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***TECHNOLOGY
SERVICES CONTRACT***

BY AND BETWEEN

***WASHINGTON STATE MILITARY
DEPARTMENT***

AND

TELECOMMUNICATION SYSTEMS, INC.

June 24, 2016

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SCHEDULES, EXHIBITS AND ATTACHMENTS

SCHEDULES

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ATTACHMENTS

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EXHIBITS

Exhibit 1	Subcontractor Confidentiality and Non-Disclosure Contract
Exhibit 2	Third Party Confidentiality and Non-Disclosure Contract

TECHNOLOGY SERVICES CONTRACT

This Technology Services Contract (the "**Contract**") is entered into as of the 24th day of June, 2016 (the "**Effective Date**"), by and between Washington State Military Department, an agency of the state of Washington, with a principal place of business at 20 Aviation Drive, Camp Murray, WA 98430-5020 ("**MIL**"), and TeleCommunication Systems, Inc., a Maryland corporation, with a principal place of business at 275 West Street, Annapolis, Maryland 21401 ("**Vendor**").

RECITALS

WHEREAS, on January 12, 2016, MIL issued a request for proposal (the "**RFP**", as further defined herein) to implement, deploy, provide and support and maintain an i3-based Emergency Services Internet Protocol 9-1-1 network ("**ESInet**," as further defined herein).

WHEREAS, on February 12, 2016, Vendor submitted a proposal to MIL, as supplemented and modified in subsequent discussions between MIL and Vendor ("**ESInet RFP Response**"), and in connection therewith represented to MIL that it had the technology, expertise, resources, products, services and skills required to meet the requirements of MIL.

WHEREAS, Vendor acknowledges that during the negotiation period, including the implementation planning workshops, it had sufficient time and opportunity to conduct comprehensive due diligence on the ESInet, the NG 9-1-1 System and to obtain a full understanding of the MIL ESInet Requirements (all as defined herein).

WHEREAS, in reliance on the representations made by Vendor in the ESInet RFP Response and in subsequent discussions, presentations to MIL and the commitments and assurances made by Vendor herein, MIL selected Vendor over other bidders to provide the ESInet Services and other Services set forth herein.

WHEREAS, MIL and Vendor want to specify the terms and conditions under which Vendor and MIL will implement, deploy, provide and support and maintain the ESInet Services and provide other Services set forth and/or contemplated herein.

NOW, THEREFORE, in consideration of the representations, warranties, promises and covenants contained herein, and other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the parties agree to the foregoing and as follows:

ARTICLE 1

RELATIONSHIP MANAGEMENT

1.1 Relationship Management. The parties commit to proactive sponsorship of the relationship created under the Contract, and to further the interests of the relationship, agree to the following:

1.1.1 General. Each party shall allocate appropriate, quality personnel to fulfill the objectives of the relationship including with respect to Vendor, supplying sufficient

and quality personnel to fulfill the implementation, testing, cutover, provision of and support and maintenance for the ESInet Services and other obligations and commitments as set forth herein.

1.1.2 Executive Sponsors. Each party shall designate a senior executive-level individual (for MIL, the "*MIL Executive Sponsor*," and for Vendor, the "*Vendor Executive Sponsor*," and each an "*Executive Sponsor*") who will have overall responsibility for the relationship between the parties with respect to the relationship. The Vendor Executive Sponsor shall be the President of Safety and Security Technologies (or higher level corporate officer) of Vendor and have full authority to act on behalf of Vendor with respect to all matters related to the Contract. If MIL determines that individual appointed by Vendor is not fulfilling the goals of the relationship, MIL shall communicate that determination to Vendor, and Vendor shall replace such individual with an individual that both parties agree is suitable to fulfill the Vendor Executive Sponsor role. Vendor Executive Sponsor's support of the relationship, including participation in phone calls, meeting (on-site and off-site), problem resolution and the like, and any expenses incurred in connection therewith, shall not be separately chargeable to MIL.

1.1.3 Executive Briefings. The relationship with Vendor will involve a significant investment and substantial commitment from MIL in the form of monies, personnel, time and effort. During the pendency of the implementation project, the Executive Sponsors will meet monthly at a location designated by MIL. Thereafter, the Executive Sponsors, the Vendor Service Manager and other appropriate representatives from each party shall meet at least quarterly, or more frequently at the request of MIL, at a location designated by MIL, to discuss the overall relationship of the parties, the status of the ESInet Services, any problems or difficulties relating to the ESInet Services, compliance with the Service Level Agreements, and other topics relating to the relationship created under the Contract.

1.1.4 Vendor Services Manager. Vendor shall designate an individual to MIL (the "*Vendor Services Manager*") to serve as Vendor's regular point of contact to administer the Contract generally, oversee the delivery of ESInet Services to MIL, Vendor's compliance with the Service Level Agreements, and the overall performance of Vendor's obligations and responsibilities under the Contract. The Vendor Services Manager, may, but is not required to be dedicated full-time to MIL, however, to the extent that the Vendor Service Manager is working for other Vendor customers, such Vendor Service Manager shall interrupt any work being done for other Vendor customer to address MIL's needs or issues with the ESInet Service. Additionally, prior to any temporary absence or unavailability of the Vendor Services Manager (*e.g.*, for vacation, sickness, training, *etc.*), Vendor shall designate a backup Vendor Services Manager to MIL in writing, and such backup Vendor Services Manager shall have the same (or better) experience, expertise, qualifications and certifications as possessed by the Vendor Services Manager. The Vendor Services Manager shall be designated as a Key Personnel. The Vendor Services Manager shall be responsible for ensuring Vendor's contractual compliance with the Contract, and for proactively communicating and coordinating with Vendor's Executive Sponsor and other Vendor personnel, as needed, to ensure such Contract compliance. In furtherance thereof,

the Vendor Services Manager shall, among other things: (a) be fully knowledgeable about all the commitments made by Vendor in the Contract, especially where such commitments may differ from Vendor's general business practices and policies; and (b) advise Vendor personnel and Vendor's subcontractors on the commitments made by Vendor to ensure the Vendor personnel have a full and complete understanding of the level and scope of the commitments made under the Contract. If MIL perceives that the Vendor Services Manager is not effectively discharging his or her duties, at MIL's request, Vendor shall replace such individual. Vendor shall not separately charge MIL for any Services, meeting time, etc., provided by the Vendor Services Manager.

1.1.5 Vendor Information Security Officer; Compliance with Security Policies and Procedures; Security Certifications.

(a) Compliance with Security Policies and Procedures. Vendor shall comply with: (i) security requirements and obligations required by applicable Law; (ii) MIL Security Policies and Procedures that MIL determines apply to the ESInet Services; (iii) the then-current Federal Communication Commission ("**FCC**") Communications Security, Reliability and Interoperability Council ("**CSRIC**"), or its successor's, security standards, policies, guidelines and procedures that apply to the ESInet Services; (iv) the then-current National Emergency Number Association i3 ("**NENA**"), or its successor's, security standards, policies, guidelines and procedures; and (v) Vendor's security standards, policies, guidelines and procedures, including as set forth in Vendor's procedures manual, provided that the security standards, policies, guidelines and procedures set forth in **subsections (i) through (iv)** shall take precedence over any inconsistencies or conflicts with Vendor's security standards, policies, guidelines and procedures (**subsections (i) through (v)** are collectively referred to as the "**Security Policies and Procedures**"). Acknowledging that the Security Policies and Procedures are constantly evolving to improve the security of systems, Vendor shall comply with any change in the Security Policies and Procedures with respect to **subsections (i), (iii), (iv) and (v)**: (vi) within the applicable timeframe required by the applicable issuing body to comply, and if the applicable issuing body does not provide a timeframe for compliance, within a reasonable time; and (vii) without charge or expense to MIL, other than as set forth immediately below. If Vendor plans to comply with a change in the Security Policies and Procedures with respect to **subsections (i), (iii), (iv) and/or (v)** as stated herein, but MIL wants Vendor to comply with such change in a different manner or using different technology (and both methods would result in compliance with such changed Security Policies and Procedures) and MIL's requested manner of compliance would materially increase Vendor's costs to provide ESInet Services, the Vendor Executive Sponsor may raise the issue in the executive briefings and, if raised by the Vendor Executive Sponsor, MIL shall: (viii) negotiate a change order to increase applicable fees (in an amount not to exceed Vendor's actual costs to comply) in good faith; or (ix) waive the requirement that Vendor comply with such changed Security Policies and Procedures in the manner specified by MIL.

If, following the Effective Date, there are new MIL Security Policies and Procedures that apply to the provision of ESInet Services, MIL will notify Vendor of such policies in writing and Vendor shall comply with such policies within a reasonable time. If such new MIL Security Policies and Procedures materially increase Vendor's costs to provide ESInet Services, the Vendor Executive Sponsor may raise the issue in the executive briefings and, if raised by the Vendor Executive Sponsor, MIL shall: (x) negotiate an amendment to the Contract to increase applicable fees (in an amount not to exceed Vendor's actual costs to comply) in good faith; or (xi) waive Vendor's obligation to comply with such new MIL Security Policies and Procedures.

(b) Vendor Information Security Officer Responsibilities. Vendor shall designate a corporate officer ("**Information Security Officer**") who shall, at no cost or expense to MIL:

(i) Be responsible to ensure Vendor's initial and on-going compliance with the Security Policies and Procedures;

(ii) Every six (6) months (2x a year), and at any other time requested by MIL, provide a written certification to MIL confirming Vendor's compliance with the Security Policies and Procedures; and

(iii) Upon MIL's request, including following any certification related to Vendor's compliance with the Security Policies and Procedures, meet with MIL's security personnel to discuss Vendor's certification, the Security Policies and Procedures or other related matters.

The Vendor Information Security Officer's participation shall not be chargeable to MIL. The Vendor Information Security Officer shall be designated as a Key Personnel.

(c) Security Certifications and Audits. Vendor represents, warrants and covenants to MIL that: (i) without limiting the security, reliability and confidentiality terms in the Contract, Vendor shall ensure the security and reliability of the ESInet Services (including portions of ESInet Services provided by subcontractors) as set forth in the Statement of Work, including in Section 2.5 and shall promptly correct all deficiencies in the ESInet Services identified as a result such security, reliability and confidentiality measures; and (ii) if NENA, APCO or the FCC establishes a certification program for providers of ESInet Services, within six (6) months of the establishment of such program(s), Vendor and its subcontractors, as applicable, shall seek certification pursuant to and be certified by such program, and Vendor and its subcontractors, as applicable, shall maintain such certifications on an on-going basis for the Term. Vendor shall provide MIL (and for its subcontractors, shall cause to be provided to MIL) with a full and complete copy of such certifications upon request, including any reports or reviews accompanying such certification.

Additionally, Vendor shall make available to MIL full and complete copies of any security or vulnerability audits, assessments, reports and reviews, whether conducted internally by Vendor (or its subcontractors) or through a Third Party, within thirty (30) days of Vendor's receipt of such audits, assessments, reports and reviews, and, to the extent there are deficiencies cited and/or recommendations made, the Vendor Information Security Officer, Vendor Executive Sponsor and other appropriate personnel from Vendor shall meet with MIL to review the deficiencies and recommendations and develop a plan of action to address such items, which plan of action shall be subject to MIL's written approval. The implementation of any measures to address deficiencies and/or recommendations shall not be chargeable to MIL. To the extent information in such audits, assessments, reports and/or reviews, if publically disclosed, could compromise the security of the ESInet Services, the parties will work together to ensure that such information is protected from disclosure under applicable Law.

1.1.6 Communication with County 911 Authority. Except as set forth herein to the contrary, all communication between Vendor (or its subcontractor) and a County 911 Authority related to the ESInet Services, acceptance testing Services, cutover Services, transition Service or other Services shall be coordinated through MIL. Any on-site access to a PSAP location by Vendor (or its subcontractor) shall follow the process set forth in **Section 3.2.4.**

1.2 Conflicts in Interpretation. In resolving any inconsistencies relating to the Contract, the following order of precedence shall be followed:

- (a) First and most senior, applicable Laws;
- (b) Second, the terms contained in the main body of the Contract;
- (c) Third, the terms contained in **Schedule 3.1.1**;
- (d) Fourth, the terms contained in **Schedule 2.3.1**;
- (e) Fifth, the terms contained in any Schedule other than **Schedule 3.1.1** or **Schedule 2.3.1**, and any Exhibit to the Contract, provided that no order of precedence shall be given by and among such Schedules and Exhibits;
- (e) Sixth, the ESInet RFP Response; and
- (f) Seventh, the Vendor procedures manual.

All Schedules and Exhibits to the Contract, including the following, and the ESInet RFP Response, are incorporated herein by reference and made a part of the Contract:

Schedule 1.3	Definitions
Schedule 2.1	High-Level Schematic of NG 9-1-1 Network

Schedule 2.3.1	Statement of Work
Schedule 2.3.2	Project Plan
Schedule 3.1.1	Service Level Agreements
Attachment A	Form of Service Level Agreement Compliance Report
Schedule 3.4	Deliverables, Ownership, Change Orders and Personnel
Schedule 3.6	ESInet Services Reports
Schedule 3.7	Optional Services
Schedule 4.1.1	Fees
Schedule 4.2.1	Form of Vendor Invoice
Schedule 6.1.3	Termination for Convenience Amount
Schedule 11.3.1	Insurance Coverages
Schedule 11.4	Approved Subcontractors
Exhibit 1	Subcontractor Confidentiality and Non-Disclosure Contract
Exhibit 2	Third Party Confidentiality and Non-Disclosure Contract

1.3 Definitions and Construction. Capitalized terms used herein shall have the meanings ascribed to them in **Schedule 1.3**, or in any other Schedule, Exhibit or Attachment. The words "include", "including" and variations thereof, will not be deemed to be terms of limitation, but rather will be deemed to be followed by the words "without limitation." Any reference herein to a particular Article or Section number (*e.g.*, "**Article 8**" or "**Section 8.6**"), shall be deemed a reference to all Sections of the Contract that bear sub-numbers to the number of the referenced in the Article or Section (*e.g.*, a reference to **Article 8** includes **Section 8.1** through **8.7**, and a reference to **Section 8.6** includes reference to **Sections 8.6.1** through **8.6.3**). The terms "hereof," "hereunder," "herein" and words of similar import will refer to the Contract as a whole, including all Schedules, Exhibits and Attachments, and not to any particular provision of the Contract. Definitions in the Contract apply equally to the singular and plural forms of the defined terms. All references to "days" without any designation of "calendar" or "business" will be deemed to be references to calendar days and not business days. All references to "business days" shall mean Monday through Friday, excluding Holidays. When calculating the time period before which, within which or following which any act is to be done or step taken, the date that is referenced in calculating such period will be excluded (for example, if an action is to be taken within two (2) days of a triggering event and such event occurs on a Tuesday then the action must be taken by Thursday). If the last day of a business day period is a non-business day, the period in question will end on the next succeeding business day.

ARTICLE 2

IMPLEMENTATION; TESTING AND CUTOVER

2.1 Originating Networks, ESInet and PSAPs. **Schedule 2.1** sets forth a general, high-level schematic of the entire NG 9-1-1 system from the originating networks in which the 9-1-1 call is made (the "**Originating Networks**"), to the ESInet Services, to the PSAPs receiving the 9-1-1 call (collectively referred to as the "**NG 9-1-1 System**"). Vendor shall provide and is fully responsible for the ESInet Services and the interconnection between the ESInet Services and the Originating Networks and PSAPs and for monitoring those interconnections with the Originating Networks and PSAPs, all in accordance with the MIL ESInet Requirements.

2.2 Project Director. Vendor shall assign a full-time project director (the "**Vendor Project Director**") to oversee the implementation and completion of the Statement of Work, Project Plan, Acceptance Test Plan and Cutover Plan. The Vendor Project Director shall be dedicated to MIL during the pendency of the implementation project and for a period of one (1) month following the last PSAP Go-Live Date to ensure the ESInet Services are stable, are in full compliance with the MIL ESInet Requirements and meet all Service Level Agreements. The Vendor Project Director shall be certified and maintain certification under the PMI Project Management Professional (PMP) program and be designated as a Key Personnel.

2.3 Implementation; Testing and Certification. Vendor shall implement and test the ESInet Services as set forth in this Section.

2.3.1 Statement of Work; Acceptance Test Plan and Cutover Plan. Vendor shall implement and test the ESInet Services, Location Services and any other Services provided by Vendor as set forth in the statement of work attached as **Schedule 2.3.1 ("Statement of Work")** which shall include an acceptance test plan ("**Acceptance Test Plan**") and cutover plan ("**Cutover Plan**").

2.3.2 Project Plan. The project plan ("**Project Plan**") attached as **Schedule 2.3.2** shall include all tasks and activities to be performed by Vendor (including its subcontractors), MIL, the Originating Networks and PSAPs including applicable commencement and completion dates, Critical Milestones, Deliverables, other milestones, activities, tasks and subtasks (along with their dependencies) and progress meetings necessary to implement, test and cutover to the ESInet Services, Location Services and other Services provided by Vendor. Vendor represents and warrants to MIL that the Project Plan sets forth the tasks, timelines, responsibilities, dependencies, Critical Milestones, Deliverables, and other information that are necessary or advisable to fully implement, test and cutover to all features, functions and components comprising the ESInet Services and Location Services.

2.3.3 Test Results and Remediation. Promptly following the completion of any testing activity set forth in the Acceptance Test Plan (but no more than five (5) days following the completion of such testing), Vendor shall provide the complete test results for such testing activity (*i.e.*, not edited test results or partial test results) to MIL. To the extent such testing and/or test results indicate that there are Issues, Vendor shall prepare and deliver to MIL a detailed plan that is acceptable to MIL for correcting all such Issues. Vendor shall correct all such Issues as set forth in such plan and shall re-test to ensure that such Issues have been corrected. Vendor shall provide MIL with the test results of such re-test and the process herein shall repeat until there are no Issues, the test results demonstrate full compliance with the MIL ESInet Requirements and Service Level Agreements, and the test results are satisfactory to MIL.

2.3.4 Certification of Testing. Upon completion of all testing Services in accordance with the Acceptance Test Plan, the Vendor Executive Sponsor shall certify to MIL in writing that: (a) the complete and final test results for the ESInet Services have been pro-

vided to MIL; (b) the test results demonstrate full compliance with the MIL ESInet Requirements and Service Level Agreements; and (c) Vendor and the ESInet Services are compliant with the Security Policies and Procedures, as applicable. If, upon certification by Vendor, MIL does not agree that the certification is accurate, the matter shall be referred to the Executive Sponsors for resolution. If the certification is acceptable to MIL, MIL shall accept the certification in writing and the ESInet Services shall be "**Ready for Cutover**."

2.3.5 Statement of Work and Project Plan Assumption. The Statement of Work and Project Plan attached to the Contract as of the Effective Date assume that the incumbent provider of ESInet services for the State will permit its NGAPs to be used by Vendor as part of the ESInet Services provided by Vendor. If the incumbent provider does not allow its NGAPs to be used as part of the ESInet Services provided by Vendor, Vendor shall immediately notify MIL in writing and the parties will negotiate in good faith to amend the Statement of Work, Project Plan and other applicable parts of the Contract as necessary; provided, however, that the fees and charges under the Contract shall not be increased as a result.

2.4 Cutover Plan and Services.

2.4.1 Cutover Plan. When the ESInet Services have achieved Ready for Cutover status, the ESInet Services shall be cutover in a live environment at each PSAP in accordance with the Cutover Plan attached to the Statement of Work. Vendor represents and warrants to MIL that the Cutover Plan sets forth the tasks, timelines, responsibilities, dependencies, Critical Milestones, Deliverables, and other information that are necessary or advisable to cutover the ESInet Services in a live environment.

2.4.2 Certification of PSAP Cutover Readiness. As a condition to any cutover of a PSAP ("**PSAP Cutover**"), the Vendor Executive Sponsor shall certify to MIL in writing that: (a) all interfaces and other items connecting the ESInet Services to such PSAP have been tested and operate without Issue; (b) the ESInet Services are ready to be cutover at the applicable PSAP; (c) the ESInet Services meet the requirements set forth in **Section 2.3.3**; and (d) all pre-cutover activities required in the Cutover Plan for the PSAP and Vendor have been completed successfully. If, upon certification by Vendor, MIL does not agree that the certification is accurate, the matter shall be referred to the Executive Sponsors for resolution. If the certification is acceptable to MIL, MIL shall accept the certification in writing and the ESInet Services shall be "**Ready for Go-Live**".

2.4.3 Cutover. On a date authorized in writing by MIL, Vendor shall perform the cutover of the ESInet Services for such PSAP (for each PSAP, "**PSAP Go-Live**", and the date of such PSAP Go-Live, the "**PSAP Go-Live Date**").

2.5 Progress Meetings and Reports. Commencing on the Effective Date and continuing through the PSAP Cutover for all PSAPs, appropriate representatives of the parties shall meet weekly to discuss the status of the ESInet Services implementation, testing and cutover Services, including progress on the Statement of Work, Project Plan, Acceptance Test Plan and Cutover

Plan (including, as applicable, related to the PSAPs and the Originating Networks). Vendor shall keep minutes of such meetings in a form reasonably satisfactory to MIL and shall issue copies of the minutes to all meeting attendees as soon as reasonably possible, but in no event later than two (2) days following each meeting. At least one (1) business day before each meeting, Vendor shall create and distribute to all meeting participants a meeting agenda, and present to MIL a detailed progress report ("**Progress Report**") related to the implementation, testing and cutover Services, as applicable. The Progress Report shall be signed by the Vendor Project Director and include:

- (a) Progress on the Statement of Work, Project Plan, Acceptance Test Plan and/or Cutover Plan since the last Progress Report;
- (b) A summary, in such detail as MIL reasonably requests, of the accomplishments and difficulties encountered, and suggestions and proposed actions for dealing with and resolving, any identified difficulties and the anticipated results;
- (c) A comprehensive and consolidated log of all outstanding Issues and Risks identified by MIL and/or Vendor that remain to be resolved;
- (d) A comprehensive list of all tasks/activities accomplished and Deliverables completed since the last Progress Report; and
- (e) Any other items as set forth in the Statement of Work, Project Plan, Acceptance Test Plan and/or Cutover Plan and any other items as MIL may reasonably request of Vendor.

Vendor shall include in the Progress Reports any delays by, or Issues or Risks related to, MIL, Vendor, Originating Networks, County 911 Authorities, PSAPs and other Third Parties. Vendor shall include in the next Progress Report any delays, Issues or Risks reported by MIL. MIL shall have the right to assume that Vendor is not aware of any Issues or Risks or delays unless Vendor specifically identifies them in the Progress Report.

No Issue or Risk shall be deleted or removed from a Progress Report, until such Issue or Risk has been resolved to MIL's reasonable satisfaction and MIL agrees to remove the Issue or Risk from the Progress Report.

2.6 Critical Milestones.

2.6.1 General. A Critical Milestone will be achieved successfully when MIL verifies in writing that the activities, events and/or Deliverables that comprise such Critical Milestone have met all applicable acceptance criteria. If a failure to meet a Critical Milestone on or before the applicable date is caused by Vendor or a Vendor subcontractor, then: (a) at MIL's option, Vendor shall provide to MIL, at no additional cost, additional Vendor personnel required or necessary to complete the Critical Milestone as soon as practicable; and (b) MIL shall be entitled to receive credits of \$10,000/day for each day that Vendor fails to timely achieve each Critical Milestone ("**Delay Credits**") up to an aggregate maximum of \$500,000 for all Delay Credits in total, as liquidated damages and not as a penalty. MIL's acceptance of additional personnel or Delay Credits as provided in this Section shall

not be construed or implied to limit or constitute a waiver of any of MIL's rights as provided in **Article 6**. Vendor shall not be obligated to provide additional personnel at no additional cost or to provide Delay Credits to MIL to the extent Vendor's failure to achieve any Critical Milestone is caused by MIL, or a delay by an Originating Network, PSAP or other Third Party (other than a Vendor subcontractor), but only in the event such delay was timely disclosed to MIL in a Progress Report, or in writing if subsequent to the delivery of the last Progress Report, or a Force Majeure Event that was not capable of being mitigated. If a failure to achieve any Critical Milestone is caused by MIL, or a delay by an Originating Network, PSAP or other Third Party (other than a Vendor subcontractor) or a Force Majeure Event that was not capable of being mitigated, and Vendor fails to timely disclose such item on a Progress Report, or in writing if subsequent to the delivery of the last Progress Report, such failure shall constitute a Vendor-caused failure to meet a Critical Milestone.

2.6.2 Critical Milestones. The following are Critical Milestones:

Critical Milestone #1 – PSAP Go-Live has occurred for a total of seventeen (17) or more mutually-agreed PSAPs on or before 11/1/2017.

Critical Milestone #2 – PSAP Go-Live has occurred for a total of thirty-four (34) or more mutually-agreed PSAPs on or before 2/1/2018.

Critical Milestone #3 – PSAP Go-Live has occurred for a total of fifty-one (51) or more mutually-agreed PSAPs on or before 4/1/2018.

Critical Milestone #4 – PSAP Go-Live has occurred for all PSAPs on or before 7/1/2018.

If a Critical Milestone due date is reset following the written agreement of the parties, such reset due date shall not operate or be construed to automatically waive any Delay Credits unless MIL specifically agrees in writing in connection with such reset due date that MIL waives the applicable Delay Credits.

2.6.3 Earn-Back Rights. Vendor shall earn back the Delay Credits associated with failing to meet Critical Milestones #1, 2 and/or 3 if Critical Milestone #4 is met on its applicable due date. Vendor shall not have the right to earn back the Delay Credits associated with failing to meet Critical Milestone #4.

2.6.4 Offset. To the extent that a court of competent jurisdiction renders a judgment against Vendor for a failure to meet a Critical Milestone, MIL agrees to offset any Delay Credits provided by Vendor for a failure to meet the same Critical Milestone from any damages awarded to MIL by such court.

2.7 Comprehensiveness of Statement of Work, Project Plan, Acceptance Test Plan and Cutover Plan and Sufficiency of Due Diligence. Vendor represents and warrants to MIL that: (a) Vendor identified in the Statement of Work, Project Plan, Acceptance Test Plan and Cutover Plan all the equipment, software, services and other items required to: (i) test, implement, cutover to and provide the ESInet Services; and (ii) achieve the MIL ESInet Requirements, and the Service Level Agreements; (b) all such equipment, software, services and other items are included in the Statement of Work, Project Plan, Acceptance Test Plan and Cutover Plan; and (c)

there are no other products, services and/or equipment that are required to meet the MIL ESInet Requirements or Service Level Agreements. Vendor further represents and warrants to MIL that the Acceptance Test Plan sets forth the information that is necessary or advisable to fully test all features, functions and components comprising the ESInet Services and Location Services. Vendor further represents and warrants to MIL that it has properly sized the amount of personnel and other resources required to complete its obligations under this Contract, including the ESInet Services, Statement of Work, Project Plan, Acceptance Test Plan and Cutover Plan for the fees stated in **Schedule 4.1.1**; the ESInet Services to be provided by Vendor are the only services required to meet the MIL ESInet Requirements; and there are no other services (*i.e.*, optional or needed additional services) that are omitted from the Contract but necessary to meet such requirements.

ARTICLE 3

ESINET SERVICES

3.1 ESInet Services.

3.1.1 Delivery of ESInet Services. Vendor shall provide ESInet Services to facilitate making 9-1-1 calls (including through wireline, wireless or VOIP) throughout the State including all calls routed to the WHITCOM 911 PSAP. Vendor shall deliver and provide ESInet Services in accordance with the MIL ESInet Requirements and in accordance with the Service Level Agreements set forth in **Schedule 3.1.1**. If Vendor fails to perform or provide the ESInet Services in accordance with the Service Level Agreements, Vendor shall provide the Service Level Credits to MIL as set forth in **Schedule 3.1.1**.

3.1.2 Location Services. The ESInet Services shall include the geographic information system and related Services described in the MIL ESInet Requirements (collectively, the "*Location Services*").

3.1.3 Conflicts in Content of Location Data. To the extent that there is any conflict related to the content of Location Data of between and among the sources of such Location Data (*e.g.*, Vendor believes that a data subject's location is 123 Main Street and the County 911 Authority believes that the data subject's location is 456 Main Street), Vendor shall notify MIL of the conflict in writing and MIL shall, in its sole discretion, resolve such conflict and confirm the Location Data that shall be used by Vendor and the County 911 Authority.

3.2 Facilities.

3.2.1 Identification Credentials. Each party shall have the right to require the other party's employees, agents, representatives and subcontractors to exhibit identification credentials issued by such party in order to access the other party's facilities.

3.2.2 Facility Rules. All Vendor employees, agents, representatives and subcontractors shall, while on MIL's and PSAP premises comply with all MIL Policies, County 911 Authority and PSAP policies, as applicable, copies of which shall be made available to Vendor by MIL or the County 911 Authority/PSAP, as applicable, upon request. Vendor

shall ensure that any of its personnel performing work on MIL's and PSAP's premises do so with MIL's and the County 911 Authority/PSAP's, as applicable, advance permission. Requests for permission of the PSAP will be coordinated with, and communicated to Vendor by, MIL. Vendor shall not stop, delay or interfere with MIL's or a PSAP's day-to-day operations without the prior written consent of an authorized MIL or County 911 Authority/PSAP representative(s), as applicable.

3.2.3 Damage to Buildings, Grounds or Other Furnishings. Vendor shall be responsible for any damage or injury to the buildings, grounds, physical property or other furnishings of MIL or a PSAP by Vendor's (and its subcontractors') employees, representatives and/or agents. Vendor shall immediately report the occurrence of any such damages or injuries to MIL and the PSAP building/facilities manager.

3.2.4 Process for Accessing PSAP Locations. Vendor shall arrange all non-emergency, on-site visits to PSAPs through MIL and the applicable County 911 Authority/PSAP. With respect to any Vendor (or subcontractor) personnel requiring on-site access to a PSAP, Vendor shall submit such personnel names (and other requested information) to MIL at least thirty (30) days in advance of such access. MIL will provide the submitted personnel names (and other requested information) to the applicable PSAP. The applicable PSAP (or a subcontractor) may conduct a background or other check on such personnel. The PSAP will communicate to MIL whether such personnel are acceptable to access the PSAP location, if such personnel may access the PSAP location on the requested date and if there are any restrictions or conditions on such access permission. MIL will notify the Vendor of the PSAP's decisions. All visits to PSAP locations shall be during the time designated by the applicable PSAP. In the event of an emergency, Vendor may communicate directly with the PSAP regarding access to the PSAP location. At all times, the Vendor shall comply with the requirements of MIL and the applicable PSAP with respect on-site access to a PSAP.

3.3 Covenant of Cooperation. Vendor shall reasonably cooperate with MIL, County 911 Authority/PSAPs and any Third Party designated by MIL, and Originating Network providers, and their agents and subcontractors, and shall disclose such information to MIL, County 911 Authority/PSAPs and any Third Parties designated by them relating to the Services as may be reasonably necessary to facilitate MIL's receipt of the Services. Vendor shall be required to cooperate with any Third Party designated by MIL, which may include disclosing Vendor Confidential Information, subject to the terms of **Article 8**.

3.4 Deliverables; Ownership; Change Orders; Personnel. Unless otherwise stated herein, the terms related to Deliverables, ownership of Deliverables, change orders and personnel as set forth in **Schedule 3.4** shall apply to the provision of Deliverables and Services under this Contract.

3.5 Disclaimer of Tariffs. Notwithstanding anything to the contrary set forth in this Contract or in any tariff filed, submitted or provided to MIL, the WUTC or any other Agency prior to or following the Effective Date in connection with or applicable to the Services provided by Vendor or an approved subcontractor, neither MIL nor the State are bound by any such tariff, or

any term, condition, restriction or limitation in such tariff, and Vendor disclaims the right to assert otherwise.

3.6 ESInet Reports. As part of the ESInet Services, Vendor shall provide MIL with the reports, including the types of information and frequency, as set forth in **Schedule 3.6**. If, following the Effective Date, MIL wants Vendor to provide additional reports, the change order procedures set forth in **Schedule 3.4** shall be used.

3.7 Optional Services. MIL has the option to expand the ESInet Services or other Services provided by Vendor to include the Services set forth on **Schedule 3.7** for the applicable fees set forth on **Schedule 3.7**. As part of exercising the option(s) below, Vendor will develop (for MIL's review and acceptance) a Statement of Work (including an Acceptance Test Plan and Cut-over Plan, as applicable) and Project Plan to implement such Services, all of which shall contain the level of detail, form and format similar to those documents attached to the Contract as of the Effective Date.

3.8 No Exclusivity. The Contract is nonexclusive and does not grant Vendor an exclusive right to provide MIL with any services, deliverables or products. Similarly, Vendor may provide the same or similar services, deliverables or products to other customers, provided, that Vendor does not breach any of its representations, warranties or covenants in the Contract, including related to Confidential Information, in providing services, deliverables or products to other customers.

ARTICLE 4

SERVICES FEES AND PAYMENT TERMS

4.1 Services Fees.

4.1.1 General. Fees and charges for the ESInet Services and other Services are set forth in **Schedule 4.1.1**. Unless expressly set forth in **Schedule 4.1.1** or otherwise agreed in writing, there are no other charges, fees, expenses or other amounts payable to Vendor for the any Services or otherwise related to this Contract, including any document retention, collection or production.

4.1.2 Renewal Terms. In consideration of any exercise of a Renewal Term by MIL, the fees during any Renewal Term shall be the fees set forth in **Schedule 4.1.1** less five percent (5%). To the extent that: (a) MIL purchases new Services from Vendor during a Renewal Term, the fees for such new Services shall be mutually agreed in writing; and (b) MIL reduces the Services purchased from Vendor during a Renewal Term, the fees will be reduced by the amount mutually agreed in writing.

4.1.3 No Payment for Location Data. Vendor will not charge MIL, the State, any county, other governmental, inter-governmental or quasi-governmental entity in the State for access to, the use of, or copies of, the Location Data.

4.2 Payment of Invoices.

4.2.1 General. Vendor shall issue all invoices based on the fees set forth in **Schedule 4.1.1**, and all such invoices shall be directed to MIL or its designee for payment. The initial form of invoice to be used by Vendor and submitted to MIL is set forth in **Schedule 4.2.1**. In order for MIL to process invoices from Vendor for payment, each invoice from Vendor must include the items listed below, as applicable to the services being invoiced. Failure to provide each of the items below, as applicable, on the invoice shall be grounds for rejecting the invoice and requiring Vendor to resubmit with such information. Receipt of the invoice by MIL shall be deemed to occur only when all of the applicable information below is set forth on the invoice. Vendor invoices shall include the following items, as applicable: The SECO Technology Contract number; Vendor's name, address, phone number and Federal Tax Identification Number; a reasonably detailed description of the Services performed; Vendor's charges for the Services; and applicable taxes. By submitting an invoice, Vendor certifies that the amount billed is accurate with respect to the fees and charges set forth therein and that such fees, charges and expenses are allowed pursuant to the Contract. All invoices shall be issued in U.S. Dollars, and payment shall be made by MIL in U.S. Dollars.

4.2.2 MIL Billing Practices and Payment Structures. Vendor shall comply with MIL's standard billing practices, including providing supporting documentation as may be reasonably required to substantiate invoice amounts and the other requirements of this Section, including detailing the fees and charges for each PSAP. MIL shall not be required to make any payments to Vendor in advance for any Services. Modifications to payment terms shall require an amendment to the Contract or a duly authorized change order, as determined by MIL.

4.2.3 Timeliness and Accuracy of Invoices. Vendor acknowledges that timeliness and accuracy of invoicing is a critical MIL business requirement, as Vendor's failure to do so may adversely impact MIL's ability to encumber funds within the proper fiscal year. Accordingly, and without limiting the generality of the terms set forth in **Sections 4.2.1** or **4.2.2**, Vendor shall issue each invoice hereunder promptly, but not more than sixty (60) days after the date on which Vendor was authorized by the terms of the Contract to issue such invoice to MIL (for each such invoice, the "**Invoicing Deadline**") and such invoice shall be accurate and correct. MIL shall notify Vendor of any inaccurate invoice, and Vendor shall re-submit an accurate invoice. MIL is not obligated to pay or partially pay any inaccurate invoices.

4.2.4 Payment and Disputes. Within sixty (60) days following its receipt of the applicable invoice, MIL shall pay the invoice, provided that: (a) it was accurately and timely issued as provided in **Sections 4.2.1** through **4.2.3**; and (b) such invoice is not disputed by MIL in accordance with the further terms of this Section. Vendor shall accept electronic funds transfers as the form of payment. If an invoiced amount is disputed in good faith by MIL, then MIL promptly shall notify Vendor of the dispute and, until resolution of the dispute by the Executive Sponsors, or failing resolution by the Executive Sponsors, then resolution pursuant to **Article 10**, MIL shall have the right to withhold and suspend disputed payments. All of Vendor's obligations under the Contract, including the

provision of uninterrupted ESInet Services, shall continue unabated during the duration of the dispute resolution. If MIL claims that it has been inappropriately billed but it has already paid the disputed amount, the parties shall work to resolve the matter within ninety (90) days from the date of MIL's written notice of such overpayment, and each party shall provide the other with all relevant documentation in an effort to resolve the matter as quickly as possible. If Vendor determines that MIL was billed improperly, it promptly shall issue to MIL a credit memo so that MIL can deduct the overpayment on the next invoice billed.

4.3 Travel and Out-of-Pocket Expenses. The fees chargeable to MIL include all travel and out-of-pocket expenses, and therefore MIL will not reimburse Vendor for any staffing accommodation, living, travel, out-of-pocket or other expenses related to this Contract or the Services.

4.4 Set-Off Rights. Vendor shall comply with MIL's billing practices relating to the issuance of credit notes and/or memoranda relating to amounts due to MIL under the Contract, including any Delay Credits, Service Level Credits or unresolved disputed amounts as described in **Section 4.2.4**. If Vendor fails to issue to MIL a credit note or memorandum on its next invoice to MIL for any undisputed Delay Credits or Service Level Credits, then MIL shall have the right to set off such amounts against any amounts then due or that become due to Vendor under the Contract. If MIL cannot effectuate a complete set-off of such undisputed amounts due to insufficient amounts owed by MIL to Vendor, Vendor promptly shall refund unrealized set off amounts to MIL no later than sixty (60) days following its receipt of written notice from MIL requiring it to do so.

4.5 Taxes. MIL shall pay all sales and use taxes required under applicable Law. Vendor must pay all other taxes, including the Washington Business and Occupation Tax, other taxes based on Vendor's income or gross receipts, and personal property taxes levied or assessed on Vendor's personal property. Vendor shall include on each invoice a separate line item specifying the tax for the Service. Vendor shall work with MIL to ensure that MIL is properly determining the amount of taxes under applicable Law associated with the Services. MIL shall not be charged for any taxes levied or assessed on the income of Vendor's employees such as IRS compensatory taxes. Vendor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under the Contract. All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance, compensatory or other expenses for Vendor or Vendor's personnel shall be Vendor's sole responsibility. MIL reserves the right to require evidence of payment of such taxes.

ARTICLE 5

REPRESENTATIONS, WARRANTIES AND COVENANTS

5.1 Functionality and Performance Warranties.

5.1.1 ESInet Services Functionality. Vendor represents and warrants to MIL that the ESInet Services shall operate in accordance with the MIL ESInet Requirements.

5.1.2 ESInet Services Performance. Vendor represents and warrants to MIL that the ESInet Services shall meet or exceed the Service Level Agreements set forth in the **Schedule 3.1.1**.

5.1.3 ESInet Design Limitations. Vendor represents and warrants to MIL that there are no design limitations relating to the ESInet Services, including number of PSAPs, number of 9-1-1 calls, modality of 9-1-1 calls (*e.g.*, wireless, wireline, VOIP, *etc.*) that would or may limit the use of the ESInet Services or its connections to or interoperability with the Originating Networks or PSAPs.

5.1.4 Disabling Codes. Vendor represents and warrants that the ESInet Services, other Services and any Deliverable provided by Vendor do not contain, and MIL shall not receive from any Vendor transmission (including any Vendor web-site or bulletin board), any virus, worm, trap door, back door, timer, clock, counter or other limiting routine, instruction or design that would erase data or programming or otherwise cause the ESInet Services, the NG 9-1-1 System or any component thereof to become inoperable or incapable of being used in the full manner for which it was designed and created (a "**Disabling Code**"). If Vendor introduces a Disabling Code, at its sole cost and expense, Vendor shall, as applicable: (a) take all steps necessary to test for the presence of Disabling Codes; (b) correct the ESInet Service, Deliverable or other Service so that it is provided without the presence of Disabling Codes; and (c) restore any and all data and programming lost by MIL as a result of such Disabling Code.

5.2 Services Warranty. Vendor represents and warrants to MIL that it shall perform all Services in accordance with industry practices and standards generally applicable to such Services; provided, however, that where the Contract specifies a particular standard or criteria for performance, this warranty does not diminish that standard or criteria for performance.

5.3 Third Party. Vendor represents and warrants to MIL that it has tested or shall have tested at the time of installation all Third Party components of the ESInet Services and determined that such Third Party components meets the representations and warranties set forth in the Contract.

5.4 Intellectual Property Warranty. Vendor represents and warrants to MIL that, as of the Effective Date, the ESInet Services and other Services, and MIL's use of the ESInet Services and other Services in accordance with the terms of the Contract do not infringe upon any patent, trademark, copyright, trade secret or other intellectual property or proprietary right of any Third Party. Vendor further represents and warrants to MIL that, as of the Effective Date, there are no actual or threatened suits against Vendor by any Third Party based on an alleged violation of any right specified in the preceding sentence. This representation and warranty shall survive the expiration or termination of the Contract.

5.5 Warranty of Authority. Each party represents and warrants to the other that it has the right to enter into the Contract and, in the case of Vendor, as of the Effective Date, there are not any outstanding assignments, grants, licenses, encumbrances, obligations or agreements that

relate to the ESInet Services and other Services (whether written, oral or implied) that are inconsistent with the Contract and the rights granted or transferred herein. This representation and warranty shall survive the expiration or termination of the Contract.

5.6 Warranty of Title. Vendor represents and warrants to MIL that it has the full authority to provide the ESInet Services and other Services to MIL. This representation and warranty shall survive the expiration or termination of the Contract.

5.7 Pending Litigation Warranty. Vendor represents and warrants to MIL that, as of the Effective Date, there is no action, suit, claim, investigation or proceeding pending, or the basis for any action, suit, investigation or proceeding, and to the best of Vendor's knowledge, there is no action, suit, claim, investigation or proceeding, or the basis for any action, suit, investigation or proceeding, threatened against, by or affecting Vendor, its affiliates or the ESInet Services in any court, or by or before any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, or before any arbitrator of any kind that, if adversely determined, might affect Vendor's ability to enter into the Contract and perform all of its obligations herein.

5.8 Offshoring. Vendor represents, warrants and covenants to MIL that Vendor shall not: (a) perform any of its obligations under the Contract from locations, or using employees, contractors and/or agents, situated outside the United States; or (b) directly or indirectly (including through the use of subcontractors) transmit any MIL Data or Location Data outside the United States; or (c) allow any MIL Data or Location Data to be accessed by Vendor employees, contractors and/or agents from locations outside the United States.

5.9 Data Collection. Vendor represents and warrants to MIL that it shall not collect, use, compile, aggregate, data mine, store, display and/or transmit MIL Data or Location Data (including in a summary, extracted, redacted or de-identified form) other than as necessary to fulfill its obligations under the Contract.

5.10 Conflicts of Interest. Vendor represents and warrants to MIL that neither Vendor, any of its affiliates or authorized subcontractors, nor any employee of either, has, shall have, or shall:

(a) Acquire, any contractual, financial, business or other interest, direct or indirect, that would conflict in any manner or degree with Vendor's performance of its duties and responsibilities to MIL under the Contract or otherwise create an appearance of impropriety with respect to the Contract.

(b) Use the authority provided or to be provided under the Contract to improperly obtain financial gain for Vendor, any of its affiliates, any of their employees, or any member of the immediate family of any such employee.

(c) Use any MIL Data or Location Data acquired in connection with the Contract to obtain financial gain for Vendor, any of its affiliates, any of their employees, or any member of the immediate family of any such employee.

(d) Accept anything of value based on an understanding that the actions of Vendor, any such affiliates or any such employees on behalf of MIL would be influenced thereby; and neither Vendor nor any of its affiliates shall attempt to influence any MIL employee by the direct or indirect offer of anything of value.

(e) Pay or agree to pay any person, other than *bona fide* employees working solely for Vendor or such affiliates or any of Vendor's subcontractors, any fee, commission, percentage, brokerage fee, contingent fee, gift or any other consideration, that is contingent upon or resulting from the award or execution of the Contract. If Vendor fails to comply with this Section, MIL shall have the right to either cancel the Contract without liability to MIL or, in MIL's discretion, deduct from payments due to Vendor, or otherwise recover from Vendor, the full amount of such commission, percentage, brokerage fee, contingent fee, gift or other consideration.

5.11 Compliance with Federal and State Programs. With respect to Vendor and Vendor's employees providing Services to MIL:

(a) Vendor represents and warrants that neither Vendor nor any of its employees is currently ineligible to participate in federal or state procurement or non-procurement programs because of being excluded, debarred, suspended or otherwise declared ineligible to participate.

(b) Vendor shall immediately disclose to MIL if it or any of its employees is debarred, suspended, excluded or otherwise declared ineligible to participate in federal or state procurement or non-procurement programs.

(c) Vendor shall immediately disclose to MIL if Vendor or any of its employees is proposed for exclusion, debarment or suspension from participation in any federal or state procurement or non-procurement program.

(d) MIL has the right to immediately terminate the Contract for cause and without further liability to MIL if Vendor becomes ineligible to participate in federal or state procurement or non-procurement programs because of being excluded, debarred, suspended or otherwise declared ineligible to participate.

(e) If any of the occurrences described above, Vendor shall provide written notice immediately to MIL in accordance with **Section 11.1**.

5.12 Open System Warranty. Vendor represents and warrants to MIL that the use of the ESInet Services (including in accordance with the Service Level Agreements) and connection of the ESInet Services to Originating Networks and PSAPs are not subject to using the equipment or hardware of Vendor (or subcontractors).

5.13 Material Misstatements or Omissions. No representation or warranty by a party that is contained in the Contract or any Schedule, Exhibit or Attachment contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements and facts contained herein or therein not materially misleading.

5.14 Disclaimer of Warranties. THE WARRANTIES SET FORTH IN THE CONTRACT, SCHEDULE, EXHIBIT OR ATTACHMENT CONSTITUTE THE ONLY WARRANTIES OF THE PARTIES AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE 6 TERM AND TERMINATION

6.1 Term.

6.1.1 Term of Contract. The initial term of the Contract shall commence on the Effective Date and continue until the date five (5) years following the final PSAP Go-Live Date ("**Initial Term**"). Following the Initial Term, MIL shall have the option to renew the Contract for periods of two (2) years (each, a "**Renewal Term**") for a total of five (5) separate Renewal Terms by providing written notice to Vendor (the Initial Term, all Renewal Terms and any Transition Period are collectively referred to as the "**Term**").

6.1.2 Termination – General. The Contract shall remain in effect until: (a) the Term expires as set forth in **Section 6.1.1**; (b) the parties mutually agree in writing to terminate the Contract; (c) MIL terminates the Contract pursuant to **Section 5.11(d), 6.1.3, 6.1.4, 7.5 or 11.15(c)**; (d) Vendor terminates the Contract pursuant to **Section 6.1.4 or 7.4**; or (e) a party elects to terminate the Contract following the occurrence for an Event of Default or under the circumstances described in **Section 11.5**.

6.1.3 Termination for Convenience. MIL shall have the right to terminate the Contract in whole or terminate the provision of ESInet Services to one (1) or more PSAPs, without cause and for its convenience and without further liability (except as provided in this Section) upon thirty (30) days prior written notice to Vendor. Following any such termination, MIL will only be responsible for the applicable amount set forth in **Schedule 6.1.3**, which represents Vendor's un-recouped (un-amortized) costs to provide the Services. Vendor acknowledges and agrees that MIL is prohibited by Law for paying for any Services in advance or paying for any Service not rendered by Vendor and Vendor will not charge MIL any fees for Services in advance or not rendered, including Services terminated under this Section. MIL agrees that Vendor is entering into multi-year contracts with Third Parties for circuits and that fees in **Schedule 6.1.3** include Vendor costs to pay such Third Party circuit fees prior to the expiration of such multi-year contracts which do not constitute payments in advance or payments for Services not rendered. Upon Vendor's receipt of written notice of termination pursuant to this Section, to the extent not previously delivered, Vendor shall deliver to MIL all Deliverables developed by Vendor and the Location Data.

6.1.4 Termination Due to Funding.

(a) Insufficient Funding. If MIL does not receive sufficient funding from the State or other sources after the Effective Date of the Contract, the parties will negotiate in good faith for a period of up to ninety (90) days (or longer by mutual agreement) to attempt to restructure the provision of ESInet Services within MIL's available funding options. If, at the end of such agreed ninety (90) day period, the parties have reached mutually acceptable terms, such terms will be memorialized in a written amendment to the Contract. If the parties have not reached mutually agreeable terms, MIL may terminate the Contract without further liability or penalty and Vendor may terminate the Contract without further liability or penalty (but subject to MIL's right to receive transition Services as set forth in **Section 6.6**).

(b) No State Budget. If, during the Term, the State has not passed a budget resulting in MIL's inability (or lack of authorization) to pay Vendor any fees or charges under the Contract: (i) MIL shall have the right, upon written notice to Vendor and in MIL's sole discretion, to terminate the Contract in its entirety or suspend MIL's obligation to pay fees and expenses under the Contract, without liability or penalty for such termination or suspension (except as otherwise set forth in this **subsection (b)**); and (ii) Vendor shall have the right to terminate the Contract in its entirety upon written notice to MIL, subject to MIL's right to receive transition Services as set forth in **Section 6.6**. If MIL suspends its obligation to pay Vendor any fees or charges under the Contract and Vendor does not terminate the Contract under **subsection (ii)**, when the State passes a budget resulting in MIL's ability (or authorization) to pay Vendor fees and charges under the Contract, MIL shall pay Vendor for Services rendered during the period in which MIL suspended its obligation to pay Vendor plus interest as permitted by applicable Law for such suspended payments. For clarity, for purposes of calculating interest permitted by applicable Law on any payments suspended pursuant to this Section, suspended payments shall be deemed to be overdue and not timely made from the date such payments originally would have been due (pursuant to **Section 4.2.4**) if MIL had not suspended its obligation to pay Vendor under **subsection (i)**.

6.1.5 Survival. Any terms of the Contract that would, by their nature or through the express terms of the Contract, survive the expiration or termination of the Contract shall so survive, including the terms of **Sections 3.2.3, 4.1.1, 4.2, 4.3, 4.4, 4.5, 6.1.2, 6.1.5, 6.3, 6.4, 6.6, Articles 7 through 11 and Section 1.2 of Schedule 3.4**.

6.2 Events of Default. The following events shall constitute "**Events of Default**," and the occurrence of any one (1) or more of such Events of Default shall constitute a material breach of the Contract that shall afford the non-breaching party the rights and remedies set forth in this Article:

(a) The failure to achieve any Critical Milestone by the applicable Critical Milestone due date, which failure was caused by Vendor (or a Vendor subcontractor or other party under Vendor's control) shall constitute a Vendor Event of Default unless such failure: (i) was caused by MIL, a MIL Third Party, an Originating Network or PSAP delay

or a Force Majeure Event that was not capable of being mitigated; or (ii) is cured by Vendor within thirty (30) days after its receipt of written notice of such breach;

(b) A Chronic Service Level Agreement Failure as described in **Schedule 3.1.1**;

(c) A party's material breach of any other representation, warranty, obligation or covenant set forth in the Contract, which material breach shall constitute an Event of Default by the non-performing party, unless such material breach is: (i) cured within the applicable time frames, if any, set forth in the Contract (including timeframes set forth in the Service Level Agreements); or (ii) if no time frame for curing such breach is specified, then cured promptly (but in no event longer than thirty (30) days following the non-performing party's receipt of written notice of such failure; provided, however, that if the breach reasonably cannot be cured within such thirty (30) day period, the non-performing party shall provide the other party with a written plan to cure such failure that is acceptable to such other party in its reasonable discretion within an additional ten (10) day period (*i.e.*, forty (40) days from the original notice of material breach);

(d) Vendor's failure to maintain insurance coverage as specified in **Section 11.3**, provided that such failure is not cured by Vendor within thirty (30) days following receipt of written notice of such failure, which failure shall constitute a Vendor Event of Default;

(e) Vendor's failure to obtain MIL's consent prior to any assignment of the Contract by Vendor as required under **Section 11.11**, which failure shall constitute a Vendor Event of Default;

(f) A party's breach of its confidentiality obligations set forth in **Section 8.2**, which shall constitute an Event of Default by the breaching party; or

(g) The institution of bankruptcy, receivership, insolvency, reorganization or other similar proceedings by or against Vendor under any law if such proceedings have not been dismissed or discharged within twenty (20) days after they are instituted; the insolvency or making of an assignment for the benefit of creditors or the admittance by Vendor of any involuntary debts as they mature; the institution of any reorganization arrangement or other readjustment of debt plan of Vendor; any corporate action taken by the Board of Directors of Vendor in furtherance of any of the above actions; or if Vendor makes an assignment of all or substantially all of its assets for the benefit of creditors, or Vendor's Board of Directors takes any corporate action by in furtherance of the above action, each of which shall constitute a Vendor Event of Default.

6.3 Rights and Remedies of Vendor Upon Default of MIL. Upon the occurrence of a MIL Event of Default, Vendor shall be entitled to all of the remedies described below in this Section. In addition, if one (1) or more events as described in **Section 6.2** occur that would give rise to a MIL Event of Default but MIL has effected a cure within the applicable time frames set forth in **Section 6.2**, if any, or thereafter, then Vendor nonetheless shall be entitled to recover damages from MIL, subject to the terms of **Article 7**.

- (a) Subject to MIL's rights as set forth below, fully or partially terminate the Contract; and/or
- (b) Recover damages from MIL.

6.4 Rights and Remedies of MIL Upon Default of Vendor. Upon the occurrence of a Vendor Event of Default, MIL shall be entitled to all of the remedies described below in this Section. In addition, if one (1) or more events as described in **Section 6.2** occur that would give rise to a Vendor Event of Default but Vendor has effected a cure within the applicable time frames set forth in **Section 6.2**, if any, or thereafter, then MIL nonetheless shall be entitled to recover damages from Vendor, subject to the terms of **Article 7**.

- (a) Fully or partially terminate the Contract; and/or
- (b) Recover damages from Vendor; and/or
- (c) Obtain from Vendor transition Services in accordance with **Section 6.6**.

6.5 No Interruption of Services. Notwithstanding anything that may be contained in the Contract to the contrary, and regardless of whether or not the parties have availed themselves of the dispute resolution procedures described in **Article 10**, in no event shall Vendor suspend, terminate, interrupt or restrict provision or receipt of the ESInet Services (including any transition Services), disable any hardware or software used to provide ESInet Services, or perform, or omit to perform, any other action that has the effect of interfering in any way with the provision of ESInet Services or MIL's and/or the public's ability to use the NG 9-1-1 System, unless: (a) express judicial authority to do so is conferred by a court of competent jurisdiction; or (b) the Term has ended and a Transition Period satisfactory to MIL has been completed.

6.6 Transition Services. Upon an expiration or a complete or partial termination of the Contract for any reason, MIL shall have the right, at MIL's option, for up to eighteen (18) months (the "**Transition Period**"), to all or any combination of the following:

- (a) Continue to receive from Vendor all ESInet Services; and
- (b) If MIL will be transitioning to a successor provider, receive from Vendor all Services, information and data reasonably necessary to effectuate an orderly and seamless transition to such successor provider and to ensure that there is no interruption of 9-1-1 service in the State or any other location where ESInet Services are being provided, including:
 - (i) Providing assistance to MIL in transferring ESInet Service-related data files (including MIL Data and Location Data) to an industry-standard format designated by MIL;

- (ii) Meeting with the successor provider, either in person or by telephone, as requested by MIL, including to discuss transitioning the ESInet Services, cutover planning, data transfers, and the like;
- (iii) Providing all data formats, data definition file layouts and schematics, functional and technical specifications, including requirements specification, platform specification, functions specification, interface control document, data dictionary, test plan, and user manuals and interface source codes for the ESInet Services as may be necessary in MIL's reasonable determination to transfer the ESInet services to the successor provider;
- (iv) Providing all knowledge transfer as needed for MIL and the replacement provider to have a working knowledge of the ESInet Services (including the Location Database) as may be necessary in MIL's reasonable determination to transfer the ESInet services to the successor provider; and
- (v) Providing to MIL such other materials and information as may be needed or required by MIL to effectuate the transition to a successor provider.

The ESInet Services, other Services, information and data provided by Vendor during the Transition Period shall be provided at the applicable rates set forth in the Contract, provided, however, that if the Contract is completely or partially terminated due to the occurrence of a Vendor Event of Default, Vendor shall provide such transition Services under **subsection 6.6(b)** at no cost to MIL for a nine (9) consecutive month period of MIL's choosing during the Transition Period. MIL shall provide Vendor advance written notice of the commencement of such nine (9) consecutive month period.

6.7 Decommissioning. Subject to the terms of this Contract, at such time as Vendor is permitted to cease providing the Services (including ESInet Services), including following any Transition Period, Vendor shall decommission the ESInet Services as set forth herein.

(a) Vendor shall not remove any equipment, hardware or software, or cease providing the ESInet Services, until MIL confirms in writing that successor ESInet services are cutover and fully operational. Vendor acknowledges that cutovers of the PSAPs to the successor provider may be implemented in waves, phases and/or on a PSAP-by-PSAP basis, and that the terms of this Section apply on such wave, phased or individual PSAP basis. Fees and charges for the ESInet Services shall be reduced as the ESInet services for a PSAP is cutover to the successor provider in an amount equal to the fees and charges associated with such PSAP;

(b) Once MIL confirms in writing that the successor ESInet services are cutover at a PSAP, Vendor shall promptly (but not more than 10 days following such written notice) remove and decommission all equipment at the applicable PSAP. All MIL, County 911 Authority/PSAP or other Washington State data residing on any such equipment shall be deleted and sanitized in accordance with NIST Special Publication 800-80 Revision 1, Guidelines for Media Sanitization, located at: <http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-88r1.pdf> (or successor standard); and

(c) Vendor shall provide a copy of the Location Services database and Location Data to MIL in the industry standard format requested by MIL. Additionally, Vendor shall provide data schemas, data dictionary information and other information needed or necessary for MIL and the successor provider to use and re-use such data.

The Services, information and data provided by Vendor pursuant to this Section shall be provided at no cost to MIL.

ARTICLE 7 LIMITATION ON LIABILITY

7.1 *Limitations Upon Types Of Recoverable Damages.* EXCEPT AS OTHERWISE PROVIDED IN SECTION 7.3, NO PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER THE CLAIM GIVING RISE TO SUCH DAMAGES IS BASED UPON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, TORT OR OTHER THEORY OF LIABILITY, AND EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF.

7.2 *Cap on Damages.* EXCEPT AS SET FORTH IN SECTION 7.3, AND REGARDLESS OF WHETHER THE CLAIM GIVING RISE TO ANY DAMAGES IS BASED UPON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, TORT OR OTHER THEORY OF LIABILITY, EACH PARTY'S CUMULATIVE LIABILITY TO THE OTHER FOR ANY AND ALL CAUSES OF ACTION ARISING OUT OF OR RELATING TO THIS CONTRACT SHALL NOT EXCEED THE FOLLOWING (THE "CAP"): (A) FOR ANY EVENT OR SERIES OF EVENTS GIVING RISE TO LIABILITY THAT OCCURS PRIOR TO THE PSAP GO-LIVE DATE FOR THE FIRST PSAP GO-LIVE, FIVE MILLION DOLLARS (\$5,000,000); AND (B) FOR ANY EVENT OR SERIES OF EVENTS GIVING RISE TO LIABILITY THAT OCCURS ON OR AFTER THE PSAP GO-LIVE DATE FOR THE FIRST PSAP GO-LIVE, FIFTEEN MILLION DOLLARS (\$15,000,000). FOR CLARITY, EXCEPT AS SET FORTH IN SECTION 7.3, AS TO EACH PARTY, THE CAP APPLIES TO ALL LIABILITIES IN THE AGGREGATE AND ANY AMOUNTS A PARTY PAYS TO THE OTHER PARTY AS A RESULT OF ANY LIABILITY UNDER THE CONTRACT SHALL REDUCE THE REMAINING BALANCE AVAILABLE UNDER THE CAP APPLICABLE TO THE PARTY HAVING PAID SUCH AMOUNTS; PROVIDED, HOWEVER, THIS SENTENCE IS SUBJECT TO AND SHALL NOT LIMIT THE TERMS OF SECTION 7.6 BELOW.

7.3 Exclusions from Limitations on Liability. The limitations on liability set forth in **Sections 7.1** and **7.2** shall not apply: (a) to claims arising as a result of bodily or personal injury, including death, to the extent caused by a party or its employees, agents and/or subcontractors; (b) to fines or penalties assessed by the FCC, WUTC or other federal, state or local governmental bodies against a party to the extent arising out of or related to the acts and omissions of the other party under this Contract; (c) to claims arising as a result of damage to real property or tangible personal property (including loss of MIL Data and Location Data) to the extent caused by a party or its employees, agents and/or subcontractors; (d) to a party's failure to comply with its obligations under **Article 9**; (e) to amounts payable by MIL to Vendor under the Contract; and (f) to any gross negligence or willful misconduct on the part of either party.

7.4 RCW 38.52.550. Notwithstanding anything to the contrary in the Contract, including in **Sections 3.5** and **9.1**, the parties acknowledge and agree that: (a) RCW 38.52.550 constitutes certain applicable Law as of the Effective Date; (b) MIL, the State and/or Vendor may use RCW 38.52.550 to defend against any Third Party claim (and damages resulting therefrom) including related to a party's indemnification obligations in the Contract; and (c) RCW 38.52.550 does not preclude, limit or restrict any breach of contract claims (or damages resulting therefrom) with respect to the Contract as between MIL (including the State) and Vendor. Except with regard to **Section 7.4(c)**, no provision of this Contract shall be construed as affecting or negating the standards or limitations for liability set forth in any applicable Law limiting the liability of any party providing or assisting in providing any 911-related products or services.

Furthermore, MIL: (d) represents that neither MIL nor any of its officials have, prior to the Effective Date, in any way waived, for itself or any of its vendors or agents providing or assisting in providing any 911-related products or services, any limitation of liability that is available under applicable Law; and (e) warrants that that neither MIL nor any of its officials will in any way waive, for itself or any of its vendors or agents providing or assisting in providing any 911-related products or services, any limitation of liability that is available under applicable Law. The parties acknowledge and agree that, under the Contract, MIL (and the State) is engaging Vendor to design, develop, install, maintain and provide a consolidated enhanced 911 emergency communications system and related services (including, as applicable, providing and/or maintaining certain database information), that as between MIL, the State and the Vendor, the Vendor shall be responsible for such system and services, and that, subject to **Section 7.4(c)**, the parties acknowledge that, to the fullest extent permitted by Law, the limitation of liability under RCW 38.52.550 (and any other applicable Law protecting providers of 911-related products or services) is intended to apply to Vendor (and its employees, agents, representatives or subcontractors that are providing 911-related products or services). In the event that, at any time during the Term, RCW 38.52.550 (or any successor statute) is amended or otherwise changed in any manner that increases the potential liability of Vendor (or its employees, agents, representatives or subcontractors that are providing 911-related products or services) as a provider of 911-related products or services, Vendor shall have the right to terminate the Contract without cause by delivering a written notice of termination to MIL; subject to MIL's right to receive transition Services as set forth in **Section 6.6**. Any termination pursuant to this Section shall not constitute a termination under any other provision of the Contract.

To the extent that an Indemnified Party waives any limitation of liability that is available to such Indemnified Party under applicable Law which would have limited Vendor's liability for a Third Party claim for which Vendor is obligated to indemnify, defend and hold harmless such Indemnified Party under **Section 9.1**, Vendor's obligation to indemnify, defend and hold harmless such Indemnified Party shall be similarly waived.

7.5 Restoration of Liability Cap. If, at any time during the Term: (a) (i) the total aggregate, undisputed liability of Vendor to MIL under or in connection with the Contract exceeds sixty percent (60%) of the Cap; and (ii) Vendor does not agree in writing to increase the Cap by the amount required to restore the full value of the Cap within thirty (30) days following its receipt of a written request from MIL that it do so; or (b) the total aggregate, undisputed liability of Vendor to MIL under or in connection with the Contract equals or exceeds the Cap, then MIL shall have the right to terminate the Contract under this Section without cause by delivering a written notice of termination to Vendor. Any termination pursuant to this Section shall not constitute a termination under any other provision of the Contract and MIL will not incur any liability, fee or expense to Vendor as a result of terminating the Contract pursuant to this Section (*e.g.*, pursuant to **Schedule 6.1.3**); provided, however, that MIL shall be liable for any fees for transition Services rendered by Vendor as set forth in **Section 6.6**.

7.6 Costs of Cure. If a party elects to cure any failure by it to comply with its obligations under the Contract, all costs and expenses associated with such cure shall be borne solely by the curing party and shall in no event count toward satisfaction of the Cap; provided, however, that if a non-breaching party sends a breaching party a written notice (pursuant to **Section 11.1**) of the breaching party's Event of Default, the breaching party may count its costs and expenses to cure such Event of Default toward satisfaction of the Cap if the breaching party provides the non-breaching party with a full and complete description of the actions taken to cure the Event of Default and the associated costs and expenses for such actions, within thirty (30) days of the breaching party's cure of such Event of Default.

7.7 No Limitation of Remedies. The specific remedies set forth in the Contract, including any Service Level Credits, Delay Credits, other credits, liquidated damages, or agreements to fix/correct various defects, issues, or provide additional personnel shall not constitute a limitation of any rights and remedies that may be available to MIL and do not foreclose MIL, the State or any of its or their officials from pursuing other remedies; provided, however, that this Section shall not alter or amend the limitations of liability set forth in **Sections 7.1 – 7.4**. Notwithstanding the forgoing, the parties acknowledge and agree that applicable Service Level Credits shall be MIL's exclusive remedy with respect to a Service Level Agreement Failure except: (a) to the extent that a Service Level Agreement Failure(s) constitutes a Chronic Service Level Agreement Failure; and (b) Service Level Credits shall not limit Vendor's obligations under **Section 9.1**.

ARTICLE 8

DATA RIGHTS AND CONFIDENTIALITY

8.1 Ownership of Data. Each party is and shall remain the owner of all right, title and interest in and to any data that it owned prior to the Effective Date, and subject to the following, in and to any data to which it may hereafter acquire ownership. Except as otherwise provided in

the Contract, no party shall be obligated to convey any right, title and/or interest in any data to the other. Each party, upon request of the other, promptly shall return to the other any data owned by the other that may have been disclosed hereunder (including MIL Data and Location Data).

Without limiting the generality of the foregoing, MIL shall own all right, title and interest in and to MIL Data and Location Data. The Location Services database, including any and all data and information that Vendor, its affiliates and/or subcontractors receive, generate, collect, store, maintain or process in connection with the performance of the Location Services, including any Data Protected by Law, ALI data and GIS data therein (collectively, "**Location Data**"), without limiting the ownership rights of the data subjects themselves, is and shall be owned exclusively by MIL. MIL shall own all right, title and interest in such aggregations, compilations, derivative works and/or other assemblage of MIL Data and Location Data (collectively, "**Derivative Works**") by Vendor, its affiliates and/or subcontractors. Vendor shall not claim or assert any ownership rights in the Location Data, MIL Data or Derivative Works. The parties agree that such ownership of MIL Data, Location Data and Derivative Works shall inure to the benefit of MIL from the date of the conception, creation or fixation of such data in a tangible medium of expression, as applicable, and that all newly created copyright aspects of such data shall be considered "works-made-for-hire" within the meaning of the Copyright Act of 1976, as amended. If and to the extent such data, or any part thereof, are not considered "works-made-for-hire" within the meaning of the Copyright Act of 1976, as amended, Vendor shall be deemed to have expressly assigned to MIL all exclusive right, title and interest in and to such data without further consideration, and Vendor agrees to promptly execute all such documents as may be requested by MIL to evidence and/or perfect MIL's intellectual property rights therein. Upon MIL's request, Vendor shall provide a copy of the Location Services database and Location Data to MIL in the industry standard format requested by MIL. If Vendor fails to provide a copy of the a copy of the Location Services database and all related Location Data to MIL in the industry standard format requested by MIL within fifteen (15) days of MIL's request, then MIL shall be entitled to a credit equal to \$5,000 per day until Vendor provides such complete database and data to MIL.

8.2 Confidential Information. Each party acknowledges that it may acquire or be exposed to Confidential Information of the other party. Having acknowledged the foregoing, the party that has received Confidential Information ("**Receiving Party**") agrees: (a) to exercise the same degree of care and protection with respect to the Confidential Information of the party that has disclosed Confidential Information ("**Disclosing Party**") that it exercises with respect to its own Confidential Information, but in no event less than a reasonable degree of care; (b) not to use the Disclosing Party's Confidential Information except as permitted or contemplated hereunder; and (c) not to directly or indirectly disclose, distribute, republish or allow any Third Party to have access to any Confidential Information of the Disclosing Party without such Third Party executing: (i) with respect to disclosure of Vendor Confidential Information, the Third Party Confidentiality and Non-Disclosure Contract set forth in **Exhibit 2**, provided that for Third Parties that have a signed confidentiality agreement with MIL as of the Effective Date with no less protective confidentiality provisions as set forth in the Contract, such Third Parties shall not be required to execute the Third Party Confidentiality and Non-Disclosure Contract; and (ii) with respect to disclosure of MIL Data or Location Data, a confidentiality and non-disclosure agreement with no less protective confidentiality provisions than those set forth in the Contract. Notwithstanding the above, but subject to the further requirements of the Contract, as applicable: (d) MIL may disclose Vendor

Confidential Information to MIL's employees and authorized agents who have a need to know; (e) Vendor may disclose MIL Data and Location Data to its employees and authorized agents who have a need to know; and (f) a party may disclose Confidential Information if so required by Law (including court order or subpoena), provided that such disclosure is made in accordance with **Section 8.5**. With respect to Confidential Information, such information shall not include information that is: (g) publicly available or later becomes available other than through a breach of the Contract; (h) known to the Receiving Party or its employees, agents or representatives prior to disclosure by the Disclosing Party or is independently developed by the Receiving Party or its employees, agents or representatives subsequent to such disclosure; or (i) subsequently lawfully obtained by the Receiving Party or its employees, agents or representatives from a Third Party without obligations of confidentiality. Notwithstanding anything to the contrary herein, MIL Data and Location Data constitute MIL Confidential Information.

8.3 Confidentiality of Personnel. Vendor shall cause all of its employees and any authorized subcontractor employees who have access to MIL's Confidential Information to be bound by a confidentiality agreement with confidentiality provisions no less protective than the confidentiality terms contained herein. MIL shall cause all of its employees and any authorized subcontractor employees who have access to Vendor's Confidential Information to be bound by a confidentiality agreement with confidentiality provisions no less protective than the confidentiality terms contained herein.

8.4 Notification Obligation. If the Receiving Party becomes aware of any unauthorized use or disclosure of the Confidential Information of the Disclosing Party, the Receiving Party promptly and fully shall notify the Disclosing Party of all facts known to it concerning such unauthorized use or disclosure. In addition, if the Receiving Party or any of its employees or agents are requested or required (by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand or other similar process) to disclose any of the Confidential Information of the Disclosing Party, the Receiving Party shall not disclose the Confidential Information without providing the Disclosing Party with reasonable prior written notice of any such request or requirement so that the Disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of the Contract. If, in the absence of a protective order or other remedy or the receipt of a waiver by the Disclosing Party, the Receiving Party or any of its employees are nonetheless, in the written opinion of the Receiving Party's counsel (a copy of which opinion shall be delivered to the Disclosing Party), legally compelled to disclose Confidential Information to any tribunal or otherwise stand liable for contempt or suffer other censure or penalty, the Receiving Party or its employees may, without liability hereunder, disclose to such tribunal only that portion of the Confidential Information that such counsel advises the Receiving Party that it is legally required to disclose. Notwithstanding the foregoing, the Receiving Party shall exercise its best efforts to preserve the confidentiality of the Confidential Information, including by cooperating with the Disclosing Party to obtain an appropriate protective order or other reliable assurance that confidential treatment shall be accorded the Confidential Information by such tribunal.

8.5 Records Disclosures. Notwithstanding anything contained in the Contract to the contrary, including those terms set forth in **Section 8.2** or **8.3**, Vendor acknowledges that MIL is a public agency and that the terms and conditions of the Contract and other Vendor information

including Vendor Confidential Information and Deliverables may be subject to disclosure or discovery under the applicable Law, including Washington State's Public Records Act (RCW 42.56). If such a disclosure or discovery request is made of MIL, MIL will, generally within ten (10) business days prior to release, notify Vendor of any such request, in order to provide Vendor time to seek judicial relief if it believes such information should not be released. Subject to a court of competent jurisdiction issuing an order prohibiting such release or the requesting party notifying MIL in writing prior to MIL's planned release that it has rescinded its request for disclosure, MIL will release and disclose all requested information without liability therefore. Vendor agrees to comply with any court order to provide records in the possession of the Vendor to MIL for an *in camera* review by the court or release, at no additional charge to MIL.

8.6 Security.

8.6.1 Data Security Program. Vendor shall maintain in effect at all times a comprehensive data security program that includes reasonable and appropriate administrative, technical and physical security measures designed to detect, prevent and mitigate the risk of identity theft and protect against the destruction, loss, unauthorized access, disclosure, use and/or alteration of data (whether or not encrypted), including MIL Confidential Information, MIL Data and Location Data, in Vendor's possession or under Vendor's control, and which shall be no less rigorous than those measures that are required to be maintained by Vendor or MIL to comply with applicable Law. Vendor will provide the data security program to MIL for its review, and MIL shall have the right to provide feedback and comment on Vendor's data security program. If Vendor recommends certain security features that MIL does not approve, the matter will be escalated to the Executive Sponsors for final resolution.

8.6.2 Security Breaches. If Vendor discovers or is notified of the destruction, loss and/or unauthorized access, disclosure, use and/or alteration of MIL Confidential Information, MIL Data or Location Data or any attempt to access MIL Confidential Information, MIL Data and/or Location Data that is reasonably likely to result in the destruction, loss and/or unauthorized access, disclosure, use and/or alteration of MIL Confidential Information, MIL Data and/or Location Data (each such event, a "**Security Event**"), Vendor shall: (a) promptly notify MIL of the Security Event; (b) investigate the Security Event and provide reasonable cooperation with MIL's investigation of the Security Event, including periodic updates with respect to Vendor's investigation of the Security Event; (c) if the source of the Security Event is not within the control of Vendor personnel, provide reasonable cooperation with MIL's development of a risk assessment, root cause analysis and corrective action plan, including MIL's mitigation and remediation activities; and (d) comply to the extent applicable to Vendor personnel, and provide reasonable cooperation with MIL in complying, with the requirements of all applicable Personal Information Laws and other applicable Laws. If the source of the Security Event is within the control of Vendor personnel, Vendor shall: (e) promptly provide a written report to MIL that sets forth Vendor's risk assessment, root cause analysis and corrective action plan; (f) implement the corrective action plan and mitigate the effects of the Security Event as soon as practicable; and (g) provide MIL periodic updates with respect to Vendor's mitigation and corrective action efforts.

8.6.3 Personal Information Laws. Vendor acknowledges that MIL Confidential Information, MIL Data and/or Location Data may include Personal Information pertaining to residents in the State and other states that have enacted Personal Information Laws. Having acknowledged the foregoing, in addition to its obligations set forth in **Section 8.6.2**, Vendor shall comply with the requirements of all applicable Personal Information Laws. If and to the extent any unauthorized access, disclosure or use of MIL Confidential Information, MIL Data and/or Location Data: (a) is attributable to a breach by Vendor of its obligations under the Contract, including the failure of Vendor to comply with the MIL Security Policies and Procedures; and (b) triggers notice or other requirements under a Personal Information Law, Vendor shall bear the costs incurred by MIL and any Agency in complying with its or their legal obligations relating to such unauthorized access, disclosure or use of MIL Confidential Information, including the reasonable costs of providing notices, a toll-free call center / help desk, credit monitoring (if applicable) and restoration services and identity theft insurance to affected individuals for up to two (2) years. Nothing contained herein shall be deemed to release Vendor from its indemnification obligations as set forth in **Article 9**.

8.7 Survival. The terms of this **Article 8** shall survive the expiration or termination of the Contract.

ARTICLE 9

INDEMNIFICATION

9.1 General. Subject to the further terms of this Article, Vendor (the "**Indemnifying Party**") shall indemnify, defend and hold harmless the State, MIL, all counties within the State and their respective officers, employees, officials, and agents (collectively, the "**Indemnified Parties**") from and against all claims, demands, suits, actions, recoveries, judgments and actual costs and expenses (including all reasonable attorneys', advisors and consultant fees and costs) in connection therewith with respect to any Third Party claim based upon: (a) bodily injury, including death, and real property and tangible personal property damage to the extent resulting from the ESInet Services, any Services or work and/or materials supplied under the Contract by Vendor or its employees, agents or representatives and/or otherwise resulting from Vendor's or its employees', agents' or representatives' negligent acts or omissions; (b) Vendor's or its employees', agents' or representatives' failure to comply with the terms of **Sections 8.2** and/or **8.6**; (c) a breach of Vendor's obligations under the Contract which results in a fine or penalty to an Indemnified Party assessed by the FCC, WUTC or other federal, state or local governmental body; or (d) Vendor's gross negligence or willful misconduct in its performance under the Contract. The indemnity provisions in this Section shall not be limited by reason of any insurance coverage required under the Contract. For clarity: (e) Vendor's indemnity obligations under this Section shall be reduced to the extent an Indemnified Party is found to have been contributorily negligent; (f) this Section does not require the Vendor to indemnify, defend or hold harmless an Indemnified Party against claims, demands, suits, actions, recoveries, judgments and actual costs and expenses to the extent arising from the acts or omissions of an Indemnified Party; and (g) MIL will reimburse Vendor for any costs and expenses reasonably incurred by Vendor to indemnify, defend or hold harmless an Indemnified Party to the extent of MIL's contributory negligence or acts or omissions.

9.2 *Infringement.* Subject to the further terms of this Article, Vendor shall indemnify, defend and hold harmless the Indemnified Parties from and against any claim asserted or any claim, suit or proceeding brought by a Third Party against the Indemnified Parties alleging that the Deliverables, ESInet Services and other Services, or any part thereof, or MIL's use of the Deliverables or ESInet Services and other Services constitutes a misappropriation of any proprietary or trade secret information or an infringement of any patent, copyright, trademark or other Intellectual Property Right enforceable in the United States. Vendor shall pay all damages awarded or agreed to settlement payments, and any actual costs and expenses, including reasonable attorneys' fees, litigation costs (including the costs and expenses of any appellate bonds) arising from any such claim and incurred by the Indemnified Parties; provided, however, that the Indemnified Parties, after receiving notice thereof, promptly shall advise Vendor of any such claim, suit or proceeding and, at Vendor's expense, cooperate with Vendor in the defense thereof. If Vendor reasonably believes that any such claim, suit or proceeding may be successful, Vendor shall, at no additional cost to the Indemnified Parties, either: (a) procure for the Indemnified Parties the right to continue using the portion of the Deliverables and/or ESInet Services and other Services subject to such claim, suit or proceeding; or (b) replace or modify the Deliverables and/or ESInet Services and other Services so that they are no longer is subject to any such claim, suit or proceeding while maintaining equivalent or better functionality and performance capabilities. No undertaking of Vendor under this Section shall extend to any alleged infringement or violation to the extent that such infringement or violation arises from or relates to: (c) adherence to design modifications, specifications, drawings, or written instructions that Vendor is specifically directed by MIL to follow; (d) use of the Deliverables and/or ESInet Services or other Services in combination with other systems, furnished either by Vendor or others, which combination was not recommended or otherwise approved by Vendor, where the lack of the combination would not, in and of itself, be infringing; or (e) alteration of the Deliverables and/or ESInet Services or other Services by someone other than Vendor or its employees, agents or representatives or someone acting based on the instructions of Vendor or its employees, agents or representatives, if such claim would have been avoided by the absence of such alteration; or (f) an Indemnified Party's unauthorized use, negligent use, or misuse of the Deliverables and/or ESInet Services or other Services.

9.3 *Industrial Insurance Immunity Waiver.* Vendor waives its immunity under Title 51 RCW (Industrial Insurance) to the extent required to indemnify, defend and hold the Indemnified Parties harmless under the Contract.

9.4 *Procedures for Indemnification.*

9.4.1 *General.* Promptly after becoming aware of same, the Indemnified Parties shall notify Vendor of any Third Party claim covered under the terms of **Sections 9.1** or **9.2**, as applicable, for which the Indemnified Parties seeks indemnification.

9.4.2 *Defense.* The defense counsel selected by the Indemnifying Party shall be reasonably acceptable to the Indemnified Parties. Vendor acknowledges that, as a State entity, MIL is represented by the Attorney General's Office of the State: (a) which must approve of and appoint the Indemnified Parties' defense counsel as special assistant Attorneys General of the State; and (b) which must work with Vendor's defense counsel in the

defense, though Vendor's defense counsel will primarily lead the Indemnified Parties' defense.

9.4.3 Settlement of Claims. Neither Vendor nor any Indemnified Party shall settle any claim, suit or action that is subject to indemnity and/or defense under **Article 9**, without the prior written consent of Vendor, MIL and the office of the Attorney General of the State, as required.

9.4.4 MIL's Reasonable Assistance. At Vendor's request, MIL will provide reasonable assistance to Vendor in the Indemnified Parties' defense, at Vendor's cost.

9.5 Survival. The terms of this Article shall survive any expiration or termination of the Contract.

ARTICLE 10

DISPUTE RESOLUTION

10.1 Administrative-Level Performance Review. If a dispute relating to the Contract arises between the parties, the Vendor Services Manager and the MIL personnel may, but shall not be obligated to, meet and attempt to resolve the dispute. If the parties are unable to resolve the dispute within ten (10) days after the initial request for a meeting, or if the parties do not agree to invoke this level of dispute resolution, then the parties may seek to resolve the dispute through an executive-level performance review as provided in **Section 10.2**.

10.2 Executive-Level Performance Review. For disputes that are not resolved at the Vendor Services Manager and MIL personnel level, the Executive Sponsors may, but shall not be obligated to, meet and attempt to resolve the dispute. If such representatives are unable to resolve the dispute within five (5) business days after the parties have commenced negotiations, or ten (10) days have passed since the initial request for negotiations at this level, or if the parties do not agree to invoke this level of dispute resolution, then the parties may seek to resolve the dispute through mediation as hereinafter provided or, if the parties do not agree to submit the dispute to mediation, to seek any and all rights and remedies that may be available to them as provided in the Contract.

10.3 Voluntary, Non-Binding Mediation. If the prior levels of dispute resolution are not invoked or are unsuccessful, the parties may, but shall not be obligated to, mutually agree in writing to submit the dispute to non-binding mediation. Mediation must occur within thirty (30) days after the parties agree to submit the dispute to mediation. The parties mutually shall select an independent mediator experienced in information systems of the type in dispute, and each shall designate a representative(s) to meet with the mediator in good faith in an effort to resolve the dispute. The specific format for the mediation shall be left to the discretion of the mediator and the designated party representatives and may include the preparation of agreed-upon statements of fact or written statements of position furnished to the other party.

10.4 Redress in Court. Informal dispute resolution under this Article shall not be a precondition to any action by a party to enforce its rights under the Contract.

10.5 Continued Performance; No Tolling of Cure Periods. Except where clearly prevented by the area in dispute, the parties shall continue performing their obligations under the Contract while the dispute is being resolved as provided in this Article, unless and until the dispute is resolved or until the Contract is terminated. The time frame for a party to cure any breach of the terms of the Contract shall not be tolled by the pendency of any dispute resolution procedures.

ARTICLE 11

MISCELLANEOUS

11.1 Notices. Any written notice required or permitted to be delivered pursuant to the Contract (other than project-related notices that may be sent by email) shall be in writing and shall be deemed delivered: (a) upon delivery if delivered in person; (b) three (3) business days after deposit in the United States mail, certified mail, return receipt requested, postage prepaid; (c) upon transmission if sent via e-mail or fax, with a confirmation copy sent via overnight mail; or (d) one (1) business day after deposit with a national overnight courier, in each case addressed to the following address:

If to MIL:

Washington State Military Department
State Enhanced 911 Coordinator's Office,
Emergency Management Division
20 Aviation Drive, MS20
Camp Murray, WA 98430-5020
Attention: William A. Leneweaver
Phone: (206) 792-2000
Fax: (253) 512-7207
E-mail: e911technicalservices@mil.wa.gov

For notices related to legal processes
with a copy to:

Washington State Attorney General
PO Box 108
Olympia, WA 98504-0108
Attention: Dawn Cortez
Phone: (360) 586-2436
Fax: (360) 586-3593
E-mail: dawnc@atg.wa.gov

If to Vendor:

TeleCommunication Systems, Inc.
2401 Elliott Avenue
Seattle, WA 98121
Attention: Lynne Houserman, President,
Safety and Security Technologies
Phone: (800) 562-6108
Fax: (206) 792-2001
E-mail:
Lynne.Houserman@comtechtel.com

with a copy to:

TeleCommunication Systems, Inc.
275 West Street, Suite 400
Annapolis, Maryland 21401
Attention: Contracts
Phone: (410) 263-7616
Fax: (410) 280-4903
E-mail: contracts@telecomsys.com

or to such other addresses as may be specified by a party upon notice given to the other.

11.2 Audits and Requests for Records.

11.2.1 Financial Audits. At any time up to and including six (6) years following the expiration or termination of the Contract, MIL (itself or through a nationally-recognized

Third Party auditor or a State auditor) shall have the right, to fully audit the books and records of Vendor to the extent reasonably necessary to confirm the accuracy and appropriateness of all invoices issued under the Contract, including all supporting details, and to verify compliance with applicable Laws. All such audits shall be conducted between the hours of 8:00 a.m. and 5:00 p.m. Pacific Time. If any audit demonstrates that Vendor has overcharged or undercharged MIL, then either: (a) Vendor promptly shall refund the overcharges to MIL; or (b) following receipt of Vendor's invoice, and subject to the terms of **Section 4.2.4**, MIL shall pay the undercharge to Vendor. Further, if any overcharge is in excess of five percent (5%) of the aggregate charges incurred during the period to which the audit relates, then Vendor shall reimburse MIL for the reasonable costs and expenses incurred to conduct such audit.

11.2.2 Operational, Vulnerability and Security Audits by MIL. MIL (itself or through a nationally-recognized Third Party auditor or a State auditor) shall (at MIL's expense) have the right to audit and inspect the operations, vulnerabilities and security of the ESInet Services and the Vendor systems that provide the ESInet Services. Vendor shall make available to MIL and its nationally-recognized auditors and inspectors (including internal and external personnel) for the purpose of performing such audits or inspections access at all reasonable times to: (a) the data and records relating to the ESInet Services and other Services and Vendor's other obligations under the Contract; (b) the security and vulnerability of the ESInet Services and the Vendor systems that provide the ESInet Services; and (c) Vendor's internal controls and systems as may be reasonably necessary to examine Vendor's performance of the ESInet Services and other Services and compliance with its duties, responsibilities and obligations under the Contract including the safeguarding of MIL Data and Location Data and compliance with the Security Policies and Procedures and the terms set forth in **Section 1.1.5**. Vendor shall provide to such auditors such assistance and support as they may reasonably request. If any audit reveals deficiencies, Vendor shall review the findings with MIL and Vendor shall promptly deliver to MIL a detailed plan reasonably acceptable to MIL to correct all deficiencies and, when all such deficiencies are corrected, Vendor shall certify to MIL in writing that all deficiencies have been corrected.

11.2.3 Additional Terms of MIL Audits. With respect to MIL's right to perform audits under **Sections 11.2.1** and **11.2.2**, unless otherwise agreed by the parties in writing: (a) Vendor shall not be required to disclose confidential information of Vendor's other customers; (b) the parties shall cooperate in good faith to minimize the disruption to the Vendor's ability to provide the ESInet Services, without compromising the audit; (c) MIL will provide Vendor with notice of the audit at least five (5) days prior to the commencement of the audit; (d) unless MIL has a reasonable suspicion related to a financial issue (or MIL seeks confirmation that issues or deficiencies with an earlier financial audit have been corrected), MIL shall not perform an audit under **Section 11.2.1** more than once in any 12-month period; and (e) unless MIL has a reasonable suspicion related to security, vulnerability, confidentiality, reliability or other similar item (or MIL seeks confirmation that issues or deficiencies with an earlier security, vulnerability, confidentiality, reliability or other similar audit have been corrected), MIL shall not perform an audit under **Section 11.2.2** more than once in any 12-month period.

11.2.4 Washington State Audits. Any audits permitted by Law or permitted under **Section 11.2** may be conducted by the State or a nationally-recognized Third Party auditor on its behalf. Vendor shall provide to the State (or to MIL, as required) such assistance and support as reasonably requested. If any audit reveals deficiencies, Vendor shall review the findings with the State and MIL and Vendor shall promptly prepare and deliver to the State and MIL a detailed plan that is reasonably acceptable to the State and MIL to correct all such deficiencies and, when all such deficiencies are corrected, Vendor shall certify to MIL in writing to the State and MIL that all deficiencies have been corrected. Vendor acknowledges and agrees that MIL does not control and cannot restrict the State's ability to audit MIL or Vendor, and therefore that any terms in the Contract restricting audits, including in **Section 11.2.3**, shall not apply to audits initiated by the State.

11.2.5 Resolutions of Disagreements with Audits. If MIL and Vendor do not agree with the results of any audit, the Executive Sponsors shall meet to attempt to resolve the matter. If the Executive Sponsors cannot resolve the matter, either party may require that the matter be submitted to an independent, nationally-recognized, reputable auditing firm ("**Independent Auditor**") to review the results of the audit and whether the deficiencies in dispute exist. The cost of the Independent Auditor shall be shared equally by the parties. If requested by such Independent Auditor, each party shall permit such firm to conduct interviews of applicable personnel and engage in such other due diligence activities to verify whether such deficiencies exist and/or the audit findings can be confirmed. The Independent Auditor shall be tasked by the parties to issue a written opinion on its findings and such written opinion shall be binding on the parties with respect to the deficiencies cited therein. If the written opinion of the Independent Auditor confirms deficiencies with respect to Vendor, Vendor shall prepare and deliver to MIL a detailed plan that is reasonably acceptable to MIL for correcting all such deficiencies. Vendor shall implement all such corrections within the time frame(s) set forth in the plan. Vendor shall bear all costs and expenses associated with correcting all deficiencies. Any audits shall be conducted so as to be non-disruptive to a parties operations and business.

11.2.6 Maintenance of Records. Vendor and its subcontractors shall maintain books, records, documents and other evidence relating to the Contract, including Vendor performance, Minority and Women's Business Enterprise participation, protection and use of MIL Data, Location Data and MIL's Confidential Information, and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature invoiced in the performance of the Contract. Vendor shall retain all such records for six (6) years after the expiration or termination of the Contract. Records involving matters in litigation related to the Contract shall be kept for either one (1) year following the termination of litigation, including all appeals, or six (6) years from the date of expiration or termination of the Contract, whichever is later. Where Vendor ordinarily and regularly in the course of business creates and maintains its books, records, documents and other evidence relating to the Contract electronically, Vendor shall retain such electronically stored information in an electronic format that remains usable, searchable, retrievable and authentic for the periods set out herein, unless the parties specifically agree in writing to an alternative. Vendor shall incorporate in its subcontracts with subcontractors the terms

and conditions of this Section. Books, records, documents, and other evidence of accounting procedures and practices related to Vendor's cost structure, including overhead, general and administrative expenses, and profit factors shall be excluded from MIL's or its auditors' review unless the cost or any other material issue under the Contract is calculated or derived from these factors.

11.2.7 Cost of Compliance. Vendor shall not charge any fee for retention or production of originals or copies of books, records, documents and other evidence required in this Section, for cooperating in audits or report writing or for any other obligation in complying with this Section.

11.3 Insurance.

11.3.1 Required Coverages. At Vendor's sole cost and expense, Vendor shall procure and maintain in effect from the date of MIL's execution and delivery of a copy of the Contract to Vendor (as described in the last sentence of **Section 11.16**) and for the subsequent duration of the Contract the insurance coverages described in the attached **Schedule 11.3.1**. The insurance policy must meet the terms and conditions set forth in this **Section 11.3** and be in a form acceptable to MIL. Insurance may be maintained with one or more carriers, each of which must: (a) be authorized to do business in the State or be eligible surplus lines insurers acceptable to MIL and having agents in the State upon which service of process may be made; and (b) have a financial strength rating of A- or better and a financial size category of A-XIII or better, each as reported in the most recent edition of Best's Insurance Reports (or any successor or replacement rating agency). Any insurance or self-insurance available to MIL shall be in excess of, and non-contributing with, any insurance that Vendor is required to procure and maintain. Vendor's insurance policies shall apply on a primary basis. During any time periods in which Vendor fails to provide the insurance coverage required in this Section or fails to provide policy terms and conditions that are acceptable to MIL, MIL shall be permitted to withhold any and all sums due and payable to Vendor, provided that such withheld amounts shall be promptly paid to Vendor when Vendor complies with the terms of this Section.

11.3.2 Additional Insureds and Evidence of Coverage. By endorsement to all liability policies except for the Auto Liability, Workers' Compensation (Industrial Insurance), Professional Liability/Errors & Omissions and Cyber Liability insurance, MIL, the State and its Agencies shall be named as an additional insured for all liability arising from the Contract. On or before the Effective Date, and thereafter upon each insurance policy renewal, and otherwise promptly following MIL's request from time-to-time, Vendor shall provide MIL with certificates of insurance, together with copies of all applicable endorsements (by endorsement cross-liability of all insureds), evidencing Vendor's compliance with the requirements set forth in this **Section 11.3**. If at any time during the period when insurance is required by the Contract, an insurer fails to comply with the requirements of the Contract, as soon as Vendor has knowledge of any such failure, Vendor shall immediately notify MIL and immediately replace such insurance with insurance meeting the Con-

tract requirements set forth herein. Within ten (10) business days following Vendor's receipt of MIL's written request, Vendor shall provide (or cause to be provided) to MIL a certified copy of any insurance policies that are required under this **Section 11.3**.

11.3.3 Claims-Made Coverage. If and to the extent any insurance coverage required under the Contract is purchased on a "claims-made" basis, such insurance must: (a) cover the acts or omissions of Vendor and any subcontractors, as applicable, up through and including the date that the Contract has terminated and any Transition Periods have expired; and (b) be continuously maintained by Vendor, with full prior acts coverage, for at least six (6) years beyond the date that the Contract has terminated and any Transition Periods have expired.

11.3.4 Notice of Cancellation. Vendor shall procure (or cause to be procured) endorsement(s) to its insurance policies that identify MIL as a scheduled party to receive written notice thirty (30) days in advance of the cancellation of any insurance required hereunder.

11.3.5 Subcontractor Insurance. If Vendor elects to have an approved subcontractor provide any Services to MIL, then prior to providing any such Services, Vendor must furnish to MIL a certified copy of the applicable insurance policy or policies reflecting coverages of the type and amount agreed upon by Vendor and MIL pursuant to **Section 11.3**. Additionally, if an approved subcontractor provides network services or back office services or has access to MIL Data or Location Data such subcontractor must have commercial general liability insurance, professional liability/errors & omissions and cyber liability insurance, ID theft and cyber extortion insurance and umbrella or excess liability insurance, all in the amounts acceptable to MIL.

11.4 Approval of Service Subcontractors. Vendor shall obtain MIL's prior written consent, which MIL may withhold in its sole discretion, before entering into an agreement with any subcontractor who may be retained by Vendor to provide any component of the ESInet Services or any other Services under the Contract. As of the Effective Date, MIL agrees that Vendor may subcontract the Services specifically identified on **Schedule 11.4** to the applicable Vendor subcontractor specifically identified on **Schedule 11.4**. If Vendor wants to change or expand the scope of Services that may be subcontracted to a subcontractor specifically identified on **Schedule 11.4**, MIL's prior written consent is required. MIL may condition the approval of any subcontractor on the receipt of the proposed subcontract between Vendor and the subcontractor, with fees redacted, to ensure that the subcontracted Services or other items are adequately covered. If MIL determines, in its sole discretion, that any previously-approved Vendor subcontractor is not satisfactorily performing its obligations, MIL reserves the right to require Vendor to replace such subcontractor with another subcontractor or for Vendor to directly perform such obligations. Vendor shall use its commercially reasonable efforts to ensure that all such subcontractor agreements include provisions naming MIL as a direct and intended third party beneficiary or otherwise granting MIL the right to directly enforce Vendor's rights against such subcontractor and provisions substantially the same as those set forth in **Article 8** of the Contract. MIL shall not be bound by the terms of such agreements entered into by Vendor, and such agreements shall not contain any ob-

ligations with respect to MIL, including a guarantee of payments to such subcontractor. Any approval by MIL of Vendor's right to use a subcontractor shall be conditioned upon the following: (a) the agreement between Vendor and subcontractor not imposing or seeking to impose any liabilities or obligations on MIL, including the pass through of any termination fees, damages or costs in the event Vendor is required to replace the subcontractor; (b) all employees of the subcontractor providing Services to MIL being subject to the terms and restrictions of **Schedule 3.4**; (c) Vendor being responsible for managing all subcontractor relationships; (d) Vendor being liable for the acts and omissions of any subcontractor under the Contract; (e) MIL and Vendor agreeing to the level and types of insurance to be obtained by subcontractor, given the type, scope and nature of the subcontracted Services; (f) Vendor and subcontractor incorporating the terms required by **Section 11.3.5** into their agreement; and (g) subcontractor executing and delivering to MIL the Subcontractor Confidentiality and Non-Disclosure Contract, the form of which is set forth in **Exhibit 1**. Vendor further agrees that it is responsible to the Indemnified Parties for the actions and omissions of its subcontractors to the same extent if such action or omission was committed by Vendor.

11.5 Force Majeure. Except as provided below, each party may be excused from performing any of its obligations hereunder, in whole or in part, to the extent that the inability to perform is caused by an act of God, war, riot, civil commotion, explosion, fire, government action, court order, epidemic, MIL-related labor activities or other similar circumstance beyond its reasonable control (each, a "**Force Majeure Event**"). Vendor's labor and union-related activities, the non-performance of Vendor or any Vendor subcontractor, and the inability or failure of Vendor to obtain permits or other governmental authorizations for its personnel, regardless of cause, shall not constitute a Force Majeure Event. Notwithstanding anything to the contrary herein, a Force Majeure Event shall not excuse Vendor from performing any obligation hereunder to the extent that Vendor's adherence to applicable redundancy requirements (including in the MIL ESInet Requirements) would have mitigated or avoided the impact of such Force Majeure Event, unless Vendor's failure to adhere to such requirements was directed by MIL. As described in the MIL ESInet Requirements, Vendor shall design and provide the ESInet Services in a manner that ensures that there will be no single point of failure (*i.e.*, if any single part of the ESInet Services or supporting platform is unavailable, including as a result of a Force Majeure Event, the ESInet Services will continue to operate as set forth in this Contract); consequently, and notwithstanding anything herein to the contrary, if a Force Majeure Event results in a failure of the ESInet Services because of a single point of failure in the ESInet Services, Vendor's performance of the ESInet Services as set forth in this Contract shall not be excused and such event shall not constitute a Force Majeure Event under the Contract. If a Force Majeure Event prevents, hinders or delays performance of either party's obligations hereunder for more than ten (10) days at any time during the term, the party not prevented from performing shall have the right to terminate the affected portion of the Contract as of the date specified by such party in a written notice of termination to the other party; provided that during such ten (10) day period the party whose performance is not prevented, hindered or delayed shall have the right to take all commercially reasonable actions that may be necessary to mitigate the impact of the other party's non-performance, and the party claiming a Force Majeure Event shall take all commercially reasonable actions that may be necessary to mitigate the impact of its non-performance.

11.6 Notice of Financial Impacts. Vendor shall provide written notice to MIL within five (5) business days following the occurrence of any event that will or may be likely to have a

material adverse impact upon Vendor's ability to perform its obligations hereunder, including Vendor's breach of any significant contract, default of any credit agreement, denial of significant funding requests and/or the filing of a significant lawsuit against Vendor, and promptly (but in no event longer than ten (10) business days) thereafter shall meet with MIL to discuss Vendor's ability to continue to perform its obligations under the Contract in light of such event.

11.7 Agency. No party shall make any representations or warranties or incur any liability on behalf of the other. No party is the agent, representative or partner of the other party. The parties agree that Vendor is an independent contractor, that neither Vendor nor its employees, subcontractors and/or agents are employees of MIL and that MIL shall, on their behalf: withhold income or other taxes; provide workers' compensation insurance (industrial insurance); participate in group insurance plans which may be available to employees of MIL; participate or contribute to any public employees retirement system; accumulate vacation leave or sick leave; or provide unemployment compensation coverage. Neither Vendor nor its employees, subcontractors and/or agents are employees of MIL, and accordingly, none of them are entitled to any of the compensation, benefits, rights, or privileges of employees of MIL.

11.8 Severability. If any provision of the Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of the Contract.

11.9 Waiver; Waiver of Non-Competition. No delay or omission by a party to exercise any right occurring upon any non-compliance or default by the other party with respect to any of the terms of the Contract shall impair any such right or power or be construed to be a waiver thereof. A waiver by any of the parties of any of the covenants, conditions or agreements to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any covenant, condition or agreement herein contained. Additionally, Vendor irrevocably waives any rights which it may have, by contract or otherwise, to require another person or entity to refrain from submitting a bid or proposal to, or providing products or services to, MIL or the State, and Vendor further agrees that it will not in the future, directly or indirectly, induce or solicit any person or entity to refrain from submitting a bid or proposal to, or providing products or services to, MIL or the State.

11.10 Governing Law; Exclusive Jurisdiction. The Contract, and all the rights and duties of the parties arising from or relating in any way to the subject matter of the Contract or the transaction(s) contemplated by it, shall be governed by, construed and enforced only in accordance with the Laws of the State of Washington (excluding any conflict of laws provisions that would refer to and apply the substantive laws of another jurisdiction). Any suit or proceeding relating to the Contract shall be brought only in State courts located in Thurston County, Washington. **THE PARTIES EACH CONSENT TO THE SOLE AND EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF WASHINGTON STATE COURTS LOCATED IN THURSTON COUNTY, WASHINGTON.**

11.11 Binding Nature and No Assignment. Neither the Contract nor any of its provisions shall be assigned, delegated or transferred, including upon a Change of Control of Vendor or a subcontractor that provides a substantial or critical part or component of the ESInet Services which

shall be deemed to be a transfer, in whole or in part, by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld. The Contract shall be binding on the parties and their successors and permitted assigns.

11.12 Counterparts. The Contract may be executed in one (1) or more duplicate originals, all of which together shall be deemed one and the same instrument.

11.13 Public Announcements. Without the prior written consent of MIL, which consent may be withheld in MIL's sole discretion, or except as required by applicable Law, Vendor shall not make or publish, directly or indirectly, any statements, articles, public or private announcements (including any announcement made via e-mail or any posting on the Internet or any Vendor website), media releases, press conferences, advertising or similar publicity in any form relating to the fact that the parties have entered into the Contract, the name, image or logo of MIL or any Agency (or any variation or combination of such name, image or logo), as well as the name or image of any MIL employee or contractor of MIL. Without limiting the generality of the foregoing, and except as required by applicable Law, Vendor shall not, without MIL's prior written approval: (a) make any references to Third Parties that MIL or the State is a customer of Vendor; (b) include or make any reference to MIL or MIL's (or the State's) name in any proposals to Third Parties; or (c) provide MIL or the State contact information to existing or prospective customers of Vendor.

11.14 MIL Policies. Vendor, its employees, agents and permitted subcontractors shall comply with all MIL policies, procedures, orders and directives (collectively, the "**MIL Policies**") provided to Vendor in writing. As of the Effective Date, there are no MIL Policies (other than the MIL Security Policies and Procedures). If, following the Effective Date there are MIL Policies that apply to Vendor, MIL will notify Vendor of such policies in writing and Vendor shall comply with such policies within a reasonable time. If such MIL Policies materially increase Vendor's costs to provide Services under the Contract, the Vendor Executive Sponsor may raise the issue in the executive briefings and, if raised by the Vendor Executive Sponsor, MIL shall: (a) negotiate an amendment to the Contract to increase applicable fees (in an amount not to exceed Vendor's actual costs to comply) in good faith; or (b) waive Vendor's obligation to comply with such new MIL Policies.

11.15 Compliance with Laws; Compliance with Civil Rights; Conflict of Interest.

(a) General. With respect to its obligations under the Contract, including the provision of ESInet Services and Location Services, Vendor shall at all times comply with all applicable Laws, including MIL Data and Location Data breach notice statutes, rules, guidelines, regulations and policies of the WUTC, RCW 19.255.010 and RCW 42.56.590, federal and applicable state nondiscrimination Laws, including Title VII of the Civil Rights Act, 42 U.S.C. §12101 *et seq.*, the Americans with Disabilities Act ("**ADA**") and Title 49.60 RCW, Washington Law Against Discrimination, the Gramm-Leach-Bliley Act ("**GLB**"), HIPAA, and all rules, regulations and policies promulgated thereunder, including the commitment to negotiate in good faith any sub-agreements that may be required to be entered into by the parties pursuant to such Laws, and any and all obligations to obtain similar protections in or institute safeguards with respect to any Third Party agreements

and/or arrangements. Vendor shall comply with all Laws governing the importation, exportation or transfer of technology across national boundaries, shall obtain all necessary permits and governmental authorizations and approvals necessary to the performance of the Contract. Vendor's noncompliance, or refusal to comply, with any applicable Law shall constitute an Event of Default pursuant to **Section 10.2(b)** and MIL shall have the rights and remedies set forth in **Section 10.4**, additionally Vendor may be declared ineligible for further contracts with MIL or the State.

(b) Regulatory Modifications. Vendor shall provide all Regulatory Modifications to MIL, and include such Regulatory Modifications in the ESInet Services or other Services whenever such modifications are mandated or required to meet any Regulatory Requirements and are related generally to the then-existing features or functionality of the ESInet Services and other Services. MIL shall notify Vendor of any new state or local Regulatory Requirements affecting MIL after becoming aware of such Regulatory Requirements. Regulatory Modifications shall be at no additional cost to MIL. Except as provided below, Vendor shall provide to MIL fully-tested Regulatory Modifications within the time frames required by Law. If MIL wants Vendor to comply with such Regulatory Requirement in a different manner or using different technology than Vendor (and both methods would result in compliance with such Regulatory Requirement) and MIL's requested manner of compliance would materially increase Vendor's costs to provide ESInet Services, the Vendor Executive Sponsor may raise the issue in the executive briefings and, if raised by the Vendor Executive Sponsor, MIL shall: (a) negotiate an amendment to the Contract to increase applicable fees (in an amount not to exceed Vendor's actual costs to comply) in good faith; or (b) waive the requirement that Vendor comply with such Regulatory Requirement in the manner specified by MIL.

(c) Conflict of Interest. Notwithstanding any determination by the Washington State Executive Ethics Board or other tribunal, MIL may, in its sole discretion, by written notice to the Vendor, terminate this Contract if it is found after due notice and examination by MIL that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the Vendor in the procurement of, or performance under this Contract, which shall constitute a Vendor Event of Default. Following a Vendor Event of Default as set forth herein, MIL shall have the rights and remedies set forth in **Section 6.4**. The rights and remedies of MIL provided for in this Section shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which MIL makes any determination under this Section shall be an issue and may be reviewed as provided in the **Article 10** of this Contract.

11.16 Binding, Irrevocable Offer. In consideration of MIL agreeing to continue evaluating Vendor as its service provider, Vendor agrees that the signed Contract by Vendor constitutes a binding, irrevocable offer to MIL on the terms and conditions set forth herein which shall remain in full force and effect through and including September 30, 2016, or such later date as may be agreed to in writing by the parties. The Contract shall only become an effective and binding agreement upon MIL's execution and delivery of a copy of the Contract to Vendor.

11.17 No Construction Against Drafter. The parties agree that any principle of construction or rule of law that provides that an agreement shall be construed against the drafter of the agreement in the event of any inconsistency or ambiguity in such agreement shall not apply to the terms and conditions of the Contract.

11.18 Attorneys' Fees. In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorney's fees and costs.

11.19 Entire Contract; Modifications. The Contract, together with all of its Schedules, Exhibits and Attachments, constitutes the final, complete and exclusive statement of the agreement of the parties relative to the subject matter hereof and supersedes all previous or contemporaneous oral or written proposals, negotiations, representations or understandings concerning such subject matter. The Contract may be modified only pursuant to a writing executed by Vendor and the MIL Executive Sponsor, or his or her designee, in order to be effective against MIL. The parties expressly disclaim the right to claim the enforceability or effectiveness of any oral modifications to the Contract or any amendments based on course of dealing, waiver, reliance, estoppel or other similar legal theory.

IN WITNESS WHEREOF, the parties have executed this Technology Services Contract as of the Effective Date.

Approved:

**Washington State Military
Department**

Approved:

TeleCommunication Systems, Inc.

Sigfred "Ziggy" Dahl, Washington State
E911 Coordinator

Stanton D. Sloane, President

Approved as to Form:

State of Washington

Office of the Attorney General

Approved:

**Washington State Military
Department**

Dawn Cortez, Assistant Attorney General

Dan Swisher, Chief Financial Officer

TeleCommunication Systems, Inc.

UBI Number: 602134718

SCHEDULE 1.3

DEFINITIONS

"*Acceptance Test Plan*" is defined in **Section 2.3.1**.

"*ADA*" is defined in **Section 11.15(a)**.

"*Agency*" means any agency, office, institution, board, commission or department of the State.

"*APCO*" means the Association of Public Safety Commissions.

"*At Risk Amount*" is defined in **Section 3.3** of **Schedule 3.1.1**.

"*Cap*" is defined in **Section 7.2**.

"*Change of Control*" means: (a) any transaction or combination of transactions as a result of which either a person, an entity or a group of persons and/or entities that customarily has acted in concert and that presently is in control of a party ceases to be in control of such party; or (b) the sale, transfer, exchange or other disposition (including disposition in full or partial dissolution) of fifty percent (50%) or more of the beneficial ownership (as defined in Rule 13(d) of the Securities Exchange Act of 1934) of the voting power of a party, or of the assets of such party that constitute a substantial or material business segment of such party; or (c) the divestiture, in whole or in part, of the business unit or division of: (i) Vendor that has provided the ESInet Services; or (ii) a subcontractor that has provided a substantial or critical component of the ESInet Services.

"*Chronic Service Level Agreements Failure*" and "*Chronic Service Level Agreements Failure(s)*" are defined in **Section 5** of **Schedule 3.1.1**.

"*Confidential Information*" shall mean: (a) information concerning the other party's business affairs, property and methods of "confidential" and/or "proprietary"; and (b) in the case of MIL, regardless of whether such information is marked confidential or proprietary: (i) MIL Data and Location Data; (ii) any information and materials relating to Third Party vendors that have provided any part of MIL's, any County 911 Authority/PSAPs' and/or any Agencies' information or communications infrastructure; and/or (iii) any information of MIL, a County 911 Authority/PSAP and/or any Agency that is maintained or stored by or through the ESInet Services.

"*Contract*" and "*Technology Services Contract*" means this Technology Services Contract, entered into by and between MIL and Vendor, effective as of the Effective Date, inclusive of all Schedules, Exhibits and Attachments.

"*County 911 Authority*" means the individual responsible for 911 in the applicable county.

"*Critical Milestone*" means those key Deliverables and key events, to be identified in the Contract, as significant project-related milestones deliverables and events.

"*CSRIC*" is defined in **Section 1.1.5(a)**.

"*Cutover Plan*" is defined in **Section 2.3.1**.

"*Data Protected by Law*" refers to data regulated and/or protected by Law, and includes all Personal Information.

"*Delay Credits*" is defined in **Section 2.6.1**.

"*Deliverables*" means the procedures manual, documentation, designs, diagrams, functional specifications, technical specifications, schematics, architectural renderings and other documents and materials developed or prepared by Vendor, either alone or jointly with MIL.

"*Derivative Works*" is defined in **Section 8.1**.

"*Disabling Code*" is defined in **Section 5.1.4**.

"*Disclosing Party*" is defined in **Section 8.2**.

"*Effective Date*" means the date, if any, on which the Contract is counter-signed by MIL.

"*ESInet*" is defined in the Recitals.

"*ESInet RFP Response*" is defined in the Recitals, and is incorporated into and made a part of the Contract.

"*ESInet Services*" means the ESInet services that Vendor provides under this Contract, including the features and functionalities set forth in the MIL ESInet Requirements.

"*Events of Default*" is defined in **Section 6.2**.

"*Executive Sponsor*" is defined in **Section 1.1.2**.

"*FCC*" is defined in **Section 1.1.5(a)**.

"*Force Majeure Event*" is defined in **Section 11.5**.

"*GLB*" is defined in **Section 11.15(a)**.

"*HIPAA*" means the Health Insurance Portability and Accountability Act of 1996, as amended.

"*Holidays*" means those days on which MIL observes a holiday in a particular calendar year as published from time-to-time by MIL.

"*Indemnified Parties*" and "*Indemnifying Party*" are defined in **Section 9.1**.

"**Independent Auditor**" is defined in **Section 11.2.5**.

"**Information Security Officer**" is defined in **Section 1.1.5(b)**.

"**Initial Term**" is defined in **Section 6.1.1**.

"**Intellectual Property Rights**" means any and all rights in and to all copyrights, inventions, patents, trademarks, trade secrets and any other proprietary rights in or to tangible or intangible property recognized in any jurisdiction in the world, whether or not registered or registerable.

"**Invoicing Deadline**" is defined in **Section 4.2.3**.

"**Issue**" means any of the following: (a) any presently identified event, circumstance or problem that adversely affects the ability to meet a Deliverable or milestone (including any Critical Milestone) due date, whether by Vendor, MIL or a Third Party; or (b) any event, problem, difficulty or circumstance which affects or may affect the ESInet Services or other Services, including the failure to meet the Service Level Agreements.

"**Key Personnel**" is defined in **Section 3 of Schedule 3.4**.

"**Law**" or "**Laws**" means all existing and future laws, statutes, regulations, rules, administrative codes, ordinances, executive orders, polices, judicial opinions and/or decrees and other decisions having the effect of law (and any amendments thereto) by any federal, state or local government, authority, department or agency in any location that MIL, PSAP or an Agency conducts business.

"**Location Data**" is defined in **Section 8.1**.

"**Location Services**" is defined in **Section 3.1.2**.

"**MIL**" is referenced in the Recitals and means the Washington State Military Department and any successors and assigns.

"**MIL Data**" means any and all data: (a) within MIL's possession, custody, or control; or (b) received, generated, collected, stored, maintained or processed in connection with the performance of the Services (including ESInet Services) or Vendor's other obligations under the Contract, including Data Protected by Law, and all information that supports any reports, findings, conclusions and recommendations by Vendor to MIL. For the purposes of the Contract, MIL Data does not cease to be MIL Data solely because it is transferred or transmitted beyond MIL's immediate possession, custody, or control.

"**MIL Executive Sponsor**" is defined in **Section 1.1.2**.

"**MIL Policies**" is defined in **Section 11.14**.

"**MIL ESInet Requirements**" means the features, functionalities and requirements set forth in Section 7 of the Statement of Work.

"**MIL Security Policies and Procedures**" means the MIL, Washington State Office of the CIO (OCIO) and other applicable State security policies and procedures. As of the Effective Date, the only MIL Security Policies and Procedures are: OCIO Policy 141.10 (Securing Information Technology Asset Standards).

"**MRC**" means monthly resource charge set forth in **Schedule 4.1.1**.

"**NENA**" is defined in **Section 1.1.5(a)**, and any successor organization.

"**NG 9-1-1 System**" is defined in **Section 2.1**.

"**Originating Networks**" is defined in **Section 2.1**.

"**Personal Information**" means: (a) MIL Data or Location Data from which a natural person can be identified by reference to an identification number, including an individual's Social security number, driver's license number or Washington identification card number, or an account number or credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account; or (b) such other definition as may be set forth in Personal Information Laws.

"**Personal Information Law(s)**" mean any law that regulates the disclosure, handling and/or security of Personal Information, including Washington Revised Statutes Section 19.255.010 *et seq.* and 42.56.590 *et seq.*, or any similar federal or state statute or regulation that exists as of the Effective Date or may be enacted in the future.

"**Production Baseline Period**" is defined in **Section 4.3** of **Schedule 3.1.1**.

"**Progress Report**" is defined in **Section 2.5**.

"**Project Plan**" is defined in **Section 2.3.2**.

"**PSAP**" means public safety answering point.

"**PSAP Cutover**" is defined in **Section 2.4.2**.

"**PSAP Go-Live**" is defined in **Section 2.4.3**.

"**PSAP Go-Live Date**" is defined in **Section 2.4.3**.

"**RCW**" means the Revised Code of Washington.

"**Ready for Cutover**" is defined in **Section 2.3.4**.

"*Ready for Go-Live*" is defined in **Section 2.4.2**.

"*Receiving Party*" is defined in **Section 8.2**.

"*Regulatory Modifications*" are modifications to the ESInet Services that enable the ESInet Services to comply with applicable Regulatory Requirements.

"*Regulatory Requirements*" means governmental and quasi-governmental Laws, regulatory requirements, ordinances, policies, administrative codes, edicts, rules, guidelines and standards in effect as of the Effective Date or at any time thereafter and shall include, for purposes of the Contract all Laws and regulations related to the use and functions of the ESInet Services by MIL and the general public, and all other standards or guidelines established by committees, agencies or other standards-setting organizations implementing Regulatory Requirements.

"*Renewal Term*" is defined in **Section 6.1.1**.

"*RFP*" is referenced in the Recitals, and includes all updates and supplements to the originally-issued RFP, along with all clarifications and additional information provided by MIL.

"*Risk*" means any potential event that could adversely affect the success (scope, resources, effort, quality, or schedule) at a future point in time.

"*Security Event*" is defined in **Section 8.6.2**.

"*Security Policies and Procedures*" is defined in **Section 1.1.5(a)**.

"*Service Level Agreements*" means the level of performance, as stated in **Section 5 of Schedule 3.1.1**, at which Valid is required to perform a particular function, service or subset of the ESInet Services.

"*Service Level Agreement(s) Failure(s)*" means the failure of the ESInet Services, or any component thereof, to operate at a level equal to or greater than the highest level of performance with respect to the applicable Service Level Agreement as set forth in **Schedule 3.1.1**.

"*Service Level Credit*" means a credit deducted from the fees paid to Vendor in connection with Service Level Agreement Failures, as described in **Schedule 3.1.1**.

"*Services*" means any and all services acquired by or provided to MIL from Vendor, including any and all ESInet Services, acceptance services, cutover services and transition services.

"*State*" means the state of Washington.

"*Statement of Work*" is defined in **Section 2.3.1**.

"*Subcontractor*" is defined in **Exhibit 1**.

"*Subcontract Agreement*" is defined in **Exhibit 1**.

"*Subcontractor NDA Contract*" is defined in **Exhibit 1**.

"*Term*" is defined in **Section 6.1.1**.

"*Third Party*" or "*Third Parties*" means persons, corporations and entities other than Vendor or MIL.

"*Third Party NDA Contract*" is defined in **Exhibit 2**.

"*Transition Period*" is defined in **Section 6.6**.

"*Vendor*" means TeleCommunication Systems, Inc. and any successors and permitted assigns.

"*Vendor Executive Sponsor*" is defined in **Section 1.1.2**.

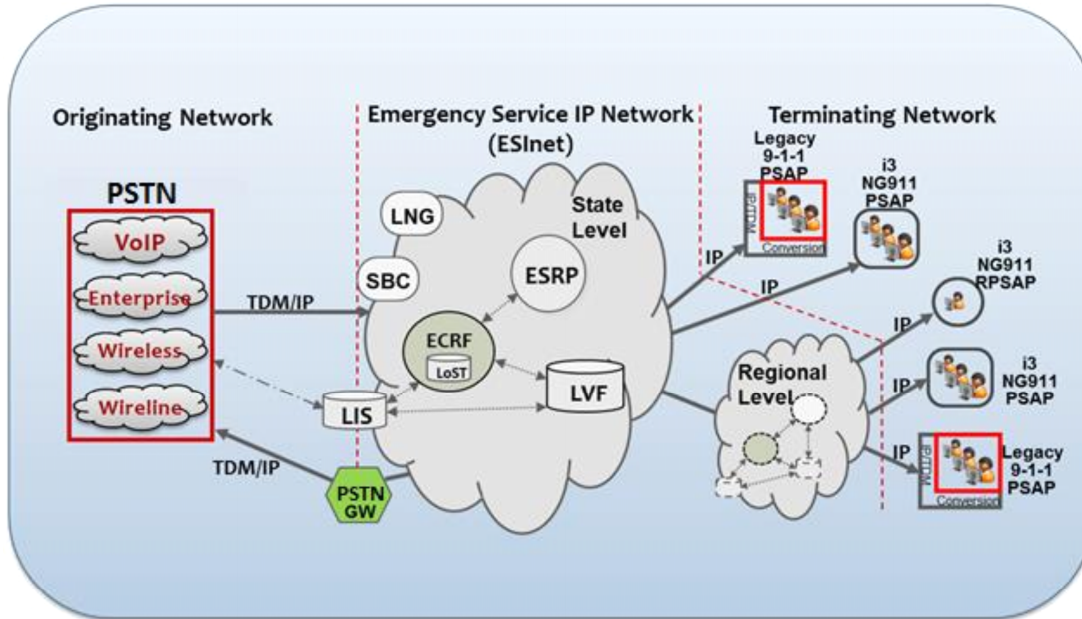
"*Vendor Project Director*" is defined in **Section 2.2**.

"*Vendor Services Manager*" is defined in **Section 1.1.4**.

"*WUTC*" means the Washington State Utilities and Transportation Commission, or any successor commission, Agency or other governmental entity.

SCHEDULE 2.1

HIGH-LEVEL SCHEMATIC OF NG 9-1-1 NETWORK



SCHEDULE 2.3.1

STATEMENT OF WORK

Core Statement of Work

Acceptance Test Plan



Microsoft Word 97 -
2003 Document

PSAP Acceptance Test Plan (Cutover Plan)



Microsoft Word 97 -
2003 Document

SCHEDULE 2.3.2

PROJECT PLAN



WA ESINET

Deployment Project 0



WA ESINET

Deployment Project 0

SCHEDULE 3.1.1

SERVICE LEVEL AGREEMENTS

1. Commencement of Service Level Agreements Obligations.

The obligation to meet Service Level Agreements, and MIL's right to receive, and Vendor's obligation to pay, any Service Level Credits shall commence upon the PSAP Go-Live Date for each PSAP.

2. Service Level Agreement Measurement and Reporting.

Vendor shall be responsible for monitoring, tracking and reporting on compliance with all Service Level Agreements and providing the Service Level Credits for the month or months (or events) in which there is a Service Level Agreement Failure.

Within five (5) business days after the end of each month, Vendor shall report to MIL Vendor's compliance with the Service Level Agreements for the prior month. The SLA compliance report must:

- (a) set forth each Service Level Agreement as stated in this Schedule and the data for the prior month reflecting (in numerical values) the actual performance with respect to the applicable Service Level Agreement;
- (b) for any Service Level Agreements that were not met at the highest stated level of required performance, a description of the failure, and complete details on the resulting root cause analysis performed with respect to the failure;
- (c) set forth the Service Level Credit to which MIL is entitled, including how such Service Level Credits were calculated;
- (d) the remediation efforts planned or taken with respect to the failure; and
- (e) a credit memorandum reflecting the Service Level Credit authorizing the Service Level Credit to be creditable on the next invoice.

The form of the SLA compliance report is attached as **Attachment A** to this Schedule.

Unless otherwise indicated, all of the Service Level Agreements shall be measured and reported as an average on a monthly basis.

3. *Service Level Credits.*

3.1 *Overview of Service Level Credit Process for Service Level Agreement Failures.*

- A. ***Single Service Level Agreement Failures.*** If a Service Level Agreement Failure occurs in any calendar month, then Vendor shall provide Service Level Credits to MIL equal to the amount of fees paid to Vendor in the applicable month times the percentage referenced in the applicable Service Level Agreement.
- B. ***Multiple Service Level Agreement Failures.*** If more than one Service Level Agreement Failure occurs in a single month, irrespective of whether there is a single or multiple causes for such multiple Service Level Agreement Failures, the Service Level Credits corresponding to all Service Level Agreement Failures will all be credited to MIL.

3.2 *Invoicing Related to Service Level Agreement Failures.*

Vendor shall issue a credit memorandum during each month in which a Service Level Agreement Failure has occurred. If MIL is eligible to receive Service Level Credits in the final month of the Term, Vendor shall pay to MIL the amount of such Service Level Credit within thirty (30) days after the final day of such month.

3.3 *Service Level Credit At Risk Amount Cap.*

The aggregate maximum amount of Service Level Credits that MIL may receive for all Service Level Agreement Failures in any single calendar month shall not exceed fifty percent (50%) of the MRC paid to Vendor in such calendar month (prior to deduction of any Service Level Credits) (the "*At Risk Amount*").

3.4 *Excused Service Level Agreements Failures.*

Vendor will be excused from meeting the Service Level Agreements that are actually and adversely affected by any of the conditions or events described below, but only for the duration of the time period that any such conditions or events are in effect. Excused Service Level Agreements Failures are:

- (a) those caused by network changes or failures in the Originating Network or PSAP for which Vendor is not responsible; and
- (b) those caused by a Force Majeure Event which involves more than one (1) point of failure.

3.5 *Root-Cause Analysis.*

Vendor shall commence performing a root-cause analysis to identify the cause of a Service Level Agreement Failure within one (1) hour of the occurrence of such failure, and shall complete such root-cause analysis within ten (10) days of the occurrence of such failure. In addition to reporting the root cause analysis as part of Vendor's monthly reporting obligations, immediately upon completing the root-cause analysis, Vendor shall provide MIL a detailed report concerning the failure and its root cause, and shall take corrective action to immediately cure the Service Level Agreement Failure. Notwithstanding any root cause analysis or efforts undertaken by Vendor herein, additional Service Level Agreement Failures of the same or similar type shall continue to generate Service Level Credits under the terms herein.

4. *Additions and Deletions of Service Level Agreements.*

4.1 *Additional Service Level Agreements.*

MIL shall have the right to add one (1) or more Service Level Agreements by written notice to Vendor not more than twice a year. The new Service Level Agreements will be established in one of the following ways:

- (a) Where Vendor has measured the data underlying the new Service Level Agreement, including as part of **Section 4.3** of this Schedule, for a period of at least three (3) months immediately preceding MIL's request for a new Service Level Agreement, MIL can elect to establish a new Service Level Agreement at the data point equal to the average monthly performance achieved during that three (3) month period, or such other level of performance as may be as mutually agreed to by the parties; or
- (b) Where Vendor has not measured the data underlying the new Service Level Agreement for a period of least three (3) months immediately preceding MIL's request for a new Service Level Agreement, the parties will follow the procedures defined in **Section 4.3** of this Schedule to develop a baseline upon which to establish a new Service Level Agreement.

Service Level Credits for new Service Level Agreements shall be mutually agreed by the parties.

If Vendor is required to measure a new Service Level Agreement in a manner that would materially increase Vendor's costs, the Vendor Executive Sponsor may raise the issue in the executive briefings and, if raised by the Vendor Executive Sponsor, MIL shall: (c) negotiate a change order to increase applicable fees (in an amount not to exceed Vendor's actual costs to measure such new Service Level Agreement) in good faith; or (d) waive the requirement that Vendor measure such new Service Level Agreement in a manner that would materially increase Vendor's costs.

4.2 Deletion of Service Level Agreements.

MIL may request the deletion of any Service Level Agreement upon written notice to Vendor, which notice shall be delivered at least thirty (30) days prior to the date on which such deletions to the Service Level Agreement is to be effective.

4.3 Baseline Period for Proposed New Service Level Agreements.

For any new Service Level Agreement proposed by MIL to which **Section 4.1(b)** applies (*i.e.*, three (3) months of performance data does not exist for the proposed new Service Level Agreement), Vendor shall measure and report the actual performance of the ESInet Services in production against the new proposed Service Level Agreement for a period of three (3) consecutive months for the purpose of establishing such Service Level Agreement (the "**Production Baseline Period**").

The new Service Level Agreement established at the end of such Production Baseline Period will be equal to the average of the documented monthly performance measured during the Production Baseline Period, or such other level of performance as may be as mutually agreed to by the parties. MIL is not entitled to receive, and Vendor is not obligated to pay, Service Level Credits for the applicable new Service Level Agreement until the conclusion of the Production Baseline Period.

5. Event of Default and Termination for Chronic Service Level Agreements Failures.

A Vendor Event of Default shall be deemed to occur when:

- (a) A Service Level Agreement Failure occurs for the same Service Level Agreement set forth below in three (3) consecutive months or for any four (4) months during any rolling twelve (12) month period:
 - Ingress-to-Egress Call Delivery;
 - Vulnerability to Single Point-of-Failure;
 - Emergency Call Delivery Accuracy;
 - Continuous Monitoring of Critical Functions; or
 - Alarm to Trouble Ticket Interval.
- (b) The ESInet Service Unavailability Service Level Agreement exceeded 30 minutes in any calendar month.
- (c) Service Level Agreement Failure occurs for the ESInet Service Unavailability Service Level Agreement in three (3) consecutive months or for any four (4) months during any rolling twelve (12) month period.
- (d) MIL is entitled to one hundred percent (100%) of the At Risk Amount in Service Level Credits during any three (3) months during any twelve (12) month period.

Subsections (a) through (c) are individually referred to as a "**Chronic Service Level Agreements Failure**" and collectively referred to as "**Chronic Service Level Agreements Failures**".

6. Service Level Agreements.

6.1 ESI_{net} Service Unavailability

6.1.1 Description

This SLA measures whether the ESI_{net} Service is meeting the Availability requirement of 99.999% (5-9's) by way of measuring the period(s) of unavailability (i.e., the ESI_{net} Service is available to receive, process, and deliver (to PSAP) a 911 call 99.999 percent of the time, computed monthly). It applies even if no 911 calls are presented to the system during any period of unavailability.

Any failure of all instances of a critical function (i.e., LNG, BCF(inc. SBC if provided), ESRP and ECRF) or infrastructure such that if any call was presented to that function during the failure would not be processed or forwarded to any destination (i.e., PSAP), is a charge against System Unavailability.

6.1.2 SLA

Vendor guarantees ESI_{net} Service Unavailability will not exceed thirty (30) seconds per calendar month.

6.1.3 Measurement

ESI_{net} Service Unavailability is measured from the time of either an alarm that provides notification of the outage event and/or the report of same by MIL, County 911 Authority and PSAP, until the time that the ESI_{net} Service is restored or operating in accordance with agreed upon specifications and on condition that the Vendor and the MIL agree to close the associated trouble ticket(s).

6.1.4 Credits

- 1) Service restored within 31 to 60 seconds – 10% of MRC
- 2) Service restored within 61 to 300 seconds – 25% of MRC
- 3) Service restoral greater than 300 seconds – 50% of MRC

If the nature of the outage(s) is partial (i.e., not all PSAPs impacted), the above credits will be prorated on a per affected PSAP basis.

6.2 Ingress-to-Egress Call Delivery

6.2.1 Description

This SLA measures whether 99.999 percent of all calls actually received by the ESI_{net} Service are delivered to an egress point (i.e., PSAP) such that they can be properly presented to the PSAP CPE for terminating treatment (e.g., answer, announcement, busy signal, etc.). This does not include 1) calls in the setup stage of call processing and which are abandoned (by the caller) before the call setup processing has completed, or 2) calls which encounter a "ring, no answer" condition, or 3) calls to legacy PSAPs for which all CAMA trunks are currently occupied.

6.2.2 SLA

Vendor guarantees that no more than 1 call in 100,000, presented to the ESI_{net}, will encounter a condition in which the caller is left "high and dry".

6.2.3 Measurement

Comparison of LNG/Originating BCF call logs with PGM/Terminating BCF call logs.

6.2.4 Credits

- 1) 2 to 10 calls in 100,000 – 15% of applicable MRC
- 2) 11 to 20 calls in 100,000 – 25% of applicable MRC
- 3) Greater than 20 calls in 100,000 – 50% of applicable MRC

Note: Applicable MRC is a prorated calculation based on PSAP impacted versus total PSAPs served.

6.3 Log Processing

6.3.1 Description

This SLA complements the Raw Logging Facility SLA by placing requirements upon the consolidation function.

6.3.2 SLA

Vendor guarantees that any failure or impairment of the log consolidation function(s) shall be repaired within 8 hours. In the event of a failure of log consolidation, if data can be reasonably derived from other sources that will be deemed acceptable and not trigger the need for any credits under this SLA.

6.3.3 Measurement

Inspection of the consolidated log files for gaps in the raw updates. (See Section 6.2.21.3).

6.3.4 Credits

- 1) Loss of consolidation functionality for 8 to 16 hours – 5% of MRC
- 2) Loss of consolidation function for 16 to 48 hours – 10% of MRC
- 3) Loss of consolidation function for more than 48 hours – 15% of MRC

6.4 Vulnerability to Single Point-of-Failure

6.4.1 Description

By design, a highly redundant system can experience failures within the system that have no noticeable impact on the service that the system renders. However, when operating with failures present, the system has reduced or lost redundancy, and is therefore vulnerable to a service effecting outage in the event of further failures. This SLA is intended to assure full redundancy is restored promptly to reduce and control the risk of a serious service affecting outage.

6.4.2 SLA

The Vendor shall restore any failed element within the core system that causes a loss of redundancy in the system within 4 hours of time that the redundant element failed. For clarity, the system is designed with both local and geographic redundancy, providing quad redundancy. Redundancy will be considered lost only when 3 of the 4 redundant elements have failed.

6.4.3 Measurement

The Vulnerability clock starts any time a critical component within the core system loses all redundancy. Violations will be detected by inspection of the operational logs.

6.4.4 Credits

- 1) Restoration within twice the SLA limit – 5% of MRC
- 2) Restoration within 10 times the SLA limit – 10% of MRC
- 3) Restoration greater than 10 times the SLA limit – 15% of MRC

If the loss of redundancy only impacts connectivity to a PSAP(s), the credit will only apply to the MRC for connectivity to that PSAP(s). Policy Based Routing as defined in the i3 standard provides a valid form of redundancy for delivery of calls to the PSAP. If calls cannot be delivered to a PSAP and Policy Based Routing delivers per the established policies, that will not be considered an outage and will not be subject to SLA penalties.

The Vendor has 4 hours to restore (at least) some level of redundancy to stop the Vulnerability clock. Failure to restore some level of redundancy within the interval is a violation of this SLA.

6.5 Emergency Call Delivery Accuracy

6.5.1 Description

This SLA effectively measures whether the ESInet Service for call routing functions (i.e., ESRP, PRF, and ECRF) is functioning correctly. It includes only calls that are misrouted is due to incorrect application processing or provisioning and not any calls which are alternate routed (i.e., routed according to a ECRF/PRF rule specified by the 911 Authority).

6.5.2 SLA

Vendor guarantees that 99.99 percent of all emergency calls, on a calendar month basis, shall be routed in accordance with the supplied data.

6.5.3 Measurement

Violations will be determined by monthly analysis of the consolidated transaction log database. Calls will be considered misrouted only to the extent the misroute differs from the authoritative sources: MIL, County 911 authority or PSAP.

6.5.4 Credits

- 1) for misrouting of up to 1 call per 1000 – 10% of applicable MRC
- 2) for misrouting of up to 1 call per 100 – 15% of applicable MRC
- 3) for misrouting more than 1 call per 100 – 20% of applicable MRC

Note: Applicable MRC is a prorated calculation based on PSAP impacted versus total PSAPs served

6.6 Call Quality

6.6.1 Description

This SLA measures whether the quality of the call(s) being delivered to the PSAP(s) is the same as that which was received by the ESInet Service.

6.6.2 SLA

Vendor guarantees that 99.9 percent of all voice calls shall be delivered with a MOS that is within 0.5 as that which was received from the Originating Network.

6.6.3 Measurement

Measured by automated voice quality measurement tools on a calendar month basis.

6.6.4 Credits

For each calendar month in which calls with reduced MOS exceed 1 per 1000 – 3% of MRC.

For clarity, call quality will be considered reduced only if the MOS of the call transmitted through the system is reduced more than 0.5 as compared to the MOS of the call when received by the system.

6.7 Scheduled Downtime

6.7.1 Description

This SLA imposes a requirement for the prompt update(s) of equipment, components, or processes in the 911 call path, but which due to redundancy, are not service effecting.

6.7.2 SLA

Vendor shall restore any out-of-service redundant element within 8 hours of being placed in an out-of-service state and is single point of failure, unless a greater time is approved by MIL as part of the applicable Method and Procedures (MOP). A redundant element will be considered lost only when 3 of the 4 redundant elements have failed.

6.7.3 Measurement

Measurement will be by log inspection and monitoring system alarms.

6.7.4 Credits

- 1) Element restoral 8:01 to 12:00 hours – 1% of MRC
- 2) Element restoral 12:01 to 16:00 hours – 3% of MRC
- 3) Element restoral greater than 16:01 hours – 5% of MRC

6.8 Continuous Monitoring of Critical Functions

6.8.1 Description

This SLA reflects that the critical functions within the ESInet Service must be monitored on a continuous (i.e., 365X24X7) basis.

6.8.2 SLA

Vendor guarantees that loss of monitoring capabilities to all, or any portion, of the ESInet shall not exceed 30, cumulative, minutes per calendar month. For further clarity, monitoring may include remote access to the system for and the use of remote monitoring will not constitute a loss of monitoring.

6.8.3 Measurement

Inspection of Operational logs.

6.8.4 Credits

- 1) Loss of monitoring for up to 60 minutes – 5% of MRC
- 2) Loss of monitoring for up to 360 minutes – 10% of MRC
- 3) Loss of monitoring over 360 minutes – 20% of MRC

6.9 LVF Public Portals

6.9.1 Description

If the Vendor has elected to provide the optional LVF and any associated Public Portal, it is important that outside entities be able to access these resources regularly. This SLA measures LVF/Public Portal unavailability.

6.9.2 SLA

Vendor guarantees that the LVF and any associated Public Portal shall be available for all but eight (8) hours, cumulative, per calendar month.

6.9.3 Measurement

Inspection of the operational logs.

6.9.4 Credits

- 1) Unavailable for 8:01 hours to 16 hours per calendar month – 3% of the applicable MRC
- 2) Unavailable for 16:01 hours to 32 hours per calendar month – 5% of the applicable MRC
- 3) Unavailable for more than 32:01hours per calendar month – 10% of the applicable MRC

6.10 Alarm to Trouble Ticket Interval

6.10.1 Description

This SLA is intended to ensure that corrective measures are initiated in accordance with the critical nature of the ESInet Service.

6.10.2 SLA

An automated system or a NOC employee shall create a trouble ticket within fifteen (15) minutes of detection for a Critical or Major alarm. The list of alarms applicable to this SLA will be identified in the mutually agreed upon NOC-to-NOC Operations Guide.

6.10.3 Measurement

Measurement is by comparing trouble ticket creation time with the acknowledgment time from the monitoring system alarm log, plus the time required to validate the condition.

6.10.4 Credits

For critical and major alarms, if greater than 25% of the alarms:

- 1) *Within 30 minutes of alarm – 3 % of MRC*
- 2) *Within 60 minutes of alarm – 5% of MRC*
- 3) *Greater than 30 minutes of alarm – 10% of MRC*

6.11 Trouble Ticket to Dispatch Interval

6.11.1 Description

This SLA ensures that the Vendor shall dispatch resources, to take the necessary corrective measures, either on-site or via remote access, in accordance with the trouble ticket information. For clarity, dispatch means to take measures to address the issue identified in the trouble ticket, including trouble shooting or corrective measures taken by tier 1 or 2 technicians.

6.11.2 SLA

Vendor guarantees that for Critical and Major trouble tickets that resources will be dispatched within 30 minutes of the trouble ticket creation. While for Minor trouble tickets resources will be dispatched with two hours of the trouble ticket creation.

6.11.3 Measurement

By comparison of the operational and/or transactional logs and the time the resource arrives on-site (not including travel time) or the log-in time of the remote access.

6.11.4 Credits

For critical and major trouble tickets, if greater than 25% of the tickets:

- 1) *Within 31 minutes to 1 hour of trouble ticket creation – 10 % of MRC*
- 2) *Within 1:01 to 4 hours of trouble ticket creation – 20% of MRC*
- 3) *Greater 4:01 hours of trouble ticket creation – 40% of MRC*

6.12 Notifications

6.12.1 Description

This SLA ensures that MIL, County 911 Authority and the PSAPs are notified of events that are affecting, or could potentially, adversely impact (e.g., loss of connectivity to a particular PSAP) their operations, immediately while making allowance for Vendor personnel to address the over-head of initiating remedial action(s).

6.12.2 SLA

Vendor guarantees that MIL and any impacted PSAP(s), including the County 911 Authority, will be notified of the situation within 30 minutes of the creation of a Critical or Major trouble ticket. The Critical and Major tickets applicable to this SLA will be identified in the mutually agreed upon NOC-to-NOC Operations Guide. Any credits applicable are to be pro-rated based on the number of affected PSAPs.

6.12.3 Measurement

This SLA shall be measured by comparing the time the trouble is identified with the time that MIL, County 911 Authority and PSAP(s) Management Information System records the call and/or email. SLA is applicable if greater three (3) or more incidents occur within any calendar month, wherein the longest response will determine the credit that applies.

6.12.4 Credits

Critical and Major Notifications:

- 1) *Within 15:01 to 30 minutes of trouble ticket creation – 10% of MRC*
- 2) *Within 30:01 minutes to 1 hour trouble ticket creation – 20% of MRC*
- 3) *Greater than 1:01 hour of trouble ticket creation – 40% of MRC*
- 4) *Failure to notify – 100% of MRC*

6.13 Database Updates

6.13.1 Description

Updates received from authorized parties (e.g., MIL,911 Authorities) for GIS, Policy, or ALI databases shall be reviewed (as required) and either uploaded into the production system or returned to the originator with notification of exceptions that must be resolved before the updates can be processed. It is left to the Vendor's discretion whether to process valid data (incremental) or wait until exceptions/error have been corrected.

6.13.2 SLA

Vendor guarantees that data, necessary for proper ESInet operation, received from authorized parties, shall be uploaded or returned within:

For daily activity ALI or GIS data (e.g., MSAG changes, ALI data discrepancies, GIS updates): two (2) business days

For ESInet-scale data changes (e.g., ESN, NPA/NXX updates): five (5) business days

For policy updates (e.g., PRF rules): five (5) business days (change control process preferred)

For pANI steering updates (unless expedited by the CSP): ten (10) business days

For ALI system changes (such as ALI format to the PSAP) the change will occur via a change control process and is not subject to SLA penalties. Initial data loading during the transition period to the new ALI service also is exempt from SLA penalties due to the large scale of the change.

6.13.3 Measurement

From the time the change was submitted to 1) the change taking effect, or 2) the data being returned for revision.

6.13.4 Credits

- 1) *Up to 2 business days exceeding allowance – 3% of MRC*
- 2) *From 3 to 5 business days exceeding allowance – 5% of MRC*
- 3) *Greater than 5 business days exceeding allowance – 10% of MRC*

ATTACHMENT A TO SCHEDULE 3.1.1

FORM OF SERVICE LEVEL AGREEMENT COMPLIANCE REPORT

(SEE ATTACHED)



Microsoft PowerPoint
97-2003 Presentator

SCHEDULE 3.4

DELIVERABLES, OWNERSHIP, CHANGE ORDERS AND PERSONNEL

1. Deliverables.

1.1 General. Vendor shall develop and deliver to MIL the Deliverables identified in this Contract, including the Statement of Work, Project Plan, Acceptance Test Plan, Cutover Plan and reports related to the ESInet Services. Following its receipt, MIL will review the Deliverable, and if the Deliverable does not conform to its requirements, MIL promptly will notify Vendor of the deficiencies, and Vendor promptly will modify the Deliverable and resubmit it to MIL for its review. The process described herein will repeat until the Deliverable conforms to its requirements and MIL accepts such Deliverable in writing.

1.2 Ownership. Each party (and/or its Third Party licensors) is and shall remain the owner of all right, title and interest in and to those of that party's intellectual property rights that either existed prior to the Effective Date or that are independently developed by such party on or after the Effective Date. Non-software Deliverables, such as design documents, functional specifications, technical specifications, schematics, reports and architectural renderings developed by Vendor for or on behalf of MIL shall be and remain the sole and exclusive property of MIL. Software-based Deliverables shall be and remain, as between Vendor and MIL, the sole and exclusive property of Vendor. Each copyrightable aspect of a MIL-owned Deliverable shall be considered a "work-made-for-hire". Vendor shall not be obligated to deliver any software code (whether in object, source or other format) to MIL as part of the provision of ESInet Services; provided, however, that this shall not change or limit Vendor's obligations to provide MIL Data and/or Location Data to MIL as set forth in the Contract.

2. Change Orders. If either party believes that a change in the Contract or in the Services or Deliverables is necessary or desirable, such party shall submit a written change order to the other in the form and format provided by MIL. With respect to change orders submitted to Vendor by MIL, Vendor shall provide its response within three (3) business days (for a simple change request) and within ten (10) business days (for a complex change request). Vendor will comply with MIL's procedures and methodologies pertaining to the processing of change orders. The parties shall finalize a change order by signing it. If a change order is not signed by both parties, Vendor shall continue to fulfill its obligations as set forth in the Contract.

3. Vendor Personnel. Vendor shall provide a sufficient number of qualified personnel to perform Vendor's obligations, including such key personnel as may be designated in the Contract or otherwise (collectively, the "**Key Personnel**"). MIL shall have the right to approve all personnel assigned to provide Services. If there are Issues or problems with personnel assigned by Vendor, MIL shall bring such Issues or problems to the attention of Vendor to attempt to resolve the situation. If Vendor is unable to promptly resolve the situation to MIL's satisfaction, upon MIL's request, Vendor will remove such personnel and replace such person with another qualified resource. Except upon MIL's prior written consent, Vendor shall not remove or temporarily reassign any

Vendor personnel to another account until such time as such personnel have completed all of their assigned responsibilities under the Contract.

SCHEDULE 3.6

ESINET SERVICES REPORTS

Report Name	Description
[1] PSAP Alternate Routing	This report will show alternate routing information for each PSAP in the identified market. The report will contain information about the alternates such as name, ranking, and the description of the alternate list they belong to.
[2] Default Routing	This report will identify the default PSAP for each trunk group in the identified market. The report will contain information about the PSAP, such as name and FCC ID. This report will also identify the LRO PSAP for the market.
[3] Call Routing Detail	This report shall provide one record for every 9-1-1 call processed for the identified market, providing details about the calling party, the time of the call, and the number of responders that participated in the call.
[4] Call Routing Summary	For the identified market, this report will provide data compiled from the Call Routing Detail report and other information sources.
[5] Trunk Group Detail	For the identified market, this report will provide a record of each call received from each trunk group.
[6] Trunk Group Summary	For the identified market, this report will provide the number of calls received from each trunk group.
[7] Call Totals (By Daily)	This report will provide information regarding call activity on a daily basis. Report will be in the form of a graph showing the average number of calls per day of the week, over the period of a month, for the previous 3 months.
[8] Call Totals (By Hour)	This report will provide information regarding call activity on an hourly basis. Report will be in the form of a graph showing the average number of calls during each hour of the day over the period of a month, for the previous 3 months.
[9] Network Metrics	This report will provide data about packet loss, latency, and jitter between ingress at the Sonus box to egress at the TCS demarcation with the CSP's MPLS cloud.
[10] Location Response Detail	This report will provide data about each location query that the system attempted.
[11] Bridge Participants Detail	If additional participants are bridged into a call (e.g., Transfer, Conference) this report shall display a record for every participant as they join the bridge and another record as they leave.
[12] Deployment Progress	This report will provide data about the number of PSAPs deployed.
[13] Trouble Tickets	This report will provide data about each trouble ticket that is either unresolved or is resolved during the reporting period.
[14] CUSTOM	Custom reporting to be agreed upon between the State of Washington and Comtech TCS.

SCHEDULE 3.7**OPTIONAL SERVICES**

Service	Fixed Fee	Description / Notes
Core Network Services – ESRP System Aware (Option 6.2.15.2)	\$88,220 NRC – \$0 MRC	MIL has the right to exercise this option prior to 12/31/2016.
Core Network Services – Network Queuing (Option 6.2.16)	\$295,380 NRC – \$0 MRC	MIL has the right to exercise this option prior to 12/31/2016.
Core Network Services – Wireless Calls Incident Direction (Option 6.2.17)	\$297,743 NRC – \$0 MRC	MIL has the right to exercise this option prior to 12/31/2016.

SCHEDULE 4.1.1**FEES**

1.0 Non-Recurring Fees – Core Services. Vendor may invoice MIL for the following one-time, non-recurring fees when MIL approves the applicable Payment Milestone (below) in writing*:

No.	Payment Milestone	Payment Milestone Description	Non-Recurring Fee	Target Date of Payment Milestone Completion**
1.	Service Deployment - Engineering Plan Complete	Engineering Plan complete (i.e., LOA/CFA complete, ICD documents complete, circuit install schedule finalized).	\$346,294	[12a]
2.	Service Deployment – ESInet Hardware Installed	All ESInet hardware has been installed.	\$1,108,139	
3.	Service Deployment – ESInet Application (version 1.0.1) Installed	ESInet application (version 1.0.1) is installed.	\$346,294	
4.	Service Deployment Fee – Comtech IOT of ESInet Complete	Vendor IOT of ESInet complete.	\$692,587	
5.	Service Deployment Fee - Completion of ESInet ATP	Core ESInet ATP is complete, all errors, Issues and defects have been corrected/resolved, all applicable MIL ESInet Requirements are met and ESInet is available for live use.	\$277,035	
6.	Monitoring Dashboard Complete	Monitoring dashboard has been tested, meets all applicable MIL ESInet Requirements, all errors, Issues and defects have been corrected/resolved and is available for live use.	\$530,909	
7.	LVF Service Available	LVF service has been tested, meets all applicable	\$399,260	

		MIL ESInet Requirements, all errors, Issues and defects have been corrected/resolved and is available for live use.		
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* When Vendor has completed and delivered all tasks, activities and Deliverables for a Payment Milestone, Vendor shall certify to MIL in writing that such Payment Milestone has been completed and that MIL has a fifteen (15) business day Payment Milestone Acceptance Period in which to approve or reject the applicable Payment Milestone ("**Payment Milestone Certification**"). Within fifteen (15) business days from the date MIL receives Payment Milestone Certification for the applicable Payment Milestone, MIL shall notify Vendor in writing whether Vendor has achieved such Payment Milestone (the "**Payment Milestone Acceptance Period**").

If MIL reasonably believes that Vendor has not completed and delivered all tasks, activities and Deliverables for a Payment Milestone, MIL shall notify Vendor in writing of the non-compliance, and shall provide Vendor with available information concerning such non-compliance (a "**Payment Milestone Notice of Non-Compliance**"). Upon receipt of a Payment Milestone Notice of Non-Compliance, Vendor shall resubmit or re-perform the applicable tasks, activities and Deliverables for such Payment Milestone as soon as commercially practicable, and the approval process described herein shall be repeated until the Payment Milestone is approved by MIL as set forth below.

If MIL reasonably believes that Vendor has completed and delivered all tasks, activities and Deliverables for a Payment Milestone, MIL shall notify Vendor in writing that MIL has approved such Payment Milestone and Vendor may invoice MIL for the applicable fee. In the event that the Payment Milestone Acceptance Period for a Payment Milestone has expired without MIL providing a Payment Milestone Notice of Non-Compliance or MIL notifying Vendor in writing that it has approved such Payment Milestone, such Payment Milestone shall be deemed to have been approved by MIL and Vendor may invoice MIL for the applicable fee.

** See Project Plan for precise dates.

2.0 Monthly Recurring Fees – Core Services. Vendor may commence invoicing MIL for the following monthly recurring fees when MIL approves the applicable Payment Milestone (below) in writing*:

No.	Payment Milestone	Payment Milestone Description	Monthly Recurring Fee	Target Date of Payment Milestone Completion**
1.	ESINET Service	Core ESInet ATP is complete, all errors, Issues and defects have been corrected/resolved, all applica-	\$157,255	[12a]

		ble MIL ESInet Requirements are met and ESInet is available for live use.		
2.	GIS Service Available	GIS service has been tested, meets all applicable MIL ESInet Requirements, all errors, Issues and defects have been corrected/resolved and is available for live use.	\$53,788	[12a]
3.	Logging Service Available	Logging service (ECATS) has been tested, meets all applicable MIL ESInet Requirements, all errors, Issues and defects have been corrected/resolved and is available for live use.	\$17,610	
4.	LVF Service Available	LVF service has been tested, meets all applicable MIL ESInet Requirements, all errors, Issues and defects have been corrected/resolved and is available for live use.	\$36,233	
5.	Temporary Administration Fee***		\$5,417	Aug-16

* When Vendor has completed and delivered all tasks, activities and Deliverables for a Payment Milestone, Vendor shall provide MIL a Payment Milestone Certification. MIL shall notify Vendor in writing whether Vendor has achieved such Payment Milestone within a fifteen (15) business day Payment Milestone Acceptance Period.

If MIL reasonably believes that Vendor has not completed and delivered all tasks, activities and Deliverables for a Payment Milestone, MIL shall provide Vendor with a Payment Milestone Notice of Non-Compliance in writing. Upon receipt of a Payment Milestone Notice of Non-Compliance, Vendor shall resubmit or re-perform the applicable tasks, activities and Deliverables for such Payment Milestone as soon as commercially practicable, and the approval process described herein shall be repeated until the Payment Milestone is approved by MIL as set forth below.

If MIL reasonably believes that Vendor has completed and delivered all tasks, activities and Deliverables for a Payment Milestone, MIL shall notify Vendor in writing that MIL has approved such Payment Milestone and Vendor may invoice MIL for the applicable fee. In the event that the Payment Milestone Acceptance Period for a Payment Milestone has expired without MIL providing a Payment Milestone Notice of Non-Compliance or MIL notifying Vendor in writing that it

has approved such Payment Milestone, such Payment Milestone shall be deemed to have been approved by MIL and Vendor may invoice MIL for the applicable fee.

** See Project Plan for precise dates.

*** Vendor may only invoice MIL for this fee for 60 months commencing the date of MIL's execution and delivery of a copy of the Contract to Vendor (as described in the last sentence of **Section 11.16**). For clarity, Vendor shall not invoice MIL for this fee in any Renewal Term.

3.0 PSAP – Non-Recurring Fees & Monthly Recurring Fees. Vendor may commence invoicing MIL for the following one-time, non-recurring fees and monthly recurring fees on the PSAP Go-Live Date for the applicable PSAP:

No.	PSAP	Non-Recurring Fees	Monthly Recurring Fees
1.	Adams County Communications Center - ALI		\$746
2.	Adams County Communications Center - ESInet Core	\$8,143	\$2,802
3.	Bothell Police Dept - ALI		\$1,243
4.	Bothell Police Dept - ESInet Core	\$8,143	\$3,991
5.	Clark Regional Emergency Services Agency - ALI		\$5,470
6.	Clark Regional Emergency Services Agency - ESInet Core	\$8,143	\$12,041
7.	Columbia County Public Safety Communications - ALI		\$746
8.	Columbia County Public Safety Communications - ESInet Core	\$8,143	\$2,638
9.	Colville Tribal police Department - ALI		\$995
10.	Colville Tribal police Department - ESInet Core	\$10,754	\$3,580
11.	Cowlitz County 911 Center - ALI		\$1,492
12.	Cowlitz County 911 Center - ESInet Core	\$9,087	\$4,634
13.	Enumclaw Police Department - ALI		\$746
14.	Enumclaw Police Department - ESInet Core	\$8,143	\$3,232
15.	Fairchild Air Force Base FD - ALI		\$497
16.	Fairchild Air Force Base FD - ESInet Core	\$8,143	\$3,253
17.	Ferry County E911 - ALI		\$995
18.	Ferry County E911 - ESInet Core	\$8,143	\$3,444
19.	Franklin County Backup - ALI		\$746
20.	Franklin County Backup - ESInet Core	\$8,269	\$2,864
21.	Franklin County Sheriff's Office - ALI		\$1,243

No.	PSAP	Non-Recurring Fees	Monthly Recurring Fees
22.	Franklin County Sheriff's Office - ESInet Core	\$8,269	\$3,833
23.	Garfield County Sheriff's Office - ALI		\$497
24.	Garfield County Sheriff's Office - ESInet Core	\$8,143	\$2,153
25.	Grays Harbor E911 Communications - ALI		\$1,989
26.	Grays Harbor E911 Communications - ESInet Core	\$12,390	\$5,063
27.	Island County Emergency Services Communications Center (I-COM 911) - ALI		\$2,486
28.	Island County Emergency Services Communications Center (I-COM 911) - ESInet Core	\$8,143	\$6,498
29.	Issaquah Police Department - ALI		\$995
30.	Issaquah Police Department - ESInet Core	\$8,143	\$3,444
31.	Joint Base Lewis McChord (JBLM) - ALI		\$995
32.	Joint Base Lewis McChord (JBLM) - ESInet Core	\$8,143	\$5,255
33.	JEFFCOM 911 Backup - ALI		\$746
34.	JEFFCOM 911 Backup - ESInet Core	\$8,773	\$2,638
35.	JEFFCOM 911 Communications - ALI		\$995
36.	JEFFCOM 911 Communications - ESInet Core	\$8,773	\$2,978
37.	King County Sheriff's Office - ALI		\$7,708
38.	King County Sheriff's Office - ESInet Core	\$8,143	\$24,445
39.	Kitsap County Central Communications (CENCOM) - ALI		\$3,730
40.	Kitsap County Central Communications (CENCOM) - ESInet Core	\$8,710	\$8,778
41.	Kittitas County 911 (KITTCOM) - ALI		\$1,243
42.	Kittitas County 911 (KITTCOM) - ESInet Core	\$9,795	\$3,608
43.	Klickitat County Sheriff's Office - ALI		\$1,243
44.	Klickitat County Sheriff's Office - ESInet Core	\$8,143	\$4,243
45.	Lewis County 911 - ALI		\$1,989
46.	Lewis County 911 - ESInet Core	\$12,547	\$5,604
47.	Lincoln County Sheriff's Office - ALI		\$746

No.	PSAP	Non-Recurring Fees	Monthly Recurring Fees
48.	Lincoln County Sheriff's Office - ESInet Core	\$8,143	\$2,353
49.	Mason County Emergency Communications (MACECOM) - ALI		\$1,243
50.	Mason County Emergency Communications (MACECOM) - ESInet Core	\$8,269	\$3,463
51.	Multi Agency Communications Center (MACC) - ALI		\$1,492
52.	Multi Agency Communications Center (MACC) - ESInet Core	\$8,338	\$4,304
53.	Northeast King County Regional Public Safety Communications Agency - ALI		\$5,719
54.	Northeast King County Regional Public Safety Communications Agency - ESInet Core	\$8,143	\$13,733
55.	Okanogan County Sheriff's Office - ALI		\$995
56.	Okanogan County Sheriff's Office - ESInet Core	\$8,458	\$3,534
57.	Pacific County Communications - ALI		\$1,492
58.	Pacific County Communications - ESInet Core	\$8,773	\$4,218
59.	Pend Oreille County 911 - ALI		\$995
60.	Pend Oreille County 911 - ESInet Core	\$8,143	\$3,589
61.	Peninsula Communications (PENCOM) - ALI		\$1,243
62.	Peninsula Communications (PENCOM) - ESInet Core	\$8,143	\$4,351
63.	Port of Seattle Police/Fire Communications - ALI		\$1,243
64.	Port of Seattle Police/Fire Communications - ESInet Core	\$8,143	\$3,916
65.	Puyallup Communications - ALI		\$2,984
66.	Puyallup Communications - ESInet Core	\$8,143	\$7,257
67.	Redmond Police Dept - ALI		\$3,232
68.	Redmond Police Dept - ESInet Core	\$8,143	\$9,398
69.	RiverCom 911 - ALI		\$2,735
70.	RiverCom 911 - ESInet Core	\$9,207	\$7,595
71.	San Juan County Sheriff's Office - ALI		\$746
72.	San Juan County Sheriff's Office - ESInet Core	\$8,773	\$2,876
73.	Seattle Fire Dept - ALI		\$6,713
74.	Seattle Fire Dept - ESInet Core	\$8,143	\$16,240
75.	Seattle Police Dept - ALI		\$7,459

No.	PSAP	Non-Recurring Fees	Monthly Recurring Fees
76.	Seattle Police Dept - ESInet Core	\$8,143	\$19,540
77.	Skagit 911 - ALI		\$3,730
78.	Skagit 911 - ESInet Core	\$8,143	\$9,534
79.	Skamania County Sheriff's Office - ALI		\$746
80.	Skamania County Sheriff's Office - ESInet Core	\$8,143	\$3,232
81.	SNOCOM 911 - ALI		\$3,730
82.	SNOCOM 911 - ESInet Core	\$8,143	\$9,854
83.	SNOPAC 911 - ALI		\$4,973
84.	SNOPAC 911 - ESInet Core	\$8,143	\$12,254
85.	South Sound 911 - ALI		\$5,221
86.	South Sound 911 - ESInet Core	\$8,143	\$12,345
87.	Southeast Communications Center (SECOM) - ALI		\$2,486
88.	Southeast Communications Center (SECOM) - ESInet Core	\$10,031	\$7,192
89.	Spokane County 911 Emergency Communications - ALI		\$5,719
90.	Spokane County 911 Emergency Communications - ESInet Core	\$8,143	\$13,119
91.	Spokane County 911 Emergency Communications Backup - ALI		\$995
92.	Spokane County 911 Emergency Communications Backup - ESInet Core	\$8,143	\$4,100
93.	Stevens County 911 - ALI		\$995
94.	Stevens County 911 - ESInet Core	\$8,143	\$3,320
95.	Tacoma FD - ALI		\$3,232
96.	Tacoma FD - ESInet Core	\$8,143	\$7,667
97.	TCOMM 911 - ALI		\$5,221
98.	TCOMM 911 - ESInet Core	\$8,143	\$11,697
99.	University of Washington Police Department - ALI		\$746
100.	University of Washington Police Department - ESInet Core	\$8,143	\$3,292
101.	Valley Communications Center (Valley-Com) - ALI		\$11,437
102.	Valley Communications Center (Valley-Com) - ESInet Core	\$8,143	\$27,460
103.	Wahkiakum County Sheriff's Office - ALI		\$746
104.	Wahkiakum County Sheriff's Office - ESInet Core	\$8,143	\$2,792

No.	PSAP	Non-Recurring Fees	Monthly Recurring Fees
105.	Walla Walla Emergency Services Communications Center (WESCOM) - ALI		\$1,243
106.	Walla Walla Emergency Services Communications Center (WESCOM) - ESInet Core	\$13,427	\$3,814
107.	West Pierce Fire & Rescue - ALI		\$995
108.	West Pierce Fire & Rescue - ESInet Core	\$8,143	\$4,193
109.	Bellingham FD/WHAT-COMM Backup - ALI		\$746
110.	Bellingham FD/WHAT-COMM Backup - ESInet Core	\$8,143	\$3,396
111.	Whatcom County Communications Center (WHAT-COMM) - ALI		\$3,730
112.	Whatcom County Communications Center (WHAT-COMM) - ESInet Core	\$8,143	\$9,243
113.	WHITCOM 911 Emergency Center - ALI		\$2,984
114.	WHITCOM 911 Emergency Center - ESInet Core	\$11,510	\$6,880
115.	WSP - Bellevue - ALI		\$2,486
116.	WSP - Bellevue - ESInet Core	\$8,143	\$6,816
117.	WSP - Bremerton - ALI		\$1,243
118.	WSP - Bremerton - ESInet Core	\$12,440	\$3,463
119.	WSP - Marysville - ALI		\$1,989
120.	WSP - Marysville - ESInet Core	\$8,143	\$5,511
121.	WSP - Spokane - ALI		\$1,243
122.	WSP - Spokane - ESInet Core	\$8,143	\$3,786
123.	WSP - Tacoma - ALI		\$1,740
124.	WSP - Tacoma - ESInet Core	\$8,143	\$4,961
125.	WSP - Vancouver - ALI		\$1,243
126.	WSP - Vancouver - ESInet Core	\$8,143	\$4,057
127.	WSP - Wenatchee - ALI		\$995
128.	WSP - Wenatchee - ESInet Core	\$16,755	\$3,282
129.	WSP - Yakima - ALI		\$1,243
130.	WSP - Yakima - ESInet Core	\$8,143	\$3,916
131.	Yakima County (SUNCOM) Backup - ALI		\$497
132.	Yakima County (SUNCOM) Backup - ESInet Core	\$8,143	\$1,880
133.	Yakima County Public Safety Communications Center (SUNCOM) - ALI		\$2,238
134.	Yakima County Public Safety Communications Center (SUNCOM) - ESInet Core	\$8,143	\$5,856

4.0 Transition Services Rates. If MIL purchases any transition Services from Vendor pursuant to **Section 6.6(b)** of the Contract, Vendor shall charge MIL for such transition Services at the following time and materials rates:

No.	Title	Hourly Rate
1.	Project Manager	\$197 per hour
2.	ALI DB Analyst	\$159 per hour
3.	ALI Data Analyst	\$106 per hour
4.	Network Engineering	\$209 per hour
5.	Installer	\$98 per hour
6.	Any Third Party costs	TCS Actual Cost +20%

SCHEDULE 4.2.1

FORM OF VENDOR INVOICE



WA ESInetForm of
Vendor Invoice 6-29-

SCHEDULE 6.1.3

TERMINATION FOR CONVENIENCE AMOUNT



WA ESInet
Termination Schedule

The examples in the attached document assume that MIL is not purchasing any ESInet Services as transition Services from Vendor as described in **Section 6.6(a)**. Notwithstanding anything to the contrary in the attached document, to the extent that MIL purchases ESInet Services as transition Services from Vendor as described in **Section 6.6(a)** for one or more PSAPs or the entire scope of ESInet Services, for purposes of calculating the applicable termination fee in the attached document, MIL shall be considered to have purchased ESInet Services both prior to termination and for the period that MIL purchased transition Services as described in **Section 6.6(a)** as applicable (e.g., MIL's purchase of ESInet Services during the Transition Period shall reduce the applicable termination fees for the period of time that MIL purchases such ESInet Services).

Notwithstanding anything to the contrary in the attached document, MIL shall not be obligated to pay Vendor any fees or expenses under this Schedule upon an expiration of the Contract, including following the Initial Term or any Renewal Term.

SCHEDULE 11.3.1**INSURANCE COVERAGES**

Type of Insurance Coverage	Minimum Policy Limits		Additional Requirements
	Per Occurrence/Claim	Annual Aggregate	
Workers' Compensation (Industrial Insurance)	Per state law requirements	Per state law requirements	The policy shall be written to meet the statutory requirements for the state in which the work is to be performed, including occupational disease. The policy must include a waiver of subrogation in favor of MIL, the State of Washington and its Affiliates.
Employer's Liability	Each Accident: \$1,000,000 Disease, Each Employee: \$1,000,000 Disease, Policy Limit: \$1,000,000	N/A	Employers Liability insurance covering the risks of Contractor's employees' bodily injury by accident or disease
Commercial General Liability, Products Liability and Completion Operations	\$1,000,000	\$2,000,000	The policy must include a waiver of subrogation in favor of MIL and its Affiliates.
Business Automobile Liability	\$1,000,000	\$1,000,000	Business Automobile Liability (owned, hired, or non-owned) covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability. The policy must include a waiver of subrogation in favor of MIL and its Affiliates.
Professional Liability/Errors & Omissions and Internet Policies	\$10,000,000	\$10,000,000	Must include coverage for Internet and information technology professional services, ASP, web portal, security/privacy. The policy must include a waiver of subrogation in favor of MIL and its Affiliates.
Cyber-Security and Privacy Breach	N/A	N/A	Included within the Errors & Omissions coverage.*
Crime, ID Theft and Cyber Extortion	\$2,000,000	\$2,000,000	Must include coverage which shall at a minimum cover occurrences falling in the following categories: Computer Fraud; Forgery; Money and Securities; and Employee Dishonesty and provide for crisis management and public relations expense. The policy must include a waiver of subrogation in favor of MIL and its Affiliates.
Umbrella or Excess Liability	\$50,000,000	\$50,000,000	Umbrella policy providing excess limits over the primary policies for Employer's Liability, Commercial General

Type of Insurance Coverage	Minimum Policy Limits		Additional Requirements
	Per Occurrence/Claim	Annual Aggregate	
			Liability, Products Liability and Completion Operations and Business Automobile Liability coverages. The policy must include a waiver of subrogation in favor of MIL and its Affiliates.

* Cyber-Security and Privacy Breach will be included in Vendor’s Errors & Omissions policy with policy limits of \$10,000,000 as specified above, with the exception of the following sub-limits and deductibles applicable to: (a) security failure or privacy breach; and (b) failure to disclose such breaches as required by Law or contract:

Expanded Coverages	LIMIT	DEDUCTIBLE	RETROACTIVE DATE
Privacy Regulation Proceeding	\$250,000	\$100,000	Not Applicable
Privacy Event Expense	\$250,000	\$100,000	Not Applicable
Network Extortion Expense	\$250,000	\$100,000	Not Applicable

SCHEDULE 11.4**APPROVED SUBCONTRACTORS**

No.	Subcontractor Name	Services That Subcontractor May Perform
1.	[12a]	Performance of reporting services.
2.	[12a]	Performance of geo-spacial data management services.
3.	[12a]	Performance of in-person maintenance and technical services at PSAPs.
4.	[12a]	Performance of in-person maintenance and technical services at PSAPs.

EXHIBIT 1**SUBCONTRACTOR CONFIDENTIALITY AND NON-DISCLOSURE CONTRACT**

This Subcontractor Confidentiality and Non-Disclosure Contract ("***Subcontractor NDA Contract***") is executed this ____ day of _____, 20__, by _____ ("***Subcontractor***").

WITNESSETH:

WHEREAS, Vendor, a Maryland corporation with a place of business at 275 West Street, Annapolis, Maryland 21401 ("***Vendor***"), and The Washington State Military Department, an agency of the state of Washington, with a principal place of business at 20 Aviation Drive, Camp Murray, WA 98430-5020 ("***MIL***"), entered into that certain Technology Services Contract, dated June 24, 2016 ("***Technology Services Contract***");

WHEREAS, with MIL's prior written consent, Vendor and Subcontractor entered into an agreement ("***Subcontract Contract***") under which, among other things, Subcontractor will provide certain of the services and/or deliverables that Vendor is obligated to provide to MIL under the Technology Services Contract; and

WHEREAS, Subcontractor may have access to certain confidential and proprietary information of MIL, and Vendor and MIL want to protect the confidentiality of any such confidential and proprietary information that may be disclosed by Vendor or MIL to Subcontractor.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Subcontractor agrees to the foregoing and as follows:

1. CONFIDENTIAL INFORMATION

The following terms shall have the meaning as described in the Technology Services Contract: Law(s) and MIL Confidential Information.

2. NON-DISCLOSURE AND RESTRICTED USE OF CONFIDENTIAL INFORMATION

2.1 Nondisclosure and Restricted Use. At all times during and after Subcontractor's access to the Confidential Information, Subcontractor will hold the Confidential Information in confidence and, except as is required in connection with Subcontractor's performance of its obligations to Vendor, Subcontractor: (a) shall not use, copy, disclose or otherwise make the Confidential Information available to any other person or entity without the prior written consent of MIL; and (b) shall not remove or permit to be removed from the Confidential Information any notice placed thereon by Vendor or MIL indicating the confidential nature of, or the proprietary right of MIL in, the Confidential Information.

2.2 Data Security. Subcontractor shall comply with MIL's security policies and procedures.

2.3 Notification Obligation. If Subcontractor becomes aware of any unauthorized use or disclosure of the Confidential Information by any person or entity, Subcontractor promptly and fully shall advise Vendor and MIL of all facts known to Subcontractor concerning such unauthorized use or disclosure.

2.4 Return of Confidential Information. Upon the termination of Subcontractor's obligations to Vendor, or at any

time upon Vendor's or MIL's request, Subcontractor shall promptly return to MIL (or destroy provided a written certification of such destruction is provided to MIL) all of the Confidential Information in Subcontractor's possession, custody or control. In connection with any such return, upon Vendor's or MIL's request, Subcontractor shall provide MIL with an affidavit stating that: (a) Subcontractor has returned to MIL all Confidential Information to which Subcontractor had access; (b) Subcontractor does not have any Confidential Information, or copies thereof, in Subcontractor's possession, custody or control; and (c) Subcontractor has not made the Confidential Information, or any part thereof, available to any other person or entity without the prior written consent of Vendor and MIL. If Subcontractor has made the Confidential Information available to another person or entity without the prior written consent of Vendor and MIL, Subcontractor agrees to promptly document the extent and nature of such dissemination, including, without limitation, identifying: (d) what Confidential Information was disclosed; (e) to whom the Confidential Information was disclosed; (f) the manner and means by which the Confidential Information was disclosed; and (g) the date(s) on which such disclosure occurred.

3. GENERAL PROVISIONS

3.1 Injunctive Relief. Because of the unique and highly confidential nature of the Confidential Information, Subcontractor acknowledges and agrees that MIL may suffer irreparable harm if Subcontractor breaches any of Subcontractor's obligations under this Subcontractor NDA Contract 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 Vendor and MIL at law and in equity, Vendor and/or MIL shall be entitled to seek enforcement of the provisions of this Subcontractor NDA Contract by seeking injunctive relief.

3.2 Severability. If any provision of this Subcontractor NDA Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Subcontractor NDA Contract.

3.3 Waiver. No delay or omission by Vendor or MIL to exercise any right occurring upon Subcontractor's non-compliance or default with respect to any of the terms of this Subcontractor NDA Contract shall impair any such right or power or be construed to be a waiver thereof. A waiver by Vendor or MIL of any of the covenants, conditions or agreements to be performed by Subcontractor shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition or agreement herein contained.

3.4 Public Disclosures. Without the prior written consent of MIL, which consent may be withheld in MIL's sole discretion, Subcontractor shall not make or publish, directly or indirectly, any statements, articles, public or private announcements (including, without limitation, any announcement made via e-mail or any posting on the Internet or any Vendor website), media releases, press conferences, advertising or similar publicity in any form relating to the fact that the parties have entered into this Subcontractor

NDA Contract or that MIL and Vendor have a contractual relationship, the name, image or logo of MIL or any department of the State (or any variation or combination of such name, image or logo), as well as the name or image of any MIL employee or contractor of MIL. Without limiting the generality of the foregoing, Subcontractor shall not, without MIL's prior written approval: (a) make any references to third parties that MIL is a customer of Subcontractor or Vendor; (b) include or make any reference to MIL or MIL's name in any proposals to third parties; or (c) provide MIL contact information to existing or prospective customers of Subcontractor or Vendor.

3.5 Governing Law; Jurisdiction. The Subcontractor NDA Contract, and all the rights and duties of Subcontractor arising from or relating in any way to the subject matter of the Subcontractor NDA Contract or the transaction(s) contemplated by it, shall be governed by, construed and enforced only in accordance with the laws of the state of Washington (excluding any conflict of laws provisions that would refer to and apply the substantive laws of another jurisdiction). **SUBCONTRACTOR AGREES AND CONSENTS TO THE SOLE AND EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF THE STATE COURTS OF WASHINGTON LOCATED IN THURSTON COUNTY.**

3.6 Third Party Beneficiary. MIL and the Agencies of the State which MIL serves are direct and intended third-party beneficiaries of the terms of this Subcontractor NDA Contract. If Subcontractor receives conflicting requests and/or instructions from Vendor and MIL with respect to the terms of this Subcontractor NDA Contract, Subcontractor shall comply with MIL's requests and/or instructions.

3.7 Assignment; Subcontracting. Subcontractor shall not assign the Subcontract Contract or this Subcontractor NDA Contract, nor subcontract or delegate any of its obligations under the Subcontract Contract or this Subcontractor NDA Contract, without the prior written consent of Vendor and MIL.

3.8 Conflicts of Interpretation. In the event of any conflicts between the terms of this Subcontractor NDA Contract and the terms of the Subcontract Contract, the terms of this Subcontractor NDA Contract shall control.

3.9 Scope of Contract. The terms and conditions of this Subcontractor NDA Contract shall apply to MIL and the Agencies of the State which MIL serves, but only as to Confidential Information that is disclosed under the Technology Services Contract to Subcontractor hereunder.

3.10 Exclusive Contract; Modifications. This Subcontractor NDA Contract constitutes the complete and exclusive statement of the agreement of the parties with respect to the subject matter of this Subcontractor NDA Contract and supersedes all prior oral and written proposals, negotiations, representations, promises, agreements, warranties or understandings concerning such subject matter. All provisions that by their nature require survival shall survive after any termination of this Subcontractor NDA Contract or Subcontractor's access to the Confidential Information. This Subcontractor NDA Contract may be modified only pursuant to a writing executed by MIL, Vendor and Subcontractor.

IN WITNESS WHEREOF, this Subcontractor Confidentiality and Non-Disclosure Contract has been executed on the date and year first above written.

[SUBCONTRACTOR]

By: _____

Printed Name: _____

Title: _____

EXHIBIT 2**THIRD PARTY CONFIDENTIALITY AND NON-DISCLOSURE CONTRACT**

This Third Party Confidentiality and Non-Disclosure Contract ("*Third Party NDA Contract*") is executed this ____ day of _____, 20__ , by _____ ("*Third Party*").

WITNESSETH:

WHEREAS, Vendor, a Maryland corporation with a place of business at 275 West Street, Annapolis, Maryland 21401 ("*Vendor*"), and The Washington State Military Department, an agency of the state of Washington, with a principal place of business at 20 Aviation Drive, Camp Murray, WA 98430-5020 ("*MIL*"), entered into that certain Technology Services Contract, dated June 24, 2016 ("*Technology Services Contract*");

WHEREAS, Third Party has obligations to MIL that will require Third Party to be granted access to the ESInet Services, as such term is defined in the Technology Services Contract and such user will be exposed to and has a need to know certain confidential and proprietary information of Vendor; and

WHEREAS, MIL and Vendor want to protect the confidentiality of any such confidential and proprietary information that may be disclosed by Vendor or MIL to Third Party.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Third Party agrees to the foregoing and as follows:

1. CONFIDENTIAL INFORMATION

Vendor Confidential Information shall have the meaning as described in the Technology Services Contract.

2. NON-DISCLOSURE AND RESTRICTED USE OF CONFIDENTIAL INFORMATION

2.1 *Nondisclosure and Restricted Use.* Third Party acknowledges and agrees that Vendor owns all right, title and interest in and to the Vendor Confidential Information, and in and to all copies thereof, and in and to all of the related trade secrets, copyrights, patents and other proprietary rights. Accordingly, at all times during and after Third Party's access to the Vendor Confidential Information, Third Party will hold the Vendor Confidential Information in confidence and, except as is required in connection with Third Party's performance of its obligations to MIL, Third Party: (a) shall not use, copy, disclose or otherwise make the Vendor Confidential Information available to any other person or entity without the prior written consent of MIL and Vendor; and (b) shall not remove or permit to be removed from the Vendor Confidential Information any notice placed thereon by MIL or Vendor indicating the confidential nature of, or the proprietary right of Vendor in, the Vendor Confidential Information. The furnishing of the Vendor Confidential Information for the limited purposes set forth herein does not constitute the grant, option, license, sublicense, assignment, or other form of transfer to Third Party of any rights, title or interest in or to such Vendor Confidential Information. Third Party shall not copy, translate, disassemble or decompile, nor create or attempt to create the ESInet Services provided hereunder or use it to create a derivative work, unless authorized in writing by Vendor.

2.2 *Notification Obligation.* If Third Party becomes aware of any unauthorized use or disclosure of the Vendor Confidential Information by any person or entity, Third Party promptly and fully shall advise MIL and Vendor of all facts known to Third Party concerning such unauthorized use or disclosure.

2.3 *Return of Proprietary Information.* Upon the termination of Third Party's access to the ESInet Services, or at any time upon Vendor's or MIL's request, Third Party shall return to Vendor all of the Vendor Confidential Information in Third Party's possession, custody or control. In connection with any such return, upon Vendor's or MIL's request, Third Party shall provide Vendor with an affidavit stating that: (a) Third Party has returned to Vendor all Vendor Confidential Information to which Third Party had access; (b) Third Party does not have any Vendor Confidential Information, or copies thereof, in Third Party's possession, custody or control; and (c) Third Party has not made the Vendor Confidential Information, or any part thereof, available to any other person or entity without the prior written consent of Vendor and MIL. If Third Party has made the Vendor Confidential Information available to another person or entity without the prior written consent of Vendor and MIL, Third Party agrees to promptly document the extent and nature of such dissemination, including, without limitation, identifying: (d) what Vendor Confidential Information was disclosed; (e) to whom the Vendor Confidential Information was disclosed; (f) the manner and means by which the Vendor Confidential Information was disclosed; and (g) the date(s) on which such disclosure occurred.

3. GENERAL PROVISIONS

3.1 *Injunctive Relief.* Because of the unique and highly confidential nature of the Vendor Confidential Information, Third Party acknowledges and agrees that Vendor may suffer irreparable harm if Third Party breaches any of Third Party's obligations under this Third Party NDA Contract 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 Vendor and MIL at law and in equity, Vendor and/or MIL shall be entitled to seek enforcement of the provisions of this Third Party NDA Contract by seeking injunctive relief.

3.2 *Severability.* If any provision of this Third Party NDA Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Third Party NDA Contract.

3.3 *Waiver.* No delay or omission by Vendor or MIL to exercise any right occurring upon Third Party's non-compliance or default with respect to any of the terms of this Third Party NDA Contract shall impair any such right or power or be construed to be a waiver thereof. A waiver by Vendor or MIL of any of the covenants, conditions or agreements to be performed by Third Party shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition or agreement herein contained.

3.4 Governing Law; Jurisdiction. The Third Party NDA Contract, and all the rights and duties of Third Party arising from or relating in any way to the subject matter of the Third Party NDA Contract or the transaction(s) contemplated by it, shall be governed by, construed and enforced only in accordance with the laws of the state of Washington (excluding any conflict of laws provisions that would refer to and apply the substantive laws of another jurisdiction). **THIRD PARTY AGREES AND CONSENTS TO THE SOLE AND EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF THE STATE COURTS OF WASHINGTON LOCATED IN THURSTON COUNTY.**

3.5 Third Party Beneficiary. Vendor is a direct and intended third-party beneficiary of the terms of this Third Party NDA Contract. If Third Party receives conflicting requests and/or instructions from Vendor and MIL with respect to the terms of this Third Party NDA Contract, Third Party shall comply with Vendor's requests and/or instructions.

3.6 Assignment; Subcontracting. Third Party shall not assign, subcontract or delegate any of its obligations under the Third Party NDA Contract, without the prior written consent of Vendor and MIL.

3.7 Exclusive Contract; Modifications. This Third Party NDA Contract constitutes the complete and exclusive statement of the agreement of the parties with respect to the subject matter of this Third Party NDA Contract and supersedes all prior oral and written proposals, negotiations, representations, promises, agreements, warranties or understandings concerning such subject matter. All provisions that by their nature require survival shall survive after any termination of this Third Party NDA Contract or Third Party's access to the Vendor Confidential Information. This Third Party NDA Contract may be modified only pursuant to a writing executed by MIL, Vendor and Third Party.

IN WITNESS WHEREOF, this Third Party Confidentiality and Non-Disclosure Contract has been executed on the date and year first above written.

[THIRD PARTY]

By: _____

Printed Name: _____

Title: _____