

Service Specific Terms – Umony

These Service Specific Terms – Umony apply when Client uses a Connected Archive or a Connected Capture Service to capture or archive content from WhatsApp or WeChat¹. Unless expressly stated otherwise, capitalized terms contained in these Service Specific Terms have the meaning given them in the Smarsh Service Agreement - General Terms.

- 1. Umony Products.** Smarsh capture of WhatsApp and WeChat is enabled by Third Party Services provided by Umony Limited (“**Umony**”). Smarsh resells Umony products and services (collectively, the “**Umony Products**”) and Umony licenses Umony Products pursuant to the Agreement, the Service Specific Terms for the applicable Connected Archive or Connected Capture Service, and these Service Specific Terms – Umony. Umony delivers the Umony Products. Umony receives, processes, and stores all data or information generated by Client’s use of the Umony Products. Umony transmits the data or information to the Connected Archive Service or Connected Capture Service Client purchased.

- 2. Umony Portal.** Client’s access to and use of the Umony web portal (“**Umony Portal**”) are subject to the Umony End User License Agreement (“**Umony EULA**”), attached as Exhibit A. Smarsh is not a party to the Umony EULA, and the Umony EULA may not be modified by Smarsh or Client. Umony may modify the Umony EULA, and Smarsh will incorporate those modifications into the Agreement upon notice to Client.
 - 2.1. Client shall comply with the Umony EULA when using the Umony Portal. Umony may suspend Client’s access to or terminate Client’s license to the Umony Portal if Client violates the Umony EULA. Smarsh will have no liability for any such suspension or termination pursuant to Client’s or Client’s end users’ violation of the Umony EULA.
 - 2.2. If Umony breaches the Umony EULA, Client’s remedies are those remedies set forth in the Umony EULA and are solely between Client and Umony.
 - 2.3. Performance and monitoring data (including numbers of conversations recorded) logged by the Umony Products, as contained on the Umony Portal is “**Umony Usage Data.**” Client can monitor the performance of the Umony Products through the Umony Usage Data available in the Umony Portal.
 - 2.4. Umony retains any intellectual property rights that may subsist in the aggregated Usage Data or in the presentation or methods used to compile the Usage Data on the Umony Portal. An access license to the Usage Data is subject to the End-User Licensing Agreement.

- 3. Umony Products Support.** Smarsh will provide technical support for the Umony Products in accordance with Section 1 of the Support and Service Levels available at <https://www.smarsh.com/legal/SupportServiceLevels>. If Smarsh is unable to resolve an issue with the Umony Products identified in the support case submitted by Client, Smarsh will escalate the issue to Umony.

- 4. Restrictions on Client’s Use of Umony Products.** Client shall not:
 - 4.1. attempt to sell, sublicense, or otherwise distribute the Umony Products;

¹ WhatsApp is a registered trademark of WhatsApp, Inc., and WeChat is a registered trademark of Tencent Holdings Limited. Smarsh’s use of such trademarks is solely for descriptive purposes and does not imply any association with the respective trademark holder or its products or brands. Smarsh is not affiliated with, associated with, authorized by, or endorsed by WhatsApp, Inc. or Tencent Holdings Limited.

- 4.2. combine or attempt to combine the Umony Products with any third-party software application;
- 4.3. develop, modify, adapt, create derivative works from, reverse engineer, decompile, or disassemble the Umony Products;
- 4.4.
- 4.5. attempt to circumvent any security protocols or devices, or interfere with the proper working of the Umony Products or the servers or networks on which any part of the Umony Products is hosted or operates; or
- 4.6. use any information provided by Umony (whether Confidential Information or otherwise) to create any software or platform with expressions or functions that are substantially similar to those of the Umony Products.

5. Umony Content; Implementation. The Services capture WhatsApp and WeChat conversations from the Umony Products as Client Data ("**Umony Content**"). The implementation process for Smarsh capture of Umony Content requires certain actions that Client and Umony must complete. Smarsh is not responsible for delays in implementation caused by Umony, Client, or Client employees or contractors. Capture of Client's employees' and contractors' WhatsApp and WeChat conversations as Umony Content requires certain actions Client employee or Client contractor must complete. Neither Smarsh nor Umony are responsible for data transmission failures caused by Client's, Client's employees', or Client's contractors' actions or failure to act. Client is permitted to capture Umony Content only for Client's current employees or contractors. Client is prohibited from actively capturing Umony Content for any individual who is not a Client employee or contractor. Client will provide each employee and contractor with clear and conspicuous notice of policies regarding the receipt, transmission, storage, and use of employee's or contractor's Umony Content. Client shall ensure that each employee and contractor has agreed to those policies and that each employee or contractor has been made aware that the employee or contractor has no reasonable expectation of privacy in the Umony Content. Client shall immediately disable Umony Content capture within the applicable Services upon the termination of an employee or contractor for whom Client is capturing Umony Content.

6. Umony Content and Data Privacy. As used in these Service Specific Terms – Umony: (i) 'personal data' and 'controller' have the meanings assigned in Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of Personal Data and on the free movement of such data and its implementing regulations promulgated by the EU, EEA, and their individual member states ("**GDPR**"); (ii) 'process' has the meaning assigned in the GDPR or the California Consumer Privacy Act of 2018, as amended (Cal. Civ. Code §§ 1798.100 to 1798.199) and its implementing regulations ("**CCPA**"), as applicable; and 'personal information' and 'service provider' have the meaning assigned in the CCPA.

- 6.1. Notwithstanding anything to the contrary in this Agreement or any other agreement to which Client and Smarsh are parties, with respect to personal data and personal information contained in Umony Content that Smarsh captures and archives as Client Data, and any processing thereof by either Client or Smarsh, the parties acknowledge and agree that:
 - a) Client is a controller;
 - b) Smarsh is a processor and service provider that processes such personal data and personal information on behalf of Client;
 - c) Umony is a subprocessor to Smarsh;
 - d) Client is solely responsible for all legal obligations of a controller under applicable Data Protection Laws & Regulations (as defined in the data privacy agreement executed by the parties); and



e) in no event will Smarsh or Umony be obligated to fulfill the legal duties of a controller or related to Client Data.

6.2. Client will use the Smarsh Services and Umony Products to process Umony Content in accordance with applicable laws, including but not limited to the GDPR, the CCPA, and all other applicable Data Protection Laws and Regulations.

6.3. As between the parties, Client is solely responsible for ensuring that its instructions to Smarsh to capture, archive, or otherwise process Umony Content comply with applicable Data Protection Laws and Regulations.

7. Umony Disclaimers. Umony makes no guarantee that:

7.1. the Umony Products can be operated free from any minimum hardware, software, server, or operating system requirements;

7.2. access to, and usage of, any Umony Products will be continuous, uninterrupted, or error-free at all times (whether for scheduled maintenance, downtime or otherwise);

7.3. the Umony Products will be fit for any particular purpose;

7.4. the results of Client's use of the Umony Products, the Umony Portal or the Umony Usage Data will fulfill Client's specific needs; or

7.5. Umony will procure in Client's name a commercial license to use WhatsApp or WeChat.

Exhibit A
Umony Portal End User License Agreement

[see attached]



SCHEDULE 3 – End-User Licensing Terms

[Umony] Portal (Portal) End User Licence Agreement (EULA)

Date last revised: MAY 2020

1. Application

This EULA is a binding, legally enforceable agreement. It sets out the terms on which you agree to use the Portal and access the data contained within it. This EULA and the access licences granted hereunder are effective on the date you first use the Portal and shall continue for as long as you use the Portal. Your use of the Portal may also be subject to terms imposed by your employer (as the customer) and our appointed reseller.

As an individual user (whether authorised through an account, or otherwise), you are deemed to be authorised to act on behalf of your employer and by accessing the Portal, you agree to be bound by the terms of this EULA. You will be prompted to accept the terms (by ticking the relevant box) the first time that you login to your account on the Portal, and the next time you login after each update to this EULA. Therefore, if you do not agree with any of the provisions of these terms, you should cease accessing or using the Portal and notify your Portal administrator.

We may amend or update this EULA at any time, in any way (with or without notice to you). Updates will require you to confirm your continued acceptance the next time you login. You are, nonetheless, advised to check regularly (to understand the terms that apply to your use at the relevant time) and you may wish to print and retain a copy for your future reference.

2. Status of contract

The Portal is owned and operated by us. We are **Umony Limited**, a UK registered company (number 10988562) and our registered office is at Russell House, 140 High Street, Edgware, UK HA8 7LW (**we/us/our**) and our website is available at www.umony.com.

Your access to, and use of, the Portal is granted to you through our appointed reseller(s). Your employer has a contract with our reseller and we, in turn, have a direct contractual relationship with our resellers (typically through a written reseller agreement). This EULA is referred to in our reseller agreement as the end-user licensing terms. This is because we developed the proprietary software on which the Portal operates, and own all of the intellectual property rights both in the Portal, its underlying software and the software used to feed the data into the Portal. More information is contained in section 6.

3. Liability

We reserve the right to enforce our rights under it against you (whether you as an individual End-User or your employer as our indirect customer) in the event of any actual or suspected breach of its terms at any time. Such enforcement is without prejudice to any other rights or remedies third parties may also have against you for any breach. For example, a breach of these terms may also be a breach of the terms that exist between your employer and our appointed reseller. In addition, you may also face disciplinary action from your employer.

By accessing and using this product, you represent that you have the authority and capacity to agree to this EULA on behalf of yourself or the entity that you represent (where necessary).

As we do not guarantee continuous, uninterrupted access to the Portal at all times (as per section 4.2), we shall not be liable to you for any losses that you incur as a result of any failure by you to use, or access, any part of the Portal at any time.



4. Limited access licence

- 4.1 We grant to you a limited, non-transferable, non-sublicensable non-exclusive, revocable licence to access and use the Portal and its data and various functions, in accordance with this EULA, for lawful business purposes only. Any other use or access is prohibited. We reserve all rights in the Portal. This EULA does not grant you any rights in, or licences to, the Portal (other than the limited licence granted in this section 4).
- 4.2 Access to the Portal is granted on an “as is” basis only for the duration of the term of the agreement between our appointed reseller and its customer (your employer). We do not guarantee the continued, uninterrupted availability of the Portal to you at any time (whether for scheduled maintenance, downtime, or otherwise), or that the Portal is accessible from any particular location.
- 4.3 You are responsible for ensuring that your systems are functional, able to access the Internet, and meet any minimum operating system requirements to access the Portal. To ensure that you receive optimum functionality from the Portal, you should always use the latest versions and use compatible browsers, ensure that cookies, pop-ups and JavaScript settings are enabled on your browsers and use any minimum screen resolution settings.
- 4.4 Any condition, warranty, representation or other term concerning your use of the Portal, which might otherwise be implied into, or incorporated in, this EULA (whether by statute, common law or otherwise) is excluded to the extent permitted by law, including without limitation, warranties of satisfactory quality or fitness for purposes.

5. Usage problems and support requests

If you have any queries relating to this EULA, your access to, or the operation of, the Portal through your account, or the data contained on it, please contact your Portal administrator who will be able to utilise the correct support channels to ensure that the query reaches us, where necessary. You should always provide (in sufficient detail), the nature of the problem and how it came to your attention, so that the most efficient resolution can be identified.

6. Intellectual Property Rights

We own all rights and titles to, and interests in, the Portal and all data and other information (other than User Information) included therein, including but not limited to all patents, trade and service marks, copyright, trade secrets and other proprietary rights therein.

You therefore acknowledge that all intellectual property rights in the Portal throughout the world belong to us, such rights are licenced (not sold) to you, and that you have no intellectual property rights in, or to, the Portal other than the right to use the Portal in accordance with the terms of this EULA.

7. Restrictions

- 7.1 You may not:
 - (a) rent, lease, lend, sell, redistribute or sublicense the Portal or your rights to access it in any way;
 - (b) violate (or assist any other party to violate) any applicable law, statute, ordinance or regulation;
 - (c) provide false, inaccurate or misleading information;



- (d) take any action which interferes with, intercepts or expropriates any system, data or information;
 - (e) partake in any transaction that involves the proceeds of illegal activity;
 - (f) transmit or upload any virus or other malicious software or program; or
 - (g) attempt to gain unauthorised access to other users' accounts or the Portal's related or underlying networks or systems.
- 7.2 In addition, you may not copy, frame, scrape, decompile, reverse engineer, disassemble, attempt to derive the source code of, modify or create derivative works from the Portal, any updates, its underlying networks or systems, or any part thereof (except as and only to the extent any foregoing restriction is prohibited by applicable law or to the extent as may be permitted by the licensing terms governing use of any open sourced components included with the Portal) or try to circumvent its security protocols, interfere with its proper working or the servers on which the Portal is hosted. Any attempt to do so is a violation of our rights.
- 7.3 Information contained on the Portal is to be used as stated in section 4 only. Therefore, you must not extract or download any Portal content, information or data (including any metadata) for any other purpose.
- 7.4 You further recognise that the Portal is used by others simultaneously. Therefore, in accessing the Portal, you must not damage, disrupt, impair or otherwise interfere with the Portal's functions and services that are offered by us to others.
- 7.5 Any breach of the restrictions in this section 7 will constitute a material breach of this EULA, and the provisions of sections 3 and 12 may apply.
- 7.6 The restrictions imposed on you under this section 7 also include a direct obligation on you not to permit, or fail to prevent, any third party (whether another authorised user, friend, colleague or family member) from doing any of the actions restricted by this section. If you become aware of any such action, you must notify your administrator immediately upon discovery.

8. Data protection

- 8.1 As your company's account is managed by our appointed reseller, your employer will remain the data controller; our appointed reseller will be a data processor on the controller's behalf, and we will be a sub-processor on behalf of our appointed reseller. Any personal data that we access through the Portal is merely processed by us "in transit" when passed to our appointed reseller. We only store very limited categories of personal data, in cached form, for a very limited period of time (up to a maximum of 7 days) where we are temporarily unable to effect the data transfer through the Cloud to our appointed reseller.
- 8.2 As we are registered in the UK, any personal data compliance obligations imposed on us are in accordance with the requirements of UK and EU Data Protection Laws (including the EU General Data Protection Regulation 2016/679). Where specific territorial data protection laws apply to your use of the Portal, these will be managed by our appointed reseller and may apply in addition (with our specific agreement).
- 8.3 When accessing the Portal through your account, personal data in connection with your account and your use of the Portal will be processed [by us and/or our reseller]. This is to verify compliance with the terms of this EULA. This usage data will normally be processed only by us and shared with our reseller who may, in turn, share this with your employer's administrator(s).
- 8.4 Any personal data that belongs to you in order to set up your account is no different to the personal data already processed by your employer (our reseller's customer) as the data controller. We will therefore be processing your personal data only for the purposes of monitoring such access and account usage, and for responding to support queries logged with us. Other categories of your personal data that we will access will include your name, business email address and business mobile device number (which is the device subject to the conversation tracking operated by our proprietary software).



- 8.5 Where you raise a support request under section 5 in accordance with the process specified in that section, some of your personal data related to the relevant request may be processed by us in connection with the resolution of the relevant problem, where your administrator or our appointed reseller cannot resolve the issue in the first instance.
- 8.6 In general terms, we will comply with our obligations under applicable Data Protection Laws when processing your personal data. We implement appropriate technical and organisational security measures to preserve the integrity of, and prevent any corruption or loss, damage or destruction to, any personal data and are ISO27001 certified (as at the date this EULA was last updated).
- 8.7 If an event occurs on the Portal that causes your data to be damaged, lost or otherwise exposed to third parties at any time, we will notify our reseller who will notify your administrator promptly (as required by our reseller agreement).
- 8.8 If you wish to access any of your personal data that is processed by us in connection with your use of the Portal at any time, please contact your administrator in the first instance, who will (in turn) notify our reseller who will contact us. We may then contact you (either directly or through your administrator), in order to clarify your request and provide you with the requested data we are able and permitted (by Data Protection Law) to provide.
- 8.9 We do not process your personal data on the basis of your consent. Your personal data is required to enable you to access your account and use the Portal. If you no longer want us to process your personal data, please notify your administrator who will (in turn) arrange for our reseller to notify us. In those circumstances, we may longer be able to monitor your use of your account and your account may need to be closed.
- 8.10 We reserve the right to amend the terms of this EULA at any time (as stated in section 1). However, if we alter the way we process your personal data we will notify your administrator and/or you personally (through your account) where we are required to do so by Data Protection Law.
- 8.11 We additionally reserve the right to disclose your account details, and any related personal data that is necessary to identify you personally, to your employer (as the customer) and/or regulatory or law enforcement bodies or agencies in connection with any investigation that may concern you or your use of WhatsApp™ and/or WeChat™. Any such disclosure under this section may be done without notifying you first.

9. Confidentiality

- 9.1 When accessing the Portal, you will likely access information that may be sensitive or confidential to your employer. It is your duty to keep such information secure at all times.
- 9.2 Where we have access to your confidential information (as the operator of the Portal), we will ensure that information is kept appropriately secure.
- 9.3 You must treat your account details as confidential and must not share them with anyone other than us or your firm's administrator; this includes those categories of persons listed in section 7.6.
- 9.4 For the purposes of this EULA, "Confidential Information" means all non-public, proprietary information provided to you by Umony, whether through the Portal or otherwise. Confidential Information includes the Portal and all information and materials contained therein, your account and login information, and any other non-public financial, technical or business information of Umony.



- 9.5 Umony will at all times retain sole ownership of all Confidential Information. You will hold all Confidential Information in strict confidence. You will not transfer, display, convey or otherwise disclose or make available any Confidential Information to any third party. You may disclose such Confidential Information to your directors, officers, or employees only to the extent such persons have a need to know such Confidential Information and who are bound by written confidentiality obligations at least as protective as those contained in this EULA. You are fully responsible for any misuse or disclosure of Confidential Information by such personnel.
- 9.6 You shall notify Umony in writing immediately upon discovery of any unauthorised use or disclosure of Confidential Information or any other breach of this EULA and cooperate with Umony in every reasonable way to regain possession of Confidential Information and prevent any further unauthorised use. Upon termination or expiration of this EULA, you will promptly destroy all Confidential Information in your possession.
- 9.7 The obligations of confidentiality do not apply to any particular Confidential Information to the extent that you can demonstrate to Umony's satisfaction that such Confidential Information:
- (a) is in or enters the public domain through no fault of your own and without any breach of confidentiality or other restriction on disclosure; or
 - (b) was lawfully in your possession without any breach of confidentiality or other restriction on disclosure prior to receiving it from Umony.
- 9.8 You may disclose Confidential Information to the extent required by law provided that you provide reasonable prior notice to Umony of any such disclosure and cooperate with efforts to limit, eliminate or otherwise secure protective treatment for such disclosure.
- 9.9 You agree and acknowledge that any actual or threatened breach of confidentiality may cause irreparable harm for which monetary damages would be an inadequate remedy and that Umony would be entitled to seek injunctive or other equitable relief to prevent or remedy such a breach.

10. User Materials

You agree that Umony may collect and use technical data and related information, including but not limited to technical information about your device, system and application software, and peripherals, that is gathered periodically to facilitate the provision of software updates, product support and other services to you (if any) related to the Portal (collectively "Data"). You may also voluntarily provide information, feedback and other content in connection with your use of the Portal (together with Data, "User Materials"). You agree that Umony may use the User Materials to improve its products and services or to provide products and services to you, and you hereby grant Umony a perpetual, nonexclusive, worldwide, royalty free, fully paid-up, transferrable and sublicense licence in and to the User Materials, including all intellectual property rights therein, for Umony to use, modify and create derivative works of the same in connection with or related to any business purpose.

11. Automatic Software Updates

Umony may from time to time develop patches, bug fixes, updates, upgrades and other modifications to improve the performance of the Portal and related services ("Updates"). These Updates may be automatically installed without providing any additional notice or receiving any additional consent. By using the Portal, you consent to these automatic updates. If you do not want such updates, your remedy is to stop using the Portal. If you do not cease using the Portal, you will receive Updates automatically.



The terms of this EULA will govern any updates provided by us that replace or supplement the original Portal, unless such upgrade is accompanied by a separate licence, in which case the terms of that licence will govern to the extent that there is any conflict or ambiguity between the two.

12. Termination & Suspension

12.1 Portal access is conditional on compliance with this EULA in full. We may suspend or disable access (temporarily or permanently) where:

- a) you breach, or are suspected of breaching, any of the terms of this EULA;
- b) your employer is in breach of any of the terms of this EULA or its contract with our appointed reseller (in which case, the reseller is obliged to notify us);
- c) we need to protect the integrity of the Portal or the data contained on it; or
- d) we need to safeguard our reasonable interests, or those of our other customers and their individual users.

12.2 Without prejudice to any other rights, we may terminate this EULA at any time, without notice, if our agreement with our reseller has to terminate due to: (i) updates to the general functionality and underlying software, networks, servers or code of WhatsApp™ and/or WeChat™ (as applicable to you) preventing our proprietary software performing in the way that it does as at the date this EULA was last revised; or (ii) WhatsApp™ and/or WeChat™ (as applicable) amending their end user licensing agreements to have the same effect.

12.3 Where we suspend access to the Portal, or disable or block relevant account details to deny access, such suspension will be for the shortest time possible. Reinstatement of access will be granted only on satisfactory assurance and evidence (where requested) that sufficient steps have been taken to prevent those circumstances recurring. In no event will we be liable for the removal of or disabling of access to the Portal, or any action taken in respect of the same.

12.4 You may terminate this EULA (effective immediately) upon written notice to us. Alternatively, you can simply stop using your account. Upon termination of this EULA, we will terminate your access to the Portal, close your account by disabling your login details, and you shall destroy all copies or screenshots made (full or partial) of the Portal and the data extracted from it.

12.5 Any decision by us to suspend or terminate your access to the Portal will be final. Responses that we may take in this section 12 are not limited, and we may take any other action that we reasonably consider to be appropriate in the circumstances.

13. Entire Agreement/Severability

As stated in section 1, this EULA applies to your Portal access. Its terms supersede in full all other terms that may be imposed on your Portal access, whether by our reseller or your employer (in the event of conflict).

If any provision in this EULA is unenforceable, illegal, or invalid, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect. Where such change is not possible, the relevant provision shall be deemed deleted without affecting the validity, enforceability or legality of the remainder.

14. Waiver



As stated in section 3, we reserve our rights to enforce breaches of this EULA. Where we do not take such action immediately, whether against you or your employer, such rights will only be deemed to have been waived if in writing given to you directly, or indirectly through your employer or our reseller. Any waiver or failure by us to enforce any provision of this EULA on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

15. Right to assign

Further to section 7.1, this EULA and your account details are personal to you individually, and your employer / our reseller's customer, collectively. You must not assign, transfer or otherwise disclose such details to third parties at any time without our or our reseller's prior consent. However, nothing prevents us from assigning, transferring, charging or mortgaging any (or all) of our rights and/or obligations under this EULA at any time. Where this happens, your employer will be notified through our reseller.

16. Governing law

Access to the Portal, the terms of this EULA, and all matters arising from or connected with it, are governed by English law. Any contractual or non-contractual dispute between you and us will be subject to the exclusive jurisdiction of the English courts in the first instance. However, we reserve our rights to take appropriate action through our appointed reseller through the Courts in the country in which you are established, where appropriate.

17. Communication between us

If you wish to contact us in writing, or if any condition in this EULA requires you to give us notice in writing, you can send this to us by email at hello@umony.com or prepaid post to Umony Limited, 4th Floor, 109 Farringdon Road, London, EC1R 3BW. Please make sure you provide a return contact address and/or email address.