V.06/26

SMARSH SERVICES AGREEMENT

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

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

1. **Services.** Smarsh will provide the services specified in each Order Form ("**Service(s)**") according to (i) the terms of the Agreement; (ii) with respect to any licensed software ("**On-Premise Software**") or software-as-a-service ("**SaaS Service**") provided by Smarsh, the applicable Service Specific Terms for such Services; (iii) with respect to any implementation professional services, the applicable statement of work ("**SOW**") or onboarding package documentation provided by Smarsh; and (iv) with respect to any support services, the applicable Service Level Agreement or support package documentation provided by Smarsh. Service Documentation can be found at https://central.smarsh.com under Product Documentation ("**Documentation**").

   1.1. **Orders.** Client may order new Services provided under this Agreement, or amend an existing Order Form, by executing a new Order Form for Services (each upon Smarsh's acceptance). The Service Term will be set forth on the applicable Order Form ("**Service Term**"). The Service Term for any additional Services purchased after or during Client's existing Service Term will co-term to, sync with, and renew based upon Client's then-current Service Term for the Services to which Client has subscribed ("**Recurring Services**").

   1.2. **Access & Use**. Client may access and use the Services specified on the applicable Order Form during the Service Term in accordance with the terms of this Agreement. With respect to Documentation or a Service that requires a license, Smarsh grants Client a revocable, non-exclusive, non-transferrable, worldwide license to use such Documentation or Service during the Service Term. Only Client and its Users may access and use the Service, and use of the Service in the aggregate must be within the usage limitations set forth in the applicable Order Form.

   1.3. **Suspension**. Smarsh reserves the right to temporarily suspend Client's or a User's access to a Service (i.e., disable login credentials) if Smarsh reasonably believes that: (i) Client or such User is in material breach of this Agreement; (ii) Client's or such User's use of a Service is likely to negatively affect the availability, security, or performance of such Service or Smarsh's

systems; or (iii) an unauthorized third party has gained access to the Service using credentials issued to Client or User by Smarsh. If Smarsh suspends Client's or a User's access pursuant to this Section, (a) Smarsh will provide notice of the suspension to Client as soon as reasonably practicable; (b) such suspension will be limited in duration and scope to the extent reasonably practicable; (c) such suspension will not interfere with the Services' capture of Client Data during such suspension; and (d) Smarsh will promptly restore Client's access to the Service after the event giving rise to the suspension has been resolved. Smarsh will not be liable for any damages resulting from such suspension.

1.4. **Restrictions.**

1.4.1. **Use Restrictions**. Client will not (and will not knowingly permit any third party (including its Users) to): (a) use the Service to develop a similar or competing product or service; (b) reverse engineer, decompile, disassemble, or seek to access the source code, algorithms, or non-public APIs to the Service or any related features; (c) modify or create derivative works of the Service or any element of the Service; (d) copy, rent, lease, distribute, lend, assign (except as authorized under this Agreement), or otherwise transfer rights to the Services, or any part thereof for the benefit of a third party or remove any proprietary notices or labels from the Services or any part thereof; (e) use the Service (i) in a manner that violates applicable laws, rules, or regulations or otherwise negatively affects the availability, security, or performance of the Service, (ii) to perform or publish benchmarks or performance information about the Service, or (iii) in excess of the scope of its rights, quantities, volumes, or licensing; or (e) or provide access to or sublicense the Service to a third party except as authorized under the Agreement; or (f) transmit any data that is subject to the Payment Card Industry Data Security Standards (PCI DSS). Further. Client acknowledges that neither Smarsh nor the Services comply with, or are required to comply with, the PCI DSS.

1.4.2. **Use of the Services to Circumvent Fees**. Client will not, and will not knowingly permit any third party (including its Users) to use the Service (a) in a manner contrary to the applicable Service Specific Terms, or (b) to otherwise circumvent another Service, such as subscribing to email archiving for the purpose of marketing email archiving or bulk email archiving, which are different Services that are subject to additional and different fees. Data types converted into supported data types will be subject to additional fees (such as transforming traditionally non-email data into .EML format for archiving). Each form of electronic communication is treated as a distinct Content Type and may be billed on a per-connection basis.

1.4.3. **Use of Security Testing Tools**. Client will not use or knowingly permit the use of any security testing tools to probe, scan, or attempt to penetrate or ascertain the security of the Services.

1.5. **Updates.** Smarsh may, in its sole discretion, update or modify the Service by making available updates or modifications that may add new or eliminate existing features or functions to the

Service, so long as such update or modification does not materially degrade the Service. For clarity, elimination of an existing material feature or function shall be replaced with a feature or function with similar effect unless Smarsh provides reasonable advance notice of such elimination and such elimination (i) is in furtherance of accepted industry practice or (ii) is made pursuant to applicable law.

1.6. **Upgrades.** Smarsh may upgrade the Service used by Client to new versions of such Service, or install patches, service packs, security updates or the like to the Services. For upgrades substantially impacting the functionality of the Service (e.g., those that require Client to retrain its Users or update a connection), Smarsh will provide Client with written notice prior to upgrade. Certain upgrades may introduce new functionality modules that will be made available to Client on an optional basis for an additional fee; Smarsh will provide Client with prior notice of any additional fees that may apply for such new modules and an option to accept or reject use of such new modules.

1.7. **Replacements.** Smarsh may, upon reasonable advance notice to Client, sunset, end of life, deprecate, retire, or replace any Service or feature thereof upon reasonable advance written notice to Client, provided that Smarsh makes a substantially similar Service or feature available to Client for the remainder of Client's then-current Service Term at no additional charge. If Smarsh is unable, or determines in good faith that is economically infeasible, to provide a substantially similar Service or feature, then Smarsh will issue Client a credit for the unused portion of any pre-paid Fees that are attributable to the discontinued Service or feature. Refunds will not apply to any modifications to Services or features that are made by Smarsh to comply with applicable law or address a material security risk.

1.8. **Client Affiliates.** A Client Affiliate may order Services subject to this Agreement by executing a new Order Form on its own behalf that references this Agreement. "**Affiliate**" means any entity that directly or indirectly controls or is controlled by or is under common control with, the party specified. For purposes of this definition, "control" means direct or indirect ownership of more than fifty percent of the voting interests of the subject entity.

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

2.1. **Smarsh Central.** Smarsh Central provides support FAQs and other support documentation to Client. Client may initiate support requests by submitting support tickets on Smarsh Central. Changes to Smarsh's support policies will be made available on Smarsh Central, provided, however, that any such changes shall not materially degrade the support services.

2.2. **Groups**. Smarsh Central provides online forums and related features to Users of the Services for discussion, feedback, and general Q&A purposes (such forums and related features are collectively called "**Groups**"). Smarsh grants Client and its Users a revocable, non-exclusive, non-transferable license to access and use Groups within Smarsh Central in connection with

Client's use of the Services. Client and/or Users may post comments or content to Groups ("**Groups Content**"). Client hereby grants Smarsh a worldwide, exclusive, royalty-free, irrevocable license to access, use, reproduce, make derivatives of, and incorporate Groups Content into Smarsh products or services for commercial use. Client acknowledges that Groups Content is not confidential and is subject to the terms of use for Groups. Smarsh may delete Groups Content without prior notice. Client is responsible for all Groups Content posted by its Users. Smarsh disclaims all liability arising from Groups Content and use of Groups, including exposure to content that is potentially offensive, indecent, inaccurate, objectionable, or otherwise inappropriate. Smarsh may suspend or discontinue Groups at any time. Smarsh provides Groups without charge and Groups is not part of the Services.

3. **Trial Services & Proof of Concept ("POC") Services**

3.1. **Trial Services.** If a trial period is indicated on an Order Form, Smarsh will provide Client with a temporary account ("**Trial Account**") to one or more Services ("**Trial Services**"). The Trial Account will be accessible for the trial period set forth in the Order Form, or if no trial period is stated, the trial period will be thirty (30) days.

3.2 **Proof of Concept ("POC") Services.** If agreed by the parties pursuant to an Order Form, Smarsh will provide Client with temporary Proof of Concept Services ("**POC Services**") subject to the additional restrictions set forth in the Order Form. The POC Services will be provided to Client for the period set forth in the Order Form, or if no period is stated, the POC Services period will be thirty (30) days. For POC Services, unless otherwise agreed by the parties, provisioning is limited to five (5) users per Service, and any onboarding fees are invoiced and due upon execution of the Order Form. Client will own the success criteria and testing.

3.3. **No Liability for Trial Accounts or POC Services.** Regardless of anything to the contrary in this Agreement, Smarsh will have no liability for any Trial Services or POC Services. TRIAL SERVICES AND POC SERVICES ARE PROVIDED "AS IS", WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, AND MAY BE TERMINATED BY SMARSH UPON WRITTEN NOTICE TO CLIENT. EXCEPT AS OTHERWISE AGREED, ANY DATA INGESTED OR OTHERWISE ENTERED INTO TRIAL SERVICES OR POC SERVICES WILL BE DELETED AT TERMINATION OR EXPIRATION.

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

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

4.1.1. Client understands that Third-Party Data Sources are not offered, controlled, or provided by Smarsh, and Smarsh is not responsible for any outages, lost data, service interruptions, or failures caused by or resulting from any action or failure to act by a Third-

Party Data Source. Smarsh does not control and is not responsible or liable for how a Third-Party Data Source transmits, accesses, processes, stores, uses, or provides data to Smarsh. Smarsh expressly disclaims all liability related to or arising from any Third-Party Data Sources, including Client's use thereof, or liability related to or arising from any updates, modifications, outages, delivery failures, corruption of data, loss of data, discontinuance of services, or termination of Client's accounts by the Third-Party Data Source.

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

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

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

5. **Client Obligations.**

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

5.2. It is Client's responsibility to protect and encrypt (i) all data sent to the Services from Client's systems and Client's Third-Party Data Source(s), and (ii) historical data sent to Smarsh by Client or on behalf of Client for ingestion into the Services. Smarsh will have no responsibility or liability for any data that Client, or any Third-Party Data Source(s) transmits to Smarsh on

behalf of Client, in an unencrypted format. Smarsh is not responsible or liable for any update, upgrade, patch, maintenance, or other change to Client's systems or Third-Party Data Sources that affects the transmission or capture of Client Data to the Services. Client is solely responsible for ensuring that its systems and Third-Party Data Sources are duly configured to meet the requirements of the Services to capture data from authorized end-user accounts, devices, web domains, as applicable.

5.3. Client is solely responsible for all Client Data. Client represents and warrants that (a) Client Data will not (i) infringe any third-party right, including third-party rights in patent, trademark, copyright, or trade secret, or (ii) violate the rights of any third parties, including any right that may exist under contract or tort theories. Client will comply with all applicable local, state, national, or international laws, rules, regulations, or treaties in connection with Client's use of the Services, including those related to data privacy, data protection, communications, SPAM, or the transmission, recording, or storage of technical data, personal data, or sensitive information.

5.4. Client is responsible for creating an account within the Services and ensuring that (a) Client's account registration information is complete and accurate; and (b) Client's account credentials remain confidential. Client will notify Smarsh immediately of any unauthorized use of Client's account or account credentials, or any other known or suspected breach of the security of Client's account. Client is responsible for the activity that occurs within Client's account and for the actions or omissions of Client's employees, contractors, or agents, whether such person is or was acting within the scope of their employment, engagement, or agency relationship.

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

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

5.7. **Privacy Jurisdictions.** Prior to the Services ingesting data on behalf of Client, Client shall inform Smarsh in writing if Client Data is subject to any data protection rules and regulations, including Regulation (EU) 2016/679 of the European Parliament of the Council of 27 April 2016 ("**Privacy Rules**"). If Client plans to capture and archive any Client Data subject to any Privacy Rules not currently contemplated by this Agreement, Client shall promptly notify Smarsh, and

the parties will work in good faith to update the Agreement, including the applicable Data Protection Addendum (or other similar document) to address such new privacy jurisdictions.

6. **Term & Termination.**

6.1. **Agreement Term.** The Agreement will begin on the execution date of this Agreement or the applicable Order Form and will end when there are no active Services provided by Smarsh to Client pursuant to this Agreement.

6.2. **Service Term.** The Service Term will begin as set forth in the Order Form and will continue for the Service Term specified on the Order Form, unless agreed otherwise in writing.

6.3. **Renewals & Non-Renewal.** Unless set forth otherwise in the applicable Order Form, Services that are provided on a recurring basis will renew automatically for additional, successive 12-month terms, unless Smarsh or Client provides the other party with written notice of non-renewal or termination in accordance with this Section. At least ninety (90) days prior to the end of the then-current Service Term, Smash will provide Client with written notice of the pending renewal of the Recurring Services ("**Renewal Notice**"). If Client does not provide written notice of its intent to cancel or reduce the scope or Minimum Commitments for the Services set forth in the Renewal Notice sixty (60) days prior to the end of the then-current Service Term, Client shall be deemed to have accepted the renewal of such Services based on the scope and Minimum Commitments set forth in the Renewal Notice. Smarsh may elect not to renew a Service by providing no less than thirty (30) days' written notice to Client prior to the end of the then-current Service Term.

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

6.5. **Termination of an Order Form or SOW.** Either party may terminate the Services provided under an Order Form or SOW if the other party materially breaches its obligations under such Order Form or SOW, and such breach remains uncured for a period of thirty (30) days following a party's receipt of written notice thereof.

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

6.7. **Effect of Termination.** Upon any termination or expiration of the Agreement: (a) Client's right to access and use the Service, and any license by Smarsh to Client related to the Service, will immediately cease; (b) Client will pay any Fees due and payable up to the date of termination, except in the case of Smarsh's termination for Client's breach, and in such case, Client will pay the Fees owing for the remainder of the then-current Service Term; and (c) upon request, each

party will return to the other or delete the Confidential Information of the other party (except Client Data, the return and deletion of which is handled separately as detailed below or as covered in the applicable SOW); provided that each party may retain a copy of Confidential Information in accordance with its internal document retention policy requirement.

6.7.1. **Client Data Transition – Professional Archive.** Upon the termination of this Agreement or the applicable Order Form, Client will cease to have access to the Services (and the Client Data stored within the Services). Client may request that Smarsh perform professional services to export or migrate the Client Data remaining in the Services subject to the execution of: (i) a SOW covering such export or migration services and the applicable fees, and (ii) an Order Form covering any fees for maintaining the Client Data (and, as applicable, access to the Services) during the duration of the professional services. Any export or migration services will be performed at Smarsh's then-current rates for professional services. Unless agreed otherwise in writing by the parties or prohibited by applicable law, upon the termination of this Agreement or the applicable Order Form, Smarsh shall delete all Client Data as soon as practicable.

6.7.2. **Transition Services – In General.** If requested in writing by Client prior to termination of this Agreement or the applicable Order Form, Smarsh shall provide Client with transition assistance for up to twelve (12) months (or such longer period as mutually agreed) subject to the execution of an Order Form or other agreement to facilitate the orderly transfer of Client Data to Client or its third-party designee ("**Transition Assistance**"). If the Transition Assistance includes access to the Services, Smarsh shall provide such Services at the then-current rates for the Services. If the Transition Assistance includes professional services for the migration or export of Client Data, such services shall be subject to the then current rates for such professional services and the execution of a SOW.

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

7. **Fees & Payment**. Client will pay the fees for the Services as set forth in the applicable Order Form ("**Fees**"). Upon execution of the Order Form, Smarsh will invoice Client for the Fees for the Recurring Services, one-time Fees, and Fees for professional services per the terms of the Order Form, or in the case of one-time fees, the applicable SOW. Fees for a renewal Service Term will be invoiced upon renewal. Client shall pay Fees within thirty (30) days of the date of the invoice. If Client requires a purchase order to facilitate an invoice payment, Client must provide the purchase order upon execution of the applicable Order Form.

7.1. **Third-Party API Usage**. In the event that any Third-Party Data Source charges any API usage service fees or passes through any costs to Smarsh that are (i) in connection with Client's use of a Service and such Third-Party Data Sources, and (ii) Smarsh can reasonably demonstrate that such costs are directly allocated to Client, Smarsh reserves the right to pass those costs along to Client ("**Third-Party Fees**"). Client agrees to pay all such Third-Party Fees when Smarsh invoices the Client for such fees, which will include a breakdown and description of the fees.

7.2. **Disputes & Failure to Pay**. If Client disputes any invoice or portion thereof, Client must notify Smarsh within thirty (30) days of the date of invoice. Invoices not disputed within thirty (30) days from the date of invoice will be deemed accepted by Client. Smarsh may assess, and Client will pay, a late fee of one and one-half percent (1.5%) per month on any amount not fully paid when due. In the event Client fails to pay invoiced amounts when due, Smarsh may (a) suspend Client's access to the Services upon written notice and a fifteen (15) day cure period, consistent with Section 1.3 (Suspension); and (b) certain professional or support services until that time when Client pays such unpaid Fees.

7.3. **Discount Expiration & Uplift.** Upon renewal, Smarsh reserves the right to apply an uplift to the Recurring Fees for the Services set forth in each applicable Order Form, provided that any such uplift will not exceed ten percent (10%) of the most recent Recurring Fees ("**Uplift**"). For the sake of clarity, Uplift is separate and distinct from any price increases that may occur as a result of (a) special or 'one time' discount expiration, (b) price changes due to Third-Party Data Sources, or (d) changes in Service scope or Minimum Commitments.

7.4. **Third-Party Data Sources Price Changes.** Client recognizes that Smarsh is unable to control the commercial models of the Third-Party Data Sources used by Client or Smarsh's partners (with respect to resold Services). If a Third-Party Data Source or Smarsh partner changes their pricing, and such change impacts the commercial feasibility of Smarsh's Fees for the applicable Service, Smarsh will provide Client with written notice of such change, including any known impact on Client's Service and any price increase for the impacted Service. Any resulting price increase will become effective upon the next renewal of the impacted Service, unless set forth otherwise by Smarsh in its written notice to Client.

7.5. **Usage Limitations.** Client's use of the Services is subject to those usage limitations and performance constraints set forth in the applicable Documentation, Agreement, and Order Form. If Client exceeds such usage limitations, Client will be subject to and agrees to pay promptly upon being invoiced by Smarsh, additional usage-based overage Fees.

7.6. **Minimum Commitment & Invoice of Overages**. Client agrees that the Recurring Services Fees and quantities for the Services in the applicable Order Form(s) are Client's minimum purchase commitment ("**Minimum Commitment**") during the applicable Service Term. The Minimum Commitment is the total sum of the Recurring Services Fees set forth in the applicable Order Form. The Fees for Recurring Services will be invoiced at the billing frequency set forth in the Order Form. For Fees invoiced based on usage, (a) if Client's usage exceeds the Minimum Commitment specified in the Order Form, Smarsh will invoice, and Client will pay, the additional Fees due for such usage at the rates specified in the Order Form; and (b) if Client's usage is less than Client's Minimum Commitment, Smarsh will invoice Client for the Minimum Commitment. Client understands that, even if Client terminates prior to the end of the applicable Service Term, such Minimum Commitment shall be due to Smarsh.

7.7. **Minimum Commitment Adjustment.** Prior to renewal, Smarsh reserves the right to review Client's actual usage of the Services and increase the Client's Minimum Commitments for the upcoming renewal to align with Client's actual usage. Such adjustments shall be based on Client's actual usage during the final year of the then current term, unless otherwise agreed in writing by the parties. Adjusted Minimum Commitments shall be effective upon renewal of the

Services. Further, If Client wishes to reduce their Minimum Commitments at renewal to match Client's actual usage (to the extent permitted given the Service), Smarsh reserves the right to reprice the Service without regard to the prior Service Term's unit rate or pricing. This repricing may also result in the removal of any volume discounts.

7.8. **Taxes.** All Fees payable by Client under this Agreement are exclusive of taxes and similar assessments. Client is responsible for all sales, service, use and excise taxes, utility user's fees, VAT, 911 taxes, or universal service fund fees or taxes, taxes assessed on the use of software or any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental or regulatory authority on any amounts payable hereunder, other than any taxes imposed on Smarsh's income. If Client is tax-exempt, Client is responsible to provide a copy of their current tax-exempt certificate upon execution.

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

8. **Confidentiality.**

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

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

disclosing party's sole expense. The receiving party shall remain fully liable under this Agreement for any breach of this Section by its Agents. The receiving party will promptly notify the disclosing party in writing upon becoming aware of any unauthorized use or disclosure of the disclosing party's Confidential Information.

8.3. **Remedies.** Each party acknowledges and agrees that a breach of the obligations of this Section by the receiving party may result in irreparable injury to the disclosing party for which there may be no adequate remedy at law, and the disclosing party will be entitled to immediately seek equitable relief, including injunction and specific performance, in the event of any breach or threatened breach or intended breach by the receiving party, without waiving any other available rights or remedies.

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

The Confidentiality section shall survive the termination of this Agreement.

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

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

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

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

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

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

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

SECTION 10.4 SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

11. **Indemnification.**

11.1. **Client Indemnification.** Client will defend and indemnify Smarsh, its officers, directors, employees, and agents, from and against all third-party claims, losses, damages, liabilities, demands, and expenses (including fines, penalties, and reasonable attorneys' fees) (collectively, "**Claims**"), arising from or related to (i) Client Data and Client's use of Client Data; (ii) Smarsh's use of Client Data in accordance with this Agreement; and (iii) Client's use of the Services in violation of this Agreement or applicable laws, rules, and regulations. Smarsh will (a) provide Client with prompt written notice upon becoming aware of any such Claim; except that Client will not be relieved of its obligation for indemnification if Smarsh fails to provide such notice unless Client is actually prejudiced in defending a Claim due to Smarsh's failure to provide notice in accordance with this Section; (b) allow Client sole and exclusive control over the defense and settlement of any such Claim; and (c) if requested by Client, and at Client's expense, reasonably cooperate with the defense of such Claim.

11.2. **Smarsh Indemnification.** Smarsh will defend and indemnify Client, its officers, directors, employees, and agents, from and against any Claims arising from Client's use of the Services in accordance with this Agreement that infringes upon any United States patent, trademark or copyright. Client will (a) provide Smarsh with prompt written notice upon becoming aware of any such Claim; except that Smarsh will not be relieved of its obligation for indemnification if Client fails to provide such notice unless Smarsh is actually prejudiced in defending a Claim due to Client's failure to provide notice in accordance with this Section; (b) allow Smarsh sole

and exclusive control over the defense and settlement of any such Claim; and (c) if requested by Smarsh, and at Smarsh's expense, reasonably cooperate with the defense of such Claim. Notwithstanding the foregoing, Smarsh will not be liable for any Claim that relates to or arises from: (i) custom functionality provided to Client based on Client's specific requirements; (ii) any modification of the Services by Client or any third party not authorized in writing by Smarsh; (iii) the combination of the Services with any services, software, or technology not provided or authorized in writing by Smarsh; or (iv) Client's failure to use updated or modified versions of the Services made available by Smarsh.

11.3. **Settlement of Claims.** Notwithstanding anything to the contrary in this Agreement, neither party will settle any Claim for which it has an obligation to indemnify under this Section admitting liability or fault on behalf of the indemnified party, nor create any obligation on behalf of the indemnified party without prior written consent, which will not be unreasonably withheld, conditioned, or delayed.

11.4. **Sole Remedy.** The indemnification obligations in Section 11.2 and the limited rights of replacement contained in this Section are Client's sole remedy, and Smarsh's sole obligation, with respect to claims of infringement under the Agreement. If the Services are subject to, or if Smarsh reasonably believes that the Services may become subject to, a claim of infringement under Section 11.2, Smarsh may, in its sole discretion, (a) procure for Client the right to continue to use the Services; (b) modify the Services so that they are non-infringing; or (c) if in the reasonable opinion of Smarsh, neither (a) nor (b) is commercially feasible, then Smarsh may, upon prior written notice to Client, terminate the applicable Service and issue Client a pro-rata refund for the unused portion of any pre-paid Fees as of the date of termination of Services.

The Indemnification section shall survive the termination of this Agreement.

12. **Remedies and Limitation of Liability**.

12.1. **Remedies.**

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

12.1.2. **Service Levels.** In the event of a breach of the applicable Service Level Agreement, available at https://www.smarsh.com/legal/SupportServiceLevels, Smarsh will provide Client with the credit stated in the Service Level Agreement. The foregoing remedy is Client's sole and exclusive remedy for a breach of the applicable Service Level Agreement.

12.2. **Limitation of Liability.**

12.2.1. **EXCLUSION OF INDIRECT AND CONSEQUENTIAL DAMAGES.** IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER, OR TO ANY THIRD PARTY, FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOSS OF REVENUES, LOSS OF GOODWILL, COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES, OR BUSINESS INTERRUPTION) ARISING FROM OR IN CONNECTION WITH THE SERVICES, WHETHER BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), REGARDLESS OF THE THEORY OF LIABILITY, OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER THE PARTY HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OCCURING, OR IF A PARTY'S REMEDY OTHERWISE FAILS ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW. SMARSH WILL NOT BE LIABLE FOR ANY DAMAGES, WHETHER CONSEQUENTIAL OR OTHERWISE, ARISING FROM OR RELATED TO CLIENT'S NON-COMPLIANCE WITH ANY FEDERAL, STATE, OR INTERNATIONAL LAWS RULES, REGULATIONS, OR DIRECTIVES.

12.2.2. EXCEPT WITH RESPECT TO SECTION 11.2 – SMARSH'S AGGREGATE LIABILITY FOR ALL DAMAGES ARISING FROM OR RELATING TO THIS AGREEMENT, NOTWITHSTANDING THE FORM IN WHICH ANY ACTION IS BROUGHT (E.G., CONTRACT, TORT, OR OTHERWISE), WILL NOT EXCEED THE TOTAL FEES ACTUALLY RECEIVED BY SMARSH FROM CLIENT FOR THE APPLICABLE SERVICES IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE INCIDENT FROM WHICH THE DAMAGES AROSE.

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

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

13. **General Terms.**

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

13.2. **Export Restrictions.** Client will comply with the applicable export laws and regulations of the United States and other applicable jurisdictions when using the Services. Client will not transfer the Software, or any other software or documentation provided by Smarsh (a) to any person on a government promulgated export restriction list; or (b) to any U.S.-embargoed countries. Without limiting the foregoing: (a) Client represents that it and its Users and any other users of the Services are not named on any United States government list of persons or entities prohibited from receiving exports; (b) Client represents that Client will not use the Software or Services in a manner which is prohibited under United States Government export

regulations; (c) Client will comply with all United States anti-boycott laws and regulations; (d) Client will not provide the Software or Service to any third-party, or permit any user to access or use the Software or Service, in violation of any United States export embargo, prohibition or restriction; and (e) Client will not, and will not permit any user or third-party to, directly or indirectly, export, re-export or release the Software or Services to any jurisdiction or country to which, or any party to whom, the export, re-export or release is prohibited by applicable law, regulation or rule.

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

13.4. **Force Majeure.** A failure of a party to perform, or an omission by a party in its performance of, any obligation of this Agreement will not be a breach of this Agreement, nor will it create any liability, if such failure or omission arises from any cause or causes beyond the reasonable control of a party (each a "**Force Majeure Event**"), including, but not limited to: (a) acts or omissions of any governmental entity; (b) any rules, regulations or orders issued by any governmental authority or any officer, department, agency, or instrumentality thereof; (c) natural disasters, fire, storm, flood, earthquake, accident, war, rebellion, insurrection, terrorist act, riot, third-party strikes, third-party lockouts, and pandemics; or (d) utility or telecommunication failures or outages; so long as such party provides prompt notice of the Force Majeure Event, uses reasonable efforts to mitigate the impact of the Force Majeure Event, and uses reasonable efforts to resume performance after any such Force Majeure Event. A Force Majeure Event will not relieve Client's obligation to pay Fees under this Agreement. This section shall survive the termination of this Agreement.

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

13.6. **Relationship of the Parties.** The parties are independent contractors as to each other, and neither party will have power or authority to assume or create any obligation or responsibility on behalf of the other. This Agreement will not be construed to create or imply any partnership, agency, or joint venture.

13.7. **Legal Notices.** Any legal notice under this Agreement will be in writing and delivered by personal delivery, express courier, certified or registered mail, postage prepaid and return receipt requested, or by email. Notices will be deemed to be effective upon personal delivery, one (1) day after deposit with express courier, five (5) business days after deposit in the mail, or when receipt is acknowledged in the case of email to Smarsh. Notices will be sent to Client at the address set forth on the Order Form or such other address as Client may specify. Notices

will be sent to Smarsh at the following address: Smarsh Inc., Attention: Legal, 851 SW 6th Ave, Suite 800, Portland, OR 97204, or in the case of email, to legal@smarsh.com.

13.8. **Publicity.** Smarsh may disclose that Client is a customer of Smarsh, provided that Client may revoke, limit, or withdraw its consent at any time by providing Smarsh with written notice to marketing@smarsh.com.

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

13.10. **Entire Agreement; Electronic Signatures.** This Agreement is the entire agreement between the parties with respect to its subject matter and supersedes any prior or contemporaneous agreements, negotiations, and communications, whether written or oral, regarding such subject matter. Smarsh expressly rejects all terms contained in Client's purchase order (or similar Client-issued documents), and such terms are excluded from this Agreement. The parties agree that electronic signatures, whether digital or encrypted, or Client's click-through acceptance of this Agreement, give rise to a valid and enforceable agreement. This Agreement shall become effective as between Client and Smarsh upon Client's signature of the applicable Order Form referencing this Agreement.

13.11. **Amendments.** The parties may amend this Agreement by a writing signed by both parties. For the avoidance of doubt, electronic communications on their own will not amend this Agreement. Smarsh may amend this Agreement (or any Service Specific Terms) by providing Client with written notice of any changes (including a general description of the changes), and such changes shall be deemed to be effective between the parties beginning on the date that is fifteen (15) days after the date of such notice, unless Client objects to such changes in writing within the fifteen-day period.

13.12. **Security Audits.**

13.12.1. **Annual Due Diligence & Security Audits.** Smarsh uses external auditors to conduct audits to verify the adequacy of Smarsh's security program ("**Security Audits**"). Smarsh agrees to conduct Security Audits on an annual basis using independent third-party auditors according to ISO 27001 or SSAE 18 standards (or equivalent standard). Client agrees that Smarsh may satisfy Client's audit requests and demonstrate its compliance with the security terms of this Agreement by making available to Client (in each case, to the extent applicable and available for the applicable Services) the following documentation: Smarsh's most recent (i) standard information gathering questionnaire, (ii) ISO 27001 report (or other similar third-party audit report), (iii) annual independent SSAE 18 report, and (iv) executive summary of Smarsh's most recent annual penetration test for the applicable Services ("**Standard Audit Documentation**").

13.12.2. **Non-Standard Audits.** If Client requires Smarsh to respond to Client's or a third-party's due diligence questionnaires or otherwise participate in audit activities that are outside the scope of Section 13.13.1 (in each case, determined at Smarsh's reasonable discretion), such requirement will be referred to as a "**Non-Standard Audit**". Smarsh will participate in Non-Standard Audits (i) at Client's sole expense, (ii) subject to Smarsh's standard hourly rate for professional services, and (iii) not more than once in any 12-month period. Prior to participating in any Non-Standard Audit, Smarsh will provide Client with an estimate of the costs associated with completing the Non-Standard Audit (based on the nature and scope of the requests) and may require an initial deposit from Client.

13.12.3. **Regulatory Requests for Information.** If Client receives a request for information about Smarsh's provision of the Services from a regulator or regulatory authority with jurisdiction over Client, Smarsh agrees to provide reasonable cooperation and assistance to Client to address such request in a reasonable and timely manner, including by making available Smarsh's Standard Audit Documentation. For the sake of clarity, a request for information under this Section will not be considered Client's annual Security Audit.

The Audits section shall survive the termination of this Agreement.

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

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

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

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

SERVICE SPECIFIC TERMS EXHIBIT

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

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

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

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

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

SERVICE SPECIFIC TERMS

Professional Archive

Cloud Capture & Vantage Capture

Capture Mobile

Web Archive

X (Twitter)

Vendor Risk Management

Cyber Compliance - Phishing

Nuclei (resold by Smarsh)

Smarsh University

Business Solutions (resold by Smarsh)