

**QUAY COUNTY GOVERNMENT**

300 South Third Street

P.O. Box 1246

Tucumcari, NM 88401

Phone: (575) 461-2112

Fax: (575) 461-6208

**AGENDA  
REGULAR SESSION  
QUAY COUNTY BOARD OF COMMISSIONERS  
FEBRUARY 22, 2021**

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**9:00 A.M. Call Meeting to Order**

Pledge of Allegiance

Approval of Minutes-Regular Session February 8, 2021

Approval/Amendment of Agenda

**Public Comment**

**Ongoing Business**

**New Business**

- I. **Ryan Smith, RN, CFRN, EMT-P, NRP, CMTE - Rico Aviation**
  - Presentation for the PHI Cares Membership and Updated Proposal
- II. **Vickie Gutierrez, Hospital Administrator, Dr. Dan C. Trigg Memorial Hospital**
  - Request Approval of 3<sup>rd</sup> and 4<sup>th</sup> Quarter Mill Levy and GRT Payment
- III. **Jason Lamb, Quay County Extension Agricultural Agent**
  - Discussion and Request Approval of Livestock Show at Fair Grounds - Steer and Heifer Jackpot
- IV. **Christopher Birch, QCDC Administrator**
  - Request Approval of Alcohol Monitoring Systems, Inc (AMS) Master Agency Agreement – Quay County
  - Request Approval of Product and Service Schedule to Master Agency Agreement – Quay County
  - Request Approval of Alcohol Monitoring Systems, Inc (AMS) Master Agency Agreement – Tenth Judicial District Attorney, New Mexico
  - Request Approval of Product and Service Schedule to Master Agency Agreement – Tenth Judicial District Attorney, New Mexico
- V. **Cheryl Simpson, Quay County Finance Director**
  - Request Approval of FY 2020-2021 Resolution No. 22 - Budget Increase to County Improvements (649)



DOC HCM-00504

03/12/2021 12:56 PM Doc Type: COCOM

Fee: (No FieldTag Finance Total Fees found)

Quay County, NM Ellen White - County Clerk County Clerk

Pages: 47



- Request Approval of FY 2020-2021 Resolution No. 23 - Authorizing Quay County to Submit a DWI Program Application to include:
  - Memorandum of Understanding (MOU)
  - Statement of Assurances
  - FY22 Funding - Application Cover Sheet
- VI. Larry Moore, Quay County Road Superintendent
  - Road Update
- VII. Richard Primrose, Quay County Manager
  - Request Approval of FY 2020-2021 Resolution No. 21 – In Support of Senate Bill (SB) 174
  - Correspondence
- VIII. Indigent Claims Board
  - Call Meeting to Order
  - Request Approval of Indigent Minutes for the January 25, 2021 Meeting
  - No Claims Submitted
  - Adjourn
- IX. Request Approval of Accounts Payable
- X. Other Quay County Business That May Arise During the Commission Meeting and/or Comments from the Commissioners
- XI. Request for Closed Executive Session
  - Pursuant to Section 10-15-1(H) 2. The New Mexico Open Meetings Act to Discuss Limited Personnel Matters
- XII. Franklin McCasland, Quay County Commission Chairman
  - Proposed action, if any, from Executive Session

**Adjourn**

*Lunch-Time and Location to be Announced*

## REGULAR SESSION-BOARD OF QUAY COUNTY COMMISSIONERS

February 22, 2021

9:00 A.M.

BE IT REMEMBERED THE HONORABLE BOARD OF QUAY COUNTY COMMISSIONERS met in regular session the 22<sup>nd</sup> day of February, 2021 at 9:00 a.m. in the Quay County Commission Chambers, Tucumcari, New Mexico, for the purpose of taking care of any business that may come before them.

### PRESENT & PRESIDING:

Franklin McCasland, Chairman  
Robert Lopez, Member  
Jerri Rush, Member  
Ellen L. White, County Clerk  
Richard Primrose, County Manager

### OTHERS PRESENT:

Janie Hoffman, Quay County Assessor  
Daniel Zamora, Quay County Emergency Manager  
Cheryl Simpson, Quay County Finance Director  
Larry Moore, Quay County Road Superintendent  
Christopher Birch, Quay County Detention Center Administrator  
Ryan Smith, Rico Aviation  
Vickie Gutierrez, Trigg Memorial Hospital Administrator  
Jason Lamb, Quay County Extension Agricultural Agent and guest Jackie Smith  
Ron Warnick, Quay County Sun

Chairman McCasland called the meeting to order. Daniel Zamora led the Pledge of Allegiance.

A MOTION was made by Robert Lopez SECONDED by Jerri Rush to approve the minutes from the January 25, 2021 regular session as presented. MOTION carried with Rush voting "aye", Lopez voting "aye" and McCasland voting "aye".

A MOTION was made by Jerri Rush, SECONDED by Robert Lopez to approve the Agenda as presented. MOTION carried with Rush voting "aye", Lopez voting "aye" and McCasland voting "aye".

Public Comments: Janie Hoffman, Quay County Assessor and Quay County NMC Board member provided information from the NMC Board Meeting held Saturday, February 20<sup>th</sup>. Hoffman presented the Legislative Items the NMC is focused on supporting or opposing.

### NEW BUSINESS:

Ryan Smith, Rico Aviation representative distributed a power point showing a merger between Rico Aviation and PHI Air Medical. Smith issued a membership proposal to Quay County, allowing the County to join as a member on behalf of all the residents of Quay County. The proposed amount of \$24,320.00 would provide a membership for all citizens of Quay County, at no additional cost to the

residents. Having this coverage would provide a cost free air flight for those in need with no deductible or balance billing. The Commission will discuss this, determine if it meets procurement and is within the budget, and revisit the idea at a future meeting. A copy of the proposal is attached.

Vickie Gutierrez, Trigg Memorial Hospital Administrator, requested approval and disbursement of the 3<sup>rd</sup> and 4<sup>th</sup> quarter Mill Levy and GRT Payments in the amount of \$250,000.00 for each category. A MOTION was made by Jerri Rush, SECONDED by Robert Lopez to approve the request. MOTION carried with Rush voting "aye", Lopez voting "aye" and McCasland voting "aye".

Gutierrez reported the PMG Clinic has administered 1068 doses of vaccine. 130 of those doses being Moderna and 938 doses of the Pfizer vaccine. Gutierrez stated they usually received 120 weekly doses of Pfizer and Moderna when available. The PMG Clinic is still working from a manual list of clients to vaccinate as their system does not interface with the DOH website for vaccinations.

Jason Lamb, Quay County Extension Agent and 4H parent, Jackie Smith requested use of the Fairgrounds to host a steer and heifer jackpot. Smith explained she has helped conduct numerous jackpots across the State recently and many Quay County families are interested in having one here locally. Smith stated the jackpots follow Covid safe protocols. Commissioner Rush expressed favorable consideration of the event, as did Commissioner Lopez. Chairman McCasland asked Lamb and Smith to get the application for facility use from the County Manager and determine the fees that might apply and who would be responsible for clean-up following the event. A MOTION was made by Jerri Rush, SECONDED by Robert Lopez to allow use of the Fairgrounds to the livestock show and jackpot. MOTION carried with Lopez voting "aye", Rush voting "aye" and McCasland voting "aye".

Christopher Birch, Quay County Detention Center Administrator requested approval of the following items pertinent to the new ankle monitoring devices and tracking system purchased by the Tenth Judicial District Attorney's Office:

- Approval of Alcohol Monitoring Systems, Inc. (AMS) Master Agency Agreement – Quay County
- Approval of Product and Service Schedule to Master Agency Agreement – Quay County
- Approval of Alcohol Monitoring Systems, Inc. (AMS) Master Agency Agreement – Tenth Judicial District Attorney, New Mexico
- Approval of Product and Service Schedule to Master Agency Agreement – Tenth Judicial District Attorney, New Mexico

A MOTION was made by Robert Lopez, SECONDED by Jerri Rush to approve the above described Agreements. MOTION carried with Lopez voting "aye", Rush voting "aye" and McCasland voting "aye". Copies are attached to these minutes.

Cheryl Simpson, Quay County Finance Director presented the following items for approval:

1. FY 2020-2021 Resolution No. 22; Budget Increase to County Improvements (Capital Outlay Funding for Fairgrounds roof in the amount of \$350,000.00) A MOTION was made by Robert Lopez, Seconded by Jerri Rush to approve Resolution No. 22. MOTION carried with Lopez voting "aye", Rush voting "aye" and McCasland voting "aye". A copy is attached.
2. FY 2020-2021 Resolution No. 23; Authorizing Quay County to submit a DWI Program Application to include the following items:
  - Memorandum of Understanding
  - Statement of Assurances

- FY22 Funding – Application Cover Sheet

A MOTION was made by Robert Lopez, SECONDED by Jerri Rush to approve Resolution No. 23 and the supporting documents as presented. MOTION carried with Rush voting “aye”, Lopez voting “aye” and McCasland voting “aye”. Copies of all documents are attached.

Larry Moore, Quay County Road Superintendent, provided the following road updates:

1. As requested by Chairman McCasland, Moore gave a monetary breakdown of the Projects and the funding matches:
  - CAP - \$285,709.00 -75% State Funds – \$241,282.00; 25% Match Waiver - \$71,427.00
  - COOP - \$92,569.00-75% State Funds – \$69,427.00; 25% Match Waiver - \$23,142.00
  - SB - \$137,900.00-75% State Funds –\$103,425.00; 25% County Match - \$34,475.00

Chairman McCasland thanked Moore for his due diligence in constantly seeking and obtaining funding to help with the County Budget. The County was able to secure \$481,703.00 in funding for these road projects, with a small County match of \$34,475.00.

2. Moore reported the crews are hauling on Quay Road O with 7/10ths of a mile laid.
3. Two trucks are currently out of service for repairs, as well as the loader still being repaired in Albuquerque.
4. 2021-2022 Project paperwork is due to the State by March 15, 2021.
5. The Annual Certified Maintained Road list will be submitted for approval at the next commission meeting.

County Manager, Richard Primrose asked if any coal mix had been purchased. Moore responded that none has been purchased at this point as he is pursuing a business from Roswell that may be able to deliver a truck load cheaper than purchasing it by the bag.

Quay County Manager, Richard Primrose presented the following items for approval:

1. FY 2020-2021 Resolution No. 21; In Support of Senate Bill 174 (Relating to Capital Outlay, Providing that funding requests from non-governmental entity projects shall not be accepted unless the State, County or Municipality has accepted the role of acting Fiscal Agent.) A MOTION was made by Robert Lopez, SECONDED by Jerri Rush to approve Resolution No. 21. MOTION carried with Lopez voting “aye”, Rush voting “aye” and McCasland voting “aye”. A copy is attached.

Primrose did not have any correspondence for reference.

Chairman McCasland requested a five minute break. Time noted 9:50 a.m.

Chairman McCasland called the Indigent Claims Board to order. Time noted 9:55 a.m.

---INDIGENT BOARD MEETING---

Indigent Claims Board was adjourned and the Board returned to regular session. Time noted 10:00 a.m.

A MOTION was made by Robert Lopez SECONDED by Jerri Rush to approve the expenditures included in the Accounts Payable Report ending February 19, 2021. MOTION carried with Rush voting "aye", Lopez voting "aye" and McCasland voting "aye".

Other Quay County Business That May Arise during the Commission Meeting and/or comments from the Commissioners: NONE

A MOTION was made by Robert Lopez, Seconded by Jerri Rush to go into Executive Session pursuant to the following items:

- Section 10-15-1(H)2 for discussion of Limited Personnel Matters.

MOTION carried with Lopez voting "aye", Rush voting "aye" and McCasland voting "aye".

Time noted 10:10 a.m.

---Executive Session---

Return to regular session. Time noted 11:25 a.m.

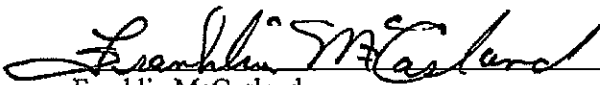
A MOTION was made by Jerri Rush, SECONDED by Robert Lopez that only the above described items were discussed in Executive Session. MOTION carried with Rush voting "aye", Lopez voting "aye" and McCasland voting "aye".

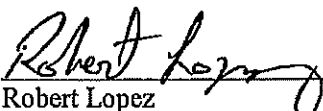
Chairman McCasland stated no action was necessary following Executive Session.

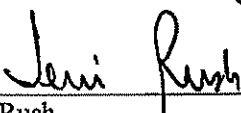
There being no further business, a MOTION was made by Robert Lopez SECONDED by Jerri Rush to adjourn. MOTION carried with Rush voting "aye", Lopez voting "aye" and McCasland voting "aye". Time noted 11:30 a.m.

Respectfully submitted by Ellen White, County Clerk.

BOARD OF QUAY COUNTY COMMISSIONERS

  
Franklin McCasland

  
Robert Lopez

  
Jerri Rush

ATTEST:

  
Ellen L. White, County Clerk





January 15, 2021

Richard Primrose  
Quay County Manager  
300 S. 3<sup>rd</sup> St, 3<sup>rd</sup> Floor, PO Box 1246  
Tucumcari, NM 88401

**PHI CARES COUNTY MEMBERSHIP PROPOSAL FOR QUAY COUNTY, NEW MEXICO**

**Introduction:** This proposal is made by and between Rico Aviation, PHI Air Medical and Quay County, New Mexico on January 15, 2021. Rico Aviation provides medically necessary emergency medical transportation and membership benefits through the PHI Cares membership program.

**Purpose:** PHI Air Medical is offering Quay County, New Mexico a special rate to cover your residents through PHI Cares, the membership program of PHI Air Medical. All standard terms and conditions of the National benefits of the PHI Cares program shall be applicable to Quay County, New Mexico and their household dependents except as otherwise set forth in the service agreement between the two parties.

In the event PHI Air Medical transports a qualified Quay County household resident originating in Quay County, New Mexico or from a surrounding county, they will not be responsible for any out-of-pocket costs for their medical air transport. Their PHI Cares membership will cover all out-of-pocket expenses for their emergency medical transport, including any co-pay or deductible expenses for a Quay County resident, if they are transported by PHI Air Medical.

**Membership Fee:** For and in consideration of the services described above, the annual membership fee will be \$8.00 per household for 3,040 household memberships, purchased and paid by Quay County, New Mexico with one check for \$24,320.00. Note: We may adjust the household numbers to reflect your current census data.

**Terms of Proposal:** This proposal is valid through December 31, 2021. A service agreement will be issued and agreed to by all parties.

Thank you for your consideration of this important life-saving benefit for the residents of Quay County, New Mexico.

Sincerely,

*Brian Coutts*

Brian Coutts  
PHI Air Medical  
Program Director  
2800 N. 44<sup>th</sup> Street, Suite 800, Phoenix, AZ 85008  
Office: 602.224.3562 / Mobile: 480.510.2945  
[bcoutts@phiairmedical.com](mailto:bcoutts@phiairmedical.com)

\*Membership is not an insurance product and does not pay for services provided by other air or ground ambulance services. Membership & renewal fees are subject to change. Please visit our website for a complete list of Terms & Conditions: [www.PHICares.com](http://www.PHICares.com)  
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1241 West Mineral Avenue, Suite 200  
Littleton, CO 80120

## MASTER AGENCY AGREEMENT

AGENCY:	<u>QUAY COUNTY NEW MEXICO</u>	TELEPHONE:	<u>575-461-6096</u>
ADDRESS:	<u>300 S. Third St., PO Box 1246</u>	INITIAL CONTRACT	
	<u>Tucumcari, NM 88401</u>	TERM:	<u>36 months</u>

This MASTER AGENCY AGREEMENT (the "Agreement"), is entered into as of the Effective Date by and between ALCOHOL MONITORING SYSTEMS, INC. ("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 the Schedule will prevail. The effective date of the Agreement is the date last signed by AMS (Effective Date). This Agreement supersedes any prior written or oral agreement and understandings with respect to the subject matter herein.

**1 GENERAL SCOPE OF AGREEMENT.** AMS sells the Equipment and provides supporting Services specific to monitoring Clients who are required to or opt to wear such Equipment. AMS desires to sell and Agency desires to purchase such Equipment and the supporting Services as specified in this Agreement and the attached Schedules in the Territory described on the applicable Schedule. The 10<sup>th</sup> Judicial District Court, New Mexico, located at 1110 E. High St., PO Box 1141, Tucumcari, NM 88401 ("10th"), will be responsible for initial Equipment purchasing and transferring such Equipment to the Agency. Agency is responsible for Client Equipment installation, monitoring, payment of Service Fees and for purchasing any replacement Equipment for lost and damaged units.

## 2 DEFINITIONS

"Clients" means individuals who are required or choose to wear the Equipment.

"Effective Date" means the date this Agreement is signed by AMS.

"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.

"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.** Intentionally Omitted.

**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: Court appearances whereby AMS is requested by Agency to be a witness in a court case; manual check-in for inactive Equipment; 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.

**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, Equipment Fees, Services and any other fees set forth on the Schedule(s).

#### **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.

**3.2.2 Freight Terms.** Equipment ordered by Agency shall be shipped to Agency's designated facility or to 10th if so directed in writing, AMS paying ground freight, and AMS bearing the risk of loss of damage until Products are delivered to Agency's or if applicable, 10th'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.** Agency shall be solely responsible for all taxes related to Products or Services provided to it by AMS under this Agreement including, by way of example and not limitation, sales, use, property, excise, value added, and gross receipts. If Agency is exempt from taxes of any kind Agency will provide appropriate exemption documentation for all such taxes applicable to the transactions contemplated by this Agreement.

**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.** Title to purchase Equipment transfers to Agency upon delivery to the freight carrier.

#### **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,

Confidential

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 usernames 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.** If applicable, 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 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 for 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 Agency and/or 10th personnel with on-line, training and certification in the use of the Products at AMS' current training rates as quoted by AMS to Agency.

**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. 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 and 10th 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.

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**6.2 Agreements with Clients.** If applicable, 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 applicable, if Agency or 10th determine 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.

## **7 MAINTENANCE AND REPAIR**

**7.1 Maintenance and Repair Policy.** Provided Agency or 10th (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 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 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

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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. The parties each agree to treat this Agreement, including all exhibits hereto, as Confidential Information of each party.

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

**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.

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## 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) sole control of the defense and settlement thereof; 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 Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado without regard to its conflicts of laws provisions. AMS and Agency hereby irrevocably consent to jurisdiction, service of process and venue in the City and County of Denver, Colorado.

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

**12.3 Injunctive Relief.** Notwithstanding anything above to the contrary, either party at any time may apply to a court having jurisdiction thereof for a temporary restraining order, preliminary injunction or other appropriate order where such relief may be necessary to protect its interests (including, without limitation, any breach of the obligations under Sections 4 and/or 8), without any showing or proving of any actual damages and without posting a bond or other security.

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#### **12.4 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.

**12.5 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.

**12.6 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.

**12.7 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.

**12.8 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.

**12.9 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.

**12.10 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.

**12.11 Publicity.** AMS shall have the right to issue news releases, press releases or other communications regarding this Agreement to potential investors and customers. However, AMS shall not disclose any names of Clients without the prior written approval of the Client and Agency.

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

**12.13 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

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

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

**IN WITNESS WHEREOF,** the parties' hereto have caused this Agreement to be executed by their duly authorized representatives as of the date last signed by AMS.

QUAY COUNTY NEW MEXICO

ALCOHOL MONITORING SYSTEMS, INC.

By:

Name: Timothy L. Rose

Title: District Attorney

Date:

By:

Name: Franklin McCasland

Title: Chairman, Board of County Commissioners

Title: Commissioners

Date:

Attest:

Clerk of Agency

By:

Name: Lou Sugo

Title: Vice President – Sales and Marketing

Title: Marketing

Signed by AMS and effective as of:

Effective Date



**PRODUCT AND SERVICE SCHEDULE  
TO  
MASTER AGENCY AGREEMENT**

**AGENCY:** QUAY COUNTY, NEW MEXICO

This **PRODUCT AND SERVICES SCHEDULE** ("Schedule") to the **MASTER AGENCY AGREEMENT** (the "Agreement") is entered into on the date last signed by AMS by and between Alcohol Monitoring Systems, Inc. ("AMS") and the Agency identified above. This Schedule is incorporated by reference into the Agreement effective \_\_\_\_\_ executed by the parties. Unless otherwise defined herein, capitalized terms in this Schedule are those as defined in the Agreement. This Schedule is effective on the date signed by AMS.

AMS hereby desires to provide Agency with the Equipment and sell the Agency supporting Services and Agency desires to order such Equipment and purchase such Services as defined in this Schedule during the Term.

**1. DEFINITIONS**

- a. "Active Equipment" means any Equipment unit actively using the Monitoring Software.
- b. "Additional Monitoring Services" means, if Agency is purchasing such services, the additional Monitoring Services provided by AMS and as further defined on Attachment 1, at the pricing set forth in Attachment 1, Schedule A.
- c. "CAM Equipment" means, if applicable per the pricing table below, an ankle bracelet device that continuously monitors alcohol levels and if configured as a kit, the base station.
- d. "Service Fee" as used on the Schedule(s) means the Monitoring Service fee charged by AMS to Agency per each Equipment unit, per day using the Monitoring Services.
- e. "Equipment" means collectively the GPS equipment, CAM equipment, various base stations, the Remote Breath Analyzer, the Radio Frequency House Arrest bracelet, Wireless Multi-connect devices and various base stations if sold separately rather than in kit configuration.
- f. "High Priority Alerts" are Equipment generated alerts that signal; (i) the Client violated the exclusion/inclusion zone(s), or failed to return to or leaves without proper authorization an assigned location; (ii) device and/or strap tampering; (iii) evidence of communication and/or location failure; or (iv) any other alert types required by Agency.
- g. "GPS Equipment" means, if applicable per the pricing table below, a device that monitors Client's geophysical location based on exclusion and inclusion zones and includes the base station if configured as a kit.
- h. "House Arrest Equipment" means, if applicable per the pricing table below, an electronic ankle device that monitors Client's adherence to a home arrest curfew schedule and includes the base station if configured as a kit.
- i. "Remote Breath Equipment" means, if applicable per the pricing table below, a device that measures alcohol levels in the breath and may have facial recognition capabilities.
- j. "SLA" means the Service Level Agreement Information document, which is attached to this Schedule as Attachment 1 and is only applicable if Agency is purchasing or renting Equipment with Additional Monitoring Services. Specific SLA protocols will be agreed to in a separate SLA document signed by Agency.
- k. "Wireless Base Station" means, if applicable per the pricing table below, an AMS device that uses cellular transmission to connect with another device, such as a House Arrest or CAM bracelet.
- l. "Wireless Multi-connect Device" means, if applicable per the pricing table below, a third-party wireless device that connects multiple electronic hardware devices, such as a CAM bracelet to a base station.

**2. TERRITORY: State of New Mexico**

### 3. EQUIPMENT AND SERVICE LIMITATIONS AND SPECIAL REQUIREMENTS

#### 3.1 GENERAL EQUIPMENT LIMITATIONS

#### 3.1 GENERAL EQUIPMENT LIMITATIONS

3.1.1 Alcohol Detection. The CAM Equipment is not designed to give immediate notification of alcohol detection.

3.1.2 Tamper Efforts. AMS makes no assurances that the any Equipment worn by a Client will detect all tamper efforts.

3.1.3 Submergence in Water or Other Liquid. Equipment is not designed for submergence in liquids. Certain Equipment can tolerate limited water exposure such as that encountered when showering.

3.1.4 Failure by Agency to Adhere to Maintenance Schedules. AMS bears no liability for Agency's failure to adhere to Equipment maintenance notifications and/or schedules related to equipment and calibration.

#### 3.2 REMOTE BREATH EQUIPMENT LIMITATIONS

3.2.1 Set Up. Agency is responsible for entering and updating schedules for each Client and setting up all relevant notifications, including all methods and events. Further, Agency is responsible for establishing a program providing the necessary criteria to interpret all testing results provided by AMS. The Equipment is intended to be used to determine if a Client has consumed alcohol. It is a professional device designed to be used by trained Agency personnel in conjunction with a routine Agency-run equipment maintenance and calibration oversight program. Use by untrained personnel or without periodic maintenance or calibration may result in invalid results or incorrect interpretation of results.

3.2.2 Breath Test Results. AMS will not analyze or interpret testing results, reporting histories, or provide an opinion as to whether the Client has consumed alcohol. The concentration of alcohol in the blood of the Client cannot be exactly determined by using a breath alcohol-screening device. Blood alcohol concentration depends on a number of variables including, but not limited to, the amount of alcohol consumed, the rate at which it was consumed, body size, age, physical health and the rate of which the Client metabolizes alcohol. No vehicle or machinery should ever be operated after alcohol consumption, regardless of the breath test result as even small quantities of alcohol can result in driving impairment.

3.2.3 Other Limitations. The SCRAM Remote Breath Equipment is not waterproof and should not be immersed in or exposed in any way to liquids. Equipment damaged by Clients or by exposure to water will not be repaired and is subject to the lost/damaged Equipment unit replacement fee.

3.3 **ADDITIONAL MONITORING SERVICES – 24/7 REQUIREMENTS.** Additional Monitoring Services are supported by a separate SLA document, which must be completed for each Client. Each SLA specifies, among other things, the type, description and price of the Monitoring Services to be provided. Any modifications of the terms of the SLA shall be made solely in writing and mutually executed by the parties and any other attempt to modify the terms of the SLA shall be void. AMS is not liable for; (i) the actions or inactions of Agency or its employees, contractors and agents that result in delay or error in the Services; (ii) failure to report Client non-compliant activities to appropriate supervising authorities when potential bond, parole or probation violations have occurred; or (iii) inaccurate information provided or input into the Monitoring Software, including Client or other contact information, GPS inclusion/exclusion zone set up and offender schedule information and associated protocols.

3.4 **WIRELESS EQUIPMENT AND NETWORK LIMITATIONS.** AMS provides a choice of data network providers as a part of its Services for the Wireless Multi-connect Device and other Equipment. AMS accepts no responsibility or liability for wireless data coverage or lack thereof. No data will be transmitted when a data network that is supporting the Equipment is not available. Wireless Multi-connect Devices do not provide caller location or caller identification.

4 **EQUIPMENT AND SERVICE PRICING:** Pricing is in accordance with the GSA Schedule #GS-07F-0003Y and will be calculated with cumulative volume levels across all Equipment. Pricing for Ally Mobile Application is AMS US Book Price.

4.1 **Purchased Equipment.**

Equipment Type	Quantity	Replacement Price per Unit	Service Fee per Unit, per Day
CAM Bracelet	1 - 49	\$1000.00	\$4.27
	50 - 149		\$3.93
	150 - 499		\$3.78
GPS Bracelet	1 - 49	\$604.48	\$2.66
	50 - 149	\$585.88	\$2.57
	150 - 499	\$562.63	\$2.52
CAM Wireless Base Station Stand Alone	1+	\$573.21	\$1.00

Note 1: Rental Equipment price changes are based on tier levels are calculated on the number of Active Equipment rental units, not total number rented.

4.2 **Rental Equipment. NA**

5. **ADDITIONAL SERVICES**

**Training:** AMS will provide Agency personnel with training in the use of the Products. Any such training will be at no charge to Agency.

**All Equipment Consumables:** No charge per the GSA Schedule terms.

**Ethernet Communication:** \$0.50 per Equipment unit, per day

6 **MOBILE APPLLCATIONS**

**TOUCHPOINT:** TouchPoint is an AMS' proprietary mobile application designed for use by Clients who are using AMS or other electronic monitoring devices under the Agency's supervision. AMS will provide the Agency with TouchPoint training. Clients will download TouchPoint to their cell phone and upon first use agree to the Mobile Application Terms and Conditions. The Agency will provide TouchPoint training to the Clients. If Agency is evaluating TouchPoint the evaluation period is 30 days from the Effective Date ("Evaluation Period") and TouchPoint will be provided at no charge during that time frame. After the Evaluation Period, If Agency continues to use TouchPoint, the price will be that as set forth below.

**TouchPoint Price/Billing:**

**Price:**

TouchPoint Client Users wearing AMS Equipment: per TouchPoint Client User, per day when active: No Charge

TouchPoint Client Users not wearing AMS Equipment: Per TouchPoint Client User, per day when active:

1 – 2500 - \$0.68  
 2500 – 50000 - \$0.65  
 5001+ - \$0.62

**Billing:** AMS will invoice the Agency monthly. Payment terms will be those as set forth in the Agreement. TouchPoint price is subject to change upon availability of additional features/function. AMS will contact Agency if the price changes

and if the new price cannot be agreed on by Amendment on this Agreement, TouchPoint will become unavailable with 10 days prior notice.

## **Ally**

**Overview:** The Ally Mobile Application is an AMS proprietary mobile application designed for Victim notification used to alert a Victim when a Client wearing an AMS GPS Bracelet is in geographic proximity of the Victim's phone. AMS will provide the Agency with Ally Mobile Application training. Victims will download the Ally Mobile Application to their cell phone and upon first use agree to the Ally Mobile application terms and Conditions of Use. The Agency will provide Ally Mobile Application training to the Victim. The alert geographic boundary is set by the Agency in the Monitoring Software. The Client must be on a 1x1 rate plan if they are paired with a Victim. The term "Victim" means a person who is a participant in a victim notification program managed by Customer and who is authorized by Customer to download and activate the Ally Mobile Application on his/her personal mobile device so that the Victim can receive alerts related to the Client based on parameters set up by Customer in the Monitoring Software.

### **Required Actions by Customer, Client and Victim:**

It is understood and agreed by the parties that the Ally Mobile Application is to be used as a part of a written victim notification program managed by Customer whereby the Client is enrolled in a GPS monitoring program requiring the wearing of a SCRAM GPS Ankle Monitor Bracelet.

The Ally Mobile Application is not a substitute for the Victim remaining vigilant to protect his/her personal safety and cannot be relied upon as the sole means of maintaining the Victim's personal safety. Each Victim must comply in all respects with the detailed requirements listed in the Ally Mobile Application Terms and Conditions which are available via a link in the Ally Mobile Application. In addition, the timely receipt and/or accuracy of alerts from the Ally Mobile Applications are dependent upon: (i) the Victim's full compliance with the requirements of the Ally Mobile Application Terms and Conditions; (ii) full compliance of the Client with the requirements of his/her GPS location monitoring program, including but not limited to, the Client not tampering with or removing his/her device; (iii) the proper set up and maintenance in the Monitoring Software by Customer of all zones, schedules and victim information for the relevant Client; and (iv) the Client's SCRAM GPS Ankle Monitor Bracelet being "active" so that notifications can be sent to the Ally Mobile Application. Customer shall be solely responsible for the management and supervision of any Client, Victims or Customer personnel using the Monitoring Software. In addition, Customer is solely responsible for (i) the development of a Victim notification program, (ii) the maintenance of a separately contracted GPS monitoring program requiring the wearing by Clients of SCRAM GPS Ankle Monitor Bracelets, (iii) the selection and implementation of the Victim enrollment process, (iv) the set up and maintenance of the monitoring and notification options available in the Monitoring Software (including maintenance of all zones, schedules and victim information) and (v) the training of Victims in the set up and use of the Ally Mobile Application. AMS is not responsible or liable for Customer's failure to properly fulfill its foregoing responsibilities. **AMS IS NOT RESPONSIBLE OR LIABLE TO CUSTOMER, CLIENT OR VICTIM IF THE ALLY MOBILE APPLICATION DOES NOT PROVIDE TIMELY OR ACCURATE NOTIFICATIONS OR ALERTS DUE TO A FAILURE OF CUSTOMER, CLIENT OR VICTIM TO COMPLY WITH ANY OF THE FOREGOING.**

**Price:** \$1 per day, per Victim per Ally user.

**Billing:** AMS will invoice the Agency monthly in arrears. Payment terms will be those as set forth in the Agreement. Ally price is subject to change upon availability of additional features/function. AMS will contact Agency if the price changes and if the new price cannot be agreed on by Amendment on this Agreement, Ally will become unavailable with 30 days prior notice.

- 7 **LOST AND DAMAGED EQUIPMENT:** Prices for replacement of lost or damaged Equipment are those listed above.
- 8 **SPECIAL TERMS:** NA

IN WITNESS WHEREOF, the parties' hereto have caused this Agreement to be executed by their duly authorized representatives as of the date last signed by AMS.

THIS SCHEDULE, AND THE AGREEMENT OF WHICH IT IS A PART, IS A COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN THE PARTIES, WHICH SUPERSEDES ALL PRIOR SCHEDULE AND ANY PROPOSALS AND UNDERSTANDINGS BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS SCHEDULE. By execution, both signers certify that each is authorized to execute the Schedule on behalf of their respective companies.

QUAY COUNTY

ALCOHOL MONITORING SYSTEMS, INC.

By: *Franklin McCasland*  
Name: Franklin McCasland  
Title: Chairman  
Date: 2-22-2021

By: \_\_\_\_\_  
Name: Lou Sugo  
Title: Vice President – Sales and Marketing

Signed by AMS and effective as of: \_\_\_\_\_  
Effective Date



**ATTACHMENT 1 – MONITORING SERVICE LEVEL AGREEMENT INFORMATION  
TO  
PRODUCT AND SERVICE SCHEDULE  
TO  
MASTER AGENCY AGREEMENT**

**1 OVERVIEW**

The following information details the alert and notification protocols that AMS will provide to Agency for those Clients using Equipment that requires Additional Monitoring Services and is incorporated by reference into the Product and Services Schedule to the Master Agency Agreement between the parties.

**1.1 SERVICES**

- 1.1.1 **Additional Monitoring Services.** AMS will provide Additional Monitoring Services on a 24/7, 365-day basis. The Monitoring Services are provided by AMS and not a third party. Services generally consist of outbound calls made by AMS to Probation Officers, law enforcement or Clients, telephone calling or customized Monitoring Services based on alert protocol specifications entered into the Monitoring Software.
- 1.1.2 **Contact Information and Monitoring Service Level Agreement Form.** Agency will contract AMS to configure the Monitoring Software to maintain all alert protocols and contact information.
- 1.1.3 **Alert Protocols.** Agency will contact AMS to set up alert protocols that will be documented in a separate SLA for each Customer.
- 1.1.4 **Alert Response Time.** AMS will respond to outbound alerts within 30 minutes of receiving notification of alert and will follow the protocols as configured for Agency.
- 1.1.5 **Recording.** The Monitoring Software will record inbound and outbound requests made by telephone. For quality purposes AMS will provide individual recordings of the telephone transactions upon written request.
- 1.1.6 **Reporting.** Upon written request, AMS will provide Agency with the following information:
  - Number of alerts received for a specific period of time
  - Average time to respond to alerts
  - Results/notes of calls

**1.2 PRICE AND PAYMENT.** Additional Monitoring Service standard fees are identified on Schedule A hereto, but will be formally agreed to in the SLA, and will be invoiced by AMS on a monthly basis as incurred and shall be paid by Agency the payment terms set forth in the Agreement from the date of such invoice and the remedies under the Agreement shall apply to any non-payment.

SCHEDULE A -- ADDITIONAL MONITORING SERVICE FEES  
TO  
ATTACHMENT 1 --SERVICE LEVEL AGREEMENT  
TO  
PRODUCT AND SERVICE SCHEDULE  
TO  
MASETER AGENCY AGREEMENT

SERVICE LEVEL CHOSEN: \_\_\_\_\_

SERVICE APPLICABLE PRODUCT(s): Check the box for the Product(s) you are purchasing the Additional Services for.

CAM ☐ REMOTE BREATH ☐ HOUSE ARREST ☐ GPS ☐

ADDITIONAL MONITORING SERVICES	CAM	REMOTE BREATH, HOUSE ARREST, GPS ( Per Day, Per Client)
<b>Standard (Included in Services Fee)</b>		
<ul style="list-style-type: none"> <li>• 24/7/365 monitoring services</li> <li>• Online training and certifications</li> <li>• Automated alert notifications delivered via text, email or page</li> <li>• Daily summary reports</li> <li>• 24/7 alert generation and analysis</li> </ul>	No Additional Charge	No Additional Charge
<b>Premier</b>		
<ul style="list-style-type: none"> <li>• Standard, plus:</li> <li>• High priority alert investigation/ handling/ resolution</li> <li>• Manual outbound officer and offender calls</li> <li>• Closed loop documentation of alert handling/ resolution (1-3 calls per alert)</li> </ul>	Not Available	\$1.00
<b>Premier Plus</b>		
<ul style="list-style-type: none"> <li>• Premier, plus:</li> <li>• Outbound offender and officer calls based on defined protocols and escalation procedures per SLA</li> <li>• Escalated alert notifications to officers and/or supervisors (e.g. highest authority for notification) (&gt;3 calls per alert)</li> </ul>	Not Available	\$1.25/day/Client
<b>Customized Services</b>		
For data entry, schedule changes, on-site training, operational assessments, agency and court reporting packages	Priced for each service in the SLA	Priced for each service in the SLA



1241 West Mineral Avenue, Suite 200  
Littleton, CO 80120

## MASTER AGENCY AGREEMENT

<b>AGENCY:</b>	<u>TENTH JUDICIAL DISTRICT ATTORNEY, NEW MEXICO</u>	<b>TELEPHONE:</b>	<u>575-461-2075</u>
<b>ADDRESS:</b>	<u>1110 E. High St., PO Box 1141, Tucumcari, NM 88401</u>	<b>INITIAL CONTRACT TERM:</b>	<u>36 months</u>
	<u>Tucumcari, NM 88401</u>		

This **MASTER AGENCY AGREEMENT** (the "**Agreement**"), is entered into as of the Effective Date by and between **ALCOHOL MONITORING SYSTEMS, INC.** ("**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 the Schedule will prevail. The effective date of the Agreement is the date last signed by AMS (Effective Date"). This Agreement supersedes any prior written or oral agreement and understandings with respect to the subject matter herein.

- 1 GENERAL SCOPE OF AGREEMENT.** AMS sells the Equipment and provides supporting Services specific to monitoring Clients who are required to or opt to wear such Equipment. AMS desires to sell and Agency desires to purchase such Equipment and the supporting Services as specified in this Agreement and the attached Schedules in the Territory described on the applicable Schedule. The County of Quay, located at 300 S. Third St., PO Box 1246, Tucumcari, NM 88401 ("Quay"), is responsible for Client Equipment installation, monitoring, payment of Service Fees and for purchasing any replacement Equipment for lost and damaged units. Agency is responsible the initial Equipment purchase.

## 2 DEFINITIONS

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

"**Effective Date**" means the date this Agreement is signed by AMS.

"**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.

"**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 Replacement 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.** Intentionally Omitted.

**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: Court appearances whereby AMS is requested by Agency to be a witness in a court case; manual check-in for inactive Equipment; 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.

**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, Equipment Fees, Services and any other fees set forth on the Schedule(s).

#### **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.

**3.2.2 Freight Terms.** Replacement Products ordered by Agency shall be shipped to Agency's designated facility if so directed in writing, AMS paying ground freight, and AMS bearing the risk of loss of damage until Products are delivered to Agency's or if applicable, 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.** Agency shall be solely responsible for all taxes related to Products or Services provided to it by AMS under this Agreement including, by way of example and not limitation, sales, use, property, excise, value added, and gross receipts. If Agency is exempt from taxes of any kind Agency will provide appropriate exemption documentation for all such taxes applicable to the transactions contemplated by this Agreement.

**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.**

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**3.5.1 Title to Equipment.** Title to purchase Equipment transfers to Agency upon delivery to the freight carrier.

#### **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.

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**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 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 for 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 Agency personnel with on-line, training and certification in the use of the Products at AMS' current training rates as quoted by AMS to Agency.

**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. 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

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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.

## **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 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 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,

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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. The parties each agree to treat this Agreement, including all exhibits hereto, as Confidential Information of each party.

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

**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.

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## 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) sole control of the defense and settlement thereof; 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 Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado without regard to its conflicts of laws provisions. AMS and Agency hereby irrevocably consent to jurisdiction, service of process and venue in the City and County of Denver, Colorado.

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

**12.3 Injunctive Relief.** Notwithstanding anything above to the contrary, either party at any time may apply to a court having jurisdiction thereof for a temporary restraining order, preliminary injunction or other appropriate order where such relief may be necessary to protect its interests (including, without limitation, any breach of the obligations under Sections 4 and/or 8), without any showing or proving of any actual damages and without posting a bond or other security.

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#### **12.4 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.

**12.5 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.

**12.6 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.

**12.7 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.

**12.8 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.

**12.9 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.

**12.10 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.

**12.11 Publicity.** AMS shall have the right to issue news releases, press releases or other communications regarding this Agreement to potential investors and customers. However, AMS shall not disclose any names of Clients without the prior written approval of the Client and Agency.

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

**12.13 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

Confidential

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

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

**IN WITNESS WHEREOF,** the parties' hereto have caused this Agreement to be executed by their duly authorized representatives as of the date last signed by AMS.

TENTH JUDICIAL DISTRICT ATTORNEY, NEW MEXICO

ALCOHOL MONITORING SYSTEMS, INC.

By: \_\_\_\_\_

Name: Timothy L. Rose

Title: District Attorney

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: Franklin McCasland

Chairman, Board of County

Title: Commissioners

Date: 2-22-2021

Attest: \_\_\_\_\_

Clerk of Agency

By: \_\_\_\_\_

Name: Lou Sugo

Title: Vice President -- Sales and Marketing

Signed by AMS and effective as of: \_\_\_\_\_

Effective Date



**PRODUCT AND SERVICE SCHEDULE  
TO  
MASTER AGENCY AGREEMENT**

**AGENCY:** TENTH JUDICIAL DISTRICT ATTORNEY, NEW MEXICO;

This **PRODUCT AND SERVICES SCHEDULE** ("Schedule") to the **MASTER AGENCY AGREEMENT** (the "Agreement") is entered into on the date last signed by AMS by and between Alcohol Monitoring Systems, Inc. ("AMS") and the Agency identified above. This Schedule is incorporated by reference into the Agreement effective \_\_\_\_\_ executed by the parties. Unless otherwise defined herein, capitalized terms in this Schedule are those as defined in the Agreement. This Schedule is effective on the date signed by AMS.

AMS hereby desires to provide Agency with the Equipment and sell the Agency supporting Services and Agency desires to order such Equipment and purchase such Services as defined in this Schedule during the Term.

**1. DEFINITIONS**

- a. "Active Equipment" means any Equipment unit actively using the Monitoring Software.
- b. "Additional Monitoring Services" means, if Agency is purchasing such services, the additional Monitoring Services provided by AMS and as further defined on Attachment 1, at the pricing set forth in Attachment 1, Schedule A
- c. "CAM Equipment" means, if applicable per the pricing table below, an ankle bracelet device that continuously monitors alcohol levels and if configured as a kit, the base station.
- d. "Service Fee" as used on the Schedule(s) means the Monitoring Service fee charged by AMS to Agency per each Equipment unit, per day using the Monitoring Services.
- e. "Equipment" means collectively the GPS equipment, CAM equipment, various base stations, the Remote Breath Analyzer, the Radio Frequency House Arrest bracelet, Wireless Multi-connect devices and various base stations if sold separately rather than in kit configuration.
- f. "High Priority Alerts" are Equipment generated alerts that signal; (i) the Client violated the exclusion/inclusion zone(s), or failed to return to or leaves without proper authorization an assigned location; (ii) device and/or strap tampering; (iii) evidence of communication and/or location failure; or (iv) any other alert types required by Agency.
- g. "GPS Equipment" means, if applicable per the pricing table below, a device that monitors Client's geophysical location based on exclusion and inclusion zones and includes the base station if configured as a kit.
- h. "House Arrest Equipment" means, if applicable per the pricing table below, an electronic ankle device that monitors Client's adherence to a home arrest curfew schedule and includes the base station if configured as a kit.
- i. "Remote Breath Equipment" means, if applicable per the pricing table below, a device that measures alcohol levels in the breath and may have facial recognition capabilities.
- j. "SLA" means the Service Level Agreement Information document, which is attached to this Schedule as Attachment 1 and is only applicable if Agency is purchasing or renting Equipment with Additional Monitoring Services. Specific SLA protocols will be agreed to in a separate SLA document signed by Agency.
- k. "Wireless Base Station" means, if applicable per the pricing table below, an AMS device that uses cellular transmission to connect with another device, such as a House Arrest or CAM bracelet.
- l. "Wireless Multi-connect Device" means, if applicable per the pricing table below, a third-party wireless device that connects multiple electronic hardware devices, such as a CAM bracelet to a base station.

**2. TERRITORY: State of New Mexico**

### 3. EQUIPMENT AND SERVICE LIMITATIONS AND SPECIAL REQUIREMENTS

#### 3.1 GENERAL EQUIPMENT LIMITATIONS

#### 3.1 GENERAL EQUIPMENT LIMITATIONS

3.1.1 Alcohol Detection. The CAM Equipment is not designed to give immediate notification of alcohol detection.

3.1.2 Tamper Efforts. AMS makes no assurances that the any Equipment worn by a Client will detect all tamper efforts.

3.1.3 Submergence in Water or Other Liquid. Equipment is not designed for submergence in liquids. Certain Equipment can tolerate limited water exposure such as that encountered when showering.

3.1.4 Failure by Agency to Adhere to Maintenance Schedules. AMS bears no liability for Agency's failure to adhere to Equipment maintenance notifications and/or schedules related to equipment and calibration.

#### 3.2 REMOTE BREATH EQUIPMENT LIMITATIONS

3.2.1 Set Up. Agency is responsible for entering and updating schedules for each Client and setting up all relevant notifications, including all methods and events. Further, Agency is responsible for establishing a program providing the necessary criteria to interpret all testing results provided by AMS. The Equipment is intended to be used to determine if a Client has consumed alcohol. It is a professional device designed to be used by trained Agency personnel in conjunction with a routine Agency-run equipment maintenance and calibration oversight program. Use by untrained personnel or without periodic maintenance or calibration may result in invalid results or incorrect interpretation of results.

3.2.2 Breath Test Results. AMS will not analyze or interpret testing results, reporting histories, or provide an opinion as to whether the Client has consumed alcohol. The concentration of alcohol in the blood of the Client cannot be exactly determined by using a breath alcohol-screening device. Blood alcohol concentration depends on a number of variables including, but not limited to, the amount of alcohol consumed, the rate at which it was consumed, body size, age, physical health and the rate of which the Client metabolizes alcohol. No vehicle or machinery should ever be operated after alcohol consumption, regardless of the breath test result as even small quantities of alcohol can result in driving impairment.

3.2.3 Other Limitations. The SCRAM Remote Breath Equipment is not waterproof and should not be immersed in or exposed in any way to liquids. Equipment damaged by Clients or by exposure to water will not be repaired and is subject to the lost/damaged Equipment unit replacement fee.

3.3 ADDITIONAL MONITORING SERVICES – 24/7 REQUIREMENTS. Additional Monitoring Services are supported by a separate SLA document, which must be completed for each Client. Each SLA specifies, among other things, the type, description and price of the Monitoring Services to be provided. Any modifications of the terms of the SLA shall be made solely in writing and mutually executed by the parties and any other attempt to modify the terms of the SLA shall be void. AMS is not liable for; (i) the actions or inactions of Agency or its employees, contractors and agents that result in delay or error in the Services; (ii) failure to report Client non-compliant activities to appropriate supervising authorities when potential bond, parole or probation violations have occurred; or (iii) inaccurate information provided or input into the Monitoring Software, including Client or other contact information, GPS inclusion/exclusion zone set up and offender schedule information and associated protocols.

3.4 WIRELESS EQUIPMENT AND NETWORK LIMITATIONS. AMS provides a choice of data network providers as a part of its Services for the Wireless Multi-connect Device and other Equipment. AMS accepts no responsibility or liability for wireless data coverage or lack thereof. No data will be transmitted when a data network that is supporting the Equipment is not available. Wireless Multi-connect Devices do not provide caller location or caller identification.

**4 EQUIPMENT AND SERVICE PRICING:**

**GSA:** Pricing is in accordance with the GSA Schedule #GS-07F-0003Y and will be calculated with cumulative volume levels across all Equipment.

**4.1 Purchased Equipment.**

Equipment Type	Quantity	Price per Unit (Initial Purchase Price)	****Service Fee per Unit, per Day
CAM Bracelet	1 - 49	\$1000.00	
	50 - 149		
	150 - 499		
GPS Bracelet	1 - 49	\$604.48	
	50 - 149	\$585.88	
	150 - 499	\$562.63	
CAM Wireless Base Station Stand Alone	1+	\$573.21	

**Note 1:** Rental Equipment price changes are based on tier levels are calculated on the number of Active Equipment rental units, not total number rented.

**\*\*\*\*\*Note 2:** The **TENTH JUDICIAL DISTRICT ATTORNEY, NEW MEXICO** of New Mexico will pay the initial Equipment purchase price under separate contract. Thereafter, Quay County New Mexico will pay all Service Fees and mobile app fees (Ally) and be responsible for buying any additional Equipment to replace lost and damaged Equipment or increase the Initial purchase quantity.

**4.2 Rental Equipment. NA**

**5. ADDITIONAL SERVICES**

**Training:** AMS will provide Agency personnel with training in the use of the Products. Any such training will be at no charge to Agency.

**All Equipment Consumables:** No charge per the GSA Schedule terms.

**Ethernet Communication:** \$0.50 per Equipment unit, per day

**6 MOBILE APPLICATIONS:** Quay County will responsible for paying for all Mobile Applications.

**7 LOST AND DAMAGE FEE:** The replacement fee for Rental Equipment lost or damage beyond repair will be the purchase price, per unit, listed above or as follows For Parts it will be the current replacement cost from the manufacturer. GPS refurbishment fee will be \$365.20 for those units that can be repaired.

**8 SPECIAL TERMS:** NA

IN WITNESS WHEREOF, the parties' hereto have caused this Agreement to be executed by their duly authorized representatives as of the date last signed by AMS.

THIS SCHEDULE, AND THE AGREEMENT OF WHICH IT IS A PART, IS A COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN THE PARTIES, WHICH SUPERSEDES ALL PRIOR SCHEDULE AND ANY PROPOSALS AND UNDERSTANDINGS BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS SCHEDULE. By execution, both signers certify that each is authorized to execute the Schedule on behalf of their respective companies.

TENTH JUCICIAL DISTRICT ATTORNEY OF NEW MEXICO

ALCOHOL MONITORING SYSTEMS, INC.

By: 

By: \_\_\_\_\_

Name: Tim Rose

Name: Lou Sugo

Title: District Attorney

Title: Vice President – Sales and Marketing

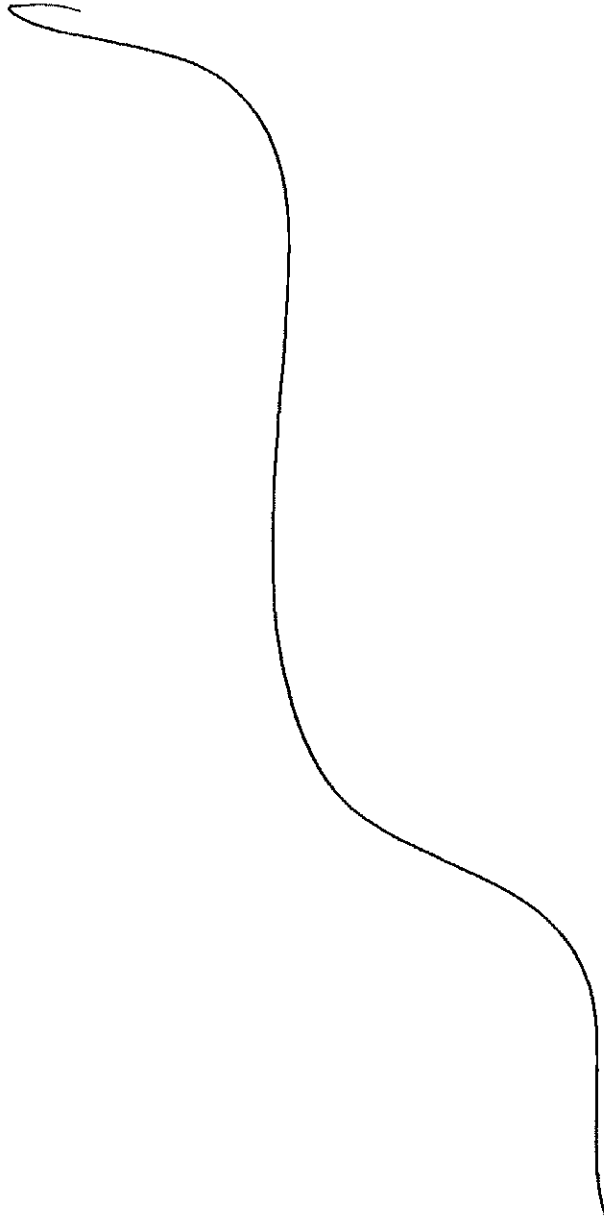
Date: 2-22-21

Signed by AMS and effective as of: \_\_\_\_\_

Effective Date

**ATTACHMENT 1 – MONITORING SERVICE LEVEL AGREEMENT INFORMATION  
TO  
PRODUCT AND SERVICE SCHEDULE  
TO  
MASTER AGENCY AGREEMENT**

**INTENTIONALLY OMITTED – Quay County pay for these service through their direct contract with AMS.**



**QUAY COUNTY  
FISCAL YEAR 2020-2021  
RESOLUTION No. 22**

Authorization of Budgetary Increase to **County Improvements (649)**

**WHEREAS**, at meeting of the Board of Quay County Commissioners on February 22, 2021 the following was among the proceedings;

**WHEREAS**, the Board of Quay County Commissioners deems it necessary to request this Budgetary Increase;

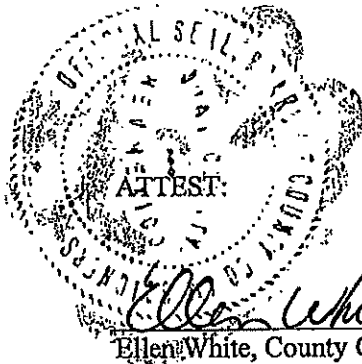
**State Fund 30300  
Budgetary Increase**

	<u><b>DEBIT</b></u>	<u><b>CREDIT</b></u>
<b>30300-0000-47300 State Legislative Appropriations</b>		<b>\$350,000.00</b>
<b>30300-2002-54010 Maintenance &amp; Repairs - Building/Structure</b>	<b>\$350,000.00</b>	

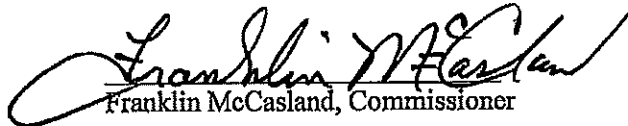
**WHEREAS**, the above activity was not contemplated at the time the final budget was adopted and approved **State Appropriations Contract dated February 9, 2021 Fairgrounds Exhibit Center Roof Replacement**

**NOW THEREFORE, BE IT RESOLVED** that after approval of the Local Government Division of the Department of Finance and Administration, the above Budgetary Adjustments be made.

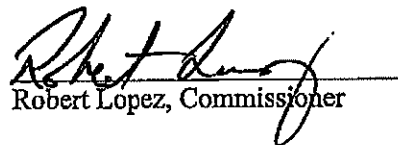
**DONE** at Tucumcari, County of Quay, New Mexico this 22<sup>nd</sup> day of February, 2021.



Ellen White, County Clerk

  
Franklin McCasland, Commissioner

  
Jerri Rush, Commissioner

  
Robert Lopez, Commissioner

QUAY COUNTY RESOLUTION

Resolution No. 23

**A RESOLUTION AUTHORIZING THE COUNTY TO SUBMIT AN APPLICATION TO THE DEPARTMENT OF FINANCE AND ADMINISTRATION, LOCAL GOVERNMENT DIVISION TO PARTICIPATE IN THE LOCAL DWI GRANT AND DISTRIBUTION PROGRAM.**

**WHEREAS**, the Legislature enacted Section 11-6A-1 through 11-6A-6 NMSA 1978 as amended to address the serious problems of Driving While Intoxicated (DWI) in the State; and

**WHEREAS**, a program is established to make grant and distribution funding available to counties and municipalities for new, innovative or model programs, services or activities to prevent or reduce the incidence of DWI, alcoholism, alcohol abuse and alcohol related domestic abuse; and

**WHEREAS**, the county DWI planning council and other governmental entities approval must be received in order to apply for grant and distribution funding; and

**WHEREAS**, the County along with participating agencies is making application to the Department of Finance and Administration, Local Government Division for program funding.

**NOW THEREFORE, BE IT RESOLVED** by the governing body of the County of Quay, that the County Chairperson, on behalf of the County and all participating entities is authorized to submit an application for Distribution and/or Grant Fiscal Year 2022 program funding under the regulations established by the Local Government Division.

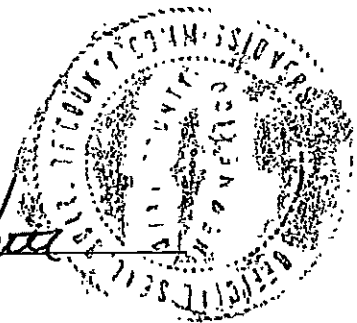
**APPROVED AND ADOPTED** by the governing body at its meeting of Feb. 22, 2021.

  
County Commission Chairperson

Attest:

\_\_\_\_\_  
DWI Planning Council Representative

  
County Clerk (SEAL)



## MEMORANDUM OF UNDERSTANDING

The QUAY County/Municipality DWI Program (hereinafter referred to as the "Program") and the New Mexico Department of Finance and Administration/Local Government Division/Driving While Intoxicated Program (hereinafter referred to as "Division") hereby exchange the following assurances and enter into the following Memorandum of Understanding (MOU):

The Division assures:

1. That Division is in full compliance with the provisions concerning security for records and research activities in accordance with Federal Confidentiality regulations, 42 CFR Part 2.16 and 2.52.
2. That client identifying information will not be re-disclosed except back to the Program from which the information was obtained, or according to the terms of this MOU.
3. That in receiving, storing, processing, or otherwise dealing with any Information from the Program about the clients in the Program, the Division acknowledges it is bound by the provisions of the Federal confidentiality regulations, 42 CFR Part 2.
4. That the Division shall undertake to resist any effort to obtain access to information pertaining to patients otherwise than as expressly provided for in the Federal confidentiality regulations, 42 CFR Part 2.
5. That the Division is not a "covered entity" as defined by the Department of Health and Human Services Regulations entitled "Standards for Privacy of Individually Identifiable Health Information", 45 CFR Parts 160 and 164, implementing the Health Insurance Portability and Accountability Act of 1996 (HIPAA); (the HIPAA Regulations).
6. That the Division shall never possess treatment or maintain any "individually identifiable health information" or transmit "protected health information" as defined by the HIPAA Regulations and in the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH Act).

The Program agrees to:

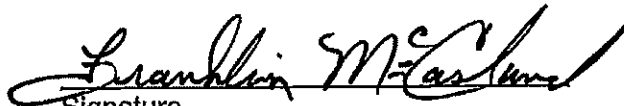
1. Upon request, provide the Division or other parties authorized with client records for those clients provided services through the Local Government Division DWI Grant Program, for the purpose of conducting outcome

monitoring research activities, and evaluation of LDWI Program interventions.

2. If applicable, comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH Act) and the Department of Health and Human Services Regulation entitled "Standards for Privacy of Individually Identifiable Health Information", 45 CFR Parts 160 and 164, applicable to entities covered by HIPAA; (the HIPAA Regulations).
3. Report or transmit data to the Division that deletes and contains no "individually identifiable health information" or "protected health information" as defined by the HIPAA Regulations and the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH Act).

Franklin McCasland, Commission Chair

County Commission Chairperson (or Designee)  
(Please Print)

  
Signature

February 22, 2021

Date



Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Donnie Quintana, Director  
Local Government Division

## STATEMENT OF ASSURANCES

### Local DWI Grant and Distribution Program

Fiscal Year 2022: July 1, 2021 – June 30, 2022

The applicant hereby assures and certifies compliance with the following statutes, rules, regulations, and guidelines associated with the acceptance and use of funds under the New Mexico Local DWI Grant and Distribution Program:

1. Compliance with the provisions of the New Mexico Local DWI Grant Program Act, Sections 11-6A-1 through 11-6A-6 NMSA 1978 as amended, the NMAC Title 2, Chapter 110 Part 4 Regulations, and the approved LDWI Guidelines.
2. The applicant has the responsibility and legal authority to receive and expend funds as described in the grant and distribution project description, as well as to finance the grantee share (minimum 10%) of costs of the project, including all project overruns.
3. Compliance with the State Procurement Code, Sections 13-1-21 through 13-1-199, NMSA 1978 as amended, with the exception of Home Ruled Governments. All project-related services, activities or programs done through a service provider must be implemented through a professional services contract. Any project-related contract, subcontract, or agreement and related amendments, providing services to the grant or distribution program, must be submitted for administrative review by the Local Government Division prior to execution.
4. Adherence to all financial, accounting, and reporting requirements of the Department of Finance and Administration. Distribution programs will include the Exhibit F, the Local DWI Distribution Fund Financial Status Report. Grant programs will include the Local DWI Program Request for Payment/Financial Status Report, Exhibit D. The said reports shall include a narrative of successes and challenges, a detailed budget breakdown of expenditures to date, a summary of any fees collected and/or expended, the Screening and Tracking Report, the Managerial Data Set, Planning Council meeting agendas and minutes, and such other information following the objectives of the county's evaluation as may be of assistance to the Division in its evaluation.
5. Compliance with the requirement to not budget, nor expend, any of the grant amount awarded or the amount distributed for **indirect administrative costs** incurred during the grant or distribution fiscal period. Requests for payment or financial status reports shall document all direct program administrative expenditures and in-kind/match administrative expenditures.
6. Compliance with the requirement to not budget, nor expend, greater than **ten percent** of the grant amount awarded or the amount distributed for **capital purchases** incurred during the grant or distribution fiscal period. Requests for payment or financial status reports shall

Revised: November 2020

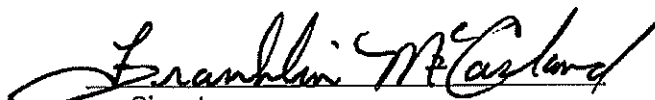
specify all capital purchases. The ten percent cap for capital purchases does not exist with detoxification funding grants.

7. Compliance with all required reports, including but not limited to: the first quarter narrative and fiscal reports due on the last working day of October; the second quarter narrative and fiscal reports due on the last working day of January; and the third quarter narrative and fiscal reports due on the last working day of April; the fourth and the final quarter Grant Fiscal report due by the 10<sup>th</sup> of July and the fourth and final narrative and distribution fiscal reports for the fiscal year due the last working day of July. Annual protocols for the screening, treatment, and compliance monitoring components are due the last working day of August for the current fiscal year. The annual reports which include program evaluation are due the last working day of August for the prior fiscal year.
8. Compliance with the current Local DWI Grant Program Screening Guidelines. To avoid any conflict of interest, or appearance of conflict of interest, screeners should not be affiliated with any contracted treatment agency. Clients will be given options (a list of available providers) for alcohol related treatment and will not be *mandated* to a particular treatment agency.
9. If applicable to the applicant, compliance with the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Department of Health and Human Services regulation entitled "Standards for Privacy of Individually Identifiable Health Information", 45 CFR Parts 160 and 164, applicable to entities covered by HIPAA; (the HIPAA Regulations).
10. Any distribution program under run amount for the fiscal year must be returned to the Local DWI Grant Fund by September 30 of the following fiscal year. Failure to remit an under run to the Local DWI Grant Fund will cause suspension of grant reimbursements and/or future distributions until the remittance is made.
11. Grant program under runs revert to the Local DWI Grant Fund.
12. Compliance with all applicable conditions and requirements prescribed by the Division in relation to receipt/accountability of state General Funds.
13. The grant applicant will follow the scope of work for the grant program, as negotiated with the Local Government Division, and in accordance with the local planning council's approved plan. The applicant will submit any proposed modifications/amendments to the scope of work to the Division for its approval, prior to execution.
14. The distribution program applicant will follow the local planning council's application as approved by DWI Grant Council in the application review process. The applicant will submit any proposed modifications/amendments to this proposal to the Division for its written approval, prior to execution of changes to programs.

15. Compliance with conflict of interest prohibitions whereby no member, officer, or employee of the grant or the distribution program, or its designee or agents, no voting member of the local planning council or of the governing body of the locality in which the program is situated, and no other public official of such locality who exercises any functions or responsibilities with respect to the program during his/her tenure (or for one year thereafter) shall have any interest, direct or indirect, in any contract or subcontract for work to be performed in the program. The grant and/or the distribution program shall incorporate, in all such contracts or subcontracts, a provision prohibiting such interest pursuant to the purposes of these stated provisions.
16. Compliance with the maintenance of records as will fully disclose the amount and disposition of the total funds from all sources budgeted for the grant or distribution agreement period, the purpose of undertaking for which such funds were used and the amount and nature of all contributions from other sources, and such other records as the Division shall prescribe. All Program records must adhere to the New Mexico State Records Center and Archives Rule for Functional Retention and Disposition Schedule, 1.21.2 NMAC.
17. The applicant will provide access to authorized State officials and representatives of all books, accounts, records, reports, files, and other papers, things, or property pertaining to the project in order to make audits, examinations, excerpts and transcripts.
18. The applicant will provide DFA's auditor and evaluator timely access to all program records and information. Additionally, the applicant will assure that records of subcontractors working for the applicant are retained and made available to DFA's auditor and evaluator.

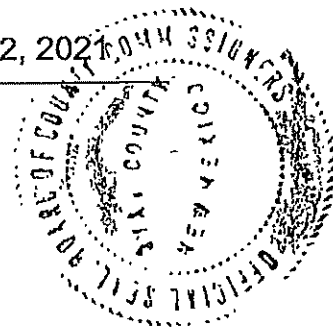
Franklin McCasland, Commission Chair

County Commission Chairperson (or Designee) (Please Print)

  
Signature

February 22, 2021

Date



**Application Cover Sheet**  
**FY22 Local DWI Program Distribution and Grant Funding**  
**Local Government Division - DFA**

County/Municipality: Quay County

**DWI Program Coordinator:**

Name: Andrea Shafer  
 Address: P. O. Box 1011  
 City, Zip: Tucumcari, NM 88401  
 Telephone: 575-461-6096  
 E-Mail: andrea.shafer@quaycounty-nm.gov

**Fiscal Agent as listed on current W-9:**

Contact Person: Cheryl Simpson  
 Mailing Address: P. O. Box 1246  
 City, Zip: Tucumcari, NM 88401  
 Telephone: 575-461-2112  
 E-Mail: cheryl.simpson@quaycounty-nm.gov

**Indicate amounts budgeted for each component area.**

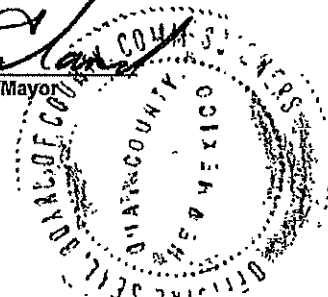
	<u>Distribution</u>	<u>Grant</u>	<u>Component Total</u>
Prevention	-	-	-
Enforcement	-	-	-
Screening	-	-	-
Domestic Abuse	-	-	-
Treatment	-	-	-
Compl. Mtr./track	51,488.00	-	51,488.00
Coord/Plan& Eval.	43,900.00	-	43,900.00
Alt. Sentencing	-	-	-
<b>Total</b>	<b>95,388.00</b>	<b>-</b>	<b>95,388.00</b>
	<b>Total Distrib. Request</b>	<b>Total Grant Request</b>	<b>Total Program Request</b>

**Certification:**

The attached resolution adopted by the governing body of Quay County on February 22, 2021 authorizes the  
 (Applicant) (Date)  
 applicant to file this application for assistance from the State of New Mexico. To the best of my knowledge,  
 the information presented in this application is true and correct.

Franklin McCasland, Commission Chair  
 Printed Name/Title

  
 Signature of County Commissioner/Mayor



Revised: January 2019

**FY 2020-2021  
THE BOARD OF COUNTY COMMISSIONERS OF  
QUAY COUNTY, NEW MEXICO**

**RESOLUTION NO. 21**

**A RESOLUTION SUPPORTING SENATE BILL 174 RELATING TO CAPITAL OUTLAY; PROVIDING THAT CAPITAL OUTLAY FUNDING REQUESTS FOR NON-GOVERNMENTAL ENTITY PROJECTS SHALL NOT BE ACCEPTED UNLESS THE STATE OR A COUNTY OR A MUNICIPALITY HAS ACCEPTED THE ROLE OF ACTING AS FISCAL AGENT FOR THE ENTITY'S PROJECT**

**WHEREAS**, Quay County, as well as all other Counties throughout the State of New Mexico frequently receive appropriations from the New Mexico Legislature that are intended to support the needs of local organizations. Said appropriations usually require Quay County to act as the fiscal agent and to disperse and monitor expenditures under a Grant Agreement; and,

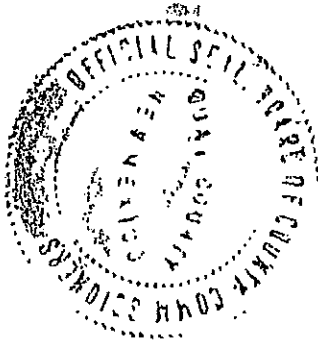
**WHEREAS**, Quay County, acting as fiscal agent for such appropriations and disbursement of such, is governed by the New Mexico Anti-Donation Clause set forth in Article IX, Section 10 of the New Mexico Constitution which prohibits donations to private corporations or other non-government organizations; and,

**WHEREAS**, the distributions of funds to various organizations often conflict with the prohibitions set forth in Article IX, Section 10 of the New Mexico Constitution; and,

**WHEREAS**, it is necessary to make modifications to the current appropriation procedure that requires local organizations to work with Quay County to determine whether Quay County is able and willing to act as the fiscal agent for said organization prior to submission of a request for appropriation.

**NOW, THEREFORE, BE IT RESOLVED**, by the Board of County Commissioners of Quay County supports the passage of Senate Bill 174 by the 2021 New Mexico Legislature and directs the County Manager to submit this resolution to Governor Michelle Lujan Grisham and our area legislators expressing our support.

**PASSED, APPROVED, AND ADOPTED** this 22<sup>nd</sup> day of February, 2021 by the Quay County Board of Commissioners.



Attest:

Ellen L. White  
Ellen L. White, County Clerk

**QUAY COUNTY COMMISSIONERS**

Franklin McCasland  
Franklin McCasland, Chairman

Robert Lopez  
Robert Lopez, Member

Jeri Rush  
Jeri Rush, Member