smarsh®

Order Form - City of Port St. Lucie, FL

Account Rep	Riley Lambert	**Customer**	City of Port St. Lucie, FL
Email	riley.lambert@smarsh.com	**Service Address**	121 Sw Port St Lucie Blvd
			Port Saint Lucie, Florida 34984-5042
Prepared on	12-Oct-2023	**Billing Contact**	Bill Jones
Valid until	31-Dec-2023	**Contact Phone**	(772) 871-5225
Start Date	Upon Execution Date	**Contact Email**	jonesb@cityofpsl.com
Subscription Term	12 Months	**Technical Contact**	Bill Jones
Billing Frequency	Annual		
Order Type	Contract		

Services	Unit Price	Minimum Quantity	Minimum Commitment
Unified			
Platform - Professional Archive - SMG	$ 680.00	1	$ 680.00
AT&T Mobile Message - Professional Archive Capture	$ 58.80	416	$ 24,460.80
Onboarding - Professional Archive - Standard		1	$ 1,680.00
Smarsh Support			
Professional Support - Basic		1	
Smarsh University			
Smarsh U - SMB - Full Access	$ 995.00	1	$ 995.00
Annual Recurring Service Fees Subtotal			$ 26,135.80
One-Time Fees Subtotal			$ 1,680.00

Notes

Terms & Conditions

On a date following the execution of this Order Form, Smarsh will provide Client with a license key for the Software or with login credentials to the applicable Service ("**Activation Date**"). Service Descriptions are available at www.smarsh.com/legal. The Services are subject to Smarsh Service Agreement-General Terms available at www.smarsh.com/legal/ServiceAgreement. The Services purchased by Client are also subject to the Information Security Addendum available at https://www.smarsh.com/legal/InfoSec and the following Service Specific Terms:

the Professional Archive Service Specific Terms available at https://www.smarsh.com/legal/SSTProfessionalCloud;
Mobile Channels Service Specific Terms available https://www.smarsh.com/legal/SSTMobileChannels;
the applicable Professional Archive Onboarding package features described in more detail at
https://www.smarsh.com/legal/OnboardingServices-ProArchive;
Smarsh U Service Specific Terms available at: https://www.smarsh.com/legal/SSTSmarshUniversity;.

The Smarsh Service Agreement – General Terms, the Information Security Addendum, the Service Specific Terms, and this Order Form are, collectively, the "**Agreement**." The Initial Term of the Services shall begin on the date this Order Form is executed and continue for the Subscription Term specified above, unless Client is adding the above Services to an existing Service account, in which case, the above Services will sync to and co-terminate with Client's existing subscription Term. The Services will be subject to renewals as specified in the Agreement.

For AT&T Mobility subscribers, your signature below represents your acceptance of the AT&T Wireless Terms and Conditions available at www.smarsh.com/legal/ATT as they apply to AT&T messages that are archived by Smarsh.

"**Archive Fees**" are the Fees charged for access to the Connected Archive (i.e., Professional Archive or Enterprise Archive). "**Capture & Archive Fees**" are the Fees that are charged for capture and archive of a bundle of Connections within the Professional Archive. "**Capture Fees**" are the per-Connection Fees that are charged for the capture of Connections by Connected Capture (i.e., Cloud Capture or Capture Server). "**Premium Adj. Fees**" are the additional Fees that are charged for capture of Connections from premium Channels. "**Set-up Fees**" are the one-time Fees that are charged to implement a Service. "**Professional Services Fees**" are the Fees charged for hourly, monthly, or flat rate professional services.

The Platform Fees, the Capture & Archive Fees, the Capture Fees, and the Premium Adj. Fees, as applicable, are invoiced on an annual, up-front basis or a monthly basis in arrears, as specified on page 1 of this Order Form. Client agrees that the Recurring Subtotal above is Client's minimum commitment during each year or month, as applicable, of the Term. Smarsh will invoice Client for any usage over the minimum quantities at the applicable rate indicated in this Order Form.

Third Party API Usage. In the event that any Third-Party Service charges any API usage fees, service fees, or pass through costs to Smarsh that are (i) in connection with the Client's use of the Services set forth in this Order Form and such Third Party Service, and (ii) Smarsh can reasonably demonstrate that such costs are directly allocated to the Client, Smarsh reserves the right to pass those costs along to the 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 each such cost.

If not priced above, data import, conversion (if applicable), and storage Fees for Client's historical data and storage Fees for data from Connected Capture or other external capture mechanisms ingested into the Professional Archive are as follows:

Data Imports - One-time	$10/GB
Import Data Conversion fees	$3/GB
Data Storage – Annual	$2.50/GB

Information about Smarsh data privacy compliance is available at www.smarsh.com/legal.

The following entities are fully owned subsidiaries of Smarsh: Digital Reasoning, Entreda, Privva, Actiance, MobileGuard

EXHIBIT A

Amendment to the Smarsh Service Agreement – General Terms

This first amendment ("**Amendment**") to the Smarsh Service Agreement - General Terms amends the Agreement between Smarsh Inc. and Port St Lucie Police. This Amendment is effective on the date the Client signs the Order Form, to which this Amendment is attached as Exhibit A.

The parties agree:

1) **Replace Section 1 in its entirety, as follows:**

   1. **Services.**

      1.1. Smarsh will provide the Services specified in each Order Form ("Services"), according to the Agreement, the Service Specific Terms (including the applicable Service Level Agreement(s)), and the Service Descriptions, which describe the features and functionality of each Service. The Service Specific Terms and Service Descriptions are located at www.smarsh.com/legal. Smarsh grants Client a revocable, non-exclusive, non-transferable, limited license to access and use the Services purchased by Client during the Term (as defined in Section 12).

      1.2. **Public Records**.

   (a) To the extent required by the Florida Public Records Act, Chapter 119, Florida Statutes, Smarsh agrees to:

      1. keep and maintain all Public Records made or received in conjunction with the Agreement.

      2. Provide Client with access to all Public Records (via making the Services available to Client) during the Term. For the sake of clarity, Public Records maintained by Smarsh outside of the Services will be made available to Client upon written request within a reasonable time and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.

      3. During the Term of the Agreement Client may, at no additional cost, export records via self-service within Services to respond to Public Records Requests. In the event of a Public Records request, Client will access such records through the Services in this manner. If instead, the Client requests that Smarsh complete the export on Client's behalf, for records that are available at self-service to Client but Client requests Smarsh complete the export, Smarsh shall provide the Client with a copy of the requested records for export within a reasonable time at a cost that does not exceed Smarsh's then-current hourly professional services rate for data extraction and exportation plus any hardware costs for portable media. For records that are not stored within the Service (i.e., corporate records) and thus not available at self-service to the Client, Smarsh shall provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by law. All data so provided to Client may be provided in PST, EML, or native format, at Client's option.

      4. Prior, and for a period of thirty (30) days following the expiration or termination of the Agreement, Client may, at no additional cost, export all Public Records from the Services via self-service within Services. If instead, the Client requests that Smarsh complete a full data export on Client's behalf, for records that are available at self-service to Client but Client requests Smarsh complete the export, Smarsh shall provide the Client with a copy of the requested records for export within a reasonable time at a cost that does not exceed Smarsh's then-current hourly professional services rate for data extraction and exportation plus any hardware costs for

portable media. For records that are not stored within the Services and thus not available at self-service to the Client, Smarsh shall provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by law. All data so provided to Client may be provided in PST, EML, or native format, at Client's option. Smarsh will securely delete all Client Data after the termination of the Agreement.

(b) For the sake of clarity, Smarsh is not a public-facing company and does not receive or process Public Records requests. Client agrees that Client, and not Smarsh, will be responsible for handling all Public Records requests. In the event that Smarsh receives a Public Records request related to the Client, Smarsh will redirect such request back to the Client. Moreover, in the event that a third party submits a Public Records directly to Smarsh that is related to the Client, Smarsh shall not disclose such records to such third party unless as authorized by applicable law.

(c) The Agreement may be terminated for cause by Client for Smarsh's refusal to allow access (via Client) to Public Records. Smarsh's failure to comply with the requirements of this Section 1.2 which leads to a violation by Smarsh of the public records disclosure requirements set for the in section 119.0701, Florida Statutes, shall constitute a breach of this Agreement, provided, that Smarsh has a reasonable opportunity to cure such breach in a timely manner. Additionally, Smarsh's failure to provide the public records to the Client in accordance with this Section 1.2 within a reasonable time may also be subject to penalties under section 119.10, Florida Statutes.

(d) "Public Records" means and includes those items specified in Florida Statutes Section 119.011(12), as amended from time to time, and currently defined as: All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business. Public Records under this Agreement include emails exchanged between Smarsh and Client representatives, the terms of this Agreement, all Client invoices, and, if applicable to the Services purchased by Client, supplier and subcontractor invoices and contracts.

(e) After the termination of the Agreement, Smarsh will securely delete and destroy any duplicates of Client Data in accordance with the terms of the Agreement and in a manner that renders such Client Data unrecoverable.

IF SMARSH HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO SMARSH'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: 772-871-5000 (telephone number), pslpd@cityofpsl.com (email address), 121 S.W. Port St. Lucie Boulevard, Bldg. C (mailing address) 121 SW PORT ST. LUCIE BLVD. PORT ST. LUCIE, FL 34984

(f) **Replace Section 4.3 in its entirety, as follows:**

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

(g) **Replace Section 6.1 in its entirety, as follows:**

Term. The Agreement will begin on the Effective Date and will remain in effect for the term specified in the Order Form or, if no term is specified, 12 months ("**Initial Term**"). The Initial Term may be renewed by Client for additional, successive 12-

month terms (each a **"Renewal Term"**) upon the execution of a Renewal Order Form. The Initial Term plus any Renewal Term are, collectively, the **"Term."** Any Order Form executed after the Effective Date will co-terminate with Client's then-current Term.

(h) Replace Section 6.2 in its entirety, as follows:

Termination for Breach. Either party may terminate this Agreement if the other party materially breaches its obligations under this Agreement and such breach remains uncured for a period of 30 days following the non-breaching party's written notice thereof. Smarsh may suspend Client's access to the Services in the event Client fails to pay undisputed Fees within 60 days after the due date, and Smarsh will not be liable for any damages resulting from such suspension.

(i) Replace Section 7 in its entirety, as follows:

Fees & Payment. Client will pay the fees for the Services as set forth in the Order Form (**"Fees"**). Following execution of the Order Form, Smarsh will activate or otherwise make available the Services listed in the Order Form by either delivering the software (if on-premise software is purchased) or providing Client with access to an account within the applicable Service (**"Activation Date"**). Beginning on the Activation Date, Client will be invoiced for the recurring Fees per the invoice schedule in the Order Form. One-time fees and fees for professional services will be invoiced per the terms of the Order Form, or the applicable statement of work. Client will pay undisputed Fees within forty-five (45) days of the date of the invoice in accordance with Section 218.74, Florida Statutes (the **"Prompt Payment Act"**). If Client disputes any Fees, Client must notify Smarsh within 120 days of the date of invoice. Invoices not disputed within 120 days from the date of invoice will be deemed accepted by Client. In accordance with the Prompt Payment Act, beginning 30 days after the payment due date, Smarsh may charge a late fee of 1% per month on any unpaid Fees. Smarsh may suspend Client's access to the Services in the event Client fails to pay undisputed Fees within 60 days after the due date, and Smarsh will not be liable for any damages resulting from such suspension. Smarsh may increase Fees at any time after the Initial Term, provided that the increased Fees will only become effective upon the commencement of the next Renewal Term following Smarsh's notice to Client of the Fee increase.

(j) Replace Section 9 in its entirety, as follows:

Taxes. All Fees payable by Client under this Agreement are exclusive of taxes and similar assessments. Smarsh acknowledges that Client is tax-exempt.

(k) Replace Section 10.2 in its entirety, as follows:

Obligations with Respect to Confidential Information. Each party agrees: (a) that it will not disclose to any third party, or use for the benefit of any third party, any Confidential Information disclosed to it by the other party except as expressly permitted by this Agreement; and (b) that it will use at least reasonable measures to maintain the confidentiality of Confidential Information of the other party in its possession or control but no less than the measures it uses to protect its own confidential information. Either party may disclose Confidential Information of the other party: (i) pursuant to the order or requirement of a court, administrative or regulatory agency, or other governmental body, provided that the receiving party, if feasible and/or legally permitted to do so, gives reasonable notice to the disclosing party to allow the disclosing party to contest such order or requirement; (ii) to the parties' agents, representatives, subcontractors or service providers who have a need to know such information provided that such party shall be under obligations of confidentiality at least as restrictive as those contained in this Agreement; or (iii) pursuant to a Florida public records request, provided that the Client gives notice to Smarsh in a reasonable amount of time to allow Smarsh the opportunity to seek a protective order preventing such disclosure. Each party will promptly notify the other party in writing upon becoming aware of any unauthorized use or disclosure of the other party's Confidential Information.

(l) Replace Section 13.1 in its entirety, as follows:

Client Indemnification. To the extent permitted by Section 768.28 Florida Statutes, and without in any manner waiving its rights to sovereign immunity or increasing the limits of liability thereunder, Client will defend, indemnify and hold harmless Smarsh, its officers, directors, employees and agents, from and against all claims, losses, damages, liabilities and expenses (including fines, penalties, and reasonable attorneys' fees), arising from or related to the content of Client Data and Client's

breach of the Service Specific Terms or Sections 4.2, 4.3, 4.4, 4.5, or 15.1 of this Agreement. Smarsh will (a) provide Client with prompt written notice upon becoming aware of any such claim; except that Client will not be relieved of its obligation for indemnification if Smarsh fails to provide such notice unless Client is actually prejudiced in defending a claim due to Smarsh's failure to provide notice in accordance with this Section 13.1(a); (b) allow Client sole and exclusive control over the defense and settlement of any such claim; and (c) if requested by Client, and at Client's expense, reasonably cooperate with the defense of such claim. Nothing in this Agreement, any terms on Smarsh's (or any assigns/successors/agents) website, or any terms that may be added to Smarsh's (or any assigns/successors/agents) website in the future, are intended or shall be construed as a waiver of Client's sovereign immunity under section 768.28, Florida Statutes, either by law or contract.

(m) Replace Section 15.4 in its entirety, as follows:

Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Florida, 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 St. Lucie County, in the State of Florida, and the parties hereby irrevocably consent to the personal jurisdiction and venue therein. This section applies and shall be given priority over any other term in this Agreement, any terms on Smarsh's (or any assigns/successors/agents) website, and any terms that may be added to Smarsh's (or any assigns/successors/agents) website in the future.

(n) Replace Section 15.9 in its entirety, as follows:

Entire Agreement; Electronic Signatures. This Agreement is the entire agreement between the parties with respect to its subject matter, and supersedes any prior or contemporaneous agreements, negotiations, and communications, whether written or oral, regarding such subject matter. Smarsh expressly rejects all terms contained in Client's purchase order documents, or in electronic communications between the parties, and such terms form no part of this Agreement. The parties agree that electronic signatures, whether digital or encrypted, give rise to a valid and enforceable agreement. This Agreement may only be modified, or any rights under it waived, by a written document executed by both parties.

(o) Delete Section 16, concerning alternative jurisdiction, in its entirety.

(p) Addition of Section 17, which states the following:

Scrutinized Companies. Smarsh certifies that (i) Smarsh is not participating in a boycott of Israel, Smarsh is not on the Scrutinized Companies that Boycott Israel list, not on the Scrutinized Companies with Activities in Sudan List, and not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, nor has Smarsh been engaged in business operations in Syria. Subject to limited exceptions provided in state law, the Client will not contract for the provision of goods or services with any scrutinized company referred to above. The Client may terminate the Agreement upon written notice to Smarsh in the event that Smarsh submitted a false certification stating that it was not (1) on the Scrutinized Companies that Boycott Israel List or engaged in a boycott of Israel; or (2) was not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

(q) Addition of Section 18, which states the following:

E-VERIFY. In accordance with section 448.095, Florida Statutes, Smarsh agrees to comply with the E-Verify requirements set forth in Section 448.095, Florida Statutes to the extent applicable to Smarsh and the Services provided to Client herein. Smarsh, and any subcontractor thereof, must register with and use the E-Verify system to verify the work authorization status of all new employees of the Smarsh. A public agency or a contractor or subcontractor thereof may not enter into a contract unless each party to the contract registers with and uses the E-Verify system. Upon written request by Client (not to exceed once every 12 months), Smarsh agrees to provide a certification to Client which certifies that (i) Smarsh is registered with and uses the E-Verify system operated by the United States Department of Homeland Security to electronically verify the employment eligibility of Smarsh's newly hired employees; and (ii) Smarsh will contractually require that all subcontractors contracted to provide services under any Florida state contract utilize and comply with the E-Verify system.

(r) Addition of Section 19, which states the following:

Once every 12 months and at Client's sole expense, Smarsh shall make available to the Client, its authorized agents, officers and employees, for examination, financial records related to the fees, expenditures and expenses charged to the Client, and shall furnish to Client, its authorized agents and employees, such financial records required by the Client to conduct Client's own internal audit on Smarsh's Services provided to the Client with respect to any such fees, expenses or expenditures, charged by Smarsh to the Client under the Agreement. Any adjustments and/or payments that must be made as a result of any such audit or inspection of Smarsh's invoices and/or records shall be made within a reasonable amount of time (not to exceed ninety (90) days) from presentation of Client's findings to Smarsh. Any such adjustments must be based on invoices or records within 180 days prior.

(s)   Addition of Section 20, which states the following:

Insurance. Smarsh shall, on a primary basis and at its sole expense, maintain in full force and effect at all times during the life of this Agreement, insurance coverage and limits, including endorsements, necessary and appropriate to provide the Services under this Agreement. Smarsh agrees to provide, once every 12 months and upon written request by the Client, a summary of Smarsh's insurance coverage for review by the Client. In addition, Smarsh agrees to use commercially reasonable efforts to provide at least 30 days prior written notice of any material adverse changes to Smarsh's insurance coverage. Smarsh agrees to add the Client as an additional insured under its General Liability Policy and shall provide Client with a copy of such additional insured endorsement.

Purchase Order Information

Client to Complete:

Is a Purchase Order (PO) required for the purchase of the Services on this Order Form?

[ ]   No

[ ]   Yes – Please complete below

PO Number:

PO Amount:

Upon signature by Client and submission to Smarsh, this Order Form shall become legally binding unless Smarsh rejects this Order Form for any of the following reasons: (i) changes have been made to this Order Form (other than completion of the purchase order information and the signature block); or (ii) the requested purchase order information or signature is incomplete; or (iii) the signatory does not have authority to bind Client to this Order Form.

Client authorized signature

By: _____   Name: _____

Title: _____   Date:_____   _____

![smarsh®]

Smarsh Inc. authorized signature

By: *Alex OpBroek*   Name: Alex OpBroek

Title: **VP, Global Corporate Controller**   Date: **Oct 16, 2023**