

CONTRACT APPROVAL FORM

(Contract Management Use only)

CONTRACT TRACKING NO.

CM2733

CONTRACTOR INFORMATION

Name: Smarsh

Address: 851 SW 6th Ave #800 Portland OR 97204

City State Zip

Contractor's Administrator Name: Riley Lambert Title: Account Executive-Government

Tel#: (407) 377-7090 Fax: _____ Email: riley.lambert@smarsh.com

CONTRACT INFORMATION

Contract Name: Text Messaging Archiving Software/Service Contract Value: One time Fee \$500/Annual \$9,216.00

Brief Description: Text Messaging Archiving Software/Service

Contract Dates : From: 9/23/19 to: 9/22/20 Status: New Renew Amend# WA/Task Order

How Procured: Sole Source Single Source ITB RFP RFQ Coop. Other Communication

If Processing an Amendment:

Contract #: _____ Increase Amount of Existing Contract: _____

New Contract Dates: _____ to _____ TOTAL OR AMENDMENT AMOUNT: _____

APPROVALS PURSUANT TO NASSAU COUNTY PURCHASING POLICY, SECTION 6

- | | | | |
|----|--|----------------|------------------------------|
| 1. | <u>[Signature]</u> | <u>9/18/19</u> | <u>IT/Technical Services</u> |
| | Department Head Signature | Date | Submitting Department |
| 2. | <u>[Signature]</u> | <u>9/18/19</u> | <u>01132516 - 541000</u> |
| | Contract Management | Date | Funding Source/Acct # |
| 3. | <u>[Signature]</u> | <u>9/18/19</u> | <u>YMS allie19</u> |
| | Office of Management & Budget | Date | |
| 4. | <u>[Signature]</u> | <u>9/23/19</u> | |
| | County Attorney (approved as to form only) | Date | |

Comments: _____

COUNTY MANAGER - FINAL SIGNATURE APPROVAL

[Signature] 9/23/19

Michael Mullin Date

RETURN ORIGINAL(S) TO CONTRACT MANAGEMENT FOR DISTRIBUTION AS FOLLOWS:

- Original: Clerk's Services; Contractor (original or certified copy)
- Copy: Department
- Office of Management & Budget
- Contract Management
- Clerk Finance

Order Form (#Q045936)(Service Account Number:)

Client Information

Company	Name	Nassau County, FL		
	Address	96135 Nassau Pl Ste 1	City	Yulee
	State	FL	Zip	32097-8635
Primary Contact <i>(Authorized User)</i>	Name	Corey Poore		
	Phone	+1.904.530.6050	Email	cpoore@nassaucountyfl.com
Technical Contact	Name	Corey Poore		
	Phone	+1.904.530.6050	Email	cpoore@nassaucountyfl.com
Billing Contact	Name	Corey Poore		
	Phone	+1.904.530.6050	Email	cpoore@nassaucountyfl.com
	Address	96135 Nassau Pl Ste 7	City	Yulee
	State	FL	Zip	32097-8635
Quote Date	08/08/2019 11:08:12		Quote Expiration	10/31/2019
Smarsh Sales Executive	Riley Lambert		Term of Agreement	12 Months
Activation Date	Upon Grant of Access to Service		Historical Import Billing	In Arrears
			Setup Fee Billing	Upon Contract Execution

Services and Fees

	Rate per Quantity	Minimum Quantity	Minimum
Setup Fee - Starter	\$500.00	1	\$500.00
Archiving Platform Content Usage - AT&T Mobile Messaging Annual	\$84.00	5	\$420.00
Archiving Platform Core Platform - Starter Package Annual	\$900.00	1	\$900.00
Archiving Platform Content Usage - Verizon Annual	\$84.00	94	\$7896.00
Recurring Subtotal			\$9,216.00
One-Time Subtotal			\$ 500.00

Notes

Terms & Conditions

On the date following the execution of this Order Form, Smarsh will provide Client with access to the applicable Service ("Activation Date"). Service Descriptions are available at www.smarsh.com/legal. The Services are subject to Smarsh Service Agreement-General Terms located here: www.smarsh.com/legal/ServiceAgreement. The Services purchased by Client are also subject to the following Service Specific Terms: Professional Cloud Service Specific Terms available at: <https://www.smarsh.com/legal/SSTProfessionalCloud>; premium Channels Service Specific Terms available at: <https://www.smarsh.com/legal/SSTMobilityChannels>;

The Smarsh Service Agreement – General Terms, the Service Specific Terms, and this Order Form are, collectively, the "Agreement." The Services will auto-renew pursuant to the terms of the Agreement.

For AT&T Mobility subscribers, your signature below represents your acceptance of the AT&T Wireless Terms and Conditions available at www.smarsh.com/legal/ATT as they apply to AT&T messages that are archived by Smarsh.

"Plan Fees" are the Fees charged for access to the Connected Archive. "Capture & Archive Fees" are the Fees that are charged for capture and archive of a bundle of Connections within the Connected Archive Service. "Capture Fees" are the per-Connection Fees that are charged for the capture of Connections by the Connected Capture Service. "Professional Services Fees" are the Fees that charged for hourly, monthly, or flat rate professional services. The Platform Fees, the Capture & Archive Fees, and the Capture Fees, as applicable, are invoiced on a monthly or annual basis, as specified in this Order Form. Client agrees that the Recurring Subtotal above is Client's minimum commitment during the Term of the Agreement. Smarsh will invoice Client for any usage over the minimum commitment at the Overage rate indicated in this Order Form.

If not priced above, data import and conversion Fees and storage Fees for data from Connected Capture or other capture mechanisms are as follows:

Data Imports	\$10/GB
Import Data Conversion fees	\$3/GB
External Capture Data Storage – Annual	\$2.50/GB

Smarsh self-certifies to the EU-U.S. Privacy-Shield. We provide information about our GDPR compliance at www.smarsh.com/legal/GDPR, and a list of Smarsh sub-processors is available at www.smarsh.com/legal/subprocessors.

By 

Name: Michael Mullin Title: County Manager Date: 9/23/19

Service Specific Terms – Professional Archive

These Service Specific Terms – Professional Archive apply only to Client's purchase and use of the Connected Archive Professional Archive Service. Unless expressly stated otherwise, capitalized terms contained in these Service Specific Terms have the meaning given them in the Smarsh Service Agreement - General Terms.

- 1. Descriptions.** The "**Professional Archive**" is a Service that captures data from the Client's Third Party Services and archives it as Client Data. The Professional Archive includes a supervision module for compliance review and a discovery module for managing collection and export of communications for litigation holds, eDiscovery, and regulatory audits. To enable the Professional Archive to receive Client Data, Client must purchase a bundle of Connections. A "**Connection**" means one of the following, as applicable to the specific Channel: (a) a user account such as an email mailbox; (b) an instant message account or screen name; (c) a social media page or profile; or (d) a mobile device phone number.
- 2. Data Retention.** Smarsh will retain Client Data captured by the Professional Archive during the Term of the Agreement for a default retention period of up to 7 years at no additional charge. If Client requires Client Data captured by the Professional Archive to be retained for longer than 7 years, Client must purchase extended data retention. Client may implement retention policies within the Professional Archive. Client is solely responsible for ensuring that the default retention period or any other retention policies implemented by Client within the Professional Archive comply with any applicable legal, regulatory, or Client internal requirements. Data that Client sends on removable media to Smarsh for import into the Professional Archive as Client Data will be subject to import fees and additional storage fees, as specified in the applicable Order Form. Data that is sent from Connected Capture or any other external capture service to the Professional Archive as Client Data will be subject to additional storage fees, as specified in the applicable Order Form. Following termination or expiration of the Agreement, Smarsh will retain Client Data for a minimum of six (6) months to allow time for Client to make alternative arrangements for long-term data storage. Thereafter, Smarsh may delete Client Data in its sole discretion.
- 3. Data Exports.** During the Term, Client may complete self-service exports of Client Data at no additional charge by logging into the Professional Archive. Client may also engage Smarsh to perform exports of Client Data on Client's behalf by signing a separate Order Form and paying the associated Professional Services Fees. Following termination or expiration of the Agreement, Client may maintain access to the Professional Archive and the ability to complete self-service exports by executing a separate historical access agreement. In the alternative, Client may engage Smarsh to perform an export on Client's behalf of all or a portion of the Client Data remaining in the Professional Archive by signing a separate Order Form and paying the associated Professional Services Fees.
- 3. Client Obligations.** Client is responsible for configuring applicable third-party platforms or systems to transmit Client Data to the Professional Archive. If Client wishes to ingest its historical data into the Professional Archive, Client must provide such data in a format acceptable to Smarsh. No later than the second business day of each month, Client shall submit to Smarsh usage reports for the prior month in a format specified by Smarsh.
- 4. Client-Side Software Terms.** Certain Channels may require Client to install software ("**Client-Side Software**") to allow the Professional Archive to receive Client Data. If Client-Side Software is provided to Client by Smarsh, upon delivery of the Client-Side Software Smarsh grants Client a limited, non-exclusive, non-sublicensable license to download and install the applicable Client-Side Software onto Client's end user's computer, laptop, or mobile device (as applicable), for which Client has purchased a Connection, or on Client owned or controlled servers, plus one copy for backup or archival purposes. Smarsh, and its licensors retain all rights in and to the Client-Side Software that are not expressly granted to Client in this Section 4.

5. **Datacenters.** The Professional Archive is hosted on Smarsh-managed infrastructure in the United States.
6. **Service Level Agreement.** The Service Level Agreement applicable to the Professional Archive is available at <https://www.smarsh.com/legal/ConnectedArchiveSLA>.

Smarsh Services Agreement-General Terms

WHEN YOU CLICK A BOX INDICATING ACCEPTANCE OF THIS AGREEMENT OR WHEN YOU EXECUTE AN ORDER FORM THAT REFERENCES THIS AGREEMENT, YOU, THE COMPANY ENTERING THIS AGREEMENT (“**CLIENT**”), AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ACCEPT THIS AGREEMENT ON BEHALF OF YOUR COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THIS AGREEMENT.

IF CLIENT PREVIOUSLY EXECUTED A SUBSCRIPTION FORM OR AN ORDER FORM (OR ENTERED INTO ANY OTHER ORDER DOCUMENT IN ELECTRONIC OR HARD COPY FORM) FOR SERVICES OR SOFTWARE, CLIENT AGREES THAT UPON ACCEPTING THE TERMS OF THIS AGREEMENT, WHETHER BY CLICK THROUGH OR BY ORDER FORM REFERENCING THIS AGREEMENT, THIS AGREEMENT SUPERSEDES ANY AND ALL PRIOR TERMS AND CONDITIONS ASSOCIATED WITH PREVIOUS ORDER FORM(S), AND SUCH PREVIOUS ORDER FORM TERMS AND CONDITIONS ARE OF NO FORCE OR EFFECT, *EXCEPT THAT* THE “**EFFECTIVE DATE**” OF CLIENT’S AGREEMENT IS THE DATE ON WHICH CLIENT FIRST EXECUTED AN ORDER FORM FOR SERVICES OR SOFTWARE, AND THE TERM OF CLIENT’S AGREEMENT FOR ALL SERVICES OR SOFTWARE WILL CONTINUE TO RENEW ON THE ANNIVERSARY OF THAT EFFECTIVE DATE, BUT ACCORDING TO THE RENEWAL TERMS OF THIS AGREEMENT.

This Smarsh Services Agreement-General Terms (the “**Agreement**”) constitutes a binding agreement between Smarsh Inc. (“**Smarsh**”) and the Client identified in an order document that references this Agreement (“**Order Form**”), or the Client who accepts the terms of this Agreement via click-through acceptance. Client agrees that the terms of this Agreement will govern Client’s use of the Services (as defined in Section 1).

This Agreement includes four parts: (1) the legal terms that are included in this “Smarsh Services Agreement – General Terms”, (2) the terms that are specific to each service included in the “Service Specific Terms”, (3) the description of what is included with each service in “Service Descriptions”; and (4) the Acceptable Use Policy (or “**AUP**”).

1. **Services.** Smarsh will provide the Services specified in each Order Form (“**Services**”), according to the Agreement, the Service Specific Terms (including the applicable Service Level Agreement(s)), and the Service Descriptions, which describe the features and functionality of each Service. The Service Specific Terms and Service Descriptions are located at www.smarsh.com/legal. Smarsh grants Client a revocable, non-exclusive, non-transferable, limited license to access and use the Services purchased by Client during the Term (as defined in Section 12).
2. **Support & User Groups.** Smarsh Central, located at <https://central.smarsh.com/s/> is where Client may seek support resources for the Services as well as engage with other end users in online forums regarding the Services.
 - 2.1. **Smarsh Central.** Support FAQ’s and other support resources are available on Smarsh Central located at <https://central.smarsh.com/s/>. Client may initiate support requests by submitting support tickets on Smarsh Central. Changes to Smarsh’s support policies will be made available on Smarsh Central.
 - 2.2. **Groups.** Smarsh Central also provides online forums and related features to Users of the Services (as defined in Section 4.6) for discussion, feedback, and general Q&A purposes (such forums and related features are collectively called “Groups”). Smarsh grants Client and its Users a revocable, non-exclusive, non-transferable license to access and use Groups within Smarsh Central in connection with Client’s use of the Services. Client or Users may post comments or content to Groups (“**Groups Content**”). Client hereby grants Smarsh a worldwide, exclusive, royalty-free, irrevocable license to access, use, reproduce, make derivatives of, and incorporate Groups

Content into Smarsh products or services for commercial use. Client acknowledges that Groups Content is not confidential and is subject to the Acceptable Use Policy available at www.smarsh.com/legal/AUP. Smarsh may delete Groups Content without prior notice. Client is responsible for all Groups Content posted by its Users. Smarsh disclaims all liability arising from Groups Content and use of Groups, including exposure to content that is potentially offensive, indecent, inaccurate, objectionable, or otherwise inappropriate. Smarsh may suspend or discontinue Groups at any time. Smarsh provide Groups without charge and Groups is not part of the Services.

3. **Trial Services.** If a trial period is indicated on an Order Form, Smarsh will provide Client with a temporary account to one or more Services (“**Trial Account**”). The Trial Account will be accessible beginning on the Activation Date (as defined in Section 7) and for the trial period set forth in the Order Form, or if no trial period is stated, the Trial Account period will be thirty (30) days from the Activation Date. DURING THE TRIAL PERIOD, THE TRIAL ACCOUNT AND ASSOCIATED SERVICES ARE PROVIDED “AS IS” AND “AS AVAILABLE” AND WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND.

4. **Client Obligations.**
 - 4.1. As used in this Agreement, the term “**Client Data**” means the data that the Services capture or archive from Client’s systems or from Client’s Third Party Services (as defined in Section 5), or Client’s historical data provided by or on behalf of Client for ingestion by the Services. Client hereby grants Smarsh a limited, non-exclusive license to access, copy, transmit, download, display, and reproduce Client Data as necessary to provide, support, and improve the Services, as directed by Client, or as otherwise authorized hereunder. Data generated by the Services regarding Client’s use of the Services is usage data and is not and does not contain Client Data.

 - 4.2. It is Client’s sole responsibility to monitor the Services and Client’s systems and Third Party Services to ensure that Client Data is being captured. Client will notify Smarsh of any delivery failures or outages of its systems that could affect the transmission of Client Data. It is Client’s responsibility to encrypt (i) data sent to the Services from Client’s systems and (ii) historical data sent to Smarsh for ingestion. Smarsh will have no responsibility or liability for any data that Client transmits to Smarsh in an unencrypted format. Smarsh is not responsible or liable for any update, upgrade, patch, maintenance or other change to Client’s systems or Third Party Services that affects the transmission of Client Data to the Service. It is Client’s responsibility to ensure that the Services are configured to capture Client Data from all relevant end-user accounts or devices or web domains, as applicable.

 - 4.3. Client is solely responsible for the content of Client Data. Client represents and warrants that (a) Client Data will not (i) infringe any third party right, including third party rights in patent, trademark, copyright, or trade secret, or (ii) constitute a breach of any other right of a third party, including any right that may exist under contract or tort theories; (b) Client will comply with all applicable local, state, national, or foreign laws, rules, regulations, or treaties in connection with Client’s use of the Services, including those related to data privacy, data protection, communications, SPAM, or the transmission, recording, or storage of technical data, personal data, or sensitive information; and (c) Client will comply with the Acceptable Use Policy available at www.smarsh.com/legal/AUP. Smarsh may update the Acceptable Use Policy from time to time.

 - 4.4. Client is responsible for creating an account within the Services and ensuring that (a) Client’s account registration information is complete and accurate; and (b) Client’s account credentials are confidential. Client will notify Smarsh immediately of any unauthorized use of Client’s account or account credentials, or any other known or suspected breach of the security of Client’s account. Client is responsible for the activity that occurs within Client’s account and for the actions or omissions of Client’s employees, contractors or agents, whether such person is or

was acting within the scope of their employment, engagement, or agency relationship. Client will not permit Smarsh competitors to access the Services.

- 4.5. Client may provide Representatives with access to the Services, may purchase Services on behalf of Representatives, or where Client is required to review Representative communications, Client may use the Services to meet such requirement. A **"Representative"** means any entity (a) that Client controls or that is under common control with Client; or (b) on behalf of which Client has a regulatory requirement to archive or review communications data. Representatives' use of the Services is subject to the terms of this Agreement. Client is responsible for the actions or omissions of each Representative whether such person is or was acting within the scope of their employment, engagement, or agency relationship.
 - 4.6. Client may designate user roles with different levels of access for use or support of the Services. An **"Authorized User"** is the administrative user(s) with the highest level of access and is responsible for managing the Services for Client. Only Authorized Users may appoint other Authorized Users, request or agree to changes to the Services, add or remove users, make billing inquiries, contact support, or take other, similar actions. A **"User"** is any individual who is granted login credentials to the Services. Users may not share account log in credentials.
5. **Third Party Providers.** The Services receive Client Data from third party sources and are dependent on the third party's services, software, applications, platforms (such as third party social media, business networking platforms systems, telecommunications carriers, or other messaging or communication services or APIs) (**"Third Party Services"**). Third Party Services are not offered, controlled or provided by Smarsh. A Third-Party Service may make changes to its service, or components thereof, or suspend or discontinue a service without notice to Smarsh. In addition, the availability of the Third-Party Service may depend on Client's compliance with the Third-Party Service terms. The Third-Party Service will have access to Client's data and will provide Client Data to Smarsh. Smarsh does not control and is not responsible or liable for how the Third-Party Service transmits, accesses, processes, stores, uses, or provides data to Smarsh. Smarsh expressly disclaims all liability related to or arising from any Third-Party Service, including Client's use thereof, or liability related to or arising from any updates, modifications, outages, delivery failures, corruption of data, loss of data, discontinuance of services, or termination of Client's account by the Third-Party Service. Client is solely responsible for ensuring Client complies with all Third-Party Service terms and conditions. Client acknowledges that certain Third-Party Services do not represent that they are suitable for sensitive communications and do not encrypt messages sent over such Third-Party Services networks, including social media providers, telecommunication carriers and certain messaging platforms. Client agrees that if Client transmits sensitive health or financial information via these unsecure Third Party Services networks, Client assumes all risk associated with such transmission and is responsible for any damages or losses incurred with respect to transmitting such sensitive data over such networks and to Smarsh. Such transmission may also be a breach of the AUP.
6. **Term & Termination.**
 - 6.1. **Term.** The Agreement will begin on the Effective Date and will remain in effect for the term specified in the Order Form or, if no term is specified, 12 months (**"Initial Term"**). The Initial Term will renew automatically for additional, successive 12-month terms (each a **"Renewal Term"**), unless Smarsh or Client provides the other party with written notice of non-renewal at least 60 days prior to the end of the Initial Term or the applicable Renewal Term, or either party terminates in accordance with section 6.2 or 6.3 below. The Initial Term plus any Renewal Term are, collectively, the **"Term."** Any Order Form executed after the Effective Date will co-terminate with Client's then-current Term.
 - 6.2. **Termination for Breach.** Either party may terminate this Agreement if the other party materially breaches its obligations under this Agreement and such breach remains uncured for a period of 30 days following the non-breaching party's written notice thereof. Smarsh may

suspend Client's access to the Services in the event of a breach of this Agreement and will not be liable for any damages resulting from such suspension.

- 6.3. **Termination for Bankruptcy.** This Agreement will terminate immediately, upon written notice, where (a) either party is declared insolvent or adjudged bankrupt by a court of competent jurisdiction; or (b) a petition for bankruptcy or reorganization or an arrangement with creditors is filed by or against that party and is not dismissed within 60 days.
- 6.4. **Effect of Termination.** Upon any termination or expiration of the Agreement: (a) all rights and licenses to the Services granted to Client by Smarsh will immediately terminate; (b) Client will pay any Fees due and payable up to the date of termination, except in the case of Smarsh's termination for Client's breach, and in such case, Client will pay the Fees owing for the remainder of the then-current Term; and (c) upon request, each party will return to the other or delete the Confidential Information of the other party; provided that if Client requests Smarsh to return Client Data from within Client's Professional Archive (defined in Professional Archive Service Specific Terms) instance, Client may (i) sign a separate Order Form for such Professional Services and will pay Smarsh's then-current data extraction and exportation fees plus any hardware costs as specified in such Order Form or (ii) sign a separate access-only agreement to maintain access to the Professional Archive with the ability to complete self-service exports.
7. **Fees & Payment.** Client will pay the fees for the Services as set forth in the Order Form ("**Fees**"). Following execution of the Order Form, Smarsh will activate or otherwise make available the Services listed in the Order Form by either delivering the software (if on-premise software is purchased) or providing Client with access to an account within the applicable Service ("**Activation Date**"). Beginning on the Activation Date, Client will be invoiced for the recurring Fees per the invoice schedule in the Order Form. One-time fees and fees for professional services will be invoiced per the terms of the Order Form, or the applicable statement of work. Client will pay Fees within thirty (30) days of the date of the invoice. If Client disputes any Fees, Client must notify Smarsh within 120 days of the date of invoice. Invoices not disputed within 120 days from the date of invoice will be deemed accepted by Client. Smarsh may charge a late fee of 1.5% per month on any Fees not paid when due. Smarsh may suspend Client's access to the Services in the event Client fails to pay the Fees when due. Smarsh may increase Fees at any time after the Initial Term.
8. **Minimum Commitment & Invoice of Overages.** Client agrees that the recurring Fees are Client's minimum purchase commitment during the Initial Term and, upon renewal, each Renewal Term. The minimum commitment is the total sum of the recurring Fees set forth in the applicable Order Form. For Fees invoiced based on usage, (a) if Client's usage exceeds the minimum commitment specified in the Order Form, Smarsh will invoice, and Client will pay the additional Fees due for such usage at the rate specified in the Order Form; and (b) if Client's usage during a month is less than Client's minimum purchase commitment, Smarsh will invoice Client for the minimum purchase commitment. Client understands that even if Client terminates prior to the end of the Term or any Renewal Term, such minimum commitment shall be due to Smarsh.
9. **Taxes.** All Fees payable by Client under this Agreement are exclusive of taxes and similar assessments. Client is responsible for all sales, service, use and excise taxes, utility user's fees, VAT, 911 taxes, or universal service fund fees or taxes, taxes assessed on the use of software or any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental or regulatory authority on any amounts payable hereunder, other than any taxes imposed on Smarsh's income.
10. **Confidentiality.**
 - 10.1. "**Confidential Information**" means (a) the non-public information of either party, including but not limited to information relating to either party's product plans, present or future developments, customers, designs, costs, prices, finances, marketing plans, business

opportunities, software, software manuals, personnel, research, development or know-how; (b) any information designated by either party as “confidential” or “proprietary” or which, under the circumstances taken as a whole, would reasonably be deemed to be confidential; (c) the terms of this Agreement; or (d) Client Data. “Confidential Information” does not include information that: (i) is in, or enters, the public domain without breach of this Agreement; (ii) the receiving party lawfully receives from a third party without restriction on disclosure and without breach of a nondisclosure obligation; (iii) the receiving party knew prior to receiving such information from the disclosing party, as evidenced the receiving party’s records; or (iv) the receiving party develops independently without reference to the Confidential Information.

10.2. **Obligations with Respect to Confidential Information.** Each party agrees: (a) that it will not disclose to any third party, or use for the benefit of any third party, any Confidential Information disclosed to it by the other party except as expressly permitted by this Agreement; and (b) that it will use at least reasonable measures to maintain the confidentiality of Confidential Information of the other party in its possession or control but no less than the measures it uses to protect its own confidential information. Either party may disclose Confidential Information of the other party: (i) pursuant to the order or requirement of a court, administrative or regulatory agency, or other governmental body, provided that the receiving party, if feasible and/or legally permitted to do so, gives reasonable notice to the disclosing party to allow the disclosing party to contest such order or requirement; or (ii) to the parties’ agents, representatives, subcontractors or service providers who have a need to know such information provided that such party shall be under obligations of confidentiality at least as restrictive as those contained in this Agreement. Each party will promptly notify the other party in writing upon becoming aware of any unauthorized use or disclosure of the other party’s Confidential Information.

10.3. **Remedies.** Each party acknowledges and agrees that a breach of the obligations of this Section 10 by the other party may result in irreparable injury to the disclosing party for which there may be no adequate remedy at law, and the disclosing party will be entitled to seek equitable relief, including injunction and specific performance, in the event of any breach or threatened breach or intended breach by the recipient of Confidential Information.

11. **Intellectual Property.** As between Smarsh and Client, all right, title and interest in and to the Services, the information technology infrastructure including the software, hardware, databases, electronic systems, networks, and all applications, APIs or Client-Side Software (as defined in the Service Specific Terms) required to deliver the Services, or made available or accessible to Client by Smarsh, including all documentation regarding the use or operation of the Services (collectively “**Intellectual Property**”) are the sole and exclusive property of Smarsh. Except as expressly stated herein, nothing in this Agreement will serve to transfer to Client any right in or to the Intellectual Property. Smarsh retains all right, title and interest in and to Intellectual Property. As between Smarsh and Client, Client Data is the sole and exclusive property of Client and other than the limited license to Client Data granted hereunder, nothing in this Agreement will serve to transfer to Smarsh any intellectual property rights in Client Data.

12. **Smarsh Representations and Warranties; Warranty Disclaimer.**

12.1. **Performance Warranty.** Smarsh represents and warrants that it will provide the Services in accordance with generally accepted industry standards.

12.2. **Authority.** Smarsh represents and warrants that it has the right and authority to enter into this Agreement and that the performance of its obligations under this Agreement will not breach, or conflict with, any other agreement to which Smarsh is a party.

12.3. **Compliance with Laws.** Smarsh represents and warrants that it will comply with the laws and regulations applicable to Smarsh in its performance of the Services.

12.4. **Warranty Disclaimer; No Guarantee.** EXCEPT AS SET FORTH ABOVE, SMARSH MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND IN CONNECTION WITH THE SERVICES, PROFESSIONAL SERVICES OR SOFTWARE, INCLUDING, WITHOUT LIMITATION, ANY INFORMATION OR MATERIALS PROVIDED OR MADE AVAILABLE BY SMARSH. SMARSH HEREBY DISCLAIMS ANY AND ALL OTHER REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. SMARSH DOES NOT REPRESENT OR WARRANT THAT THE SERVICES OR SOFTWARE WILL BE AVAILABLE OR ERROR-FREE. SMARSH WILL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES OR OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET, ELECTRONIC COMMUNICATIONS, OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF SMARSH. SMARSH DOES NOT GUARANTEE THAT USE OF THE SERVICES BY CLIENT OR THE ADVICE, CONSULTING OR PROFESSIONAL SERVICES PROVIDED TO CLIENT WILL ENSURE CLIENT'S LEGAL COMPLIANCE WITH ANY FEDERAL, STATE, OR INTERNATIONAL STATUTE, LAW, RULE, REGULATION, OR DIRECTIVE. THE SOFTWARE IS NOT DESIGNED OR INTENDED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, INCLUDING BUT NOT LIMITED TO ANY APPLICATION IN WHICH THE FAILURE OF THE SOFTWARE COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR PROPERTY DAMAGE.

13. **Indemnification.**

13.1. **Client Indemnification.** Client will defend, indemnify and hold harmless Smarsh, its officers, directors, employees and agents, from and against all claims, losses, damages, liabilities and expenses (including fines, penalties, and reasonable attorneys' fees), arising from or related to the content of Client Data and Client's breach of the Service Specific Terms or Sections 4.2, 4.3, 4.4, 4.5, or 15.1 of this Agreement. Smarsh will (a) provide Client with prompt written notice upon becoming aware of any such claim; except that Client will not be relieved of its obligation for indemnification if Smarsh fails to provide such notice unless Client is actually prejudiced in defending a claim due to Smarsh's failure to provide notice in accordance with this Section 13.1(a); (b) allow Client sole and exclusive control over the defense and settlement of any such claim; and (c) if requested by Client, and at Client's expense, reasonably cooperate with the defense of such claim.

13.2. **Smarsh Indemnification.** Smarsh will defend, indemnify and hold Client harmless from third-party claims arising from a claim that the Services infringe any United States patent, trademark or copyright; provided that, Client shall (a) provide Smarsh with prompt written notice upon becoming aware of any such claim; (b) allow Smarsh sole and exclusive control over the defense and settlement of any such claim; and (c) reasonably cooperate with Smarsh in the defense of such claim. Notwithstanding the foregoing, Smarsh will not be liable for any claim that relates to or arises from: (i) custom functionality provided to Client based on Client's specific requirements; (ii) any modification of the Services by Client or any third party; (iii) the combination of the Services with any technology or other services, software, or technology not provided by Smarsh; or (iv) Client's failure to use updated or modified versions of the Services made available by Smarsh. Except as expressly provided in Section 14.1.3, the indemnification obligation contained in this Section 13.2 is Client's sole remedy, and Smarsh's sole obligation, with respect to claims of infringement.

14. **Remedies and Limitation of Liability.**

14.1. **Remedies.**

14.1.1. In the event of a breach of any warranty under Section 12 Smarsh will use commercially reasonable efforts to provide Client with an error correction or work-around that corrects the reported non-conformity. The foregoing remedy is Client's sole and exclusive remedy for a breach of Section 12.

14.1.2. In the event of a breach of the applicable Service Level Agreement, Smarsh will provide Client with the credit stated in the Service Level Agreement. The foregoing remedy is Client's sole and exclusive remedy for a breach of the applicable Service Level Agreement.

14.1.3. If the Services are subject to a claim of infringement under Section 13.2, Smarsh may, in its sole discretion, either (a) procure for Client the right to continue to use the Services; (b) modify the Services such that they are non-infringing; or (c) if in the reasonable opinion of Smarsh, neither (a) nor (b) is commercially feasible, then Smarsh may, upon thirty (30) days' prior written notice to Client, terminate the applicable Service.

14.2. **Limitation of Liability.**

14.2.1. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER, OR TO ANY THIRD PARTY, FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF: USE, DATA, BUSINESS, OR PROFITS), ARISING FROM OR IN CONNECTION WITH THE SERVICES OR SOFTWARE (AS DEFINED IN THE SERVICE SPECIFIC TERMS), WHETHER BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER THE PARTY HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SMARSH WILL NOT BE LIABLE FOR ANY DAMAGES, WHETHER CONSEQUENTIAL OR OTHERWISE, ARISING FROM OR RELATED TO CLIENT'S NON-COMPLIANCE WITH ANY FEDERAL, STATE, OR INTERNATIONAL STATUTE, LAW, RULE, REGULATION, OR DIRECTIVE.

14.2.2. EXCEPT WITH RESPECT TO SECTION 13.1 (CLIENT INDEMNIFICATION), EACH PARTY'S AGGREGATE LIABILITY FOR ALL DAMAGES ARISING FROM OR RELATING TO THIS AGREEMENT, NOTWITHSTANDING THE FORM IN WHICH ANY ACTION IS BROUGHT (E.G., CONTRACT, TORT, OR OTHERWISE), WILL NOT EXCEED THE TOTAL FEES ACTUALLY RECEIVED BY SMARSH FROM CLIENT FOR THE APPLICABLE SERVICES IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE INCIDENT FROM WHICH THE DAMAGES AROSE.

14.2.3. THE LIMITATION OF LIABILITY SET FORTH ABOVE IS CUMULATIVE; ALL PAYMENTS MADE FOR ALL CLAIMS AND DAMAGES WILL BE AGGREGATED TO DETERMINE IF THE LIMIT HAS BEEN REACHED.

15. **General Terms.**

15.1. **Export Restrictions.** The Services and Software (as defined in the Service Specific Terms), including any software, documentation and any related technical data included with, or contained in, the Services of Software, may be subject to United States export control laws and regulations. Smarsh Public IM policy manager is classified under Export Control Classification Number (ECCN) 5D002.c.1 and has been qualified for export under authority of license exception ENC, in accordance with sections 740.17(d) and 740.17(b)(3) of the U.S. Export Administration Regulations, 15 C.F.R. Part 730 et seq. (the "EAR"). It may not be downloaded or otherwise exported or re-exported into (or to a national or resident of) Crimea- Region of Ukraine, Cuba, Iran, North Korea, Sudan, Syria or any other country to which the United States has embargoed goods; or any organization or company on the United States Commerce Department's "Denied Parties List." Client will comply with the export laws and regulations of the United States and other applicable jurisdictions when using the Services. Client will not transfer the Software, or any other software or documentation provided by Smarsh (a) to any person on a government promulgated export restriction list; or (b) to any U.S.-embargoed countries. Without limiting the foregoing: (a) Client represents that it and its Authorized Users and any other users of the Services are not named on any United States government list of persons or entities prohibited from receiving exports; (b) Client represents that Client will not use the Software or Services in a manner which is prohibited under United States Government export regulations; (c) Client will comply with all United States anti-boycott laws and regulations; (d) Client will not provide the Software or Service to any third party, or permit any user to access or use the Software or Service,

in violation of any United States export embargo, prohibition or restriction; and (e) Client will not, and will not permit any user or third party to, directly or indirectly, export, re-export or release the Software or Services to any jurisdiction or country to which, or any party to whom, the export, re-export or release is prohibited by applicable law, regulation or rule.

- 15.2. **Assignment.** Neither party may assign this Agreement, in whole or in part, without the other party's prior written consent, except that either party may assign this Agreement without the other's consent in the case of a merger, reorganization, acquisition, consolidation, or sale of all, or substantially all, of its assets. Any attempt to assign this Agreement other than as permitted herein will be null and void. This Agreement will inure to the benefit of, and bind, the parties' respective successors and permitted assigns.
- 15.3. **Force Majeure.** A failure of party to perform, or an omission by a party in its performance of, any obligation of this Agreement will not be a breach of this Agreement, nor will it create any liability, if such failure or omission arises from any cause or causes beyond the reasonable control of the parties, including, but not limited to the following (each a "**Force Majeure Event**"): (a) acts of God; (b) acts or omissions of any governmental entity; (c) any rules, regulations or orders issued by any governmental authority or any officer, department, agency or instrumentality thereof; (d) fire, storm, flood, earthquake, accident, war, rebellion, insurrection, riot, strikes and lockouts; or (e) utility or telecommunication failures; so long as such party uses reasonable efforts to resume performance after any such Force Majeure Event.
- 15.4. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Delaware, without regard to conflict/choice of law principles. Any legal action or proceeding arising under this Agreement will be brought exclusively in the federal or state courts located in Multnomah County, in the State of Oregon, and the parties hereby irrevocably consent to the personal jurisdiction and venue therein.
- 15.5. **Relationship of the Parties.** The parties are independent contractors as to each other, and neither party will have power or authority to assume or create any obligation or responsibility on behalf of the other. This Agreement will not be construed to create or imply any partnership, agency, or joint venture.
- 15.6. **Notices.** Any legal notice under this Agreement will be in writing and delivered by personal delivery, express courier, certified or registered mail, postage prepaid and return receipt requested, or by email. Notices will be deemed to be effective upon personal delivery, one (1) day after deposit with express courier, five (5) business days after deposit in the mail, or when receipt is acknowledged in the case of email to Smarsh. Notices will be sent to Client at the address set forth on the Order Form or such other address as Client may specify. Notices will be sent to Smarsh at the following address: Smarsh Inc., Attention: Legal, 851 SW 6th Ave, Suite 800, Portland, OR 97204, or in the case of email, to legal@smarsh.com.
- 15.7. **Publicity.** Smarsh may disclose that Client is a customer of Smarsh.
- 15.8. **Severability; Waiver.** If for any reason a court of competent jurisdiction finds any provision or portion of this Agreement to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Agreement will continue in full force and effect. Failure of either party to insist on strict performance of any provision herein will not be deemed a waiver of any rights or remedies that either party will have and will not be deemed a waiver of any subsequent default of the terms and conditions thereof.
- 15.9. **Entire Agreement; Electronic Signatures.** This Agreement is the entire agreement between the parties with respect to its subject matter, and supersedes any prior or contemporaneous agreements, negotiations, and communications, whether written or oral, regarding such subject matter. Smarsh expressly rejects all terms contained in Client's purchase order documents, or in electronic communications between the parties, and such terms form no part of this Agreement. The parties agree that electronic signatures, whether digital or encrypted, or

Client's click-through acceptance of this Agreement, give rise to a valid and enforceable agreement.

15.10. **Amendments.** Smarsh may amend this Agreement by posting a revised version to www.smarsh.com/legal or at the Services log-in prompt. Client accepts the revised version of this Agreement by either (a) click-through acceptance at the Services log-in prompt; (b) execution of an Order Form incorporating the revised version; or (c) continued use of the Services for 30 days following the earliest notice of such revised version provided to an Authorized User at the Services log-in prompt.

16. IF CLIENT IS LOCATED IN EUROPE, THE FOLLOWING MODIFICATIONS TO THE ABOVE TERMS APPLY:

16.1. Sections 14.2.1 – 14.2.3 are replaced with the following Sections 14.2.1 – 14.2.3:

14.2.1 Limitation of Consequential Damages. Subject to 14.2.3, in no event shall either party be liable under or in relation to this Agreement or its subject matter (whether such liability arises due to negligence, breach of contract, misrepresentation or for any other reason) for any: (a) loss of profits; (b) loss of sales; (c) loss of turnover; (d) loss of, or loss of use of, any (i) software or (ii) data; (e) loss of use of any computer or other equipment or plant; (f) wasted management or other staff time; (g) losses or liabilities under or in relation to any other contract; or (h) indirect, special or consequential loss or damage.

14.2.2 Limitation on Direct Damages. Subject to Sections 14.2.1 and 14.2.3, Smarsh's aggregate liability arising from or in connection with this Agreement (and whether the liability arises because of breach of contract, negligence, misrepresentation or for any other reason) shall not exceed 1.25 times the amounts paid or payable (having been invoiced but not yet paid) by Client for the license to use the Service.

14.2.3 Notwithstanding anything to the contrary in this Agreement, neither party excludes or limits its liability in respect of death or personal injury caused by the negligence of that party, its servants or agents, breach of any condition as to title or quiet enjoyment implied by Section 12 Sale of Goods Act 1979 or Section 2 Supply of Goods and Services Act 1982, or liability for fraudulent misrepresentation or such other liability which cannot under applicable law be excluded or limited by Agreement.

16.2. Section 15.4 is replaced with the following:

15.4 Governing Law and Jurisdiction. This Agreement and all matters arising out of or relating to this Agreement shall be governed by the laws of England and Wales and the parties agree to submit to the exclusive jurisdiction of the English courts. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement. Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement prevents either party from seeking injunctive relief in the appropriate or applicable forum.

Connected Archive – Service Level Agreement

Definitions

“Availability” means that Client is able to access the Connected Archive and is measured using the formula in section 1.1 below.

“Downtime” means service interruptions that occur outside normal maintenance windows, including Planned Maintenance and Outages.

“Outages” means unplanned service interruptions that temporarily prevent access to major functions of the production platform.

“Planned Maintenance” means (i) maintenance that occurs during normal maintenance windows (as specified in section 2.4 below) and (ii) maintenance that occurs outside normal maintenance windows for which Smarsh has provided notice in accordance with section 2.5 below.

1. Smarsh Uptime Commitment

- 1.1 The production instance of the Smarsh Connected Archive will be available 99.9% of any calendar month (the “Uptime Commitment”). Availability is measured using the following industry-standard formula:

$$\text{Availability (less Planned Maintenance)} = \frac{\text{Total Minutes in a Month (30 days)} - \text{Total Downtime in the Month}}{\text{Total Minutes in a Month (30 days)}} * 100$$

Smarsh will not be responsible for interruption of Client’s access to the Services, and the Services will not be considered unavailable (i.e., such interruptions will not be included in the Downtime calculation), where the interruption results from: (a) routine maintenance, repair, and upgrade during Smarsh’s normal maintenance windows (specified below); (b) issues or failures with Client’s hardware, software, communications, or internet providers; (c) issues or failures of third-party sites, applications, software, hardware, or other components not supplied by Smarsh, or the intentional or malicious actions of third parties; (d) Client’s acts or omissions; or (e) force majeure events. Client may view the system status and subscribe to status updates at <https://status.smarsh.com/>.

- 1.2 If Smarsh does not meet its Uptime Commitment, Smarsh will issue Client a credit equal to 1/30th of the monthly fee for the Service that did not meet the Uptime Commitment. Credits must be requested by Client, within thirty (30) days of the end of the month in which the Uptime Commitment was not met. The failure to meet the Uptime Commitment must be verified by Smarsh’s diagnostic monitoring tools. Credits will be credited against Client’s next invoice.

2. Support and Maintenance Services

- 2.1 Smarsh uses tools to provide server, network, and application diagnostic monitoring of the technical infrastructure that delivers the Services.
- 2.2 Client may find online support resources and FAQ’s here: <https://central.smarsh.com>. With the exception of Severity Level 1 issues, Client must report issues regarding availability or performance of the Services by submitting a support case at <https://central.smarsh.com>. Support requests must include a detailed description of the error or request, including the operating conditions that gave rise to the error. The individual reporting a support incident will receive an auto-reply notification via email to confirm receipt of a Support request, along with a case number for reference. Client may also submit a support request by phone at 866-SMARSH-1. Smarsh standard phone support is available Monday through Friday between the hours of 7 am and 12 am Eastern (excluding United States Federal Holidays). Off-hours phone support is available 24 hours per day, 365 days per year for Severity Level 1 or 2 issues. All Severity Level 1 issues must be reported by phone. Smarsh may limit the right to submit support requests to a single or maximum number of Authorized Users.



2.3 Upon receiving a support request, Smarsh will use commercially reasonable efforts to respond to Client’s request within the mean response time indicated below for the corresponding severity level and address and/or fix errors to the Services reported by Client that are within the control of Smarsh, based on the following resolution process:

Severity Level	Description	Mean Response Time	Resolution Process
1	Issue impacts multiple users: Service is down, or major functionality is unavailable or materially impacted by performance issues, and no workaround is available.	15 minutes (Client must call by phone)	Smarsh will investigate the issue and will work continuously until error is fixed or temporary workaround is implemented.
2	Issue impacts multiple users: important features are unavailable or degraded, or multiple users are degraded, and no sustainable workaround is available. Or The issue impacts a single user, major functionality is unavailable or materially impacted by performance issues, and no workaround is available.	1 hour	Smarsh will investigate the issue and will work continuously until error is fixed or temporary workaround is implemented.
3	Issue impacts multiple or single users: important features are unavailable but workaround is available, Or intermittent disruption of Services.	4 hours (during business hours)	Smarsh will work during normal business hours to investigate the issue and implement a fix or workaround.
4	A minor feature is unavailable, Or there is a minor performance impact Or the Client makes a routine request (e.g. add user, password reset).	1 Business Day	Smarsh will work to provide fix in next maintenance release or respond to the routine maintenance request.

2.4 To the extent reasonably possible, Smarsh will refrain from performing maintenance during Smarsh’s normal business hours so as to minimize any interference with or disruption of the Services. Smarsh provides maintenance notifications and reminders, and Client may subscribe to such notifications and reminders, at <https://status.smarsh.com/>. Smarsh’s normal maintenance windows are:

- Mon-Thurs between 9PM-11:59PM Eastern
- Mon-Fri between 12AM-5AM Eastern
- Friday after 6PM Eastern
- Weekends anytime

2.5 Smarsh agrees to provide Client with 48 hours’ prior notice via <https://status.smarsh.com/> if Smarsh must perform maintenance outside the normal maintenance windows, or if Smarsh must suspend the Services outside normal maintenance hours to perform necessary maintenance.

2.6 Premium support services may be purchased by Client as a Professional Service.