

SOFTWARE SUBSCRIPTION AND SERVICES AGREEMENT

This **SOFTWARE SUBSCRIPTION AND SERVICES AGREEMENT** (“**Agreement**”) is entered into as of this ____ day of _____, 2022 by and between **ALCOHOL MONITORING SYSTEMS, INC.** (“**AMS**”) with its primary address at 1241 W. Mineral Ave., Ste. 200, Littleton, CO 80120 and El Dorado County Probation with its primary address at 3974 Durock Road Ste. 205, Shingle Springs, CA 95682 (“**Customer**”). Activation of the Premium Software will be upon AMS’ acknowledgement of a fully executed initial Order Form as Attachment 1 to this Agreement.

1. DEFINITIONS

“**Access Fees**” means the fees specified in this Agreement for access to, and use of, the Premium Software and Mobile Applications.

“**API**” means application program interfaces which are a set of tools and protocol created to provide interfaces and data exchanges between applications.

“**Billing Period**” means the agreed upon intervals for which AMS will invoice Customer for the Premium Software and Mobile Applications as specified on any Order Form.

“**Client**” means any person who is an offender, an ex-offender, or participant under supervision by an officer or any other similarly supervised personnel of the Customer.

“**Client User**” means any Client who is using a device registered by Customer in the Premium Software user administration system as an active Client.

“**Customer Components**” means Customer’s software, hardware and/or components of the same.

“**Effective Date**” is October 8, 2022.

“**Intellectual Property Rights**” means any and all intellectual property rights of any nature anywhere in the world whether registered, registrable or otherwise, including patents, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, and instruction manuals.

“**Implementation Services**” means services and other deliverables that are provided by AMS or its third-party suppliers in order to configure the Premium Software for its use by the Customer with the Customer Components.

“**Mobile Applications**” are any applications listed in this Agreement which are provided by AMS or its third-party supplier and designed to complement the Premium Software, but which run on mobile devices such as smart phones or tablets.

“**Order Form**” means the AMS form, a copy of which is attached here to as Attachment 1, evidencing an order for the Premium Software and/or Mobile Applications and any subsequent orders for any of the foregoing submitted online or in written form. The Order Form shall specify, among other things, the order date, the services contracted for and software licensed, the applicable Access Fees, the Billing Period, number of Users, Subscription Term and other charges as agreed to between the parties.

“**Premium Software**” means (i) the software application(s) Customer is subscribing to as identified in the Order Form which is an AMS proprietary, online, web-based software application as provided by AMS (ii) any APIs to third party products provided by AMS, (iii) all AMS-included content and; (iv) any related User Guides accessed online or downloaded by Customer through its access to the Premium Software.

“**Provider User**” means an individual who is a treatment provider to active Clients of Customer.

“**SOW**” means a Statement of Work executed by the parties, which is subject to and made part of this Agreement by reference which details project-specific activities, deliverables and timelines for the provision of Implementation Services.

“**Subscription Term**” means the period for which Customer has committed to subscribe to the Premium Software and Mobile Applications as indicated on any Order Form, unless (and until) terminated earlier in accordance with this Agreement.

“**Term**” means the term of the Agreement as set forth in Section 16.1 below.

“**Third-party Components**” means third party software, hardware and/or content.

“**TouchPoint Mobile Application or App**” means a Mobile Application used by a Client User under this Agreement.

“**Update**” means maintenance releases, patches, fixes, extensions or enhancements of the Mobile Applications which AMS generally makes available in its sole discretion and which may be delivered automatically or made available for download via notification.

“**User**” means an individual authorized and registered with AMS to access the Premium Software and/or Mobile Applications who is either an employee, an independent contractor or a treatment provider (“**Provider User**” defined above) engaged by Customer, who is not a competitor of AMS, and who requires access in order to perform his/her tasks and who is registered in AMS’ monitoring system as an active user.

“**User Guides**” means AMS’s online user guides comprising instructions for the use of the Premium Software and Mobile Applications and/or descriptions of their operational and/or design characteristics.

“**User Types**” means various categories of Users as listed in this Agreement that have different rights of access to and use of the Premium Software and Mobile Applications.

2. GRANT OF ACCESS – PREMIUM SOFTWARE.

2.1 Grant of Access – Premium Software. In consideration for the payment by the Customer to AMS of the Access Fees contained in the applicable Order Form(s), AMS shall grant to Customer a non-exclusive, non-transferable limited right to access and use the Premium Software pursuant to the terms set out in this Agreement and the applicable SOW for the duration of the specified Subscription Term. Customer’s license to access the Premium Software shall commence upon execution of an Order Form and Customer understands that the maximum number of Users at all times shall not exceed the number of Users and User Type subscriptions purchased by Customer. Customer agrees that it will not allow access to the Premium Software by anyone other than a User. Customer shall maintain a written, up-to-date list of the current Users and provide such list to AMS within five (5) working days of AMS’s written request at any time. Customer shall be, separately but fully liable for any acts or omissions of their Users related to the use of the Premium Software. Customer shall ensure that each User shall keep a secure password for their use of the Software or Mobile Application and that such password shall be changed no less frequently than every six (6) months and that each User shall keep their password confidential. Customer agrees to (i) use reasonable efforts to prevent unauthorized access to or use of the Premium Software and notify AMS promptly upon becoming aware of any such unauthorized access or use; (ii) use the Premium Software only in accordance with the User Guides, any other written instructions and all applicable laws and government regulations; and (iii) use the Premium Software, Mobile Applications and User Guides only as expressly allowed under this Agreement. Customer and its Provider Users acknowledge and understand that that Provider Users shall not transmit to or enter into the Premium Software database any Protected Health Information of Clients as that term is defined in the Health Insurance Portability and Accountability Act (“HIPAA”). Customer’s failure to comply with Customer’s obligations under this Section 2.1 shall be deemed a material breach of this Agreement.

3. GRANT OF ACCESS – MOBILE APPLICATIONS.

3.1 Customer Mobile Applications. Subject to the terms and conditions of this Agreement and in consideration for the payment by Customer to AMS of the Access Fees contained in the applicable Order Form(s), AMS shall grant to Customer a non-transferable, non-exclusive limited license to install one or more of the Customer Mobile Applications specified in the Order Form for the Subscription Term for the purposes set out in this Section 3.1. Customer shall procure that its Users (a) may use the Customer Mobile Applications only for the purpose of obtaining and analyzing information accessed through the Premium Software on behalf of the Customer and its Clients and interacting with any Clients who are authorized users of the Client Mobile Applications; and (b) may install or use the Customer Mobile Applications only on devices owned or controlled by the Customer or the Users.

3.2 Client Mobile Applications. Subject to the terms and conditions of this Agreement and in consideration for the Access Fees contained in the applicable Order Form(s) AMS shall grant to Customer a non-transferable, non-exclusive limited license to install one or more Client Mobile Applications on its Client Users’ personal mobile devices.

3.3 Access to Mobile Applications. Mobile Applications are available through one of the mobile app stores supported by AMS. For the Mobile Applications, AMS shall provide each User and, if applicable, Client User, with an access code to enable such User or Client User to download a copy of and use the Mobile Applications. To the extent there is any conflict or inconsistency between any license terms that may be embedded in the Mobile Applications (the “EULA”) and the terms and conditions of this Agreement, this Agreement shall prevail and apply to the use of such Mobile Applications and Customer shall be solely responsible and liable to AMS for ensuring all the Users’ and Client Users’ compliance with the terms of this Agreement and associated EULA.

3.4 Mobile Application Updates. The timing and frequency of any Updates to the Mobile Applications will be determined at the sole discretion of AMS.

3.5 Mobile Application Removal. Within three (3) working days of termination or expiration of this Agreement or when the Mobile Application is no longer in use by the Client, Customer is solely responsible for ensuring that the Mobile Application Users remove the Mobile Application from their cell phone or other device.

4. RESERVATION OF RIGHTS; USER RESTRICTION, LIMITATIONS OF USE AND HIPAA.

4.1 Reservation of Rights. Except for the limited rights expressly granted hereunder, AMS (or its third-party licensors) reserves all rights and title to and interest in the Premium Software and Mobile Applications (and all modification to the same), including without limitation all related Intellectual Property Rights. No rights are granted to Customer hereunder other than as expressly set forth herein.

4.2 User and License Restrictions. Customer acknowledges and agrees that each User and Client User subscription is for a single designated individual and cannot be shared or used by more than one individual unless it has been reassigned in its entirety to another individual. Subject to AMS’s prior written consent, Customer may purchase additional subscriptions during the Subscription Term at the same pricing as that for the pre-existing subscriptions, prorated for the remainder of the Subscription Term. Unless extended in accordance with this Agreement, the additional User and Client User subscriptions shall terminate on the same date as the pre-existing subscriptions.

4.3 Limitations of Use. With regard to the Premium Software and Mobile Applications, Customer agrees not to and shall not permit anyone to (including, without limitation, third parties and Users) do or attempt to do any of the following, except as may be expressly permitted by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement: (a) tamper with the security of the Premium Software and/or Mobile Applications; (b) access data not intended for Customer; (c) log into a server or account for which Customer is not authorized; (d) copy, modify, adapt, alter, translate, or create derivative works of the Premium Software or Mobile Applications; (e) rent, lease, license, sublicense, sell, resell, assign, transfer, distribute or otherwise transfer or commercially exploit the Premium Software or Mobile Applications; (f) make the Premium Software or Mobile Applications available to any third party not explicitly authorized under this Agreement (g) remove, modify, or obscure any copyright, trademark, patent or other proprietary notice that appears in the Premium Software or Mobile Applications; (h) except as expressly permitted in this Agreement, make the Premium Software or Mobile Applications available over a network or other environment permitting access or use by multiple mobile devices; (i) create any link to the Premium Software or Mobile Applications or frame or mirror any content contained or accessible from the Premium Software or Mobile Applications; (j) use the Premium Software or Mobile Applications for timesharing or service bureau purposes or otherwise for the benefit of a third party or use the Premium Software or Mobile Applications for creating a product, service or software that is, directly or indirectly, competitive with or in any way a substitute for any services, product or software offered by AMS; (k) reverse engineer, remanufacture, decompile, disassemble, or otherwise attempt, in whole or in part, to derive the source code for or to decrypt the Premium Software or Mobile Applications; (l) probe, scan or test the vulnerability of the Premium Software or Mobile Applications or to breach the security or authentication measures without prior written and proper authorisation from AMS; or (m) willfully render any part of Premium Software or Mobile Applications unusable. Customer shall not access, store, distribute or transmit any viruses (or similar) or any material during the course of its use of the Premium Software or Mobile Applications that is: (a) unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; (b) facilitates illegal activity; or (c) is otherwise illegal or causes damage or injury to any person or property, and AMS reserves the right, without liability or prejudice to its other rights, to suspend Customer's (and/or Users' or Client Users') access to the Premium Software or Mobile Applications in the event of any breach of this Section 4.3.

4.4 HIPAA and 42 C.F.R. Part 2.

4.4.1 Purpose of Customer Use. The parties agree that the Premium Software will be accessed and used by Customer for the purpose of monitoring and communicating regarding a Client's compliance with parole obligations or court order. The parties further understand that the Premium Software is not used to maintain information on behalf of a "covered entity" or "business associate" under the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations found at 45 C.F.R. Parts 160 and 164 (collectively "HIPAA") or on behalf of a "program" under the Confidentiality of Substance Use Disorder Patient Records found at 42 C.F.R. Part 2 ("Part 2").

4.4.2 Customer Compliance with HIPAA and Part 2. Customer and each User granted access to the Premium Software are responsible for ensuring compliance with HIPAA, Part 2, or applicable state law when entering, transmitting, or accessing information through the Premium Software, including but not limited to information entered into the Premium Software from other Customer or third-party systems through the use of APIs or any other means of automatic information transmittal. Customer is responsible for establishing the access levels and controls granted to each User and Customer warrants to AMS that it will (a) establish such user access and controls consistent with its obligations under HIPAA, Part 2, state law, and court limitations and (b) ensure that each User will only enter information into the application to the extent such User has legal authority to use or disclose such information. To the extent information subject to Part 2 is entered into the application, the User entering such information is responsible for identifying the information by indicating "42 CFR Part 2 prohibits unauthorized disclosure of these records".

5. OTHER TERMS OF ACCESS AND USE

5.1 Other Terms of Access and Use. Upon request from Customer, AMS may make Customer Components and Third-party Components available for access through or linked to the Premium Software and Mobile Applications. AMS disclaims all liability and responsibility for such Customer Components and Third-party Components, and Customer remains solely responsible for obtaining and maintaining the necessary permissions for such access or linkage and for obtaining and maintaining all necessary rights for Customer's use of (and AMS's access or linking to) the Customer Components and Third-party Components and Customer shall be solely responsible for any problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer Components and Third-party Components. In the event there is a claim made against AMS by a third party alleging that the Customer Components or Third-party Components infringes or misappropriates the Intellectual Property Rights of a third party or violates applicable law, AMS will provide notice of such claim to Customer and AMS may immediately remove the relevant Customer Components or Third Party Components until such claim is resolved to the satisfaction of AMS. Customer warrants that its purchases hereunder are based on the current specifications, functionality and features and are not contingent on the delivery of any future specifications, functionality or features nor dependent on any oral or written comments, statements or other representations made by or on behalf of AMS regarding future specifications, functionality or features of the Premium Software or Mobile Applications, or other products or services. Customer hereby assigns (and shall ensure that each of its Users assigns) to AMS (by way of present and, where appropriate future assignment) all its right, title and interest (including Intellectual Property Rights) in and to all and any suggestions, enhancement requests, recommendations, communications or other feedback provided by Customer or its Users in connection with the Premium Software, Mobile Applications or other products or services of AMS, and Customer agrees that the foregoing shall be provided free of any confidentiality or privacy restrictions that may otherwise apply.

5.2 **Reserved**

5.3 **Order of Precedence.** Should there be a conflict between the Agreement, the SOW, and Order Form, the order of precedence shall be the Agreement, the SOW (if applicable) and the Order Form.

5.4 **Cooperative Purchasing.** Pursuant to their own governing laws, and subject to the agreement of AMS, other entities may be permitted to make purchases at the terms and conditions contained herein. These purchases shall be independent of the agreement between Customer and AMS, and Customer shall not be a party to any transaction between AMS and any other purchaser.

6. **AVAILABILITY OF SERVICES.** AMS shall use commercially reasonable efforts to make the Premium Software and Mobile Applications available for twenty-four (24) hours a day, seven (7) days a week. Customer agrees that from time to time the Premium Software or Mobile Applications may be inaccessible or inoperable for reasons beyond the control of AMS, including: (i) equipment malfunctions; (ii) periodic planned and unscheduled maintenance procedures or repairs; or (iii) interruption or failure of telecommunication or digital transmission links, hostile network attacks, network congestion or other similar failures or disasters. Customer shall not be entitled to any setoff, discount, refund or other credit as a result of unavailability of the Services except as expressly provided herein.
7. **SECURITY.** AMS shall use commercially reasonable efforts to prevent unauthorized access to restricted areas of the Premium Software and any databases or other sensitive material. AMS reserves the right to deactivate or suspend access to the Premium Software by Customer and/or by a User or a Mobile Application by a User or Client User if such User or Client User is found or AMS reasonably suspects them to be using their access to facilitate illegal, abusive or unethical activities or otherwise in breach of this Agreement. Such activities include pornography, obscenity, violations of law or privacy, hacking, computer viruses, or any harassing or harmful materials or uses.
8. **AMS WARRANTY.** AMS warrants that the Premium Software and the Mobile Applications will perform in all material respects in accordance with their respective User Guides for the Subscription Term. The entire liability of AMS and the exclusive remedy of Customer for breach of this warranty is for AMS, at its expense and sole option, to: (a) use all reasonable commercial endeavours to correct any such non-conformance; (b) provide Customer with an alternative means of accomplishing the desired performance; or (c) terminate this Agreement and refund Customer in accordance with Section 16.3.
9. **CUSTOMER WARRANTIES.** Customer represents and warrants that (i) it has the legal power to enter into this Agreement, (ii) it will not transmit to AMS any viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs; and (iii) that it has and will maintain all rights necessary to any Customer Components and Third Party Components accessed through or linked to the Premium Software or Mobile Applications in accordance with Section 5.1. Customer shall defend, indemnify and hold AMS harmless from and against all claims, actions, proceedings, losses, damages, costs and expenses, (including without limitation court costs and reasonable legal fees), arising out of or in connection with any breach of this warranty.
10. **IMPLEMENTATION SERVICES.**
 - 10.1 **Services.** In the event that AMS agrees to provide any Implementation Services under a SOW in order to configure the Premium Software for its use by Customer, AMS shall provide such Implementation Services under the terms of this Agreement and the applicable SOW.
 - 10.2 **Change Procedures.** In the event it is necessary to modify the scope of the Implementation Services at any time, including but not limited to, where such modifications would: (a) add to AMS's obligations under the SOW; (b) extend the time needed to complete the Implementation Services; and/or (c) increase the cost to complete the Implementation Services, the parties will mutually discuss in good faith and sign an amendment to the SOW modifying the scope, timescales and/or cost of the Implementation Services accordingly.
 - 10.3 **Deliverable(s), Ownership and Customer License.** AMS retains all right, title and interest in any deliverables provided as a part of the Implementation Services ("Deliverables"), except for any Customer Components or Third Party Components incorporated in the Deliverable (hereinafter "Components"). To the extent Customer acquires any rights in a Deliverable, excluding in relation to the Components, Customer hereby assigns (by way of present and, where appropriate future assignment) all such rights, title and interest (including Intellectual Property Rights) in and to the Deliverable to AMS. Notwithstanding the foregoing and provided AMS has been paid for all amounts owed pursuant to this Agreement and applicable SOW(s) for such Deliverables, AMS grants Customer a non-exclusive, non-transferrable, limited license to use the Deliverables in conjunction with the Premium Software and Mobile Applications.
 - 10.4 **Implementation Services Warranty.** AMS warrants that any Implementation Services provided under this Agreement shall be performed in a professional and workmanlike manner in accordance with applicable industry standards. For any breach of the foregoing warranty, Customer's sole remedy and AMS's sole obligation, at AMS's option, is to: (a) re-perform the Implementation Services that failed to comply with the warranty at no additional charge to Customer, or (b) refund the amounts paid by Customer for the Implementation Services that failed to comply with the warranty, provided AMS has received written notice from Customer within thirty (30) calendar days after completion of any such Implementation Services (or part thereof) that Customer alleges fails to comply with the warranty above and AMS has been provided with sufficient access to assess or otherwise test the compliance of such Implementation Services.
11. **DISCLAIMER AND LIABILITY OF THE PARTIES.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF

MERCHANTABILITY, NON-INFRINGEMENT, COURSE OF PERFORMANCE OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. Except as provided herein, AMS cannot and does not guarantee the privacy, security, authenticity and non-corruption of any information transmitted through, or stored in any system connected to, the Internet. Except in relation to any claim AMS may have for breach of its Intellectual Property Rights, under no other circumstances shall a party to this Agreement be liable to the other party (or in the case of such other party being the Customer, to its Users) whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any 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 such party has been advised of the possibility of such damages. Nothing in this Agreement excludes or limits the liability of either party for (i) any indemnity or breach of the confidentiality obligations in this Agreement; (ii) any liability for personal injury, death or damage to property caused by its negligence or willful misconduct or the negligence of its employees, agents or subcontractors; or (iii) fraud or fraudulent misrepresentation; or (iv) any other liability that cannot be limited or excluded by applicable law. Subject to the foregoing, AMS's aggregate liability to Customer, Clients and its Users in each Liability Period (defined below) in respect of any and all claims of any nature (including in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise), arising directly or indirectly out of or in connection with this Agreement, including all SOWs or the performance or contemplated performance of this Agreement including all SOWs, in each case in respect of all incidents or series of incidents arising in such Liability Period, shall be limited to, an amount equal to the aggregate amounts paid by Customer to AMS in respect of the twelve (12) calendar months immediately preceding the earliest event giving rise to such claim (the "**Liability Period**") less any amounts paid by AMS to Customer in such Liability Period under this Agreement.

12. ACCESS FEES AND IMPLEMENTATION SERVICES FEES: PAYMENT TERMS.

12.1 Access Fees. Customer shall pay AMS in advance the Access Fees specified on the initial Order Form for each Billing Period commencing on the date specified in the Order Form for the Subscription Term. Customer shall pay, all Access Fees under this Agreement and any subsequent Order Forms which for additional Users or Client Users upon receipt of the applicable invoice from AMS.

12.2 Implementation Services Fees; Payment terms. AMS shall invoice Customer for the fees for the Implementation Services fees on a monthly basis unless agreed otherwise in the applicable SOW. Customer shall reimburse AMS for all actual and reasonable travel and related living expenses that AMS incurs in connection with delivering the Implementation Services. Customer shall pay the invoices for the fees and expenses relating to the Implementation Services within thirty (30) days of date of each such invoice.

12.3 Unpaid Fees. Without prejudice to any other right and remedies of AMS, if any invoice remains unpaid by the relevant due date, interest shall accrue on a daily basis on such overdue amounts at the rate of the lesser of: (a) 1.5% per month; or (b) the maximum amount permitted by applicable law, in each case whether before or after judgment.

12.4 Taxes. Customer shall pay all taxes invoiced by AMS related to the Access Fees, Implementation Services fees or other charges or fees payable in connection with this Agreement to the extent such taxes are applicable to Customer. All amounts referenced or referred to in this Agreement shall be payable in US Dollars and exclusive of value added or other applicable sales taxes, unless otherwise stated.

13. SUSPENSION OF SERVICE. If any amounts, fees, expenses or charges payable by Customer under or in connection with this Agreement remain unpaid by the relevant due date, AMS may, without limiting its other rights and remedies, suspend access to the Premium Software and/or Mobile Applications until such overdue amounts are paid in full together with any interest payable on such overdue amount. For a Client User who is responsible for paying his/her Access Fees, AMS may, without limiting its other rights and remedies, suspend access to the Client Mobile Application for such Client User in the event of non-payment.

14. INFRINGEMENT INDEMNIFICATION. AMS agrees to defend Customer and pay any judgments, costs and expenses, or amounts paid in settlement to which AMS agrees, which Customer may sustain as the result of any claim by a third party that Customer's use of the Premium Software or Mobile Applications in accordance with this Agreement infringes or misappropriates such third party's (i) duly issued patent existing or issued prior to the Effective Date, or (ii) copyright, or trade secrets existing as of the Effective Date. Provided always that in the event of a claim for indemnification, Customer must: (a) immediately notify AMS in writing of the suit or claim; (b) give AMS sole authority to defend or settle the suit or claim (provided that AMS may not settle any claim unless it unconditionally releases Customer of all liability); and (c) reasonably cooperate and assist AMS (at AMS's expense) with defense of the suit or claim. The obligations under this Section do not apply to the extent a claim against Customer arises from Customer's breach of the terms of this Agreement.

If either the Premium Software or Mobile Applications become or in AMS's opinion are likely to become the subject of a suit or claim of infringement of a third party's intellectual property rights, AMS will, at AMS's option and expense:

- (a) procure for Customer the right to continue to use the relevant software as furnished;
- (b) modify the relevant software to make it non-infringing, provided that it still substantially conforms to the applicable User Guides in all material respects; or
- (c) terminate this Agreement and/or the Order Form for the relevant software. In such event, AMS will pay Customer, as Customer's sole and exclusive remedy, an amount equal to the prepaid Access Fees calculated commencing with on the effective date of termination.

15. CONFIDENTIAL INFORMATION

15.1 Confidential Information. In connection with this Agreement a party ("Discloser") may furnish to the other party ("Recipient") confidential information, including without limitation, software, user and training manuals, data, Client 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) any 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 the Premium Software, Mobile Applications, User Guides and all data and other information accessed by Customer via the Premium Software and Mobile Applications. 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 attachments and amendments hereto, as Confidential Information of each party.

15.2 Nondisclosure. It is agreed that, after receipt of Confidential Information of the other party, Recipient shall: (i) treat the Discloser's Confidential Information as confidential; (ii) not disclose the Discloser's Confidential Information to any other person without the Discloser's prior written consent save to those employees who need to use the Confidential Information in connection with the performance of this Agreement, (iii) not use such Confidential Information other than for the purposes of this Agreement; and (iv) 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 are exposed to Discloser's Confidential Information.

15.3 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 without the use of such Confidential Information.

15.4 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 Recipient is legally required; and (ii) to the extent permitted by law, 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.

16. TERM OF AGREEMENT; TERM OF LICENSE SUBSCRIPTION; REFUND UPON TERMINATION FOR CAUSE.

16.1 Term of Agreement. This Agreement commences on the Effective Date and continues for the Subscription Term specified in the Order Form unless the Agreement is extended pursuant to Section 16.2 or has been otherwise terminated as set forth in its termination provisions.

16.2 Term of Additional User/Client User Subscriptions. Additional Users or Client Users may be added by written addendum to the applicable Order Form. Additional User/Client User subscriptions commence on the start date specified in the addendum to the Order Form and continue for the Subscription Term specified therein. User subscriptions shall automatically renew for additional periods equal to the shorter of the expiring Subscription Term or one year, unless either party gives the other party notice of non-renewal at least thirty (30) days before the expiry of the then current Subscription Term. The Access Fees (and any other applicable charges) for additional Users or Client Users added during the remainder of the Subscription Term and for the subsequent renewal term shall be the same as the Access Fees (and any other applicable charges) that applied during the immediately preceding Subscription Term, unless AMS provides written notice of an increase at least thirty (30) days before the extension of the Subscription Term.

16.3 Termination for Cause; Refund or Payment upon Termination.

16.3.1 Termination for Cause. In the event that either party breaches any of the terms or conditions in this Agreement, this Agreement may be terminated by the non-breaching party; provided that prior to any such termination or any claim for damages being made, the terminating party must provide the other party with thirty (30) days' written notice and sufficient detail of any such alleged breach so as to afford the breaching party an opportunity to cure the alleged breach.

16.3.2 Refund upon Termination for Cause. In the event that Customer exercises its right and terminates the Agreement in accordance with Section 16.3.1 as a result of a breach by AMS that remains unremedied, AMS shall refund to Customer any prepaid Access Fees covering the remainder of the Subscription Term of all subscriptions after the effective date of termination. In the event that AMS exercises its right and terminates the Agreement in accordance with Section 16.3.1 as a result of a breach by Customer then, without prejudice to any other rights or remedies AMS may have, Customer shall pay any unpaid Access Fees through the remainder of the Subscription Term.

16.4 Termination for Non-Appropriation of Funds. In the event that Customer 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 Customer'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 Customer, Customer may terminate this Agreement, without further financial obligation or liability to AMS.

16.5 Data Transfer. Within 90 days of termination or expiration of this Agreement, AMS will provide Customer with a Client Data file in JSON format. Any requirement to expunge Client Data is Customer's sole responsibility and AMS will bear no responsibility or liability for Customer's failure to expunge such data.

16.6 Survival. Upon termination of this Agreement for any reason, all licences granted under or in connection with this Agreement shall immediately terminate and Customer shall immediately cease (and ensure that its Clients and Users immediately cease) all use of, and access to, the Premium Software and Mobile Application. This Section 16 and Sections 11, 14, 15, and 17 shall survive termination of this Agreement howsoever arising.

17. MISCELLANEOUS PROVISIONS

17.1 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to its conflicts of laws provisions. In any litigation in which the parties are adverse, the parties agree to waive their respective rights to a trial by jury.

17.2 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 and the party not initiating the arbitration will choose its location. 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.

17.3 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 3 to 6 and/or 15), without any showing or proving of any actual damages and without posting a bond or other security.

17.4 Assignment. Except as expressly permitted herein, neither party may transfer or assign this Agreement, in whole or in part, without the prior written consent of the other party and any such attempt at transfer or assignment shall be void. Notwithstanding the foregoing, AMS may transfer or assign this Agreement to an entity that is an affiliate of AMS or, in the event of a sale of all or substantially all of its assets or equity, each without the consent of Customer. This Agreement shall extend to and be binding upon any successors and permitted assigns of the parties. AMS may subcontract the performance of any of its obligations under this Agreement. AMS shall remain responsible for all acts and omissions of its subcontractors (and their employees) as if they were its own.

17.5 Insurance. AMS will maintain insurance with coverage type and amounts as specified in Exhibit A, which is attached hereto.

17.6 Independent Contractor. This Agreement does not constitute and shall not be construed as constituting a partnership, agency, distributorship or joint venture between the parties and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power). AMS is to be and shall remain an independent contractor with respect to Products provided or Services performed under this Agreement.

17.7 Force Majeure. Except for the obligation to make payments as provided herein, neither party shall be liable to the other party or in default under this Agreement if it is prevented or delayed in performing its obligations or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes or other industrial disputes, failure of a utility service or transport or communications network, wars, act of God, fire, flood, storm, natural disaster, riot or civil commotion, malicious damage, acts of the public enemy, compliance with any law or government order, rule, regulation or direction, government restrictions or acts of terrorism. Such party shall promptly notify the other party and use reasonable efforts to remove the cause and continue its performance under this Agreement whenever the cause is removed.

17.8 Notices. All notices, requests, demands or communications required or permitted hereunder shall be in writing, delivered personally or by electronic mail or overnight delivery service at the respective addresses set forth herein (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 or overnight delivery service.

17.9 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.

17.10 Severability. If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted and such modification or deletion not affect the validity and enforceability of the rest of this Agreement.

17.11 Publicity. Subject to Section 15, AMS shall have the right to issue news releases, press releases or other communications regarding the intended nature of the relationship between the parties in connection with this Agreement

to potential investors and customers. However, AMS shall not disclose any names of Customer or Clients without the prior written approval of the relevant Customer or Client.

17.12 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.

17.13 Execution. This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all counterparts shall together constitute one agreement. Transmission of the executed signature page of a counterpart of this Agreement by email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Agreement.

17.14 Entire Agreement. This Agreement constitutes the entire understanding of the parties, and supersedes and extinguishes all prior promises, assurances, warranties, representations and understandings between them, whether written or oral relating to its subject matter hereof. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

17.15 Third Party Rights. No one other than a party to this Agreement (and their permitted assignees) shall have any right to enforce any of its terms. For the avoidance of doubt, no Clients shall have the right to enforce any terms of this Agreement against AMS. The rights of the parties to enter into, rescind or vary this Agreement are not subject to the consent of any other person.

17.16 Variation. This Agreement may not be modified or amended except in writing and signed by both parties (or their authorized representatives).

17.17 Contract Administrator. The County Officer or employee with responsibility for administering this Agreement is Gary Romanko, Deputy Chief Probation Officer, Probation Department, or successor.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date last signed below.

**ALCOHOL MONITORING SYSTEMS,
INC.**

By:

Printed Name: John Hennessey

Title: Chief Operating Officer

Date: _____

-- COUNTY OF EL DORADO --

By: _____
Board of Supervisors
"County"

Dated: _____

Attest:
Kim Dawson
Clerk of the Board of Supervisors

By: _____
Deputy Clerk

Dated: _____

EXHIBIT "A"

Insurance: Contractor shall provide proof of a policy of insurance satisfactory to County's Risk Management Division and documentation evidencing that Contractor maintains insurance that meets the following requirements:

- A. Workers' Compensation Insurance with statutory limits as required by the laws of any and all states in which Contractor's employees are located, and Employer's Liability Insurance on a per occurrence basis with a limit of not less than \$1,000,000.
- B. Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000 aggregate limit.
- C. Automobile Liability Insurance of not less than \$1,000,000 is required in the event motor vehicles are used by Contractor in performance of the Agreement.
- D. In the event Contractor is a licensed professional or professional consultant and is performing professional services under this Agreement, Professional Liability Insurance is required with a limit of liability of not less than \$1,000,000.
- E. Contractor shall furnish a certificate of insurance satisfactory to County's Risk Management Division as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to County's Risk Management Division or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.
- G. Contractor agrees that the insurance required herein shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Contractor agrees to provide an updated certificate of insurance prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Risk Management and Contractor agrees that no work or services shall be performed prior to the giving of such approval. In the event Contractor fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.
- H. The certificate of insurance must include the following provisions stating that:
 - 1. Contractor will notify County in the event of cancellation of insured's coverage; and
 - 2. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, on an additional insured endorsement, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.
- I. Contractor's insurance coverage shall be primary insurance in respect to County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by County, its

officers, officials, employees, or volunteers shall be in excess of Contractor's insurance and shall not contribute with it.

- J. Any deductibles or self-insured retentions must be declared to and approved by County. At the option of County, either: The insurer shall reduce or eliminate such deductibles or self-insured retentions in respect to County, its officers, officials, employees, and volunteers; or Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to County, its officers, officials, employees, or volunteers.
- L. The insurance companies shall have no recourse against the County of El Dorado, its officers, and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. Contractor's obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement.
- N. In the event Contractor cannot provide an occurrence policy, Contractor shall endeavor to provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- O. The certificate of insurance shall meet such additional standards as may be determined by the contracting County department, either independently or in consultation with County's Risk Management Division as essential for protection of County.

**ATTACHMENT 1 – ORDER FORM
TO
PREMIUM SOFTWARE SUBSCRIPTION AND SERVICES AGREEMENT
SOFTWARE, PRICING AND OTHER TERMS**

1. Annual Fees:

Annual fees to be paid in advance include: Nexus Premium Software and Access Fees for 50 Full Access Users, Data Access Users, and Read Only Users; Nexus Treatment Portal; Annual API Maintenance Fee; and all TouchPoint Mobile App user fees.

Annual Access Fees:

Year One:	\$59,000.00
Year Two:	\$61,350.00
Year Three:	\$63,817.50
Year Four:	\$66,408.38
Year Five:	\$69,128.80

2. Subscription Term: This Agreement shall commence on October 8, 2022, and continue through October 7, 2023 (the "Initial Term"). After the Initial Term expires, this Agreement will automatically renew for four (4) one year renewals (each a "Renewal Term") unless either party provides the other with a written notice of termination thirty (30) days prior to the end of the Term. The Initial Term, together with any Renewal Term, is referred to as the "Term."

3. User Definitions:

Full Access User: Unlimited Client tests per day, unlimited number of Clients and 24/7 support call center. Has the ability to enter Client Data, set/collect amounts due from Clients and access to Power BI reporting, provide access for Data Access User, and set Client sanctions.

Data Access User: Unlimited Client tests per day, unlimited number of Clients and 24/7 support call center. Client set up, collect amounts due from Clients, and assign but not set Client sanctions. No access to Power BI reporting.

Read Only User: Ability only to view Client Data. Visibility to Client case load, test results and Client payment compliance. No access to Power BI reporting.

4. Billing Period: Nexus and Touchpoint: Annual, paid in advance

5. Training: \$2,000 per day for on-site training with a 2-day minimum. Customer will be provided with 2 days of training annually at no cost to Customer.

6. Not to Exceed Amount: \$359,704.68 over the Term.