

## SmartSheet10™ TERMS OF SERVICE

These **SmartSheet10™ TERMS OF SERVICE** including the Business Associate Addendum and the Sales Order (this “**Agreement**”), is a legally binding agreement between SmartSheet10, LLC (“**SS10**”), and the individual or entity identified as “**Client**” in the Sales Order for SmartSheet10™, as those terms are defined below (“**Client**”). This Agreement governs Client’s license, access, and use of SmartSheet10™. This Agreement is effective as of the date both of the following occur or have occurred: (a) SS10 accepts Client’s initial order and sends Client a corresponding Sales Order; and (b) Client manifests consent to the terms of this Agreement by executing the Sales Order or otherwise indicating acceptance of this Agreement through downloading, using, or otherwise accessing SmartSheet10™ (“**Effective Date**”).

### **1. DEFINITIONS**

“**Authorized User**” means an individual who is registered and identified by Client to receive a User ID to access SmartSheet10™ in accordance with Section 5 (Authorized Users) and to download SmartSheet10™. Each Authorized User must be part of a single, common Billing Enterprise, and must be either: (a) a licensed healthcare professional whose credentials are associated with the delivery of healthcare services directly to patients and who is legally authorized to write prescriptions for prescription drugs and order laboratory tests; or (b) the nurses, other clinical support, or administrative staff of such a licensed healthcare professional, including third-party billing and/or consulting staff. Authorized Users who are licensed doctors of medicine, doctors of osteopathy, doctors of dental surgery or dental medicine, doctors of podiatric medicine, doctors of optometry, chiropractors, nurse practitioners, physician’s assistants, or other individuals who have authority to write prescriptions under local law generally are considered “Primary Authorized Users”. Nurses, other clinical support, and administrative staff of a Primary Authorized User are considered “Secondary Authorized Users” and are not charged a separate subscription fee for SmartSheet10™. Primary Authorized Users and Secondary Authorized Users have different roles and privileges in using SmartSheet10™ as described in Section 5 (Authorized Users).

“**Billing Enterprise**” means a single, common legal entity and the business operations associated with that entity through which medical or other professional services are billed, either on behalf of that entity or as a consulting service providing billing, coding, and/or related consulting services.

“**Client Support Portal**” means the portion of the Website that provides information about Client support services and is accessible solely to Authorized Users, as may be modified by SS10 from time-to-time.

“**Content**” means all text, photographs, images, graphics, audio, video, and other content made available to Client by SS10 via SmartSheet10™.

“**Data**” means all information, records, files, and data entered into, received, processed, or stored by or for Client using SmartSheet10™.

“**HIPAA**” means collectively the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996 and the Health Information Technology for Economic and Clinical Health Act of 2009 and the regulations and guidance promulgated or issued thereunder now or in the future.

“**Order Interface**” means the order interface available on the Website, or the functional equivalent thereof, that allows Client to submit orders to request access to SmartSheet10™ and Subscription Enhancements.

“**Payment Method**” has the meaning set forth in Section 9.2 (Payment).

**“Personally Identifiable Information”** means information that identifies or can be used to identify, contact, or locate the person to whom that information pertains. Personally Identifiable Information includes: name, address, phone number, fax number, email address, Social Security number or other government-issued identifier, and credit card information. If Client is a covered entity or a business associate under HIPAA, then Personally Identifiable Information includes Protected Health Information.

**“Protected Health Information”** means protected health information as such term is defined in HIPAA.

**“Sales Order”** means the confirmation correspondence that SS10 sends Client confirming Client’s order of SmartSheet10™ or Subscription Enhancements related thereto.

**“SmartSheet10™”** means the software, and any and all Updates thereto, which allows Authorized Users to access and use SmartSheet10™ and related services.

**“SmartSheet10™ Subscription”** means the service provided by SS10, including User Materials, Support Services, and the Content, and the core functionalities thereof. The term “SmartSheet10™ Subscription” also includes any and all Subscription Enhancements and software that Client orders as set forth in the Sales Order.

**“Subscription Enhancements”** means the optional software and services that may be purchased by Client in addition to the SmartSheet10™ Subscription as described in the Subscription Fee Schedule.

**“Subscription Fees”** means fees for SmartSheet10™ as further described in Section 9 (Subscription Fees and Payment) of this Agreement, which fees may change from time-to-time as Client adds services or by SS10 in accordance with Section 9.1 (Subscription Fees).

**“Subscription Fee Schedule”** means the Subscription Fees SS10 charges for SmartSheet10™ and Subscription Enhancements related thereto. The Fee Schedule at any point in time is reflected on the Order Interface, which is subject to change from time-to-time as described in Section 9.1 (Subscription Fees).

**“Support Services”** means the support services, implementation support, training, and any associated services provided by SS10 (or on SS10’s behalf) to Client as described in the Subscription Fee Schedule.

**“Term”** means the initial term of the Agreement plus any renewal terms unless earlier terminated as provided in this Agreement.

**“Update”** means any improvement, enhancement, modification, and/or change provided by SS10 to the SmartSheet10™ Subscription or SmartSheet10™.

**“User ID”** means the unique user identification assigned to an Authorized User as set forth in Section 5 (Authorized Users).

**“User Materials”** means any on-line user guides, instructional videos, help files, or written instruction manuals regarding the use of SmartSheet10™.

**“Website”** means the SS10 website, currently accessible through <http://smartsheet10.com/>, including sub-domains and successor versions thereof, as may be modified by SS10 from time-to-time. The Website provides access to and shall be considered to include the Client Support Portal, and access to some User Materials on the Website, such as this Agreement and the Order Interface.

## 2. CHANGES TO THIS AGREEMENT

SS10 may in its sole and exclusive discretion modify the terms and conditions of this Agreement from time-to-time by posting such changes to the Website. By continuing to use and access SmartSheet10™, Client agrees to this Agreement, as modified. If Client does not agree to the Agreement as modified, Client's only option is to immediately terminate use of and access to SmartSheet10™.

## 3. SmartSheet10™ AND ORDERING SmartSheet10™

**3.1 General.** Subject to the terms and conditions of this Agreement, SS10 will make SmartSheet10™ available to Authorized Users during the Term. SS10 may delegate the performance of certain obligations of SmartSheet10™ and/or the Support Services to third parties, provided that SS10 remains primarily responsible to Client for the delivery of SmartSheet10™ and/or Support Services. SS10 may, in its sole discretion, modify, enhance, or otherwise change the SS10 Subscription or SmartSheet10™ without materially adversely affecting SmartSheet10™ features. SS10 may require Authorized Users to use an updated version of SmartSheet10™.

**3.2 Ordering.** Orders for SmartSheet10™ are placed using the Order Interface. Upon acceptance of Client's order, SS10 will issue Client a Sales Order. Either in the Sales Order or promptly thereafter, SS10 will provide Client with email confirmation of the first month's charges to Client's Payment Method.

**3.3 Support Services.** Client and the Authorized Users will have unlimited access to SS10's free online Support Services during the Term. The online Support Services may consist of online tutorials, videos, webinars, and User Materials, as identified on the Website. Client is solely responsible for downloading SmartSheet10™ on Authorized Users' Devices, initiating use of SmartSheet10™, and transferring any of Client's preexisting Data to SmartSheet10™. For an additional fee, Client may order implementation support services or additional instructor-led remote training during the Term via the Order Interface at the fees set forth in the Fee Schedule. Support Services also include telephone and email access to SS10's Customer and Technical Support Team.

**3.4 Optional Services.** Client may order additional Subscription Enhancements during the Term via the Order Interface at the fees set forth in the Fee Schedule. Client's license to such additional Subscription Enhancements will be co-terminus with the Term.

## 4. LICENSE

**4.1 License.** SS10 grants to Client a nonexclusive, personal, revocable, and nontransferable license, during the Term of this Agreement to allow Authorized Users to access and use SmartSheet10™ and the Content and, if selected on a Sales Order, download SmartSheet10™ to Authorized Users' Devices solely for internal use for the purposes and in compliance with the terms set forth in this Agreement and in the User Materials in connection with the Billing Enterprise. License to use SmartSheet10™ is limited to the number of Authorized Users licensed under this Agreement. This license is subject to Client's and Authorized Users' compliance with the terms and conditions set forth in this Agreement.

**4.2 Restrictions.** Client will use SmartSheet10™ solely for legitimate and lawful purposes relating to the provision of patient care in connection with Client's Billing Enterprise. Client and Authorized Users may use SmartSheet10™ only to process and manage the Data of Client's Billing Enterprise as consistent with Authorized Users' credentials as provided in the registration process. Client will not, in whole or in part: (a) copy User Materials or distribute copies of the User Materials to any third-party; (b) modify, port, adapt, translate, reverse engineer, make alterations, decompile, disassemble or make derivative works based on SmartSheet10™, the SS10 Subscription, or User Materials except as otherwise permitted by law; (c)

sell, license, rent, loan, sub-license, lease, distribute, or attempt to grant any rights to SmartSheet10™ to third parties except to Authorized Users pursuant to this Agreement; (d) use SmartSheet10™ to act as a service bureau or application service provider; (e) gain or attempt to gain unauthorized access to SmartSheet10™, including by accessing through any mechanism other than the SS10 Subscription or SmartSheet10™; (f) remove any proprietary notices, labels or marks from SmartSheet10™, (g) use SmartSheet10™ for purposes of comparison with or benchmarking against products or services made available by third parties; or (h) knowingly take any action that would cause any element of SmartSheet10™ to be placed in the public domain. No Content may be copied, reproduced, republished, uploaded, posted, transmitted, commercialized or distributed in any way, except as expressly permitted by this Agreement or the obvious functionality of SmartSheet10™, and only then provided Client keeps intact all copyright and other proprietary notices.

**4.3. Third-Party Software.** This Agreement is limited to the software and services expressly set forth herein. Certain software included in the SS10 Subscription is licensed to SS10 by third-party licensors and is subject to such third-party's usage guidelines and restrictions. Client agrees to comply with the guidelines and restrictions of such third-party licensors as set forth in this Agreement, User Materials or accessible through the Website. In addition, there may be additional third-party or SS10 software that may be necessary or desirable for use with the SmartSheet10™ Service or the SmartSheet10™ Subscription. Such additional software must be licensed separately.

## **5. AUTHORIZED USERS**

**5.1 Authorized Users.** The number of Authorized Users licensed under this Agreement is the number of users Client identifies in the Order Interface. Client may not have more than five (5) Secondary Authorized Users per Primary Authorized User. If Client is an individual, and not a corporation, limited liability company, partnership or other legal entity, then Client must qualify as, and will be deemed to be, a Primary Authorized User for the purposes of this Agreement. If Client is not an individual, then Client must designate at least one Primary Authorized User under Client's account. Each Authorized User's access to SmartSheet10™ will be governed by this Agreement. Client is responsible for ensuring that Authorized Users comply with this Agreement. Authorized Users include only those individuals whose credentials and identity have been authenticated by SS10 and who have completed the registration process and accepted the terms of this Agreement. After completing these requirements, SS10 will issue the Authorized User a unique User ID for his or her access to SmartSheet10™.

**5.2. Client's Responsibility for Authorized User Activity.** After Client has received a Sales Order for SmartSheet10™, Client must identify one or more Authorized Users as Client's system administrator, who will be responsible for, and enabled to modify, the configuration and management of Client's account. Client's system administrator(s) will be able to enroll and assign roles and privileges for all Authorized Users. Client is responsible for all obligations under this Agreement arising in connection with Authorized Users' use of SmartSheet10™. Client will be liable for any act or omission by any of Authorized Users under this Agreement. Any such act or omission of any Authorized User under this Agreement will be deemed to be a breach of this Agreement by Client. Client is responsible for updating the Authorized Users in the event of the termination of employment of any of Authorized User (or, if the Authorized User is not an employee, of the termination of the relationship with Client that resulted in the individual being a Authorized User or otherwise having access to SmartSheet10™).

**5.3. Reassignment of Authorized Users.** Client may permanently reassign an Authorized User license from one individual to another individual by notifying SS10 of the Authorized User whose use of SmartSheet10™ is being terminated and the individual to whom the Authorized User license will be reassigned. Secondary Authorized User licenses may be reassigned only to other Secondary Authorized Users who are part of the nursing or other clinical support or administrative staff of a Primary Authorized

User. Once the new Authorized User's credentials have been authenticated by SS10 and once the new Authorized User has completed the registration process and has accepted the terms of this Agreement, SS10 will provide a User ID to the new Authorized User. The User ID of any Authorized User whose use is terminated will be de-activated. Temporary employees may access SmartSheet10™ by being temporarily assigned an Authorized User license while the Authorized User that the temporary employee is supporting is temporarily reassigned a Secondary Authorized User license.

**5.4. Adding Authorized Users.** Client may request to add more Primary Authorized Users under Client's account by updating the information on the Order Interface. If any additional Primary Authorized Users are added other than on the anniversary of the Effective Date, then the Subscription Fees for such additional Primary Authorized Users will be pro-rated for the initial, partial year of SmartSheet10™. Added Primary Authorized User licenses will be co-terminus with the Term.

**5.5. Subtracting Authorized Users.** A reduction in Primary Authorized Users will be permitted only as of the next renewal term.

## **6. SECURITY**

**6.1. SS10's Responsibilities.** SS10 uses a variety of security technologies and procedures to help protect Data and any Personally Identifiable Information that Client provides in connection with Client's account from unauthorized access, use, or disclosure. For example, SS10 stores Personally Identifiable Information provided by Client on computer servers with limited access that are located in controlled facilities. Access controls are audited annually and access to Personally Identifiable Information is monitored in real time. Log files are controlled and monitored with intrusion detection. Additionally, when SS10 transmits sensitive Personally Identifiable Information (such as a credit card number) over the Internet, SS10 protects it through the use of encryption, such as Secure Sockets Layer (SSL) protocol. SS10 will maintain an audit log of actions taken through SmartSheet10™ related to electronic Protected Health Information, and will provide a copy of the audit log to Client upon request.

**6.2. Client's Responsibilities.** Client is responsible for the security of Client's own computer systems, the security of Client's and Authorized Users' access to and connection with SmartSheet10™, and the privacy and security of Client's Data and Personally Identifiable Information, subject to the terms and conditions of this Agreement. Client will establish appropriate confidentiality, privacy, and security policies and safeguards consistent with applicable law, including HIPAA, if applicable, and industry standards and will train Authorized Users on such policies and safeguards. Without limiting the generality of the foregoing, Client will ensure that Authorized Users use only their own assigned User IDs and never share their User ID or use another's User ID. Client will adopt and maintain security precautions for User IDs to prevent their disclosure to and use by unauthorized persons and will promptly notify SS10 if the security or integrity of a User ID or password has been compromised.

**6.3 Access Outside of the U.S.** Client agrees that Personally Identifiable Information and all other information provided under this Agreement may be processed and stored on servers in the United States of America, the laws of which may be deemed by other countries to have inadequate data protection. Accordingly, Client represents and warrants that: (a) all Authorized Users located in countries outside the United States of America have consented and continue to consent to the processing of such information as provided in this Agreement and to the transfer of that information to, and/or storage of that information in, the United States; and (b) Client may otherwise allow Authorized Users to access SmartSheet10™ from outside the United States without violation of any country's data-security or data-transfer laws, including the European Union Safe Harbor Directive.

## **7. CONFIDENTIALITY**

During the Term, either party may receive information about the business, financial affairs, current or future products or technology, trade secrets, workforce, customers, or any other information about the other party that is treated or designated by the other party as confidential or proprietary, or would reasonably be viewed as confidential or as having value to the other party's competitors ("**Confidential Information**"). SmartSheet10™ and any nonpublic information or materials (tangible or intangible) provided or accessible to Client by SS10 pursuant to this Agreement constitute Confidential Information of SS10. The receiving party will take all steps necessary to protect the confidentiality of the Confidential Information, and will not disclose, provide, or otherwise make available any Confidential Information to any third-party without the disclosing party's prior written consent except (i) to its own attorneys, accountants and other agents, contractors or licensors for internal business purposes only or to support the delivery of SmartSheet10™, (ii) to meet legal or regulatory requirements, such as under a court order or to a government institution if required or authorized by law, or (iii) in the event of a sale to, merger with or acquisition of a party, or others authorized by this Agreement to receive Confidential Information of the disclosing party, by a third-party. In accordance with this provision, the receiving party will use at least the same precautions as it uses in regard to its own confidential information, but not less than reasonable care. The receiving party will promptly report to the disclosing party any unauthorized use or disclosure of any Confidential Information. The confidentiality obligations of this Section will survive for five (5) years after the termination or expiration of this Agreement, except (a) in the case of trade secrets, the confidentiality obligations of which will endure the lifetime of the trade secret and (b) Protected Health Information, which will be subject to the Business Associate Agreement as provided in Section 8.1 (Business Associate Agreement).

## **8. PROTECTED HEALTH INFORMATION**

**8.1. Business Associate Addendum** The Business Associate Addendum (below) sets forth SS10's obligations with respect to Protected Health Information. To the extent of any conflict between this Agreement and the Business Associate Agreement with respect to Protected Health Information, the terms and conditions of the Business Associate Agreement will control.

**8.2 Client's Obligations.** If Client is a "covered entity" under HIPAA, Client will (a) not request SS10 to use or disclose Protected Health Information in any manner that would not be permissible under HIPAA if done by Client unless specifically permitted for a business associate under HIPAA, (b) comply with the minimum necessary requirements under HIPAA with respect to communications with SS10 and (c) not transmit electronic Protected Health Information over any open network unless the transmission is encrypted according to the appropriate standard of care.

## **9. SUBSCRIPTION FEES AND PAYMENT**

**9.1. Subscription Fees.** Client will pay the Subscription Fees as set forth in the Fee Schedule, as well as any associated taxes, late fees, and surcharges. SS10 reserves the right to modify its fees from time-to-time by updating the Order Interface. Client understands and agrees that Client's access and use of SmartSheet10™ may require the payment of third-party fees (such as for associated devices, hardware, and internet services) and that Client is solely responsible for paying any such fees.

**9.2. Payment.** As a condition to Client's use of SmartSheet10™, Client will provide SS10 with valid credit card information, sufficient to enable payment processing from a credit-card issuer that SS10 accepts, with available funds sufficient to pay all applicable fees under this Agreement ("**Payment Method**"). Client authorizes SS10 to collect all amounts due under this Agreement from Client's Payment Method, including, if applicable, late fees and any other outstanding charges. Unless otherwise specified on the Sales Order, Client's Payment Method will be billed immediately after Client purchases the licenses to SmartSheet10™

and on a monthly basis thereafter and immediately in full for any one-time SmartSheet10™ Subscriptions ordered. This authorization will remain valid until ninety (90) days after Client terminates SS10's authority to charge Client's Payment Method.

**9.3. Late Payments.** Client will promptly update Client's account information whenever Client's Payment Method information changes (including, for example, Client's name, address, e-mail address, telephone number, and credit card number and expiration date or other payment method information). SS10 may (a) suspend SmartSheet10™ or (b) terminate this Agreement pursuant to Section 12 (Term and Termination) if such update is not promptly provided and/or if at any time SS10 is unable to process payment of any amount payable under this Agreement using Client's Payment Method. Late payments due to an inability to process payment information may be subject to a percentage-based late fee not to exceed the late fees permitted under applicable law.

**9.4. Taxes.** The Subscription Fees set forth in the fee schedule do not include taxes. Client will be responsible for the payment of all taxes associated with this Agreement (other than taxes based on SS10's gross receipts or net income).

**9.5. Disputes.** If Client would like to dispute any SS10 charges on Client's statement, Client must notify SS10 in writing within ten (10) days after charges are available on a statement from Client's credit card issuer or the invoice reflecting the charges in question has been received from SS10. If Client does not dispute the charges within ten (10) days, Client waives any right to contest the charges.

## **10. CLIENT'S USE OF SmartSheet10™**

**10.1. Computer System.** Client is responsible for providing and maintaining, in good working order at all times, Client's own Internet access and all necessary telecommunications equipment, hardware, software, devices, and other materials and equipment necessary for Authorized Users to access and use SmartSheet10™.

**10.2. Authorization; Non-infringement.** Client will obtain all authorizations, consents, releases and permissions that are necessary or desirable to enter Data into SmartSheet10™, to use SmartSheet10™ to access, process and store Data and to receive SmartSheet10™, all as set forth in this Agreement. Client and Authorized Users will not submit, access or use any Data or use SmartSheet10™ in any way that infringes, misappropriates, or that violates any trademark, copyright, patent, trade secret, publicity, privacy or other right of any third-party or violates any applicable local, state or federal laws, statutes, ordinances, rules or regulations, or any judicial or administrative orders.

**10.3. No Interference with Service Operations.** Neither Client or Authorized Users will take any action that: (a) interferes or attempts to interfere with the proper working of SmartSheet10™ or disrupts, diminishes the quality of, interferes with the performance of, or impairs the functionality of SmartSheet10™; (b) circumvents, disables or interferes or attempts to circumvent, disable or interfere with security-related features of SmartSheet10™ or features that prevent or restrict use, access to or copying of any Data or Content or enforce limitations on use of SmartSheet10™; or (c) imposes or may impose, in SS10's sole discretion, an unreasonable or disproportionately large load on SmartSheet10™ infrastructure.

## **11. PROPRIETARY RIGHTS**

**11.1. SmartSheet10™.** As between Client and SS10, SS10 is and will remain the exclusive owner of all right, title, and interest in and to SmartSheet10™ Software, Content, Updates, User Materials, SS10's Confidential Information and all other SS10 work product and/or other materials provided or accessible to Client in connection with this Agreement, including all associated intellectual property rights. Trademarks,

trade names, product names, and logos (“**Trademarks**”) contained in or used by SmartSheet10™ are the trademarks or registered trademarks of their respective owners, and the use of such Trademarks shall inure to the benefit of the trademark owner. The use of such Trademarks is intended to denote interoperability and does not constitute: (i) an affiliation by SS10 and its licensors with such company; or (ii) an endorsement or approval by such company of SS10, its licensors or its products or services.

**11.2. Data.** As between Client and SS10, Client is and will remain the exclusive owner of all right, title, and interest in and to any Data Client provides to SmartSheet10™; provided, however, that Client hereby grants to SS10 a non-exclusive license, during the Term and through the transition period set forth in Section 12 (Term and Termination), to use the Data for any purpose in its sole discretion, including, but not limited to: as permitted or required by this Agreement or the Business Associate Addendum; for the purposes of performing its obligations under this Agreement; and for providing SmartSheet10™ pursuant to the functionality thereto. The foregoing license grants SS10 the right to provide and/or sub-license Data to third-parties for any purpose in its sole discretion, including, but not limited to third-parties providing e-prescription services, insurance services, and other related services, including to verify Authorized Users’ credentials and to authenticate Authorized Users. SS10 may de-identify Personally Identifiable Information and may use and disclose such de-identified information for any purpose in its sole discretion, except as prohibited by applicable law. Client warrants that it has all necessary permissions, including any patient consent, to provide Data to SS10 consistent with this Agreement. Client further warrants that the Data and any other information that is provided to SS10 under this Agreement will be accurate and that Client will update the Data and other information as necessary so that it remains accurate.

**11.3. Feedback.** To the extent that SS10 receives from Client or any Authorized User any suggestions, ideas, improvements, modifications, feedback, error identifications or other information related to SmartSheet10™, the SS10 Subscription, SmartSheet10™, the User Materials, the Content, or any other products or services (“**Feedback**”), SS10 may perpetually and irrevocably use, disclose, and exploit such Feedback without any restriction for any purpose, including to improve SmartSheet10™ and to develop, market, offer, sell, and provide other products and services.

## **12. TERM AND TERMINATION**

**12.1. Term and Termination without Cause.** Unless otherwise stated in the Sales Order, this Agreement will be effective for an initial term of one (1) year from the Effective Date and automatically will renew for successive one (1) year renewal terms, unless: (a) either party gives the other party notice of its election not to renew this Agreement at least ninety (90) days prior to the end of the then-current term; or (b) terminated by either party for cause as set forth in Section 12.2 below. Any additional Authorized User or Subscription Enhancements that are included under the Subscription Fees will automatically renew or expire with the Agreement. Unless otherwise specified in the Sales Order, any one-time services will be considered fulfilled upon the earlier of completion of the services or the expiration of the term during which the one-time service was contracted, and SS10 PM shall have no further obligation with respect to such services, whether or not the Agreement is renewed.

### **12.2. Termination for Cause.**

**12.2.1. Termination for Breach.** Each party may terminate this Agreement upon notice for material breach if the other party fails to cure a material breach within thirty (30) days following written notice from the non-breaching party. SS10 will have the right to terminate this Agreement upon notice for non-payment if Client fails to cure the non-payment within fifteen (15) days following written notice from SS10. Notwithstanding anything to the contrary in this Section, SS10 may terminate this Agreement upon written notice to Client if Client or any Authorized User: (a) violates the scope or any restriction on its license under Section 4 (License); (b) breaches Client’s confidentiality obligations under this Agreement;



and/or (c) threatens the integrity or security of SmartSheet10™, or the SS10 system or infrastructure.

**12.2.2. Termination for Insolvency.** Each party will have the right to terminate this Agreement immediately upon written notice in the event that the other party becomes insolvent, files for any form of bankruptcy or becomes the subject of any involuntary proceeding relating to insolvency, liquidation, receivership or composition for the benefit of creditors if such proceeding is not dismissed within sixty (60) days of filing, makes any assignment for the benefit of creditors, has a receiver, administrative receiver or officer appointed over the whole or a substantial part of the assets, or ceases to conduct business (other than in connection with an assignment permitted under Section 14.2 [Assignment; Successors]) or an equivalent act to any of the above occurs under the laws of the jurisdiction of each party.

### **12.3. Effect of Termination**

**12.3.1. Effect of Termination.** Upon termination or expiration for any reason, all licenses granted hereunder automatically will terminate, and SS10 immediately may disable and discontinue Client's access to and use of SmartSheet10™ without additional notice to Client. Client will return to SS10 or destroy all User Materials and other materials Client has acquired pertaining to SmartSheet10™ or any Confidential Information. Client will destroy and remove from the Authorized User's Device all SmartSheet10™ received pursuant to the terms of this Agreement. All of Client's payment obligations will become immediately due and payable and Client will remain liable to SS10 for all charges under this Agreement and all the costs SS10 incurs to collect these charges, including collection agency fees, reasonable attorneys' fees, and arbitration or court costs. In the event of early termination, Client will not be eligible of any refunds for amounts paid or any waiver of amounts payable.

**12.3.2. Survival.** The following sections of this Agreement (together with any other provisions of this Agreement that by their sense and context are intended to survive termination) will survive any expiration or termination of this Agreement: 7 (Confidentiality); 9 (Subscription Fees and Payment); 11 (Proprietary Rights); 12 (Term and Termination); 13 (Limitations; Disclaimer); 14 (General); and the Business Associate Agreement.

**12.3.3. Access to Data.** Upon expiration or termination of this Agreement, Client shall not have access to SmartSheet10™ for any purpose. For a data conversion fee, SS10 will provide patient demographic information in CSV or excel format for purposes of facilitating a Data export. Additional fees may apply in the event support is required to facilitate this Data export. Additional fees may also apply for facilitating extraction or access of Data from Client's SQL-database file(s).

## **13. LIMITATIONS; DISCLAIMER**

**13.1. Scheduled Maintenance.** SS10 reserves the right to take servers making SmartSheet10™ available out of service to conduct routine maintenance. SS10 will use commercially reasonable efforts to perform such maintenance outside of regular business hours. SS10 will not be responsible for any damages or costs incurred by Client, if any, for scheduled and unscheduled downtime or maintenance.

**13.2. Service Limitations.** SmartSheet10™ may be temporarily unavailable from time-to-time due to required telecommunications interruptions or other disruptions. SS10 also may make improvements and/or changes in SmartSheet10™ at any time with or without notice. SS10 will not be responsible for any damages that Client may suffer arising out of use, or inability to use, SmartSheet10™. Subject to the terms and conditions of this Agreement, SS10 will not be liable for unauthorized access to or acquisition, alteration, theft, or destruction of Client Data files, programs, procedures, or information through accident, fraudulent means or devices, or any other method. Client agrees that it is Client's responsibility to validate for integrity, accuracy, applicability, and correctness all Data, output, and reports. Subject to the terms and

conditions of this Agreement, Client waives any damages occasioned by lost, altered, or corrupt Data, incorrect reports or incorrect Data files resulting from a programming error, operator error, equipment or software malfunction, or from the use of third-party software.

**13.3. Professional Responsibility.** SmartSheet10™ DOES NOT GIVE MEDICAL ADVICE, PROVIDE MEDICAL OR DIAGNOSTIC SERVICES, OR PRESCRIBE MEDICATION. USE OF SmartSheet10™ IS NOT A SUBSTITUTE FOR THE PROFESSIONAL JUDGMENT OF HEALTH CARE PROVIDERS IN DIAGNOSING AND TREATING PATIENTS. CLIENT ACKNOWLEDGES THAT CLIENT IS SOLELY RESPONSIBILITY FOR VERIFYING THE ACCURACY OF PATIENT INFORMATION (INCLUDING, WITHOUT LIMITATION, BY OBTAINING ALL APPLICABLE PATIENTS' MEDICAL AND MEDICATION HISTORY AND ALLERGIES) AND ANY INFORMATION PROVIDED TO A PATIENT, AND FOR ALL MEDICAL DECISIONS OR ACTIONS WITH RESPECT TO THE MEDICAL CARE, TREATMENT AND WELLBEING OF CLIENT'S PATIENTS, INCLUDING, WITHOUT LIMITATION, ALL OF CLIENT'S ACTS OR OMISSIONS IN TREATING THE APPLICABLE PATIENT. ANY USE OR RELIANCE BY CLIENT UPON SmartSheet10™ WILL NOT DIMINISH THAT RESPONSIBILITY. CLIENT ASSUMES ALL RISKS ASSOCIATED WITH CLIENT'S CLINICAL USE OF SMARTSHEET10™ FOR THE TREATMENT OF PATIENTS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, NEITHER SS10 NOR ITS LICENSORS ASSUME ANY LIABILITY OR RESPONSIBILITY FOR DAMAGE OR INJURY (INCLUDING DEATH) TO CLIENT, OTHER PERSONS OR PROPERTY ARISING FROM ANY USE OF THE CONTENT OR SMARTSHEET10™.

**13.4. Disclaimer of Warranties.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, TRAKNET AND ITS AFFILIATES, AGENTS, CONTRACTORS AND LICENSORS: (A) PROVIDE THEIR RESPECTIVE SERVICES AND SOFTWARE ON AN "AS IS" BASIS; (B) DO NOT WARRANT THE SEQUENCE, ACCURACY, COMPLETENESS OR RESULTS OBTAINED FROM SmartSheet10™; (C) EXPRESSLY DISCLAIM ALL WARRANTIES AND CONDITIONS, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT; AND (D) DO NOT WARRANT THAT THE OPERATION OF SmartSheet10™ WILL BE UNINTERRUPTED OR ERROR-FREE. THE LAWS OF SOME JURISDICTIONS DO NOT PERMIT WAIVERS OF CERTAIN WARRANTIES, SO PORTIONS OF THE ABOVE DISCLAIMER MAY NOT APPLY TO CLIENT.

**13.5. Limitations of Damages and Liability.** IN NO EVENT WILL SS10, OR ANY SS10 AFFILIATE, AGENT, CONTRACTOR, OR LICENSOR, BE LIABLE TO CLIENT OR TO ANY THIRD-PARTY FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR PUNITIVE DAMAGES UNDER THIS AGREEMENT OR IN CONNECTION WITH SMARTSHEET10™ OR ANY OTHER SUBSCRIPTION ENHANCEMENTS PROVIDED BY SS10 UNDER THIS AGREEMENT, INCLUDING DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA OR BUSINESS INFORMATION, OR OTHER PECUNIARY LOSS ARISING OUT OF THE USE OR INABILITY TO USE SMARTSHEET10™, DATA, OR ANY SUBSCRIPTION ENHANCEMENTS, EVEN IF SS10 HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF AVAILABLE REMEDIES ARE FOUND TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE. FURTHER, EXCEPT FOR SS10'S INDEMNITY OBLIGATIONS UNDER SECTION 13.6 (INDEMNIFICATION) IN NO EVENT WILL SS10'S ENTIRE LIABILITY TO CLIENT OR ANY THIRD-PARTY UNDER OR IN CONNECTION WITH THIS AGREEMENT EXCEED THE SUBSCRIPTION FEES PAID BY CLIENT TO SS10 UNDER THIS AGREEMENT DURING THE THREE (3) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THE APPLICABLE CAUSE OF ACTION AROSE, AND SS10'S LICENSORS, AFFILIATES AND AGENTS SHALL NOT BE LIABLE TO CLIENT OR ANY THIRD-PARTY FOR ANY CLAIM

ARISING UNDER THIS AGREEMENT. THE LAWS OF SOME JURISDICTIONS DO NOT PERMIT THE DISCLAIMER OF LIABILITY FOR CERTAIN TYPES OF DAMAGES, SO PORTIONS OF THE ABOVE MAY NOT APPLY.

### **13.6. Indemnification.**

**13.6.1. Client Indemnification.** Client will indemnify, defend and hold harmless SS10 and its officers, directors, employees, representatives, agents, contractors and licensors (the “**Indemnified Parties**”) from and against any and all third-party claims, actions, losses, liabilities, damages, costs and expenses (including attorneys’ fees) made, incurred, assessed or awarded against SS10 by any third-party arising out of or in connection with: (a) any health care or professional services that Client or Authorized Users provide, including all patient-care decisions resulting from or involving the use of, or inability to use, SmartSheet10™, Content or Data; (b) Client’s or any Authorized User’s misuse of SmartSheet10™, SS10 Subscription, or User Materials; (c) material breach of this Agreement; and (d) any claims or disputes concerning Data, including regarding ownership or infringement. Client will not settle or compromise such claim, except with prior written consent of SS10. The Indemnified Parties may participate in the defense or settlement of such claim at their own expense and with its own choice of counsel.

**13.6.2 SS10 Indemnification.** SS10 will defend Client and pay any damages finally awarded against Client (including attorneys’ fees) arising out of or in connection with any third-party claims that the SS10 Subscription, SmartSheet10™, SmartSheet10™, or User Materials misappropriate or infringe any third-party United States patent, copyright, trademark or trade secret. SS10 will have no liability for any such claim to the extent that: (a) it is based on the modification of the SS10 Subscription, SmartSheet10™, or User Materials by Client, an Authorized User or someone other than SS10, its contractors or agents; (b) it results from a failure of Client to use an updated version of the SmartSheet10™ Subscription, SmartSheet10™, Subscription Enhancements, or User Materials made available to Client by SS10 at no additional Subscription Fees; or (c) it is based on the combination of SmartSheet10™ Subscription, SmartSheet10™, Subscription Enhancements, or User Materials with any other software, program, device or materials not provided by SS10 if such infringement or misappropriation would not have occurred but for such use or combination. If any claim that SS10 is obligated to defend has occurred or if SS10 reasonably believes such a claim may occur, then Client will permit SS10, at SS10’s option and expense: (a) to procure for Client the right to continue using the SmartSheet10™ Subscription, SmartSheet10™, Subscription Enhancements, or User Materials; (b) to replace with non-infringing alternates or modify the SmartSheet10™ Subscription, SmartSheet10™, Subscription Enhancements, or User Materials so that it or they become non-infringing but with substantially equivalent functionality; or (c) reasonably failing the above, to terminate this Agreement and pay to the Client any prepaid subscription fees, prorated to the termination date.

THIS SECTION 13.6.2 CONSTITUTES CLIENT’S SOLE AND EXCLUSIVE REMEDIES AND SS10’ ENTIRE OBLIGATION TO CLIENT WITH RESPECT TO ANY CLAIM THAT THE SmartSheet10™ SUBSCRIPTION, SmartSheet10™, SUBSCRIPTION ENHANCEMENTS, OR USER MATERIALS INFRINGE OR MISAPPROPRIATE, OR MISAPPROPRIATE THE RIGHTS OF ANY THIRD-PARTY.

## **14. GENERAL**

**14.1. Export Law; Government Use.** The SmartSheet10™ Subscription, SmartSheet10™, Subscription Enhancements, or User Materials and related technology are subject to United States export control laws and may be subject to export or import regulations in other countries. Client will not export SmartSheet10™ Subscription, SmartSheet10™, Subscription Enhancements, or User Materials, and Client warrants that Client’s receipt of SmartSheet10™ Subscription, SmartSheet10™, Subscription

Enhancements, or User Materials does not violate the laws or regulations, including applicable sanctions or embargoes, of the United States or any other country. SmartSheet10™ is a "commercial item" as that term is defined at FAR 2.101, consisting of "commercial technical data", "commercial databases", "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212 and is provided to the U.S. Government only as a commercial end item with restricted rights. Consistent with FAR 12.212, FAR 52.227 and DFARS 227.7202, and any agency FAR Supplements or similar acquisition regulations, as applicable, all U.S. Government End Users acquire SmartSheet10™ Subscription, SmartSheet10™, Subscription Enhancements, or User Materials with only those rights set forth in this Agreement and subject to the limitations and restrictions set forth in the referenced regulations. The source is TRAKnet PM, LLC d/b/a TRAKnet Solutions, c/o NEMO Capital Partners, LLC, 28819 Franklin Road Southfield, MI 48034.

**14.2. Assignment, Successors.** Neither this Agreement nor any of Client's rights or obligations hereunder may be assigned or delegated by Client in whole or in part without the prior written approval of SS10. Notwithstanding the foregoing, Client may assign this Agreement, or change person designated to administer this Agreement on behalf of Client, to one of its Authorized Users provided that in the case of an assignment such Authorized User accepts all the obligations and duties hereunder and provides a substitute Payment Method. Any assignment or delegation in contravention of the foregoing will be null and void. Subject to the foregoing, this Agreement will bind and inure to the benefit of the successors and assigns of Client and SS10.

**14.3. Construction.** Whenever used in this Agreement, unless otherwise specified or clearly intended by the context, the terms "includes," "including," "e.g.," "for example," "such as," "for instance," and other similar terms are deemed to include the term "without limitation" immediately thereafter; and the term "or" is deemed to permit multiple, rather than strictly alternative, options and so construed to mean "and/or." The headings of sections and subsections of this Agreement are for convenience of reference only and are not intended to affect the interpretation or construction of any provision of this Agreement.

**14.4. Entire Agreement.** This Agreement is the complete and exclusive statement of the agreement between SS10 and Client and supersedes any proposal or prior agreement, oral or written, and any other communications between the parties in relation to the subject matter of this Agreement.

**14.5. Force Majeure.** Notwithstanding any other provision of this Agreement, any failure of SS10 to perform or delay in the performance of its obligations under this Agreement due to any cause or event not reasonably within SS10's control, including but not limited to casualty, labor disputes, failure of equipment or carriers or utilities, compliance with governmental authority or Act of God, will not constitute a breach of this Agreement, and SS10's performance will be excused during such period of delay.

**14.6. Governing Law.** This Agreement will be governed by and construed under the laws of the State of Michigan exclusively; as such laws apply to contracts between Michigan residents performed entirely within Michigan.

**14.7. Arbitration; Choice of Forum and Venue.** Any dispute, controversy or claim arising out of or relating to this Agreement will be settled by arbitration in Southfield, Michigan, by a single arbitrator in accordance with the American Arbitration Association rules. The arbitrator will be empowered to award only those damages that are permitted in this Agreement, subject to any disclaimers of damages and liability limits set forth in this Agreement. The award rendered by the arbitrator will include costs of the arbitration and reasonable costs for experts and other witnesses. Judgment on the award may be entered in any court having jurisdiction. Nothing in this Agreement will be deemed as preventing either party from seeking provisional relief from any court of competent jurisdiction, to protect that party's name or proprietary rights. The award of the arbitrator will be final and binding upon the parties without appeal or review except as

permitted by Michigan law.

**14.8 Advice of Legal Counsel.** Each party acknowledges that, in executing this Agreement, it has had the opportunity to seek advice from legal counsel and that the person consenting on its behalf has read and understood all of the terms and provisions of this Agreement. This Agreement will not be construed against any party by reason of the drafting or preparation thereof.

**14.9. Authority.** Each party represents and warrants that it has all necessary rights and authority to enter into this Agreement and grants the rights and licenses and carry out its obligations under this Agreement, including that Client has authority to enter into this Agreement on behalf of its Authorized Users.

**14.10. Notice.** All notices required or permitted under this Agreement will be in writing and delivered by confirmed facsimile, email, courier or overnight delivery services, certified mail, or (if specified by SS10 and the functionality of SmartSheet10™) online via Client's account. In each instance, notice will be deemed given upon receipt. Notice contact information for each party is provided via Client's online account. Either party may change its notice address by giving written notice to the other pursuant to this Section.

**14.11. Waiver and Severability.** Waiver of a breach of or right under this Agreement will not constitute a waiver of any other or subsequent breach or right. If any provision in this Agreement is held by a court of competent jurisdiction to be unenforceable, that provision will be changed and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions of this Agreement will remain in full force and effect.

## **BUSINESS ASSOCIATE ADDENDUM**

This **BUSINESS ASSOCIATE ADDENDUM** (this “Addendum”), by and between SmartSheet10, LLC (“Business Associate”), and the individual or entity identified as “Client” in the Sales Order for SmartSheet10™ (“Covered Entity”) under the SmartSheet10™ Terms of Service effective by and between Covered Entity and Business Associate is effective as of the effective date of the Terms of Service (“Effective Date”). Business Associate and Covered Entity are referred to in this Addendum individually as a “Party” and collectively as the “Parties.”

WHEREAS, Covered Entity is a covered entity under the administrative simplification provision of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations, including the Standards for Privacy of Individually Identifiable Health Information (“Privacy Rule”), the Security Standards for the Protection of Electronic Protected Health Information (“Security Rule”) (collectively, “HIPAA”) and the Health Information Technology for Economic and Clinical Health Act and its implementing regulations (“HITECH Act”);

WHEREAS, the Parties have entered into or contemporaneously are entering into the SS10 Terms of Service (the “Terms of Service”);

WHEREAS, under the Terms of Service, Business Associate performs certain functions or services on behalf of Covered Entity that may require, at least in part, that Business Associate access, create, and/or receive Protected Health Information (as defined below) from or on behalf of Covered Entity.

WHEREAS, Business Associate may be a “business associate,” as defined in HIPAA and the HITECH Act; and

NOW, THEREFORE, in consideration of the mutual promises in this Addendum and the Terms of Service, compliance with HIPAA and the HITECH Act, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree that this Addendum shall be incorporated into and shall modify the Terms of Service.

**1. Definitions.** Except as otherwise defined in this Addendum, any and all capitalized terms in this Addendum shall have the definitions set forth in HIPAA and the HITECH Act. “Individual” shall have the same meaning as the term “individual” in 45 CFR Section 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR Section 164.502(g). “Protected Health Information” shall have the same meaning as the term “protected health information” in 45 CFR Section 160.103 that is created, received, maintained, or accessed by Business Associate from or on behalf of Covered Entity.

**2. Permitted Uses and Disclosures of Protected Health Information.**

2.1 Uses and Disclosures to Perform Service Agreement. Business Associate may only use or disclose Protected Health Information as necessary to perform functions, activities or services for or on behalf of Covered Entity as specified in the Terms of Service or this Addendum, including providing training and support to Covered Entity which may involve accessing Covered Entity’s computer systems.

2.2 Use and Disclosure for Management and Administration. Business associate may use protected health information for the proper management and administration of the business associate or to carry out the legal responsibilities of the business associate.

2.3 Other Permissible Uses and Disclosures. Except as otherwise limited in this Addendum or the Terms of Service, Business Associate may use Protected Health Information to: (i) provide Data

Aggregation services for Covered Entity's health care operations; (ii) create Limited Data Sets; and (iii) create De-Identified Information. De-Identified information does not constitute Protected Health Information and is not subject to the terms of this Addendum.

2.4 Minimum Disclosure Necessary. Business associate agrees to make uses and disclosures and requests for protected health information consistent with Covered Entity's minimum necessary policies and procedures.

2.5 Limitations on Uses and Disclosures. Notwithstanding anything to the contrary in this Addendum or the Terms of Service, Business Associate: (i) may use or disclose Protected Health Information only if such use or disclosure is in compliance with this Addendum; and (ii) shall not use or disclose Protected Health Information in a manner that would violate HIPAA or the HITECH Act if done by Covered Entity, unless such use or disclosure is permitted by HIPAA and the HITECH Act for Business Associate.

### **3. Obligations of Business Associate.**

3.1 Limitations on Uses and Disclosures. Business Associate shall not use or further disclose any Protected Health Information other than as Required by Law or as required or permitted by this Addendum.

3.2 Safeguards. Business Associate shall use appropriate administrative, physical, and technical safeguards and comply with the Security Rule to prevent use or disclosure of Protected Health Information other than as provided for by this Addendum and to reasonably and appropriately protect the confidentiality, integrity, and the availability of Protected Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity.

3.3 Reporting. Business Associate shall report to Covered Entity:

3.3.1 A use or disclosure of Protected Health Information not provided for by this Addendum of which it becomes aware, including Breaches of Unsecured Protected Health Information; and/or

3.3.2 A Security Incident of which it becomes aware, including Breaches of Unsecured Protected Health Information; provided that any Security Incidents that are "unsuccessful" and do not represent risks to Protected Health Information, such as "pings" on a firewall, may be reported through routine reports.

3.4 Subcontractors. Business Associate shall ensure that any of its subcontractors or agents that create, receive, maintain, or transmit Protected Health Information on behalf of Business Associate: (i) agree to the same restrictions and conditions that apply to Business Associate with respect to such Protected Health Information; and (ii) agree to implement reasonable and appropriate safeguards to protect Protected Health Information.

3.5 Access. Business Associate shall make available and provide access to Protected Health Information in a designated record set to the Covered Entity to allow Covered Entity to meet its obligations under 45 CFR Section 164.524 and the HITECH Act.

3.6 Amendment. Business Associate shall make amendments to Protected Health Information in a designated record set as directed or agreed to by Covered Entity to allow Covered Entity to meet its obligations under 45 CFR Section 164.526, or take other measures necessary to satisfy Covered Entity's

obligations under 45 CFR Section 164.526.

3.7 Accountings of Disclosures. Business Associate shall document such disclosures of Protected Health Information and, upon request, shall provide to Covered Entity such information necessary to permit Covered Entity to comply with its accounting of disclosures obligations in accordance with 45 CFR Section 164.528 and the HITECH Act. Unless the Parties otherwise agree, Covered Entity shall not provide Business Associate's contact information to an Individual in response to a request for an accounting of disclosures.

3.8 Disclosure to the Secretary. Business Associate shall make internal practices, books, and records, including policies and procedures relating to the use and disclosure of Protected Health Information received from, or created by Business Associate on behalf of Covered Entity available to the secretary of the Department of Health and Human Services or his or her designee (the "Secretary"), in a time and manner designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with HIPAA. Notwithstanding the foregoing, no legal privilege or protection shall be deemed waived by virtue of this provision.

3.9 HITECH Compliance. Business Associate shall comply with 45 CFR Sections 164.308, 164.310, 164.312, and 164.316 of the Security Rule as if Business Associate were a covered entity under HIPAA. Each privacy and security provision of the HITECH Act that is applicable to Covered Entity is hereby incorporated into this Addendum and shall apply to Business Associate.

#### **4. Responsibilities of Covered Entity.**

4.1 Notice of Privacy Practices. Provide Business Associate with Covered Entity's notice of privacy practices, as well as any changes to such notice, to the extent such notice affects Business Associate's permitted or required uses and disclosures of Protected Health Information.

4.2 Obtain Permissions. Obtain any and all necessary authorizations, consents, and other permissions by individuals for Business Associate to fulfill its obligations under the Terms of Service and to use or disclose Protected Health Information as permitted under this Addendum.

4.3 Restrictions. Notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with HIPAA or the HITECH Act.

4.4 No Impermissible Requests. No request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under HIPAA or the HITECH Act if done by Covered Entity.

4.5 Secure Transmissions. Transmit or provide Protected Health Information to Business Associate in a secure manner.

#### **5. Term and Termination.**

5.1 Term. The term of this Addendum shall commence as of the Effective Date and shall terminate when the underlying SmartSheet10™ Terms of Service is terminated or a party terminates for cause as authorized in Section 5.2 below, whichever is sooner.

5.2 Termination for Cause. Upon either Party's knowledge of a material breach or violation by the other Party of this Addendum, HIPAA or the HITECH Act, the non-breaching Party may: (i) terminate the



Terms of Service upon notice to the breaching Party if the breaching Party does not cure the breach or end the violation within thirty (30) days from receipt of written notice specifying the breach, or (ii) report the violation to the Secretary if neither termination of the Terms of Service nor cure of the material breach is feasible.

5.3 Effect of Termination. Except as provided below, upon termination of the Terms of Service for any reason, Business Associate shall return or destroy all Protected Health Information. In the event that Business Associate determines that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Addendum to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for as long as Business Associate maintains such Protected Health Information. This provision shall survive the termination or expiration of this Addendum or the Terms of Service for any reason.

## 6. Miscellaneous.

6.1 Interpretation. The Parties intend that this Addendum be interpreted consistently with their intent to comply with HIPAA, the HITECH Act, and other federal and state law. Except where this Addendum conflicts with the Terms of Service, all other terms and conditions of the Terms of Service remain unchanged. The Parties agree that, in the event an inconsistency exists between the Terms of Service and this Addendum, the provisions of this Addendum will control.

6.2 No Third-Party Beneficiaries. Except as expressly stated in the Terms of Service, the Parties do not intend to create any rights in any third parties.

6.3 Amendment. Except as otherwise specifically provided, this Addendum may be amended or modified only in a writing signed by the Parties. The Parties agree to take such action as is necessary to amend this Addendum from time-to-time as is necessary for the Parties to comply with state and federal law, including HIPAA and the HITECH Act.

6.4 Assignment. No Party may assign its respective rights and obligations under this Addendum without the prior written consent of the other Party.

6.5 Governing Law. This Addendum will be governed by the laws of the State of Michigan, without reference to Michigan's choice of law rules.

6.6 Waiver. No change, waiver, or discharge of any liability or obligation under this Addendum on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation or shall prohibit enforcement of any obligation, on any other occasion.