



## Smarsh Services Agreement – Public Sector

### General Terms

This Smarsh Services Agreement – Public Sector (the “**Agreement**”) constitutes a binding agreement between Smarsh Inc. (“**Smarsh**”) and the customer (“**Client**”) identified in an order form or other order document with an authorized reseller of Smarsh products and services (“**Reseller**”) that references this Agreement (“**Order**”). This Agreement is effective on the first day of the Term (as defined in Section 6.1) as specified in the Order (“**Effective Date**”). Client agrees that the terms of this Agreement will govern Client’s use of the Services (as defined in Section 1) in addition to those additional terms set forth in the Order. To the extent there is a conflict between this Agreement and the Order, the terms of the Order will apply. Each Order will be the Client’s commitment to purchase and pay for the Services stated in the Order, subject to the cancellation and termination rights set forth in the Order or in applicable Federal Acquisition Regulations (FAR) or state-specific procurement laws and regulations.

This Agreement includes five parts: (1) the legal terms that are included in this “General Terms” Section, (2) the terms that are specific to each service included in the “Service Specific Terms” attached as Exhibits A and B, (3) the Service Level Agreement included as part of the applicable Service Specific Terms, (4) the Acceptable Use Policy (or “**AUP**”) attached as Exhibit C, and (5) the description of each service in “Service Descriptions” available at [www.smarsh.com/legal](http://www.smarsh.com/legal).

1. **Services and License Grant.** Smarsh will provide the Services specified in each Order (“**Services**”), according to the Order, this Agreement, the Service Specific Terms, the applicable Service Level Agreement and the Service Descriptions. Smarsh grants Client a revocable, non-exclusive, non-transferable, limited license to access and use the Services purchased by Client during the Term (as defined in Section 6.1).
2. **Support & User Groups.** Client will find support resources for the Services and may engage with other end users in online forums regarding the Services at Smarsh Central, located at <https://central.smarsh.com>.
  - 2.1. **Smarsh Central.** Support FAQ’s and other support resources are available on Smarsh Central located at <https://central.smarsh.com>. Client may initiate support requests by submitting support tickets on Smarsh Central. Changes to Smarsh’s support FAQs and other support resources will be made available on Smarsh Central. For the avoidance of doubt, support FAQs and other support resources are not part of this Agreement.
  - 2.2. **Groups.** Smarsh Central provides online forums and related features to Users (as defined in Section 4.5) 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 during the Term. Client or Users may post comments or content to Groups (“**Groups Content**”). Client grants Smarsh a worldwide, royalty-free, irrevocable license to access, use, reproduce, make derivatives of, and incorporate Groups Content into Smarsh products or services for commercial use without payment to Client or its Users. Client acknowledges that Groups Content is not confidential and is subject to the Acceptable Use Policy attached as Exhibit C. Smarsh may delete Groups Content without prior notice. 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 provides Groups without charge and Groups is not part of the Services. Smarsh may suspend or discontinue Groups at any time without notice.

3. **Trial Services.** If a trial period is indicated on an Order, Smarsh will provide Client with a temporary account to one or more Services ("**Trial Account**"). The Trial Account will be accessible beginning on the date Client signs the applicable Order and for the trial period set forth in the Order. If no trial period is stated, the Trial Account period will be thirty (30) days from the Activation Date ("**Trial Period**"). DURING THE TRIAL PERIOD, THE TRIAL ACCOUNT AND ASSOCIATED SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" AND WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND.
  
4. **Client Obligations.**
  - 4.1. As used in this Agreement, the term "**Client Data**" means the data that the Services capture and archive from Client's Third Party Services (as defined in Section 5). Client hereby grants Smarsh a limited, non-exclusive license to access, copy, transmit, download, display, and reproduce Client Data as necessary to provide, support, and improve the Services, as directed by Client, or as otherwise authorized hereunder. Data generated by the Services regarding Client's use of the Services is usage data and is not and does not contain Client Data.
  - 4.2. It is Client's sole responsibility to monitor the Services and Third Party Services to ensure that Client Data is being captured. Smarsh is not responsible or liable for any update, upgrade, patch, maintenance or other change to Third Party Services that affects the transmission of Client Data to the Service. It is Client's responsibility to ensure that the Services are configured to capture Client Data from all relevant end-user accounts or devices or web domains, as applicable.
  - 4.3. Client may not use the Services in any manner or for any purposes other than as expressly permitted by the Order and this Agreement. Client is solely responsible for the content of Client Data. Client represents and warrants that (a) Client Data will not (i) infringe any third party right, including patent, trademark, copyright, or trade secrets, or (ii) constitute a breach of any other right of a third party, including any right that may exist under contract or tort theories; (b) Client will comply with all applicable local, state, national, or foreign laws, rules, regulations, or treaties in connection with Client's use of the Services, including those related to data privacy, data protection, communications, SPAM, or the transmission, recording, or storage of technical data, personal data, or sensitive information; and (c) Client will comply with the Acceptable Use Policy attached as Exhibit C.
  - 4.4. Client is responsible for creating an account within the Services and ensuring that (a) Client's account registration information is complete and accurate; and (b) Client's account credentials are confidential. Client must notify Smarsh immediately of any unauthorized use of Client's account or account credentials, or any other known or suspected breach of the security of Client's account. Client is responsible for the activity that occurs within Client's account and for the actions or omissions of Client's employees, contractors or agents, whether such person is or was acting within the scope of their employment, engagement, or agency relationship. Client will not permit Smarsh competitors to access the Services for any reason.
  - 4.5. Client may designate user roles with different levels of access for use or support of the Services. An "**Authorized User**" is the administrative user(s) with the highest level of access and is responsible for managing the Services for Client. Authorized Users may appoint other Authorized Users, request or agree to changes to the Services, add or remove users, make billing inquiries, contact support, or take other, similar actions. A "**User**" is any individual who is granted login credentials to the Services. Users may not share account log in credentials.
  
5. **Third Party Providers.** The Services receive Client Data from telecommunications providers and other third party service providers and are dependent on the third party's services, software, applications, platforms ("**Third Party Services**"). Third Party Services are not offered, controlled or provided by Smarsh. A Third-Party Service may make changes to its service, or components thereof, or suspend or discontinue a service without notice to Smarsh. In addition, the availability of the Third-Party Service may depend on Client's compliance with the applicable Third-Party Service terms. The



Third-Party Service will have access to Client's data and will provide Client Data to Smarsh. Smarsh does not control and is not responsible or liable for how the Third-Party Service transmits, accesses, processes, stores, uses, or provides data to Smarsh. Smarsh expressly disclaims all liability related to or arising from any Third-Party Service, including Client's use thereof, or liability related to or arising from any updates, modifications, outages, delivery failures, corruption of data, loss of data, discontinuance of services, or termination of Client's account by the Third-Party Service. Client is solely responsible for ensuring Client complies with all Third-Party Service terms and conditions. Client acknowledges that certain Third-Party Services do not represent that they are suitable for sensitive communications and do not encrypt messages sent over such Third-Party Services networks, including social media providers, telecommunication carriers and certain messaging platforms. Client agrees that if Client transmits sensitive personal, health or financial information via these unsecure Third Party Services, Client assumes all risk associated with such transmission and is responsible for any damages or losses incurred with respect to transmitting such sensitive data over such networks and to Smarsh. Such transmission may also be a breach of the AUP.

## 6. Term & Termination.

6.1. **Term.** The Agreement will begin on the Effective Date and will remain in effect for the term specified in the Order ("**Initial Term**"). Client may renew this Agreement and continue the associated Services for additional 12-month terms (each a "**Renewal Term**") by executing a renewal Order. The Initial Term plus any Renewal Term are, collectively, the "**Term.**" The term of any Order for additional Services executed after the Effective Date will co-terminate with Client's then-current Term.

### 6.2. Termination.

6.2.1. **Federal Clients.** Unless otherwise specified in the Order, the Client's termination rights are governed by FAR 52.212-4(l) and (m).

6.2.1.1. **Disputes.** This Agreement is subject to 41 U.S.C. chapter 71, Contract Disputes, and any uncured material breach of this Agreement by either party will be a dispute to be resolved in accordance with FAR 52.233-1, Disputes. Smarsh shall continue to perform under this Agreement, pending final resolution of any such dispute.

6.2.2. **State and Local Clients.** Either party may terminate this Agreement if the other party materially breaches its obligations under this Agreement and such breach remains uncured for a period of 30 days following the non-breaching party's written notice thereof. Smarsh may suspend Client's access to the Services in the event of Client's material breach of this Agreement and will not be liable for any damages resulting from such suspension.

6.3. **Effect of Termination.** Upon any termination or expiration of the Agreement: (a) all rights and licenses to the Services granted to Client by Smarsh will immediately terminate; (b) Client will pay Reseller any Fees due and payable up to the date of termination and (c) upon request, each party will return to the other or delete the Confidential Information of the other party..

7. **Fees & Payment.** Client will pay Reseller the fees for the Services as set forth in the Order ("**Fees**") in accordance with the invoice schedule, invoice instructions, and payment schedule included with such Order. After Reseller submits an Order to Smarsh, Smarsh will activate or otherwise make available the Services for Client's use by providing Client with login credentials to an account within the Federal Archive. The "**Activation Date**" is the date that Smarsh provides such access credentials to Client. Client's failure to pay the Fees to Reseller when due will be a material breach of the agreement subject to the applicable provisions of Section 6.2 above. Unless Client is a U.S. federal government entity, Smarsh may suspend Client's access to the Services in the event of Client's material breach of this Agreement and will not be liable for any damages resulting from such suspension

8. **Minimum Commitment & Invoice of Overages.** Client agrees that the quantities set forth in the Order are Client's minimum purchase commitment during the Term of the Order and, upon renewal, each Renewal Term.
9. **Taxes.** All Fees payable by Client under this Agreement are exclusive of taxes and similar assessments. If Smarsh is required to pay sales, service, use and excise taxes, utility user's fees, 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, then such taxes shall be billed to and paid by Client if Client determines such taxes are applicable and allowable.
10. **Confidentiality.**
  - 10.1. **"Confidential Information"** means (a) the non-public information of either party, including but not limited to information relating to either party's product plans, present or future developments, customers, designs, information security policies and procedures, security documentation, costs, unit or line item prices, finances, marketing plans, business opportunities, software, software manuals, personnel, research, development or know-how; (b) any information designated by either party as "confidential" or "proprietary" or which, under the circumstances taken as a whole, would reasonably be deemed to be confidential; or (c) Client Data. "Confidential Information" does not include information that: (i) is in, or enters, the public domain without breach of this Agreement; (ii) the receiving party lawfully receives from a third party without restriction on disclosure and without breach of a nondisclosure obligation; (iii) the receiving party knew prior to receiving such information from the disclosing party, as evidenced the receiving party's records; or (iv) the receiving party develops independently without reference to the Confidential Information.
  - 10.2. **Obligations with Respect to Confidential Information.** Each party agrees: (a) that it will not disclose to any third party, or use for the benefit of any third party, any Confidential Information disclosed to it by the other party except as expressly permitted by this Agreement; and (b) that it will maintain the confidentiality of Confidential Information of the other party in its possession or control using measures at least as protective as those it uses to protect its own confidential information but no less than reasonable measures. Either party may disclose Confidential Information of the other party: (i) pursuant to the order or requirement of a court, administrative or regulatory agency, or other governmental body, provided that the receiving party, if feasible and/or legally permitted to do so, gives reasonable notice to the disclosing party to allow the disclosing party to contest such order or requirement; (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; or (iii) where Client holds Smarsh Confidential Information, , pursuant to a public records request, provided that Client gives reasonable notice to Smarsh to allow Smarsh the opportunity to request redaction of its Confidential Information or seek a protective order preventing its 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.
11. **Intellectual Property.** As between Smarsh and Client, all right, title and interest in and to the Services, the information technology infrastructure including the software, hardware, databases, electronic systems, networks, and all applications and APIs required to deliver the Services, or made available or accessible to Client by Smarsh, including all documentation regarding the use or operation of the Services (collectively "**Intellectual Property**") are the 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. As between Smarsh and Client, Client Data is the sole and exclusive

property of Client. Except for the limited license to Client Data granted in Section 4.1, nothing in this Agreement will serve to transfer to Smarsh any intellectual property rights in Client Data.

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

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

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

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

12.4. **Warranty Disclaimer; No Guarantee.** EXCEPT AS SET FORTH ABOVE, SMARSH MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND IN CONNECTION WITH THE SERVICES, OR PROFESSIONAL SERVICES, INCLUDING, WITHOUT LIMITATION, ANY INFORMATION OR MATERIALS PROVIDED OR MADE AVAILABLE BY SMARSH. SMARSH HEREBY DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. SMARSH DOES NOT REPRESENT OR WARRANT THAT THE SERVICES 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 ITS REASONABLE CONTROL. SMARSH DOES NOT GUARANTEE THAT USE OF THE SERVICES BY CLIENT OR THE ADVICE, CONSULTING OR PROFESSIONAL SERVICES PROVIDED TO CLIENT WILL ENSURE CLIENT'S LEGAL COMPLIANCE WITH ANY FEDERAL, STATE, OR INTERNATIONAL STATUTE, LAW, RULE, REGULATION, OR DIRECTIVE.

12.5. **High-Risk Disclaimer.** CLIENT UNDERSTANDS AND AGREES THAT THE SERVICES ARE NOT FAULT-TOLERANT AND ARE NOT DESIGNED OR INTENDED FOR USE IN ANY HIGH-RISK OR HAZARDOUS ENVIRONMENT, INCLUDING WITHOUT LIMITATION, THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION, AIR TRAFFIC CONTROL, LIFE SUPPORT MACHINES, WEAPONS SYSTEMS, OR ANY OTHER APPLICATION WHERE THE FAILURE OR MALFUNCTION OF ANY SERVICES CAN REASONABLY BE EXPECTED TO RESULT IN DEATH, PERSONAL INJURY, SEVERE PROPERTY DAMAGE OR SEVERE ENVIRONMENTAL HARM (A "HIGH RISK ENVIRONMENT"). ACCORDINGLY, (I) CLIENT SHOULD NOT USE THE SERVICES IN A HIGH RISK ENVIRONMENT, (II) ANY USE OF THE SERVICES BY CLIENT IN A HIGH RISK ENVIRONMENT IS AT CLIENT'S OWN RISK, (III) SMARSH, ITS AFFILIATES AND SUPPLIERS SHALL NOT BE LIABLE TO CLIENT IN ANY WAY FOR USE OF THE SERVICES IN A HIGH RISK ENVIRONMENT, AND (IV) SMARSH MAKES NO WARRANTIES OR ASSURANCES, EXPRESS OR IMPLIED, REGARDING USE OF THE PRODUCTS IN A HIGH RISK ENVIRONMENT.

## 13. **Indemnification.**

13.1. **Client Indemnification.** To the extent permitted by applicable law, and without in any manner waiving its rights to sovereign immunity or increasing its liability thereunder, Client will defend, indemnify and hold harmless Smarsh and its officers, directors, employees and agents, from and against all claims, losses, damages, liabilities and expenses (including fines, penalties, and reasonable attorneys' fees), arising from or related to the content of Client Data and Client's breach of the Service Specific Terms or Sections 4.2, 4.3, 4.4, 4.5, or 15.1 of this Agreement. Smarsh will (a) provide Client with prompt written notice upon becoming aware of any such claim; except that Client will not be relieved of its obligation for indemnification if Smarsh fails to provide such notice unless Client is actually prejudiced in defending a claim due to Smarsh's failure to provide notice in accordance with this Section 13.1(a); (b) allow Client sole and exclusive control over the defense and settlement of any such claim; and (c) if requested by Client, and at Client's expense, reasonably cooperate with the defense of such claim.

13.2 **Smarsh Indemnification.** Smarsh will defend, indemnify and hold Client harmless from third-party claims that the Services infringe any United States patent, trademark or copyright. Client will provide Smarsh with prompt written notice upon becoming aware of any such claim. Unless prohibited by applicable law, Client will allow Smarsh sole and exclusive control over the defense and settlement of any such claim and reasonably cooperate with Smarsh in such defense, unless (i) prohibited by applicable state law, or (ii) Client is a U.S. federal government entity. If Client is a U.S. federal government entity, the U.S. Department of Justice has the sole right to represent Client in any such proceedings in accordance with 28 USC 516. Notwithstanding the foregoing, Smarsh will not be liable for any claim that relates to or arises from: (i) custom functionality provided to Client based on Client's specific requirements; (ii) any modification of the Services by Client or any third party; (iii) the combination of the Services with any technology or other services, software, or technology not provided by Smarsh; or (iv) Client's failure to use updated or modified versions of the Services made available by Smarsh. Except as expressly provided in Section 14.1.3, the indemnification obligation contained in this Section 13.2 is Client's sole remedy, and Smarsh's sole obligation, with respect to claims of infringement.

#### 14. Remedies and Limitation of Liability.

##### 14.1. Remedies.

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

14.1.2. In the event of a breach of the applicable Service Level Agreement, Smarsh will provide Client with the credit stated in the Service Level Agreement.

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

##### 14.2. Limitation of Liability.

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

14.2.2. EXCEPT WITH RESPECT TO SECTION 13 (INDEMNIFICATION), EACH PARTY'S AGGREGATE LIABILITY FOR ALL DAMAGES ARISING FROM OR RELATING TO THIS AGREEMENT, NOTWITHSTANDING THE FORM IN WHICH ANY ACTION IS BROUGHT (E.G., CONTRACT, TORT, OR OTHERWISE), WILL NOT EXCEED THE TOTAL FEES ACTUALLY PAID BY CLIENT FOR THE APPLICABLE SERVICES IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE INCIDENT FROM WHICH THE DAMAGES AROSE.



14.2.3. NOTWITHSTANDING THE FORM IN WHICH ANY ACTION IS BROUGHT (E.G., CONTRACT, TORT, OR OTHERWISE), EACH PARTY'S AGGREGATE LIABILITY FOR ALL DAMAGES ARISING FROM OR RELATING TO SECTION 13 (INDEMNIFICATION) OF THIS AGREEMENT WILL NOT EXCEED THREE TIMES (3X) THE TOTAL FEES ACTUALLY PAID BY CLIENT FOR THE APPLICABLE SERVICES IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE INCIDENT FROM WHICH THE DAMAGES AROSE.

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

## 15. General Terms.

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

15.2. **Assignment.** Neither party may assign this Agreement, in whole or in part, without the other party's prior written consent. If Client is a U.S. federal government entity, all assignments of this Agreement must be made in accordance with 41 U.S.C. Section 6305 and FAR Subpart 42.12. Any attempt to assign this Agreement other than as permitted herein will be null and void. This Agreement will inure to the benefit of, and bind, the parties' respective successors and permitted assigns.

15.3. **Force Majeure.** A failure of party to perform, or an omission by a party in its performance of, any obligation of this Agreement will not be a breach of this Agreement, nor will it create any liability, if such failure or omission arises from any cause or causes beyond the reasonable control of the parties, including, but not limited to the following (each a "**Force Majeure Event**"): (a) acts of God; (b) acts or omissions of any governmental entity; (c) any rules, regulations or orders issued by any governmental authority or any officer, department, agency or instrumentality thereof; (d) fire, storm, flood, earthquake, accident, war, rebellion, insurrection, riot, strikes and lockouts; or (e) utility or telecommunication failures; so long as such party uses reasonable efforts to resume performance after any such Force Majeure Event.

## 15.4. Governing Law.

15.4.1. **Federal Clients.** This Agreement will be governed by and construed in accordance with the applicable federal laws of the United States, and any legal action or proceeding arising



under this Agreement will be governed by the Contract Disputes Act and Federal Tort Claims Act, as applicable. Smarsh shall continue to perform under this Agreement, pending final resolution of any such legal action, proceeding, or dispute.

- 15.4.2. **State and Local Clients.** This Agreement will be governed by and construed in accordance with the laws of the state or commonwealth where Client is located, and any legal action or proceeding arising under this Agreement will be brought exclusively in the federal or state courts located in the county where Client is located.
- 15.5. **Relationship of the Parties.** The parties are independent contractors as to each other, and neither party will have power or authority to assume or create any obligation or responsibility on behalf of the other. This Agreement will not be construed to create or imply any partnership, agency, or joint venture.
- 15.6. **U.S. Government Rights.** In accordance with FAR Sections 12.211 and 12.211, and Defense Federal Acquisition Regulation Supplement (DFARS) Section 227.7202-1 and 227.7202-3, the Services are provided to the Client as “commercial items,” “commercial computer software,” “commercial computer software documentation,” and “technical data” with the same rights and restrictions generally applicable to the Services.
- 15.7. **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 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).
- 15.8. **Publicity.** Smarsh may disclose that Client is a customer of Smarsh.
- 15.9. **Severability; Waiver.** If for any reason a court of competent jurisdiction finds any provision or portion of this Agreement to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Agreement will continue in full force and effect. Failure of either party to insist on strict performance of any provision herein will not be deemed a waiver of any rights or remedies that either party will have and will not be deemed a waiver of any subsequent default of the terms and conditions thereof.
- 15.10. **Entire Agreement; Electronic Signatures.** This Agreement together with the Order is the entire agreement between the parties with respect to its subject matter, and supersedes any prior or contemporaneous agreements, negotiations, and communications, whether written or oral, regarding such subject matter. Smarsh expressly rejects all terms contained in Client’s purchase order documents, or in electronic communications between the parties, and such terms form no part of this Agreement. The parties agree that electronic signatures, whether digital or encrypted, give rise to a valid and enforceable agreement. This Agreement may only be modified, or any rights under it waived, by a written document executed by both parties.



## EXHIBIT A

These Service Specific Terms apply solely to Client's purchase and use of the Federal Archive and consist of the following schedules:

- |                   |   |
|-------------------|---|
| <b>Schedule 1</b> | Service Specific Terms – Federal Archive  |
| <b>Schedule 2</b> | Service Level Agreement – Federal Archive |



## Exhibit A – Schedule 1

### Service Specific Terms – Federal Archive

Unless expressly stated otherwise, capitalized terms contained in these Service Specific Terms have the meaning given them in the General Terms section of the Agreement.

1. **Descriptions. “Federal Archive”** is a capture and archive Service that captures data from the Client’s Third Party Services provider (i.e., AT&T and Verizon) and archives such data as Client Data. Federal Archive captures text messages in native format directly from the applicable carrier and preserves conversational context. Federal Archive includes (i) functionality to securely export Client Data to local machines or other systems of record and (ii) granular, role-based User access controls and permissions. To enable Federal Archive to receive Client Data, Client must purchase Connections. Each “**Connection**” corresponds to one mobile phone number.
2. **Data Retention.** Smarsh will retain Client Data captured by the Federal Archive at no additional charge for a default retention period of up to 7 years from the message ingestion date during the Term of the Agreement. If Client requires a different retention period for Client Data captured by Federal Archive, Client must submit a written request for Smarsh to implement custom retention policies. If Client requires a retention period longer than 7 years, Client must purchase extended storage. Client is solely responsible for ensuring that the default retention period or any other retention policies implemented by Client within the Federal Archive comply with applicable legal, regulatory, or Client’s internal requirements. Following termination or expiration of the Agreement, Smarsh will retain Client Data for a minimum of six (6) months to allow time for Client to make alternative arrangements for long-term data storage. Thereafter, Smarsh may delete Client Data in its sole discretion.
3. **Data Exports.** During the Term, Client may complete self-service exports of Client Data at no additional charge by logging into the Federal Archive. Following termination or expiration of the Agreement, Client may maintain access to the Federal Archive and the ability to complete self-service exports by executing a separate historical access agreement.
4. **Client Obligations.** Client is responsible for configuring applicable Third Party Services, third-party platforms or systems to transmit Client Data to the Federal Archive.
5. **Data Centers.** The Federal Archive is hosted on AWS GovCloud infrastructure in the United States and is managed by Smarsh.
6. **Data Security.** Smarsh will implement a written information security program that maintains administrative, technical, and physical safeguards, designed to:
  - ensure the security and confidentiality of all Client Confidential Information that is processed, stored, or controlled by Smarsh;
  - protect against anticipated threats or hazards to the security or integrity of such Confidential Information;
  - prevent unauthorized access to or use of such Confidential Information; and
  - ensure the secure disposal of such Confidential Information in compliance with applicable National Institute of Standards and Technology (NIST) standards.

Smarsh will use reasonable efforts to ensure its written information security program and administrative, technical, and physical safeguards align with accepted industry practices (such as applicable security standards published by International Organization for Standardization (ISO) or NIST), and comply with applicable data protection and privacy laws, as well as the terms and conditions of the Agreement, including those contained in this Information Security Addendum. More information about the security controls applicable to Federal Archive is available in Smarsh’s



System Security Plan (“SSP”). Smarsh will provide a copy of its then-current SSP to Client upon written request.

Smarsh received Authority to Operate from its FedRAMP sponsor, Office of the Inspector General, U.S. Department of State on February 5, 2020. Once Smarsh receives FedRAMP authorization from the General Services Administration, Smarsh will use continuous monitoring and proactive measures to ensure the Federal Archive remains FedRAMP Authorized for the life of the product.

**7. Mobile Channels.**

7.1. Client is permitted to actively capture and archive text messages only for Client's current employees or contractors. Client is prohibited from actively capturing or archiving text messages for any individual who is not a Client employee or contractor. Client agrees to (i) notify Smarsh immediately when any employee's employment or contractor's service is terminated; and (b) 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 text messages. 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 text messages.

7.2. Each Third Party Service provider may have a different implementation process. The implementation process is dependent on Client and the applicable Third Party Services provider must complete. Smarsh is not responsible for delays in implementation that are caused by a Third Party Services provider, Client, or Client employees or contractors. AT&T and Verizon require Smarsh to pass through certain additional terms (“Additional Text Service Terms”). Such Additional Text Service Terms are subject to modification by the applicable carrier and such modifications will be incorporated into the Agreement upon notice to Client. The current Additional Text Service Terms begin on the next page.

**8. Limitation of Liability.**

8.1. The limitations of liability specified in Section 14.2 (Limitation of Liability) of the Smarsh Service Agreement – Public Sector – General Terms do not apply with respect to the Federal Archive.

8.2. With respect to the Federal Archive:

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

8.2.2. EACH PARTY'S AGGREGATE LIABILITY FOR ALL DAMAGES ARISING FROM OR RELATING TO THIS AGREEMENT, NOTWITHSTANDING THE FORM IN WHICH ANY ACTION IS BROUGHT (E.G., CONTRACT, TORT, OR OTHERWISE), WILL NOT EXCEED FIVE TIMES (5X) 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.

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

**EACH OF I-II THAT FOLLOW ARE AGREEMENTS MADE BETWEEN CLIENT AND THE APPLICABLE TELECOMMUNICATIONS CARRIER DIRECTLY. SMARSH IS NOT A PARTY TO THESE TERMS.**

[CARRIER TERMS BEGIN ON THE NEXT PAGE]



## **I. AT&T Mobile Archiving Terms. These Terms are made between Client and AT&T Mobility.**

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. Customer 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 Customer Liable MDN whose Customer 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. Customer Liable MDNs Only. You will enroll only Customer 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 Customer Liable MDN to Another Employee. Prior to transferring a mobile device or Customer 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 Customer 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. Customer 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.



## II. Verizon Mobile Archiving 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 from VZW.
- 1.2. **Archived Messages Service** means SMARSH’s service that provides Archived Messages to you.
- 1.3. **Customer Liable 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. **Employee Liable 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.
- 1.5. **Messages** means messages sent or received by the Participating Employee via the short message service (SMS) or the multimedia message service (MMS).
- 1.6. **Participating Employee** means your employee who has opted into the Archived Messages Service via your Customer Liable 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. Customer will not access, use, copy, store or disclose Archived Messages for any other purpose.
- 2.2. **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 such agreement and these Terms and Conditions.
- 2.3. **Customer Liable MDNs Only.** You will enroll only Customer Liable MDNs in the Archived Messages Service. You will not enroll any Employee Liable MDNs in the Archived Messages Service.
- 2.4. **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 the terms and conditions of the Archived Messages Service, including how you and SMARSH 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, VZW will send a free to end user



text message, pre-approved by you, to each employee containing a notice to opt-in to the Archived Messages Service, and you will not access, use, store, copy or disclose any employee's Archived Messages until such consent has been obtained.

- 2.5. **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 of any such revocation of consent so that SMARSH 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.
- 2.6. **Transferring Mobile Device or Customer Liable MDN to Another Employee.** Prior to transferring a mobile device or Customer Liable MDN enrolled in the Archived Messages Service to another employee, you will disenroll or notify SMARSH to disenroll from the Archived Messages Service the Participating Employee and the Customer Liable MDN on that mobile device.
- 2.7. **Periodic Reminders.** VZW will provide periodic reminders to each Participating Employee of its enrollment in the Archived Messages Service, if Company enables such option in SMARSH's portal.
- 2.8. **Acknowledgement.** You acknowledge that VZW will make available to SMARSH 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.
- 2.9. **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.
3. **CUSTOMER 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 no 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.
4. **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.

**Updated 11/24/15**

## Exhibit A – Schedule 2

### Service Level Agreement – Federal Archive

#### Definitions

“**Availability**” means that Client can access the Federal Archive. Availability is measured using the formula in section 1.1 below.

“**Downtime**” means service interruptions that occur outside maintenance windows, including Outages.

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

“**Planned Maintenance**” means maintenance that occurs during maintenance windows (as specified in section 2.4 below).

#### 1. Smarsh Uptime Commitment

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

$$\text{Availability (less Planned Maintenance)} = \frac{\text{total minutes in a month (30 days)} - \text{total Downtime in the month}}{\text{total minutes in a month (30 days)}} * 100$$

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

1.2 If Smarsh does not meet its Uptime Commitment, Smarsh will issue Client a credit equal to 1/30th of Client's monthly subscription Fee for Federal Archive. Credits must be requested by Client within thirty (30) days of the end of the month in which the Uptime Commitment was not met. Failure to meet the Uptime Commitment will be verified by Smarsh's diagnostic monitoring tools before Smarsh issues a credit. Credits will be applied to Client's next invoice.

#### 2. Support and Maintenance Services

2.1 Smarsh uses tools to provide server, network, and application diagnostic monitoring of the technical infrastructure that delivers the Federal Archive.

2.2 Client may find online support resources and FAQ's at <https://central.smarsh.com>. With the exception of Severity Level 1 issues, Client must report issues regarding Federal Archive availability or performance by submitting a support case at <https://central.smarsh.com>. Support requests must include a detailed description of the error or request, including the operating

conditions that gave rise to the error. The User that reports a support incident will receive an auto-reply notification via email to confirm receipt of a Support request, along with a case number for reference. Client may also submit a support request by phone at 1-877-353-4364. Smarsh standard phone support is available Monday through Friday between the hours of 9 am and 5 pm Eastern (excluding United States federal holidays). Off-hours phone support is available 24 hours per day, 365 days per year for Severity Level 1 issues. *Client must report all Severity Level 1 issues must be reported.* Smarsh may limit the right to submit support requests to a single or maximum number of Authorized User(s).

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

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



the Client makes a routine request (e.g. add user, password reset).

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**2.4** To the extent reasonably possible, Smarsh will refrain from performing maintenance that causes interference with or disruption to Client's access to Federal Archive. Smarsh will perform planned maintenance during the maintenance windows specified below. To the extent feasible, Smarsh will provide 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 Federal Archive.

Smarsh's maintenance windows are:

- Mon-Fri 12:00 AM-8:59 AM Eastern
- Mon-Fri between 5:01 PM-11:59 PM Eastern
- Weekends anytime

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

**2.5** Premium support services may be purchased by Client for an additional Fee.

## EXHIBIT B

These Service Specific Terms apply solely to Client's purchase and use of Smarsh products and Services other than the Federal Archive and consist of the following schedules:

<b>Schedule 1A</b>	Service Specific Terms – Professional Archive
<b>Schedule 1B</b>	Service Level Agreement – Connected Archive
<b>Schedule 2</b>	Service Specific Terms – Connected Capture
<b>Schedule 3</b>	Service Specific Terms – Mobile Channels
<b>Schedule 4</b>	Service Specific Terms – Web Archive
<b>Schedule 5</b>	Service Specific Terms – Smarsh University
<b>Schedule 6</b>	Service Specific Terms – CellTrust
<b>Schedule 7</b>	Service Specific Terms - NextRequest

## Exhibit B – Schedule 1A

### Service Specific Terms – Professional Archive

These Service Specific Terms – Professional Archive apply only to Client's purchase and use of the Connected Archive - Professional Archive Service (f/k/a Smarsh Archiving Platform). Unless expressly stated otherwise, capitalized terms contained in these Service Specific Terms have the meaning given them in the Smarsh Services Agreement – Public Sector - General Terms.

- 1. Descriptions.** The “**Professional Archive**” is a Service that captures data from the Client's Third Party Services providers and archives it as Client Data. The Professional Archive includes a supervision module for compliance review and a discovery module for managing collection and export of communications for litigation holds, eDiscovery, and regulatory audits. To enable the Professional Archive to receive Client Data, Client must purchase a bundle of Connections. A “**Connection**” means one of the following, as applicable to the specific [Channel](#): (a) a user account such as an email mailbox; (b) an instant message account or screen name; (c) a social media page or profile; or (d) a mobile device phone number.
- 2. Data Retention.** Smarsh will retain all Client Data captured by the Professional Archive during the Term of the Agreement for up to 7 years from the message ingestion date at no additional charge. If Client requires Client Data captured by the Professional Archive to be retained for longer than 7 years, Client must purchase extended data retention. Client may implement retention policies within the Professional Archive. Client is solely responsible for ensuring that the 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. 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. Following termination or expiration of the Agreement, Smarsh will retain Client Data for a minimum of six (6) months to allow time for Client to make alternative arrangements for long-term data storage. Thereafter, Smarsh may delete Client Data in its sole discretion.
- 3. Data Exports.** During the Term, Client may complete self-service exports of Client Data at no additional charge by logging into the Professional Archive. Client may also engage Smarsh to perform exports of Client Data on Client's behalf by signing a separate Order 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 and paying the associated Professional Services Fees.
- 3. Client Obligations.** Client is responsible for configuring applicable third-party platforms or systems to transmit Client Data to the Professional Archive. If Client wishes to ingest its historical data into the Professional Archive, Client must provide such data in a format acceptable to Smarsh. If requested by Smarsh, and no later than the second business day of each month, Client shall submit to Smarsh usage reports for the prior month in a format specified by Smarsh.
- 4. Client-Side Software Terms.** Certain Channels may require Client to install software (“**Client-Side Software**”) to allow the Professional Archive to receive Client Data. If Client-Side Software is provided to Client by Smarsh, upon delivery of the Client-Side Software Smarsh grants Client a limited, non-exclusive, non-sublicensable license to download and install the applicable Client-Side Software onto Client's end user's computer, laptop, or mobile device (as applicable), for which Client



has purchased a Connection, or on Client owned or controlled servers, plus one copy for backup or archival purposes. Smarsh, and its licensors retain all rights in and to the Client-Side Software that are not expressly granted to Client in this Section 4.

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

## Exhibit B – Schedule 1B

### Service Level Agreement – Connected Archive

#### Definitions

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

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

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

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

#### 3. Smarsh Uptime Commitment

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

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

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

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

#### 4. Support and Maintenance Services

- 4.1 Smarsh uses tools to provide server, network, and application diagnostic monitoring of the technical infrastructure that delivers the Services.

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

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

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



there is a minor performance impact

**Or**

the Client makes a routine request (e.g. add user, password reset).

respond to the routine maintenance request.

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

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

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

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

## Exhibit B – Schedule 2

### Service Specific Terms – Connected Capture

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

- 1) **Descriptions.** “Connected Capture” means a SaaS Service hosted by Smarsh (“Cloud Capture”) or an on-premise software product hosted on Client’s infrastructure (“Capture Server”), as applicable, that captures Client Data from Third Party Services and transmits it to one of the following: (i) Client’s own archive system, (ii) Client’s Connected Archive instance, or (iii) Client’s third-party archive system. To enable Connected Capture to capture Client Data, Client must purchase Connections. A “Connection” means one of the following, as applicable to the specific [Channel](#): (a) a user account such as an email mailbox; (b) an instant message account or screen name; (c) a social media page or profile; or (d) a mobile device phone number. Connected Capture includes the Cloud Capture product, the product formerly known as Socialite, and the on-premise and cloud hosted versions of the products formerly known as Vantage and MobileGuard.
- 2) **Temporary Data Retention.** Cloud Capture products will retain Client Data for a temporary retention period (“Temporary Retention Period”). Each Cloud Capture product has a different Temporary Retention Period. Client Data will be deleted at the expiration of the Temporary Retention Period. Connected Capture is not an archive service. Smarsh expressly disclaims any responsibility or obligation imposed on third-party data storage providers by statute or by rule, regulation or opinion of any governmental agency, regulatory organization or similar institution.
- 3) **Client Obligations.** Client is responsible for configuring applicable third-party platforms or systems to transmit Client Data to Connected Capture. Certain Channels require Client to install software to allow Connected Capture to capture Client Data from such Channels (“**Client-Side Software**”). Client is responsible for the download and installation of Client-Side Software.
- 4) **Client-Side Software Terms.** If Smarsh provides Client-Side Software to Client, Smarsh grants Client a limited, non-exclusive, non-sublicensable license to download and install the applicable Client-Side Software onto Client’s end users’ computer, laptop or mobile device (as applicable), for which Client has purchased a Connection, or on Client owned or controlled servers, plus one copy for backup or archival purposes. Smarsh (including its licensors) retains all rights in and to the Client-Side Software that are not expressly granted to Client by this Section 4.
- 5) **Datacenters.** Cloud Capture products are hosted on Smarsh-managed infrastructure. Capture Server products are hosted on Client-managed infrastructure.
- 6) **Connected Capture Server.** If you purchase Capture Server products, these additional terms apply, which include amendments to the Smarsh Services Agreement – Public Sector – General Terms.
  - a) **Amendments.** The following terms of the Smarsh Services Agreement – Public Sector - General Terms do not apply to Capture Server products: Section 4 “Client Obligations,” Section 12.1 “Performance Warranty” and any terms related to data privacy, data security, business continuity, the GDPR or any other data protection laws. For the avoidance of doubt, the amendments contained in this Section 6 do not apply to Client’s use of the Smarsh Archiving Platform, the Federal Archive, any Connected Archive product, or Capture Cloud products.
  - b) **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 statement of work 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 statement of work. In addition, Client will pay the expenses reasonably incurred by Smarsh in the performance of such Professional Services.

- c) **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. 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 6(c), 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.
- d) **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 6(d). 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.
- e) **Maintenance and Support.** Smarsh provides maintenance and support services for Capture Server products in accordance with the applicable Maintenance and Support Policy located at <https://www.smarsh.com/legal/CaptureServerSupport> ("**Maintenance and Support**"). Maintenance and Support services begin upon the Activation Date and expire upon termination of the Agreement.
- f) **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 6(e), 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.

- g) **Additional Limitation of Liability.** IN ADDITION TO THE LIMITATIONS OF LIABILITY SET FORTH IN SECTION 14 OF THE OF THE SMARSH SERVICES AGREEMENT – PUBLIC SECTOR – GENERAL TERMS, 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.



## Exhibit B – Schedule 3

### Service Specific Terms – Mobile Channels

These Service Specific Terms – Mobile Channels apply when Client uses the Professional Archive or a Connected Capture Service to capture or archive text messages from a mobile telecommunications provider or from the CellTrust SL2 app. Unless expressly stated otherwise, capitalized terms contained in these Service Specific Terms have the meaning given them in the Smarsh Services Agreement – Public Sector - General Terms.

Client is only permitted to actively capture and archive text messages for Client's current employees or contractors. Client is not permitted to actively capture or archive text messages for any individual who is not a Client employee or contractor. Client agrees to (i) notify Smarsh immediately when any employee's employment or contractor's service is terminated; and (b) 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 text messages. 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 text messages. Each telecommunications carrier may have a different implementation process. The implementation process is dependent on actions to be completed by Client and the applicable telecommunications carrier. Smarsh is not responsible for delays in implementation caused by a telecommunications carrier, CellTrust, Client, or Client employees or contractors.

Certain telecommunications carriers (e.g. AT&T, Verizon and Rogers) require Smarsh to pass through certain additional terms ("Additional Text Service Terms"). Such Additional Text Service Terms are subject to modification by the applicable carrier and such modifications shall be incorporated into the Agreement upon notice to Client. The current Additional Text Service Terms follow.

**EACH OF I-III THAT FOLLOW ARE AGREEMENTS MADE BETWEEN CLIENT AND THE APPLICABLE TELECOMMUNICATION CARRIER DIRECTLY. SMARSH IS NOT A PARTY TO THESE TERMS.**

[TERMS BEGIN ON THE NEXT PAGE]



## **II. AT&T Mobile Archiving Terms. These Terms are made between Client and AT&T Mobility.**

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, Client accepts these Terms and Conditions, which AT&T may modify from time to time. Any material modifications to the Terms and Conditions are subject to a bilateral modification signed by both parties.

### **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 Federal Archive Service.
- 1.2. Federal Archive Service means SMARSH’s service that provides Client access to Archived Messages.
- 1.3. Customer Liabe MDNs means a Mobile Directory Number (MDN) for AT&T wireless service that is established under Client’s corporate account and corporate name and for which You are financially responsible to AT&T for an AT&T service.
- 1.4. Employee Liabe 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 Customer Liabe MDN whose Customer Liabe 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. Customer Liable MDNs Only. You will enroll only Customer 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 Customer Liable MDN to Another Employee. Prior to transferring a mobile device or Customer 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 Customer 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. Customer 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.



### III. Verizon Mobile Archiving 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 from VZW.
- 1.2. **Archived Messages Service** means SMARSH’s service that provides Archived Messages to you.
- 1.3. **Customer Liable 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. **Employee Liable 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.
- 1.5. **Messages** means messages sent or received by the Participating Employee via the short message service (SMS) or the multimedia message service (MMS).
- 1.6. **Participating Employee** means your employee who has opted into the Archived Messages Service via your Customer Liable 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. Customer will not access, use, copy, store or disclose Archived Messages for any other purpose.
- 2.2. **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 such agreement and these Terms and Conditions.
- 2.3. **Customer Liable MDNs Only.** You will enroll only Customer Liable MDNs in the Archived Messages Service. You will not enroll any Employee Liable MDNs in the Archived Messages Service.
- 2.4. **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 the terms and conditions of the Archived Messages Service, including how you and SMARSH 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, VZW will send a free to end user



text message, pre-approved by you, to each employee containing a notice to opt-in to the Archived Messages Service, and you will not access, use, store, copy or disclose any employee's Archived Messages until such consent has been obtained.

- 2.5. **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 of any such revocation of consent so that SMARSH 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.
- 2.6. **Transferring Mobile Device or Customer Liable MDN to Another Employee.** Prior to transferring a mobile device or Customer Liable MDN enrolled in the Archived Messages Service to another employee, you will disenroll or notify SMARSH to disenroll from the Archived Messages Service the Participating Employee and the Customer Liable MDN on that mobile device.
- 2.7. **Periodic Reminders.** VZW will provide periodic reminders to each Participating Employee of its enrollment in the Archived Messages Service, if Company enables such option in SMARSH's portal.
- 2.8. **Acknowledgement.** You acknowledge that VZW will make available to SMARSH 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.
- 2.9. **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.
3. **CUSTOMER 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 no 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.
4. **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.

**Updated 11/24/15**



## Exhibit B – Schedule 4

### Service Specific Terms – Web Archive

These Service Specific Terms – Web Archive apply only where Client purchases the Web Archive Service. Unless expressly stated otherwise, capitalized terms contained in these Service Specific Terms have the meaning given them in the Smarsh Services Agreement – Public Sector - General Terms.

**Web Archive.** The Smarsh "**Web Archive**" is a Service that crawls and captures Client-designated websites and sends such captured websites to the Connected Archive as Client Data, or to a Client's own, or third party, archive. To enable Web Archive, Client must pay (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.** Smarsh will retain Client Data captured by the Web Archive during the Term of the Agreement or for a period of 7 years, whichever period is shorter, at no additional charge. If Client requires Client Data captured by Web Archive to be retained for more than 7 years, Client must purchase extended data retention. Following termination or expiration of the Agreement, Smarsh will retain Client Data for a minimum of six (6) months. Thereafter, Smarsh may delete Client Data in its sole discretion.

**Datacenters.** The Web Archive Service is hosted on Smarsh-managed infrastructure in the United States.

**Service Level Agreement.** The Service Level Agreement applicable to the Web Archive Service is available at [www.smarsh.com/legal](http://www.smarsh.com/legal).

## Exhibit B – Schedule 5

### 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 weeks prior to the scheduled course date for on-site Dedicated Courses. Client must submit its proposed reschedule date within 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.



## Exhibit B – Schedule 6

### Service Specific Terms – CellTrust

These Service Specific Terms – CellTrust SL2 apply only where Client purchases the CellTrust SL2 Service. Unless expressly stated otherwise, capitalized terms contained in these Service Specific Terms have the meaning given them in the Smarsh Services Agreement – Public Sector - General Terms.

CellTrust SL2. The CellTrust SL2 product (“SL2”) is resold by Smarsh and licensed to Client by CellTrust Corporation pursuant to the applicable CellTrust license agreement - SL2 App Agreement, the SL2 Server Agreement, or the SL2 App for Apple Agreement - each available at [www.smarsh.com/legal](http://www.smarsh.com/legal) (“SL2 Terms”). To use SL2, Client and end users must download SL2 and accept the applicable SL2 Terms. Smarsh will provide Client with a license key to enable such download. A “Unit” with respect to SL2 means a license key. The provision of the license key is Smarsh’s sole obligation with respect to the SL2 product. The SL2 product is delivered by CellTrust, and all data or information generated by the SL2 product is received, processed, and stored by CellTrust and, transmitted by CellTrust to the Connected Archive Service or Connected Capture Service, as applicable, if purchased by Client. The SL2 Terms and privacy policies apply to data generated, hosted, processed, and stored by the SL2 product, and this Agreement does not apply to such data. In the event of CellTrust’s breach of the SL2 Terms, Client’s remedies are those remedies set forth in the SL2 Terms and are as between Client and CellTrust. Technical support for SL2 is provided by CellTrust. The CellTrust service level agreement, located at [www.smarsh.com/legal/CellTrustSLA](http://www.smarsh.com/legal/CellTrustSLA), applies to SL2; provided that, Client must request credits directly from Smarsh for any unavailability of SL2.

## Exhibit B – Schedule 7

### Service Specific Terms – NextRequest

**NextRequest.** If Client purchases the NextRequest Service from Smarsh, these terms apply. The NextRequest portal is a software as a service product that allows the public to submit record requests to public entities and allows the public entity to manage the request via the portal. The NextRequest portal is not hosted, maintained or supported by Smarsh. The NextRequest portal is hosted and maintained by NextRequest Inc. Client may not use the NextRequest portal or submit to the NextRequest portal Protected Health Information as defined by the Health Insurance Portability and Accountability Act of 1996 as amended. In addition, the NextRequest acceptable use policy and privacy policy will apply to Client's use of the NextRequest Service. With respect to the acceptable use policy and privacy policy, those agreements are entered into directly between NextRequest and Client. Smarsh expressly disclaims all liability from the manner in which NextRequest handles or manages client's data. In addition, the following pass through terms apply and are made by and between Client and NextRequest Inc.:

1. **Service and Support.** Subject to the terms and conditions hereof, NextRequest shall provide Client access to its web-based portal for the management of public records (the "NextRequest Services"). NextRequest reserves the right to suspend Client's access to the NextRequest Services: (i) for scheduled or emergency maintenance, or (ii) in the event Client is in breach of these terms applicable to the NextRequest Services. Before exercising its suspension right pursuant to clause (ii), NextRequest shall provide Client written notice and opportunity to cure such breach.
2. **Restrictions and Responsibilities.** Client will not, and will not permit any third party to: (i) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of the Services, or any software, documentation or data related to the NextRequest Services (provided that reverse engineering is prohibited only to the extent such prohibition is not contrary to applicable law); (ii) rent, lease, copy, modify, superset, subset translate, create derivative works based on, or otherwise provide temporary access to, the NextRequest Services or software; (iii) use the NextRequest Services or software for timesharing or service bureau purposes or for any purpose other than specified in this Addendum ; (iv) remove any names, designations or notices from the NextRequest Services or software; (iv) use the NextRequest Services in a manner which would cause NextRequest Services to be subject to employment, health, or children privacy laws or similar to which it otherwise would not be subject (); or (v) use the NextRequest Services or software other than in accordance with these terms and in compliance with all applicable laws and regulations, including but not limited to any privacy laws, public records laws, laws and regulations concerning intellectual property, consumer and child protection, obscenity or defamation.
3. **AUP.** Client acknowledges and agrees that the NextRequest Services operate on or with or using application programming interfaces (APIs) and/or other services operated or provided by third parties ("Third Party Services"). NextRequest is not responsible for the operation of any Third-Party Services nor the availability or operation of the NextRequest Services to the extent such availability and operation is dependent upon Third Party Services. Client is solely responsible for complying with any applicable terms or conditions thereof. Client may be required to comply with terms of Third Party Services used by NextRequest, which are available at [nextrequest.com/legal](http://nextrequest.com/legal). NextRequest does not make any representations or warranties with respect to Third Party Services or any third-party providers. Any exchange of data or other interaction between Client and a third-party provider is solely between Client and such third-party provider and is governed by such third party's terms and conditions.
4. **Client Indemnification.** Client hereby agrees to indemnify and hold harmless NextRequest and its affiliates and respective directors, officers, employees, and agents from and any and all damages against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys' fees) in connection with any third party claim or action that arises

from Client's breach of these terms or that arises in connection with content provided by Client to NextRequest through the NextRequest Services or otherwise ("Client Data"). Although NextRequest has no obligation to monitor the content provided by Client or Client's use of the NextRequest Services, NextRequest may do so and may remove any such content or prohibit any use of the NextRequest Services it reasonably believes may be (or alleged to be) in violation of the Agreement, agreements with NextRequest's Third Party Services providers, or any law or regulation or right of any third party.

5. **Intellectual Property Rights.** Nothing in this Agreement conveys to Client any rights of ownership in or related to the NextRequest Services, or any intellectual property rights contained therein. Except as expressly set forth herein, NextRequest alone (and its licensors, where applicable) will retain all intellectual property rights relating to the NextRequest Services or the software or any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Client or any third party relating to the Service, which are hereby assigned to NextRequest.
6. **Indemnification.** If NextRequest receives any notice or claim that any Client Data, or activities hereunder with respect to any Client Data, may infringe or violate rights of a third party or any laws (a "Claim"), NextRequest may (but is not required to) suspend activity hereunder with respect to that content and Client will defend, indemnify and hold NextRequest harmless from all liability, damages, settlements, attorney fees and other costs and expenses in connection with any such Claim, as incurred.
7. Client will have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of any and all data, information or other material provided, uploaded, or submitted by Client to the NextRequest Services in the course of using the NextRequest Services ("**Client Data**"). NextRequest will receive and process Client Data to perform NextRequest's obligations under this Agreement. Notwithstanding anything to the contrary, NextRequest is hereby granted (i) a non-exclusive, royalty-free, worldwide, transferable license and right to internally use, copy, modify, create derivative works of, and disclose Client Data solely for the purposes of providing the NextRequest Services to Client, and (ii) a non-exclusive, irrevocable, perpetual, royalty-free, fully paid-up, worldwide, transferable license and right to Aggregated Anonymous Data (as defined below) to use and exploit Aggregated Anonymous Data for any business purposes (including without limitation, for purposes of improving, testing, operating, promoting and marketing products and services). "Aggregated Anonymous Data" means data submitted to, collected by, or generated by NextRequest in connection with Client's use of the Services, but only in aggregate, anonymized form which doesn't specifically identify Client.
8. **Termination.** This Addendum and the rights and obligations therein which by their nature should survive shall survive termination of the agreement between Smarsh and Client.
9. **Warranty Disclaimer.** ANYTHING PROVIDED BY NEXTREQUEST IN CONNECTION WITH THE SERVICES IS PROVIDED "AS-IS," WITHOUT ANY WARRANTIES OF ANY KIND, AND NEXTREQUEST HEREBY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT.
10. **LIMITATION OF LIABILITY.** IN NO EVENT WILL NEXTREQUEST BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE SUBJECT MATTER OF THE NEXTREQUEST SERVICES, INCLUDING WITHOUT LIMITATION, LOSS OF REVENUE OR ANTICIPATED PROFITS OR LOST BUSINESS OR LOST SALES, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, EVEN IF THE BREACHING PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. NEXTREQUEST'S TOTAL LIABILITY, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, WILL NOT EXCEED, IN THE AGGREGATE THE FEES PAID AND PAYABLE TO NEXTREQUEST FOR PROVIDING THE SERVICES TO CLIENT IN THE TWELVE (12) MONTH PERIOD ENDING ON THE



DATE THAT A CLAIM OR DEMAND IS FIRST ASSERTED. THE FOREGOING LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THIS SECTION SHALL NOT APPLY TO ANY LIABILITY ARISING UNDER CLIENT'S INDEMNIFICATION OBLIGATIONS TO NEXTREQUEST.

11. **Miscellaneous.** Client agrees that NextRequest is the intended third-party beneficiary to these terms and relevant provisions of agreement between Smarsh, Inc. and Client which references these terms ("Agreement"), and NextRequest has the right to enforce these terms or the Agreement directly against the Client. If any provision of these terms is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that these terms will otherwise remain in full force and effect and enforceable. This Addendum is not assignable, transferable or sublicensable by Client except with NextRequest's prior written consent. NextRequest may transfer and assign any of its rights and obligations under this Addendum. The parties agree that these terms are the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Addendum, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of these terms and neither party has any authority of any kind to bind the other party in any respect whatsoever. In any action or proceeding to enforce rights under these terms, the prevailing party will be entitled to recover costs and attorneys' fees. All notices under these terms will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by e-mail; and upon receipt, if sent by certified or registered mail (return receipt requested), postage prepaid. Neither party hereto shall be responsible for any failure to perform its obligations under this Addendum (other than obligations to pay money) if such failure is caused by acts of God, war, strikes, revolutions, lack or failure of transportation facilities or utility or telecommunication, laws or governmental regulations or other causes that are beyond the reasonable control of such party.
12. **U.S. GOVERNMENT MATTERS.** Notwithstanding anything else, Customer may not provide to any person or export or re-export or allow the export or re-export of the Services or any direct product thereof, in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority.



## EXHIBIT C

### Acceptable Use Policy (Public Sector)

January 15, 2020

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

Smarsh may suspend Client's use of the Services, or any User's access to Groups on Smarsh Central, if Client or any of Client's Users or Representatives violate this AUP. Smarsh will provide written notice of such suspension to Client at the notice address provided in the Order. As between Client and Smarsh, Client is solely responsible for the data, content, messages, or other information that Client transmits, archives, distributes, displays, uploads or downloads through its use of the Services.

#### Prohibited Activities

Client shall not use the Services to:

- (a) commit a crime, violate any rights of a person or entity (including intellectual property rights), or violate any local, state, national, or international law, rule or regulation, as applicable.
- (b) impersonate a person or entity or to otherwise misrepresent any affiliation with a person or entity;
- (c) commit fraud or make fraudulent offers or advertisements (i.e., make money fast schemes, chain letters, pyramid schemes);
- (d) transmit harmful or potentially harmful code, including viruses, Trojan horses, worms, time bombs or any other computer programming routines that could damage, interfere with, surreptitiously intercept, or expropriate any system, program, data or personal information;
- (e) transmit bank, credit card or debit card numbers or other card numbers, or other financial account information such as cardholder name, expiration date, PIN or PIN blocks, service code, or track data from a magnetic strip or chip.
- (f) create a false identity or forged email address or header, or phone number, or otherwise attempt to mislead others as to the identity of the sender or the origin of a message or phone call;
- (g) circumvent another service offered by Smarsh, such as subscribing to email archiving for the purpose of archiving email marketing;
- (h) harvest data;
- (i) act in a way that will subject Smarsh to any third-party liability; or
- (j) violate the terms of use of the applicable telecommunications provider or other Third Party Services provider.

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

#### Interference with Services is Prohibited

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

- (a) unauthorized access to or use of the Services, data, or the networks or systems, including an attempt to probe, scan or overload a Smarsh system or the Services, or to breach security or authentication measures without express authorization;
- (b) unauthorized monitoring of code, data, or traffic on a system without express authorization;
- (c) deliberate attempts to overload a system and broadcast attacks;
- (d) an action that imposes an unreasonable or disproportionately large load on Smarsh's infrastructure;
- (e) performance of a program/script/command or sending messages of any kind that are designed to interfere with a user's terminal session, by any means, including locally or by the Internet;



- (f) the use of manual or electronic means to avoid any use limitations placed on the Services, such as timing out; or
- (g) any other activity that could be reasonably interpreted as unauthorized access to or interference with the Services.

### **Laws Specific to Communications**

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

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

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

### **Updates**

Smarsh may revise and update this AUP from time to time. Material changes will be incorporated into the Order by a bilateral modification.

Current Version of AUP (Public Sector): Version 1, Effective January 15, 2020.