Attachment A

Smartsheet Agreement

AGREEMENT FOR SERVICES OF INDEPENDENT CONTRACTOR

THE AGREEMENT FOR SERVICES OF INDEPENDENT CONTRACTOR DATED JUNE 25, 2024 (hereafter Agreement) is made by and between the County of Santa Barbara, a political subdivision of the State of California (hereafter COUNTY) and Smartsheet Inc. with an address at 10500 NE 8th St. Suite 1300, Bellevue, WA, 98004 (hereafter CONTRACTOR) wherein CONTRACTOR agrees to provide and COUNTY agrees to accept the services specified herein.

WHEREAS, CONTRACTOR represents that it is specially trained, skilled, experienced, and competent to perform the special services required by COUNTY and COUNTY desires to retain the services of CONTRACTOR pursuant to the terms, covenants, and conditions herein set forth;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. DESIGNATED REPRESENTATIVE

Andre Monostori at phone number 805-568-2606 is the representative of COUNTY and will administer this Agreement for and on behalf of COUNTY. CONTRACTOR shall assign an Authorized Representative following execution of this Agreement. Any changes in designated representatives shall be made only after advance written notice to the other party if possible, or as soon as practicable following reassignment.

2. SCOPE OF SERVICES

CONTRACTOR agrees to provide services to COUNTY ("services") in accordance with the Order attached hereto as EXHIBIT A and incorporated herein by reference ("Order") and the Smartsheet Services Agreement attached hereto as EXHIBIT B and incorporated herein by reference ("Services Agreement").

3. TERM

The term of this Agreement shall commence, and CONTRACTOR shall commence performance of services hereunder, beginning July 1, 2024, and shall terminate on June 30, 2027, unless earlier terminated in accordance with the provisions of this Agreement ("Term").

4. INDEPENDENT CONTRACTOR

It is mutually understood and agreed that CONTRACTOR (including any and all of its officers, agents, and employees), shall perform all services hereunder as an independent contractor as to COUNTY and not as an officer, agent, servant, employee, joint venturer, partner, or associate of COUNTY. Furthermore, COUNTY shall have no right to control, supervise, or direct the manner or method by which CONTRACTOR shall perform its work and function. CONTRACTOR understands and acknowledges that it shall not be entitled to any of the benefits of a COUNTY employee, including but not limited to vacation, sick leave, administrative leave, health insurance, disability insurance, retirement, unemployment insurance, workers' compensation and protection of tenure. CONTRACTOR shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, CONTRACTOR shall be solely responsible and save COUNTY harmless from all matters relating to payment of CONTRACTOR's employees, including compliance with Social Security withholding and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, CONTRACTOR may be providing services to others unrelated to the COUNTY or to this Agreement.

5. **DEBARMENT AND SUSPENSION**

CONTRACTOR certifies to COUNTY that it and its employees and principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, state, or county government contracts. CONTRACTOR certifies that it shall not knowingly contract with a subcontractor that is so debarred or suspended.

6. **TAXES**

Other than income taxes imposed on CONTRACTOR, COUNTY will bear all taxes, duties, VAT, and all other governmental charges (collectively, "Taxes") resulting from this Agreement. If COUNTY is exempt from any applicable Taxes, COUNTY will provide evidence reasonably satisfactory to CONTRACTOR of COUNTY's tax-exempt status and, after receipt of such evidence, CONTRACTOR will not charge COUNTY any Taxes from which it is exempt. If it is determined that payments due under this Agreement are subject to withholding Taxes, COUNTY shall notify CONTRACTOR prior to deducting any such Taxes. COUNTY shall: (a) only withhold amounts required under law; (b) make timely payment to the proper taxing authority of such withheld amount; and (c) provide CONTRACTOR with proof of such payment within thirty (30) days following that payment. COUNTY shall not be responsible for paying any Taxes on CONTRACTOR's behalf, and should COUNTY be required to do so by state, federal, or local taxing agencies, CONTRACTOR agrees to promptly reimburse COUNTY for the full value of such paid Taxes plus interest and penalty, if any. These Taxes shall include, but not be limited to, the following: FICA (Social Security), unemployment insurance contributions, income tax, disability insurance, and workers' compensation insurance.

7. **CONFLICT OF INTEREST**

CONTRACTOR covenants that CONTRACTOR presently has no employment or interest which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. COUNTY retains the right to waive a conflict of interest disclosed by CONTRACTOR if COUNTY determines it to be immaterial, and such waiver is only effective if provided by COUNTY to CONTRACTOR in writing.

8. **NO PUBLICITY OR ENDORSEMENT**

CONTRACTOR shall not use COUNTY's name or logo or any variation of such name or logo in any publicity, advertising or promotional materials. CONTRACTOR shall not use COUNTY's name or logo in any manner that would give the appearance that the COUNTY is endorsing CONTRACTOR. CONTRACTOR shall not in any way contract on behalf of or in the name of COUNTY. CONTRACTOR shall not release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning the COUNTY or its projects, without obtaining the prior written approval of COUNTY.

9. **RECORDS, AUDIT, AND REVIEW**

CONTRACTOR shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of CONTRACTOR's profession and shall maintain such records in accordance with this Agreement. All accounting records shall be kept in accordance with generally accepted accounting principles. COUNTY shall have the right to audit and review all such documents and records at any time during CONTRACTOR's regular business hours or upon reasonable notice. In addition, if this Agreement exceeds ten thousand dollars ($10,000.00), CONTRACTOR shall be subject to the examination and audit of the California State Auditor, at the request of the COUNTY or as part of any audit of the COUNTY, for a period of three (3) years after final payment under the Agreement (Cal. Govt. Code Section 8546.7).

10. **INSURANCE**

CONTRACTOR agrees to provide evidence of the following insurance coverage through commercial insurance, self-insurance or a combination thereof with limits no less than described below:
General Liability with policy limits no less than $1,000,000 per occurrence, $2,000,000 in the aggregate.
Workers' Compensation as required by the State of California, with Statutory Limits, and Employer's Liability

Insurance with limit of no less than $1,000,000 per accident for bodily injury or disease.
Professional Liability, or applicable Errors and Omissions policy, with policy limits no less than $1,000,000 per occurrence, $2,000,000 in the aggregate.
Cyber Liability Insurance: Cyber Liability Insurance, with limits not less than $2,000,000 per occurrence or claim, $2,000,000 aggregate.
The Certificate Holder shall read as follows:

- County of Santa Barbara
- 105 East Anapamu Street
- Santa Barbara, CA 93101

11. **NONDISCRIMINATION**

CONTRACTOR provides equal employment opportunities to all employees and applicants for employment without regard to race, color, religion, sex, national origin, age, disability, genetics, or other legally protected classes of persons in compliance with all applicable federal and state laws governing nondiscrimination in employment. If complaint is made that seller is engaging in discriminatory employment practices in violation of this Section 11, and the State Fair Employment Practice Commission or the Federal Equal Employment Opportunities Commission determines that such unlawful discrimination exists, then the County of Santa Barbara may forthwith terminate this Agreement and any applicable Order in accordance with Section 7.3 of the Services Agreement.

12. **NONEXCLUSIVE AGREEMENT**

CONTRACTOR understands that this is not an exclusive Agreement and that COUNTY shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by CONTRACTOR as the COUNTY desires.

13. **SECTION HEADINGS**

The headings of the several sections, and any Table of Contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

14. **SEVERABILITY**

If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

15. **REMEDIES NOT EXCLUSIVE**

No remedy herein conferred upon or reserved to the parties is intended to be exclusive of any other remedy or remedies, and except as otherwise provided herein or in the Services Agreement, each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

16. **NO WAIVER OF DEFAULT**

No delay or omission of COUNTY to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to COUNTY shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of COUNTY.

17. **ENTIRE AGREEMENT AND AMENDMENT**

In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means.

18. **COMPLIANCE WITH LAW**

CONTRACTOR represents and warrants that it has the necessary authority to enter into this Agreement and that CONTRACTOR shall comply with any United States laws, statutes, and regulations to the extent such laws, statutes and regulations apply to CONTRACTOR's provision of the Services (as defined in the Services Agreement) under this Agreement. For the avoidance of doubt, CONTRACTOR shall not be responsible for COUNTY's compliance with any laws, statutes and regulations applicable to COUNTY and its industry.

19. **CALIFORNIA LAW AND JURISDICTION**

This Agreement shall be governed by the laws of the State of California.

20. **EXECUTION OF COUNTERPARTS**

This Agreement may be executed electronically and in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

21. **AUTHORITY**

Each of the signatories and parties to this Agreement warrants and represents that such party has the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of the entity represented or purported to be represented by such signatory or party, and that all corporate formalities and other formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement as a legally binding obligation on such party have been fully complied with. Furthermore, by entering into this Agreement, CONTRACTOR hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which CONTRACTOR is obligated, which breach would have a material effect hereon.

22. **ORDER OF PRECEDENCE**

In the event of conflict between the provisions contained in Sections 1 through 23 of this Agreement ("Numbered Sections") and the provisions contained in the exhibits attached hereto ("Exhibits"), the provisions contained in the Numbered Sections shall control and prevail over those in the Exhibits, including, but not limited to, the Services Agreement attached hereto as Exhibit B.

23. **BUSINESS ASSOCIATE**

The parties agree to the terms and conditions set forth in EXHIBIT D - HIPAA Business Associate Agreement (BAA), attached hereto and incorporated herein by reference.

Agreement for Services of Independent Contractor between the **County of Santa Barbara** and Smartsheet Inc.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the first date executed by all of the parties hereto.

ATTEST:

Mona Miyasato
County Executive Officer
Clerk of the Board

By: _____
         Deputy Clerk

COUNTY OF SANTA BARBARA:

By: _____
         Steve Lavagnino, Chair
         Board of Supervisors

Date: _____

RECOMMENDED FOR APPROVAL:

Chris Chirgwin, CIO
Information Technology

DocuSigned by:
Chris Chirgwin

By: _____
         D97209A7A68A4A0
         Department Head

CONTRACTOR:

Smartsheet Inc.

DocuSigned by:
Todd Doherty

By: _____
         AD8D8D0B5DDF47B...
         Authorized Representative

Name: Todd Doherty
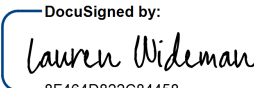
Title: SVP of Commercial Sales
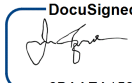
APPROVED AS TO FORM:

Rachel Van Mullem
County Counsel

DocuSigned by:
Lauren Wideman

By: _____
         8E464D822C84458
         Deputy County Counsel

APPROVED AS TO ACCOUNTING FORM:

Betsy M. Schaffer, CPA
Auditor-Controller

DocuSigned by:

By: _____
         6BAAEA15901943F...
         Deputy

APPROVED AS TO FORM:
Risk Management

DocuSigned by:
Greg Milligan

By: _____
         05E555F00269466...

Risk Management

EXHIBIT A

ORDER

Top features	Silver	Gold	Platinum
Project Portfolio Management at scale	✓	✓	✓
Portfolio WorkApps: streamlined team engagement	✓	✓	✓
Secure request management	✓	✓	✓
Collaborator access to WorkApps	✓	✓	✓
Data connections	✓	✓	✓
Enterprise-level data storage		✓	✓
CRM and software development integration		✓	✓
Intelligent workflows across platforms		✓	✓
Smartsheet Safeguard			✓

Smartsheet Advance product Documentation >

smartsheet

Order Q-4230705

Customer Contact Information

	Contact Name	Email	Phone
Contract Owner	Mark Garcia	mkgarcia@countyofsb.org	8055683277
Billing Contacts	Onelia Rodriguez	itdfinance@countyofsb.org	(805)568-2699
Services Contact			

Customer Address Information

	Ship To	Bill To
Street	105 E Anapamu St, Room 304	105 E Anapamu St, Room 304
City	Santa Barbara	Santa Barbara
State	California	California
Zip	93110	93110
Country	United States	United States

Subscription Details

Organization Name	County of Santa Barbara
Payment Terms	Net 30
Order Execution Date	
Subscription Action	Renewal in Accordance with the Existing Terms
System Administrator Email The System Administrator will have administrative control over this plan and cannot be a user associated with another Smartsheet plan.	mkgarcia@countyofsb.org

Purchase Order Does your organization require a PO to process payment?	PO Number	PO Attachment
International Tax ID		

Smartsheet

Product	Region	Annual / Unit Price	Unit Quantity	Extended Price	One-Time Discount	Billing Frequency	Subscription Term	Total Price
Enterprise Plan plus Pro Support - Licensed Users	US	483.00	476	229,907.95		Annual	7/1/2024 to 6/30/2027 (36 Months)	689,723.85 USD
Enterprise Plan plus Pro Support - Licensed Users	US	483.00	20	9,660.00	33%	Annual	7/1/2024 to 6/30/2027 (36 Months)	19,416.60 USD
Smartsheet Advance - Platinum (Up to 2499 Connected Users)	US	201,185.00	1	201,185.00		Annual	7/1/2024 to 6/30/2027 (36 Months)	603,555.00 USD
Smartsheet University Live Pass	US	3,000.00	2	6,000.00		Annual	7/1/2024 to 6/30/2027 (36 Months)	18,000.00 USD

Total	1,330,695.45 USD

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Order Q-4230705

Smartsheet will provision Subscription Services and issue an invoice for amounts due promptly after receipt of an executed Order. Subscription Term may be adjusted based on the actual provision date of the Subscription Service, which will be specified in your invoice with any corresponding prorated amounts due. This Order and any renewals are governed by, and hereby incorporate by reference, that certain agreement governing your company's use of the Smartsheet services effective as of 7/10/2020 ("Negotiated Agreement"). By submitting this Order, you are entering into an agreement on behalf of your company for the provision of services by Smartsheet. Accordingly, you represent and warrant that you have the necessary authority to (i) submit this Order, (ii) agree to the Negotiated Agreement, and (iii) designate the SysAdmin indicated above. Minimum differences in feature availability may exist between Regions, for details see https://help.smartsheet.com/regions-capability-differences

Smartsheet Inc. acquired Brandfolder, Inc. as a wholly owned subsidiary in September 2020 and is working to integrate the companies' services and business operations. Accordingly, Smartsheet is now issuing transactional documentation with respect to Brandfolder services. Please visit www.smartsheet.com/platform for more information.

Customer may add additional Enterprise Plan plus Pro Support - Licensed Users at any time during the Subscription Term. Smartsheet will invoice Customer quarterly for all additional Enterprise Plan plus Pro Support - Licensed Users added during the preceding quarter (calculated from the Subscription Effective Date). The fees for such additional Enterprise Plan plus Pro Support - Licensed Users will be prorated based on the remainder of the then-current annual subscription period. During the Subscription Term, removal of Enterprise Plan plus Pro Support - Licensed Users from Customer's subscription plan will not result in any credits or refunds owed to Customer.

Customer's high watermark number of Enterprise Plan plus Pro Support - Licensed Users at the end of the previous annual subscription period will determine Customer's Enterprise Plan plus Pro Support - Licensed Users count for purposes of the immediately following annual subscription period of this Order.

Annual fees for Smartsheet Advance - Platinum are based on the number of Connected Users acquired by Customer. As Customer increases the number of Connected User, if such increase of Connected Users moves the Customer into the next Connected User Band provided in the table below, Customer will pay the difference between the Annual Platform Fee last paid by Customer and the new applicable Annual Platform Fee in the table below, prorated for the remainder of the then current annual subscription term. Customer will be invoiced for such additional fees when applicable. Any renewal of this Order will be based on the cumulative number of Connected Users at the end of the Subscription Term and the Annual Platform Fee specified in the below table.

Connected User Band:	Connected Users:	Annual Platform Fee - Advance Platinum
1	2,500 – 2,999	$222,185.00
2	3,000 – 3,499	$247,185.00

Product Terms:

Your purchase level of Smartsheet Advance includes access to Smartsheet's subscription-based online work collaboration service and certain components (collectively, the "Platform"), which are identified https://www.smartsheet.com/pricing/smartsheet-advance.

Customer is responsible for maintaining use of the Services in accordance with the limitations set forth in this Order and the Agreement. Smartsheet may assess Customer's and its Users' access and use of the Services against the applicable limits and restrictions of Customer's plan and purchases of Services. In conjunction with such assessment, Smartsheet may provide written notice (including via email) that Customer has exceeded its purchased capacity. Smartsheet may issue an invoice for the additional capacity of a Service that will bring Customer into compliance with applicable limits and restrictions and Customer shall pay such invoice in accordance with the Agreement..

✓ smartsheet

Order Q-4230705

ACCEPTED AND AGREED:

SMARTSHEET INC.

County of Santa Barbara

By:

By:

Name:

Name:

Title:

Title:

Date:

Date:

EXHIBIT B

Smartsheet Services Agreement

This *Services Agreement* ("**Agreement**") is entered into by and between Smartsheet Inc. ("**Smartsheet**") and County of Santa Barbara ("**Customer**"). Unless otherwise stated herein, this Agreement governs Smartsheet's provision of the Services to Customer. This Agreement is effective as of the date of the last signature below ("**Effective Date**").

1.   **Subscription Service**.

1.1   <u>Right to Access and Use</u>. Subject to the terms and conditions of this Agreement, and in consideration of the fees specified in any Order, Smartsheet hereby grants Customer a worldwide, non-exclusive, non-transferable right to access and use the Subscription Service during the Term for Customer's own business purposes and authorizes Customer to grant such limited access and use rights to Customer Users.

1.2   <u>Account Creation and Administration</u>. The personal information used to create Customer User account profiles will be provided by Customer or Customer Users. Each set of login credentials for the Subscription Service can be used only by a single, individual Customer User.

2.   **Responsibilities and Restrictions.**

2.1   <u>Customer Responsibilities</u>. Customer will access and use the Services only in accordance with this Agreement, Orders and SOWs, the Documentation, and applicable laws and regulations. Customer will promptly notify Smartsheet of any unauthorized access or use which Customer becomes aware. Customer will be responsible for the transfer or disclosure of Customer Content caused by Customer or Customer Users via the functionality of the Services and for all access to and use of the Services that occurs under Customer Users' login credentials.

2.2   <u>Use Restrictions</u>. Customer's use of the Services is subject to the limits, including Customer User quantities, set forth in each Order, as well as the storage and other limitations set forth in Smartsheet's *Limits Policy*. The applicable use limits set forth in Smartsheet's *Limits Policy* on the Term start date of a Service will apply throughout such Term. Customer will not, and will not permit Customer Users to, commercially sell, resell, license, sublicense, distribute, or frame the Services to a third party, or use the Services other than in compliance with Smartsheet's *Acceptable Use Policy*.

3.   **Security and Processing**.

3.1   <u>Security</u>. Smartsheet has implemented and will maintain commercially reasonable information security policies and safeguards as described in Schedule 1 (*Security Practices*) to this Agreement, which include physical, organizational, and technical measures designed to preserve the security, integrity, and confidentiality of Customer Content and to protect against information security threats. Smartsheet may update such security policies and safeguards from time to time provided that any such update does not materially reduce the overall level of security or commitments provided to Customer as described in Schedule 1.

3.2   <u>Processing</u>. Customer represents and warrants that it has all rights, permissions, and consents necessary to: (a) submit all Customer Content to the Services; and (b) grant Smartsheet the limited rights to process Customer Content for the provision o f the Services. Customer hereby grants Smartsheet a worldwide, non-exclusive, non-transferable, right to use and otherwise process Customer Content under this Agreement only: (x) as required by applicable law; (y) as requested by Customer in writing or as allowed by Customer via a Service's access controls; and (z) as necessary to provide the Services and prevent or address technical problems with the Services or violations of this Agreement. Smartsheet's limited right to process Customer Content hereunder will not excuse any obligation of Smartsheet relating to Customer Content under this Agreement. If Customer requires, in its sole discretion, specific terms for processing Customer Content which includes personal information, Customer may submit a form agreeing to the terms of the *Data Processing Addendum* ("**DPA**") at www.smartsheet.com/legal, and the DPA on the Site at the time of such submission will be incorporated into this Agreement on the date of such submission or the Effective Date, whichever is later.

3.3   <u>Service Providers</u>. Smartsheet may engage service providers to act on Smartsheet's behalf in connection with Smartsheet's provision of the Services, including processing Customer Content, provided that: (a) such service providers are subject to confidentiality and data security obligations that are substantially as protective of Customer Content as those set forth in this

Agreement; and (b) Smartsheet is responsible for such service providers' acts and omissions in relation to Smartsheet's obligations under this Agreement.

4. **Intellectual Property and Proprietary Rights**.

4.1   Smartsheet. As between the parties, all right, title, and interest in and to Smartsheet Properties is owned by Smartsheet notwithstanding any other provision in this Agreement. Except as expressly set forth in this Agreement, Smartsheet does not convey any rights to Customer or any Customer User.

4.2   Customer. As between the parties, Customer retains all its right, title, and interest in and to Customer Content and Customer Confidential Information, including all intellectual property and proprietary rights therein. Except as expressly set forth in this Agreement, Smartsheet acquires no right, title, or interest from Customer under this Agreement in or to Customer Content.

4.3   Feedback. Customer grants Smartsheet a worldwide, irrevocable, perpetual, sublicensable, transferable, non-exclusive license to use and incorporate into Smartsheet's products and services any feedback or suggestions for enhancement that Customer or a Customer User provides to Smartsheet, without any obligation of compensation.

5. **Other Products and Services**.

5.1   Professional Services. If Smartsheet provides Professional Services to Customer, Smartsheet hereby grants Customer a worldwide, non-exclusive, non-transferable right to access and use Customizations resulting from Professional Services during the Term for Customer's own business purposes pursuant to the terms and conditions of this Agreement and the applicable Order or SOW and in consideration of the fees and scope specified therein. Subject to the terms and conditions of this Agreement, including any obligations of confidentiality, Smartsheet may perform (or assign any employees or subcontractors to perform) professional services similar to those performed for Customer for any third party or use any information incidentally retained in the unaided memories of Smartsheet personnel to perform such other professional services.

5.2   Online Training. If Smartsheet makes training content available to Customer via an online portal ("**Training Resources**"), Smartsheet hereby grants Customer a worldwide, non-exclusive, non-transferable right to access and use the Training Resources during the Term for Customer's own business purposes. Training Resources are not part of the Subscription Service and the content of Training Resources is subject to change at Smartsheet's sole discretion.

5.3   Smartsheet API. Smartsheet may make an application programming interface or other similar development tool available within an internet-delivered Service which establishes an interface with such Service ("**Smartsheet API**"). Unless Customer has entered into Smartsheet's separate developer agreement and Smartsheet has provided Customer with an application ID for authentication purposes, Customer shall not use or enable a third party to use any Smartsheet API: (a) in a manner that causes Customer to exceed the limits of its authorized use of the applicable Service as set forth in this Agreement or an applicable Order; or (b) to access data, applications, services, or a Smartsheet account belonging to a third party.

5.4   Free and Beta Services. Smartsheet may make a Service available to Customer free of charge by: (a) specifying the Service as free of charge on an Order; or (b) providing a clear and conspicuous written notice that the Service is free of charge (collectively (a) and (b), "**Free Services**"). Smartsheet may make a Service available to Customer: (x) labeled "Beta Service" on an Order; or (y) accompanied by a clear and conspicuous written notice that the Service is to be used at Customer's own risk or provided as is (collectively (x) and (y), "**Beta Service**"). Notwithstanding any other provision of this Agreement, Customer acknowledges and agrees that: (i) Free Services and Beta Services are made available to Customer without any warranty, commitment to availability, security or accuracy, or other related obligation of any kind under this Agreement, unless otherwise required by applicable law; (ii) Free Services are made available to Customer without any support, maintenance, indemnification, or other related obligation of any kind under this Agreement, unless otherwise required by applicable law; (iii) Free Services may not include or allow access to all features and functionality available to paying customers; (iv) Smartsheet may terminate Customer's access to or use of a Free Service at any time, unless otherwise specified in writing, and Smartsheet will not be liable for such termination; and (v) Customer Content submitted to a Free Service may be permanently lost, and Smartsheet will not be liable for such loss.

5.5   Third Party Products. At Customer's discretion, Customer may procure services, applications, and online content from a third party for use with the Services ("**Third Party Products**"). Any such use is subject to the end user license or use agreement that Customer accepts from or establishes with the third party. Third Party Products are not Services and, as between the parties, Smartsheet has no liability with respect to Customer's procurement or use of Third Party Products.

6.   Fees and Payment.

6.1   Fees. Customer will pay Service fees specified in each Order or SOW. All Service fees are nonrefundable once paid except as otherwise expressly provided in this Agreement or the applicable Order or SOW. Smartsheet may increase the unit price specified in an Order for any Renewal Term upon written notice to Customer (including via email) at least forty-five (45) days prior to the start of the Renewal Term.

6.2   Payment. Unless otherwise provided in the applicable Order or SOW, Smartsheet will invoice Customer for Subscription Service fees annually in advance and Professional Service fees on a time and materials basis monthly in arrears. All amounts due under this Agreement are payable in United States dollars net thirty (30) days from the date of the invoice. Customer agrees to promptly notify Smartsheet in writing of any changes to its billing information during any Term. Smartsheet reserves the right to correct any billing errors or mistakes that Smartsheet identifies in an invoice or after a payment is received. Smartsheet may accept payment in any amount without prejudice to Smartsheet's right to recover the balance of the amount due under an Order or SOW or to pursue any other right or remedy. Amounts due to Smartsheet from Customer shall not be withheld or offset against amounts due or alleged to be due to Customer from Smartsheet. Except as prohibited by law, Smartsheet may charge a late fee of one and one-half percent (1.5%) per month on past due amounts. If Customer requires a purchase order, vendor registration form, or other documentation, such requirement will in no way relieve, affect or delay Customer's obligation to pay any amounts due hereunder.

6.3   Taxes. Other than income taxes imposed on Smartsheet, Customer will bear all taxes, duties, VAT, and all other governmental charges (collectively, "**Taxes**") resulting from this Agreement. If Customer is exempt from any applicable Taxes, Customer will provide evidence reasonably satisfactory to Smartsheet of Customer's tax-exempt status and, after receipt of such evidence, Smartsheet will not charge Customer any Taxes from which it is exempt. If it is determined that payments due under this Agreement are subject to withholding Taxes, Customer shall notify Smartsheet prior to deducting any such Taxes. Customer shall: (a) only withhold amounts required under law; (b) make timely payment to the proper taxing authority of such withheld amount; and (c) provide Smartsheet with proof of such payment within thirty (30) days following that payment.

6.4   Affiliates. Customer's Affiliates may purchase Services under this Agreement by executing an Order or SOW. Each Order or SOW is a separate contract between Smartsheet and the Affiliate that executes it, and such Affiliate will be deemed "Customer" as used in this Agreement with respect to such Order or SOW.

6.5   Payment Processors and Resellers. Customer may elect to purchase certain Services through a reseller authorized by Smartsheet ("**Reseller**") or elect to pay for the Services under this Agreement through a third party who processes Customer's payments ("**Payment Processor**"). Customer's obligation for payment to, and relationship with, any Reseller or Payment Processor is between Customer and such Reseller or Payment Processor provided, however, that Customer shall remain liable for the fees payable to Smartsheet for such Services.

7.   Term and Termination.

7.1   Agreement Term; Renewal of Orders. This Agreement will remain in effect until terminated as set forth herein or by the parties' mutual written agreement. Orders will remain in effect for the Term of the Services specified therein ("**Initial Term**"). After the Initial Term, ORDERS WILL AUTOMATICALLY RENEW FOR SUCCESSIVE ONE (1) YEAR RENEWAL TERMS (each a "**Renewal Term**") UNLESS EITHER PARTY PROVIDES THE OTHER PARTY WRITTEN NOTICE OF NON-RENEWAL AT LEAST THIRTY (30) DAYS PRIOR TO THE END OF THE THEN-CURRENT TERM. Notwithstanding the foregoing, any purchases of non-recurring or one-time Services made via an Order will not automatically renew.

7.2   Term of SOWs. Each SOW remains in effect for the period specified therein. If no period is specified, the SOW will terminate once the Professional Services set forth in the SOW have been completed.

7.3   Termination for Cause. Either party may terminate a Service or this Agreement immediately upon written notice if the other party breaches any material provision of an Order, SOW, or this Agreement, and fails to cure the breach within thirty (30) days of such written notice from the non-breaching party.

7.4   Termination for Non-Appropriation of Funds. Notwithstanding any other provision of this Agreement, in the event that no funds are appropriated or budgeted, or funds are not otherwise available for payments in the fiscal year(s) covered by the then-Current Term, then Customer will notify Smartsheet of such occurrence and Customer may terminate or suspend this contract in

whole or in part, without a prior notice period.

7.5   Effect of Termination. Upon termination of this Agreement for any reason: (a) all Orders and SOWs under this Agreement will terminate; and (b) all rights and obligations of the parties hereunder will cease (except as set forth in Section 7.8 (Survival) below). If Customer terminates a Service or this Agreement for Smartsheet's uncured breach pursuant to Section 7.3 (Termination for Cause), Smartsheet shall issue a refund of prepaid fees covering the terminated portion of each Services' respective Term and, if applicable, Training Resources and Partner Apps. If Smartsheet terminates a Service or this Agreement for Customer's uncured breach pursuant to Section 7.3, Customer shall pay all outstanding payable amounts (if any) under this Agreement for the Term applicable to any terminated Service and, if applicable, Training Resources and Partner Apps, regardless of the due dates specified in the Order or SOW. Customer will remain obligated to pay for Professional Services rendered through, or payable as of, the effective date such Professional Services are terminated.

7.6   Return of Customer Content. The Subscription Service includes a feature that permits Customer, at any time during the Term, to download a backup of Customer Content with: (a) Customer's file attachments in their native file formats; and (b) all other Customer Content in an industry standard export format, including a Microsoft Excel file. Upon Customer's written request prior to or contemporaneous with termination or expiration of any Term and at no additional cost to Customer, Smartsheet will allow a Customer's SysAdmin to have read-only access to the Subscription Service for the sole purpose of retrieving Customer Content for thirty (30) days following such date of termination or expiration. Thereafter, Smartsheet has no obligation to retain, and will render unrecoverable, Customer Content in accordance with Schedule 1 (*Security Practices*).

7.7   Suspension. Smartsheet may suspend Customer's access to any Service immediately if: (a) Customer fails to make a payment for more than fifteen (15) days following its due date; or (b) Customer has, or Smartsheet reasonably suspects based on documented evidence that Customer has, breached Section 2.2 (Use Restrictions) or misappropriated or infringed Smartsheet's intellectual property or proprietary rights.

7.8   Survival. The following Sections will survive termination or expiration of this Agreement: 3.2 (Processing); 4 (Intellectual Property and Proprietary Rights); 5.4 (Free and Beta Services); 5.5 (Third Party Products); 6.1 (Fees); 6.2 (Payment); 7.6 (Return of Customer Content); 7.8 (Survival); 8 (Confidentiality); 10 (Limitations of Liability); 11 (Indemnification); and, to the extent necessary to effectuate the foregoing, 12 (General).

8.   Confidentiality.

8.1   Confidential Information. "**Confidential Information**" means any Trade Secret (defined below) and all non-public, proprietary, business, technical, legal, or financial information disclosed or learned in connection with this Agreement that the Disclosing Party has identified as confidential at the time of disclosure or that, based on the nature of the information or circumstances surrounding its disclosure, the Receiving Party would clearly understand it as confidential. With regard to Smartsheet, Confidential Information includes Smartsheet Properties. With regard to Customer, Confidential Information includes Customer Content. "**Trade Secret**" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Confidential Information does not include: (a) information that was generally known to the public at the time disclosed to the Receiving Party; (b) information that becomes generally known to the public (other than through a breach of Section 8 (Confidentiality) by the Receiving Party) after disclosure to the Receiving Party; (c) information that was in the Receiving Party's possession free of any obligation of confidentiality prior to disclosure by the Disclosing Party; (d) information that is rightfully received by the Receiving Party from a third party without any restriction on disclosure; or (e) information that was independently developed by the Receiving Party without reference to or use of Disclosing Party's Confidential Information. ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS." EXCEPT FOR THE WARRANTIES EXPRESSLY STATED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTIES, EXPRESSED OR IMPLIED, CONCERNING THE ACCURACY OR COMPLETENESS OF ITS CONFIDENTIAL INFORMATION.

8.2   Use and Disclosure of Confidential Information. The Receiving Party: (a) will not use the Disclosing Party's Confidential Information for any purpose except as permitted under this Agreement; (b) will not disclose, give access to, or distribute any of the Disclosing Party's Confidential Information to any third party, except to the extent expressly authorized in this Agreement or a separate written agreement signed by the Disclosing Party; and (c) will take reasonable security precautions (which will be at least as protective as the precautions it takes to preserve its own Confidential Information of a similar nature) to safeguard the Disclosing Party's

Confidential Information. Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information to those of its employees, directors, Affiliates, advisors, agents, contractors, and other representatives ("**Representatives**") who need to know such information in order to exercise their respective rights and obligations hereunder, provided that each such Representative is bound to protect the Confidential Information by confidentiality obligations substantially as protective as those set forth in this Agreement. The Receiving Party will be responsible for its Representatives' disclosure or use of the Disclosing Party's Confidential Information in violation of Section 8 (Confidentiality). The Receiving Party will promptly notify in writing the Disclosing Party upon discovery of any unauthorized disclosure or use of the Disclosing Party's Confidential Information, or any other breach of Section 8, by it or its Representatives. The Receiving Party's obligations set forth in Section 8 will remain in effect during the Term and three (3) years after termination of this Agreement. The disclosure of Confidential Information to the Receiving Party does not grant or convey any right of ownership of such Confidential Information. Notwithstanding the foregoing, Customer is subject to the California Public Records Act (Government Code Section 6250 et seq.) (the "**CPRA**") and the Brown Act (Government Code Section 54950 et seq.), and both parties acknowledge that Customer may be compelled to disclose information, which may include certain Confidential Information, provided under this Agreement pursuant to a valid request under the CPRA or under the Brown Act, unless it meets an exception as set forth in either the CPRA or the Brown Act.

8.3   Required Disclosures. The Receiving Party may disclose Confidential Information to the extent required by law or legal process. In such cases, however, the Receiving Party will (except to the extent prohibited by law or legal process): (a) give the Disclosing Party prior written notice of such disclosure so as to afford the Disclosing Party a reasonable opportunity to appear, object, and obtain a protective order or other appropriate relief regarding such disclosure; (b) use diligent efforts to limit disclosure to t hat which is legally required; and (c) reasonably cooperate with the Disclosing Party, at the Disclosing Party's expense, in its efforts t o obtain a protective order or other legally available means of protection.

8.4   Payment Processor or Reseller Disclosures. If Customer elects to utilize a Payment Processor or Reseller to pay for or procure Services, Smartsheet is permitted to disclose Confidential Information (including this Agreement and any Orders and SOWs) to such Payment Processor or Reseller that is necessary to effectuate such transaction.

8.5   Return of Materials. Upon written request by the Disclosing Party, the Receiving Party will, without undue delay: (a) either return or destroy all tangible documents and media in its possession or control that contain the Disclosing Party's Confidential Information; (b) render unrecoverable electronically stored Confidential Information of the Disclosing Party in its possession or control; and (c) certify its compliance with this Section 8.5 in writing. Notwithstanding the foregoing: (x) the Receiving Party will not be obligated to render unrecoverable Confidential Information of the Disclosing Party that is contained in an archived computer system backup made in accordance with the Receiving Party's legal and financial compliance obligations or security and disaster recovery procedure; and (y) Smartsheet shall return or render unrecoverable Customer Content as set forth in Section 7.6 (Return of Customer Content). Any such retained Confidential Information will remain subject to Section 8 (Confidentiality).

8.6   Remedies. The Receiving Party acknowledges that any actual or threatened breach of Section 8 (Confidentiality) may cause irreparable, non-monetary injury to the Disclosing Party, the extent of which may be difficult to ascertain. Accordingly, the Disclosing Party is entitled to (but not required to) seek injunctive relief to prevent or mitigate any breaches of Section 8 with respect to the Disclosing Party's Confidential Information or any damages that may otherwise result from those breaches.

9.   Representations and Warranties; Disclaimer.

9.1   Authority and Compliance Warranty. Smartsheet represents and warrants that it has the necessary authority to enter into this Agreement and that Smartsheet shall comply with all applicable laws and regulations. For the avoidance of doubt, Smartsheet shall not be responsible for the Customer's compliance with any laws, statutes and regulations applicable solely to Customer.

9.2   Limited Warranty for Subscription Service. Smartsheet represents and warrants that the Subscription Service will operate during the applicable Term substantially as described in the applicable plan feature overview and release notes made available by Smartsheet on the Site. Upon receipt of Customer's written notice of any alleged failure to comply with this warranty, Smartsheet will use commercially reasonable efforts to cure or correct the failure. If Smartsheet has not cured or corrected the failure within thirty (30) days following its receipt of such notice, then Customer may terminate the applicable Order and Smartsheet shall issue a refund of prepaid fees covering the terminated portion of the Subscription Services. Notwithstanding the foregoing, this warranty will not apply to any failure due to a defect in or modification of the Subscription Service that is caused or made by Customer, any Customer

User, or a person acting at Customer's direction. This Section 9.2 sets forth Customer's exclusive rights and remedies and Smartsheet's sole liability in connection with this warranty.

9.3   Limited Warranty for Professional Services. Smartsheet represents and warrants that the Professional Services will be provided in a competent and workmanlike manner in accordance with the Order or SOW, as applicable. Customer must notify Smartsheet in writing of any alleged failure to comply with this warranty within thirty (30) days following delivery of the Professional Services. Upon receipt of such notice, Smartsheet will either: (a) use commercially reasonable efforts to cure or correct the failure; or (b) terminate the Professional Services and issue a refund of prepaid fees covering the terminated portion of the Professional Services. This Section 9.3 sets forth Customer's exclusive rights and remedies and Smartsheet's sole liability in connection with this warranty.

9.4   Equal Opportunity. Smartsheet provides equal employment opportunities to all employees and applicants for employment without regard to race, color, religion, sex, national origin, age, disability, genetics, or other legally protected classes of persons in compliance with all applicable federal and state laws governing nondiscrimination in employment.

9.5   Disclaimer. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY STATED IN THIS AGREEMENT, SMARTSHEET MAKES NO REPRESENTATIONS AND DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SMARTSHEET SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND ACCURACY, AND SMARTSHEET DOES NOT WARRANT THAT THE SERVICES OR THIRD-PARTY APPLICATIONS AND SERVICES WILL BE ERROR-FREE OR OPERATE WITHOUT INTERRUPTIONS OR DOWNTIME.

10.   Limitations of Liability.

10.1   Exclusion of Damages; Liability Cap.

TO THE EXTENT PERMITTED BY LAW, NEITHER PARTY WILL BE LIABLE FOR ANY LOST PROFITS, GOODWILL, OR REVENUES OR FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, COVER, BUSINESS INTERRUPTION, OR PUNITIVE DAMAGES IN CONNECTION WITH ANY CLAIM OF ANY NATURE, WHETHER IN CONTRACT, TORT, OR UNDER ANY THEORY OF LIABILITY, ARISING UNDER THIS AGREEMENT, EVEN IF IT HAS BEEN GIVEN ADVANCE NOTICE OF SUCH POSSIBLE DAMAGES.

TO THE EXTENT PERMITTED BY LAW, EACH PARTY'S ENTIRE LIABILITY UNDER THIS AGREEMENT WILL NOT EXCEED THE FEES PAID BY CUSTOMER TO SMARTSHEET UNDER THIS AGREEMENT FOR THE SERVICES GIVING RISE TO THE LIABILITY DURING THE TWELVE (12) MONTHS PRIOR TO THE DATE ON WHICH THE LIABILITY AROSE. THE EXISTENCE OF MORE THAN ONE CLAIM WILL NOT ENLARGE THIS LIMIT.

THE FOREGOING EXCLUSIONS AND LIABILITY LIMITS IN THIS SECTION 10.1 SHALL NOT APPLY TO DAMAGES OR LIABILITY RESULTING FROM CLAIMS OR OBLIGATIONS ARISING UNDER SECTIONS 2.2 (USE RESTRICTIONS), 6.1 (FEES), 6.2 (PAYMENT), OR 11 (INDEMNIFICATION), OR INFRINGEMENT OR MISAPPROPRIATION BY A PARTY OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS.

10.2   General. The parties acknowledge and agree that the limitations of liability, disclaimer of warranties, and any exclusion of damages included in this Agreement represent an allocation of risk between the parties (including the risk that a remedy may fail of its essential purpose and cause consequential loss) which is reflected by the fees paid.

11.   Indemnification.

11.1   By Smartsheet. Smartsheet will defend Customer and its respective officers, directors, and employees ("**Customer Indemnified Parties**") from and against any claims, demands, proceedings, investigations, or suits, brought by a third party alleging that Customer's use of the Services or Customizations in accordance with this Agreement infringes any third party intellectual property rights (each, a "**Claim Against Customer**"). Smartsheet will indemnify Customer Indemnified Parties for any finally awarded damages or settlement amount approved by Smartsheet in writing to the extent arising from a Claim Against Customer, and any reasonable attorneys' fees of Customer associated with initially responding to a Claim Against Customer. Notwithstanding the foregoing, Smartsheet will have no obligation under this Section 11.1 to the extent any Claim Against Customer arises from: (a) Customer's use of the Services or Customizations in combination with technology or services not provided by Smartsheet, if the Services or Customizations or use thereof would not infringe without such combination; (b) Customer Content; (c) Smartsheet's compliance with

designs, specifications, or instructions provided in writing by Customer if such infringement would not have occurred but for such designs, specifications, or instructions; or (d) use of the Services or Customizations by Customer after notice by Smartsheet to discontinue use. If Customer is enjoined or otherwise prohibited from using any of the Services or Customizations or a portion thereof based on a Claim Against Customer, then Smartsheet will, at Smartsheet's sole expense and option, either: (x) obtain for Customer the right to use the allegedly infringing portions of the Service or Customizations; (y) modify the allegedly infringing portion of the Service or Customizations so as to render it non-infringing without substantially diminishing or impairing its functionality; or (z) replace the allegedly infringing portions of the Service or Customizations with non-infringing items of substantially similar functionality. If Smartsheet determines that the foregoing remedies are not commercially reasonable or possible, then Smartsheet will terminate the applicable Order or SOW and issue a refund of prepaid fees covering the terminated portion of the applicable Service.

11.2   By Customer. To the extent permitted by applicable law, Customer will defend Smartsheet and Smartsheet's Affiliates providing the Services, and their respective officers, directors, and employees ("**Smartsheet Indemnified Parties**") from and against any claims, demands, proceedings, investigations, or suits, brought by a third party arising out of (i) Customer Content unless and to the extent the Claim Against Smartsheet arises from Smartsheet's willful misconduct, gross negligence, or use of Customer Content other than as authorized under this Agreement, or (ii) Customer's use of the Services or Customizations in violation of applicable law (each, a "**Claim Against Smartsheet**"). Customer will indemnify Smartsheet Indemnified Parties for any finally awarded damages or settlement amount approved by Customer in writing to the extent arising from a Claim Against Smartsheet, and any reasonable attorneys' fees of Smartsheet associated with initially responding to a Claim Against Smartsheet.

11.3   Conditions. The indemnifying party's obligations under Section 11 (Indemnification) are contingent on the indemnified party: (a) promptly providing written notice of the claim to the indemnifying party (provided that indemnifying party shall not be excused from its indemnity obligations for indemnified party's failure to provide prompt notice except and then solely to the extent that the indemnifying party is materially prejudiced thereby); (b) giving the indemnifying party sole control of the defense and settlement of the claim (provided that any settlement unconditionally releases the indemnified party of all liability and does not make any admissions on behalf of the indemnified party or include payment of any amounts by the indemnified party); and (c) providing the indemnifying party, at the indemnifying party's expense, all reasonable assistance in connection with such claim. The indemnified party may participate in the defense of the claim at its sole cost and expense. Section 11 sets forth the indemnifying party's sole liability to, and the indemnified party's exclusive remedy for, any type of claim or action described in Section 11.

12.   General.

12.1   Insurance. Smartsheet will, at its expense, procure and maintain commercially reasonable insurance coverage during the Term, evidenced by Smartsheet's certificate of insurance, which is available on the Site. Smartsheet will name Customer as an additional insured on its commercial general liability, umbrella/excess liability, auto liability, and errors and omissions policy. Privacy Liability Coverage, Media Liability and Cyber Liability/Computer Security/Data Breach Coverage are included as part of the Errors & Omissions Policy, with limits not less than $2,000,000 per occurrence or claim, $2,000,000 in aggregate. Such policy must be kept in force during the life of this Agreement.

12.2   Publicity. Smartsheet will request Customer's prior written consent for any use of Customer's name or logo.

12.3   United States Government End-Users. The Services provided by Smartsheet are "commercial items" consisting in part of "commercial computer software" and "computer software documentation," as such terms are used in the Federal Acquisition Regulation (FAR) and the Defense Federal Acquisition Regulation Supplement (DFARS). In accordance with FAR 12.211 (Technical data) and FAR 12.212 (Computer software), and DFARS 227.7102 (Commercial items, components, or processes) and DFARS 227.7202 (Commercial computer software and commercial computer software documentation), as applicable, the rights of the United States government to use, modify, reproduce, release, perform, display, or disclose computer software, computer software documentation, and technical data furnished in connection with the Services will be pursuant to the terms of this Agreement. This United States government rights clause is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses government rights in computer software, computer software documentation, or technical data.

12.4   Export Compliance. Each party shall comply with United States export control laws and regulations. Without limiting the foregoing: (a) Customer acknowledges that the Services, Documentation, and Customizations may be subject to United States Export Administration Regulations; (b) Customer will not permit Customer Users to access or use any Service, Documentation, or Customization in a United States embargoed country; and (c) Customer is responsible for complying with any local laws and regulations which may impact Customer's right to import, export, access, or use the Services, Documentation, and Customizations.

12.5   Notices. Except where this Agreement permits notice via email, all notices provided under this Agreement must be in writing

and sent via internationally recognized delivery service or certified United States mail. Notices sent via email will be deemed given one (1) business day after being sent; and notices sent via any other authorized delivery method will be deemed given five (5) business days after being sent. Notices must be addressed as follows: if to Smartsheet, *Attn: Legal, 10500 NE 8th Street, Suite 1300, Bellevue WA 98004*, and for notices permitted to be sent via email, to legal@smartsheet.com; and, if to Customer, *Attn: Legal* at the billing address set forth on the initial Order, and for notices permitted to be sent via email, to the SysAdmin email address set forth on the initial Order. Customer may request notification of changes to the Policies and *Privacy Notice* via www.smartsheet.com/notification- requests.

12.6   Assignment. Either party may assign this Agreement and any Orders or SOWs in connection with a merger or similar transaction or to a company acquiring substantially all of its assets, equity, or business, without any requirement to obtain permission for such assignment; otherwise, neither party may assign this Agreement or any Orders or SOWs to a third party without the advance written consent of the other party. Subject to the foregoing and notwithstanding any prohibitions on transferability under this Agreement, the assigning party shall notice the non-assigning party of any permitted assignment and this Agreement and any Orders or SOWs will bind and inure to the benefit of the parties, their successors, and their permitted assigns.

12.7   Force Majeure. Neither party shall be liable for a delay or default under this Agreement solely to the extent that such delay or default is beyond such party's reasonable control and is solely caused by any of the following events, and is in no way arising out of or attributable to any act or omission by or on behalf of such party, provided that such party uses reasonable efforts to mitigate against the effects of such Force Majeure Event and to resume full performance hereunder as soon as possible: natural disasters and war. Notwithstanding the foregoing, in the event that such delay or default continues for more than thirty (30) days, the COUNTY shall have the right to immediately terminate this Agreement and CONTRACTOR shall provide to COUNTY a pro-rata refund for the remaining portion of the Term following the effective date of such termination by COUNTY.

12.8   Amendment; Waiver. Unless otherwise expressly stated herein, this Agreement and any Orders or SOWs may be modified only by a written amendment or agreement executed by an authorized representative of each party. The waiver of any breach of any provision of this Agreement or of any Order or SOW will be effective only if in writing, and no such waiver will operate or be construed as a waiver of any subsequent breach.

12.9   Enforceability. If any provision of this Agreement or any Order or SOW is held to be unenforceable, then that provision is to be construed either by modifying it to the minimum extent necessary to make it enforceable (if permitted by law) or disregarding it (if not permitted by law), and the rest of this Agreement or the relevant Order or SOW is to remain in effect as written. Notwithstanding the foregoing, if modifying or disregarding the unenforceable provision would result in failure of an essential purpose of this Agreement or any Order or SOW, the entire Agreement or the relevant Order or SOW will be considered null and void.

12.10   Governing Law. This Agreement and any Orders and SOWs are governed by the laws of the State of California, without regard to its conflicts of law rules.

12.11   Entire Agreement; Conflict. This Agreement, together with the Policies, Schedule(s) attached hereto, and, if applicable, the DPA, and any Orders and SOWs represent the entire agreement between Smartsheet and Customer with respect to the Services. Downloadable Smartsheet applications or products expressly governed by a separate end-user license agreement presented at the time of download or use are not governed by this Agreement. During the electronic provisioning of the Subscription Service or Training Resources, any user agreement presented to a Customer User will be considered null and void, however, Customer Users will be required to individually acknowledge that certain information collected about them is used as described in Smartsheet's *Privacy Notice*, which is available on the Site. In the event of any conflict between this Agreement and any Order or SOW, this Agreement will govern and control unless the Order or SOW expressly and specifically overrides terms or conditions of this Agreement. With respect to any Services, terms and conditions included in the following items, whether submitted or executed before or after the Term start date, are null and void: (a) a Customer purchase order or similar document; (b) a Customer vendor registration form or online portal; and (c) any other contemporaneous or prior agreements or commitments regarding the Services or the other subject matter of this Agreement.

12.12   Mandatory Disclosure. Smartsheet is required to report certain civil, criminal, or administrative proceedings to the System for Award Management (SAM) located at www.sam.gov. Failure to make required disclosures can result in any of the remedies described in 2 CFR §200.338 Remedies for noncompliance, including suspension or debarment. (See also 2 CFR part 180 and 31 U.S.C. 3321.)

12.13   Procurement of Recovered Materials. Smartsheet shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as applicable to Services provided under this Agreement. The

requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EP A) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

13. **Definitions**. Capitalized terms used but not otherwise defined in this Agreement have the following meanings:

"**Affiliate**" means any person or entity that owns or controls, is owned or controlled by, or is under common control or ownership with, a party to this Agreement, where control is defined as the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract, or otherwise.

"**Customer Content**" means any data, file attachments, text, images, reports, personal information, or other content that is uploaded or submitted to the internet-delivered Services by Customer or Customer Users and is processed by Smartsheet on behalf of Customer. For the avoidance of doubt, Customer Content does not include usage, statistical, or technical information that does not reveal the actual contents of Customer Content.

"**Customer User**" means any individual authorized or invited by Customer or a Customer User to access and use the Services received by Customer from Smartsheet under the terms of this Agreement.

"**Customizations**" means all software, code, materials, ideas, deliverables, and items that are conceived, made, discovered, written, or created by Smartsheet's personnel in connection with providing Professional Services.

"**Disclosing Party**" means the party disclosing Confidential Information to the Receiving Party.

"**Documentation**" means documentation provided by Smartsheet on the Site that is uniformly available and applicable to all Smartsheet customers and relates to the operation and use of the Services, including user manuals, operating instructions, and release notes, each as updated by Smartsheet from time to time.

"**Order**" means an executed ordering document or online order issued or otherwise approved in writing by Smartsheet that sets forth the commercial details of Services made available to Customer and incorporates this Agreement by reference.

"**Partner App**" means a service or application developed and owned by a third party for which Customer purchases a license from Smartsheet under an Order and is made available to Customer exclusively in accordance with the terms and conditions of the end user license agreements accompanying them, except that the payment provisions of this Agreement will apply.

"**Policies**" means the *Limits Policy*, *Acceptable Use Policy*, and *Travel and Expense Policy*, each as found on the Site at www.smartsheet.com/legal and updated by Smartsheet from time to time.

"**Professional Services**" means implementation, configuration, integration, training, advisory, and other professional services related to the Services that are specified in an Order or SOW.

"**Receiving Party**" means the party receiving or accessing Confidential Information of the Disclosing Party.

"**Services**" means Professional Services, the Subscription Service, and any other internet-delivered service or application provided or controlled by Smartsheet.

"**Site**" means Smartsheet's website at www.smartsheet.com and any website linked from such website that is owned or controlled by Smartsheet.

"**Smartsheet Properties**" means Services, Documentation and Customizations, and all Smartsheet technology, software, data, methodologies, improvements, and documentation, used to provide or made available in connection with Services, Documentation, and Customizations, and all intellectual property and proprietary rights in and to the foregoing.

"**SOW**" means a statement of work or similar document that describes and scopes Professional Services, establishes the fees for the Professional Services, and incorporates this Agreement by reference.

"**Subscription Service**" means Smartsheet's subscription internet-delivered work collaboration services and applications that are purchased by Customer.

"**SysAdmin**" means a Customer User with certain administrative control rights over Customer's Subscription Service.

"**Term**" means the period of authorized access and use of a Service as set forth in an Order.

SECURITY PRACTICES

1.   Security Protocols.

1.1   <u>Information Security Program</u>. Smartsheet shall maintain a comprehensive written information security program, including policies, standards, procedures, and related documents that establish criteria, means, methods, and measures governing the processing and security of Customer Content and the Smartsheet systems or networks used to process or secure Customer Content in connection with providing the Subscription Service ("**Smartsheet Information Systems**").

1.2   <u>Security Controls</u>. In accordance with its information security program, Smartsheet shall implement appropriate physical, organizational, and technical controls designed to: (a) ensure the security, integrity, and confidentiality of Customer Content accessed, collected, used, stored, or transmitted to or by Smartsheet; and (b) protect Customer Content from known or reasonably anticipated threats or hazards to its security, integrity, accidental loss, alteration, disclosure, and other unlawful forms of processing. Without limitation, Smartsheet will, as appropriate, utilize the following controls:

     1.2.1   <u>Firewalls</u>. Smartsheet will install and maintain firewall(s) to protect data accessible via the Internet.

     1.2.2   <u>Updates</u>. Smartsheet will maintain programs and routines to keep the Smartsheet Information Systems up-to-date with the latest upgrades, updates, bug fixes, new versions, and other modifications.

     1.2.3   <u>Anti-malware</u>. Smartsheet will deploy and use anti-malware software and will keep the anti-malware software up to date. Smartsheet will use such software to mitigate threats from all viruses, spyware, and other malicious code that are or should reasonably be detected.

     1.2.4   <u>Testing</u>. Smartsheet will regularly test its security systems, processes, and controls to ensure they meet the requirements of these Security Practices.

     1.2.5   <u>Access Controls</u>. Smartsheet will secure data in production Smartsheet Information Systems by complying with the following:

       a.   Smartsheet will assign a unique ID to each individual with access to systems processing Customer Content.

       b.   Smartsheet will restrict access to systems with Customer Content to only those individuals necessary to perform a specified obligation as permitted by this Agreement.

       c.   Smartsheet will regularly review (at a minimum once every ninety (90) days) the list of individuals and services with access to systems processing Customer Content, and remove accounts that no longer require access.

       d.   Smartsheet will not use manufacturer supplied defaults for system passwords, on any operating systems, software, or other systems and will mandate the use of system-enforced "strong passwords" in accordance with or exceeding the best practices (described below) on all systems processing Customer Content and will require that all passwords and access credentials are kept confidential and not shared among Smartsheet personnel.

       e.   At a minimum, Smartsheet production passwords will: (i) contain at least 8 characters; (ii) not match previous passwords, the user's login, or common name; (iii) be changed whenever an account compromise is suspected or assumed; and (iv) be regularly replaced.

       f.   Smartsheet will enforce account lockout by disabling accounts with access to Customer Content when an account exceeds a designated number of incorrect password attempts in a certain period.

       g.   Smartsheet will maintain log data for all use of accounts or credentials used by Smartsheet personnel for access to systems processing Customer Content, and will regularly review access logs for signs of malicious behavior or unauthorized access.

     1.2.6   <u>Policies</u>. Smartsheet will maintain and enforce appropriate information security, confidentiality, and acceptable use policies for employees, subcontractors, agents, and suppliers that meet the standards set forth in these Security Practices, including methods to detect and log policy violations.

     1.2.7   <u>Development</u>. Development and testing environments for Smartsheet Information Systems will be separate from production environments.

     1.2.8   <u>Deletion</u>. Smartsheet will utilize procedures that at a minimum are in accordance with National Institute of Standards and Technology (NIST) SP 800-88 Revision 1 recommendations (or a successor standard widely used in the industry) to render Customer Content unrecoverable prior to disposal of media.

     1.2.9   <u>Encryption.</u> Smartsheet will utilize cryptographic standards mandating authorized algorithms, key length requirements, and key management processes that are consistent with or exceed then-current industry standards, including NIST recommendations, and utilize hardening and configuration requirements consistent in approach with then-current industry standards, including SANS Institute, NIST, or Center for Internet Security (CIS)

recommendations. Pursuant to such standards, Smartsheet will encrypt Customer Content at rest within the Subscription Service and shall only allow encrypted connections to the Subscription Service for the transfer of Customer Content.

      1.2.10   <u>Remote Access</u>. Smartsheet will ensure that any access from outside of its protected corporate or production environments to systems processing Customer Content or to Smartsheet's corporate or development workstation networks will require appropriate connection controls, such as VPN or multi-factor authentication.

2.   System Availability.

Smartsheet will maintain (or, with respect to systems controlled by its service providers, ensure that such service providers maintain) a disaster recovery ("**DR**") program designed to recover the Subscription Service availability following a disaster. At a minimum, such DR program will include the following elements: (a) routinely validated procedures to regularly and programmatically create retention copies of Customer Content for the purpose of recovering lost or corrupted data; (b) inventories, updated at minimum annually, that list all critical Smartsheet Information Systems; (c) annual review and update of the DR program; and (d) annual testing of the DR program designed to validate the DR procedures and recoverability of the service detailed therein.

3.   Security Incidents.

3.1   <u>Procedure</u>. If Smartsheet becomes aware of confirmed unauthorized or unlawful access to any Customer Content processed by Smartsheet Information Systems (a "**Security Incident**"), Smartsheet will promptly: (a) notify Customer of the Security Incident; and (b) take reasonable steps to mitigate the effects and to minimize any damage resulting from the Security Incident.

3.2   <u>Unsuccessful Attempts</u>. An unsuccessful attack or intrusion is not a Security Incident subject to this Section 3. An "unsuccessful attack or intrusion" is one that does not result in unauthorized or unlawful access to Customer Content and may include, without limitation, pings and other broadcast attacks on firewalls or edge servers, port scans, unsuccessful log-on attempts, denial of service attacks, packet sniffing (or other unauthorized access to traffic data that does not result in access beyond IP addresses or TCP/UDP headers), or similar incidents.

3.3   <u>Customer User Involvement</u>. Unauthorized or unlawful access to Customer Content that results from the compromise of a Customer User's login credentials or from the intentional or inadvertent disclosure of Customer Content by a Customer User is not a Security Incident.

3.4   <u>Notifications</u>. Notification(s) of Security Incidents, if any, will be delivered to one or more of Customer's SysAdmin users by any reasonable means Smartsheet selects, including email. Customer is solely responsible for maintaining accurate contact information in the Subscription Service at all times.

3.5   <u>Disclaimer</u>. Smartsheet's obligation to report or respond to a Security Incident under this Section 3 is not an acknowledgement by Smartsheet of any fault or liability of Smartsheet with respect to the Security Incident.

4.   Auditing and Reporting.

4.1   <u>Monitoring</u>. Smartsheet monitors the effectiveness of its information security program on an ongoing basis by conducting various audits, risk assessments, and other monitoring activities to ensure the effectiveness of its security measures and controls.

4.2   <u>Audit Reports</u>. Smartsheet uses external auditors to verify the adequacy of its security measures and controls for certain Services, including the Subscription Service. The resulting audit will: (a) include testing of the entire measurement period since the previous measurement period ended; (b) be performed according to AICPA SOC2 standards or such other alternative standards that are substantially equivalent to AICPA SOC2; (c) be performed by independent third party security professionals at Smartsheet's selection and expense; and (d) result in the generation of a SOC 2 report ("**Audit Report**"), which will be Smartsheet's Confidential Information. The Audit Report will be made available to Customer upon written request no more than annually subject to the confidentiality obligations of the Agreement or a mutually-agreed non-disclosure agreement covering the Audit Report. For the avoidance of doubt, each Audit Report will only discuss Services in existence at the time the Audit Report was issued; subsequently released Services, if covered by the Audit Report, will be in the next annual iteration of the Audit Report.

4.3   Penetration Testing. Smartsheet uses external security experts to conduct penetration testing of certain Services, including the Subscription Service. Such testing will: (a) be performed at least annually; (b) be performed by independent third party security professionals at Smartsheet's selection and expense; and (c) result in the generation of a penetration test report ("**Pen Test Report**"), which will be Smartsheet's Confidential Information. Pen Test Reports will be made available to Customer upon written request no more than annually subject to the confidentiality obligations of the Agreement or a mutually-agreed non-disclosure agreement covering the Pen Test Report.

5.   Post-Termination Practices.

5.1   Treatment of Customer Content. Subject to Section 5.2 below, Smartsheet will, within one hundred eighty (180) days following termination of the Agreement, render unrecoverable all Customer Content from Smartsheet Information Systems and, upon written request, certify such process in writing.

5.2   Retention of Customer Content. Customer acknowledges that Smartsheet may, pursuant to its standard retention copy creation procedures or as a requirement of certain laws or regulations to which Smartsheet is subject, maintain copies or backups of Customer Content (including as part of records, documents, or broader data sets) beyond the period described in Section 5.1. In such cases, notwithstanding the requirements of Section 5.1, Smartsheet may continue to retain such Customer Content in copies or backups beyond the period prescribed in Section 5.1 provided that: (a) Smartsheet notifies Customer on termination of its need to retain such copies and/or backups; and (b) Smartsheet will continue to comply with all the requirements of the Agreement in relation to any such retained Customer Content.

6.   Service Providers.

Smartsheet will use diligent efforts to evaluate and select suppliers and subcontractors that provide (at a minimum) substant ially similar levels of security as required by these Security Practices in connection with the Subscription Service.

7.   Definitions.

Capitalized terms used but not defined in this Schedule have the meanings ascribed to them in the Agreement.

EXHIBIT D

HIPAA BUSINESS ASSOCIATE AGREEMENT (BAA)

✓ smartsheet

HIPAA Business Associate Agreement

This HIPAA Business Associate Agreement ("BAA") is entered into by and between Smartsheet Inc., with its principal place of business located at 10500 NE 8th Street, Suite 1300, Bellevue WA 98004 ("**Smartsheet**"), and the undersigned customer ("**Customer**"). This BAA is effective on the date it is executed by Smartsheet (the "**BAA Effective Date**").

1. **Applicability.** This BAA is subject to the terms of the Subscription Agreement (defined below). In the event of a conflict between the Subscription Agreement and this BAA, the BAA will control. A breach of this BAA by either party constitutes a material breach of the Subscription Agreement. Customer is obligated to notify Smartsheet if Customer downgrades its Subscription Service from an Enterprise level plan, and accordingly is no longer authorized to upload or submit PHI to the Subscription Service.

2. **Definitions.** For the purposes of this BAA, any capitalized terms not defined herein will have the meaning given to them in the Subscription Agreement. The following terms shall have the meanings as defined in HIPAA: "**Breach**"; "**Security Incident**"; "**Protected Health Information (PHI)**", "**Required By Law**"; and "**Individual**".

"**Business Associate**" has the same meaning as the term "business associate" at 45 CFR § 160.103, and in reference to the party to this BAA shall mean Smartsheet.

"**CFR**" means the U.S. Code of Federal Regulations.

"**Covered Entity**" has the same meaning as the term "covered entity" at 45 CFR § 160.103, and in reference to the party to this BAA shall mean Customer.

"**Customer Content**" means data, information, file attachments, text, images, reports, and other content that is uploaded or submitted to the Subscription Service by Customer or Customer Users and processed in the Subscription Service.

"**Customer PHI**" means PHI contained within Customer Content.

"**HIPAA**" means the Health Insurance Portability and Accountability Act of 1996 and the rules and the regulations thereunder, as amended (including with respect to the HITECH Act).

"**HIPAA Implementation Guide**" means the informational guide made available by Smartsheet, at www.smartsheet.com/HIPAA-Implementation-Guide describing how Customer can configure and use the Subscription Service consistent with Customer's obligations under HIPAA.

"**HIPAA Rules**" means the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

"**HITECH Act**" means the Health Information Technology for Economic and Clinical Health Act enacted in the United States Congress, which is Title XIII of Division A and Title IV of Division B of the American Recovery & Reinvestment Act of 2009 ("**ARRA**"), and the regulations thereunder, as amended.

"**Independent Contractor**" means a non-employee worker who performs services on behalf of Smartsheet subject to Smartsheet's privacy and security policies.

"**Secretary**" means the Secretary of the U.S. Department of Health and Human Services.

"**Security Rule**" means 45 CFR Part 160 and Subparts A and C of Part 164.

"**Subcontractor**" means any person (including any third party, but excluding Independent Contractors of Smartsheet) appointed by or on behalf of Smartsheet to process Customer PHI in connection with the Subscription Agreement.

"**Subscription Agreement**" means the applicable agreement governing Customer's access and use of the Subscription Service.

"**Subscription Service**" means Smartsheet's internet-delivered work collaboration services and applications as such term is defined in the Subscription Agreement. For purposes of this BAA, Training Services, Free Services, and services and applications provided by third-parties, including Partner Apps, are not part of the Subscription Service and Customer is responsible for determining and implementing appropriate measures for the use of services and applications consistent with Customer's obligations under HIPAA.

"**Unsecured PHI**" has the same meaning as the term "unsecured protected health information" at 45 CFR § 164.402.

3. Obligations of Smartsheet.

3.1 Smartsheet agrees to not use or disclose Customer PHI other than as permitted or required by this BAA or as Required by Law.

3.2 Smartsheet agrees to use appropriate safeguards to comply with the Security Rule with respect to Customer PHI, to prevent use or disclosure of Customer PHI other than as provided for by this BAA, and to reasonably and appropriately protect the confidentiality, integrity, and availability of the Customer PHI that it processes on behalf of Customer as required by the Security Rule.

3.3 Smartsheet agrees to mitigate, to the extent practicable, any harmful effects known to Smartsheet resulting from an unauthorized use or disclosure of Customer PHI by Smartsheet in violation of this BAA's requirements.

3.4 Smartsheet agrees to the following Breach notification requirements:

a. In the event of a Breach, suspected Breach, or Security Incident involving Customer PHI (collectively referred to as a "**Reportable Incident**") of which Smartsheet becomes aware, Smartsheet will provide notice to Customer of such Reportable Incident without undue delay, but in no case more than thirty (30) days following Smartsheet's knowledge of such Reportable Incident. Notification will be (i) consistent with applicable law and the legitimate needs of law enforcement, and after taking any measures necessary to determine the scope of the Reportable Incident; and (ii) sent to Customer's SysAdmin through the Subscription Service or via direct communication pursuant to the notification requirements in the Subscription Agreement.

b. Customer acknowledges that Smartsheet routinely experiences, without limitation, pings and other broadcast attacks on Smartsheet's firewall, port scans, unsuccessful log-on attempts, denial of service attacks, and any combination of the above, that do not result in unauthorized access, use, disclosure, modification, or destruction of Customer Content, including Customer PHI, or interference with the general operation of Smartsheet's systems or the Subscription Service ("**Unsuccessful Attempts**"). The parties acknowledge and agree that this Section 3.4(b) constitutes notice by Smartsheet to Customer of the ongoing existence and occurrence of Unsuccessful Attempts for which no additional notice to Customer shall be required.

3.5 Smartsheet will take appropriate measures to ensure that Subcontractors and Independent Contractors are bound by substantially the same restrictions, conditions, and requirements as Smartsheet under this BAA. To the

extent Smartsheet uses Subcontractors and Independent Contractors in its performance of obligations hereunder, Smartsheet will remain responsible for their performance as described in the Subscription Agreement.

3.6 Smartsheet will make Customer PHI in a Designated Record Set available to Customer in order for Customer to comply with its obligations with 45 CFR § 164.524, it being understood that Customer will be solely responsible for identifying the relevant Designated Record Set and PHI and for complying with any request made by individuals under 45 CFR § 164.524.

3.7 Smartsheet will make Customer PHI in a Designated Record Set available to Customer for amendment in order for Customer to comply with its obligations with 45 CFR § 164.526, it being understood that Customer will be solely responsible for identifying the relevant Designated Record Set and PHI and making any necessary amendments to comply with any request made by individuals under 45 CFR § 164.526.

3.8 Smartsheet will maintain and make available information necessary for Customer to provide an accounting of disclosures of Customer PHI in accordance with 45 CFR § 164.528, it being understood that Customer will be solely responsible for identifying the relevant individuals and associated PHI and for complying with any request made by individuals under 45 CFR § 164.528. Smartsheet is not responsible for providing an accounting of disclosures made by Customer while using the Services.

3.9 To the extent Required by Law, and subject to applicable attorney-client privileges, Smartsheet will make its internal practices, books, and records concerning the use and disclosure of Customer PHI received from Customer or created or received by Smartsheet on behalf of Customer, available to the Secretary for the purpose of the Secretary determining compliance with the HIPAA Rules.

4. **Permitted Uses and Disclosures.**

4.1   By Smartsheet: Smartsheet may use and disclose Customer PHI:

   a.   to perform the services as specified in the Subscription Agreement;

   b.   as Required by Law; and

   c.   for the proper management and administration of Smartsheet's business and to carry out the legal responsibilities of Smartsheet, provided that any disclosure of Customer PHI for such purposes may only occur if (i) required by applicable law; or (ii) Smartsheet obtains reasonable written assurances from the person to whom Customer PHI will be disclosed that it will be held in confidence, used only for the purpose for which it was disclosed, and that Smartsheet will be notified in the event of an unauthorized disclosure.

4.2 Minimum Necessary. Smartsheet agrees to limit uses and disclosures of Customer PHI consistent with minimum necessary requirements under 45 CFR § 164.502(b).

4.3 Limitations. Smartsheet may not use or disclose Customer PHI in a manner that would violate Subpart E of 45 CFR Part 164 if done by Customer.

5. **Obligations of Customer.**

5.1. Customer warrants that Customer, its directors, officers, subcontractors, employees, affiliates, agents, and representatives:

   a.   will comply with HIPAA in its use or disclosure of Customer PHI;

b.   will not use or disclose Customer PHI in any manner that violates applicable federal and state laws;

c.   will not request that Smartsheet use or disclose Customer PHI in any manner that would violate applicable federal and state laws if such use or disclosure were done by Customer; and

d.   will not use the Subscription Service to create, receive, maintain or transmit PHI using a Connector or third-party application (including Partner Apps), except where Customer has expressly entered into separate HIPAA business associate agreement with said third-party service providers.

5.2 In connection with Customer's management and administration of the Subscription Service with respect to Customer Users, Customer is responsible for using the available controls within the Subscription Service to support its compliance with HIPAA, including reviewing the HIPAA Implementation Guide and enforcing appropriate controls.

5.3 Customer shall use measures and controls available within the Subscription Service to ensure: (a) that non-HIPAA compliant functionality is disabled for all Customer Users who use the Subscription Service in connection with Customer PHI; and (b) use of Customer PHI is appropriately limited to the minimum extent necessary for Customer to carry out its authorized use of such PHI, except as otherwise allowed by 45 CFR 164.502(b)(2).

5.4 Customer (and not Smartsheet) is responsible for: (a) managing whether Customer Users are authorized to create, receive, maintain, or transmit PHI within the Subscription Service; and (b) for sharing or distribution of PHI by Customer Users who are utilizing the sharing features within the Subscription Service. Smartsheet has no obligation to protect Customer PHI under this BAA to the extent such PHI is created, received, maintained, or transmitted outside of the Subscription Services.

5.5 Customer will notify Smartsheet of: (a) any limitation(s) in the notice of privacy practices under 45 CFR § 164.520, to the extent that such limitation may affect Smartsheet's use or disclosure of Customer PHI; (b) any changes in, or revocation of, the permission granted by an Individual to use or disclose his or her PHI, to the extent that such changes may affect Smartsheet's use or disclosure of Customer PHI; and (c) any restriction on the use or disclosure of Customer PHI that Customer has agreed to or is required to abide by under 45 CFR § 164.522, to the extent that such restriction may affect Smartsheet's use or disclosure of Customer PHI.

5.6 In the event that Customer's notice of privacy practices as described in Customer's patient privacy notification limits Smartsheet's ability to process Customer PHI as set forth herein or Customer agrees to or must abide by restrictions or any other limitations on such ability, Smartsheet shall be permitted to terminate the Subscription Agreement without penalty by giving Customer three (3) days written notice. Smartsheet may suspend or terminate Customer's use of the Subscription Service if it is made known to Smartsheet that Customer is not adequately making use of the features discussed in the HIPAA Implementation Guide. The provisions of this Section shall survive the termination of this BAA.

6.   **Term and Termination.**

6.1 This BAA will terminate upon the earlier of: (a) a permitted termination as set forth herein; (b) the expiration or termination of the Subscription Agreement; or (c) the execution of a business associate agreement that supersedes this BAA. Upon termination of this BAA for any reason, Customer must immediately (x) delete or remove any Customer PHI from the Subscription Service, and (y) cease to create, receive, maintain, or transmit PHI via the Subscription Service.

6.2 Upon expiration or termination of the period of authorized access and use of the Subscription Service, Smartsheet will return, allow read-only access to or render unrecoverable Customer PHI, if any, according the terms and conditions of the applicable Subscription Agreement; provided that Smartsheet may retain Customer PHI

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contained in an archived computer system backup made in accordance with the Smartsheet's legal and financial compliance obligations or security and disaster recovery procedure. Any such retained Customer PHI will remain subject to the terms of this BAA and the applicable Subscription Agreement.

7. **Entire Agreement.** This BAA constitutes the entire agreement between the parties related to the subject matter hereof. Except as expressly modified or amended under this BAA, the terms of the Subscription Agreement remain in full force and effect. This BAA may not be modified unless done so in writing and signed by a duly authorized representative of both parties. If any provisions of this BAA, or any part thereof, is found to be invalid, the remaining provisions shall remain in effect. For the avoidance of doubt, except as otherwise expressly set forth herein, the terms and conditions with respect to the parties' limitations of liability and indemnification obligations are set forth in the Subscription Agreement.

8. **General.** The parties agree to take such action as is necessary to amend this BAA to comply with the requirements of the HIPAA Rules, HIPAA, the HITECH, and any other applicable law. The respective rights and obligations of Smartsheet under Section 6 of this BAA shall survive the termination of this BAA. Except to the extent preempted by federal law, this BAA shall be governed by and construed in accordance with the same laws as those governing the Subscription Agreement. Any reference in this BAA to a section in the HIPAA Rules shall mean the section as in effect or as amended.

IN WITNESS WHEREOF, the parties hereto have executed this BAA as of the date Smartsheet's signature below.

CUSTOMER: Santa Barbara County Department of Behavioral Wellness   SMARTSHEET INC.:

By: _Lindsay Walter_	By: _Jolene Marshall_
Name: Lindsay Walter	Name: Jolene Marshall
Title: Deputy Director	Title: VP of Legal
Date: January 30, 2020	Date: 3/20/2020