

**RED SKY TECHNOLOGIES, INC.**  
**TERMS OF SERVICE AGREEMENT FOR**  
**E911 SERVICES**

This Terms of Service Agreement (Agreement) governs your purchase of E911 Service(s) from Red Sky Technologies, Inc. (Red Sky), through Cisco Systems, Inc. (Cisco) as a Reseller, or a Cisco Authorized Reseller (Authorized Reseller), (together Cisco and Authorized Resellers are referred to as "Approved Source"). This Agreement is between You and Red Sky.

BY CLICKING 'ACCEPT,' OR USING THE E911 SERVICE(S), YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU DO NOT HAVE AUTHORITY TO ENTER INTO THIS AGREEMENT, OR IF YOU DO NOT AGREE WITH ITS TERMS, DO NOT CLICK 'ACCEPT' AND DO NOT USE THE E911 SERVICE(S). IF YOU DETERMINE THAT YOU CANNOT COMPLY WITH THE TERMS OF THIS AGREEMENT AFTER YOU HAVE PAID FOR THE E911 SERVICE(S), YOU MAY TERMINATE YOUR ACCESS TO THE E911 SERVICE(S) FOR A FULL REFUND PROVIDED YOU DO SO WITHIN THIRTY (30) DAYS OF YOUR PURCHASE.

**1. DESCRIPTION OF THE E911 SERVICE(S)**

- 1.1. **E911 Service.** The E911 Service(s) may consist of Cloud Services along with Software that is used to find, route 9-1-1 calls and provide the end user notification that a 9-1-1 call has taken place. The Cloud Services consist of a cloud-based 9-1-1 call routing service that accepts a 9-1-1 call from an enterprise call server, PBX, or hosted cloud solution and will route the 9-1-1 call to the Public Safety Answering Point (PSAP) or to a designated security answering point. The E911 Service(s) may also consist of Software that is installed in Your or Red Sky's datacenter to provide end point automated location tracking and 9-1-1 notifications.

**2. OUR RESPONSIBILITIES**

- 2.1. **SERVICE AND SUPPORT.** Red Sky will provide the E911 Service(s) and basic technical support to You as described in the Red Sky Offer Description and any applicable Statement of Work (SOW).
- 2.2. **UPDATES TO THE E911 SERVICE(S).** Red Sky may enhance and refine the E911 Service(s) provided such updates do not materially reduce the functionality of the E911 Service(s). If the change will materially affect the E911 Service(s), Red Sky or the Approved Source will notify You in advance of the implementation of the change. From time to time, Red Sky performs scheduled maintenance to update the servers and Software that are used to provide You the E911 Service(s).

**3. YOUR PAYMENT OBLIGATIONS**

- 3.1. **FEES.** Fees for E911 Service(s) are set out in Your Order with Your Approved Source, this Agreement, the Offer Description and any SOW. Fees are non-refundable and payment obligations are non-cancelable, except as specifically provided in this Agreement; or Your Order; or where prohibited by law. A true-up and fee adjustment will be performed at the end of the initial term and may be performed, as necessary, during any renewal terms. Red Sky will attempt to match the Terms and Conditions of the Cisco WebEx calling product but such uniformity may not always be possible.
- 3.2. **ERC EXPENSES.** An emergency 911 call that cannot be connected to the appropriate Public Safety Answering Point ("PSAP") due to incomplete or missing location data is a "Failed User Emergency 9-1-1 Call." Failed User Emergency 9-1-1 Calls will be routed to an emergency call response center ("ERC") which is an external call center, contracted by Red Sky that operates 24/7 and is staffed by trained and certified professionals. Upon receiving a 9-1-1 call, the ERC will attempt to route the call to the appropriate PSAP, based on the location information communicated by the 9-1-1 caller. You will be responsible for and will reimburse Red Sky for all expenses associated with any calls that are routed to the ERC ("ERC Expenses"). Each call that arrives at the ERC will incur a charge of \$100.00 to You. Red Sky will notify You of any ERC calls and associated ERC Expenses within 24 hours of such call and Red Sky or Your Approved Source will invoice You monthly for those ERC Expenses.

**4. YOUR USE OF THE E911 SERVICE(S)**

- 4.1. **ACCEPTABLE USE.** You will use the E911 Service(s) only for the purposes of establishing locations for Phones and End Points and for routing Your 9-1-1 emergency calls and for no other purpose. You will not (i) interfere with the E911 Service(s), other customers' access to the E911 Service(s), or with the security of the E911 Service(s); (ii)

sell, resell, or distribute the E911 Service(s); (iii) make the E911 Service(s) available to third parties as a managed or network provisioned service; or (iv) attack or disrupt the E911 Service(s), including denial of service (DoS), unauthorized access, monitoring or crawling, or distribution of malware (including but not limited to viruses, Trojan horses, worms, time bombs, spyware, adware, or cancelbots). Use of the E911 Service(s) for any purpose other than that contemplated by this Agreement will constitute a material breach and will be grounds for termination.

- 4.2. **You are responsible for Your users.** You will inform Your Authorized Users of Your policies and practices that are relevant to their use of the E911 Service(s) and of any settings that may impact the processing of Customer Data.
- 4.3. **Your obligation to provide accurate and complete user location data.** You expressly acknowledge that it is solely Your responsibility to enter correct, complete and current location data for each Phone or End Point ("User Location Data") into the E911 Service(s).
- 4.4. **You acknowledge the Limitations of the E911 Service(s).** Red Sky, Cisco or your Authorized Reseller has advised You that the E911 Service(s) is used to route 9-1-1 emergency calls. Red Sky has advised and You acknowledge that You may not be able to place 9-1-1 calls using the E911 Service(s): (a) During any disruption of power at Your location; (b) During any disruption of internet connectivity to Your location; (c) During any period in which Your VoIP telephony service provider or Local Exchange carrier has cancelled or suspended delivery of services to You for any reason (including suspension or cancellation for failure to pay or their default); (d) During any period of E911 Service(s) outage or failure beyond Red Sky's reasonable control (including natural disasters, wide-spread telephony or Internet network failures or a service failure of Red Sky or its third-party suppliers); (e) If You attempt a 9-1-1 call from a location different from Your then current address stored in the E911 Service(s); (f) If incorrect or invalid address information is provided or if such information is not updated by You in the event of a change in Your location; (g) If Your equipment fails to function, is not properly configured or is defective.
- 4.5. **With regard to VoIP Calls.** Red Sky uses commercially reasonable efforts to deliver every 9-1-1 call with the enhanced location data provided by our customers to the appropriate Public Safety Answering Point ("PSAP"). There are limitations placed upon Red Sky by the PSAPs. Each of the approximately 6,000 PSAPs must individually agree to accept a 9-1-1 call with a VoIP type service. We are aware of PSAPs that fall into three categories: a) those that accept VoIP calls with location data on 9-1-1 equipment; b) those that accept VoIP 9-1-1 calls without location data on administrative lines; and c) those that do not accept VoIP 9-1-1 calls. In this last case, VoIP 9-1-1 calls are routed to the next closest PSAP that accepts VoIP 9-1-1 calls.
- 4.6. **E911 Service(s) Support.** Red Sky will be the primary point of contact for Support of the Cloud Service and the Software.

## 5. **Data Privacy**

- 5.1. **Protected Personal Information.** You acknowledge that the Red Sky E911 Service(s) does not store any Protected Personal Information ("PPI"). The Red Sky E911 Service(s) only stores Direct Inward Dial (DID) telephone numbers used for 9-1-1 call routing purposes and their associated building addresses and locations.

## 6. **Ownership and Software Licensing Rights**

- 6.1. **What you Own.** You retain all right, title and interest in and to Your Customer Data. We may use Your Customer Data in order to (i) provide the E911 Service(s), and (ii) derive Statistical Data.
- 6.2. **What we Own.** Red Sky retains ownership in all intellectual property rights to the Software and Cloud Service and the underlying technology, software, patents, know-how and associated documentation, in whole or in part, including all improvements, enhancements, modifications, and derivative works (together, "Materials"). Red Sky reserves all rights to the Cloud Service, Software and Materials that are not expressly granted under this Agreement.
- 6.3. **Software License & Restrictions.** To use the Cloud Service, You may be required to download and install Red Sky Software or a Red Sky proprietary agent, plug-in or similar software. Subject to the terms of this Agreement, Red Sky grants You a limited, non-exclusive, non-sublicensable and non-transferable license to use the Software identified in the Order or SOW. The Software may contain open source code that is subject to its own license terms. You may not nor allow a third party to use, copy, modify, reverse engineer, decompile, or otherwise attempt to derive the source code for the Software, or create derivative works of the Software except, in accordance with: a) this Agreement, or b) Your standard backup procedures; or, as legally required for interoperability purposes. You may, without incurring additional Fees, move the Software to and use the Software on other servers temporarily, because of equipment or software malfunctions; or permanently, onto replacement servers if the original servers are replaced by You provided there is no increase in the number of copies of the Software in use. If You permanently transfer the Software to servers at a different location that physically replace the original servers, You will

completely cease the use of the Software on the original set of servers and will promptly give Red Sky written notice of such relocation.

## **7. Indemnification**

- 7.1. **Intellectual Property Indemnification.** Red Sky will defend You against any third-party claim that Red Sky Software or Cloud Service infringes such third-party's patent or copyright (a "Claim"), and will indemnify You against the final judgment entered by a court of competent jurisdiction or a settlement arising out of such Claim. Red Sky will have no obligation for any Claim to the extent such Claim is based on (i) a modification of the E911 Service(s) by You or a third party, or use of the E911 Service(s) outside the scope of this Agreement; (ii) combination, operation, or use of the E911 Service(s) with non-Red Sky products, software, services or business processes; (iii) Customer Data; or (iv) services You provide based on the E911 Service(s). If a Claim is made or appears likely, Red Sky may, at Red Sky's option, (1) procure for You the right to continue using the Software or Cloud Service under the terms of this Agreement, or (2) replace or modify the Software or Cloud Service to be non-infringing without material decrease in functionality. If Red Sky determines that neither of these options are reasonably available, You will remove the Software Product(s) from your servers and devices and Red Sky will terminate the applicable Cloud Service upon written notice to You, and refund You a pro rata portion of the price You pre-paid for the Cloud Service and Software for the remainder of the unexpired term.
- 7.2. **Your Indemnification.** You will indemnify, defend, and hold harmless Red Sky, its affiliates and their respective directors, officers, employees and agents from and against any third-party claims, actions, damages, liabilities, costs, judgments or expenses (including but not limited to filing fees, expert fees, attorney fees) arising or resulting from: a) Your unauthorized use, operation, or modification of the Cloud Service; b) Your misuse or incorrect use of the Cloud Service including but not limited to failure to provide the necessary location data for proper routing of a 9-1-1 call.
- 7.3. **Remedy.** Red Sky shall defend and indemnify You, including the Your officers, directors, and employees, from any and all loss, damage, penalty, liability, cost, and expense, including without limitation, reasonable attorney's fees and disbursements (Loss), that may be incurred by, imposed upon, or asserted against the You by reason of any claim, action or demand by a third party to the extent such Loss results from or arises out of gross negligence or willful misconduct by Red Sky. If Your gross negligence or willful misconduct contributed to cause the injury or damage for which a claim of indemnity is being asserted hereunder, the losses will be allocated or reallocated, as the case may be, between You and Red Sky to reflect the relative fault of such parties; and the liability of Red Sky will be proportionately reduced.
- 7.4. **Indemnification Procedure.** The party against whom a third party claim is brought will (a) timely notify the other party in writing of the claim (provided, that the failure to provide timely notice that prejudices the indemnifying party shall relieve the indemnifying party of its obligations under this Section 7 to the extent the indemnifying party has been prejudiced and such failure to provide timely notice shall relieve the indemnifying party of any obligation to reimburse the other party for its attorney's fees incurred prior to notification), and (b) reasonably cooperate in the defense of the claim and may participate in the defense of the claim at its own expense. The party that is obligated to defend a claim will have the right to fully control the defense and to settle the claim; provided, however, that any settlement of a claim shall not include a financial or specific performance obligation on, or admission of liability by, the party against whom the claim is brought. This section and section 8 state the parties' entire obligation and Your exclusive remedy regarding any claims for intellectual property infringement.

## **8. Warranties, Disclaimers and Limitation of Liability**

- 8.1. **Warranty.** Unless otherwise provided in an applicable Offer Description, Red Sky warrants that it provides Software and the Cloud Service in accordance with the Offer Description using commercially reasonable skill and care. Upon prompt notification by You of Red Sky's breach of this warranty, to the extent permitted by applicable law, Your sole and exclusive remedy for breach of this or any warranty, is, at Red Sky's option, either repair or replacement of the Software or Cloud Service or a refund of the fees paid to Red Sky for the period in which the Software or Cloud Service did not materially comply. EXCEPT AS EXPRESSLY STATED IN THIS SECTION 8, TO THE EXTENT ALLOWED BY APPLICABLE LAW, REDSKY: (I) EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY, CONDITION OR OTHER IMPLIED TERM AS TO MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT; AND (II) MAKES NO WARRANTY OR REPRESENTATION THAT: (1) THE E911 SERVICE(S) WILL BE UNINTERRUPTED, COMPLETELY SECURE, ERROR-FREE, OR FREE OF VIRUSES; OR (2) THE E911 SERVICE(S) WILL MEET YOUR BUSINESS REQUIREMENTS OR OPERATE WITH YOUR EXISTING SYSTEMS.

8.2. **LIMITATION OF LIABILITY.** EXCEPT FOR ANY INDEMNIFICATION OBLIGATIONS AND ANY AMOUNTS DUE TO RED SKY, NEITHER PARTY'S LIABILITY FOR CLAIMS RELATED TO, OR ARISING OUT OF, THIS AGREEMENT, YOUR ORDER, ANY SOFTWARE OR THE CLOUD SERVICE, SHALL EXCEED, IN THE AGGREGATE, THE FEES PAID TO RED SKY IN THE TWELVE (12) MONTHS PRECEDING THE LAST EVENT GIVING RISE TO THE LIABILITY. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR (I) INDIRECT, INCIDENTAL, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES; (II) LOSS OR CORRUPTION OF DATA OR INTERRUPTED OR LOSS OF BUSINESS; OR (III) LOSS OF REVENUES, PROFITS, GOODWILL OR ANTICIPATED SALES OR SAVINGS. THIS LIMITATION OF LIABILITY APPLIES WHETHER THE CLAIMS ARE IN WARRANTY, CONTRACT, TORT, INFRINGEMENT, NEGLIGENCE OR OTHERWISE, EVEN IF EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTHING IN THIS SECTION 8.2 LIMITS OR EXCLUDES ANY LIABILITY THAT CANNOT BE LIMITED OR EXCLUDED UNDER APPLICABLE LAW. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT. YOU ACKNOWLEDGE THAT RED SKY WILL NOT BE LIABLE FOR ANY CLAIMS ARISING FROM ANY EFFORTS UNDERTAKEN BY REDSKY OR THE ERC TO CORRECT ANY FAILED USER EMERGENCY 911 CALLS.

## **9. TERM AND TERMINATION.**

- 9.1. **Term.** The initial term of the E911 Service(s) starts on the date the Cloud Service and Software is available for Your use and lasts for the period stated in the Order.
- 9.2. **Renewal.** In order to provide You with uninterrupted service, the E911 Service(s) will automatically renew for the renewal period selected on the Order ("Renewal Term") unless (i) either of the parties notifies the other in writing at least thirty (30) days before the end of the then-current term of its intention not to renew or (ii) You or Your Approved Source elect on the Order at the time of initial purchase not to auto-renew the E911 Service(s).
- 9.3. **Termination.** If a party materially breaches this Agreement and does not cure that breach within thirty (30) days after receipt of written notice of the breach, the non-breaching party may terminate this Agreement for cause. Red Sky also has the right to immediately suspend or terminate Your use of the Services if You breach Section 4.1 (Acceptable Use) or Section 6.3 (Software License and Restrictions) above. Upon termination or expiration of this Agreement, You must cease any further use of the Software or Cloud Service (as applicable) and destroy any copies of Software within Your control. Upon any termination by You for Red Sky's material breach of the Agreement, Red Sky will refund to You or Your Approved Source any prepaid fees covering the remainder of the then-current term after the effective date of termination. Upon any termination by Red Sky for Your material breach of the Agreement, You will pay any unpaid fees covering the remainder of the then-current term.
- 9.4. **End-of-Life.** Red Sky reserves the right to end-of-life (EOL) the E911 Service(s) three (3) years after the first initial sales date. If You prepaid the fee for E911 Service(s) which is subject to EOL, Red Sky will use commercially reasonable efforts to transition You to a substantially similar E911 Service. If Red Sky does not have a substantially similar E911 Service, then Red Sky will refund You any unused portion of the prepaid fee for such E911 Service(s), calculated from the last date the E911 Service(s) is available.
- 9.5. **Survival.** The following sections survive the expiration or termination of this Agreement: 3 (Your Payment Obligations), 4 (Your Use of the E911 Service(s)), 5 (Data Protection and Privacy), 6 (Ownership and Software Licensing Rights), and 9 (General Provisions) and any other provisions that must survive to achieve the intent of the Agreement.

## **10. General Provisions**

- 10.1. **Assignment and Subcontracting.** Neither Party may assign rights, delegate obligations or subcontract the performance of the E911 Service(s) under this agreement without the prior written consent of the other Party.
- 10.2. **Modifications.** As the Red Sky business evolves, Red Sky may modify this Agreement. Any material changes to the Agreement are not retroactive and will only apply to future Orders. If You place a new Order after such modification, Your use of the E911 Service(s) will be deemed as acceptance of the Agreement, as modified.
- 10.3. **Compliance with Laws.** It is Your responsibility to understand Your local E911 compliance obligations and Red Sky specifically disclaims any such obligation. In the event that E911 Service(s) requirements different than those stated in this Agreement are, in Red Sky's reasonable opinion, necessary or advisable based on Red Sky's interpretation of currently evolving 9-1-1 service laws, rules and regulations, You agree to negotiate modifications to the E911 Service(s) as requested by Red Sky, and if agreement respecting the same cannot be reached, Red Sky may terminate the E911 Service(s) and this Agreement without liability.
- 10.4. **Governing Law and Venue.** This Agreement, and any disputes arising out of or related hereto, will be governed exclusively by the governing law applicable to Your primary place of business; and the location of your primary place of business will also determine the applicable jurisdiction and venue. The courts located in the

applicable venue will have exclusive jurisdiction to adjudicate any dispute arising out of or relating to the Agreement or its formation, interpretation or enforcement. Each party hereby consents and submits to the exclusive jurisdiction of such courts. Regardless of the provisions of this paragraph, either party may seek injunctive relief in any court of appropriate jurisdiction with respect to any alleged breach of its intellectual property or proprietary rights.

- 10.5. **Notification.** Red Sky may provide You with notice via email or regular mail, to the last designated address on your account, and/or postings on the [www.RedSkyE911.com](http://www.RedSkyE911.com) website or any other website used as part of the E911 Service(s). Notices to Red Sky shall be sent to Red Sky Technologies, Inc., Attn: Controller, 333 N. Michigan Ave., Floor 16, Chicago, IL 60601 unless an applicable Offer Description specifically allows other means of notice.
- 10.6. **Force Majeure.** Except for payment obligations, neither party will be responsible for failure of performance due to a Force Majeure Event
- 10.7. **Reservation of Rights.** Failure to enforce any right under this Agreement will not waive that right.
- 10.8. **Severability.** If any term of this Agreement is not enforceable, this will not affect any other terms.
- 10.9. **Complete Agreement.** This Agreement together with the applicable Offer Description(s) and SOW is the complete agreement between the parties concerning any E911 Service(s) and supersedes all prior or contemporaneous communications, understandings or agreements (whether written or oral) regarding this subject matter. In the event of any conflict, the order of precedence is: i) Statement of Work ii) this Agreement iii) Offer Description and iv) any applicable Documentation referenced in this Agreement.

## 11. DEFINITIONS.

- 11.1. "Agreement" means this Terms of Service Agreement.
- 11.2. "Administrative Data" means data related to Your employees or representatives to administer or manage Your use of the E911 Service(s). Administrative Data may include Personal Data and information about our contractual commitments, whether collected at the time of the initial registration or thereafter.
- 11.3. "Approved Source" means Cisco or a Cisco authorized reseller, distributor, or systems integrator.
- 11.4. "Authorized User" means the individuals authorized by You to access or use the E911 Service(s) including employees, agents, and visitors that use your telephone system.
- 11.5. "Red Sky" "we," "our" or "us" means Red Sky Technologies, Inc. or its applicable affiliate.
- 11.6. "Cloud Service" means the Red Sky hosted software-as-a-service offering described in the applicable Offer Description that You purchase with an Order and which is governed by this Agreement.
- 11.7. "Confidential Information" means non-public confidential or proprietary information of the disclosing party that is clearly marked confidential or should be reasonably assumed as confidential given the nature of the information and the circumstances of disclosure.
- 11.8. "Customer Data" means all information and data that You or anyone acting on Your behalf provides or transfers to Red Sky in connection with Your use of the E911 Service(s).
- 11.9. "Data" means Telemetry Data and Statistical Data.
- 11.10. "Documentation" means the Red Sky user or technical manuals, training materials, specifications, privacy data sheets, or other information applicable to the E911 Service(s).
- 11.11. "Force Majeure Event" means an event beyond the affected party's reasonable control, including accidents, severe weather events, acts of God, actions of any government agency, epidemic, pandemic, acts of terrorism, or the stability or availability of the Internet or a portion thereof.
- 11.12. "Offer Description(s)" means a description of the applicable E911 Service(s).
- 11.13. "Order" means an ordering document (including a web or other electronic form) submitted to Red Sky that specifies at least the duration, type/product ID (PID) and quantity of E911 Service(s) to be provided and the associated fees.
- 11.14. "Personal Data" has the same meaning given to Personal Information in Red Sky's [Privacy Statement](#).
- 11.15. "Software" means Red Sky software that is installed in Your or Red Sky's datacenter or installed on your enterprise computers and is used to track the location of IP phones and provide 9-1-1 call notifications.
- 11.16. "Statement of Work" A definitive document that describes the services and software to be delivered along with a project schedule and a detailed list of the project responsibilities of the parties.
- 11.17. "Statistical Data" means any information/data that Red Sky derives from Customer Data and/or Telemetry Data, provided that such information/data is aggregated and/or de-identified such that it cannot reasonably be used to identify an individual or entity.
- 11.18. "Support" means technical support provided by Red Sky as defined by our Support Policy.

- 11.19. "Telemetry Data" means information generated by instrumentation and logging systems created through the use and operation of Red Sky products and services.
- 11.20. "You" or "Your" means the individual or legal entity purchasing the E911 Service(s).