

**AGREEMENT FOR CENCOM JETSB TO USE THE
LAKE COUNTY ETSB'S SOLACOM GUARDIAN 9-1-1 CALL HANDLING SYSTEM**

This Agreement arises under the Emergency Telephone System Act (50 ILCS 750/1 *et seq.*) and is between the County of Lake, a county existing under the Counties Code (55 ILCS 5/1-1001 *et seq.*) and acting through its Lake County Emergency Telephone System Board ("LC ETSB"), and the CenCom E9-1-1 Joint Emergency Telephone System Board ("CenCom JETSB"), an entity formed through an intergovernmental agreement under 50 ILCS 750/15.4. This Agreement shall be effective under the provision below specifying its effective date.

Recitals

Whereas:

- 1) The Emergency Telephone System Act authorizes both the LC ETSB and the CenCom JETSB to operate 9-1-1 emergency telephone systems in certain geographic areas within Lake County, Illinois.
- 2) The LC ETSB operates a call handling system called "Guardian 9-1-1 Call Handling" made by Solacom, which is a subsidiary of Comtech Telecommunications Corp. The LC ETSB's system consists of servers running Solacom software, which are redundantly installed at two locations within Lake County.
- 3) The Guardian 9-1-1 Call Handling system is a Next Generation 9-1-1 system that processes incoming emergency and non-emergency calls for service, and also allows for outbound call processing.
- 4) In conjunction with equipment that CenCom JETSB will independently procure, CenCom JETSB would like to use the LC ETSB's Guardian 9-1-1 Call Handling system for call answering purposes and is willing to pay for the costs incurred to facilitate its use of that system.
- 5) This Agreement memorializes the terms and conditions under which this joint venture will occur.

In light of the foregoing, the parties agree as follows:

Article 1. **Recitals.** The recitals above are incorporated into the body of this agreement.

Article 2. **Conditions of Use.**

- 2.1 **System Ownership and Access.** The Guardian 9-1-1 Call Handling system, including without limitation its hardware, software, and reports derived from them, shall remain the exclusive property of the LC ETSB. CenCom

JETSB shall have no direct programming access to the Guardian 9-1-1 Call Handling system, no right or ability to modify its operating system, utilities, or software, and no rights to administer the system. Further, CenCom JETSB shall have no right to work on, install, or have anyone else install any software, interfaces, or scripts on the computer hardware operating the Guardian 9-1-1 Call Handling system.

To foster timely notification regarding the system's performance and future development, and to create an avenue for input about the system, the Parties agree to create a User Group that shall meet no less than annually.

- 2.2 **Equipment That is the Responsibility of CenCom JETSB.** To use the Guardian 9-1-1 Call Handling System, CenCom JETSB—or any Public Safety Answering Points (PSAPs) used by the CenCom JETSB—will need to procure, at its own cost and using its own procurement process, the following equipment: (1) a “Survivability Controller,” which is a Solacom device that will, in the case of a catastrophic event, allow the Call Handling System to operate fully independently of the LC ETSB's equipment; (2) call answering equipment (Guardian call answering positions) that the telecommunicators will use to process in- and outbound telephone calls at their PSAP; (3) all peripheral hardware devices located at the PSAP that will enable the calls to be delivered to the Guardian 9-1-1 Call Handling System; and (4) any other hardware and software that must be installed at the PSAP to enable telephone call to be processed by the Guardian 9-1-1 Call Handling System.

2.3 **Costs.**

- 2.3.1 **Annual Cost-Share Based on Usage.** The LC ETSB shall invoice to CenCom JETSB an annual cost to use the system. This invoice shall occur by October 1 of each year (or such other time as the Parties agree). Accompanying the invoice will be a breakdown of system calls in a form substantially similar to that shown in Exhibit A to this Agreement.

The invoice will represent CenCom JETSB's share of costs for its use of the system, and the total amount will be derived from the total server maintenance and support costs the LC ETSB incurs, and multiplying that number by the percentage of calls attributable to the CenCom JETSB, based on annual statistical reports the for the JETSB's use of the overall system. For the purpose of producing an annual invoice, if annual data is not available at the time of an invoice, then the Parties agree that the call percentage may be extrapolated to months in which no data is available.

Calls attributable to the CenCom JETSB shall include those arising from dispatch centers funded in whole or in part by the CenCom

JETSB, such as the CenCom E9-1-1 Public Safety Communications Center but shall not include 9-1-1 calls that originate from within the geographic boundaries of the LC ETSB. With its invoice, the LC ETSB shall provide system data that documents the basis for the annual cost shown in the invoice.

2.3.2 **Direct Costs.** CenCom JETSB shall pay 100% of all direct costs associated with its use of the Guardian 9-1-1 Call Handling system. These costs will include, without limitation, the cost of licensing, mapping, geocoding, engineering, consulting, programming, cabling, training, generating reports, creating interfaces, and troubleshooting, plus the cost of maintenance and upgrades for equipment not owned or operated by the LC ETSB. To the extent any such costs are incurred by the LC ETSB, the LC ETSB shall provide an itemized invoice to the CenCom JETSB, and the CenCom JETSB shall pay the invoice in a manner consistent with the provisions of the Local Government Prompt Payment Act (50 ILCS 505/1 *et seq.*). CenCom JETSB's obligation to pay its costs shall survive termination of this Agreement.

2.3.3 **System Upgrades or Refreshes.** The Call Handling System is expected to be upgraded or have a system "refresh" every few years, involving additional expenses beyond the "Annual" and "Direct Costs" referenced in the sections above. CenCom JETSB agrees to contribute its percentage share of such upgrades or refreshes in a manner similar to the method of calculating its Annual Cost-Share: the LC ETSB's total cost will be multiplied by the CenCom JETSB's percentage usage of the system over the time period during which CenCom has used the system.

Article 3. **LC ETSB Rights.**

3.1 System The LC ETSB shall retain exclusive right and authority to program, modify, upgrade, administer and otherwise alter the Guardian 9-1-1 Call Handling system. The LC ETSB shall provide notice to the CenCom JETSB, consistent with the notice provision below, of modifications, upgrades or alterations to the Guardian 9-1-1 Call Handling system that are likely to impact the CenCom JETSB's access to the Guardian 9-1-1 Call Handling system.

3.2 CenCom may increase its usage of the Guardian 9-1-1 Call Handling system by contracting to dispatch with other agencies, provided that the Guardian 9-1-1 Call Handling system has sufficient capacity to serve the agencies so added. If system capacity is inadequate, the Parties agree that the costs to expand capacity shall be treated as Direct Costs under § 2.3.2, above. Before an expansion of more than 10% occurs, CenCom agrees to first coordinate the system's expansion with the LC ETSB.

Article 4. **Additional Provisions.**

- 4.1 **Notice.** Notice may be given by email to the officials listed below, at their then-current email address, but shall not be deemed received unless the recipient acknowledges receipt.

In addition to or in lieu of email, all notices and other communications regarding the terms of this Agreement shall be in writing and shall be deemed received within three business days after being deposited in the U.S. Mail, proper postage prepaid, if properly addressed as follows, respectively:

The LC ETSB's Initial Designated Representative is:

Steven J. Winnecke
Executive Director
Lake County ETSB
1300 S. Gilmer Rd.
Volo, IL 60073
Ph: 847-487-8163
Email: swinnecke@lakecounty911.org

CenCom JETSB's Initial Designated Representative is:

Lisa Berger
Executive Director
CenCom E9-1-1
Public Safety Communication Center
911 N. Lotus Dr
Round Lake Beach, IL 60073
Ph: 847-270-9121
Email: lberger@cencom911.net

The Parties may change their Designated Representative by providing notice of such change with the contact information for the new Designated Representative in accordance with the Notice provision of this Agreement.

- 4.2 **Prompt Payment.** CenCom JETSB shall pay all invoices under this Agreement in accordance with the Local Government Prompt Payment Act (50 ILCS 505/1 *et seq.*). Failure of the LC ETSB to invoice CenCom JETSB in a timely manner shall not waive the CenCom JETSB's obligation to pay.
- 4.3 **Force Majeure.** The LC ETSB shall not be responsible for any failure to perform the undertakings, obligations, and commitments it assumes in this Agreement if a force majeure prevents their completion.
- 4.4 **Non-Exclusivity.** Nothing in this Agreement shall be interpreted to prevent or limit the right of the LC ETSB to provide any services, including those

similar to those at issue in this Agreement, to other governmental or nongovernmental entities.

- 4.5 **Modification; Entire Agreement.** No amendment of this agreement will be effective unless it is in writing and signed by the parties. This agreement constitutes the entire agreement of the parties relating to the subject matter of this agreement and supersedes all other oral or written agreements.
- 4.6 **Severability.** If any provision of this agreement is unenforceable to any extent, the remainder of this agreement (or application of that provision to any persons or circumstances other than those as to which it is held unenforceable) will not be affected by that unenforceability and will be enforceable to the fullest extent permitted by law.
- 4.7 **Governing Law; Venue.** The laws of Illinois, without giving effect to principles of conflict of laws, govern all matters arising under this agreement, including all tort claims, and all lawsuits shall be brought only in the Nineteenth Judicial Circuit of Lake County, Illinois.
- 4.8 **Term; Termination.** This Agreement will become effective when all of the parties have signed it, and the date this Agreement is signed by the last party to sign it (as indicated by the date associated with that party's signature) will be deemed the "Effective Date" of this Agreement.

If a party signs but fails to date a signature, the date that the other party receives the signing party's signature will be deemed to be the date that the signing party signed this agreement, and the other party may inscribe that date as the date associated with the signing party's signature.

Upon becoming effective, this Agreement shall remain in effect for an initial period of two years ("Initial Term"), unless terminated sooner in accordance with this Agreement.

After the Initial Term, the Agreement will continue in force and effect from year to year, but either party may terminate it after the Initial Term expires by giving written notice to the other party 60 days prior to the termination date identified in the notice, unless the agreement is otherwise terminated in accordance with this agreement.

After the Initial Term, if the LC ETSB terminates this Agreement by using the 60-day notice provision and the CenCom JETSB has paid its annual cost-share (as defined further above), then the LC ETSB shall reimburse the CenCom JETSB for a prorated portion of the cost-share. The prorated portion shall be for the months after the termination goes into effect.

- 4.9 **Waivers.** No term or condition of this Agreement shall be deemed waived by either party unless the term or condition to be waived and the

circumstances giving rise to such waiver are set forth specifically in a duly authorized and written waiver of such party. No waiver by any party of any term or condition of this Agreement shall be deemed or construed as a waiver of any other term or condition of this Agreement, nor shall waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or a different provision of this Agreement.

4.10 **No Third-Party Beneficiaries.** Nothing in this Agreement shall create, or be construed or interpreted to create, any third-party beneficiary rights.

4.11 **Assignments.** A party may assign this Agreement only with the express written consent of the other party.

4.12 **Insurance.**

Each party agrees that it shall maintain insurance coverage sufficient to cover its operations and employees during the term of this Agreement, including:

(a) Unemployment and Workers Compensation Coverage.

(b) Comprehensive General Liability Insurance with minimum limits of \$1,000,000 per occurrence.

(c) Automobile Liability Insurance with minimum limits of \$1,000,000 per occurrence covering all owned or leased motor vehicles.

Upon request, each party will provide to the other party a certificate of insurance, in form reasonably acceptable to the requesting party, evidencing the existence of the insurance required under this paragraph. The Parties expressly intend this provision to be construed as maintaining an independent contractor relationship between them, and to foreclose the creation of “special employer” relationships under Illinois law.

4.13 **Indemnification.**

CenCom JETSB agree to defend itself in any actions or disputes brought against the CenCom JETSB in connection with or as the result of this Agreement. Also, the CenCom JETSB agrees to indemnify and hold the LC ETSB and the County of Lake harmless (free from liability and damages of any kind whatsoever) resulting from acts or omissions of the CenCom JETSB arising under (or alleged to arise under) this Agreement. For the purpose of this section, acts and omissions of the CenCom JETSB means the acts or conduct of the JETSB’s officers, employees, and agents, including any contractors the JETSB may employ.

LC ETSB agree to defend itself in any actions or disputes brought against the LC ETSB in connection with or as the result of this Agreement. Also, the LC ETSB agrees to indemnify and hold the CenCom JETSB and its individual members harmless (free from liability and damages of any kind

whatsoever) resulting from acts or omissions of the LC ETSB arising under (or alleged to arise under) this Agreement. For the purpose of this section, acts and omissions of the LC ETSB means the acts or conduct of the LC ETSB's officers, employees, and agents, including any contractors the LC ETSB may employ.

- 4.14 **Counterparts.** The parties may sign this agreement in several counterparts, each of which will be deemed an original but all of which together will constitute one instrument.

Signed:

**Lake County Emergency Telephone
System Board**

By: Dave Dato
Its: Chair

Date: _____

County of Lake

By: Sandy Hart
Its: Chair

Date: _____

**CenCom Joint Emergency Telephone
System Board**

By:
Its: Chair

Date: _____