

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT,  
IN AND FOR LEON COUNTY, FLORIDA**

Florida Department of Law  
Enforcement and Florida Department  
of State,

Petitioners,

v.

CMI, Inc., a Kentucky corporation,

Case No. 2008 CA 003619  
Judge Kevin Davey

Respondent.

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Amended Petition for Declaratory Judgment and Supplemental Relief

Petitioners, Florida Department of Law Enforcement ["FDLE"] and the Florida Department of State ["FDOS"] sue Respondent, CMI, Inc., a Kentucky corporation ["CMI"], and allege:

1. This is an action to determine the parties' respective rights, obligations, and entitlements concerning a computerized breath alcohol testing instrument, the "Intoxilyzer 8000", and ownership of underlying source code that is compiled by the manufacturer of the Intoxilyzer 8000 to create the software which operates the Intoxilyzer 8000. The Intoxilyzer 8000 is a computerized breath alcohol testing instrument used by Florida's and other states' law enforcement personnel to conduct breath alcohol tests.

**Jurisdiction and Venue**

2. This Court has jurisdiction pursuant to Art. 5, section 20 (c)(3) of the Florida Constitution, and Fla.Stat. § 86.011, et seq.

3. Venue is in Leon County, Florida, because the headquarters of FDLE and FDOS are in Leon County and because the contracts and documents memorializing FDLE's purchase from CMI authorize venue in Leon County.

### Standing and the Parties

4. FDLE is an agency of the State of Florida and has standing to bring this action for declaratory judgment because:

(a) FDLE purchased Intoxilyzer 8000 instruments from CMI for distribution to, and use by, Florida local law enforcement agencies;

(b) FDLE has received numerous subpoenas directing the attendance of FDLE's employees at criminal "driving while intoxicated" hearings and trials to testify about the contract based ownership issue presented in this action;

(c) FDLE operations have been and will continue to be substantially disrupted by such subpoenas directing the attendance of its employees at such hearings and trials;

(d) FDLE wishes to efficiently resolve this contract based ownership issue so as to obtain the benefits it intended by its purchase of Intoxilyzer 8000 instruments from CMI.

5. FDOS is an agency of the State of Florida and has standing to bring this action for declaratory judgment because:

(a) pursuant to Fla. Stat. § 286.021, FDOS holds the legal title and every right and interest to any patent, trademark, or copyright owned or held by the state or any state agency, and

(b) pursuant to Fla. Stat. 286.031 FDOS is authorized, inter alia, to enforce the rights of the state and to do any and all acts necessary for the proper execution of powers and duties conferred on the FDOS by Fla. Stat., §§ 286.021 and 286.031.

6. CMI is a corporation registered to do business in the State of Florida. CMI was a registered vendor on MyFloridaMarketPlace at the time of FDLE's purchase of the Intoxilyzers, and CMI is the manufacturer of the Intoxilyzer 8000.

7. Contracts, purchase orders and other documentation of FDLE's purchase of the Intoxilyzers from CMI through MyFloridaMarketPlace are attached as Composite Exhibit "A."

8. The Intoxilyzer 8000 contains software that controls its operation and function. CMI claims a copyright to the Intoxilyzer 8000 software and claims the software is a confidential and proprietary trade secret. CMI also owns and has a copyright to the Intoxilyzer 8000 instrument's underlying source code. CMI does not provide the source code to vendees.

9. CMI has stated its corporate policy concerning the intellectual property associated with the Intoxilyzer 8000. That policy does not authorize FDLE or any other purchaser to disclose the source code. (Exhibit "B"). Similarly, CMI contends that its source code and other confidential and proprietary information constitute trade secrets that are exempt from disclosure under Chapter 119, Florida Statutes.

### **Substantive Allegations**

10. FDLE has expended significant financial and human resources to respond to dozens of subpoenas requiring its Leon County based employees to appear at hearings and trials in other counties for testimony in criminal courts pursuant to subpoena. Inquiries of FDLE employees at those hearings and trial question ownership of source codes in the Intoxilyzer 8000. Having to respond to these subpoenas and requests for information about the source codes in the Intoxilyzer 8000 has burdened and will burden FDLE's resources to the immediate detriment of its statutory responsibilities.

11. In State of Florida v. Kathleen Glynn, et al, Case Number 08 –MM-4465, a Seminole County Court recently incorrectly concluded on January 21, 2009, - in a case in which neither the FDLE nor the FDOS were parties - that the State of Florida owns the source codes for the Intoxilyzer 8000. That order is on appeal to the Circuit Court. The County Court order included sanctions against "The State of Florida". The findings were based on dated misstatements by one FDLE employee, since corrected, that contract documents for the purchases of the Intoxilyzer 8000 did not exist and on the Court's interpretation of the MyFloridaMarketPlace website.

12. By this request for declaratory judgment FDLE and FDOS seek to ensure their respective actions comport with FDLE's contractual obligations to CMI and with FDLE's and FDOS' obligations under Florida law. Petitioners also seek to ensure that answers to questions about the Intoxilyzer 8000 source code ownership are accurately, promptly and efficiently accomplished with minimal disruption of FDLE's, the Florida Courts, and other publicly funded resources.

13. FDLE does not possess, and believes it is not authorized to possess or to disclose, the source code or other confidential and proprietary information associated with the Intoxilyzer 8000.

14. Because of the requests for the information received by FDLE, and due to the claims of FDLE's and the State of Florida's alleged ownership of, or rights to disclose, information about the Intoxilyzer 8000, a legal, adversarial controversy exists between the parties to this action.

15. FDLE and FDOS are in doubt as to their rights and obligations with respect to the ownership and use of source code and other information that is alleged by CMI to be copyright protected as well as confidential and proprietary trade secrets. Accordingly, FDLE and FDOS seek a determination of this Court as to (a) the ownership rights to the source code and other confidential and proprietary information; and (b) FDLE's obligation, if any, to disclose the source code and other confidential and proprietary information.

16. FDLE and FDOS are legally entitled to the declarations that they seek. The public interest will be served, and public resources will be conserved, by a declaration of FDLE's, CMI's, and FDOS' respective rights and obligations regarding ownership of the source codes, including obligations to disclose said information to interested parties, including persons arrested based on the use of the Intoxilyzer 8000 and law enforcement agencies who presently are or will be prosecuting those cases.

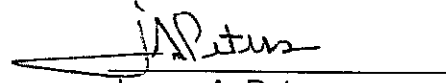
**Prayer for Relief**

Wherefore, Petitioners pray that this Court:

- (A) Take jurisdiction over this case and these parties;
- (B) Grant a declaratory judgment determining the relative obligations and entitlements between these parties as to ownership of source code and other copyright protected as well as confidential and proprietary tradesecret information pertaining to the Intoxilyzer 8000 instruments;
- (C) Grant supplemental and other declaratory relief sufficient to ensure that the parties' actions comport with the contractual relation between FDLE and CMI and with their rights, duties and obligations pursuant to applicable law.

Respectfully submitted,

Bill McCollum  
ATTORNEY GENERAL

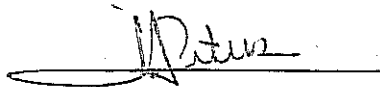


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Tallahassee, FL 32399-1050  
(850) 414-3300

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Assistant General Counsel  
Florida Department of  
Law Enforcement  
Florida Bar No. 44423  
P.O. Box 1489  
Tallahassee, FL 32302  
(850) 617-1276

**CERTIFICATE OF SERVICE**

I CERTIFY that a true and correct copy of the foregoing has been furnished to Glenn Burhans, Greenberg Traurig, P.A., 101 East College Avenue, Tallahassee, FL 32301 by hand delivery this 2<sup>nd</sup> day of February, 2009.

A handwritten signature in black ink, appearing to read "D. Jones", is written over a horizontal line.

Attorney

Cc: Robert N. Harrison and Stuart Hyman

fnalfapet.doc

Composite Exhibit A



**Order No. DO113360**

Issued on Fri, 17 Jun, 2005  
 Created on Fri, 17 Jun, 2005 by Arlita System

Supplier:  
 CMI, Inc.  
 318 East Ninth Street  
 Owensboro, KY 42303  
 Phone: 270-825-8648  
 Fax: 270-825-8878  
 Contact: Josie Hagan

Bill To:  
 Florida Department of Law Enforcement  
 Finance & Accounting  
 PO Box 1429  
 Tallahassee, FL 32302  
 United States

Entity Description: Department of Law Enforcement  
 Organization Code: 71820101200  
 Object Code: 710000-612032  
 Expansion Option: 28  
 Exemption Status: No  
 Exemption Reason: ?

Vendor Number: 1

Recycled Content: N  
 Requester: Florence DeWiest  
 Distributor: N  
 State Contract ID:  
 PR No.: PR377705  
 Requester Phone:  
 Master Agreement ID:  
 MyGreenFlorida Content:  
 Method of Procurement: UND - Under Bid Threshold  
 Purchase Order Type: G (Single Source)  
 Shipping Method: Best Way  
 FOB Code: FOB  
 FOB Code Description: Freight charges are paid by seller and added to invoice. Buyer ultimately bears the cost of the freight.  
 Encumber Pymt: No  
 PO Start Date:  
 PO End Date:  
 Fiscal Year Indicator: 2005  
 PU#: 7100  
 Eln Code: 710000-00  
 Additional Item Intec:  
 Terms and Conditions: [http://marketplace.myflorida.com/vendor/po\\_jcu.pdf](http://marketplace.myflorida.com/vendor/po_jcu.pdf)  
 P Card Order: No

Item	Description	Part Number	Unit	Qty	Need By	Unit Price	Extended Amount
1	INTOXILYZER 8000, WITH BADGE READER, MODEM, ...		each	12	None	\$5,875.000000USD	\$71,700.000000USD
	INTOXILYZER 8000, WITH BADGE READER, MODEM, AND INTERNAL PRINTER.						
	EACH INTOXILYZER 8000 PACKAGE INCLUDES THE FOLLOWING: - 1 EACH, GAS DELIVERY SYSTEM - 1 BOX MOUTHPIECES (100/BOX) - 3 ROLLS THERMAL PRINTER PAPER						



1 EACH, 105 L GAS CYLINDER, J&B BRAC  
 FLORIDA SPECIFIC SOFTWARE  
 TWO YEAR WARRANTY

ATTENTIO  
 N VENDOR/BUILLIN  
 HUI  
 THERE ARE 8 DIFFERENT SHIPPING LOCATIONS

THIS ORDER MUST BE DELIVERED, INSTALLED, AND INVOICED BEFORE JUNE 24, 2008. FAILURE TO DO THIS COULD RESULT IN NON-PAYMENT.

Ship To:  
 FDLE Jacksonville Regional Operations Center  
 Bldg E  
 821 N Davis St  
 Jacksonville, FL 32209  
 United States

Deliver To:  
 MATTHEW E. MALHOTR/PHONE: 904-380-7162

Ship To Code: U1A0r5n2q

Item	Description	Part Number	Unit	Qty	Need By	Unit Price	Extended Amount
2	INTOXLYZER 8000, WITH BADGE READER, MODEM, ... INTOXLYZER 8000, WITH BADGE READER, MODEM, AND INTERNAL PRINTER. EACH INTOXLYZER 8000 PACKAGE INCLUDES THE FOLLOWING: 1 EACH, GAS DELIVERY SYSTEM 1 BOX MOUTHPIECES (100/BOX) 3 ROLLS THERMAL PRINTER PAPER 1 EACH, 105 L GAS CYLINDER, J&B BRAC FLORIDA SPECIFIC SOFTWARE TWO YEAR WARRANTY		each	12	None	\$5,575.00000USD	\$71,700.00000USD

Ship To:  
 FDLE Pensacola Regional Operations Center  
 1301 N. Fletcher  
 Pensacola, FL 32501  
 United States

Deliver To:  
 STEPHEN M. NEFF/PHONE: 850-555-2100

Ship To Code: U2A0r5n2q

Item	Description	Part Number	Unit	Qty	Need By	Unit Price	Extended Amount
3	INTOXLYZER 8000, WITH BADGE READER, MODEM, ... INTOXLYZER 8000, WITH BADGE READER, MODEM, AND INTERNAL PRINTER. EACH INTOXLYZER 8000 PACKAGE INCLUDES THE FOLLOWING: 1 EACH, GAS DELIVERY SYSTEM 1 BOX MOUTHPIECES (100/BOX) 3 ROLLS THERMAL PRINTER PAPER 1 EACH, 105 L GAS CYLINDER, J&B BRAC FLORIDA SPECIFIC SOFTWARE TWO YEAR WARRANTY		each	14	None	\$5,575.00000USD	\$78,050.00000USD

Ship To:  
 FDLE Melbourne Field Office  
 #401  
 700 S Babcock St  
 Melbourne, FL 32901  
 United States

Deliver To:  
 DWITE H. HACKNEY/PHONE: 321-984-4930

Ship To Code: U0A0r5n2q

Item	Description	Part Number	Unit	Qty	Need By	Unit Price	Extended Amount
4	INTOXILYZER 3000, WITH BADGE READER, MODEM, ... INTOXILYZER 3000, WITH BADGE READER, MODEM, AND INTERNAL PRINTER.  EACH INTOXILYZER 3000 PACKAGE INCLUDES THE FOLLOWING: 1 EACH, GAS DELIVERY SYSTEM 1 BOX MOUTHPIECES (100/BOX) 3 ROLLS THERMAL PRINTER PAPER 1 EACH, 105 L GAS CYLINDER, .030 BRAC FLORIDA SPECIFIC SOFTWARE TWO YEAR WARRANTY		each	8	None	\$2,973.00000160	\$24,584.00000080

Ship To:  
FDLE Melbourne Field Office  
#401  
700 S Babcock St  
Melbourne, FL 32901  
United States

Deliver To:  
ROGER G. EKPPER/PHONE: 321/954-4330

Ship To Code: UOAGr18.g

Item	Description	Part Number	Unit	Qty	Need By	Unit Price	Extended Amount
8	INTOXILYZER 8000, WITH BADGE READER, MODEM, ... INTOXILYZER 8000, WITH BADGE READER, MODEM, AND INTERNAL PRINTER.  EACH INTOXILYZER 8000 PACKAGE INCLUDES THE FOLLOWING: 1 EACH, GAS DELIVERY SYSTEM 1 BOX MOUTHPIECES (100/BOX) 3 ROLLS THERMAL PRINTER PAPER 1 EACH, 105 L GAS CYLINDER, .030 BRAC FLORIDA SPECIFIC SOFTWARE TWO YEAR WARRANTY		each	8	None	\$8,973.00000000	\$71,784.00000000

Ship To:  
FDLE Tampa Regional Crime Lab  
4211-A Lois Ave  
Tampa, FL 33614  
United States

Deliver To:  
DONALD P. SUERETH/PHONE: 813/778-7232

Ship To Code: UOAGr21.g

Item	Description	Part Number	Unit	Qty	Need By	Unit Price	Extended Amount
8	INTOXILYZER 1000, WITH BADGE READER, MODEM, ... INTOXILYZER 1000, WITH BADGE READER, MODEM, AND INTERNAL PRINTER.  EACH INTOXILYZER 1000 PACKAGE INCLUDES THE FOLLOWING: 1 EACH, GAS DELIVERY SYSTEM 1 BOX MOUTHPIECES (100/BOX) 3 ROLLS THERMAL PRINTER PAPER 1 EACH, 105 L GAS CYLINDER, .030 BRAC FLORIDA SPECIFIC SOFTWARE TWO YEAR WARRANTY		each	8	None	\$2,973.00000080	\$23,784.00000080

Ship To:  
FDLE Ft. Myers Regional Operations Center  
STE 1  
4700 Terminal Dr  
Ft. Myers, FL 33907  
United States

Deliver To:  
GEORGE L. VENTURA/PHONE: 239/278-7000 EXT. 170

Order DO113360

Page 4 of 4

Ship To Order U0AOrder.g

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Total	\$348,550.00000000
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PURCHASE ORDER  
CONDITIONS AND INSTRUCTIONS

1. This purchase order was issued via MyFloridaMarketPlace and is thereby subject to a Transaction Fee of 1%, unless exempted by rule. Each line item, or portion thereof, is subject to the 1% Transaction Fee unless a specific exemption code accompanies the line item or portion thereof. For reference, a table and description all exemption codes follows these terms and conditions.
2. Pursuant to section 287.058(1), F.S., the provisions of section 287.058(1)(a)-(f), F.S. are hereby incorporated by reference, to the extent applicable. Pursuant to section 287.0582, F.S., if this purchase order binds the State or an executive agency for the purchase of services or tangible personal property for a period in excess of one (1) fiscal year, the State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature. Travel expenses are not reimbursable unless specifically authorized in writing, and shall be reimbursed only in accordance with section 112.061, F.S.
3. This purchase order may be unilaterally cancelled by the customer for vendor's refusal to allow public access to all documents, papers, letters or other material, whether made or received in conjunction with this agreement which are subject to the public records act, Chapter 119, *Florida Statutes*.
4. Items may be tested for compliance with specifications. Items delivered not conforming to specifications may be rejected and returned at vendor's expense. Any increase in cost may be charged against the vendor.
5. Items received in excess of quantities specified may, at purchaser's option, be returned at the vendor's expense. Substitutions are not permitted. Section 215.422, F.S., provides that agencies have 5 working days to inspect and approve goods and services, unless bid specifications or the purchase order specifies otherwise.
6. In accordance with Section 287.133(2)(a) and 287.134(2)(a), F.S., an entity or affiliate who has been on the convicted vendor list or the discriminatory vendor list, respectively, may not submit a bid on a contract to provide goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not award or perform work as a contractor, supplier, sub-contractor, or consultant under contract with any public entity; and may not transact business with any public entity.
7. The vendor shall comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of federal, State, and local agencies having jurisdiction and authority. By way of non-exhaustive example, the vendor shall comply with section 247A(e) of the Immigration and Nationalization Act, the Americans with Disabilities Act, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran's status. Violation of such laws shall be grounds for termination or cancellation of this purchase order.
8. Pursuant to section 216.347, F.S., the vendor may not expend any State funds for the purpose of lobbying the Legislature, the judicial branch, or a state agency. In addition, the Contractor shall not, in connection with this or any other agreement with the State, directly or indirectly (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any State officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (2) offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any State officer or employee. For purposes of clause (2), "gratuity" means any payment of more than

nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. Upon request of the Inspector General or any other authorized State official, the vendor shall provide any type of information the Inspector General deems relevant to the vendor's integrity or responsibility. Such information may include, but shall not be limited to, the vendor's business or financial records, documents, or files of any type or form that refer to or relate to the purchase order. The vendor shall retain such records for the longer of (1) three years after the expiration of the purchase order or (2) the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dliis.dos.state.fl.us/barm/qenschedules/qensched.htm>). The vendor agrees to reimburse the State for the reasonable costs of investigation incurred by the Inspector General or other authorized State official for investigations of the vendor's compliance with the terms of this or any other agreement between the vendor and the State which results in the suspension or debarment of the vendor. Such costs shall include, but shall not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The vendor shall not be responsible for any costs of investigations that do not result in the vendor's suspension or debarment.

9. The purchaser assumes no liability for merchandise shipped to other than the specified destination.
10. The terms of this purchase order may not be modified. Any attempt to modify a purchase order for goods or services shall not be accepted as the basis for additional compensation.
11. Interest penalties for late payment are available subject to the provisions of section 215.422, F.S. A Vendor Ombudsman, whose duties include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency may be contacted at 850-488-2924 or by calling the State Comptroller's Hotline, 1-800-848-3792.
12. The following provisions shall apply to all purchase orders UNLESS OTHERWISE INDICATED IN A SEPARATE APPLICABLE DOCUMENT agreed to by the purchaser and the vendor:
  - A. All purchases are F.O.B. Destination, transportation charges prepaid.
  - B. Each shipment must be shipped to the address indicated on the face of this purchase order and marked to the attention of the individual identified, if any. Each shipment must be labeled plainly with the purchase order number and must show the gross, tare, and net weight. A complete packing list must accompany each shipment. This paragraph shall also apply to any third party who ships items against this purchase order on behalf of the vendor.
  - C. No extra charges shall be applied for boxing, crating, packing, or insurance.
  - D. The following delivery schedule shall apply: 8:00 AM – 4:00 PM, Monday through Friday, excluding legal holidays.
  - E. If delivery to the specified destination cannot be made on or before the specified date, notify the purchaser immediately using the contact information provided in the MyFloridaMarketPlace system.
13. By accepting this electronic purchase order, the vendor agrees to be bound by these conditions and instructions.

AI	All items must be completely assembled and/or installed by the vendor before acceptance by the state.
AP	<p>This purchase order is payable annually in advance, upon receipt of an approved invoice.</p> <p>If this purchase order is cancelled, pursuant to the terms of the contract, or in accordance with Florida statutes or administrative rules, the contractor shall reimburse to the state all sums received for commodities and or services not rendered after the effective date of cancellation and/or as otherwise provided by the terms of the contract, administrative rule, or law.</p> <p>This order is subject to section 559.909, Florida statutes (copy attached). Do not exceed your written estimate by more than \$10.00 or 10%, whichever is greater, but not to exceed \$50.00 without prior written approval from the purchase order contract manager.</p>
AV	Signature by agency personnel for deliveries does not confirm either a complete or accurate shipment. Incomplete &/or incorrect shipments not complying with the requirements of this purchase order must be re-delivered at the vendor's expense.
BR	This is a blanket purchase order, do not ship except upon receipt of a "release against blanket purchase order" form. Deliver within 30 days of receipt of release.
CB	Jury trial waiver/third party benefits: as consideration of this contract, the parties hereby waive trial by jury in any action or proceeding brought by any party against any other party pertaining to any matter whatsoever arising out of or in any way connected with this contract, and no third party benefits are created or contemplated by the parties.
CN	This contract may be cancelled by either party with thirty (30) days written notice to the other party. Contract is subject to immediate cancellation if either product or service do not meet the agency's performance standards.
CR	Camera ready copy, artwork, separations, negatives, etc. Are the property of the state. Payment for this order will not be made until all such materials have been returned in useable condition.
CY	<p>Copyrights and right to data</p> <p>Where activities supported by the contract produce original writing, sound recordings, pictorial reproductions, drawings or other graphic representation and works of any similar nature, the department has the right to use, duplicate and disclose such materials in whole or in part, in any manner, for any purpose whatsoever and to have others acting on behalf of the department to do so. If the materials so developed are subject to copyright, trademark, or patent, legal title and every right, interest, claim or demand of any kind in and to any patent, trademark or copyright, or application for the same, will vest in the state of Florida, department of state for the exclusive use and benefit of the state. Pursuant to section 286.021, Florida statutes, no person, firm or corporation, including parties to this contract, shall be entitled to use the copyright, patent, or trademark without the prior written consent of the department of state.</p> <p>The department shall have unlimited rights to use, disclose or duplicate, for any purpose whatsoever, all information and data developed, derived, documented, or furnished by the contractor under this contract. All computer programs and other documentation produced as part of the contract shall become the exclusive property of the state of Florida, department of state and may not be copied or removed by any employee of the contractor</p>

	without express written permission of the department.
DM	This agreement is entered into pursuant to 409.25656 & 409.25657 Florida statutes (1997) for the purpose of developing & operating a data match system. The financial institution shall participate in the automated exchange of data whereby the financial institution will provide, on a quarterly basis, identifying information for each child support obligor who maintains an account at the financial institution & who owes past due child support. All information shall be kept confidential & shall be used solely for the purpose specified in the above referenced statute.
EC	It is the vendor's responsibility to pick up empty cylinders within 24 hours after notification by the user. When rental shown expires, vendor must pick up all cylinders delivered under this order. No rent will be paid for time not covered by this order.
EF	Services and/or repairs and/or commodities not to exceed purchase order amount without prior approval by the purchasing agent and/or a formal change order
FB	Note: this order is issued in compliance with section 3a-40.103, Florida administrative code, which in part prohibits the expenditure of state funds for refreshments unless expressly provided by law.
FF	This purchase involves federal funds. In the event of discontinuance of such funding, the state hereby reserves the right to terminate this contract without advance notice, subject to the effective date of the discontinuance of funding.
F	Freight charges must have copy of itemized freight bill along with invoice if over \$25.00 with the exception of Federal Express, UPS, USPS, Airborne.
HG	This order covers moving expenses of household goods only. The following are not allowable as a state expense: <ul style="list-style-type: none"> <li>• Net weight in excess of 15,000 pounds</li> <li>• Storage and/or unpacking of household goods</li> <li>• Insurance beyond the normal liability of the common carrier</li> <li>• Cleaning of any residence</li> </ul> Above services, if requested, are to be paid by the individual owner.
IB	Indemnification clause: the contractor shall be liable, and agrees to be liable for, and shall indemnify, defend and hold the department harmless from all claims, suit, judgements or damages, including court costs and attorney's fees arising out of intentional acts, negligence or omissions by the vendor in the course of the operations of this contract.
IC	The contractor shall not commence any work in connection with this contract until all of the appropriate insurance coverages have been obtained to adequately protect the purchaser from any and all liability and property damage hazards which may result in the performance of this contract. Furthermore, all insurance shall be with insurers qualified and duly licensed to transact business in the state of Florida. The purchaser reserves the right to require the contractor to furnish the purchaser an insurance certificate which will provide evidence that all of the appropriate coverages are in full force and effect.
IP	Vendor shall submit itemized invoice indicating part number, description, labor, and must show the agency's property number of equipment repaired.
LS	All materials/furnishings shall meet the minimum fire safety requirements of the "life safety code" and have been tested in accordance with standard methods of the national fire

	protection manual.
MA	Purchased in accordance with f.s. 110.1245, for the meritorious service awards program.
MD	Chapter 502: all cottage cheese, cream and milk to be cooled at the plant and in transit. To arrive at destination with a temperature not higher than 45 degrees f. In full compliance with chapter 502 - state of Florida milk and milk products law.
NP	Non-performance: time is of the essence on this order. The state may cancel all or any portion of this order if delivery or performance is not completed within the specified time.
RE	<p>It is expressly understood and agreed that any articles that are the subject of, or required to carry out, this purchase order/contract shall be purchased from a non-profit agency for the blind or for the severely handicapped that is qualified pursuant to chapter 413, Florida statutes, in the same manner and under the same procedures set forth in section 4-13.036(1) and (2), Florida statutes; and for the purposes of this purchase order/contract the person, firm or other business entity carrying out the provisions of this purchase order/contract shall be deemed to be substituted for the state agency insofar as dealing with such qualified nonprofit agency are concerned. The "nonprofit agency" identified in respect of Florida which may be contacted at:</p> <p style="text-align: center;">             Respect of Florida              2475 Apalachee Pkwy Ste 205              Tallahassee FL 32301-4946              (850) 487-1471              Website: <a href="http://www.respectofflorida.org">www.respectofflorida.org</a> </p>
SB	Whenever necessitated by legitimate concern for reasonable security precautions as determined by the agency & without regard to the identity of any individual, the agency will require the contracting party(ies) and/or employees of the contracting party(ies) to submit to, & successfully pass, an appropriate security background investigation prior to being allowed access to any of the agency's facilities to perform those services as set forth in this contract and/or purchase order.
TM	Chapter 442, Florida statutes, requires a material safety data sheet to accompany each container of toxic material. Delivery will not be accepted without the required material safety data sheet.
TO	Trial order: the goods ordered are for test or trial purposes. The state may either keep and pay for them or return them with no obligation or charge to the state. The state shall be the sole judge of the results of this trial.
VA	<p>Delivery of a vehicle does not constitute acceptance for the purpose of payment. Final acceptance and authorization of payment shall be given only after a thorough inspection indicates that vehicle meets contract specifications and the requirements listed below (documents 1-11). Should the delivered vehicle(s) differ in any respect from specifications, payment will be withheld until such time as the contractor completes necessary corrective action. Units shall be delivered with each of the following documents completed/included: for the purpose of payment. Final acceptance and</p> <ol style="list-style-type: none"> <li>1. Copy of the "certification of compliance with vehicle specifications and purchase order" form (see enclosed form).</li> <li>2. Copy of the "manufacturer's invoice", or "window sticker" (prices may be deleted).</li> <li>3. Copy of the "pre-delivery service report".</li> <li>4. Documentation on the "standard vehicle warranty" and "extended vehicle warranty" (if applicable).</li> <li>5. Owner's manual.</li> </ol>



	6. DHSMV 82040, "application for certificate of title and/or vehicle registration". 7. A properly completed dr-41a, "certificate of motor vehicle sales tax exemption". 8. Temporary tag. 9. Copy of the "rustproofing certificate/warranty" (if applicable). 10. Copy of the "purchaser's purchase order".  Copy of the applicable "vehicle specification".
VV	Notice to vehicle vendor: the vehicle(s) requested are intended for law enforcement use. We will be installing motorola maratrac low band police radios, operating on 45.00, 44.66, and 42.92 mhz. The radios are rated at 110 watts. Per the provisions of the state contract, please provide noise suppression. We need to have shielding for the computer and fuel pumps, or a change to the frequencies on these devices as necessary. Please provide a toll free number to resolve any technical problems related to radio communications notice to vehicle vendor: the vehicle(s) requested are intended for law enforcement use. We will be installing motorola maratrac low band police radios, operating on 45.00, 44.66, and 42.92 mhz. The radios are rated at 110 watts. Per the provisions of the state contract, please provide noise suppression. We need to have shielding for the computer and fuel pumps, or a change to the frequencies on these devices as necessary. Please provide a toll free number to resolve any technical problems related to radio communications after delivery of the vehicle(s).

Exemption Code Table and Description

1A	PROCUREMENT UNDER SECTION 337.11 FLORIDA STATUTES.
1B	PROCUREMENT UNDER SECTION 287.055 FLORIDA STATUTES.
1C	PROCUREMENT UNDER CHAPTER 255 FLORIDA STATUTES.
1D	TRANSACTION WITH A NON-PROFIT ENTITY.
1E	TRANSACTION WITH ANOTHER GOVERNMENTAL AGENCY.
1F	TRANSACTION WITH REQUIRED SOLE PROVIDER OR PRICE PAID AND PAYEE ESTABLISHED BY FEDERAL OR PRIVATE GRANT.
1G	PAYMENT TO UNREGISTERED VENDOR UNDER RULE 60A-1.030(3).
1H	PAYMENT TO VENDOR IN EXCHANGE FOR PROVIDING HEALTH CARE SERVICES AT OR BELOW MEDICAID RATES.
1I	DISBURSEMENT TO RECIPIENT OR SUB-RECIPIENT; PAYMENT TO SATISFY MAINTENANCE OF EFFORTS REQUIREMENT; OR PAYMENT TO MATCH FEDERAL AWARD.
1X	TRANSACTION PRE-DATES EFFECTIVE DATE OF RULE 60A-1.031.
1R	VENDOR RELUCTANT TO REGISTER.
2	TRANSACTION IS CRITICAL TO THE AGENCY'S MISSION OR NECESSARY FOR PUBLIC HEALTH SAFETY AND WELFARE, AND IMPOSITION OF FEE WOULD PREVENT THE CONSUMMATION OF THE TRANSACTION.
3	EMERGENCY TRANSACTION PER RULE 60A-1.032(3).

Intoxilyzer  
8000  
Software  
LDB

CMI, Inc.

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2. Indemnify and hold CMI harmless from all consequential claims and damages

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The initial maintenance term of this agreement is six (6) months from acceptance of this agreement, a subsequent renewed maintenance term must commence without a break from expiration of a previous maintenance term, and expires six (6) months later. Maintenance will be provided throughout the life of this agreement providing that Licensee has paid the required fees for maintenance.

## 10. UPGRADES TO LICENSED SOFTWARE

Revisions classified as Upgrades are made available at separate published fees.

## 11. APPLICATIONS SUPPORT

a) CMI will make telephone assistance available, on weekdays between 9:00a.m. and 4:00 p.m. (CST), to provide assistance to Licensee with issues associated with the Original Software.

b) Licensee may, with CMI approval, send documentation of a problem to CMI, who will use reasonable efforts to provide a solution within five (5) business days after receipt. If appropriate, CMI will use reasonable efforts to incorporate the solution in the next Revision of the Original Software. CMI does not represent or guarantee that all problems can be corrected.

c) CMI services performed beyond this Agreement scope are made at CMI's then prevailing rates covering materials, labor, and travel expenses.

d) Support is provided for the most current and previous Revision level of the Original Software, and not to Licensee's derivative or Composite Software.

## 12. FEES

a) Fees are exclusive of taxes, and Licensee will pay any international, federal, state, or local taxes (exclusive of taxes on CMI's net income) or other assessments.

b) Maintenance over the Initial Maintenance Term is included with purchase of the Licensed Software. The non-refundable Renewed Maintenance fee must be paid in advance of any Renewed Maintenance Term commencing.

## 13. TERMINATION

The License perpetually continues from acceptance of this Agreement, unless Licensee terminates or breaches this Agreement, upon which Licensee shall destroy all Licensed Software and Composite Software.

## 14. GENERAL

a) This Agreement is to be governed by the laws of the State of Kentucky or applicable U.S. federal law. If a provision of this

Agreement is found to be invalid by a court of competent jurisdiction, those remaining provisions shall remain in full force and effect.

b) This is the only Licensed Software Agreement between CMI and the Licensee, except where Licensee enters into a signed Agreement with CMI and which may take precedence over this Agreement.

Exhibit B

KING & SCHICKLI, PLLC

WARREN D. SCHICKLI  
MICHAEL S. HARGIS  
ANDREW G. CORNIG  
MICHAEL T. SANDERSCH

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RELATED CAUSES

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BRETT G. CORRELY

OF COUNSEL

J. RALPH KING  
JAMES D. LILES

January 25, 2007

Greg A. Tynan, Deputy Chief  
County Court Bureau  
Office of the State Attorney  
Ninth Judicial Circuit of Florida  
415 North Orange Avenue  
P.O. Box 1673  
Orlando, Florida 32802

VIA EMAIL  
ORIGINAL BY UPS

Re: Intellectual Property Rights  
CMI, Inc.

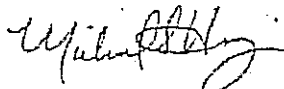
Dear Mr. Tynan:

Enclosed herewith is the Affidavit of Gary J. Braswell, Chairman of the Board of Directors of CMI, Inc., concerning production requests from various defense counsel for the source code for CMI, Inc.'s INTOXILYZER® 8000 breath alcohol testers.

I feel it is important to note that CMI, Inc. further owns certain copyrights under Title 17 of the United States Code in the software for the INTOXILYZER® 8000 breath alcohol testers, and considers the software proprietary information and a trade secret. Disclosure of the software would likewise cause irreparable harm to CMI, Inc.

Very truly yours,

KING & SCHICKLI, PLLC



Michael S. Hargis

MSH/edb  
Enclosure

cc: Alan W. Holbrook, Esq.  
Sullivan, Mountjoy, Stainback, & Miller, PSC


AFFIDAVIT

Comes Affiant, Gary J. Braswell, and being first duly sworn, states as follows:

1. My name is Gary J. Braswell. I am the Chairman of the Board of Directors of CMI, Inc. ("CMI") located at 316 East 9<sup>th</sup> Street, Owensboro, Kentucky. CMI is a Kentucky corporation.
2. CMI manufactures, among other goods, INTOXILYZER<sup>®</sup> 8000 breath alcohol testers. CMI has sold the INTOXILYZER<sup>®</sup> 8000 breath alcohol tester in several states to various federal, state and local agencies and instrumentalities.
3. CMI owns certain copyrights in the source code for the INTOXILYZER<sup>®</sup> 8000 breath alcohol testers afforded by Title 17 of the United States Code.
4. CMI considers the source code for the INTOXILYZER<sup>®</sup> 8000 breath alcohol testers proprietary information and a trade secret of CMI. Disclosure of the source code would cause irreparable harm to CMI.
5. CMI has not disclosed the source code for the INTOXILYZER<sup>®</sup> 8000 breath alcohol tester to the Florida Department for Law Enforcement or any other of CMI's customers, or individuals outside of CMI.
6. CMI has no written contractual agreement with Florida regarding the sale of INTOXILYZER<sup>®</sup> breath alcohol testers, but sells its breath alcohol testers based upon purchase orders and sales invoices to customers in Florida.
7. I swear that all of the above statements are true and correct to the best of my knowledge.

CMI, Inc.

By:

  
Gary J. Braswell  
Chairman of the Board



COMMONWEALTH OF KENTUCKY )  
COUNTY OF DAVIES )

SUBSCRIBED AND SWORN to before me by Gary J. Braswell, Chairman of the Board of CMI, Inc., and known by me to hold such office, for and on behalf of such corporation, on this 25<sup>th</sup> day of January, 2007.

*Richard H. Phelps*  
Notary Public, State at Large  
My Commission expires: 10-22-2007

PREPARED BY:

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Attorney for CMI, Inc.