

days from the date of such invoice. Late payments shall be treated in accordance with Section 2.6.

2.5 Taxes. Agency shall be solely responsible for all taxes related to Products or Services provided to it by AMS under this Agreement including, by way of example and not limitation, sales, use, property, excise, value added, and gross receipts irrespective of whether the Products are purchased or rented. If Agency is exempt from taxes of any kind, including but not limited to sales tax, use tax and excise tax, Agency will provide appropriate exemption documentation for all such taxes applicable to the transactions contemplated by this Agreement.

2.6 Failure to Make Payments. If any amounts owed to AMS are more than thirty (30) days past due, AMS may (i) after notice to Agency, disconnect it from SCRAMNET until full payment is made; and (ii) subject overdue amounts to interest, accruing from the due date at the rate of either one-and-one-half percent (1.5%) per month or at the highest rate specified by applicable statute, whichever is lower. In addition, AMS may reject orders from Agency for additional SCRAMx Sets or withhold delivery of SCRAMx Sets already ordered until all outstanding amounts are paid in full by Agency.

2.7 Failure to Make Payments. Any amounts due and payable to AMS which are not paid in accordance with the terms of Sections 2.2 or 2.4, will be subject to interest, accruing from the due date at the rate of either one-and-one-half percent (1.5%) per month or the highest rate specified by applicable statute, whichever is lower. If any amounts owed to AMS under Sections 2.2 or 2.4 are more than thirty (30) days past due date, AMS may, after notice to Agency, disconnect it from SCRAMNET until full payment is made. In addition, AMS may reject orders from Agency for additional SCRAMx Sets or withhold delivery of SCRAMx Sets already ordered until all outstanding amounts are paid in full by Agency.

2.7 Delivery Terms. SCRAMx Sets ordered by Agency shall be delivered FOB to Agency's designated facility at AMS' expense. AMS shall determine the type of packaging, mode and time of transportation.

2.8 Title to Products - Rental Option. Title and ownership of any rented Products delivered by AMS shall remain with AMS. Agency will not encumber or dispose of such Products. In the event of the loss of any of the Products, Agency agrees to pay AMS the Replacement Costs specified in Exhibit A. AMS reserves the right, at its sole option, to reduce Agency's Product inventory if Agency does not remit the Replacement Costs within thirty (30) days from the loss of the Products. Agency shall cooperate with AMS in the preparation and filing of any documents considered necessary by AMS to preserve AMS' title and ownership rights to the Products. AMS reserves the right to audit rental inventory on a monthly basis.

3 TERMS OF SERVICES AND SUPPORT

3.1 General Scope of Services ("Services"). In consideration of the payment by Agency of the Daily SCRAMx Services Fee for each SCRAMx Set, AMS shall provide Agency with the Services and support functions set forth herein (the "Services"). The Services shall consist of: (i) the remote collection and compilation of reports and data from the SCRAMx Sets via SCRAMNET; (ii) the provision of training and certification for Agency personnel as described below; (iii) the provision of technical support and telephone assistance from AMS professionals; (iv) the scheduled maintenance of the SCRAMx Sets; (v) the provision of reasonable disaster recovery and backup Services for Agency data stored on SCRAMNET; and (vi) the provision of such other Services and support functions as may be agreed to by the parties from time to time.

3.2 Training and Certification. AMS will provide Agency with personnel training and certification in the use of the Products at AMS' then-current training rates. Agency personnel using the Products to monitor home detention Participants must complete training and certification as specified by AMS prior to being granted access to SCRAMNET. AMS will provide Agency access to a reasonable number of copies of its *SCRAMx Operational Reference Guide* and the AMS required training curriculum and syllabus. Any travel, lodging and reasonable expenses incurred by AMS personnel for purposes of training and personnel certification will be paid by the Agency.

3.3 SCRAMx Set Maintenance. As a part of the Services, AMS will provide for the maintenance of SCRAMx Sets to so that they remain in good repair and working order and will continue to meet or exceed published specifications. Notwithstanding the foregoing, the maintenance program shall not cover SCRAMx Sets damaged or rendered inoperative for any cause not due to defects covered by the service and repair policy in Section 6. Agency shall not, without prior approval from AMS, send to AMS for maintenance any SCRAMx Sets not then scheduled for maintenance. All returns for maintenance shall be accompanied by a Returned Merchandise Authorization (RMA) Number obtained prior to shipment.

3.4 SCRAMNET Services. Under the terms specified in Section 4, AMS will provide web-based access to SCRAMNET by the Agency on a twenty-four (24) hours per day, 365 days per year basis except as specified in Section 4.3. Agency will have access via a toll-free telephone number from anywhere in the continental United States to upload information from the SCRAMx Base Station to SCRAMNET and for direct access by the Agency to SCRAMNET. AMS will also provide regular off-site data storage and backup services for Agency data.

3.5 Other Services. AMS may provide consultation, additional training, certification or other Services at the then current published rates, when and if requested by Agency and agreed to in writing by AMS.

3.6 Additional or Changed Services at AMS' Initiative. From time to time, AMS may revise the scope of the Services or make substitutions, additions, modifications and improvements to SCRAMNET, provided that the resulting Services continue to meet or exceed the level specified in the *SCRAMx Operational Reference Guide*. Additionally, as a part of these changed Services, AMS also may determine, at its sole option, to discontinue providing SCRAMx Services hereunder for specific versions of the Products upon a minimum of one (1) year prior notice to Agency. AMS also may, from time to time, at its own expense, install additional machinery, equipment and other personal property at Agency. All such machinery, equipment and other personal property shall remain the sole property of AMS and AMS may remove the same from Agency at any time, provided that any damage to property resulting from such removal shall be repaired by AMS.

3.7 Participant Agreements. Agency is solely responsible for notifying Participants in writing of any restrictions or limitations on the use of the SCRAMx Bracelets of which it is made aware by AMS, including but not limited to banned products; prohibitions on tampering; health risk warnings; and swimming, bathing and personnel hygiene restrictions. These mandatory restrictions and prohibitions to be communicated to Participants are available to Agency on SCRAMNET in the form of a "Participant Agreement". This Participant Agreement is not intended to cover all possible requirements of the relationship between Agency and its Participants and should be reviewed by Agency's legal

advisors prior to use. Agency agrees to hold AMS harmless for the failure of Agency to notify Participants of the restrictions and prohibitions contained in the Participant Agreement and for the failure of Participants to heed the restrictions and prohibitions contained in the Participant Agreement.

3.8 Additional Responsibilities. AMS shall not be responsible or liable for product and services not explicitly provided for in this Agreement, including but not limited to third party infrastructure or services, such as communication systems, which may be subject to latency and/or service interruptions. Agency shall be solely responsible for the management and supervision of the Products and any personnel utilizing the Products and SCRAMNET, as well as the selection and implementation of the Participant enrollment, monitoring and notification options provided for in SCRAMNET. Agency is solely responsible for the management of the Participants, including the response to any Participant violations reported by AMS. AMS is not responsible or liable for Agency's failure to properly fulfill its foregoing responsibilities.

3.9 Third Party Call Center Support. If Agency determines that it will establish and use a third party call center to monitor and receive alerts from SCRAMNET, then Agency will notify AMS and shall ensure that personnel certified by AMS will operate the SCRAMx System call center. Agency shall be responsible for all acts and omissions of the third party call center personnel granted access to SCRAMNET as if they were employees of Agency.

4 ACCESS RIGHTS

4.1 Access Grant. In consideration of the payment of the Daily SCRAMx Services Fees described herein and subject to the terms and restrictions set forth below, AMS grants Agency a limited, nonexclusive right to access SCRAMNET for the purposes of monitoring Participant data.

4.2 Agency Obligations. Agency agrees to limit requests for access to SCRAMNET to only personnel of Agency who are authorized to enroll Participants, set notification options and otherwise access the information residing on SCRAMNET. AMS will provide a user ID and private password to access SCRAMNET and allow enrollment of Participants and set up of notification options. Such user IDs and passwords must be protected as Confidential Information of AMS and Agency shall not allow the sharing of user IDs or passwords with other employees or third parties. Agency shall provide written notice to AMS within ten (10) days if any previously authorized personnel's status changes such that access should no longer be allowed, including but not limited to termination or resignation of any Agency personnel who had access to SCRAMNET. These requirements are subject to change based on reasonable review by AMS of its information security needs. Agency is responsible for procuring all communications connections linking its computers or its network to the Internet.

4.3 AMS Obligations. AMS will use reasonable efforts to prevent unauthorized access to restricted areas of its servers and any databases or other material generated from or used in conjunction with SCRAMNET. Further, while it is AMS' intent that access be available at all times, AMS does not warrant uninterrupted or error-free operation of SCRAMNET. Lack of access to SCRAMNET shall not be a breach of this Agreement if it is due to (i) scheduled downtime; (ii) reasonable needs for maintenance; (iii) reasonable periods for failure of equipment, computer programs or communications, including but not limited to third party infrastructure or services, such as communication systems, which may be subject to latency and/or service interruptions; or (iv) other events reasonably beyond the control of AMS and AMS exercises such commercially reasonable efforts to restore access as circumstances require.

4.4 Improper Use. AMS reserves the right to deactivate or suspend access to SCRAMNET by an Agency's user if such user is found or reasonably suspected to be using his/her access to facilitate illegal, abusive or unethical activities. Such activities include pornography, obscenity, violations of law or privacy, hacking, computer viruses or any harassing or harmful materials or uses. Agency agrees to hold AMS harmless from any claims resulting from such use or for any unlawful disclosure or use of Participant data by Agency. Upon termination of this Agreement, all information identifying Participants and all Participant data shall be purged from SCRAMNET and any AMS data storage records.

5 SERVICE AND REPAIR

5.1 Service and Repair. When installed according to instructions, AMS warrants to Agency that the SCRAMx Sets will function with SCRAMNET substantially in accordance with the performance parameters specified in the then current *SCRAMx Operational Reference Guide*. This warranty shall remain in effect provided that Agency continues to pay to AMS the Daily SCRAMx Services Fees and, in the case of rented Products, the Equipment Rental Fee. While the SCRAMx equipment can provide continuous home detention monitoring, it is not designed to give immediate notification of alcohol detection and AMS makes no assurances that the SCRAMx Set will detect all tamper efforts.

5.2 Exclusions From Service and Repair Policy. The above policy does not cover SCRAMx Sets that are defective due to (i) improper use or installation, damage, accident, abuse or alteration; (ii) failure to comply with the operating and maintenance instructions set forth in the *SCRAMx Operational Reference Guide*; or (iii) servicing of the SCRAMx Sets by anyone not previously authorized by AMS or failure of Agency to obtain reasonable and necessary maintenance of the SCRAMx Sets as contemplated under this Agreement.

5.3 Sole Remedy. In the event of a breach of the above policy, AMS will, at its sole option, repair or replace the defective SCRAMx Set.

5.4 THE REMEDIES EXPRESSLY STATED IN THIS SECTION 5 ARE EXCLUSIVE, AND AMS DISCLAIMS ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. AGENCY IS SOLELY RESPONSIBLE FOR DETERMINING THE SUITABILITY OF THE PRODUCTS AND SCRAMx SERVICES FOR AGENCY'S INTENDED PURPOSE.

6 TERM AND TERMINATION

6.1 Term. Subject to termination of this Agreement in accordance with this Section 6, the term of this Agreement for purposes of Agency's right to purchase SCRAMx Sets and receive SCRAMx Services shall commence from the Effective Date and extend through the date specified as the Term on the Exhibit A ("Term").

6.2 Termination by Consent. This Agreement may be terminated at any time upon mutual consent of the parties, which termination will be evidenced by a written agreement providing for such termination.

6.3 Termination for Breach. Either party may terminate this Agreement (i) if a voluntary or involuntary petition in bankruptcy, receivership, assignment for the benefit of creditors or other similar insolvency action is filed or levied against the other party and not discharged within sixty (60) days after the filing or levied thereof; (ii) by written notice by the non-breaching party, if the other party fails to cure any

nonpayment of money owed to the other party under this Agreement within thirty (30) days of such notice; (iii) by written notice by the non-breaching party, if the other party fails to cure any material breach of this Agreement (other than non-payments described in clause (ii) above) within sixty (60) days of such notice (it is understood, however, that a violation of law, breach of confidentiality or misuse of access grants that cannot be cured shall be grounds for immediate termination); or (iv) immediately, by written notice by the non-breaching party, upon the second commission of a previously remedied material breach under clause (iii) above.

6.4 Termination for Non-Appropriation of Funds. In the event that Agency is unable to continue to make payments required hereunder due to a failure of the responsible governmental entity to make available funding to the level and in the amount required to remain in compliance with Agency's financial obligations hereunder, then upon the occurrence of such a non-appropriation event and on the date that the requisite funding ceases to be available to the Agency, the Agency may terminate this Agreement, without further financial obligation or liability to AMS other than to pay for Products and Services previously delivered to Agency or performed for Agency.

6.5 Survival. Sections 7, 8 and 9.2 shall survive termination of this Agreement.

7 CONFIDENTIAL INFORMATION

7.1 In connection with this Agreement a party ("Discloser") may furnish to the other party ("Recipient") software, user and training manuals, data, Participant information, designs, drawings, tracings, plans, layouts, specifications, samples, equipment and other information provided by or on behalf of Discloser to Recipient, that should reasonably have been understood by Recipient, because of (i) legends or other markings, or (ii) the circumstance of disclosure or the nature of the information itself, to be proprietary and confidential to Discloser or to a third party ("Confidential Information"). Confidential Information specifically includes all information accessed by the Agency and its Agencies on SCRAMNET, and ON_TARGET Confidential Information may be disclosed in written or other tangible form (including digital or other electronic media) or by oral, visual or other means. Each party agrees not to disclose to the other party any confidential or proprietary information of third parties unless authorized to do so. The parties each agree to treat this Agreement, including all exhibits hereto, as Confidential Information of each party.

7.2 Nondisclosure. It is agreed that, after receipt of Confidential Information of the other party, Recipient shall: (i) restrict the dissemination of such Confidential Information to those employees who need to use the Confidential Information in the performance of this Agreement, and (ii) to use no less than a reasonable standard of care, in safeguarding against unauthorized disclosure of such Confidential Information. Recipient agrees to have an appropriate nondisclosure agreement signed by each of its employees, agents and contractors who may be exposed to Discloser's Confidential Information.

7.3 Exceptions From Confidential Information. Confidential Information shall not include information that: (i) is or becomes part of the public domain without violation of this Agreement by Recipient, (ii) is already in Recipient's possession free of any restriction on use or disclosure, (iii) becomes available to Recipient from a third party provided that such party was free from restriction on disclosure of the information or (iv) has been independently developed by Recipient.

7.4 Required Disclosures. If Recipient is required by legal proceeding discovery request, "open records" or equivalent request, investigative demand, subpoena, court or government order to disclose Confidential Information, Recipient may disclose such Confidential Information provided that: (i) the disclosure is limited to the extent and purpose legally required; and (ii) prior to any disclosure, Recipient shall immediately notify Discloser in writing of the existence, terms and conditions of the required disclosure and, at Discloser's request and expense, cooperate in obtaining a protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information.

8 ARBITRATION; ALLOCATION OF LIABILITY

8.1 Arbitration. Disputes arising under this Agreement that cannot be resolved informally by the parties through good faith negotiations shall be resolved by arbitration before a sole arbitrator appointed and operating pursuant to the Federal Arbitration Act and Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall be conducted in the City and County of Denver, Colorado. The written decision of the arbitrator shall be final, binding and convertible to a court judgment in any appropriate jurisdiction. Each party shall bear its own expenses with respect to such arbitration and shall share equally in the expenses of the arbitrator and the fees of the American Arbitration Association.

8.2 Injunctive Relief. Notwithstanding anything above to the contrary, either party at any time may apply to a court having jurisdiction thereof for a temporary restraining order, preliminary injunction or other appropriate order where such relief may be necessary to protect its interests (including, without limitation, any breach of the obligations under Sections 5 and/or 8), without any showing or proving of any actual damages and without posting a bond or other security.

8.3 Allocation of Liability.

8.3.1 UNDER NO CIRCUMSTANCES SHALL A PARTY TO THIS AGREEMENT BE LIABLE TO THE OTHER PARTY OR ANY OTHER THIRD PARTY FOR INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, PROFITS, DATA, (OR USE THEREOF), OR BUSINESS INTERRUPTION ARISING OUT OF ANY ACTS OR FAILURES TO ACT, WHETHER SUCH DAMAGES ARE LABELED IN STRICT LIABILITY, TORT, CONTRACT OR OTHERWISE, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8.3.2 AMS HAS NO RESPONSIBILITY OR LIABILITY FOR ACTS THAT MAY BE COMMITTED BY INDIVIDUALS WHILE THEY ARE PARTICIPANTS. UNDER NO CIRCUMSTANCES SHALL THE TOTAL LIABILITY OF AMS FOR ALL CLAIMS OF ANY KIND WHATSOEVER, AND UNDER ANY THEORY OF LIABILITY, EXCEED THE TOTAL AMOUNT PAID BY AGENCY TO AMS HEREUNDER.

8.3.3 The limitations set forth in this Section 8.3 shall apply even if any exclusive remedy in this Agreement fails of its essential purpose. The allocation of liability in this Section 8.3 represents the agreed and bargained for understanding of the parties and each party's compensation hereunder reflects such allocations.

9 MISCELLANEOUS PROVISIONS

9.1 Independent Contractor. This Agreement does not constitute and shall not be construed as constituting a partnership, agency, distributorship or joint venture between the parties. AMS is to be and shall remain an independent contractor with respect to all Services performed under this Agreement. AMS may subcontract the performance of any of its responsibilities to provide Services pursuant to this Agreement.

9.2 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado without regard to its conflicts of laws provisions. AMS and Agency hereby irrevocably consent to jurisdiction, service of process and venue in the City and County of Denver, Colorado.

9.3 Non-Discrimination. To the extent required by law, AMS shall have in place a policy against discrimination such that no person shall be excluded from full employment rights or participation in or the benefits of any program, services or activity on the grounds of race, color, creed, religion, age, sex, disability, marital status or national origin, and no person who is protected by applicable federal or state laws shall be otherwise subjected to discrimination.

9.4 Assignment. Neither party may assign this Agreement, in whole or in part, without the written consent of the other party and any such attempt at assignment shall be void. Notwithstanding the foregoing, AMS may assign this Agreement to an entity that is wholly-owned by AMS or, in the event of a sale of all or substantially all of its assets or equity, each without the consent of the Agency. This Agreement shall extend to and be binding upon any successors and permitted assigns of the parties.

9.5 Force Majeure. Neither party shall be in default under this Agreement by reason of its delay in the performance of, or failure to perform, any of its obligations under this Agreement, if, and to the extent that, such delay or failure is caused by strikes, wars, natural disasters, acts of the public enemy, government restrictions or acts of terrorism. Upon claiming any excuse or delay under this Section, such party shall promptly notify the other party, use reasonable efforts to remove the cause and continue its performance under this Agreement whenever the cause is removed.

9.6 Notices. All notices, requests, demands or communications required or permitted hereunder shall be in writing, delivered personally or by electronic mail, facsimile or overnight delivery service at the respective addresses set forth on page one (or at such other addresses as shall be given in writing by either party to the other). All notices, requests, demands or communications shall be deemed effective upon receipt for personal delivery, or on the business day following the date of sending by electronic mail, facsimile or overnight delivery service.

9.7 Waiver. Severability. Any waiver of any default or breach of this Agreement shall be effective only if in writing and signed by an authorized representative of the party providing the waiver. No such waiver shall be deemed to be a waiver of any other or subsequent breach or default. If any provision of this Agreement is held to be invalid, the remaining portions of this Agreement shall remain in full force.

9.8 Publicity. AMS shall have the right to issue news releases, press releases or other communications regarding this Agreement to potential investors or to other persons who may desire to understand AMS' ability to provide SCRAMx Sets and Services. However, AMS shall not disclose any names of Participants or Agencies for whom Agency provides SCRAMx Services without the prior written approval of Agency and such approval is not to be unreasonably delayed or withheld.

9.9 Headings. Headings used in this Agreement are for convenience of reference only and shall not be construed as altering the meaning of this Agreement or any of its parts.

9.10 Entire Agreement. This Agreement constitutes the entire understanding of the parties, and supersedes all prior or contemporaneous written and oral agreements, representations or negotiations with respect to the subject matter hereof. This Agreement may not be modified or amended except in writing and signed by both parties.

IN WITNESS WHEREOF, the undersigned duly authorized representatives have executed this Agreement, effective as of the Effective Date.

FOR AND ON BEHALF OF AGENCY

By: Ali Bovingdon
Authorized Signature
Name: Ali Bovingdon
Position: Deputy Attorney General
Date: 09/30/11
Name: N/A
Clerk of Agency

ALCOHOL MONITORING SYSTEMS, INC.

By: Chris Stites
Authorized Signature
Name: Chris Stites
Position: Vice President - Sales
Date: 9/29/11

U.S. SCRAMx Agency Sales and Services Agreement

EXHIBIT A

This Exhibit A ("Exhibit") to the U.S. SCRAMx Agency Sales and Services Agreement ("Agreement"), effective as of **EFFECTIVE DATE** is by and between **24 x 7 Sobriety Program ("Agency")** and **Alcohol Monitoring Systems, Inc. ("AMS")** in consideration of their mutual promises and subject to its terms and conditions. Each term herein shall have the meaning assigned to it in the Agreement.

1. **Term:** This contract shall take effect on October 1, 2011, (or upon contract execution) and terminate on September 31, 2014, unless terminated earlier in accordance with the terms of this contract. Upon each requested renewal beyond September 31, 2014, Agency must submit a Sole Source Justification to the State Procurement Bureau for approval.
2. **Territory:** _____ County 24x7 Sobriety Program
3. **SCRAMx Purchase Price as of Effective Date:**
 - SCRAMx Set price will include SCRAMx bracelet and Base Station at \$1,500.00 each
 - SCRAMx Bracelet only will be \$1,200.00 each
 - SCRAMx Base Station will be \$400.00 each
 - SCRAMx Direct Connect will be \$60.00 each
4. **SCRAMx Rental Price as of Effective Date:**
 - A daily equipment rental fee of \$2.50 will be charged to the agency upon receipt of shipped equipment regardless of if the equipment is activated
 - There will be a 10% shelf allotment –waived for initial 90 days
 - Minimum initial order of five (5) bracelet sets / bracelet only
 - Ninety (90) day minimum rental term which is renewed on a month to month basis unless terminated by Agency or AMS under section 7.
 - Replacement Costs of lost or damaged equipment not covered under Section 5
 1. SCRAMx Bracelet will be \$1,200.00
 2. SCRAMx Base Station will be \$400.00
5. **Daily Monitoring Fee's for SCRAMX Services** will be charged when a unit is activated and placed in service. The Agency is responsible for additional billing days if the equipment is not properly deactivated.
 - Daily Fee for SCRAMx Services for Purchased Equipment as of Effective Date is \$5.00 per day
 - Daily Fee for SCRAMx Services for Rented Equipment as of Effective Date is \$5.00 per day
6. **Other Special Terms:** The maximum amount a participating 24x7 Sobriety Program Agency can charge an offender accordance to pricing established by the Montana Attorney General's Office is as follows:
 - Agency Daily Service Fee for purchased equipment will be \$8.00 a day / \$50.00 Participation Fee
 - Agency Daily Service Fee for rented equipment will be \$8.00 a day / \$50.00 Participation Fee

FOR AND ON BEHALF OF AGENCY

By: Ali Boringdon
Authorized Signature
Name: Ali Boringdon
Position: Attorney General Office - Montana DOJ
Date: 09/30/11
Name: N/A
Clerk of Agency

By: Rhonda R. Pandey
Authorized Signature
Name: State Procurement Bureau
Procurement Officer - State Procurement
Bureau
Position: Bureau
Date: 9/30/2011
Name: Dept of Administration
Clerk of Agency

ALCOHOL MONITORING SYSTEMS, INC.

By: Chris Stites
Authorized Signature
Name: Chris Stites
Position: Vice President - Sales
Date: 9/29/11



AMENDMENT TO SCRAM SYSTEM AGENCY SALES AND SERVICES AGREEMENT

AGENCY: **24 x 7 Sobriety Program**

In consideration of the terms the SCRAM System Agency Sales and Services Agreement entered into by and between Alcohol Monitoring Systems, Inc ('AMS') and (Agency') pursuant to the SCRAM System Agency Sales and Services Agreement between AMS and Agency and to which this Amendment is attached, AMS and Agency agree to amend the SCRAM System Agency Sales and Services Agreement by (i) substituting the numbered Sections below for those identical numbered Sections of the SCRAM System Agency Sales and Services Agreement; or (ii) otherwise adding or deleting provisions to such Agreement, all as set forth below:

Section 2.2.1 shall be modified as follows:

2.2.1 Purchased Products. The purchase price of the Products plus any applicable taxes is due and payable within 30 days upon receipt of invoice. Late payments shall be treated in accordance with Section 2.6

Section 2.2.2 shall be modified as follows:

2.2.2 Equipment Rental. Monthly payments for Equipment Rental Fees will be invoiced to Agency by AMS on or before the tenth (10th) day of each month and shall be paid by Agency to AMS within thirty (30) days from the date of such invoice. Late payments shall be treated in accordance with Section 2.6

Section 2.5 shall be modified as follows:

2.5 Taxes. ~~Agency shall be solely responsible for all taxes related to Products or Services provided to it by AMS under this Agreement including, by way of example and not limitation, sales, use, property, excise, value added, and gross receipts irrespective of whether the Products are purchased or rented. If Agency is exempt from taxes of any kind, including but not limited to sales tax, use tax and excise tax, Agency will provide appropriate exemption documentation for all such taxes applicable to the transactions contemplated by this Agreement~~

Section 2.6 shall be modified as follows:

2.6 Failure to Make Payments. If any amounts owed to AMS are more than thirty (30) days past due, AMS may (i) after notice to Agency, disconnect it from SCRAMNET until full payment is made; and (ii) ~~subject overdue amounts to interest accruing from the due date at the rate of either one and one half percent (1.5%) per month or at the highest rate specified by applicable statute, whichever is lower. Per 17-8-242, MCA, the State shall pay simple interest at the rate of 0.05% each day on amounts due. In addition, AMS may reject orders from Agency for additional SCRAMx Sets or withhold delivery of SCRAMx Sets already ordered until all outstanding amounts are paid in full by Agency.~~

Section 2.7 shall be modified as follows:

~~2.7 Failure to Make Payments. Any amounts due and payable to AMS which are not paid in accordance with the terms of Sections 2.2 or 2.4, will be subject to interest, accruing from the due date at the rate of either one and one-half percent (1.5%) per month or the highest rate specified by applicable statute, whichever is lower. If any amounts owed to AMS under Sections 2.2 or 2.4 are more than thirty (30) days past due date, AMS may, after notice to Agency, disconnect it from SCRAMNET until full payment is made. In addition, AMS may reject orders from Agency for additional SCRAMx Sets or withhold delivery of SCRAMx Sets already ordered until all outstanding amounts are paid in full by Agency.~~

Section 6.4 shall be modified as follows:

~~6.4 Termination for Non-Appropriation of Funds. In the event that Agency is unable to continue to make payments required hereunder due to a failure of the responsible governmental entity to make available funding to the level and in the amount required to remain in compliance with Agency's financial obligations hereunder, then upon the occurrence of such a non-appropriation event and on the date that the requisite funding ceases to be available to the Agency, the Agency may terminate this Agreement, without further financial obligation or liability to AMS other than to pay for Products and Services previously delivered to Agency or performed for Agency. The state must terminate this contract if funds are not appropriated or otherwise made available to support the State's continuation of performance in a subsequent fiscal period (Section 18-4-313(4), MCA.)~~

~~6.4.a Termination of Contract Unless otherwise stated, the State may, by written notice to the contractor, terminate the contract in whole or in part at any time the contractor fails to perform the contract.~~

Section 7.5 shall be added as follows:

7.5 Access and Retention of Records: The contractor agrees to provide the department, Legislative Auditor, or their authorized agents, access to any records necessary to determine contract compliance. (Section 18-1-118, MCA). The contractor agrees to create and retain records supporting the services rendered or supplies delivered for a period of three years after either the completion date of the contract or the conclusion of any claim, litigation, or exception relating to the contract taken by the State of Montana or third party.

Section 8.1 shall be modified as follows:

8.1 Arbitration. Disputes arising under this Agreement that cannot be resolved informally by the parties through good faith negotiations shall be resolved by arbitration before a sole arbitrator appointed and operating pursuant to the Federal Arbitration Act and Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall be conducted in the Lewis and Clark County, Helena, Montana City and County of Denver, Colorado. The written decision of the arbitrator shall be final, binding and convertible to a court judgment in any appropriate jurisdiction. Each party shall bear its own expenses with respect to such arbitration and shall share equally in the expenses of the arbitrator and the fees of the American Arbitration Association.

Section 8.4 shall be added as follows:

8.4 Hold Harmless/Indemnification: The contractor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including

the cost of defense thereof, arising in favor of the contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this agreement.

Section 9.2 shall be modified as follows:

9.2 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of ~~Montana~~ Colorado without regard to its conflicts of laws provisions. AMS and Agency hereby irrevocably consent to jurisdiction, service of process and venue in the Lewis and Clark County, Helena, Montana ~~City and County of Denver, Colorado.~~

Section 9.4 shall be modified as follows:

9.4 Assignment. ~~Neither party may assign this Agreement, in whole or in part, without the written consent of the other party and any such attempt at assignment shall be void. Notwithstanding the foregoing, AMS may assign this Agreement to an entity that is wholly owned by AMS or, in the event of a sale of all or substantially all of its assets or equity, each without the consent of the Agency. This Agreement shall extend to and be binding upon any successors and permitted assigns of the parties.~~

9.4 Assignment, Transfer and Subcontracting: The contractor shall not assign, transfer or subcontract any portion of the contract without the express written consent of the department. (Section 18-4-141, MCA.)

Section 9.5 shall be modified as follows:

9.5 Force Majeure. ~~Neither party shall be in default under this Agreement by reason of its delay in the performance of, or failure to perform, any of its obligations under this Agreement, if, and to the extent that, such delay or failure is caused by strikes, wars, natural disasters, acts of the public enemy, government restrictions or acts of terrorism. Upon claiming any excuse or delay under this Section, such party shall promptly notify the other party, use reasonable efforts to remove the cause and continue its performance under this Agreement whenever the cause is removed. Neither party shall be responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the nonperforming party, so long as such party is using its best efforts to remedy such failure or delays.~~

Section 9.11 shall be added as follows:

9.11 Cooperative Purchasing Language: There is an established contract between the parties of AMS, Inc., and the Montana Department of Justice for SCRAM. Under Montana law, public procurement units, as defined in section 18-4-401, MCA, have the option of cooperatively purchasing with the State. Public procurement units are defined as local or state public procurement units of this or any other state, including an agency of the United States, or a tribal procurement unit.

Signatures:

FOR AND ON BEHALF OF AGENCY

ALCOHOL MONITORING SYSTEMS, INC.

By: Ali Boringdon
Name: Ali Boringdon
Title: Attorney General Office - Montana DOJ
Date: 09/30/11
Attest: N/A
Clerk of Agency

By: Chris Stites
Name: Chris Stites
Title: Vice President - Sales
Date: 9/29/11

By: Randy R. Rader
Name: State Procurement Bureau
Title: Contract Officer - State Procurement Bureau
Date: 9/30/11
Attest: Dept. of Administration
Clerk of Agency

State of Montana 24x7 Sobriety Program Contract Definitions

AMS Contract Section 2.6 Failure to Make Payments

17-8-242. Interest assessed on amounts due. (1) Except as provided in 17-8-244, a state agency shall pay simple interest at the rate of 0.05% each day on amounts due for supplies and services received if the agency fails to make timely payment.

(2) For purposes of this section, payment is timely if a warrant is mailed or is otherwise made available to the payee when due and for the amount specified in the applicable contract or agreement. If no date is specified in the applicable contract or agreement, payment is timely if paid within 30 days after receipt of a properly completed invoice, addressed to the payer agency, or receipt of the supplies or services by the agency, whichever is later.

History: En. Sec. 2, Ch. 484, L. 1983.

AMS Contract Section 6.4 Termination for Non-Appropriation of Funds

18-4-313. Contracts -- terms, extensions, and time limits. (1) Except as provided in subsection (2) or unless otherwise provided by law, a contract, lease, or rental agreement for supplies or services may not be made for a period of more than 7 years. A contract, lease, or rental agreement may be extended or renewed if the terms of the extension or renewal, if any, are included in the solicitation, if funds are available for the first fiscal period at the time of the agreement, and if the total contract period, including any extension or renewal, does not exceed 7 years. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of funds for the fiscal periods.

(2) The contract term limit specified in subsection (1) does not apply to:

- (a) a contract for hardware, software, or other information technology resources, which may be made for a period not to exceed 10 years;
- (b) a department of revenue liquor store contract governed by the term specified in 16-2-101;
- (c) a department of corrections contract governed by the term specified in 53-1-203, 53-30-505, or 53-30-608; and
- (d) the department of administration state employee group benefit plans contracts governed by the term specified in 2-18-811, including group benefit plan contracts made in partnership with the Montana university system group benefit plan.

(3) Prior to the issuance, extension, or renewal of a contract, it must be determined that:

- (a) estimated requirements cover the period of the contract and are reasonably firm and continuing; and
- (b) the contract will serve the best interests of the state by encouraging effective competition or otherwise promoting economies in state procurement.

(4) If funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract must be canceled.

History: En. Sec. 24, Ch. 519, L. 1983; amd. Sec. 1, Ch. 121, L. 1985; amd. Sec. 3, Ch. 228, L. 1993; amd. Sec. 12, Ch. 130, L. 1995; amd. Sec. 63, Ch. 546, L. 1995; amd. Sec. 22, Ch. 181, L. 2001; amd. Secs. 40, 46, Ch. 313, L. 2001; amd. Sec. 8, Ch. 289, L. 2005; amd. Sec. 2, Ch. 127, L. 2007.

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AMS Contract Section 9.4 Assignment

18-4-141. Contract transfers and collusion prohibited -- violations and penalty. (1) A contract or order or any interest in a contract or order may not be transferred, assigned, or subcontracted by the party to whom the contract or order is given to any other party without the express written approval of the state, and the state may declare void any unapproved transfer, assignment, or subcontract.

(2) Collusion or secret agreements between vendors for the purpose of securing any advantage to the vendors as against the state in the awarding of contracts are prohibited. The state may declare the contract void if the department finds sufficient evidence after a contract has been let that the contract was obtained by a vendor or vendors by reason of collusive or secret agreement among the vendors to the disadvantage of the state.

(3) All rights of action for a breach of a contract by the contracting parties are reserved to the state.

(4) A person who violates the provisions of 2-2-201 or this section, or both, is guilty of a misdemeanor and shall be fined an amount of not less than \$500 or more than \$5,000, and the state of Montana may at its option declare any contract in violation of the provisions of 2-2-201 or this section, or both, void ab initio.

History: En. Sec. 12, Ch. 66, L. 1923; re-en. Sec. 293.12, R.C.M. 1935; amd. Sec. 2, Ch. 43, L. 1973; amd. Sec. 77, Ch. 326, L. 1974; amd. Sec. 5, Ch. 97, L. 1977; R.C.M. 1947, 82-1922; amd. Sec. 1, Ch. 52, L. 1983; MCA 1981, 18-4-105; redes. 18-4-141 by Code Commissioner, 1983; amd. Sec. 7, Ch. 443, L. 1997; amd. Sec. 17, Ch. 181, L. 2001.

AMS Contract Section 7.5 Confidential Information

18-1-118. Access to records of contracting entities. Money may not be spent by a state agency under a contract with a nonstate entity unless the contract contains a provision that allows the legislative auditor sufficient access to the records of the nonstate entity to determine whether the parties have complied with the terms of the contract. The access to records is necessary to carry out the functions provided for in Title 5, chapter 13. A state agency may terminate a contract, without incurring liability, for the refusal of a nonstate entity to allow access to records as required by this section.

History: En. Sec. 12, Ch. 787, L. 1991; amd. Sec. 60, Ch. 545, L. 1995; amd. Sec. 2, Ch. 377, L. 1997.

Exhibit A Special Terms: Cooperative Purchasing Language

18-4-401. Definitions. As used in this part, the following definitions apply:

(1) "Cooperative purchasing" means procurement conducted by or on behalf of more than one public procurement unit.

(2) "Local public procurement unit" means a county, city, town, or other subdivision of the state or a public agency of any such subdivision; public authority; educational, health, or other institution; to the extent provided by law, any other entity that expends public funds for the

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procurement of supplies and services; and any nonprofit corporation operating a charitable hospital.

(3) "Public procurement unit" means a local or state public procurement unit of this or any other state, including an agency of the United States, or a tribal procurement unit.

(4) "State public procurement unit" means a state department, agency, or official that expends public funds for the procurement of supplies and services.

(5) "Tribal procurement unit" means a tribal government, tribal entity, or official of a tribal government located in Montana that expends tribal funds or funds administered by a tribe for the procurement of supplies and services to the extent provided by tribal or federal law.