

Last Updated: April 9, 2019

## SmartSky Partner Portal Terms of Use

**User acknowledges and agrees that when User clicks the “I Accept” box for these Portal Terms in order to access the Portal, that User accepts these Portal Terms in their entirety. SmartSky reserves the right to modify these Portal Terms at any time. User understands and agrees that if User clicks the “I Accept” box after any change or modification to these Portal Terms, SmartSky will treat User’s acceptance of the Portal Terms as User’s agreement to the updated Portal Terms. User may not use the Portal or access the Information if User does not accept these Portal Terms in their entirety.**

### A. Introduction

- The purpose of the Partner Portal (“**Portal**”) is to provide SmartSky Network, LLC’s (“**SmartSky**”) strategic business partners (“**Partners**”), and certain of their respective authorized employees and other users of the Portal granted access by SmartSky (together with Partners, the “**User**” or “**Users**”), with (i) technical information and training materials to assist with certification and installation of SmartSky products, and (ii) current information, using the SmartSky Network Visualization Tool (“**NVT**”), concerning the progress SmartSky is making with the rollout of its ATG 4G LTE broadband network in the continental United States. **All coverage maps, data, and projections are estimates only and are subject to change at any time by SmartSky.** All information available to Users through the Portal, as may be updated from time to time, including the NVT, CONUS, and related materials through the Portal are, collectively, the “**Information**”.
- SmartSky is managing access to the Portal through SmartSky issued online log-in credentials, including a unique username and User-generated password (the “**Log-In Credentials**”).
- All questions relating to the Portal, the information included therein (including the NVT) and these SmartSky Partner Portal Terms of Use (“**Portal Terms**”) must be reduced to writing and directed via e-mail to: [partnerportal@smartskynetworks.com](mailto:partnerportal@smartskynetworks.com).

In **consideration** of the foregoing, including access to the Portal, by accepting these Portal Terms User hereby acknowledges, confirms, and agrees as follows:

### B. Confidentiality

- The Information is non-public technical information constituting SmartSky highly confidential proprietary information and such Information may be subject to the requirements of applicable Export Administration Regulations (“**EAR**”). Applicant agrees to hold the Information in complete confidence, subject to these Portal Terms, and to comply with all requirements of applicable EAR.
- User’s use of and access to the Information is solely for the purposes set forth herein or otherwise set forth in the Portal. User shall hold all Information in strict confidence and will not disclose the Information to others or use the Information except as expressly permitted under these Portal Terms or as expressly authorized in writing by SmartSky. User will use the same degree of care to protect the Information as it uses to protect its own information of like nature, but in no circumstances less than reasonable care.
- Notwithstanding anything to the contrary in these Portal Terms, the Information may be disclosed by User: (a) to those Users who require it in connection with their duties and who are

contractually or legally obligated to hold such Information in confidence and restrict its use consistent with the obligations under the these Portal Terms; and (b) to the extent required by law, pursuant to a duly authorized subpoena, court order or government authority, provided that (i): User provides SmartSky with sufficient advance notice of such disclosure requirement or obligation to permit SmartSky to seek a protective order or other appropriate remedy protecting the Information from disclosure; and (ii) User limits the release of the Information to the greatest extent possible under the circumstances.

- Obligations under this Section B shall not apply to information which: (a) was in the public domain or generally available to the public prior to receipt thereof by User through the Portal, or which subsequently becomes part of the public domain or generally available to the public before any wrongful act of User or any employee or agent of User; (b) was in the possession of User without breach of any obligation hereunder to SmartSky prior to access through the Portal; (c) is later received by User from a third party, unless User knows or has reason to know of an obligation of secrecy of the third party to SmartSky with respect to such information; (d) is developed by the User independent of the Information accessed through the Portal; or (e) has previously been disclosed by SmartSky to third parties without obligation of confidentiality.
- If User has disclosed, or is threatening to disclose, any Information in breach of these Portal Terms, SmartSky shall be entitled to seek an injunction to prevent such disclosure, or to prevent User from providing any services to any third party to whom such Information has been or may be disclosed. SmartSky shall not be prohibited by this provision from pursuing other remedies, including a claim for losses or damages.

C. Disclaimers and Use at Own Risk

- ALL INFORMATION AVAILABLE THROUGH THE PORTAL IS PROVIDED ON AN “AS-IS,” “AS-AVAILABLE” BASIS AND SMARTSKY AND ITS AFFILIATES, OFFICERS, DIRECTORS, ADVISERS AND REPRESENTATIVES (“**SMARTSKY PARTIES**”) EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. THE SMARTSKY PARTIES MAKE NO WARRANTY AS TO THE ACCURACY, COMPLETENESS, CURRENCY, OR RELIABILITY OF ANY INFORMATION AVAILABLE THROUGH THE PORTAL. USER IS RESPONSIBLE FOR VERIFYING ALL INFORMATION BEFORE RELYING ON IT. USE OF THE PORTAL AND THE INFORMATION IS AT USER’S SOLE RISK. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY USER FROM SMARTSKY OR THROUGH OR FROM THE PORTAL OR ANY INFORMATION WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THESE PORTAL TERMS.
- USER HEREBY AGREES THAT IT MAY NOT USE ANY CHANGES, UPDATES, OR MODIFICATIONS TO THE INFORMATION AS EVIDENCE OF SMARTSKY’S NEGLIGENCE OR WILLFUL MISCONDUCT.
- SMARTSKY MAKES NO REPRESENTATIONS OR WARRANTIES THAT USE OF THE PORTAL WILL BE UNINTERRUPTED, COMPLETELY SECURE, VIRUS-FREE, OR ERROR-FREE. User is responsible for taking all precautions necessary to ensure that any Information User obtains from the Portal is free of viruses.
- User understands that applications, systems, and devices connected to the Internet are subject to inherent risks common to the Internet, such as malicious code, viruses, hackers, and other similar parties, code, or systems. SmartSky has no liability for any Information accessed or

downloaded through the Portal or for the acts of any third party that may affect the use of the Portal. User understands and agrees that no data transmitted over the Internet is or can be guaranteed to be completely secure.

#### D. Access

- Access to the Portal is limited to Users who have a meaningful reason to access the Information, as determined by SmartSky in its sole discretion, and who have requested and received SmartSky-approved personal username and password (the “**Log-In Credentials**”) to the Portal.
- User’s access to the Portal may be withdrawn by SmartSky at any time and without prior notice. Users must comply immediately with any written request (email acceptable) from SmartSky relating to the Portal, use of the Information, applicable procedures, and any other requirements.
- Issuance of approved Log-In Credentials to access the Portal will be considered by SmartSky on a case by case basis and at SmartSky’s sole discretion. Requests for a User to receive SmartSky approved Log-In Credentials must be submitted via email to [partnerportal@smartsdynetworks.com](mailto:partnerportal@smartsdynetworks.com) and must include all information requested by SmartSky.
- Partner will immediately notify SmartSky if any User no longer requires a log-in as set forth herein or if a User is terminated as an employee, consultant, agent, or representative of Partner.
- User agrees that as a condition to its access of the Portal, User must promptly notify SmartSky at [partnerportal@smartsdynetworks.com](mailto:partnerportal@smartsdynetworks.com) of any error, mistake, inconsistency, or necessary clarification of the Information that User recognizes and that User will refrain from using any Information affected by such error, mistake, inconsistency, or ambiguity until User receives confirmation from SmartSky that such issue has been resolved.

#### E. Usage

- In addition to these Portal Terms, use of the Portal through SmartSky’s website is subject to and governed by SmartSky’s Privacy Policy located at <https://www.smartsdynetworks.com/privacy-policy/>, which is incorporated herein and made a part of these Portal Terms by this reference.
- Access to the Portal does not authorize any marking, altering, modification, or copying of any information contained therein and Users agree they will not mark, alter, modify, or copy the Information.
- Log-In Credentials issued by SmartSky to Users shall be strictly limited to the User to whom they are issued. User agrees their Log-In Credentials will not be shared with any other person. If an additional User or person needs access to the Portal, an appropriate request must be made in accordance with SmartSky’s established procedures for access to the Portal.
- SmartSky reserves the right to take any action that it deems necessary to ensure the security of the Portal, the Information, and User’s Log-In Credentials, including without limitation changing User’s password and terminating User’s ability to access the Portal. User is solely responsible for keeping its Log-In Credentials confidential. User is solely liable for any claims, damages, losses, costs or other liabilities resulting from or caused by any failure to keep the Users’ Log-In Credentials confidential, whether such failure occurs with or without User’s knowledge or consent. User will immediately notify SmartSky of any suspected or actual unauthorized access

to or use of User's Log-In Credentials or any other breach of User's account security. User hereby authorizes and consents to the collection, storage, sharing, use, and transfer by SmartSky and its service providers, of any information and data related to or derived from User's use of the Portal.

- User is responsible for providing and maintaining, at its own risk, option, and expense, any hardware, software, and communication lines required to access and use the Portal, and SmartSky reserves the right to change the access configuration of the Portal at any time without prior notice.
- User may not use the Portal for any use other than the business purpose for which it was intended. User may not take any of the following actions with respect to the Portal or the server hosting the Portal nor will User use the Portal to upload, post, email, distribute, transmit, link, solicit or otherwise make available any content or use the Portal in any manner that: (i) decompiles, uses reverse engineering, disassembles, derives the source code of or decrypts the Portal or server hosting the Portal; (ii) manipulates or otherwise displays the Portal, in whole or in part, by using framing, mirroring or similar navigational technology or directly links to any portion of the Portal other than the main homepage located at [www.smartsdynetworks.com](http://www.smartsdynetworks.com); (iii) uses any robot, spider, scraper or other automatic or manual means to access the Portal or copies any content or Information on the Portal; (iv) removes, obscures, or alters any proprietary notices (including any notice of copyright or trademark) or warnings of SmartSky or its affiliates, partners, suppliers or licensors; (v) modifies, adapts, improves, enhances or makes any derivative work from the Portal or Information; (vi) disables, overburdens, impairs or otherwise interferes with or interrupts the Portal or any hardware, software, system or network connected with the Portal; (vii) probes, scans, or tests the vulnerability of or breach the authentication measures of the Portal or any related networks or systems; (viii) interferes with any other party's use and enjoyment of the Portal; (ix) compiles, uses, downloads or otherwise copies any User information or any portion thereof, or transmits, provides or otherwise distributes (whether or not for a fee) such information to any third party; (x) is fraudulent, malicious or unlawful, unauthorized; (xi) promotes or provides instructions for illegal activities; (xii) disseminates viruses or other computer code, files or programs that interrupt, destroy or limit the functionality of any computer software or hardware; (xiii) attempts to gain unauthorized access to any other accounts, computer systems or networks connected to any server or systems through hacking, password mining or any other means; or (xiv) accesses systems, data or information not intended by SmartSky to be made accessible to User.

F. Indemnification and Limitation of Liability

- User agrees to defend, indemnify, and hold harmless SmartSky, its affiliates, its contractors, and all of their respective directors, officers, employees, representatives, partners, equity holders, stockholders, principals, agents, predecessors, successors, and assigns from and against any and all suits, actions, claims, proceedings, damages, settlements, judgments, injuries, liabilities, obligations, losses, risks, costs, and expenses (including, without limitation, attorneys' fees and litigation expenses) relating to or arising from User's use or misuse of the Portal, Information, or any fraud, violation of law, or willful misconduct by User, or any breach by User of these Portal Terms. SmartSky reserves the right, at User's expense, to assume the exclusive defense and control of any matter which User is required to indemnify against, and User agrees to cooperate in SmartSky's defense of such matter.

- UNDER NO CIRCUMSTANCES SHALL SMARTSKY OR ITS OFFICERS, DIRECTORS, STOCKHOLDERS, VENDORS, CONTRACTORS, EMPLOYEES, AGENTS, OR AFFILIATES BE LIABLE TO USER OR ANY THIRD PARTY, WHETHER IN CONTRACT, TORT OR OTHERWISE, FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES (EVEN IF SUCH DAMAGES ARE FORESEEABLE, AND WHETHER OR NOT EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) ARISING FROM ANY ASPECT OF THE RELATIONSHIP PROVIDED FOR HEREIN. TO THE FULL EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT WILL SMARTSKY, ITS SUCCESSORS AND ASSIGNS, ITS SUBSIDIARIES, AND ITS AFFILIATES BE LIABLE TO USER OR TO ANY THIRD PARTY IN WARRANTY, CONTRACT, NEGLIGENCE, STRICT TORT OR OTHERWISE, REGARDING ANY DEFECTS IN THE DESIGN, DEVELOPMENT, OR PRODUCTION OF OR ERRORS IN THE PORTAL OR INFORMATION. USER EXPRESSLY AGREES AND ACKNOWLEDGES THAT THE FOREGOING LIMITATIONS OF LIABILITY FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES AND SHALL APPLY EVEN IF A LIMITED REMEDY FAILS OF ITS ESSENTIAL PURPOSE OR IS DEEMED UNCONSCIONABLE. NOTE: SOME STATES DO NOT ALLOW THE EXCLUSION OR THE LIMITATION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO USER.

G. General

- All trademarks, service marks and logos that are used or displayed on the Portal are owned by SmartSky. User must obtain SmartSky's written permission prior to using any trademark or service mark of SmartSky. Unauthorized use of any trademarks, service marks or logos used on the Portal may be a violation of state, national and international trademark laws. Additionally, SmartSky's custom icons, graphics, logos and scripting on the Portal may be covered by trademark, trade dress, copyright or other proprietary right law, and may not be copied, modified or used, in whole or in part, without the prior written permission of SmartSky.
- These Portal Terms shall be governed by, construed and interpreted in accordance with the laws of the State of North Carolina, without reference to (i) the conflicts of laws principles thereof and (ii) the United Nations Conventions on Contracts for the International Sale of Goods. User hereby submits itself to the jurisdiction of the State of North Carolina and agrees that, for the purposes of any action brought by User under these Portal Terms, the exclusive venue for any claims shall be the state courts located in Durham County, North Carolina, or the Federal District Court for the Middle District of North Carolina located in Durham County, North Carolina. SmartSky may, pursuant hereto, at its sole option, bring any action in any other court of competent jurisdiction.
- If User or SmartSky wish to give the other party written notices under these Portal Terms, they must be (a) in writing, (b) if to User, sent to User's applicable email address on file with SmartSky (or posted in User's account if no email address is on file), (c) if to SmartSky, sent by overnight courier, certified or registered mail, or other reliable means (with confirmation of delivery) to SmartSky's principal business address at 430 Davis Drive, Suite 350, Morrisville, NC 27560. Notices will be effective upon delivery.
- To the maximum extent allowed by applicable law, User agrees that any claim User may have arising out of or related to User's use of the Portal or the Information must be filed within one (1) year after such claim arose; otherwise, User's claim is permanently barred.

- These Portal Terms constitute the entire agreement between User and SmartSky regarding the Portal and the Information. By entering into these Portal Terms, User affirms that User is not relying on any other advice, advertisements, or any other representation, promise, condition, inducement, or warranty, express or implied, from any person that is not expressly and specifically set forth in writing in these Portal Terms.
- If a court of competent jurisdiction finds any provision of these Portal Terms unlawful or unenforceable, that provision will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of these Terms will continue in full force and effect. User and SmartSky intend that all restrictions on use, disclaimers of warranties, limitations of responsibility and liability, exclusions of damages or other remedies, and indemnification rights of SmartSky in these Portal Terms shall be upheld and applied to the maximum extent permitted by law.
- Sections A, B, C, F, and G shall survive the expiration or termination of these Portal Terms, along with any terms that by their nature would survive