

INTOXIMETERS 24/7 STATE AGENCY PROGRAM AGREEMENT

DATE OF AGREEMENT: September 30, 2011
AGENCY INFORMATION: Montana Department of Justice

Address: 215 North Sanders
Helena, MT 59620
Attn: Ali Bovington

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. The State of Montana has passed legislation to implement a 24/7 Program. AGENCY is a member of the executive or judicial branch who has a legitimate business need to use and operate the Software.

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 AGENCY certain rights with respect to the Licensed Technology.

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

1. Licensed Technology. During the Term of this Agreement, INTOXIMETERS hereby grants to AGENCY a non-transferable, non-exclusive license to access, use and display the Software via the Internet solely for purposes of conducting the 24/7 Program at the Site(s) in strict accordance with this Agreement.
2. Services. During the Term of this Agreement, INTOXIMETERS, or its subcontractors or designated representatives, will provide the Services.
3. 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.

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

AGENCY:

By:

Name:

Title:

By:

Name:

Title:

Clerk of Agency:

INTOXIMETERS:

By:

Name:

Title:

[Signature]

Tim Burton

Deputy Director

State Procurement Bureau

Rhonda B. Gray

Contracts Officer

N/A

M. Rankine Forrester

M. Rankine Forrester

CEO

Schedule A – 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 AGENCY, 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 in the ordinary course, and reasonably able to train other personnel within AGENCY'S organization who will operate the Software in the ordinary course. AGENCY 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 AGENCY'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 Users. AGENCY shall not modify the Training Materials without the prior approval of INTOXIMETERS. AGENCY may make copies of the Training Materials provided: (a) AGENCY may only make a reasonable number of copies as is required solely for the purposes of training Users and maintaining backup copies; (b) copies are distributed only to individuals who are Users, and only for so long as such individuals retain such status; and (c) AGENCY 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.

Technical Support. INTOXIMETERS will provide reasonable technical telephone support to AGENCY during normal business hours (8:00 am to 6:00 pm Central Time), to assist in AGENCY'S utilization of Licensed Technology as permitted hereunder. INTOXIMETERS shall promptly provide AGENCY with appropriate telephone numbers and any changes thereto.

SCHEDULE B

Description of Software

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 State Agency Program Agreement.

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

"Licensed Technology" means the Software.

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

"AGENCY Content" means all text, images, data and other content input through the Software by AGENCY or on behalf of AGENCY in connection with the conduct of the 24/7 Program.

"Parties" means INTOXIMETERS and AGENCY, collectively.

"Party" means INTOXIMETERS or AGENCY, respectively.

"Services" means the technical support and training, provided by INTOXIMETERS or its subcontractors and designated representatives pursuant to this Agreement, as described on Schedule A 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 B pertaining to the operation of the 24/7 Program that is hosted by INTOXIMETERS and made available to AGENCY 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 AGENCY.

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

"Term" means the full Term of this Agreement as described in Section 6.1.

"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 AGENCY that use the Software.

EXHIBIT B

INTOXIMETERS 24/7 Program Agreement Terms and Conditions

1. So long as the Software is hosted on servers maintained by INTOXIMETERS (i.e., thin client mode of operation), then INTOXIMETERS will use industry standard security measures to maintain AGENCY's authorized users' login information (e.g., User IDs and passwords) for access to the Software in confidence and coordinate with AGENCY on the creation and allocation of required user IDs and passwords. INTOXIMETERS may access AGENCY 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 AGENCY Content.

2. AGENCY agrees to use the Licensed Technology solely for AGENCY's business purposes and the operation of the 24/7 Program. Except as expressly permitted by this Agreement, AGENCY 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. AGENCY shall not disassemble, de-compile or reverse engineer the Software. AGENCY agrees that only INTOXIMETERS shall have the right to alter, maintain, enhance or otherwise modify the Licensed Technology. AGENCY 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.

3. AGENCY understands and agrees that use of the Software by AGENCY 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. AGENCY shall ensure that all such AGENCY employees, contractors and agents comply with such "Terms of Use" and "Privacy Policy."

4. WARRANTIES AND REMEDIES.

4.1 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. INTOXIMETERS shall, at its own expense and as its sole obligation and AGENCY'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 AGENCY within the Software Warranty Period or, if INTOXIMETERS determines that it is unable to correct a material defect, AGENCY 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 AGENCY 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.

4.2 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.

4.3 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 AGENCY or failures caused by reasons outside INTOXIMETERS' reasonable control.

4.4 Equipment. INTOXIMETERS DOES NOT WARRANT ANY EQUIPMENT, COMPUTER HARDWARE OR PARTS.

4.5 Disclaimers. EXCEPT AS EXPRESSLY SET FORTH HEREIN, INTOXIMETERS MAKES NO REPRESENTATION OR WARRANTIES OF ANY KIND WHETHER EXPRESS, IMPLIED OR STATUTORY IN RESPECT OF THE SOFTWARE OR THE SERVICES TO BE PERFORMED HEREUNDER OR THE 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. EACH OF THE PARTIES HEREBY CONFIRMS THAT IT IS NOT PLACING ANY RELIANCE ON ANY COVENANT, REPRESENTATION OR WARRANTY OF THE OTHER PARTY, 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 AGENCY CONCERNING THE PERFORMANCE BY INTOXIMETERS, THE SOFTWARE OR ANY PART THEREOF RELATING TO THE SERVICES PROVIDED HEREUNDER AND, EXCEPT AS EXPRESSLY PROVIDED HEREIN, INTOXIMETERS WILL NOT UNDER ANY CIRCUMSTANCES BE LIABLE TO AGENCY 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 AGENCY.

5. EFFECTIVE DATE AND DURATION

5.1 Contract Term. This Agreement shall take effect on October 1, 2011, (or upon execution) and shall, unless sooner terminated as provided below, continue until the earlier of September 31, 2014 or the date that no Sites are in operation in Montana for a three (3) month continuous period.

5.2 Termination by INTOXIMETERS. Notwithstanding anything contained herein to the contrary, this Agreement may be terminated at any time by INTOXIMETERS upon the following terms and conditions:

5.2.1 If AGENCY breaches any material provision of this Agreement, and such breach is not cured within thirty (30) days following the AGENCY's receipt of written notice of such breach from INTOXIMETERS, or if such breach cannot be cured within such thirty (30) day period AGENCY 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 AGENCY.

5.2.2 Notwithstanding anything contained in this Agreement, INTOXIMETERS shall have the right to immediately terminate this Agreement without notice if AGENCY misuses the Licensed Technology in contravention of this Agreement.

5.3 Termination by AGENCY. 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 AGENCY'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, AGENCY shall have the right to cancel this Agreement. The State of Montana must terminate this Agreement if funds are not appropriated or otherwise made available to support the State's continuation of performance of this Agreement in a subsequent fiscal period. (See section 18-4-313(4), MCA.)

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

5.4.1 AGENCY, upon request of INTOXIMETERS, at its own cost and expense, immediately deliver to INTOXIMETERS any and all Training Materials and other INTOXIMETERS provided information and materials 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 AGENCY shall immediately destroy the materials as to which the instruction is given.

5.4.2 AGENCY shall immediately discontinue using the Licensed Technology.

6. MISCELLANEOUS.

6.1 Assignment. This Agreement may not be assigned by AGENCY (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 (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.

6.2 Interpretation. 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.

6.3 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.

6.4 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.

6.5 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.

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

6.7 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.

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

6.9 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.

6.10 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.)

6.11 Indemnification.

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

6.11.2 Indemnification by INTOXIMETERS. INTOXIMETERS agrees to defend, indemnify and hold harmless the AGENCY, 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. AGENCY 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. AGENCY 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.

6.12 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.

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 THESE 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.

14.1 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

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.

8. 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