

# HOSTED VOICE SERVICES SCHEDULE

Last updated: November 29, 2021

This Hosted Voice Services Schedule along with the Customer Work Order (“CWO”) you executed with Smart City Networks, Limited Partnership, the Master Services Agreement and as applicable any Services Schedule, Privacy and Use Policies, and the pricing, products and other services described on Smart City’s website ([www.smartcitynetworks.com](http://www.smartcitynetworks.com)), together constitute the Agreement (“Agreement”) between Smart City (“Smart City”, “we”, or “us”) and the user (“you,” “user” or “Customer”) of Smart City’s business communications services and any related products or services (“Services”). The Agreement governs both the Services and any equipment, such as a Multimedia Terminal Adapter, Analog Telephone Adapter or any other IP connection Equipment, used in conjunction with the Services and it applies to all lines on each Smart City account. With the exception of the CWO that you executed with Smart City, Smart City may, at its discretion and without notice, modify, change, add to or omit any other terms and conditions of the Agreement without advance notice to you. Your use of the Services after one (1) full billing cycle constitutes your agreement to such changes.

## 1. Provision of the Services

### **Smart City Hosted Voice Services - General.**

For Smart City traditional Plain Old Telephone Service (“POTS”) and Primary Rate Interface (“PRI”) Service, Voice Over Internet Protocol (“VoIP”) Service, and/or Smart City Hosted Voice Service, Customer is responsible for all charges, including any third-party charges, incurred for all types of calls, authorized or unauthorized, placed by or through Customer’s equipment or software via any remote access feature, transferring capability, or call forwarding, even when such calls are placed fraudulently. Customer’s responsibility for these charges applies in all instances, including if Customer purchased or leased such equipment or software by or through Smart City or purchased Smart City-provided maintenance for its equipment or software. To reduce Customer’s exposure, Customer may install its own blocking techniques to stop such capabilities and calls. Smart City will neither install nor assist in the installation of such blocking techniques and has no obligation to block these capabilities or liability if such calls are placed, including no liability for charges that Customer may incur.

#### A. General Terms

Smart City will provide the Hosted Voice Services (the “Services”) as described in the relevant CWO. Smart City may enhance, replace, and/or change the features of the Services, but it will not materially reduce the core features, functions, or security of the Services during the Term of the Agreement without Customer’s consent.

#### B. Customer Care

Smart City and Customer will mutually agree to a first-tier support process to Customer’s End Users. Smart City may require Customer’s Helpdesk support personnel or Site Administrator to complete a series of training courses on the Services. Such training will be provided online by Smart City at no cost. Smart City will make second-tier remote support available to Customer’s Helpdesk personnel and/or Account Administrators via Smart City Customer Care, to attempt to resolve technical issues with, and answer questions regarding the use of the Services. Onsite and implementation services are not included in Smart City Customer Care support. Any individual contacting Smart City Customer Care on behalf of Customer must be of record and authorized to do so on behalf of the Account and will be required to follow Smart City’s authentication protocol.

#### C. Professional Services

Smart City offers a broad portfolio of professional services that includes onsite and remote implementation services; extended enterprise service, including dedicated proactive network monitoring and premium technical support, and consulting. Any such services are governed by the Agreement along with a Smart City Professional Services Agreement and an applicable Statement of Work (“SOW”) executed by the Customer and Smart City.

## D. Subcontracting

Smart City may provide any of the Services hereunder through any of its Affiliates or subcontractors, provided that Smart City will bear the same degree of responsibility for acts and omissions for those subcontractors acting on Smart City's behalf in the performance of its obligations under the Agreement as it would bear if such acts and omissions were performed by Smart City directly.

## 2. Use of the Services

### A. Services Requirements

The Services are dependent upon Customer's maintenance of sufficient Internet access, networks, power and other requirements as set forth in Appendix A - Technical Sufficiency Criteria. Smart City will not be responsible for any deficiencies in the provision of the Services if Customer's network does not meet the Technical Sufficiency Criteria.

## 3. Use Policies

Customer and its End Users may use the Services only in compliance with the Agreement, applicable Law, and the Use Policies referenced below, which are incorporated into and form part of the Agreement. Customer may not use nor permit the use of the Services to interfere with the use of Smart City's Services by others, or with the operation of the Smart City Network. Customer may not resell the Services. Customer must ensure that its End Users comply with the Use Policies. Any breach of this Section 2 will be deemed a material breach of the Agreement. Smart City may update the Use Policies from time to time and will provide notice to Customer at the email address on file with the Customer Account. Such updates will become effective 30 days after the posting of such update on the Smart City website.

### A. Acceptable Use Policy

The Services must be used in accordance with Smart City's Acceptable Use Policy ("AUP"), available at [www.smartcitynetworks.com/about-us/legal/](http://www.smartcitynetworks.com/about-us/legal/). Notwithstanding anything to the contrary in the Agreement, Smart City may act immediately and without notice to suspend or limit the Services if Smart City reasonably suspects fraudulent or illegal activity in the Customer's Account, material breach of the AUP, or use of the Services that could interfere with the functioning of the Smart City Network, provided such suspension or limitation may only be to the extent reasonably necessary to protect against the applicable condition, activity, or use. Smart City will promptly remove the suspension or limitation as soon as the condition, activity or use is resolved and mitigated in full. If Customer anticipates legitimate but unusual activity on its Account, Customer should contact Smart City Customer Service by calling (702) 943-6000, or by Email at [csr@smartcitynetworks.com](mailto:csr@smartcitynetworks.com) in advance to avoid any Services disruption.

## B. Emergency Services

Smart City's policy governing the provision of Emergency Services (911) accessed via the Services is available at [www.smartcitynetworks.com/legal/](http://www.smartcitynetworks.com/legal/).

## C. Numbering Policy

The provision, use, and publication of numbers used in conjunction with the Services are governed by Smart City's Numbering Policy, available at [www.smartcitynetworks.com/legal/](http://www.smartcitynetworks.com/legal/).

## D. Reasonable Use

Customer agrees, represents, and warrants that it is purchasing the Services, and the Equipment (if any) for its own internal use only, and shall not resell, transfer or charge for the Services or the Equipment without the advance express written permission of Smart City, which permission Smart City may withhold in its sole discretion. The Smart City Services Plans that offer unlimited minutes of PSTN calls ("Unlimited PSTN Plans"), unlimited faxing or unlimited text messages are for reasonable business use of Customer only. Such use shall not include certain activities including, but not limited to, any autodialing, continuous or extensive call forwarding, continuous or extensive chat, continuous connectivity, fax or text message broadcast or blasting, telemarketing (including without limitation charitable or political solicitation or polling), call center operations (except with respect to Customer's use of subscribed to Services), junk or Text Message faxing, fax spamming, calling/faxing/Text Messaging any person (through the use of distribution lists or otherwise) who has not given specific permission to be included in such a process or any other activity that would be inconsistent with reasonable business usage. Customer will not use the Services to send unsolicited commercial e-mail or Text Messages to recipients outside Customer's organization. Customer shall not transmit through the Services any unlawful, harassing, defamatory, abusive, threatening, harmful, vulgar, obscene, indecent, or otherwise objectionable communications or material of any kind or nature. Customer further agrees not to transmit any material that encourages conduct that could constitute a criminal offense, violate the intellectual property rights of others, give rise to civil liability or otherwise violate any applicable local, state, national or international statute, regulation, or other law. Without limiting any other remedies hereunder, Smart City reserves the right to immediately terminate or modify the Services of any Customer using Unlimited PSTN, fax or texting Service Plan if Smart City determines, in its sole discretion, that Customer is not using such plan for Customer's reasonable business use.

## E. Robocall Mitigation

To help reduce the number of illegal robocalls that may originate from Smart City's network, effective in May 2021, Smart City implemented robocall mitigation efforts to monitor our network and verify that calls originating over our network are from legitimate numbers belonging to a valid Smart City customer. This practice has been implemented per FCC mandate. In line with FCC rules, users of Smart City's Services are prohibited from originating unwanted calls, including illegal and spoofed robocalls, with the intent to defraud, cause harm or wrongly obtain anything of value from the recipient of the call. Violation of these terms can result in suspension or termination of the customer's or users Services.

## F. High Risk Use Prohibited.

**THE SERVICES ARE NOT DESIGNED, MANUFACTURED, INTENDED, OR RECOMMENDED FOR USE FOR ANY HIGH-RISK OR FAIL-SAFE PURPOSE OR ACTIVITY OR IN ANY ENVIRONMENT WHERE FAILURE, INTERRUPTION, MALFUNCTION, ERROR, OR UNAVAILABILITY COULD RESULT IN PHYSICAL HARM OR PERSONAL INJURY, DEATH OR DISMEMBERMENT, OR PROPERTY OR ENVIRONMENTAL DAMAGE. CUSTOMER SHALL NOT USE THE SERVICES FOR ANY SUCH PURPOSE OR ACTIVITY OR IN ANY SUCH ENVIRONMENT.**

## G. Resale Prohibited.

Customer may not sell, resell, sublease, assign, license, or sublicense the Services or any component thereof or use or offer the same on a service-bureau or time-sharing basis.

## H. Service Change.

Smart City shall be permitted to perform upgrades and make other modifications to the Services ordered by Customer (each, a "Service Change") from time to time, as long as such Service Changes do not materially reduce the overall functionality or security of the Services. Some Services may rely on third-party integrations to provide a feature of the Services. In these cases, Customer understands that Smart City has no control of the availability of features where a third-party integration is required. Smart City reserves the right to discontinue specific features that rely on third-party integration should the third-party no longer provide them. Smart City will reasonably work to replace the third-party integration provided that a suitable substitute is available. Smart City will use commercially reasonable efforts to notify Customer in advance of any such Service Change.

## 4. Intellectual Property

### A. Limited License

Subject to, and conditional upon Customer's compliance with, the terms of the Agreement, Smart City grants to Customer and its End User(s), a limited, personal, revocable, non-exclusive, non-transferable (other than as permitted under the Agreement), non-sublicensable license to use any software provided or made available by Smart City to the Customer as part of the Services ("Software") to the extent reasonably required to use the Services as permitted by the Agreement, only for the duration that Customer is entitled to use the Services and subject to the Customer being current on its payment obligations. Customer will not, and will not allow its End Users, to (a) sublicense, resell, distribute or assign its right under the license granted under the Agreement to any other person or entity; (b) modify, adapt or create derivative works of the Software or any associated documentation; (c) reverse engineer, decompile, decrypt, disassemble or otherwise attempt to derive the source code for the Software; (d) use the Software for infringement analysis, benchmarking, or for any purpose other than as necessary to use the Services Customer is authorized to use; (e) create any competing Software or Services; or (f) remove any copyright or other proprietary or confidential notices on any Software or Services.

### B. Intellectual Property Rights

#### (i) Smart City's Rights

Except as expressly provided in the Agreement, the limited license granted to Customer under Section 3(A) above does not convey any ownership or other rights or licenses, express or implied, in the Services, any related materials, or in any Intellectual Property and no IP Rights or other rights or licenses are granted, transferred, or assigned to Customer, any End User, or any other party by implication, estoppel, or otherwise. All rights not expressly granted herein are reserved and retained by Smart City and its licensors. The Software and Services may comprise or incorporate services, software, technology or products developed or provided by third parties, including "open source" software or code. Customer acknowledges that misuse of Smart City Services may violate third-party IP Rights.

#### (ii) Customer's Rights

As between Smart City and Customer, Customer retains title to all IP Rights that are owned by the Customer or its suppliers. To the extent reasonably required or desirable for the provision of the Services, Customer grants to Smart City a limited, personal, non-exclusive, royalty-free, license to use Customer's IP Rights in the same. Customer must provide (and is solely responsible for providing) all required notices and obtaining all licenses, consents, authorizations or other approvals related to the use, reproduction, transmission, or receipt of any Customer Content that includes personal or Confidential Information or incorporates any third-party IP rights.

## 5. LIMITATION OF LIABILITY

### A. Excluded Damages

TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES BE LIABLE FOR (i) INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, REPUTATIONAL, SPECIAL OR PUNITIVE DAMAGES OF

ANY KIND; (ii) COSTS OF PROCUREMENT, COVER, OR SUBSTITUTE GOODS OR SERVICES; (iii) LOSS OF USE, LOSS OR CORRUPTION OF DATA; OR (iv) LOSS OF BUSINESS OPPORTUNITIES, PROFITS, GOODWILL, OR SAVINGS, WHETHER IN ANY OF THE FOREGOING, ARISING UNDER CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR ANY OTHER THEORY OF LIABILITY, EVEN IF SUCH PARTY HAS BEEN INFORMED IN ADVANCE OF SUCH DAMAGES OR SUCH DAMAGES COULD HAVE BEEN REASONABLY FORESEEN. NEITHER PARTY WILL BE LIABLE FOR ACTIONS REASONABLY TAKEN TO COMPLY WITH LAW.

B. Direct Damages

EXCEPT AS SET FORTH HEREIN, THE TOTAL CUMULATIVE LIABILITY OF THE PARTIES UNDER THE AGREEMENT WILL NOT EXCEED THE AMOUNTS PAID OR PAYABLE UNDER THE AGREEMENT DURING THE PREVIOUS SIX (6) MONTHS. LIMITATIONS UNDER THIS SECTION 5(B) (DIRECT DAMAGES) WILL NOT APPLY TO: (i) CUSTOMER PAYMENT OBLIGATIONS; (ii) EITHER PARTY'S LIABILITY FOR INFRINGEMENT OF THE OTHER PARTY'S IP RIGHTS; (iii) EITHER PARTY'S LIABILITY RESULTING FROM GROSS NEGLIGENCE, FRAUD, OR WILLFUL OR CRIMINAL MISCONDUCT; OR (iv) CUSTOMER'S LIABILITY RESULTING FROM USE OF THE SERVICES IN BREACH OF THE ACCEPTABLE USE POLICY OR EMERGENCY SERVICES POLICY. NOTHING IN THE AGREEMENT SHALL LIMIT OR EXCLUDE ANY LIABILITY WHICH MAY NOT BE RESTRICTED, LIMITED OR EXCLUDED PURSUANT TO APPLICABLE LAW.

6. Indemnification

A. Indemnification Obligations

Customer agrees to indemnify and defend Smart City and its Affiliates at Customer's expense, from and against any and all third-party claims, arising out of or in connection with: (i) material violation of applicable Law by the Customer or its End Users in connection with the use of the Services; (ii) use of the Services in a manner not authorized by the Agreement; (iii) failure to promptly install any updates of any software or firmware or accept or use modified or replacement items provided by or on behalf of Smart City, or (d) claims relating to Customer Content. Further, Customer will indemnify and hold harmless Smart City against all damages, costs, and legal fees finally awarded against Smart City by a court of competent jurisdiction in connection with such third-party claim or agreed to in a written settlement agreement approved in writing by the Customer.

## Attachment A - Definitions

Capitalized terms used in the Agreement but otherwise not defined have the following meaning:

**“Account”** means the numbered account established with Smart City and associated with Customer and the Services provided to Customer under the Agreement. For billing and convenience purposes, multiple services, Digital Lines, or End Users may be included in a single billing account, and/or a single Customer may have multiple billing accounts encompassing different geographic locations, business units, or other designations as requested by Customer and accepted by Smart City.

**“Account Administrator”** means the person(s) who have been granted authority by Customer to set up, amend, or otherwise control settings and/or make additional purchases for the Customer Account via the Administrative Portal. Account Administrators may have varying levels of Customer Account rights, skills, or permissions.

**“Account Data”** means any Customer business contact information provided with the Customer Account; Smart City-generated logs of calling or other metadata developed or collected in the provision of the Services; configuration data; and records of Digital Lines and any Services purchased under the Agreement.

**“Administrative Portal”** means the online administrative portal through which Customer Account Administrators control settings and/or make additional purchases for the Customer Account.

**“Affiliate(s)”** has the meaning set forth in the Master Services Agreement.

**“Confidential Information”** means any information disclosed by or on behalf of the Disclosing Party to the Receiving Party that should reasonably be considered as confidential given the nature of the information and the circumstances surrounding its disclosure.

**“Customer Content”** means the content of calls, facsimiles, SMS messages, voicemails, voice recordings, shared files, conferences or other communications transmitted or stored through the Services.

**“Digital Line”** means a phone number assigned to the End User of Customer or a specifically designated location (e.g., conference room) and the associated voice service for inbound and outbound calling that permits an End User of Customer generally to make and receive calls to and from the public switched telephone network as well as to and from other extensions within the same Customer Account.

**“Disclosing Party”** means the Party disclosing Confidential Information or on whose behalf Confidential Information is disclosed by such Party’s agents, including but not limited to, its Affiliates, officers, directors, employees and attorneys.

**“Dispute”** has the meaning set forth in the Master Services Agreement.

**“Effective Date”** has the meaning set forth in the Master Services Agreement.

**“End Point”** means an application or device through which any Customer’s End-User might access and/or use any of the Services, including without limitation IP Desk Phones, Desktop Clients, Web Clients, Mobile Applications, and Software Integrations.

**“End User”** means an individual user to whom Customer makes the Services available, and may be a natural person, and may include but is not limited to Customer’s employees, consultants, clients, external users, invitees, contractors and agents.

**“Helpdesk”** means first-tier support provided to End Users by Customer.

**“Initial Term”** has the meaning set forth in the Smart City Phone Lease Program and Rental Agreement below, and the Master Services Agreement.

**“Intellectual Property Rights”** or **“IP Rights”** means all common law and statutory rights (whether registered or unregistered, or recorded or unrecorded, regardless of method) arising out of or associated with: (a) patents and

patent applications, inventions, industrial designs, discoveries, business methods, and processes; (b) copyrights and copyright registrations, and “moral” rights; (c) the protection of trade and industrial secrets and Confidential Information; (d) other proprietary rights relating to intangible property; (e) trademarks, trade names and service marks; (f) a person’s name, likeness, voice, photograph or signature, including without limitation rights of personality, privacy, and publicity; (g) analogous rights to those set forth above; and (h) divisions, continuations, continuations-in-part, renewals, reissuances and extensions of the foregoing (as applicable).

“**Law**” means any law, statute, regulation, rule, ordinance, administrative guidance, treaty or convention, or court or administrative order or ruling of any governing Federal, State, local or non-U.S. governmental body with jurisdiction over the Services.

“**Customer Work Order(s)**” or “**CWO(s)**” shall have the meaning set forth in the Master Services Agreement and is a request or order for Services describing the type and quantity of Services required by Customer and submitted, accepted and signed by the Parties in accordance with the Agreement.

“**Receiving Party**” means the Party or its agents, including, but not limited to its Affiliates, officers, directors, employees and attorneys receiving Confidential Information.

“**Renewal Term**” has the meaning set forth in the Smart City Phone Lease Program and Rental Agreement below, and the Master Services Agreement.

“**Smart City Customer Care**” means Smart City’s Customer Service operations which may be contacted [via](#) local Smart City representatives utilizing the local published contact information.

“**Smart City Network**” means the network and supporting facilities between and among the Smart City points of presence (“PoP(s)”), up to and including the interconnection point between Smart City network and facilities, and the public Internet, private IP networks, and the Public Switched Telephone Network (PSTN). The Smart City Network does not include the public Internet, a Customer’s own private network, or the PSTN.

“**Service(s)**” means the Smart City Hosted Voice Services provided under the Agreement and set forth in one or more CWO’s.

“**Services Attachment**” means documents appended to the Agreement containing additional terms for equipment and Services.

“**Services Activation Date**” has the meaning set forth in the Master Services Agreement.

“**Term**” has the meaning set forth in the Smart City Phone Lease Program and Rental Agreement below, and the Master Services Agreement and is the Initial Term plus any Renewal Terms.

“**Use Policy**” refers to any of the policies identified in Section 3.

## APPENDIX A

### Technical Sufficiency Criteria

Last Updated: May \_\_, 2021

Use of Smart City products and services (collectively, “**Services**”) is dependent on meeting these Technical Sufficiency Criteria. These Technical Sufficiency Criteria are incorporated into and made a part of the applicable Agreement.

The Services require a properly configured, high performance, enterprise-grade broadband IP network and connection. Use of the Services with any network, services, or connection not compatible with the Services may result in partial or complete unavailability, interruption, or underperformance of the Services or other services utilizing the same network, services, or connection. Likewise, 2G, 3G, or LTE networks are not recommended for use with the Services. Customer will provide and maintain, at its own cost, an IP network, services, and connection meeting the foregoing standard and all equipment necessary for the Services to connect to and use such network, services, and connection.

To ensure a fast and reliable experience, the following Minimum Network Requirements must be met:

- A. Internal network cabling must be Cat 5e or better for all wired portions of the network;
- B. Round-trip latency shall not exceed 300 milliseconds;
- C. Round-trip jitter shall not exceed 30 milliseconds, and;
- D. Minimum bandwidth of 150 Kbps must be allocated for each call path

Customer’s IP network and broadband connection must meet the above Minimum Network Requirements by utilizing Smart City’s speed test tool which can be found here: <https://speedtest.smartcity.net>

To minimize unauthorized use, Customer should (a) disable international calling for all Digital Lines, extensions or Accounts for which such calling activity is not needed or not authorized; (b) restrict international calling destinations to those that are needed and authorized; (c) block inbound calls from any caller and area codes from which Customer does not wish to receive calls and block inbound calls with no caller identification if appropriate; (d) disable attachment of facsimile image and voicemail audio files to message notification emails associated with Customer’s Account(s) and/or individual Digital Lines or extensions for which such functionality is not required and to the extent that such files may include sensitive or confidential content.



# SMART CITY

## Phone Lease Program and Rental Agreement

Last Updated: May \_\_, 2021

Smart City's Phone Lease Program and Rental Agreement ("Rental Agreement") is available to those customers who have entered into an agreement for the purchase of Smart City Smart City Services (hereafter, the "Smart City Agreement") with a minimum Initial Term of at least 36 months and a Renewal Term of at least 12 months. For clarification, the Rental Agreement must be coterminous with the Smart City Agreement and for an Initial Term of at least 36 months, and the customer must enter into the Rental Agreement at the same time as the Smart City Agreement. This Phone Rental/Lease Program is offered and available to United States Residents only.

This Rental Agreement, when entered into, will form part of the Smart City Agreement, the terms of which are incorporated herein by reference, including without limitation, all defined terms. Any capitalized terms not defined herein will have the same meaning as in the Smart City Agreement, as applicable.

### 1. **Rental Services**

This Rental Agreement is for the rental of certain telephone hardware (each a "Rental Device") from Smart City (collectively, the "Rental Services"). Smart City charges a recurring monthly fee for each Rental Device (collectively, the "Rental Fees"). As a part of your monthly recurring bill from Smart City under the Smart City Agreement, you agree to pay the Rental Fees for all Rental Devices, using the same payment method and payment period as your payments for Smart City Services, as defined in your Smart City Agreement. Smart City will pro-rate the Rental Fees for any equipment that is rented, for the initial period from the start of the rental period until the end of then-current billing period for the Smart City Services, and the start of the rental will begin on the date a Rental Device is recorded as delivered by a designated courier (the "Rental Start Date").

The Rental Services with respect to a Rental Device shall commence on the Rental Start Date and terminate upon the earliest to occur of (a) either Party delivers written notice of termination of the Smart City Agreement to the other Party at least 30 days prior to the applicable termination date (with such termination date being at the end of the Smart City Services billing period in which the end of such 30-day period occurs, or (b) the termination of the Smart City Agreement. Notwithstanding the above, at any time within 30 days after the Rental Start Date, you may terminate the Rental Services with respect to a Rental Device immediately upon written notice from you to Smart City, without paying any Rental Fees for such Rental Device.

Upon any termination of the Rental Agreement or Rental Services, you agree to return or purchase a Rental Device (including all accessories and materials that were provided with the primary hardware device) consistent with Smart City's written instructions and in accordance with the Return or Purchase Rights section of this Rental Agreement, and that Rental Device will no longer be considered a Rental Device upon the completion of a return or purchase. If you do not return a Rental Device (subject to Smart City's inspection and acceptance of the returned Rental Device in its reasonable discretion) within 30 following the termination of the Rental Services for such Rental Device, you will be deemed to have purchased that device at a purchase price equal to (a) during the first 12 months after you received the Rental Device, 100% of the Rental Device's then-current Smart City list price, or (b) after such 12 month period, 80% of such list price, and you agree to pay the applicable purchase price.

If you wish to upgrade a Rental Device, the replacement of the current Rental Device shall be deemed a termination of the Rental Services with respect to the current Rental Device and be subject to the termination provisions hereof, including the return or purchase provisions for the Rental Device set forth in the Return or Purchase Rights section of this Rental Agreement; provided that the Rental Services for the current Rental Device shall be deemed to terminate, and the Rental Services of the replacement Rental Device shall commence, on the date the replacement Rental Device is recorded as delivered by a designated courier.

The Rental Fees for the Rental Services do not include additional services you may select, taxes, fees, international usage, and other additional services. Sales tax varies by jurisdiction of purchase or rental and may be calculated based on full retail price or Smart City cost price, as determined by the tax law in the jurisdiction of purchase or rental.

## **2. Rental Devices Ownership; Damage and Loss**

Smart City is and will remain the owner of each Rental Device unless/until title is conveyed to you either in writing following Smart City's confirmation to you of its receipt of your payment in full of the purchase price for the Rental Device, or upon expiration of the Initial Term of the Agreement. You will not grant any third party any right to use, possess, or control any Rental Device, sublease any Rental Device, attempt to dispose of any Rental Device, grant any interest or right in a Rental Device to any third party, or otherwise do anything that undermines Smart City's ownership of each Rental Device during the Initial Term of the Agreement. Smart City may, without notifying you, assign Smart City's interest in any Rental Device, and in that event, Smart City's assignee will have all of Smart City's rights in the Rental Device under this Agreement, but none of Smart City's obligations. You agree not to assert against Smart City's assignee any claims, offsets, or defenses you may have against Smart City. Upon Smart City's request, you will execute and deliver to Smart City any documents or forms for protecting Smart City's ownership and interest in each Rental Device, including finance statements under the Uniform Commercial Code.

Upon receipt of each Rental Device, you will examine each Rental Device, and unless you notify Smart City within five (5) business days of your receipt of a Rental Device to any issue with a Rental Device, each Rental Device is deemed to be in good working order at the time of receipt. In the event that any Rental Device delivered to you is stolen, lost, damaged, or transferred to any third party, regardless of the circumstances or cause, you will immediately notify Smart City in writing and pay Smart City a purchase price equal to (a) during the first 12 months after you received the Rental Device, 100% of the Rental Device's then-current Smart City list price, or (b) after such 12-month period, 80% of such list price. This obligation does not apply to any damage to a Rental Device that is covered by the manufacturer's warranty.

There is no maintenance/insurance fee for the Rental Device during the rental period. Upon expiration of the rental period, title to the Rental Device shall automatically transfer from Smart City to you. Should you purchase the telephone hardware or continue to use any telephone hardware now owned by you in association with Smart City's provision of the Smart City Services, you will be charged a \$1.00 monthly maintenance/insurance fee per item of telephone hardware owned by you to cover the cost of replacement of the telephone hardware owned by you during the Initial Term or any Renewal Term, as applicable, of the Smart City Agreement. Should you upgrade the telephone hardware as part of a Renewal Term of your Smart City Agreement, there will be no maintenance/insurance fee for the new Rental Device during the Renewal Term.

## **3. Rental Device Usage**

You will ensure that: (a) each Rental Device will only be used in a careful and proper manner and in accordance with the written instructions provided with it by Smart City, as may be updated by Smart City or the manufacturer of the Rental Device from time to time; (b) each Rental Device will be used with due care and will not be defaced, modified, or used or operated in any manner or for any purpose in violation of any federal, state, or local law or regulation; (c) each Rental Device must remain within the United States and may not be exported or re-exported to any country contrary to U.S. export laws; (d) any regulatory or certification markers affixed to a Rental Device may not be removed, defaced, or otherwise obstructed; and (e) each Rental Device will only be repaired subject to Smart City's express written authorization and in accordance with Smart City's instructions and requirements.

#### 4. **Return or Purchase Rights**

##### A. **Returns**

When you return a Rental Device, you agree to return a fully functional and non-damaged Rental Device to Smart City, at your risk and cost, and you agree that, to the extent that you do not do so, you will be obligated to pay Smart City's then current re-stocking fee. You agree to pay all shipping and handling charges related to any Rental Device and related hardware returns.

All Rental Devices and related hardware must be fully functional, include all components, manuals, peripheral devices, and all other accessories that were originally shipped with the Rental Device. At our discretion, we may decline your return or charge you an additional fee of \$30 for each missing item or for each item that we determine is damaged or not in good working condition.

Before returning any Rental Device or hardware that has data in its memory, please transfer all files you wish to retain to another file source. Once the hardware is returned, your files cannot be recovered and you release us of any liability for any lost, damaged, or destroyed files, data, or other information.

##### B. **Purchases**

You may purchase a Rental Device at any time following 12 months from the date you received the Rental Device. You agree to purchase the Rental Device for 80% of the Rental Device's then-current Smart City list price.

##### C. **Other Remedies**

If you are obligated to return or purchase a Rental Device subject to this Return or Purchase Rights section of this Rental Agreement, and you have not returned a Rental Device or you have defaulted in any obligation to pay the purchase price due for a Rental Device to be purchased, Smart City may, in addition to those remedies available at law, in equity, or as otherwise set forth in this Agreement, take possession of any or all Rental Devices without demand, notice, or legal process, wherever each Rental Device may be located, and you hereby waive any and all damages occasioned by that taking of possession.

#### 5. **Warranty Disclaimer**

EACH RENTAL DEVICE AND ANY TELEPHONE HARDWARE PURCHASED IN CONNECTION WITH THIS RENTAL AGREEMENT IS PROVIDED "AS IS" AND "AS AVAILABLE" AND SMART CITY MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY SIMILAR WARRANTY, WHETHER SAID WARRANTY ARISES UNDER PROVISIONS OF ANY LAW OF THE UNITED STATES OR ANY STATE THEREOF OR ANY COUNTRY. SMART CITY MAKES NO REPRESENTATIONS OR WARRANTIES THAT ANY RENTAL DEVICE WILL BE DELIVERED TO YOU BY A PARTICULAR DATE OR IS FREE OF RIGHTFUL CLAIMS OF ANY THIRD PARTY FOR INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY OR OTHER PROPRIETARY RIGHTS (INCLUDING PATENT AND TRADE SECRET RIGHTS). THE ENTIRE RISK ASSOCIATED WITH THE USE OF ANY RENTAL DEVICE SHALL BE BORNE SOLELY BY YOU.

SOME JURISDICTIONS DO NOT PERMIT THE DISCLAIMER OF CERTAIN IMPLIED WARRANTIES, SO CERTAIN OF THE FOREGOING DISCLAIMERS MAY NOT APPLY TO YOU. TO THE EXTENT THAT SMART CITY CANNOT DISCLAIM ANY SUCH WARRANTY AS A MATTER OF APPLICABLE LAW, THE SCOPE AND DURATION OF SUCH WARRANTY WILL BE THE MINIMUM PERMITTED UNDER SUCH LAW.

#### 6. **General Terms**

You authorize us to collect any payment owed by you hereunder from your payment method, as provided in your Smart City Agreement. This Rental Agreement, which is subject to and incorporates by reference the Smart City Agreement constitutes the complete, final, and exclusive embodiment of the entire agreement between you and Smart Metro regarding the Rental Services. In signing the Agreement, the undersigned represents to Smart City that the undersigned has full power and authority to perform all of its obligations hereunder. This Rental Agreement is the binding obligation of the undersigned, enforceable against the undersigned in accordance with its terms.

Smart City may, in its discretion, update or change the terms and conditions of this Rental Agreement, and the version of this Rental Agreement applicable to each Rental Device, is the version of this Rental Agreement then in effect at the start of the rental for that Rental Device, including the start of the rental for an upgrade Rental Device.