

## 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 City of Merced, CA 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 and only to the extent that such confidential information is not subject to an exemption from such public record request, 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 California, 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 – SLED Additional Terms.

**14.1 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.

9) Except as otherwise set forth in this Amendment, the Agreement will remain unchanged and in full force and effect. This Amendment, together with the Agreement is the entire agreement between the parties, and supersedes all prior agreements between them, whether written or oral in nature

## 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

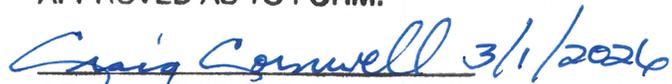
Upon signature by Client and submission to Company, this Order Form shall become legally binding unless Company rejects this Order Form for any of the following reasons: (i) changes have been made to this Order Form (other than completion of the purchase order information and the signature block); or (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: \_\_\_\_\_

**APPROVED AS TO FORM:**

  
CRAIG J. CORNWELL      Date  
City Attorney-City of Merced

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## SMARSH SERVICES AGREEMENT

This Smarsh Services Agreement (“**Agreement**”) constitutes a binding agreement between Smarsh Inc. (or the affiliate of Smarsh listed on the applicable Order Form) (“**Smarsh**” or “**Company**”) and the company signing this Agreement (“**Client**”) or the Order Form or other similar ordering document accepted by Smarsh that references this Agreement (“**Order Form**”). Smarsh and Client are each a “**party**” to the Agreement and collectively are referred to as the “**parties**”.

This Agreement includes all Order Forms, Statements of Work, exhibits, appendices, or other addenda that reference this Agreement and incorporates any applicable Service Specific Terms, Service Level Agreements, or Documentation by reference.

1. **Services.** Smarsh will provide the services specified in each Order Form (“**Service(s)**”) according to (i) the terms of the Agreement; (ii) with respect to any licensed software (“**On-Premise Software**”) or software-as-a-service (“**SaaS Service**”) provided by Smarsh, the applicable Service Specific Terms for such Services; (iii) with respect to any implementation professional services, the applicable statement of work (“**SOW**”) or onboarding package documentation provided by Smarsh; and (iv) with respect to any support services, the applicable Service Level Agreement or support package documentation provided by Smarsh. Service Documentation can be found at <https://central.smarsh.com> under Product Documentation (“**Documentation**”).
  - 1.1. **Orders.** Client may order new Services provided under this Agreement, or amend an existing Order Form, by executing a new Order Form for Services (each upon Smarsh’s acceptance). The Service Term will be set forth on the applicable Order Form (“**Service Term**”). The Service Term for any additional Services purchased after or during Client’s existing Service Term will co-term to, sync with, and renew based upon Client’s then-current Service Term for the Services to which Client has subscribed (“**Recurring Services**”).
  - 1.2. **Access & Use.** Client may access and use the Services specified on the applicable Order Form during the Service Term in accordance with the terms of this Agreement. With respect to Documentation or a Service that requires a license, Smarsh grants Client a revocable, non-exclusive, non-transferrable, worldwide license to use such Documentation or Service during the Service Term. Only Client and its Users may access and use the Service, and use of the Service in the aggregate must be within the usage limitations set forth in the applicable Order Form.
  - 1.3. **Suspension.** Smarsh reserves the right to temporarily suspend Client’s or a User’s access to a Service (i.e., disable login credentials) if Smarsh reasonably believes that: (i) Client or such User is in material breach of this Agreement; (ii) Client’s or such User’s use of a Service is likely to negatively affect the availability, security, or performance of such Service or Smarsh’s systems; or (iii) an unauthorized third party has gained access to the Service using credentials issued to Client or User by Smarsh. If Smarsh suspends Client’s or a User’s access pursuant to this Section, (a) Smarsh will provide notice of the suspension to Client as soon as reasonably practicable; (b) such suspension will be limited in duration and scope to the extent reasonably practicable; (c) such suspension will not interfere with the Services’ capture of Client Data during such suspension; and (d) Smarsh will promptly restore Client’s access to the Service after the event giving rise to the suspension has been resolved. Smarsh will not be liable for any damages resulting from such suspension.
  - 1.4. **Restrictions.**

- 1.4.1. **Use Restrictions.** Client will not (and will not knowingly permit any third party (including its Users) to): (a) use the Service to develop a similar or competing product or service; (b) reverse engineer, decompile, disassemble, or seek to access the source code, algorithms, or non-public APIs to the Service or any related features; (c) modify or create derivative works of the Service or any element of the Service; (d) copy, rent, lease, distribute, lend, assign (except as authorized under this Agreement), or otherwise transfer rights to the Services, or any part thereof for the benefit of a third party or remove any proprietary notices or labels from the Services or any part thereof; (e) use the Service (i) in a manner that violates applicable laws, rules, or regulations or otherwise negatively affects the availability, security, or performance of the Service, (ii) to perform or publish benchmarks or performance information about the Service, or (iii) in excess of the scope of its rights, quantities, volumes, or licensing; or (e) or provide access to or sublicense the Service to a third party except as authorized under the Agreement; or (f) transmit any data that is subject to the Payment Card Industry Data Security Standards (PCI DSS). Further, Client acknowledges that neither Smarsh nor the Services comply with, or are required to comply with, the PCI DSS.
- 1.4.2. **Use of the Services to Circumvent Fees.** Client will not, and will not knowingly permit any third party (including its Users) to use the Service (a) in a manner contrary to the applicable Service Specific Terms, or (b) to otherwise circumvent another Service, such as subscribing to email archiving for the purpose of marketing email archiving or bulk email archiving, which are different Services that are subject to additional and different fees. Data types converted into supported data types will be subject to additional fees (such as transforming traditionally non-email data into .EML format for archiving). Each form of electronic communication is treated as a distinct Content Type and may be billed on a per-connection basis.
- 1.4.3. **Use of Security Testing Tools.** Client will not use or knowingly permit the use of any security testing tools to probe, scan, or attempt to penetrate or ascertain the security of the Services.
- 1.5. **Updates.** Smarsh may, in its sole discretion, update or modify the Service by making available updates or modifications that may add new or eliminate existing features or functions to the Service, so long as such update or modification does not materially degrade the Service. For clarity, elimination of an existing material feature or function shall be replaced with a feature or function with similar effect unless Smarsh provides reasonable advance notice of such elimination and such elimination (i) is in furtherance of accepted industry practice or (ii) is made pursuant to applicable law.
- 1.6. **Upgrades.** Smarsh may upgrade the Service used by Client to new versions of such Service, or install patches, service packs, security updates or the like to the Services. For upgrades substantially impacting the functionality of the Service (e.g., those that require Client to retrain its Users or update a connection), Smarsh will provide Client with written notice prior to upgrade. Certain upgrades may introduce new functionality modules that will be made available to Client on an optional basis for an additional fee; Smarsh will provide Client with prior notice of any additional fees that may apply for such new modules and an option to accept or reject use of such new modules.
- 1.7. **Replacements.** Smarsh may, upon reasonable advance notice to Client, sunset, end of life, deprecate, retire, or replace any Service or feature thereof upon reasonable advance written notice to Client, provided that Smarsh makes a substantially similar Service or feature available to Client for the remainder of Client's then-current Service Term at no additional charge. If Smarsh is unable, or determines in good faith that is economically infeasible, to provide a substantially similar Service or feature, then Smarsh will issue Client a credit for the unused portion of any pre-paid Fees that are attributable to the discontinued Service or feature. Refunds

will not apply to any modifications to Services or features that are made by Smarsh to comply with applicable law or address a material security risk.

- 1.8. **Client Affiliates.** A Client Affiliate may order Services subject to this Agreement by executing a new Order Form on its own behalf that references this Agreement. **"Affiliate"** means any entity that directly or indirectly controls or is controlled by or is under common control with, the party specified. For purposes of this definition, "control" means direct or indirect ownership of more than fifty percent of the voting interests of the subject entity.
2. **Support & User Groups.** Smarsh Central, located at <https://central.smarsh.com>, is where Client can access support resources for the Services and engage with other end users in online forums regarding the Services.
  - 2.1. **Smarsh Central.** Smarsh Central provides support FAQs and other support documentation to Client. 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, provided, however, that any such changes shall not materially degrade the support services.
  - 2.2. **Groups.** Smarsh Central provides online forums and related features to Users of the Services 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 and/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 terms of use for Groups. 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 provides Groups without charge and Groups is not part of the Services.
3. **Trial Services & Proof of Concept ("POC") Services**
  - 3.1. **Trial Services.** If a trial period is indicated on an Order Form, Smarsh will provide Client with a temporary account (**"Trial Account"**) to one or more Services (**"Trial Services"**). The Trial Account will be accessible for the trial period set forth in the Order Form, or if no trial period is stated, the trial period will be thirty (30) days.
  - 3.2. **Proof of Concept ("POC") Services.** If agreed by the parties pursuant to an Order Form, Smarsh will provide Client with temporary Proof of Concept Services (**"POC Services"**) subject to the additional restrictions set forth in the Order Form. The POC Services will be provided to Client for the period set forth in the Order Form, or if no period is stated, the POC Services period will be thirty (30) days. For POC Services, unless otherwise agreed by the parties, provisioning is limited to five (5) users per Service, and any onboarding fees are invoiced and due upon execution of the Order Form. Client will own the success criteria and testing.
  - 3.3. **No Liability for Trial Accounts or POC Services.** Regardless of anything to the contrary in this Agreement, Smarsh will have no liability for any Trial Services or POC Services. TRIAL SERVICES AND POC SERVICES ARE PROVIDED "AS IS", WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, AND MAY BE TERMINATED BY SMARSH UPON WRITTEN NOTICE TO CLIENT. EXCEPT AS OTHERWISE AGREED, ANY DATA INGESTED OR OTHERWISE ENTERED INTO TRIAL SERVICES OR POC SERVICES WILL BE DELETED AT TERMINATION OR EXPIRATION.

4. **Third-Party Data Sources & Client Data.** To capture or archive data, the Services are dependent on receiving data from Third-Party Data Sources or Client's own systems.

4.1. **Third-Party Data Sources.** The Services may receive data from third-party data sources on behalf of Client, such as email application providers (e.g., Microsoft), telecommunication companies (e.g., Verizon or AT&T), social media networks (e.g., Facebook), or business content management providers or customer relationship management software (e.g., Salesforce), including those third parties' APIs or platforms ("**Third-Party Data Sources**").

4.1.1. Client understands that Third-Party Data Sources are not offered, controlled, or provided by Smarsh, and Smarsh is not responsible for any outages, lost data, service interruptions, or failures caused by or resulting from any action or failure to act by a Third-Party Data Source. Smarsh does not control and is not responsible or liable for how a Third-Party Data Source transmits, accesses, processes, stores, uses, or provides data to Smarsh. Smarsh expressly disclaims all liability related to or arising from any Third-Party Data Sources, 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 accounts by the Third-Party Data Source.

4.1.2. Client is solely responsible for ensuring that Client complies with all Third-Party Data Source terms and conditions. Client acknowledges that certain Third-Party Data Sources do not represent that they are suitable for sensitive communications and do not encrypt messages sent over such Third-Party Data Source networks, including social media providers, telecommunication carriers, and certain messaging platforms. Client agrees that, if Client transmits sensitive health, financial, or personal information via these unsecured Third-Party Data Source 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.

4.2. As used in this Agreement, the term "**Client Data**" means: (a) the data that the Services capture or archive from Client's systems or from Client's Third-Party Data Sources, (b) Client's historical data provided by or on behalf of Client that is ingested into the Services, and (c) all content, data, and information that is submitted, posted, uploaded, captured, or otherwise transmitted to the Services by or on behalf of Client from Client's Systems or Third-Party Data Sources. Client hereby grants Smarsh a limited, non-exclusive license to access and use Client Data as necessary to provide support and improve the Services on behalf of Client, or as otherwise authorized hereunder or by Client in writing to Smarsh.

4.3. **Usage Data.** Smarsh may collect telemetry data generated by Client's use and operation of the Services ("**Usage Data**") and use such Usage Data to operate, provide, improve, or support the Services and for other lawful business purposes. Smarsh may not disclose Usage Data externally unless Smarsh deidentifies such Usage Data in a manner that ensures that such Usage Data cannot identify the Client or its Users. **Usage Data excludes any Client Data.**

## 5. **Client Obligations.**

5.1. Because Smarsh does not have access to Client's systems, nor does Smarsh control or have access to Client's Third-Party Data Sources, Client is solely responsible for monitoring the data within the Services, Client's systems, and Third-Party Data Sources to ensure that all such data is being captured accurately by the Service. Client will promptly notify Smarsh of any inconsistencies or inaccuracies in the capturing of Client Data, as well as of any delivery failures or outages of Client's systems or Client's Third-Party Data Sources that could affect the transmission or capture of Client Data by the Services.

5.2. It is Client's responsibility to protect and encrypt (i) all data sent to the Services from Client's systems and Client's Third-Party Data Source(s), and (ii) historical data sent to Smarsh by Client or on behalf of Client for ingestion into the Services. Smarsh will have no responsibility or liability for any data that Client, or any Third-Party Data Source(s) transmits to Smarsh on behalf of Client, 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 Data Sources that affects the transmission or capture of Client Data to the Services. Client is solely responsible for ensuring that its systems and Third-Party Data Sources are duly configured to meet the requirements of the Services to capture data from authorized end-user accounts, devices, web domains, as applicable.

- 5.3. Client is solely responsible for all 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) violate the rights of any third parties, including any right that may exist under contract or tort theories. Client will comply with all applicable local, state, national, or international 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.
- 5.4. 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 remain 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.
- 5.5. Client may provide Representatives with access to the Services 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.
- 5.6. Client may designate user roles with different levels of access for use or support of the Services. An "**Authorized User**" is the administrative user 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 login credentials with any other third party.
- 5.7. **Privacy Jurisdictions.** Prior to the Services ingesting data on behalf of Client, Client shall inform Smarsh in writing if Client Data is subject to any data protection rules and regulations, including Regulation (EU) 2016/679 of the European Parliament of the Council of 27 April 2016 ("**Privacy Rules**"). If Client plans to capture and archive any Client Data subject to any Privacy Rules not currently contemplated by this Agreement, Client shall promptly notify Smarsh, and the parties will work in good faith to update the Agreement, including the applicable Data Protection Addendum (or other similar document) to address such new privacy jurisdictions.

## 6. **Term & Termination.**

- 6.1. **Agreement Term.** The Agreement will begin on the execution date of this Agreement or the applicable Order Form and will end when there are no active Services provided by Smarsh to Client pursuant to this Agreement.
- 6.2. **Service Term.** The Service Term will begin as set forth in the Order Form and will continue for the Service Term specified on the Order Form, unless agreed otherwise in writing.
- 6.3. **Renewals & Non-Renewal.** Unless set forth otherwise in the applicable Order Form, Services that are provided on a recurring basis will renew automatically for additional, successive 12-

month terms, unless Smarsh or Client provides the other party with written notice of non-renewal or termination in accordance with this Section. At least ninety (90) days prior to the end of the then-current Service Term, Smarsh will provide Client with written notice of the pending renewal of the Recurring Services ("**Renewal Notice**"). If Client does not provide written notice of its intent to cancel or reduce the scope or Minimum Commitments for the Services set forth in the Renewal Notice sixty (60) days prior to the end of the then-current Service Term, Client shall be deemed to have accepted the renewal of such Services based on the scope and Minimum Commitments set forth in the Renewal Notice. Smarsh may elect not to renew a Service by providing no less than thirty (30) days' written notice to Client prior to the end of the then-current Service Term.

- 6.4. **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 thirty (30) days following the non-breaching party's receipt of written notice thereof. Smarsh reserves the right to temporarily suspend Client's access to the Services in the event of a breach of this Agreement until such breach is cured, and Smarsh will not be liable for any damages resulting from such suspension.
- 6.5. **Termination of an Order Form or SOW.** Either party may terminate the Services provided under an Order Form or SOW if the other party materially breaches its obligations under such Order Form or SOW, and such breach remains uncured for a period of thirty (30) days following a party's receipt of written notice thereof.
- 6.6. **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 (sixty) (60) days.
- 6.7. **Effect of Termination.** Upon any termination or expiration of the Agreement: (a) Client's right to access and use the Service, and any license by Smarsh to Client related to the Service, will immediately cease; (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 Service Term; and (c) upon request, each party will return to the other or delete the Confidential Information of the other party (except Client Data, the return and deletion of which is handled separately as detailed below or as covered in the applicable SOW); provided that each party may retain a copy of Confidential Information in accordance with its internal document retention policy requirement.
- 6.7.1. **Client Data Transition – Professional Archive.** Upon the termination of this Agreement or the applicable Order Form, Client will cease to have access to the Services (and the Client Data stored within the Services). Client may request that Smarsh perform professional services to export or migrate the Client Data remaining in the Services subject to the execution of: (i) a SOW covering such export or migration services and the applicable fees, and (ii) an Order Form covering any fees for maintaining the Client Data (and, as applicable, access to the Services) during the duration of the professional services. Any export or migration services will be performed at Smarsh's then-current rates for professional services. Unless agreed otherwise in writing by the parties or prohibited by applicable law, upon the termination of this Agreement or the applicable Order Form, Smarsh shall delete all Client Data as soon as practicable.
- 6.7.2. **Transition Services – In General.** If requested in writing by Client prior to termination of this Agreement or the applicable Order Form, Smarsh shall provide Client with transition assistance for up to twelve (12) months (or such longer period as mutually agreed) subject to the execution of an Order Form or other agreement to facilitate the orderly transfer of Client Data to Client or its third-party designee ("**Transition Assistance**"). If the Transition Assistance includes access to the Services, Smarsh shall provide such Services at the then-current rates for the Services. If the Transition Assistance includes professional services for

the migration or export of Client Data, such services shall be subject to the then current rates for such professional services and the execution of a SOW.

The Term & Termination section shall survive the termination of this Agreement.

7. **Fees & Payment.** Client will pay the fees for the Services as set forth in the applicable Order Form ("**Fees**"). Upon execution of the Order Form, Smarsh will invoice Client for the Fees for the Recurring Services, one-time Fees, and Fees for professional services per the terms of the Order Form, or in the case of one-time fees, the applicable SOW. Fees for a renewal Service Term will be invoiced upon renewal. Client shall pay Fees within thirty (30) days of the date of the invoice. If Client requires a purchase order to facilitate an invoice payment, Client must provide the purchase order upon execution of the applicable Order Form.
  - 7.1. **Third-Party API Usage.** In the event that any Third-Party Data Source charges any API usage service fees or passes through any costs to Smarsh that are (i) in connection with Client's use of a Service and such Third-Party Data Sources, and (ii) Smarsh can reasonably demonstrate that such costs are directly allocated to Client, Smarsh reserves the right to pass those costs along to Client ("**Third-Party Fees**"). Client agrees to pay all such Third-Party Fees when Smarsh invoices the Client for such fees, which will include a breakdown and description of the fees.
  - 7.2. **Disputes & Failure to Pay.** If Client disputes any invoice or portion thereof, Client must notify Smarsh within thirty (30) days of the date of invoice. Invoices not disputed within thirty (30) days from the date of invoice will be deemed accepted by Client. Smarsh may assess, and Client will pay, a late fee of one and one-half percent (1.5%) per month on any amount not fully paid when due. In the event Client fails to pay invoiced amounts when due, Smarsh may (a) suspend Client's access to the Services upon written notice and a fifteen (15) day cure period, consistent with Section 1.3 (Suspension); and (b) certain professional or support services until that time when Client pays such unpaid Fees.
  - 7.3. **Discount Expiration & Uplift.** Upon renewal, Smarsh reserves the right to apply an uplift to the Recurring Fees for the Services set forth in each applicable Order Form, provided that any such uplift will not exceed ten percent (10%) of the most recent Recurring Fees ("**Uplift**"). For the sake of clarity, Uplift is separate and distinct from any price increases that may occur as a result of (a) special or 'one time' discount expiration, (b) price changes due to Third-Party Data Sources, or (d) changes in Service scope or Minimum Commitments.
  - 7.4. **Third-Party Data Sources Price Changes.** Client recognizes that Smarsh is unable to control the commercial models of the Third-Party Data Sources used by Client or Smarsh's partners (with respect to resold Services). If a Third-Party Data Source or Smarsh partner changes their pricing, and such change impacts the commercial feasibility of Smarsh's Fees for the applicable Service, Smarsh will provide Client with written notice of such change, including any known impact on Client's Service and any price increase for the impacted Service. Any resulting price increase will become effective upon the next renewal of the impacted Service, unless set forth otherwise by Smarsh in its written notice to Client.
  - 7.5. **Usage Limitations.** Client's use of the Services is subject to those usage limitations and performance constraints set forth in the applicable Documentation, Agreement, and Order Form. If Client exceeds such usage limitations, Client will be subject to and agrees to pay promptly upon being invoiced by Smarsh, additional usage-based overage Fees.
  - 7.6. **Minimum Commitment & Invoice of Overages.** Client agrees that the Recurring Services Fees and quantities for the Services in the applicable Order Form(s) are Client's minimum purchase commitment ("**Minimum Commitment**") during the applicable Service Term. The Minimum Commitment is the total sum of the Recurring Services Fees set forth in the applicable Order Form. The Fees for Recurring Services will be invoiced at the billing frequency set forth in the 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 rates specified in the Order Form; and (b) if Client's usage is less

than Client's Minimum Commitment, Smarsh will invoice Client for the Minimum Commitment. Client understands that, even if Client terminates prior to the end of the applicable Service Term, such Minimum Commitment shall be due to Smarsh.

- 7.7. **Minimum Commitment Adjustment.** Prior to renewal, Smarsh reserves the right to review Client's actual usage of the Services and increase the Client's Minimum Commitments for the upcoming renewal to align with Client's actual usage. Such adjustments shall be based on Client's actual usage during the final year of the then current term, unless otherwise agreed in writing by the parties. Adjusted Minimum Commitments shall be effective upon renewal of the Services. Further, If Client wishes to reduce their Minimum Commitments at renewal to match Client's actual usage (to the extent permitted given the Service), Smarsh reserves the right to reprice the Service without regard to the prior Service Term's unit rate or pricing. This repricing may also result in the removal of any volume discounts.
- 7.8. **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. If Client is tax-exempt, Client is responsible to provide a copy of their current tax-exempt certificate upon execution.

The Fees & Payment section shall survive the termination of this Agreement.

## 8. **Confidentiality.**

- 8.1. **"Confidential Information"** means (a) the non-public information of the disclosing party, including information relating to the disclosing party's product plans, present or future developments, customers, designs, concepts, costs, prices, finances, marketing plans, processes, policies, business opportunities, software, software manuals, personnel, research, development, or know-how, security reports and attestations, audit reports, financial, and other business and/or technical information; (b) any information designated as "confidential" or "proprietary" or which, under the circumstances, would reasonably be deemed to be confidential; and (c) the terms of this Agreement. "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 by the receiving party's records; or (iv) the receiving party develops independently without reference to the Confidential Information.
- 8.2. **Obligations with Respect to Confidential Information.** The receiving party agrees that: (a) 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 disclosing 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 disclosing party in its possession or control but no less than the measures it uses to protect its own confidential information. The receiving party may disclose Confidential Information of the disclosing 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 ("**Compelled Disclosure**"); or (ii) to the receiving party's 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**"). The receiving party will provide reasonable cooperation to the disclosing party in connection with a Compelled Disclosure at the disclosing party's sole expense. The receiving party shall remain fully liable under this Agreement for any breach of this Section by its Agents. The receiving party will promptly notify the disclosing party in writing upon becoming aware of any unauthorized use or disclosure of the disclosing party's Confidential Information.

8.3. **Remedies.** Each party acknowledges and agrees that a breach of the obligations of this Section by the receiving 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 immediately seek equitable relief, including injunction and specific performance, in the event of any breach or threatened breach or intended breach by the receiving party, without waiving any other available rights or remedies.

8.4. **Feedback.** "Feedback" is any suggestion or idea for improving or otherwise modifying Smarsh's products or services. Feedback is not Confidential Information. Nothing in the Agreement will restrict Smarsh's right to make use of Feedback in any way Smarsh sees fit, and Smarsh is not required to compensate or credit Client, User, or the individual who provided such Feedback. "If Feedback contains Client's Confidential Information, Smarsh may only use that portion of the Feedback that is not Client's Confidential Information. Client understands and acknowledges that it has no duty or obligation to provide Feedback to Smarsh.

The Confidentiality section shall survive the termination of this Agreement.

9. **Intellectual Property.** As between Smarsh and Client, all right, title, and interest in and to the Services, Usage Data, Feedback, 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, as well as Smarsh's Confidential Information (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 the Intellectual Property. As between Smarsh and Client, Client's Confidential Information and Client Data are 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.

The Intellectual Property section shall survive the termination of this Agreement.

10. **Representations and Warranties; Warranty Disclaimer.**

10.1. **Performance Warranty.** Smarsh represents and warrants that it will use commercially reasonable efforts to provide the Services in accordance with generally accepted industry standards.

10.2. **Authority.** Each party 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 it is a party.

10.3. **Compliance with Laws.** Each party represents and warrants that it will comply in all material respects with the laws and regulations applicable to the operation of their business.

10.4. **Warranty Disclaimer; No Guarantee.** EXCEPT AS EXPLICITLY SET FORTH OTHERWISE, 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, TO THE FULLEST EXTENT PERMITTED BY LAW. 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, INTERCEPTION OF, OR LOSS OF CLIENT DATA WHILE IN TRANSIT VIA THE INTERNET OR A TELECOMMUNICATIONS PROVIDER'S NETWORK, 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 SERVICES, 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.

SECTION 10.4 SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

## 11. Indemnification.

- 11.1. **Client Indemnification.** 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) (collectively, "**Claims**"), 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.
- 11.2. **Smarsh Indemnification.** Smarsh will defend and indemnify Client, its officers, directors, employees, and agents, from and against any Claims arising from Client's use of the Services in accordance with this Agreement that infringes upon any United States patent, trademark or copyright. Client will (a) provide Smarsh with prompt written notice upon becoming aware of any such Claim; except that Smarsh will not be relieved of its obligation for indemnification if Client fails to provide such notice unless Smarsh is actually prejudiced in defending a Claim due to Client's failure to provide notice in accordance with this Section; (b) allow Smarsh sole and exclusive control over the defense and settlement of any such Claim; and (c) if requested by Smarsh, and at Smarsh's expense, reasonably cooperate with 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 not authorized in writing by Smarsh; (iii) the combination of the Services with any services, software, or technology not provided or authorized in writing by Smarsh; or (iv) Client's failure to use updated or modified versions of the Services made available by Smarsh.
- 11.3. **Settlement of Claims.** Notwithstanding anything to the contrary in this Agreement, neither party will settle any Claim for which it has an obligation to indemnify under this Section admitting liability or fault on behalf of the indemnified party, nor create any obligation on behalf of the indemnified party without prior written consent, which will not be unreasonably withheld, conditioned, or delayed.
- 11.4. **Sole Remedy.** The indemnification obligations in Section 11.2 and the limited rights of replacement contained in this Section are Client's sole remedy, and Smarsh's sole obligation, with respect to claims of infringement under the Agreement. If the Services are subject to, or if Smarsh reasonably believes that the Services may become subject to, a claim of infringement under Section 11.2, Smarsh may, in its sole discretion, (a) procure for Client the right to continue to use the Services; (b) modify the Services so 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 prior written notice to Client, terminate the applicable Service and issue Client a pro-rata refund for the unused portion of any pre-paid Fees as of the date of termination of Services.

The Indemnification section shall survive the termination of this Agreement.

## 12. Remedies and Limitation of Liability.

### 12.1. Remedies.

12.1.1. **Performance.** In the event of a breach of any performance warranty under Section 10.1, 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 this Section. If Smarsh is unable to provide an error correction or work-around that corrects the reported non-conformity, Client may terminate the applicable Service and be entitled to a pro-rata refund of any pre-paid Fees for the duration of time between the termination date of such Service and the end of the applicable Service Term.

12.1.2. **Service Levels.** 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.

### 12.2. Limitation of Liability.

12.2.1. **EXCLUSION OF INDIRECT AND CONSEQUENTIAL DAMAGES.** 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, BUT NOT LIMITED TO, LOST PROFITS, LOSS OF REVENUES, LOSS OF GOODWILL, COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES, OR BUSINESS INTERRUPTION) ARISING FROM OR IN CONNECTION WITH THE SERVICES, WHETHER BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), REGARDLESS OF THE THEORY OF LIABILITY, OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER THE PARTY HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OCCURRING, OR IF A PARTY'S REMEDY OTHERWISE FAILS ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW. 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 LAWS RULES, REGULATIONS, OR DIRECTIVES.

12.2.2. EXCEPT WITH RESPECT TO SECTION 11.2 – SMARSH'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.

12.2.3. **CUMULATIVE LIABILITY.** THE LIMITATION OF LIABILITY SET FORTH IN THIS SECTION 12.2 IS CUMULATIVE. ALL PAYMENTS MADE FOR ALL CLAIMS AND DAMAGES WILL BE AGGREGATED TO DETERMINE IF THE LIMIT HAS BEEN REACHED.

The Remedies & Limitation of Liability section shall survive the termination of this Agreement.

## 13. General Terms.

13.1. **Data Security and Privacy.** Smarsh shall implement and maintain commercially reasonable and appropriate technical and organizational measures to protect Client Data, including any Personal Information contained within the Client Data, as set forth in Smarsh's Information Security Addendum. If Client intends to transmit any Personal Information or Personal Data to Smarsh, the transfer and processing of such Personal Information will be subject to Smarsh's Data Processing Addendum, a copy of which can be requested from [privacy@smarsh.com](mailto:privacy@smarsh.com).

- 13.2. **Export Restrictions.** Client will comply with the applicable 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 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.
- 13.3. **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 ("**Change of Control**"). 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.
- 13.4. **Force Majeure.** A failure of a 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 a party (each a "**Force Majeure Event**"), including, but not limited to: (a) acts or omissions of any governmental entity; (b) any rules, regulations or orders issued by any governmental authority or any officer, department, agency, or instrumentality thereof; (c) natural disasters, fire, storm, flood, earthquake, accident, war, rebellion, insurrection, terrorist act, riot, third-party strikes, third-party lockouts, and pandemics; or (d) utility or telecommunication failures or outages; so long as such party provides prompt notice of the Force Majeure Event, uses reasonable efforts to mitigate the impact of the Force Majeure Event, and uses reasonable efforts to resume performance after any such Force Majeure Event. A Force Majeure Event will not relieve Client's obligation to pay Fees under this Agreement. This section shall survive the termination of this Agreement.
- 13.5. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of New York, 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 the County of New York in the State of New York, and the parties hereby irrevocably consent to the personal jurisdiction and venue therein. This Section shall survive the termination of this Agreement.
- 13.6. **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.
- 13.7. **Legal 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](mailto:legal@smarsh.com).

- 13.8. **Publicity.** Smarsh may disclose that Client is a customer of Smarsh, provided that Client may revoke, limit, or withdraw its consent at any time by providing Smarsh with written notice to [marketing@smarsh.com](mailto:marketing@smarsh.com).
- 13.9. **Severability; Waiver.** If 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 to reflect 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 in this Agreement 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.
- 13.10. **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 (or similar Client-issued documents), and such terms are excluded from 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. This Agreement shall become effective as between Client and Smarsh upon Client's signature of the applicable Order Form referencing this Agreement.
- 13.11. **Amendments.** The parties may amend this Agreement by a writing signed by both parties. For the avoidance of doubt, electronic communications on their own will not amend this Agreement. Smarsh may amend this Agreement (or any Service Specific Terms) by providing Client with written notice of any changes (including a general description of the changes), and such changes shall be deemed to be effective between the parties beginning on the date that is fifteen (15) days after the date of such notice, unless Client objects to such changes in writing within the fifteen-day period.
- 13.12. **Security Audits.**
- 13.12.1. **Annual Due Diligence & Security Audits.** Smarsh uses external auditors to conduct audits to verify the adequacy of Smarsh's security program ("**Security Audits**"). Smarsh agrees to conduct Security Audits on an annual basis using independent third-party auditors according to ISO 27001 or SSAE 18 standards (or equivalent standard). Client agrees that Smarsh may satisfy Client's audit requests and demonstrate its compliance with the security terms of this Agreement by making available to Client (in each case, to the extent applicable and available for the applicable Services) the following documentation: Smarsh's most recent (i) standard information gathering questionnaire, (ii) ISO 27001 report (or other similar third-party audit report), (iii) annual independent SSAE 18 report, and (iv) executive summary of Smarsh's most recent annual penetration test for the applicable Services ("**Standard Audit Documentation**").
- 13.12.2. **Non-Standard Audits.** If Client requires Smarsh to respond to Client's or a third-party's due diligence questionnaires or otherwise participate in audit activities that are outside the scope of Section 13.13.1 (in each case, determined at Smarsh's reasonable discretion), such requirement will be referred to as a "**Non-Standard Audit**". Smarsh will participate in Non-Standard Audits (i) at Client's sole expense, (ii) subject to Smarsh's standard hourly rate for professional services, and (iii) not more than once in any 12-month period. Prior to participating in any Non-Standard Audit, Smarsh will provide Client with an estimate of the costs associated with completing the Non-Standard Audit (based on the nature and scope of the requests) and may require an initial deposit from Client.
- 13.12.3. **Regulatory Requests for Information.** If Client receives a request for information about Smarsh's provision of the Services from a regulator or regulatory authority with jurisdiction over Client, Smarsh agrees to provide reasonable cooperation and assistance to Client to address such request in a reasonable and timely manner, including by making available

Smarsh's Standard Audit Documentation. For the sake of clarity, a request for information under this Section will not be considered Client's annual Security Audit.

The Audits section shall survive the termination of this Agreement.

13.13. **No Third-Party Beneficiaries.** This Agreement does not confer any benefits on any third party (including any User or Affiliate) unless explicitly stated.

13.14. **Conflict.** In the event of a conflict between the terms of this Agreement, the Order Form, the SOW, and the Data Processing Addendum, the conflict shall be resolved in the following order of precedence with each taking precedence over those listed subsequently, unless specifically set forth otherwise in the applicable agreement or document:

1. Data Processing Addendum (with respect to the processing of Personal Data);
2. Smarsh Services Agreement;
3. Order Form; and
4. Statement of Work (if entered into by the parties).

13.15. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Counterparts may be delivered via electronic mail (including .pdf or electronic signature) or other transmission method and any counterpart so delivered will be deemed to have been duly and validly delivered and be valid and effective for all purposes.

## **SERVICE SPECIFIC TERMS EXHIBIT**

The Service Specific Terms contained herein shall apply to Client during the applicable Service Term if Client uses, or purchases, the applicable Service.

Service Specific Terms for Services not purchased nor used by Client shall not apply unless or until that time when Client or a Client Affiliate uses or purchases such Services.

The applicable Service Specific Terms are incorporated into this Agreement by reference.

These Service Specific Terms shall govern Client's use of the applicable Services. Client's use of the applicable Service shall be deemed to be acceptance of the applicable Service Specific Terms.

The Client agrees to comply with the applicable Service Specific Terms for the duration of the Agreement or applicable Service Term for such Service.

### **SERVICE SPECIFIC TERMS**

Professional Archive

Cloud Capture & Vantage Capture

Capture Mobile

Carrier Pass Through Terms

Web Archive

X (Twitter)

Vendor Risk Management

Cyber Compliance - Phishing

Nuclei (resold by Smarsh)

Smarsh University

Business Solutions (resold by Smarsh)

## SERVICE SPECIFIC TERMS - PROFESSIONAL ARCHIVE

- Service Description.** “Professional Archive” is a SaaS Service that enables Client to capture and archive data from the Client’s Third-Party Data Services. Professional Archive includes additional modules, including a supervision module for compliance review of electronic communications and a discovery module for managing the collection of electronic communications for litigation holds, eDiscovery, and regulatory audits. Professional Archive is licensed by Connections. A “Connection” means one of the following, as applicable to the specific Channel: (a) a user account or identifier such as an email mailbox, group email box, account name, username; telephone number (b) an instant message account or screen name; (c) a social media page or profile; or (d) a mobile device phone number.
- Data Retention.** Professional Archive is designed to retain Client Data within Professional Archive during the Term of the Agreement for the retention periods set by Client. Unless configured otherwise, the maximum retention period is seven (7) years. If Client requires Client Data to be retained for longer than 7 years, additional fees will apply. 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 may retain Client Data for up to six (6) months to allow time for Client to make alternative arrangements for data transition to another provider, provided, that, any such export of data post termination of the Agreement will be subject to additional fees.. Smarsh may delete Client Data in its sole discretion.
- Client Data Exports.** During the Term and subject to certain restrictions, Client may complete self-service exports of Client Data using Professional Archive’s standard tools and processes (as set forth in the Documentation). 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.
- 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.
- Service Environment.** The Professional Archive is hosted on a Smarsh-managed service environment in the United States.
- Service Levels.** Professional Archive, and the relevant support services, will be provided in accordance with the Service Level Agreement attached to this Agreement. For the sake of clarity, in the event of a breach of these SLAs with respect to Professional Archive, Smarsh will provide Client with the credit stated in the SLAs. The foregoing remedy is Client’s sole and exclusive remedy for a breach of the applicable SLAS.
- Letter of Undertaking.** Upon Client’s written request and only to the extent that Smarsh is providing an “electronic record keeping system” as described in SEC Rule 17a-4(f)(or similar SEC Rule such as 18a-6), Smarsh agrees to provide Client with an undertaking that (i) Smarsh’s archive software (as applicable) used by Client is an “electronic recordkeeping system,” and (ii) Smarsh will facilitate within its ability, and not impede or prevent, the examination, access, download, or transfer of the Client’s

records by a representative or designee of the Securities and Exchange Commission as permitted under the law, or a trustee appointed under the Securities Investor Protection Act of 1970 ("17a-4 Letter"). In the event that Client requires a 17a-4 Letter, Client represents and warrants to Smarsh that (i) Client (or a Client Affiliate) is subject to the rules of the Securities and Exchange Commission governing the maintenance and preservation of the records (e.g., Client Data) maintained by the Services, (ii) Client has "independent access" to, and the ability to download, Client Data using the Services, and (iii) Client consents to Smarsh fulfilling its obligations with respect to the provision of the Services under this Agreement and to Smarsh providing the required undertakings as set forth in SEC Rule 17a-4(f), including those required by 17a-4(f)(3)(v)(A), 17a-4(i)(1)(ii)(A), or any successor provisions. If Client wishes for Smarsh to act as a "designated third party" under SEC Rule 17a-4(f)(3)(v)(A), Client must provide Smarsh with advance written notice and the ability to consent to such role, and such consent may require Client to agree to certain reasonable conditions in order for Smarsh to act in such capacity.

8. **Mobile Terms.** In the event that Client enables the capture of content and electronic data for certain mobile phone carriers (such as Verizon, AT&T), Smarsh is required to pass along additional pass-through terms, and such terms of service shall apply and govern Client's capture and use of such third-party capture channel (as between Client and the applicable third-party). Client agrees to comply with such additional pass-through terms for the applicable carrier, as applicable and set forth below in the **Carrier Pass Through Terms of Use**.

## SERVICE SPECIFIC TERMS - CLOUD CAPTURE

1. **Service Description.** The “**Capture Platform**” is a software as a service platform that enables Client to capture electronic communications (outside of Mobile communications) and other content types from various Third-Party Data Sources, such as email, and transmit such electronic communications to a location designated by the Client, such as (i) Client’s own archive system, (ii) Client’s archive with Smarsh, or (iii) Client’s third-party archive system.
2. **Temporary Data Retention.** The Capture Platform is designed to retain Client Data for temporary retention periods (“**Temporary Retention Period**”) of up to 30 days, as designated by the Client in the Capture Platform. The maximum retention period for the Capture Platform is 90 days.
3. **Data Deletion.** The Capture Platform is designed to delete Client Data after the expiration of the Temporary Retention Period.
4. **Service Environment.** Smarsh will deploy the Capture Platform in a multi-tenant service environment located in the United States using AWS as a cloud hosting provider.
5. **DISCLAIMER.** THE CAPTURE PLATFORM IS NOT DESIGNED TO BE USED FOR LONG TERM STORAGE OR AS A DATA ARCHIVE. THE CAPTURE PLATFORM IS NOT DESIGNED TO PERFORM AS AN ARCHIVE OF RECORD ON BEHALF OF THE CLIENT OR TO MEET CLIENT’S RECORD RETENTION REQUIREMENTS. WITH RESPECT TO THE CAPTURE PLATFORM ONLY, SMARSH EXPRESSLY DISCLAIMS ANY RESPONSIBILITY OR OBLIGATION IMPOSED ON THIRD- PARTY RECORD HOLDERS (AS A SERVICE PROVIDER TO THE APPLICABLE REGULATED ENTITY) BY STATUTE OR BY RULE, REGULATION OR OPINION OF ANY GOVERNMENTAL AGENCY, REGULATORY ORGANIZATION OR SIMILAR INSTITUTION, INCLUDING WITHOUT LIMITATION, THE U.S. SECURITIES AND EXCHANGE COMMISSION, THE FINANCIAL INDUSTRY REGULATORY AUTHORITY, OR ANY SECURITIES EXCHANGE.
6. **Service Levels.** Cloud Capture, and the relevant support services, will be provided in accordance with the Service Level Agreement attached to this Agreement. For the sake of clarity, in the event of a breach of these SLAs with respect to Cloud Capture, Smarsh will provide Client with the credit stated in the SLAs. The foregoing remedy is Client’s sole and exclusive remedy for a breach of the applicable SLAS.
7. **Mobile Terms.** In the event that Client enables the capture of content and electronic data for certain mobile phone carriers (such as Verizon, AT&T), Smarsh is required to pass along additional pass-through terms, and such terms of service shall apply and govern Client’s capture and use of such Third-Party Data Source capture channel (as between Client and the applicable Third-Party Data Source). Client agrees to comply with such additional pass-through terms for the applicable carrier, as applicable and set forth below in the **Carrier Pass Through Terms of Use**.
8. **Capture Server or Vantage Capture Server.**
  - a. **Activation.** Unless Client purchases a separate Professional Services package of installation and configuration services for Capture Server products from Smarsh, Client must perform the installation of Capture Server products on Client servers without assistance from Smarsh. The Activation Date for Capture Server products is the date that the Software is delivered to Client pursuant to the Software Performance Warranty below. Client accepts Capture Server products on the Activation Date. If Client purchases a Professional Services package of installation and configuration services for Capture Server products, Smarsh will assist Client with the installation and configuration of such Capture Server products in accordance with the applicable SOW for such Professional Services package. The Fees for the Professional Services package depend on the Capture Server licenses purchased and will be specified in the applicable SOW. In addition, Client

will pay the expenses reasonably incurred by Smarsh in the performance of such Professional Services.

b. **License Grant.** Subject to Client's compliance with the terms of this Agreement and payment of applicable fees, Smarsh grants to Client a non-exclusive, non-transferable, non-sublicensable license during the Term to download, install, make one backup copy of the Capture Server product, and use the object code form of the Capture Server product together with its documentation, solely for Client's business purposes up to the number of licenses specified in the Order Form. Capture Server products may be delivered with, or link to, programs that are copyrighted and made available under one or more open source or public licenses that permit copying, modification and redistribution of its source code ("**Open Source Software**"). Open Source Software is separate and distinct from the Capture Server product and is made available pursuant to the terms of its applicable license. Smarsh and its licensors retain ownership of all right, title, and interest in and to Capture Server products. Except as expressly set forth in this Section, no rights or licenses are granted to Client. Client shall not reverse engineer, decompile, disassemble or otherwise attempt to discover the source code or underlying ideas or algorithms of the Capture Server products. Client shall not (i) modify, translate, or create derivative works of, copy (except for one archival or back-up copy), or transfer to a third party any rights in the Capture Server products. Client shall not remove, deface, or obscure any copyright, trademark, or other proprietary notice contained on or in the Software.

c. **Records and Audits.** Client will maintain accurate records necessary to prove compliance with the terms of the license, including the number of users of the Capture Server products. Upon Smarsh's reasonable written request, Client will provide Smarsh with information necessary to verify such compliance. If Client discovers that it has exceeded the number of licenses or connections that it has purchased, Client will immediately notify Smarsh and pay the associated fees for such additional licenses and Connections. Upon 7 days' prior written notice, Smarsh may conduct an audit of Client's relevant records and facilities to verify Client's compliance with this Section. Such audits will be at Smarsh's expense, unless the audit reveals that Client has underreported licenses or connections, or underpaid Fees, by more than 10% during any audit period, in which case Client will bear the reasonable costs of such audit. If an audit reveals any underpayment, Client will promptly pay any amount due.

d. **Performance.** Client is responsible for the supervision, management, and control of its affiliates' and end users' use of Capture Server products, and for the provision and proper maintenance of the hardware and any supporting software (such as operating-system updates and virus-protection software). Capture Server products may contain automated tracking features to verify Client's use is within the terms of the license. Client will not hinder, impede, alter or prevent the automated tracking features. Smarsh will deliver the Capture Server products to Client in a good and workmanlike manner in accordance with generally accepted industry standards ("**Software Performance Warranty**"). The foregoing warranty will expire 30 days after Smarsh's delivery of the Capture Server product. In the event of a breach of the Software Performance Warranty, Smarsh will repair the Capture Server product so that it meets the foregoing Software Performance Warranty or provide Client with a replacement. The foregoing remedy represents Client's sole and exclusive remedy for any damage, loss, or claim arising out of the Capture Server products. Smarsh makes no other representation or warranty with respect to the Capture Server products. OTHER THAN THE SOFTWARE PERFORMANCE WARRANTY, THE CAPTURE SERVER PRODUCTS ARE PROVIDED "AS IS." THE WARRANTY CONTAINED IN THIS SECTION, AND THE OBLIGATION TO PROVIDE SUPPORT, DO NOT APPLY TO ANY SOFTWARE THAT IS NOT PROVIDED BY SMARSH OR THAT IS LICENSED TO CLIENT DIRECTLY FROM THE APPLICABLE SOFTWARE PROVIDER. IF CLIENT LICENSES SOFTWARE DIRECTLY FROM THE LICENSOR OF SUCH SOFTWARE, CLIENT MUST CONTACT THE LICENSOR'S SUPPORT FOR ANY ISSUES RELATED TO SUCH SOFTWARE.

e. **Limitation of Liability.** SMARSH EXPRESSLY DISCLAIMS LIABILITY FOR (A) CHANGES OR MODIFICATIONS MADE TO CAPTURE SERVER PRODUCTS BY ANYONE OTHER THAN SMARSH; OR (B) ANY CHANGES, MODIFICATIONS, COMBINATIONS WITH OTHER SOFTWARE APPLICATIONS OR EQUIPMENT, CONDITIONS, OR ISSUES ON, OR ARISING FROM, CLIENT'S SYSTEMS, SERVERS, OR NETWORKS, OR THE INTERNET, THAT AFFECT THE USE OR OPERATION OF CAPTURE SERVER.

## SERVICE SPECIFIC TERMS - CAPTURE MOBILE

### 1. MOBILE APP CAPTURE SERVICES.

- A. **Service Description.** The Capture Mobile Services provided by Smarsh (or one of its affiliates) to Client enables Client to capture electronic communications and other content types from (such service as “**Mobile App Capture Services**”):
- i. Certain Consumer Mobile Apps, such as WhatsApp, Telegram, or Signal (“Consumer Mobile Apps”) installed on (a) Client’s corporate mobile devices, and (b) to the extent authorized, on Client’s employees’ personal mobile devices. For the sake of clarity, the capture of electronic communications from WeChat are covered by separate Service Specific Terms.
  - ii. Smarsh’s “Bring Your Own Device” (BYOD) Mobile App (“BYOD Mobile App”) installed on (a) Client’s corporate devices, and (b) to the extent authorized, on Client’s employees’ personal mobile devices.
  - iii. Smarsh’s “Mobile Device App” (“Mobile Device App”) installed on Client’s corporate devices.<sup>1</sup>
- B. **CLIENT OBLIGATIONS.** Client is responsible for configuring any applicable third-party platforms, mobile applications, or systems to enable the transmission of Client Data to the Capture Mobile Services.
- C. **ADDITIONAL TERMS.** If Client leverages the Capture Mobile Service in connection with Consumer Mobile Apps (such as WhatsApp, Telegram, Signal), Client acknowledges and agrees that Client is subject to the privacy policies and terms of service for such Consumer Mobile App(s). Client shall comply with any privacy policies or terms of service for such Consumer Mobile App used by Client in connection with the Capture Mobile Services.

### 2. MOBILE CARRIER CAPTURE SERVICES.

- A. **Service Description.** Subject to any applicable Mobile Carrier (defined below) specific requirements, the Capture Mobile Services provided by Smarsh (or one of its affiliates) to Client enables Client to capture electronic communications, and other content types from (such service as “**Mobile Carrier Capture Services**”):
- i. Certain mobile telecommunication carriers (“Mobile Carriers”) located within the United States when using Client’s corporate devices registered with such Mobile Carrier, such as Verizon, AT&T, or US Cellular.
  - ii. Certain Mobile Carriers located outside the United States when using Client’s corporate devices registered with such Mobile Carrier, such as Bell Canada, Telus, Rogers, O2.
- B. **CLIENT OBLIGATIONS.** Client is responsible for configuring any applicable third-party platforms or systems to enable the transmission of Client Data to the Mobile Carrier Capture Services, including any specific requirements of any Mobile Carrier.
- C. **ADDITIONAL MOBILE CARRIER TERMS.** In the event that Client leverages the Capture Mobile Service and uses certain Mobile Carriers (such as Verizon, AT&T), Smarsh is required by such
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Mobile Carrier to pass along such carriers' additional terms of service to the Client set forth below ("**Carrier Pass Through Terms of Use**"). Those Carrier Pass Through Terms of Use shall be by and between the Client and the applicable Mobile Carrier and only apply to Client's capture and use of such electronic communications and content types from the applicable Mobile Carrier. Client agrees to comply with the Carrier Pass Through Terms of Use of those Mobile Carriers used by Client in connection with these Service Specific Terms.

1. **Temporary Data Retention.** The Capture Mobile Services are designed to retain Client Data for a temporary retention period of ("**Temporary Retention Period**") up to 30 days, as configured by the Client.
2. **Data Deletion.** The Capture Mobile Services are designed to delete Client Data after the expiration of the Temporary Retention Period.
3. **Service Environment.** Unless agreed otherwise by the Parties in writing, the Capture Mobile Services are deployed in a service environment or data center located in the United States. Client Data will be stored and maintained by the Capture Mobile Services within the United States.
4. **Capture Mobile Service Documentation.** Smarsh will make available to the Client the Capture Mobile Service Documentation in Smarsh's support portal - <http://central.smarsh.com> ("**Documentation**"), including any performance constraints or service guidelines, as amended from time to time, or directly upon written request.
5. **UNIQUE PHONE NUMBERS<sup>2</sup>.**
  - a) **Phone Numbers.** The Capture Mobile Services may require Client to use a unique phone number in connection with the Capture Mobile Services in order to send and receive messages and other data using the applicable mobile device application on a Client user's device (generally "**Mobile App**," and included as part of the "**Capture Mobile Services**"). Upon written request, Smarsh can provide Client with unique phone numbers which will be allocated to the applicable client device user's account ("**Smarsh Numbers**"). Provision of Smarsh Numbers is subject to applicable numbering rules and regulatory practices, which may change or be amended from time to time, as well as additional fees associated with such lines. Smarsh reserves the right to change the terms related to Smarsh Numbers accordingly, including without limitation to impose or amend local residency requirements and/or to require the provision of further user information for continued access to defined Smarsh Numbers.
  - b) **Smarsh Number Restrictions.** The Mobile Apps and Smarsh Numbers do not support any type of emergency calling, nor does it support activation of SMS. Client cannot use Smarsh Numbers to receive messages for the purpose of identity verification, such as activation via SMS or activation calls, and the like.
  - c) **Compliance.** Client may purchase and allocate Smarsh Numbers to User accounts subject to compliance with the allocation requirements displayed upon subscription to receive a Smarsh Number. Client, and not Smarsh, is responsible for compliance with any requirements related to the residence and/or the location of Client's Users.
6. **Notice & Consent.** Client is only authorized to use the Capture Mobile Services to capture electronic communications (both incoming and outgoing) from mobile devices or corporate mobile accounts linked to Client's current employees and independent contractors (each a "**Client Individual**").

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<sup>2</sup> For clarity, the Mobile Device App may not require a unique Phoner Number and may use Client's corporate device mobile carrier line.

Prior to capturing electronic communications of the Client Individual, Client shall (i) provide each Client Individual with clear and conspicuous notice of Client's policies regarding Client's receipt, transmission, capture, use and storage of such Client Individual's, and generally Client's employees and independent contractor's electronic communications, (ii) obtain such Client Individual's consent for such capture of their electronic communications, and (iii) ensure that such Client Individual has been made aware of, and understands that, they have no reasonable expectation of privacy with respect to their electronic communications connected to such devices and accounts. To the extent required by applicable law, Client is responsible for ensuring that all Client Individuals using mobile devices or mobile account lines subject to the Capture Mobile Services inform any third parties that such Client Individual's electronic communications are being captured and retained by Client. Client shall process all Personal Data or Personal Information in accordance with all applicable data protection and privacy laws.

## 7. **DISCLAIMER OF WARRANTIES**

a. THE CAPTURE MOBILE SERVICES ARE NOT DESIGNED TO BE USED FOR LONG-TERM STORAGE OR AS A DATA ARCHIVE SERVICE. THE CAPTURE MOBILE SERVICE IS NOT DESIGNED TO PERFORM AS AN ARCHIVE OF RECORD ON BEHALF OF THE CLIENT OR TO MEET CLIENT'S RECORD RETENTION REQUIREMENTS. WITH RESPECT TO THE CAPTURE MOBILE SERVICES ONLY, SMARSH EXPRESSLY DISCLAIMS ANY RESPONSIBILITY OR OBLIGATION IMPOSED ON THIRD- PARTY RECORD HOLDERS (AS A SERVICE PROVIDER TO THE APPLICABLE REGULATED ENTITY) BY STATUTE OR BY RULE, REGULATION OR OPINION OF ANY GOVERNMENTAL AGENCY, REGULATORY ORGANIZATION OR SIMILAR INSTITUTION, INCLUDING WITHOUT LIMITATION, THE U.S. SECURITIES AND EXCHANGE COMMISSION, THE FINANCIAL INDUSTRY REGULATORY AUTHORITY, OR ANY SECURITIES EXCHANGE.

b. **GENERAL.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE AGREEMENT, CLIENT EXPRESSLY ACKNOWLEDGES AND AGREES THAT USE OF THE CAPTURE MOBILE SERVICES AND THE INTERNET GENERALLY IS AT CLIENT'S OWN RISK AND, EXCEPT AS SPECIFICALLY PROVIDED FOR HEREIN, THAT THE CAPTURE MOBILE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT ANY WARRANTIES OR CONDITIONS WHATSOEVER, EXPRESS OR IMPLIED. SMARSH WILL USE COMMERCIALY REASONABLE EFFORTS TO MAKE ACCESS TO THE CAPTURE MOBILE SERVICES AVAILABLE TO CLIENT THROUGH THE REQUIRED ACCESS PROTOCOLS BUT MAKES NO WARRANTY OR GUARANTEE THAT CLIENT WILL BE ABLE TO ACCESS THE SERVICE OR ANY PART THEREOF AT ANY PARTICULAR TIME OR ANY PARTICULAR LOCATION.

c. **ADDITIONAL LIMITATIONS.** WITHOUT LIMITING THE GENERALITY OF THE TERMS SET FORTH HEREIN, SMARSH AND ITS AFFILIATES, AGENTS, CONTENT PROVIDERS, SERVICE PROVIDERS, AND LICENSORS:

(I) HEREBY DISCLAIM ALL EXPRESS AND IMPLIED WARRANTIES AS TO THE ACCURACY, COMPLETENESS, NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE SERVICE GENERALLY, AND ANY CONTENT OR SERVICES CONTAINED THEREIN, AS WELL AS ALL EXPRESS AND IMPLIED WARRANTIES THAT THE OPERATION OF THE CAPTURE MOBILE SERVICES GENERALLY AND ANY CONTENT OR SERVICES CONTAINED THEREIN WILL BE UNINTERRUPTED OR ERROR-FREE;

(II) SHALL IN NO EVENT BE LIABLE TO CLIENT OR ANYONE ELSE FOR ANY INACCURACY, ERROR OR OMISSION, OR LOSS, INJURY OR DAMAGE CAUSED IN WHOLE OR IN PART BY FAILURES, DELAYS OR INTERRUPTIONS IN THE CAPTURE MOBILE SERVICES, OR INSTALLATION AND COMPUTER, MOBILE PHONE OR TABLET DISRUPTIONS RELATED TO THE SERVICES, AND ANY CONTENT OR SERVICES CONTAINED THEREIN. SMARSH SHALL IN NO EVENT BE LIABLE TO CLIENT OR ANYONE ELSE FOR ANY CONSEQUENTIAL, INCIDENTAL, OR SPECIAL DAMAGES ARISING OUT OF, RESULTING FROM, OR RELATING IN ANY MANNER TO THE USE OR INABILITY TO USE THE CAPTURE MOBILE SERVICES, AND ANY CONTENT OR SERVICES CONTAINED THEREIN;

(III) SMARSH SHALL IN NO EVENT BE LIABLE TO REIMBURSE MESSAGE CREDITS, REIMBURSE PAYMENTS OR HAVE ANY OTHER LIABILITY FOR MESSAGES THAT WERE SENT BUT NOT DELIVERED, NOT RECEIVED OR NOT ACCURATELY DISPLAYED, HEARD OR REPRESENTED ON ANY SUCH COMMUNICATION DEVICE DUE TO THE FAILURE OF SUCH THIRD-PARTIES DUE TO THE FACT THAT DELIVERY METHODS OF ELECTRONIC COMMUNICATIONS TO VARIOUS COMMUNICATION DEVICES IS SUBJECT TO A COMBINATION OF NETWORK PROVIDERS' AND SERVICE PROVIDERS' TERMS AND CONDITIONS AND NETWORK STATUS OVER WHICH SMARSH HAS NO CONTROL;

(IV) HEREBY DISCLAIMS ANY LIABILITY OF ANY KIND FOR COSTS OR DAMAGES ARISING OUT OF PRIVATE OR GOVERNMENTAL LEGAL ACTIONS RELATED TO CLIENT'S USE OF ANY OF THE CAPTURE MOBILE SERVICES IN ANY COUNTRY.

d. **HIGH RISK ACTIVITIES.** THE CAPTURE MOBILE SERVICES ARE NOT FAULT-TOLERANT AND ARE NOT DESIGNED, MANUFACTURED OR INTENDED FOR USE OR RESALE AS ONLINE CONTROL EQUIPMENT IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, INCLUDING BUT NOT LIMITED TO USE IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, DIRECT LIFE SUPPORT MACHINES, OR WEAPONS SYSTEMS, IN WHICH THE FAILURE OF SERVICE COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE ("HIGH RISK ACTIVITIES"). IN ADDITION TO THE OTHER DISCLAIMERS AND LIMITATIONS CONTAINED WITHIN THESE TERMS, SMARSH AND ITS AFFILIATES, AGENTS, CONTENT PROVIDERS, SERVICE PROVIDERS AND LICENSORS SPECIFICALLY DISCLAIM ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR HIGH RISK ACTIVITIES INCLUDING EMERGENCY NOTIFICATION SERVICES.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF WARRANTIES OR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO CLIENT. IN SUCH JURISDICTIONS, SMARSH'S LIABILITY (AND THE LIABILITY OF ITS AFFILIATES, AGENTS, CONTENT PROVIDERS AND SERVICE PROVIDERS) SHALL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW.

8. **SUB-PROCESSORS.** The Capture Mobile Services may rely on the Sub-Processors set forth in the Sub-Processor Exhibit attached hereto.
9. **SERVICE LEVELS.** The Capture Mobile Services, and the relevant support services, will be provided in accordance with the Service Level Agreement attached to this Agreement. For the sake of clarity, in the event of a breach of these SLAs with respect to Capture Mobile Services, Smarsh will provide Client with the credit stated in the SLAs. The foregoing remedy is Client's sole and exclusive remedy for a breach of the applicable SLAs.

**CAPTURE MOBILE SERVICES**

**SUB-PROCESSOR EXHIBIT**

**Sub-Processor(s).** With respect to Capture Mobile Services, the following entities are sub-processors:

| <b>Name</b>                | <b>Location</b> | <b>Role</b>                 |
|----------------------------|-----------------|-----------------------------|
| <b>TeleMessage Ltd.</b>    | Israel          | Support, Implementation     |
| <b>Microsoft Azure</b>     | USA             | Infrastructure as a Service |
| <b>Amazon Web Services</b> | USA             | Infrastructure as a Service |

## CARRIER PASS THROUGH TERMS OF USE

### AT&T MOBILE TERMS.

This agreement is between you as our subscriber (“**You**”) and the affiliate of AT&T Mobility National Accounts, LLC providing wireless service to You (“**AT&T**”), and it sets forth the terms and conditions (“**Terms and Conditions**”) under which You agree to use and AT&T agrees to provide access to Archived Messages through the Archived Messages Service (as such terms are defined below). By using the Archived Messages Service, You accept these Terms and Conditions, which AT&T may modify from time to time.

#### 1. **DEFINITIONS.**

1.1. “**Archived Messages**” means a Participating Employee’s Messages that AT&T has made available to SMARSH for retrieval through use of SMARSH’s Archived Messages Service.

1.2. “**Archived Messages Service**” means SMARSH’s service that provides You access to Archived Messages.

1.3. “**Client Liable MDNs**” means a Mobile Directory Number (**MDN**) for AT&T wireless service that is established under Your corporate account and corporate name and for which You are financially responsible to AT&T for an AT&T service.

1.4. “**Employee Liable MDN**” means a MDN for AT&T wireless service that is established in the name of an individual employee of Your company or other authorized individual and for which such individual is financially responsible to AT&T for AT&T services.

1.5. “**Messages**” means messages sent or received by any Participating Employee via short message service (**SMS**), multimedia message service (**MMS**) and/or AT&T Business Messaging Service.

1.6. “**Participating Employee**” means Your employee or other authorized user of a mobile device with a Client Liable MDN whose Client Liable MDN(s) is subscribed to the Archived Messages Service.

#### 2. **ARCHIVED MESSAGES SERVICE.**

2.1. You authorize AT&T to make the Messages available to Smarsh for use solely in connection with SMARSH’s Archived Messages Services.

2.2. You will only access, use, copy, store or disclose Archived Messages in accordance with these Terms and Conditions. You will not access, use, copy, store or disclose Archived Messages for any other purpose.

2.3. **SMARSH.** You will enter into an agreement with SMARSH Inc. (“**SMARSH**”) for the Archived Messages Service, and You will pay all of SMARSH’s charges for such Archived Messages Service in accordance with that agreement and these Terms and Conditions.

2.4. **Client Liable MDNs Only.** You will enroll only Client Liable MDNs in the Archived Messages Service. You may not enroll any Employee Liable MDNs in the Archived Messages Service.

2.5. **Notice and Consent.** Prior to enrolling any individual’s device in the Archived Messages Service and accessing, using, storing, copying or disclosing any Participating Employee’s Archived Messages, You will provide advance disclosure to each such individual containing clear and conspicuous notice of the terms and conditions of the Archived Messages Service, including how You and SMARSH will access, use, copy, retain, protect or disclose such individual’s Archived Messages, as well as the duration and

purpose of such access, use, copying or retention. You will also obtain all lawfully required consents for those uses of such individual's Messages. You agree to maintain the currency of such consent at all times.

2.6. **Transferring a Mobile Device or Client Liable MDN to Another Employee.** Prior to transferring a mobile device or Client Liable MDN that is enrolled in the Archived Messages Service to another person, you will disenroll or notify SMARSH to disenroll the then-current Participating Employee and the Client Liable MDN on that mobile device from the Archived Messages Service.

2.7. **Acknowledgement and Agreement.** You acknowledge that AT&T will make the Archived Messages available to SMARSH for use in connection with the Archived Messages Service and that AT&T will have no further control for the Archived Messages after they are provided to SMARSH. You further agree that AT&T will have no responsibility or liability to You with respect to the Archived Messages after they are provided to SMARSH.

2.8. **Limitations and Restrictions.** You may access a Participating Employee's Archived Messages only with that Participating Employee's express knowledge and consent. You must maintain records of each Participating Employee's express, informed consent for You to collect and use his or her Archived Messages. If a Participating Employee revokes such consent at any time, then you must immediately cease initiating requests for that individual's Archived Messages.

2.9. **Client Business Records.** You agree to maintain full, complete and accurate records related to Your performance under these Terms and Conditions, and You agree to preserve such records for five (5) years from the date of preparation; provided, however, that You agree to retain for at least five (5) years following Your latest access to Archived Messages Service records that are sufficient to demonstrate each Participating Employee's consent to Your access to and use of his or her Archived Messages. Such records shall be available for inspection and copying by AT&T during Your normal business hours, upon five (5) days' notice, but not more than once per quarter, unless otherwise required by applicable law, rule or regulation. If You fail to comply with the obligations set forth in this Section, or if AT&T's review of such records reveals that You are in violation of any of these Terms and Conditions, then, in addition to its other remedies under these Terms and Conditions, Your account agreement with AT&T or at law or in equity, AT&T may terminate your access to the Archived Messages.

2.10. **Compliance with Laws, Policies and Practices.** You agree to comply with all applicable laws, rules and regulations, including all applicable consumer protection, marketing, data security, export and privacy laws and Federal Trade Commission privacy initiatives. You are solely responsible for making any disclosures required by law, rule, regulation, or otherwise regarding the nature, accuracy, effectiveness, or limitations of the Archived Messages Service.

2.11. **Indemnification.** You agree to indemnify and hold AT&T, its officers, directors, employees and agents harmless from and against any claim, damage or loss that is related to or arising out of Your failure to comply with any of these Terms and Conditions, including reasonable attorney's fees.

## VERIZON MOBILE TERMS

This agreement is between you as our subscriber and Verizon Wireless (“VZW”) and it sets forth the terms and conditions under which you agree to use, and we agree to provide access to, Archived Messages through the Archived Messages Service (as such terms are defined below). By using the Archived Messages Service, you accept these Terms and Conditions, which may be modified by us from time to time.

### 1. Definitions.

1.1 **“Archived Messages”** means the Participating Employee’s Messages available for retrieval by Smarsh Inc. from VZW.

1.2 **“Archived Messages Service”** means Smarsh Inc.’s service that provides Archived Messages to you.

1.3 **“Corporate Liable VZW MDNs”** means a VZW Mobile Directory Number (MDN) that is established under your corporate account and corporate name for which you are financially responsible for the payment to VZW for VZW service.

1.4 **“Messages”** means messages sent or received by the Participating Employee via the short message service (SMS) or the multimedia message service (MMS).

1.5 **“Participating Employee”** means your employee who has opted into the Archived Messages Service via your Corporate Liable VZW MDN.

### 2. Archived Messages Service.

2.1 You will only access, use, copy, store or disclose Archived Messages in accordance with these Terms and Conditions. Client will not access, use, copy, store or disclose Archived Messages for any other purpose.

(a) **Smarsh Inc.** You will enter into an agreement with Smarsh Inc. (“**Smarsh Inc.**”) for the Archived Messages Service and you will pay all of Smarsh Inc.’s charges for such Archived Messages Service in accordance with such agreement.

(b) **Corporate Liable VZW MDNs Only.** You will enroll only Corporate Liable VZW MDNs in the Archived Messages Service. You will not enroll any Employee Liable VZW MDNs in the Archived Messages Service. “Employee Liable VZW MDN” means a VZW MDN that is established in the name of an individual employee of your company and such individual employee is financially responsible for the payment to VZW for VZW services.

(c) **Notice and Consent.** Prior to enrolling any employee in the Archived Messages Service and accessing, using, storing, copying or disclosing any Participating Employee’s Archived Messages, you will provide advance disclosure to each employee containing clear and conspicuous notice of how you and Smarsh Inc. (and its affiliate) will access, use, copy, retain, protect or disclose such employee’s Archived Messages, as well as the duration and purpose of such access, use, copying or retention. Prior to enrolling any employee in the Archived Messages Service, you will obtain the employee’s consent to the archiving of the employee’s Archived Messages, including a consent for a carrier to share the Archived Messages with you and Smarsh Inc. and you will not access, use, store, copy or disclose any employee’s Archived Messages until such consent has been obtained.

(d) **Revocation of Consent.** You will ensure that each Participating Employee may immediately revoke consent through readily available mechanisms to the Participating Employee. You will immediately notify Smarsh Inc. of any such revocation of consent so that Smarsh Inc. can notify VZW of such revocation. If consent is revoked, then you will not access, retrieve, use, store, copy or disclose such employee’s Archived Messages dated after the revocation date. You may access, use, store, copy or disclose such employee’s Archived Messages retrieved by you prior to such revocation date.

(e) **Periodic Reminders.** You will provide periodic reminders to each Participating Employee of its enrollment in the Archived Messages Service.

(e) You acknowledge that VZW will make available to Smarsh Inc. the Archived Messages for use in connection with the Archived Messages Service and VZW will have no further control or responsibility for the Archived Messages once they are provided to Smarsh Inc.

(f) **Limitations and Restrictions.** You may access the Participating Employee's Archived Messages only with that Participating Employee's express knowledge and consent. You must maintain records of each employee's express, informed consent for you to collect such Participating Employee's Archived Messages. If a Participating Employee revokes such consent at any time, then you must immediately cease initiating requests for that employee's Archived Messages.

2.2 **Client Business Records.** You will maintain full, complete and accurate records related to your performance under these Terms and Conditions, and shall preserve such records for five (5) years from the date of preparation; provided, however, that you will retain, for at least five (5) years following the latest access to Archived Messages, records sufficient to demonstrate each employee's consent to access and use its Archived Messages. Such records shall be available for inspection and copying by VZW during your normal business hours, upon five (5) days' notice, but not more than once per quarter, unless otherwise required by applicable law, rule or regulation. If you refuse to comply with the obligations set forth in this Section or if VZW's review of such records reveals that you are in violation of any of these Terms and Conditions, then, in addition to its other remedies under these Terms and Conditions, your account agreement with VZW or at law or in equity, VZW may terminate your access to the Archived Messages.

2.3 **Compliance with Laws, Policies and Practices.** You will comply with all applicable laws, rules and regulations, including all applicable consumer protection, marketing, data security, export and privacy laws and Federal Trade Commission privacy initiatives. You are solely responsible for making any disclosures required by law, rule, regulation, or otherwise regarding the nature, accuracy, effectiveness, or limitations of the Archived Messages Service.

#### 2.4 **Responsibility and Indemnification.**

2.4(a) **Responsibility.** You assume all responsibility and risk for the Notice and Consent of Participating Employees and the Periodic Reminders as set forth above.

#### 2.4(b) **Indemnification.**

2.4(b)(1) You will defend, indemnify and hold harmless VZW, its Affiliates, and their respective directors, officers, employees, contractors, agents, shareholders, any successors and assigns and their respective heirs and legal representatives (collectively, the "**VZW Indemnitees**"), from and against any and all Claims and Losses, reasonable attorney's fees and defense costs arising out of, relating to or resulting from your acts or omissions or your failure to comply with the terms of Section 2.1 (c) Notice and Consent and 2.1(e) Periodic Reminders. For any Claims that are the subject of your indemnification obligations herein, VZW will have sole control of the defense, unless VZW tenders such defense thereof to you, and will provide you with reasonable information throughout the course of such defense. (i) "**Claims**" means any Third-Party claims, demands, actions, disputes, controversies or requests for equitable or injunctive relief by a Participating Employee that you have not complied with your notice and/or consent requirements and (ii) "**Losses**" means any damages or settlement amounts payable to a Participating Employee as a result of the final adjudication or settlement of a Claim, including, without limitation, judgments, arbitration awards, payments of interest, fines, assessments, penalties and deficiencies, and any other losses, obligations, liabilities, costs or expenses suffered or incurred as a result of a Claim.

2.5(b)(2) Your indemnification obligations are subject to the following: (a) You will cooperate reasonably with VZW in connection with any Claim; (b) You will not consent to the entry of any judgment or enter into any settlement of Claim without VZW's prior written consent, which will not be unreasonably

withheld; and (c) You are obligated to VZW for its reasonable attorney's fees and expenses incurred in the enforcement of the indemnification hereunder.

3. **Billing and Payment.** The billing and payment terms set forth in your account agreement with VZW apply to all of Smarsh Inc.'s charges set forth on the VZW bill and you will pay VZW for all of Smarsh Inc.'s charges set forth on the VZW bill in accordance with that agreement.

## ADDITIONAL CARRIER TERMS FOR MOBILE CARRIER CAPTURE

### **O2**

- [https://www.telemessage.com/wp-content/uploads/2023/01/Hosted\\_Mobile\\_Recording\\_Schedule.pdf](https://www.telemessage.com/wp-content/uploads/2023/01/Hosted_Mobile_Recording_Schedule.pdf)
- <https://www.o2.co.uk/termsandconditions/business>

### **ROGERS**

- [https://www.telemessage.com/wp-content/uploads/2023/02/Rogers\\_Hosted\\_Mobile\\_Recording\\_Schedule.pdf](https://www.telemessage.com/wp-content/uploads/2023/02/Rogers_Hosted_Mobile_Recording_Schedule.pdf)
- <https://www.rogers.com/support/terms>

### **BELL**

- [https://www.bell.ca/styles/common/all\\_languages/all\\_regions/pdfs/Bell\\_Terms\\_of\\_Service.pdf](https://www.bell.ca/styles/common/all_languages/all_regions/pdfs/Bell_Terms_of_Service.pdf)

### **TELUS**

- <https://www.telus.com/en/support/article/service-terms-between-you-and-telus>

## SERVICE SPECIFIC TERMS - WEB ARCHIVE

- Service Description.** "Web Archive" is a Service that crawls and captures Client-designated websites and sends such captured content to Client's archive of record with Smarsh as Client Data, or to a Client's own, or third-party, archive. Web Archive is licensed based on (a) a domain Fee for each website or video domain from which webpages and videos will be captured, and (b) a page Fee for each webpage URL or video URL that will be captured.
- Data Retention.** Web Archive is designed to retain the Client Data captured by Web Archive during the Term of the Agreement for the retention periods set by Client. Unless configured otherwise, the maximum retention period is 7 years. If Client requires Client Data to be retained for longer than 7 years, additional fees will apply. Client is solely responsible for ensuring that the default retention period or any other retention policies implemented by Client within Web Archive comply with any applicable legal, regulatory, or Client internal requirements. Following termination or expiration of the Agreement, Smarsh may retain Client Data for up to six (6) months. Thereafter, Smarsh may delete Client Data in its sole discretion.
- Service Environment.** The Web Archive Service is hosted on a Smarsh-managed service environment located in the United States.
- Service Level Agreement.** Web Archive, and the relevant support services, will be provided in accordance with the Service Level Agreement attached to this Agreement. For the sake of clarity, in the event of a breach of these SLAs with respect to Web Archive, Smarsh will provide Client with the credit stated in the SLAs. The foregoing remedy is Client's sole and exclusive remedy for a breach of the applicable SLAS.

## SERVICE SPECIFIC TERMS – X OR TWITTER

These Service Specific Terms – X (Twitter) apply when Client captures or archives Twitter content. Unless expressly stated otherwise, capitalized terms contained in these Service Specific Terms have the meaning given them in the Smarsh Service Agreement - General Terms.

- Twitter Content.** Twitter is a Third-Party Data Source as further described in Section 5 (Third-Party Data Sources) of the Smarsh Service Agreement – General Terms. The Services capture the following information from Twitter as Client Data: tweets created by end users, end users' comments, end users' retweets where the retweet contains new end user content, end users' direct messages, end users' blocks, end users' favorites, and end users' follows ("**Twitter Content**"). Smarsh will capture only end user content as Twitter Content, it will not capture third-party content from Twitter. Client is permitted to actively capture Twitter Content only for end users who are Client's current employees or contractors. Client is prohibited from actively capturing Twitter Content for any individual who is not a Client employee or contractor. Furthermore, Client is permitted to capture Twitter Content from only those end user accounts that the employee or contractor uses solely within the scope of its employment or contract with Client. Client will provide each employee and contractor with clear and conspicuous notice of policies regarding the receipt, transmission, storage, and use of employee's or contractor's Twitter Content. Client is responsible for ensuring that each employee and contractor has agreed to such policies and that each employee has been made aware that such employee has no reasonable expectation of privacy in such employee's Twitter Content. Client will immediately disable Twitter Content capture within the applicable Services for an employee or contractor when such employee's employment or contractor's service with Client is terminated.
- Acceptable Use of Twitter Content.** Client may capture, archive, and use Twitter Content contained in Client Data for the following purposes: (a) to meet legal and regulatory obligations to store communications (e.g. SEC 17a4, MiFID 2); (b) to search and export communications in response to litigation or regulatory requests (electronic discovery); and (c) to detect and prevent misconduct by automatically flagging communications which match certain keyword policies (driven by legal and regulatory requirements, such as FINRA rule 3110). If Client is a government entity: (i) Client's use of the Services to capture and archive Twitter Content must be in accordance with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4; and (ii) Client is prohibited from using Twitter Content to conduct surveillance or gather intelligence.
- Twitter TOS.** Twitter requires Smarsh to pass through certain additional terms ("**Twitter TOS**"). Smarsh is not a party to the Twitter TOS. The Twitter TOS are subject to modification by Twitter. The Twitter TOS are available at <https://twitter.com/en/tos>. Client shall at all times comply with the Twitter TOS when using the Services to capture or archive Twitter Content. Twitter may direct Smarsh to cease the capture and archive of Twitter Content if Client violates the Twitter TOS. Smarsh will have no liability for such termination of the Services pursuant to Client's or Client's end users' violation of the applicable Twitter TOS.

## SERVICE SPECIFIC TERMS - VENDOR RISK MANAGEMENT PLATFORM

1. **Service Description.** The “VRM Platform” is a software as a service platform that is designed to assist the Client with assessing and auditing Client’s service providers and vendors. The VRM Platform includes the following functionalities:
  - Custom vendor questionnaire and assessment creation;
  - Workflow management to assign, distribute and track the status of tasks within the VRM Platform
  - Answer Scoring Automation, Filtering and Reporting

A “User” of the VRM Platform is someone who registers for a VRM Platform account at the behest of Client.
2. **Client Vendor Access.** Client may invite Client Vendors to create an account to use the Client’s VRM Platform only for the express purpose of providing answers to Client’s vendor questionnaires and assessments. Client is responsible for all activities undertaken by Client’s Vendors that access and use Client’s VRM Platform, including all content uploaded by the Vendor into the VRM Platform.
3. **Access.** Subject to the terms of this Agreement, Client may access and use the VRM Platform for the duration of the applicable respective subscription term as set forth in the Order Form. Smarsh reserves the right to suspend Client’s access to the VRM Platform, upon reasonable advance written notice to the Client, if (i) Smarsh reasonably believes that Client’s actions, or the actions of Client’s Users, is reasonably likely (in Smarsh’s sole reasonable opinion) to negatively affect the availability, quality, or performance of Smarsh’s systems or the VRM Platform; or (iii) Smarsh in good faith suspects that any unauthorized Third-Party has gained access to the VRM Platform using credentials issued to the Client by Smarsh. For the sake of clarity, Smarsh will provide Client with reasonable advanced notice (to the extent commercially practicable) prior to suspending Client’s access.
4. **Restrictions.** The Client will not (and will not knowingly permit any third-party to, including its Users): (a) use the VRM Platform to develop a similar or competing product or service; (b) reverse engineer, decompile, disassemble, or seek to access the source code, algorithms, or non-public APIs to the VRM Platform or any related features; (c) modify or create derivative works of the VRM Platform or copy any element of or related features with the VRM Platform; (d) copy, rent, lease, distribute, assign, or otherwise transfer rights to the VRM Platform or any part thereof, for the benefit of a third-party; or remove any proprietary notices or labels from the VRM Platform or any part thereof; (e) use the VRM Platform to perform or publish benchmarks or performance information about the VRM Platform; (f) provide access to or sublicense the VRM Platform to a third-party except as authorized under the Agreement, (g) transmit, or allow any Third-Party Data Source to transmit on Client’s behalf to Smarsh any data that is subject to PCI data storage requirements, (h) use the VRM Platform in a manner that (i) violates applicable laws, rules, or regulations, or (ii) negatively affects the availability, quality, or performance of the VRM Platform. The Client will not, directly or indirectly, in whole or in part, use or knowingly permit the use of any security testing tools in order to probe, scan or attempt to penetrate or ascertain the security of the VRM Platform.
5. **Content on VRM.** Smarsh does screen or review the content uploaded to the VRM Platform by or on behalf of Client (“Client Content”). Smarsh reserves the right to remove uploaded content if it violates the terms of the Agreement or these Service Specific Terms, the AUP, or otherwise threatens the safety and security of the VRM Platform. Client, and not Smarsh, is responsible for all content uploaded into the VRM Platform by Client or Client’s Users, including verifying the accuracy and completeness of content uploaded by Users for the purpose of Vendor

assessments and questionnaires. Scores and results generated by the VRM Platform are dependent on Client Content and the responsibility of the Client to verify. Client represents and warrants that (a) Client Content 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. Smarsh is not responsible for Client's Content and Client shall indemnify and hold Smarsh harmless of any damages, claims, penalties, liabilities arising from Client Content.

6. **Termination; Data Transition; Export of Client Content.** Following the termination or expiration of the applicable subscription term of the VRM Platform, Client will cease to have access to the VRM Platform, the Client Content and content stored within the VRM Platform. Client is responsible for exporting all Client Content and Content from the VRM Platform prior to the termination or expiration of these Service Specific Terms or the Agreement. Thereafter, Smarsh reserves the right to delete all data in Client's VRM Platform, including all account information and Client Content. Upon such termination or expiration, Client agrees to immediately cease using the VRM Platform and any associated Smarsh IP.
  
7. **WARRANTY DISCLAIMER; NO GUARANTEE.** EXCEPT AS SET FORTH ABOVE, SMARSH MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND IN CONNECTION WITH THE VRM PLATFORM, 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 VRM PLATFORM 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 VRM PLATFORM BY CLIENT WILL ENSURE CLIENT'S LEGAL COMPLIANCE WITH ANY FEDERAL, STATE, OR INTERNATIONAL STATUTE, LAW, RULE, REGULATION, OR DIRECTIVE. THE VRM PLATFORM 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 VRM PLATFORM COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR PROPERTY DAMAGE.
  
8. **Conflict.** To the extent that any language contained in the Agreement conflicts with any language contained in Service Specific Terms, the terms of these Service Specific Term shall control as it relates to the VRM Platform.

## SERVICE SPECIFIC TERMS – CYBER COMPLIANCE – PHISHING

These Service Specific Terms shall govern Client's use of the Phishing Services set forth on the applicable Order Form between the Client and Smarsh. Unless expressly stated otherwise, capitalized terms contained herein shall have the meaning given them in the Agreement.

Client's use of the Phishing Services is subject to Client's compliance with the following terms:

- 1) **PHISHING SERVICES.** The Phishing Services provided by Smarsh are designed to provide the Client with access to the following core functionalities:
  - a. **Targeted Phishing Campaigns:**
    - i. Client selects a phishing email template from the phishing campaign catalog.
    - ii. Smarsh will initiate the email campaign using the selected template to its licensed users.
    - iii. Client's licensed users will receive the phishing campaign email.
  - b. **Activity Logging:**
    - i. The following user events are observed and logged:
      - Email delivered to licensed user
      - Email opened by licensed user
      - Link within email clicked by licensed user
      - Email reply by licensed user
      - Email attachment opened by licensed user
      - Data submitted by licensed user
      - Email reported by licensed user
  - c. **User Training:**
    - i. Licensed users who record a failing status for the phishing campaign are required to complete phishing awareness training.
- 2) **RESTRICTIONS.**
  - a. **Usage.** The Phishing Services are sold on an annual, per user basis. Each twelve (12) month period within Client's Subscription Term shall include four (4) phishing campaigns, delivered once per business quarter.
  - b. **Scheduling.** Client will be responsible for initiating the scheduling of Phishing Services and determining the content and scope of the campaign, and failure to do so within the applicable Service Term will result in the expiration of the phishing campaigns purchased for the Service Term.
- 3) **CLIENT OBLIGATIONS.**
  - a. Client is required to whitelist the domains and IP addresses from which phishing campaigns will originate. A list of domains and IP addresses, and instructions to assist in whitelisting, will be provided to Client upon initiation of a phishing campaign request.
  - b. Clients must provide proof of ownership for all email domains included within phishing campaigns. This is accomplished by adding a TXT record provided by Smarsh to the DNS records for each domain.
- 4) **DEPLOYMENT LOCATION.** Unless agreed otherwise by the Parties in writing, the Phishing Services are deployed in a service environment or data center located in the United States.
- 5) **SERVICE DOCUMENTATION.** Smarsh will make available to the Client the Phishing Services Documentation in Smarsh's support portal - <http://central.smarsh.com> ("**Documentation**"), including any

performance constraints or service guidelines, as amended from time to time, or directly upon written request.

- 6) **DISCLAIMER; LIMITATION OF LIABILITY.** EXCEPT AS EXPRESSLY SET FORTH ABOVE, THE SERVICES ARE PROVIDED “AS-IS” AND SMARSH DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. SMARSH SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, UNINTERRUPTED USE, AND ANY WARRANTIES ARISING FROM CONDUCT OR COURSE OF DEALING. SMARSH MAKES NO WARRANTIES OF ANY KIND THAT THE SERVICES WILL BE ABLE TO OR ACTUALLY SOLVE, IMPROVE, OR OTHERWISE MITIGATE ANY PROBLEMS CLIENT MAY EXPERIENCE WITH PHISHING OR ANY OTHER COMPUTER- OR CYBER-ATTACKS. SMARSH’S CYBER COMPLIANCE SERVICES (INCLUDING THE PHISHING SERVICES AND ANYTHING ASSOCIATED THEREWITH) IS NOT AN ANTIVIRUS, ANTIMALWARE, OR OTHER CYBERSECURITY APPLICATION; SMARSH WILL HAVE NO OBLIGATION TO UNDERTAKE EFFORTS TO ACTUALLY PREVENT OR MITIGATE ANY POTENTIAL OR REAL ATTACKS.
- 7) **CONFLICT.** To the extent that any language contained in the Agreement conflicts with any language contained in these Service Specific Terms, the terms herein shall control in connection with the Phishing Services.
- 8) **SUB-PROCESSORS.** The Phishing Services may rely on the Sub-Processors set forth in the Sub-Processor Exhibit attached hereto.

## PHISHING SERVICES

### SUB-PROCESSOR EXHIBIT

**Sub-Processor(s).** With respect to the Phishing Services, the following entities are sub-processors:

| Name    | Location      | Role   |
|---------|---------------|--|
| KnowBe4 | United States | Provision of Phishing Platform;<br>Training Content; |

## SERVICE SPECIFIC TERMS – NUCLEI (RESOLD)

These Service Specific Terms – Nuclei apply only where Client purchases Nuclei Products. Unless expressly stated otherwise, capitalized terms contained in these Service Specific Terms have the meaning given them in the Smarsh Service Agreement.

**1. Nuclei Services.** Nuclei’s services (the “**Nuclei Services**”) are cloud-native SaaS services. Nuclei Services are resold by Smarsh and licensed to Client by Nuclei, Inc. pursuant to the Nuclei Subscription Agreement, available at <https://nuclei.ai/legal/> (“**Nuclei Terms**”). The Nuclei Terms and Nuclei’s privacy policies apply to data generated, hosted, processed, and stored by the Nuclei Services. In the event Nuclei breaches the Nuclei Terms, Client’s sole remedies are those remedies set forth in the Nuclei Terms.

**2. Nuclei SLAs.** Nuclei provides technical support for the Nuclei Services. The Nuclei SLAs, available at <https://nuclei.ai/legal/>, apply to Nuclei Services. In the event Nuclei does not meet its SLAs, Client must request applicable service credits from Smarsh.

### **3. Nuclei Service Description.**

The Nuclei Services are explained in more detail below:

#### **3.1. Nuclei AI.**

A broad set of machine learning services and supporting cloud infrastructure, enabling:

- Automatic audio transcription for rapid discovery and search
- Automatic language translation of text-based communications
- Automatic classification of text-based communications

#### **3.2. Nuclei Capture.**

A highly scalable platform designed to capture, enrich, and consolidate data from a wide range of sources, enabling seamless data portability and providing a single pane of glass for monitoring and surveillance of communication data. An overview of all supported connector integrations is available here: <https://support.nuclei.ai>.

#### **3.3. Nuclei Recording.**

A Microsoft Teams recording application that automatically records voice and video communications within Microsoft Teams, ensuring compliance with regulatory and legal requirements. An overview of the recording integration for Microsoft Teams is available here: <https://support.nuclei.ai>.

**4. Smarsh Voice Archiving.** With respect to Archiving for Nuclei Products provided by Smarsh, additional capture Fees and storage Fees may apply and are separate from the Fees for Nuclei Services. A “**Unit**” with respect to Voice Capture means a phone number, username, or email address. A “**Unit**” with respect to Voice Storage means a gigabyte. For archiving associated with Nuclei Historical, with respect to: (i) Voice Capture a “**Unit**” means a gigabyte, and (ii) Voice Transcription a “**Unit**” means one minute.

## SERVICE SPECIFIC TERMS – SMARSH UNIVERSITY

These Service Specific Terms – Smarsh University apply only to Client's purchase and use of Smarsh University training and certification courses. Unless expressly stated otherwise, capitalized terms have the meaning given them in the Smarsh Service Agreement - General Terms.

1. **Descriptions.** "**Smarsh University**" or "**Smarsh U**" is a suite of training and certification courses designed to help Client and its Users understand and leverage the features and functionality of the products Client purchases from Smarsh. Smarsh University courses are offered as Public Courses, Dedicated Courses, and Web-based Courses (defined below).

2. **Definitions.**

"**Certification Exam**" is an examination related to a specific Smarsh product or Service that if passed leads to certification of expertise in the use of such Smarsh product or Service.

"**Dedicated Courses**" are private instructor-led courses conducted either by web conference or on-site at Client's facilities.

"**Public Courses**" are instructor-led courses attended by Trainees from multiple companies and are conducted by web conference or on-site at a Smarsh-hosted event.

"**Trainee**" is a Client employee, agent, or Representative for whom Client purchases a Smarsh U subscription or attendance at a Dedicated Course or an à la carte Public Course.

"**Web-based Courses**" or "**WBC**" is a suite of pre-recorded online courses available to Trainees by login to the Smarsh learning management system using the Trainee's Smarsh Central access credentials.

"**Smarsh U Lab**" is a training environment hosted in Smarsh data centers in the U.S.

3. **Orders and Payment.** Client must execute an Order Form to purchase Smarsh University subscriptions, blocks of Public Courses, and Dedicated Courses. Client must purchase all à la carte courses and Certification Exams through Smarsh Central. Smarsh University course Fees and Certification Exam Fees are non-refundable.

- 3.1. Subscriptions. Smarsh U subscriptions are offered as Full Access or WBC-only (defined below) and sync to and co-terminate with Client's then-current Service Term under the Agreement. A "**Unit**" with respect to Smarsh U subscriptions is one Trainee. "**Full Access**" subscriptions include unlimited Public Courses and WBC access for each Trainee. "**WBC-only**" subscriptions include unlimited WBC access for each Trainee.

- 3.2. Blocks of Public Courses. Client may purchase Public Courses in 1-day, 2-day, and 3-day blocks. Blocks of Public Courses are consumed in half-day or one day increments per-Trainee, as specified in the registration information for each Public Course.

- 3.3. Dedicated Courses. Dedicated Courses are one-time courses offered on a per-Trainee, per-day basis. Dedicated Courses are capped at ten (10) Trainees and are sold in half-day increments. All on-site Dedicated Courses must be scheduled at least two (2) weeks in advance and require a minimum purchase of one full day. Trainer travel expenses will be included in the Fees for on-site Dedicated Courses.

- 3.4. Purchases from within Smarsh Central. Payments for Certification Exams and à la carte Public Courses and WBC are processed through Stripe Checkout. Payments processed through Stripe Checkout are subject to the [Stripe Checkout User Terms of Service](#) and the [Stripe Privacy Policy](#).

4. **Certification.** Client may purchase Certification Exams for Trainees or Users. Once a Trainee or User passes a Certification Exam, the Trainee or User is Smarsh-certified and will receive a verifiable digital certificate of achievement and a verifiable digital badge indicating the Trainee is certified in the use of a specific Smarsh product or Service. Certificates and badges are unique to each User or Trainee and will transfer with such individual if they change employment. Certifications are valid for twenty-four (24) months following a successful Certification Exam. After that time, a Trainee or User must recertify to maintain their Smarsh certification. A recertification exam is available up to six (6) months following certification expiration. Thereafter the Trainee or User must retake the Certification Exam to maintain Smarsh certification. For the avoidance of doubt, Client must purchase a new Certification Exam if a User or Trainee wishes to (i) retake a failed Certification Exam (ii) certify in additional products or Services.
5. **License.** Smarsh grants Client and its Trainees a non-exclusive, non-transferable, limited license to access and use the Smarsh U Lab, course materials and course content solely for training purposes.
6. **Client Obligations and Trainee Conduct.**
  - 6.1. Trainees may not share access credentials.
  - 6.2. Client must provide a computer for each Trainee and high-speed internet access to enable Trainees to remotely connect to the Smarsh U Lab for all courses.
  - 6.3. Client must provide dedicated classroom space for on-site Dedicated Courses.
  - 6.4. Smarsh may refuse, limit, or cancel any Smarsh U course if, in the sole opinion of Smarsh, any Trainee displays unreasonable behavior or acts in a violent, threatening, inappropriate, abusive, or disruptive manner during a course.
7. **Substitutions and Cancellations.**
  - 7.1. Substitutions. Client may transfer a Unit up to three (3) times during an annual Term. Client must request all transfers by submitting a support case through Smarsh Central.
  - 7.2. Requests to Reschedule. Client may reschedule a Dedicated Course one time. Client must submit all requests to reschedule a Dedicated Course by submitting a support case through Smarsh Central. Client must submit its request to reschedule at least one week prior to the scheduled course date for virtual Dedicated Courses and at least two (2) weeks prior to the scheduled course date for on-site Dedicated Courses. Client must submit its proposed reschedule date within thirty (30) days following a reschedule request, and the rescheduled course date must occur not more than 180 days after the original course date. The parties will execute a change order to reflect the rescheduled course date.
  - 7.3. Cancellations by Smarsh. Smarsh will use commercially reasonable efforts to hold all courses as scheduled but may need to cancel or reschedule a course in certain circumstances. If Smarsh cancels an on-site Dedicated Course or a Public Course that Client purchased à la carte, Smarsh will issue Client a reschedule voucher equal to the Fee for the cancelled course. Client may use the voucher to reschedule the Dedicated Course or register for a future Public Course within twelve (12) months of the cancelled course date. All vouchers expire twelve (12) months after the cancelled course date.
8. **Intellectual Property.** Smarsh University and related course materials, information technology infrastructure, including the software, hardware, databases, electronic systems, networks, and all applications required to deliver the Smarsh U Lab are Smarsh Intellectual Property.

9. **WARRANTY DISCLAIMER; NO GUARANTEE. ALL SMARSH UNIVERSITY COURSES, MATERIALS, AND ANY OTHER DOCUMENTATION, PUBLICATIONS, OR OTHER INFORMATION OR MATERIALS PROVIDED BY OR ON BEHALF OF SMARSH TO CLIENT OR ITS TRAINEES FOR TRAINING PURPOSES ARE FURNISHED ON AN "AS-IS" BASIS, WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND. 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 SMARSH U COURSES OR CERTIFICATION WILL ENSURE CLIENT'S LEGAL COMPLIANCE WITH ANY FEDERAL, STATE, OR INTERNATIONAL STATUTE, LAW, RULE, REGULATION, OR DIRECTIVE.**

## **SERVICE SPECIFIC TERMS – BUSINESS SOLUTIONS**

**Email Hosting.** If Client purchases Email Hosting, Email Encryption or Data Loss Prevention (“**DLP**”) Services, these additional terms apply.

- a) **Units.** Email Encryption is a Service that encrypts a Client-designated email mailbox’s outgoing email. A “Unit” with respect to Email Encryption, Email Hosting or DLP is an email mailbox.
- b) With respect to Email Hosting Services, if Microsoft Corporation (“**Microsoft**”) increases the price that Microsoft charges for the underlying licenses or services Microsoft provides that are applicable to the Email Hosting Services, Smarsh may increase the price for the Email Hosting Services by the full amount of the price increase, regardless of whether the price increase occurs during the Initial Term.
- c) With respect to the Email Hosting Services, the retention of Email Hosting Service Client Data during the Term is subject to space limitations applicable to the Email Hosting Service plan purchased by Client. Email Hosting Service Client Data will be retained for a period of 30 days following the termination or expiration of the earlier of the Email Hosting Service termination or the termination or expiration of the Agreement.
- d) The following terms and conditions apply to Email Hosting Services.

## **MICROSOFT SOFTWARE USE – TERMS AND CONDITIONS**

This document (“**MSFT Terms**”) concerns Your use of Microsoft software, which includes computer software provided to You by Smarsh or Intermedia as described below, and may include associated media, printed materials, and “online” or electronic documentation (individually or collectively “**Licensed Products**”).

### **1. DEFINITIONS.**

For purposes of these MSFT Terms, the following definitions will apply:

“**Client Software**” means software that allows a Device to access or utilize the services or functionality provided by the Server Software.

“**Device**” means each of a computer, workstation, terminal, handheld PC, pager, telephone, personal digital assistant, “smart phone”, or other electronic device.

“**Server Software**” means software that provides services or functionality on a computer acting as a server.

“**Redistribution Software**” means software described in Paragraph 6 (“Use of Redistribution Software”) below.

**2. OWNERSHIP OF LICENSED PRODUCTS.** The Licensed Products are licensed from an affiliate of the Microsoft Corporation (“**Microsoft**”). All title and intellectual property rights in and to the Licensed Products (and the constituent elements thereof, including but not limited to any images, photographs, animations, video, audio, music, text, and “applets” incorporated into the Licensed Products) are owned by Microsoft or its suppliers. Licensed Products are protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. Your possession, access, or use of the Licensed Products does not transfer any ownership of Licensed Products or any intellectual property rights to You.

**3. COPYRIGHT, TRADEMARK AND PATENT NOTICES.** You must not remove, modify or obscure any copyright, trademark or other proprietary rights notices that are contained in or on the Licensed

Products. You must include Microsoft's copyright notice on any labels or documentation (including online documentation) that include the Licensed Products. You have no right under this Agreement to use any Microsoft logos in any manner whatsoever. Whenever a Licensed Product is first referenced in any written or visual communication, You must use the appropriate trademark, Licensed Product descriptor and trademark symbol (either ™ or ®), and clearly indicate Microsoft's (or Microsoft's suppliers') ownership of such marks. For information on Microsoft trademarks, including a listing of current trademarks, see <http://www.microsoft.com/trademarks>. You must not undertake any action that will interfere with or diminish Microsoft's (or Microsoft's suppliers') right, title and/or interest in the trademark(s) or trade name(s). At Microsoft's request, You must provide Microsoft with samples of all of Your written or visual materials that use a Licensed Product name.

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15. **DISCLOSURE OF INFORMATION.** You hereby consent to the provision of Your information regarding Your Account to Microsoft to the extent required under the terms of its license agreement with Microsoft.
16. **LIABILITY FOR BREACH.** You agree that You will also be legally responsible directly to Microsoft for any breach of these terms and conditions.
17. **OWA ACCESS RESTRICTIONS.** You acknowledge and agree that if You have an Outlook Web Access-only (OWA-only) Account (Basic SAL license), You are restricted from and will not use shared folders, shared calendars, shared contacts, shared tasks and public folders with respect to such access.

## INFORMATION SECURITY ADDENDUM

### 1. Security Program

- i. Smarsh has implemented and will maintain appropriate technical, physical, and administrative measures reasonably designed to prevent accidental or unlawful destruction, loss, alteration, or unauthorized disclosure of, or access to confidential information ("**Information Security Program**").
- ii. Smarsh's Information Security Program oversees all areas of security applicable to Smarsh and information security, including physical access to Smarsh's data centers that store data ingested by the applicable Service ("**Client Data**"), system and data access, transmission of Client Data, as well as general supervision and enforcement. Smarsh's Information Security Program generally aligns with the security standards published by the International Organization for Standardization (ISO).
- iii. Smarsh undergoes annual independent third-party SSAE 18 SOC 2 Type II (or its equivalent or successor) assessments of its Information Security Program. After each such assessment, Smarsh assesses the criticality of any issues presented in such report or assessment, and remediates, or implements compensating controls for, any issues identified in such assessment in a timely manner based on level of criticality and risk.

### 1.2 Personnel Security

To the extent permitted by applicable law, Smarsh performs criminal background checks on all Smarsh employees prior to commencement of employment. Smarsh requires each employee to maintain the confidentiality of Confidential Information, including written confidentiality agreements and annual security and data privacy awareness training. Smarsh also requires additional role-based security training for employees with access to Client Data or the application that processes and stores Client Data.

### 1.3 Third-Party Risk Management

Smarsh screens and enters into written confidentiality agreements with its vendors to maintain the security of Confidential Information. Smarsh conducts an initial risk assessment of each vendor, including an initial risk review and verification before engaging such vendor. Thereafter, Smarsh conducts an annual risk review of such vendor.

### 1.4 Smarsh's Access Security

- i. **Facilities Access.** Smarsh employs physical security procedures which require that only authorized individuals have access to corporate facilities. Such procedures include the use of CCTV, cardkey access, processes to log and monitor visitors, and use of receptionists or security guards.
- ii. **Systems Access.** Smarsh follows the principle of "least privilege" when granting access to Smarsh internal systems ("**Smarsh Systems**"). Smarsh uses complex password requirements across all Smarsh Systems to minimize password-related access control risks. Smarsh, when reasonably possible and feasible, utilizes multi-factor authentication for access and administration of Smarsh's Systems. Smarsh's information security policies prohibit Smarsh employees from sharing, writing down, or storing passwords in an unencrypted manner on any Smarsh System (including desktops).

### 1.5 Application Security – Software as a Service

- i. **Applications.** Smarsh provides various software as a service solutions that, as configured by Client, capture, ingest, store, and archive Client Data from various Third-Party Data Source providers of Client (each, a “**SaaS Application**”).
- ii. **Software Code Review and Design.** Smarsh uses a “security by design” approach that follows generally accepted industry standards for a secure software development life cycle. Smarsh performs both static and dynamic web application security code analysis on all code prior to deployment in a production environment. Smarsh uses a formal change management process that includes the tracking and approval for all software product updates and changes. Any such changes are internally reviewed and tested within a staging environment before such changes are finalized and deployed to production environments.
- iii. **Monitoring & Application Scanning.** Smarsh, in accordance with generally accepted industry standards, monitors the SaaS Applications and the Smarsh networks, servers, and service environments hosting the SaaS Applications for potential security vulnerabilities consistent with Smarsh’s vulnerability management program. Smarsh will promptly assess discovered security vulnerabilities taking into account the risk posed and prioritize them for remediation activities.
- iv. **Anti-Malware Testing.** Smarsh, using industry-standard measures, on a regular basis, tests and scans the SaaS Applications 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 SaaS Applications or any component thereof.
- v. **Physical and Software Security.** Smarsh’s information security policy requires all network devices and servers that host or process Client Data to be secured to address reasonable threats through industry standard technical measures. Smarsh physically or logically separates quality assurance and test environments from production environments. Smarsh uses industry-standard firewalls, intrusion detection, and malware detection on its networks and hosted systems and requires the use of VPN for access to its secured environments.
- vi. **Client Data.** Smarsh will not use Client Data for testing purposes or access Client Data, except as authorized by Client, or as required by the applicable Services. Smarsh will not use any data derived from Client Data for any purpose except to provide the Services.
- vii. **Smarsh Physical Data Center Security.** Smarsh ensures that physical security controls are implemented to prevent unauthorized individuals from accessing Smarsh data centers. Smarsh uses data center security measures that align with industry standard practices for physical security and, at a minimum, require that Smarsh data centers use: floor-to-ceiling walls, multi-factor authentication for data center access, 24/7 security monitoring, alarmed exits, and onsite security personnel.
- viii. **Cloud Environment Data Center Security.** Smarsh may use infrastructure-as-a-service providers (“**Cloud Providers**”) to provide the Services (as applicable). Before utilizing a Cloud Provider, Smarsh evaluates the Cloud Provider’s security controls and processes to ensure that such security program meets the applicable obligations contained in Smarsh’s own Information Security Program. On a regular basis thereafter, Smarsh reviews each Cloud Provider’s security controls as audited by Cloud Provider’s third-party security audits and certifications to ensure that such Cloud Provider maintains its Security Program at a level consistent with Smarsh’s Information Security Program. Such controls include the use of, at a minimum, physical access controls, multi-factor authentication for data center access, 24/7 security monitoring, alarmed exits, and onsite security personnel.
- ix. **Penetration Testing.** Smarsh performs annual penetration testing on the SaaS Applications using independent, third-party resources. Upon written request (and not more than once every twelve (12) months), Smarsh will provide a summary penetration testing report to Client.
- x. **Performance.** Smarsh uses industry-standard technology and tools to monitor the uptime status

of its SaaS Applications and to send alerts when any warning conditions need to be reviewed.

- xi. **Data Management.** Client Data is stored in a logically separated environment.
- xii. **Encryption.** Smarsh encrypts Client Data in transit and at rest using encryption techniques that comply with security industry standards published by NIST.

**1.6 Business Continuity/Disaster Recovery.** Smarsh maintains a Business Continuity and Disaster Recovery Plan ("BCP") and shall activate the BCP in the event of a disaster, as defined in the BCP. Upon written request, Smarsh will make an executive summary of the BCP available to Client. Smarsh tests the BCP on a regular basis, and at least annually.

## **1.7 Incident Response.**

- i. **Security Incident.** Smarsh's Information Security Program includes incident response policies and procedures in the event that there is any actual, or reasonably suspected, unauthorized access to Smarsh facilities, Smarsh Systems, or the SaaS Applications ("**Security Incident**"), including processes to ensure that (i) the Security Incident is contained and remediated in a timely fashion; (ii) if required, timely notice is provided to any affected parties (iii) the Security Incident is appropriately tracked; (iv) all related server logs are retained for at least ninety (90) days following the Security Incident; (v) all related Security Incident reports are retained for at least three (3) years; and (vi) all related Security Incident logs are appropriately protected to ensure the integrity of such log. Smarsh will promptly implement such procedures upon becoming aware of a Security Incident.
- ii. **Client Data Incident.** Unless prohibited by applicable law, Smarsh upon becoming aware of any actual (or reasonably suspected) unauthorized third-party access to, disclosure or loss of Client Data maintained in the Services ("**Client Data Incident**"), will: (i) investigate, and take reasonable measures to remediate, the cause of such Client Data Incident, (ii) promptly, and in any event within seventy-two (72) hours, after discovery, provide written notice to the administrative contact set forth under the Client's account with Smarsh, and (iii) provide Client with known details of the Client Data Incident (including the nature and extent of the unauthorized access). The Client is responsible for ensuring that its administrative contact details remain updated.

## **2. Security Documentation; Audit Rights; Security Assessments**

- i. **Security Documentation.** Upon written request, not more than once every twelve (12) months, and subject to the confidentiality obligations set forth in the Agreement, Smarsh will make available to Client, at no cost to Client, a copy of Smarsh's most recent (i) annual independent SSAE 18 SOC 2 Type II report, (ii) executive summary of Smarsh's annual penetration test, and (iii) Smarsh's standard information gathering questionnaire (collectively, "**Security Packet**") to demonstrate Smarsh's compliance with the Information Security Program.
- ii. **Security Assessments of Cloud Providers.** Client recognizes that Smarsh utilizes Cloud Providers to process Client Data or provide the Services. Client agrees that Smarsh does not have access to, or control over, the physical infrastructure or facilities used by such Cloud Providers or the manner in which such Cloud Providers allow third-parties to audit such Cloud Provider's security controls and processes. If Client wishes to conduct an audit of any related Cloud Provider applicable to the Services, Client may elect to do so in the manner set forth in this Section 3. Upon Client's written request (and no more than once every twelve (12) months), and subject to the confidentiality obligations set forth in this Agreement, Smarsh agrees to use commercially reasonable efforts to provide Client with sufficient information to obtain such security documentation on its own.

## SUPPORT AND SERVICE LEVEL AGREEMENT

### 1. SUPPORT

Smarsh offers a broad range of technical support services as set forth below.

### 2. SUPPORT PACKAGES

The Smarsh Basic support package is included with all Smarsh Services at no additional charge. Client may purchase a premium support package to extend hours of support coverage, receive support from named or assigned members of the Smarsh Global Support team, and access other support services beyond those included in the Basic support package. The table below provides an overview of the support services included with each support package. The Agreement provides more details about the premium support packages purchased by Client. Client may access online support resources and FAQ's at <https://central.smarsh.com> ("**Smarsh Central**").

| Features   | Support Packages |          |           |      |            |
|--|------------------|----------|-----------|------|------------|
|  | Basic            | PRO Plus | PRO Elite | BCS* | BCS Elite* |
| Access to Smarsh Central Self-Service Support Resources            | ✓                | ✓        | ✓         | ✓    | ✓          |
| Access to System Status Page Updates and Subscriptions             | ✓                | ✓        | ✓         | ✓    | ✓          |
| Products Updates, Fixes, and Enhancements (Standard Release Cycle) | ✓                | ✓        | ✓         | ✓    | ✓          |
| Web-based Support  | ✓                | ✓        | ✓         | ✓    | ✓          |
| 24/7 Phone Support for Severity 1 Issues                           | ✓                | ✓        | ✓         | ✓    | ✓          |
| Enhanced Support Response Times                                    |                  | ✓        | ✓         | ✓    | ✓          |
| Named Technical Support Engineer(s)                                |                  | ✓        | ✓         | ✓    | ✓          |
| Weekly Status Calls  |                  | ✓        | ✓         | ✓    | ✓          |
| Annual Account Reviews   |                  | ✓        | ✓         | ✓    | ✓          |
| Quarterly Account Reviews  |                  |          | ✓         |      | ✓          |
| Regular Account Reports  |                  |          | ✓         |      | ✓          |
| Smarsh University Subscription                                     |                  | ✓        | ✓         | ✓    | ✓          |
| Named Executive Sponsor  |                  |          | ✓         |      | ✓          |

|                               |  |  |  |  |   |
|-------------------------------|--|--|--|--|---|
| Dedicated Account Status Page |  |  |  |  | ✓ |
|-------------------------------|--|--|--|--|---|

**\* BCS (BUSINESS CRITICAL SUPPORT) AND BCS ELITE ARE NOT AVAILABLE FOR PROFESSIONAL ARCHIVE.**

### 3. SERVICE INCIDENTS AND SUPPORT REQUESTS

Except with respect to Severity Level 1 issues, Smarsh recommends reporting issues regarding availability or performance of the Services by creating a case at Smarsh Central. All Severity Level 1 issues must be reported via phone. Support requests must include a detailed description of the error or request, including the operating conditions that gave rise to the error. The individual requesting support will receive notification via email to confirm receipt of a Support request, along with a case number for reference. Smarsh standard phone support is available Monday through Friday between the hours of 8 am and 8 pm Eastern (excluding United States Federal or Smarsh-observed Holidays). If Client purchases a premium support package, standard phone support hours may be expanded. Off-hours phone support is available 24 hours per day, 365 days per year for Severity Level 1 issues. Smarsh may limit the right to submit support requests to a maximum of 10 Users, unless specified otherwise in the Agreement.

| Severity | Description   |
|----------|---|
| 1        | Issue impacts multiple users: SaaS Service is completely shut down, or major functionality is unavailable or materially impacted by performance issues, and no workaround is available.   |
| 2        | Issue impacts multiple users: important features are unavailable or degraded, or multiple users are degraded, and no workaround is available.<br><b>Or</b><br>The issue impacts a single user, major functionality is unavailable or materially impacted by performance issues, and no workaround is available. |
| 3        | Issue impacts multiple or single users: important features are unavailable, but a workaround is available.<br><b>Or</b><br>intermittent disruption of Services.   |
| 4        | A minor feature is unavailable,<br><b>Or</b><br>there is a minor performance impact   |

#### Initial Response

After Client creates a case, Smarsh will use commercially reasonable efforts to respond to Client within the target response time indicated below for the corresponding severity level and support package. For all packages, Smarsh will respond to routine service requests (e.g. requests for information, password resets, reports of potential defects, feature requests, and troubleshooting guidance) within one business day.

| Target Initial Response Time |                |                                       |
|------------------------------|----------------|---------------------------------------|
| Severity                     | Basic          | PRO Plus*, PRO Elite*, BCS, BCS Elite |
| 1                            | 60 minutes     | 30 minutes                            |
| 2                            | 2 hours        | 1 hour                                |
| 3                            | 4 hours        | 2 hours                               |
| 4                            | 1 business day | 8 hours                               |

\* For Pro Plus and Pro Elite - during US Business Hours, except for Severity 1.

### Resolution Process

Smarsh will address and resolve issues with the Services reported by Client that are within the control of Smarsh based on the resolution process indicated below for the corresponding severity level. If Client purchases a premium support package, Smarsh will provide notification of a target resolution or workaround plan, updates, and escalation based on the process for the corresponding severity level specified below, unless specified otherwise in the Agreement.

| Resolution Process |   |  |               |  |
|--------------------|---|--|---------------|--|
| Severity           | All packages  | PRO Plus, PRO Elite, BCS, BCS Elite    |               |  |
|                    |   | Notification of Resolution Target      | Updates       | Escalation to Management   |
| 1                  | Smarsh will investigate the issue and will work continuously until the error is fixed or a temporary workaround is implemented. | Within 4 hours after initial response  | Every hour    | If the issue is not resolved within 8 hours after initial response         |
| 2                  | Smarsh will investigate the issue and will work continuously until the error is fixed or a temporary workaround is implemented. | Within 48 hours after initial response | Every 4 hours | If the issue is not resolved within 3 business days after initial response |
| 3                  | Smarsh will work during normal  | Within 4 days after initial response   | Every day     | If the issue is not resolved within 5 business days                        |

|   |  |                                      |                           |                           |
|---|--|--------------------------------------|---------------------------|---------------------------|
|   | business hours to investigate the issue and implement a fix or workaround. |                                      |                           | after initial response    |
| 4 | Smarsh will work to provide a fix in the next maintenance release.         | Within 7 days after initial response | As agreed by the parties. | As agreed by the parties. |

### Escalation Process

Client may escalate an active support case if (i) Client is not satisfied with the resolution method implemented by Smarsh, (ii) there has been a significant change in the business impact to Client after the issue was reported, or (iii) Smarsh fails to respond in a timely manner during the resolution process. Instructions for initiating the escalation process are available at Smarsh Central.

#### 4. Service Levels

This section applies only to those SaaS Services set forth specifically herein. It does not apply to products that are deployed on-premises.

##### i. Definitions

**“Availability”** means that Client can access the platform and is measured using the formula in section 2.2 below.

**“Downtime”** means Service interruptions that occur outside applicable maintenance windows specified in section 2.4 below, including Planned Maintenance, Emergency Maintenance, and Outages.

**“Emergency Maintenance”** means maintenance required to: (i) maintain Availability on a go-forward basis, or (ii) execute a critical security change.

**“Outages”** means unplanned Service interruptions that temporarily prevent access to major functions of the applicable platform.

**“Planned Maintenance”** means: (i) maintenance that occurs during applicable maintenance windows specified in section 2.4 below, or (ii) maintenance that occurs outside applicable maintenance windows for which Smarsh has provided advance notice in accordance with section 2.4 below.

##### ii. Uptime Commitment

The Availability for the production instance of those SaaS Services (set forth below during each calendar month (the **“Uptime Commitment”**)) is as specified below. The Uptime Commitments specified below do not apply to user acceptance testing environments or other non-production environments.

| SaaS Service | Uptime Commitment |
|--------------|-------------------|
| Archive      |                   |

|                      |       |
|----------------------|-------|
| Professional Archive | 99.9% |
| <b>Capture</b>       |       |
| MobileGuard          | 99.9% |
| Cloud Capture        | 99.9% |
| Capture Mobile       | 99.9% |

Availability is measured using the following industry-standard formula:

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

## 5. Service Credits

If Smarsh does not meet its Uptime Commitment in any calendar month, Smarsh will issue Client a credit for a portion of Client's platform Fees for the affected Service in accordance with the table below. Client must request credits within thirty (30) days from the end of the month in which Smarsh did not meet its Uptime Commitment. Smarsh will use its diagnostic monitoring tools to verify its failure to meet its Uptime Commitment before Smarsh issues a credit. Smarsh will apply applicable credits to Client's next invoice.

| Uptime         | Service Credit  |
|----------------|---|
| 98.0% - 99.89% | 5% of monthly platform Fee (or 0.5% of annual platform Fee)   |
| 95.0% - 97.9%  | 10% of monthly platform Fee (or 1% of annual platform Fee)    |
| Below 95.0%    | 20% of monthly platform Fee (or 1.75% of annual platform Fee) |

## 6. Maintenance Windows

Smarsh provides maintenance notifications and reminders, and Client may subscribe to such notifications and reminders, through the Status Page at <https://status.smarsh.com/>.

**Professional Archive.** To the extent reasonably possible, Smarsh will refrain from performing maintenance that causes interference with or disruption to Client's access to Professional Archive. Smarsh will perform planned maintenance during the maintenance windows specified below. To the extent feasible, Smarsh will provide 48 hours' advance notice of any maintenance it will perform outside

its maintenance windows and that may cause interference with or disruption to Client's access to Professional Archive.

Professional Archive maintenance windows:

- Mon-Thurs: 12:00 AM-5:00 AM and 9:00 PM-11:59 PM Eastern
- Fri: 12:00 AM-5:00 AM and 6:00 PM-11:59 PM Eastern
- Weekends: any time

**Capture Platform and Capture Mobile.** To the extent reasonably possible, Smarsh will refrain from performing maintenance that causes interference with or disruption to Client's access to Cloud Capture during normal business hours for the region in which Client's Cloud Capture instance is deployed. Smarsh will perform planned maintenance during the maintenance windows specified below. To the extent feasible, Smarsh will provide at least three (3) days' advance notice of any maintenance it will perform outside its maintenance windows and that may cause interference with or disruption to Client's access to Cloud Capture. Smarsh may perform Emergency Maintenance without providing advance notice to Client.

Capture maintenance windows:

- Mon-Fri: 12 AM - 5AM and 8 PM - 11:59 PM
- Weekends: any time

*The times specified above are local to the region in which Client's Cloud Capture instance is deployed.*