



4862 S. 96th Street, Suite #2, Omaha NE 68127
PH: 888-381-8881 FAX: 402-916-4673

Agenda Item # RAM 17
Date 4/8/20
Authorized Distributor

VIGILNET TERMS AND CONDITIONS

These Terms and Conditions apply to the provision of goods and services provided by Vigilnet America LLC ("Vigilnet") to the Agency ("Agency") listed in the Vigilnet Supply and Support Service Agreement No. 2004 (together with the Scope of Work and Terms and Conditions, the "Agreement"). Each individual who is wearing Vigilnet equipment or is the subject of monitoring will be referred to in this Agreement as a "Participant."

NATURE OF SERVICES PROVIDED

All equipment and services provided by Vigilnet under this Agreement are to be used solely for assisting the Agency for criminal justice purposes. The services provided by Vigilnet under this Agreement and all ancillary tasks associated with the performance of this Agreement are not intended to be used, nor should they be used for, treatment of any kind.

LIMITATION OF LIABILITY AND REMEDIES

The Agency's rights and remedies in this Agreement are exclusive and in lieu of all other rights and remedies at law or in equity. Vigilnet's aggregate liability to the Agency for any and all causes whatsoever, regardless of the form of action, whether arising in contract (including but not limited to indemnity, warranty and all other types of claims under this Agreement and any other agreement) or tort (including but not limited to strict liability and negligence), will in no event exceed the lesser of: (a) the Agency's actual direct damages; or (b) an amount equal to the total aggregate fees the Agency has paid Vigilnet under the Agreement in the 12 months preceding the claim. The above will not, however, limit Vigilnet's liability for their own gross negligence or willful misconduct. In no event will Vigilnet be liable for any special, incidental, indirect, consequential or exemplary damages or lost profits, regardless of whether Vigilnet was advised of the possibility thereof and regardless of whether any limited remedy in this Agreement fails of its essential purpose.

INDEMNITY AND EXCLUSION OF OTHER CLAIMS

Agency agrees to protect, defend, hold harmless and indemnify Vigilnet and its affiliates and representatives, including its officers, directors, employees and agents, from and against any and all lawsuits, claims, demands, actions, liabilities, losses, damages, costs and expenses (including attorneys' fees and court costs), regardless of the cause or alleged cause thereof, and regardless of whether such matters are groundless, fraudulent or false, arising out of any actual or alleged death of or injury to any person, damage to any property, infringement of any legal right, or any other damage or loss, by whomsoever suffered, resulting or claimed to result in whole or in part from any act, activity, or omission of the Agency.

Except as expressly provided in this Agreement, neither party will be required to defend, indemnify or hold the other party harmless from or against any claim whatsoever. Without limiting the generality of the foregoing, Vigilnet has no liability for goods or services provided to the Agency by anyone other than Vigilnet, and as to Vigilnet's liability it is limited as further stated in this Agreement.

LIMITATION OF WARRANTIES

Vigilnet warrants that Vigilnet will perform the required services under this Agreement in a good and workmanlike manner. Vigilnet's only obligation under this warranty is to perform their services in a timely fashion until they are performed in a good and workmanlike manner. Vigilnet makes no warranty of any type as to any software program or other intellectual property licensed by the Agency from Vigilnet or third parties. Vigilnet assigns any third party warranties regarding such programs to the Agency, as the Agency interest appears, to the extent permitted by law. Vigilnet makes no warranty or representation as to goods or services supplied to the Agency by anyone other than Vigilnet, and as to Vigilnet their warranties are

limited as stated in this paragraph. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, VIGILNET MAKES NO WARRANTIES OF ANY TYPE, EITHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, WITH RESPECT TO ANYTHING RELATED TO THIS AGREEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, VIGILNET MAKES NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

INSURANCE ADDITIONAL INSURED COVERAGE

Vigilnet's Commercial General Liability, Automobile, and Umbrella insurance policies must include Agency as additional insured.

SEVERABILITY

If any provision or portion of a provision of this Agreement is held void or unenforceable by a court of competent jurisdiction, the entire remainder of this Agreement will continue in full force and effect.

FORCE MAJEURE

Vigilnet has no liability for any delay or default in performing or delivering under this Agreement if such delay or default is caused by conditions beyond their control including, but not limited to natural disasters, severe weather, government restrictions (including the denial or cancellation of any necessary license, registration or approval), war, insurrection, failure of one or more suppliers, subcontractors or carriers, or any other cause beyond Vigilnet's reasonable control.

WAIVER

No waiver under this Agreement (whether by course of conduct or otherwise) will be effective unless in writing and no waiver will be considered a waiver of any other or further default. Vigilnet's non-enforcement or waiver of any provision under any other agreement(s) with the Agency or any other party, will not be construed as a waiver of any provision under this Agreement or of any rights to subsequently enforce such provisions.

ALLOCATION OF LIABILITY

Under no circumstances will a party to this Agreement be liable to the other party or any other

third party for indirect, special, incidental, exemplary, or consequential damages. Vigilnet has no responsibility or liability for acts that may be committed by the Participant, regardless of whether the Participant was or was not using Vigilnet equipment or services.

GOVERNING LAW AND VENUE

This Agreement and any disagreement or claim arising between the parties is governed by the law of the State of Nebraska (without regard to conflict of law principles). Any lawsuit you bring against us will be filed in state or federal court in Omaha, Douglas County, Nebraska.

SURVIVAL OF PROVISIONS AND AMENDMENTS

The provisions of this Agreement which by their nature are intended to survive termination of this Agreement (including but not limited to representations, warranties, guarantees, indemnifications, payment of obligations, limitations of liabilities and remedies, and forum selection) shall survive its termination. Any changes to the terms of the Agreement shall be in writing and executed by both parties. Furthermore, if there is a conflict of terms between the Agreement and any purchase order or purchase agreement, this Agreement will be the controlling document and non-executed modifications to the Agreement will not be accepted.

THIS AGREEMENT WILL NOT BE EFFECTIVE UNTIL EXECUTED BY THE AGENCY AND ACCEPTED BY AN AUTHORIZED REPRESENTATIVE OF VIGILNET, AT ITS PRINCIPLE PLACE OF BUSINESS. BY SIGNING BELOW, THE AGENCY IS ACKNOWLEDGING THAT THEY RECEIVED THIS AGREEMENT AND HAD AN OPPORTUNITY TO REVIEW THE AGREEMENT. UPON FULL EXECUTION, THE AGREEMENT WILL BE EFFECTIVE AS OF THE EFFECTIVE DATE STATED IN THE AGREEMENT.

SCOPE OF WORK

This Scope of Work outlines the responsibilities of the respective parties related to the goods and services provided by Vigilnet America LLC ("Vigilnet") to the Agency ("Agency") listed in the Vigilnet Supply and Support Agreement No. 20004 (together with the Scope of Work and Terms and Conditions, the "Agreement"). Each individual who is wearing Vigilnet equipment or is the subject of monitoring will be referred to in this Agreement as a "Participant."

Vigilnet will provide services as follows:

- A. Vigilnet will deliver monitoring equipment and accessories to the Agency. Equipment supply will meet the Agency's desired usage level and will allow for proper "on shelf" inventory to be available. Shipping will be at no additional cost.
- B. If Vigilnet and the Agency agree, the manufacturer of the monitoring equipment can be changed if both Vigilnet and the Agency agree that it is in the best interest of both parties to make such a change. Such reasons include, but are not limited to, a particular monitoring technology becoming outdated, the pricing structure of a certain manufacturer becoming impractical or unreasonable, or a new product that offers a more reliable technology in the field of monitoring.
- C. Vigilnet will deliver to the Agency all supplies relating to maintaining the monitoring program. Shipping will be at no additional cost.
- D. Vigilnet will travel to the Agency as needed for on-site training of the Agency staff on equipment functionality, software use, and program essentials, at no additional cost to the Agency. The Agency must provide Vigilnet with at least two weeks' notice for on-site training of Agency staff.
- E. Vigilnet will mail the Agency a monthly invoice for services for the preceding month. Billing terms will allow for payment to be received up to 30 days from the date of the invoice.
- F. The amount billed will be determined by the per diem rates listed in Table 1. The cost per day will apply only when a Participant has hardware assigned to their profile. There is no cost to the Agency for equipment on the shelf.
- G. Vigilnet will offer the Agency a purchase price of the equipment to lower the cost per day. The purchase price is quoted below in Table 2. Vigilnet reserves the right to change the purchase price if the technology is upgraded or the cost of the equipment is increased by the Original Equipment Manufacturer.

Table 1: Cost Per Day (Leased)	
Equipment Hardware	Cost Per Day – Active Units
SCRAM CAM (Alcohol Monitoring)	\$7.95
SCRAM CAM with Home Confinement	\$7.95
SCRAM Ethernet Communication	\$0.50
SCRAM Cellular Communication	\$1.50
Radio Frequency Monitoring – Multiple Carriers (Landline)	\$3.25
Radio Frequency Monitoring – Multiple Carriers (Ethernet)	\$3.75
Radio Frequency Monitoring – Multiple Carriers (Cellular)	\$4.75
Mobile Breathalyzer Monitoring – Multiple Carriers	\$7.50
Global Positioning Systems – Multiple Carriers	\$6.95

Table 2: Cost Per Day (Purchased)	
Equipment Hardware	Cost Per Day – Active Units
SCRAM CAM	\$ 7.50
SCRAM CAM with Ethernet	\$ 8.00
SCRAM CAM with Cellular Communication	\$ 8.50
Purchase Price for CAM Sets	\$ 1,400.00

The Agency will assist Vigilnet by providing Vigilnet with the following information and support:

- A. The Agency will perform installation, maintenance, and removal of equipment.
- B. Assigning Agency individuals to be responsible for accepting, reviewing, managing, and/or disseminating monitoring data and alerts.
- C. The Agency is responsible for complying with all laws and regulations applicable to its actions under this Agreement.
- D. The Agency is responsible for all lost or damaged equipment at the rates listed below in Table 3. This includes equipment lost by anyone for any reason, including but not limited to, Participants, employees of the Agency, independent contractors working under the direction of the Agency, and theft from the Agency office locations or vehicles.

Table 3: Replacement Cost	
Technology	Replacement Cost
SCRAM CAM Bracelet	\$1,000.00
SCRAM CAM Base Station	\$ 400.00
SCRAM CAM Base Station Power Cord	\$ 7.00
SCRAM CAM Strap	\$ 25.00
Radio Frequency Bracelet – SCRAM RF	\$ 275.00
Radio Frequency Base Unit – SCRAM RF	\$ 400.00
Radio Frequency Bracelet – BI HomeGuard 206	\$ 300.00
Radio Frequency Base Unit – BI HomeGuard 206	\$ 990.00
Mobile Breathalyzer – SCRAM Remote Breath	\$ 850.00
Mobile Breathalyzer – BI SL2	\$ 520.00
GPS Monitoring Bracelet – BI ET1	\$ 1,740.00
GPS Monitoring Beacon – BI ET1	\$ 250.00
GPS Monitoring Charger Cord – BI ET1	\$ 60.00
GPS Monitoring Strap – BI ET1	\$ 30.00
GPS Monitoring Bracelet – BI LOC 8	\$ 1,000.00
GPS Monitoring Beacon – BI LOC 8	\$ 250.00
GPS Monitoring Wall Charger – BI LOC 8	\$ 49.00

GPS Monitoring Battery – BI LOC 8	\$ 35.00
GPS Monitoring Bracelet – SCRAM GPS	\$ 540.00
GPS Monitoring Wall Charger – SCRAM GPS	\$ 75.00
GPS Monitoring Strap – SCRAM GPS	\$ 25.00
GPS Monitoring Bracelet – Other	\$ 600.00
GPS Monitoring Strap – Other	\$ 75.00
SCRAM Cellular Attachment	\$ 400.00
SCRAM Wireless Base Station	\$ 650.00

- E. The Agency will remit payment according to the above noted billing terms.

- F. The Agency will complete an audit of leased equipment 60 days prior to the contract anniversary date and will cooperate with Vigilnet to account for all leased items. In the event that leased items are damaged or unaccounted for, Vigilnet will invoice Agency for any such equipment.

TERM

The term of this Agreement is for one year from the effective date of this Agreement, with a mutual option to extend for five (5) additional one year periods, unless terminated earlier as provided under this Agreement. This Agreement, its terms and conditions, and authorized amendments are renewed automatically on the anniversary of its original effective date unless otherwise terminated as provided for in this Agreement. Vigilnet or the Agency, upon ninety days written notice, may terminate this Agreement for any reason or no reason.

EFFECTIVE DATE

The goods and services provided by Vigilnet under the Agreement shall commence on the effective date of April 1, 2020.



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PH: 888-381-8881 FAX: 402-916-4673

SRAM
Authorized Distributor

No. 2004

VIGILNET SERVICE AGREEMENT

This Supply and Support Service Agreement (together with the Scope of Work and Terms and Conditions, the "Agreement") is made between Vigilnet America LLC and the undersigned agency (the "Agency") and is effective as of the effective date provided in the Scope of Work.

Provision of Services: Vigilnet will provide Agency with the products and services outlined in the attached Scope of Work, subject to the attached Terms and Conditions. This Agreement, including its attachments, constitute the entire agreement between Vigilnet and the Agency.

Binding Effect: The provisions of this Agreement, including its attachments, are binding upon the parties and their respective heirs, executors, administrators, legal representatives, successors and assigns. No person or entity (including but not limited to Agency employees and contractors) is a third party beneficiary of this Agreement.

Entire Agreement: This Agreement, including its attachments, constitutes the entire agreement between Vigilnet and the Agency and supersedes any previous agreements, drafts, negotiations, discussions and representations between the parties. The Agency acknowledges and agrees that, in entering into this Agreement, the Agency has not relied on any representation which is not contained within the terms of this Agreement. Headings used in this Agreement are merely for the convenience of the parties and are not to be given any weight in the interpretation of this Agreement.

Notices: All notification with respect to this Agreement must be in writing and signed by a duly authorized representative of the party. Notification documents must be sent by certified mail or delivered by messenger as follows:

To Vigilnet at 4862 South 96th Street, Suite No. 2, Omaha, NE 68127
To the Agency at 428 N. Broad Street, 2nd Floor, Fremont, NE 68025

If Vigilnet attempts to contact the Agency but does not hear back and the Agency continues to use Vigilnet equipment or services, the continued use and acceptance of Vigilnet's equipment and services after the effective date stated in the updated Agreement constitutes acceptance.

Vigilnet America LLC

The Agency: Dodge County NE
Corrections Department

By:
Print Name: Michael A Beckley

By: _____
Print Name: Steve Hespen

Title: Director of Business Development

Title: Sheriff

Date: 4/2/2020

Date: _____