

Smarsh Historical Access Agreement

This Smarsh Historical Access Agreement (the “Agreement”) constitutes a legal, binding agreement between Smarsh, Inc. (“Smarsh”) and the client identified in the order form (“Client”) for certain archiving Services (as defined in Section 1.1) and states the terms upon which Smarsh provides such Services to Client. The “Effective Date” of the Agreement shall be the date upon which Client first executes the order form for Services (“Order Form”). By executing an Order Form, Client agrees to the terms of this Agreement.

1. SERVICES.

1.1 Historical Access Services. Subject to Client’s compliance with this Agreement, Smarsh will provide, and hereby grants Client the limited, non-exclusive, non-sublicensable right to access and use Smarsh’s software as a service archiving services in order to access Client’s archived data (“Services”).

1.2 Data Retention. Smarsh will retain Client’s historical data (“Client Data”) for the Term specified in the Order Form, unless Client requests or implements specific retention policies within the Services. Any specific retention policies will be based on variables assigned to Client Data by Client and Client shall be solely responsible for the retention policies applied to Client Data. Following termination or expiration of this Agreement, Smarsh will retain the Client Data for a minimum of six (6) months. Thereafter, Smarsh reserves the right, in its sole discretion, to retain or delete Client Data

1.3 Support. Smarsh will provide the level of support applicable to the package purchased by Client as specified here <https://www.smarsh.com/services>. Client may contact Smarsh support via email at support@smarsh.com. Telephone support is available at 1-866-SMARSH-1. Smarsh will conduct maintenance, to the extent reasonably possible, during times other than normal business hours.

2. FEES FOR SERVICES.

2.1 Payment of Fees. Client shall pay the fees for the Services as set forth in the Order Form (“Fees”). Fees may include One-time Fees and/or Monthly Fees. One-time Fees shall be invoiced upon execution of the Order Form (“One-time Fees”). Monthly historical access to Client Data Fees (“Monthly Fees”) are invoiced in arrears on the last of day of the applicable month following the Effective Date of the Order Form. All Fees shall be due and payable within thirty (30) days following the date of invoice. Smarsh may charge a late fee of 1.5% per month on any Fees not paid when due. Smarsh reserves the right to suspend Client’s access to the Services in the event Client fails to pay the Fees when due.

2.2 Taxes. Fees do not included sales or use taxes, or additional fees or charges which may be assessed on the transaction. Client is responsible for all such taxes, fees or charges.

3. CLIENT’S USE OF THE SERVICES.

3.1 Client Account. Client shall create an account within the Services. Client is responsible for (a) ensuring that Client’s account registration information is complete and accurate; and (b) the security and confidentiality of Client’s account credentials. Client shall designate at least one authorized user who shall have administrative access to Client’s account, with full access privileges and the authority to place orders under Section 1.2 (“Authorized User”). The Authorized User is responsible for managing all aspects of the Services, including without limitation, requesting changes or modifications to the Services, adding or removing users, webpages, URL(s), or adding or deleting Authorized Users. Client

acknowledges and agrees that Smarsh will only accept such requests from Authorized Users, or a verified officer of Client's organization. Smarsh may, in its sole discretion, refuse to comply with any request if the identity of the Authorized User or the officer making any such request cannot be reasonably verified. The Services may only be used by Client's authorized employees, agents or contractors in the performance of their duties to Client. Client shall notify Smarsh immediately of any unauthorized use of any password or account or any other known or suspected breach of security. Client shall not permit Smarsh competitors to access the Services. Client is solely responsible for all activity which occurs within Client's account and for the actions of its employees, contractors or agents, whether or not such person is or was acting within the scope of their employment, engagement or agency relationship.

3.2 Acceptable Use Policy. Client shall comply with Smarsh's Acceptable Use Policy, incorporated by reference herein, available at <https://www.smarsh.com/legal-acceptable-use-policy>, and which may be updated from time to time by Smarsh. Client is prohibited from, and shall not copy, modify, adapt, transmit, sell, distribute or otherwise use the Services, in whole or in part, except as expressly permitted in this Agreement. Client is responsible for the data and content archived by, or provided to, Smarsh via the Services and represents and warrants that such content shall not (a) infringe any third party right, including, without limitation, third party rights in patent, trademark, copyright, or trade secret; or (b) constitute a breach of any other right of a third party, including without limitation, any right under contract or tort theories. Client shall abide by all applicable local, state, national or foreign laws, rules, regulations or treaties in connection with Client's use of the Services including, without limitation, those related to data privacy, communications, SPAM communications, or the transmission and storage of technical or personal data.

3.3 License to Client Data. Client hereby grants Smarsh the limited, non-exclusive right to access, copy, transmit, download, display, and reproduce Client Data as necessary to provide, support and improve the Services, or as otherwise authorized hereunder. Client represents and warrants that Client has all necessary rights in and to the Client Data to grant the foregoing license to Smarsh.

3.4 Client Indemnification. Client shall indemnify, defend and hold harmless Smarsh, its officers, directors, employees and agents, from and against all claims, losses, damages, liabilities and expenses (including reasonable attorneys' fees), arising from Client's breach of any of Client's obligations under this Section 3. Client's obligation for indemnification shall be predicated upon (a) Smarsh providing Client with prompt written notice upon becoming aware of any such claim; provided that, Client shall not be relieved of its obligation for indemnification as the result of Smarsh's failure to provide such notice unless Client is actually prejudiced in defending such a claim as a result of Smarsh's failure to provide notice; (b) if requested by Client, and at Client's expense, Smarsh reasonably cooperating with the defense of such claim; and (c) Smarsh allowing Client sole and exclusive control over the defense and settlement of any such claim.

4. CONFIDENTIALITY.

4.1 Confidential Information. "Confidential Information" means (a) the non-public business or technical 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; (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” will 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; or (iv) the receiving party develops independently without reference to the Confidential Information

4.2 Confidentiality Obligations. Each party agrees: (a) 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 (b) that it will take reasonable measures to maintain the confidentiality of Confidential Information of the other party in its possession or control, which will not be less than the measures it uses to maintain the confidentiality of its own information of similar importance. Either party may disclose Confidential Information of the other party: (x) 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 contest such order or requirement; or (y) to the parties agents, representatives, subcontractors or service providers who have a need to know such information and only upon the requirement that such party maintain the Confidential Information on a confidential basis.

4.3 Remedies. Each party acknowledges and agrees that a breach of the obligations of this Section 4 by the other party will 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.

5. INTELLECTUAL PROPERTY RIGHTS.

As between Smarsh and Client, all server hardware, software and applications required to operate the Services, and other associated technology or documentation, are the sole and exclusive property of Smarsh. Except as expressly stated herein, nothing in this Agreement shall serve to transfer to Client any intellectual property right in or to the Services, Software, Smarsh trademarks or other intellectual property. Smarsh retains all right, title and interest in and to the Services, Software and the associated technology and documentation. 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 in Section 3, nothing in this Agreement shall serve to transfer to Smarsh any intellectual property right in the Client Data.

6. TERM AND TERMINATION.

6.1 Term. The Agreement shall commence of the Effective Date and shall remain in effect for the term specified in the initial Order Form, or if no term is specified, for an initial term of twelve (12) months from the Effective Date. Unless Smarsh or Client provides the other party with at least ninety (90) days prior written notice, this Agreement and all purchased Services will automatically renew for additional twelve (12) month terms. The initial twelve (12) month term plus any renewal terms are, collectively, the “Term.”

6.2 Termination for Breach. Either party may terminate the this Agreement if the other party materially breaches its obligations hereunder and such breach remains uncured for thirty (30) days following the written notice of such breach to the non-breaching party. Smarsh reserves the right to suspend Client's access to the Services in the event of any breach of this Agreement and shall not be liable for any damages resulting from such suspension.

6.3 Effect of Termination. Upon any termination or expiration the Agreement: (a) all rights and licenses to the Services shall immediately terminate; (b) Client shall make payment to Smarsh of any Fees then 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 shall pay the Fees owing for the remainder of the then current Term; and (c) upon request, each party shall return to the other or delete Confidential Information of the other party, provided however, if Client wishes Smarsh to return Client Data, Client agrees to pay Smarsh's then current data extraction and exportation fees.

6.4 Termination for Bankruptcy. This Agreement shall 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.

7. WARRANTY AND DISCLAIMERS.

7.1 Performance Warranty. Smarsh warrants that the Services shall be accessible 99% of the time measured on a monthly basis ("Performance Warranty"). The Performance Warranty shall not apply where the downtime or interruption of the Services resulted from: (a) Smarsh's routine maintenance, repair and upgrade of the Services; (b) issues or failures with Client's hardware, service providers, software, communications or internet providers; (c) issues, actions, omissions or failures of third party services not controlled by Smarsh; (d) Client's acts or omissions; or (e) a Force Majeure event as defined under Section 10.4.

7.2 Proper Authority. Smarsh represents that it has the right and authority to enter into this Agreement, to grant to Client the rights hereunder, and that the performance of its obligations under this Agreement will not breach or be in conflict with any other agreement to which Smarsh is a party to.

7.3 Compliance with Laws. Smarsh warrants that it will comply with the laws and regulations applicable to Smarsh's business in the performance of the Services.

7.4 EXCEPT AS SET FORTH IN SECTIONS 7.1 – 7.3 ABOVE, 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 DOES NOT REPRESENT OR WARRANT THAT THE SERVICES OR SOFTWARE WILL BE AVAILABLE OR ERROR FREE. SMARSH SHALL 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 MAKES NO REPRESENTATION OR WARRANTY THAT USE OF THE

SMARSH SERVICES GUARANTEES LEGAL COMPLIANCE UNDER ANY FEDERAL, STATE OR INTERNATIONAL STATUTE, LAW, RULE, REGULATION, OR DIRECTIVE.

8. REMEDIES AND LIMITATION OF LIABILITY.

8.1 In the event of a breach of the Performance Warranty under Section 7.1, Smarsh shall use commercially reasonable efforts to provide Client with an error correction or work-around that corrects the reported non-conformity, and will provide Client a credit equal to 1/30th of the Monthly Fees for the applicable Service in which the Performance Warranty was not met. Credits must be requested in writing within thirty (30) days and a breach of the Performance Warranty must be verified by Smarsh. Credits shall be credited towards Client's next invoice. The foregoing represents Client's sole remedy for any breach of the Performance Warranty.

8.2 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 THE PROVISION OF SERVICES, NOTWITHSTANDING THE FORM (E.G., CONTRACT, TORT, OR OTHERWISE) IN WHICH ANY ACTION IS BROUGHT, SHALL BE LIMITED TO THE 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.

8.3 THE ABOVE LIMITATIONS OF LIABILITY REFLECT AN ALLOCATION OF RISK BETWEEN THE PARTIES IN VIEW OF THE FAVORABLE FEES BEING CHARGED BY SMARSH RELATIVE TO THE SERVICES DESCRIBED HEREIN, AND ARE MATERIAL TERMS HEREOF.

9. INDEMNIFICATION.

9.1 Agreement to Indemnify. Smarsh will defend Client against third party claims, and indemnify and hold Client harmless against final judgments (including reasonable attorneys' fees), arising out of a breach of a claim that the Services infringe any United States patent, trademark or copyright, provided that (a) Client provides Smarsh with prompt written notice upon becoming aware of any such claim; (b) Client reasonably cooperates with Smarsh in the defense of such claim; and (c) Smarsh has sole and exclusive control over the defense and settlement of any such claim. Notwithstanding the foregoing, Smarsh will have no liability of any kind to the extent any claim is based on 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 Services with any technology or other services not provided by Smarsh; or (iv) the failure of Client to use updated or modified versions of the Services made available by Smarsh to avoid such a claim.

9.2 If the Services are subject to a claim of infringement of the intellectual property rights of a third party, 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) or (b) are commercially feasible, then Smarsh may upon thirty (30) days prior notice to Client, terminate the applicable Service.

9.3 The indemnification obligation contained in this Section 9, shall be Client's sole remedy, and Smarsh's sole obligation, with respect to any breach of the warranty contained in Section 7.3.

10. GENERAL PROVISIONS.

10.1 Export Restrictions. The Services, including any software, documentation and any related technical data included with, or contained in the Services, may be subject to United States export control laws and regulations. Client shall comply with the export laws and regulations of the United States and other applicable jurisdictions in providing or using the Services. Without limiting the foregoing: (a) Client represents that it is not named on any United States government list of persons or entities prohibited from receiving exports; (b) Client represents that Client will not use the Services in a manner which is prohibited under United States Government export regulations; (c) Client will comply with all United States antiboycott laws and regulations; (d) Client shall not provide the Service to any third party, or permit any User to access or use the Service in violation of any United States export embargo, prohibition or restriction; and (e) Client shall not, and shall not permit any user or third party to, directly or indirectly, export, re-export or release the Services to any jurisdiction or country to which, or any party to whom, the export, re-export or release is prohibited by applicable law, regulation or rule.

10.2 U.S. Government End User Provisions. Smarsh provides the Services to federal government end users solely in accordance with the following: government technical data and software rights related to the Services include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with Smarsh to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

10.3 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. 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.

10.4 Force Majeure. 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: (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.

10.5 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.

10.6 Notices. 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, Oregon 97204.

10.7 No Agency. 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.

10.8 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.

10.9 Marketing. Client grants Smarsh the limited right to disclose that Client is a customer of the Smarsh. Smarsh agrees to obtain the prior written approval for any use of Client's name in any print marketing materials, press release, blog posts, case studies or white papers.

10.10 Severability. 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.

10.11 Waiver. 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.

10.12 Electronic Signatures and Communications. The parties agree that electronic signatures, whether digital or encrypted, by an Authorized User or 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, form no part of this Agreement.

10.13 Modifications. Smarsh may make non-material modifications to this Agreement by posting the modifications to the weblink this Agreement is located at. Material modifications may be made by posting an updated version of this Agreement with the updated version number to a new version weblink. Client agrees to the updated version upon execution of an Order Form referencing the updated



version number and weblink, and, upon execution, the terms of the updated version shall apply to all Services purchased by Client.

Smarsh

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