

# ACCEPTABLE USE POLICY

Last Updated: November 29, 2021

SMART CITY NETWORKS, LIMITED PARTNERSHIP, its affiliates, and subsidiaries (including, but not limited to Smart City Washington) (“Smart City”) has adopted this Acceptable Use Policy (“AUP”) to outline the acceptable use of Smart City’s Broadband Services, Voice Services and Smart City Hosted Voice Solution (individually “the Service” and collectively “the Services”). This AUP is in addition to any restrictions contained in the various Smart City Services agreements for any of the Service offerings (the “Subscriber Agreement”). This AUP applies to Smart City’s services that (i) provide or include access to the Internet, hosting services, or are provided over the Internet or wireless data networks (collectively, “Broadband Service”), (ii) provide or include access to the public telephone switching network, including business lines, residential lines, PRIs and voicemail (collectively, “Voice Services”), and (iii) provide or include communications services through cloud-based services, including hosted PBXs, contact center services and cloud-based voicemail (collectively, “Smart City Hosted Voice Solution”).

You, the customer, must comply with this AUP. Your failure to do so could result in the suspension or termination of your Service subscription(s). If you do not agree to comply with this AUP, you must immediately stop all use of the Service and notify Smart City so that we can close your account.

Smart City may revise this AUP from time to time and will have the latest version posted on its website. Smart City will use reasonable efforts to make customers aware of any changes to this AUP, which may include sending e-mail announcements or posting additional information on the Smart City website. Revised versions of this AUP are effective immediately upon posting.

Accordingly, customers of Smart City’s Services should read any Smart City announcements they receive and regularly visit Smart City’s web site and review this AUP to ensure that their activities conform to the most recent version. You can send questions regarding this AUP to, and report violations of it at, [abuse@smartcitynetworks.com](mailto:abuse@smartcitynetworks.com). To report illegal content on the Internet go to [www.ftc.gov](http://www.ftc.gov).

## 1. Prohibited Uses and Activities

In general, this AUP prohibits uses and activities involving the Services that are illegal, infringe the rights of others, or interfere with or diminish the use and enjoyment of the Service(s) by others.

### A. Network and Usage Restrictions

No user of the Broadband Service, Voice Service, Smart City Hosted Voice Solution, Customer Equipment, or Smart City Equipment may, individually or in combination with another:

- i. restrict, inhibit, or otherwise interfere with the ability of any other person, regardless of intent, purpose or knowledge, to use or enjoy the Service(s) (except for safety and security functions such as parental controls, for example), including, without limitation, posting or transmitting any information or software which contains a worm, virus, or other harmful feature, or generating levels of traffic sufficient to impede others’ ability to use, send, or retrieve information;

- ii. restrict, inhibit, interfere with, or otherwise disrupt performance of the Service or cause a performance degradation, regardless of intent, purpose or knowledge, to the Broadband Service or any Smart City (or Smart City supplier) host, server, backbone network, node or service;
- iii. resell the Service or otherwise make available to anyone outside the Premises the ability to use the Service (for example, through Wi-Fi or other methods of networking), in whole or in part, directly or indirectly;
- iv. connect Smart City Equipment to any computer outside of your Premises;
- v. interfere with computer networking or telecommunications service to any user, host or network, including, without limitation, denial of service attacks, flooding of a network, overloading a service, improper seizing and abusing operator privileges, and attempts to “crash” a host; and
- vi. accessing and using the Service with anything other than a Smart City assigned Internet Protocol (“IP”) address.

## **B. Conduct and Information Restrictions**

No user of the Broadband Service, Voice Service, Smart City Hosted Voice Solution, , Customer Equipment, or Smart City Equipment may, individually or in combination with another:

- i. avoid incurring charges for or otherwise being required to pay for usage of the Service;
- ii. invade another person’s privacy, stalk, harass, or otherwise violate the rights of other persons;
- iii. undertake or accomplish any unlawful purpose. This includes, but is not limited to, posting, storing, transmitting or disseminating information, data or material which is libelous, obscene, unlawful, threatening or defamatory, or which infringes the intellectual property rights of any person or entity, or which in any way constitutes or encourages conduct that would constitute a criminal offense, or otherwise violate any local, state, federal, or non-U.S. law, order, or regulation;
- iv. post, store, send, transmit, or disseminate any information or material which a reasonable person could deem to be unlawful;
- v. upload, post, publish, transmit, reproduce, create derivative works of, or distribute in any way information, software or other material obtained through the Service or otherwise that is protected by copyright or other proprietary right, without obtaining any required permission of the owner;
- vi. collect, or attempt to collect, personal information about third parties without their consent;
- vii. transmit unsolicited bulk or commercial messages commonly known as “spam;”
- viii. send voluminous copies of the same or substantially similar messages, empty messages, or messages which contain no substantive content, or send very large messages or files that disrupts a server, account, blog, newsgroup, chat, or similar service;

- ix. initiate, perpetuate, or in any way participate in any pyramid or other illegal scheme;
- x. participate in the collection of voluminous amounts of e-mail addresses, screen names, or other identifiers of others (without their prior consent), a practice sometimes known as spidering or harvesting, or participate in the use of software (including “spyware”) designed to facilitate this activity;
- xi. collect responses from unsolicited bulk messages;
- xii. falsify, alter, or remove message headers;
- xiii. falsify references to Smart City or its network, by name or other identifier, in messages;
- xiv. impersonate any person or entity, engage in sender address falsification, forge anyone else’s digital or manual signature, or perform any other similar fraudulent activity (for example, “phishing”);
- xv. violate the rules, regulations, terms of service, or policies applicable to any network, server, computer database, service, application, system, or Web site that you access or use;

### **C. Technical Restrictions**

No user of the Broadband Service, Voice Service, Smart City Hosted Voice Solution, Customer Equipment, or Smart City Equipment may, individually or in combination with another:

- i. use the Internet service or facilities for web-hosting, e-mail hosting, or other unusually high-bandwidth consumption unless you have made special subscription arrangements with Smart City and the usage does not otherwise violate law or regulation;
- ii. access any other person’s computer or computer system, network, software, or data without his or her knowledge and consent; breach the security of another user or system; or attempt to circumvent the user authentication or security of any host, network, or account. This includes, but is not limited to, accessing data not intended for you, logging into or making use of a server or account you are not expressly authorized to access, or probing the security of other hosts, networks, or accounts without express permission to do so;
- iii. use or distribute tools or devices designed or used for compromising security or whose use is otherwise unauthorized, such as password guessing programs, decoders, password gatherers, keystroke loggers, analyzers, cracking tools, packet sniffers, encryption circumvention devices, or Trojan Horse programs. Unauthorized port scanning is strictly prohibited;
- iv. copy, distribute, or sublicense any proprietary software provided in connection with the Service by Smart City or any third party, except that you may make one copy of each software program for back-up purposes only;
- v. distribute programs that make unauthorized changes to software (cracks);
- vi. use or run dedicated, stand-alone equipment or servers from the Premises that provide network content or any other services to anyone outside of your Premises local area

network (“Premises LAN”), also commonly referred to as public services or servers. Examples of prohibited equipment and servers include, but are not limited to, e-mail, web hosting, file sharing, and proxy services and servers;

- vii. use or run programs from the Premises that provide network content or any other services to anyone outside of your Premises LAN;
- viii. service, alter, modify, or tamper with Smart City Equipment or Service or permit any other person to do the same who is not authorized by Smart City;
- ix. perform auto-dialing, or “predictive dialing” in an abusive manner (i.e. non-manual dialing with call duration below the lowest 95th percentile average duration for the Smart City customer base on a similar calling plan, or using a software program or other means to continuously dial or place outbound calls);
- x. trunk or forward your Smart City phone or fax number to other numbers that handle simultaneous calls or to a private branch exchange (PBX) or key system;
- xi. engage in traffic pumping or access stimulation of calls through the Service(s) or the Smart City network.

#### **D. Robocall Mitigation**

To help reduce the number of illegal robocalls that may originate from Smart City 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.

## **2. Customer Conduct and Features of the Service**

### **A. Customer Obligations**

In addition to being responsible for your own compliance with this AUP, you are also responsible for any use or misuse of the Service that violates this AUP, even if it was committed by a friend, family member, or guest with access to your Service account. Therefore, you must take steps to ensure that others do not use your account to gain unauthorized access to the Service by, for example, strictly maintaining the confidentiality of your Service login and password. In all cases, you are solely responsible for the security of any device you choose to connect to the Service, including any data stored or shared on that device. It is also your responsibility to secure Customer Equipment and any other Premises equipment or programs not provided by Smart City that connects to the Service from external threats such as viruses, spam, bot nets, and other methods of intrusion.

### **B. Smart City’s Rights**

Smart City reserves the right to refuse to transmit or post, and to remove or block, any information or materials, in whole or in part, that it, in its sole discretion, deems to be in violation of this AUP, or otherwise harmful to the Smart City network or customers using the Service, regardless of whether this material or its dissemination is lawful so long as it violates this AUP. Neither Smart City nor any of its affiliates, suppliers, or agents have any obligation to monitor transmissions or postings (including, but not limited to, e-mail, file transfer, blog, newsgroup, voice calls, voicemail and instant message transmissions) made on the Service. However, Smart City and its affiliates, suppliers, and agents have the right to monitor these transmissions and postings from time to time for violations of this AUP and to disclose, block, or remove them in accordance with this AUP, the Subscriber Agreement, or applicable law.

### **C. Service Restrictions**

All of Smart City's network and system services are provided according to scheduled fees for each type of service. You agree to use such services in accordance with the terms set forth below.

#### **i. Email and Web-Hosting Services**

- a) Unsolicited Email Prohibited – You may not use Smart City-hosted email addresses for the purpose of sending unsolicited email. You may not use or cause to be used Smart City equipment, network connectivity, or other resources to originate, deliver, relay or otherwise transmit unsolicited email messages.

You may not engage in any of the foregoing prohibited activities by using the service of any other provider, third-party agent, remailing service or address forwarding service, in such a way that Smart City's network addresses or Smart City-hosted web or email services are in any way identified as being associated with the sending of unsolicited email.

- b) Unauthorized use, or forging, of mail header information or telephone caller ID (e.g. "spoofing") is prohibited.
- c) Fraudulent Activity Prohibited – You may not use Smart City email and web- hosting services to make fraudulent offers to sell or buy products, items, services, or to advance any type of financial scam such as "pyramid schemes", "Ponzi schemes", or "chain letters." You may not use techniques to hide or obscure the source of any e-mail or other communications.
- d) Smart City reserves the right to suspend or delay delivery of email to customer utilizing Smart City email services and/or the virtual domain email if the volume of email being redirected, stored, or delivered on the customer's behalf is deemed excessive. Excessive traffic is defined as any amount of email traffic that noticeably degrades performance on the server in question, in the sole discretion of Smart City. Stored mail exceeding these limits may be transferred to a compressed file at Smart City's discretion. Smart City will attempt to notify the account holder via the account contact information on record; however, Smart City reserves the right to delete the contents of such email boxes upon thirty (30) days after attempted notification.

- e) The Service may not be used to communicate or distribute e-mail or other forms of communications in violation of Section I of this AUP. As described below in Section III of this AUP, Smart City uses reasonable network management tools and techniques to protect customers from receiving spam and from sending spam (often without their knowledge over an infected computer).
- f) Smart City is not responsible for deleting or forwarding any e-mail sent to the wrong e-mail address by you or by someone else trying to send e-mail to you. Smart City is also not responsible for forwarding e-mail sent to any account that has been suspended or terminated. This e-mail will be returned to the sender, ignored, deleted, or stored temporarily at Smart City's sole discretion.
- g) In the event that Smart City believes in its sole discretion that any subscriber name, account name, or e-mail address (collectively, an "identifier") on the Service may be used for, or is being used for, any misleading, fraudulent, or other improper or illegal purpose, Smart City (i) reserves the right to block access to and prevent the use of any of these identifiers, and (ii) may at any time require any customer to change his or her identifier. In addition, Smart City may at any time reserve any identifiers on the Service for Smart City's own purposes. In the event that a Service account is terminated for any reason, all e-mail and voicemail associated with that account (and any secondary accounts) will be permanently deleted as well.

#### **ii. Instant, Video, and Audio Messages**

Each user is responsible for the contents of his or her instant, video, and audio messages and the consequences of any of these messages. Smart City assumes no responsibility for the untimeliness, incorrect delivery, deletion, or failure to store these messages. In the event that a Service account is terminated for any reason, all instant, video, and audio messages associated with that account (and any secondary accounts) will be permanently deleted as well.

### **3. Network Management and Limitations on Data Consumption**

Smart City manages its network with the goal of delivering a fast and reliable broadband Internet experience to all of its customers however, high-speed bandwidth and network resources are not unlimited. Managing the network is essential for the promotion of the best possible broadband Internet experience by all of Smart City's customers. The company uses reasonable network management practices that are consistent with industry standards. Smart City tries to use tools and technologies that are minimally intrusive and, in its independent judgment guided by industry experience, among the best in class. Of course, Smart City's network management practices will change and evolve along with the uses of the Internet and the challenges and threats on the Internet.

All broadband Internet service providers manage their networks. Many of them use the same or similar tools as Smart City. If Smart City did not manage its network, its customers would be subject to the negative effects of spam, viruses, security attacks, network congestion, and other risks and degradations of service. By engaging in responsible network management, including enforcement of this AUP, Smart City can deliver the best possible broadband Internet experience to all of its customers.

## Network Management

Smart City uses various tools and techniques to manage its network, deliver the Service, and ensure compliance with this AUP and the Subscriber Agreement. These tools and techniques are dynamic, like the network and its usage, and can and do change frequently. Smart City's network management practices may include (i) identifying spam and preventing its delivery to customer e-mail accounts, (ii) detecting malicious Internet traffic and preventing the distribution of viruses or other harmful code or content, (iii) temporarily lowering the priority of traffic for users who are the top contributors to current network congestion, and (iv) using other tools and techniques Smart City may be required to implement in order to meet its goal of delivering the best possible broadband Internet experience to all of its customers.

### A. Network Usage and Data Consumption Restrictions

You acknowledge that all of the Smart City Internet services are intended for periodic, active use of email, user newsgroups, transfers via FTP, Internet chat, Internet games, and browsing of the Internet. You must comply with all current bandwidth, data storage, and other limitations on the Smart City Internet services that have been established by Smart City and Smart City suppliers. You agree not to intentionally use the Smart City Internet service on a standby or inactive basis in order to maintain a connection. The excessive use or abuse of Smart City's network resources by one customer may have a negative impact on all other customers. Accordingly, in addition to the Prohibited Uses and Activities provided in Section I, you may not use the Smart City Internet service or take any action, directly or indirectly, that will result in excessive consumption or utilization of the system or network resources, or which may weaken network performance, as determined in Smart City's sole discretion. Such prohibited actions include, but are not limited to: using the Smart City Internet Services to host a web server site which attracts excessive traffic at your location, continuously uploading or downloading streaming video or audio, use net hosting, continuous FTP uploading or downloading, or acting in a manner that negatively effects other users' ability to engage in real time exchanges and use of the Smart City Internet Services.

Therefore, Smart City reserves the right to impose and enforce bandwidth usage thresholds based on individual broadband service plans limiting the amount of data you are able to upload and download within specific time periods. Smart City also reserves the right to suspend or terminate Service accounts where data consumption is not characteristic of a typical user of a similar Services account as determined by Smart City in its sole discretion.

Common activities that may cause excessive data consumption in violation of this AUP include, but are not limited to, numerous or continuous bulk transfers of files and other high capacity traffic using (i) file transfer protocol ("FTP"), (ii) peer-to-peer applications, and (iii) newsgroups. You must also ensure that your use of the Service does not restrict, inhibit, interfere with, or degrade any other person's use of the Service, nor represent (as determined by Smart City in its sole discretion) an overly large burden on the network. In addition, you must ensure that your use of the Service does not limit or interfere with Smart City's ability to deliver and monitor the Service or any part of its network.

If you use the Service in violation of the restrictions referenced above, that is a violation of this AUP. In these cases, Smart City may, in its sole discretion, suspend or terminate your Broadband Service, or request that you subscribe to a higher tier of the Broadband Service if you wish to continue to use the Broadband Service at higher data consumption levels.

Smart City's determination of the data consumption for Broadband Service is final.

## **B. Violation of this Acceptable Use Policy**

Smart City reserves the right to immediately suspend or terminate your Service account and terminate the Subscriber Agreement if you violate the terms of this AUP or the Subscriber Agreement.

Smart City does not routinely monitor the activity of individual Service accounts for violations of this AUP, except for determining aggregate data consumption in connection with the data consumption provisions of this AUP. However, in the company's efforts to promote good citizenship within the Internet community, it will respond appropriately if it becomes aware of inappropriate use of the Service. Smart City has no obligation to monitor the Service and/or the network. However, Smart City and its suppliers reserve the right at any time to monitor bandwidth, usage, transmissions, and content in order to, among other things, operate the Service; identify violations of this AUP; and/or protect the network, the Service and Smart City users.

Smart City prefers to inform customers of inappropriate activities and give them a reasonable period of time in which to take corrective action. Smart City also prefers to have customers directly resolve any disputes or disagreements they may have with others, whether customers or not, without Smart City's intervention. However, if the Service is used in a way that Smart City or its suppliers, in their sole discretion, believe violates this AUP, Smart City or its suppliers may take any responsive actions they deem appropriate under the circumstances with or without notice. These actions include, but are not limited to, temporary or permanent removal of content, cancellation of newsgroup posts, filtering of Internet transmissions, and the immediate suspension or termination of all or any portion of the Service (including but not limited to newsgroups).

Neither Smart City nor its affiliates, suppliers, or agents will have any liability for any of these responsive actions. These actions are not Smart City's exclusive remedies and Smart City may take any other legal or technical actions it deems appropriate with or without notice.

Smart City reserves the right to investigate suspected violations of this AUP, including the gathering of information from the user or users involved and the complaining party, if any, and examination of material on Smart City's servers and network. During an investigation, Smart City may suspend the account or accounts involved and/or remove or block material that potentially violates this AUP. You expressly authorize and consent to Smart City and its suppliers cooperating with (i) law enforcement authorities in the investigation of suspected legal violations, and (ii) and system administrators at other Internet service providers or other network or computing facilities in order to enforce this AUP. Upon termination of your Service account, Smart City is authorized to delete any



files, programs, data, e-mail and other messages associated with your account (and any secondary accounts).

The failure of Smart City or its suppliers to enforce this AUP, for whatever reason, shall not be construed as a waiver of any right to do so at any time. You agree that if any portion of this AUP is held invalid or unenforceable, that portion will be construed consistent with applicable law as nearly as possible, and the remaining portions will remain in full force and effect. You agree to indemnify, defend and hold harmless Smart City and its affiliates, suppliers, and agents against all claims and expenses (including reasonable attorney fees) resulting from any violation of this AUP. Your indemnification will survive any termination of the Subscriber Agreement.

YOU AGREE TO DEFEND, INDEMNIFY AND HOLD SMART CITY HARMLESS FROM ANY AND ALL LIABILITIES, COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES, RELATED TO ANY VIOLATION OF THIS AUP BY YOU OR AUTHORIZED USERS OF YOUR ACCOUNT, OR IN CONNECTION WITH THE USE OF THE SERVICE OR THE INTERNET OR THE PLACEMENT OR TRANSMISSION OF ANY MESSAGE, INFORMATION, SOFTWARE OR OTHER

MATERIALS ON THE INTERNET BY YOU OR USERS OF YOUR ACCOUNT. Your indemnification will survive any termination of the Subscriber Agreement.

### **C. Redress and Governing Law**

#### **i. Governing Law/Resolution of Disputes – Arbitration**

Any dispute or claim between you, the customer, and Smart City arising out of or relating to the service provided in connection with this AUP or the Subscriber Agreement shall be resolved by arbitration (“Arbitration”), unless otherwise specified in customer’s individual Subscriber Agreement. To the extent that there is a conflict regarding this Arbitration provision, the customer’s individual Subscriber Agreement supersedes the Terms and Policies of the individual Services.

The arbitrator’s decision shall follow the plain meaning of the relevant documents, and shall be final and binding. The parties agree that no arbitrator has the authority to: (i) award relief in excess of what the Subscriber Agreement provides; or (ii) award punitive or exemplary damages. Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. All claims shall be arbitrated individually and customer will not bring, or join any class action of any kind in court or in arbitration or seek to consolidate or bring previously consolidated claims in Arbitration. CUSTOMER ACKNOWLEDGES THAT THIS ARBITRATION PROVISION CONSTITUTES A WAIVER OF ANY RIGHT TO A JURY TRIAL.

#### **ii. Governing Law/Resolution of Disputes – Governing Law**

The Agreement and the relationship between you and Smart City shall be governed by the laws of the state where the Smart City services are being provided without regard to its conflict of law provisions. To the extent court action is initiated to enforce an

arbitration award or for any other reason consistent with the Arbitration provision herein, you and Smart City agree to submit to the personal and exclusive jurisdiction of the courts located within the state where the Smart City services are being provided and waive any objection as to venue or inconvenient forum. The failure of Smart City to exercise or enforce any right or provision of this AUP or the Subscriber Agreement shall not constitute a waiver of such right or provision. If any provision of this AUP or the Subscriber Agreement is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of this AUP or the Subscriber Agreement remain in full force and effect. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the service, this AUP or the Subscriber Agreement must be filed within one (1) year after such claim or cause of action arose or be forever barred.

#### **D. Copyright and Digital Millennium Copyright Act ("DMCA") Requirements**

Smart City is committed to complying with U.S. copyright and related laws, and requires all customers and users of the Service to comply with these laws. Please refer to Smart City's Copyright and DMCA Enforcement Policy for a description of customer obligations and Smart City's enforcement and DMCA Agent contact information.