



# Software Hosting and End-User License Subscription Agreement

This Software Hosting and End-User License Subscription Agreement (the "AGREEMENT") is entered into and effective as of the date the contract is fully executed (the "Effective Date") between **OneRain Incorporated** ("ONERAIN" or "LICENSOR"), a Colorado corporation, having offices at 1531 Skyway Drive, Suite Unit D, Longmont, Colorado 80504 and **Snohomish County**, a political subdivision of the State of Washington, having offices at 3000 Rockefeller, Everett WA 98201 (the "County"), for access to the "SOFTWARE" on a Hosted System or Hosted Servers.

The SOFTWARE that the County seeks to use was developed by ONERAIN and by accessing and using the SOFTWARE, the County is agreeing to be bound by the terms of this AGREEMENT.

## 1. DEFINITIONS

(a) "Software" means only the ONERAIN software program(s) and third party software programs, in each case, supplied by ONERAIN herewith ("SOFTWARE"), and corresponding documentation, associated media, printed materials, and online or electronic documentation.

(b) "Hosted System" means the service provided by ONERAIN to install and host the SOFTWARE on a host server that is accessible to the County over the Internet.

(c) "Hosted Server" means the server provided by ONERAIN or its agent through which the County accesses the Hosted System, over the Internet.

(d) "Licensed Subscription" means the combination of SOFTWARE and Hosting provided by ONERAIN to the County during the specified Subscription Period.

(e) "Subscription Period" means the one year period(s) during which the County's rights to access and use the Hosting System and SOFTWARE are in effect. The initial subscription period shall begin after the contract is fully executed. Thereafter, each one year subscription period shall begin on the anniversary date of contract execution.

(f) "Customer Data" means all information entered into the Hosted System by the County in the course of its authorized use of the Hosted System and stored on the Host Server for access by the Hosted System and retrieval by the County.

(g) "User(s)" means authorized employees, representatives, consultants, contractors, agents or customers of the County.

(h) "Business Day" means any day other than a Saturday or Sunday or other day upon which banks are authorized or required to close in the State of Colorado.

## 2. HOSTING

Hosted Services: ONERAIN will provide the following Software hosting services as part of a Subscription:

(a) Services to be provided: See EXHIBIT A.

(b) Data Downloads: The County may request a copy of Customer Data at any time. The charge to the County will be quoted by OneRain and approved by the County prior to the data download, based on OneRain's then standard per hour rate. Estimated time to create a database backup is two hours.

(c) Security: ONERAIN will exercise industry-standard measures to prevent unauthorized access to the server sites. Currently all services hosted by OneRain use secure communication via HTTPS. Any requests made via HTTP are re-routed to HTTPS.

(d) Support: ONERAIN will provide the County the following support services:

i. Telephone Consultation: telephone consultation and support on the use of the SOFTWARE during OneRain's normal business hours (8am to 5pm Mountain Time) Monday through Friday.

ii. Online: the County may log requests for support via email by directing its query to an email account or website provided by ONERAIN.

iii. Support Response Time: ONERAIN will respond to emails and phone messages within one (1) Business Day. If the County has a problem that cannot be

identified by telephone, and has the necessary communications software and equipment to allow ONERAIN to dial into the County's system, then ONERAIN will use this facility to aid in identifying and correcting the problem.

### **3. LICENSE GRANTS & RESTRICTIONS**

(a) ONERAIN hereby grants the County a non-exclusive, non-transferable license to use the Hosted System and Licensed Subscription, subject to the terms and conditions of this AGREEMENT.

(b) The County hereby grants to ONERAIN a non-exclusive royalty-free, worldwide license to store, reproduce, distribute and display the Customer Data for the purposes of web-based dissemination, visualization, monitoring and alerting through the Contrail system, and to be used in statistical analysis reporting of historical data. ONERAIN shall not use Snohomish County data for the purpose of promotions or advertising.

(c) The County may use the Licensed Subscription only for the County's business purposes.

### **4. EACH PARTIES' RESPONSIBILITIES**

The County is responsible for its activity occurring on ONERAIN's servers and shall abide by all applicable local, state, national and applicable foreign laws, treaties and regulations in connection with its use of the Subscription, including those related to data privacy, international communications and the transmission of technical or personal data.

ONERAIN is responsible for providing the Hosted Service and shall abide by all local, state, national and foreign laws, treaties and regulations applicable to it in connection with the Subscription, including those related to data privacy, international communications and the transmission of technical or personal data.

Each party shall: (i) notify the other immediately of any unauthorized use of any password or account or any other known or suspected breach of security; and (ii) report to the other party immediately and use reasonable efforts to stop immediately any unauthorized copying or distribution of Customer Data that is known or suspected by either party.

### **5. ACCOUNT INFORMATION AND DATA**

The County shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data, and ONERAIN shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Customer Data, unless the data loss occurs as a result of the actions of OneRain.

### **6. INTELLECTUAL PROPERTY OWNERSHIP**

(a) ONERAIN Software. The foregoing grants of rights give the County limited license to use the SOFTWARE. No title or ownership rights to the SOFTWARE are transferred to the County by this AGREEMENT. ONERAIN and its suppliers retain all right, title and interest, including all copyright and intellectual property rights, in and to, the SOFTWARE (as an independent work and as an underlying work serving as a basis for any improvements, modifications, derivative works, and applications the County may develop), and all copies thereof. All rights not specifically granted in this AGREEMENT, including all copyrights, are reserved by ONERAIN and its suppliers. ONERAIN, Contrail®, Contrail Inventory, Contrail Insight and other trademarks contained in the SOFTWARE are trademarks or registered trademarks of ONERAIN Incorporated. This AGREEMENT does not authorize the County to use, remove or alter ONERAIN's or its licensors' names or any of their respective trademarks.

### **7. CHARGES AND PAYMENT OF FEES**

The County is responsible for paying for all instances of the SOFTWARE installed on Hosted Server(s) for the entire Licensed Subscription Period, whether or not such instances of the SOFTWARE are actively used. An "instance" is an installed copy of the SOFTWARE. All pricing terms are confidential, and the County agrees not to disclose them to any third party unless ONERAIN has made them publicly available beforehand, or unless required by law per section 21 of this agreement.

### **8. BILLING AND RENEWAL**

ONERAIN charges and collects in advance for use of the Licensed Subscription. Unless written notice of cancelation is received thirty (30) days prior to the renewal date, ONERAIN will automatically renew and issue an invoice to the County annually. Fees for other services will be charged on an as-quoted basis. ONERAIN's fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and the County shall be responsible for payment of all such taxes, levies, or duties, excluding only United States (federal or state) or foreign taxes based solely on ONERAIN's or its personnel's income.

### **9. NON-PAYMENT AND SUSPENSION**

In addition to any other rights granted to ONERAIN herein, ONERAIN reserves the right to suspend or terminate this AGREEMENT and the County's access to the Subscription if the County fails to pay any correct invoice within sixty (60) days of the receipt date. Delinquent invoices (accounts in arrears) will be assessed finance charges at a 12% per annum rate at 60 days past due, retroactive to 31 days past due. The

County will continue to be charged for Subscription during any period of suspension.

#### **10. TERM AND TERMINATION**

This AGREEMENT commences on the Effective Date. The Initial Term will be from the Effective Date for the period of one (1) calendar year. Unless either party provides written notice of non-renewal to the other party thirty (30) days prior to expiration of the Initial Term, upon the expiration of the Initial Term any Contract or Order Form in effect under this AGREEMENT will automatically renew for successive renewal terms of one (1) calendar year.

Either party may terminate this AGREEMENT due to a material breach of this AGREEMENT by the other party, provided the party seeking termination first provides the breaching party written notice of the breach and thirty (30) days in which to cure the breach. After the Initial Term, either party also may terminate this AGREEMENT for convenience, by notifying the other party in writing at least ten (10) days prior to termination. In the event this AGREEMENT is terminated, ONERAIN will provide at no additional charge to the County a file of the County Data within thirty (30) days of termination if the County has paid ONERAIN in full, for all services to that point; provided however, if this AGREEMENT has been terminated due to the County's breach, in addition to all fees due for services, the County shall pay ONERAIN its standard hourly rate to create and assemble the Customer Data. The County agrees and acknowledges that ONERAIN has no obligation to retain the Customer Data, and may delete such Customer Data, more than ninety (90) days after any termination or expiration of this AGREEMENT. OneRain agrees to notify the County in writing 30 days before the end of the 90 day period to ensure the County has the opportunity to obtain all data prior to deletion.

Annual recurring subscription pricing shall remain firm-fixed at \$12,000 per year for the first three (3) years.

#### **11. TERMINATION FOR CAUSE**

(a) Any breach of the County's payment obligations or unauthorized use of the ONERAIN SOFTWARE or Subscription will be deemed a material breach of this AGREEMENT. ONERAIN, in its sole discretion, may terminate the County's passwords, accounts and/or access to the Subscription after providing the notice and right to cure provided in Section 10, if the County breaches or otherwise fails to comply with this AGREEMENT.

(b) Any breach by ONERAIN by failure to perform any of the obligations of the AGREEMENT, or if ONERAIN becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an

assignment for the benefit of creditors, the County may terminate the Agreement after providing the notice and right to cure provided in Section 10.

#### **12. TERMINATION FOR NON-APPROPRIATION**

In the event that sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, the County may terminate this contract as a matter of public convenience as provided herein. The County will not be obligated to make payments for services or amounts incurred after the end of the current fiscal period, provided the County provides ONERAIN written notice prior to the end of the current fiscal period that non-allocation of funds is probable and provides a Notice of Termination within 14 days after the end of the fiscal period.

#### **13. REPRESENTATIONS & WARRANTIES**

Each party represents and warrants that it has the legal power and authority to enter into this AGREEMENT.

#### **14. DISCLAIMER**

(a) ONERAIN MAKES NO REPRESENTATION, WARRANTY, OR GUARANTY REGARDING THE RELIABILITY, COMPLETENESS, QUALITY, ACCURACY, SUITABILITY, TIMELINESS, AVAILABILITY, OR ACCURACY OF THE SUBSCRIPTION OR ANY DATA.

(b) ONERAIN AND ITS SUPPLIERS DO NOT REPRESENT OR WARRANT THAT THE USE OF THE SUBSCRIPTION WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA.

(c) ONERAIN AND ITS SUPPLIERS DISCLAIM ALL OTHER WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESS, IMPLIED, OR OTHERWISE, INCLUDING THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

(d) ONERAIN AND ITS SUPPLIERS DO NOT REPRESENT OR WARRANT THAT THE SUBSCRIPTION OR THE SERVER(S) THAT MAKE THE SUBSCRIPTION AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

(e) NO ORAL OR WRITTEN INFORMATION EXTRANEIOUS TO THIS AGREEMENT, OR ADVICE GIVEN BY ONERAIN, ITS DEALERS, DISTRIBUTORS, AFFILIATES, AGENTS OR EMPLOYEES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF ANY WARRANTY PROVIDED HEREIN.

## 15. EXCLUSIVE REMEDY

The County's exclusive remedy for breach of ONERAIN'S warranty is to terminate this Subscription in accordance with the terms defined in Section 10, and two (2) times the total amount paid under the contract. THIS REMEDY IS THE SOLE AND EXCLUSIVE REMEDY AVAILABLE TO the County FOR BREACH OF EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THE SOFTWARE AND RELATED DOCUMENTATION.

## 16. INTERNET DELAYS

ONERAIN'S SUBSCRIPTIONS MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. ONERAIN IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM INTERNET PROBLEMS.

## 17. LIMITATION OF LIABILITY

(a) NEITHER ONERAIN NOR ITS SUPPLIERS SHALL BE LIABLE TO ORGANIZATION OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, COVER OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR THE INABILITY TO USE EQUIPMENT OR ACCESS DATA, LOSS OF BUSINESS, LOSS OF PROFITS, BUSINESS INTERRUPTION OR THE LIKE), ARISING OUT OF THE USE OF, OR INABILITY TO USE, THE SOFTWARE AND BASED ON ANY THEORY OF LIABILITY INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF ONERAIN OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

(b) ONERAIN'S TOTAL LIABILITY FOR ACTUAL DAMAGES FOR ANY CAUSE WHATSOEVER WILL BE LIMITED TO TWO (2) TIMES THE TOTAL AMOUNT PAID UNDER THE CONTRACT.

## 18. U.S. GOVERNMENT RESTRICTED RIGHTS LEGEND

This Subscription and the documentation are provided with "RESTRICTED RIGHTS" applicable to private and public licenses alike. Without limiting the foregoing, use, duplication, or disclosure by the U.S. Government is subject to restrictions as set forth in this AGREEMENT and as provided in DFARS 227.7202-1(a) and 227.7202-3(a) (1995), DFARS 252.227-7013 (c)(1)(ii)(OCT 1988), FAR 12.212(a)(1995), FAR

52.227-19, or FAR 52.227-14, as applicable. Manufacturer: OneRain, Incorporated.

## 19. THIRD PARTY SOFTWARE

The SOFTWARE may contain third party software which requires notices and/or additional terms and conditions. Such required third party software notices and/or additional terms and conditions are located at <https://contrail.onerain.com/help/thirdparty.php> and are made a part of and incorporated by reference into this AGREEMENT.

## 20. NOTICE

All notices or correspondence shall be in writing and addressed to ONERAIN or SNOHOMISH COUNTY at their respective addresses as shown in this AGREEMENT. Notice shall be deemed to have been given upon the expiration of three business days after mailing or posting (if sent by first class mail or pre-paid post) or one business day after mailing via a nationally recognized overnight delivery service.

## 21. CONFIDENTIALITY AND PUBLIC DISCLOSURE

(a) ONERAIN may have access to non-public information relating to the County's business and Customer Data disclosed to it or as a consequence of providing the License to the County, which information is considered to be trade secret, proprietary, and confidential ("County Confidential Information"). ONERAIN agrees not to use the County's Confidential Information except for the County's benefit providing the License to the PRODUCT under this Agreement, and not to disclose County Confidential Information to any third party without the County's prior written consent, except as required by law. Upon expiration or termination of this Agreement, ONERAIN will return or destroy (at the County's request) County's Confidential Information.

(b) The County will have access to non-public, confidential and proprietary information of ONERAIN ("ONERAIN Confidential Information"), which shall include but is not limited to the PRODUCT. The County agrees not to use ONERAIN Confidential Information except as necessary for use of the PRODUCT as set forth herein, and not to disclose ONERAIN Confidential Information to any third party without ONERAIN's prior written consent, except as required by law. In the event that the County receives a request pursuant to the Public Records Act to disclose the ONERAIN'S proprietary software, software documentation, or other information identified by the ONERAIN in writing as confidential, the County's sole obligations shall be to: (1) notify the ONERAIN and (2) refrain from disclosing such records for a period of up to ten business days to allow the ONERAIN an opportunity to seek legal protection against disclosure from a court of competent jurisdiction.

## 22. NON-DISCRIMINATION

It is the policy of the County to reject discrimination which denies equal treatment to any individual because of his or her race, creed, color, national origin, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability as provided in Washington's Law Against Discrimination, Chapter 49.60 RCW, and the Snohomish County Human Rights Ordinance, Chapter 2.460 SCC. These laws protect against specific forms of discrimination in employment, credit transactions, public accommodation, housing, county facilities and services, and county contracts.

The Contractor shall comply with Chapter 2.460 SCC, which is incorporated herein by this reference. Execution of this contract constitutes a certification by the Contractor of the Contractor's compliance with the requirements of Chapter 2.460 SCC. If the Contractor is found to have violated this provision, or furnished false or misleading information in an investigation or proceeding conducted pursuant to Chapter 2.460 SCC, this contract may be subject to a declaration of default and termination at the County's discretion. This provision shall not affect the Contractor's obligations under other federal, state, or local laws against discrimination.

**Federal Non-Discrimination.** The County assures that no persons shall on the grounds of race, color, national origin, or sex as provided by Title BI of the Civil Rights Act of 1964 (Pub. L. No. 88-352), as amended, and the Civil Rights Restoration Act of 1987 (Pub. L. No. 100-259) be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any County sponsored program or activity. Snohomish County further assures that every effort will be made to ensure nondiscrimination in all of its programs and activities, whether those programs and activities are federally funded or not.

## 23. INSURANCE

**(a) No Limitation.** Contractor's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of the Contractor to the coverage provided by insurance or to limit the County's recourse to any remedy indemnification and payment to the County under the terms of a required insurance policy.

**(b) Minimum Scope of Insurance and Limits.** The Contractor shall obtain and maintain continuously and

for the duration of the Agreement, and for three years following termination, the following insurance:

**1. Commercial General Liability Insurance** with a minimum limit of \$1,000,000 per occurrence, \$2,000,000 general aggregate, and endorsed to include Snohomish County, its officers, elected officials, agents, and employees as an additional insured with respect to the work performed for the County. Insurance shall be written on ISO occurrence form CG 00 01 or a substitute form providing equivalent coverage.

**2. Worker's Compensation Coverage** as required by the industrial Insurance laws of the State of Washington. The Contractor's obligation shall extend to itself and any subcontractors working on behalf of the Contractor and must be obtained before performing any work under the Agreement. The County will not be responsible for payment of workers' compensation premiums or for any other claim or benefit for the Contractor, its employees, consultants, or subcontractor that might arise under the Washington State Industrial Insurance laws.

**(c) Other Insurance Provisions.** The required Commercial General Liability Insurance and Professional Technical Liability Policies shall meet the following requirements:

1. The Contractor's insurance coverage shall be placed with insurance carriers licensed to do business in the state of Washington with a current A.M. Best rating of not less than A:VII.

2. The Contractor's insurance coverage shall be primary insurance with respect to the County. Any insurance or self-insurance coverage maintained by the County shall be in excess of the Contractor's insurance and shall not contribute with it. The County reserves the right to receive a certified copy of required insurance policies and to approve any deductible.

3. The Contractor's insurance shall be endorsed to state that the insurer shall provide at least thirty days prior written notice by certified mail, return receipt requested, of any impending cancellation, non-renewal, expiration, or reduction in coverage.

4. Contractor shall furnish the County with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Contractor before commencement of the work. The County reserves the right to receive a certified copy of required insurance policies and to approve any deductible.

#### 24. GENERAL

This AGREEMENT will be governed by the laws of the State of Washington. Should any part of this AGREEMENT be held unenforceable or invalid or prohibited under law, it will be struck from the AGREEMENT and will not affect the enforceability of the other parts of this AGREEMENT. No failure by either party to enforce a provision of this AGREEMENT, and no waiver by either party of its rights under any provision thereof, will be deemed a waiver of subsequent breaches.

This AGREEMENT and Exhibits A and B, attached hereto and incorporated by this reference, contain the complete agreement between the parties with respect to the subject matter of such Agreements, and supersede all prior or contemporaneous agreements or understandings, whether oral or written. Any varying or additional terms contained in any contract or purchase order or other written notification or document issued by the County in relation to the Subscription licensed hereunder shall be of no effect.

IN WITNESS WHEREOF, the parties have executed this agreement as of the day of year written by the Snohomish County Executive or his authorized representative below.

SNOHOMISH COUNTY:

  
County Executive  
**KEN KLEIN**  
Executive Director  
1/1/17  
Date

ONERAIN, INCORPORATED

  
Name  
12/12/2016  
Date

Approved as to insurance and indemnification provisions:

  
Risk Management  
1/4/17  
Date

COUNCIL USE ONLY	
Approved:	2-1-17
Docfile:	D-5

Recommended for Approval:

  
Information Services Director  
1/4/17  
Date

**EXHIBIT A**  
**Software Hosting and End-User License Subscription Agreement**

**SOFTWARE is defined as:**

**Contrail Server<sup>1</sup>**

**12-Month managed and hosted application service subscription to include:**

- **Contrail Base Station**
- **Contrail Inventory *plus* Maintenance**
- **Contrail Insight**
- **Contrail ALERT2 TDMA Manager**

**Number of Subscriptions:**

1

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**Applicable to Contrail® Server:**

The County will host no more than five (5) client websites per Hosted Server instance.



EXHIBIT B  
COMPENSATION SCHEDULE

Description	Quantity	Unit Price	Total
<b>Annual Recurring Cost</b>			
1. <b>Contrail Server</b> 12-Month managed and hosted application service subscription includes: <ul style="list-style-type: none"> <li>- Contrail Base Station</li> <li>- Contrail Inventory <i>plus</i> Maintenance</li> <li>- Contrail Insight</li> <li>- Contrail ALERT2 TDMA Manager</li> </ul>	1 12 Mo.	\$12,000	\$12,000
<b>One-time Costs</b>			
2. <b>Contrail Server Setup and Installation</b> Includes: <ul style="list-style-type: none"> <li>- Server setup, OS installation and configuration of Contrail application</li> <li>- Loading of site and sensor definitions, thresholds, alarms, rating tables, web theme and maps</li> </ul>	1	\$3,360	\$3,360
3. <b>Contrail On-Site Training</b> <ul style="list-style-type: none"> <li>- Contrail Administrator</li> <li>- Contrail User</li> </ul>	1	\$4,000	\$4,000
4. <b>Contrail Inventory Training</b> <ul style="list-style-type: none"> <li>- Webinar on-line training session (End User/ Administrator)</li> </ul>	1	\$0	\$0
5. <b>Contrail ALERT2 TDMA Manager Training</b> <ul style="list-style-type: none"> <li>- Webinar on-line training session (Administrator)</li> </ul>	1	\$0	\$0
6. <b>Hardware: OneRain Custom Serial-to-IP Connection Kit</b> <ul style="list-style-type: none"> <li>- Digi™ 4-Port PortServer custom configured</li> <li>- Customized serial cable assembly</li> </ul>	1	\$1,500	\$1,500
<b>Total first year cost</b>			<b>\$20,860</b>
*** <b>Limited-Time Only Discount***</b> <ul style="list-style-type: none"> <li>- Credit for DIADvisor™ software license</li> </ul>	1	-\$4,500	-\$4,500
<b>Total first year cost with DIADvisor credit</b>			<b>\$16,360</b>
***Offer applies only to purchase of licenses Contrail products or subscription to Contrail Server hosted applications (does not apply to Contrail Web)			