Contractor will comply with all laws, ordinances, regulations, and building code requirements applicable to the work required by this Agreement. The Contractor is presumed to be familiar with all state and local laws, ordinances, code rules and regulations that may in any way affect the work outlined in this Agreement. If the Contractor is not familiar with state and local laws, ordinances, code rules and regulations, the Contractor remains liable for any violation and all subsequent damages or fines.

10. **Indemnification.**

- 10.1. To the maximum extent permitted by Florida law, the Contractor shall indemnify and hold harmless the County and its officers and employees from any and all liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees, caused by the negligence, recklessness, or intentional wrongful misconduct of the Contractor or anyone employed or utilized by the Contractor in the performance of this Agreement. Contractor agrees that indemnification of the County shall extend to any and all Work performed by the Contractor, its subcontractors, employees, agents, servants or assigns.
- 10.2. The Contractor's obligation to indemnify under this Article will survive the expiration or earlier termination of this Agreement until it is determined by final judgment that an action against the County or an indemnified party for the matter indemnified hereunder is fully and finally barred by the applicable statute of limitations.
- 10.3. This obligation shall in no way be limited in any nature whatsoever by any limitation on the amount or type of Contractor insurance coverage. This indemnification provision shall survive the termination of this Agreement between the County and the Contractor.
- 10.4. In any and all claims against the County or any of its agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Article shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workers' compensation acts, disability benefit acts or employee benefit acts.
- 10.5. Nothing contained herein shall constitute a waiver by the County of sovereign immunity or the provisions or limits of liability of §768.28, Florida Statutes.

11. **Assignment of Interest.** The Contractor and County recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the County. Therefore, the Contractor hereby assigns to the County any and all claims for such overcharges as to goods, material or services purchased in connection with this Agreement. However, for all other assignments, neither party will assign, convey, pledge, sublet, transfer or otherwise dispose any interest in this Agreement and shall not transfer any interest in same without prior written consent of the other party.

12. **Successors and Assigns.** The County and Contractor each bind the other and their respective successors and assigns in all respects to all of the terms, conditions, covenants, and provisions of this Agreement.

13. **Independent Contractor.** In the performance of this Agreement, the Contractor is acting in the capacity of an independent contractor and not as an agent, employee, partner, joint venture, or associate of the County. The Contractor is solely responsible for the means, method, technique, sequence, and procedure utilized by the Contractor in the full performance of this Agreement.

14. **Collusion.** By signing this Agreement, the Contractor declares that this Agreement is made without any previous understanding, agreement, or connections with any persons, contractors, or corporations and that this Agreement is fair and made in good faith without any outside control, collusion, or fraud.

15. **Conflict of Interest.** The Contractor warrants that neither it nor any of its employees have any financial or personal interest that conflicts with the execution of this Agreement. The Contractor shall notify the County of any conflict of interest due to any other clients, contracts, or property interests.
16. **Third Party Beneficiaries.** This Agreement does not create any relationship with, or any rights in favor of, any third party.
17. **Severability and Ambiguity.** It is understood and agreed by the Parties to this Agreement that if any of the provisions of this Agreement shall contravene, or be invalid under the laws of the State of Florida, such contravention or invalidity shall not invalidate the entire Agreement, but it shall be construed as if not containing the particular provision or provisions held to be invalid, and the rights and obligations of the Parties shall be construed and enforced accordingly. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if jointly drafted by the Parties and no presumption, inference, or burden of proof shall arise favoring or disfavoring a Party by virtue or authorship of any or all of this Agreement's provisions. Each Party represents and agrees that it has had the opportunity to seek the advice of appropriate professions, including legal professionals, in the review and execution of this Agreement.
18. **Non Waiver.** The failure of any party to exercise any right in this Agreement shall not be considered a waiver of such right.
19. **Governing Law and Venue.** This Agreement is governed in accordance with the laws of the State of Florida. Venue shall be in Alachua County.
20. **Attachments.** All exhibits attached to this Agreement are incorporated into and made part of this Agreement by reference.
21. **Amendments.** The Parties may amend this Agreement only by mutual written agreement of the Parties.
22. **Captions and Section Headings.** Captions and section headings used herein are for convenience only and shall not be used in construing this Agreement.
23. **Construction.** This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by one of the Parties. It is recognized that both Parties have substantially contributed to the preparation of this Agreement.
24. **Counterparts.** This Agreement may be executed in any number of 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. Receipt via fax or email with pdf attachment by a party or its designated legal counsel of an executed counterpart of this Amendment shall constitute valid and sufficient delivery in order to complete execution and delivery of this Amendment and bind the Parties to the terms hereof.
25. **Entire Agreement.** This Agreement constitutes the entire agreement and supersedes all prior

written or oral agreements, understandings, or representations.

26. **Electronic Signatures.** The Parties agree that an electronic version of this Agreement shall have the same legal effect and enforceability as a paper version. The Parties further agree that this Agreement, regardless of whether in electronic or paper form, may be executed by use of electronic signatures. Electronic signatures shall have the same legal effect and enforceability as manually written signatures. The County shall determine the means and methods by which electronic signatures may be used to execute this Agreement and shall provide the Contractor with instructions on how to use said method. Delivery of this Agreement or any other document contemplated hereby bearing an manually written or electronic signature by facsimile transmission (whether directly from one facsimile device to another by means of a dial-up connection or whether mediated by the worldwide web), by electronic mail in “portable document format” (“.pdf”) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing an original or electronic signature.

27. **U.S. Department of Homeland Security E-Verify System.**

27.1. The Contractor shall utilize the U.S. Department of Homeland Security’s E-Verify system to verify the employment eligibility of all new employees hired by the Contractor during the term of this Agreement. The E-Verify system is located at <https://www.uscis.gov/E-Verify>.

27.2. The Contractor shall expressly require any subcontractors performing work or providing services pursuant to the County’s Agreement to utilize the U.S. Department of Homeland Security’s E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of this Agreement. The E-Verify system is located at <https://www.uscis.gov/E-Verify>.

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed for the uses and purposes therein expressed on the day and year first above-written.

ALACHUA COUNTY, FLORIDA

By: _____

Marihelen Wheeler, Chair
Board of County Commissioners

Date: _____

ATTEST:

APPROVED AS TO FORM

J.K. "Jess" Irby, Esq., Clerk

Alachua County Attorney's Office

(SEAL)

CONTRACTOR

By: *Danna Coapland*

Print: Danna Coapland

Title: VP Finance, BI Incorporated

Date: 01/14/2022

IF THE CONTRACTOR IS NOT A NATURAL PERSON, PLEASE PROVIDE A CERTIFICATE OF INCUMBENCY AND AUTHORITY, OR A CORPORATE RESOLUTION, LISTING THOSE AUTHORIZED TO EXECUTE AGREEMENTS ON BEHALF OF YOUR ORGANIZATION. IF ARE A NATURAL PERSON, THEN YOUR SIGNATURE MUST BE NOTARIZED.