

Red Sky End User License Agreement

This Red Sky End User License Agreement ("EULA") is by and between **Licensee** and Red Sky Technologies, Inc., an Illinois corporation, with its place of business at 333 N Michigan Ave, 16th Floor, Chicago, IL 60601 ("**Red Sky**").

The Parties have agreed that Red Sky will license certain Software Product(s) (described below) and provide Standard Maintenance and Support to Licensee. Therefore, in consideration of the mutual promises and upon the terms and conditions set forth in this EULA, the adequacy of which consideration is hereby accepted and acknowledged, the Parties agree as follows:

1. **DEFINITIONS.** Capitalized terms shall be given the meaning below.
 - 1.1. "**Call Server**" means the Server used by Licensee to deliver distributed telecommunications services. The number of Call Servers will be used in determining the type and size of license purchased. The term "Call Server" may be used interchangeably with the term "PBX".
 - 1.2. "**Client**" means a computer device that is part of a network, connected to a Server and which incorporates the object code licenses for the Software Product(s) for such device and on which the Software is used or is managed.
 - 1.3. "**Device**" means an end point capable of making a voice telephone call such as an IP hard phone, laptop, tablet, or smartphone that is capable of running a Unified Communications soft client for telephony defined to Licensee's PBX or Call Server that will determine the type and size of license purchased.
 - 1.4. "**EULA**" means this Master Software License Agreement.
 - 1.5. "**Ports**" means the interfaces on the data or voice network into which an IP telephone can be connected that have been defined in Licensee's PBX/Call Server.
 - 1.6. "**Private Branch Exchange, "PBX"** means an electronic system used by Licensee to deliver telecommunications services. The number of PBXs will be considered in determining the type and size of license purchased. The term "PBX" may be used interchangeably with the term "Call Server".
 - 1.7. "**Server**" means a computer that, as a component of a network, (A) provides shared services to workstations over a network, (B) facilitates other stations, or (C) handles the requests of a system or software at another site, and that incorporates the object code of the Software Product(s) licensed by Licensee.
 - 1.8. "**Software**" means the software component of the Software Product.
 - 1.9. "**Software Product(s)**" means one or more Red Sky proprietary computer software programs, in object code format, and their related materials. Software Product(s) includes the user manuals, documentation, and software release notes associated with such computer software programs (collectively the "**Documentation**"). Software Product(s) includes updates, modifications and new releases of such computer software program and Documentation as may be provided by Red Sky to Licensee from time to time.
 - 1.10.
 - 1.11. "**Stations**" means the number of telephones that have been defined to Licensee's PBX or Call Server that will determine the type and size of license purchased.
 - 1.12. "**Switch**" means a Layer 2 IP device that distributes IP packets to Ports and Stations connected to the Switch.
2. **LICENSE GRANT AND RESTRICTIONS.**
 - 2.1. **GRANT OF LICENSE.** Subject to the terms and conditions of this EULA, Red Sky hereby grants Licensee a non-exclusive, non-transferable, perpetual license to use the Software.
 - 2.2. **SCOPE OF USE.** Software is licensed based the number of Stations, Devices, Ports, PBX or Call Servers in the Licensees environment. Licensee may install and use a number of copies of the Software Product(s) up to the maximum number of copies of each Software Product for which Licensee has paid the applicable license fee. Licensee may also make a reasonable number of copies of the Software in machine-readable form solely for archive or backup purposes in accordance with Licensee's standard archive or backup policies and procedures. Use of a number of copies of the Software Product greater than the maximum number of licenses purchased and paid for is prohibited and any such use will be subject to additional license fees. Licensee must notify Red Sky of such increase and pay the additional License fees. Failure to do so may impact the functionality of the Software.
 - 2.3. **USE RESTRICTIONS.**
 - 2.3.1. **General.** Licensee acknowledges that the Software Product(s) contain proprietary information of Red Sky or its licensors and Licensee will take reasonable steps to ensure that the Software Product(s) will not be reproduced or disclosed to others in whole or in part, without the prior written permission of Red Sky. Other than in accordance with this Agreement, Licensee will not, and will not knowingly permit others to, (i) use, copy, duplicate, or otherwise reproduce any part of the Software Product(s); (ii) modify, adapt, translate, distribute, publicly display, publicly perform or create derivative works based in whole or in part, upon any Software Product(s), (iii) lease, license, sublicense, transfer or assign any of its rights under this Agreement; (iv) sell, rent, distribute, provide access to the Software Product(s) or in any way allow third parties to exploit the Software Product(s); (v) reverse engineer, decompile, disassemble or otherwise attempt to derive any of the source code for the Software; or (vi) employ any methods to disable, circumvent or otherwise bypass computer programming and encryption files designed to prevent unauthorized access and use of the licensed

Software Product(s). The rights granted Licensee hereunder are restricted exclusively to Licensee and Licensee will advise all parties with access to the Software Product(s) or the output of the Software Product(s) of these restrictions. The prohibitions on disclosure will not apply to disclosures by Licensee to its agents, contractors or employees provided such disclosures are reasonably necessary to Licensee's authorized use of the Software Product(s), and provided further that Licensee will take reasonable steps to ensure that the Software Product(s) are not disclosed by its agents, contractors and employees in contravention of this Agreement. In the event of a breach of the EULA, Red Sky may not have an adequate remedy at law and injunctive or other equitable relief will be permitted to remedy such breach. The obligations of this Section 2 will survive the expiration or termination of this EULA.

- 2.3.2. **USE ON OTHER SERVERS;** Licensee may, without incurring additional License fees, move the Software Product(s) to and use the Software Product(s) on other Servers (i) temporarily, because of equipment or software malfunctions, or (ii) permanently, onto replacement Servers if the original Servers are replaced by Licensee provided: (a) there is no increase in the number of copies of the Software Product(s) in use, and (b) if Licensee permanently transfers the Software Product(s) to Servers at a different location that physically replace the original Servers, Licensee will completely cease the use of the Software Product(s) on the original set of Servers and will promptly give Red Sky written notice of such relocation. Failure to do so may impact the functionality of the Software Product(s). Additional license fees will be invoiced to Licensee when Licensee either (x) increases the number of computers using the Software, or (y) transfers copies of the Software Product to additional computers that are not then licensed to use the Software Product(s) and for which the applicable License fees have not been paid.
- 2.3.3. **TRANSFER OF LICENSE GRANT.** Following thirty (30) days written notice, Licensee may, with Red Sky's concurrence (which will not be unreasonably withheld) transfer the license granted hereunder provided that, either Licensee or transferee, directly or indirectly, holds a majority interest in the other. As a condition of Red Sky's consent, transferee must assume, in writing, Licensee's obligations under the EULA and Licensee must remain liable hereunder. Under no circumstance will such transfer be permitted if Licensee is in default under the terms of this EULA.
- 2.3.4. **TITLE.** Copies of the Software Product(s) transferred pursuant to this EULA are licensed and not sold. This EULA grants Licensee no title or rights of ownership in the Software Product(s). All Software Product(s) furnished by Red Sky, and all copies thereof made by Licensee, including translations, compilations, and partial copies, and all patches, revisions, and updates thereto are and will remain the property of Red Sky or Red Sky's licensors, as applicable. All Red Sky "**Proprietary Information**" (defined below) and title to all patents, copyrights, trade secret rights anywhere in the world, and other intellectual property and rights in or related to the Software Product(s) will be the sole property of and remain with Red Sky or its licensors, as applicable. Red Sky Proprietary Information includes, but is not limited to, Red Sky E911Manager® software including all E911 Manager® software modules and clients and related Documentation and any modifications thereto developed in whole or in part by Red Sky.
- 2.3.5. **DOCUMENTATION and PROPRIETARY MARKINGS.** Documentation is provided on-line to the Licensee for its internal use only and only in conjunction with its use of the Software Product(s). Licensee may make a reasonable number of copies of the Documentation. Licensee will not remove or destroy any proprietary markings or proprietary legends placed on or contained within the Software Product(s) or any related materials. Additionally, Licensee will reproduce and include Red Sky's proprietary, copyright, and other intellectual property markings and notices on any and all copies of the Software Product(s) and related materials, or on any portion thereof.
- 2.3.6. **VERIFICATION OF SOFTWARE PRODUCT(S) DEPLOYED.** Upon reasonable advance notice to Licensee and on a non-interference basis with Licensee's normal business operations, Red Sky may verify the number of Software Product(s) and Licenses that Licensee has placed into use under the EULA. Unless a previous verification has shown a discrepancy, such verification will not be conducted more frequently than once per year. If a discrepancy is found, the verification may be conducted quarterly at the discretion of Red Sky.
- 2.3.7. **No Implied Licenses.** Any use, modification or distribution of the Software Product(s) by Licensee outside the scope of the express licenses granted is prohibited.

3. WARRANTY.

- 3.1. **LIMITED WARRANTY.** Red Sky warrants to Licensee that for a period of one (1) year from delivery of the Software Product(s) by Red Sky (the "**Warranty Period**"), the unmodified Software will be capable of operating substantially in conformance with the Product Specifications in effect at the time of delivery when operated in accordance with the applicable Documentation. If, during the Warranty Period, it is determined that the Software Product(s) do not operate in substantial conformance with the Product Specifications, Red Sky will undertake good faith efforts to cure the nonconformity. Licensee's only remedy in the event of nonconformity in the Software or for breach of any warranty is, at Red Sky's option, either (i) repair or replacement of the Software or (ii) return

of the License Fee paid for the Software Product(s).

- 3.2. DISCLAIMERS. EXCEPT AS SPECIFICALLY PROVIDED IN THIS SECTION 4, RED SKY MAKES NO WARRANTIES EITHER EXPRESS OR IMPLIED AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE CONDITION OF THE SOFTWARE PRODUCT, OR ASSOCIATED PROFESSIONAL SERVICES, THEIR MERCHANTABILITY, OR THEIR FITNESS FOR ANY PARTICULAR PURPOSE. Red Sky does not warrant that the Software Product(s) will perform without error or that it will run without immaterial interruption. Red Sky makes no warranty and will have no responsibility for any claim arising out of: (i) a modification of the Software Product(s) made by anyone other than Red Sky unless Red Sky approves such modification in writing; or (ii) use of the Software Product(s) in combination with any operating system not authorized in the Documentation or Product Specifications.

4. STANDARD MAINTENANCE AND SUPPORT, AND PROFESSIONAL SERVICES.

- 5.1 STANDARD MAINTENANCE AND SUPPORT. The License Fee for the Software Product(s) includes one year of standard maintenance and support beginning on the date of the installation of the Software Product(s) (the "**Warranty Maintenance Period**"). Prior to the Warranty Maintenance Period, Licensee will follow and implement all Software installation instructions of Red Sky, its officers, agents and employees. During the Warranty Maintenance Period and during any subsequent period for which Licensee has paid in advance for maintenance and support services, Red Sky will provide certain basic maintenance and support of the Software Product(s).

- 4.1.1. SCOPE OF STANDARD MAINTENANCE AND SUPPORT. The specific services included in Red Sky's standard maintenance and support are more fully set forth in the Statement of Work, Schedule A. In order to receive the standard maintenance and support services defined in this Section 5 and the Statement of Work, Licensee must bring or maintain all licensed Software Product(s) at a single location at the current level of dot release or major release, as the case may be. Standard maintenance and support will include i) Red Sky software installation, deployment assistance and/or training in the Software; and ii) software product updates ("**dot release**"). Red Sky will make available all dot releases of the version of the Software licensed to Licensee. Dot releases typically feature modifications, updates, enhancements, and corrections to the current revision of Software. For example, if Licensee purchased a license to version 6.0, Licensee will receive dot releases v6.1 through v6.9 should those releases be generally distributed to other users of the Software. Dot releases are provided at "no charge" to Licensee during the Warranty Maintenance Period or any other maintenance period for which fees have been paid under an annual maintenance and support plan. Licensee is not eligible to receive the next major release of the Software free of charge when and if it is available. No claims for loss, damage or injury may be brought against Red Sky by Licensee or any third party unless all installation, maintenance and support instructions have been followed. Licensee will indemnify and hold Red Sky, its officers, employees, and agents harmless from any and all claims, suits, losses, costs and expenses, including but not limited to, court costs and reasonable attorney's fees if all instructions have not been followed.

- 4.1.2. REMOTE ACCESS FOR STANDARD MAINTENANCE AND SUPPORT. Licensee will provide Red Sky with remote access to its computer system to permit remote installation of Software Product(s) and technical support. Red Sky agrees to abide by Licensee's security policy in effect at the time. If Licensee cannot or will not provide remote access to its computer system, technical support can only be provided via telephone using an employee of the Licensee as an on-site proxy to address any issues; in this case, no service level response times can be assured

- 4.2. UPGRADES. Licensee understands and acknowledges that Red Sky may develop and market new or different software programs or features that use part or all of the Software Product(s) and that perform all or part of the functions performed by the Software Product(s), including but not limited to releases of new software product(s) or upgrades of the Software Product(s) that include the such new product features and functionality. Nothing contained in the Agreement gives Licensee any rights with respect to such new products, or such new or different software programs or features.

5. INDEMNITY

- 5.1. INTELLECTUAL PROPERTY INDEMNITY. Red Sky will defend or at Red Sky's sole option settle any action or claim based upon a third party's claim of U.S. and/or Canadian patent, copyright, or trade secret infringement asserted against Licensee by virtue of Licensee's use of the Software Product(s) as delivered, by Red Sky, provided that Red Sky is given prompt written notice of the action or claim and the right to control and direct the investigation, defense and settlement thereof, and further provided that Licensee reasonably cooperates with Red Sky in connection with the foregoing. If Licensee's use of the Software Product, is enjoined due to actual or alleged infringement of any U. S. patent, copyright or trade secret, Red Sky will, at its sole option and expense, either (a) procure for Licensee the right to continue using the Software Product; (b) replace

or modify the Software Product so it becomes non-infringing; or, (c) if Red Sky does not either procure the right to use or replace or modify the Software Product so that it is no longer infringing, Licensee will return the Software Product, and Red Sky will return to Licensee the License Fee for the Software Product amortized on a straight-line basis over five (5) years.

5.2. INTELLECTUAL PROPERTY INDEMNITY LIMITATIONS. NOTWITHSTANDING THE FOREGOING, RED SKY WILL NOT BE LIABLE FOR A CLAIM OF INFRINGEMENT BASED ON LICENSEE'S (i) USE OF OTHER THAN THE LATEST UNMODIFIED RELEASE OF THE SOFTWARE PRODUCT(S) AVAILABLE TO LICENSEE; (ii) USE OR COMBINATION OF THE SOFTWARE PRODUCT WITH NON-RED SKY PROGRAMS IF INFRINGEMENT WOULD NOT HAVE OCCURRED WITHOUT THE COMBINATION; (iii) USE OF THE SOFTWARE PRODUCT(S) AFTER RECEIVING NOTICE OF A CLAIM THAT IT INFRINGES THE RIGHTS OF A THIRD PARTY; (iv) MODIFICATION OF THE SOFTWARE MADE WITHOUT THE CONSENT OF RED SKY; (v) USE OF THE SOFTWARE PRODUCT(S) OTHER THAN AS PERMITTED UNDER THIS EULA OR IN A MANNER FOR WHICH IT WAS NOT INTENDED. NOTWITHSTANDING ANYTHING CONTAINED IN THIS SECTION 6 TO THE CONTRARY, THE MAXIMUM AGGREGATE LIABILITY OF RED SKY, ITS OFFICERS, AGENTS AND EMPLOYEES FOR ANY CLAIMS OR DAMAGES ARISING OUT OF THE MATTERS DESCRIBED IN THIS SECTION 6 WILL BE LIMITED AS DESCRIBED IN SECTION 7 OF THIS EULA.

6. LIMITATIONS OF LIABILITY. SHOULD LICENSEE, ANY PARTY CLAIMING THROUGH LICENSEE, OR ANY PARTY CLAIMING TO HAVE IN ANY WAY RELIED UPON THE SOFTWARE PRODUCT(S) OR PROFESSIONAL SERVICES SUFFER ANY LOSS, DAMAGE, COST OR EXPENSE FROM ITS USE, OR OPERATION OF THE SOFTWARE PRODUCT(S) OR PROFESSIONAL SERVICES, THEN THE MAXIMUM AGGREGATE AMOUNT OF LIABILITY OF RED SKY, ITS OFFICERS, EMPLOYEES AND AGENTS WILL BE LIMITED TO THE AMOUNT OF FEES PAID OR PAYABLE TO RED SKY BY LICENSEE DURING THE TWELVE MONTH PERIOD PRECEDING THE FIRST ACT GIVING RISE TO LIABILITY FOR THE SOFTWARE PRODUCT(S) OR PROFESSIONAL SERVICES THAT CAUSED OR ALLEGEDLY CAUSED SUCH LOSS, DAMAGE, COST OR EXPENSE. IN NO EVENT SHALL RED SKY, UNDER THIS EULA OR OTHERWISE BE LIABLE OR OBLIGATED IN ANY MANNER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, COLLATERAL, CONSEQUENTIAL, STATUTORY, OR PUNITIVE DAMAGES. THE LIABILITIES LIMITED BY THIS SECTION 7 APPLY: (i) TO LIABILITY FOR NEGLIGENCE; (ii) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, EQUITY, TORT, OR OTHERWISE (INCLUDING BREACH OF WARRANTY AND STRICT LIABILITY IN TORT); (iii) EVEN IF RED SKY IS INFORMED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES OCCURRING AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND (iv) EVEN IF LICENSEE'S REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. THIS LIMITATION IS SEPARATE AND INDEPENDENT OF ANY OTHER REMEDY LIMITATIONS AND SHALL NOT FAIL IF SUCH OTHER LIMITATION OR REMEDY FAILS. If applicable law limits the application of the provisions of this section 7, Red Sky's liability will be limited to the maximum extent permissible. RED SKY WILL NOT BE LIABLE FOR ANY LOSS, DIRECT OR INDIRECT OR INCIDENTAL, INCLUDING GOOD WILL, SPECIAL AND CONSEQUENTIAL DAMAGES THAT MAY ARISE FROM THE UNAUTHORIZED USE, OPERATION, OR MODIFICATION OF THE SOFTWARE PRODUCT(S) OR PROFESSIONAL SERVICES BY LICENSEE. THIS EULA WILL NOT CREATE ANY THIRD PARTY BENEFICIARY RIGHTS OR BENEFITS TO PARTIES OTHER THAN LICENSEE EXCEPT AS MAY BE SPECIFICALLY STATED HEREIN.

7. LIMITATIONS OF THE SOFTWARE PRODUCT(S). Red Sky has advised Licensee that the Software Product(s) are used to route 9-1-1 emergency calls. Red Sky has advised and Licensee acknowledges that the Software Product(s) may not function properly: (i) during any disruption of power at the Licensee's location; (ii) during any disruption of internet connectivity to the Licensee's location; (iii) during any period in which the Licensees VoIP telephony service provider or Local Exchange carrier has cancelled or suspended delivery of services to Licensee for any reason (including suspension or cancellation for failure to pay or other default); (iv) During any period of Service 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); (v) if a Licensee attempts a 9-1-1 call from a location different from the Licensee's then current address stored in the Service; (vi) if incorrect or invalid Licensee address information is provided or if such information is not updated by the Licensee in the event of a change in their location;(vii) If Licensee's equipment fails to function, is not properly configured or is defective.

8. TERMINATION.

8.1. TERMINATION BY REDSKY. Red Sky may terminate this EULA without further obligation or liability (i) if Licensee is delinquent in making payments of any sum due under this EULA and continues to be delinquent for a period of thirty (30) days after the last day on which such payment is due, (ii) Licensee commits any other breach of this EULA and fails to remedy such breach within thirty (30) days after written notice by Red Sky of such breach; (iii) immediately, if Licensee violates

Section 2 hereof.

- 8.2. LIQUIDATION OF REDSKY. This EULA will automatically terminate if Red Sky is liquidated, dissolved, or ceases to carry on business on a regular basis as it pertains to the Software Product(s) licensed by Red Sky and Red Sky's obligations under this EULA are not assumed by a successor or assignee.
- 8.3. EFFECT OF TERMINATION. Upon termination of this EULA, all licenses and other rights granted to Licensee hereunder will immediately terminate, and Licensee will immediately, (i) cease using the Software Product(s), (ii) return the Software Product(s) and all copies of Documentation to Red Sky; or alternatively, provide written certification that all copies of the Software Product(s) and Documentation have been destroyed, and (iii) purge all copies of the Software Product(s) and any portions thereof from all computers and from any computer storage device or medium on which Licensee has placed or has permitted others to place the Software Product(s). Termination of this EULA by either Party will not limit either Party from pursuing any other remedies available to it, including injunctive relief, nor will such termination release Licensee from any obligation to pay all fees that have accrued or that Licensee has agreed to pay under any Purchase Order. The following provisions will survive termination of the EULA, Sections 2, 3, 7, 8, 9, 11, 12 13, and any other provision that must survive termination to fulfill its essential purpose.
9. U.S. GOVERNMENT END USERS. Any Software Product(s) licensed to the United States of America, its agencies or instrumentalities (the "**U.S. Government**") is provided with "Restricted Rights." Use, duplication, or disclosure by the U. S. Government is subject to the restrictions set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software - Restricted Rights at 48 CFR 52.227-19, as applicable. All Rights Reserved under the Copyright Laws of the United States. Manufacturer/Contractor is Red Sky Technologies, Inc., 333 N Michigan Ave, Floor 16, Chicago, IL 60601.
10. EXPORT LAW CONTROLS; EXPORT ASSURANCE DECLARATION. Licensee will comply with all export and re-export laws, restrictions and regulations (the "**Export Requirements**") imposed by the governments of the United States or the country to which the Software Product is shipped to Licensee. Licensee will not commit any act or omission that will result in a violation of any Export laws, regulations or restrictions. Licensee will comply in all respects with any governmental laws, orders or other restrictions on the export of Licensed copies of Red Sky or its licensor's Software Product(s) (including any related information and documentation) that may be imposed from time to time by the government of the United States or the country to which the Red Sky or its licensor's Software Product(s) is shipped. This Section 11 will survive the expiration or termination of the license or this EULA.
11. TAXES. In addition to all specified charges in this EULA, Licensee will pay or reimburse Red Sky for all federal, state, local or other taxes (exclusive of income, business privilege, or similar taxes) including but not limited to sales, use, lease or similar assessments based on charges payable by the user of the Software Product(s), or the Professional Services performed hereunder. Red Sky will invoice Licensee for all such applicable taxes unless, in advance of delivery of the Software Product(s), Licensee provides Red Sky a valid exemption certification from the applicable taxing authority.
12. GENERAL.
 - 12.1. FORCE MAJEURE. Except with regard to any obligation to pay money hereunder, neither Party will be liable for any delay or interruption of its performance of obligations under the Agreement, or losses resulting therefrom, due to any act of God, strikes, lockouts, riots, acts of war or insurgency, acts of terrorism (including cybersecurity attacks and hacking), acts of sabotage, epidemics, governmental regulations imposed after the fact, fire, communication line failures, power failures, disruption of internet connectivity, inability to secure materials, earthquakes, floods, storms or other disasters, or any other cause beyond the reasonable control of the Party delayed. If any such contingency does occur the time to perform an obligation under this Agreement affected thereby will be extended by the length of time such contingency continues.
 - 12.2. NOTICE. All notices under this Agreement, including notice of address change, must be in writing and will be deemed to have been given when sent by (i) registered mail return receipt requested; or (ii) a nationally recognized overnight delivery service (such as Federal Express) to the President of the appropriate Party at the address on page one of this Agreement, or to a Party's address as changed in accordance with this Section 13.2.
 - 12.3. CONFIDENTIAL DATA Licensee acknowledges that the Software Product(s) will not store confidential or personal data and will only store location records associated with telephone numbers and emergency location identification numbers. No personal or confidential data including social security numbers, dates of birth, names, personal addresses, financial data or health records are stored in the Software Product(s).
 - 12.4. SUCCESSORS AND ASSIGNS. All terms and provisions of this Agreement will be binding upon and inure for the benefit of the Parties hereto, and their successors, permitted assigns and legal representatives, except that Licensee may not assign this Agreement nor any right granted hereunder, in whole or in part without Red Sky's prior written consent. For purposes of this Agreement, assignment includes change of control by and of Licensee. As a condition of Red Sky's consent, assignee must assume in writing Licensee's obligations under this Agreement. Notwithstanding the foregoing, Red Sky may transfer this Agreement and its rights and obligations hereunder in its sole discretion to a successor entity in the event of an acquisition of Red Sky, whether by equity or asset purchase, merger, corporate restructuring or reorganization or the like.

- 12.5. GOVERNING LAW. This Agreement will be governed by the laws of the State of Illinois, except to the extent that the issue arising under the Agreement is governed by federal law, and the parties consent and submit to the jurisdiction and venue of the State and Federal Courts located in Chicago, Illinois.
- 12.6. SEVERABILITY. If any provision of this Agreement will be held invalid, illegal or unenforceable, by a court of competent jurisdiction, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law and the remaining provisions of the Agreement shall continue in full force and effect.
- 12.7. ATTORNEY'S FEES. The prevailing Party shall be awarded attorney's fees and costs in any litigation related to this Agreement.
- 12.8. CONFLICTS. In the event of any conflict between this Agreement, the Purchase Order, the Quotation and the Statement of Work, the terms and conditions contained in this Agreement will control, followed by the terms and conditions in the Statement of Work, and then the Quotation. If Licensee issues a Purchase Order hereunder, such Purchase Order will be considered issued for the purpose of authorization and Licensee's internal use only and none of the terms and conditions will modify the terms and conditions of this Agreement or affect the obligations of Red Sky to Licensee as set forth in this Agreement.
- 12.9. ENTIRE AGREEMENT. This Agreement, together with all schedules, exhibits, riders, attachments, addenda, and amendments which are hereby incorporated by reference, constitutes the entire understanding between the Parties hereto with respect to the subject matter hereof and supersedes all prior negotiations, understandings and agreements between the Parties, whether written or oral. This Agreement may not be modified, amended, supplemented or otherwise changed in any manner unless done so in a subsequently dated writing signed by officers of both Licensee and Red Sky.
- 12.10. WAIVER. Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than (i) by an authorized representative and (ii) in an explicit written waiver. No waiver of any default or breach of this Agreement will constitute a waiver of any prior or subsequent default or breach of this Agreement.
- 12.11. COMPLIANCE WITH LAWS. In connection with the performance, access and use of the Software Product(s) under this Agreement, each Party agrees to comply with the laws, rules and regulations applicable to the performance of its obligations under this Agreement. It is the Licensee's responsibility to understand its state law E911 requirements and compliance obligations; and Red Sky specifically disclaims any such obligation. In the event that 9-1-1 service limitations or 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, Licensee agrees to negotiate modifications to the Agreement as requested by Red Sky, and if agreement respecting the same cannot be reached, Red Sky may terminate the Agreement without liability.
- 12.12. HEADINGS, Counterparts AND CORPORATE WARRANTY The paragraph headings appearing in this Agreement are inserted only as a matter of convenience and in no way define or limit the scope of such paragraph. This Agreement may be signed in counterparts which together shall form a single agreement as if the Parties had executed the same document. Each Party represents and warrants that (i) such Party has the authority to execute and perform all obligations under this Agreement; and (ii) entering into this Agreement does not violate any agreement or obligation existing between such Party and any third-party.