



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

Authorized Distributor

No. 200010

**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, a foreign limited liability company and Yamhill County, a political subdivision of the State of Oregon, acting by and through its Department of Community Justice (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 615 NE 6th Street, McMinnville, OR 97128

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**

By:   
Print Name: Michael A Beckley

Title: Director of Business Development

**The Agency: Yamhill County**

By:   
Print Name: Mary Starrett

Title: Commissioner

Date: 11/16/2020

Accepted by Yamhill County

Board of Commissioners on

9/30/21

by Board Order

# 21-398

Date: 9/30/21



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**S RAM**  
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### 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. 200010 (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. Support services include the detection and correction of software errors and the implementation of all service changes, updates and upgrades at no additional cost to Agency.

#### LICENSE TERMS AND USE

In consideration of payment of the fees as outlined herein, Vigilnet hereby grants Agency a non-exclusive and non-transferable license and sublicense to any Vigilnet or third party software installed on the Vigilnet equipment and services and any associated manuals and/or documentation provided under this Agreement. Agency cannot distribute, rent, sublicense or lease any such software

#### 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. Except as provided elsewhere herein, 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 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 Agency's actual direct damages) up to an amount equal to the total aggregate fees the Agency has paid Vigilnet under the Agreement

in the 12 months preceding the claim or up to the limits of Vigilnet's applicable insurance coverage for any covered claims, whichever is greater. 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

Subject to Article XI, Section 10 of the Oregon Constitution and the Oregon Tort Claims Act, 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), 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 under this Agreement.

Vigilnet agrees to protect, defend, hold harmless and indemnify County 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), 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 Vigilnet under this Agreement.

If Vigilnet becomes, or in Vigilnet's opinion is likely to become, the subject of an infringement claim or action, Vigilnet may at its option and in its sole discretion: (i) procure, at no cost to Agency, the



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Right for Agency to continue using Vigilnet products



or services; (ii) replace or modify Vigilnet products or services to render them non-infringing, provided there is no material loss of functionality; or (iii) if, in Vigilnet's reasonable option, neither (i) or (ii) above is commercially practicable, terminate the Agreement and provide Agency a prorated refund of amounts paid.

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.

#### **CONFIDENTIALITY**

"Confidential Information" means non-public information that a party provides and is reasonably considered to be of a confidential, proprietary or trade secret nature, including marketing, engineering and other plans, financial statements and projections, customer and supplier information, research, designs, plans, compilations, methods, techniques, processes, procedures, and know-how, whether in tangible or intangible form, and whether or not stored, compiled or memorialized physically, electronically, graphically, photographically, or in writing. Confidential Information does not include information which (i) is, as of the time of its disclosure or thereafter becomes part of the public domain through no fault of the receiving party; (ii) can be demonstrated by credible evidence as rightfully known to the receiving party prior to the time of its disclosure, or to

have been independently developed by the receiving party; or (iii) is subsequently learned from a third party not under a confidentiality obligation to the disclosing party. Each party will maintain the other party's Confidential Information in confidence and not use or disclose any portion of the other party's Confidential Information to third parties, except as reasonably necessary to perform this Agreement, to comply with law, and as expressly authorized in this Agreement, provided however that nothing in this Agreement will preclude Vigilnet from disclosing Data or Confidential Information of Agency in response to a subpoena, civil investigative demand or other lawful order, or in response to a request from law enforcement or other governmental authority. Should Vigilnet receive any request or demand to release Agency Confidential Information, Vigilnet shall immediately inform Agency of such request or demand prior to release of any such Agency Confidential Information.

#### **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 shall maintain during the entire term of this Agreement (A) workers compensation insurance in compliance with statutory requirements, (B) commercial general liability insurance (including personal injury liability, products and completed operations coverage), on an occurrence basis, with not less than \$2,000,000 per occurrence for bodily injury, death and property damage, with an annual aggregate limit of \$3,000,000, and (C) professional liability insurance, including errors and omissions and cyber coverage, with not less than \$2,000,000 per occurrence and \$3,000,000 in the aggregate, to protect against all loss suffered by Agency or third parties, including financial and consequential loss, caused by error, omission or negligent acts related to the performance of services under this Agreement.

ii. The required insurance coverages shall be (i) with insurance companies admitted to do business in the state of Oregon and rated A or better by Best's Insurance Rating, and (ii) reasonably acceptable to Agency. At Agency's request, Vigilnet shall furnish Agency with certificates of insurance for the required insurance coverages, that indicate (a) the types of insurance coverage, (b) the identity of all persons or entities covered, (c) the amounts of insurance coverage, and (d) the period of insurance coverage. Any required insurance coverage shall provide that it may not be canceled except after at least 30 days written notice to Agency.

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

"Tail" Coverage. If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, VigilNet shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of this Agreement, for a minimum of 24 months following the later of : (i) VigilNet's completion and Agency's acceptance of all services required under this Agreement; or (ii) the expiration of all warranty periods provided under this Agreement. Notwithstanding the foregoing 24-month requirement, if VigilNet elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then VigilNet may request and Agency may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If Agency approval is granted, VigilNet shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

#### **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**

Neither party shall have any 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), pandemic, war, insurrection, failure of one or more suppliers, subcontractors or carriers, or any other cause beyond that party'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. Either party's non-enforcement or waiver of any provision under any other agreement(s) 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 (as defined in the Scope of Work), regardless of whether the Participant was or was not using Vigilnet equipment or services.

#### **INDEPENDENT CONTRACTOR**

Each of the parties is an independent contractor and will have no right, power or authority to assume or create any obligation or responsibility on behalf of the other. This Agreement will not create or imply any partnership, association, agency, fiduciary relationship, joint venture or several liability between the parties.

#### **COMPLIANCE WITH APPLICABLE LAWS**

Vigilnet shall comply with all federal, state and local laws, orders, ordinances and regulations applicable to the work under this Agreement, including, without limitation, the applicable provisions of ORS chapters 279A, B, and C, particularly 279C.500, 279C.510, 279C.515, 279C.520 and 279C.530, as amended. Vigilnet expressly agrees to comply with Title VI of the CIVIL RIGHT ACT of 1964 and comparable state and local laws. Vigilnet shall also comply with Section V of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 (Pub. Law No. 101-336), ORS 30.670 to ORS 30.685, ORS 659A.142, ORS 659A.145, and all regulations and administrative rules established pursuant to those laws. Vigilnet shall comply with all applicable federal, state and local laws, rules, and regulations on nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, disability, sexual orientation, gender identity or source of income. Vigilnet certifies compliance with the tax laws of the State of Oregon or a political subdivision of the state, including ORS 305.620 and ORS Chapters 316, 317 and 318.

#### **GOVERNING LAW AND VENUE**

This Agreement and any disagreement or claim arising between the parties is governed by the law of the State of Oregon (without regard to conflict of law principles). Any lawsuit you bring against us will be filed in state court in Yamhill County Oregon or federal court in Portland Oregon. The parties hereby consent and submit to the personal jurisdiction of such courts for the purposes of litigating any such action.

#### **ATTORNEY FEES**

If either Vigilnet or Agency employs attorneys to enforce any rights arising out of or relating to this Agreement, each party shall be responsible for their own attorneys' fees and costs.

#### **ASSIGNMENT AND DELEGATION**

Neither party may not assign, transfer, or sell any of its rights, or delegate any of its responsibilities under this Agreement without the prior written consent of the other party, which will not be unreasonably withheld. Except as provided herein, all other assignments of rights are prohibited, whether they are voluntary or involuntary, by merger, consolidation, dissolution, operation of law, or any other manner. For purposes of this section 11.1 a "change of control" is deemed an assignment of rights and a "merger" refers to any merger in which Agency or Vigilnet participates, regardless of whether it is the surviving or disappearing corporation. Neither party may delegate any performance under this Agreement. Any purported assignment of rights or delegation of performance in violation of this section 11.1 is void.

#### **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 PRINCIPAL 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.

By the signatures of their duly authorized representatives below, Vigilnet and Agency have executed this Agreement in one or more counterparts, each of which constitutes an original but all of which together constitute one agreement. Transmission of signature pages by email or other electronic means is acceptable.

### 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. 200010 (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 provide notification to the Agency of alerts based on agreed upon protocol for Participants undergoing monitoring. Vigilnet will send notifications to identified Agency representatives by email or text for immediate notification and/or email for next business day notification.
- D. Vigilnet will provide violation and equipment status information to the Agency through software access and will provide technical support to view the actions/events of the Participant undergoing monitoring.
- E. Vigilnet will provide to the Agency technical support and all necessary court documentation for services set forth in this Scope of Work.
- F. 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.
- G. 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, following receipt, review and approval by Agency.
- H. 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.

Table 1: Cost Per Day (Leased)			
	0-100 daily units active (billed as 0-3,041 monitored days per month).	101-200 daily units active (billed as 3,042-6,083 monitored days per month).	201 + daily units active (billed as 6,084 or more monitored days per month).
Full Service Case Management			
GPS Monitoring – 1 Piece (multiple carriers)			
Passive	\$8.00	\$7.75	\$7.50
Hybrid	\$8.85	\$8.75	\$8.50
Active	\$8.85	\$8.50	\$8.25
GPS Monitoring – 2 Piece (multiple carriers)			
Passive	\$9.50	\$9.25	\$9.00
Hybrid	\$9.50	\$9.25	\$9.00
Active	\$9.50	\$9.25	\$9.00
SCRAM CAM Transdermal Alcohol	\$8.40	\$8.20	\$7.90
SCRAM CAM Transdermal RF/Curfew	\$8.85	\$8.55	\$8.30
SCRAM Remote Breath Breathalyzer	\$6.50	\$6.35	\$6.20
BI SL2 Breathalyzer	\$6.50	\$6.35	\$6.20
Wireless Attachment for SCRAM CAM	\$1.90	\$1.90	\$1.90
Ethernet for SCRAM CAM or Remote Breath	\$0.30	\$0.30	\$0.30
Radio Frequency (RF) Stand Alone	\$5.95	\$5.75	\$5.60
Beacon for 1-piece GPS	\$0.50	\$0.50	\$0.50

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

- A. The Agency will establish departmental protocols for the enforcement of monitoring.
- B. The Agency will perform installation, maintenance, and removal of equipment.
- C. Assigning Agency individuals to be responsible for accepting, reviewing, managing, and/or receiving monitoring data and alerts.
- D. The Agency is responsible for complying with all laws and regulations applicable to its actions under this Agreement.
- E. 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	\$1,200.00
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
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

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

**TERMINATION**

Vigilnet or the Agency, upon ninety days written notice, may terminate this Agreement for any reason or no reason. Either party may terminate this Agreement upon written notice to the other party if the other party (a) breaches any material provision of this Agreement (including any payment obligation) and fails to cure such breach within 30 days following receipt of written notice of breach by the terminating party, or (b) becomes insolvent, ceases operations, is the subject of a bankruptcy petition that, if involuntary, is not dismissed within 30 days, enters receivership or any insolvency proceeding or makes an assignment for the benefit of its creditors.

**EFFECTIVE DATE**

The goods and services provided by Vigilnet under the Agreement shall commence on the effective date of June 1, 2021.