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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

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Deputy Clerk

INTERNATIONAL BIOMETRIC )  
GROUP, LLC )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
CHOICEPOINT SERVICES INC., )  
 )  
Defendant. )  
\_\_\_\_\_ )

CIVIL ACTION FILE  
NO. 1:03-CV-0831

**-RLV**

**ANSWER AND COUNTERCLAIMS OF  
DEFENDANT CHOICEPOINT SERVICES INC.**

NOW COMES ChoicePoint Services Inc. ("ChoicePoint"), Defendant  
in the above-styled case, and hereby files its Answer and Counterclaims as  
follows:

**DEFENSES**

**First Defense**

Plaintiff's Complaint fails to state a claim against ChoicePoint upon  
which relief can be granted.

**Second Defense**

Plaintiff's claims are barred by the doctrine of waiver.

**Third Defense**

Plaintiff's claims are barred by the doctrine of estoppel.

**Fourth Defense**

Plaintiff's claims are barred, in whole or in part, because the contract purposes have been frustrated.

**Fifth Defense**

Insofar as the evidence adduced may authorize, ChoicePoint asserts the defense of unclean hands.

**Sixth Defense**

Insofar as the evidence adduced may authorize, ChoicePoint asserts the defense of in pari delicto.

**Seventh Defense**

Insofar as the evidence adduced may authorize, ChoicePoint asserts the defense of laches.

**Eighth Defense**

Plaintiff's claims are barred, in whole or in part, because of the failure of a condition precedent.

**Ninth Defense**

At all times, ChoicePoint has acted in good faith toward Plaintiff.

**Tenth Defense**

Plaintiff's claim for injunctive relief should be dismissed because Plaintiff cannot demonstrate that it has suffered irreparable harm.

**Eleventh Defense**

Plaintiff's claim for injunctive relief should be dismissed because Plaintiff cannot demonstrate that it cannot obtain an adequate remedy at law.

**Twelfth Defense**

Plaintiff's claim for injunctive relief should be dismissed because Plaintiff cannot demonstrate that the equities favor the issuance of injunctive relief.

**Thirteenth Defense**

ChoicePoint reserves the right to raise additional affirmative defenses as may be discovered during the course of these proceedings.

**Fourteenth Defense**

Except as specifically admitted below, ChoicePoint denies each and every allegation in the Complaint.

**ANSWER**

ChoicePoint answers each of the numbered paragraphs of the Complaint as follows:

### **Nature And Basis Of Action**

1. ChoicePoint denies the allegations contained in Paragraph 1 of the Complaint.

### **The Parties**

2. ChoicePoint admits the allegations contained in Paragraph 2 of the Complaint.

3. ChoicePoint admits the allegations contained in Paragraph 3 of the Complaint.

### **Jurisdiction And Venue**

4. ChoicePoint admits the allegations contained in Paragraph 4 of the Complaint.

### **Facts Giving Rise To This Action That Are Common To All Counts**

5. ChoicePoint admits that the parties entered into a Consulting Agreement (the "Agreement"), a true and correct copy of which is attached hereto as Exhibit A. To the extent that the Plaintiff attempts to characterize the contents of the Agreement, ChoicePoint specifically denies the characterization and states that the document speaks for itself. ChoicePoint denies the remaining allegations contained in Paragraph 5 of the Complaint.

6. To the extent that the Plaintiff attempts to characterize the contents of the Agreement, ChoicePoint specifically denies the characterization and states that the document speaks for itself. ChoicePoint denies the remaining allegations contained in Paragraph 6 of the Complaint.

7. To the extent that the Plaintiff attempts to characterize the contents of the Agreement, ChoicePoint specifically denies the characterization and states that the document speaks for itself. ChoicePoint denies the remaining allegations contained in Paragraph 7 of the Complaint.

8. To the extent that the Plaintiff attempts to characterize the contents of the Agreement, ChoicePoint specifically denies the characterization and states that the document speaks for itself. ChoicePoint denies the remaining allegations contained in Paragraph 8 of the Complaint.

9. To the extent that the Plaintiff attempts to characterize the contents of the Agreement, ChoicePoint specifically denies the characterization and states that the document speaks for itself. ChoicePoint denies the remaining allegations contained in Paragraph 9 of the Complaint.

10. To the extent that the Plaintiff attempts to characterize the contents of the Agreement, ChoicePoint specifically denies the characterization and states that the document speaks for itself. ChoicePoint

denies the remaining allegations contained in Paragraph 10 of the Complaint.

11. To the extent that the Plaintiff attempts to characterize the contents of the Agreement, ChoicePoint specifically denies the characterization and states that the document speaks for itself. ChoicePoint denies the remaining allegations contained in Paragraph 11 of the Complaint.

12. ChoicePoint admits that some of Plaintiff's employees received an award, along with all other members of the project, for assisting in a project led by ChoicePoint to conduct fingerprinting at airports. ChoicePoint denies the remaining allegations contained in Paragraph 12 of the Complaint.

### **Count I - Breach of Contract**

13. ChoicePoint incorporates by reference its Answers and Responses to Paragraphs 1 through 12 as if set forth fully here.

14. To the extent that the Plaintiff attempts to characterize the contents of the Agreement, ChoicePoint specifically denies the characterization and states that the document speaks for itself. ChoicePoint

denies the remaining allegations contained in Paragraph 14 of the Complaint.

15. ChoicePoint admits that Plaintiff presented ChoicePoint with five invoices totaling \$660,391.21. ChoicePoint denies the remaining allegations contained in Paragraph 15 of the Complaint.

16. ChoicePoint denies the allegations contained in Paragraph 16 of the Complaint.

**Count II - Breach of Confidentiality Agreement**

17. ChoicePoint incorporates by reference its Answers and Responses to Paragraphs 1 through 12 as if set forth fully here.

18. To the extent that the Plaintiff attempts to characterize the contents of the Agreement, ChoicePoint specifically denies the characterization and states that the document speaks for itself. ChoicePoint denies the remaining allegations contained in Paragraph 18 of the Complaint.

19. To the extent that the Plaintiff attempts to characterize the contents of the Agreement, ChoicePoint specifically denies the characterization and states that the document speaks for itself. ChoicePoint

denies the remaining allegations contained in Paragraph 19 of the Complaint.

20. ChoicePoint admits that some of the information provided to ChoicePoint by Plaintiff is Confidential Information as the term is defined in the Agreement. ChoicePoint denies the remaining allegations contained in Paragraph 20 of the Complaint.

21. ChoicePoint admits the allegations contained in Paragraph 21 of the Complaint.

22. ChoicePoint denies the allegations contained in Paragraph 22 of the Complaint.

23. ChoicePoint denies the allegations contained in Paragraph 23 of the Complaint.

24. ChoicePoint denies the allegations contained in Paragraph 24 of the Complaint.

**Count III - Violation of The Georgia Trade Secrets Act**

25. ChoicePoint incorporates by reference its Answers and Responses to Paragraphs 1 through 12 and 17 through 24 as if set forth fully here.



26. ChoicePoint admits that some of the information in the CBA technology, supplied by ChoicePoint, is not commonly known by or available to the public. ChoicePoint also admits that some of the information in the CBA technology, supplied by ChoicePoint, derives economic value from not being known by or available to the public. Furthermore, ChoicePoint admits that the information supplied by ChoicePoint constitutes trade secrets. ChoicePoint denies the remaining allegations contained in Paragraph 26 of the Complaint.

27. In response to the allegations contained in Paragraph 27 of the Complaint, ChoicePoint states that it is without knowledge or information sufficient to admit or deny the allegation that the CBA technology allegedly developed by Plaintiff is the subject of efforts by Plaintiff to maintain its secrecy. To the extent that the Plaintiff attempts to characterize the contents of the Agreement, ChoicePoint specifically denies the characterization and states that the document speaks for itself. ChoicePoint denies the remaining allegations contained in Paragraph 27 of the Complaint.

28. ChoicePoint admits the allegations contained in Paragraph 28 of the Complaint.

29. ChoicePoint denies the allegations contained in Paragraph 29 of the Complaint.

30. ChoicePoint denies the allegations contained in Paragraph 30 of the Complaint.

31. ChoicePoint denies the allegations contained in Paragraph 31 of the Complaint.

**Count IV - Violation of IBG's Standard Software License Agreement**

32. ChoicePoint incorporates by reference its Answers and Responses to Paragraphs 1 through 12 as if set forth fully here.

33. ChoicePoint denies the allegations contained in Paragraph 33 of the Complaint.

34. ChoicePoint denies the allegations contained in Paragraph 34 of the Complaint.

35. ChoicePoint denies the allegations contained in Paragraph 35 of the Complaint.

36. ChoicePoint admits that it is selling CBA services to third parties. ChoicePoint denies the remaining allegations contained in Paragraph 36 of the Complaint.

37. ChoicePoint denies the allegations contained in Paragraph 37 of the Complaint.

38. ChoicePoint denies the allegations contained in Paragraph 38 of the Complaint.

39. ChoicePoint denies the allegations contained in Paragraph 39 of the Complaint.

#### **Attorneys' Fees**

40. ChoicePoint incorporates by reference its Answers and Responses to Paragraphs 1 through 31.

41. To the extent that the Plaintiff attempts to characterize the contents of the Agreement, ChoicePoint specifically denies the characterization and states that the document speaks for itself. ChoicePoint denies the remaining allegations contained in Paragraph 41 of the Complaint.

42. ChoicePoint denies the allegations contained in Paragraph 42 of the Complaint.

#### **Prayer For Relief**

43. As to, the "Wherefore" paragraph following Paragraph 42 of the Complaint, ChoicePoint denies that Plaintiff is entitled to injunctive

relief, damages, attorneys' fees, expenses, or any other relief. ChoicePoint also denies the remaining allegations contained in Plaintiff's Prayer For Relief.

### **COUNTERCLAIMS**

In accordance with Rule 13 of the Federal Rules of Civil Procedure, as and for its counterclaims against Plaintiff, ChoicePoint states and alleges the following:

#### **Nature of Counterclaims**

44. ChoicePoint asserts against Plaintiff claims for Breach of Contract, fraud, and misappropriation of trade secrets under the Georgia Trade Secrets Act of 1990, O.C.G.A. § 10-1-760 *et seq.* ChoicePoint seeks monetary relief as a result of Plaintiff's conduct and a permanent injunction prohibiting Plaintiff from misappropriating ChoicePoint's trade secrets.

#### **The Parties**

45. ChoicePoint is a Georgia Corporation having its principal place of business at 1000 Alderman Drive, Alpharetta, Georgia 30005.

46. Upon information and belief, Plaintiff International Biometric Group, LLC ("IBG") is a New York limited liability company having its

principal place of business at One Battery Park Plaza, New York, New York 10004.

### **Jurisdiction And Venue**

47. This is a diversity of citizenship action. This Court has jurisdiction over the subject matter of these counterclaims pursuant to 28 U.S.C. § 1332 (a). The parties are citizens of different States and the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

48. Venue in this Court is proper under 28 U.S.C. § 1391. Upon information and belief, Plaintiff has sold its products and services to ChoicePoint in this judicial district and has transacted business with ChoicePoint within this judicial district.

### **Factual Background**

49. On March 14, 2001, ChoicePoint and IBG entered into a consulting agreement, a true and correct copy of which is attached hereto as Exhibit A. Under this Agreement, IBG agreed to provide ChoicePoint consulting services in connection with the development of a central biometric authority ("CBA"). ChoicePoint intended to use this newly developed technology in its pre-employment screening services.

50. ChoicePoint chose IBG to assist in the design and development of the ChoicePoint CBA technology because IBG represented that it had expertise in the development of biometric software and code.

51. IBG employees stated that they wanted to work with ChoicePoint on the project because ChoicePoint was more knowledgeable about the application of Biometric technology to information retrieval and decision-making intelligence than IBG or any other company with which IBG had worked.

52. The parties contemplated that ChoicePoint would sell the ChoicePoint CBA technology to third parties and agreed that IBG would receive a percentage of revenue generated from the sale to third parties of CBA technology incorporating intellectual property owned by IBG.

53. At the time the Agreement was signed the parties had not agreed on IBG's specific compensation percentage for sales to third parties. Later, however, the parties' principals, Derrick Smith and Samir Nanavanti, agreed that IBG would receive between 5-7% of the revenue generated from the sale to third parties of CBA technology incorporating intellectual property owned by IBG.

54. ChoicePoint has successfully marketed and sold its CBA technology to third parties. IBG is aware that ChoicePoint is marketing and selling ChoicePoint CBA services and has participated in several sales calls and even provided training in connection with the installation of the software for one or more third parties.

### **Count I - Breach of Contract**

55. ChoicePoint incorporates by reference Paragraphs 1 through 54 as if set forth fully here.

56. During the project, IBG engaged in abusive billing practices. IBG presented ChoicePoint with bills that provided minimal detail, making it difficult for ChoicePoint to verify the accuracy of IBG's bills.

57. Pursuant to Paragraph 3 of the Agreement, IBG agreed to supply "receipts, ledgers, time records and other business records" necessary for ChoicePoint to audit IBG's invoices upon request.

58. When ChoicePoint requested that IBG provide supporting documentation IBG would often refuse to provide the backup or would threaten to delay the implementation of the project.

59. As a result of IBG's refusal to provide backup, its threats to delay implementation of the project, and its late submission of invoices,

ChoicePoint was often unable to verify IBG's bills. IBG's refusal to provide backup upon request was a clear breach of Paragraph 3 of the Agreement.

60. Pursuant to Paragraph 3 of the Agreement, IBG also agreed to "obtain the express written consent of [ChoicePoint] prior to performing any services in excess of one hundred sixty-five thousand dollars (\$165,000)."

61. On at least nine occasions IBG performed work in excess of one hundred sixty-five thousand dollars (\$165,000) without first obtaining ChoicePoint's express written consent as required by Paragraph 3 of the Agreement. IBG's failure to obtain pre-approval from ChoicePoint for work in excess of \$165,000 was a clear breach of the Agreement.

62. Pursuant to Paragraph 5 of the Agreement, the parties agreed that any work "which is unique to [ChoicePoint] or [ChoicePoint's] specific operations will be owned exclusively by [ChoicePoint]." The parties also agreed that "[i]f either [IBG] or [ChoicePoint], as part of [IBG's] Work for [ChoicePoint], develops any invention relating to CBA that is not covered under [IBG's] pending [CBA] patent application, both parties shall jointly own such invention."



63. Upon information and belief, IBG has been offering and selling to third parties IBG software and code that was developed as part of IBG's work on behalf of ChoicePoint.

64. IBG has breached Paragraph 5 of the Agreement by failing to get ChoicePoint's consent to the third party sales and by failing to compensate ChoicePoint for those sales.

65. On August 20, 2002, IBG filed a Multiple Algorithm patent application that contains intellectual property developed as part of the course of IBG's work on behalf of ChoicePoint. IBG, however, failed to list ChoicePoint as the inventor or co-inventor as required by Paragraph 5 of the Agreement.

66. Pursuant to Paragraph 11.1 of the Agreement, IBG agreed that it "shall not subcontract, assign, subrogate or transfer any interest, obligation or right under this Agreement without the prior written consent from [ChoicePoint]."

67. IBG, without ChoicePoint's prior written consent, obtained a substantial portion of its software and programming code from third parties such as Aware, Inc. and Identix, Inc. and presented it to ChoicePoint as if the software and programming code were written by IBG.

68. Paragraph 4.2 of the Agreement required IBG to perform its consulting work on behalf of ChoicePoint in a workmanlike and professional manner.

69. IBG failed to perform its work in a workmanlike and professional manner. IBG supplied ChoicePoint with software and source code that contained significant errors and that failed to meet ChoicePoint's functional requirements. In fact, much of the IBG software and code contained functionality that was neither requested by nor of any use to ChoicePoint, yet on information and belief IBG billed ChoicePoint for the work involved in creating this functionality.

70. ChoicePoint has incurred expenses in excess of \$12,500 to correct IBG's software and code errors.

71. ChoicePoint has complied with all of its obligations under the Agreement.

72. IBG's intentional failure to comply with the terms of the Agreement constitutes bad faith under O.C.G.A. § 13-6-11 and a material breach of the Agreement.

73. ChoicePoint has suffered damages and continues to suffer damage in excess of \$150,000 as the result of IBG's breaches of contract.

## **Count II - Fraudulent Misrepresentation**

74. ChoicePoint incorporates by reference Paragraphs 1 through 73 as if set forth fully here.

75. IBG intentionally made fraudulent misrepresentations and engaged in fraudulent billing practices by invoicing ChoicePoint for work that was not properly payable under the Agreement.

76. IBG requested that its employees be allowed to attend ChoicePoint sales calls and then charged ChoicePoint \$15,975 for its employees' time (and now claims that the software should not have been sold to third parties). In addition, IBG's Partner, Samir Nanavati, charged ChoicePoint for his attendance at a personal dinner on July 4, 2002 that Mr. Nanavati attended with his fiancée. IBG also billed ChoicePoint for work and functionality that ChoicePoint requested IBG not work on. IBG wanted to incorporate the functionality for its own use in future exploitation of the product, however, and thus continued the work and billed ChoicePoint for the work while concealing the nature of the work for which the bills were submitted.

77. IBG knew that billing ChoicePoint for its employees' attendance at the ChoicePoint sales call, for Mr. Nanavati's attendance at the

4<sup>th</sup> of July dinner, and for features that ChoicePoint requested not be developed was improper and that these expenses were not properly compensable under the Agreement.

78. To conceal the nature of these improper billing practices, IBG submitted its invoices late and used cursory descriptions that concealed the work for which IBG was billing. When ChoicePoint sought backup as required by the Agreement, IBG would delay further and often refuse to provide the information.

79. ChoicePoint reasonably relied on IBG's representations that the bills were accurate. As a result, ChoicePoint paid invoices that included the improper charges for IBG's employees' attendance at the ChoicePoint sales call, Mr. Nanavati's attendance at the 4<sup>th</sup> of July dinner, and the increased features that ChoicePoint had requested not be developed.

80. IBG also intentionally misrepresented and concealed the extent to which IBG developed original software and code designed specifically for ChoicePoint's biometric products.

81. Initially, IBG represented that most of the software and code that IBG would provide to ChoicePoint would be custom designed for ChoicePoint's specific products. In fact, third party components accounted

for more than 90% of the source code and functionality in the biometrics systems provided to ChoicePoint by IBG. IBG used third party vendors such as Aware, Inc. and Identix, Inc. to provide code and software and then wrote wrapper code pulled from Internet sites to mask the off-the-shelf functionality of the third party products.

82. ChoicePoint reasonably relied on IBG's intentional misrepresentation that it was developing original software and code tailored to ChoicePoint's specific biometric product.

83. As a result of IBG's intentional misrepresentation regarding utilization of third party software and code, ChoicePoint has had to purchase licenses from third party vendors such as Aware, Inc. To date, ChoicePoint has paid in excess of \$150,000 in third-party license fees.

84. ChoicePoint has suffered damages and is continuing to suffer damage as the result of IBG's fraudulent actions in an amount to be determined, but in excess of \$150,000.

85. IBG's actions demonstrate willful misconduct, malice, fraud, wantonness, oppression, or that entire want of care which would raise the presumption of conscious indifference to consequences, and demonstrate a specific intent to cause harm to ChoicePoint. ChoicePoint is therefore

entitled to recover punitive damages to punish, penalize, or deter IBG's actions.

86. ChoicePoint should be awarded the expenses of litigation in this matter, including its attorneys' fees, because IBG has acted in bad faith.

**Count III - Violation of the Georgia Trade Secrets Act**

87. ChoicePoint incorporates by reference Paragraphs 1 through 86 as if set forth fully here.

88. The ChoicePoint CBA technology developed by ChoicePoint and IBG contains information, including but not limited to, technical and nontechnical data, which is not commonly known or available to the public. This information derives economic value from not being generally known to, and by not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and constitutes trade secrets under the Georgia Trade Secrets Act.

89. The ChoicePoint CBA technology developed by ChoicePoint and IBG is the subject of efforts by ChoicePoint to maintain its secrecy, including but not limited to, the confidentiality provision contained in the Agreement.

90. Upon information and belief, IBG is offering and has sold software and code containing ChoicePoint CBA technology to third parties, while concealing the same from ChoicePoint.

91. In the course of offering and selling software and code containing ChoicePoint CBA technology to third parties, IBG has used the trade secrets contained in the ChoicePoint CBA technology without the consent of ChoicePoint. Moreover, IBG has made improper use of ChoicePoint trade secrets by selling ChoicePoint CBA technology to a third party in violation of the parties' Agreement.

92. IBG's improper use of ChoicePoint's trade secrets constitutes a violation of the Georgia Trade Secrets Act of 1990, O.C.G.A. § 10-1-760, *et seq.*

93. ChoicePoint has suffered damages and continues to suffer damages as a result of IBG's violation of the Georgia Trade Secrets Act.

94. IBG's actions demonstrate willful misconduct, malice, fraud, wantonness, oppression, or that entire want of care which would raise the presumption of conscious indifference to consequences, and demonstrate a specific intent to cause harm to ChoicePoint. ChoicePoint is therefore

entitled to recover punitive damages to punish, penalize, or deter IBG's actions.

95. Unless permanently enjoined, IBG will continue to make improper use of ChoicePoint's trade secrets, thereby causing IBG irreparable injury for which there is no adequate remedy at law.

#### **Attorneys' Fees**

96. ChoicePoint incorporates by reference Paragraphs 1 through 95 as if set forth fully here.

97. Pursuant to Paragraph 11.2 of the Agreement, the parties agreed that the prevailing party in any action arising out of the Agreement would be entitled to recovery of its reasonable attorneys' fees, costs and expenses.

98. IBG's actions demonstrate willful misconduct and constitute bad faith under O.C.G.A. § 13-6-11.

99. ChoicePoint is entitled to attorneys' fees as a result of IBG's bad faith breach of the Agreement.

#### **Prayer For Relief**

WHEREFORE, ChoicePoint prays for relief as follows:

A. That the Court dismiss the Plaintiff's Complaint, and each and every claim and count thereof, with prejudice, that judgment be



entered in favor of ChoicePoint, and that Plaintiff take nothing by this action;

B. For an award of monetary damages, adequate to compensate for Plaintiff's breach of the contract, fraud, and misappropriation of trade secrets;

C. Adjudge and decree that ChoicePoint is entitled to an award of punitive damages in an amount to be determined by the trier of fact;

D. An injunction permanently prohibiting IBG from offering to sell or selling software and code containing ChoicePoint CBA technology without the consent of ChoicePoint;

E. For ChoicePoint's attorneys' fees, expenses and costs incurred in connection with this action pursuant to Paragraph 11.2 of the Agreement;

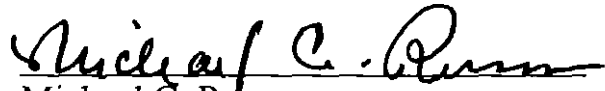
F. ChoicePoint's expenses of litigation, including attorneys' fees, under O.C.G.A. § 13-6-11 for Plaintiff's bad faith breach of the Agreement.

G. Such other and further relief as this Court deems just and proper.

DATED: April 16, 2003  
Atlanta, Georgia

Respectfully submitted,

KING & SPALDING



Michael C. Russ

Georgia Bar No. 620200

Bradley A. Slutsky

Georgia Bar No. 653073

Stephen P. Cummings

Georgia Bar No. 186015

King & Spalding LLP

191 Peachtree Street, N.E.

Atlanta, Georgia 30303

Phone: (404) 572-4600

Fax: (404) 572-5142

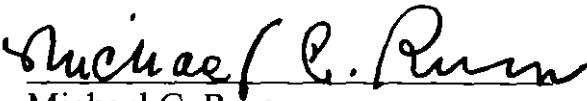
ATTORNEYS FOR DEFENDANT  
CHOICEPOINT SERVICES INC.

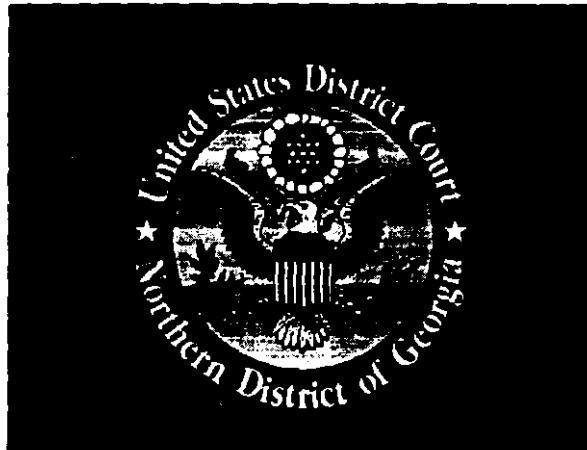
**CERTIFICATE OF SERVICE**

This is to certify that I have served a true and correct copy of the within and foregoing **ANSWER AND COUNTERCLAIMS OF DEFENDANT CHOICEPOINT SERVICES INC.** upon all parties by causing a copy of same to be sent via Hand Delivery, properly addressed as follows:

Martin J. Elgison  
Keith E. Broyles  
Dana Marty Haas  
Alston & Bird, LLP  
1291 West Peachtree Street  
Atlanta, GA 30309-3424

This 16<sup>th</sup> day of April, 2003.

  
Michael C. Russ



## EXHIBIT / ATTACHMENT

          A          

(To be scanned in place of tab)



ChoicePoint

## CONSULTING AGREEMENT

THIS AGREEMENT is made this 14th day of March, 2001 by and between ChoicePoint Services Inc., a corporation with offices located at 1000 Alderman Drive, Alpharetta, Georgia 30005, (hereinafter referred to as "Client"), and, International Biometric Group, LLC, a corporation with offices located at One Battery Park Plaza, New York, New York 10004 (hereinafter referred to as "Consultant").

1. **Engagement.** Client retains Consultant to perform the work described in Exhibit A ("Work") in accordance with the terms of this CONSULTING AGREEMENT ("Agreement"). Consultant shall provide and dedicate all resources necessary to perform the Work and complete it when due.

2. **Term.** This Agreement is effective upon its acceptance by Client in Alpharetta, Georgia and will remain in effect until terminated by either party upon sixty (60) days advance written notice. Client reserves the right to direct Consultant by written notice to cease performing the Work at any time for any reason, and Consultant will not be entitled to payment of fees or expenses for any Work performed or expense incurred after Consultant's receipt of that notice, until such time as Client notifies Consultant in writing to resume the Work. If Client does not notify Consultant to resume Work within thirty (30) days after Consultant's receipt of the notice to suspend Work, this Agreement will be deemed to be terminated as of that 30th day. Sections and subsections 5, 6, 7, 8 and 11.2 survive any termination of this Agreement.

3. **Fees.** Client shall pay Consultant a fee in an amount of Two Hundred Twenty-Five and 00/100 Dollars (\$225.00) per hour for Work performed under this Agreement ("Fee"). Client shall pay Consultant any Fee due for each phase of the project, as described in Exhibit A, on a monthly basis. Client shall pay Consultant any Fee due Consultant pursuant to the terms of this Agreement within 30 days of receipt of an invoice detailing the hours worked and the tasks performed. Consultant shall not invoice Client before payment is due. Except as specifically set forth in Exhibit A or pre-approved by Client in writing, Consultant is not entitled to reimbursement of expenses incurred in connection with its performance of this Agreement and the Work. Upon request by Client, Consultant will supply receipts, ledgers, time records and other business records as Client deems reasonably necessary to audit any invoices or Work performed by Consultant. Consultant shall obtain the express written consent of Client prior to performing any services in excess of one hundred sixty-five thousand dollars (\$165,000.00). All invoices shall be submitted to:

ChoicePoint Services Inc.  
1000 Alderman Drive  
Alpharetta, Georgia 30005  
Attn: General Counsel

4. **Work.**

4.1 In the event Consultant anticipates not being able to perform the Work when due, Consultant shall immediately notify Client in writing, submit a proposed revision and continue work under the original timetable until otherwise directed by Client. Consultant is permitted to provide services to other businesses but shall at all times comply with this Agreement.

4.2 All Work must be performed in a workmanlike and professional manner by employees or agents of Consultant having a level of skill commensurate with the requirements of the Work to be performed. Client has the right, at any time, to insist upon removal of any employee or agent of Consultant whom Client deems unsatisfactory. Upon such removal, Consultant shall use its best efforts to promptly replace that person with a substitute having appropriate skills and training.

4.3 Client's security and safety policies must be observed at all times in the event that Consultant performs Work at Client's facilities. Consultant is solely responsible for paying and shall pay its own expenses, debts, accounts, obligations, liabilities, employee's workers compensation, and all taxes on fees paid under this Agreement. Consultant warrants that it will maintain, at its sole expense and during the term of this Agreement, policies of insurance as set forth in Exhibit B.

4.4 This Agreement will not be deemed to create an agency, employment, partnership or joint venture between the parties. Consultant is an independent contractor. Consultant does not have any authority to bind, enter into agreements or incur obligations on behalf of Client. Neither Consultant nor its employees or agents can be considered employees of Client for any purpose including, but not limited to, benefit programs, bonuses, income tax withholding, unemployment benefits, disability benefits, employment taxes or worker's compensation insurance.

5. Ownership. Any portion of Work, and resulting product related thereto, which is unique to Client's company or Client's specific operations will be owned exclusively by Client. Client acknowledges that no rights are granted to Client regarding proprietary rights, including trade secrets and copyrights, developed by Consultant not related specifically to Client's company or Client's specific operations. Client acknowledges that, unless explicitly stated, no rights are granted to Client in regards to the Central Biometric Authority technology as claimed in U.S. patent application titled "Identity Verification Method Using A Central Biometric Authority," Serial No. 09/311,928, filed May 14, 1999, including any patents issuing from the application, related applications for patents, including any divisionals, continuations, continuations-in-part and provisional applications, patents resulting from reissues or reexaminations, and foreign counterparts or equivalent statutory rights. Client agrees not to challenge Consultant's patent application and not to file an application for a substantially similar invention. If either Consultant or Client, as part of Consultant's specific Work for Client, develops any invention relating to CBA that is not covered under the pending patent application, both parties shall jointly own such invention.

6. Competition. During the term of this Agreement, and for 1 year after its termination or the maximum period allowed by law, whichever is less, neither party may, directly or indirectly solicit for employment or hire any employee of the other party with whom the soliciting party has had contact in connection with the relationship arising under this Agreement.

7. Confidentiality.

7.1 During the term of this Agreement, it may be necessary for a party to disclose information, ideas, designs, processes, trade secrets, specifications, drawings, plans, diagrams, schedules, lists, blueprints, formulas, data, knowledge, inventions and techniques ("Confidential Information") to the other party to this Agreement. The party receiving Confidential Information shall treat it as strictly confidential and shall use reasonable care to prevent the unauthorized disclosure, transfer or use of the Confidential Information. The term "Confidential Information" does not include information that: (1) may be publicly disclosed by the party disclosing the information either prior to or subsequent to the receipt of such information by the receiving party; (2) becomes generally known in the trade through no fault of the receiving party; (3) may be lawfully disclosed to the receiving party by a third person to this Agreement who has lawfully acquired the Confidential Information; or (4) was independently developed by the receiving party. A receiving party shall not, directly or indirectly, divulge or use Confidential Information. Each party shall ensure that their employees and agents observe and comply with the provisions of this Agreement. Each party must continue to comply with the terms of this section 7 for a period of 2 years after any termination of this Agreement.

7.2 The parties agree not to issue or release for publication any articles or advertising matter relating to this Agreement which mention or imply the name of the other party or any of its affiliates, or subject matter hereof, unless prior written consent is granted by the other party. Without limiting the generality of the foregoing, Client grants Consultant the limited authority under the terms of this Agreement to list Client on its client list

8. Indemnification. Consultant agrees that it must indemnify, defend and hold harmless Client and its subsidiary, parent and affiliated companies and its and their officers, directors, agents and employees from and against any and all losses, claims, demands, actions, causes of action, suits, costs, attorneys' fees, damages, expenses, compensation, penalties, liabilities and obligations of any kind resulting from, arising out of, or incurred in connection with Consultant's: (i) intentional wrongful acts; (ii) intentional failure to comply with applicable law; or (iii) failure to comply with the terms of this Agreement.

Client agrees that it must indemnify, defend and hold harmless Consultant and its subsidiary, parent and affiliated companies and its and their officers, directors, agents and employees from and against any and all losses, claims, demands, actions, causes of action, suits, costs, attorneys' fees, damages, expenses, compensation, penalties, liabilities and obligations of any kind resulting from, arising out of, or incurred in connection with Client's: (i) intentional wrongful acts; (ii) intentional failure to comply with applicable law; or (iii) failure to comply with the terms of this Agreement.

9. Additional Remedies. In addition to any other remedies at law or in equity to which it is entitled, either party reserves the right to suspend its performance or terminate this Agreement during any period in which the other party to this Agreement: (i) is in default for more than 10 days; (ii) is the subject of a dissolution or bankruptcy action; (iii) suffers the appointment of a receiver;

(iv) transfers all or substantially all of its assets; or (v) commits any act with the intent to defraud the other party. Due to the likelihood of irreparable injury, either party will be entitled to an injunction prohibiting any breach of sections 5, 6, 7 or 8.

10. Modifications. This Agreement may only be modified by written agreement of the parties.

11. Miscellaneous.

11.1 Consultant shall not subcontract, assign, subrogate or transfer any interest, obligation or right under this Agreement without the prior written consent from Client. Any dissolution, merger, consolidation, reorganization or transfer of substantially all assets or a controlling percentage of the corporate stock or other interests of Consultant constitutes an assignment of this Agreement. Subject to the foregoing, this Agreement is binding upon and inure to the benefit of the parties and their successors or assigns.

11.2 Consultant submits to the jurisdiction of, and this Agreement is governed by the laws of, the state of Georgia. Venue for any action arising out of this Agreement will exist in a court of competent jurisdiction in Atlanta, Georgia. The prevailing party in any such action will be entitled to the recovery of its reasonable attorney's fees, costs and expenses.

11.3 Neither party will, by the mere lapse of time, without giving notice or taking other action, be deemed to have waived any of their rights under this Agreement. No waiver of a breach of this Agreement will constitute a waiver of any prior or subsequent breach of this Agreement.

11.4 Client is not liable for special, incidental or consequential damages, including lost profits. Neither party will be liable for any loss or damage due to causes beyond its control, including earthquake, war, fire, flood, power failure, acts of God or other catastrophes.

11.5 If either party is or becomes the subject of any insolvency, bankruptcy, receivership, dissolution, reorganization or other similar proceeding, federal or state, voluntary or involuntary, under any present or future law or act, that party consents to the immediate and absolute lifting of any stay as to the enforcement of remedies under this Agreement, including specifically, but not limited to, the stay imposed by §362 of the United States Federal Bankruptcy Code, as amended.

11.6 Each party and each person signing on behalf of a party represents and warrants that it has the full legal capacity and authority to enter into and perform the obligations of this Agreement without the approval of any other person.

11.7 This Agreement constitutes the entire understanding of the parties with respect to the subject matter of this Agreement, and all prior agreements, understandings, and representations are terminated and canceled in their entirety.

11.8 This Agreement must not be construed more strongly against either party regardless of who is more responsible for its preparation.

11.9 If there is any conflict between a part of this Agreement and any present or future law or regulation, the part of this Agreement that is affected may be curtailed only to the extent necessary to bring it within the requirements of the law or regulation.

11.10 All notices given in connection with this Agreement, must be in writing and deemed received 48 hours after deposit in the first class United States mail, postage prepaid, or if given by other means, upon actual receipt. Notices must be delivered to the appropriate party at its address set forth in this Agreement.

11.11 Consultant is liable for all taxes, including income taxes, required to be paid or collected relating to Fees and/or expenses received from Client.

11.12 Consultant must at its own expense comply with all federal, state and local laws, rules and regulations that are now or may in the future become applicable to Consultant or Consultant's business or Consultant's personnel engaged in the services covered by this Agreement including, but not limited to, unemployment, Worker's Compensation, Social Security, federal, state and local income tax and sales tax, where applicable.

International Biometric Group  
"Consultant"

By:   
Signature

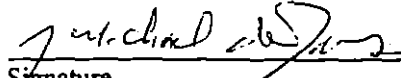
Samir Nanavati, Partner  
Name and Title

Address:  
One Battery Park Plaza  
New York, NY 10004

Phone:  
212-809-9491

06-1503417  
Consultant's Federal Tax Identification or Social  
Security Number (Must be supplied in order  
to report earnings to the Internal Revenue Service)

ChoicePoint Services Inc.

By:   
Signature

J. MICHAEL de JESUS  
Name and Title *President Board*

Date of Acceptance: 3/19/01



## EXHIBIT A

### DESCRIPTION OF WORK AND PROJECT OVERVIEW

Client shall reimburse Consultant for all third party hardware and software purchases listed in this Exhibit A for which Consultant obtains the written consent of Client prior to purchase. Consultant agrees to provide Client with access to such receipts, ledgers, time records or other records as may be reasonably appropriate for Client or its accountants to verify the amount and nature of such expenses under this Agreement. All fees, costs and expenses listed in this Exhibit A are estimates for each phase of this project and are listed for reference only. Actual fees, costs and expenses shall be determined based on the actual Work performed and services and products purchased pursuant to each phase of this project.

#### Phase 1: Trial 50-Desktop, Internal Rollout; Address Primary Deployment-Related Issues

**Duration:** 60 days

##### Objectives and Scope

- Design and deploy a 50 person, strategic rollout to secure a ChoiceTrust partner's internal transactions
- Assesses the impact of adding biometric authentication to existing ChoiceTrust process flow
- Establishes a framework for determining which technologies will be incorporated into ChoiceTrust's PKI
- Addresses issues involved in standardizing, securing and managing biometric data
- Determines the most suitable target markets for eventual deployment of the biometric offering
- Establishes Phase 2 specifications and select Phase 2 rollout vendor

**Costs (estimated):** IBG Fees

\$150,000

Third party biometric hardware & software

\$15,000

Third party additional backend HW and SW

N/A

ChoicePoint resources/personnel (hours)

125 - 175

#### Phase 2: Single-Device, 500-Desktop Deployment; Integration into Existing PKI

**Duration:** 120 days from conclusion of Phase 1

##### Objectives and Scope

- Shifts biometric rollout from "internal" to "external" – biometric authentication becomes an operational service offering
- Deployment to 500 desktops, securing strategic partners' B2B transactions
- Achieves full integration of single biometric solution into ChoiceTrust PKI
- Establish Phase 3 specifications and select vendors for initial CBA development

**Costs (estimated):** IBG Fees

\$225,000 - \$250,000

Third party biometric hardware & software

\$50,000 - \$75,000

Third party additional backend HW and SW

\$100,000 - \$125,000

ChoicePoint resources/personnel (hours)

1250 - 1500

#### Phase 3: Multi-device, 750-Desktop Deployment; Initial Development of CBA Infrastructure

**Duration:** 120 days from conclusion of Phase 2

**Objectives and Scope**

- Design and initial deployment of CBA infrastructure
- Incorporates of small number of pre-qualified technologies into CBA infrastructure
- Deploys to 750 additional desktops, with handful of technologies available
- Shifts verification to CBA (likely resident within ChoiceTrust)

<b>Costs (estimated):</b>	<b>IBG Fees</b>	<b>\$275,000 - \$300,000</b>
	Third party biometric hardware & software	\$75,000 - \$100,000
	Third party additional backend HW and SW	\$100,000 - \$125,000
	ChoicePoint resources/personnel (hours)	1500 - 2000
	License fee for CBA during pilot (<180 days)	\$0

**Phase 4: Full CBA Development; Broaden and Formalize CBA Compatibility; Assessment of "Advanced Biometric Services"**

**Duration:** 150 days from conclusion of Phase 3

**Objectives and Scope**

- Full design and deployment of ChoiceTrust/CBA infrastructure
- Establishes *platform* for all compatible biometric technologies and devices
- Scalability to maximum number of transactions, as determined by estimates of ChoiceTrust rate of adoption
- Full B2B and B2C compatibility
  - Evaluates role of biometrics in other ChoicePoint offerings

<b>Costs (estimated):</b>	<b>IBG Fees</b>	<b>\$300,000 - \$325,000</b>
	Third party biometric hardware & software	N/A
	Third party additional backend HW and SW	\$200,000 - \$250,000
	ChoicePoint resources/personnel (hours)	500
	License fee for CBA	TBD

**EXHIBIT B**  
**INSURANCE REQUIREMENTS**

Consultant will maintain the following policies of insurance:

1. Worker's Compensation insurance in accordance with the applicable statutory requirements of all states of operation covering all employees who will be used in the performance of this Agreement.
2. Employers' Liability insurance with limits no less than \$500,000/\$500,000/\$500,000.
3. Commercial General Public Liability insurance with a combined single limit of not less than \$1,000,000 for bodily injury and property damage. That insurance must include, but not be limited to, contractual liability, independent contractors, completed operations, broad-form property damage, and personal injury coverage. Client, its officers, agent and employees will be additional insureds for purposes of this Agreement.
4. Automobile Liability insurance for non-owned vehicles with a combined single limit of not less than \$1,000,000 for bodily injury and property damage combined. Client, its officers, agents, and employees must be additional insureds for the operations under this Agreement.

Consultant will place the insurance policies listed above with insurance companies who are licensed to do business in Consultant's states of operation and whose financial condition, policy forms, and deductibles are acceptable to Client. All policies will contain the following provision:

This policy will not be modified by any endorsement which restricts or reduces the required coverage, nor will this policy be canceled until at least 30 days prior written notice has been given to Client.

Consultant will provide certificates of insurance to Client evidencing the required policies and coverages no later than 30 days after the Effective Date of this Agreement, and no later than 30 days after each policy renewal.