

ADDITIONAL TERMS OF SERVICE—NON-FIXED/NOMADIC 911

These ADDITIONAL TERMS OF SERVICE—NON-FIXED/NOMADIC 911 apply to Customer and its end users (“Users”) use of nomadic voice over IP Service, in addition to the terms in the Master Service Agreement. Customer will ensure that its Users agree to these terms before using the Products.

1. ACKNOWLEDGEMENT OF THE LIMITATIONS OF THE SERVICES.

- 1.1. MetTel has advised and Customer understands and agrees to notify its Users that the E911 Services are used to route 9-1-1 emergency calls, and that Customer and their Users may not be able to place 9-1-1 calls using the E911 Service: (i) During any disruption of power at the Customer’s or a User’s location; (ii) During any disruption of internet connectivity to the Customer’s or a User’s location; (iii) During any period in which the Customer’s or a User’s VoIP telephony MetTel or Local Exchange carrier has cancelled, suspended or terminated delivery of services to Customer or a User for any reason (including suspension, cancellation or termination of services for non-payment); (v) during any period in which MetTel or one of its licensors has suspended or terminated delivery of Software or Services to Customer provided such suspension or termination is in accordance with this Terms of Service Agreement; (iv) During any period of E911 Service outage or failure beyond MetTel’s or its licensor’s reasonable control (including natural disasters, wide-spread telephony or Internet network failures); and (viii) if Customer equipment fails to function, is not properly configured or is defective; or (ix) if all instructions, requirements and obligations for proper operation of the Software and Services are not executed in accordance with the provisions set forth in the Statement of Work.
- 1.2. MetTel has advised, and Customer on behalf of itself and its Users acknowledges, that 9-1-1 calls may not be properly routed: (i) if Customer or a User attempts a 9-1-1 call from a location different from the then current address, for the Customer or User, stored in the E911 Service; or (ii) if incorrect or invalid address information is provided or if such information is not updated in the event of a change in location.
- 1.3. With regard to VoIP Calls: MetTel’s licensors use commercially reasonable efforts to deliver every 9-1-1 call with the enhanced location data that Customers and their Users provide to the appropriate Public Safety Answering Point (“PSAP”). There are limitations placed upon MetTel’s licensors 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. Customer acknowledges that PSAPs fall into three categories: (1) those that accept VoIP calls with location data on 9-1-1 equipment; (2) those that accept VoIP 9-1-1 calls without location data on administrative lines; and (3) 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.

2. OWNERSHIP AND SOFTWARE LICENSING RIGHTS

- 2.1. What Customer Owns. Customer will retain all right, title and interest in and to its data. MetTel may use Customer’s data in order to (i) provide the E911 Services, and (ii) derive statistical data.
- 2.2. What MetTel Owns. MetTel or its licensors retain ownership in all intellectual property rights to the E911 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, the “Materials”). MetTel and its licensors (as applicable) reserve all rights to the Services, Software and Materials that are not expressly granted under these terms.
- 2.3. Software License & Restrictions. To use the Services, Customer may be required to download and install Software or a proprietary agent, plug-in or similar software. Subject to these terms, MetTel grants Customer a limited, non-exclusive, non-sublicensable and non-transferable license to use the Red Sky Technologies Software identified in the Schedule/order or SOW. The Software may contain open-source code that is subject to its own license terms. Customer may not, nor allow a User or other 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) these terms, or b) Customer’s standard backup procedures; or, c) as legally required for interoperability purposes. Customer may, without incurring additional fees, i) temporarily move the Software to, and use the Software on, other devices because of equipment or software malfunctions on the original devices; or ii) permanently move the Software to, and use the Software onto replacement devices if the original devices are replaced by Customer provided there is no increase in the number of copies of the Software in use. If Customer permanently transfers the Software to devices at a different location that physically replace the original devices, Customer agrees to completely cease the use of the Software on the original devices and will promptly give MetTel written notice of such relocation.

3. INDEMNIFICATION

- 3.1. Customer Indemnification. Customer will indemnify, defend, and hold harmless MetTel, its affiliates and their respective directors, officers, employees, third party supplier 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) unauthorized use, operation, or modification of the Services; b) misuse or incorrect use of the Services including but not limited to failure to provide the necessary location data for proper routing of a 9-1-1 call.
- 3.2. Indemnification Procedure. MetTel will (a) timely notify Customer in writing of the claim (provided, that the failure to provide timely notice that prejudices Customer shall relieve Customer of its obligations under this Section to the extent Customer has been materially prejudiced thereby), and (b) reasonably cooperate in the defense of the claim and may participate in the defense of the claim at its own expense. Any settlement of a claim shall not include a financial or specific performance obligation on, or admission of liability by, MetTel unless otherwise agreed in writing in advance.

4. 911 METTEL LIMITS OF LIABILITY

- 4.1. CUSTOMER ACKNOWLEDGES ON ITS BEHALF AND ON BEHALF OF ITS USERS THAT NEITHER METTEL NOR ANY OF ITS THIRD-PARTY SUPPLIERS WILL BE LIABLE FOR ANY LOSS, DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL, THAT MAY ARISE FROM THE USE, OR OPERATION, OF THE E911 SERVICES OR FROM ANY UNAUTHORIZED USE OR MODIFICATION OF THE SERVICE. FURTHER CUSTOMER ACKNOWLEDGES, THAT METTEL WILL NOT BE LIABLE FOR ANY CLAIMS ARISING FROM ANY EFFORTS UNDERTAKEN BY METTEL, ITS THIRD PARTY SUPPLIER, OR THE EMERGENCY RELAY CENTER ("ERC") TO CORRECT ANY FAILED USER EMERGENCY 911 CALLS, INCLUDING BUT NOT LIMITED TO, THOSE THAT ARE A RESULT OF INVALID OR INCOMPLETE USER LOCATION DATA; THOSE THAT ARE A RESULT OF INTERRUPTIONS IN THE VOICE CONNECTIVITY BETWEEN THE CUSTOMER'S PBX/CALL AND THE ERC; AND THOSE WHICH THE ERC IS UNABLE TO RE-ROUTE TO THE APPROPRIATE PSAP BECAUSE THE USER CANNOT OR DOES NOT PROVIDE CORRECT OR VALID LOCATION INFORMATION.