

Data Processing Addendum (Controller to Processor)

This Data Processing Addendum ("DPA") is incorporated into and forms a part of the agreement between Smartsheet Inc. ("Smartsheet") and Customer that governs Customer's use of the Subscription Service ("Agreement"). Except as modified below, the terms of the Agreement shall remain in full force and effect.

1. Definitions

1.1 In this DPA, the following terms (and derivations thereof) have the meanings set out below:

- 1.1.1 **"California Consumer Privacy Act of 2018"** or **"CCPA"** means Assembly Bill 375 of the California House of Representatives, an act to add Title 1.81.5 (commencing with Section 1798.100) to Part 4 of Division 3 of the Civil Code, relating to privacy and approved by the California Governor on June 28, 2018;
- 1.1.2 **"Contracted Processor"** means Smartsheet or a Subprocessor;
- 1.1.3 **"Customer Content"** means any data, file attachments, text, images, reports, personal information, or other content that is uploaded or submitted to the Subscription Service 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 the Customer Content.
- 1.1.4 **"Data Protection Laws"** means EU Data Protection Laws and, to the extent applicable, the data protection or privacy laws of any other country;
- 1.1.5 **"Data Subject"** means (i) an identified or identifiable natural person who is in the EEA or whose rights are protected by the GDPR; or (ii) a **"Consumer"** as the term is defined in the CCPA;
- 1.1.6 **"Data Subject Rights"** means those rights identified in the GDPR and the CCPA granted to Data Subjects;
- 1.1.7 **"Documentation"** means documentation provided by Smartsheet on Smartsheet's website at www.smartsheet.com, and any website linked from such website that is owned or controlled by Smartsheet, 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.
- 1.1.8 **"EEA"** means the European Economic Area;
- 1.1.9 **"EU Data Protection Laws"** means Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (**"General Data Protection Regulation"** or **"GDPR"**), as transposed into domestic legislation of each Member State and the laws implementing the GDPR;
- 1.1.10 **"Personal Data"** means Customer Content that directly or indirectly identifies or relates to a Data Subject;
- 1.1.11 **"Privacy Shield"** means the EU-U.S. and Swiss-U.S. Privacy Shield self-certification programs approved by the European Commission (Decision of 12th July 2016) and operated by the U.S. Department of Commerce;

- 1.1.12 **"Services"** means professional services, the Subscription Service, and any other internet-delivered service or application provided by Smartsheet that Customer uses with the Subscription Service;
 - 1.1.13 **"Standard Contractual Clauses", "SCCs", or "SCC"** means the standard contractual clauses for the transfer of personal data from controllers in the EU to data processors established outside the EU or EEA issued by the European Commission under decision 2010/87/EU attached hereto as Annex 2, as amended by Section 3;
 - 1.1.14 **"Subscription Service"** means Smartsheet's subscription internet-delivered work collaboration services and applications that are provided to Customer by Smartsheet;
 - 1.1.15 **"Subprocessor"** means any person (including any third party but excluding independent contractors of Smartsheet subject to Section 4) appointed by or on behalf of Smartsheet to Process Personal Data on behalf of Customer in connection with the Agreement; and
 - 1.1.16 **"Supervisory Authority"** means either (as applicable): (i) an independent public authority which is established by an EU Member State pursuant to Article 51 of the GDPR; or (ii) the California Attorney General.
- 1.2 The terms, "**Commission**", "**Controller**", "**Member State**", "**Personal Data Breach**", and "**Processing**" have the meanings given in the GDPR.
- 1.3 Capitalized terms not defined herein have the meaning given in the Agreement. The word "**include**" shall be construed to mean "include without limitation," and any derivations thereof shall be construed accordingly. All "Section" references shall be to this DPA unless otherwise specified.
- 2. Processing of Personal Data**
- 2.1 Smartsheet will, and require that Subprocessors, only Process Personal Data pursuant to Customer's documented instructions as set forth in this DPA and the Agreement or where required by laws to which the relevant Contracted Processor is subject.
- 2.2 As necessary for the provision of the Services, Customer instructs Smartsheet (and authorizes Smartsheet to instruct each Subprocessor) to:
- 2.2.1 Process Personal Data, including but not limited to by disclosing such data to Subprocessors and other third parties;
 - 2.2.2 transfer Personal Data to any country or territory subject to Section 3; and
 - 2.2.3 engage any Subprocessors subject to Section 6;
- and warrants and represents that it is and will at all relevant times remain duly and effectively authorized to give such instruction.
- 2.3 Annex 1 (Details of Processing) sets out information regarding the Processing of Personal Data as may be required by Data Protection Laws including Article 28(3) of the GDPR. Nothing in Annex 1 confers any right or imposes any obligation on a party to this DPA.
- 3. International Transfers**
- 3.1 With regard to any transfer of Personal Data from Customer to Smartsheet (or from Smartsheet to a third country) that would be prohibited by applicable EU Data Protection Laws in the absence of a lawful data transfer mechanism:

- 3.1.1 Smartsheet will during the Term: (i) maintain its self-certification to the Privacy Shield; and (ii) comply with each of the Privacy Shield principles (including, without limitation, Accountability for Onward Transfer) with respect to the Processing of Personal Data; and
- 3.1.2 if Smartsheet ceases to maintain its Privacy Shield self-certification for any reason, the Standard Contractual Clauses, subject to Section 3.2 below, shall go into immediate effect.
- 3.2 The following terms apply only in the event the Standard Contractual Clauses are in effect:
 - 3.2.1 the SCCs and this Section 3.2 apply to the legal entity that executed this DPA;
 - 3.2.2 this DPA and the Agreement are Customer's complete and final instructions for the Processing of Personal Data. For the purposes of SCC Clause 5(a), the following is deemed an instruction by Customer to process Personal Data: (i) Processing in accordance with the Agreement and applicable Orders or SOWs; (ii) Processing initiated by users in their use of the Services; and (iii) Processing to comply with other reasonable instructions provided by Customer where such instructions are consistent with the terms of the Agreement;
 - 3.2.3 SCC Clause 5(h) is satisfied by the process described in Section 6 of this DPA;
 - 3.2.4 Smartsheet may remove all commercial information, or terms unrelated to the SCCs, from copies of Sub-processor agreements it must provide pursuant to SCC Clause 5(j); such copies will be provided by Smartsheet (in a manner determined in its discretion) only upon Customer's written request;
 - 3.2.5 the requirements of SCC Clause 5(f), 11, and 12(2) shall be satisfied by the processes set forth in Sections 6, 10, and 11 of this DPA;
 - 3.2.6 Smartsheet will provide any certification of deletion required by SCC Clause 12(1) only upon Customer's request in accordance with Section 10.4 of this DPA.

4. Smartsheet Personnel

Persons authorized by Smartsheet to process Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

5. Security

- 5.1 Smartsheet will implement and maintain each of the technical and organizational measures described in the Smartsheet Documentation and the Agreement ("**TOM**").
- 5.2 Acknowledging that Customer (and not Smartsheet): (i) controls the nature and contents of Customer Content (including any Personal Data therein); and (ii) acts as its own system administrator and controls user access to Customer Content (including any Personal Data therein), Customer represents and warrants that on the date of this DPA and during the Term:
 - 5.2.1 with respect to Personal Data, the TOM meet the requirements set out in Data Protection Laws applicable to Customer's use of the Services;
 - 5.2.2 Personal Data has been and will be collected and Processed by Customer in accordance with applicable Data Protection Laws;
 - 5.2.3 the Processing of Personal Data in accordance with this DPA by Smartsheet will not violate applicable Data Protection Laws; and

- 5.2.4 Customer will take all steps necessary to ensure it achieves the foregoing, including without limitation, by providing Data Subjects with appropriate privacy notices, obtaining any required consent, and ensuring that there is a lawful basis for Contracted Processors to Process Personal Data.
- 5.3 Customer will indemnify and hold harmless the Contracted Processors against all losses, fines, and regulatory sanctions arising from any claim by a third party (including any Supervisory Authority) arising out of Customer's negligence, wilful misconduct, and bad faith in connection with any breach of Section 5.2 by Customer.
- 6. Subprocessing**
- 6.1 Customer authorizes Smartsheet to appoint Subprocessors (and permits each Subprocessor to appoint additional Subprocessors) in accordance with this Section 6.
- 6.2 A list of Smartsheet's current Subprocessors is available at <https://www.smartsheet.com/legal/gdpr> (as updated from time to time), which includes the name and location of, and a brief description of the Processing undertaken by, each current Smartsheet Subprocessor.
- 6.3 Smartsheet may continue to use those Subprocessors already engaged by Smartsheet as of the date of this DPA. Customer may submit the form available at <https://www.smartsheet.com/legal/subprocessor-notification> to request notification of the appointment of new Smartsheet Subprocessors. Within 15 days after receiving such notice, if Customer has a bona fide and reasonable basis to object to the new Subprocessor, Customer must notify Smartsheet in writing and Smartsheet will use reasonable efforts to make available to Customer a change in the Services or recommend a commercially reasonable change to Customer's configuration or use of the Services to avoid Processing of Personal Data by the objected-to new Subprocessor. If Smartsheet cannot reasonably accommodate Customer's objection, Smartsheet will notify Customer. Customer may, by written notice to Smartsheet within 30 days of Smartsheet's notice, terminate the Agreement to the extent it relates to the Services which require the use of the objected-to new Subprocessor.
- 6.4 Smartsheet carries out appropriate due diligence on each Subprocessor and the arrangement between Smartsheet and each Subprocessor is governed by a written contract which: (i) includes terms substantially equivalent to those set out in this DPA; and (ii) meet the requirements of Article 28(3) of the GDPR and Section 1798.140(v) and (w) of the CCPA. Smartsheet is responsible for its Subprocessor's acts and omissions in relation to Smartsheet's obligations under this DPA.
- 7. Data Subject Rights**
- 7.1 Customer is responsible for responding to Data Subject requests using its own access to the relevant Personal Data. At Customer's request, Smartsheet will provide reasonable assistance to Customer, to the extent Customer is unable to access the relevant Personal Data after diligent reasonable efforts. Taking into account the nature of the Processing, and solely to the extent Customer cannot access Personal Data itself, Smartsheet shall assist Customer by implementing appropriate technical and organizational measures, insofar as this is reasonably possible, for the fulfilment of Customer's obligations, as reasonably understood by Customer, to respond to requests to exercise Data Subject rights under the GDPR and the CCPA. To the extent legally permitted, Customer shall be responsible for any costs arising from Smartsheet's provision of such assistance.
- 7.2 Smartsheet will without undue delay notify Customer if Smartsheet receives a request directly from a Data Subject under Data Protection Laws in respect of Personal Data. Smartsheet will not respond to such request except on the documented instructions of Customer or as required by applicable law.
- 8. Personal Data Breach**

Smartsheet's obligations

- 8.1 Notification to customer. Smartsheet will notify Customer without undue delay upon Smartsheet becoming aware of a Personal Data Breach affecting Personal Data. Smartsheet's notification of or response to a Personal Data Breach under this Section 8 will not be construed as an acknowledgement by Smartsheet of any fault or liability with respect to the Personal Data Breach.
- 8.2 Provision of information for downstream notification. Smartsheet will make commercially reasonable efforts, in accordance with its security incident management policies and procedures, to identify the cause of such Personal Data Breach, and provide Customer with sufficient information to allow Customer to meet its obligations under the GDPR and CCPA to report or inform Data Subjects of the Personal Data Breach.
- 8.3 Cooperation with customer's instructions. At Customer's sole expense and to the extent Customer cannot itself access the information necessary to comply with its additional obligations under applicable Data Protection Laws, Smartsheet shall cooperate with Customer and, if necessary, take such reasonable commercial steps as are directed by Customer to assist in Customer's investigation, mitigation, and remediation of each such Personal Data Breach.

Customer's Obligations

- 8.4 Customer is solely responsible for complying with incident notification laws applicable to Customer; and
- 8.5 Customer is solely responsible for fulfilling any third party notification obligations related to any Personal Data Breach. Smartsheet will not assess the contents of Personal Data to identify information subject to any specific legal requirements.

9. Data Protection Impact Assessment and Prior Consultation

At Customer's request, Smartsheet shall provide reasonable assistance to Customer with any data protection impact assessments and prior consultations with Supervisory Authorities or other competent data privacy authorities, as required by Article 35 or 36 of the GDPR, and in each case solely in relation to Processing of Personal Data by, and taking into account the nature of the Processing and information available to, the Contracted Processors.

10. Return of Personal Data

- 10.1 Subject to Sections 10.2 and 10.3, Smartsheet shall without undue delay after, and in any event no later than 180 days of, the date of cessation of any Services involving the Processing of Personal Data (the "**Cessation Date**"), render unrecoverable or return Personal Data in accordance with Smartsheet's security practices.
- 10.2 Customer can, at any time during the Term, obtain a zip file backup from the Subscription Service that includes: (i) Customer's then-current file attachments in their native file formats; and (ii) all other then-current Customer Content (including any Personal Data contained therein), in a commonly used format, as reasonably determined by Smartsheet. Upon Customer's request made prior to the Cessation Date, Smartsheet will allow Customer's SysAdmin(s) to have read-only access to the Subscription Service for the sole purpose of retrieving such data for 30 days following the Cessation Date. Thereafter, Smartsheet has no obligation to retain, and will render unrecoverable, such data in accordance with Smartsheet's security practices.
- 10.3 Each Contracted Processor may retain Personal Data to the extent required by applicable laws and only to the extent and for such period as required by applicable laws.

10.4 At Customer's reasonable request, Smartsheet shall provide written certification to Customer that it has fully complied with this Section 10 within 180 days of the Cessation Date.

11. Audit Rights

Audit rights at Smartsheet's expense

11.1 **Audit Reports.** 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: (i) include testing of the entire measurement period since the previous measurement period ended; (ii) be performed according to AICPA SOC2 standards or such other alternative standards that are substantially equivalent to AICPA SOC2; (iii) be performed by independent third party security professionals at Smartsheet's selection and expense; and (iv) 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.

11.2 **Penetration Testing.** Smartsheet uses external security experts to conduct penetration testing of certain Services, including the Subscription Service. Such testing will: (i) be performed at least annually; (ii) be performed by independent third party security professionals at Smartsheet's selection and expense; and (iii) 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.

Additional audits required by EU Data Protection Law

11.3 Subject to Sections 11.4 to 11.6, and always at Customer's sole expense, Smartsheet will (i) make available to Customer on request all information necessary to demonstrate compliance with this DPA, and (ii) allow for and contribute to audits, including inspections, by an auditor mandated by Customer in relation to the Processing of the Personal Data by Smartsheet.

11.4 Information and audit rights of Customer only arise under Section 11.3 to the extent: (i) Smartsheet Processes Personal Data of Data Subjects located in the EEA on behalf of Customer; and (ii) this DPA (including Section 11.1), the Smartsheet Documentation, and the Agreement do not otherwise give Customer information and audit rights meeting the relevant requirements of the GDPR (including, where applicable, Article 28(3)(h) of the GDPR).

11.5 Customer may only mandate an auditor for the purposes of Section 11.3 if the auditor is approved by Smartsheet in writing, such approval not to be unreasonably withheld.

11.6 Customer shall give Smartsheet reasonable notice of any audit or inspection to be conducted under Section 11.3 and shall make (and ensure that each of its mandated auditors makes) reasonable endeavors to avoid causing any damage, injury, or disruption to the Contracted Processor's premises, equipment, personnel, and business while its personnel are on those premises in the course of such an audit or inspection. A Contracted Processor need not give access to its premises for the purposes of such an audit or inspection:

11.6.1 to any individual unless he or she produces reasonable evidence of identity and authority;

- 11.6.2 outside normal business hours at those premises, unless the audit or inspection needs to be conducted on an emergency basis and Customer has given notice to Smartsheet that this is the case before attendance outside those hours begins; or
- 11.6.3 for the purposes of more than one audit or inspection, in respect of each Contracted Processor, in any calendar year, except for any additional audits or inspections which: (i) Customer reasonably considers necessary because of genuine concerns as to Smartsheet's compliance with this DPA or after a Personal Data Breach; or (ii) Customer is required to carry out by a Supervisory Authority under the GDPR,

where Customer has identified its concerns or the relevant requirement or request in its notice to Smartsheet of the audit or inspection.

12. California Consumer Privacy Act of 2018

- 12.1 Smartsheet is a "Service Provider" as defined in CCPA Section 1798.140(v).
- 12.2 Customer discloses Personal Data to Smartsheet solely for: (i) a valid business purpose; and (ii) Smartsheet to perform the Services.
- 12.3 Smartsheet is prohibited from: (i) selling Personal Data; (ii) retaining, using, or disclosing Personal Data for a commercial purpose other than providing the Services; and (iii) retaining, using, or disclosing the Personal Data outside of the Agreement between Smartsheet and Customer.
- 12.4 Smartsheet understands the prohibitions outlined in Section 12.3.

13. General Terms

Governing law and jurisdiction

- 13.1 The parties to this DPA hereby submit to the choice of jurisdiction stipulated in the Agreement with respect to any disputes or claims arising under this DPA, including disputes regarding its existence, validity, or termination or the consequences of its nullity; and
- 13.2 This DPA and all non-contractual or other obligations arising out of or in connection with it are governed by the laws of the country or territory stipulated for this purpose in the Agreement.

Order of precedence

- 13.3 Nothing in this DPA reduces Smartsheet's obligations under the Agreement in relation to the protection of Personal Data or permits Smartsheet to Process (or permit the Processing of) Personal Data in a manner which is prohibited by the Agreement.
- 13.4 Subject to Section 13.2, with regard to the subject matter of this DPA, in the event of inconsistencies between the provisions of this DPA and any other agreements between the parties, including the Agreement and including (except where explicitly agreed otherwise in writing, signed on behalf of the parties) agreements entered into or purported to be entered into after the date of this DPA, the provisions of this DPA shall prevail.

Changes in Data Protection Laws.

- 13.5 If any variation is required to this DPA as a result of a change in Data Protection Law, then either Party may provide written notice to the other Party of that change in law. The Parties will discuss and negotiate in good faith any necessary variations to this DPA to address such changes. If Customer gives notice under this Section 13.5, the parties shall without undue delay discuss the proposed variations and negotiate in good faith with a view to agreeing and implementing those or alternative variations

designed to address the requirements identified in Customer's notice (to the extent such variations are reasonable with regard to Smartsheet's business operations) as soon as is reasonably practicable.

Severance

- 13.6 Should any provision of this DPA be invalid or unenforceable, then the remainder of this DPA shall remain valid and in force. The invalid or unenforceable provision shall be either (i) amended as necessary to ensure its validity and enforceability, while preserving the parties' intentions as closely as possible or, if this is not possible, (ii) construed in a manner as if the invalid or unenforceable part had never been contained therein.

Liability

- 13.7 For the avoidance of doubt, as between the parties to this DPA, each party's liability and remedies under this DPA are subject to the aggregate liability limitations and damages exclusions set forth in the Agreement.

ANNEX 1: DETAILS OF PROCESSING OF CUSTOMER PERSONAL DATA

This Annex 1 includes certain details of the Processing of Personal Data as required by Article 28(3) of the GDPR.

Subject matter and duration of the Processing of Personal Data:

The subject matter and duration of the Processing of Personal Data are set out in the Agreement and this DPA.

The nature and purpose of the Processing of Personal Data

Processing of Personal Data by Smartsheet is reasonably required to facilitate or support the provision of the Services as described under the Agreement and this DPA.

Type of Personal Data and Categories of Data Subjects:

The types of Personal Data and categories of Data Subject about whom the Personal Data relates are determined and controlled by Customer in its sole discretion. Smartsheet's Services does not impose any limits on the type of data stored or otherwise processed.

Obligations and Rights of the Controller:

The obligations and rights of Customer are set out in the Agreement and this DPA.

ANNEX 2: STANDARD CONTRACTUAL CLAUSES

For the purposes of Article 26(2) of Directive 95/46/EC, or a successor law or regulation including the GDPR, for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection

Customer (the “data exporter”)

and

Smartsheet Inc. (the “data importer”)

each a “party”; together “the parties”,

HAVE AGREED on the following Contractual Clauses (the Clauses) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Appendix 1.

Clause 1

Definitions

For the purposes of the Clauses:

- (a) *'personal data', 'special categories of data', 'process/processing', 'controller', 'processor', 'data subject'* and *'supervisory authority'* shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;
- (b) *'the data exporter'* means the controller who transfers the personal data;
- (c) *'the data importer'* means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;
- (d) *'the subprocessor'* means any processor engaged by the data importer or by any other subprocessor of the data importer who agrees to receive from the data importer or from any other subprocessor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;
- (e) *'the applicable data protection law'* means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;
- (f) *'technical and organisational security measures'* means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

Clause 2

Details of the transfer

The details of the transfer and in particular the special categories of personal data where applicable are specified in Appendix 1 which forms an integral part of the Clauses.

Clause 3

Third-party beneficiary clause

1. The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.
2. The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.
3. The data subject can enforce against the subprocessor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.
4. The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

Clause 4

Obligations of the data exporter

The data exporter agrees and warrants:

- (a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;
- (b) that it has instructed and throughout the duration of the personal data processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;
- (c) that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 2 to this contract;
- (d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these

measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;

- (e) that it will ensure compliance with the security measures;
- (f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;
- (g) to forward any notification received from the data importer or any subprocessor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;
- (h) to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for subprocessing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;
- (i) that, in the event of subprocessing, the processing activity is carried out in accordance with Clause 11 by a subprocessor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and
- (j) that it will ensure compliance with Clause 4(a) to (i).

Clause 5

Obligations of the data importer

The data importer agrees and warrants:

- (a) to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (c) that it has implemented the technical and organisational security measures specified in Appendix 2 before processing the personal data transferred;
- (d) that it will promptly notify the data exporter about:
 - (i) any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation,
 - (ii) any accidental or unauthorised access, and

- (iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;
- (e) to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;
- (f) at the request of the data exporter to submit its data processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;
- (g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for subprocessing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;
- (h) that, in the event of subprocessing, it has previously informed the data exporter and obtained its prior written consent;
- (i) that the processing services by the subprocessor will be carried out in accordance with Clause 11;
- (j) to send promptly a copy of any subprocessor agreement it concludes under the Clauses to the data exporter.

Clause 6

Liability

1. The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or subprocessor is entitled to receive compensation from the data exporter for the damage suffered.
2. If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his subprocessor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, in which case the data subject can enforce its rights against such entity.

The data importer may not rely on a breach by a subprocessor of its obligations in order to avoid its own liabilities.

3. If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the subprocessor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the subprocessor agrees that the data subject may issue a claim against the data subprocessor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data

subject can enforce its rights against such entity. The liability of the subprocessor shall be limited to its own processing operations under the Clauses.

Clause 7

Mediation and jurisdiction

1. The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:
 - (a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;
 - (b) to refer the dispute to the courts in the Member State in which the data exporter is established.
2. The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

Clause 8

Cooperation with supervisory authorities

1. The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.
2. The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any subprocessor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.
3. The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any subprocessor preventing the conduct of an audit of the data importer, or any subprocessor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5 (b).

Clause 9

Governing Law

The Clauses shall be governed by the law of the Member State in which the data exporter is established.

Clause 10

Variation of the contract

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clause.

Clause 11

Subprocessing

1. The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the subprocessor which imposes the same obligations on the subprocessor as are imposed on the data importer under the Clauses. Where the subprocessor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the subprocessor's obligations under such agreement.
2. The prior written contract between the data importer and the subprocessor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.
3. The provisions relating to data protection aspects for subprocessing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established.
4. The data exporter shall keep a list of subprocessing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5 (j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

Clause 12

Obligation after the termination of personal data processing services

1. The parties agree that on the termination of the provision of data processing services, the data importer and the subprocessor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.
2. The data importer and the subprocessor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data processing facilities for an audit of the measures referred to in paragraph 1.

Appendix 1 to the Standard Contractual Clauses

This Appendix forms part of the Clauses and must be completed and signed by the parties

The Member States may complete or specify, according to their national procedures, any additional necessary information to be contained in this Appendix

Data exporter

The data exporter is: Customer

Data importer

The data importer is: Smartsheet Inc.

Data subjects

The personal data transferred concern the following categories of data subjects:

See ANNEX 1 of the Data Processing Addendum

Categories of data

The personal data transferred concern the following categories of data:

See ANNEX 1 of the Data Processing Addendum

Special categories of data (if appropriate)

The personal data transferred concern the following special categories of data:

See ANNEX 1 of the Data Processing Addendum

Processing operations

The personal data transferred will be subject to the following basic processing activities:

See ANNEX 1 of the Data Processing Addendum

Appendix 2 to the Standard Contractual Clauses

This Appendix forms part of the Clauses and must be completed and signed by the parties.

Description of the technical and organisational security measures implemented by the data importer in accordance with Clauses 4(d) and 5(c):

The applicable security controls are referenced and/or set forth in the Smartsheet Documentation and the Agreement.