



TEXAS CIVIL COMMITMENT OFFICE

CONTRACT

This contract (Contract) is entered into by and between the Texas Civil Commitment Office (TCCO or Office), an agency of the State of Texas, and Behavioral Technology, Inc. (Contractor), (collectively, the Parties).

1. **Purpose of the Contract.** TCCO agrees to pay for services and Contractor agrees to provide the services as described in the Statement of Work.
2. **Total Amount of the Contract and Payment Method(s).** The parties agree that the fee to be paid for Contractor for the services as described in the Statement of Work is eight hundred ninety-five dollars (\$895.00).
3. **Funding Obligation.** This Contract is contingent upon the continued availability of funding through Governor's Grant #2852302. If grant funds become unavailable through lack of appropriations, budget cuts, amendment to the Appropriations Act, or any other disruptions of current appropriated funding for this Contract, the TCCO may restrict, reduce, or terminate funding under this Contract.
4. **Term of the Contract.** This Contract begins on September 1, 2018 and ends on August 31, 2019. TCCO is not responsible for payment under this Contract before both parties have signed the Contract or before the start date of the Contract, whichever is later.
5. **Authority.** TCCO enters into this Contract under the authority of Health and Safety Code, §841.007. If this is a professional services, Contract authority is also granted through Professional Services Procurement Act, Texas Government Code, §§2254.001-2254.005, Health and Safety Code, §12.0121, and 25 Texas Administrative Code, §1.181; and Contractor shall perform "professional services" within the meaning of that term as defined in the above. If this Contract is an interagency, contract authority is also granted through the Texas Government Code, Interagency Cooperation Act, Chapter 771 et seq. If this contract is an interlocal, Contract authority is also granted through the Texas Government Code, Interlocal Cooperation Act, Chapter 791 et seq.
6. **Renewal.** This contract may be renewed or extended at the sole discretion of TCCO based upon the availability of funds under Grant #2852302 or any similar such grant awarded to the TCCO.
7. **Documents Forming Contract.** The Contract consists of the following:
 - a. Core Contract (this document)
 - b. Exhibits, if applicable

Any changes made to the Contract, whether by edit or attachment, do not form part of the Contract unless expressly agreed to in writing by TCCO and Contractor and incorporated herein through written amendment.

This Contract may be modified within the Contract period by written amendment signed by both Parties.

8. **Statement of Work. Contractor shall:**
 - a. *Provide four (4) hours of consultation and training to TCCO staff regarding penile plethysmographs and the interpretation of penile plethysmograph reports. The consultation and training shall take place at Contractor's place of business with the availability for additional TCCO staff to attend and participate via videoconference at no additional cost.*
 - b. *No written report is required of Contractor.*
 - c. *Obey all municipal, county, state and federal laws.*

d. *Not accept, solicit, or give any gift, favor, or service that might reasonably tend to influence his or her duties or know that it is being offered with the intent to influence one's conduct.*

9. **Payee.** The Parties agree that the following payee is entitled to payment for services rendered by Contractor or goods received under this Contract as described in the Statement of Work, above:

Name: Behavioral Technology, Inc.
Address: 423 West 500 North
Salt Lake City, Utah 84103
Phone: 801-363-9017

Vendor ID:

10. **Payment Method.** Contractor shall be paid via a state warrant issued by or through the Texas Comptroller of Public Accounts.

11. **Billing Instructions.** Contractor shall submit one (1) original itemized invoice and a sign-in sheet listing training participants showing Purchase Order, if applicable, or Contract number on all copies. The state will incur no penalty for late payment if payment is made in thirty (30) or fewer days from receipt of goods or services and an uncontested invoice. Payment shall be made in accordance with the Texas Government Code, Chapter 2251 (Texas Prompt Payment Act). Contractor shall maintain all documentation that substantiates billing submissions and make the documentation available to TCCO upon request.

Invoices and receipts shall be submitted to the following address:

Texas Civil Commitment Office
4616 W. Howard Lane
Building 2, Suite 350
Austin, Texas 78728
Fax: (512) 341-4645

OR

Email: billing@tcco.texas.gov

12. **Budget.** The total amount of this Contract is eight hundred ninety-five dollars (\$895.00).

13. **Confidentiality.** Contractor shall have a system in effect to protect client or patient records and all other documents deemed confidential by federal or state law, rules, and regulations that are maintained in connection with the activities funded under this Contract. These laws, rules, and regulations include but are not limited to 7 CFR 246; 42 CFR Part 2; 45 CFR Parts 160 and 164 (Health Insurance Portability and Accountability Act [HIPAA]); Health and Safety Code, Chapters 12, 47, 81, 82, 85, 88, 92, 161, 181, 241, 245, 251, 534, 576, 577, 596, 611, and 773; Occupations Code, Chapters 56 and 59; and Health & Safety Code, Sec. 841.142 and 841.1462; and all applicable state rules. Contractor shall not disclose or transfer confidential client or patient information except in accordance with the Texas Medical Practice Act, Occupations Code, Chapter 159 and as allowed under HIPAA. Contractor shall cooperate with the TCCO to allow the TCCO to request, collect and receive protected health information (PHI) under this Contract, without the consent of the individual to whom the PHI relates.

14. **Termination.** This Contract may be terminated by mutual agreement of both Parties. Either Party may terminate this Contract by giving the other Party thirty (30) days written notice of its intent to terminate. Written notice may be sent by any method, which provides verification of receipt, and the thirty (30) days will be calculated from the date of receipt. This Contract may be terminated for cause by either Party for breach or failure to perform an essential requirement of the Contract.

Upon termination of all or part of this Contract, TCCO and the Contractor will be discharged from any further obligation created under the applicable terms of this Contract except for the equitable settlement of the respective accrued interests or obligations incurred prior to termination.

TCCO reserves the right to limit or cancel access under this Contract should TCCO determine that it has insufficient capacity in its computer system to maintain current levels of transactions by the Contractor and/or that continued access by the Contractor is detrimental to the overall efficiency and operation of TCCO's computer systems. Any such limitation or termination of services will be upon written notice to the Contractor by TCCO.

15. **Force Majeure.** Neither Party will be liable for any failure or delay in performing all or some of its obligations, as applicable, under this Contract if such failure or delay is due to any cause beyond the reasonable control of such Party, including, but not limited to, extraordinarily severe weather, strikes, natural disasters, fire, civil disturbance, epidemic, war, court order, or acts of God. The existence of any such cause of delay or failure will extend the period of performance in the exercise of reasonable diligence until after the cause of the delay or failure no longer exists and, if applicable, for any reasonable period of time thereafter required to resume performance. A Party, within a period of time reasonable under the circumstances, must inform the other by any reasonable method (phone, e-mail, etc.) and, as soon as practicable, must submit written notice with proof of receipt of the existence of a force majeure event or otherwise waive the right as a defense to non-performance.

16. **Interim Contracts.** The Parties agree that the Contract will automatically continue as an "Interim Contract" beyond the expiration date of the term of the Contract under the following circumstances: (1) on or shortly prior to the expiration date of the Contract, there is a state of disaster declared by the Governor that affects the ability or resources of the TCCO contract or program staff managing the Contract to complete in a timely manner the extension, renewal, or other standard contract process for the Contract; and (2) TCCO makes the determination in its sole discretion that an Interim Contract is appropriate under the circumstances. The TCCO shall notify Contractor promptly in writing if such a determination is made. The notice will specify whether the TCCO is extending the Contract for additional time for Contractor to perform or complete the previously contracted goods and services (with no new or additional funding) or is purchasing additional goods and services as described in the Contract for the term of the Interim Contract, or both. The notice will include billing instructions and detailed information on how the TCCO will fund the goods or services to be procured during the Interim Contract term. The Interim Contract will terminate thirty (30) days after the disaster declaration is terminated unless the Parties agree to a shorter period of time.

17. **General Provisions.**

- A. **Contractor Status.** Contractor certifies by the execution of this Contract that it is not ineligible for participation in federal assistance programs under Executive Order 12549, Debarment and Suspension. Contractor further certifies that it has not been debarred from the receipt of an agency contract by any action taken by the State of Texas. A false statement regarding Contractor's status will be treated as a material breach of contract and may be grounds for termination.
- B. **Compliance with Statutes and Rules.** Contractor shall comply with all applicable federal and state laws, rules, regulations, standards and guidelines in effect on the beginning date of this Contract unless amended, including but not limited to all child abuse reporting requirements in Chapter 261 of the Texas Family Code.
- C. **Breach of Contract Claim.** Any claims for breach of this Contract by Contractor that the Parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260, subchapter B, of the Government Code. To initiate the process, Contractor shall submit written notice, as required by Subchapter B, to the Office of General Counsel, Department of State Health Services, 1100 West 49th Street, Austin, TX 78756. Said notice shall also be given to all other representatives of TCCO and Contractor otherwise

entitled to notice under this contract. Compliance by Contractor with Subchapter B is a condition precedent to the filing of a contested case proceeding under Government Code, Chapter 2260, Subchapter C and department rules.

- D. Reporting.** Contractor shall submit reports, if required, in accordance with the reporting requirements established by the TCCO.
- E. Applicable Contracts Law and Venue for Disputes.** Regarding all issues related to contract formation, performance, interpretation, and any issues that may arise in any dispute between the Parties, the Contract shall be governed by, and construed in accordance with, the laws of the State of Texas. In the event of a dispute between the Parties, venue for any suit shall be Travis County, Texas.
- F. Assurances.** As required by Texas Government Code §2252.903, Contractor certifies by the execution of this Contract that it is not prohibited from entering into a contract because of indebtedness to the state, including but not limited to, tax delinquency, student loan delinquency, or child support delinquency. If the Contractor is indebted to the state or becomes indebted to the state during the terms of this Contract, Contractor agrees that any payments under the Contract will be applied directly toward eliminating the debt until it is paid in full.

As required by Texas Family Code, §231.006, a child support obligor who is more than thirty (30) days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25% is not eligible to receive payments from state funds under a contract to provide property, materials, or services or receive a state-funded grant or loan. Contractor agrees to comply with these provisions, certifies that it is not ineligible to receive the payments specified in this Contract, and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.

Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive this Contract under Texas Government Code § 2155.004 (concerning financial participation by a person who received compensation from TCCO related to this transaction) or Texas Government Code §§ 2155.006 or 2261.053 (concerning certain federal disaster-related contracts) and acknowledges that this Contract may be terminated and payment withheld if these certifications are inaccurate. Contractor further certifies that neither Contractor nor its principals is disqualified or ineligible for participation in a federal or state assistance program; neither Contractor nor its principals is debarred, suspended, or other

- G. Acceptance as Payment in Full.** Contractor shall accept reimbursement or payment from the TCCO as payment in full for services or goods provided to clients. Contractor agrees to not seek additional reimbursement or payment for services or goods from clients.
- H. Records Retention.** If licensed by a regulatory agency and/or Board, the Contractor shall retain records in accordance with the applicable Texas Administrative Code.
- I. Survival of Obligations.** The obligations of Contractor to retain records and maintain confidentiality of information shall survive this Contract.
- J. Access.** In addition to any right of access arising by operation of law, Contractor, and any of Contractor's affiliate or subsidiary organizations or subcontractors shall permit the TCCO or any of its duly authorized representatives, as well as duly authorized federal, state or local authorities, including the Office of the Inspector General at HHSC (OIG) and the State Auditor's Office (SAO), unrestricted access to and the right to examine any site where business is conducted or services are performed and all records (including client and patient records, if any), books, papers or documents related to the Contract.

- K. Gifts and Benefits Prohibited.** Contractor certifies that it has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, present or future employment, gift, loan, gratuity, special discount, trip, favor, or service to a TCCO official or employee in connection with this Contract.
- L. Program Site.** All Contractors shall ensure that the location where services are provided is in compliance with all applicable local, state and federal zoning, building, health, fire, and safety standards.
- M. Independent Contractor.** Contractor is an Independent Contractor. Contractor shall direct and be responsible for the performance of its employees, subcontractors, joint venture participants or agents. Contractor is not an agent or employee of the TCCO or the State of Texas for any purpose whatsoever.
- N. Licenses, Certifications, Permits, Registrations, and Approvals.** Contractor shall obtain and maintain all applicable licenses, certifications, permits, registrations and approvals to conduct its business and to perform the services under this Contract. Any revocation, surrender, expiration, non-renewal, inactivation or suspension of any such license, certification, permit, registrations or approval shall constitute grounds for termination of this Contract or other remedies the TCCO deems appropriate. Contractor shall ensure that all its employees, staff and volunteers maintain in active status all licenses, certifications, permits, registrations and approvals required to perform their duties under this Contract and shall prohibit any person who does not hold a current, active required license, certification, permit, registration or approval from performing services under this Contract.
- O. Immunity Not Waived.** THE PARTIES EXPRESSLY AGREE THAT NO PROVISION OF THIS CONTRACT IS IN ANY WAY INTENDED TO CONSTITUTE A WAIVER BY TCCO OR THE STATE OF TEXAS OF ANY IMMUNITIES FROM SUIT OR FROM LIABILITY THAT TCCO OR THE STATE OF TEXAS MAY HAVE BY OPERATION OF LAW.

18. **Performance Measure** TCCO shall monitor and audit Contractor's performance under this Contract. The TCCO shall perform inspections in a manner that will not unduly interfere with the Contractor's performance of services. Contractor shall furnish and shall require subcontractors to furnish, at no increase in price, all reasonable assistance for the safe and convenient performance of these duties.

19. **Performance Standard** TCCO shall assess payment or service adjustments for failure to maintain acceptable compliance with the following performance standard.

- a. Contractor shall provide four (4) hours of consultation and training to TCCO staff regarding penile plethysmographs and the interpretation of penile plethysmograph reports on a mutually agreeable date.
- b. Acceptable quality level: 100% compliance.
- c. Unacceptable quality level: Less than 100% compliance.
- d. In the event of unacceptable in which the Contractor does not provide consultation and training, the parties agree that Contractor shall not be paid.


20. **Entire Agreement.** The Parties acknowledge that this Contract is the entire agreement of the Parties and that there are no agreements or understandings, written or oral, between them with respect to the subject matter of this Contract, other than as set forth in this Contract.


By signing below, the Parties acknowledge that they have read the Contract and agree to its terms, and that the persons whose signatures appear below have the requisite authority to execute this Contract on behalf of the named party.

EXECUTED IN DUPLICATE ORIGINALS ON THE DATES INDICATED:

CONTRACTOR NAME:

TEXAS CIVIL COMMITMENT OFFICE

BY: 
Dr. Peter Byrne

BY: 
Marsha McLane, Executive Director

TITLE: Chief Executive Officer

DATE: 9/18/18

DATE: 9/25/18

LICENSE#: [REDACTED]
(if applicable)

PRINT OR TYPE NAME AND ADDRESS OF CONTRACTOR:

Peter M. Byrne, Ph.D.
Behavioral Technology, Inc.
423 West 500 North
Salt Lake City, UT 84103
Tel: 801-363-9017

FEDERAL TAX #: [REDACTED] **or CONTRACTOR I.D. #**
(Required) (Required)