DATA SHARING, NON-DISCLOSURE AND USE AGREEMENT

Between

WASHINGTON STATE MILITARY DEPARTMENT (MIL)

and KITTITAS COUNTY

Background:

Pursuant to RCW 38.52.510, "Each county, singly or in combination with one or more adjacent counties, must implement countywide or multicounty-wide enhanced 911 emergency communications systems so that enhanced 911 is available throughout the state." Pursuant to RCW 38.52.520, the state enhanced 911 coordination office was established within MIL and its duties include "[c]oordinating and facilitating the implementation and operation of enhanced 911 emergency communications systems throughout the state."

Accordingly, MIL has procured Emergency Services IP Network (ESInet)[1] services on behalf of the counties to facilitate next generation enhanced 911 services, which include, but is not limited to, telephone and cellular calls and certain other media sent by customers via the 911 system to the counties' Public Safety Answering Points (PSAP). In order for COUNTY and its PSAPs to connect to the ESInet services: (a) COUNTY and its PSAPs must provide certain security and other confidential and proprietary information of COUNTY and its PSAP's to MIL; (b) MIL must provide such COUNTY and PSAP security and other confidential and proprietary information to VENDOR; (c) VENDOR must provide certain security and other confidential and proprietary information of VENDOR to MIL; and (d) MIL must provide such VENDOR security and other confidential and proprietary information to COUNTY and its PSAPs. The MIL contract with the ESInet services vendor, Comtech/TCS (VENDOR), requires that, MIL and COUNTY maintain the confidentiality of all material marked as confidential by the VENDOR, and provide notice to the VENDOR and opportunity to seek a court order preventing disclosure if disclosure of such VENDOR information is required by law. Similarly, the MIL contract with VENDOR requires that VENDOR maintain the confidentiality of COUNTY and PSAP information marked as confidential by COUNTY or its PSAPs, and provide notice to MIL and opportunity to seek a court order preventing disclosure if disclosure of such COUNTY or PSAP is required by law.

Therefore, this Data Sharing, Non-Disclosure and Use Agreement (AGREEMENT) is entered into, by and between MIL and COUNTY (PARTIES) to enable COUNTY and its PSAPs to share COUNTY and PSAP security and other confidential and proprietary information with MIL, for MIL to provide such security and other confidential and proprietary information to VENDOR and to enable MIL to share VENDOR security and other confidential and proprietary information with COUNTY and its PSAPs.

Contact Information:

MIL

Contact: William Andrew Leneweaver
Title: Deputy State 911 Coordinator
Address: 20 Aviation Drive
Camp Murray, WA 98407

Telephone: (253) 512-7039
Email: Andy.leneweavr@mil.wa.gov

COUNTY

Contact:
Title:
Address:

Telephone:
Email:

[1] All definitions relating to the E911 system are contained in WAC 118-66-030.

VENDOR

Contact: Andrew Singer
Title: Senior Director NG911 Services
Address: 2401 Elliott Avenue, 2nd Floor
Seattle, WA 98121

Telephone: (206) 792-2237
Email: andrew.singer@comtechtel.com

Parties Agree:

1. Period of AGREEMENT

The period of this AGREEMENT shall commence on date of execution and end when the PARTIES, and their employees, contractors and agents, no longer hold, in any manner, the DATA of the other PARTY. This agreement does not cover any disclosure of DATA prior to the period of this agreement.

2. DATA

DATA for the purposes of this agreement means "any written information, documents, or electronic data, relating to the ESInet that is marked "confidential" or "proprietary", including regarding the telecommunication interconnections between the VENDOR, the ESInet, MIL, the COUNTY or its PSAPs". The DATA may include confidential or proprietary information belonging to the COUNTY, its PSAPs, MIL, and/or VENDOR or confidential security data that could result in a security risk to the ESInet.

3. Intended Use of the DATA

The VENDOR DATA is intended for use by MIL, the COUNTY and its PSAPs to facilitate telecommunication interconnections between the VENDOR, the ESInet, MIL, the COUNTY or its PSAPs, related to the ESInet. The COUNTY DATA is intended for use by MIL and the VENDOR to facilitate telecommunication interconnections between the VENDOR, the ESInet, MIL, the COUNTY or its PSAPs, related to the ESInet. MIL may disclose and distribute the COUNTY DATA to VENDOR for VENDOR's use to facilitate telecommunication interconnections.

4. Constraints on Use of DATA

This AGREEMENT prohibits any use of the VENDOR DATA by the COUNTY and its PSAPs other than as specifically set forth herein. This AGREEMENT prohibits any use of the COUNTY DATA by MIL or the VENDOR other than as specifically set forth herein.

5. Non-Disclosure of DATA

A. COUNTY shall not disclose, in whole or in part, the VENDOR DATA other than to the employees, contractors and agents of COUNTY and its PSAPs that have a need to know such information, provided such employees, contractors and agents have signed the Confidentiality Statement set forth in **Attachment A**.

B. MIL and VENDOR, shall not disclose, in whole or in part, the COUNTY DATA other than to its employees, contractors and agents that have a need to know such information, provided such employees, contractors and agents have signed the Confidentiality Statement set forth in **Attachment A**.

C. If a PARTY, its employees, agents, or contractors, including PSAP employees, agents, or contractors or VENDOR, is required by law, government regulations, subpoena or court order to disclose any DATA, PARTY shall give 10 business days prior written notice of the proposed disclosure to the other PARTY

and the VENDOR, at the contact information listed herein, to allow that PARTY or VENDOR the opportunity to file documents seeking a court order preventing disclosure of the DATA. The notice shall include the name of the requester, so the PARTY and/or VENDOR may name the requestor as a party to any action to enjoin disclosure.

D. Upon receipt of written notice of the requirement to disclose the DATA, the PARTY and/or VENDOR, at their expense, may then either seek appropriate protective relief to prevent all or part of such disclosure. Should the PARTY and/or VENDOR not file for protective relief in superior court in the ten (10) business day time frame provided, the PARTY shall disclose DATA only in compliance with, and only to the extent required by, any applicable law, regulation, subpoena or court order.

E. If a PARTY or VENDOR becomes aware of any unauthorized use or disclosure of the DATA of the other PARTY, such PARTY or VENDOR shall promptly advise the other PARTY of all facts regarding such unauthorized use or disclosure.

6. DATA Security

Each PARTY and VENDOR will employ reasonable industry standard security procedures and processes to protect the DATA of the other PARTY from unauthorized physical and electronic access.

7. Indemnification

Each PARTY accepts full responsibility and liability for any violations of this AGREEMENT by any of its employees, agents, or contractors, including its PSAP employees. MIL will also accept full responsibility and liability for any violations of this AGREEMENT by the Vendor, and any of its employees, agents, or contractors. The PARTIES agrees that the breach of the terms of this AGREEMENT could cause damage to the other PARTY and VENDOR. Each PARTY agrees to indemnify, defend and hold harmless the other and VENDOR for a breach of this AGREEMENT resulting from the conduct of that PARTY and its employees, agents, and contractors, including PSAP employees.

8. Penalties for Unauthorized Use of the DATA or Unauthorized Disclosure of DATA

In the event a PARTY or VENDOR fails to comply with any terms of this AGREEMENT, the other PARTY or VENDOR shall have the right to take such action as it deems appropriate, which may include the termination of COUNTY'S use of the ESInet services by MIL, if COUNTY is at fault. The exercise of remedies pursuant to this paragraph shall be in addition to all sanctions provided by law, and to legal remedies available to parties injured by unauthorized disclosure.

If the breach is capable of cure, the breaching PARTY must be giving notice and an opportunity cure the breach within 14 days of receipt of notice prior to exercising any other remedies available under this AGREEMENT.

9. Amendments and Alterations to this AGREEMENT

MIL and COUNTY may amend this AGREEMENT by mutual consent, in writing, at any time.

10. Other

The PARTIES agree that no failure or delay in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

Because of the unique and highly confidential nature of the DATA, the PARTIES acknowledge and agree that a PARTY (or VENDOR) may suffer irreparable harm if a PARTY (or Vendor) breaches any of obligations under this AGREEMENT and that monetary damages may be inadequate to compensate for such breach. Accordingly, in addition to any other rights and remedies that may be available to a PARTY (or VENDOR) at law and in equity, a PARTY (or VENDOR) shall be entitled to seek enforcement of the provisions of this AGREEMENT by seeking injunctive relief.

This AGREEMENT contains the entire agreement between the parties concerning the subject matter hereof, and no modification of this AGREEMENT or waiver of the terms and conditions hereof will be binding unless approved in writing by the parties.

VENDOR is a direct and intended third-party beneficiary of the terms of this AGREEMENT.

No PARTY shall assign, subcontract or delegate any of its obligations under this AGREEMENT, without the prior written consent of the other PARTY.

Washington law will govern this agreement. Jurisdiction and venue for any action under this agreement is in Thurston County, Washington.

11. Signatures

By signing this AGREEMENT, COUNTY and MIL agree to the AGREEMENT being effective as of the last signing date noted below.

COUNTY	**MIL**
Signature Date	Signature Date
Title:	Title: **State E911 Coordinator**

ATTACHMENT A

CONFIDENTIALITY STATEMENT

[SEE ATTACHED]

Confidentiality Statement

I understand that the Emergency Services IP Network (ESInet) is intended for use by KITTITAS County (COUNTY), its employees, agents and subcontractors, including Public Safety Answering Points (PSAP), to connect E911 customers to the COUNTY, to provide E911 services.

I understand that in the course of my employment I may receive or become aware of confidential DATA. "DATA" for the purposes of this agreement means "any written information, documents, or electronic data, relating to the ESInet that is marked "confidential" or "proprietary", including regarding the telecommunication interconnections between the VENDOR, the ESInet, MIL, the COUNTY or its PSAPs".

The DATA may include confidential or proprietary information belonging to the COUNTY, its PSAPs, MIL, and/or VENDOR or confidential security data that could result in a security risk to the ESInet. "VENDOR" for the purposes of this agreement Comtech/TCS. "MIL" for the purposes of this agreement means the Washington State Military Department, an agency of the state of Washington.

I understand that I am prohibited from any use of the DATA other than to facilitate telecommunication interconnections between the VENDOR, the ESInet, MIL, the COUNTY or its PSAPs related to the ESInet. Any other use of the DATA is prohibited.

I certify that I will not disclose any DATA unless specifically authorized by MIL, the COUNTY or as provided in this Confidentiality Statement.

Signature Date

Print Name