

**INTOXIMETERS 24/7 PROGRAM AGREEMENT**

DATE OF AGREEMENT: \_\_\_\_\_

OPERATOR INFORMATION:

Identity: \_\_\_\_\_, a [entity type/jurisdiction]

Address: \_\_\_\_\_

Attn: \_\_\_\_\_

Capitalized terms used in this Agreement, including in the Schedules and Exhibits hereto, shall have the meanings given them on Exhibit A hereto.

INTOXIMETERS develops and sells breath alcohol monitors and related equipment, has developed certain computer software related to the administration of remote alcohol and drug use monitoring programs, and provides certain services relating to the use of such monitors, equipment and software, all in connection with the 24/7 Program. OPERATOR operates a Site or Sites and desires to obtain certain software, products, goods and services from INTOXIMETERS in connection with such operation.

Pursuant and subject to the terms of this Agreement, and in connection with the 24/7 Program, INTOXIMETERS is willing to provide and make available to OPERATOR (1) certain rights with respect to the Licensed Technology, (2) the Equipment (if any) and (3) certain support and other services related to the Licensed Technology and the Equipment (if any).

By execution of this Agreement below, INTOXIMETERS and OPERATOR agree as follows:

1. Equipment. INTOXIMETERS agrees to provide to OPERATOR, and OPERATOR agrees to accept from INTOXIMETERS, the Equipment.
2. Licensed Technology. During the Term of this Agreement, INTOXIMETERS hereby grants to OPERATOR a non-transferable, non-exclusive license (i) to access, use and display the Software via the Internet using the Equipment solely for purposes of conducting the 24/7 Program at the Site(s) in strict accordance with this Agreement, and (ii) to use the Know-How solely for purposes of conducting the 24/7 Program at the Site(s) in strict accordance with this Agreement.
3. Services. During the Term of this Agreement, INTOXIMETERS, or its subcontractors or designated representatives, will provide the Services.
4. Fees. In exchange for the Equipment, the grant of certain licenses with respect to the Licensed Technology, and the provision of the Services, OPERATOR agrees to pay to INTOXIMETERS the Program Fees.
5. Terms and Conditions. This Agreement and the transactions contemplated herein are and shall be subject to the terms and conditions set forth on Exhibit B hereto.

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IN WITNESS WHEREOF, the parties have executed this 24/7 Program Agreement as of the date first set forth above.

OPERATOR:

\_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

INTOXIMETERS:

INTOXIMETERS, INC.

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Schedule A – Equipment; Program Fees

**Equipment**

Description	Model No.	Serial No.	Purchase Price *
<b>Total Purchase Price</b>			

**Consumables Available For Equipment**

Description	Model No.

**Site Location(s) for Equipment:** \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**Program Fees:**

Maximum Allowable Fee: In accordance with the pricing established by the Montana Attorney General's Office, the maximum amount a participating 24x7 Sobriety Program Operator can charge a participant per Test Event is Two Dollars (\$2.00).

Random Program Fee: With respect to each Random Program participant, Fifty Cents (\$0.50) per day of each Random Program participant's enrollment on a Random Program.

Test Event Fee: If the OPERATOR elects to use INTOXIMETERS Equipment, one and 25/100 Dollar (\$1.25) for each Test Event occurring in the initial eighteen months of the Term, and One Dollar (\$1.00) for each Test Event occurring thereafter.

If the OPERATOR elects not to use INTOXIMETERS Equipment, one and 00/100 Dollar (\$1.00) for each Test Event occurring during the Term of this Agreement.

## Schedule B – Services

Training Services. INTOXIMETERS, or its subcontractors or designated representatives, will provide a one-time "Train the Trainer" training program at a regional training facility designated by INTOXIMETERS for up to three employees of OPERATOR, in a manner designed to ensure that those individuals participating in the training program will be reasonably qualified, capable and competent to operate the Software on the Equipment in the ordinary course, and reasonably able to train other personnel within OPERATOR'S organization who will operate the Software on the Equipment in the ordinary course. OPERATOR is responsible for the cost of all travel, lodging and living expenses of its employees attending the INTOXIMETERS training program. Notwithstanding such training, so long as INTOXIMETERS complies with its obligations under this provision INTOXIMETERS does not warrant or represent that such trainees (or other individuals within OPERATOR'S organization who are trained by such trainees) shall be qualified, capable or competent to operate, maintain, or perform service on any Equipment for which such training has been provided.

Training Materials. In connection with the training services described herein, INTOXIMETERS will provide one complete set of its Training Materials to facilitate the cascading of training to Testers, Users and Interested Parties. OPERATOR shall not modify the Training Materials without the prior approval of INTOXIMETERS. OPERATOR may make copies of the Training Materials provided: (a) OPERATOR may only make a reasonable number of copies as is required solely for the purposes of training Testers, Users and Interested Parties, and maintaining backup copies; (b) copies are distributed only to individuals who are Testers, Users or Interested Parties, and only for so long as such individuals retain such status; and (c) OPERATOR shall reproduce on each copy and on each partial copy of the Training Materials any copyright notice and proprietary rights legend contained therein, as such notice and legend appear in the original.

Hosted Servers. Access to and use of INTOXIMETERS hosted servers via the Internet to access the Software and to securely store and backup OPERATOR Content.

Technical Support. INTOXIMETERS will provide reasonable technical telephone support to OPERATOR during normal business hours (8:00 am to 6:00 pm Central Time), to assist in OPERATOR'S utilization of Licensed Technology as permitted hereunder and to support the use of any INTOXIMETERS Breath Test Instruments included in the Equipment hereunder that is provided to OPERATOR directly by INTOXIMETERS. All telephone support requests shall be responded to by qualified and knowledgeable personnel. INTOXIMETERS shall promptly provide OPERATOR with appropriate telephone and telephonic pager contact numbers and any changes thereto.

Software Upgrade Services. INTOXIMETERS will provide OPERATOR, at no additional cost, any updates, error corrections or bug fixes to the Software when the same are generally made available by INTOXIMETERS licensed users of the Software.

### Schedule C – Software and Specifications

The software is a networked data management software system for managing a 24/7 program. The software is an Internet based system for recording, managing, reporting and billing scheduled and random alcohol and/or drug tests.

#### Specifications

##### Test Site Interface For:

- Scheduling participants tests cycles
- Collecting Test Event information
- Generating end of shift workflow to do's

##### Participant Manager Interface:

- Enrolling participant functionality
- Review test and payment information on participants that you supervise
- Report on the test and payment data collected

##### AGENCY Administrative:

- Program Overview
- Managing managers
  - Enrolling managers
  - Defining users/managers roles and authority
- Access to all participant information for the managers that you supervise

##### System Forensics:

- Access to reports that document all entries into the system

## EXHIBIT A

### Defined Terms

"24/7 Program" means the remote alcohol and drug use monitoring program approved for use in the State of Montana consisting of a twenty-four hour and seven day a week sobriety program in which a participant submits to the testing of the participant's blood, breath, urine, or other bodily substances in order to determine the presence of alcohol, marijuana, or any controlled substance in the participant's body.

"Agreement" means this INTOXIMETERS 24/7 Program Agreement.

"Confidential Information" means any and all information of a proprietary nature which is disclosed by INTOXIMETERS to OPERATOR, including without limitation financial, accounting and technical data, engineering information, designs, drawings, research and development information, specifications, ideas, concepts, know-how, Training Materials, sales, customer and supplier information, marketing and business plans, financial projections, and any other information of INTOXIMETERS which INTOXIMETERS considers to be proprietary or confidential. Unless otherwise agreed, it shall be presumed that all information received by OPERATOR from INTOXIMETERS or learned by OPERATOR while on INTOXIMETERS' premises is considered proprietary and confidential by INTOXIMETERS without the necessity of INTOXIMETERS specifically marking, confirming in writing or otherwise indicating the confidential nature of such information.

"Contract Term" means the period beginning on the later of October 1, 2011, or upon execution of this Agreement, and ending on September 31, 2014, unless terminated earlier in accordance with the terms of this Agreement.

"Equipment" means that equipment, such as personal computers, printers, breath alcohol content monitoring devices, and calibration equipment provided directly by INTOXIMETERS to OPERATOR for use at the Sites in connection with the 24/7 Program or Software, as further described on Schedule A.

"Interested Parties" means Users who will be contacted based on various outcomes of Test Events.

"INTOXIMETERS" means INTOXIMETERS, INC., a Missouri corporation with offices at 2081 Craig Rd., St. Louis, Missouri 63146.

"Know-How" means INTOXIMETERS' patented or unpatented technical experience, methods, processes, apparatus and techniques, relating to the use and operation of the Software, including without limitation such items as may be embodied in the Training Materials.

"Licensed Technology" means the Software and the Know-How.

"Loss" or "Losses" means all demands, claims, liabilities, losses, damages, settlements, awards, judgments, fines, penalties, costs or expenses (including, without limitation, reasonable fees of attorneys, experts and other advisors and professionals).

"OPERATOR" means the party identified as the OPERATOR in the main body of this Agreement.

"OPERATOR Content" means all text, images, data and other content input through the Software by OPERATOR or on behalf of OPERATOR in connection with the conduct of the 24/7 Program, including without limitation, records relating to Test Events.

"OPERATOR Improvements" means and collectively includes the inventions, improvements or modifications made at any time during the Term by OPERATOR, OPERATOR'S affiliates or their respective agents, which constitute improvements or modifications to the Licensed Technology.

"Parties" means INTOXIMETERS and OPERATOR, collectively.

"Party" means INTOXIMETERS or OPERATOR, respectively.

"Program Fees" means, collectively, the Random Program Fees, the Test Event Fees and the Third Party Accounting Fees, as further described on Schedule A.

"Random Program" means that particular 24/7 Program in which a participant is not required to submit to regularly scheduled Test Events (for example, regularly scheduled twice a day testing), but rather, is required to submit to randomly scheduled testing.

"Services" means the technical support and training, provided by INTOXIMETERS or its subcontractors and designated representatives pursuant to this Agreement, as described on Schedule B hereto.

"Site" or "Sites" means and is limited to facilities located in the State of Montana that are used for remote alcohol and drug use monitoring as part of the 24/7 Program and at which Equipment is installed.

"Software" means computer programs, computer code and associated documentation, training manuals and user's manuals described on Schedule C pertaining to the operation of the 24/7 Program that is hosted by INTOXIMETERS and made available to OPERATOR by INTOXIMETERS via the Internet. Software shall include improvements, modifications, fixes, upgrades and enhancements to the Software owned or controlled by INTOXIMETERS now or in the future, to the extent generally made available to participants.

"Software Warranty Period" means a period of ninety (90) days after the first productive use of the Software by OPERATOR.

"Specifications" means the Software functional requirements set forth on Schedule C.

"Test Event" means each single test that is scheduled by OPERATOR utilizing the Software for a participant in the 24/7 Program to submit to a procedure that is intended to detect the presence of alcohol or drugs in the participant's body. For avoidance of doubt, a "Test Event" is deemed to occur when the participant is tested for drugs or alcohol or if they are a 'no-show' for a random or scheduled test or otherwise fails to submit to scheduled testing.

"Term" means the full Term of this Agreement as described in Section 7.1.

"Testers" means personnel of OPERATOR who perform Test Events with respect to participants in the 24/7 Program.

"Training Materials" means INTOXIMETERS' standard training materials as utilized in its "Train the Trainer" training program, regardless of the format in which such materials are provided.

"Users" means personnel of OPERATOR that use the Software.

## EXHIBIT B

### *INTOXIMETERS 24/7 Program Agreement Terms and Conditions*

#### 1. Equipment.

1.1 *Delivery; Shipping.* INTOXIMETERS will make initial shipment of the Equipment to the Site(s) designated herein. Risk of loss shall remain with INTOXIMETERS until initial delivery by INTOXIMETERS at the Sites, at which point OPERATOR shall have the sole risk of loss with respect to the Equipment. Loss or damage to the Equipment will not relieve OPERATOR of its obligations under this Agreement. Following initial delivery, movement of Equipment from one Site to another Site shall be at OPERATOR'S sole expense. Equipment returned to INTOXIMETERS or its suppliers for repair will be shipped at OPERATOR'S expense. Return shipment of such Equipment to OPERATOR shall be at OPERATOR'S expense. Promptly upon initial delivery of the equipment, OPERATOR shall thoroughly inspect the Equipment and immediately notify INTOXIMETERS of any defect or nonconformity discovered.

1.2 *Software Installation.* INTOXIMETERS will use commercially reasonable efforts to install the Software necessary for the use of the Equipment in the 24/7 Program promptly upon delivery of Equipment from INTOXIMETERS to OPERATOR; however, INTOXIMETERS will not be responsible for delays in installation caused by events or circumstances beyond its control or due to events under the reasonable control of OPERATOR.

#### 1.3 *Possession, Use and Title.*

##### (a) During the Term:

(i) This Agreement shall be a lease with respect to the Equipment and no right, title or interest in the Equipment shall pass to OPERATOR other than the right to maintain quiet and peaceful possession and use of the Equipment, provided no material breach by OPERATOR has occurred and has not been cured as provided for herein, free from interference by any person claiming by, through, or under INTOXIMETERS.

(ii) OPERATOR agrees, upon request of INTOXIMETERS, to give and record such notices and to take such other action at its own expense as may be necessary to prevent any third party (other than an assignee of INTOXIMETERS) from acquiring or having the right under any circumstances to acquire any interest in the Equipment or this Agreement, or to evidence INTOXIMETERS' interest in the Equipment. While this Agreement is intended to be a lease during the period specified, OPERATOR grants a security interest in the Equipment to INTOXIMETERS to protect INTOXIMETERS' interest in the Equipment, if this Agreement is later determined to be a security agreement. OPERATOR gives INTOXIMETERS permission to file a UCC financing statement in order to evidence any such lease and to perfect any such security interest. OPERATOR will immediately notify INTOXIMETERS in writing upon any change in its entity form, its jurisdiction of formation or addresses of its principal executive office.

(iii) OPERATOR shall keep the Equipment free and clear of all, and shall not create, incur, assume or suffer to exist any, claims, liens, pledges, rights of others or other encumbrances, other than those arising by, through or under INTOXIMETERS, and OPERATOR shall give the INTOXIMETERS immediate notice in case any Equipment is levied upon or, from any cause, becomes liable to seizure.

(iv) The Equipment shall always remain personal property even though the Equipment may hereafter become attached or affixed to real property.

(v) OPERATOR shall obtain and maintain, at its own expense, casualty insurance policies insuring the Equipment against loss or damage, in an amount not less than the reasonable replacement value of the Equipment. At INTOXIMETERS' request, OPERATOR shall name INTOXIMETERS as loss payee under such policies and shall furnish INTOXIMETERS with a certificate



of insurance evidencing the issuance of such policies to OPERATOR in at least the minimum amounts required herein, and evidencing the designation of INTOXIMETERS as loss payee. With respect to the Equipment, OPERATOR hereby appoints INTOXIMETERS as its agent and attorney-in-fact to make claims, make adjustments, receive payments and execute and endorse all documents, checks or drafts in connection with insurance payments.

(b) During the Term of this Agreement:

(i) OPERATOR shall use the Equipment in a careful and proper manner and for the use contemplated by the manufacturer thereof and in compliance with all applicable laws, rules, and regulations and the terms of any manufacturer's warranty, and only in connection with the 24/7 Program. Equipment will at all times be kept at the Sites designated herein unless INTOXIMETERS has given prior written consent to a change in location.

(ii) OPERATOR shall provide reasonable protection of Equipment from physical harm by any cause whatsoever, including, but not limited to, trespass, damage, interference by other persons, vandalism, water damage, and fire.

(iii) OPERATOR is responsible for and will provide regularly scheduled electronic and mechanical maintenance of the equipment (including without limitation, the Equipment) in accordance with INTOXIMETERS or, if applicable, third party manufacturer's specifications. Such maintenance shall include without limitation, all required accuracy checks and calibration procedures. OPERATOR shall keep accurate and detailed logs and records regarding its use and maintenance of the Equipment.

(iv) INTOXIMETERS shall have the right, but not the obligation, at all reasonable times to enter upon the premises where the Equipment is located or used to inspect the Equipment and any related logs and records. Such inspections shall be for, among other things, determining whether OPERATOR is properly complying with its obligations hereunder. Neither OPERATOR nor any third party may rely upon any such inspections by INTOXIMETERS and INTOXIMETERS shall not be obligated to inform OPERATOR or any third party of the result of any such inspection.

(c) If during any continuous three (3) month period, OPERATOR fails to conduct on average at least one hundred (100) Test Events per month, then INTOXIMETERS may, at its option and upon thirty (30) days written notice to OPERATOR and the Attorney General, require OPERATOR to return the equipment to INTOXIMETERS. In the event such option is exercised by INTOXIMETERS, then OPERATOR shall, by the end of the thirty (30) day period, promptly cease use of the Equipment and, at OPERATOR'S cost and expense, shall promptly return to INTOXIMETERS all Equipment provided to OPERATOR hereunder, that has not previously been returned to INTOXIMETERS.

1.4 *Standard Terms.* OPERATOR understands and agrees that in addition to the terms and conditions of this Agreement, Equipment used in the 24/7 Program shall also be subject to the standard INTOXIMETERS or third party manufacturer, as applicable, terms and conditions of sale.

1.5 *Consumables.* In connection with the conduct of the 24/7 Program at the Sites, INTOXIMETERS agrees to supply OPERATOR with reasonably required volumes of the consumables (i.e., mouthpieces), at INTOXIMETERS' then currently available pricing, for use only with the following INTOXIMETERS instruments during the Term: Alco-Sensor, Alco-Sensor III, Alco-Sensor V and Alco-Sensor FST. OPERATOR agrees to follow any procedures adopted by INTOXIMETERS for monitoring, ordering and supplying such consumables. Acquisition and supply of other consumables used in the conduct of the 24/7 Program at the Sites (such as paper, printer ink, mouthpieces for other models of instruments and the like) shall also be the responsibility of OPERATOR.

2. Licensed Technology.

2.1 *No Right to Sublicense.* For avoidance of doubt, the licenses granted to OPERATOR hereunder do not permit OPERATOR to sublicense the Licensed Technology to any third party.

2.2 *Obligations of INTOXIMETERS.* So long as the Software is hosted on servers maintained by INTOXIMETERS (i.e., thin client mode of operation), then INTOXIMETERS will (i) routinely backup all OPERATOR Content; (ii) use industry standard security measures to maintain OPERATOR'S authorized users' login information (e.g., User IDs and passwords) for access to the Software in confidence and coordinate with OPERATOR on the creation and allocation of required user IDs and passwords; and (iii) not use OPERATOR Content for any purpose other than to provide support services. INTOXIMETERS may access OPERATOR Content as necessary to identify or resolve technical problems or respond to complaints about the Software. INTOXIMETERS will at all times use commercially reasonable efforts to maintain the confidentiality of OPERATOR Content.

2.3 *Limitations.* OPERATOR agrees to use the Licensed Technology solely for OPERATOR'S business purposes in connection with the operation of the 24/7 Program. Except as expressly permitted by this Agreement, OPERATOR shall not (i) permit any third parties to use the Software, (ii) process or permit to be processed the data of any other party, or (iii) use the Licensed Technology for the benefit of a third party or to develop a product that is similar to the Software or to operate a service bureau. OPERATOR shall not disassemble, de-compile or reverse engineer the Software. OPERATOR agrees that only INTOXIMETERS shall have the right to alter, maintain, enhance or otherwise modify the Licensed Technology. OPERATOR may not use, copy, modify, or distribute the Licensed Technology (electronically or otherwise), or make any copy, adaptation, transcription, or merged portion thereof, except as expressly authorized by INTOXIMETERS in writing or as expressly specified in the terms of this Agreement.

2.4 *Ownership.* INTOXIMETERS shall have sole and exclusive ownership of all right, title, and interest in and to the Licensed Technology and all modifications and enhancements thereof, including without limitation, OPERATOR Improvements. This Agreement does not provide OPERATOR with any title or ownership of the Licensed Technology. OPERATOR shall have sole and exclusive ownership of all right, title, and interest in and to the OPERATOR Content.

2.5 *Disclosure.* During the Term, OPERATOR agrees to disclose to INTOXIMETERS all OPERATOR Improvements, which shall be owned exclusively by INTOXIMETERS. For the purpose of imparting technical information to INTOXIMETERS regarding the OPERATOR Improvements, OPERATOR agrees: (i) to advise INTOXIMETERS within sixty (60) days of the development of any OPERATOR Improvements; (ii) to permit INTOXIMETERS' employees to make such inspections of the OPERATOR Improvements as are reasonably acceptable to OPERATOR; and (iii) to furnish INTOXIMETERS with copies of drawings and other available technical data relative to all OPERATOR Improvements.

2.6 *Access to Software.* OPERATOR shall maintain the confidentiality of user IDs and passwords and shall use all commercially reasonable efforts to ensure that the Software is accessed by authorized personnel of OPERATOR only.

2.7 *Use of Software.* OPERATOR understands and agrees that use of the Software by OPERATOR'S employees, contractors and agents is governed by the terms and conditions of this Agreement and is also governed by the "Terms of Use" and "Privacy Policy" attached hereto as Attachments I and II, respectively. OPERATOR shall ensure that all such OPERATOR employees, contractors and agents comply with such "Terms of Use" and "Privacy Policy."

3. Payment; Taxes; Recordkeeping; Audit Rights.

3.1 *Payment Terms.* All Program Fees are payable on a monthly basis within thirty (30) days after the conclusion of each calendar month's operations. All Program Fees are payable without setoff, deduction, counterclaim, recoupment or defense of any kind or nature. If such Program Fees are not timely paid and such

delinquent payments are not made within ten (10) days of written notice by INTOXIMETERS of such delinquency, then as provided in MCA 17-8-242, and except as provided in MCA 17-8-244, delinquent payments shall bear simple interest at the rate of 0.05% each day on amounts due for supplies and services received.

3.2 *Record Keeping.* OPERATOR must keep appropriate, complete, true and accurate records (in accordance with generally accepted management accounting practices with clear audit trails) of all matters connected with the Program Fees payable hereunder at its principal place of business. OPERATOR will also keep proper books of account relating to the fees payable to INTOXIMETERS under this Agreement, containing such correct entries complete in every particular as may be necessary to enable the amounts due to INTOXIMETERS to be conveniently ascertained and audited. At INTOXIMETERS' written request, OPERATOR will at all reasonable times make available to an independent certified public accountant selected by INTOXIMETERS and reasonably acceptable to OPERATOR the such records and books of account. OPERATOR will give such independent certified public accountant all reasonable assistance, access and facilities necessary, as well as access to appropriate accounting, business, technical, manufacturing and sales personnel to ask questions, to enable such independent certified public accountant to review the records and books. Information acquired or learned by such independent certified public accountant shall be treated as Confidential Information of OPERATOR.

4. Warranties.

4.1 *Mutual Warranties.* Each Party represents and warrants to the other party that: (i) it has full power and authority to enter into, and to perform its obligations under this Agreement; (ii) it has taken all necessary action to authorize the execution, delivery and performance of this Agreement; and (iii) this Agreement constitutes its legal, valid and binding obligations.

4.2 *Equipment.* INTOXIMETERS' standard product warranty shall apply to all Equipment designed and/or manufactured by INTOXIMETERS and provided to OPERATOR directly by INTOXIMETERS, during the Contract Term. OPERATOR understands and agrees that INTOXIMETERS does not assume any obligations to support or otherwise warrant any equipment not provided directly by INTOXIMETERS to OPERATOR.

4.3 *Software.* For the Software Warranty Period, INTOXIMETERS warrants that the Software, when used as permitted under this Agreement and in accordance with its intended purpose (i) shall operate substantially as described in the Specifications; and (ii) shall not corrupt any data entered into the Software or corrupt any other software used on the Equipment. INTOXIMETERS shall, at its own expense and as its sole obligation and OPERATOR'S exclusive remedy for any breach of this warranty, use commercially reasonable efforts to fix or replace, at its option, any defective Software which INTOXIMETERS has determined to be under warranty after receipt of written notice as to such warranty claim from OPERATOR within the Software Warranty Period or, if INTOXIMETERS determines that it is unable to correct a material defect, OPERATOR may terminate this Agreement, return the affected Software and receive a refund of the fees paid for the affected Software. Any defect correction provided to OPERATOR will not extend the original Software Warranty Period. INTOXIMETERS does not warrant that the Software will run properly on all hardware, that the operation of the Software will be uninterrupted or completely error free, or that all Software errors or defects will be corrected.

4.4 *System Downtime.* Any downtime associated with upgrades and maintenance to the Software will be pre-announced via email communication or other mutually agreed means. Upgrades and maintenance will be performed during non-business hours (between 11 pm and 8 am central time). Upgrades and maintenance may take several hours to complete, during which time the Software will not be available. Excluding scheduled maintenance and connectivity failures beyond INTOXIMETERS' reasonable control, INTOXIMETERS shall use all commercially reasonable efforts to maintain system uptime of at least 99%. INTOXIMETERS shall have no liability of any kind with regard to any period of time during which the 24/7 Program is unable to operate due to failures caused by OPERATOR or failures caused by reasons outside INTOXIMETERS' reasonable control.

4.5 *Services.* INTOXIMETERS warrants for Services provided hereunder that the recommendations and performance of the applicable personnel will reflect competent professional knowledge and judgment consistent with industry standards.

4.6 *Disclaimers.*

(a) EXCEPT AS EXPRESSLY SET FORTH HEREIN, INTOXIMETERS MAKES NO REPRESENTATION OR WARRANTIES OF ANY KIND WHETHER EXPRESS, IMPLIED OR STATUTORY IN RESPECT OF THE LICENSED TECHNOLOGY OR THE SERVICES TO BE PERFORMED HEREUNDER OR THE EQUIPMENT OR OTHER GOODS TO BE PROVIDED IN CONNECTION THEREWITH, AND DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND WORKMANLIKE CONDUCT. OPERATOR HEREBY CONFIRMS THAT IT IS NOT PLACING ANY RELIANCE ON ANY COVENANT, REPRESENTATION OR WARRANTY OF INTOXIMETERS, WHETHER ORAL OR IN WRITING, EXPRESS OR IMPLIED, EXCEPT THOSE EXPRESSLY SET FORTH HEREIN. THIS AGREEMENT SETS FORTH THE SOLE AND EXCLUSIVE REMEDIES AVAILABLE TO OPERATOR CONCERNING THE PERFORMANCE BY INTOXIMETERS, THE LICENSED TECHNOLOGY OR ANY PART THEREOF, RELATING TO THE EQUIPMENT, GOODS OR SERVICES PROVIDED HEREUNDER AND, EXCEPT AS EXPRESSLY PROVIDED HEREIN, INTOXIMETERS WILL NOT UNDER ANY CIRCUMSTANCES BE LIABLE TO OPERATOR UNDER ANY THEORY OF RECOVERY, WHETHER BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), UNDER WARRANTY OR OTHERWISE FOR ANY OTHER DIRECT, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES OR CLAIMS OF OPERATOR.

(b) INTOXIMETERS DOES NOT WARRANT ANY EQUIPMENT, COMPUTER HARDWARE, COMPUTER SOFTWARE, OR PARTS OR COMPONENTS THEREOF, NOT DESIGNED AND/OR MANUFACTURED BY INTOXIMETERS. WARRANTIES, IF ANY, ON SUCH EQUIPMENT, COMPUTER HARDWARE, COMPUTER SOFTWARE, PARTS AND COMPONENTS SHALL BE THOSE OF THE ORIGINAL MANUFACTURERS THEREOF.

(c) Other than with respect to the Equipment, Licensed Technology and Services to be provided pursuant to (and subject to) the terms of this Agreement, OPERATOR understands that it is solely responsible for providing all facilities, utilities, internet access and other properties, services and personnel which are fit and sufficient to allow OPERATOR to access and utilize the functionality of the 24/7 Program. For the avoidance of doubt, INTOXIMETERS makes no representation or warranty, and undertakes no covenant, obligation or liability with respect to (i) any such other facilities, utilities, internet access and other properties, services and personnel not provided by INTOXIMETERS under this Agreement, (ii) any use or operation of the Equipment or Licensed Technology other than pursuant to this Agreement or as expressly directed by INTOXIMETERS, (iii) any modification or repair of the Equipment other than as performed by INTOXIMETERS or as directed by INTOXIMETERS, (iv) any combination of the Equipment or the Licensed Technology with any other facilities, systems or properties of OPERATOR, or (v) any training provided within OPERATOR'S organization other than in strict accordance with the Training Materials.

5. Indemnification: Infringement Claims.

5.1 *Indemnification by OPERATOR.* OPERATOR agrees to defend, indemnify and hold harmless INTOXIMETERS and each of its directors, officers and employees from and against all Losses incurred by such indemnified parties as a result of OPERATOR'S (i) negligence or breach of any of the terms of this Agreement, including any representations or warranty provided by OPERATOR, and (ii) use and operation of the Licensed Technology and the 24/7 Program. INTOXIMETERS agrees to promptly notify OPERATOR in writing of any Loss in respect of which it intends to claim indemnification. OPERATOR shall have the right to defend or settle any such claim with counsel of its choosing at its own expense. INTOXIMETERS shall have the right to participate in any such defense or settlement with counsel of its choosing at its own expense; and shall provide OPERATOR, at OPERATOR'S expense, with all reasonable assistance and full information with respect to that Loss, defense or settlement.

5.2 *Indemnification by INTOXIMETERS.* INTOXIMETERS agrees to defend, indemnify and hold harmless the OPERATOR, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, from and against all Losses arising as a result of INTOXIMETERS' negligence or breach of this Agreement. OPERATOR agrees to promptly notify INTOXIMETERS in writing of any Loss in respect of

which it intends to claim indemnification. INTOXIMETERS shall have the right to defend or settle any such claim with counsel of its choosing at its own expense. OPERATOR shall have the right to participate in any such defense or settlement with counsel of its choosing at its own expense; and shall provide INTOXIMETERS, at INTOXIMETERS' expense, with all reasonable assistance and full information with respect to that Loss, defense or settlement.

### 5.3 *Infringement Claims.*

(a) If, as a result of any claim of infringement against any patent, U.S. copyright, or other intellectual property right, INTOXIMETERS or OPERATOR is enjoined from using the Software, or if INTOXIMETERS reasonably believes that the Software is likely to become the subject of a claim of infringement, INTOXIMETERS, at its option and expense, may either (i) procure the right for OPERATOR to continue to use the Software, (ii) replace or modify the Software so that it becomes non-infringing and remains functionally equivalent, or (iii) terminate this Agreement, accept a return of the Software and give OPERATOR a refund of the fees paid by OPERATOR less a reasonable allowance for the period of time OPERATOR used the Software.

(b) INTOXIMETERS shall have no obligations under this Section 5.3 or otherwise if the infringement claim arises from (i) OPERATOR'S combination with or in addition to products, equipment, software or data not supplied or recommended in writing by INTOXIMETERS, where the alleged infringement would not exist but for such combination, (ii) any modification of the Software by any person other than INTOXIMETERS, (iii) any modifications made in whole or in part in accordance with OPERATOR'S specifications, (iv) any use of the Software not in accordance with this Agreement or for purposes not intended by INTOXIMETERS, or (v) where OPERATOR continues the allegedly infringing activity after being notified thereof and provided modifications that would have avoided the alleged infringement.

(c) This Section 5.3 states the entire liability of INTOXIMETERS and OPERATOR'S sole and exclusive remedy for infringement claims and actions.

## 6. Confidentiality.

6.1 *Nondisclosure and Use.* OPERATOR acknowledges and agrees that Confidential Information of INTOXIMETERS is proprietary to INTOXIMETERS and constitutes a valuable trade secret, and agrees, for itself and its subsidiaries or affiliates and their respective officers, employees, advisers, agents or representatives, that it and they: (i) will retain in strict confidence and not disclose to any other person or entity any Confidential Information received from, or belonging to, INTOXIMETERS; and (ii) will not use any Confidential Information of INTOXIMETERS for its own direct or indirect commercial or other benefit or in any way other than as permitted by this Agreement.

6.2 *Exceptions.* Notwithstanding the foregoing, OPERATOR may disclose Confidential Information without breach of this Section 6: (i) pursuant to the order or requirement of a court, administrative agency or other governmental body, provided that OPERATOR promptly informs INTOXIMETERS such disclosure is required, takes reasonable steps to limit such disclosure and does not inhibit INTOXIMETERS in taking whatever lawful steps INTOXIMETERS considers necessary to attempt to preserve the confidentiality of such information; or (ii) to its attorneys and accountants who have been and will be instructed to maintain its confidentiality; provided that OPERATOR shall be liable for any unauthorized disclosure of Confidential Information by any such person.

6.3 *Exclusions.* The obligations of confidentiality under this Section 6 shall not apply to information which is or hereafter becomes publicly available through no fault of the OPERATOR (but only after, and only to the extent that, it becomes publicly available), or which the OPERATOR can show was known to it at the time of disclosure, free of an obligation of confidence to INTOXIMETERS. Specific information disclosed to OPERATOR shall not be deemed to be within the foregoing exceptions merely because it is embraced by general disclosures in the public domain or in the possession of OPERATOR.

7. Term and Termination.

7.1 *Term.* This Agreement shall commence on the date first set forth above and shall continue for the Contract Term, unless sooner terminated as provided below. The parties acknowledge that for any renewals beyond September 31, 2014, Sole Source Justification must be submitted to the State Procurement Bureau, and approval must be received from the State Procurement Bureau.

7.2 *Termination by INTOXIMETERS.* Notwithstanding anything contained herein to the contrary, this Agreement may be terminated at any time by INTOXIMETERS as set forth below. Termination of this Agreement shall not (i) relieve OPERATOR of its obligations to pay any applicable fees, charges and sums due hereunder or (ii) limit INTOXIMETERS from pursuing any other remedies available to it, including injunctive or other equitable relief.

(a) If OPERATOR fails to pay any sums of money due under this Agreement when due and such payment has not been received by INTOXIMETERS within ten (10) days following the OPERATOR'S receipt of written notice of such failure to pay, then INTOXIMETERS may terminate this Agreement, with immediate effect upon written notice to OPERATOR.

(b) If OPERATOR breaches any material provision of this Agreement, and such breach is not cured within thirty (30) days following the OPERATOR'S receipt of written notice of such breach from INTOXIMETERS, or if such breach cannot be cured within such thirty (30) day period OPERATOR fails to commence the cure within such thirty (30) day period or thereafter fails to diligently prosecute such cure, then INTOXIMETERS may terminate this Agreement, with immediate effect upon written notice to OPERATOR.

(c) INTOXIMETERS shall have the right to immediately terminate this Agreement without notice if OPERATOR breaches Section 2 or Section 6, or otherwise misuses the Licensed Technology or the Confidential Information in contravention of this Agreement.

(d) INTOXIMETERS shall have the right to terminate this Agreement at any time, with or without cause, upon ninety (90) days written notice to OPERATOR.

7.3 *Termination by OPERATOR.*

(a) In the event INTOXIMETERS shall be in breach or default of any of the terms, conditions, or covenants of this Agreement, and such breach or default shall continue for a period of ninety (90) days after the receipt of OPERATOR'S written notice to INTOXIMETERS setting forth INTOXIMETERS' breach due to INTOXIMETERS' failure to employ commercially reasonable efforts commensurate with industry standards to remedy such breach or default, then in addition to all other rights and remedies of law or equity or otherwise, OPERATOR shall have the right to terminate this Agreement. Except as expressly provided herein, this Agreement is non-terminable and non-cancelable by OPERATOR.

(b) OPERATOR shall have the right to terminate this Agreement at any time, with or without cause, upon ninety (90) days written notice to INTOXIMETERS.

(c) REDUCTION OF FUNDING: This Agreement is terminable by the State of Montana if funds are not appropriated or otherwise made available to support the State's continuation of performance in a subsequent fiscal period. (See section 18-4-313(4), MCA.)

7.4 *Effect of Termination.* Upon termination of this Agreement in accordance with the terms hereof:

(a) OPERATOR shall immediately discontinue using the Licensed Technology.

(b) OPERATOR, upon request of INTOXIMETERS, at its own cost and expense, immediately deliver to INTOXIMETERS any and all Confidential Information (as hereinafter defined) in its possession or under its control (without retention of any copies, notes or excerpts) unless instructed by INTOXIMETERS in writing to destroy all or any part of such materials, in which case OPERATOR shall immediately destroy the materials as to which the instruction is given, and certify the same to INTOXIMETERS in writing.

(c) OPERATOR, upon request of INTOXIMETERS, at its own cost and expense, shall promptly return to INTOXIMETERS all Equipment provided to OPERATOR hereunder, that has not previously been returned to INTOXIMETERS.

(d) INTOXIMETERS, upon request of OPERATOR, shall reasonably provide OPERATOR with an electronic copy of all OPERATOR Content then in INTOXIMETERS' possession. OPERATOR Content shall be provided in a spreadsheet, delimiter-separated values or other database format as determined by INTOXIMETERS.

(e) Notwithstanding the expiration or termination of this Agreement, the provisions regarding any payment due and owing to INTOXIMETERS, together with Sections 2.4, 2.5, 3, 4.6, 5, 6, 7.4 and 8 (including all applicable subsections) will each survive such expiration or termination.

## 8. Miscellaneous.

8.1 *Assignment.* This Agreement may not be assigned by OPERATOR (by operation of law, merger, acquisition, consolidation or otherwise) without the prior written consent of INTOXIMETERS. Any attempted assignment which is expressly prohibited by this Agreement shall be null and void. This Agreement is solely for the benefit of the Parties hereto and shall confer no rights or benefits to the any third parties. INTOXIMETERS shall not assign, transfer, or subcontract any portion of this contract without the express written consent of the State of Montana (Section 18-4-141, MCA); provided, that INTOXIMETERS may use third-party data hosting, data co-location or other services as are customarily used by INTOXIMETERS in the ordinary-course operation of its business. INTOXIMETERS shall be responsible to the State of Montana for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by INTOXIMETERS. No contractual relationships exist between any subcontractor and the State of Montana.

8.2 *Notices.* Any notice or other communication required by this Agreement shall be made in writing and given by prepaid, first class, certified mail, return receipt requested, and shall be deemed to have been served on the date received by the addressee at the addresses set forth herein or such other address as may from time to time be designated to the other Party in writing.

8.3 *Remedies.* OPERATOR agrees and acknowledges that any breach of Section 2 or Section 6 of these Terms and Conditions may cause irreparable injury to INTOXIMETERS and that INTOXIMETERS' remedy at law for any such breach may be inadequate. Accordingly, OPERATOR agrees that, in addition to any other remedies provided for herein or otherwise available at law, temporary and permanent injunctive relief and other equitable relief may be granted in any action brought by INTOXIMETERS to enforce the provisions of Section 2 and Section 6 of these Terms and Conditions without the necessity of proof of actual damage or the posting of any bond.

8.4 *Governing Law.* The validity, construction and performance of this Agreement, shall be governed by and interpreted in accordance with the laws of the State of Montana without application of its choice of law rules.

8.5 *Waiver.* No waiver by either Party, express or implied, of any breach of any term, condition, or obligation of this Agreement by the other Party shall be construed as a waiver of any subsequent breach of any term, condition, or obligation of this Agreement, whether of the same or different nature.

8.6 *Relationship of the Parties.* This Agreement does not create a relationship of employment, agency, joint venture or partnership between the Parties. A Party must not represent itself, and must ensure its personnel do not represent themselves, as being employees, partners, joint venturers or agents of the other Party; or having any authority to act on behalf of the other Party or to bind the other Party to any course of action.

8.7 *Entire Agreement; Amendment.* This Agreement constitutes the entire understanding and agreement between the Parties, and supersedes all previous agreements (whether written or oral) concerning the subject matter hereof. This Agreement shall not be modified, amended, or supplemented except by a written document executed by both Parties.

8.8 *Headings.* The headings in this document are for information purposes only and are not meant to have any legal effect in interpreting this document.

8.9 *Severability.* The invalidity or unenforceability of any paragraph or provision of this document shall not affect the validity or enforceability of any one or more of the other paragraphs or provisions.

8.10 *Counterparts.* This Agreement may be executed in two or more counterparts, each of which shall constitute an original, but all of which together shall constitute a single agreement.

8.11 *Further Assurances.* At any time or from time to time, OPERATOR shall at the request and expense of INTOXIMETERS execute, and deliver or cause to be delivered, all such consents, documents, assignments or further instruments, and take or cause to be taken all such actions, as INTOXIMETERS may reasonably deem necessary or desirable in connection with the transfer, assignment and protection of OPERATOR Improvements.

8.12 *Access to Records.* INTOXIMETERS agrees to provide the State of Montana, Legislative Auditor or their authorized agents sufficient access to INTOXIMETERS' records to determine contract compliance (Section 18-1-118, MCA).

8.13 *Compliance with Laws.* INTOXIMETERS must, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules, and regulations. OPERATOR must, in the operation of the 24/7 Program and the Site, fully comply with all applicable federal, state, or local laws, rules, and regulations. In accordance with section 49-3-207, MCA, INTOXIMETERS agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

8.14 *Venue.* This solicitation is governed by the laws of Montana. The parties agree that any litigation concerning this bid, request for proposal, limited solicitation, or subsequent contract, must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees. (Section 18-1-401, MCA.)



Attachment I

24/7 PROGRAM TERMS OF USE

You are about to log into the Intoximeters, Inc. ("Intoximeters," "we," "us," or "our") hosted software application (the "24/7 Site") for configuring, managing and inputting data in connection with the 27/7 Program. To access the 24/7 Site, you must at all times agree to and comply with these Terms of Use ("Terms" or "Agreement"). This Agreement is a legal contract between you, either an individual of at least 18 years of age or a single company, organization, or entity ("you," "User," "Administrator" or, collectively, "Users" or "Administrators"), and Intoximeters regarding your use of the 24/7 Site. The services hereunder are offered by Intoximeters, Inc. located at: 2081 Craig Rd., St. Louis, MO 63146.

PLEASE READ CAREFULLY THE FOLLOWING TERMS OF USE. BY ACCESSING OR USING THE 24/7 SITE, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE BOUND BY THE FOLLOWING TERMS, INCLUDING ANY ADDITIONAL GUIDELINES, AND ANY FUTURE MODIFICATIONS (COLLECTIVELY, THE "TERMS"). IF AT ANY TIME YOU DO NOT AGREE TO THESE TERMS, THEN YOU MUST TERMINATE YOUR USE OF THE 24/7 SITE. THE 24/7 SITE IS MADE AVAILABLE UNDER A MASTER 24/7 PROGRAM AGREEMENT (THE "MASTER AGREEMENT") BETWEEN INTOXIMETERS AND THE COMPANY, ENTITY, OR ORGANIZATION (COLLECTIVELY, THE "SUBSCRIBING ORGANIZATION") THAT IS RESPONSIBLE FOR THE CREATION AND ADMINISTRATION OF THE 24/7 PROGRAM. YOU REPRESENT AND WARRANT THAT YOU:

- (I) ARE AN AUTHORIZED REPRESENTATIVE OF THE SUBSCRIBING ORGANIZATION;
- (II) HAVE READ THE FOREGOING TERMS;
- (III) UNDERSTAND THESE TERMS, AND
- (IV) AGREE TO THESE TERMS.

1. Privacy. The Privacy Policy for the 24/7 Site is hereby incorporated into these Terms by reference. Please read this policy carefully for details relating to the collection, use, storage and disclosure of information by Intoximeters and through the 24/7 Site. To the extent that your use of the 24/7 Site enables you to access information that is collected, used or disclosed via the 24/7 Site, you agree to only access and process such information in accordance with these Terms and the Intoximeters Privacy Policy unless or except to the extent you possess other more permissive rights in such information.

2. Specific Aspects and Features. When using the 24/7 Site, you will be subject to any additional posted guidelines or rules applicable to specific aspects or features of the 24/7 Site which may be posted from time to time (the "Guidelines"). All such Guidelines are hereby incorporated by reference into the Terms.

3. Modification of the Terms. Intoximeters reserves the right, at its sole discretion, to change, modify, add, or remove portions of these Terms at any time. You agree to review these Terms and any Guidelines periodically for changes. Your continued use of the 24/7 Site after the posting of changes constitutes your binding acceptance of such changes. If any such revision is unacceptable to you, your only remedy is to terminate this Agreement and your use of the 24/7 Site. For any material changes to these Terms, such amended terms will automatically be effective thirty days after they are initially posted on the 24/7 Site.

4. Customer Service; Customer Communications and Notice. Please email [support@] for further assistance. Under these Terms, you consent to receive communications from Intoximeters electronically. We will communicate with you by email or by posting notices on the 24/7 Site. You agree that all agreements, notices, disclosures, and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing.

5. Eligibility. THE 24/7 SITE IS NOT AVAILABLE TO PERSONS UNDER 18 YEARS OF AGE OR TO ANY USERS PREVIOUSLY SUSPENDED OR REMOVED FROM THE 24/7 SITE BY INTOXIMETERS. BY CLICKING THE "I ACCEPT" BUTTON OR BY OTHERWISE SUBSCRIBING TO OR USING THE 24/7 SITE YOU REPRESENT THAT YOU ARE AT LEAST 18 YEARS OF AGE.

6. The 24/7 Site Accounts.

6.1 Administrator Accounts. In order to use the 24/7 Site, an account must be created on your behalf ("Administrator Account"). You agree to provide true, accurate, current, and complete information in connection with the creation of your Administrator Account. You further agree to maintain and update your personal information as needed to keep it true, accurate, current, and complete. You are solely responsible for maintaining the confidentiality of your user ID and password and for restricting access to your computer, and you agree to accept responsibility for all activities that occur under your Administrator Account. If you have reason to believe that your Administrator Account is no longer secure (for example, in the event of a loss, theft or unauthorized disclosure or use of your user ID or password), you agree to immediately notify Intoximeters. You will be liable for the losses incurred by Intoximeters or others due to any unauthorized use of your Administrator Account or any Administrator Account created by you.

6.2 Master Administrator Accounts. Some Administrator Accounts grant their owners certain options to determine the degree of access and control of the 24/7 Site by other Administrators ("Master Administrator Accounts"). Each Master Administrator Account owner ("Master Administrator") may designate other individuals as additional and/or successor Administrators, and is responsible for confirming that any such individuals are authorized to receive and accept such responsibility. Upon becoming a Master Administrator, each such person will be deemed to agree to the obligations hereunder. Master Administrator Accounts must comply in all respects with Section 6.1 above. **MASTER ADMINISTRATORS ARE FULLY AND SOLELY RESPONSIBLE FOR ALL ACTIVITY OCCURRING UNDER THEIR MASTER ADMINISTRATOR ACCOUNT AND ALL ADMINISTRATOR ACCOUNTS STEMMING FROM THEIR MASTER ADMINISTRATOR ACCOUNTS.**

6.3 Account Information. You acknowledge and agree that Intoximeters may access, preserve and disclose your Administrator Account information and related contents if required to do so by law or in a good faith belief that such access preservation or disclosure is reasonably necessary to: (a) comply with legal process; (b) enforce these Terms; (c) respond to claims that your use of the 24/7 Site violates the rights of third parties; (d) respond to your requests for customer service; or (e) protect the rights, property or personal safety of Intoximeters, its users, or the public.

7. Restrictions - WHEN USING THE 24/7 SITE YOU AGREE NOT TO:

7.1 Use the 24/7 Site for any purpose that is unlawful or is otherwise prohibited by these Terms;

7.2 Use the 24/7 Site in any manner that in our sole discretion could damage, disable, overburden, or impair it or interfere with any other party's use of the 24/7 Site;

7.3 Attempt to gain unauthorized access to the 24/7 Site, other Administrator Accounts, computer systems or networks connected to the 24/7 Site, or any part of them, through hacking, password mining or any other means or interfere or attempt to interfere with the proper working of the 24/7 Site or any activities conducted on the 24/7 Site;

7.4 Modify the 24/7 Site in any manner or form, or use modified versions of the 24/7 Site, including (without limitation) for the purpose of obtaining unauthorized access to the 24/7 Site;

7.5 Use any robot, spider, scraper, or other automated means to access the 24/7 Site for any purpose without our express written permission or bypass our robot exclusion headers or other measures we may use to prevent or restrict access to the 24/7 Site;

7.6 Impersonate another person or access another User's account without that person's permission or to violate any contractual or fiduciary relationships;

7.7 Share Intoximeters-issued passwords with any third party or encourage any other User to do so;

7.8 Modify, adapt, translate or create derivative works based upon the 24/7 Site;

7.9 Reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the 24/7 Site;

7.10 Rent, lease, loan, resell, sublicense, distribute or otherwise transfer the 24/7 Site to any third party or use the 24/7 Site for any purpose other than your own internal personal or business use or to provide time sharing or similar services for any third party, unless authorized to do so in writing by Intoximeters; or

7.11 Remove, circumvent, disable, damage or otherwise interfere with security-related features of the 24/7 Site, or features that enforce limitations on use of the 24/7 Site.

8. Violations; Termination. You agree that Intoximeters may terminate any Administrator Account we determine, in our sole discretion, to have violated any term of this Agreement. You agree that any such termination of your access to the 24/7 Site or any account you may have or portion thereof may be affected without prior notice, and you agree that Intoximeters will not be liable to you or any third-party for such termination. Any suspected fraudulent, abusive, or illegal activity on the 24/7 Site may be referred to appropriate law enforcement authorities. These remedies are in addition to any other remedies Intoximeters may have at law or in equity.

9. Ownership; Proprietary Rights. The 24/7 Site is owned and operated by Intoximeters. The visual interfaces, graphics, design, compilation, information, computer code, products, software, services, and all other elements of the 24/7 Site, with the exception of data you enter into the 24/7 Site ("Materials") are protected by United States copyright, trade dress, patent, and trademark laws, international conventions, and all other relevant intellectual property and proprietary rights, and applicable laws. Except for any technology licensed by Intoximeters, which is owned by and provided by our third-party licensors, all Materials contained in the 24/7 Site are the property of Intoximeters or its subsidiaries or affiliated companies. All trademarks, service marks, and trade names are proprietary to Intoximeters or its affiliates and/or third-party licensors. Except as expressly authorized by Intoximeters, you agree not to sell, license, distribute, copy, modify, publicly perform or display, transmit, publish, edit, adapt, create derivative works from, or otherwise make unauthorized use of the Materials.

10. Third-Party Sites. The 24/7 Site may call the servers of other web sites or services solely at the direction of and as a convenience to Users ("Third-party Sites"). Intoximeters makes no express or implied warranties with regard to the content, products, or services that are contained on or accessible through Third-party Sites. ACCESS AND USE OF THIRD-PARTY SITES, INCLUDING THE INFORMATION, MATERIAL, PRODUCTS, AND SERVICES ON SUCH SITES OR AVAILABLE THROUGH SUCH SITES, IS SOLELY AT YOUR OWN RISK.

11. Disclaimers; No Warranties. EXCEPT AS EXPRESSLY SET FORTH IN THE MASTER AGREEMENT, THE 24/7 SITE AND ANY THIRD-PARTY DATA, SOFTWARE, SERVICES, OR APPLICATIONS MADE AVAILABLE IN CONJUNCTION WITH OR THROUGH THE 24/7 SITE ARE PROVIDED TO YOU "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTIES OF ANY KIND EITHER EXPRESS, IMPLIED OR STATUTORY. EXCEPT AS EXPRESSLY SET FORTH IN THE MASTER AGREEMENT, TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, INTOXIMETERS, ITS SUPPLIERS, LICENSORS, AND PARTNERS DISCLAIM ALL WARRANTIES, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF PROPRIETARY RIGHTS. EXCEPT AS EXPRESSLY SET FORTH IN THE MASTER AGREEMENT, INTOXIMETERS, ITS SUPPLIERS, LICENSORS, AND PARTNERS DO NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE 24/7 SITE AND THE USE OR THE RESULTS OF THE USE OF THE 24/7 SITE WILL BE EFFECTIVE, ACCURATE, UNINTERRUPTED OR ERROR-FREE, THAT THE 24/7 SITE WILL MEET YOUR REQUIREMENTS, THAT DEFECTS WILL BE CORRECTED, OR THAT THE 24/7 SITE OR THE SERVER THAT MAKES THEM AVAILABLE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. INTOXIMETERS WILL NOT BE RESPONSIBLE OR LIABLE FOR THE DELETION, CORRECTION, DESTRUCTION, DAMAGE, LOSS, OR FAILURE TO STORE OR MAINTAIN ANY DATA YOU ENTER INTO THE 24/7 SITE.

12. **Limitation of Liability.** UNDER NO CIRCUMSTANCES, INCLUDING BUT NOT LIMITED TO NEGLIGENCE, WILL INTOXIMETERS OR ITS AFFILIATES, CONTRACTORS, EMPLOYEES, AGENTS, OR THIRD-PARTY PARTNERS, LICENSORS, OR SUPPLIERS BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE, OR EXEMPLARY DAMAGES (INCLUDING WITHOUT LIMITATION LOSSES OR LIABILITY RESULTING FROM LOSS OF DATA, LOSS OF REVENUE, ANTICIPATED PROFITS, OR LOSS OF BUSINESS OPPORTUNITY) THAT RESULT FROM YOUR USE OR YOUR INABILITY TO USE THE 24/7 SITE, OR ANY OTHER INTERACTIONS WITH INTOXIMETERS, EVEN IF INTOXIMETERS OR A INTOXIMETERS AUTHORIZED REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT AS EXPRESSLY SET FORTH IN THE MASTER AGREEMENT, IN NO EVENT WILL INTOXIMETERS OR ITS AFFILIATES, CONTRACTORS, EMPLOYEES, AGENTS, OR THIRD-PARTY PARTNERS, LICENSORS, OR SUPPLIERS TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION ARISING OUT OF OR RELATING TO THESE TERMS OR YOUR USE OF THE 24/7 SITE, (WHETHER IN CONTRACT, TORT INCLUDING NEGLIGENCE, WARRANTY, OR OTHERWISE) EXCEED THE AMOUNT PAID BY YOU, IF ANY, FOR ACCESSING THE 24/7 SITE DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DAY THE ACT OR OMISSION OCCURRED THAT GAVE RISE TO YOUR CLAIM OR FIVE HUNDRED DOLLARS, WHICHEVER IS GREATER. YOU ACKNOWLEDGE AND AGREE THAT INTOXIMETERS HAS OFFERED ITS PRODUCTS AND SERVICES AND ENTERED INTO THESE TERMS IN RELIANCE UPON THE DISCLAIMERS OF WARRANTY AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN, THAT THE DISCLAIMERS OF WARRANTY AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN REFLECT A REASONABLE AND FAIR ALLOCATION OF RISK BETWEEN THE PARTIES (INCLUDING THE RISK THAT A CONTRACT REMEDY MAY FAIL OF ITS ESSENTIAL PURPOSE AND CAUSE CONSEQUENTIAL LOSS).

13. INTENTIONALLY OMITTED

14. Miscellaneous.

14.1 **Notice.** Intoximeters may provide you with notices by email, regular mail or postings on the 24/7 Site. Notice will be deemed given twenty-four hours after email is sent, unless Intoximeters is notified that the email address is invalid. Alternatively, we may give you legal notice by mail to a postal address, if provided by you through the 24/7 Site. In such case, notice will be deemed given three days after the date of mailing. Notice posted on the 24/7 Site is deemed given 30 days following the initial posting.

14.2 **Waiver.** The failure of Intoximeters to exercise or enforce any right or provision of these Terms will not constitute a waiver of such right or provision. Any waiver of any provision of these Terms will be effective only if in writing and signed by Intoximeters.

14.3 **Governing Law.** These Terms will be governed by and construed in accordance with the laws of the State of Montana, without giving effect to any principles of conflicts of law.

14.4 **Severability.** If any provision of these Terms or any Guidelines is held to be unlawful, void, or for any reason unenforceable, then that provision will be limited or eliminated from these Terms to the minimum extent necessary and will not affect the validity and enforceability of any remaining provisions.

14.5 **Assignment.** These Terms and related Guidelines, and any rights and licenses granted hereunder, may not be transferred or assigned by you, but may be assigned by Intoximeters without restriction.

14.6 **Survival.** Upon termination of these Terms, any provision which, by its nature or express terms should survive, shall survive such termination or expiration, including, but not limited to, Sections 1, 3, 4, 6, and 7 through 14 herein.

14.7 **Headings.** The heading references herein are for convenience purposes only, do not constitute a part of these Terms, and will not be deemed to limit or affect any of the provisions hereof.

14.8 Claims. YOU AND INTOXIMETERS AGREE THAT ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THE 24/7 SITE MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.

## Attachment II

### 24/7 PROGRAM PRIVACY POLICY

Welcome to the Intoximeters, Inc. ("Intoximeters," "we," "us," or "our") 24/7 Program platform (the "24/7 Site"). Intoximeters values the privacy of all users of the 24/7 Site, and has created this Privacy Policy to explain how Intoximeters collects, stores, uses, and discloses information created through the use of the platform. By using the 24/7 Site, you expressly consent to the information handling practices described in this notice and otherwise represent and warrant that you have or will communicate this policy to affected individuals as appropriate or required by any applicable laws.

This Privacy Policy is incorporated into and is subject to the 24/7 Program Terms of Use ("Terms"). Your use of the 24/7 Site and any information you provide through the 24/7 Site are subject at all time to this Privacy Policy and the Terms. Any capitalized terms not defined herein shall have the meanings ascribed to them in the Terms.

#### 1. Information Intoximeters Collects:

- **Personally Identifiable Information:** You will enter what is generally called "personally identifiable" information (such as name, email address, postal mailing address, home/mobile telephone number, fingerprint) into the 24/7 Site ("Personal Information"). Administrators may enter the Personal Information of other individuals in connection with configuring and managing the interaction of such individuals ("Enrolled Individuals") with the 24/7 Program.
- **Configuration Information:** You will enter certain information other than Personal Information into the 24/7 Site related to configuration and management of the 24/7 Program;
- **Cookies Information:** When you access the 24/7 Site, we may send one or more cookies - small text files containing a string of alphanumeric characters- to your computer that will store certain information you enter into the 24/7 Site ("Cookies Information"). Intoximeters may use both session cookies and persistent cookies. A session cookie disappears after you close your browser. A persistent cookie remains after you close your browser and may be used by your browser on subsequent visits to the 24/7 Site. Persistent cookies can be removed. Please review your web browser "Help" file to learn the proper way to modify your cookie settings.
- **Logged Information:** When you access the 24/7 Site, we may automatically record certain information from your system by using different types of tracking technology ("Logged Information"). Logged Information may include Internet Protocol address ("IP Address"), a unique device or user ID, version of software installed, system type, the content and pages that you access on the 24/7 Site, and the dates and times that you visit the 24/7 Site.

#### 2. How Intoximeters Uses Information:

- Intoximeters uses the information that you provide or that we collect to operate and provide all of the features and services of the 24/7 Site and the 24/7 Program.
- Except as otherwise provided for in the Terms and this Privacy Policy, Intoximeters shall only access your Personally Identifiable Information, and Configuration Information when directed to do so by you in connection with configuring the 24/7 Site and supporting your use of the 24/7 Site.
- We will use your email address, without further consent, for administrative communications such as notifying you of major the 24/7 Site updates or for customer service purposes.
- Intoximeters may use Configuration Information and Cookies Information in aggregate form such that you or your Subscribing Organization cannot be identified, to understand the usage trends and preferences of the 24/7 Site users, to improve the 24/7 Site interface, and to create new features and functionality.

- Intoximeters may use "Cookies" information to: (a) remember your information so that you will not have to re-enter it during your visit or the next time you access the 24/7 Site; (b) monitor aggregate the 24/7 Site usage metrics such as total number of visitors and pages accessed; and (c) track your entries, submissions, and status in any promotions or other activities.

Intoximeters only processes information for the purposes described in the Master Agreement, Terms and its Privacy Policy for specific services. In addition to the above, such purposes include:

Providing our products and services to users; Auditing, research and analysis in order to maintain, protect and improve our services; Ensuring the technical functioning of the 24/7 Site; and Developing new services.

### 3. When Your Information Is Disclosed:

- Except as otherwise provided herein or in the Terms, Intoximeters does not share your information with other organizations without your express consent.
- We may disclose your information to affiliated companies, or other businesses or persons to: provide the 24/7 Site hosting, maintenance, and security services; conduct data analysis and create reports; and assist Intoximeters in improving the 24/7 Site and creating new services features. We require that these parties process such information in compliance with this Privacy Policy, we authorize only a limited use of such information, and we require these parties to use reasonable confidentiality measures.
- Intoximeters may disclose information it collects if it believes such disclosure is required by law or including to respond to a court order, judicial or other government subpoena, or warrant. In some cases, we may be required to make such disclosures without providing notice to Users or others.
- Intoximeters also reserves the right to disclose information that we believe, in good faith, is appropriate or necessary to take precautions against liability; protect Intoximeters from fraudulent, abusive, or unlawful uses; to investigate and defend ourselves against third-party claims or allegations; to assist government enforcement agencies; to protect the security or integrity of the 24/7 Site; or to protect the rights, property, or personal safety of Intoximeters, users of the 24/7 Site, or others.

### 4. Data Security:

Intoximeters uses commercially reasonable physical, managerial, and technical safeguards to preserve the integrity and security of our systems and your personal information during transmission and storage. We cannot, however, ensure or warrant the security of any information you transmit to Intoximeters, and you do so at your own risk. We make no guarantee that your information may not be accessed, disclosed, altered, or destroyed by a breach of any of our physical, technical, or managerial safeguards. If Intoximeters learns of a security systems breach, then we may attempt to notify you electronically so that you can take appropriate protective steps. Intoximeters may post a notice on the 24/7 Site if a security breach occurs. Depending on where you live, you may have a legal right to receive notice of a security breach in writing. To receive a free written notice of a security breach you should notify us at [support@24x7sober.com](mailto:support@24x7sober.com)

### 5. Change of Control:

In the event that Intoximeters is acquired by or merged with a third-party entity, we reserve the right, in any of these circumstances, to transfer or assign the information that we have collected from you as part of that merger, acquisition, sale, or other change of control.

### 6. Changes and Updates:

This Privacy Policy may be revised periodically without further notice to you and this will be reflected by a "last modified" date below. Please revisit this page to stay aware of any changes. In general, we only use your personal

information in the manner described in the Privacy Policy in effect when we received that personal information. Your continued use of the 24/7 Site constitutes your agreement to this Privacy Policy and any future revisions.

For revisions to this Privacy Policy that may be materially less restrictive on our use or disclosure of personal information you have provided to us, we will make reasonable efforts to notify you and obtain your consent before implementing revisions with respect to such information.

7. Effective Date, Date Last Modified:

Privacy Policy effective as of September 30, 2011.

Privacy Policy last modified on September 30, 2011.

10. Intoximeters Contact Information:

Please contact Intoximeters with any questions or comments about this Privacy Policy and our third-party disclosure practices: 2081 Craig Rd., St. Louis, MO 63146 or by email: [support@24x7sober.com](mailto:support@24x7sober.com)



INTOXIMETERS 24/7 PROGRAM AGREEMENT APPROVED BY:

FOR AND ON BEHALF OF STATE OF MONTANA

By: *Tim Burrow*

Name: Tim Burrow

Position: Attorney General Office-Montana DOJ

Date: 10-3-11

By: *State Procurement Bureau*

Name: *Rhonda B. Gardy*

Position: Procurement Officer—State Procurement

Bureau

Date: 10/3/11

FOR AND ON BEHALF OF INTOXIMETERS

By: *M Rankine Forrester*

Name: M Rankine Forrester

Position: CEO

Date: 10.3-11