# CONTRACT APPROVAL FORM

| (Contract Management Use only) |
| --- |
| **CONTRACT TRACKING NO.** |
| CM2887 |

## CONTRACTOR INFORMATION

Name: Smarsh

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

                                City           State       Zip

Contractor's Administrator Name: Kraig Etzel     Title: Account Executive

Tel#: (407) 377-7090    Fax:         Email: kraig.etzel@smarsh.com

## CONTRACT INFORMATION

$24,093.10

Contract Name: Text Messaging Archiving Software/Service    Contract Value (12,046.55 annual)

Brief Description: Text Messaging Archiving Software/Service

Contract Dates : From: 09/23/2020 to: 09/22/2022 24 months   Status: __X__ New ____ Renew ____ Amend# ____ WA/Task Order

How Procured: ___ Sole Source ___ Single Source ___ ITB ___ RFP ___ RFQ ___ Coop. _X_ 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. _____ 7-16-2020    Technical Services
   Department Head Signature    Date       Submitting Department

2. _____ 7/13/20    01132516-541000
   Contract Management    Date       Funding Source/Acct #

3. _____ 7/17/20
   Office of Management & Budget    Date

4. _____ 
   County Attorney (approved as to form only)    Date

Comments: _____

### COUNTY MANAGER – FINAL SIGNATURE APPROVAL

_____ _____
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

Revised 4/05/2017

## Client Information

| Company | Name | Nassau County, FL | | |
|---|---|---|---|---|
| | Address | 96135 Nassau Pl Ste 1 | City | Yulee |
| | State | FL | Zip | 32097-8635 |
| **Primary Contact** *(Authorized User)* | Name | Corey Poore | Title | |
| | Phone | +1.904.530.6050 | Email | cpoore@nassaucountyfl.com |
| **Technical Contact** | Name | Corey Poore | Title | |
| | Phone | +1.904.530.6050 | Email | cpoore@nassaucountyfl.com |
| **Billing Contact** | Name | Corey Poore | Title | |
| | Phone | +1.904.530.6050 | Email | cpoore@nassaucountyfl.com |
| | Address | 96135 Nassau Pl Ste 7 | City | Yulee |
| | State | FL | Zip | 32097-8635 |

| | | | |
|---|---|---|---|
| **Quote Date** | 05/06/2020 06:50:04 | **Quote Expiration** | 08/31/2020 |
| **Smarsh Sales Executive** | Kraig Etzel | **Term of Agreement** | 24 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 |
|---|---|---|---|
| Pro Support - Basic - Annual | $0.00 | 1 | $0.00 |
| Professional Archive - SMG 100 - Annual | $500.00 | 1 | $500.00 |
| Professional Archive - SMG 100 Capture & Archive - Annual | $64.37 | 125 | $8046.55 |
| Professional Archive - SMG 100 Premium Adj - Annual | $28.00 | 125 | $3500.00 |
| Professional Archive-Extended Retention Fee (Per GB)-Annual | $2.50 | 0 | $0.00 |

| | |
|---|---|
| Recurring Subtotal | $12,046.55 |
| One-Time Subtotal | $ 0.00 |

| **Notes** | If Client uses more connections than it has licensed, Smarsh will bill for that use at $140.00 per connection plus $28.00 for each premium connection. |
|---|---|

# Terms & Conditions

On a date following the execution of this Order Form, Smarsh will provide Client with a license key for the Software or with login credentials 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 available at www.smarsh.com/legal/ServiceAgreement. The Services purchased by Client are also subject to the Information Security Addendum available at https://www.smarsh.com/legal/InfoSec and the following Service Specific Terms:

Mobile Channels Service Specific Terms available at: https://www.smarsh.com/legal/SSTMobileChannels; Professional Cloud Service Specific Terms available at: https://www.smarsh.com/legal/SSTProfessionalCloud .

The Smarsh Service Agreement – General Terms, the Information Security Addendum, the Service Specific Terms, and this Order Form are, collectively, the "**Agreement**." The Initial Term of the Services shall begin on the date this Order Form is executed and continue for the Subscription Term specified above, unless Client is adding the above Services to an existing Service account, in which case, the above Services will sync to and co-terminate with Client's existing subscription Term. The Services will be subject to renewals as specified in 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.

"**Archive Fees**" are the Fees charged for access to the Connected Archive (i.e., Professional Archive or Enterprise Archive). "**Capture &
Archive Fees**" are the Fees that are charged for capture and archive of a bundle of Connections within the Professional Archive.
"**Capture Fees**" are the per-Connection Fees that are charged for the capture of Connections by Connected Capture (i.e., Cloud Capture or Capture Server). "**Premium Adj. Fees**" are the additional Fees that are charged for capture of Connections from premium Channels.
"**Set-up Fees**" are the one-time Fees that are charged to implement a Service. "**Professional Services Fees**" are the Fees charged for hourly, monthly, or flat rate professional services.

The Platform Fees, the Capture & Archive Fees, the Capture Fees, and the Premium Adj. Fees, as applicable, are invoiced on an annual, up-front basis or a monthly basis in arrears, as specified on page 1 of this Order Form. Client agrees that the Recurring Subtotal above is Client's minimum commitment during each year or month, as applicable, of the Term. Smarsh will invoice Client for any usage over the minimum quantities at the applicable rate indicated in this Order Form.

☐

If not priced above, data import, conversion (if applicable), and storage Fees for Client's historical data and storage Fees for data from Connected Capture or other external capture mechanisms ingested into the Professional Archive are as follows:

| | |
|---|---|
| Data Imports - One-time | $10/GB |
| Import Data Conversion fees | $3/GB |
| 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.☐
☐
**Client authorized signature**
☐

By _____

Name: _Michael Mullin_  Title: _County Manager_  Date: _7/22/2020_

# 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 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. 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 login credentials 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) ~~45 days~~ days of the date of the invoice. If Client disputes any Fees, Client must notify Smarsh within 120 days ~~per Fla stat.~~ 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 ~~218.73~~ due. Smarsh may suspend Client's access to the Services in the event Client fails to pay the Fees + when due. Smarsh will increase Fees upon each Renewal Term, provided that any such increase will ~~218.74~~ not exceed five percent (5%) of the then current Fees. Smarsh will provide ninety (90) days' prior written notice of any such increase in Fees.

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.

# 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.

# Service Descriptions

Last updated April 15, 2020

# Professional Archive

## Overview

The Connected Archive - Professional Archive ("Professional Archive") archives supported electronic communications and other data from third party systems ("Channels"). Professional Archive includes the following capabilities: storage, search, discovery, administration, reporting, exports, and depending upon the plan, policies and supervision. Additional modules or professional services may be added to enhance the capabilities of Professional Archive. Available features and add-on modules are described in this document. Certain plans are not eligible for certain features or add-on modules. Smarsh will enable the features of Professional Archive that are associated with the plan Client purchases. Client must purchase Connection bundles to enable capture from supported Channels. A full list of supported Channels is available at https://www.smarsh.com/products/connected-capture/all-supported-channels/. Connections captured from a premium Channel will incur additional charges, as indicated on the applicable Order Form (defined in the General Terms available at https://www.smarsh.com/legal/).

## Plans and Features

Client must purchase a plan to access Professional Archive. Client will have access to the features and other services that correspond to the purchased plan, as specified in the tables on pages 3-8 below.

| Legend | |
|:---:|:---|
| ✓ | *Feature is included* |
| $ | *Feature is available for an additional fee* |
| - | *Feature is not available* |

| | Silver | Gold | Platinum |
|---|---|---|---|
| **Professional Archive** | | | |
| # of Bundled Connections | 5 \| 10 \| 20 | 50 \| 100 \| 200 | 500 \| 1000 \| 2000 \| 5000 |
| Professional Archive Access | 3 Users | 10 Users | 100 Users |
| Standard Storage | 7 years | 7 years | 7 years |
| **Search** | | | |
| Universal Search | ✓ | ✓ | ✓ |
| Proximity Search | ✓ | ✓ | ✓ |
| Saved Search | ✓ | ✓ | ✓ |
| Advanced Search | - | ✓ | ✓ |
| **Policies** | | | |
| Active Lexicon Policies | 2 | 10 | 50 |
| Post Review Actions | ✓ | ✓ | ✓ |
| **Supervision** | | | |
| Review & Escalation Queues | ✓ | ✓ | ✓ |
| Review Tools | ✓ | ✓ | ✓ |
| **Discovery** | | | |
| Cases | Unlimited | Unlimited | Unlimited |
| Legal Hold | ✓ | ✓ | ✓ |
| Discovery Users | 1 | 5 | 20 |
| **Admin** | | | |
| Self-Service Exports | 2 active per User | 10 active per User | 25 active per User |
| Roles | ✓ | ✓ | ✓ |
| Groups | ✓ | ✓ | ✓ |
| Retention Policies | ✓ | ✓ | ✓ |
| IP Whitelisting | - | ✓ | ✓ |
| Multi Factor Authentication | - | - | ✓ |
| Identity & Access Management | - | $ | ✓ |
| External Archiving | ✓ | ✓ | ✓ |
| **Reports** | | | |
| Administration | ✓ | ✓ | ✓ |
| Policy Activity | ✓ | ✓ | ✓ |
| Supervision | ✓ | ✓ | ✓ |

| | Silver | Gold | Platinum |
|---|---|---|---|
| **Client Services** | | | |
| Onboarding | $ | $ | $ |
| Legacy Data Import | $ | $ | $ |
| **Professional Services** | | | |
| Audit Assist | $ | $ | $ |
| Monthly Archive DVD | $ | $ | $ |
| Policy Library | $ | $ | $ |
| Policy Tuning | $ | $ | $ |
| Assisted Review | $ | $ | $ |
| Custom Feature/Application Development | - | - | $ |
| **Training** | | | |
| Online User Guides and Knowledge Base | ✓ | ✓ | ✓ |
| Smarsh University: Web-based and Instructor-led Training | $ | $ | $ |
| Smarsh University: On-site Training | $ | $ | $ |
| **Support** | | | |
| Basic | ✓ | ✓ | ✓ |
| Premium | $ | $ | $ |

| | SMG | GOV |
|---|---|---|
| **Professional Archive** | | |
| Connections | 10 \| 20 \| 50 \| 100 \| 200 | 500 \| 1000 \| 2000 \| 5000 |
| Professional Archive Access | 3 Users | 50 Users |
| Standard Storage | 7 years | 7 years |
| **Search** | | |
| Universal Search | ✓ | ✓ |
| Proximity Search | ✓ | ✓ |
| Saved Search | ✓ | ✓ |
| Advanced Search | - | ✓ |
| **Policies** | | |
| Active Lexicon Policies | 2 | 10 |
| Post Review Actions | ✓ | ✓ |
| **Discovery** | | |
| Cases | Unlimited | Unlimited |
| Legal Hold | ✓ | ✓ |
| Discovery Users | 3 | 15 |
| **Admin** | | |
| Self-Service Exports | 2 active per User | 25 active per User |
| Roles | ✓ | ✓ |
| Groups | ✓ | ✓ |
| Retention Policies | ✓ | ✓ |
| IP Whitelisting | - | ✓ |
| Multi Factor Authentication | - | ✓ |
| Identity & Access Management | - | ✓ |
| External Archiving | ✓ | ✓ |
| **Reports** | | |
| Administration | ✓ | ✓ |
| Policy Activity | ✓ | ✓ |

| | SMG | GOV |
|---|:---:|:---:|
| **Client Services** | | |
| Onboarding | $ | $ |
| Legacy Data Import | $ | $ |
| **Professional Services** | | |
| Audit Assist | $ | $ |
| Monthly Archive DVD | $ | $ |
| Custom Feature/Application Development | - | $ |
| **Training** | | |
| Online User Guides and Knowledge Base | ✓ | ✓ |
| Smarsh University: Web-based and Instructor-led Training | $ | $ |
| Smarsh University: On-site Training | $ | $ |
| **Support** | | |
| Basic | ✓ | ✓ |
| Premium | $ | $ |

| | E-Discovery |
|---|---|
| **Professional Archive** | |
| Connections | 500 \| 1000 \| 2000 \| 5000 |
| Professional Archive Access | 10 Users |
| Standard Storage | 3 years |
| **Search** | |
| Universal Search | ✓ |
| Proximity Search | ✓ |
| Saved Search | ✓ |
| Advanced Search | ✓ |
| **Discovery** | |
| Cases | Unlimited |
| Legal Hold | ✓ |
| Discovery Users | 15 |
| **Admin** | |
| Self-Service Exports | 10 active per user |
| Roles | ✓ |
| Groups | ✓ |
| Retention Policies | ✓ |
| IP Whitelisting | ✓ |
| Multi Factor Authentication | ✓ |
| Identity & Access Management | $ |
| **Reports** | |
| Administration | ✓ |

| | E-Discovery |
|---|:---:|
| **Client Services** | |
| Onboarding | $ |
| Legacy Data Import | $ |
| **Professional Services** | |
| Audit Assist | $ |
| Monthly Archive DVD | $ |
| Custom Feature/Application Development | $ |
| **Training** | |
| Online User Guides and Knowledge Base | ✓ |
| Smarsh University: Web-based and Instructor-led Training | $ |
| Smarsh University: On-site Training | $ |
| **Support** | |
| Basic | ✓ |
| Premium | $ |

## Add-on Modules

| | Personal Access |
|---|:---:|
| Employee access to the employee's archived messages | $ |
| Tablet & Mobile Interfaces | ✓ |
| User Labels/Folders | ✓ |
| Outlook® Plug-in | ✓ |

## Plan Features Descriptions

### Connections

One Connection is:

- An end-user account such as email mailbox;
- An instant message account or screen name;
- A social media page or profile; or
- A mobile device phone number

A Channel is an electronic communications data source, such as email, a social media platform, a mobile carrier, or a collaboration platform. Connections from certain Channels are premium Connections and will incur additional capture and archive fees as indicated on the applicable Order Form.

### Professional Archive Access

Each User of Professional Archive receives individual log-in credentials, which allows that User to access Professional Archive.

### Standard Storage

The Capture & Archive Fees specified in the Order Form for Professional Archive include 3 years of storage of Client Data for the E-Discovery package and 7 years of storage of Client Data for all other packages. Client must purchase extended data retention if a longer storage period is required. Additional storage fees apply for legacy data sent to Smarsh for import into Professional Archive or data sent from Connected Capture products or other external capture services to Professional Archive.

### Search

Users can perform e-discovery or compliance and supervision searches across archived Connections based on variables such as message data, User data review activities and advanced search features. Users can apply tags, retention policies, notes and other information to (i) individual messages or (ii) in bulk to a set of messages. Professional Archive includes an audit trail that tracks and logs activity within Client's account including searches, messages reviewed, and notations made.

### Policies

Policies allow Client to configure compliance rules for automated flagging and classification of messages based on Client-selected criteria within Professional Archive, up to the number of active lexicon policy rules specified in Client's plan. Messages can be automatically tagged, flagged, scored or assigned to a specific User.

### Supervision

Supervision allows Reviewers to mark messages "Reviewed," "Escalate," or "Violation," as well as to design and implement review and escalation queues based off policies and escalated messages. These queues enable formalized, streamlined, workflows for small and large compliance teams.

## Discovery

Discovery allows Users to: (i) access cases as well as a facet and filtering panel that allows Users to filter the messages by Channel, participant, message tags, and other facets, (ii) manage legal holds, (iii) share cases with other Users,  and (iv) and export messages from a case via FTP.

## Admin

Authorized Users have the ability to add, manage, and remove Users and Reviewers from within Professional Archive, set permissions for Users and Reviewers, and grant access to specific features.

## Self-Service Exports

Client may export or download messages from Professional Archive by creating an Export. An Export is a collection of messages that can be exported out of the archive. The number of active Exports a User can have at any given time is specified in the Plans and Features table in this document.

## Users, Reviewers, and Roles

Client can provide access to Professional Archive for as many Users as Client requires. Client must appoint at least one Authorized User as the administrative User associated with the account. Reviewers are Users who perform supervision. Roles allow Client to define permissions for specific pages and features. These roles can be assigned to a User.

## Groups

Groups allows Client to create a hierarchy of groups using end-user identifiers and associated Connections. Client can set permissions for these groups to control data access for Professional Archive Users.

## Retention Policies

Retention policies allow a User to create and apply policies to messages to be retained for a certain time period and then purged (deleted) from Professional Archive.

## IP Whitelisting

IP whitelisting allows Client to determine the IP addresses that a User may use to access Professional Archive. IP whitelisting supports multi-factor authentication.

## Multi-Factor Authentication

Multi-factor authentication allows Client to enforce a second layer of authentication before access to Professional Archive is permitted. To access Professional Archive, a User must provide their log-in credentials together with a code that is sent to the email address associated with the applicable Professional Archive account.

### Identity & Access Management

Available identity and access management features include:

- **Active Directory Sync**

  Enables Client to integrate their Active Directory in Professional Archive.

- **LDIF**

  Enables Client to update Groups within Professional Archive using a LDAP Data Interchange Format ("LDIF") file process.

- **Single Sign-on**

  Enables Client to allow Users to authenticate into Professional Archive using a single set of log-in credentials.

Client must purchase an add-on onboarding service to enable identity and access management features.

### External Archiving

Enables Client to send a copy of Client Data to a third party by email.

### Reports

Client will have access to different levels of pre-built reports depending upon Client's specified plan. Available standard reports include Professional Archive administration, policy activity, and supervision. Administration reports include User activity, archive statistics, and content usage. Policy reports include policy activity, auditing, and actions. Supervision reports include reviewer, queue, and message activity.

## Add-on Modules Descriptions

### Personal Archive

Allows end-users of Connections to search their own archived messages through a web-based client or Outlook plugin.

## Professional Services Descriptions

### Onboarding

Smarsh offers several Professional Archive onboarding packages to provide options that align to each Client's specific implementation needs. With all onboarding packages, Smarsh will create Client's Professional Archive environment and provide detailed configuration instructions.

### Data Import

Smarsh will import Client's messages from legacy systems into Professional Archive at an agreed-upon rate specified in an Order Form. Additional data conversion charges will apply if the data is not provided in a supported format.

## Audit Assist

Audit Assist allows Client up to five hours of data export service, once per year, in response to a regulatory audit. Any hours in excess of five will be paid at the hourly rate specified in the applicable Order Form, or if not specified, $250 per hour. Alternatively, Client may purchase assistance with data requests for audit or litigation purposes at an hourly rate. Audit Assist includes structuring a data export and responding to a data request.

## Monthly Archive DVD

The Smarsh Client Data team will create a copy of the data ingested by Professional Archive in the previous month. The data will be copied to one or more DVDs and then shipped to Client's authorized shipping address.

## Assisted Review

Assisted Review is a service through which Smarsh certified reviewers augment Client's existing compliance program by completing first-pass compliance reviews on Client's behalf. The certified reviewers follow Client's supervision policies and guidelines to review flagged messages within Professional Archive and escalate the messages that meet Client's specified risk criteria for further review by Client's compliance team.

## Policy Library

Policy Library is a library of pre-built Smarsh-designed lexicon policies that a Client can select for its use.

## Policy Tuning

Policy Tuning is a service through which Smarsh experts work with Client to tune policies and modulate lexicons for Supervision within Professional Archive. Policy Tuning results in a standard set of diagnostic tools and processes that prioritize the most critical, high-risk messages for review in order to improve the effectiveness of Client's compliance program. Client must purchase Policy Library to be eligible to purchase Policy Tuning.

## Training

Smarsh offers online documentation, training courses, and certification courses to help Client and its Users understand and leverage Professional Archive's features and functionality. Each Professional Archive package includes access to user guides, technical documentation, and knowledge articles on Smarsh Central. Client may purchase Smarsh University training and certification courses for an additional fee.

## Support

Smarsh provides phone and web-based technical support as specified in the Smarsh Support and Service Levels document available at https://www.smarsh.com/legal. Web-based technical support articles are available at https://central.smarsh.com/s/. Each Professional Archive package includes the Basic support package. Client may purchase a premium support package to extend hours of availability, allocate designated support resources, and access other premium support services.

## Regulatory Letter

Upon completion of Professional Archive implementation, and at Client's request, Smarsh will provide Client a letter stating that Smarsh is providing third-party downloader service pursuant to certain rules and regulations.

## Custom Feature/Application Development

Custom features/applications that are not currently available in Professional Archive may be requested and will be provided (if feasible, in Smarsh's sole discretion) at an agreed-upon rate.

## Additional Professional Services / Support

The following additional professional and support services may be purchased by Client for a fee:
- Premium support
- Custom documentation
- Custom end-user communications
- Data export services

# Acceptable Use Policy

## September 19, 2019

This Acceptable Use Policy ("AUP") describes the proper use of the Services and Groups available through Smarsh Central. This AUP is incorporated by reference into the Agreement.

Smarsh may suspend or terminate Client's use of the Services, any User's access to Groups on Smarsh Central, or the Agreement, if Client or any of Clients Users or Representatives violate this AUP. As between Client and Smarsh, Client is solely responsible for the data, content, messages, or other information that Client transmits, archives, distributes, displays, uploads or downloads through its use of the Services.

**Prohibited Activities**

Client shall not use the Services to:

(a) commit a crime, violate any rights of a person or entity (including intellectual property rights), or violate any local, state, national, or international law, rule or regulation, as applicable.

(b) impersonate a person or entity or to otherwise misrepresent any affiliation with a person or entity;

(c) commit fraud or make fraudulent offers or advertisements (i.e., make money fast schemes, chain letters, pyramid schemes);

(d) transmit harmful or potentially harmful code, including viruses, Trojan horses, worms, time bombs or any other computer programming routines that could damage, interfere with, surreptitiously intercept, or expropriate any system, program, data or personal information;

(e) transmit bank, credit card or debit card numbers or other card numbers, or other financial account information such as cardholder name, expiration date, PIN or PIN blocks, service code, or track data from a magnetic strip or chip.

(f) create a false identity or forged email address or header, or phone number, or otherwise attempt to mislead others as to the identity of the sender or the origin of a message or phone call;

(g) circumvent another service offered by Smarsh, such as subscribing to email archiving for the purpose of archiving email marketing;

(h) harvest data; or

(i) act in a way that will subject Smarsh to any third-party liability.

Client shall not (a) reverse engineer any Service; (b) attempt to bypass or break any security mechanism on any of the Services; or, (c) use the Services in a manner that poses a security or service risk to Smarsh or other users.

**Interference with Services is Prohibited**

Client shall not engage in, or attempt to engage in:

(a) unauthorized access to or use of the Services, data, or the networks or systems, including an attempt to probe, scan or overload a Smarsh system or the Services, or to breach security or authentication measures without express authorization;

(b) unauthorized monitoring of code, data, or traffic on a system without express authorization;

(c) deliberate attempts to overload a system and broadcast attacks;

(d) an action that imposes an unreasonable or disproportionately large load on Smarsh's infrastructure;

(e) performance of a program/script/command or sending messages of any kind that are designed to interfere with a user's terminal session, by any means, including locally or by the Internet;

(f) the use of manual or electronic means to avoid any use limitations placed on the Services, such as timing out; or

(g) any other activity that could be reasonably interpreted as unauthorized access to or interference with the Services.

**Laws Specific to Communications**

Clients shall comply with all laws that apply to communications, including wiretapping laws, the Telephone Consumer Protection Act, the Do-Not-Call Implementation Act, CAN-SPAM Act of 2003 and any other laws or regulations applicable to communications, including any third party policies such as the applicable guidelines published by the Cellular Telecommunications Industry Association, the Mobile Marketing Association.

If Client uses the Services in connection with any bulk and commercial email practices Client shall, in accordance with applicable law:

(a) obtain the verifiable consent of e-mail recipients via affirmative means;
(b) obtain necessary consents in accordance with applicable law;
(c) retain evidence of consents in a form that may be produced on request;
(d) allow a recipient to revoke consent;
(e) post an email address for complaints in a conspicuous place;
(f) have a privacy policy posted for each domain associated with the mailing;
(g) have the means to track anonymous complaints;
(h) not obscure the source of the Client e-mail in any manner; and,
(i) not attempt to send any message to an email address after such  number of rejections as is specified by law.

**Updates**

Smarsh may revise and update this AUP from time to time.

Current Version of AUP: Version 5, Effective September 19, 2019.

# Information Security Addendum

## Overview

Smarsh will implement and maintain a written information security program that maintains administrative, technical, and physical safeguards, designed to:

- ensure the security and confidentiality of all Client Confidential Information that is processed, stored, or controlled by Smarsh;
- protect against anticipated threats or hazards to the security or integrity of such Confidential Information;
- prevent unauthorized access to or loss, acquisition, disclosure, or use of such Confidential Information; and
- ensure the secure disposal of such Confidential Information in compliance with applicable National Institute of Standards and Technology (NIST) standards.

Smarsh will use reasonable efforts to ensure its written information security program and administrative, technical, and physical safeguards align with accepted industry practices [such as applicable security standards published by International Organization for Standardization (ISO) or NIST], and comply with applicable data protection and privacy laws, as well as the terms and conditions of the Agreement, including those contained in this Information Security Addendum. Detailed information about Smarsh's information security program is contained in the security documentation available by secure login at https://central.smarsh.com.

Smarsh will designate a security manager to oversee its information security program and ensure its compliance with this Information Security Addendum.

## 1. Personnel Security

1.1. <u>Screening</u>. Smarsh will perform criminal background checks on all Smarsh employees prior to commencement of employment. Smarsh shall not allow any employee to perform services for Client or to access Client Data if such background checks reveal such individual was convicted of a crime involving any type of theft, fraud, bribery, other dishonest acts or the violation of any securities law.

1.2. <u>Training</u>. Smarsh will provide annual security awareness training to all Smarsh employees and contractors and will require Subcontractors to provide such training for their employees. Smarsh will provide additional role-based security training for Smarsh employees and contractors with access to Client Data or the applications that process and store Client Data.

1.3. <u>Revocation</u>. Smarsh will revoke physical and logical access for each Smarsh employee within 24 hours of such employee's termination of employment.

## 2. Facilities & Systems Security

2.1. <u>Facilities Access</u>. Smarsh will employ physical security procedures to ensure that only authorized individuals and guests have access to corporate facilities. Such procedures will include the use of CCTV, cardkey access, processes to log and monitor visitors, and use of receptionists or security guards. Smarsh will maintain surveillance records for at least ninety (90) days.

2.2. <u>Systems Access</u>. Smarsh will follow the principle of "least privilege" when granting access to Smarsh systems. Smarsh will enforce complex password requirements across all Smarsh systems to minimize password-related access control risks. Smarsh will utilize multi-factor authentication when feasible. Smarsh's information security policies will prohibit Smarsh employees from sharing, writing down, emailing, IM'ing or storing passwords unencrypted on any Smarsh system (including desktops).

## 3. Product Security

**3.1.** Smarsh will leverage a "security by design" approach and will utilize a software development life cycle that follows best practices defined by NIST and the OWASP Software Assurance Maturity Model (SAMM).

**3.2.** Smarsh will proactively ensure the security of its applications and environment by leveraging a "security by design" approach. Smarsh will, in accordance with industry accepted benchmarks such as those published by the Center for Internet Security (or equivalent), security-harden all network devices and servers that will host or process Client Data and code or web applications that are under Smarsh control. Smarsh will perform both static and dynamic automated web application security code analysis on all code prior to deployment in a production environment and correct security flaws discovered by source code analyses prior to deployment. Smarsh will, in accordance with generally accepted industry standards, monitor the Services and Smarsh networks, servers, and applications for potential security vulnerabilities. Smarsh will promptly respond to any identified vulnerabilities and assess criticality to resolve, or implement compensating controls for, such identified vulnerabilities within a reasonable amount of time, taking into account the risks posed by each such vulnerability.

**3.3.** Smarsh will employ then-current industry-standard measures to test the Services for (a) 'back door,' 'time bomb,' 'Trojan Horse,' 'worm,' 'drop dead device,' 'virus',

'spyware' or 'malware;' or (b) any computer code or software routine that disables, damages, erases, disrupts or impairs the normal operation of the Services or any component thereof.

**3.4.** Smarsh QA and test networks and environments will be physically or logically separated from production networks and environments and will not be globally accessible to anyone on the internet. Administrative passwords across QA and test environments will be different than those used in production environments.

**3.5.** Smarsh will enforce a formal change management process which will include tracking and approving all product changes. Any such changes will be internally reviewed and tested within a staging environment before such changes are finalized and deployed.

**3.6.** Smarsh will not use Client Data for testing purposes.

## 4. Data Center Security

**4.1.** Data Center Access. Smarsh will employ physical security procedures and controls to ensure that only authorized individuals have access to Smarsh data centers.

**4.2.** Physical Security. Smarsh will employ data center security measures that align with the AICPA trust principles for physical security and will, at a minimum, secure Smarsh data centers using: floor-to-ceiling walls, multi-factor authentication for data center access, 24/7 security monitoring, alarmed exits, and onsite security personnel.

**4.3.** Data Center Locations. Smarsh primary and disaster recovery data centers will be located in geographically diverse locations to enhance security, availability, and resiliency.

## 5. Secure Configuration

Smarsh will use the Center for Internet Security (CIS) benchmarks for its secure baseline configurations. Smarsh will use secure configuration management tools to alert of changes to baseline configurations.

## 6. Data Management

6.1. Segregation. Client Data will be logically segregated from the data of other Smarsh clients.

6.2. Encryption. Smarsh will encrypt Client Data in transit and at rest using encryption techniques that comply with security industry standards published by NIST.

6.3. <u>Back-ups</u>. Smarsh leverages data replication across multiple geographically dispersed data centers as well as a local backup data center.

6.4. <u>Media Destruction</u>. Smarsh will ensure removal of all data from any media taken out of service and destroy or securely erase such media to make it unreadable, undecipherable, and unrecoverable by any means in compliance with applicable NIST standards.

6.5. <u>Removable media</u>. Smarsh will not allow its employees to store Client Data on any portable removable media (such as USB mass storage, external hard drives, and CD/DVDs); provided, however, that if storage on removable media is required to support the services (such as for client-requested data exports) provided under the Agreement, portable removable media must be encrypted as described above in Section 4.2.

## 7. Vulnerability Management

**7.1.** Smarsh will deploy vulnerability scanning mechanisms in its information systems and on hosted applications and will configure such mechanisms to conduct regular scans on Smarsh operating systems and infrastructure, web applications, and databases. Smarsh will analyze and assess all scan reports.

**7.2.** Smarsh will undergo annual penetration testing and will conduct quarterly security audits to identify potential vulnerabilities in the infrastructure used to provide the Services. Smarsh will implement a software/firmware patching program and will apply updates to all infrastructure components in a timely manner in accordance with the NIST 800-53 vulnerability remediation guidelines for critical or high-risk vulnerabilities.

## 8. Application Performance and Security

Smarsh will use industry-standard technology and tools to monitor the uptime status of its hosted applications and send alerts when any warning conditions need to be reviewed. Smarsh will use industry-standard firewalls, IDS/IPS technology, and malware detection on its networks and hosted applications and will harden its device configurations. Smarsh will require the use of VPN for access to its secure networks.

## 9. Business Resiliency and Incident Response

9.1. <u>Incident Response</u>. Smarsh's information security program will include written incident response policies and procedures to define roles and responsibilities in the event that there is any actual, or reasonably suspected, unauthorized access to Smarsh facilities or Smarsh systems ("**Security Incident**"). Such policies and procedures will include processes to ensure that (i) server logs are maintained; (ii) all

Security Incidents (defined below) are appropriately logged; (iii) all such server logs are retained for at least ninety (90) days; (iv) all such Security Incident logs are retained for at least three (3) years; and (v) all such logs are appropriately protected to ensure the integrity of such log. Smarsh will immediately implement such procedures immediately upon becoming aware of a Security Incident.

9.2. <u>Client Data Incident</u>. Upon becoming aware of any actual or reasonably suspected unauthorized third-party access to, or disclosure of, Client Data ("Client Data Incident"), Smarsh will: (i) immediately investigate, and take reasonable measures to remediate, the cause of such Client Data Incident, and (ii) promptly, but no later than forty-eight (48) hours after discovery, notify Client of such Client Data Incident. The notification will include, to the extent known, details of the incident, including the time, date, and nature of the incident and contact information for a member of Smarsh's information security team who can answer additional questions.

9.3. <u>Business Continuity/Disaster Recovery.</u> Smarsh will maintain a Business Continuity and Disaster Recovery Plan ("BCP") for the Services and implement the Plan in the event of a disaster, as defined in the BCP. The BCP will include disaster avoidance procedures which are designed to safeguard Client Data and Smarsh's data processing capabilities in the event of a disaster as defined in the BCP. Smarsh will make an executive summary of the BCP available in its Security Packet. Smarsh will test the BCP on at least an annual basis.

## 10. Annual Security Reviews

10.1. Smarsh will undergo an annual independent third-party SSAE 16 SOC 2 Type II (or its equivalent or successor) assessment of its information security program and its administrative, technical, and physical safeguards for all facilities used to deliver the Services. Such assessment will include, at a minimum, a network-level vulnerability assessment based on recognized industry practices.

10.2. Smarsh will assess criticality and remediate, or implement compensating controls for, all issues identified in such assessment in a timely manner based on level of criticality and risk.

10.3. Smarsh will include an executive summary of the results of such assessment in the Security Packet available to Client via login at https://central.smarsh.com.

## 11. Vendor and Third-Party Security

11.1. <u>Risk Assessments</u>. Smarsh will conduct an initial risk review and verification before engaging third-party vendors or subcontracting any of the Services. Thereafter, Smarsh will conduct annual risk reviews of such third-party vendors and subcontractors.

11.2. <u>Subcontractors</u>. A list of Smarsh subcontractors is available at https://www.smarsh.com/legal/subprocessors. Smarsh will provide prior notice to Client and allow time for Client to object before Smarsh engages any new subcontractors who will have access to or process Client Data. If Smarsh uses subcontractors to perform any of the Services, Smarsh will (a) enter into a written agreement with each such subcontractor that imposes obligations on the subcontractor (i) that are at least as restrictive as those imposed on or required of Smarsh under the applicable provisions of the Agreement and (ii) that prohibit the subcontractor from accessing or using Client Data except to the extent necessary to perform the subcontracted services; (b) only disclose Client Data to such subcontractor to the extent necessary for the subcontractor to perform the subcontracted services, (c) not be relieved of any of its obligations under this Agreement; and (d) remain liable and responsible for the performance or non-performance of such subcontractor.

## 12. Client Security Assessments

12.1. <u>Security Documentation</u>. To facilitate Client's risk-based assessment of Smarsh's information security program and administrative, technical, and physical safeguards applicable to Client's Confidential Information, Smarsh will make its Security Packet available to Client via https://central.smarsh.com. The Security Packet includes, among other documentation, Smarsh's completed industry-standard information gathering questionnaire ("SIG") and Smarsh's annual independent SSAE 16 SOC 2 Type II report. Smarsh will update the Security Packet on a regular basis. If Client requests that Smarsh complete Client's security or other questionnaire(s) in lieu of, or in addition to, the Security Packet, Client must execute an order form and pay a professional services fee based on the size and scope of such questionnaire(s).

12.2. <u>On-site Assessments</u>. Where sufficient to allow Client to complete its risk-based assessment of Smarsh's information security program and administrative, technical, and physical safeguards applicable to Client's Confidential Information, Client shall refer to Smarsh's Security Packet. If Client desires to complete an on-site assessment, Client may conduct no more than one on-site assessment in a 12-month period, all such requests must be received by Smarsh at least 30 days prior to the requested assessment date, all such on-site assessments must be conducted during Smarsh's normal business hours, and Client shall bear all costs associated with such on-site assessment. Smarsh will scope the work required to facilitate such assessment and provide Client with a quote for the professional services fees associated with such on-site assessment. If Client desires to proceed with such on-site assessment, Client must execute an order form or statement of work for such on-site assessment and provide Smarsh with its proposed list of

attendees. Smarsh will invoice Client for such on-site assessment, and Client shall pay the associated fees within 30-days of the invoice date.

## 13. Export Controls

Smarsh will comply with the export laws and regulations of the United States and other applicable jurisdictions when providing the Services. Smarsh will neither conduct business with nor allow access to its information systems by (a) any person on a government promulgated export restriction list; (b) any U.S.-embargoed countries; or (c) any organization or company on the U.S. Commerce Department's "Denied Parties List."