CONTRACT BETWEEN

THE DEPARTMENT OF CORRECTIONS

AND

3M ELECTRONIC MONITORING, INC.

This Contract is between the Florida Department of Corrections ("Department") and 3M Electronic Monitoring, Inc. ("Contractor") which are the parties hereto.

WITNESSETH

Whereas, the Department has supervisory and protective care, custody, and control of the inmates, buildings, grounds, property, and all other matters pertaining to facilities and programs for the imprisonment, correction, and rehabilitation of adult offenders in accordance with Section 945.025, Florida Statutes;

Whereas, it is necessary that budget resources be allocated effectively;

Whereas, this Contract is entered into pursuant to RFP# 10-DC-8200 authorized pursuant to Section 287.057 (1)(b), Florida Statutes;

Whereas, at the time of bid submission the Contractor was known as Pro Tech Monitoring, Inc., and has since been renamed 3M Electronic Monitoring, Inc.;

Whereas, the Contractor is a qualified and willing participant with the Department to provide Global Positioning Satellite Electronic Monitoring Services.; and

Therefore, in consideration of the mutual benefits to be derived hereby, the Department and the Contractor do hereby agree as follows:

I. CONTRACT TERM AND RENEWAL

A. Contract Term

This Contract shall begin on July 1, 2012, or the date on which it is signed by both parties, whichever is later, and shall end at midnight on June 30, 2015. In the event this Contract is signed by the parties on different dates, the latter date shall control.

This Contract is in its initial term.

B. Contract Renewal

The Department has the option to renew this Contract for one additional three (3) year period(s) after the initial Contract period upon the same terms and conditions contained herein and at the renewal prices indicated in Section III, Compensation. Exercise of the renewal option is at the Department’s sole discretion and shall be conditioned, at a minimum, on the Contractor’s performance of this Contract and subject to the availability of funds. The Department, if it desires to exercise its renewal option, will provide written notice to the Contractor no later than thirty (30) days prior to the Contract expiration date. The renewal term shall be considered separate and shall require exercise of the renewal option should the Department choose to renew this Contract.
II. SCOPE OF SERVICE

A. General Description of Services

The Contractor shall provide Active Global Positioning Satellite (GPS) services statewide 24 hours a day, 7 days a week, which shall include a monitoring system that is capable of being accessed through a secure internet connection and fully supported by a secure database for transactional records. The service shall be inclusive of all technology, equipment, systems and related support services, data storage support services and shall be fully supported by twenty-four (24) hour monitoring services and staff.

The Contractor shall provide, at their own expense, all systems and equipment (software and hardware) required for the service delivery, regardless of the actual number of units including but not limited to:

1. A system with a database to monitor offender activity;
2. All monitoring units (transmitter, receiver/dialer and other related equipment) to communicate location data to the Contractor’s system;
3. All software and hardware required to access the Internet, with the exception of Department personal computers; and
4. All labor, materials, equipment, cellular wireless service costs and consumables necessary to perform GPS tracking services on an as-needed basis.

All technical specifications and service requirements shall meet or exceed the minimum requirements outlined herein. All equipment and systems furnished shall be standard products of the manufacturer identified, shall be in proper working order, clean and free from defects of features affecting appearance, serviceability, or the safety of the offender in normal intended use. No deviations from the minimum specifications shall be permitted without the prior written approval of the Department.

B. Rules, Regulations and Governance

1. The Contractor shall provide all services in accordance with all applicable federal and state laws, rules and regulations, including Sections 948.03 and 948.11, Florida Statutes, and Department of Corrections’ rules and procedures. All such laws, rules and regulations, current and/or as revised, are incorporated herein by reference and made a part of this Contract. The Contractor and the Department shall work cooperatively to ensure service delivery in complete compliance with all such rules and regulations.

2. The Contractor shall ensure that all Contractor’s staff providing services under this Contract complies with prevailing ethical and professional standards, and the statutes, rules, procedures and regulations mentioned above.

3. Should any of the above laws, standards, rules or regulations, Department procedures, or directives change during the course of this Contract term, the updated version will take precedence.

4. The Contractor shall pay for all costs associated with local, state, and federal licenses, permits and inspection fees required to provide services. All required permits and licenses shall be current, maintained on site and a copy submitted to the Contract Manager or designee upon request.
5. The Contractor shall comply with the provisions of the Americans with Disabilities Act. This includes provisions referencing both employment and public service agencies (Titles I and II), as well as any other applicable provision.

C. Communications

1. Contract communications will be in three (3) forms: routine, informal and formal. For the purposes of this Contract, the following definitions shall apply:

   Routine: All normal written communications generated by either party relating to service delivery. Routine communications must be acknowledged or answered within thirty (30) calendar days of receipt.

   Informal: Special written communications deemed necessary based upon either contract compliance or quality of service issues. Must be acknowledged or responded to within fifteen (15) calendar days of receipt.

   Formal: Same as informal but more limited in nature and usually reserved for significant issues such as Breach of Contract, failure to provide satisfactory performance, imposition of liquidated damage, or contract termination. Formal communications shall also include requests for changes in the scope of the Contract and billing adjustments. Must be acknowledged upon receipt and responded to within seven (7) calendar days of receipt.

The Contractor shall respond to all communications by facsimile, email, or hard copy mail.

A date/numbering system shall be utilized for tracking of formal communications.

2. The only personnel authorized to use formal contract communications are the Department’s Contract Manager, Contract Administrator, Deputy Secretary and the Contractor’s CEO or Project Manager. Designees or other persons authorized to utilize formal contract communications must be agreed upon by both parties and identified in writing within ten (10) days of execution of the Contract. Notification of any subsequent changes must be provided in writing prior to issuance of any formal communication from the changed designee or authorized representative.

3. In addition to the personnel named under Formal Contract Communications, personnel authorized to use Informal Contract Communications include any other persons so designated in writing by the parties.

4. In addition to the Contract communications noted in Section II., C., in this Contract, if there is an urgent administrative problem the Department shall make contact with the Contractor and the Contractor shall orally respond to the Contract Manager or Contractor’s designee, within two (2) hours. If a non-urgent administrative problem occurs, the Department will make contact with the Contractor and the Contractor shall orally respond to the Contract Manager within forty eight (48) hours. The Contractor or Contractor’s designee at each institution shall respond to inquiries from the Department by providing all information or records that the Department deems necessary to respond to inquiries, complaints or grievances from or about inmates within three (3) working days of receipt of the request. The Contract Manager shall be copied on all such correspondence.
D. **GPS System Specifications**

The Contractor shall provide a web-based system that is capable of being accessed through a secure (password protected) internet connection from desktop, laptop or remote means by Department personnel, who have appropriate security clearance and have been provided Contractor-supplied security codes.

1. The system shall be supported by a database that allows for multiple data fields, subject to final approval by the Department.

2. The system shall provide the capability for the Department to download data and reports from the database, through secured internet access, as outlined in Section II., O., Reporting Requirements. The system shall provide for 100% redundancy to avoid any downtime due to hardware or software issues.

3. The system shall provide for offender enrollments and scheduling to be performed via direct telephone request (password accessible) when Department staff (probation officer) does not have immediate access to an internet connection.

4. The system shall provide for mapping of offender locations and for saving of mapped locations.

5. The system shall provide security features which prevent unauthorized individuals from accessing any information held by the Contractor. Secure access to the system shall be maintained at all times.

6. The system shall provide the capability for every human voice call in and out of the system to be recorded with a transaction record that indicates the called number or calling number, length and the result of the call. This information shall be made available to the Contract Manager or designee at the Department’s request.

7. The system shall provide that all data be recorded with a historical transaction record and stored/archived for retrieval/backup in a database when requested by Department personnel in accordance with the following:
   
   a. All historical data shall be centrally stored and accessible for reporting purposes;
   b. This information shall be available for reporting in a standard transaction file format; and
   c. All current and historical data files shall be retained for a period of seven (7) years by the Contractor and this information shall be available at no charge to the Department after termination of the contract.

8. The system shall enable the Department to monitor the near real time position for a specific offender’s location at any and all times. Offender location data shall be uploaded a minimum of once every 30 minutes while in compliance and immediately uploaded when the offender is in violation status. The system shall provide offender locations upon demand. The system shall also be capable of the following:

   a. Establishing configurable inclusion and exclusion zones;
   b. Collecting offender points at a minimum of once every 1-minute while in compliance and once every 30 seconds while in violation status;
c. Communicating (in an understandable manner) with the offender (e.g. two way voice communication);
d. Providing location mapping; and
e. Providing alarm notification.

9. The system shall have the capability to query the database for any/all GPS offenders based on a specified dates times and locations.

10. All offender location data shall be electronically transmitted to any and/or all of the Department’s designated crime data integration systems. This shall be done in a time frame and in a format designated by the Department. The Department reserves the right to request points be downloaded (at no additional charge) to other crime data integration systems as required by other law enforcement agencies.

11. The system shall provide the capability for the entry of narrative-style notes by Department personnel and/or the Contractor’s monitoring center staff. These notes will be utilized as documentation of steps taken to resolve offender alarms.

12. The electronic monitoring system shall have on-board processing and the ability to store inclusion/exclusion zone information, schedules and rules in the system.

E. System User Interface

The system shall provide a software application for enrollment, scheduling and reviewing of offender location and mapping.

1. System software shall allow for a non-erasable alpha numeric identification designated by the Department (DC number), with no more or no less than six (6) characters. A unique identification shall be used for each offender within the Contractor’s system. In addition, the software shall require the following minimum mandatory fields for initial offender enrollment:
   a. Name;
   b. DC number;
   c. Physical address;
   d. Serial number of equipment;
   e. Time zone;
   f. Assigned officer; and
   g. Offender photo.

2. The mapping software utilized shall include but not be limited to the following:
   a. Allow unlimited access to the most up to-date maps available with state of the art graphics with aerial photography capabilities.
   b. Allow for zooming/scaling from street level to statewide;
   c. Allow for identification/labeling of streets;
   d. Display offender location information in a sequenced event and/or at a specific date and time; and
   e. Display inclusion and exclusionary zones that shall be printable from the screen.
3. Any software necessary for Department interface shall be provided at the expense of the Contractor, with no licensing fee to the Department. Any and all software shall be subject to pre-approval and testing by the Department.

4. The Contractor shall provide a web-based application that includes but is not limited to the following:
   
a. An internet link to the Contractors web-based data application software with all data processing functions occurring solely on the contractors servers.
   b. The web site shall not require any software downloads or remote access to the Department’s computers to utilize the system.
   c. The web-based application shall provide the ability to efficiently stream aerial mapping data and offender tracking points with minimal latency during critical hours of operations and concurrency.
   d. The web-based application shall be accessible twenty four (24) hours per day, seven (7) days per week while maintaining acceptable processing performance for offender mapping and tracking data.
   e. The web-based application shall allow users to access the application over an SSL connection with 128 bit encryption, utilizing Microsoft Explorer web browser version 6 or higher.

F. System Monitoring and Notification Requirements

The Contractor shall provide twenty-four (24) hours per day, seven (7) days per week monitoring of assigned service units. Upon receipt of an alarm, the system shall have the capability to provide automated notification as specified by the Contract Manager or designee. Notification shall be made by fax, email, text message or by telephone in accordance with the following:

1. The System shall provide a means of notification (alarm) to the offender’s receiver/dialer when the radio frequency signal is lost between the offender’s transmitter and receiver/dialer. The alarm notification shall be made to the Department immediately, but not longer than 5 minutes after the alarm processing has expired according to mutually agreed upon Contractor response protocols via fax, and/or email, text messaging or by telephone (does not apply to a single body worn unit).

2. The System shall provide a means of notification (alarm) to the offender when the system receiver loses the GPS signal and the receiver has been in motion for 10 minutes (unless the system utilizes an alternate or assisted GPS technology). The alarm notification shall be made to the Department immediately, but not longer than 5 minutes after the alarm processing has expired according to mutually agreed upon Contractor response protocols via fax, and/or email, text messaging or by telephone.

3. The System shall provide a means of notification (alarm) to the offender when the offender is late returning home from an approved absence or leaves home when unscheduled. The alarm notification shall be made to the Department immediately, but not longer than 5 minutes after the alarm processing has expired according to mutually agreed upon Contractor response protocols via fax, and/or email, text messaging or by telephone.

4. The System shall provide a means of notification (alarm) to the offender when the offender is in an area defined to be off limits (exclusionary zone). The alarm notification
shall be made to the Department immediately, but not longer than 5 minutes after the alarm processing has expired according to mutually agreed upon Contractor response protocols via fax, and/or email, text messaging or by telephone.

5. Monitoring unit equipment failures or tampering shall be considered an alarm and shall be reported to the Department. The alarm notification shall be made to the Department immediately, but not longer than 5 minutes after the alarm processing has expired according to mutually agreed upon Contractor response protocols via fax, and/or email, text messaging or by telephone.

6. Monitoring unit communication failures shall be considered an alarm and shall be reported to the Department. The alarm notification shall be made to the Department immediately, but not longer than 5 minutes after the alarm processing has expired according to mutually agreed upon Contractor response protocols via fax, and/or email, text messaging or by telephone.

7. The System shall provide some manner of notification (alarm) to the offender’s receiver/dialer when the receiver/dialer’s battery is low. The alarm notification shall be made to the Department immediately, but not longer than 5 minutes after the alarm processing has expired according to mutually agreed upon Contractor response protocols via fax, and/or email, text messaging or by telephone.

8. Notification of low battery in a transmitter shall be reported to the Department on the daily report transmitted to the Department by fax and/or email.

G. Alarm Processing Requirements

1. System generated alarms requiring an initial response by the Contractor’s monitoring center staff:

   a. The following system generated alarms shall allow the offender the opportunity to resolve the alarm in a timeframe that will be predetermined by the Department and the Contractor after Contract award. These alarms require further steps to be taken by the Contractor’s monitoring center staff if the alarm is not resolved by the offender:

      1) Loss of radio frequency signal between the receiver/dialer and transmitter (see Section II., F., 1.) (N/A for a single body worn device);
      2) Loss of GPS signal while receiver/dialer is in motion (see Section II., F., 2.);
      3) Inclusion/Home (unauthorized absence) (see Section II., F., 3.);
      4) Loss of cellular communication (see Section II., F., 6.); and
      5) Receive/Dialer low battery (see Section II., F., 7.)

   b. The following sequential steps shall be taken for system generated alarms that allow the offender to resolve:

      1) The offender shall be made aware of the above listed specified alarms via a pre-defined automated alarm notification system. Specific instructions shall be provided to the offender on how to acknowledge alarms and steps to resolve alarms during initial enrollment to the system. If the offender complies and the
alarm is resolved within a specified time frame, no further action is required by the monitoring center.

2) If the alarm does not clear within a specified time frame, the monitoring center shall attempt to contact the offender via phone numbers listed within the Contractor’s data base. If there are no phone numbers listed or contact is unsuccessful, a message shall be sent to the receiver/dialer alerting the offender to contact the monitoring center by calling a toll-free telephone number (supplied by the Contractor).

3) If the offender contacts the monitoring center and the alarm is resolved and cleared, within a specified time frame, no further action is required to be taken by the monitoring center.

4) If the offender fails to contact the monitoring center within a specified time frame and the alarm is still in effect, the alarm notification shall be sent to all Department staff associated with the alarm via email, fax and/or text message.

5) If acknowledgment is received within a specified time frame from a Department staff member that was notified, the Department staff member will take responsibility for the alarm resolution, and there is no further action required by the monitoring center.

6) If an acknowledgment by one of the Department staff members is not made or received within a specified time frame, the alarm notification shall be automatically returned to the monitoring center system, and the call tree escalation process shall be implemented.

7) A monitoring center staff member shall immediately start making telephone calls to Department staff based on the day, and time of day, involved. Each Department staff member has a daytime and afterhours/holiday/weekend call tree list with corresponding phone numbers.

8) The monitoring center staff members shall make these physical phone calls, in designated succession, until a Department staff member answers the phone and provides the verifiable security identification to the monitoring center staff. Upon verification of identity, the alarm information is provided to the Department staff member for investigation and resolution, and no further action is required by the monitoring center.

9) If the first Department staff member within the list does not answer the phone or is unable to properly provide verifiable security information, the call shall be discontinued and the next Department staff member on the list is called until successful contact is made.

10) If the monitoring center staff reaches the last Department staff member on the list with no success, the monitoring staff shall start the list over again until a Department staff member is successfully contacted.

11) The monitoring center shall call each Department staff member on the list twice before moving on to the next Department staff member.

2. System generated alarms automatically forwarded to Department staff:

a. The following system generated alarms shall be directly forwarded to Department staff for immediate investigation and resolution:

1) Exclusion zone (see Section II., F., 4.);
2) Receiver/dialer tamper (see Section II., F., 5.);
3) Transmitter tamper (see Section II., F., 5.); and
4) Transmitter low battery (see Section II., F., 8.).

b. The following sequential steps shall be taken for system generated alarms that shall be automatically forwarded to Department staff to resolve:

1) If acknowledgment from Department staff is received by the monitoring center within a specified time frame, the Department staff member will take responsibility for the alarm resolution and there is no further action required by the monitoring center.

2) If an acknowledgment by Department staff is not made or received within a specified time frame, the alarm notification shall be automatically returned to the monitoring center system, and the call tree escalation process is implemented.

3) A monitoring center staff member shall immediately start making phone calls to Department staff based on the day, and time of day, involved. Each Department staff member has a daytime and afterhours/ holiday/weekend call tree list with corresponding phone numbers.

4) The monitoring center shall make these physical phone calls, in designated succession, until a Department staff member answers the phone and provides the verifiable security identification to the monitoring center staff. Upon verification of identity, the alarm information shall be provided to the department staff member for investigation and resolution, and no further action is required by the monitoring center.

5) If the first department staff member within the list does not answer the phone or is unable to properly provide verifiable security information, the call is discontinued and the next Department staff member on the list is called until successful contact is made.

6) If the monitoring center staff reaches the last department staff member on the list with no success, the monitoring staff shall start the list over again until a Department staff member is successfully contacted.

7) The monitoring center shall call each Department staff member on the list twice before moving on to the next Department staff member.

H. Equipment Specifications

1. Starting Inventory:

A verified equipment inventory will be provided to the Contractor by the Department’s Contract Manager for purposes of the beginning inventory for this Contract.

2. General Equipment Requirements:

All equipment provided pursuant to this Contract shall meet the following requirements: (This includes all transmitters, receiver/dialers, re-charging systems, straps, batteries, and any equipment used to secure any of the equipment to the offender).

a. The Contractor shall be the owner of the electronic monitoring equipment and the GPS tracking software and not a reseller or subcontractor. The Contractor SHALL NOT subcontract GPS tracking devices or equipment, monitoring center services, training, help desk functions and/or the Contractor’s Account Management positions.
b. The Contractor shall provide only equipment that meets the highest levels of ruggedness, durability and performance available, when considering the following: operating temperature, stored temperature range, temperature cycling, shock and vibration, water resistance or waterproofing, operating humidity range, stored humidity range and tamper resistance.

c. The Contractor shall provide equipment that meets market safety standards and presents no health or safety hazards to staff and/or offenders.

d. All equipment shall be permanently marked with the model/serial identification numbers and will not change colors or lose labeling after being exposed to common cleaning products.

e. The equipment shall be capable of tracking an offender on a twenty-four (24) hour, seven (7) day a week basis and shall be able to confirm the date, time and location of the tracking event.

f. The equipment shall not be available as an open market item if this could compromise the security of the system.

g. The equipment shall be currently registered and approved by the Federal Communications Commission (FCC).

h. The equipment shall be equal or equivalent to the latest industry standards and of the latest technology currently in use by the Contractor.

i. All equipment shall be designed so that if an offender tampers with the equipment an alarm is generated.

j. All equipment assigned to the offender shall be manufactured to allow for repeated proper sanitization. The Contractor shall provide instructions to sanitize the equipment, including recommended cleaning agents and methods.

k. The equipment shall not have any sharp edges and shall be designed so not to cause excessive chafing or bruising.

3. Receiver/dialer Requirements:

All receiver/dialer’s provided pursuant to this Contract shall meet the following requirements:

a. The Contractor shall provide equipment that can be attached to the offender in a manner that will not impede normal activities or work. A waist pack, carrying bag or clip is acceptable.

b. Communication between the receiver/dialer and monitoring center shall be encrypted and should use standard or wireless cellular telephone connections and standard 110 volt AC residential current.

c. Any part of the receiver/dialer system (including re-charging systems if applicable) that requires the use of a telephone shall use standard telephone lines, wireless
cellular telephones, or both to communicate between the individual receiver/dialer and the monitoring center.

d. The receiver/dialer shall include an internal clock and enough memory to store five (5) days of data if communication with the monitoring center is disrupted.

e. The Contractor shall provide a battery for the receiver/dialer that hold a single charge for a minimum period of sixteen (16) hours and are re-chargeable for up to twelve (12) months before failing to hold a charge.

f. The receiver/dialer shall be able to re-charge the battery to maximum capacity (100% charge) in under 6 hours for a two piece device and under two hours for a single body worn device.

g. The receiver/dialer shall have an internal rechargeable battery that shall allow for continuous operation in cases of power failures or if power is interrupted. The receiver/dialer shall have a battery backup power source that shall allow for a minimum of twelve (12) hours of continuous operation.

h. The receiver/dialer shall have internal diagnostics that can determine if it is operating properly and the ability to relay the information to the monitoring center.

i. If connected to a standard telephone or power line, the receiver/dialer shall have internal surge protection on both the telephone line and power source.

j. The receiver/dialer shall be wireless tethered to a transmitter, unless it is a single body worn unit.

k. The GPS receiver within the receiver/dialer shall acquire GPS within 5 minutes when placed in an outdoor environment with a 360 degree view in the horizontal plane and 180 degree view of the sky from horizon to zenith in the vertical plane.

4. Transmitter Requirements (**not applicable to a single body worn device**):

All transmitters provided pursuant to this Contract shall meet the following requirements:

a. The transmitter shall be small, light, and not restrictive. It shall attach around the ankle of the offender and weight no more than ten (10) ounces.

b. The transmitter shall not pose a safety hazard nor unduly restrict offenders’ activities. It shall be enclosed in a sealed hypoallergenic case that is resistant to shock, water, corrosion, chemical solvents, and detergents. It shall function reliably under normal atmospheric environmental conditions of approximately zero (0) to one hundred thirty-five (135) degrees Fahrenheit.

c. The transmitter shall emit an individually coded encrypted signal at least once every 30 seconds, with a transmission range of not less than 150 feet in an open air environment.

d. The transmitter shall be capable of sending a signal indicating a low transmitter battery condition exist a minimum of seventy two (72) hours prior to battery failure.
e. The strap and circuitry within the transmitter shall enable the transmitter to immediately notify the monitoring center of any tamper attempt or removal from the offenders’ ankle.

f. The battery powering the transmitter shall have a guaranteed life cycle of not less than twelve (12) months. All transmitters shall be replaced at specific intervals to avoid failures of transmitters due to loss of battery power. The Department reserves the right to require transmitter replacement at shorter intervals should it be determined that the failure rate is unacceptable due to battery loss of power.

g. The transmitter shall be designed to prevent tracing or duplication of the signal by other electronic devices or equipment.

5. Shipping of Equipment

The Contractor shall pay **ALL** costs associated with shipping (both delivery and return) of all equipment and supplies. Shipping will be only to locations within the State of Florida.

The replacement of equipment, parts and consumables shall be sent via 2-day mail or overnight mail within 24 hours of notification if requested by the GPS program manager.

The equipment shall be provided in a shipping container with unpacking/packing instructions, all accessories parts list assembly instructions, care and maintenance instructions and a user manual.

I. Accessories

All accessories, including replacement batteries, straps, waist packs, carrying bags, clips and other related supplies necessary for proper operation shall be provided at no cost to the Department as specified below.

1. Straps

   a. All straps utilized to attach equipment to an offender shall be designed so that if an offender cuts, severs or otherwise compromises the integrity of the strap an alarm is generated.

   b. Straps used to attach the equipment to an offender shall have exterior surfaces made of hypoallergenic materials, and shall be adjustable in length to fit all offenders. All straps designed to attach equipment to an offender shall have the capability to be securely sized to an offender. If straps are pre-sized they shall be immediately available in one-half inch increments or less.

2. Waist Pack/Carrying Bag/Clip

   If required for use with the receiver/dialer, waist packs, carrying bags or clips shall be provided to the Department at no additional cost.

3. Batteries (**not applicable to a single body worn device**):

   a. The Contractor shall provide batteries for transmitters that provide a minimum of twelve (12) months of service without requiring charging or changing.
b. The Contractor shall provide batteries for receiver/dialer that hold a single charge for a minimum period of sixteen (16) hours and are re-chargeable for up to twelve (12) months before failing to hold a charge.

4. AC Adapters

The Contractor shall provide an AC adapter suitable for vehicle chargers at no charge.

J. System/Equipment Technical Assistance

The Contractor shall provide remote diagnostic support and trouble-shooting technical assistance via a toll-free telephone line 24 hours a day, seven (7) days a week, including holidays.

In the event of technical problems that are not resolved from a remote location, the Contract Manager or designee may, upon request, require the Contractor to provide on-site, technical assistance within 24 hours.

K. Delivered Equipment

In the event any equipment becomes inoperative due to a malfunction or through normal use, the Contractor shall incur all repair and replacement costs.

The Department will determine the method, frequency and location of all equipment and supply deliveries throughout the State.

Upon approval by the Department’s GPS Contract Manager, the Contractor may furnish upgraded equipment with improved surveillance technology, at no additional cost to the Department. If it is determined that upgraded equipment is to replace existing equipment, the Department’s Contract Manager and the Contractor shall develop an agreed upon implementation plan that will include a systematic process to ensure a smooth transition.

L. Circuit Backup/Replacement Inventory

In each of the twenty (20) judicial Circuits, the Contractor shall provide and maintain a backup/replacement inventory of monitoring units equal to or exceeding twenty-five percent (25%) of the actual number of units currently in use in each Circuit under this Contract. The number of backup/replacement units will increase as additional monitoring units are placed in service under this Contract. The location of the back-up inventory in each Circuit will be determined by the Contract Manager.

In the event of any monitoring unit equipment failure, the Department will replace the equipment from the back-up/replacement inventory maintained in each Circuit. If back-up inventory is placed in service, the Contractor shall be responsible for all costs associated with replacing the Circuit’s back-up replacement inventory overnight, including standard overnight courier shipping charges, if applicable.

The Department shall not pay the Contractor an inventory fee, storage fee, installation equipment fee or any other fee related to inventory units and equipment. The Department shall only be obligated to pay the per-day per activated unit rate as set forth in the terms of this agreement.
M. Lost, Stolen or Damaged Equipment

The Contractor shall provide the Department an allowance towards lost, stolen and damaged equipment. The allowance shall be equal to five percent (5%) of the total annual cost of the Contract to the Department. This will be determined by taking the total annual Departmental costs of the Contract and multiplying that amount by 5%. The result of this calculation will be the dollar amount that the value of lost, stolen or damaged equipment must exceed before a liability is attributed to the Department. Lost, stolen or damaged equipment will be determined annually through the conducting of an annual equipment inventory, performed by the Department, as of the anniversary date of the contract. A copy of the annual inventory will be provided to the Contractor for reconciliation purposes.

This allowance includes all items of equipment containing serial numbers that make up an entire electronic monitoring unit, i.e. transmitter, receiver, dialer, charging system. The serial number for any equipment determined to be lost, stolen or damaged is required to be provided to the Department’s Contract Manager prior to any payment for such equipment by the Department.

Payment for any equipment in excess of the allowance will be made in accordance with prices contained in the awarded Contractor’s Lost, Stolen or Damaged Equipment Price List.

N. Contractor Monitoring Center Requirements

1. The Contractor’s place of business and monitoring center service facilities used for this program shall be located within the United States of America. The Contractor’s primary monitoring center shall be capable of uninterrupted operation 24/7/365. This will include all systems, hardware and software, communications and building support services such as electrical power.

2. The Contractor’s monitoring center shall be monitored twenty four (24) hours a day, seven (7) days a week, including holidays to ensure that any interruption in service is detected and resolved.

3. The monitoring center shall have a permanently installed and functioning backup power source, independent of its main power source, capable of maintaining continuous operations, for a minimum of forty-eight (48) hours, in the event of failures of normal utility power.

4. The monitoring center shall have duplicate computers with the ability to, at a minimum, permit restoration of data collection and user monitoring services within ten minutes after computer failure.

5. The monitoring center shall have duplicate data storage devices with automated fail-over and automatic re-establishment of the duplicate databases upon replacement of the failed storage device.

6. The Contractor shall have a secondary (backup) monitoring center capable of providing full operational functions in the event the primary monitoring center is disabled. The secondary monitoring center shall be located sufficiently distant from the primary center, such that it is unlikely to be adversely affected by a manmade or natural event or loss of electrical or communications services that would disable the primary monitoring center.
7. The Contractor shall maintain redundant equipment in the monitoring center so that interruptions in service are avoided.

8. The Contractor shall have documented policies and procedures for network security, application security, data transmission and data security, as well as monitoring center physical security.

9. Each monitoring center shall have ventilation and temperature control adequate to ensure proper functions of the monitoring center hardware.

10. The Contractor shall maintain a written Disaster Recovery Plan to cover power failures, telephone system failures, local equipment failures, flood or fire at the monitoring center and continued continuity of operations.

11. The Contractor shall perform complete support of all interface hardware and software equipment (within the monitoring center) necessary to ensure provision of the service for the duration of the contract.

12. The Contractor shall maintain professional highly trained and qualified staff to monitor and operate the monitoring center equipment.

13. The Contractor shall provide the Department a contact number, accessible twenty (24) hours a day, seven (7) days a week for the purpose of reporting problems that might be experienced.

14. In the event any component of the Contractor’s service becomes inoperable, the Contractor shall immediately notify the Contract Manager or designee by telephone, but no later than thirty (30) minutes after service failure.

15. The Contractor’s monitoring center shall provide an initial response to pre-determined alarm notifications to troubleshoot and resolve the notifications per established protocols as agreed to by both the Department and the Contractor. In the event an alarm notification is unresolved, the Contractor’s monitoring center shall be responsible for contacting the Department’s designated officer via, text message, fax, email or phone. The means or mode of contact shall be at the Department’s discretion. These services shall be provided twenty-four (24) hours per day seven (7) days per week.

16. The Contractor shall provide a dedicated toll-free telephone number to be supplied to the Department’s supervised offenders which shall be utilized to contact the monitoring center for alarm notification resolution.

17. The Contractor shall provide initial notification via telephone, cellular telephone, text message, and email 24 hours a day, seven days a week to designated Department staff when an alarm notification is generated. The contractor’s monitoring service shall include the capability to administer a phone call by a live staff person in the monitoring center in response to designated alarm notifications.

18. The Contractor shall be able to receive a verifiable confirmation via a telephone call or text message response to the Contractor’s monitoring center to confirm that all immediate alarm notifications were received/acknowledged by Department staff. The Contractor shall be responsible to maintain a call tree to be utilized when contacting Department staff to report alarm notifications pursuant to established protocols.
19. The monitoring center shall have redundant inbound and outbound communication services, provided by distinct carriers and/or methods, such that the failure of the primary service or method shall not adversely affect the secondary (backup) service or method.

O. Reporting Requirements

1. Data Requirements: At a minimum, the system shall provide data using extensible markup (XML) tags as defined by the Justice XML workgroup and approved by the Department.

2. The Contractor shall have the ability to write files to a server at the Contractor’s site and shall allow the Department to retrieve the files on a daily basis thru a File Transfer Protocol (FTP).

The files will need to include the following information:

a. FILE 1 – Alarm file
   1) The key file the Contractor uses to distinguish each alarm.
   2) The type of alarm as defined by the Department.
   3) The DC number of the offender.
   4) Date and time of the alarm.
   5) Length of the alarm (until resolution).

b. FILE 2 – Comment file
   1) The key field the Contractor uses to distinguish each alarm.
   2) Comments relating to the alarm.
   3) Date and time of updates to the comments.

c. FILE 3 – Alarm cleared
   1) The key field that the Contractor uses to distinguish each alarm.
   2) Date and time the alarm was cleared.

d. FILE 4 – Points reviewed
   1) The DC number of the offender.
   2) The DOC USERID of the officer reviewing the points.
   3) Date the points were reviewed.
   4) Dates of the points reviewed by the officer.

3. System Generated Reports: At a minimum, the system shall allow the Department to generate the following “canned” reports directly from the system database through the secure internet site. To ensure that reports are accurate and timely, the system’s database shall be updated in real time to ensure all report data is current when viewed and/or downloaded by Department personnel. All reports shall have the capability of being queried, sorted or filtered by any field contained in the report or by data parameters as applicable and reports shall be readable on screen, printable and shall be downloadable into an excel format. Report formats shall be subject to final approval by the Contract Manager or designee.
a. **Equipment Report** – The system shall provide a real time report of all assigned equipment (in use) and inventoried equipment containing a serial number. This report shall include description/type of equipment, serial number, assigned offender, assigned officer (if applicable), circuit identifier and totals.

b. **Offender Alarm Report** – The system shall provide the Department the ability to generate an alarm report, queried by individual assigned offender and date parameters that identifies the type of alarm, time of alarm, method of alarm (text message, fax, email or phone call) and recipient of alarm.

c. **Offender Report** – The system shall provide the Department the ability to generate a summary report of all offenders by Circuit and/or assigned officer that identifies offender name, DC #, address, and officer assigned.

d. **Data Fields/Entry Exceptions Report** – The system shall provide the Department the ability to generate a report that identifies all data fields currently in use and identifying any incomplete or missing data entry.

e. **Circuit Alarm Report** – The system shall provide the Department the ability to generate an alarm report, queried by Circuit identifier and date parameters that identifies the assigned offender, type of alarm, method of alarm (text message, fax, email or phone call) and recipient of alarm.

f. **Alarm Notification** – The system shall provide the Department the ability to generate a report by date parameters, sorted by Circuit, identifying the number and type of alarms during specified time parameters, such as:

1) Monday-Friday 8:00 am-5:00 pm  
2) After hours  
3) Weekends

g. **Summary Totals** - The system shall provide the Department the ability to generate a report by summary totals, such as:

1) Total number of alarms per circuit  
2) Percent of total circuit alarms per type of alarm  
3) Average number of alarm notifications per month, per offender, within the circuit

h. **Current Usage Report**: The system shall provide the Department the ability to generate a current usage report indicating the actual number of daily service units used to date (real time) for the monthly period. This report should be detailed to reflect offender name, DC #, service type, and number of days utilized to date.

i. **Monthly Usage Report**: The system shall provide the Department the ability to generate a total monthly usage summary report, downloadable on the 5th day of the month, indicating the actual number of active GPS units utilized during the previous month’s time period. This report should be detailed to reflect offender name, DC#, type of service and number of days utilized for the preceding monthly period and shall be subtotaled by Circuit. Any additions or deletions to the monthly usage report after the 5th of the month shall be provided by written notice to the Contract
Manager or designee. A copy of this report shall also accompany the monthly invoice, in accordance with Section III., C., Submission of Invoice(s).

j. **Ad Hoc Reports:** The Contractor shall provide the Department ad hoc reporting from the system upon request of the Contract Manager or designee.

**NOTE:** The Department reserves the right to modify reporting requirements as necessary, upon 30 days written notification to the Contractor.

4. **Contractor Reports:** The Contractor shall submit reports as outlined below in a format approved by the Contract Manager:

a. **Daily Alarm Summary Report:** The Contractor shall submit a daily report (between the hours of midnight and 6:00 a.m. for the previous day) that identifies each alarm, type of alarm, time and duration of alarm, assigned officer, assigned offender, and totals. This report shall be sorted by circuit and shall be emailed to all designated officers within the circuit.

b. **Monthly System Performance Report:** The Contractor shall submit a monthly report, no later than the tenth (10th) day of the month for the preceding month, on performance of the system, including any system interruptions to the Contract Manager or designee. Additionally, regular operational metrics such as timing of system updates, failed connections and any system unavailability shall be reported.

c. **Annual Summary Report** - The Contractor shall submit an annual summary report, on the anniversary date of the contract, of all issues identified or reported by field and central office staff, including the Contract Manager. The Contractor shall also include information on the following: new technology employed, improvements to the equipment and/or service delivery, dates of training and on-site technical assistance and court appearances.

d. **Ad Hoc Reports:** The Contractor shall provide the Department ad hoc reports upon request of the Contract Manager or designee.

**NOTE:** The final report format shall be approved by the Contract Manager. The Department reserves the right to modify reporting requirements as necessary, upon 30 days’ written notification to the Contractor.

P. **Ongoing Demonstration/Testing of Units**

For the life of the Contract (including renewal period, if renewed), the Contractor shall allow the Department the use of five (5) active GPS monitoring units for demonstration and/or testing purposes, not to exceed a five (5) day period for any single demonstration/test period. These units shall not be part of the backup inventory and shall be provided at no additional cost. Units may be demonstrated/tested at the discretion of the Department.

Q. **Training and Training Manuals**

The Contractor shall provide appropriate training for all Contractor staff working in the monitoring center to ensure that they have sufficient knowledge regarding the system to allow them to effectively respond to questions and to fully utilize the system and equipment.
The Contractor shall develop and provide on-site training for Department staff on the operational use of the system and the use of all associated equipment and services, specifically training in use of new electronic monitoring technology.

Prior to, or during the first thirty (30) days of service implementation, the Contractor shall be prepared to provide start-up training on an accelerated schedule in each of the state’s twenty (20) judicial circuits on mutually agreeable dates and at Department-designated locations.

In addition, after implementation training, the Contractor shall provide additional training by the contractors’ staff at a minimum of one time per year for Department staff in each of the state’s twenty (20) judicial circuits. Training shall be performed on a mutually agreed upon schedule at Department designated locations with final approval by the Department’s Contract Manager or designee.

The training curriculum and evaluation forms submitted by Contractor in response to the RFP are hereby adopted as the approved curriculum and forms to be utilized for all training purposes under this Contract. Said curriculum and forms are incorporated herein as if fully stated. Any changes to these documents shall be approved in writing by the Department’s Contract Manager.

The Contractor shall provide all materials and equipment necessary to perform the training and shall utilize actual equipment currently being utilized. A minimum of 25 copies per judicial circuit of the approved training curriculum and/or user manuals for Department staff shall be available for each training session. Additional training manuals shall be provided upon request of the Contract Manager or designee.

The Contractor shall conduct an evaluation of each training session specifically focused on course content and effectiveness of instructor, utilizing the Contractor’s approved form, to be completed by Department staff. Copies of the evaluation forms shall be provided to the Department.

All training and all associated training manuals shall be provided at no cost to the Department.

R. Contractor Staff

1. Contractor Staff Levels and Qualifications

The Contractor shall provide an adequate level of staffing for provision of the services outlined herein and shall ensure that staff providing services are highly trained and qualified. Additionally, the Contractor shall establish and maintain a good working relationship with the judiciary, criminal justice system, Department staff and the community and serve as a liaison between each in addressing system issues. The Contractor shall have paid-awake staff on duty at the monitoring center twenty-four (24) hours a day, seven (7) days a week, and sufficient staff to provide training. In addition to technical and training staff, the Contractor shall minimally provide an Account Management Team in support of this contract, which shall consist of the following:

Account Management Team

The Account Management Team shall be comprised, at a minimum, of 3 full time positions located in Florida and solely dedicated to the Department. The Account
Management Team shall include one (1) account manager position and two (2) account representatives’ positions. The Account Management Team shall be directly responsible for overall operational performance of the Contract, including account management, troubleshooting, training and any other responsibilities agreed upon by the Contract Manager/designee and the Contractor.

The Contractor shall be responsible for ensuring that the Account Manager attends meetings upon Department request. The Contractor shall be responsible for all expenses incurred for travel, including transportation, meals, and per diem incurred on behalf of the Account Manager’s position.

2. Contractor Requirements

a. Conduct and Safety Requirements

The Contractor’s staff shall adhere to the standards of conduct prescribed in Chapter 33-208, Florida Administrative Code, and as prescribed in the Department’s personnel policy and procedure guidelines, particularly rules of conduct, employee uniform and clothing requirements (as applicable), security procedures, and any other applicable rules, regulations, policies and procedures of the Department.

In addition, the Contractor shall ensure that all staff adhere to the following requirements:

1) The Contractor’s staff shall not display favoritism to, or preferential treatment of, one offender or group of offenders over another.

2) The Contractor’s staff shall not deal with any offender except in a relationship that supports services under this Contract. Specifically, staff members must never accept for themselves or any member of their family, any personal (tangible or intangible) gift, favor, or service from an offender or an offender’s family or close associate, no matter how trivial the gift or service may seem. The Contractor shall report to the Contract Manager any violations or attempted violation of these restrictions. In addition, no staff member shall give any gifts, favors or services to offenders, their family or close associates.

3) The Contractor’s staff shall not enter into any business relationship with offenders or their families (example – selling, buying or trading personal property), or personally employ them in any capacity.

4) The Contractor’s staff shall not have outside contact (other than incidental contact) with an offenders being served or their family or close associates, except for those activities that are to be rendered under the Contract.

5) The Contractor’s staff shall not engage in any conduct which is criminal in nature or which would bring discredit upon the Contractor or the State. In providing services pursuant to this Contract, the Contractor shall ensure that its employees avoid both misconduct and the appearance of misconduct.

6) Any violation or attempted violation of the restrictions referred to in this section regarding employee conduct shall be reported by phone and in writing to the Contract Manager or their designee, including proposed action to be taken by the Contractor. Any failure to report a violation or take appropriate disciplinary action
against the offending party or parties shall subject the Contractor to appropriate action, up to and including termination of this Contract.

7) The Contractor shall report any incident described above, or requiring investigation by the Contractor, in writing, to the Contract Manager or their designee within twenty four (24) hours, of the Contractor’s knowledge of the incident.

b. Staff Background/Criminal Record Checks

1) The Contractors’ staff assigned to this Contract shall be subject, at the Department’s discretion and expense, to a Florida Department of Law Enforcement (FDLE) Florida Crime Information Center/National Crime Information Center (FCIC/NCIC) background/criminal records check. This background check will be conducted by the Department and may occur or re-occur at any time during the Contract period. The Department has full discretion to require the Contractor to disqualify, prevent, or remove any staff from any work under the Contract. The use of criminal history records and information derived from such records checks are restricted pursuant to Section 943.054, F.S. The Department shall not disclose any information regarding the records check findings or criteria for disqualification or removal to the Contractor. The Department shall not confirm to the Contractor the existence or nonexistence of any criminal history record information. In order to carry out this records check, the Contractor shall provide, upon request, the following data for any individual Contractor or subcontractor’s staff assigned to the Contract: Full Name, Race, Gender, Date of Birth, Social Security Number, Driver’s License Number and State of Issue. If requested, the Contractor’s staff shall submit to fingerprinting by the Department of Corrections for submission to the Federal Bureau of Investigation (FBI). The Contractor shall not consider new employees to be on permanent status until a favorable report is received by the Department from the FBI.

2) The Contractor shall ensure that the Contract Manager or designee is provided the information needed to have the NCIC/FCIC background check conducted prior to any new Contractor staff being hired or assigned to work under the contract. The Contractor shall not offer employment to any individual or assign any individual to work under the contract, who has not had an NCIC/FCIC background check conducted.

3) No person who has been barred from any Department institution or other facility shall provide services under this Contract.

4) The Contractor shall not permit any individual to provide services under this Contract who is under supervision or jurisdiction of any parole, probation or correctional authority. Persons under any such supervision may work for other elements of the Contractor’s agency that are independent of the contracted services.

c. Utilization of E-Verify

As required by State of Florida Executive Order Number 11-116, the Contractor identified in this Contract is required to utilize the U.S. Department of Homeland Security’s E-Verify system to verify employment eligibility of: all persons
employed during the contract term by the Contractor to perform employment duties pursuant to the Contract, within Florida; and all persons, including subcontractors, assigned by the Contractor to perform work pursuant to the Contract with the Department.  (http://www.uscis.gov/e-verify) Additionally, the Contractor shall include a provision in all subcontracts that requires all subcontractors to utilize the U.S. Department of Homeland Security’s E-Verify system to verify employment eligibility of: all persons employed during the contract term by the Contractor to perform work or provide services pursuant to this Contract with the Department.

S. Litigation-Related Testimony

The Contractor acknowledges that services performed under this contract are for criminal justice offenders on legal supervision and as such, the Contractor may receive written/verbal requests or legal subpoenas from the Circuit Court, State Attorney’s Office, Public Defender’s Office, Florida Parole Commission and/or other judicial entities to provide testimony regarding monitoring equipment, system specifications and functioning, including the accuracy and reliability of reports/results. The Contractor shall make available qualified personnel to provide testimony as requested or subpoenaed. Reimbursement for costs incurred shall be made by the judicial entity requesting testimony or issuing the legal subpoena (as applicable) and shall be at the standard rates established for the level of testimony provided.

The Contractor shall ensure that qualified personnel is available to provide such expert testimony and that personnel responds timely and/or appears as stipulated in the request and/or subpoena. The Contractor shall immediately notify the Contract Manager or Designee upon receipt of any subpoena involving or affecting the Department.

The Contractor shall maintain communication and work cooperatively with the Circuit Court, State Attorney’s Office, Public Defender’s Office, Florida Parole Commission and/or other judiciary entities in providing educational materials and/or instructions concerning monitoring equipment, system specifications and system functioning.

The Contractor shall provide a central point of contact from which the Circuit Court, State Attorney’s Office, Public Defender’s Office, Florida Parole Commission and/or other judicial entities may request technical assistance on litigation issues and the methodology and accuracy of testing.

T. Advertising/Promotions

The Contractor shall not issue news releases, advertisements or news articles, or any other information of any kind related to the Department, including statistical data, offender information or programs without prior written approval from the Department’s Contract Manager or designee.

U. Quality Assurance Program

The Contractor shall have a formal quality assurance/quality control program in place that demonstrates that internal review and quality control processes are in place and routine evaluations of the quality of the system, equipment and service are performed to ensure compliance with the terms and conditions of the contract. A copy of the quality assurance/quality control program shall be submitted upon request from the Contract manager or designee.
V. Contract Expiration Tasks

Upon the expiration date of the Contract (or any other termination date), the Contractor shall timely provide the most up-to-date copy of the system’s database, including all historical data, the data dictionary, file layouts, code tables, code values, data relationships, keys, and indices etc., in a format to be determined by the Contract Manager. In addition, the Contractor shall immediately provide a single read-only license for the Department’s use for a period of three to six (3-6) months.

W. Performance Measures

The Department desires to contract with a provider who clearly demonstrates its willingness to be held accountable for the achievement of certain performance measures in successfully delivering services under this Contract. Therefore, the Department has developed the below Performance Measure categories which shall be used to measure Contractor’s performance and delivery of services.

1) Performance Outcomes and Standards; and
2) Other Contract Requirements.

A description of each of the Performance Measure categories is provided below:

1. Performance Outcomes and Standards

Listed below are the key Performance Outcomes and Standards deemed most crucial to the success of the overall desired service delivery. The Contractor shall ensure that the stated performance outcomes and standards (level of achievement) are met. Performance shall be measured, beginning the second month after which service has been fully implemented.

Performance Measure #1 – Reports

Outcome: All reports are timely submitted.

Measure: Documentation of reports received and dates reports are received. This shall be measured on a monthly basis.

Standard: Ninety five percent (95%) of all required reports outlined in Section II., O. Reporting Requirements, shall be timely submitted.

Performance Measure #2 – Training

Outcome: Department staff satisfactorily trained.

Measure: Training evaluation forms completed by Department staff are reviewed by the Department’s Contract Manager or designee to determine if a minimum of 85% show a “satisfactory” or better score. This shall be measured after each training session.

Standard: Eighty five percent (85%) of training evaluation forms completed by Department staff after Contractor’s training sessions shall indicate a score of “satisfactory” or better.
Performance Measure #3 – Reporting System Failures

Outcome: System failures reported by Contractor to the Department within sixty minutes of each system failure occurrence.

Measure: The amount of time between system failures and when reports of system failure are made by the Contractor to the Department. This shall be measured for each occurrence.

Standard: One hundred percent (100%) of system failures shall be reported to the Department within sixty (60) minutes of occurrence.

Performance Measure #4 – Timely submittal of Invoices

Outcome: All invoices timely received within 15 days after the end of the month service is provided.

Measure: Contract Manager will document number of invoices not received within 15 days after the end of the month service is provided. This shall be measured monthly.

Standard: One hundred percent (100%) of monthly use charges invoiced to the Department by the Contractor within 15 days after the end of the month service is provided.

2. Other Contract Requirements

Outcome: The Contractor shall meet the following contract requirements one hundred percent (100%) of the time.

a. Delivery of equipment is timely made to maintain 25% minimum spare allotment of daily active use as provided in Section II., K.

b. All Corrective Action Plans shall be timely submitted (when applicable).

c. Other terms or conditions of the Contract involving delivery of services not otherwise listed above shall be complied with.

Measure: The Department will monitor the Contractor’s performance to determine compliance with other contract requirements on a quarterly basis.

Standard: The Contractor shall achieve 100% compliance after the time frame allowed for correction action on identified deficiencies. Performance shall be measured on an annual basis.

X. Monitoring Methodology

1. Monitoring Performance Outcomes and Standards

The Department’s Contract Manager and/or designee will monitor the Contractor's service delivery quarterly (unless otherwise stated) to determine if the Contractor has achieved the required level of performance for each Performance Outcome and Standard.
identified in Section II., W., 1., Performance Outcomes and Standards shall be measured/assessed as specified beginning the second month after services have been implemented.

If the Department determines that the Contractor has failed a Performance Outcome and Standard, Contractor will be sent a formal contract communication in accordance with Section II., C.

Note: The Contractor shall correct all identified non-compliant service delivery related to failure to meet the Performance Outcomes and Standards identified in Section II., W., 1., however, this shall not negate the fact that a performance outcome and standard has not been met and that liquidated damages will be imposed.

2. Monitoring Other Contract Requirements

Monitoring for Other Contract Requirements, identified in Section II., W., 2., shall be conducted as determined necessary but no less than annually. A monitoring tool will be utilized by the Department’s Office of Community Corrections in review of Contractor’s performance. Such monitoring may be conducted during either announced or unannounced site visits.

The Department’s Contract Manager or designee will provide an oral exit report at termination of the monitoring visits and a written monitoring report to the Contractor within three weeks of the monitoring. Non-compliance issues identified by the Contract Manager or designee will be identified in detail to provide opportunity for correction, where feasible.

Within ten (10) days of receipt of the Department’s monitoring report, (which may be transmitted by email), the Contractor shall provide a formal Corrective Action Plan (CAP) to the Contract Manager (email acceptable) in response to all noted deficiencies to include responsible individuals and required time-frames for achieving compliance. Such time-frames for compliance shall not exceed thirty (30) days, from the date of receipt of the monitoring report by the Contractor, unless specifically agreed upon in writing by the Department. CAPs that do not contain all information required shall be rejected by the Department in writing (email acceptable). The Contractor shall have five (5) days from the receipt of the written rejection to submit a revised CAP. This will not increase the time for compliance, and correction of the noted deficiencies. All noted deficiencies shall be corrected within the time-frames identified or the Department will impose liquidated damages in accordance with Section II., Y. The Contract Manager, Contract Monitoring Team or other designated Department staff may conduct follow-up monitoring reviews at any time to determine compliance based upon the submitted CAP. The Department reserves the right for any Department staff to make scheduled or unscheduled, announced or unannounced monitoring visits.

During follow-up monitoring, any noted failure by the Contractor to correct deficiencies for Other Contract Requirement violations identified in the monitoring report within the time-frame specified in the CAP shall result in application of Liquidated Damages as specified in Section II., Y., Liquidated Damages.
3. Repeated Instances

Repeated instances of failure to meet either the Performance Outcomes and Standards or Other Contract Requirements or to correct deficiencies may, in addition to imposition of liquidated damages, result in determination of Breach of Contract, and/or termination of the Contract in accordance with Section VI., C., Termination for Cause.

Y. Liquidated Damages

Liquidated damages may be assessed when the Contractor repeatedly fails to meet service requirements or fails to correct identified contract deficiencies within the time frames set forth for corrective action as specified in Section II., X., Monitoring Methodology.

By executing this Contract, the Contractor expressly agrees to the imposition of liquidated damages, in addition to all other remedies available to the Department by law, in the following named amounts and according to the following named procedures:

1. Within the first ten (10) days after written notice from the Contract Manager of Contractor service deficiencies – No assessment of damages if deficiencies are corrected within the ten (10) day time period.

2. After ten (10) days of initial notice of unsatisfactory service (without corrective action initiated by the Contractor and if unsatisfactory service continues) liquidated damages in the amount of $500.00 per day for each day or part thereof that the deficiency/issue remains uncorrected shall be assessed.

3. Where the same instance of unsatisfactory service occurs on three or more occasions within a ninety (90) day period, (only where the deficiencies have been corrected as indicated in the first bullet above), liquidated damages in the amount of $5,000.00 shall be assessed.

The Contractor shall forward a cashier’s check or money order, payable to the Department in the appropriate amount, to the Contract Manager within ten (10) days of receipt of a written notice of demand for damages due.

Z. Deliverables

The following services or service tasks are identified as deliverables for the purposes of this Contract:

1. Reports as required in Section II., O., Reporting Requirements; and
2. Daily Unit of Service for Active GPS as outlined in Section II, SCOPE OF SERVICE.

AA. Scope Change after Contract Execution

During the term of this contract, the Department may unilaterally require, by written order, changes altering, adding to, or deducting from the Contract specifications, provided that such changes are within the general scope of the Contract.

The Department may make an equitable adjustment in the Contract price or delivery date if the change affects the cost or time of performance. Such equitable adjustments require the written consent of the Contractor, which shall not be unreasonably withheld.
The Department shall provide written notice to the Contractor thirty (30) days in advance of any Department-required changes to the technical specifications and/or scope of service that affect the Contractor's ability to provide the service as specified herein. Any changes that are other than purely administrative changes will require a formal contract amendment.

III. COMPENSATION

A. Payment

1. Per Diem Rates

   This Contract is a fixed, per diem rate Contract. The Department will compensate the Contractor for electronic monitoring services as specified in Section II, SCOPE OF SERVICE, on a monthly basis for the actual number of daily service units utilized (assigned to an offender and in use) for Active GPS services with the price inclusive of all equipment and related services utilized by the Department as delineated below:

<table>
<thead>
<tr>
<th>Type of Monitoring</th>
<th>Per Diem Price (Daily Service Unit Price)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Active GPS</td>
<td>$5.50</td>
</tr>
</tbody>
</table>

2. Allowance for Lost, Stolen or Damaged Equipment

   As stated in Section II., L., Lost, Stolen or Damaged Equipment, the Contractor shall provide the Department an allowance toward lost, stolen and damaged equipment. The allowance shall be equal to five percent (5%) of the total annual cost of the contract to the Department. The Contractor shall invoice the Department annually for any equipment in excess of the allowance as determined by the annual inventory as specified in Section II., M., Lost, Stolen or Damaged Equipment, and at the prices listed below:

<table>
<thead>
<tr>
<th>Description of Equipment</th>
<th>Actual Replacement Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>SMART XT</td>
<td>$900.00</td>
</tr>
<tr>
<td>SMART Base 2000</td>
<td>$750.00</td>
</tr>
<tr>
<td>Bracelet Transmitter</td>
<td>$100.00</td>
</tr>
<tr>
<td>WMTD</td>
<td>$900.00</td>
</tr>
<tr>
<td>WMTD Charger</td>
<td>$100.00</td>
</tr>
</tbody>
</table>

B. MyFloridaMarketPlace

   The State of Florida has instituted MyFloridaMarketPlace, a statewide eProcurement System (“System”). Pursuant to Section 287.057(22), Florida Statutes, all payments shall be assessed a Transaction Fee of one percent (1.0%), which the Contractor shall pay to the State, unless otherwise exempt pursuant to Rule 60A-1.032, F.A.C. For payments within the State accounting system (FLAIR or its successor), the Transaction Fee shall, when possible, be automatically deducted from payments to the Contractor. If automatic deduction is not possible, the Contractor shall pay the Transaction Fee pursuant to Rule 60A-1.031(2), F.A.C. By submission of these reports and corresponding payments, Contractor certifies their correctness. All such reports and payments shall be subject to audit by the State or its designee.
The Contractor shall receive a credit for any Transaction Fee paid by the Contractor for the purchase of any item(s) if such item(s) are returned to the Contractor through no fault, act, or omission of the Contractor. Notwithstanding the foregoing, a Transaction Fee is non-refundable when an item is rejected or returned, or declined, due to the Contractor’s failure to perform or comply with specifications or requirements of the agreement. Failure to comply with these requirements shall constitute grounds for declaring the Contractor in default and recovering reprocurement costs from the Contractor in addition to all outstanding fees. **CONTRACTORS DELINQUENT IN PAYING TRANSACTION FEES SHALL BE EXCLUDED FROM CONDUCTING FUTURE BUSINESS WITH THE STATE.**

1. **Transaction Fee Exemption**

   The State of Florida has instituted MyFloridaMarketPlace, a statewide eProcurement System (“System”). Pursuant to section 287.057(22), Florida Statutes, all payments shall be assessed a Transaction Fee of one percent (1.0%), which the Contractor shall pay to the State, unless exempt pursuant to 60A-1.032, F.A.C.

2. **Vendor Substitute W9**

   The State of Florida Department of Financial Services (DFS) needs all vendors that do business with the state to electronically submit a Substitute W-9 Form to [https://flvendor.myfloridacfo.com](https://flvendor.myfloridacfo.com). Forms can be found at: [https://flvendor.myfloridacfo.com/casappsp/cw9hsign.htm](https://flvendor.myfloridacfo.com/casappsp/cw9hsign.htm). Frequently asked questions/answers related to this requirement can be found at: [https://flvendor.myfloridacfo.com/W-9%2ofaqspdf](https://flvendor.myfloridacfo.com/W-9%2ofaqspdf). DFS is ready to assist vendors with additional questions. You may contact their Customer Service Desk at 850-413-5519 or FLW9@myfloridacfo.com.

C. **Submission of Invoice(s)**

   The Contractor agrees to request compensation on a monthly basis through submission to the Department of a properly completed invoice within fifteen (15) days following the end of the month for which payment is being requested. Invoices shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof and must be accompanied by a copy of the monthly usage report (identified in Section II., O., Reporting Requirements). **Invoices will only be approved after receipt of the required monthly usage report.**

   The Contractor shall submit a monthly invoice for each circuit, and a total monthly invoice, broken down by circuit, with supporting documentation to the Contract Manager or designee. Any additional documentation that must accompany the invoice shall be submitted with the invoice by the Contractor to ensure the Department will approve the invoice for payment.

D. **Official Payee**

   The name and address of the official payee to whom payment shall be made is as follows:

   3M Electronic Monitoring, Inc.
   1838 Gunn Highway
   Odessa, Florida  33556
E. **Travel Expenses**

The Department shall not be responsible for the payment of any travel expense for the Contractor that occurs as a result of this Contract.

F. **Contractor’s Expenses**

The Contractor shall pay for all licenses, permits, and inspection fees or similar charges required for this Contract, and shall comply with all laws, ordinances, regulations, and any other requirements applicable to the work to be performed under this Contract.

G. **Annual Appropriation**

The State of Florida’s and the Department’s performances and obligations to pay for services under this Contract are contingent upon an annual appropriation by the Legislature. The costs of services paid under any other Contract or from any other source are not eligible for reimbursement under this Contract.

H. **Tax Exemption**

The Department agrees to pay for contracted services according to the conditions of this Contract. The State of Florida does not pay federal excise taxes and sales tax on direct purchases of services.

I. **Timeframes for Payment and Interest Penalties**

Contractors providing goods and services to the Department should be aware of the following time frames:

1. Upon receipt, the Department has five (5) working days to inspect and approve the goods and services and associated invoice, unless the Contract specifies otherwise. The Department has twenty (20) days to deliver a request for payment (voucher) to the Department of Financial Services. The twenty (20) days are measured from the latter of the date the invoice is received or the goods or services are received, inspected, and approved.

2. If a payment is not available within forty (40) days, a separate interest penalty, as specified in Section 215.422, Florida Statutes, will be due and payable, in addition to the invoice amount, to the Contractor. However in the case of health services contracts, the interest penalty provision applies after a thirty-five (35) day time period to health care contractors, as defined by rule. Interest penalties of less than one (1) dollar will not be enforced unless the Contractor requests payment. Invoices, which have to be returned to a Contractor because of Contractor preparation errors, may cause a delay of the payment. The invoice payment requirements do not start until the Department receives a properly completed invoice.

J. **Final Invoice**

The Contractor shall submit the final invoice for payment to the Department no more than forty-five (45) days after acceptance of the final deliverable by the Department or the end date of this Contract, whichever occurs last. If the Contractor fails to do so, all right to payment is forfeited, and the Department will not honor any request submitted after aforesaid time period. Any payment due under the terms of the Contract may be withheld until all applicable deliverables and invoices have been accepted and approved by the Department.
K. **Vendor Ombudsman**

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted by calling the Department of Financial Services’ Toll Free Hotline.

L. **Electronic Transfer of Funds**

Contractors are encouraged to accept payments for work performed under this contract by receiving Direct Deposit. To enroll in the State of Florida’s Direct Deposit System the Contractor must complete a direct deposit form by contacting the Florida Department of Financial Services, Bureau of Accounting Direct Deposit Section at http://www.myfloridacfo.com/aadir/direct_deposit_web/index.htm or by phone at (850) 413-5517.

IV. **CONTRACT MANAGEMENT**

A. **Department’s Contract Manager**

The Contract Manager for this Contract will be:

Shawn Satterfield  
Chief, Bureau of Community Programs and Victim Services  
501 South Calhoun Street  
Tallahassee Florida 32399-2500  
Telephone: (850) 717-3457  
Fax: (850) 487-4427  
E-mail: Satterfield.shawn@mail.dc.state.fl.us

The Contract Manager will perform the following functions:

1. Maintain a Contract Management file;  
2. Serve as the liaison between the Department and the Contractor;  
3. Evaluate the Contractor's performance;  
4. Direct the Contract Administrator to process all amendments, renewals and terminations of this Contract; and  
5. Evaluate Contractor performance upon completion of the overall Contract. This evaluation will be placed on file and will be considered if the Contract is subsequently used as a reference in future procurements.

The Contract Manager may delegate the following functions to the Local Contract Coordinator:

1. Verify receipt of deliverables from the Contractor;  
2. Monitor the Contractor’s performance; and  
3. Review, verify, and approve invoices from the Contractor.

The Local Contract Coordinator for this Contract will be:

Brian Futch  
Correctional Program Administrator
B. Department’s Contract Administrator

The Contract Administrator for this Contract will be:

Chief, Bureau of Procurement & Supply
Department of Corrections
501 South Calhoun Street
Tallahassee, FL 32399-2500
Telephone: (850) 717-3700
Fax: (850) 488-7189

The Contract Administrator will perform the following functions:

1. Maintain the official Contract Administration file;
2. Process all Contract amendments, renewals, and termination of the Contract; and
3. Maintain the official records of all formal correspondence between the Department and the Contractor provided by the Contract Manager for filing in the Contract Administration file.

C. Contractor’s Representative

The name, title, address, and telephone number of the Contractor’s representative responsible for administration and performance under this Contract is:

Alejandra A. Lang, President
3M Electronic Monitoring, Inc.
1838 Gunn Hwy.
Odessa, Florida 33556
Telephone: 813-749-5454
Fax: 813-749-5474
E-mail: aarnaizg@mmm.com

D. Contract Management Changes

After execution of this Contract, any changes in the information contained in Section IV., CONTRACT MANAGEMENT, will be provided to the other party in writing and a copy of the written notification shall be maintained in the official Contract record.

V. CONTRACT MODIFICATION

Unless otherwise stated herein, modifications to the provisions of this Contract, with the exception of Section III. C., Invoice Submission and Section IV., CONTRACT MANAGEMENT, shall be valid only through execution of a formal Contract amendment.
VI. TERMINATION

A. Termination at Will

This Contract may be terminated by the Department upon no less than thirty (30) calendar days’ notice and by the Contractor upon no less than ninety (90) notice, without cause, unless a lesser time is mutually agreed upon by both parties. Notice shall be delivered by certified mail (return receipt requested), by other method of delivery whereby an original signature is obtained, or in-person with proof of delivery.

B. Termination Because of Lack of Funds

In the event funds to finance this Contract become unavailable, the Department may terminate the Contract upon no less than twenty-four (24) hours’ notice in writing to the Contractor. Notice shall be delivered by certified mail (return receipt requested), facsimile, by other method of delivery whereby an original signature is obtained, or in-person with proof of delivery. The Department shall be the final authority as to the availability of funds.

C. Termination for Cause

If a breach of this Contract occurs by the Contractor, the Department may, by written notice to the Contractor, terminate this Contract upon twenty-four (24) hours’ notice. Notice shall be delivered by certified mail (return receipt requested), by other method of delivery whereby an original signature is obtained, or in-person with proof of delivery. If applicable, the Department may employ the default provisions in Chapter 60A-1, Florida Administrative Code. The provisions herein do not limit the Department’s right to remedies at law or to damages.

D. Termination for Unauthorized Employment

Violation of the provisions of Section 274A of the Immigration and Nationality Act shall be grounds for unilateral cancellation of this Contract.

VII. CONDITIONS

A. Records

1. Public Records Law

The Contractor agrees to allow the Department and the public access to any documents, papers, letters, or other materials subject to the provisions of Chapters 119 and 945.10, Florida Statutes, made or received by the Contractor in conjunction with this Contract. The Contractor’s refusal to comply with this provision shall constitute sufficient cause for termination of this Contract.

2. Audit Records

   a. The Contractor agrees to maintain books, records, and documents (including electronic storage media) in accordance with generally accepted accounting procedures and practices which sufficiently and properly reflect all revenues and expenditures of funds provided by the Department under this Contract, and agrees to provide a financial and compliance audit to the Department or to the Office of the Auditor General and to ensure that all related party transactions are disclosed to the auditor.
b. The Contractor agrees to include all record-keeping requirements in all subcontracts and assignments related to this Contract.

c. The Contractor shall ensure that a financial and compliance audit is conducted in accordance with the applicable financial and compliance audit requirements as specified in this Contract and Attachment #1, which is incorporated herein as if fully stated.

3. Retention of Records

The Contractor agrees to retain all client records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertaining to this Contract for a period of seven (7) years. The Contractor shall maintain complete and accurate record-keeping and documentation as required by the Department and the terms of this Contract. Copies of all records and documents shall be made available for the Department upon request. All invoices and documentation must be clear and legible for audit purposes. All documents must be retained by the Contractor at the address listed in Section IV., C., Contractor’s Representative or the address listed in Section III., D., Official Payee, for the duration of this Contract. Any records not available at the time of an audit will be deemed unavailable for audit purposes. Violations will be noted and forwarded to the Department’s Inspector General for review. All documents must be retained by the Contractor at the Contractor’s primary place of business for a period of seven (7) years following termination of the Contract, or, if an audit has been initiated and audit findings have not been resolved at the end of seven (7) years, the records shall be retained until resolution of the audit findings. The Contractor shall cooperate with the Department to facilitate the duplication and transfer of any said records or documents during the required retention period. The Contractor shall advise the Department of the location of all records pertaining to this Contract and shall notify the Department by certified mail within ten (10) days if/when the records are moved to a new location.

B. Prison Rehabilitative Industries and Diversified Enterprises, Inc. (“PRIDE”)

The Contractor agrees that any articles which are the subject of, or are required to carry out this Contract, shall be purchased from PRIDE, identified under Chapter 946, Florida Statutes, in the same manner and under the procedures set forth in Subsections 946.515(2) and (4), Florida Statutes. The Contractor shall be deemed to be substituted for the Department in dealing with PRIDE, for the purposes of this Contract. This clause is not applicable to subcontractors, unless otherwise required by law. Available products, pricing, and delivery schedules may be obtained by contacting PRIDE.

C. Products Available from the Blind or Other Handicapped (RESPECT): The State/Department supports and encourages the gainful employment of citizens with disabilities. It is expressly understood and agreed that any articles that are the subject of, or required to carry out, this contract shall be purchased from a nonprofit agency for the blind or for the severely handicapped that is qualified pursuant to Chapter 413, Florida Statutes, in the same manner and under the same procedures set forth in Section 413.036(1) and (2), Florida Statutes; and for purposes of this contract the person, firm, or other business entity carrying out the provisions of this contract shall be deemed to be substituted for this agency insofar as dealings with such qualified nonprofit agency are concerned.” Additional information about the designated nonprofit agency and the products it offers is available at http://www.respectofflorida.org.
D. **Procurement of Materials with Recycled Content**

It is expressly understood and agreed that any products or materials which are the subject of, or are required to carry out, this Contract shall be procured in accordance with the provisions of Sections 403.7065, Florida Statutes.

E. **Sponsorship**

If the Contractor is a nongovernmental organization which sponsors a program financed partially by State funds, including any funds obtained through this Contract, it shall, in publicizing, advertising, or describing the sponsorship of the program, state: “Sponsored by 3M Electronic Monitoring, Inc., and the State of Florida, Department of Corrections.” If the sponsorship reference is in written material, the words “State of Florida, Department of Corrections” shall appear in the same size letters or type as the name of the organization.

F. **Employment of Department Personnel**

The Contractor shall not knowingly engage in this project, on a full-time, part-time, or other basis during the period of this Contract, any current or former employee of the Department where such employment conflicts with Section 112.3185, Florida Statutes.

G. **Non-Discrimination**

No person, on the grounds of race, creed, color, national origin, age, gender, marital status or disability, shall be excluded from participation in, be denied the proceeds or benefits of, or be otherwise subjected to, discrimination in the performance of this Contract.

H. **Americans with Disabilities Act**

The Contractor shall comply with the Americans with Disabilities Act. In the event of the Contractor’s noncompliance with the nondiscrimination clauses, the Americans with Disabilities Act, or with any other such rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Contracts.

I. **Indemnification**

The Contractor shall be liable, and agrees to be liable for, and shall indemnify, defend, and hold the Department, its employees, agents, officers, heirs, and assignees harmless from any and all claims, suits, judgments, or damages including court costs and attorney’s fees arising out of intentional acts, negligence, or omissions by the Contractor, or its employees or agents, in the course of the operations of this Contract, including any claims or actions brought under Title 42 USC §1983, the Civil Rights Act.

J. **Contractor’s Insurance**

The Contractor agrees to provide adequate insurance coverage on a comprehensive basis and to hold such insurance at all times during the existence of this Contract. The Contractor accepts full responsibility for identifying and determining the type(s) and extent of insurance necessary to provide reasonable financial protection for the Contractor and the Department under this Contract. Upon the execution of this Contract, the Contractor shall furnish the Contract Manager written verification of such insurance coverage. Such coverage may be provided by a self-
insurance program established and operating under the laws of the State of Florida. The Department reserves the right to require additional insurance where appropriate.

If the Contractor is a state agency or subdivision as defined in Section 768.28, Florida Statutes, the Contractor shall furnish the Department, upon request, written verification of liability protection in accordance with Section 768.28, Florida Statutes. Nothing herein shall be construed to extend any party’s liability beyond that provided in Section 768.28, Florida Statutes.

K. Independent Contractor Status

The Contractor shall be considered an independent Contractor in the performance of its duties and responsibilities under this Contract. The Department shall neither have nor exercise any control or direction over the methods by which the Contractor shall perform its work and functions other than as provided herein. Nothing in this Contract is intended to, nor shall be deemed to constitute, a partnership or a joint venture between the parties.

L. Disputes

Any dispute concerning performance of this Contract shall be resolved informally by the Contract Manager. Any dispute that can not be resolved informally shall be reduced to writing and delivered to the Department’s Deputy Secretary. The Deputy Secretary shall decide the dispute, reduce the decision to writing, and deliver a copy to the Contractor, the Contract Manager and the Contract Administrator.

M. Copyrights, Right to Data, Patents and Royalties

Where activities supported by this Contract produce original writing, sound recordings, pictorial reproductions, drawings or other graphic representation and works of any similar nature, the Department has the right to use, duplicate and disclose such materials in whole or in part, in any manner, for any purpose whatsoever and to have others acting on behalf of the Department to do so. If the materials so developed are subject to copyright, trademark, or patent, legal title and every right, interest, claim or demand of any kind in and to any patent, trademark or copyright, or application for the same, will vest in the State of Florida, Department of State for the exclusive use and benefit of the State. Pursuant to Section 286.021, Florida Statutes, no person, firm or corporation, including parties to this Contract, shall be entitled to use the copyright, patent, or trademark without the prior written consent of the Department of State.

The Department shall have unlimited rights to use, disclose or duplicate, for any purpose whatsoever, all information and data developed, derived, documented, or furnished by the Contractor under this Contract. All computer programs and other documentation produced as part of the Contract shall become the exclusive property of the State of Florida, Department of State, and may not be copied or removed by any employee of the Contractor without express written permission of the Department.

The Contractor, without exception, shall indemnify and save harmless the Department and its employees from liability of any nature or kind, including cost and expenses for or on account of any copyrighted, patented, or unpatented invention, process, or article manufactured or supplied by the Contractor. The Contractor has no liability when such claim is solely and exclusively due to the combination, operation, or use of any article supplied hereunder with equipment or data not supplied by the Contractor or is based solely and exclusively upon the Department’s alteration of the article. The Department will provide prompt written notification of a claim of
copyright or patent infringement and will afford the Contractor full opportunity to defend the action and control the defense of such claim.

Further, if such a claim is made or is pending, the Contractor may, at its option and expense, procure for the Department the right to continue use of, replace, or modify the article to render it noninfringing. (If none of the alternatives are reasonably available, the Department agrees to return the article to the Contractor upon its request and receive reimbursement, fees and costs, if any, as may be determined by a court of competent jurisdiction.) If the Contractor uses any design, device, or materials covered by letter, patent or copyright, it is mutually agreed and understood without exception that the Contract prices shall include all royalties or costs arising from the use of such design, device, or materials in any way involved in the work to be performed hereunder.

N. Subcontracts

The Contractor is fully responsible for all work performed under this Contract. The Contractor may, upon receiving written consent from the Department’s Contract Manager, enter into written subcontract(s) for performance of certain of its functions under this Contract excluding the devices, equipment services and positions listed in Section II., H., 2., a. No subcontract, which the Contractor enters into with respect to performance of any of its functions under this Contract, shall in any way relieve the Contractor of any responsibility for the performance of its duties. All payments to subcontractors shall be made by the Contractor.

If a subcontractor is utilized by the Contractor, the Contractor shall pay the subcontractor within seven (7) working days after receipt of full or partial payments from the Department, in accordance with Section 287.0585, Florida Statutes. It is understood and agreed that the Department shall not be liable to any subcontractor for any expenses or liabilities incurred under the subcontract and that the Contractor shall be solely liable to the subcontractor for all expenses and liabilities under this Contract. Failure by the Contractor to pay the subcontractor within seven (7) working days will result in a penalty to be paid by the Contractor to the subcontractor in the amount of one-half (½) of one percent (1%) of the amount due per day from the expiration of the period allowed herein for payment. Such penalty shall be in addition to actual payments owed and shall not exceed fifteen percent (15%) of the outstanding balance due.

O. Assignment

The Contractor shall not assign its responsibilities or interests under this Contract to another party without prior written approval of the Department’s Contract Manager. The Department shall, at all times, be entitled to assign or transfer its rights, duties and obligations under this Contract to another governmental agency of the State of Florida upon giving written notice to the Contractor.

P. Force Majeure

Neither party shall be liable for loss or damage suffered as a result of any delay or failure in performance under this Contract or interruption of performance resulting directly or indirectly from acts of God, fire, explosions, earthquakes, floods, water, wind, lightning, civil or military authority, acts of public enemy, war, riots, civil disturbances, insurrections, strikes, or labor disputes.
Q. **Substitution of Key Personnel**

In the event the Contractor desires to substitute any key personnel submitted with his/her proposal, either permanently or temporarily, the Department shall have the right to approve or disapprove the desired personnel change in advance in writing.

R. **Severability**

The invalidity or unenforceability of any particular provision of this Contract shall not affect the other provisions hereof and this Contract shall be construed in all respects as if such invalid or unenforceable provision was omitted, so long as the material purposes of this Contract can still be determined and effectuated.

S. **Use of Funds for Lobbying Prohibited**

The Contractor agrees to comply with the provisions of Section 216.347, Florida Statutes, which prohibits the expenditure of State funds for the purposes of lobbying the Legislature, the Judicial branch, or a State agency.

T. **Verbal Instructions**

No negotiations, decisions, or actions shall be initiated or executed by the Contractor as a result of any discussions with any Department employee. Only those communications that are in writing from the Department’s staff identified in Section IV., Contract Management, of this Contract shall be considered a duly authorized expression on behalf of the Department. Only communications from the Contractor’s representative identified in Section IV., C., which are in writing and signed, will be recognized by the Department as duly authorized expressions on behalf of the Contractor.

U. **Conflict of Interest**

The Contractor shall not compensate in any manner, directly or indirectly, any officer, agent or employee of the Department for any act or service that he/she may do, or perform for, or on behalf of, any officer, agent, or employee of the Contractor. No officer, agent, or employee of the Department shall have any interest, directly or indirectly, in any contract or purchase made, or authorized to be made, by anyone for, or on behalf of, the Department.

V. **Department of State Licensing Requirements**

All entities defined under Chapters 607, 617 or 620, Florida Statutes, seeking to do business with the Department, shall be on file and in good standing with the State of Florida, Department of State.

W. **MyFloridaMarketPlace Vendor Registration**

All vendors that have not re-registered with the State of Florida since March 31, 2003, shall go to [http://vendor.myfloridamarketplace.com/](http://vendor.myfloridamarketplace.com/) to complete on-line registration, or call 1-866-352-3776 for assisted registration.

X. **Public Entity Crimes Information Statement**

A person or affiliate who has been placed on the Convicted Vendor List following a conviction for a public entity crime may not submit a bid or proposal to provide any goods or services to a
public entity, may not submit a bid or proposal to a public entity for the construction or repair of a public building or public work, may not submit bids or proposals for leases of real property to a public entity, may not be awarded or perform work as a Contractor, supplier, subcontractor, or consultant under a Contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for Category Two for a period of thirty-six (36) months from the date of being placed on the Convicted Vendor List.

Y. Discriminatory Vendors List

An entity or affiliate who has been placed on the Discriminatory Vendor List may not submit a bid or proposal to provide goods or services to a public entity, may not submit a bid or proposal with a public entity for the construction or repair of a public building or public work, may not submit bids or proposals on leases of real property to a public entity, may not perform work as a Contractor, supplier, subcontractor or consultant under a Contract with any public entity and may not transact business with any public entity.

Z. Governing Law and Venue

This Contract is executed and entered into in the State of Florida, and shall be construed, performed and enforced in all respects in accordance with the laws, rules and regulations of the State of Florida. Any action hereon or in connection herewith shall be brought in Leon County, Florida.

AA. No Third Party Beneficiaries

Except as otherwise expressly provided herein, neither this Contract, nor any amendment, addendum or exhibit attached hereto, nor term, provision or clause contained therein, shall be construed as being for the benefit of, or providing a benefit to, any party not a signatory hereto.

BB. Health Insurance Portability and Accountability Act

The Contractor shall comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (42 U.S.C. 1320d-8), and all applicable regulations promulgated thereunder. Agreement to comply with HIPAA is evidenced by the Contractor’s execution of this Contract, which includes and incorporates Attachment #2, Business Associate Agreement, as part of this Contract.

CC. Reservation of Rights

The Department reserves the exclusive right to make certain determinations regarding the service requirements outlined in this Contract. The absence of the Department setting forth a specific reservation of rights does not mean that any provision regarding the services to be performed under this Contract are subject to mutual agreement. The Department reserves the right to make any and all determinations exclusively which it deems are necessary to protect the best interests of the State of Florida and the health, safety and welfare of the Department’s inmates and of the general public which is serviced by the Department, either directly or indirectly, through these services.
DD. Cooperative Purchasing

As provided in Section 287.042(16), Florida Statutes, other State agencies may purchase from this Contract, provided that the Department of Management Services has determined that the Contract’s use is cost effective and in the best interest of the State. Upon such approval, the Contractor may, at its discretion, sell these commodities or services to additional agencies, upon the terms and conditions contained herein. In addition, other political subdivisions may also purchase from this Contract at the discretion of the Contractor. Entities purchasing from this Contract assume and bear complete responsibility with regard to performance of any contractual obligation or term.

EE. Scope Changes After Contract Execution

During the term of the Contract, the Department may unilaterally require, by written order, changes altering, adding to, or deducting from the Contract specifications, provided that such changes are within the general scope of the Contract.

The Department may make an equitable adjustment in the Contract prices or delivery date if the change affects the cost or time of performance. Such equitable adjustments require the written consent of the Contractor, which shall not be unreasonably withheld.

The Department shall provide written notice to the Contractor thirty (30) days in advance of any Department required changes to the technical specifications and/or scope of service that affect the Contractor’s ability to provide the service as specified herein. Any changes that are other than purely administrative changes will require a formal Contract Amendment.
Waiver of breach of any provision of this Contract shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Contract.

This Contract and Attachments 1 and 2, RFP # 10-DC-8200 and the Contractor's response to the RFP, contain all the terms and conditions agreed upon by the parties. In the event of any conflict in language among these documents, the Department's Contract will govern.

IN WITNESS THEREOF, the parties hereto have caused this Contract to be executed by their undersigned officials as duly authorized.

CONTRACTOR:
3M ELECTRONIC MONITORING, INC.

SIGNED
BY:

NAME: Alejandra A. Lang

TITLE: President

DATE: 6/21/12

FEID #: 13-4088052

DEPARTMENT OF CORRECTIONS

SIGNED
BY:

NAME: Kenneth S. Tucker

TITLE: Secretary
Department of Corrections

DATE: 6/29/12

Approved as to form and legality, subject to execution.

SIGNED
BY:

NAME: Jennifer A. Parker

TITLE: General Counsel
Department of Corrections

DATE: 6/19/12
FINANCIAL AND COMPLIANCE AUDITS  
Special Audit Requirements

The administration of resources awarded by the Department of Corrections to the Contractor may be subject to audits and/or monitoring by the Department of Corrections, as described in this attachment.

MONITORING

In addition to reviews of audits conducted in accordance with OMB Circular A-133 and Section 215.97, F.S., as revised (see “AUDITS” below), monitoring procedures may include, but not be limited to, on-site visits by Department staff, limited scope audits as defined by OMB Circular A-133, as revised, and/or other procedures. By entering into this Contract, the Contractor agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Department of Corrections. In the event the Department of Corrections determines that a limited scope audit of the Contractor is appropriate, the Contractor agrees to comply with any additional instructions provided by the Department to the Contractor regarding such audit. The Contractor further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Office (CFO) or Auditor General.

AUDITS

PART I: FEDERALLY FUNDED

This part is applicable if the Contractor is a State or local government or a non-profit organization as defined in OMB Circular A-133, as revised.

1. In the event that the Contractor expends $500,000 or more in Federal awards in its fiscal year, the Contractor must have a single or program-specific audit conducted in accordance with the provisions of OMB Circular A-133, as revised. EXHIBIT 1 to this Contract indicates Federal resources awarded through the Department of Corrections by this Contract. In determining the Federal awards expended in its fiscal year, the Contractor shall consider all sources of Federal awards, including Federal resources received from the Department of Corrections. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by OMB Circular A-133, as revised. An audit of the Contractor conducted by the Auditor General in accordance with the provisions of OMB Circular A-133, as revised, will meet the requirements of this part.

2. In connection with the audit requirements addressed in Part I, paragraph 1., the Contractor shall fulfill the requirements relative to auditee responsibilities as provided in Subpart C of OMB Circular A-133, as revised.

3. If the Contractor expends less than $500,000 in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, is not required. In the event that the Contractor expends less than $500,000 in Federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, the cost of the audit must be paid from non-Federal resources (i.e., the cost of such an audit must be paid from Contractor resources obtained from other than Federal entities).


PART II: STATE FUNDED

This part is applicable if the Contractor is a nonstate entity as defined by Section 215.97(2), Florida Statutes.

1. In the event that the Contractor expends a total amount of State financial assistance equal to or in excess of $500,000 in any fiscal year of such Contractor, the Contractor must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, Florida Statutes; applicable rules of the Department of Financial Services; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. EXHIBIT 1 to this Contract indicates State financial assistance
awarded through the Department of Corrections by this Contract. In determining the State financial assistance expended in its fiscal year, the Contractor shall consider all sources of State financial assistance, including State financial assistance received from the Department of Corrections, other state agencies, and other nonstate entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.

2. In connection with the audit requirements addressed in Part II, paragraph 1, the Contractor shall ensure that the audit complies with the requirements of Section 215.97(8), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.

3. If the Contractor expends less than $500,000 in State financial assistance in its fiscal year, an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. In the event that the Contractor expends less than $500,000 in State financial assistance in its fiscal year and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the non-State entity's resources (i.e., the cost of such an audit must be paid from the Contractor's resources obtained from other than State entities).

4. For information regarding the Florida Catalog of State Financial Assistance (CSFA), a Contractor should access the Florida Single Audit Act website located at https://apps.fldfs.com/fsaa/index.aspx for assistance. In addition to the above websites, the following websites may be accessed for information: Legislature's Website http://www.leg.state.fl.us/, Department of Financial Services’ Website http://www.fldfs.com/, and the Auditor General’s Website http://www.state.fl.us/audgen.

REPORT SUBMISSION

1. Copies of reporting packages for audits conducted in accordance with OMB Circular A-133, as revised, and required by PART I of this Contract shall be submitted, when required by Section .320 (d), OMB Circular A-133, as revised, by or on behalf of the Contractor directly to each of the following:

A. The Department of Corrections at the following addresses:

<table>
<thead>
<tr>
<th>Internal Audit</th>
<th>Contract Manager</th>
<th>Contract Administrator</th>
</tr>
</thead>
<tbody>
<tr>
<td>Office of the Inspector General</td>
<td>Shawn Satterfield, Chief, Bureau of Community Programs and Victim Services</td>
<td>Bureau of Procurement &amp; Supply</td>
</tr>
<tr>
<td>Florida Dept. of Corrections</td>
<td>Florida Department of Corrections</td>
<td>Florida Dept. of Corrections</td>
</tr>
<tr>
<td>501 South Calhoun Street</td>
<td>501 South Calhoun Street</td>
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<tr>
<td>Tallahassee, FL 32399-2500</td>
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<td>Tallahassee, FL 32399-2500</td>
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</tbody>
</table>

B. The Federal Audit Clearinghouse designated in OMB Circular A-133, as revised (the number of copies required by Sections .320 (d)(1) and (2), OMB Circular A-133, as revised, should be submitted to the Federal Audit Clearinghouse), at the following address:

Federal Audit Clearinghouse
Bureau of the Census
1201 East 10th Street
Jeffersonville, IN 47132

C. Other Federal agencies and pass-through entities in accordance with Sections .320 (e) and (f), OMB Circular A-133, as revised.
2. Pursuant to Section .320(f), OMB Circular A-133, as revised, the Contractor shall submit a copy of the reporting package described in Section .320(c), OMB Circular A-133, as revised, and any management letters issued by the auditor, to the Department of Corrections at each of the following addresses:

<table>
<thead>
<tr>
<th>Internal Audit</th>
<th>Contract Manager</th>
<th>Contract Administrator</th>
</tr>
</thead>
<tbody>
<tr>
<td>Office of the Inspector General</td>
<td>Shawn Satterfield, Chief, Bureau of Community Programs and Victim Services</td>
<td>Bureau of Procurement &amp; Supply</td>
</tr>
<tr>
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</tr>
</tbody>
</table>

3. Copies of financial reporting packages required by PART II of this Contract shall be submitted by or on behalf of the Contractor directly to each of the following:

A. The Department of Corrections at the following addresses:

<table>
<thead>
<tr>
<th>Internal Audit</th>
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<tbody>
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</tr>
</tbody>
</table>

B. The Auditor General’s Office at the following address:

State of Florida Auditor General  
Room 401, Claude Pepper Building  
111 West Madison Street  
Tallahassee, Florida 32399-1450

4. Any reports, management letters, or other information required to be submitted to the Department of Corrections pursuant to this Contract shall be submitted timely in accordance with OMB Circular A-133, Florida Statutes, or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.

5. Contractors, when submitting financial reporting packages to the Department of Corrections for audits done in accordance with OMB Circular A-133, or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the Contractor in correspondence accompanying the reporting package.

RECORD RETENTION

The Contractor shall retain sufficient records demonstrating its compliance with the terms of this Contract for a period of 7 years from the date the audit report is issued, and shall allow the Department of Corrections, or its designee, CFO, or Auditor General access to such records upon request. The Contractor shall ensure that audit working papers are made available to the Department of Corrections, or its designee, CFO, or Auditor General upon request for a period of 7 years from the date the audit report is issued, unless extended in writing by the Department of Corrections.

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EXHIBIT – 1

FUNDS AWARDED TO THE CONTRACTOR PURSUANT TO THIS CONTRACT CONSIST OF THE FOLLOWING:

<table>
<thead>
<tr>
<th>Federal Resources Awarded to the Contractor Pursuant to this Contract Consist of the Following:</th>
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</thead>
<tbody>
<tr>
<td>Federal Program Number</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>State Resources Awarded to the Contractor Pursuant to this Contract Consist of the Following Matching Resources for Federal Programs:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal Program Number</td>
</tr>
<tr>
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<table>
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<tr>
<th>State Resources Awarded to the Contractor Pursuant to this Contract Consist of the Following Resources Subject to Section 215.97, F.S.:</th>
</tr>
</thead>
<tbody>
<tr>
<td>State Program Number</td>
</tr>
<tr>
<td>----------------------</td>
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<tr>
<td>1005</td>
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<tr>
<td>1005</td>
</tr>
</tbody>
</table>

For each program identified above, the Contractor shall comply with the program requirements described in the Catalog of Federal Domestic Assistance (CFDA) [http://www.myfloridacfo.com/aadir/statewide_financial_reporting/sefarprogramtitles.pdf] and/or the Florida Catalog of State Financial Assistance (CSFA) https://apps.fldfs.com/fsaa/catalog.aspx. The services/purposes for which the funds are to be used are included in the Contract scope of services/work. Any match required by the Contractor is clearly indicated in the Contract.

* This amount is an estimate of the funding amount and subject to change; reference Section III, Compensation of this Contract.
BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement supplements and is made a part of this Agreement between the Florida Department of Corrections ("Department") and 3M Electronic Monitoring, Inc. ("Contractor"), (individually, a "Party" and collectively referred to as "Parties").

Whereas, the Department creates or maintains, or has authorized the Contractor to receive, create, or maintain certain Protected Health Information ("PHI") as that term is defined in 45 C.F.R. §164.501 and that is subject to protection under the Health Insurance Portability and Accountability Act of 1996, as amended. ("HIPAA");

Whereas, the Department is a “Covered Entity” as that term is defined in the HIPAA implementing regulations, 45 C.F.R. Part 160 and Part 164, Subparts A, C, and E, the Standards for Privacy of Individually Identifiable Health Information ("Privacy Rule") and the Security Standards for the Protection of Electronic Protected Health Information ("Security Rule");

Whereas, the Contractor may have access to Protected Health Information in fulfilling its responsibilities under its contract with the Department;

Whereas, the Contractor is considered to be a “Business Associate” of a Covered Entity as defined in the Privacy Rule;

Whereas, pursuant to the Privacy Rule, all Business Associates of Covered Entities must agree in writing to certain mandatory provisions regarding the use and disclosure of PHI; and

Whereas, the purpose of this Agreement is to comply with the requirements of the Privacy Rule, including, but not limited to, the Business Associate contract requirements of 45 C.F.R. §164.504(e).

Whereas, in regards to Electronic Protected Health Information as defined in 45 C.F.R. § 160.103, the purpose of this Agreement is to comply with the requirements of the Security Rule, including, but not limited to, the Business Associate contract requirements of 45 C.F.R. §164.314(a).

Now, therefore, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

1. **Definitions**

   Unless otherwise provided in this Agreement, any and all capitalized terms have the same meanings as set forth in the HIPAA Privacy Rule, HIPAA Security Rule or the HITECH Act. Contractor acknowledges and agrees that all Protected Health Information that is created or received by the Department and disclosed or made available in any form, including paper record, oral communication, audio recording, and electronic display by the Department or its operating units to Contractor or is created or received by Contractor on the Department’s behalf shall be subject to this Agreement.

2. **Confidentiality Requirements**

   A. Contractor agrees to use and disclose Protected Health Information that is disclosed to it by the Department solely for meeting its obligations under its agreements with the Department, in accordance with the terms of this agreement, the Department's established policies rules, procedures and requirements, or as required by law, rule or regulation.

   B. In addition to any other uses and/or disclosures permitted or authorized by this Agreement or required by law, Contractor may use and disclose Protected Health Information as follows:

      (1) if necessary for the proper management and administration of the Contractor and to carry out the legal responsibilities of the Contractor, provided that any such disclosure is required by law or that Contractor obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Contractor of any instances of which it is aware in which the confidentiality of the information has been breached;
(2) for data aggregation services, only if to be provided by Contractor for the health care operations of the Department pursuant to any and all agreements between the Parties. For purposes of this Agreement, data aggregation services means the combining of protected health information by Contractor with the protected health information received by Contractor in its capacity as a Contractor of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.

(3) Contractor may use and disclose protected health information that Contractor obtains or creates only if such disclosure is in compliance with every applicable requirement of Section 164.504(e) of the Privacy relating to Contractor contracts. The additional requirements of Subtitle D of the HITECH Act that relate to privacy and that are made applicable to the Department as a covered entity shall also be applicable to Contractor and are incorporated herein by reference.

C. Contractor will implement appropriate safeguards to prevent use or disclosure of Protected Health Information other than as permitted in this Agreement. Further, Contractor shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of the Department. The Secretary of Health and Human Services and the Department shall have the right to audit Contractor’s records and practices related to use and disclosure of Protected Health Information to ensure the Department's compliance with the terms of the HIPAA Privacy Rule and/or the HIPAA Security Rule.

Further, Sections 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards), and 164.316 (policies and procedures and documentation requirements) of the Security Rule shall apply to the Contractor in the same manner that such sections apply to the Department as a covered entity. The additional requirements of the HITECH Act that relate to security and that are made applicable to covered entities shall be applicable to Contractor and are hereby incorporated by reference into this BA Agreement.

D. Contractor shall report to Department any use or disclosure of Protected Health Information, which is not in compliance with the terms of this Agreement as well as any Security incident of which it becomes aware. Contractor agrees to notify the Department, and include a copy of any complaint related to use, disclosure, or requests of Protected Health Information that the Contractor receives directly and use best efforts to assist the Department in investigating and resolving such complaints. In addition, Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of Protected Health Information by Contractor in violation of the requirements of this Agreement.

Such report shall notify the Department of:

1) any Use or Disclosure of protected health information (including Security Incidents) not permitted by this Agreement or in writing by the Department;

2) any Security Incident;

3) any Breach, as defined by the HITECH Act; or

4) any other breach of a security system, or like system, as may be defined under applicable State law (Collectively a “Breach”).

Contractor will without unreasonable delay, but no later than seventy-two (72) hours after discovery of a Breach, send the above report to the Department.

Such report shall identify each individual whose protected health information has been, or is reasonably believed to have been, accessed, acquired, or disclosed during any Breach pursuant to 42 U.S.C.A. § 17932(b). Such report will:

1) Identify the nature of the non-permitted or prohibited access, use, or disclosure, including the nature of the Breach and the date of discovery of the Breach.
2) Identify the protected health information accessed, used or disclosed, and provide an exact copy or replication of that protected health information.

3) Identify who or what caused the Breach and who accessed, used, or received the protected health information.

4) Identify what has been or will be done to mitigate the effects of the Breach; and

5) Provide any other information, including further written reports, as the Department may request.

E. In accordance with Section 164.504(e)(1)(ii) of the Privacy Rule, each party agrees that if it knows of a pattern of activity or practice of the other party that constitutes a material breach of or violation of the other party’s obligations under the BA Agreement, the non-breaching party will take reasonable steps to cure the breach or end the violation, and if such steps are unsuccessful, terminate the contract or arrangement if feasible. If termination is not feasible, the party will report the problem to the Secretary of Health and Human Services (federal government).

F. Contractor will ensure that its agents, including a subcontractor, to whom it provides Protected Health Information received from, or created by Contractor on behalf of the Department, agree to the same restrictions and conditions that apply to Contractor, and apply reasonable and appropriate safeguards to protect such information. Contractor agrees to designate an appropriate individual (by title or name) to ensure the obligations of this agreement are met and to respond to issues and requests related to Protected Health Information. In addition, Contractor agrees to take other reasonable steps to ensure that its employees’ actions or omissions do not cause Contractor to breach the terms of this Agreement.

G. Contractor shall secure all protected health information by a technology standard that renders protected health information unusable, unreadable, or indecipherable to unauthorized individuals and is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute and is consistent with guidance issued by the Secretary of Health and Human Services specifying the technologies and methodologies that render protected health information unusable, unreadable, or indecipherable to unauthorized individuals, including the use of standards developed under Section 3002(b)(2)(B)(vi) of the Public Health Service Act, pursuant to the HITECH Act, 42 U.S.C.A. § 300jj-11, unless the Department agrees in writing that this requirement is infeasible with respect to particular data. These security and protection standards shall also apply to any of Contractor’s agents and subcontractors.

H. Contractor agrees to make available Protected Health Information so that the Department may comply with individual rights to access in accordance with Section 164.524 of the HIPAA Privacy Rule. Contractor agrees to make Protected Health Information available for amendment and incorporate any amendments to Protected Health Information in accordance with the requirements of Section 164.526 of the HIPAA Privacy Rule. In addition, Contractor agrees to record disclosures and such other information necessary, and make such information available, for purposes of the Department providing an accounting of disclosures, as required by Section 164.528 of the HIPAA Privacy Rule.

I. The Contractor agrees, when requesting Protected Health Information to fulfill its contractual obligations or on the Department’s behalf, and when using and disclosing Protected Health Information as permitted in this contract, that the Contractor will request, use, or disclose only the minimum necessary in order to accomplish the intended purpose.

3. **Obligations of Department**

A. The Department will make available to the Business Associate the notice of privacy practices (applicable to offenders under supervision, not to inmates) that the Department produces in accordance with 45 CFR 164.520, as well as any material changes to such notice.
B. The Department shall provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, if such changes affect Business Associate’s permitted or required uses and disclosures.

C. The Department shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that impacts the business associate’s use or disclosure and that the Department has agreed to in accordance with 45 CFR 164.522 and the HITECH Act.

4. Termination

A. Termination for Breach - The Department may terminate this Agreement if the Department determines that Contractor has breached a material term of this Agreement. Alternatively, the Department may choose to provide Contractor with notice of the existence of an alleged material breach and afford Contractor an opportunity to cure the alleged material breach. In the event Contractor fails to cure the breach to the satisfaction of the Department, the Department may immediately thereafter terminate this Agreement.

B. Automatic Termination - This Agreement will automatically terminate upon the termination or expiration of the original contract between the Department and the Contractor.

C. Effect of Termination

(1) Termination of this agreement will result in termination of the associated contract between the Department and the Contractor.

(2) Upon termination of this Agreement or the contract, Contractor will return or destroy all PHI received from the Department or created or received by Contractor on behalf of the Department that Contractor still maintains and retain no copies of such PHI; provided that if such return or destruction is not feasible, Contractor will extend the protections of this Agreement to the PHI and limit further uses and disclosure to those purposes that make the return or destruction of the information infeasible.

5. Amendment - Both parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary to comply with the requirements of the Privacy Rule, the HIPAA Security Rule, and the HITECH Act.

6. Interpretation - Any ambiguity in this Agreement shall be resolved to permit the Department to comply with the HIPAA Privacy Rule and/or the HIPAA Security Rule.

7. Indemnification – The Contractor shall be liable for and agrees to be liable for, and shall indemnify, defend, and hold harmless the Department, its employees, agents, officers, and assigns from any and all claims, suits, judgments, or damages including court costs and attorneys’ fees arising out or in connection with any non-permitted or prohibited Use or Disclosure of PHI or other breach of this Agreement, whether intentional, negligent or by omission, by Contractor, or any sub-contractor of Contractor, or agent, person or entity under the control or direction of Contractor. This indemnification by Contractor includes any claims brought under Title 42 USC §1983, the Civil Rights Act.

8. Miscellaneous - Parties to this Agreement do not intend to create any rights in any third parties. The obligations of Contractor under this Section shall survive the expiration, termination, or cancellation of this Agreement, or any and all other contracts between the parties, and shall continue to bind Contractor, its agents, employees, contractors, successors, and assigns as set forth herein for any PHI that is not returned to the Department or destroyed.