



SMARTCARRIER

Smart Carrier
326 Broad Street, Utica, NY 13501
www.smartcarrier.i
Operating Company Number (OCN):
560J

[National Emergency Number Association Registration](#)
Federal Communication Commission
(FCC)
499A ID:833627
Authorized Service Provider for STIR/SHAKEN

Revised: April 10, 2025

Smart Carrier End User License Agreement (EULA)

Technology Innovation Lab, LLC, d/b/a Smart Carrier (“**Smart Carrier**” or “**we/us/our**”) is a provider of a cloud-based software-as-a-service platform and such other services and products as we may offer from time to time (“**Service**”). Anyone who accesses the web interface, SIP interfaces, or Application Programming Interface (“**API**”) is a user of the Service (“**User**” or “**you/your**”) and must agree to the terms and conditions of this End User License Agreement (“**EULA**” or “**Agreement**”). By accessing or using Smart Carrier or its Application Program Interface (“API”), you represent that you are of legal age and have the authority to bind your company, organization and affiliates to the terms of this EULA.

THIS EULA CONTAINS AUTOMATIC RENEWAL TERMS, AUTOMATIC PAYMENT TERMS AND WAIVERS OF THE RIGHT TO A JURY TRIAL AND TO PARTICIPATE IN CLASS ACTIONS. If you do not agree to any term or condition in this EULA, please do not access or use our Services or API.

If you have ordered voice Services, you acknowledge and agree that our voice Services differ from traditional telephone services with respect to 911 calls. By accepting this EULA and using the voice Service, you represent and warrant that you have read, understood and agree to our 911 Disclosure.

1. ACCESS AND USE OF THE SERVICES.

1.1. **Right to Use Services.** You agree to use the Smart Carrier service in accordance with the use levels specified in the Service plan you select (the “**Plan(s)**”), as posted within the Smart Carrier web interface, on our website or in a Service order submitted by you in accordance with our then current procedures (an “**Order**”). You may use our Services only as permitted in this EULA. We grant you a limited right to use Smart Carrier Services for your legitimate business communications needs. If your affiliates use Smart Carrier, you warrant that you have the authority to bind those affiliates and you will be liable if your affiliates do not comply with the Agreement or fail to timely pay any amount when due. Smart Carrier software and websites are provided via equipment and resources located in the United States and other locations throughout the world and you consent to having telecom signaling data and call detail records processed by us in the United States and other locations throughout the world.



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1.2. **Limitations on Use.** By using Smart Carrier, you agree on behalf of yourself, your users and any other person accessing the Services under your account, not to (i) modify, prepare derivative works of, or reverse engineer Smart Carrier's Services; (ii) knowingly or negligently use Smart Carrier Services in a way that abuses or disrupts our networks, user accounts, or the Smart Carrier Service; (iii) use the Services in violation of our policies, applicable laws, or regulations.

1.3. **No caching, copying or redistribution of data.** The Smart Carrier Service includes access to and use of proprietary data created or compiled by Smart Carrier or third parties. This data includes number portability data, local exchange routing guide data, blacklists, whitelists, Caller ID (CNAM), calling number reputation and other data that may be added to the service. By using the Smart Carrier service, you agree to not cache, copy or redistribute any data provided by the Smart Carrier Service.

1.4. **Changes to Services.** We reserve the right to enhance or modify features of Smart Carrier but will not materially reduce the core functionality or discontinue any Smart Carrier feature unless we provide you with prior written notice. We will use commercially reasonable efforts to provide such notice at least 30 days prior to any such reduction or discontinuance, and we may provide such notice via our website. Your use of the Smart Carrier Service after any change in functionality constitutes your acceptance of the Service as modified. We may offer additional functionality to Smart Carrier or premium feature improvements for an additional cost.

1.5. **Proprietary Rights and Smart Carrier Marks.** You acknowledge that Smart Carrier retains all proprietary rights, title and interest in Smart Carrier, our name, logo or other marks (together, the "**Smart Carrier Marks**"), and any related intellectual property rights, including, without limitation, all modifications, enhancements, derivative works, and upgrades thereto. You agree that you will not use or register any trademark, service mark, business name, domain name or social media account name or handle which incorporates in whole or in part the Smart Carrier Marks or is similar to any of these. You will not remove any Smart Carrier Marks from any product, device or documentation that we may provide to you.

2. ORDERS, FEES AND PAYMENT.

2.1 **Orders.** Customers may submit Orders Smart Carrier using our then-current ordering processes. If no Order is explicitly specified, then the user's initial login to the Smart Carrier web interface will constitute their Order on behalf of their firm or organization. All Orders are effective on the earlier of (i) the date you accept this click-through EULA from the Smart Carrier web interface, (ii) the date you submit your Order, (iii) the date you convert from a services trial,



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(iv) the date on the signature block of the Order; or (v) the date on which you first use any Service (“**Effective Date**”). Smart Carrier’s acceptance of your Order may be subject to our verification and credit approval processes. Each Order shall be treated as a separate and independent Order.

2.2. Fees and Payment. You agree to pay all applicable, undisputed fees for Smart Carrier Services as set forth on the invoice. Except as set forth in Section 3.3 below, any and all payments you make to us for access to Smart Carrier are final and non-refundable. You are responsible for all fees and charges imposed by your data transmission providers related to your access and use of Smart Carrier. You are responsible for providing accurate and current billing, contact and payment information to Smart Carrier.

2.3 Automatic Payments. Upon submitting an Order, you will provide us with a credit or debit card for the payment of charges. You agree that we may take steps to verify whether your payment method is valid or bill you for all amounts due for your use of Smart Carrier. You expressly authorize us to charge your payment card on file and to automatically update your payment card information using software designed to do so in the event your payment card on file is no longer valid. You agree that your credit card information and related personal data may be provided to third parties for payment processing and fraud prevention purposes. We may suspend or terminate your Smart Carrier account and service if at any time we determine that your payment information is inaccurate or not current, and you are responsible for fees and overdraft charges that we may incur when we charge your card for payment.

2.4 Price Changes. Unless otherwise explicitly stated in a Plan, we reserve the right to update the price for any Smart Carrier Service at any time, and such price changes will be effective as of your next billing cycle. We will notify you of any price changes by publishing on our website, emailing, quoting or invoicing you.

2.5. Sales, Promotional Offers, Coupons and Pricing. Sales, promotions and other special discounted pricing offers are temporary and, upon the renewal of your subscription, any such discounted pricing offers may expire. We reserve the right to discontinue or modify any coupons, credits, sales and special promotional offers in our sole discretion.

2.6. Disputes; Delinquent Accounts. You must notify us of any fee dispute within 5 days of the invoice date, with sufficient detail and documentation to permit us to investigate such dispute, and you must timely pay all undisputed amounts. If a dispute is resolved in our favor, you agree to pay any fees withheld within 5 days after such resolution. If a dispute is resolved in your favor, we will credit your account for any amounts erroneously collected on your next invoice. We may suspend or terminate your Smart Carrier account if you do not pay



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undisputed fees, and you agree to reimburse us for all reasonable costs and expenses incurred in collecting delinquent amounts.

2.7. Taxes and Withholding. You are responsible for all applicable sales, services, value-added, goods and services, withholding, tariffs and similar taxes (collectively, “**Taxes**”) and all surcharges, fees, and contributions in support of regulatory programs (collectively, “**Regulatory Fees**”) imposed by any government entity or collecting agency based on the Services, except those Taxes based on our net income, or Taxes for which you have provided an exemption certificate. We reserve the right to gross up the price for Smart Carrier in any invoice, or require you to gross up your payment, if your withholding obligations prevent us from receiving the amount specified in the Order. Additionally, if you do not satisfy your Tax and Regulatory Fee obligations, you agree that you will be required to reimburse us for any Taxes or Regulatory Fees paid on your behalf, and we may take steps to collect Taxes we have paid on your behalf. In all cases, you will pay the amounts due under this Agreement to us in full without any right of set-off or deduction.

2.8. Prepayment. Smart Carrier may, in its sole and absolute discretion, require prepayment in order to provide some or all Smart Carrier services. Additionally, Smart Carrier may offer customers prepayment terms, which terms will be posted on its website from time to time.

3. TERM AND TERMINATION.

3.1. **Term.** Your initial term commitment for any Order (“**Initial Term**”) will be specified in the Order, or if no term is specified, your Initial Term will be month to month from the first full month you, or anyone in your organization, has access to the Smart Carrier web interface. The Initial Term will have an “Effective Date” as specified in the Order. Following the Initial Term, the Services will automatically renew on a month to month basis (“**Renewal Terms**”), unless either party provides notice of non-renewal of the Order 30 days before the current term expires. We may agree to align the invoicing under multiple Orders, but this will not reduce the term of any Order. Terminating a Smart Carrier Service does not affect the term of any other Smart Carrier Service still in effect. If we, in our sole and absolute discretion, permit you to reinstate a Smart Carrier Service at any time after termination or expiration of the Term of such Service, you agree that you will be bound by the then-current terms applicable to the Service.



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3.2. **Termination for Cause.** Either party may terminate the Agreement (i) if the other party breaches its material obligations and fails to cure within 30 days of receipt of written notice, or

(ii) if the other party becomes insolvent or bankrupt, liquidated or is dissolved, or ceases substantially all of its business, and we may suspend access or terminate immediately if you breach *Section 1.2, 4 or 5*.

3.3. **Effect of Termination.** If this Agreement or any Smart Carrier account is terminated, you will immediately discontinue all use of Smart Carrier Services, except that upon request, we will provide you with limited access to the Services for a period not to exceed 30 days, solely to enable you to retrieve your Data from Smart Carrier. We have no obligation to maintain your Data after that period. Neither Party will be liable for any damages resulting from termination of the Agreement, and termination will not affect any claim arising prior to the effective termination date. If we discontinue Smart Carrier in accordance with Section 3.2 above, the related Order will be terminated, and we will provide you with a pro rata refund of any prepaid, unused fees. You agree to pay for any use of the Services past the date of expiration or termination.

3.4. **Survival.** The provisions of *Sections 2 (Orders, Fees and Payment), 3.3 (Effect of Termination), 4 (Your Data and Accounts), 7 (Indemnification), 8 (Limitation on Liability), 9.7 (Notices), 9.10 (Choice of Law and Forum), 9.11 (Class Action Waiver), and 9.12 (Dispute Resolution)* survive any termination of this Agreement.

4. YOUR DATA AND ACCOUNTS.

4.1. **Your Data.** You retain all rights to your Data (as hereinafter defined), and we do not own or license your Data. You grant us a non-exclusive, worldwide, royalty-free, license to use, modify, reproduce and distribute your Data, only as required to provide and bill for the Smart Carrier Service to which you have subscribed, and as otherwise required by applicable law. You warrant that (i) you have the right to grant us the license set forth in this Section 4.1, and (ii) none of your Data infringes on the rights of any third party. Each party agrees to apply reasonable technical, organizational and administrative security measures to keep Data protected in accordance with industry standards. We will not view, access or process any of your Data, except: (x) as directed or instructed by you or your users, or (y) as required to comply with our policies, applicable law, or governmental request. You agree to comply with all legal duties applicable to you as a data controller by virtue of the submission of your Data within the Services. If your Data is subject to EU data protection laws and is processed by us as a data processor acting on your behalf (in your capacity as data controller), we will use and process your Data in order to provide the Services and fulfill our obligations under the



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Agreement, and in accordance with your instructions as represented in this Agreement.

Notwithstanding anything to the contrary, this *Section 4.1* expresses the entirety of our obligations with respect to your Data. “Data” means any of your, or your users’ or data that is provided to service in the form of SIP INVITEs, Call Detail Records or any other data provided to fulfill your account and the Smart Carrier Service provided.

4.2. **Your Accounts.** You are solely responsible for (i) all use of Smart Carrier Services by you, your users, your organization and affiliates, (ii) obtaining consent from your users to the collection, use, processing and transfer of Data, and (iii) providing notices or obtaining consent as legally required in connection with Smart Carrier. We do not send emails asking for your usernames or passwords, and to keep your accounts secure, you should keep all usernames and passwords confidential. We are not liable for any loss that you may incur if a third party uses your password or account. We may suspend your Smart Carrier account or terminate your Agreement if you, your users, organization or affiliates are using Smart Carrier in a manner that is likely to cause harm to us. You agree to notify us immediately and terminate any unauthorized access to Smart Carrier or other security breach.

5. **COMPLIANCE WITH LAWS.** In connection with the performance, access and use of the Services under the Agreement, each party agrees to comply with all applicable laws, rules and regulations including, but not limited to export, privacy, and data protection laws and regulations. If necessary and in accordance with applicable law, we will cooperate with local, state, federal and international government authorities with respect to the Services. Notwithstanding any other provision in this Agreement, we may immediately terminate the Agreement for noncompliance with applicable laws.

6. **WARRANTIES.** The Smart Carrier Service is a tool for detecting fraudulent phone calls, call routing, call reporting and other services. The Service is provided on a “best efforts” basis, and Smart Carrier provides no representation, warranty or guarantee for any Smart Carrier feature or that the Smart Carrier service will detect or stop fraudulent calls, calls used to perpetrate fraud, toll fraud, traffic pumping or theft of your telecom service. We warrant that the Services will conform to the Service descriptions and levels provided by us in writing, under normal business use. We do not represent or warrant that (i) the use of our Services will be timely, uninterrupted or error free, or operate in combination with any specific hardware, software, system or data, (ii) our Services will meet your requirements, or (iii) all errors or defects will be corrected. Use of the Services is at your sole risk. Our entire liability and your exclusive remedy under this warranty will be, at our sole option and subject to applicable law, to provide conforming Services, or to terminate the non-conforming Services or the applicable Order and provide service credits or a pro-rated refund of any prepaid fees from the period of non-conformance through the end of the remaining term. EXCEPT FOR THE FOREGOING



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WARRANTIES EXPRESSLY SET FORTH IN THIS SECTION, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, WE DISCLAIM ALL OTHER REPRESENTATIONS, WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

7. **INDEMNIFICATION.** You will indemnify, defend and hold Smart Carrier harmless against (a) any claims from your users, customers or any other person accessing the Services through your account; and (b) any third-party claim resulting from a breach of *Section 1.2 or 4*, or alleging that any of your Data infringes upon any patent or copyright, or violates trade secret or privacy rights of any party. In connection with such indemnification, you agree to pay reasonable attorneys' fees, court costs, damages finally awarded, or reasonable settlement costs with respect to any such claim. We will promptly notify you of any claim and cooperate with you in defending the claim; provided, that any delay in notifying you will not relieve you of your obligations under this Section except to the extent that you are actually prejudiced thereby. You will reimburse us for reasonable expenses incurred in providing any cooperation or assistance. You will have full control and authority over the defense and settlement of any claim, except that: (i) any settlement requiring us to admit liability or imposes ongoing obligations on us requires prior written consent, not to be unreasonably withheld or delayed, and (ii) we may join in the defense with our own counsel at our own expense.

8. LIMITATION ON LIABILITY.

8.1. **LIMITATION ON INDIRECT LIABILITY.** Neither party will be liable to the other party or to any other person for any indirect, special, consequential or incidental loss, exemplary or other damages, whether direct or indirect, arising out of or relating to: (i) loss of data, (ii) loss of income, (iii) loss of opportunity, (iv) lost profits, (v) costs of recovery or any other damages, however caused and based on any theory of liability, including, but not limited to, breach of contract, tort (including negligence), or violation of statute, whether or not such party has been advised of the possibility of damages. Some jurisdictions do not allow limitation or exclusion of liability for incidental or consequential damages, so some of the above limitations may not apply.

8.2. **LIMITATION ON AMOUNT OF LIABILITY.** Except for your breach of *sections 1.2 or 4* and your payment and indemnification obligations, and to the extent permitted by applicable law, the total cumulative liability of either party and their respective licensors and suppliers arising out of this agreement is limited to the sum of the amounts paid for the applicable service during the 1 month immediately preceding the incident giving rise to the liability. The foregoing



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does not limit your obligations to pay any undisputed fees and other amounts due under any Order.

9. ADDITIONAL TERMS.

9.1. **Free Services and Trials.** We may, from time to time and in our sole and absolute discretion, offer free Services on a trial basis. Your right to access and use any free Services is not guaranteed for any period of time and we reserve the right, in our sole discretion, to limit or terminate the use of any free or basic versions of any Services by any individual or entity. If you are using the Services on a trial or promotional basis for a time period established by us ("**Trial Period**"), your Trial Period and access to the Services will terminate (i) at the end of the Trial Period stated in your Order, or (ii) at the exhaustion of any free usage provided as a first month billing credit, or (iii) upon your earlier conversion to a subscription Plan. Following expiration of the Trial Period, Smart Carrier services may automatically continue to provide Services, unless you provide notice of cancellation to us prior to the end of the Trial Period, and you are responsible for payment of all applicable Service fees as set forth on the Smart Carrier web interface or Plan. During the Trial Period, to the extent permitted by law, we provide the Services "AS IS" and without warranty or indemnity, and all other terms otherwise apply. We may modify or discontinue any trials or promotions at any time without notice, unless notice is required by law.

9.2. **Third Party Features.** The Services may be linked to third party sites or applications ("**Third Party Services**"). We are not responsible for and do not endorse Third Party Services. You have sole discretion whether to purchase or connect to any Third-Party Services and your use is governed solely by the terms for those Third-Party Services.

9.3. **Beta Services.** We may, from time to time and in our sole and absolute discretion, offer you access to beta services that are being provided prior to general release, but we do not make any guarantees that these services will be made generally available ("**Beta Services**"). You understand and agree that the Beta Services may contain bugs, errors and other defects, and use of the Beta Services is at your sole risk. We have no obligation to provide technical support and we may discontinue provision of Beta Services at any time in our sole discretion and without prior notice to you. These Beta Services are offered "as-is", and to the extent permitted by applicable law, we disclaim any liability, warranties, indemnities, and conditions, whether express, implied, statutory or otherwise. If you are using Beta Services, you agree to receive related correspondence and updates from us, and acknowledge that opting out may result in cancellation of your access to the Beta Services. If you provide feedback ("**Feedback**") about the Beta Service, you agree that we own any Feedback that you share with us. For the Beta Services only, this Section 9.3 supersedes any conflicting terms and conditions in the Agreement, but only to the extent necessary to



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resolve conflict.

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9.4. **Copyright.** If you believe that our Services have been used in a way that constitutes copyright infringement, you should contact the Smart Carrier Legal Department at the Smart Carrier address listed on the Smart Carrier web site.

9.5. **Security Emergencies.** If we reasonably determine that the security of Smart Carrier or infrastructure may be compromised due to hacking attempts, denial of service attacks, or other malicious activities, we may temporarily suspend the operation of any or all Smart Carrier Services and we will take action to promptly resolve any security issues. We will use commercially reasonable efforts to notify you of any suspension or other action taken for security reasons; provided, that we reserve the right to delay or withhold notice if, in our sole discretion or at the request of law enforcement, notice may impede an investigation into the security issue.

9.6. **Assignment.** You may not assign your rights or delegate your duties under this Agreement either in whole or in part without our prior written consent, which shall not be unreasonably withheld, except that either party may assign this Agreement to an affiliated entity, or as part of a corporate reorganization, consolidation, merger, or sale of all or substantially all of its assets. Any attempted assignment without consent will be void. We may assign our rights and obligations under this Agreement upon written notice to you. This Agreement will bind and inure to the benefit of each party's successors or assigns.

9.7. **Notices.** Notices must be sent by personal delivery, overnight courier or certified or registered mail, return receipt requested. We may also provide notice to the email last designated on your account, electronically via postings on our website, in-product notices, or our self-service portal or administrative center. Unless specified elsewhere in this Agreement, notices should be sent to us at the address for your applicable contracting entity, with a copy to our Legal Department at the Smart Carrier mailing address listed on the Smart Carrier website. We will send notices to the address last designated on your account. Notice is given (a) upon personal delivery; (b) for overnight courier, on the second business day after notice is sent, (c) for registered or certified mail, on the fifth business day after notice is sent, (d) for email, when the email is sent, or (e) if posted electronically, upon posting.

9.8. **Entire Agreement; Order of Precedence.** This Agreement, which includes your Order and related invoices for Smart Carrier services, this EULA, any Service and Support Level Descriptions provided by us, and all Smart Carrier Policies set forth herein or therein, sets forth the entire agreement between us relating to Smart Carrier and supersedes all prior and contemporaneous oral and written agreements, except as otherwise permitted. If there is an actual conflict between an executed Order, this EULA and the Service and Support



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Level Descriptions, the conflict will be resolved in that order, but only for the specific Services described in the applicable Order. Nothing contained in any document submitted by you will add to or otherwise modify the Agreement. We may update this EULA and our Policies from time to time, which will be identified by the last updated date, and may be reviewed at the link referencing this EULA or Terms of Service on the Smart Carrier web interface. Your continued access to and use of the Service constitutes your acceptance of the then-current terms and conditions of your Service.

9.9. **General Terms.** If any term of this Agreement is not enforceable, this will not affect any other terms. Both parties are independent contractors and nothing in this Agreement creates a partnership, agency, fiduciary or employment relationship between the parties. No person or entity not a party to this Agreement will be a third-party beneficiary. Our authorized distributors do not have the right to modify this Agreement or to make commitments binding on Smart Carrier. Failure to enforce any right under the Agreement will not waive that right. Unless otherwise specified, remedies are cumulative. The Agreement is agreed to online using the click-through license agreement of the Smart Carrier web interface, or executed by electronic signature and in one or more counterparts. No party will be responsible for any delay or failure to perform under the Agreement due to force majeure events (e.g. natural disasters; terrorist activities, activities of third party service providers, labor disputes; and acts of government) and acts beyond a party's reasonable control, but only for so long as those conditions persist.

9.10. **Choice of Law and Forum.** This Agreement, including all claims relating to or arising out of the Agreement, are governed by the laws of New York, without regard to New York's conflict or choice of law provisions. If the Class Action Waiver set forth in *Subsection 6.13* is not enforceable in arbitration, or if the Dispute Resolution procedure laid out in *Subsection 6.14* is unenforceable or does not apply, the parties agree that *Subsection 6.14* shall be null and void in its entirety and the federal and state courts of the State of New York shall have exclusive jurisdiction over any action arising out of or related to the Agreements and personal jurisdiction over each and every party. IN THE EVENT THAT A DISPUTE HEREUNDER MUST BE RESOLVED IN COURT, EACH PARTY HEREBY EXPRESSLY WAIVES THE RIGHT TO A JURY TRIAL.

9.11. **Class Action Waiver.** You may only resolve disputes with us on an individual basis and you agree not to bring or participate in any class, consolidated, or representative action against us or any of our employees or affiliates. Where under the applicable law, you and Smart Carrier agree that you shall not bring any claim against the other as a plaintiff or class member in any purported class or representative action. Instead, you and Smart Carrier may only bring claims against each other in your or its individual capacity. Furthermore, unless both you and Smart Carrier agree, no arbitrator or judge may consolidate more than one person's claim or otherwise preside over any form of representative or class proceeding.



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9.12. **Dispute Resolution.** All controversies and claims that arise out of or relate to the Agreements shall be resolved in accordance with the following:

9.12.1 Applicability and Exceptions. The dispute resolution process set forth below (informal resolution followed by binding arbitration) applies to all controversies and claims that arise out of or relate to the Agreements, subject only to the exceptions listed below.

9.12.2 Infringement of Intellectual Property. If the claim relates to theft, infringement, or other misuse of a party's intellectual property, including infringement of a trademark or service mark or copying or distributing the Protected Data, the claiming party need not rely on binding arbitration and need not attempt informal resolution, but instead may immediately seek relief in a court of competent jurisdiction. For such actions, the parties consent to jurisdiction in the State of New York.

9.12.3 Small Claims. The claimant may seek resolution of any dispute in small claims court in Fulton County, New York, provided that all claims between the parties fall within the jurisdiction of the small claims court and were not able to be resolved by the informal resolution procedure described in *Paragraph 9.12.5* below.

9.12.4 Enforcement Actions. The claimant may pursue enforcement actions through applicable U.S. federal, state, or local agencies where such actions are available.

9.12.5 Informal Resolution. In the event of any controversy or claim arising out of or relating to the Agreements, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, the claiming party shall provide a brief, written description of the dispute to the responding party and give the responding party sixty (60 days) to resolve the dispute to the complaining party's satisfaction.

9.12.6 Binding Arbitration. If the parties to the Agreements do not reach a solution through the informal resolution process described in *Paragraph 6.13.2*, then any controversy or claim arising out of or relating to the Agreements, shall be settled by arbitration administered by the American Arbitration Association (the "AAA") in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof or having jurisdiction over the relevant party or its assets. The parties agree that the Agreements affect interstate commerce, so the U.S. Federal Arbitration Act and federal arbitration law apply and govern the interpretation and enforcement of this provision (notwithstanding the choice of law provision set forth above). Notwithstanding and in addition to the foregoing, the following rules shall apply to any binding arbitration brought under the Agreements:

6.13.3.1 Location and Language. The place of the arbitration shall be Fulton County, New York and the language shall be English.

9.12.7 Number and Selection of Arbitrators. For any dispute in which the



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amount in controversy is less than \$100,000, there shall be one arbitrator who shall be selected and appointed in accordance with the AAA's Commercial Arbitration Rules. In all other cases there shall be a panel three arbitrators, one selected by the initiating party in the request for arbitration, the second selected by the other party within 30 days of receipt of the request for arbitration, and the third, who shall act as chairperson, selected by the two party-appointed arbitrators within 30 days of the selection of the second arbitrator. Any arbitrators not selected within the specified timeframes shall be selected by the AAA.

9.12.8 Confidentiality. The existence of the arbitral proceedings and any rulings or awards shall be kept confidential except: (1) if the disclosure is required of a party to fulfill a legal duty, protect or pursue a legal right, or enforce or challenge an award in bona fide legal proceedings before a state court or other judicial authority; (2) if the disclosure is made to the party's accountants, attorneys, and other fiduciaries; (3) to an arbitrator or third party for use as persuasive authority in other proceedings brought pursuant to this Subsection; or (4) with the written consent of all parties. Notwithstanding anything to the contrary, either party may disclose matters relating to the arbitration or the arbitral proceedings where necessary for the preparation of a claim or defense in such arbitration.

9.12.9 Modifications. If the Company makes any changes to this Dispute Resolution provision, you may reject any such change by sending the Company written notice within 30 days of the change to the Company's address for Notice, in which case your account and any rights granted to you under the Agreements shall be immediately terminated, without liability to you, and this Dispute Resolution Subsection as in effect immediately prior to the amendment(s) you reject, shall survive.

9.12.10 Time Limitations. Any claim under the Agreements shall be time-barred unless the claiming party commences arbitration (or litigation if one of the exceptions set forth elsewhere in this Agreement applies) with respect to such claim within one year after the basis for such claim became known or should have become known to the claiming party. If applicable law prohibits a one-year limitation period for commencing claims, any claim must be asserted within the shortest time period permitted by applicable law. Any applicable statutes of limitations and defenses based upon the passage of time shall be tolled upon the filing of a request for arbitration until 60 days after the issuance of the final award.

9.13 Amendments. We may amend the Agreements from time to time by posting updated Agreements to Smart Carrier's Website and/or within the Smart Carrier Service. Your continued use of the Smart Carrier Service after the changes have been made will act as your acceptance of the revised Agreements. If you do not wish to continue to use the Smart Carrier Service under the new version of the Agreements, you may terminate the Agreements. You acknowledge and agree that it is your responsibility to review the Agreements periodically to



SMARTCARRIER

Smart Carrier
326 Broad Street, Utica, NY 13501
www.smartcarrier.i
Operating Company Number (OCN):
560J

[National Emergency Number Association Registration](#)
Federal Communication Commission

(FCC)

499A ID:833627

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maintain awareness of the most current terms of the Agreements. The Company is never required to alert you as to changes to the Agreements, but the Company may choose to do so by any means reasonable under the circumstances (e.g. by sending an e-mail or displaying a notice within the Smart Carrier Service or on the Smart Carrier Website).

9.14 Severability. If any provision or term of the Agreements is deemed invalid, illegal, or unenforceable, the remainder of the Agreements shall remain in full force and effect, except where the construction of the Agreements without the severed provision would materially alter the economic or legal substance of the Agreements in a manner that is materially adverse to the Company, in which case the parties shall negotiate in good faith to modify the Agreements so as to effect the original intent of the parties as closely as possible. To the extent any express or implied restrictions are not permitted by applicable laws, these express or implied restrictions shall remain in force and effect to the maximum extent permitted by such applicable laws.

9.15 Force Majeure. Any delay in the performance of any duties or obligations of either party will not be considered a breach of the Agreements if such delay is caused by labor dispute, shortage of materials, earthquake, flood, intervening illegality, or other event beyond the control of such party, provided that such party uses reasonable efforts under the circumstances to notify the other party of the circumstances causing the delay and to resume performance as soon as possible.