BIG HORN COUNTY BOARD OF COUNTY COMMISSIONERS

121 3rd St W
Room 301
Hardin, MT 59034

BIG HORN COUNTY

Members
George Real Bird III, Presiding Officer
Larry Vandersloot, Member
Lawrence Pete Big Hair, Member

BIG HORN COUNTY BOARD OF COUNTY COMMISSIONERS MINUTES
March 23, 2023
9:00 AM

1. Call to Order

Commissioner Real Bird, Presiding Officer calls meeting to order.

2. Roll Call

(SIGN-IN SHEET)

3. Public Comments

Co

COA

Debra Johnson opens the public comment. She states her experience with local government. She explained the group she came with today asked her to start the public comment. They would like to go on record once again to express that they do not want to have the senior center moved from its current location 317 N Center Avenue (correction 317 N Custer Avenue) to the Heritage Acres building. She explains the groups involved with the Senior Center are the Council on Aging and the Senior Citizen Association. She goes on to explain in 1965 they started older Americans act to help elderly maintain health in communities. Big Horn County is under Area II out of Roundup. The Center was opened in 2011 and several changes have been made to accommodate the seniors and it would be a disadvantage to have them move. She asks what the plans are for the current facility.
Elanine Malensik read all the newspaper articles about the center and they all stated that the seniors didn't want to move. They aren't located far away and are updated by the newspaper. Very few towns have a senior center like Hardin's and she feels that if they move it, it could damage it. She would like a revote.
Rosalyn Stern voices her concern about parking.
Jennifer Dosson, Supervisor for the Lodge Grass Senior Center, has heard concerns that kitchen use is an issue. Since the Extension will be moving over to Heritage, they seem to think they have use of the kitchen as well as the COA. This sparks issues with the commodities.
Joe Malensik asks if they've considered any of the other vacant buildings in Hardin. He also suggests moving the Treasurers to the old first interstate building, which is already equipped with a vault.
Miriam Old Coyote thinks the 4 way stop could be dangerous with all the big semi-trucks.
Grace Atwood as a tax payer for 50 years, feels that at her age they deserve support.
Dave Graber hears there are a series of problems that people can see and there are a series of plans in place to solve these problems. He suggests hearing from people who know what the options are. Let's help the commissioners facilitate this by letting them know about the biggest problems.
Paulette Frazier is a part of a group that has recently discovered the senior center and would hate to lose it when they just found it.
Delores Pease explains she sees that the proposal was made to move the seniors and now the other

county offices see it as a prize to have it and everyone wants a piece of it, because it's a beautiful building meant for the seniors and shouldn't be available to anyone else. Why remodel twice? Where is the money coming from?
Denise Rios, Big Horn County Treasurer, explains that they didn't go looking for a space, a study was done and that was what was proposed for the treasurer's office to move. She will respect the Commissioner's decision, she is looking at the seniors of the community and her office is busy and she services everyone in the community. Her office can't be far because her office is the county's bank and employees visit her office frequently. She didn't ask for that space, but would respect their choice.
Elaine Malensik understands everything Denise said but doesn't feel the seniors are a priority. No amount of remodeling would make it work for the seniors.
Etta Kollekowski would like answers. They are being kept in the dark.
Commissioner Vandersloot, explains he took on the building because it was empty. People from the community expressed the building would be great for the seniors. He went over with some of the seniors and the first meeting wasn't great. The second meeting, some came around and said they would put a committee together. He still got push back and was hurt by the fact that he personally put an ad in the paper and had flyers put up at the center so they could be involved in the move and only 6 people showed up. No one else from this room showed up to give their opinion. He was looking for opinions so he could make an educated decision.
Delores Pease has been in the building for many reasons, many times and wrote a letter to the board with her opinion on why she prefers their building vs. the Heritage building.
Commissioner Vandersloot explains again he set up several times to get the opinions and help in making his decision.
Tom Ackerman, asks if the building is spoken for?
Commissioner Vandersloot explains their still looking at drawings and cost.
Discussion over issues and changes to the building ensues. Meal numbers were discussed.
Judy Nelson has recently discovered the Senior Center and thinks it's a wonderful building. She doesn't feel the other building is suitable.
Joe Malensik is out if it gets moved.
Kathy Stenerson doesn't think anything is wrong with the other building, but they prefer where they are. Although the invitation is great, they've already seen the building.
Jennifer Dosson thinks no remodeling would be disappointing to the cooks. The kitchen would need more than a paint job.
Larry Johnson understands the feasibility of the Treasure's office being moved, but doesn't understand why they are making them move when they work so close with the other departments.
Commissioner Real Bird explains this process started 2-3 years ago. Spurred by Covid figuring out how our building could better be utilized, they started the study. The ambulance is getting a new building and moving out of the health building. Last year the study went on hold because the community health building was too costly to remodel. When the Commissioners found out that the hospital association was closing the nursing home, the board had architects go in and see how they could utilize the building, instead of leaving it vacant. They've done space assessments and visited departments and evaluated all the spaces. No office has been in the same space for 100 years, the building has been remodeled to keep up with the times. Different counties have outgrown their buildings and we have too. The sheriff needs more space, the jail needs more space. We've tried twice to build a jail and two rivers wasn't occupied and now it is, so maybe we have a better chance of building a jail. Evaluating the different county spaces, it is in consultation with the public and the county officials. Everyone is always welcome to our meetings. The motions were made last year for the move of Sheriff, Public Health and COA. The space study was done in public. We can have the architects print out the studies.
Dave Graber explains IGL and encourages our community to look into it as an option. Daycare's are located in the same area as seniors.

Elaine Malensik opposes anyone taking their building.
Discussion over the apartments ensues. There are 16 one bedrooms and 4 studio apartments and are at capacity.
Commissioner Vandersloot extends an invitation to tour heritage Wednesday March 29th at 1PM.

The board will take a 10 minute recess.

4. Claim Approvals

The board reconvenes at 10:50AM. Commissioner Vandersloot entertained a motion to approve the claims. Commissioner Big Hair seconds. Motions carries.

5. Approve Minutes and Supporting Documents

Commissioner Vandersloot entertains a motion to approve minutes from January 17, 19, 26, 2023 and February 2 and 9, 2023. Commissioner Big Hair seconds. Motion carried.

6. Old Business

Alcohol Monitoring system

Judge Bear Don't Walk and Sabrina Allred join the meeting after returning from a short recess. Tom Ackerman, Big Horn County News, was also in attendance. Judge Bear Don't walk explains since he's become Justice of the Peace (JOP), he's always had an interest in home incarceration and testing to help the overburden of incarceration. In the Montana Code Annotated (MCA) under the misdemeanor probation, she is required to have a software system that will assist the probation officer in managing the clients that the court system will have. Discussion over this particular company and why it was chosen ensues. Commissioner Vandersloot entertained a motion to approve the contract for Alcohol Monitoring System (AMS). The motion was seconded by Commissioner Big Hair and passed unanimously.

Audit Response

Peri Schenderline, Administrative Assistant, explained there was a deadline for the audit response to be in by yesterday. Mike Opie, accountant, made the changes the commissioners requested and county attorney reviewed it, and he went ahead and submitted it.

7. New Business

Sheriff

(CLOSED DOOR)

Discussed dispatch.

Coal Board Contracts

Commissioner Vandersloot entertained a motion to execute the CDBG electronic health records for the Hopital and the Coal Board Motorgraders. The motion was seconded by Commissioner Big Hair and passed unanimously.

MDT HWY 313 FLAP

Commissioner Vandersloot entertained a motion to sign the letter of support for the 313 Flap grant. The motion was seconded by Commissioner Big Hair and passed unanimously.

Personnel

(CLOSED DOOR)

8. Discussion

9. Adjourn

There being no other business, the board adjourned.

Approved: G Re B-O III

George Real Bird III, Presiding Officer

Attest: Peri Schenderline

Peri Schenderline, Deputy Clerk & Recorder

COA Public Comment

3/23

	PRINT NAME	Phone #
	Michael Offer	406-665-9884
1	Debra J Kern	
2	Hazel Geier	
3.	Margaret Arbogast	
4	Clifford R. Arbogast	665-2842
5	Shirley R Margheim	
6	Darlene Mehling	
7.	SHAron Rexroad	
8	Delores Wittmier	
9	Cliff Wittmier	
10	Bill Eshleman	
11	Linda Landrie	
12	Bonnie Graber	
13.	Jacque Ruegamer	
14.	Bruce Ruegamer	
15.	Grace Atwood	
16	John Atwood	
17	Dave Archer 665-3373	
18	Larry Johnson	
19	Tom Ackerman	
20	Don Ragland	
21	Bernie Thorberg	
22	Joe Malensek	
23	Judy Nelson	672-4874
24.	Paulette Frazer	665-2493
25	Olivia Hickey	665-2218
26	Sandra Gonzales	406-638-1622
27	Alice Chapple	665-3289
28	Ezza Kollekowski	679-1876
29	Ilene Klein	665-6034
30	Demetrio Hernandez	406-665-6036
31	Miriam OldCoyote	
32	Rosalind Stern	406-679-1540

3/23	PRINT NAME	Phone #
33	Kathy Farr Stenerson	
34	Anne C. Luft	
35	LANA Moccasin	
36	~~Bonnie Graber~~ previously listed	~~665-3323~~
37	Jennifer Dosson	406 794 2272
38	Elaine Malensek	
39	Debra Johnson	406-665-3164
40	Delores Pease	406-665-2051

SOFTWARE SUBSCRIPTION AND SERVICES AGREEMENT

This **SOFTWARE SUBSCRIPTION AND SERVICES AGREEMENT** ("**Agreement**") is entered into as of this 23rd day of March, 2023 (the "Effective Date") by and between Alcohol Monitoring Systems, Inc. ("**AMS**") with its primary address at 1241 W. Mineral Ave., Ste. 200, Littleton, CO 80120 and Big Horn County Justice Court, with its primary address at 121 3rd Street West, Hardin, MT 59034 ("**Customer**").

1. **DEFINITIONS**

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

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

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

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

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

"Customer Components" means Customer's software, hardware and/or components of the same.

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

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

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

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

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

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

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

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

"Term" means the term of the Agreement as set forth in Section 16.1 below.

"Third-party Components" means third party software, hardware and/or content.

"TouchPoint Mobile Application or App" means a Mobile Application used by a Client User under this Agreement.

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

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

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

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

2. GRANT OF ACCESS – PREMIUM SOFTWARE.

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

3. GRANT OF ACCESS – MOBILE APPLICATIONS.

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

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

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

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

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

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

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

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

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

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

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

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

5. OTHER TERMS OF ACCESS AND USE

5.1 Other Terms of Access and Use. Upon request from Customer, AMS may make Customer Components and Third-party Components available for access through or linked to the Premium Software and Mobile Applications. AMS disclaims all liability and responsibility for such Customer Components and Third-party Components, and Customer remains solely responsible for obtaining and maintaining the necessary permissions for such access or linkage and for obtaining and maintaining all necessary rights for Customer's use of (and AMS's access or linking to) the Customer Components and Third-party Components and Customer shall be solely responsible for any problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer Components and Third-party Components. In the event there is a claim made against AMS by a third party alleging that the Customer Components or Third-party Components infringes or misappropriates the Intellectual Property Rights of a third party or violates applicable law, AMS will provide notice of such claim to Customer and AMS may immediately remove the relevant Customer Components or

Third Party Components until such claim is resolved to the satisfaction of AMS. Customer warrants that its purchases hereunder are based on the current specifications, functionality and features and are not contingent on the delivery of any future specifications, functionality or features nor dependent on any oral or written comments, statements or other representations made by or on behalf of AMS regarding future specifications, functionality or features of the Premium Software or Mobile Applications, or other products or services. Customer hereby assigns (and shall procure that each of its Users assigns) to AMS (by way of present and, where appropriate future assignment) all its right, title and interest (including Intellectual Property Rights) in and to all and any suggestions, enhancement requests, recommendations, communications or other feedback provided by Customer or its Users in connection with the Premium Software, Mobile Applications or other products or services of AMS, and Customer agrees that the foregoing shall be provided free of any confidentiality or privacy restrictions that may otherwise apply.

5.2 Reserved

5.3 Order of Precedence. Should there be a conflict between the Agreement and the Order Form, the order of precedence shall be the Agreement, then the Order Form.

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

6. **AVAILABILITY OF SERVICES**. AMS shall use commercially reasonable efforts to make the Premium Software and Mobile Applications available for twenty-four (24) hours a day, seven (7) days a week. Customer agrees that from time to time the Premium Software or Mobile Applications may be inaccessible or inoperable for reasons beyond the control of AMS, including: (i) equipment malfunctions; (ii) periodic planned and unscheduled maintenance procedures or repairs; or (iii) interruption or failure of telecommunication or digital transmission links, hostile network attacks, network congestion or other similar failures or disasters. Customer shall not be entitled to any setoff, discount, refund or other credit as a result of unavailability of the Services except as expressly provided herein.

7. **SECURITY.** AMS shall use commercially reasonable efforts to prevent unauthorized access to restricted areas of the Premium Software and any databases or other sensitive material. AMS reserves the right to deactivate or suspend access to the Premium Software by Customer and/or by a User or a Mobile Application by a User or Client User if such User or Client User is found or AMS reasonably suspects them to be using their access to facilitate illegal, abusive or unethical activities or otherwise in breach of this Agreement. Such activities include pornography, obscenity, violations of law or privacy, hacking, computer viruses, or any harassing or harmful materials or uses.

8. **AMS WARRANTY**. AMS warrants that the Premium Software and the Mobile Applications will perform in all material respects in accordance with their respective User Guides for the Subscription Term. The entire liability of AMS and the exclusive remedy of Customer for breach of this warranty is for AMS, at its expense and sole option, to: (a) use all reasonable commercial endeavours to correct any such non-conformance; (b) provide Customer with an alternative means of accomplishing the desired performance; or (c) terminate this Agreement and refund Customer in accordance with Section 16.3.

9. **CUSTOMER WARRANTIES.** Customer represents and warrants that (i) it has the legal power to enter into this Agreement, (ii) it will not transmit to AMS any viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs; and (iii) that is has and will maintain all rights necessary to any Customer Components and Third Party Components accessed through or linked to the Premium Software or Mobile Applications in accordance with Section 5.1. Customer shall defend, indemnify and hold AMS harmless from and against all claims, actions, proceedings, losses, damages, costs and expenses, (including without limitation court costs and reasonable legal fees), arising out of or in connection with any breach of this warranty.

10. **IMPLEMENTATION SERVICES.**

10.1 Services. In the event that AMS agrees to provide any Implementation Services under a SOW in order to configure the Premium Software for its use by Customer, AMS shall provide such Implementation Services under the terms of this Agreement and any applicable SOW.

10.2 Change Procedures. In the event it is necessary to modify the scope of the Implementation Services at any time, including but not limited to, where such modifications would: (a) add to AMS's obligations under the SOW; (b) extend the time needed to complete the Implementation Services; and/or (c) increase the cost to complete the Implementation Services, the parties will mutually discuss in good faith and sign an amendment to the SOW modifying the scope, timescales and/or cost of the Implementation Services accordingly.

10.3 Deliverable(s), Ownership and Customer License. AMS retains all right, title and interest in any deliverables provided as a part of the Implementation Services ("Deliverables"), except for any Customer Components or Third Party Components incorporated in the Deliverable (hereinafter "Components"). To the extent Customer acquires any rights in a Deliverable, excluding in relation to the Components, Customer hereby assigns (by way of present and, where appropriate future assignment) all such rights, title and interest (including Intellectual Property Rights) in and to the Deliverable to AMS. Notwithstanding the foregoing and provided AMS has been paid for all amounts owed pursuant to this Agreement and applicable SOW(s) for such Deliverables, AMS grants Customer a non-exclusive, non-transferrable, limited license to use the Deliverables in conjunction with the Premium Software and Mobile Applications.

10.4 Implementation Services Warranty. AMS warrants that any Implementation Services provided under this Agreement shall be performed in a professional and workmanlike manner in accordance with applicable industry standards. For any breach of the foregoing warranty, Customer's sole remedy and AMS's sole obligation, at AMS's option, is to: (a) re-perform the Implementation Services that failed to comply with the warranty at no additional charge to Customer, or (b) refund the amounts paid by Customer for the Implementation Services that failed to comply with the warranty, provided AMS has received written notice from Customer within thirty (30) calendar days after completion of any such Implementation Services (or part thereof) that Customer alleges fails to comply with the warranty above and AMS has been provided with sufficient access to assess or otherwise test the compliance of such Implementation Services.

11. **DISCLAIMER AND LIABILITY OF THE PARTIES**. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, COURSE OF PERFORMANCE OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. Except as provided herein, AMS cannot and does not guarantee the privacy, security, authenticity and non-corruption of any information transmitted through, or stored in any system connected to, the Internet. Except in relation to any claim AMS may have for breach of its Intellectual Property Rights, under no other circumstances shall a party to this Agreement be liable to the other party (or in the case of such other party being the Customer, to its Users) whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any indirect, special, incidental, exemplary or consequential damages including, without limitation, damages for loss of goodwill, profits, data (or use thereof), or business interruption arising out of any acts or failures to act, whether such damages are labeled in strict liability, tort, contract or otherwise, even if such party has been advised of the possibility of such damages. Nothing in this Agreement excludes or limits the liability of either party for (i) any indemnity or breach of the confidentiality obligations in this Agreement; (ii) any liability for personal injury, death or damage to property caused by its negligence or willful misconduct or the negligence of its employees, agents or subcontractors; or (iii) fraud or fraudulent misrepresentation; or (iv) any other liability that cannot be limited or excluded by applicable law. Subject to the foregoing, AMS's aggregate liability to Customer, Clients and its Users in each Liability Period (defined below) in respect of any and all claims of any nature (including in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise), arising directly or indirectly out of or in connection with this Agreement, including all SOWs or the performance or contemplated performance of this Agreement including all SOWs, in each case in respect of all incidents or series of incidents arising in such Liability Period, shall be limited to, an amount equal to the aggregate amounts paid by Customer to AMS in respect of the twelve (12) calendar months immediately preceding the earliest event giving rise to such claim (the "**Liability Period**") less any amounts paid by AMS to Customer in such Liability Period under this Agreement.

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

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

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

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

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

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

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

reasonably cooperate and assist AMS (at AMS's expense) with defense of the suit or claim. The obligations under this Section do not apply to the extent a claim against Customer arises from Customer's breach of the terms of this Agreement.

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

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

15. CONFIDENTIAL INFORMATION

15.1 Confidential Information. In connection with this Agreement a party ("Discloser") may furnish to the other party ("Recipient") confidential information, including without limitation, software, user and training manuals, data, Client information, designs, drawings, tracings, plans, layouts, specifications, samples, equipment and other information provided by or on behalf of Discloser to Recipient, that should reasonably have been understood by Recipient, because of (i) any markings, or (ii) the circumstance of disclosure or the nature of the information itself, to be proprietary and confidential to Discloser or to a third party ("Confidential Information"). Confidential Information specifically includes the Premium Software, Mobile Applications, User Guides and all data and other information accessed by Customer via the Premium Software and Mobile Applications. Confidential Information may be disclosed in written or other tangible form (including digital or other electronic media) or by oral, visual or other means. Each party agrees not to disclose to the other party any confidential or proprietary information of third parties unless authorized to do so. The parties each agree to treat this Agreement, including all attachments and amendments hereto, as Confidential Information of each party.

15.2 Nondisclosure. It is agreed that, after receipt of Confidential Information of the other party, Recipient shall: (i) treat the Discloser's Confidential Information as confidential; (ii) not disclose the Discloser's Confidential Information to any other person without the Discloser's prior written consent save to those employees who need to use the Confidential Information in connection with the performance of this Agreement, (iii) not use such Confidential Information other than for the purposes of this Agreement; and (iv) use no less than a reasonable standard of care in safeguarding against unauthorized disclosure of such Confidential Information. Recipient agrees to have an appropriate nondisclosure agreement signed by each of its employees, agents and contractors who are exposed to Discloser's Confidential Information.

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

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

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

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

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

16.3 Termination for Cause; Refund or Payment upon Termination.

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

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

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

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

16.6 Survival. Upon termination of this Agreement for any reason, all licences granted under or in connection with this Agreement shall immediately terminate and Customer shall immediately cease (and procure that its Clients and Users immediately cease) all use of, and access to, the Premium Software and Mobile Application. This Section 16 and Sections 11, 14, 15, 17 and 18 shall survive termination of this Agreement howsoever arising.

17. MISCELLANEOUS PROVISIONS

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

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

17.3 Injunctive Relief. Notwithstanding anything above to the contrary, either party at any time may apply to a court having jurisdiction thereof for a temporary restraining order, preliminary injunction or other appropriate order where such relief may be necessary to protect its interests (including, without limitation, any breach of the obligations under Sections 3 to 6 and/or 15), without any showing or proving of any actual damages and without posting a bond or other security.

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

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

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

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

17.8 Waiver; Severability. Any waiver of any default or breach of this Agreement shall be effective only if in writing and signed by an authorized representative of the party providing the waiver. No such waiver shall be deemed to be a waiver of any other or subsequent breach or default.

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

17.10 Publicity. Subject to Section 15, AMS shall have the right to issue news releases, press releases or other communications regarding the intended nature of the relationship between the parties in connection with this Agreement to potential investors and customers. However, AMS shall not disclose any names of Customer or Clients without the prior written approval of the relevant Customer or Client.

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

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

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

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

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

THIS AGREEMENT has been entered into by each party's duly authorized representatives as of the signature dates below.

FOR AND ON BEHALF OF:

CUSTOMER		**ALCOHOL MONITORING SYSTEMS, INC.**	
By:	Authorized Signature	**By:**	Authorized Signature
Name:	Judge Ernie Beardontwalk	**Name:**	John Hennessey
Position:	Big Horn County Justice of the Peace	**Position:**	Chief Operating Officer
Date:	3-23-2023	**Date:**	
By:	Authorized Signature		
Name:	George Real Bird III		
Position:	Presiding Officer Big Horn County Board of Commissioners		
Date:	3/23/23		

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

1. **Premium Software and Access Fees: Pricing is in accordance with the GSA Schedule #GS-07F-0003Y and will be calculated with cumulative volume levels across all categories.**

SCRAM NEXUS CASE MANAGEMENT

Annual Software subscription fees

Software	**Description**	**Qty**	**Price per user per month**	**Annually**
Nexus/TouchPoint	Nexus User License Full	2	$110.00	$2,640
24/7 Application	24/7 Financial Tracking	2	$20.00	$480
TouchPoint	Client Application	1	$10.00	$120 per user
Services	**Description**	**Qty**		**One-Time Setup Fees**
Nexus/TouchPoint	Nexus Training 2-day	1		$5,000
Technical Consulting Services	Remote Setup	1		$2,000
	In-person Setup			$5,000

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FOR AND ON BEHALF OF:

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By:	Authorized Signature	**By:**	Authorized Signature
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Position:	Big Horn County Justice of the Peace	**Position:**	Chief Operating Officer
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By:	Authorized Signature		
Name:	George Real Bird III		
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Nexus/TouchPoint	Nexus Training 2-day	1		$5,000
Technical Consulting Services	Remote Setup	1		$2,000
	In-person Setup			$5,000

2. **Subscription Term**: 36 months from the Effective Date of the Agreement.

3. **Billing Period**:

   NEXUS: Prepaid by Customer annually in advance.

   TouchPoint: AMS will invoice Customer monthly in arrears.

4. **Set up Fees:** As outlined in Section 1 of Attachment 1 herein.

5. **Training and Technical Consulting Services:** As outlined in Section 1 of Attachment 1 herein.

6. **Other Special Terms**: NA

March 22, 2023

Western Federal Lands
Federal Highway Administration, USDOT
610 East Fifth Street
Vancouver, WA 98661-3801

Subject: Support for Montana Department of Transportation (MDT) Federal Lands Access Program (FLAP) Application for Improvements to South of Hardin – South (S-313)

To Whom It May Concern:

Big Horn County is fully in support of MDT's application for Federal Lands Access Program funding to extend reconstruction of S-313 and the safety improvements that are necessary to improve access to the Big Horn Canyon National Recreation Area (including the town of Fort Smith and Ok-A-Beh Marina), Afterbay North and South campgrounds, Bighorn River Afterbay Access boat launch, and 3-Mile Fishing Access and boat launch.

This roadway is a major economic generator for our county and the communities that benefit from tourism and recreation associated with the Big Horn River region. This highly popular area generates millions of dollars in revenue for local hotels, camping fees, gas stations, restaurants, shuttle and guide services, as well as fishing lodges.

More importantly, improving the safety of the 3.8 miles of roadway planned for reconstruction is paramount to the residents and visitors of Big Horn County. We are thankful for the ongoing work of MDT to address two dangerous 90 degree curves on S-313 and this extension of that project will address the next most dangerous section of S-313 to complement the work already underway. Given the number of crashes over the last several years on this stretch of roadway, including two fatalities, safety improvements are critical to maintain the vitality of this region.

We would appreciate funding of MDT's application.

Sincerely,

George Real Bird III	Larry Vandersloot	Lawrence Big Hair
Presiding Officer	Member	Member