

## AGREEMENT FOR SERVICES OF INDEPENDENT CONTRACTOR

**THIS AGREEMENT** (hereafter Agreement) is made by and between the County of Santa Barbara, a political subdivision of the State of California (hereafter COUNTY) and Alcohol Monitoring Systems, Inc. dba SCRAM Systems ("AMS") 1241 West Mineral Avenue, Suite 200, Littleton, Colorado 80120, (hereafter CONTRACTOR) wherein CONTRACTOR agrees to provide, and COUNTY agrees to accept the services specified herein.

**WHEREAS**, CONTRACTOR represents that it is specially trained, skilled, experienced, and competent to perform the special services required by COUNTY and COUNTY desires to retain the services of CONTRACTOR pursuant to the terms, covenants, and conditions herein set forth;

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

### 1. DESIGNATED REPRESENTATIVE

Emir Saafir, at phone number 805- 803-8513 and Sean Dugger, Lieutenant (SBSO) at phone number 805-554-3104 are the representatives of COUNTY and will administer this Agreement for and on behalf of COUNTY. John Hennessey, at phone number 815-342-4469, is the authorized representative for CONTRACTOR. Changes in designated representatives shall be made only after advance written notice to the other party.

### 2. NOTICES

Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by personal delivery or facsimile, or with postage prepaid by first class mail, registered or certified mail, or express courier service, as follows:

To COUNTY: Emir Saafir, Probation Manager, Santa Barbara County Probation  
117 East Carrillo Street  
Santa Barbara, CA 93101  
(805) 803-8513

Sean Dugger, Lieutenant (SBSO)  
4436 Calle Real  
Santa Barbara, CA 93110  
(805) 554-3104

To CONTRACTOR: John Hennessey, Chief Operating Officer  
Alcohol Monitoring Systems, Inc. dba SCRAM Systems  
1241 West Mineral Avenue, Suite 200  
Littleton, CO 80120  
(815) 342-4469

or at such other address or to such other person that the parties may from time to time designate in accordance with this Notices section. If sent by first class mail, notices and consents under this section

shall be deemed to be received five (5) days following their deposit in the U.S. mail. This Notices section shall not be construed as meaning that either party agrees to service of process except as required by applicable law.

**3. SCOPE OF SERVICES**

CONTRACTOR agrees to provide services to COUNTY in accordance with EXHIBIT A attached hereto and incorporated herein by reference.

**4. TERM**

CONTRACTOR shall commence performance on July 1, 2024, and end performance upon completion, but no later than June 30, 2025, unless otherwise directed by COUNTY or unless earlier terminated.

**5. COMPENSATION OF CONTRACTOR**

In full consideration for CONTRACTOR's services, CONTRACTOR shall be paid for performance under this Agreement in accordance with the terms of EXHIBIT B attached hereto and incorporated herein by reference. Billing shall be made by invoice, which shall include the contract number assigned by COUNTY and which is delivered to the address given in Section 2 NOTICES above following completion of the increments identified on EXHIBIT B. Unless otherwise specified on EXHIBIT B, payment shall be net thirty (30) days from presentation of invoice.

**6. INDEPENDENT CONTRACTOR**

It is mutually understood and agreed that CONTRACTOR (including any and all of its officers, agents, and employees), shall perform all of its services under this Agreement as an independent contractor as to COUNTY and not as an officer, agent, servant, employee, joint ventures, partner, or associate of COUNTY. Furthermore, COUNTY shall have no right to control, supervise, or direct the manner or method by which CONTRACTOR shall perform its work and function. However, COUNTY shall retain the right to administer this Agreement so as to verify that CONTRACTOR is performing its obligations in accordance with the terms and conditions hereof. CONTRACTOR understands and acknowledges that it shall not be entitled to any of the benefits of a COUNTY employee, including but not limited to vacation, sick leave, administrative leave, health insurance, disability insurance, retirement, unemployment insurance, workers' compensation and protection of tenure. CONTRACTOR shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, CONTRACTOR shall be solely responsible and save COUNTY harmless from all matters relating to payment of CONTRACTOR's employees, including compliance with Social Security withholding and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, CONTRACTOR may be providing services to others unrelated to the COUNTY or to this Agreement.

**7. STANDARD OF PERFORMANCE**

CONTRACTOR represents that it has the skills, expertise, and licenses/permits necessary to perform the services required under this Agreement. Accordingly, CONTRACTOR shall perform all such services in the manner and according to the standards observed by a competent practitioner of the same profession in which CONTRACTOR is engaged. All products of whatsoever nature, which CONTRACTOR delivers to COUNTY pursuant to this Agreement, shall be prepared in a first class and workmanlike manner and shall conform to the standards of quality normally observed by a person practicing in CONTRACTOR's profession. CONTRACTOR shall correct or revise any errors or omissions, at COUNTY'S request in

accordance with CONTRACTOR'S Maintenance and Repair Policy as outlined in the Master Agency Agreement, attached hereto as Exhibit E. Permits and/or licenses shall be obtained and maintained by CONTRACTOR without additional compensation.

#### 8. DEBARMENT AND SUSPENSION

CONTRACTOR certifies to COUNTY that it and its employees and principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, state, or county government contracts. CONTRACTOR certifies that it shall not contract with a subcontractor that is so debarred or suspended.

#### 9. TAXES

CONTRACTOR shall pay all taxes, levies, duties, and assessments of every nature due in connection with any work under this Agreement and shall make any and all payroll deductions required by law. COUNTY shall not be responsible for paying any taxes on CONTRACTOR's behalf, and should COUNTY be required to do so by state, federal, or local taxing agencies, CONTRACTOR agrees to promptly reimburse COUNTY for the full value of such paid taxes plus interest and penalty, if any. These taxes shall include, but not be limited to, the following: FICA (Social Security), unemployment insurance contributions, income tax, disability insurance, and workers' compensation insurance.

#### 10. CONFLICT OF INTEREST

CONTRACTOR covenants that CONTRACTOR presently has no employment or interest and shall not acquire any employment or interest, direct or indirect, including any interest in any business, property, or source of income, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall be employed by CONTRACTOR. CONTRACTOR must promptly disclose to COUNTY, in writing, any potential conflict of interest. COUNTY retains the right to waive a conflict of interest disclosed by CONTRACTOR if COUNTY determines it to be immaterial, and such waiver is only effective if provided by COUNTY to CONTRACTOR in writing.

#### 11. OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

COUNTY shall be the owner of the following items incidental to this Agreement upon production, whether completed or not: all data collected, all documents of any type whatsoever, all photos, designs, sound or audiovisual recordings, and other materials, and any material necessary for the practical use of such items, from the time of collection and/or production whether or not performance under this Agreement is completed or terminated prior to completion.

CONTRACTOR shall not release any of such items to other parties except after prior written approval of COUNTY.

Unless otherwise specified in Exhibit A, CONTRACTOR hereby assigns to COUNTY all copyright, patent, and other intellectual property and proprietary rights to all data, documents, reports, photos, designs, sound or audiovisual recordings, and other materials prepared or provided by CONTRACTOR pursuant to this Agreement (collectively referred to as "Data"). COUNTY shall have the unrestricted authority to copy, adapt, perform, display, publish, disclose, distribute, create derivative works from, and otherwise use in whole or in part, any Data. CONTRACTOR agrees to take such actions and execute and deliver such

documents as may be needed to validate, protect and confirm the rights and assignments provided hereunder. CONTRACTOR warrants that any Data and other items provided under this Agreement will not infringe upon any intellectual property or proprietary rights of any third party. CONTRACTOR at its own expense shall defend, indemnify, and hold harmless COUNTY against any claim that any Data or other items provided by CONTRACTOR hereunder infringe upon intellectual or other proprietary rights of a third party, and CONTRACTOR shall pay any damages, costs, settlement amounts, and fees (including attorneys' fees) that may be incurred by COUNTY in connection with any such claims. This Ownership of Documents and Intellectual Property provision shall survive expiration or termination of this Agreement.

#### **12. NO PUBLICITY OR ENDORSEMENT**

CONTRACTOR shall not use COUNTY's name or logo or any variation of such name or logo in any publicity, advertising or promotional materials. CONTRACTOR shall not use COUNTY's name or logo in any manner that would give the appearance that the COUNTY is endorsing CONTRACTOR. CONTRACTOR shall not in any way contract on behalf of or in the name of COUNTY. CONTRACTOR shall not release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning the COUNTY or its projects, without obtaining the prior written approval of COUNTY.

#### **13. COUNTY PROPERTY AND INFORMATION**

All of COUNTY's property, documents, and information provided for CONTRACTOR's use in connection with the services shall remain COUNTY's property, and CONTRACTOR shall return any such items whenever requested by COUNTY and whenever required according to the Termination section of this Agreement. CONTRACTOR may use such items only in connection with providing the services. CONTRACTOR shall not disseminate any COUNTY property, documents, or information without COUNTY's prior written consent.

#### **14. RECORDS, AUDIT, AND REVIEW**

CONTRACTOR shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of CONTRACTOR's profession and shall maintain such records for at least four (4) years following the termination of this Agreement. All accounting records shall be kept in accordance with generally accepted accounting principles. COUNTY shall have the right to audit and review all such documents and records at any time during CONTRACTOR's regular business hours or upon reasonable notice. In addition, if this Agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR shall be subject to the examination and audit of the California State Auditor, at the request of the COUNTY or as part of any audit of the COUNTY, for a period of three (3) years after final payment under the Agreement (Cal. Govt. Code Section 8546.7). CONTRACTOR shall participate in any audits and reviews, whether by COUNTY or the State, at no charge to COUNTY.

If federal, state or COUNTY audit exceptions are made relating to this Agreement, CONTRACTOR shall reimburse all costs incurred by federal, state, and/or COUNTY governments associated with defending against the audit exceptions or performing any audits or follow-up audits, including but not limited to: audit fees, court costs, attorneys' fees based upon a reasonable hourly amount for attorneys in the community, travel costs, penalty assessments and all other costs of whatever nature. Immediately upon notification from COUNTY, CONTRACTOR shall reimburse the amount of the audit exceptions and any other related costs directly to COUNTY as specified by COUNTY in the notification.

**15. INDEMNIFICATION AND INSURANCE**

CONTRACTOR agrees to the indemnification and insurance provisions as set forth in EXHIBIT C attached hereto and incorporated herein by reference.

**16. NONDISCRIMINATION**

COUNTY hereby notifies CONTRACTOR that COUNTY's Unlawful Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) applies to this Agreement and is incorporated herein by this reference with the same force and effect as if the ordinance were specifically set out herein and CONTRACTOR agrees to comply with said ordinance.

**17. NONEXCLUSIVE AGREEMENT**

CONTRACTOR understands that this is not an exclusive Agreement and that COUNTY shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by CONTRACTOR as the COUNTY desires.

**18. NON-ASSIGNMENT**

CONTRACTOR shall not assign, transfer or subcontract this Agreement or any of its rights or obligations under this Agreement without the prior written consent of COUNTY and any attempt to so assign, subcontract or transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

**19. TERMINATION**

- A. **By COUNTY.** COUNTY may, by written notice to CONTRACTOR, terminate this Agreement in whole or in part at any time, whether for COUNTY's convenience, for non-appropriation of funds, or because of the failure of CONTRACTOR to fulfill the obligations herein.
1. **For Convenience.** COUNTY may terminate this Agreement in whole or in part upon thirty (30) days written notice. During the thirty (30) day period, CONTRACTOR shall, as directed by COUNTY, wind down and cease its services as quickly and efficiently as reasonably possible, without performing unnecessary services or activities and by minimizing negative effects on COUNTY from such winding down and cessation of services.
  2. **For Non-appropriation of Funds.** Notwithstanding any other provision of this Agreement, in the event that no funds or insufficient funds are appropriated or budgeted by federal, state or COUNTY governments, or funds are not otherwise available for payments in the fiscal year(s) covered by the term of this Agreement, then COUNTY will notify CONTRACTOR of such occurrence and COUNTY may terminate or suspend this Agreement in whole or in part, with or without a prior notice period. Subsequent to termination of this Agreement under this provision, COUNTY shall have no obligation to make payments with regard to the remainder of the term.
  3. **For Cause.** Should CONTRACTOR default in the performance of this Agreement or materially breach any of its provisions, COUNTY may, at COUNTY's sole option, terminate or suspend this Agreement in whole or in part by written notice. Upon receipt of notice, CONTRACTOR shall immediately discontinue all services affected (unless the notice directs

otherwise) and notify COUNTY as to the status of its performance. The date of termination shall be the date the notice is received by CONTRACTOR, unless the notice directs otherwise.

- B. By CONTRACTOR. Should COUNTY fail to pay CONTRACTOR all or any part of the payment set forth in EXHIBIT B, CONTRACTOR may, at CONTRACTOR's option terminate this Agreement if such failure is not remedied by COUNTY within thirty (30) days of written notice to COUNTY of such late payment.
  
- C. Upon termination, CONTRACTOR shall deliver to COUNTY all of COUNTY'S property in CONTRACTOR'S possession, including data, estimates, graphs, summaries, reports, and all other property, records, documents or papers as may have been accumulated or produced by CONTRACTOR in performing this Agreement, whether completed or in process, except such items as COUNTY may, by written permission, permit CONTRACTOR to retain. Notwithstanding any other payment provision of this Agreement, COUNTY shall pay CONTRACTOR for satisfactory services performed to the date of termination to include a prorated amount of compensation due hereunder less payments, if any, previously made. In no event shall CONTRACTOR be paid an amount in excess of the full price under this Agreement nor for profit on unperformed portions of service. CONTRACTOR shall furnish to COUNTY such financial information as in the judgment of COUNTY is necessary to determine the reasonable value of the services rendered by CONTRACTOR. In the event of a dispute as to the reasonable value of the services rendered by CONTRACTOR, the decision of COUNTY shall be final. The foregoing is cumulative and shall not affect any right or remedy which COUNTY may have in law or equity.

## 20. SECTION HEADINGS

The headings of the several sections, and any Table of Contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

## 21. SEVERABILITY

If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

## 22. REMEDIES NOT EXCLUSIVE

No remedy herein conferred upon or reserved to COUNTY is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

## 23. TIME IS OF THE ESSENCE

Time is of the essence in this Agreement and each covenant and term is a condition herein.

**24. NO WAIVER OF DEFAULT**

No delay or omission of COUNTY to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to COUNTY shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of COUNTY.

**25. ENTIRE AGREEMENT AND AMENDMENT**

In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.

**26. SUCCESSORS AND ASSIGNS**

All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

**27. COMPLIANCE WITH LAW**

CONTRACTOR shall, at its sole cost and expense, comply with all County, State and Federal ordinances and statutes now in force or which may hereafter be in force with regard to this Agreement. The judgment of any court of competent jurisdiction, or the admission of CONTRACTOR in any action or proceeding against CONTRACTOR, whether COUNTY is a party thereto or not, that CONTRACTOR has violated any such ordinance or statute, shall be conclusive of that fact as between CONTRACTOR and COUNTY.

**28. CALIFORNIA LAW AND JURISDICTION**

This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to Santa Barbara County, if in federal court.

**29. EXECUTION OF COUNTERPARTS**

This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

**30. AUTHORITY**

All signatories and parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, CONTRACTOR hereby warrants that it shall not have breached the terms or conditions of any

other contract or agreement to which CONTRACTOR is obligated, which breach would have a material effect hereon.

31. **SURVIVAL**

All provisions of this Agreement which by their nature are intended to survive the termination or expiration of this Agreement shall survive such termination or expiration.

32. **PRECEDENCE**

In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in the Exhibits, the provisions of the Exhibits shall prevail over those in the numbered sections.

//

//



Agreement for Services of Independent Contractor between the **County of Santa Barbara** and **Alcohol Monitoring Systems, Inc. dba SCRAM Systems.**


**IN WITNESS WHEREOF**, the parties have executed this Agreement to be effective on the date executed by COUNTY.

**ATTEST:**

Mona Miyasato  
County Executive Officer  
Clerk of the Board

By:   
Deputy Clerk

**COUNTY OF SANTA BARBARA:**


By:   
Steve Lavagnino, Chair  
Board of Supervisors

Date: 6-25-24

**RECOMMENDED FOR APPROVAL:  
PROBATION DEPARTMENT**

DocuSigned by:  
By:   
50E81596A3814F4...  
Holly L. Benton, Chief  
Department Head

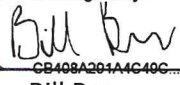
**CONTRACTOR:  
Alcohol Monitoring Systems, Inc.  
dba SCRAM Systems**

DocuSigned by:  
By:   
FB3084CA162D46D...  
Authorized Representative


Name: John Hennessey

Title: Chief Operating Officer


**SHERIFF'S DEPARTMENT**

DocuSigned by:  
By:   
CB408A201A4C40C...  
Bill Brown  
Sheriff-Coroner

**APPROVED AS TO FORM:  
Rachel Van Mullem  
County Counsel**

DocuSigned by:  
By:   
0FF0498BF6704A8...  
Deputy County Counsel

**APPROVED AS TO ACCOUNTING FORM:  
Betsy M. Schaffer, CPA  
Auditor-Controller**

DocuSigned by:  
By:   
6BAAEA15901943E...  
Deputy

**APPROVED AS TO FORM:  
Gregory Milligan, ARM**

DocuSigned by:  
By:   
05F555F00260466...  
Risk Management

## EXHIBIT A

### STATEMENT OF WORK

I. **CONTRACTOR shall provide COUNTY Global Positioning Systems (GPS) , Electronic Monitoring (EM), and Remote Breath Alcohol on Demand Testing, leased equipment and monitoring services to be used in the enhanced monitoring of adult and juvenile clients, who are under supervision by the Probation Department, including adult pre-trial clients released to the Pre-Trial Supervision program and those in the Alternative Sentencing Program (ASP) as identified by the Santa Barbara Sheriff's Office and monitored by the Probation Department. CONTRACTOR shall also provide training and support to the COUNTY regarding the use of the leased equipment, associated systems, and software.**

A. Service Component:

1. CONTRACTOR shall provide GPS, EM, and Remote Breath Alcohol on Demand Testing equipment to COUNTY for use in the enhanced monitoring of clients on an ongoing basis as requested by COUNTY.
2. CONTRACTOR shall provide training to COUNTY staff on GPS, EM, and Remote Breath Alcohol on Demand Testing equipment, associated systems, and software. Training shall be on an as-needed basis and is to include a combination of hands-on instruction and written procedures.
3. CONTRACTOR shall provide monitoring services of activated units on a 24-hour basis, 7 days a week, and make appropriate notifications as requested by COUNTY of any alert associated with a monitored client.
4. CONTRACTOR shall provide support to COUNTY regarding the use, installation, operation, and removal of equipment, including computer programs and applications used in establishing a monitoring plan or program for individual clients.

B. Description of Component:

1. Leased equipment provided by CONTRACTOR for use by COUNTY includes the following units and items:
  - a. SCRAM GPS devices and EM equipment
  - b. Straps and direct clips for devices (included in cost of devices)
  - c. Charging components GPS devices
  - d. Remote Breath Alcohol on Demand equipment
  - e. Installation kit(s) (included in cost of devices)
2. Regular and routine maintenance of leased equipment is the sole responsibility of CONTRACTOR. COUNTY agrees to notify CONTRACTOR of any known maintenance

related matters in accordance with CONTRACTOR'S Maintenance and Repair Policy as outlined in the Master Agency Agreement, attached hereto as Exhibit D.

3. COUNTY agrees to notify CONTRACTOR of any devices or items that become inoperable, damaged, or misplaced within three (3) business days of learning of the condition or status of the device or item, and to arrange the return of any devices or items as necessary in accordance with CONTRACTOR'S Maintenance and Repair Policy as outlined in the Master Agency Agreement, attached hereto as Exhibit D.
4. COUNTY agrees to reimburse CONTRACTOR for the cost associated with any damage to or loss of any device or item caused by a client under the supervision of the COUNTY as described in ATTACHMENT B-1.
5. COUNTY agrees to compensate CONTRACTOR for all costs related to the installation and deployment of monitoring equipment and system which are included in the cost of rates per day and live monitoring center as described in EXHIBIT B-1.

C. Performance Measures:

1. CONTRACTOR shall provide equipment, including replacement equipment, via ground freight, processed the day following receipt of the order.
2. CONTRACTOR shall initiate technical support regarding the operation of equipment and program software within two (2) business days of notice of a matter needing resolution.
3. CONTRACTOR shall provide onsite or virtual training regarding the operation of the equipment and program software upon request from COUNTY.
4. Upon request by COUNTY, CONTRACTOR shall provide software training for customizing data reports to meet legislative reporting requirements.
5. CONTRACTOR shall ensure the inventory allowance for COUNTY is closely managed by CONTRACTOR'S account manager, and CONTRACTOR will request that COUNTY return any inventory in excess of the 25% shelf allowance prior to billing COUNTY for any excess inventory as described in Pricing Exhibit: GS Contract #GS-07F-0003y.

D. Confidentiality

CONTRACTOR agrees to maintain the confidentiality of client records and/or client information pursuant to: Title 42 United States Code (U.S.C.) Section 290 dd-2; Title 42 Code of Federal Regulations (C.F.R.), Part 2; Title 22 California Code of Regulations (Cal. Code Regs.) section 51009; Welfare & Institutions Code (Welf. & Inst. Code) sections 14100.2, 5328, and 827; Health and Safety Code (Health & Saf. Code) sections 11812 and 11845.5; Civil Code Sections

56 – 56.37, 1798.80 – 1798.82, and 1798.85; and Penal Code (Pen. Code) sections 11140, 11142 and 13330. Client records and/or information must comply with all appropriate State and Federal requirements. CONTRACTOR shall ensure that no list of persons receiving services under this Agreement is published, disclosed, or used for any purpose except for the direct administration of these services or other uses authorized by law that are not in conflict with requirements for confidentiality contained in the preceding codes.

- E. CONTRACTOR and COUNTY agree that immaterial changes to the agreement agreed upon by COUNTY and CONTRACTOR, including authorizing additional services, amending program staffing requirements, amending service locations, and adding program goals, outcomes, and measures and reallocation of funds between funding sources may be authorized by the Chief Probation Officer or designee in writing and will not constitute an amendment to this agreement. CONTRACTOR and COUNTY agree that line-item budget changes to Attachment B-1 of the Agreement in an amount not to exceed 10% of the stated line-item budgeted amounts for each service may be authorized by the Chief Probation Officer or designee in writing and will not constitute an amendment to this agreement.

F. Intellectual Property Exclusions

Any and all systems, applications and software that is used by CONTRACTOR to provide services to COUNTY under this Agreement shall at all times remain CONTRACTOR's sole and exclusive property. CONTRACTOR has and will retain all right, title, interest, and ownership in and to (i) the software and any copies, custom versions, modifications, or updates of the software, (ii) all related documentation, and (iii) any trade secrets, know-how, methodologies, and processes related to Provider's applications, the system, and our other products and services (collectively, the "Materials"). The Materials constitute proprietary information and trade secrets of CONTRACTOR and its licensors, whether or not any portion thereof is or may be the subject of a valid copyright or patent.

## EXHIBIT B

### PAYMENT ARRANGEMENTS Periodic Compensation (with attached Schedule of Fees)

For CONTRACTOR services to be rendered under this Agreement, CONTRACTOR shall be paid a total contract amount, including cost reimbursements, not to exceed **\$380,834.60**.

- A. Payment for services and/or reimbursement of costs shall be made upon CONTRACTOR's satisfactory performance, based upon the scope and methodology contained in **EXHIBIT A** as determined by COUNTY. Payment for services and/or reimbursement of costs shall be based upon the costs, expenses, overhead charges and hourly rates for personnel, as defined in **Attachment B-1** (Schedule of Fees) and **Attachment B-2** (Pricing Exhibit: GSA Contract #GS-07F-0003Y). Invoices submitted for payment that are based upon **Attachment B-1** and **Attachment B-2** must contain sufficient detail to enable an audit of the charges and provide supporting documentation if so specified in **EXHIBIT A**.
- B. Pricing will remain as outlined in Pricing Exhibit: GSA Contract #GS-07F-0003Y, with effective date of May 1, 2024.
- C. Monthly, CONTRACTOR shall submit to the COUNTY DESIGNATED REPRESENTATIVES an invoice or certified claim on the County Treasury for the service performed over the period specified. These invoices or certified claims must cite the assigned Board Contract Number. COUNTY DESIGNATED REPRESENTATIVE shall evaluate the quality of the service performed and if found to be satisfactory and within the cost basis of **Attachment B-1** and **Attachment B-2** shall initiate payment processing. COUNTY shall pay invoices or claims for satisfactory work within 30 days of receipt of correct and complete invoices or claims from CONTRACTOR.
- D. CONTRACTOR shall provide to COUNTY an invoice of services provided and associated costs in a format agreed to by both parties. It shall be itemized to include the name of the monitored subject, the device utilized or provided services, any inclusive dates of service, and the appropriate unit or organization indicator. The unit or organization indicators are to separate costs for budget purposes and distinct between Probation and Sheriff.
- E. Payment Provisions
  1. CONTRACTOR shall invoice the Santa Barbara Sheriff Office ("Sheriff") and the Probation Department ("Probation") separately and the Sheriff and Probation will remit payment separately to the CONTRACTOR using the following methods:
    - a. Sheriff will remit payment for all costs associated with the Alternative Sentencing Program.
    - b. With the exception of costs associated with the Alternative Sentencing Program, Probation will remit payment for all other costs associated with this contract.

Cost referenced in subsections (a) and (b) include costs for leased equipment, training and support regarding the equipment and software, and monitoring services as outlined in this Agreement.

COUNTY's failure to discover or object to any unsatisfactory work or billings prior to payment will not constitute a waiver of COUNTY's right to require CONTRACTOR to correct such work or billings or seek any other legal remedy.

## ATTACHMENT B-1 SCHEDULE OF FEES

Agency Name: Alcohol Monitoring Systems, Inc. dba SCRAM Systems  
 Agreement Amount: \$380,834.60  
 Agreement Term: July 1, 2024 to June 30, 2025

	Service Component Detail							Cost Breakdown and Summary				
	Monitoring Fee Per Day	Equipment Rental Fee Per Day	Sales Tax	Live Monitoring Center Fee Per Day	Number of Clients on GPS and RB Per Day	No. of Days	Total Days Clients on GPS and RB Per Year	Total Cost of GPS and RB	Rate for Lost, Damaged, Stolen or Replacement Equipment	No. of Lost, Damaged, Stolen or Replacement Equipment Per Year	Estimated Cost of Lost, Damaged, Stolen or Replacement Equipment	Total Budget
	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)	(K)	(L+K)
<b>Service Components</b>												
SCRAM - GPS												
Probation - Adult	\$2.80	\$0.10	8.75%	\$0.25	125	365	45,625	\$144,175.00	\$400.00	72	\$28,800.00	\$172,975.00
Probation - Juvenile	\$2.80	\$0.10	8.75%	\$0.25	40	365	14,600	\$46,136.00	\$400.00	72	\$28,800.00	\$74,936.00
Sheriff's Office (SO)	\$2.80	\$0.10	8.75%	\$0.25	95	365	34,675	\$109,573.00	\$400.00	1	\$400.00	\$109,973.00
SCRAM - Remote Breath (RB)												
Probation - Juvenile	\$2.80	\$1.95	8.75%	\$0.25	12	365	4,380	\$22,644.60	\$500.00	0	\$0.00	\$22,644.60
<b>Equipment</b>												
Short Cords									\$10.20	30	\$306.00	\$306.00
<b>Total Contract Amount Not to Exceed:</b>					<b>272</b>		<b>99,280</b>	<b>\$322,328.60</b>			<b>\$58,306.00</b>	<b>\$380,834.60</b>

ATTACHMENT B-2



**Santa Barbara Probation Department Pricing Quote**

**Effective Date:** May 2, 2024

**Pricing Exhibit:** GSA Contract #GS-07F-0003Y.

**SCRAM GPS**

- **\$2.90/day: Service Fees (When-On)- broke down as:**
  - A. **\$2.80/day- monitoring fee**
  - B. **\$0.10/day equipment rental fee + 8.75% sales tax**
- **Shelf Fees: \$0.78/day above 25%\***
- **\$11 per USB GPS charger**

**SCRAM Remote Breathe (Alcohol On demand Testing)**

- **\$4.75/day: Service Fees (When-On)**  
**Shelf Fees: \$1.56/day above 25%\***
- A. **\$2.80/ day – monitoring fee**
- B. **\$1.95/ day equipment rental fee + 8.75% sales tax**

**\*Shelf Fees (Inventory Allowance) – 25%:**

This means that 25% of the total inventory (both in use and not in use) may sit on the shelf (not in use), at no charge. Anything over 25% will be assessed a shelf fee listed above; AMS agrees to make 3 attempts to rectify any shelf overages before assessing fees.

**Lost, Damaged or Stolen Allotment for all equipment (10%).**

AMS will increase LDA for Santa Barbara County Probation from 5% to 10% allotment on the full contract value on any LDS devices.

**\$400 per lost GPS device**  
**\$500 per lost Remote Breathe device**  
**\$20 per lost or broken charger**

**SCRAM Monitoring Center:**

Available upon request, with 24/7 live monitoring coverage starting at \$0.25/day.

**SCRAM Touchpoint:**

Touchpoint App Comes standard with GPS monitoring at no cost with Electronic Monitoring

**Consumables:** Any consumable piece (backplate) can be ordered upon request along with monthly allotments of consumables at **no cost**. Up to **20 GPS** replacement chargers monthly at no cost. Up to 20 GPS straps monthly at no cost.

**RMAs and Shipping:** FedEx ground shipping at **no cost**. Expedited shipping will be paid by the customer.



1241 West Main Street, Suite 200, Meridian, ID 83451  
P: 208.769.8900 • F: 208.798.4262 • [www.ams.com](http://www.ams.com)





ATTACHMENT B-2



**On-Demand Onsite Training:**

**No Charge** and available upon request, we suggest a minimum of Bi-Annual training.

**Contract Signer:**

**John Hennessey, Chief Operating Officer. 815-342-4469**



1241 West Main Street, Suite 200, Madison, Wisconsin 53703  
Phone: 608-499-4900 • Fax: 608-781-4262 • [www.scram-systems.com](http://www.scram-systems.com)



## EXHIBIT C

### Indemnification and Insurance Requirements (For Information Technology Contracts)

#### INDEMNIFICATION

CONTRACTOR agrees to indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless COUNTY and its officers, officials, employees, agents and volunteers from and against any and all claims, actions, losses, damages, judgments and/or liabilities arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person or entity and for any costs or expenses (including but not limited to attorneys' fees) incurred by COUNTY on account of any claim except where such indemnification is prohibited by law. CONTRACTOR'S indemnification obligation applies to COUNTY'S active as well as passive negligence but does not apply to COUNTY'S sole negligence or willful misconduct.

#### NOTIFICATION OF ACCIDENTS AND SURVIVAL OF INDEMNIFICATION PROVISIONS

CONTRACTOR shall notify COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement. The indemnification provisions in this Agreement shall survive any expiration or termination of this Agreement.

#### INSURANCE

CONTRACTOR shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the CONTRACTOR, its agents, representatives, employees or subcontractors.

##### A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL, including products-completed operations, personal & advertising injury, with limits no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if CONTRACTOR has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. **Workers' Compensation:** Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease. **(Not required if CONTRACTOR provides written verification that it has no employees)**
4. **Professional Liability (Errors and Omissions)** Insurance appropriate to the CONTRACTOR'S profession, with limit of no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

5. **Cyber Liability Insurance:** Cyber Liability Insurance, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by the CONTRACTOR in this agreement and shall include, but not be limited to, claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic information. The policy shall provide coverage for breach response costs, regulatory fines and penalties as well as credit monitoring expenses.

If the CONTRACTOR maintains higher limits than the minimums shown above, the COUNTY requires and shall be entitled to coverage for the higher limits maintained by the CONTRACTOR. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the COUNTY.

#### B. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **Additional Insured** – COUNTY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the CONTRACTOR including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the CONTRACTOR'S insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).
2. **Primary Coverage** – For any claims related to this Agreement, the CONTRACTOR's insurance coverage shall be primary insurance as respects the COUNTY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, officials, employees, agents or volunteers shall be excess of the CONTRACTOR'S insurance and shall not contribute with it.
3. **Notice of Cancellation** – Each insurance policy required above shall provide that notice to the COUNTY will be provided in the event that coverage is canceled.
4. **Waiver of Subrogation Rights** – CONTRACTOR hereby grants to COUNTY a waiver of any right to subrogation which any insurer of said CONTRACTOR may acquire against the COUNTY by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the COUNTY has received a waiver of subrogation endorsement from the insurer.
5. **Deductibles and Self-Insured Retention** – Any deductibles or self-insured retentions must be declared to and approved by the COUNTY. The COUNTY may require the CONTRACTOR to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

6. **Acceptability of Insurers** – Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum A.M. Best's Insurance Guide rating of "A- VII".
7. **Verification of Coverage** – CONTRACTOR shall furnish the COUNTY with proof of insurance, original certificates and amendatory endorsements as required by this Agreement. The proof of insurance, certificates and endorsements are to be received and approved by the COUNTY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CONTRACTOR'S obligation to provide them. The CONTRACTOR shall furnish evidence of renewal of coverage throughout the term of the Agreement. The COUNTY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
8. **Failure to Procure Coverage** – In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, COUNTY has the right but not the obligation or duty to terminate the Agreement. Maintenance of required insurance coverage is a material element of the Agreement and failure to maintain or renew such coverage or to provide evidence of renewal may be treated by COUNTY as a material breach of contract.
9. **Subcontractors** – CONTRACTOR shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and CONTRACTOR shall ensure that COUNTY is an additional insured on insurance required from subcontractors.
10. **Claims Made Policies** – If any of the required policies provide coverage on a claims-made basis:
  - i. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
  - ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract work.
  - iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the CONTRACTOR must purchase "extended reporting" coverage for a minimum of three (3) years after completion of contract work.
11. **Special Risks or Circumstances** – COUNTY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. CONTRACTOR agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of COUNTY to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of COUNTY.



1241 West Mineral Avenue, Suite 200  
Littleton, CO 80120

**EXHIBIT D**

**MASTER AGENCY AGREEMENT**

<b>AGENCY:</b>	<b>SANTA BARBARA COUNTY</b>	<b>INITIAL CONTRACT TERM:</b>	<b>July 1, 2024- June 30, 2025</b>
<b>ADDRESS:</b>	<b>117 E. Carrillo Street Santa Barbara, CA 93101</b>		

This **MASTER AGENCY AGREEMENT** (the “**Master Agreement**”), is entered into as of this 1<sup>st</sup> day of July 2024 by and between **ALCOHOL MONITORING SYSTEMS, Inc. dba SCRAM Systems (“AMS”)**, a Delaware corporation located at 1241 West Mineral Avenue, Suite 200, Littleton, Colorado 80120, and the Agency listed above. This Agreement incorporates by reference any and all **Schedules** executed by the parties. Capitalized terms not otherwise defined in this Agreement are those as defined in the attached Schedule(s). Should there be a conflict between the terms in this Agreement and those of any Schedule, the terms in COUNTY Agreement will prevail. The effective date of the Agreement is the date last signed by AMS (Effective Date”). This Agreement does not supersede COUNTY terms and conditions.

**1 GENERAL SCOPE OF AGREEMENT.** AMS sells and rents Equipment and provides supporting Services specific to monitoring Clients who are required to or opt to wear such Equipment. AMS desires to sell or rent and Agency desires to order such Equipment and the supporting Services as specified in this Agreement and the attached Schedules in the Territory described on the applicable Schedule.

**2 DEFINITIONS**

“**Clients**” means individuals who are required or choose to wear the Equipment.

“**Effective Date**” means the date identified in the preamble to this Agreement.

“**Equipment**” means the hardware identified in the applicable Schedule.

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

“**Monitoring Services**” means the remote collection, compilation and reporting of data from the Equipment.

“**Monitoring Software**” means AMS’ proprietary, web-based software applications, depending on the Equipment or Service contracted for, which track and store Client data and other features as may be added from time to time.

“**Parts**” means peripheral hardware necessary for the support of the Equipment such as, but not limited, to batteries, straps and back-plates.

“**Products**” means collectively the Equipment and the Parts.

“**Rental Equipment**” means Equipment rented by AMS to Agency.

“**RMA**” means a Return Material Authorization issued by AMS.

“**Services**” means collectively the; (i) the Monitoring Services; (ii) provision of training and certification necessary for Agency to use Products; (iii) provision of technical support and telephone assistance; (iv) scheduled Equipment (v) maintenance; (vi) disaster recovery and backup services for Client data stored using the Monitoring Software; and (v) provision of such other Services and support functions as may be agreed to in writing by the parties and made part of this Agreement.

“Territory” means the geographic area type as defined on each Schedule in which Agency may provide the Products and Services to Clients.

“Third Party Contractor” means Agency’s third-party subcontractors to whom Agency is subcontracting any of Agency’s work or responsibilities under this Agreement.

### **3 GENERAL BUSINESS TERMS**

#### **3.1 Payment Terms.**

**3.1.1 Purchased Products.** Products will be invoiced at the time of shipment. The price of the Products does not include applicable taxes and is due and payable in U.S. dollars within ten (10) days of date of invoice.

**3.1.2 Rental Equipment.** Rental Equipment Fees will be invoiced monthly to Agency by AMS based on the specific pricing option for the Rental Equipment on or before the tenth (10<sup>th</sup>) day of each month and shall be paid by Agency to AMS within thirty (30) days from the date of such invoice.

**3.1.3 Monitoring Service and Other Fees.** Service fees will be invoiced by AMS on a monthly basis as incurred and shall be paid by Agency within thirty (30) days from the date of such invoice. Other fees include, but are not limited to, fees for the following: Repair or replacement not covered by the Maintenance and Repair Policy under Section 7 and Equipment returned to AMS without an RMA. Unless set forth on an applicable Schedule, fees will be charged at AMS’ then prevailing rates. There is no charge to Agency for court appearances where AMS is requested by Agency to be a witness for a court case, however Agency shall allow AMS to appear virtually when possible.

**3.1.4 Currency; Invoiced Taxes.** All fees are payable in U.S. Dollars. In addition, Agency is responsible for the timely payment of all taxes invoiced by AMS related to the purchase price for Products, Rental Equipment Fees, Services and any other fees set forth on the Schedule(s).

**3.1.5 Annual Price Adjustment.** After the first twelve (12) months of the Initial Term, AMS reserves the right to increase the pricing specified on the accompanying Product and Services Schedule by the yearly percentage increase in the Consumer Price Index for all urban consumers as issued by the Bureau of Labor Statistics of the U.S. Department of Labor (“CPI”) as reported for each September (as measured by the increase in the CPI from September of the prior year) (“Annual Price Adjustment”). AMS will notify Agency of any such Annual Price Adjustment for the following calendar year by October 1 of the prior year, and such percentage increase will become effective as of January 1 of the following year.

#### **3.2. Ordering; Freight Terms; Order Cancellation and Reschedule.**

**3.2.1 Orders.** AMS may provide Agency with AMS’ standard order form to use for when Agency places orders under this Agreement. Agency may use its own purchase order form in addition to the AMS order form. All terms on any Agency purchase order shall not alter or amend the terms of this Agreement and any additional or varying terms contained in such instrument are expressly rejected. AMS shall make commercially reasonable efforts to supply all Equipment ordered under the terms of this Agreement; however, AMS does not guarantee the availability of any Equipment.

**3.2.2 Freight Terms.** Products ordered by Agency shall be shipped to Agency’s designated facility, AMS paying ground freight, and AMS bearing the risk of loss of damage until Products are delivered to Agency’s dock, at which time any visible damage to the outermost packaging must be noted on the Bill of Lading. AMS shall determine the type of packaging, mode of transportation for all shipments including for returns. Any returns must be accompanied by an RMA. Orders expedited at Agency’s request will be shipped FOB Origin, with all freight costs to be paid by the Agency.

**3.2.3 Order Cancellation and Reschedule.** Orders for Products, once accepted by AMS, are non-cancelable, and Products are non-returnable, except in accordance with the Maintenance and Repair Policy set forth in this Agreement or the terms, if any, in the applicable Schedule. Upon AMS agreement, Agency can reschedule orders one time upon thirty (30) days written notice prior to the shipment date. Any such rescheduled delivery date must be within thirty (30) days of the original delivery date.

**3.3 Taxes.** Intentionally omitted.

**3.4 Failure to Make Payments and Suspension of Services.** Late paid invoices 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. In addition, if Agency fails to pay any amount when due under this Agreement,

AMS will provide written notice to Agency of such failure. If Agency does not pay any outstanding amount due within five (5) business days of the date of such notice, AMS may do any of the following; (i) reject orders from Agency for additional Products or withhold delivery of Products already ordered but not yet shipped; (ii) suspend access to the Services until Agency pays all outstanding amounts in full; and (iii) proceed with termination of this Agreement and any applicable Schedules in accordance with the terms in Section 9.3 of this Agreement.

### **3.5 Title to Equipment; Rental Equipment.**

**3.5.1 Title to Equipment.** Title to purchased Equipment transfers to Agency upon delivery to the freight carrier. Title to any Rental Equipment shall remain with AMS, unless such Equipment is later purchased by the Agency.

**3.5.2 Rental Equipment.** Agency may rent Equipment from AMS in quantities agreed to by the parties. Agency will not encumber or dispose of any Rental Equipment. Agency will inventory Rental Equipment in a location that is used and operated by Agency authorized personnel only. All Rental Equipment maintained in Agency's inventory location will be handled in accordance with industry standard practices for prevention of loss or physical damage, including that which may be caused by electronic static discharge and environmental concerns. Agency will be responsible to and reimburse AMS for all loss to AMS resulting from damage, theft, destruction or any other loss whatsoever of Rental Equipment received by Agency. In the event of the loss or damage to any of the Rental Equipment, Agency agrees to pay AMS the Replacement Fee amounts specified on the relevant Schedule. AMS reserves the right, at its sole option, to reduce Agency's inventory of Rental Equipment, if Agency does not remit the Replacement Fee within thirty (30) days from the date of receipt of AMS' invoice. Agency will cooperate with AMS in the preparation and filing of any documents considered necessary by AMS to preserve AMS' title and ownership rights to the Rental Equipment. Upon reasonable notice, AMS reserves the right to audit Rental Equipment inventory on a quarterly basis. At all times throughout the Term, Agency will procure and maintain risk insurance to specifically cover loss or damage to Rental Equipment while in Agency's possession up to the equivalent of the Replacement Fee for the Rental Equipment. At the end of the rental period, Agency must obtain an RMA and ship returned Rental Equipment to AMS with freight to be paid by Agency and risk of loss or damage to remain with Agency until delivery to AMS.

## **4 USE RESTRICTIONS; FIRMWARE LICENSE; OWNERSHIP; LIMITED LICENSE; DISCLAIMER**

**4.1 Use Restrictions; No Modification.** Agency shall not do any of the following acts: (i) wilfully tamper with the security of the Monitoring Software, Mobile Application or Equipment; (ii) access data on the Monitoring Software not intended for Agency; (iii) log into an unauthorized server or account on the Monitoring Software; (iv) attempt to probe, scan or test the vulnerability of the Monitoring Software or Mobile Application or to breach the security or authentication measures without proper authorization; (v) wilfully render any part of Monitoring Software or Mobile Application unusable; (vi) reverse engineer, de-compile, disassemble or otherwise attempt to discover the source code or underlying ideas or algorithms of the Monitoring Software or Mobile Application; (vii) modify, translate, or create derivative works based on the Monitoring Software or Mobile Application; (viii) rent, lease, distribute, license, sublicense, sell, resell, assign, or otherwise commercially exploit the Monitoring Software or make the Monitoring Software or Mobile Application available to a third party other than as contemplated in this Agreement; (ix) use the Monitoring Software for timesharing or service bureau purposes or otherwise for the benefit of a third party; (x) publish or disclose to third parties any evaluation of the Monitoring Software or Mobile Application without AMS' or its third party supplier's prior written consent; (xi) remove, modify, obscure any copyright, trademark, patent or other proprietary notice that appears on the Monitoring Software or Mobile Application; or (xii) create any link to the Monitoring Software or frame or mirror any content contained or accessible from the Monitoring Software. Except as expressly provided in this Agreement, no right or license is granted hereunder, by implication, estoppel or otherwise.

**4.2 Firmware License.** The Products contain firmware developed and owned by AMS or its third-party supplier. Agency is hereby granted a limited, non-exclusive, non-transferable, royalty-free license, for the Term, as defined in Section 9.1 below, to use the firmware in the Products. Use of the Parts may be subject to third party license agreements. AMS and its third-party suppliers shall retain all rights to the firmware contained in the Products. Any applicable license shall be deemed to be in effect upon delivery of the Products.

**4.3 Ownership; Limited License.** Agency acknowledges that all right, title and interest in any software, Mobile Application or firmware provided under this Agreement and all modifications and enhancements thereof, including all rights under copyright and patent and other intellectual property rights, belong to and are retained solely by AMS or its third-party suppliers. This Agreement provides Agency only the rights expressly granted in this Agreement. Further, if Agency suggests any new features or functionality for the Equipment, Monitoring Software or Parts that AMS or its

third party suppliers subsequently incorporate into the Products or Monitoring Software, any such new features or functionality shall be the sole and exclusive property of AMS or its third party suppliers and shall be free from any confidentiality restrictions that might otherwise be imposed upon AMS pursuant to Section 8 below.

**4.4 EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT AND TO THE EXTENT ALLOWED BY APPLICABLE LAW, AMS DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. AMS SHALL HAVE NO LIABILITY WHATSOEVER AS A RESULT OF THE EQUIPMENT BEING LOCATED IN AN AREA NOT COVERED BY APPROPRIATE WIRELESS COVERAGE (IF APPLICABLE), OR IF THE EQUIPMENT FAILS TO ESTABLISH A CONNECTION WITH THE MONITORING SOFTWARE OR THE MONITORING SERVICES ARE DISABLED DUE TO NETWORK RELATED ISSUES.** Without limiting the express warranties set forth in this Agreement, AMS does not warrant that the Services will meet Agency's requirements or that access to and use of the Monitoring Services will be uninterrupted or free of errors. 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. Neither AMS nor its third-party suppliers shall be responsible for any delays, errors, failures to perform, or disruptions in the Monitoring Services caused by or resulting from any act, omission or condition beyond AMS' or its third party supplier's reasonable control.

## **5 SERVICE TERMS**

**5.1 Service Scope.** AMS will provide Agency with the Services and support functions per the terms in this Agreement. Unless otherwise expressly agreed to by the parties, AMS is not obligated to and will not provide Services for any Equipment not obtained directly from AMS.

**5.2 Monitoring Service Availability.** AMS shall use commercially reasonable efforts to make the Monitoring Services available for twenty-four (24) hours a day, seven (7) days a week. Agency agrees that from time to time the Monitoring Services may be inaccessible or inoperable for reasons beyond the reasonable control of AMS, including: (i) equipment malfunctions; (ii) periodic maintenance procedures or repairs which AMS may undertake; or (iii) interruption or failure of telecommunication or digital transmission links, hostile network attacks, network congestion or other similar failures. Agency will not be entitled to any setoff, discount, refund or other credit as a result of unavailability of the Monitoring Services unless expressly provided in this Agreement.

**5.3 Monitoring Software Security.** AMS shall use commercially reasonable efforts to prevent unauthorized access to restricted areas of the Monitoring Software and any databases or other sensitive material. AMS reserves the right to deactivate or suspend access to the Monitoring Software by a 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.

**5.4 Access to Monitoring Software.** Agency agrees to limit requests for access to the Monitoring Software to Agency personnel who are authorized to enroll Clients, set notification options and otherwise access the information residing within the Monitoring Software. AMS will provide to Agency usernames, passwords and other information necessary to access the Monitoring Software. Agency is responsible for keeping its usernames and passwords protected as Confidential Information as defined in and per the terms of Section 8 of this Agreement and for any communications or transactions made using its user names and passwords. Agency personnel are responsible for changing their respective usernames and passwords if they believe that either have been stolen or might otherwise be misused. Agency shall provide written notice to AMS within ten (10) days if any previously authorized personnel 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 the Monitoring Software. These requirements are subject to change based on periodic review by AMS of its information security needs.

**5.5 Equipment and Utilities.** Agency is responsible and shall bear the costs associated with providing and maintaining internet access and all necessary telecommunications equipment, software and other materials necessary for accessing the Monitoring Software. Agency agrees to notify AMS of any changes in the foregoing, including any system configuration changes or any hardware or software upgrades, which may affect Agency's ability to access the Monitoring Software.

**5.6 Equipment Maintenance.** AMS and Agency shall establish a routine maintenance program designed to keep the Equipment in good repair, working order and condition in accordance with AMS' then-published specifications, including establishing a schedule that will ensure the return of the Equipment to AMS at approximately



annual intervals. Unless otherwise agreed, Agency shall be responsible for (i) collecting any Equipment from Clients that is scheduled for maintenance and (ii) shipping it to AMS having first obtained a RMA number from AMS. Such maintenance program shall not cover Equipment damaged or rendered inoperative for any cause not due to defects covered by the service and repair policy in the Agreement. Agency shall not, without prior approval from AMS, send to AMS for maintenance any Equipment not then scheduled for maintenance. Equipment returned to AMS for any reason, including rental returns, damages, and scheduled repairs, that are not accompanied with a properly issued RMA may be assessed a returned administrative charge.

**5.7 Training and Certification.** AMS will provide COUNTY personnel with in person and on-line training and certification in the use of the Products at AMS' at no additional cost to COUNTY upon request from COUNTY.

**5.8 Additional or Changes to Services.** From time-to-time, AMS may revise the scope of the Services, subcontract or delegate to a third party some or all of the provision of the Services, or make substitutions, additions, modifications and improvements to Monitoring Software and/or Services. This must be approved by COUNTY. Additionally, as a part of these changed Services, AMS also may determine, at its sole option, to discontinue providing Services hereunder for specific versions of the Products upon a minimum of one (1) year prior notice to Agency.

## **6. AGENCY RESPONSIBILITIES.**

**6.1 Equipment.** Agency shall be solely responsible for the management and supervision of the Equipment and any personnel or Clients using the Equipment and the Monitoring Software, as well as the selection and implementation of the Client enrollment, monitoring and notification options provided for the Monitoring Software. For avoidance of doubt, Agency is solely responsible for the management of the Clients, including the response to any Client violations reported by AMS or its third-party providers. AMS is not responsible or liable for Agency's failure to properly fulfill its foregoing responsibilities.

**6.2 Agreements with Clients.** Agency shall obtain the necessary written consent from any Client authorizing the tracking and/or monitoring of the Equipment by AMS or its subcontractors. Agency is solely responsible for notifying Clients in writing of any restrictions or limitations on the use of the Equipment of which it is made aware by AMS. These mandatory restrictions and prohibitions to be communicated to Clients are available on the Monitoring Software platform 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 Clients and should be reviewed by Agency's legal advisors prior to use. Agency agrees to indemnify and hold AMS harmless from any claim resulting from the failure of Agency to notify Clients of the restrictions and prohibitions on use of the Equipment and to obtain Client's written consent authorizing the tracking and or monitoring of the Equipment by AMS or its subcontractors.

**6.3 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 the Monitoring Software, then Agency will notify AMS and shall ensure that personnel certified by AMS will operate the call center. Agency shall be responsible for all acts and omissions of the third-party call center personnel granted access to Monitoring Software as if they were employees of Agency.

**6.4 Research Studies.** Agency agrees that prior to using the Equipment for a research study or publishing any results from such a study, the Agency will obtain AMS' prior written approval of the study and additional written approval of any intent to publish the research results. AMS may, at its sole discretion, withhold any such approval. Agency's breach of this Section 6.4 will be a material breach of the Agreement.

## **7 MAINTENANCE AND REPAIR**

**7.1 Maintenance and Repair Policy.** Provided Agency; (i) pays to AMS the Service fee(s) for Equipment; and (ii) installs the Equipment in accordance with AMS' instructions, for all Equipment manufactured by and ordered directly from AMS, AMS will provide the necessary maintenance and repair for such Equipment at AMS' expense to enable it to function with the Monitoring Software in a manner substantially in accordance with the performance parameters specified in the documentation for the specific Equipment. For any Parts manufactured by third parties and sold by AMS, any service or repair commitment for that Part shall be solely as described in the relevant Schedule for that Part. Products returned to AMS under warranty must be returned within thirty (30) days of issuance of the RMA. Agency must return damaged or defective Products to AMS using the label or freight carrier information provided by AMS to Agency at the time of RMA issuance.

**7.2 Maintenance and Repair Policy Exclusions.** The above policy does not cover Equipment that is obtained from sources outside of AMS or is 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 documentation for the specific Equipment; (iii) servicing of the Equipment by anyone not authorized by AMS; (iv) failure of Agency to obtain reasonable and necessary maintenance of the Equipment as contemplated under the Agreement; (v) use of Parts in the repair of the Equipment that have not been approved in writing by AMS for use in the Equipment; or (vi) use in connection with a third party product other than that as approved in writing by AMS.

**7.3 Sole Remedy.** In the event of a breach of the above Maintenance and Repair policy, Agency's sole remedy shall be, at AMS' option, the repair or replacement of the defective Equipment or Part by AMS.

**7.4 Product Changes; Retrofit Activities.** AMS shall have the right at any time (i) to change the design or specifications of any Equipment without notice and without obligation to make the same or any similar change on any Equipment previously purchased by Agency; and (ii) to retrofit or replace (during routine maintenance or otherwise) any Equipment to incorporate any upgrades or updates then available. However, nothing herein shall obligate AMS to provide Agency with all new models of Equipment at no additional cost, and AMS may charge a fee for Equipment model upgrades in certain circumstances including, but not limited to, a new line of products or a change in underlying technology or technological advancements requiring significant changes to an existing Equipment model. Regarding the foregoing, in any case where AMS charges a fee for an Equipment model upgrade, it will provide no less than six (6) months' notice to Agency prior to discontinuing the sale or rental of the discontinued Equipment model. In addition, AMS will continue to repair the Equipment for the shorter of three years or date of termination of third-party technology services integral to the performance and functionality of the discontinued Equipment.

## **8 CONFIDENTIAL INFORMATION**

**8.1 Confidential Information.** In connection with this Agreement a party ("Discloser") may furnish to the other party ("Recipient") 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) 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 Agency via the Monitoring Software. 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.

**8.2 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.

**8.3 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.

**8.4 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.

## **9 TERM AND TERMINATION**

**9.1 Term.** This Agreement shall commence from the Effective Date and shall continue for the period specified on page one (the "Initial Term") unless earlier terminated in accordance with the provisions of this Agreement. After the Initial Term expires, this Agreement can be extended by mutual written agreement of the parties for additional terms (each a "Renewal Term"). The Initial Term, together with any Renewal Term, is referred to as the "Term".

**9.2 Termination for Convenience.** This Agreement may be terminated for convenience at any time upon thirty (30) days prior written notice by one party to the other.

**9.3 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 levy 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.

**9.4 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, 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.

**9.5 Survival.** This Section, any indemnity obligations of either party, and Sections 4.3, 4.4, 6, 8, 11, 12.1 and 12.2 shall survive termination of this Agreement.

## **10 EFFECT OF TERMINATION**

**10.1 Payments; Return of Equipment.** Upon any termination of this Agreement or any Schedule incorporated by reference herein, Agency shall provide AMS with all outstanding payments due and, within ten (10) days of the termination, return to AMS all Equipment not owned by Agency or, if so directed by AMS, to AMS' third party supplier. Upon termination of this Agreement, each party shall deliver or destroy all Confidential Information of the other party which is in its possession, care or control within thirty (30) days of termination except for backup and archived Client data.

## **11 ALLOCATION OF LIABILITY**

Each party agrees, to the extent allowed by law, to defend, indemnify and hold the other party and its officers, directors, shareholders, employees and third party suppliers (collectively, the "Indemnified Parties") harmless from and against all losses, damages and expenses, including reasonable attorneys' fees, in connection with any claims against the Indemnified Parties arising out of or related to the negligence or willful misconduct of the other party's employees or agents. Further, Agency shall indemnify and hold harmless AMS and its officers, directors, shareholders, employees and third-party suppliers against the acts of any Client assigned to wear the Equipment, including claims for personal, injury property damage or death. An indemnifying party shall have the foregoing obligation only if the other party provides: (i) a prompt written request for indemnification and defense in such claim or action; (ii) with consent of the Board of Supervisors, County has the right to consent to settlement which will not be unreasonably withheld; and (iii) all available information, assistance and authority reasonably necessary to settle and defend any such claim or action.

EXCEPT AS ALLOWED BY APPLICABLE LAW, 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.

AMS HAS NO RESPONSIBILITY OR LIABILITY FOR ACTS THAT MAY BE COMMITTED BY INDIVIDUALS WHILE THEY ARE CLIENTS. EXCEPT AS LIMITED BY APPLICABLE LAW, 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 DURING THE TWELVE MONTHS IMMEDIATELY PRECEDING THE EARLIEST EVENT GIVING RISE TO THE CLAIM.

The limitations set forth in this Section 11 shall apply even if any exclusive remedy in this Agreement fails of its essential purpose. The allocation of liability in this Section 11 represents the agreed and bargained for understanding of the parties and each party's compensation hereunder reflects such allocations.

## 12 MISCELLANEOUS PROVISIONS

**12.1 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 4 and/or 8), without any showing or proving of any actual damages and without posting a bond or other security.

### **12.2 Non-Discrimination and Business Code of Conduct.**

**12.4.1 Non-discrimination.** To the extent not exempt, the parties shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.

**12.3 Records Retention and Audit Rights.** Agency will retain all records relating to the Agreement or any Schedule for a period of seven (7) years after termination of the Agreement or applicable Schedule. During the Term, upon ten (10) days prior written notice, and not more than once per year (unless circumstances warrant additional audits as described below), AMS may audit Agency's procedures and records that relate to the obligations under this Agreement. Notwithstanding the foregoing, the parties agree that AMS may conduct an audit at any time, in the event of (i) audits required by governmental or regulatory authorities or (ii) investigations of a breach of this Agreement.

**12.4 Assignment.** Except as expressly permitted herein, neither party may transfer or assign this Agreement, in whole or in part, without the 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 Agency. This Agreement shall extend to and be binding upon any successors and permitted assigns of the parties.

**12.5 No Agency; Independent Contractor.** The use of the term "Agency" in this Agreement is solely for convenience and is not intended to make either party an agent of the other party. This Agreement does not constitute and shall not be construed as constituting an agency, distributorship or joint venture business arrangement between the parties. AMS is to be and shall remain an independent contractor with respect to Products provided or Services performed under this Agreement. AMS may subcontract the performance of any of its obligations under this Agreement. However, such subcontracting will not relieve AMS of its obligations under this Agreement.

**12.6 Force Majeure.** Except for the obligation to make payments as provided herein, 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.

**12.7 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 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, facsimile or overnight delivery service.

**12.8 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.

**12.9 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.

**12.10 Execution.** This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. The parties agree that signatures on this Agreement, as well as any other documents to be executed under this Agreement, may be delivered by facsimile or email and signed using a portable document format or an electronic signature in lieu of an

original signature, and the parties agree to treat such signatures as original signatures and agree to be bound by this provision.