

SMARSH SERVICES AGREEMENT - BYOD APPLICATIONS

1. **Communication Applications.** If Client purchases a Service that allows Users to send and receive voice or text message communications, the following terms apply.
 - 1.1. **BYOD Application.** The BYOD Application is a service that allows Client Users the ability to make and receive voice and text communications through a downloadable application ("**BYOD Application**"). The BYOD Application must be downloaded through an app store by end users and installed on the end user's mobile device. The BYOD Application is built on third party platform as a service ("**BYOD Platform**") and subject to certain pass through terms, as indicated below. CLIENT AND CLIENT USERS SHALL NOT USE THE BYOD APPLICATION SERVICE FOR EMERGENCY OR 911 CALLING. CLIENT SHALL NOT USE THE BYOD APPLICATION TO SEND OR RECEIVE PROTECTED HEALTH INFORMATION AS DEFINED BY THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996.
 - 1.2. **Fees, Taxes and Pass Through Costs.** Because the BYOD Application utilizes a third party BYOD Platform, upon which taxes, fees and other pass through costs related to virtual communications platforms may be assessed, Smarsh may pass through any taxes or fees which are passed through to Smarsh by the third party BYOD Platform, including without limitation USF, 911 related taxes, surcharges, international roaming fees and similar fees. Fees may be increased at any time following the Initial Term. Smarsh may pass through any taxes or other fees assessed by the BYOD Platform at any time, including during the Initial Term.
 - 1.3. **BYOD Platform Pass Through Terms.**
 - 1.3.1. **Data.** Smarsh and the BYOD Platform will receive data related to Client's usage, including without limitation, calls made, received, recipient, sender, time and date ("**Usage Data**"). Smarsh and the BYOD Platform provider will also receive messaging logs, traffic routing information and message content, which is Client Data. Smarsh and the BYOD Platform will retain and may disclose Usage Data for internal operational purposes or as required by applicable law. Client hereby grants Smarsh and the BYOD Platform the right to access and use Usage Data and Client Data. The BYOD Application handles Usage Data and Client Data in accordance with the privacy policy made available at www.smarsh.com/legal/subprocessors.
 - 1.3.2. **Porting.** The term porting means to move a mobile device number from one telecommunications carrier or virtual messaging application (like the BYOD Platform provider) to another. Whether or not a number may be ported depends on eligibility criteria established by the applicable telecommunications carrier, messaging application or the BYOD Platform, as applicable. The BYOD Platform will port a number where Client (a) has either ported in or purchased the phone number more than ninety (90) days prior to the port-away date; (b) provides clear notice of its intent to port the phone numbers away before execution of the port-away request; and (c) has met the minimum usage and call duration requirements required by the BYOD Platform. Where the BYOD Platform provides a virtual number to Client, the BYOD Platform is the "customer of record" with respect to that virtual number.
 - 1.3.3. **Restrictions.** The following restrictions or limitations apply to Client's use of the BYOD Application Service: the BYOD Platform may reclaim any number where (a) the numbers are unutilized or underutilized as defined by any local, federal, and/or national regulatory agency and/or governmental organization with oversight over the relevant phone number and numbering plan; (b) Client has not paid Fees when due; (c) in the case of fraud; (d) with respect to free trial accounts that are not used for more than 30 days.
 - 1.3.4. **TCPA Compliance.** Client represents and warrants that Client and its users will comply with the Telephone Consumer Protection Act ("TCPA") as it applies to Client's or User's use of the BYOD Application. Client is solely responsible for any violation of the Telephone Consumer Protection Act by Client or its Users, and Smarsh disclaims any liability related to Client's activities under TCPA.
 - 1.3.5. **CellTrust SL2.** If Client purchases the BYOD Application which is provided by CellTrust as the CellTrust SL2 product ("**SL2**"), these terms apply in addition to the above pass through terms. The SL2 product is licensed by CellTrust Corporation to Client pursuant to the applicable CellTrust license agreement, available here: SL2 App Agreement, the SL2 Server Agreement and the SL2 App for Apple Agreement each available

at www.smarsh.com/legal/celltrust (“**SL2 Terms**”). To use SL2, Client and end users must download SL2 and accept the applicable SL2 Terms. Smarsh will provide Client with a license key to enable such download. A “**Unit**” with respect to SL2 means a license key. The provision of the license key is Smarsh’s sole obligation with respect to the SL2 product. The SL2 product is delivered by CellTrust and all data or information generated by the SL2 product is received, processed and stored by CellTrust and transmitted by CellTrust to the Smarsh archiving Service (if Client purchases the archiving Service). The SL2 Terms and privacy policies apply to data generated, hosted, processed and stored by the SL2 product and this Agreement does not apply to such data. In the event of CellTrust’s breach of the SL2 Terms, Client’s remedies are those remedies set forth in the SL2 Terms and are as between Client and CellTrust. Technical support for SL2 is provided by CellTrust. The CellTrust service level agreement located at www.smarsh.com/legal/celltrust and applies to SL2; provided that, Client must request credits for any unavailability of SL2 directly from Smarsh.

- 1.3.6. **For App Store Purchasers.** The BYOD Application will be made available to Users via the Apple app store and the Google Play app store. The parties acknowledge that this Agreement is between Client and Smarsh, and not with Apple or Google. Neither Apple nor Google are responsible for the BYOD Application or the contents thereof. By obtaining the BYOD Application from Apple’s iTunes App Store, Google Play or another app store, Client acknowledges and agrees that Client is authorized to install, activate and use the BYOD Application, and that Apple, Google or other app store providers have no responsibility whatsoever for the BYOD Application, including without limitation its performance, maintenance and support, or for any claim by a third party that the BYOD Application infringes the intellectual property rights of a third party. Apple is not responsible for addressing any claims related to the BYOD Application or Client’s or User’s possession and/or use of the BYOD Application, including, but not limited to, product liability claims, any claim that the BYOD Application fails to conform to any applicable legal or regulatory requirement and claims arising under consumer protection or similar legislation. Apple, Google and the subsidiaries of each the foregoing parties are third-party beneficiaries of this Agreement, and Apple or Google or their third-party beneficiaries shall have the right (and will be deemed to have accepted the right) to enforce the Agreement against Client as a third-party beneficiary. Smarsh, shall be solely responsible for the investigation, defense, settlement and discharge of any intellectual property infringement claim attributable to the BYOD Application pursuant to the Smarsh Service Agreement General Terms.