

Smarsh Professional Services Agreement

This Professional Services Agreement (this “**Agreement**”) is dated as of the date of execution (the “Effective Date”) of the order form or statement of work for professional services (“**Order Form**”) executed by Client, and is made by and between Smarsh Inc. (“**Smarsh**”) and the client identified on the order form (“**Client**”).

1. **Services.** Smarsh will provide the professional services specified in the Order Form (“**Services**”) at the fixed fee or hourly rates specified therein (“**Fees**”). All Services hours must be delivered within the 12 months following the Effective Date or such hours are forfeited. Services may consist of a package of managed hours (“**Managed Services**”) or hourly services (“**Hourly Services**”).

a. **Dedicated Support.** If purchased by Client, Smarsh will provide a named individual as a point of contact for Client (“**Designated Support**” and the individual the “**Designated Support Contact**”). Designated Support is a type of Managed Service. The Designated Support Contact will provide up to the number of hours of reactive support per month as is set forth in the Order Form. The Designated Support Contact will track time on a daily basis. Time worked per day will be rounded up to the next 15 minute increment (for example, four 5 minute conversations, equaling 20 minutes, would be rounded up to 30 minutes). On a quarterly basis, Smarsh will review actual time the Designated Support Contact provided Support and will compare actual time to the hours purchased by Client. If actual time is greater than purchased hours, Client may choose to (a) strictly cap hours for all monthly Designated Support going forward (this choice (a) will expire once elected, and only choice (b) or choice (c) will be available if actual time exceeds purchased hours following such election), (b) upgrade to a higher level of Dedicated Support package, or (c) pay 150% the hourly rate specified in the Designated Support package for the actual time over the purchased hours. Dedicated Support hours expire at the end of each month and do not roll over. Smarsh will designate backup individuals if the Designated Support Contact is unavailable. Smarsh reserves the right to replace the Designated Support Contact at any time. If any service level agreement commitments are made in an Order Form, such commitments do not apply where Client does not use the Designated Support Contact contact information provided by Smarsh (as may be updated, amended or changed from time to time on prior notice to Client). Except for the overages described in this Section 1(a), Fees for Dedicated Support are invoiced monthly in arrears.

2. Customer Obligations.

Client will cooperate with Smarsh in all matters relating to the Services, including appointing a primary point of contact for Smarsh communications. Client is solely responsible for ensuring the Services meet any regulatory requirement or legal requirement applicable to Client.

3. Delays.

Smarsh will not be liable for any costs, losses or other damages arising from non-performance where the performance of any of Smarsh’s obligations under this Agreement is prevented or delayed by any act or omission of Client or its agents, subcontractors, consultants or employees.

4. Fees, Expense Reimbursement & Change Order.

With respect to Hourly Services, Client will pay the hourly rate indicated on the Order Form for all hours worked by Smarsh following completion of the Hourly Services. For Managed Services, Client will pay the flat fee for Services specified on the Order Form upon execution of the Order Form. All invoices are due 30 days from date of invoice. Client must notify Smarsh within 120 days of the date of invoice in the event Client disputes any Fees. Invoices not disputed within 120 days from the date of invoice will be deemed accepted by Client. Smarsh may charge a late fee of 1.5% per month on any Fees not paid when due. If Client requires Smarsh to travel to the Client’s location, Client will reimburse Smarsh for actual travel costs incurred (e.g., airfare, hotel, transportation, meals). Smarsh will estimate travel-related costs before incurring any out-of-pocket costs. Smarsh invoice for expense reimbursement will include receipts for any expense item of \$25 or more. If changes to the Services are required, Smarsh will submit a change order for any work requested that is outside the scope of work included in Order Form at a \$200 per hour, unless a different rate was agreed to in an Order Form.

5. Deliverables & Limited License.

The Services may result in deliverables. The deliverables may be set forth in the Order Form. The Services do not consist of custom development work or custom developed deliverables. Where the Services consist of custom reports or custom policies,

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the Services are a configuration of the Smarsh Archiving Platform and no ownership in any Smarsh intellectual property is transferred to client and these Services are not considered a “work made for hire”. Smarsh owns all right, title and interest to any deliverable created for Client (not including any Client data which may be incorporated in such deliverable). Client owns all right title and interest in and to any Client data which is incorporated in any deliverable. Smarsh hereby grants Client the limited right to use the deliverables (whether stated in an Order Form or not) in connection with Client’s use of the Smarsh Archiving Platform products for the term of Client’s archiving service agreement applicable to such products. Client hereby grants Smarsh the limited right to copy, publish, display, transmit, or create a derivative work of the Client data in order to provide, support or improve the Services. Nothing in this Agreement will be construed to grant any ownership or exclusive license in any intellectual property to Client and Smarsh retains all right, title and interest in and to the Services.

6. Confidentiality.

“**Confidential Information**” means the non-public information of either party, including but not limited to information relating to either party’s product plans, customers, designs, costs, prices, finances, marketing plans, business opportunities, personnel, research, development or know-how; 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; the terms of this Agreement; or Client Data. Confidential Information does not include information that (a) is in, or enters, the public domain without breach of this Agreement; (b) the receiving party lawfully receives from a third party without restriction on disclosure and without breach of a nondisclosure obligation; the receiving party knew prior to receiving such information from the disclosing party; or (c) the receiving party develops independently without reference to the Confidential Information. Each party agrees: that it will not disclose to any third party, or use for its own benefit or the benefit of any third party, any Confidential Information disclosed to it by the other party except as expressly permitted in this Agreement; and that it will take reasonable measures to maintain the confidentiality of Confidential Information of the other party in its possession or control. 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 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 maintain the Confidential Information on a confidential basis. Each party acknowledges and agrees that a breach of the obligations of this Section 6 by the other party may result in irreparable injury to the disclosing party for which there will be no adequate remedy at law, and the disclosing party shall be entitled to seek equitable relief, including injunction and specific performance, in the event of any breach or threatened breach or intended breach by recipient.

7. Term and Termination.

The Agreement will commence on the Effective Date and continue until the completion of the Services; provided that, the limited license specified in Section 5 shall continue for such time as Client’s archiving services agreement is in effect. Either party may terminate this Agreement upon the material breach of this Agreement by the other party and the breaching party’s failure to cure following thirty (30) days’ notice of such breach by the non-breaching party. Upon termination of this Agreement and Client’s agreement for the Archiving Platform or email hosting services, the limited license specified in Section 5 will terminate. Termination of this Agreement shall not affect any other agreement entered into by the parties.

8. Representations and Warranties; Limitation of Liability.

SMARSH MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND IN CONNECTION WITH THE SERVICES OR SOFTWARE, INCLUDING, WITHOUT LIMITATION, ANY OTHER INFORMATION OR MATERIALS PROVIDED, OR MADE AVAILABLE, BY SMARSH. SMARSH HEREBY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

SMARSH MAKES NO REPRESENTATION OR WARRANTY THAT USE OF THE SERVICES OR THE ADVICE, CONSULTING OR PROFESSIONAL SERVICE PROVIDED TO CLIENT GUARANTEES OR WILL RESULT IN LEGAL COMPLIANCE UNDER ANY FEDERAL, STATE OR INTERNATIONAL STATUTE, LAW, RULE, REGULATION, OR DIRECTIVE AND SMARSH EXPRESSLY DISCLAIMS ALL LIABILITY ARISING OR RELATED TO CLIENT’S COMPLIANCE WITH ANY FEDERAL, STATE OR INTERNATIONAL STATUTE, LAW, RULE, REGULATION, OR DIRECTIVE.

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9. 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 OUT OF OR IN CONNECTION WITH THE SERVICES, WHETHER BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE OR WHETHER THE PARTY HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. SMARSH'S AGGREGATE LIABILITY HEREUNDER FOR ALL DAMAGES ARISING UNDER OR RELATING TO THIS AGREEMENT, NOTWITHSTANDING THE FORM IN WHICH ANY ACTION IS BROUGHT (E.G., CONTRACT, TORT, OR OTHERWISE), SHALL BE LIMITED TO THE TOTAL FEES ACTUALLY RECEIVED BY SMARSH FROM CLIENT FOR THE APPLICABLE SERVICES IN THE TWELVE (12) MONTH PERIOD PRECEDING THE MONTH IN WHICH THE INCIDENT CAUSING THE DAMAGES AROSE. THE LIMITATION ON LIABILITY SET FORTH ABOVE IS CUMULATIVE; ALL PAYMENTS MADE FOR ALL CLAIMS AND DAMAGES SHALL BE AGGREGATED, TO DETERMINE IF THE LIMIT HAS BEEN REACHED.

9. General Terms.

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. Without limiting the foregoing, this Agreement will inure to the benefit of and bind the parties' respective successors and permitted assigns. No failure or omission by the parties hereto in the performance of any obligation of this Agreement shall be deemed a breach of this Agreement, nor shall it create any liability, provided the party uses reasonable efforts to resume performance hereunder, if the same shall arise from any cause or causes beyond the reasonable control of the parties, including, but not limited to the following, which, for the purpose of this Agreement, shall be regarded as beyond the control of the parties in question: (i) acts of God; (ii) acts or omissions of any governmental entity; (iii) any rules, regulations or orders issued by any governmental authority or any officer, department, agency or instrumentality thereof; (iv) fire, storm, flood, earthquake, accident, war, rebellion, insurrection, riot, strikes and lockouts; or (v) utility or telecommunication failures. 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. Any legal notice under this Agreement will be in writing and delivered by personal delivery, express courier, or certified or registered mail, postage prepaid and return receipt requested. Notices will be deemed to be effective upon personal delivery, one (1) day after deposit with express courier, five (5) days after deposit in the mail. 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. The parties are independent contractors and will have no power or authority to assume or create any obligation or responsibility on behalf of each other. This Agreement will not be construed to create or imply any partnership, agency, or joint venture.

10. Entire Agreement.

This Agreement is the complete and exclusive agreement between the parties with respect to the subject matter hereof, and supersedes any prior or contemporaneous agreements, negotiations and communications (both written and oral) regarding such subject matter. 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 affect 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 shall not be deemed a waiver of any rights or remedies that either party shall have and shall not be deemed a waiver of any subsequent default of the terms and conditions thereof.

11. Electronic Signatures and Communications.

The parties agree that electronic signatures, whether digital or encrypted, or click through acceptance, by a party's authorized signatory are intended to authenticate such signatures and give rise to a valid, enforceable, and fully effective agreement. The parties expressly agree that any terms in Client's purchase order forms, or electronic communications, other than orders placed by Client pursuant to Section 1.2, form no part of this Agreement.

12. Modifications.

Smarsh may make modifications to this Agreement by posting the modifications to the weblink this Agreement is located at or at the Service login page. Client unequivocally indicates acceptance of any such modifications by (i) accepting the version of the Agreement with the modified terms at the product log in page; or (ii) executing an Order Form including the modified terms.