AMS
ALCOHOL MONITORING SYSTEMS, INC

1241 West Mineral Avenue, Suite 200
Littleton, CO 80120

Alpha Test Program Agreement #522-S1711

Whereas, **Alcohol Monitoring Systems, Inc. (**AMS) is the creator of software known as the "Compliance Platform" intended to case manage probationers more effectively. Prior to releasing the software for public purchase, AMS seeks practical input from the El Dorado County Probation Department ("Agency") as a test agency to give input to AMS on various features of the data driven decision support software for probation case management.

Whereas, Agency is interested in purchasing the AMS software when it is made available to the public and would like to ensure its effectiveness,

Therefore, the Parties agree as follows:

This **Alpha Test Program Agreement ("Agreement")** between **Alcohol Monitoring Systems, Inc**. located at 1241 West Mineral Avenue, Suite 200, Littleton, Colorado 80120 **("AMS")** and **El Dorado County Probation Department** located at 3974 Durock Road, Ste. 205, Shingle Springs, CA 95682 ("**Agency**") is effective upon signature of both parties ("Effective Date")

This Agreement, sets forth the terms and conditions under which AMS will provide Agency access to the Compliance Platform Software, prior to releasing the software for public purchase ("Pre Release Software"), and Agency will provide feedback to AMS regarding the Pre Release Software.

1.   Agency's Responsibilities and Obligations

Agency hereby agrees to identify a core team of no fewer than two (2) and no more than six (6) Agency employees ("Agency Users") that will test, through an alpha phase, all aspects of the Pre Release Software as reasonably requested by AMS and provide feedback regarding its functionality ("Feedback"). The Agency Users will allocate six (6) hours per week from the Effective Date through January 31, 2017 to work with AMS's project team to gather detailed feedback necessary to build out the Pre Release Software application. This includes such areas as comparing the Agency's processes to the existing functionality in the Pre Release Software and identifying functional gaps in the Pre Release Software.

EDC#522-S1711

2. AMS's Responsibilities and Obligations.

a. Provide assistance to the Agency for their feedback

To enable the testing and subject to the Agency's continued compliance with the terms and conditions of this Agreement, AMS grants Agency a royalty-free, non-transferable, non-exclusive limited right to access and use the Pre Release Software solely to provide Feedback to AMS prior to the release of the Pre Release Software to the general market. Access to the Pre

Release Software shall be limited to Agency Users and other Agency employees in their chain of command necessary to review their Feedback to the Pre Release Software under this Agreement and who are informed of the confidentiality requirements of this Agreement.

AMS shall provide a project manager and additional AMS technical resources to coordinate the testing and to perform a detailed review of Agency's internal processes and functional gaps as identified by Agency. AMS will review, prioritize and provide status of Feedback provided by Agency during the testing of the Pre Release Software. AMS will communicate regularly with Agency and let Agency know as quickly as possible of any interim releases AMS wanted Agency to test, and to keep Agency informed of any changes to the timeline for testing.

The end date of this phase is to be determined based on Feedback during the alpha testing and may be moved forward or back as determined in its sole discretion by AMS. Decisions on time frame will be communicated to Agency by the project manager once approved internally by AMS.

b. Offer an irrevocable offer to purchase at specified cost.

In exchange for Agency providing the Alpha Testing feedback described above, if AMS offers the Compliance Platform Software, AMS shall offer Agency the opportunity to purchase use of the Software through software licensing at a reduced price.

Agency shall have the irrevocable option to purchase from AMS a three-year subscription (with two, one year options) for thirty (30) or more Agency Users for the Compliance Platform Software. Agency User access to the Compliance Platform will be provided at no charge for the initial year. For the second year, the fees will be $75 per Agency User per month and the third year fees will be $100 per Agency User per month. This offer will remain in effect for a minimum of ninety (90) days after the Compliance Platform Software is made available publicly ("General Availability Software"). Agency may accept or reject the foregoing offer in its sole discretion.

EDC#522-S1711

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c. Possible Future Beta Testing

AMS anticipates a beta testing phase will occur and that Agency will participate in the beta phase. Nothing in this agreement obligates either party to participating in a beta testing agreement.

d. No obligation to use Feedback

Agency feedback will be considered in the development of the Pre Release Software, there are no guarantees, written or implied, that Agency's requests will be incorporated into the version of the Pre Release Software offered to the general market.

3.   Confidentiality

Any Feedback provided by Agency shall be deemed non-confidential to Agency. The Agency will not provide any personal identifiable information about any probationer as part of its Feedback. If AMS personnel view any confidential information in their performance under this agreement, they agree to maintain the confidentiality of that information. AMS will hold any and all data used for experimental purposes as confidential in accordance with the laws of the State of California and of the United States for automated criminal record information. Personally identifiable information will be treated in accordance with any prevailing confidentiality statutes applicable to the type of data. All data provided by Agency and used in the testing and performance of the Pre Release Software, excluding Feedback, is owned by the Agency and, unless a subsequent agreement is established for the benefit of Agency, shall be returned or destroyed at the request of Agency.

During the Term (the period of the testing by Agency of the Pre Release Software), Agency Users will not disclose to any third party the Pre Release Software, Feedback, and any product-related information and other proprietary technology or know how disclosed to Agency by AMS under this Agreement. It is understood by the parties that, once the Pre Release Software is made generally available by AMS, Agency has access to the Generally Available Software and Agency Users may discuss with third parties the features of the Generally Available Software.

EDC#522-S1711

Further, Agency Users may demonstrate the user interface screens of the Generally Available Software to third parties upon the prior written approval of AMS (which includes email approval) and subject to Agency's own internal approval process. Agency will maintain the confidentiality of such information with at least the same degree of care that it uses to protect its own confidential information, but not less than a reasonable degree of care under the circumstances. However, Agency will not be liable for the disclosure of such information which is: (a) in the public domain other than by a breach of this Agreement on Agency's part; or (b) rightfully received from a third party without any obligation of confidentiality; or (c) rightfully known to Agency without any limitation on use or disclosure prior to its receipt from AMS; or (d) independently developed by Agency's employees; or (e) generally made available to third parties by AMS without restriction on disclosure.

4.   Term

The test will be conducted from November 01, 2016 through December 31, 2018. The purchase price identified in the contract shall remain in effect for a minimum of 90 days after the Software is released to the public.

The prior agreement #276-S1710 covered the term of 12/12/16 through 01/31/17. This agreement, #522-S1711, is intended to terminate and supersede the prior agreement in order to correct the term dates.

5.   Termination

Either party may terminate this Agreement at any time for any reason or no reason by providing the other party seven (7) days advance written notice thereof. Upon any expiration or termination of this Agreement, the access rights and licenses granted to Agency under this Agreement shall immediately terminate, and Agency shall immediately cease using, and will return to AMS (or, at AMS' request, destroy), all other items in Agency's possession or control which are protected under Section 3 above. Sections 2, 3, 8, 9, and 11 through 17 shall survive termination or expiration of this Agreement.

6.   Additional Restrictions

Agency agrees not to and shall not permit any third party to (a) modify, adapt, alter, translate, or create derivative works from the Pre Release Software; (b) license, sublicense, sell, resell, transfer, distribute or otherwise transfer, or commercially exploit or make available the Pre Release Software to any third party; (c) use the Pre Release Software to process the data of or otherwise benefit third parties; (d) reverse engineer, remanufacture, decompile, disassemble, or otherwise attempt, in whole or in part, to derive the source code for the Pre Release Software provided hereunder; (e) use AMS' systems to store or transmit infringing, libelous, or otherwise unlawful or tortious material; (f) attempt to gain unauthorized access to any of AMS' systems or

(k) otherwise use or copy the Pre Release Software except as expressly allowed under this Agreement.

7.   Assumptions

Each party shall bear its respective cost of performance under this Addendum, including any costs of personnel, travel and equipment except as mutually agreed by both parties.

8.   Facilities

The parties anticipate that part of AMS's work may be performed at Agency's facilities. Agency shall provide, at its expense, suitable and timely access to reasonable work space and peripherals needed by on-site AMS personnel to perform their work.

9.   Ownership

Title to the Pre Release Software and all copies thereof remain with AMS and/or its suppliers. The Pre Release Software is protected by United States copyright laws and international treaty provisions. Except as expressly provided herein, AMS does not grant any express or implied right to Agency under AMS patents, copyrights, trademarks, or trade secret information.

Agency agrees to and hereby assigns to AMS all right and title to and interest in all property rights (including without limitation all patent, copyright, trade secret, mask work, trademark, moral right or other intellectual property rights) to any modifications or enhancements to any AMS product, technology, service, specification or other documentation derived from Agency's Feedback. Agency acknowledges that any and all AMS products incorporating such Feedback shall be the sole and exclusive property of AMS. Agency will not give AMS any Feedback (i) that Agency has reason to believe is subject to any patent, copyright, or other intellectual property claim or right of any third party; or (ii) subject to license terms that seek to require any AMS product incorporating or derived from any Feedback, or other AMS intellectual property, to be licensed to or otherwise shared with any third party.

EDC#522-S1711

10. <u>**Warranty and Liability Disclaimer.**</u>
Provision of any Pre Release Software under this Agreement is experimental and shall not create any obligation for AMS to continue to develop, productize, support, repair, offer for sale or in any other way continue to develop the Pre Release Software.

THE PRE RELEASE SOFTWARE IS PROVIDED TO AGENCY ON AN "AS IS" BASIS. ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, NONINFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE OR SATISFACTORY QUALITY, ARE EXPRESSLY DISCLAIMED BY AMS AND ITS THIRD PARTY SUPPLIERS. FURTHER, IN NO EVENT SHALL AMS OR ITS SUPPLIERS BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OF INFORMATION) ARISING OUT OF THE USE OF OR INABILITY TO USE THE PRE RELEASE SOFTWARE, EVEN IF AMS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11. <u>**Export Restrictions.**</u>
Agency agrees to comply with all applicable international and national laws that apply to the Pre Release Software, including the U. S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by US and other governments.

12. <u>**Governing Law.**</u>
This Agreement is governed by and interpreted in accordance with the laws of California without regard to its conflict of laws provisions. Exclusive jurisdiction and venue of any actions arising out of, or relating to or in any way connected with the Agreement, its negotiation or termination, will be in U.S. District Court for the Eastern District of California. Agency waives any objection to jurisdiction or venue in such courts. In any litigation in which the parties are adverse, the parties agree to waive their respective rights to a trial by jury.

13. <u>**Notice**</u>.
Any notice to be given hereunder by either party to the other shall be in writing and shall be hand delivered, sent by overnight courier or sent by facsimile to the address listed on page one (or at such other addresses as shall be given in writing by either party to the other). All notices shall be deemed effective upon receipt.

EDC#522-S1711

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14.   Assignment.

Neither party may transfer or assign any of its rights or obligations arising under this Agreement without the prior written consent of the other party and any attempt at transfer or assignment shall be void.

15.   Severability.

If any term, provision, covenant or restriction contained in this Agreement is held by any court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants or restrictions contained in this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

16.   Construction.

The parties have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring either party by virtue of the authorship at any of the provisions of this Agreement.

17.   Entire Agreement.

This Agreement contains the entire agreement between the parties regarding the subject matter hereof and supersedes all prior agreements, understandings, arrangements and discussions between the parties regarding such subject matter.

18.   Counterparts.

This Agreement may be signed in counterparts, each of which shall be deemed an original but all of which together shall be deemed to constitute a single instrument.

EDC#522-S1711

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ACCEPTED BY:
AMS, Inc.

By: _____
Authorized Signature

Name: _Michael Iiams_____

Position: _CEO_____

Date: _5/30/17_____

ACCEPTED BY:
Agency

By: _____
Authorized Signature

Name: _BRIAN RICHART_____

Position: _CHIEF_____

Date: _5/24/17_____

EDC#522-S1711