

AUTO RENEWAL FORM

Renewal of (title of agreement/contract): SMARSH CM3640

This letter confirms the renewal of the Agreement/Contract on the terms set out below.

General information

No.	Topic	Details
1	Department	Tech Services
2	Vendor	SMARSH
3	Agreement/Contract	Contract No.: CM3640 Auto Renewal No. AR-1 Funding Account(s): 01132516-541000 Amount: \$ 26,910.14

Agreement/Contract Renewal

On behalf of the Nassau County Board of County Commissioners, the Department gives notice that it wishes to exercise the option to automatically renew the term of the Agreement/Contract for Text Messaging Archival , beginning 09/23/2024 and ending 09/22/2025 , in accordance with the terms of the above referenced agreement.

Yours sincerely,

Derrick D. Lindsay 8/26/2024  
Department Head: Date

Risk Manager Initials: MP  
8/26/2024

Approved by: 8/26/2024  
Chris Lacambra Date  
Office of Management & Budget Director

Sanjay K. Mohan 8/28/2024  
Procurement Director Date

Denise C. May 9/3/2024  
County Attorney Date 8/30/2024

COUNTY MANAGER – FINAL SIGNATURE APPROVAL

Taco E. Pope, AICP 9/3/2024  
Taco E. Pope, AICP, County Manager Date





Order Form (#Q-69422)(Service Account Number: 303008 )

Renewal - Nassau County, FL

Account Rep      Maya Arastuie  
Email              mahya.arastuie@smarsh.com  
Company          Smarsh Inc.  
Prepared on      9-Aug-2024  
Valid until        23-Sep-2024

Customer        Nassau County, FL  
Service Address   96135 Nassau Pl Ste 1  
                         Yulee, Florida 32097-8635  
Billing Contact    Corey Poore  
Contact Phone     +1.904.530.6050  
Contact Email     cpoore@nassaucountyfl.com  
Technical Contact   Norm Kennedy  
                         Norm Kennedy

Start Date        23-Sep-2024  
Renewal Date     23-Sep-2025  
Billing Frequency   Annual  
Order Type        Renewal

Services	Unit Price	Minimum Quantity	Minimum Commitment
Unified		1	
Platform - Professional Archive - SMG	\$ 551.25	1	\$ 551.25
AT&T Mobile Message - Professional Archive Capture	\$ 110.01	20	\$ 2,200.17
Facebook - Professional Archive Capture	\$ 110.01	4	\$ 440.03
Instagram - Professional Archive Capture	\$ 110.01	1	\$ 110.01
Twitter - Professional Archive Capture	\$ 620.00	1	\$ 620.00
Verizon - Professional Archive Capture	\$ 110.01	199	\$ 21,891.69
Smarsh Support		1	
Professional Support - Basic		1	
Smarsh University		1	
Smarsh U - SMB - Full Access	\$ 1,096.99	1	\$ 1,096.99
Annual Recurring Service Fees Subtotal			\$ 26,910.14
One-Time Fees Subtotal			\$ 0.00
Total			\$ 26,910.14

Notes	All prices quoted are before tax. Applicable taxes will be added at time of invoicing. If you are tax exempt, please send a current copy of your tax-exempt certificate to accounting@smarsh.com
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## Terms & Conditions

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The Services are subject to the terms and conditions of this Order Form and (i) the Smarsh Service Agreement available at [www.smarsh.com/legal/ServiceAgreement](http://www.smarsh.com/legal/ServiceAgreement) (ii) the Service Specific Terms referenced in or attached to this Order Form, and (iii) any exhibits or attachments to this Order Form that may amend, supersede, or append the terms referenced herein (collectively "Agreement"):

### SERVICE SPECIFIC TERMS

- The Professional Archive Service Specific Terms available at <https://www.smarsh.com/legal/SSTProfessionalCloud>;
- Mobile Channels Service Specific Terms available at <https://www.smarsh.com/legal/SSTMobileChannels>;
- Twitter Service Specific Terms available at <https://www.smarsh.com/legal/SSTTwitter>;
- Smarsh U Service Specific Terms available at: <https://www.smarsh.com/legal/SSTSmarshUniversity>;

### TERM

The Term of the Services shall begin on the Start Date set forth above, or if no Start Date is set forth above, the execution date of this Order Form, and shall continue for the Subscription Term specified above. For Services added during Client's existing Term, the Term of the Services will sync to and co-terminate upon Client's Renewal Date set forth above. Renewal of the Services shall be subject to the terms of the Agreement.

### INVOICING

The Recurring Service Fees and One-Time Fees ("Fees") shall be invoiced at the billing frequency set forth on page 1 of this Order Form. For usage overages, Smarsh will invoice Client for any usage over the minimum quantities at the same per unit rate as indicated in the first page of this Order Form on a regular basis in arrears. Client agrees that the Recurring Services Fees set forth in this Order Form are Client's minimum commitment for the Term.

### DATA MANAGEMENT FEES

If not priced above or set forth on a separate Order Form between Smarsh and the Client for the applicable data management services requested by the Client, the following standard data import, conversion (if applicable), and storage Fees for data imports Client's Professional Archive shall apply to data imports during the Client's term:

- Data Imports - One-time Fee (25 GB Minimum) - \$10/GB thereafter
- Import Data Conversion fees (25 GB Minimum) - \$3/GB
- Data Storage – Annual \$2.50/GB



## Amendment to the Smarsh Service Agreement

This Amendment ("**Amendment**") amends the Smarsh Service Agreement located at <https://www.smarsh.com/legal/ServiceAgreement> between Smarsh Inc. ("Smarsh") and Nassau County, FL ("Client") ("Agreement"). This Amendment is effective as of the date last signed below, or on the date (i) the Client signs the Order Form to which this Amendment is attached. Capitalized terms not defined in this Amendment have the meaning provided in the Agreement.

**WHEREAS**, Client has requested certain modifications to the Agreement, and Smarsh has agreed to such modifications as set forth below;

**THEREFORE**, Client and Smarsh agree as follows:

- 1) **Conflict.** In the event of a conflict between this Amendment and the Agreement, the terms of this Amendment shall control with respect to the clauses and language modified by this Amendment.

- 2) Section 6.3 of the Agreement is hereby deleted and replaced with the following language:

**6.3. Renewals & Non-Renewal – Limited Term.** The Services that are provided on a recurring basis will not renew automatically for an additional, successive 12-month Service Term. The Services may be renewed by Client for an additional, successive 12-month Service Term (each a "Renewal Term") upon the execution of a renewal Order Form prior to the expiration of the then current Service Term. Smarsh may elect not to renew a Service by providing no less than 30 days written notice to the Client prior to the end of the then current Service Term.

- 3) Section 7.7 of the Agreement is hereby deleted and replaced with the following language:

**7.7 Taxes.** All Fees payable by Client under this Agreement are exclusive of taxes and similar assessments. Smarsh acknowledges that Client is tax-exempt.

- 4) Section 8.2 of the Agreement is hereby deleted and replaced with the following language:

**8.2. 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 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 legally permitted to do so, gives reasonable notice to the disclosing party to allow the disclosing party to contest such order or requirement; (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 ("Agents"); or (iii) pursuant to a public records request under those laws applicable to the Client, provided that the Client gives notice to Smarsh in a reasonable amount of time to allow Smarsh the opportunity to seek a protective order preventing such disclosure. 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.

- 5) Section 11.1 of the Agreement is hereby deleted and replaced with the following language:

**11.1. Client Indemnification.** To the extent permitted by those laws applicable to the Client, and without in any manner waiving its rights to sovereign immunity or increasing the limits of liability thereunder, Client will defend



and indemnify Smarsh, its officers, directors, employees, and agents, from and against all third party claims, losses, damages, liabilities, demands, and expenses (including fines, penalties, and reasonable attorneys' fees), arising from or related to (i) Client Data and Client's use of Client Data, (ii) Smarsh's use of Client Data in accordance with this Agreement, and (iii) Client's use of the Services in violation of this Agreement or applicable laws, rules, and regulations. 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 ; (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.

6) Section 13.5 of the Agreement is hereby deleted and replaced with the following language:

**13.5. Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Florida without regard to conflict/choice of law principles.

7) Section 13.11 of the Agreement is hereby deleted and replaced with the following language:

**13.11. Amendments.** This Agreement may only be modified, or any rights under it waived, by a written document executed by both parties.

8) **The following language is added to the Agreement as Section 14 – Florida Specific Language.**

**14. Florida Specific Language:**

**14.1. Public Records.** To the extent required by the Florida Public Records Act, Chapter 119, Florida Statutes (or its successor rule, as amended), Smarsh shall maintain and allow Client access to Public Records made or received in conjunction with the Agreement. The Agreement may be terminated for cause by Client for Smarsh's refusal to allow access to Public Records. For the purpose of this Agreement, "Public Records" means and includes those items specified in Florida Statutes Section 119.011(12), as amended from time to time, and currently defined as: "[A]ll documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business" . . . . Public Records under this Agreement include (without limitation) emails exchanged between Smarsh and Client representatives, the terms of this Agreement, all Client invoices, and, if applicable to the Services purchased by Client, supplier and subcontractor invoices and contracts.

**14.2. Third Party Requests.** In the event that Smarsh receives a Public Records request related to the Client, Smarsh will redirect such request back to the Client. Moreover, in the event that a third party submits a Public Records request directly to Smarsh that is related to the Client, Smarsh shall not disclose such records to such third party unless as authorized by applicable law.

**14.3. Public Records Access.** To the extent required by the Florida Public Records Act, Chapter 119, Florida Statutes (or its successor rule, as amended), Smarsh agrees to:

- i. keep and maintain all Public Records made or received in conjunction with the Agreement.
- ii. Provide Client with access to all Public Records that are Client Data (via making the Services available to Client) during the Service Term. For the sake of clarity, Public Records maintained by Smarsh outside of the Services will be made available to Client upon written request within a reasonable time and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- iii. During the Service Term of the Agreement Client may, at no additional cost, export records



using the standard self-service tools within Services to respond to Public Records requests. In the event of a Public Records request, Client will access such records through the Services in this manner. If instead, the Client requests that Smarsh complete the export on Client's behalf, for records that are available at self-service to Client but Client requests Smarsh complete the export, Smarsh shall provide the Client with a copy of the requested records for export within a reasonable time at a cost that does not exceed Smarsh's then-current hourly professional services rate for data extraction and exportation plus any hardware costs for portable media. For records that are not stored within the Service (i.e., corporate records) and thus not available at self-service to the Client, Smarsh shall provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by law. All data so provided to Client may be provided in PST, EML, or native format, at Client's option.

iv. Prior to, and for a period of seven (7) days following the expiration or termination of the Agreement, Client may, at no additional cost, export all Public Records from the Services using the standard self-service tools available within Services. If instead, the Client requests that Smarsh complete a full data export on Client's behalf, for records that are available at self-service to Client but Client requests Smarsh complete the export, Smarsh shall provide the Client with a copy of the requested records for export within a reasonable time at a cost that does not exceed Smarsh's then-current hourly professional services rate for data extraction and exportation plus any hardware costs for portable media. For records that are not stored within the Services and thus not available at self-service to the Client, Smarsh shall provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by law. All data so provided to Client may be provided in PST, EML, or native format, at Client's option. Smarsh will securely delete all Client Data after the termination of the Agreement.

14.4. Except as required by applicable Florida Law, Smarsh is not a public-facing company and does not receive or process Public Records requests on Client's behalf or in connection with Client's Public Records. Client agrees that Client, and not Smarsh, will be responsible for handling all Public Records requests made in connection with Client's Public Records.

14.5. The Agreement may be terminated for cause by Client for Smarsh's refusal to allow access (via Client) to Public Records. Smarsh's failure to comply with the requirements of this Section which leads to a violation by Smarsh of the public records disclosure requirements set for the in section 119.0701, Florida Statutes, shall constitute a breach of this Agreement, provided, that Smarsh has a reasonable opportunity to cure such breach in a timely manner. Additionally, Smarsh's failure to provide the public records to the Client in accordance with this Section within a reasonable time may also be subject to penalties under section 119.10, Florida Statutes.

14.6. After the termination of the Agreement, Smarsh will securely delete and destroy any duplicates of Client Data in accordance with the terms of the Agreement and in a manner that renders such Client Data unrecoverable.

IF THE VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE TELEPHONE NUMBER, EMAIL ADDRESS, AND MAILING ADDRESS LISTED ON THE ORDER FORM.

14.7. **Scrutinized Companies.** Smarsh (defined, for the purposes of this section, to include those subsidiaries and parent companies, if any, stated in Florida Statute § 287.135(1)(b)), certifies that (i) Smarsh is not participating in a boycott of Israel, Smarsh is not on the Scrutinized Companies that Boycott Israel list, not on the Scrutinized Companies with Activities in Sudan List, and not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, nor has Smarsh been engaged in business



operations in Syria. Subject to limited exceptions provided in state law, neither Smarsh nor the Client will contract for the provision of goods or services with any scrutinized company referred to above. The Client may terminate the Agreement if Smarsh is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel, or, upon written notice to Smarsh in the event that Smarsh submitted a false certification stating that it was not (1) on the Scrutinized Companies that Boycott Israel List or engaged in a boycott of Israel; or (2) was not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

- 14.8. **E-VERIFY.** In accordance with section 448.095, Florida Statutes, Smarsh agrees to comply with the E-Verify requirements set forth in Section 448.095, Florida Statutes to the extent applicable to Smarsh and the Services provided to Client herein. Smarsh, and any subcontractor with which Smarsh contracts with to provide Services to the Client under this Agreement, must register with and use the E-Verify system to verify the work authorization status of all new employees of Smarsh and any subcontractor with which Smarsh contracts with to provide Services directly to the Client. A public agency or a contractor or subcontractor thereof may not enter into a contract unless each party to the contract registers with and uses the E-Verify system. Upon written request by Client (not to exceed once every 12 months), Smarsh agrees to provide a certification to Client which certifies that (i) Smarsh is registered with and uses the E-Verify system operated by the United States Department of Homeland Security to electronically verify the employment eligibility of Smarsh's newly hired employees; and (ii) Smarsh will contractually require that all subcontractors contracted to provide services under any Florida state contract utilize and comply with the E-Verify system.
- 14.9. **Insurance.** Smarsh shall, on a primary basis and at its sole expense, maintain in full force and effect at all times during the life of this Agreement, insurance coverage and limits, including endorsements, necessary and appropriate to provide the Services under this Agreement. Smarsh agrees to provide, once every 12 months and upon written request by the Client, a summary of Smarsh's insurance coverage for review by the Client. In addition, Smarsh agrees to use commercially reasonable efforts to provide at least 30 days prior written notice of any material adverse changes to Smarsh's insurance coverage.





## Purchase Order Information

### Client to Complete:

Is a Purchase Order (PO) required for the purchase of the Services on this Order Form?

☐ No

☐ Yes – Please complete below

PO Number:

PO Amount:

Upon signature by Client and submission to Company, this Order Form shall become legally binding unless Company rejects this Order Form for any of the following reasons: (i) changes have been made to this Order Form (other than completion of the purchase order information and the signature block); or (ii) the requested purchase order information or signature is incomplete; or (iii) the signatory does not have authority to bind Client to this Order Form.

### Client authorized signature

By:  Name:

Date:  Title: