



Last Updated: March 2, 2017

This User Agreement (“**Agreement**”) is entered into by and between Smartsheet Inc. (“**Smartsheet**”) and any individual or entity (“**Customer**”) prior to Customer’s use of the Subscription Service. This Agreement governs the use of the Subscription Service and any Professional Services (collectively, the “**Services**”) by Customer, whether on a free or paid basis. If Customer is a direct competitor to Smartsheet, Customer is not permitted or authorized to use the Services.

1. **Services.**

1.1 **Subscription Service.** Subject to this Agreement and in consideration of the fees specified in any Order, Smartsheet will make the Subscription Service available to Customer throughout the Term. In the event that Customer purchases a subscription to an Add-On, the Subscription Service will be deemed to include such Add-Ons except as otherwise expressly provided herein. Smartsheet hereby grants Customer a worldwide, revocable, non-exclusive, non-transferable right to access and use the Subscription Service during the Term for Customer’s internal business purposes, pursuant to the terms and conditions of this Agreement.

1.2 **Professional Services.** Subject to this Agreement and in consideration of the fees specified in any applicable Order or SOW, the parties may agree for Smartsheet to provide Professional Services. The specifications for Professional Services, if any, will be as set forth in an Order or SOW.

2. **Use of the Services; Restrictions.**

2.1 **Conditions.** Smartsheet’s provision of the Services is conditioned on Customer’s acknowledgement and agreement to the following:

(a) Certain types of information included in the Customer Content may be subject to specific laws (e.g., laws regarding personally identifiable information, payment card information, protected health information, etc.). Customer, not Smartsheet, is responsible for compliance with any such laws. Without limiting the foregoing, Customer represents and warrants that if applicable, it will provide any required notice to and obtain any required consent from individuals and/or other entities related to the Customer Content and any personal or otherwise protected information included therein.

(b) All Customer Content stored utilizing the Subscription Service is maintained in encrypted form (in transit and at rest) and Smartsheet does not access Customer Content except: (a) as requested by Customer to enable the provision of customer support; and (b) as necessary for Smartsheet to (i) comply with applicable law or legal proceedings, or (ii) investigate, prevent or take action against suspected abuse, fraud or violation of this Agreement. Except with respect to requests described in subpart (i) above, unless prohibited by law, where Smartsheet receives a request from an individual to access, amend, or delete her/his personal information stored within Customer Content or as part of the Account Information provided by Customer, Smartsheet will refer such requests to Customer. Customer will be responsible for responding to such requests as required by applicable law, and Smartsheet will provide Customer with reasonable support as necessary to facilitate Customer’s response.

(c) The Subscription Service facilitates the sharing of information within Customer’s organization and potentially outside of Customer’s organization. Between Customer and Smartsheet, Customer has exclusive control over the distribution of and access to the Customer Content.

2.2 **Login Credentials.** Each set of login credentials for the Subscription Service may be used only by a single, individual Customer User. Customer agrees to promptly notify Smartsheet of any unauthorized access or use of which Customer becomes aware. Customer will be responsible for all use and misuse of the Subscription Service that occurs under Customer Users’ login credentials, and for any breach of this Agreement by any Customer Users.

2.3 **Prohibited Use.** Customer will not, and will ensure that Customer Users do not: (a) “frame,” distribute, resell, or permit access to the Subscription Service by any third party other than for its intended purposes; (b) use the Subscription Service other than in compliance with applicable law; (c) interfere with the Subscription Service or disrupt any other user’s access to the Subscription Service; (d) reverse engineer, attempt to gain unauthorized access to the Subscription Service, or attempt to discover the underlying source code or structure of the Subscription Service; (e) submit to the Subscription Service any content or data that violates the Acceptable Content Policy, as updated by Smartsheet from time to time (a current version of which can be found at <https://www.smartsheet.com/acceptable-content-policy>) (“**Acceptable Content Policy**”); (f) submit to the Subscription Service any routine, device or other undisclosed feature, including a so-called time bomb, virus, software lock, drop dead device, malicious logic, worm, Trojan horse, or trap or back door or software routine, that is designed to delete, disable, deactivate, interfere with or otherwise harm any software, program, data, device, system or service, or which is intended to provide unauthorized access or to produce unauthorized modifications; or (h) use any robot, spider, data scraping or extraction tool, or similar mechanism with respect to the Subscription Service.

2.4 **Usage Limitations.** Customer’s subscription is subject to the limits on Licensed Users set forth in each Order, as well as the storage and other limitations set forth in the Subscription Limits Policy, as updated by Smartsheet from time to time (a current version of which can be found at <https://www.smartsheet.com/limits-policy>) (“**Subscription Limits Policy**”).

2.5 **Account Information.** Account Information will be provided to Smartsheet by Customer Users but Customer may provide certain Account Information (e.g., Customer User titles, departments, phone numbers, or profile pictures) for Customer Users when configuring Customer’s account. Except for email address, Customer Users may elect whether or not to display their Account Information within the Subscription Service. In the event that Account Information is provided by Customer, Customer represents and warrants that: (a) it has provided all required notice to Customer Users pursuant to applicable law, Customer policy, etc.; and (b) it has all rights, permissions, and consents necessary: (i) to provide the Account Information to Customer; and (ii) for the display of such Account Information within the

Subscription Service. In accordance with Section 2.1(b) above, Smartsheet will refer to Customer any requests related to the Account Information that was provided by Customer, and will provide Customer reasonable assistance in order to facilitate Customer's response to such requests, unless prohibited by law.

3. Customer Content; Processing of Data.

3.1 Disclosure. The Subscription Service is designed to facilitate collaboration and sharing of Customer Content among Customer Users and, if elected by Customer Users, with third parties. Smartsheet will not have any responsibility for distribution, publication, display, or any other disclosure of Customer Content by Customer Users or Collaborators via the Subscription Service.

3.2 Processing. Customer agrees that Smartsheet may: (i) process the Customer Content to make the Subscription Service available to Customer; and (ii) process the Account Information as necessary to provide the Subscription Service, administer its business relationship with Customer (including for billing, customer support, and product-related communications), and as otherwise set forth in the Privacy Policy.

3.3 Service Providers. In addition, Smartsheet may allow service providers who act on Smartsheet's behalf to process Customer Content and Account Information in connection with providing the Subscription Service, provided that: (a) such service providers are subject to confidentiality obligations that are substantially as protective of the Customer Content as those set forth in this Agreement; and (b) Smartsheet will be responsible for any breach of this Agreement by such service providers in connection with the provision of the Subscription Service.

3.4 Security. Smartsheet will provide maintain commercially reasonable information security policies and safeguards, which include technical and organizational measures, designed to preserve the security, integrity, and confidentiality of the Customer Content and to protect it against unauthorized access and information security threats.

3.5 Treatment at Termination. The Subscription Service includes a feature that permits Customer, at any time during the Term, to obtain a zip file backup that includes: (a) Customer's then-current file attachments in their native file formats; and (b) all other then-current Customer Content in an Excel file. Upon the effective date of termination, Smartsheet has no obligation to retain, and may delete, Customer Content.

3.6 Ownership. As between the parties, Customer retains all right, title, and interest in and to all Customer Content. Customer represents and warrants that it has all rights, permissions, and consents necessary: (a) to submit all Customer Content to the Subscription Service; (b) to grant Smartsheet the limited rights to process Customer Content as set forth in this Agreement; and (c) for any transfer or disclosure of Customer Content among or by Customer Users and Collaborators.

4. Additional Products and Services.

4.1 Connectors. Customer may (if its subscription includes one or more Connectors) use Connectors to integrate the Subscription Service with Customer's accounts or subscriptions to third party services or applications. In such case, Customer Users may transfer information between the Subscription Service and such third party services or applications via the Connectors, resulting in the modification of Customer Content or the content and information stored in Customer's third party services or applications. Smartsheet will have no liability for modification or deletion of Customer Content or data in third party services or applications through use of a Connector by a Customer User.

4.2 Online Training. Customer may have access to the Training Resources. In such case, Smartsheet hereby grants Customer a worldwide, revocable, non-exclusive, non-transferable right to access and use the Training Resources during the Term for Customer's internal business purposes, pursuant to the terms and conditions herein. Customer acknowledges that the Training Resources are subject to change, and Smartsheet does not guarantee the availability of any particular content. The Training Resources are not part of the Subscription Service.

4.3 Smartsheet Labs Apps. Smartsheet may make Labs Apps available to all users of the Subscription Service. Customer Users are granted a worldwide, revocable, non-exclusive, non-transferable right to access and use the Labs Apps during the Term for Customer's internal business purposes, pursuant to the terms and conditions herein. Customer acknowledges that use of the Labs Apps is at Customer's sole risk and responsibility, and access to the Labs Apps may be terminated at any time. Labs Apps are made available without charge and are not part of the Subscription Service.

4.4 Community Features. Smartsheet may make public forums, online communities, or bulletin boards ("**Community Features**") available to all users of the Subscription Service. Customer Users are granted a worldwide, revocable, non-exclusive, non-transferable right to use the Community Features, pursuant to the terms and conditions herein. Customer Users who use the Community Features: (a) grant Smartsheet a worldwide, perpetual, non-exclusive, royalty-free, transferable right to use content posted by such Customer Users ("**Community Content**") to provide the Community Features and improve the Services; (b) acknowledge that Community Content may not be able to be deleted; (c) are responsible for all activity that occurs under their account, including any liability arising from their Community Content; and (d) agree to indemnify Smartsheet, its corporate affiliates, and their respective directors, employees, and agents and hold them harmless from any claims, demands, proceedings, investigations, or suits brought by a third party regarding such Customer User's Community Content. All Community Content (including any links to third party sites or applications) provided by Customer Users must comply with the Acceptable Content Policy. Smartsheet reserves the right to remove, edit, or reinstate any Community Content at its sole discretion, and without notice to the originating Customer User. Smartsheet disclaims all liability arising from the Community Content and use of the Community Features, including exposure to content that is potentially offensive, indecent, inaccurate, objectionable, or otherwise inappropriate. Customer acknowledges that use of the Community Features is at Customer's sole risk and responsibility, and access to the Community Features may be terminated at any time. The Community Features are made available without charge and are not part of the Subscription Service.

4.5 **Third Party Applications.** Third party applications and web services, including without limitation Partner Apps, may be available to Customer for use in connection with the Subscription Service. These applications and services are provided by third parties and are not part of the Subscription Service, except where otherwise specified. Third party applications and services are subject to any end user license agreements that accompany them, and Smartsheet has no liability whatsoever with respect to any third party applications and services. Notwithstanding the foregoing, the payment provisions (and only the payment provisions) of this Agreement apply with respect to Partner Apps purchased by Customer under an applicable Order.

5. Fees and Payment.

5.1 **Fees; Payment.** In consideration of the Services, Customer will pay the fees specified at the time of purchase or renewal. Unless otherwise specified in an Order, Smartsheet may raise the unit price for any Renewal Terms to the then-current pricing for the relevant Services. In the event that Customer selects a multi-year Subscription Term for an Order: (a) Customer may elect to pay the total fees for the Subscription Service at the outset in lieu of being invoiced or charged annually; or (b) Customer will be invoiced or charged the annual fees for the Subscription Service on or around the anniversary date of Subscription Effective Date, even if Customer has terminated the Order or otherwise changed its subscription plan. Customer will reimburse Smartsheet for reasonable, out-of-pocket expenses incurred by Smartsheet in the course of providing Professional Services. All fees are nonrefundable once paid, except as expressly otherwise provided in this Agreement or the applicable SOW or Order. Customer agrees to promptly notify Smartsheet of any changes to its billing information. If Customer uses a credit card to make payment hereunder, Customer authorizes Smartsheet to charge such credit card on a recurring basis for all applicable fees and taxes. If Customer is invoiced for fees and taxes, all amounts are payable according to the invoice instructions in U.S. dollars net thirty (30) days from the date of the invoice unless otherwise specified. Items purchased via an Order and all renewals shall be payable in advance. Items purchased via SOW shall have the applicable invoicing instructions included in the SOW. Smartsheet reserves the right to correct any billing errors or mistakes that it identifies even if it has already issued an invoice or received payment. Customer agrees to notify Smartsheet about any suspected billing errors or mistakes within thirty (30) days after the relevant invoice or charge date; failure to do so will result in waiver of Customer's right to dispute such errors or mistakes. 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. Customer will reimburse any costs or expenses (including, but not limited to, reasonable attorneys' fees) incurred by Smartsheet to collect any amount that is not paid when due. Smartsheet may accept payment in any amount without prejudice to Smartsheet's right to recover the balance of the amount due or to pursue any other right or remedy. Amounts due to Smartsheet by Customer may not be withheld or offset against amounts due or asserted to be due to Customer from Smartsheet. 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, it will provide evidence reasonably satisfactory to Smartsheet of its tax exempt status. If Customer requires a purchase order, vendor registration form, or other documentation, such requirement will in no way affect or delay Customer's obligation to pay any amounts due hereunder.

5.2 **Refunds.** In the event that Customer terminates this Agreement for Smartsheet's uncured breach pursuant to Section 6.4 or pursuant to Section 10.2, Customer will be entitled to a prorated refund of prepaid, unused fees for the Subscription Service and if applicable, the Training Resources. In the event that Customer terminates an SOW or an Order for Professional Services pursuant to Section 10.3, Customer will be entitled to a prorated refund of the prepaid, unused fees for the Professional Services.

5.3 **Resellers and Payment Processors.** Smartsheet may enable Customers to purchase and/or pay for certain Services through an authorized reseller or payment processor ("**Channel Partner**"). Customer's obligation for payment to, and relationship with, such Channel Partner is between Customer and such Channel Partner.

5.4 **Free Access.** If Customer is provided with access to the Subscription Service, Add-Ons or any other Smartsheet product or service at no charge, Customer acknowledges that (a) the version available to Customer may not include or allow access to all features and functionality available to paid subscribers, and (b) such products and services are made available to Customer on an "as is" basis without any warranty, support, maintenance, or other obligation of any kind. Add-Ons provided without charge are not part of the Subscription Service for purposes of this Agreement. Smartsheet may terminate Customer's free access to any Smartsheet product or service at any time, unless otherwise specified. Any use of a Smartsheet product or service at no charge is at Customer's sole risk and responsibility.

6. Term and Termination.

6.1 **Term.** This Agreement will remain in effect throughout the Term unless earlier terminated as set forth herein.

6.2 **Term; Non-Renewal of Orders.** Each Order remains in effect for the initial Subscription Term specified therein and any subsequent renewal periods (each a "Renewal Term," and collectively with the Initial Term, the "Term"). After the Initial Term of an Order ends, Orders will automatically renew for successive one (1) year Renewal Terms 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.

6.3 **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.

6.4 **Termination for Cause; Suspension.** Either party may terminate this Agreement immediately if the other party breaches any material provision of an applicable Order, SOW, or this Agreement, and fails to cure that breach within thirty (30) days of written notice from the non-breaching party identifying the breach. In addition, Smartsheet may suspend Customer's access to the Subscription Service immediately if: (a) Customer fails to make a payment when payment is due; or (b) Customer has (or Smartsheet reasonably suspects that Customer has) breached Section 2.3 or misappropriated or infringed Smartsheet's intellectual property or proprietary rights.

6.5 **Effect of Termination.** Upon expiration or termination of this Agreement for any reason: (a) all Orders and SOWs under this Agreement will terminate; (b) all rights and obligations of the parties hereunder will cease (except as set forth in Section 6.6 below); (c) Customer will remain obligated to pay for Professional Services rendered through the effective date of termination; and (d) Customer will

not be entitled to any refund of fees (except as set forth in Section 5.2 above).

6.6 Survival. The following sections will survive termination or expiration of this Agreement: 3.2 (Processing), 3.5 (Treatment at Termination), 3.6 (Ownership), 4.4 (Community Features), 4.5 (Third Party Applications), 5.1 (Fees; Payment) (with respect to amounts that are accrued but unpaid as of the effective date of termination), 5.4 (Free Access to Add-Ons), 6.6 (Survival), 7 (Proprietary Rights), 8 (Confidentiality), 11 (Limitation of Liability; Damages Exclusion), 12 (Indemnification), 14 (Non-Solicitation), 16 (Notices), 18 (Entire Agreement), and 19 (General).

7. Proprietary Rights. As between the parties, Smartsheet retains all right, title and interest in and to: (a) the Services, Work Product (except for any Customer Confidential Information used to develop the Work Product), Labs Apps, Training Resources, Community Features, and the technology and software used to provide them, and all intellectual property and proprietary rights therein; and (b) all electronic and print documentation and other content and data (excluding Customer Content and Account Information) made available through the Services. Except for the licenses as set forth in this Agreement, this Agreement does not convey any of Smartsheet's intellectual property or proprietary rights to anyone, including Customer. Customer agrees that Smartsheet will have a perpetual right to use and incorporate into the Services, Work Product, Labs Apps, Training Resources, or Community Features any feedback or suggestions for enhancement that Customer or a Customer User provides to Smartsheet, without any obligation of compensation.

8. Confidentiality.

8.1 Confidential Information. "**Confidential Information**" means all non-public, proprietary business, technical, legal, or financial information disclosed or learned in connection with this Agreement (or in the case of Customer, learned in conjunction with Customer's use of the Services) 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 should treat as confidential. Confidential Information does not include: (a) Customer Content or Account Information; (b) information that was generally known to the public at the time disclosed to the Receiving Party; (c) information that becomes generally known to the public (other than through a breach of this Section 8 by the Receiving Party) after disclosure to the Receiving Party; (d) information that was in the Receiving Party's possession free of any obligation of confidentiality prior to disclosure by the Receiving Party; (e) information that is rightfully received by the Receiving Party from a third party without any restriction on disclosure; or (f) 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." 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 in connection with 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 a separate written agreement signed by both parties; 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 keep the Disclosing Party's Confidential Information confidential. 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, provided that each such Representative is bound to protect the Confidential Information by confidentiality obligations substantially as protective as this Agreement. The Receiving Party will be responsible for its Representatives' disclosure or use of the Disclosing Party's Confidential Information in violation of this Section 8. The Receiving Party will promptly notify the Disclosing Party upon discovery of any unauthorized disclosure or use of the Disclosing Party's Confidential Information, or any other breach of this Section 8, by it or its Representatives. The Receiving Party's (and its Representatives') obligations under this Section 8 cease to apply to information upon the later of: (i) the termination of this Agreement; or (ii) after three (3) years have passed from the date on which it was first disclosed.

8.3 Return of Materials. Upon written request by the Disclosing Party, the Receiving Party will: (a) either return or destroy all documents and media in its possession or control that contain the Disclosing Party's Confidential Information; and (b) certify its compliance with this Section 8.3 in writing. Notwithstanding the foregoing, the Receiving Party will not be obligated to erase Confidential Information of the Disclosing Party that is contained in an archived computer system backup that was made in accordance with the Receiving Party's security and/or disaster recovery procedures; provided, however, that any such Confidential Information contained in such archived computer system backup will be subject to this Section 8.

8.4 Intellectual Property; No Obligation to Disclose. The Disclosing Party retains all of its rights, title, and interest in and to its Confidential Information, including all intellectual property and proprietary rights therein. The disclosure of Confidential Information to the Receiving Party does not grant or convey any right of ownership of such Confidential Information. The Receiving Party understands that nothing in this Agreement requires the disclosure of any Confidential Information; provided that if Smartsheet is the Receiving Party, Customer understands that it may not be able to receive the full benefit of the Subscription Service without disclosure of certain Confidential Information.

8.5 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 from doing so): (a) give the Disclosing Party prior 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 that which is legally required; and (c) reasonably cooperate with the Disclosing Party, at the Disclosing Party's expense, in its efforts to ensure that the Confidential Information will be subject to a protective order or other legally available means of protection.

8.6 Permitted Disclosures. In the event that Customer utilizes a Channel Partner in connection with this Agreement, Customer acknowledges and agrees that its Confidential Information, and any Orders and SOWs may be disclosed to such Channel Partner.

8.7 **Injunctive Relief.** The Receiving Party acknowledges that any actual or threatened breach of this Section 8 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 in addition to all remedies available to the Disclosing Party at law and/or in equity, to prevent or mitigate any breaches of this Section 8 with respect to the Disclosing Party's Confidential Information or any damages that may otherwise result from those breaches.

9. **Privacy.** Customer acknowledges and agrees that use of the Services is subject to Smartsheet's privacy practices, which are described in the Privacy Policy, and may be updated from time to time (a current version of which can be found at <https://www.smartsheet.com/privacy> (<https://www.smartsheet.com/privacy>)) ("**Privacy Policy**"). For the avoidance of doubt, the Privacy Policy details Smartsheet's handling and treatment of Customer Content and Account Information.

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

10.1 **Authority Warranty.** Customer represents and warrants that it has the necessary authority to enter into this Agreement on behalf of themselves or the entity they are representing, as applicable. If Customer is accepting this Agreement in connection with its use of the Services on behalf of any entity, Customer acknowledges and agrees that this Agreement will be enforceable against such entity.

10.2 **Limited Warranty for Subscription Service.** If Customer has paid fees under this Agreement for the Subscription Service, Smartsheet represents and warrants that the Subscription Service will operate substantially as described in the online product descriptions written or created by Smartsheet and made available on the Site. Customer must notify Smartsheet in writing of any alleged failure by Smartsheet to comply with this warranty within thirty (30) days of such failure. Upon receipt of such notice, Smartsheet will either: (a) use commercially reasonable efforts to cure or correct the failure, or (b) terminate the applicable Order and issue a prorated refund for the terminated portion of the Subscription Services. This Section 10.2 sets forth Customer's exclusive rights and remedies and Smartsheet's sole liability in connection with the provision of the Subscription Service.

10.3 **Limited Warranty for Professional Services.** If Customer has paid fees under this Agreement 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 by Smartsheet 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 prorated refund for the terminated portion of the Professional Services. This Section 10.3 sets forth Customer's exclusive rights and remedies and Smartsheet's sole liability in connection with the performance of the Professional Services.

10.4 **Disclaimer.** Customer acknowledges that the Subscription Service, Training Resources, Labs Apps, and Community Features may experience periods of downtime, including but not limited to scheduled maintenance. EXCEPT FOR THE LIMITED WARRANTIES SET FORTH ABOVE IN THIS SECTION 10, SMARTSHEET MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE SUBSCRIPTION SERVICE, TRAINING RESOURCES, LABS APPS, COMMUNITY FEATURES, PROFESSIONAL SERVICES, WORK PRODUCT, AND ANY INFORMATION OR MATERIALS RELATED THERETO OR MADE AVAILABLE THEREFROM, WHETHER EXPRESS OR IMPLIED. SMARTSHEET SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND ACCURACY. SMARTSHEET DOES NOT WARRANT THAT THE SUBSCRIPTION SERVICE, TRAINING RESOURCES, LABS APPS, OR COMMUNITY FEATURES WILL BE ERROR-FREE OR OPERATE WITHOUT INTERRUPTIONS OR DOWNTIME. SMARTSHEET MAKES NO REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE THIRD PARTY APPLICATIONS AND COMMUNITY CONTENT, AND EXPRESSLY DISCLAIMS ALL RESPONSIBILITY THEREFOR.

11. **Liability Limitation; Damages Exclusion.** SMARTSHEET WILL NOT BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, OR PUNITIVE DAMAGES IN CONNECTION WITH ANY CLAIM OF ANY NATURE ARISING UNDER THIS AGREEMENT, EVEN IF IT HAS BEEN GIVEN ADVANCE NOTICE OF SUCH POSSIBLE DAMAGES. SMARTSHEET'S ENTIRE LIABILITY UNDER THIS AGREEMENT WILL NOT EXCEED THE AMOUNT ACTUALLY PAID BY CUSTOMER TO SMARTSHEET UNDER THE ORDER FORM OR SOW TO WHICH THE LIABILITY RELATES DURING THE TWELVE (12) MONTHS PRIOR TO THE DATE ON WHICH THE LIABILITY AROSE.

12. **Indemnification.**

12.1 **By Smartsheet.** If Customer has paid fees under this Agreement for the Services, Smartsheet will defend Customer, its corporate affiliates, and their respective directors, employees, and agents ("**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 Subscription Service or Work Product in accordance with this Agreement infringes any third party intellectual property rights (each an "**Infringement Claim**"). Smartsheet will indemnify Customer Indemnified Parties for any damages, reasonable attorneys' fees, and costs resulting from an Infringement Claim and finally awarded against Customer or agreed to be paid by Customer in a written settlement approved by Smartsheet in writing. Notwithstanding the foregoing, Smartsheet will have no obligation under this Section 12.1 to the extent any alleged infringement arises from: (a) Customer's use of the Subscription Service or Work Product in combination with technology or services not provided by Smartsheet, if the infringement would not have occurred but for such combination; (b) Customer Content; (c) Smartsheet's compliance with designs, specifications, or instructions provided by Customer if such infringement would not have occurred but for such designs, specifications, or instructions; or (d) use by Customer after notice by Smartsheet to discontinue use (provided that Smartsheet subsequently refunds amounts paid for the allegedly infringing material after Customer's discontinuance of use). If Customer is enjoined or otherwise prohibited from using any of the Subscription Service or Work Product or a portion thereof based on an Infringement Claim, then Smartsheet will, at its sole expense and option, either: (i) obtain for Customer the right to use the allegedly infringing portions of the Subscription Service or Work Product; (ii) modify the allegedly infringing portion of the Subscription Service or Work Product so as to render it non-infringing without substantially diminishing or impairing its functionality; or (iii) replace the allegedly infringing portions of the Subscription Service or Work Product with non-infringing items of substantially similar functionality. If Smartsheet determines that the foregoing remedies are not commercially reasonable, then Smartsheet may terminate the applicable Order or SOW and issue a prorated refund of fees prepaid by

Customer for the terminated portion of the Initial Term or then-current Renewal Term. This Section 12.1 sets forth Smartsheet's sole liability and Customer's sole and exclusive remedy for any actual or alleged infringement by Smartsheet of any third party intellectual property rights.

12.2 By Customer. Customer will defend Smartsheet, its corporate affiliates, and their respective directors, employees, and agents ("**Smartsheet Indemnified Parties**") from and against any claims, demands, proceedings, investigations, or suits brought by a third party arising out of: (a) the Customer Content; or (b) Customer's use of the Subscription Service or Work Product in violation of this Agreement or applicable law. Customer will indemnify Smartsheet Indemnified Parties for any damages, reasonable attorney's fees, and costs resulting from a claim that Customer is obligated to defend and finally awarded against Smartsheet or agreed to be paid by Smartsheet in a written settlement approved by Customer in writing.

12.3 Conditions. The indemnifying party's obligations under this Section 12 are contingent on the indemnified party: (a) promptly providing written notice of the claim to the indemnifying party; (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.

13. Publicity. Unless Customer has specifically notified Smartsheet to the contrary in writing (email notice permitted), Smartsheet may disclose Customer as a customer of Smartsheet, and may use Customer's name and logo on the Site and in Smartsheet's promotional materials. Smartsheet will request Customer's prior consent for any other uses; such consent to be deemed given if Customer fails to respond to a request within five (5) business days.

14. Non-Solicitation. During the Term and for a period of one (1) year thereafter, Customer will not: (a) hire or attempt to hire any of Smartsheet's employees; or (b) solicit, induce, recruit or encourage any of Smartsheet's employees to terminate their relationship with Smartsheet. Notwithstanding the foregoing, Customer will not be precluded from hiring a Smartsheet employee pursuant to a general solicitation of employment (e.g., posting a job opening) not specifically directed at Smartsheet employees.

15. Federal Government Customers. The Subscription Service is a "commercial item" consisting of "commercial computer software" as defined in FAR 2.101. Smartsheet provides the Subscription Service for federal government end use in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Computer Software), and for Department of Defense agencies in accordance with DFAR 227.7202 (Commercial Computer Software and Commercial Computer Software Documentation).

16. Notices. Customer agrees to receive all communications, agreements, and notices from Smartsheet electronically, including by e-mail, in-app notifications, or by posting them on the Site or through the Subscription Service. Customer further agrees such communications provided electronically will satisfy any legal requirement that such communications be in writing. Except where this Agreement permits notice to Smartsheet via email, all notices provided under this Agreement must be in writing and sent via internationally recognized delivery service or certified U.S. mail. Notices sent via email will be deemed given one (1) business day after being sent; 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, to *Attn: Legal Affairs, 10500 NE 8th Street, Suite 1300, Bellevue WA 98004*, and for notices permitted to be sent via email, to legal@smartsheet.com (<mailto:legal@smartsheet.com>).

17. 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. This Agreement and any Orders or SOWs will bind and benefit the parties, their successors, and their permitted assigns.

18. Entire Agreement. This Agreement and any Orders or SOWs represent the entire agreement between Smartsheet and Customer with respect to Customer's use of the Subscription Service and accompanying Professional Services. In the event of a conflict between the payment terms in this Agreement and any Order or SOW, the payment terms in the Order or SOW will govern and control. In the event of any other conflict between this Agreement and any Order or SOW, this Agreement will govern and control. This Agreement and any Orders or SOWs expressly supersede: (a) any terms or conditions stated in a Customer purchase order or similar document, whether submitted or executed before or after the Subscription Start Date set forth in the applicable Order; and (b) any other contemporaneous or prior agreements or commitments regarding the Subscription Service or the other subject matter of this Agreement. For the avoidance of doubt, this Agreement will not supersede any non-disclosure agreement entered into by the parties governing information exchanged prior to Customer's use of the Services or for purposes unrelated to this Agreement. Smartsheet expressly agrees that any end-user agreement governing use of the Training Resources and Community Features by Customer Users will be considered null and void and will not supersede this Agreement.

19. General. Neither party is liable for delay or default under this Agreement if caused by conditions beyond its reasonable control. This Agreement and any Orders or SOWs are governed by the laws of the State of Washington, without regard to its conflicts of law rules, and each party hereby consents to exclusive jurisdiction and venue in the state and federal courts located in Seattle, Washington for any dispute arising out of this Agreement or any Orders or SOWs. 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. If any provision of this Agreement or of 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 deemed null and void.

20. Modifications. Smartsheet reserves the right to modify this Agreement by posting a revised version on the Site. Except in the event of extenuating circumstances, revisions will be effective fifteen (15) days after posting. Continued use of the Services after the effective date of a revision will constitute Customer's agreement to the modified Agreement. If Customer does not agree to a revision, Customer may terminate this Agreement by providing written notice to Smartsheet. For the avoidance of doubt, Customer will not receive a refund of fees. Customer's termination will be effective upon Smartsheet's acknowledgement of such termination, and in no event later than thirty (30) days from Smartsheet's receipt of Customer's termination notice. Customer's continued use of the Subscription Service after the effective date of a revision will constitute acceptance of the modified Agreement.

21. Definitions.

"Acceptable Content Policy" has the meaning given in Section 2.3.

"Account Information" means personal information about Customer Users provided to Smartsheet in connection with the creation or administration of Customer User accounts. For example, Account Information includes names, email addresses, and other profile information associated with a Customer User account. Account Information does not include aggregate or de-identified information compiled from Account Information that does not identify Customer, any Customer User, or any other individual.

"Add-Ons" means optional features and applications developed by Smartsheet and purchased and included as part of Customer's subscription, including Connectors, Premium Apps, and the other Add-Ons indicated in each Order.

"Channel Partner" has the meaning given in Section 5.3.

"Collaborator" means a user with a Smartsheet login invited to access and use a sheet.

"Community Content" has the meaning given in Section 4.4.

"Community Features" has the meaning given in Section 4.4.

"Confidential Information" means all financial, technical, or business information of the Disclosing Party that the Disclosing Party designates as confidential at the time disclosed to, or learned by, the Receiving Party, or that the Receiving Party reasonably should understand to be confidential based on the nature of the information or the circumstances surrounding its disclosure. For the avoidance of doubt, Confidential Information does not include Customer Content or Account Information.

"Connector" means an Add-On developed by Smartsheet that allows for Customer Content to be exported or imported from Customer's account or subscription to a third party service or application.

"Customer Content" means data, information, file attachments, text, images, personally identifiable information, and other content that is (a) uploaded or submitted to the Subscription Service by Customer Users; and/or (b) collected by Customer Users from third parties using "web forms" or similar features of the Subscription Service. Customer Content does not include usage, statistical, and technical information related to Customer Content that does not reveal the actual contents of the Customer Content.

"Customer Indemnified Parties" has the meaning given in Section 12.1.

"Customer User" means, collectively, all (a) Licensed Users; (b) SysAdmins (regardless of whether or not they are Licensed Users); and (c) any Non-Licensed Users.

"De-identified Data" has the meaning given in Section 3.5.

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

"Infringement Claim" has the meaning given in Section 12.1.

"Labs Apps" means any pre-release, alpha or "Smartsheet Labs" Apps that Smartsheet may make available to Customer separately from the Subscription Service.

"Licensed User" means a user with certain rights to use the Subscription Service on Customer's behalf. Customer's SysAdmin(s) may designate any user with a registered Smartsheet login as a Licensed User.

"Non-Licensed User" means a user with a Smartsheet login who (a) is not a Licensed User and (b) accepts an invitation to join Customer's account and have his or her usage managed by Customer's SysAdmin.

"Order" means (a) an electronic or tangible order form or (b) online order, setting forth commercial details of a subscription to the Subscription Service (including any Add-Ons) and the purchase of associated Professional Services (if any), and incorporating this Agreement by reference.

"Partner Apps" means applications developed and owned by third parties for which Customer purchases a license from Smartsheet under this Agreement and are 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 Acceptable Content Policy, Privacy Policy, Subscription Limits Policy, and Insurance Policy.

"Premium Apps" means an Add-On developed by Smartsheet that allows for Customer Content to be viewed or manipulated in a separate interface.

"Privacy Policy" has the meaning given in Section 9.

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

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

“**Representatives**” has the meaning given in Section 8.2.

“**Site**” means Smartsheet’s website at <http://www.smartsheet.com> (<http://www.smartsheet.com/>).

“**Smartsheet Indemnified Parties**” has the meaning given in Section 12.2.

“**Smartsheet User Agreement**” has the meaning given in Section 19.

“**SOW**” means a statement of work or similar document that describes Professional Services, establishes the fees for the Professional Services, references this Agreement, and is executed by an authorized representative of each party.

“**Subscription Limits Policy**” has the meaning given in Section 2.4.

“**Subscription Service**” means Smartsheet’s internet-delivered work collaboration service.

“**SysAdmin**” means a user with certain administrative control rights over Customer’s subscription plan.

“**Term**” has the meaning given in Section 6.2.

“**Training Resources**” means Smartsheet’s online training portal and the content therein.

“**Work Product**” 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 the Professional Services.

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