Smarsh Services Agreement-General Terms

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

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

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

This Agreement includes five parts: (1) the legal terms that are included in this "Smarsh Services Agreement – General Terms", (2) the terms that are specific to each service included in the "Service Specific Terms" attached as Exhibit A, (3) the Information Security Addendum attached as Exhibit B, (4) the description of what is included with each service in the applicable "Service Descriptions" available at https://www.smarsh.com/legal; and (5) the Acceptable Use Policy (or "**AUP**") attached as Exhibit C.

1. **Services.** Smarsh will provide the Services specified in each Order Form ("**Services**"), according to the Agreement, the Service Specific Terms (including the applicable Service Level Agreement(s)), and the Service Descriptions, which describe the features and functionality of each Service. 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).

2. **Support & User Groups.** Smarsh Central, located at https://central.smarsh.com is where Client may seek support resources for the Services as well as engage with other end users in online forums regarding the Services.

    2.1. **Smarsh Central.** Support FAQ's and other support resources are available on Smarsh Central located at https://central.smarsh.com. Client may initiate support requests by submitting support tickets on Smarsh Central. Changes to Smarsh's support policies will be made available on Smarsh Central.

    2.2. **Groups**. Smarsh Central also provides online forums and related features to Users (as defined in Section 4.6) of the Services for discussion, feedback, and general Q&A purposes (such forums and related features are collectively called "Groups"). Smarsh grants Client and its Users a revocable, non-exclusive, non-transferable license to access and use Groups within Smarsh Central in connection with Client's use of the Services. Client or Users may post comments or content to Groups ("**Groups Content**"). Client hereby grants Smarsh a worldwide, exclusive, royalty-free, irrevocable license to access, use, reproduce, make derivatives of, and incorporate Groups Content into Smarsh products or services for commercial use. Client acknowledges that Groups Content is not confidential and is subject to the AUP. Smarsh may delete Groups

Content without prior notice. Client is responsible for all Groups Content posted by its Users. Smarsh disclaims all liability arising from Groups Content and use of Groups, including exposure to content that is potentially offensive, indecent, inaccurate, objectionable, or otherwise inappropriate. Smarsh may suspend or discontinue Groups at any time. Smarsh provide Groups without charge and Groups is not part of the Services.

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

4. **Client Obligations.**

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

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

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

   4.4. Client is responsible for creating an account within the Services and ensuring that (a) Client's account registration information is complete and accurate; and (b) Client's account credentials are confidential. Client will notify Smarsh immediately of any unauthorized use of Client's account or account credentials, or any other known or suspected breach of the security of Client's account. Client is responsible for the activity that occurs within Client's account and for the actions or omissions of Client's employees, contractors or agents, whether such person is or was acting within the scope of their employment, engagement, or agency relationship. Client will not permit Smarsh competitors to access the Services.

   4.5. Client may provide Representatives with access to the Services, may purchase Services on behalf of Representatives, or where Client is required to review Representative communications, Client may use the Services to meet such requirement. A "**Representative**" means any entity (a) that

Client controls or that is under common control with Client; or (b) on behalf of which Client has a regulatory requirement to archive or review communications data. Representatives' use of the Services is subject to the terms of this Agreement. Client is responsible for the actions or omissions of each Representative whether such person is or was acting within the scope of their employment, engagement, or agency relationship.

4.6. Client may designate user roles with different levels of access for use or support of the Services. An "**Authorized User**" is the administrative user(s) with the highest level of access and is responsible for managing the Services for Client. Only Authorized Users may appoint other Authorized Users, request or agree to changes to the Services, add or remove users, make billing inquiries, contact support, or take other, similar actions. A "**User**" is any individual who is granted login credentials to the Services. Users may not share account log in credentials.

5. **Third Party Providers.** The Services receive Client Data from third party sources and are dependent on the third party's services, software, applications, platforms (such as third party social media, business networking platforms systems, telecommunications carriers, or other messaging or communication services or APIs) ("**Third Party Services**"). Third Party Services are not offered, controlled or provided by Smarsh. A Third-Party Service may make changes to its service, or components thereof, or suspend or discontinue a service without notice to Smarsh. In addition, the availability of the Third-Party Service may depend on Client's compliance with the Third-Party Service terms. The Third-Party Service will have access to Client's data and will provide Client Data to Smarsh. Smarsh does not control and is not responsible or liable for how the Third-Party Service transmits, accesses, processes, stores, uses, or provides data to Smarsh. Smarsh expressly disclaims all liability related to or arising from any Third-Party Service, including Client's use thereof, or liability related to or arising from any updates, modifications, outages, delivery failures, corruption of data, loss of data, discontinuance of services, or termination of Client's account by the Third-Party Service. Client is solely responsible for ensuring Client complies with all Third-Party Service terms and conditions. Client acknowledges that certain Third-Party Services do not represent that they are suitable for sensitive communications and do not encrypt messages sent over such Third-Party Services networks, including social media providers, telecommunication carriers and certain messaging platforms. Client agrees that if Client transmits sensitive health or financial information via these unsecure Third Party Services networks, Client assumes all risk associated with such transmission and is responsible for any damages or losses incurred with respect to transmitting such sensitive data over such networks and to Smarsh. Such transmission may also be a breach of the AUP.

6. **Term & Termination.**

6.1. **Term.** The Agreement will begin on the Effective Date and will remain in effect for the term specified in the Order Form or, if no term is specified, 12 months ("**Initial Term**"). The Initial Term will renew automatically for additional, successive 12-month terms (each a "**Renewal Term**"), unless Smarsh or Client provides the other party with written notice of non-renewal at least 60 days prior to the end of the Initial Term or the applicable Renewal Term, or either party terminates in accordance with section 6.2 or 6.3 below. The Initial Term plus any Renewal Term are, collectively, the "**Term**." Any Order Form executed after the Effective Date will co-terminate with Client's then-current Term.

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

6.3. **Termination for Bankruptcy.** This Agreement will terminate immediately, upon written notice, where (a) either party is declared insolvent or adjudged bankrupt by a court of competent jurisdiction; or (b) a petition for bankruptcy or reorganization or an arrangement with creditors is filed by or against that party and is not dismissed within 60 days.

6.4. **Effect of Termination.** Upon any termination or expiration of the Agreement: (a) all rights and licenses to the Services granted to Client by Smarsh will immediately terminate; (b) Client will pay any Fees due and payable up to the date of termination, except in the case of Smarsh's termination for Client's breach, and in such case, Client will pay the Fees owing for the remainder of the then-current Term; and (c) upon request, each party will return to the other or delete the Confidential Information of the other party; provided that if Client requests Smarsh to return Client Data from within Client's Professional Archive (defined in Professional Archive Service Specific Terms) instance, Client may (i) sign a separate Order Form for such Professional Services and will pay Smarsh's then-current data extraction and exportation fees plus any hardware costs as specified in such Order Form or (ii) sign a separate access-only agreement to maintain access to the Professional Archive with the ability to complete self-service exports.

7. **Fees & Payment**. Client will pay the fees for the Services as set forth in the Order Form ("**Fees**"). Following execution of the Order Form, Smarsh will activate or otherwise make available the Services listed in the Order Form by either delivering the software (if on-premise software is purchased) or providing Client with access to an account within the applicable Service ("**Activation Date**"). Beginning on the Activation Date, Client will be invoiced for the recurring Fees per the invoice schedule in the Order Form. Smarsh may suspend Client's access to the Services in the event Client fails to pay the Fees when due.

8. **Minimum Commitment & Invoice of Overages**. Client agrees that the recurring Fees are Client's minimum purchase commitment during the Initial Term and, upon renewal, each Renewal Term. The minimum commitment is the total sum of the recurring Fees set forth in the applicable Order Form. For Fees invoiced based on usage if Client's usage exceeds the minimum commitment specified in the Order Form, Client will pay the additional Fees due for such usage at the rate specified in the Order Form. Client understands that even if Client terminates prior to the end of the Term or any Renewal Term, such minimum commitment shall be due and payable.

9. **Confidentiality.**

9.1. "**Confidential Information**" means (a) the non-public information of either party, including but not limited to information relating to either party's product plans, present or future developments, customers, designs, costs, prices, finances, marketing plans, business opportunities, software, software manuals, personnel, research, development or know-how; (b) any information designated by either party as "confidential" or "proprietary" or which, under the circumstances taken as a whole, would reasonably be deemed to be confidential; (c) the terms of this Agreement; or (d) Client Data. "Confidential Information" does not include information that: (i) is in, or enters, the public domain without breach of this Agreement; (ii) the receiving party lawfully receives from a third party without restriction on disclosure and without breach of a nondisclosure obligation; (iii) the receiving party knew prior to receiving such information from the disclosing party, as evidenced the receiving party's records; or (iv) the receiving party develops independently without reference to the Confidential Information.

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

those contained in this Agreement. Each party will promptly notify the other party in writing upon becoming aware of any unauthorized use or disclosure of the other party's Confidential Information.

9.3. **Remedies.** Each party acknowledges and agrees that a breach of the obligations of this Section 9 by the other party may result in irreparable injury to the disclosing party for which there may be no adequate remedy at law, and the disclosing party will be entitled to seek equitable relief, including injunction and specific performance, in the event of any breach or threatened breach or intended breach by the recipient of Confidential Information.

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

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

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

11.2. **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.

11.3. **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.

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

12. **Indemnification.**

    12.1. **Client Indemnification.** Client will defend, indemnify and hold harmless Smarsh, its officers, directors, employees and agents, from and against all claims, losses, damages, liabilities and expenses (including fines, penalties, and reasonable attorneys' fees), arising from or related to the content of Client Data and Client's breach of the Service Specific Terms or Sections 4.2, 4.3, 4.4, 4.5, or 14.1 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 12.1(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.

    12.2. **Smarsh Indemnification.** Smarsh will defend, indemnify and hold Client harmless from third-party claims arising from a claim that the Services infringe any United States patent, trademark or copyright; provided that, Client shall (a) provide Smarsh with prompt written notice upon becoming aware of any such claim; (b) allow Smarsh sole and exclusive control over the defense and settlement of any such claim; and (c) reasonably cooperate with Smarsh in the defense of such claim. Notwithstanding the foregoing, Smarsh will not be liable for any claim that relates to or arises from: (i) custom functionality provided to Client based on Client's specific requirements; (ii) any modification of the Services by Client or any third party; (iii) the combination of the Services with any technology or other services, software, or technology not provided by Smarsh; or (iv) Client's failure to use updated or modified versions of the Services made available by Smarsh. Except as expressly provided in Section 13.1.3, the indemnification obligation contained in this Section 12.2 is Client's sole remedy, and Smarsh's sole obligation, with respect to claims of infringement.

13. **Remedies and Limitation of Liability**.

    13.1. **Remedies.**

        13.1.1. In the event of a breach of any warranty under Section 11 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 11.

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

        13.1.3. If the Services are subject to a claim of infringement under Section 12.2, 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.

    13.2. **Limitation of Liability.**

        13.2.1. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER, OR TO ANY THIRD PARTY, FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF: USE, DATA, BUSINESS, OR PROFITS), ARISING FROM OR IN CONNECTION WITH THE SERVICES OR SOFTWARE (AS DEFINED IN THE SERVICE SPECIFIC TERMS), WHETHER BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER THE PARTY HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SMARSH WILL NOT BE LIABLE FOR ANY DAMAGES,

WHETHER CONSEQUENTIAL OR OTHERWISE, ARISING FROM OR RELATED TO CLIENT'S NON-COMPLIANCE WITH ANY FEDERAL, STATE, OR INTERNATIONAL STATUTE, LAW, RULE, REGULATION, OR DIRECTIVE.

13.2.2. EXCEPT WITH RESPECT TO SECTION 12.1 (CLIENT INDEMNIFICATION), EACH PARTY'S AGGREGATE LIABILITY FOR ALL DAMAGES ARISING FROM OR RELATING TO THIS AGREEMENT, NOTWITHSTANDING THE FORM IN WHICH ANY ACTION IS BROUGHT (E.G., CONTRACT, TORT, OR OTHERWISE), WILL NOT EXCEED THE TOTAL FEES ACTUALLY 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.

13.2.3. 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.

14. **General Terms.**

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

14.2. **Assignment.** Neither party may assign this Agreement, in whole or in part, without the other party's prior written consent, except that either party may assign this Agreement without the other's consent in the case of a merger, reorganization, acquisition, consolidation, or sale of all, or substantially all, of its assets. Any attempt to assign this Agreement other than as permitted herein will be null and void. This Agreement will inure to the benefit of, and bind, the parties' respective successors and permitted assigns.

14.3. **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.

14.4. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Delaware, without regard to conflict/choice of law principles. Any legal action or proceeding arising under this Agreement will be brought exclusively in the federal or state courts located in Multnomah County, in the State of Oregon, and the parties hereby irrevocably consent to the personal jurisdiction and venue therein.

14.5. **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.

14.6. **Notices.** Any legal notice under this Agreement will be in writing and delivered by personal delivery, express courier, certified or registered mail, postage prepaid and return receipt requested, or by email. Notices will be deemed to be effective upon personal delivery, one (1) day after deposit with express courier, five (5) business days after deposit in the mail, or when receipt is acknowledged in the case of email to Smarsh. Notices will be sent to Client at the address set forth on the Order Form or such other address as Client may specify. Notices will be sent to Smarsh at the following address: Smarsh Inc., Attention: Legal, 851 SW 6th Ave, Suite 800, Portland, OR 97204, or in the case of email, to legal@smarsh.com.

14.7. **Publicity.** Smarsh may disclose that Client is a customer of Smarsh.

14.8. **Severability; Waiver.** If for any reason a court of competent jurisdiction finds any provision or portion of this Agreement to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Agreement will continue in full force and effect. Failure of either party to insist on strict performance of any provision herein will not be deemed a waiver of any rights or remedies that either party will have and will not be deemed a waiver of any subsequent default of the terms and conditions thereof.

14.9. **Entire Agreement; Electronic Signatures.** This Agreement is the entire agreement between the parties with respect to its subject matter, and supersedes any prior or contemporaneous agreements, negotiations, and communications, whether written or oral, regarding such subject matter. Smarsh expressly rejects all terms contained in Client's purchase order documents, or in electronic communications between the parties, and such terms form no part of this Agreement. The parties agree that electronic signatures, whether digital or encrypted, or Client's click-through acceptance of this Agreement, give rise to a valid and enforceable agreement.

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

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

15.1. Sections 13.2.1 – 13.2.3 are replaced with the following Sections 13.2.1 – 13.2.3:

13.2.1 Limitation of Consequential Damages. Subject to 13.2.3, in no event shall either party be liable under or in relation to this Agreement or its subject matter (whether such liability arises due to negligence, breach of contract, misrepresentation or for any other reason) for any: (a) loss

of profits; (b) loss of sales; (c) loss of turnover; (d) loss of, or loss of use of, any (i) software or (ii) data; (e) loss of use of any computer or other equipment or plant; (f) wasted management or other staff time; (g) losses or liabilities under or in relation to any other contract; or (h) indirect, special or consequential loss or damage.

13.2.2 Limitation on Direct Damages. Subject to Sections 13.2.1 and 13.2.3, Smarsh's aggregate liability arising from or in connection with this Agreement (and whether the liability arises because of breach of contract, negligence, misrepresentation or for any other reason) shall not exceed 1.25 times the amounts paid or payable (having been invoiced but not yet paid) by Client for the license to use the Service.

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

15.2. Section 14.4 is replaced with the following:

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

EXHIBIT A - Service Specific Terms

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

Schedule 1A	Service Specific Terms – Professional Archive
Schedule 1B	Service Level Agreement – Connected Archive
Schedule 2	Service Specific Terms – Connected Capture
Schedule 3	Service Specific Terms – Mobile Channels
Schedule 4	Service Specific Terms – Smarsh University
Schedule 5	Service Specific Terms – CellTrust
Schedule 6	Service Specific Terms – Web Archive
Schedule 7	Service Specific Terms – Business Solutions

EXHIBIT A – 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. Unless expressly stated otherwise, capitalized terms contained in these Service Specific Terms have the meaning given them in the Smarsh Service Agreement - General Terms.

1. **Descriptions.** The "**Professional Archive**" (aka the "Smarsh Archiving Platform") is a Service that captures data from the Client's Third Party Services and archives it as Client Data. The Professional Archive includes a supervision module for compliance review and a discovery module for managing collection and export of communications for litigation holds, eDiscovery, and regulatory audits. To enable the Professional Archive to receive Client Data, Client must purchase a bundle of Connections. A "**Connection**" means one of the following, as applicable to the specific Channel: (a) a user account such as an email mailbox; (b) an instant message account or screen name; (c) a social media page or profile; or (d) a mobile device phone number.

2. **Data Retention**. Smarsh will retain Client Data captured by the Professional Archive during the Term of the Agreement for a default retention period of up to 7 years at no additional charge. If Client requires Client Data captured by the Professional Archive to be retained for longer than 7 years, Client must purchase extended data retention. Client may implement retention policies within the Professional Archive. Client is solely responsible for ensuring that the default retention period or any other retention policies implemented by Client within the Professional Archive comply with any applicable legal, regulatory, or Client internal requirements. Data that Client sends on removable media to Smarsh for import into the Professional Archive as Client Data will be subject to import fees and additional storage fees, as specified in the applicable Order Form. Data that is sent from Connected Capture or any other external capture service to the Professional Archive as Client Data will be subject to additional storage fees, as specified in the applicable Order Form. Following termination or expiration of the Agreement, Smarsh will retain Client Data for a minimum of six (6) months to allow time for Client to make alternative arrangements for long-term data storage. Thereafter, Smarsh may delete Client Data in its sole discretion.

3. **Data Exports**. During the Term, Client may complete self-service exports of Client Data at no additional charge by logging into the Professional Archive. Client may also engage Smarsh to perform exports of Client Data on Client's behalf by signing a separate Order Form and paying the associated Professional Services Fees. Following termination or expiration of the Agreement, Client may maintain access to the Professional Archive and the ability to complete self-service exports by executing a separate historical access agreement. In the alternative, Client may engage Smarsh to perform an export on Client's behalf of all or a portion of the Client Data remaining in the Professional Archive by signing a separate Order Form and paying the associated Professional Services Fees.

3. **Client Obligations**. Client is responsible for configuring applicable third-party platforms or systems to transmit Client Data to the Professional Archive. If Client wishes to ingest its historical data into the Professional Archive, Client must provide such data in a format acceptable to Smarsh. No later than the second business day of each month, Client shall submit to Smarsh usage reports for the prior month in a format specified by Smarsh.

4. **Client-Side Software Terms**. Certain Channels may require Client to install software ("**Client-Side Software**") to allow the Professional Archive to receive Client Data. If Client-Side Software is provided to Client by Smarsh, upon delivery of the Client-Side Software Smarsh grants Client a limited, non-exclusive, non-sublicensable license to download and install the applicable Client-Side

Software onto Client's end user's computer, laptop, or mobile device (as applicable), for which Client has purchased a Connection, or on Client owned or controlled servers, plus one copy for backup or archival purposes. Smarsh, and its licensors retain all rights in and to the Client-Side Software that are not expressly granted to Client in this Section 4.

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

6. **Service Level Agreement**. The Service Level Agreement applicable to the Professional Archive is available at https://www.smarsh.com/legal/ConnectedArchiveSLA. A courtesy copy is attached as Schedule 1B.

EXHIBIT A – Schedule 1B
Connected Archive – Service Level Agreement

Definitions

"Availability" means that Client is able to access the Connected Archive (i.e., the Professional Archive, the Enterprise Archive, or the Smarsh Archiving Platform) and is measured using the formula in section 1.1 below.

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

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

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

1. Smarsh Uptime Commitment

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

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

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

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

2. Support and Maintenance Services

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

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

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

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

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

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

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

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

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Exhibit A - 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 Service Agreement - General Terms.

1) **Descriptions. "Connected Capture"** means a SaaS Service hosted by Smarsh ("**Cloud Capture**" aka "MobileGuard Cloud" or "Socialite" or "Vantage Cloud") or an on-premise software product hosted on Client's infrastructure ("**Capture Server**" aka "MobileGuard On-prem" or "Vantage"), 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.

2) **Temporary Data Retention**. Cloud Capture products will retain Client Data for a 30-day temporary retention period ("**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, including without limitation, the U.S. Securities and Exchange Commission, the Financial Industry Regulatory Authority, or any securities exchange (each a "**Regulatory Agency**"). Notwithstanding the provisions above, Smarsh will comply with any requests for Client Data received from a Regulatory Agency within the Temporary Retention Period, subject to the confidentiality provisions of the Smarsh Service Agreement – General Terms.

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 Service Agreement – General Terms.

   a) **Amendments**. The following terms of the Smarsh Service Agreement- General Terms do not apply to Capture Server products: Section 4 "Client Obligations," Section 11.1 "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, 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 Form. Capture Server products may be delivered with, or link to, programs that are copyrighted and made available under one or more open source or public licenses that permit copying, modification and redistribution of its source code ("**Open Source Software**"). Open Source Software is separate and distinct from the Capture Server product and is made available pursuant to the terms of its applicable license. Smarsh and its licensors retain ownership of all right, title, and interest in and to Capture Server products. Except as expressly set forth in this Section 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 13 OF THE OF THE SMARSH SERVICE AGREEMENT – 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 A - SCHEDULE 3
Service Specific Terms – Mobile Channels

These Service Specific Terms – Mobile Channels apply when Client uses a Connected Archive product or Connected Capture products 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 Service Agreement - 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]

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 V ZW 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. <u>**COMPLIANCE WITH LAWS, POLICIES AND PRACTICES.**</u> 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

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III.   Rogers Mobile Archiving Terms.

Where Client purchases Rogers Archiving Service, Client will be required to sign this Data Release Direction and Consent directly with Rogers Communications Canada Inc. This serves as notice of the foregoing requirement.

DATA RELEASE DIRECTION & CONSENT

WHEREAS Rogers Communications Canada Inc. ("**Rogers**") provides telecommunications services (including SMS/MMS messaging services), to _____ ("**Customer**");

AND WHEREAS the Customer has executed an agreement with Smarsh Inc. ("**Smarsh**") for the archiving of the Customer's SMS/MMS messages associated with the listed Customer CTNs, as provided by Smarsh;

AND WHEREAS the Customer has directed Rogers to send copies of the SMS/MMS messages associated with the listed Customer CTNs to Smarsh in order to facilitate the archiving of those messages;

NOW, for valuable consideration, the receipt and sufficiency of which are acknowledged, Customer agrees as follows:

Customer hereby directs Rogers to send copies of all of the Customer's incoming and outgoing SMS/MMS messages for those corporate lines that the Customer has indicated, as communicated through Smarsh, and consents to the transmission/disclosure of such Customer data and confidential information (including personal information) from Rogers to Smarsh. The Customer acknowledges that the Customer data will be sent outside of Canada as part of this direction and consent.

Customer (which term includes its parent, predecessor, subsidiary, affiliated and related companies and organizations, associated and related partnerships, and each of the present and former directors, officers, employees, agents, representatives, and employees of each of them and their successors, heirs, executors, administrators and assigns) thereby, for itself, its administrators and agents releases and forever discharges Rogers (along with its affiliates, present and former directors, officers, and employees) from any action or cause of action in relation to: (i) the Customer's data that is sent to Smarsh; and, (ii) Smarsh's services to the Customer. The Customer accepts and assumes all of the risks of directing Rogers to send the Customer's data to Smarsh to enable Smarsh to provision the archiving services contracted for by the Customer directly with Smarsh and further agrees not to make any claim, threaten to institute or take or continue any proceedings whatsoever against any person or corporation or entity with respect to the matters herein released, nor to make any claim, threaten to institute or take or continue any proceedings against any person or corporation or entity in respect of which any claim could arise against Rogers in relation thereof. In the event such proceedings are commenced, Customer agrees that this data release direction and consent may be raised as an estoppel and as a complete defence and reply to any such proceedings and may be submitted to the court as Customer's consent to an order dismissing such proceedings on a summary basis.

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Exhibit A - SCHEDULE 4
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. <u>Purchases from within Smarsh Central</u>. 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. <u>Substitutions</u>. 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. <u>Requests to Reschedule</u>. 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. <u>Cancellations by Smarsh</u>. 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 A - SCHEDULE 5
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 Service Agreement - 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 ("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, applies to SL2; provided that, Client must request credits directly from Smarsh for any unavailability of SL2.

Exhibit A - SCHEDULE 6
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 Service Agreement - 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.

Exhibit A - SCHEDULE 7
Service Specific Terms – Business Solutions

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

a) **Units.** Email Encryption is a Service that encrypts a Client designated email mailbox's outgoing email. A "Unit" with respect to Email Encryption, Email Hosting or DLP is an email mailbox.

b) With respect to Email Hosting Services, if Microsoft Corporation ("**Microsoft**") increases the price that Microsoft charges for the underlying licenses or services Microsoft provides that are applicable to the Email Hosting Services, Smarsh may increase the price for the Email Hosting Services by the full amount of the price increase, regardless of whether the price increase occurs during the Initial Term.

c) With respect to the Email Hosting Services, the retention of Email Hosting Service Client Data during the Term is subject to space limitations applicable to the Email Hosting Service plan purchased by Client. Email Hosting Service Client Data will be retained for a period of 30 days following the termination or expiration of the earlier of the Email Hosting Service termination or the termination or expiration of the Agreement.

d) The following terms and conditions apply to Email Hosting Services.

MICROSOFT SOFTWARE USE – TERMS AND CONDITIONS

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

1. **DEFINITIONS.**

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

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

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

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

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

2. **OWNERSHIP OF LICENSED PRODUCTS.** The Licensed Products are licensed from an affiliate of the Microsoft Corporation ("Microsoft"). All title and intellectual property rights in and to the Licensed Products (and the constituent elements thereof, including but not limited to any

images, photographs, animations, video, audio, music, text, and "applets" incorporated into the Licensed Products) are owned by Microsoft or its suppliers. The Licensed Products are protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. Your possession, access, or use of the Licensed Products does not transfer any ownership of Licensed Products or any intellectual property rights to You.

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

4. **ANTI-PIRACY.** You must not engage in the manufacture, use, distribution or transfer of counterfeit, pirated or illegal software. You may not distribute or transfer Licensed Products to any party that You know is engaged in these activities. You must report to Microsoft any suspected counterfeiting, piracy or other intellectual property infringement in computer programs, manuals, marketing materials or other materials owned by Microsoft, its Affiliates and/or its licensors as soon as You become aware of it. You will cooperate with Microsoft in the investigation of any party suspected of these activities

5. **USE OF CLIENT SOFTWARE.** You may use the Client Software installed on Your Devices only in accordance with the instructions, and only in connection with the services, provided to You. The terms of this MSFT Terms permanently and irrevocably supersede the terms of any Microsoft End User License Agreement that may be presented in electronic form during Your use of the Client Software

6. **USE OF REDISTRIBUTION SOFTWARE.** In connection with the services provided to You, You may have access to certain "sample," "redistributable" and/or software development ("SDK") software code and tools (individually and collectively "Redistribution Software"). **YOU MAY NOT USE, MODIFY, COPY, AND/OR DISTRIBUTE ANY REDISTRIBUTION SOFTWARE UNLESS YOU EXPRESSLY AGREE TO AND COMPLY WITH CERTAIN ADDITIONAL TERMS CONTAINED IN THE SERVICES PROVIDER USE RIGHTS ("SPUR").** Microsoft does not permit You to use any Redistribution Software unless You expressly agree to and comply with such additional terms.

7. **COPIES.** You may not make any copies of the Licensed Products; provided, however, that You may
(a) make one (1) copy of Client Software on Your Device; and (b) You may make copies of certain Redistribution Software in accordance with Paragraph 6 (Use of Redistribution Software). You must erase or destroy all such Client Software and/or Redistribution Software upon termination or cancellation of Your agreement with Smarsh, upon notice from Smarsh or upon transfer of Your Device to another person or entity, whichever first occurs. You may not copy any printed materials accompanying the Licensed Products.

8. **LIMITATIONS ON REVERSE ENGINEERING, DECOMPILATION AND DISASSEMBLY.** You may not reverse engineer, decompile, or disassemble the Licensed Products, except and only to the extent that applicable law, notwithstanding this limitation expressly permits such activity.

9.   **NO RENTAL.** You may not rent, lease, lend, pledge, or directly or indirectly transfer or distribute Licensed Products to any third party, and You may not permit any third party to have access to and/or use the functionality of the Licensed Products.

10.   **TERMINATION.** Without prejudice to any other rights, Intermedia may terminate Your rights to use the Licensed Products if You fail to comply with these terms and conditions. In the event of termination or cancellation, You must stop using and/or accessing the Licensed Products, and destroy all copies of the Licensed Products and all of their component parts.

11.   **NO WARRANTIES, LIABILITIES OR REMEDIES BY MICROSOFT.** ANY WARRANTIES, LIABILITY FOR DAMAGES AND REMEDIES, IF ANY, ARE <u>NOT</u> BY MICROSOFT OR ITS AFFILIATES OR SUBSIDIARIES.

12.   **PRODUCT SUPPORT.** Any product support for the Licensed Products is not provided by Microsoft or its affiliates or subsidiaries.

13.   **NOT FAULT TOLERANT.** THE LICENSED PRODUCTS MAY CONTAIN TECHNOLOGY THAT IS NOT FAULT TOLERANT AND IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS IN WHICH THE FAILURE OF THE LICENSED PRODUCTS COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL, PROPERTY OR ENVIRONMENTAL DAMAGE.

14.   **EXPORT RESTRICTIONS.** The Licensed Products are of U.S. origin for purposes of U.S. export control laws. You agree to comply with all applicable international and national laws that apply to the Licensed Products, including
U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issue by U.S. and other governments. For additional information, see
http://www.microsoft.com/exporting/.

15.   **DISCLOSURE OF INFORMATION.** You hereby consent to the provision of Your information regarding Your Account to Microsoft to the extent required under the terms of its license agreement with Microsoft.

16.   **LIABILITY FOR BREACH.** You agree that You will also be legally responsible directly to Microsoft for any breach of these terms and conditions.

17.   **OWA ACCESS RESTRICTIONS.** You acknowledge and agree that if You have an Outlook Web Access-only (OWA-only) Account (Basic SAL license), You are restricted from and will not use shared folders, shared calendars, shared contacts, shared tasks and public folders with respect to such access.

EXHIBIT B
INFORMATION SECURITY ADDENDUM

Overview

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.

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

1. Personnel Security

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

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

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

2. Facilities & Systems Security

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

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

3. Product Security

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

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

3.3. Smarsh will employ then-current industry-standard measures to test the Services for (a) 'back door,' 'time bomb,' 'Trojan Horse,' 'worm,' 'drop dead device,' 'virus', 'spyware' or 'malware;' or (b) any computer code or software routine that disables, damages, erases, disrupts or impairs the normal operation of the Services or any component thereof.

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

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

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

4. Data Center Security

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

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

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

5. Secure Configuration

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

6. Data Management

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

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

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

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

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

7. Vulnerability Management

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

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

8. Application Performance and Security

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

will harden its device configurations. Smarsh will require the use of VPN for access to its secure networks.

9. **Business Resiliency and Incident Response**

9.1. Incident Response. Smarsh's information security program will include written incident response policies and procedures to define roles and responsibilities in the event that there is any actual, or reasonably suspected, unauthorized access to Smarsh facilities or Smarsh systems ("**Security Incident**"). Such policies and procedures will include processes to ensure that (i) server logs are maintained; (ii) all Security Incidents (defined below) are appropriately logged; (iii) all such server logs are retained for at least ninety (90) days; (iv) all such Security Incident logs are retained for at least three (3) years; and (v) all such logs are appropriately protected to ensure the integrity of such log. Smarsh will immediately implement such procedures immediately upon becoming aware of a Security Incident.

9.2. Client Data Incident. Upon becoming aware of any unauthorized third-party access to, or disclosure of, Client Data ("Client Data Incident"), Smarsh will: (i) immediately investigate, and take reasonable measures to remediate, the cause of such Client Data Incident, and (ii) promptly, but no later than forty-eight (48) hours after discovery, notify Client of such Client Data Incident.

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

10. **Annual Security Reviews**

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

10.2. Smarsh will use reasonable efforts to remediate, or implement compensating controls for, all issues identified in such assessment based on level of criticality and risk.

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

11. Vendor and Third-Party Security

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

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

12. Client Security Assessments

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

12.2. <u>On-site Assessments</u>. Where sufficient to allow Client to complete its risk-based assessment of Smarsh's information security program and administrative, technical, and physical safeguards applicable to Client's Confidential Information, Client shall refer to Smarsh's Security Packet. If Client desires to complete an on-site assessment, Client may conduct no

more than one on-site assessment in a 12-month period, all such requests must be received by Smarsh at least 30 days prior to the requested assessment date, all such on-site assessments must be conducted during Smarsh's normal business hours, and Client shall bear all costs associated with such on-site assessment. Smarsh will scope the work required to facilitate such assessment and provide Client with a quote for the professional services fees associated with such on-site assessment. If Client desires to proceed with such on-site assessment, Client must execute an order form or statement of work for such on-site assessment and provide Smarsh with its proposed list of attendees. Smarsh will invoice Client for such on-site assessment, and Client shall pay the associated fees within 30-days of the invoice date.

13. **Export Controls**

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

EXHIBIT C
ACCEPTABLE USE POLICY

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

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

Prohibited Activities

Client shall not use the Services to:

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

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

Interference with Services is Prohibited

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

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

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

Laws Specific to Communications

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

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

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

Updates

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

Current Version of AUP: Version 5, Effective September 25, 2019.