

GOODS AND SERVICES AGREEMENT

THIS AGREEMENT, made this 29th day of MARCH, 2010 by and between the MASSACHUSETTS SHERIFFS' ASSOCIATION, 271 CAMBRIDGE STREET, SUITE No.202, CAMBRIDGE Massachusetts, 02141 (hereinafter "MSA") and BI2 TECHNOLOGIES, LLC, 488 STATE ROAD, PLYMOUTH, MA 02360 (hereinafter "Contractor").

WHEREAS, the MSA desires to provide for the Upgrade and Expansion of [an existing] Facial Recognition System [at the Essex County Sheriff's Department in Middleton, MA] into other Massachusetts Sheriffs' Offices and desires to purchase the related goods and services required for same,

WHEREAS, the Contractor desires to provide to the MSA a new, upgraded and expanded facial recognition system for the Essex County Sheriff's Department, and all thirteen other Massachusetts Sheriffs' Departments (capacity-permitting) and twenty-eight (28) individual police Departments across the Commonwealth, and the related goods and services required for same,

NOW, THEREFORE, in consideration of mutual covenants and agreements hereinafter set forth, the parties hereto, intending to be legally bound hereby, agree as follows:

SECTION I. MSA GRANT TO the Contractor

The **MSA** hereby grants to the Contractor, as an independent contractor, the exclusive right to provide a new, upgraded and expanded facial recognition system for the Essex County Sheriff's Department, and all thirteen other Massachusetts Sheriffs' Departments (capacity-permitting) and twenty-eight (28) individual police Departments across the Commonwealth, and the related goods and services required for same.

SECTION II. CONTRACTOR'S RESPONSIBILITIES

A. The Contractor will provide a new, upgraded and expanded facial recognition system for the Essex County Sheriff's Department, and all thirteen other Massachusetts Sheriffs' Departments (capacity-permitting) and twenty-eight (28) individual police Departments across the Commonwealth, and the related goods and services

required for same, in compliance with the provisions of the Agreement, and in compliance with the provisions of an **Invitation to Bid pursuant to INVITATION FOR RESPONSES - IRIS BIOMETRIC IDENTIFICATION PROGRAM** (hereinafter referred to as the "IFR") opened **JANUARY 20, 2010** and the Contractor's submitted Bid for **Upgrade and Expansion of [an existing] Facial Recognition System [at the Essex County Sheriff's Department in Middleton, MA]** into other **Massachusetts Sheriffs' Offices**, copies of which are attached hereto as Exhibits A and B respectively, and which are hereby incorporated by reference as if fully set forth herein.

- B. The Contractor shall hire all employees necessary for the performance of this Agreement. All persons employed by the Contractor will be the employees of the Contractor, and not the **MSA**. All persons employed by the **MSA** will be the employees of the **MSA**, and not the Contractor. The Contractor, in performing work required by the Agreement, shall not discriminate against any employee or applicant for employment because of race, creed, sex, color, national origin or age, or in violation of federal, state or local law.

C. The Contractor agrees that the Contractor's employees and agents shall comply with and observe all applicable rules and regulations concerning conduct in and at the **fourteen Massachusetts Sheriffs' Departments** which the **fourteen Massachusetts Sheriffs Departments** impose upon Sheriffs' Department employees and agents.

D. The Contractor shall be responsible for the payment of all state and federal sales taxes, and any other taxes imposed by any other governmental entity so authorized arising from provision to the MSA of **a new, upgraded and expanded facial recognition system for the Essex County Sheriff's Department, and all thirteen other Massachusetts Sheriffs' Departments (capacity-permitting) and twenty-eight (28) individual police Departments across the Commonwealth**, and the related goods and services required for same pursuant to the terms of this Agreement. The Contractor hereby agrees to indemnify, defend and hold harmless the

employees and Officers of the MSA and their respective agents, servants, employees and representatives of and from any and all losses, claims, actions, liabilities and expenses arising from the Contractor's failure to pay any taxes for which the Contractor is responsible pursuant to this paragraph.

E. The Contractor has obtained all liability and other insurance required to provide goods and services pursuant to this Agreement, including worker's compensation, automobile, comprehensive general liability and product liability insurance. A true and accurate copy of said Certificate(s) of Insurance evidencing such insurance coverage are attached hereto as Exhibits B.

SECTION III. MSA RESPONSIBILITIES

A. The **MSA** shall provide the Contractor and its employees with access to and use of those portions of **the fourteen Massachusetts Sheriffs'**

Departments necessary for the Contractor to perform its obligations under this Agreement.

The fourteen Sheriffs' Departments will provide such heat, light, electricity and phone service reasonably required for the Contractor's performance hereunder.

SECTION IV. FINANCIAL ARRANGEMENTS

The financial arrangements of the Agreement are set forth in the Contractor's General Bid Form attached to its Bid for **Upgrade and Expansion of [an existing] Facial Recognition System [at the Essex County Sheriff's Department in Middleton, MA into other Massachusetts Sheriffs' Offices]**, attached hereto as Exhibit B.

SECTION V. INDEMNIFICATION: INSURANCE

A. The Contractor agrees to pay for and discharge completely, by payment or otherwise, any and all billing vouchers, invoices, or other evidence of indebtedness which may arise out of any monetary obligation or other expense incurred by the Contractor for labor, services, materials,

supplies, equipment, or any other resource utilized by the Contractor to provide for **Upgrade and Expansion of [an existing] Facial Recognition System [at the Essex County Sheriff's Department in Middleton, MA into other Massachusetts Sheriffs' Offices]** during the term of this Agreement.

- B. The Contractor agrees to indemnify, defend and hold the **employees and Officers of the MSA** harmless from and against all losses, claims, actions, liability, damage or expenses of whatever nature arising, wholly or in part, from any act, omission or negligence of the Contractor or the Contractor's vendors, subcontractors, suppliers, licensees, agents, servants, representatives, or employees, resulting from any accident, injury, death, damage, or other loss whatsoever caused to any person or entity, or to the property of any person or entity occurring during the term of the Agreement. This indemnity and hold harmless agreement shall include indemnity against all costs, expenses (including but not limited to attorney's fees), liabilities and damages incurred in or in connection with any such

claim, action, or proceeding brought thereon, and the defense thereof.

The contractor agrees to maintain in full force during the term of this Agreement a broad form policy of comprehensive general public liability and property damage insurance (without any so-called employee exclusion or the like) and under which the insurer agrees to indemnify, defend, and hold said **MSA**, and its officials, agents, servants, representatives, and employees harmless from and against all cost, expense (including but not limited to attorney's fees) liability or damages arising out of or based upon any and all claims, accidents, injuries, and damages described in the immediately preceding sub-paragraph of this Paragraph B. The minimum limits of liability per occurrence of such insurance shall be a combined single limit of \$1,000,000 for injury (or death) to one or more persons and \$1,000,000 damages to property.

The contractor shall also carry professional liability insurance coverage, including riders or endorsements for products liability coverage, with minimum limits of liability of \$1,000,000 per occurrence and \$3,000,000 in aggregate annually for personal injury, death, property damage, or other loss occurring during the term of the Agreement.

The contractor hereby acknowledges that the insurance coverage provisions in the two immediately preceding sub-paragraphs of this Paragraph B were not intended to, and shall not be construed so as to amend, alter, or modify the Contractor's duty to fully indemnify, defend, and hold the MSA harmless as detailed in the first sub-paragraph of this Paragraph B. In the event that the Contractor's insurers disclaim or otherwise deny the Contractor's insurance coverage arising out of any claim, action, or other proceeding arising during the term of this Agreement, The Contractor shall nevertheless be obligated to fully indemnify,

defend, and hold the **MSA** harmless, as provided herein.

- C. The Contractor agrees to use and occupy the fourteen Massachusetts Sheriffs' Department premises at its own risk, and that the **MSA** shall have no responsibility or liability for any loss or damage to the Contractor's property during the term of the Agreement.
- D. The Contractor's obligation to indemnify, defend and hold the **MSA** harmless pursuant to this Agreement shall depend upon the **MSA** promptly notifying the Contractor in writing and cooperating with the Contractor in the defense of any such claims or losses against either the Contractor or the **MSA**. If within (90) days after first receiving notice of such claim or lawsuit, the **MSA** forwards to the Contractor the Summons, Complaint and any other documents that relate to said claim or lawsuit, such notice shall be presumed to be prompt for purposes of this paragraph. In the event the **MSA** fails to notify the Contractor of such claims or lawsuits within ninety (90) day period, the Contractor may be relieved of its obligation to indemnify,

defend and hold the **MSA** harmless if the **MSA's** delay in providing notice substantially prejudices the Contractor in the defense of any claim or lawsuit.

SECTION VI. COMMENCEMENT AND RENEWAL

This Agreement shall become effective upon the date of execution.

SECTION VII. RELATIONSHIP WITH THE MSA

A. The contractor has been retained solely for the purpose of and to the extent set forth in this Agreement. The contractor's relationship to the **MSA** during the term of the Agreement shall be that of an independent contractor and provider while providing the **Upgrade and Expansion of [an existing] Facial Recognition System [at the Essex County Sheriff's Department in Middleton, MA into other Massachusetts Sheriffs' Offices** and related goods and services. Under no circumstances shall an employee or independent contractor of the Contractor be deemed an employee or sub-contractor of the **MSA**. The

contractor shall have no capacity to involve the **MSA** in any agreement or incur any liability on its behalf except as expressly provided in the Agreement. The **MSA** shall not be obligated under the terms or provisions of any contract, sub-contract, or other commitment entered into or incurred by the contractor. The **MSA** shall not be liable for any loss or personal property, personal injury to, death of, or any other loss of the Contractor, its agents, servants, representatives, or employees as a result of any act of an inmate, or any act of the **fourteen Massachusetts Sheriffs' Departments**, its agents, servants, representatives or employees, or any defect in any real or personal property owned by the **fourteen Massachusetts Sheriffs' Departments**.

SECTION VIII. REMEDIES

- A. The Contractor shall not be liable for any damages, including but not limited to liquidated damages, sustained by the **MSA** due to the Contractor's failure to furnish goods and services under the terms of this Agreement only if the Contractor's performance hereunder has been rendered impossible due to the occurrence

of an unexpected, unavoidable event beyond the Contractor's control, such as an act of God, a state of war, sabotage, embargoes, expropriation or confiscation of the Facility, or by compliance with any federal, state or municipal governmental regulation or order, provided that the Contractor has notified the **MSA** in writing of such unexpected, unavoidable event immediately upon its occurrence.

B. In the event the **MSA** or the Contractor breaches any term, condition, or provision of the Agreement, either party may avail itself of any and all remedies described in this Agreement or to which the parties may be entitled at law or in equity.

SECTION IX. PROHIBITION AGAINST ASSIGNMENT

The parties shall not assign or in any way transfer any interest in this Agreement or any part thereof, without the written consent of the other party. The Contractor shall not delegate its responsibility to provide goods and services to the **MSA** as described herein, without the prior written consent of the **MSA**.

SECTION X. COMPLIANCE WITH LAWS AND PUBLIC POLICY

A. This Agreement shall be governed exclusively by the terms, conditions and provisions contained herein and by the laws of the Commonwealth of Massachusetts, as they may exist from time to time. Any clause which does not conform to such laws of the Commonwealth shall be void, and such laws shall be operative in lieu of such clause. If any term or provision of the Agreement, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

B. The Contractor agrees to comply with the provisions of Massachusetts General Law c. 268A (the Conflict of Interest Law so called). The

Contractor shall not act in collusion with any public official, agent, or employee, or with any other party to violate or to defeat the purpose of said law, nor shall the Contractor agree to give or receive any job-related gifts regarding this Agreement or any other matter in which the **MSA** has a direct or substantial interest.

SECTION XI. WAIVER

Failure on the part of the **MSA** to complain of any action or non-action on the part of the Contractor, no matter how long the same may continue, shall never be deemed to be a waiver by the **MSA** of any of its rights hereunder. Further, it is covenanted and agreed that no waiver at any time of any of the provisions hereof by **any and all fourteen Massachusetts Sheriffs' Departments** shall be construed as a waiver of any of the other provisions hereof, and that a waiver at any time of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions. The consent or approval of the **MSA** to or of any action by the Contractor requiring the **MSA's** consent or approval shall not be deemed to waive or render unnecessary the **MSA's** consent or approval to or of any subsequent similar act by the Contractor. Any consent required of the **MSA** may be withheld in its sole

discretion unless the provision requiring such consent specifically states that the **MSA** shall not withhold such consent unreasonably.

SECTION XII. OTHER AGREEMENT

The Contractor hereby warrants and represents that neither this Agreement nor the provision of [an] **Upgrade and Expansion of [an existing] Facial Recognition System [at the Essex County Sheriff's Department in Middleton, MA into other Massachusetts Sheriffs' Offices** and related goods and services and related goods and services hereunder violates the provisions of any agreement previously executed by the Contractor or any affiliate of the Contractor.

SECTION XIII. NOTICES

Whenever by the terms of this Agreement notice, demand, or other communication shall or may be given either to the **MSA** or to the Contractor, the same shall be in writing and shall be sent by registered or certified mail, postage prepaid, return receipt requested, or shall be delivered by private express carrier.

If intended for the MSA, it shall be addressed to it at the **MASSACHUSETTS SHERIFFS' ASSOCIATION, 271 CAMBRIDGE STREET, SUITE NO. 202, CAMBRIDGE, MASSACHUSETTS, 02141**, or to such other address or addresses as may from time to time hereafter be designated by the Sheriff by like notice.

If intended for the Contractor, by notice addressed to it at **BI2 TECHNOLOGIES, LLC, 488 STATE ROAD, PLYMOUTH, MASSACHUSETTS, 02360** or to such other address or addresses as may from time to time hereafter be designated by the Contractor by like notice.

All such notices shall be effective when deposited in the United States mail or delivered to a private express carrier within the Continental United States, provided that the same are received or refused in the ordinary course at the address to which the same were sent. Any such notice, demand, or other communication from an attorney acting or purporting to act on behalf of a party shall be deemed to be notice from such party provided that such attorney is authorized to act on behalf of such party.

SECTION XIV. PARAGRAPH HEADINGS

The paragraph headings throughout this Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

SECTION XV. MISCELLANEOUS

The **MSA** and the Contractor hereby represent and warrant to each other that each has consulted an attorney concerning the provisions of the Agreement, that each was satisfied that, based on its consultations with said attorney, each was informed about the contents of the Agreement, that neither party is relying upon any warranties, representations or advice from, or promises or inducements of any nature by the other party or any of its representatives not specifically contained in this Agreement, that neither party is under any legal disability or impairment and that each has freely chosen to execute this Agreement.

SECTION XVI. POLITICAL ACTIVITY PROHIBITED

None of the services to be provided by the Contractor shall be used for any partisan political activity or to further the election or defeat of any candidate for public office.

SECTION XVII. AMENDMENT

No amendment to this Agreement shall be effective unless it is in writing, signed by authorized representatives of all parties.

SECTION XVIII. ENTIRE CONTRACT

This Agreement, including any attachments or documents incorporated by reference, contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior Agreements, representations, negotiations, and undertakings not set forth or incorporated herein.

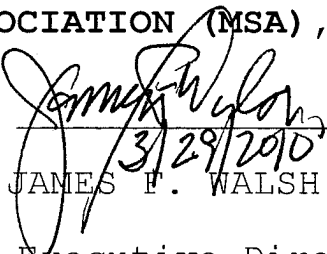
SECTION XIX. MULTIPLE COPIES

This Agreement is executed in several counterparts, each of which shall be deemed to be an original copy of this Agreement and shall have the force and effect as such.

WITNESS the execution hereof under seal in three (3) original copies, each of which shall be deemed an original for all purposes as of the day and year first written above.

MASSACHUSETTS SHERIFFS' ASSOCIATION (MSA) ,

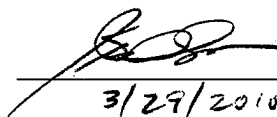
By: _____


3/29/2010
JAMES F. WALSH

Executive Director, MSA

BI2 TECHNOLOGIES, LLC

By: _____

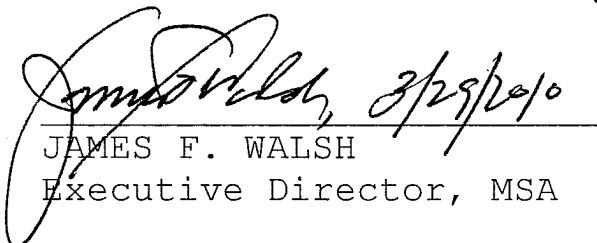

3/29/2010

SEAN G. MULLIN

President & CEO,
The Child Project, LLC

Attorney for Sheriff's
Department-As To Form

**Certification of the Availability of
Funds for this contract (M.G.L. c. 44, 31C)**


3/29/2010
JAMES F. WALSH
Executive Director, MSA

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