

TRACKWISE DIGITAL SERVICE AGREEMENT

THIS TRACKWISE DIGITAL SERVICE AGREEMENT (“AGREEMENT”) IS INCORPORATED INTO AND MADE A PART OF AN ORDER FORM EXECUTED BY SPARTA SYSTEMS INC., A NEW JERSEY CORPORATION, WITH OFFICES AT 2000 WATERVIEW DRIVE, SUITE 300, HAMILTON, NJ 08691 (“SPARTA”) AND THE ENTITY IDENTIFIED AS THE SUBSCRIBER IN THE ORDER FORM (“SUBSCRIBER”) BETWEEN SPARTA AND SUCH SUBSCRIBER (EACH A “PARTY” AND COLLECTIVELY, THE “PARTIES”). THIS AGREEMENT GOVERNS SUBSCRIBER’S ACQUISITION AND USE OF SPARTA’S PROPRIETARY SERVICE KNOWN AS TRACKWISE DIGITAL. THIS SERVICE MAY NOT BE ACCESSED BY A DIRECT COMPETITOR, EXCEPT WITH SPARTA’S PRIOR WRITTEN CONSENT. IN ADDITION, TRACKWISE DIGITAL MAY NOT BE USED FOR ANY BENCHMARKING OR COMPETITIVE PURPOSE. THIS AGREEMENT WAS LAST UPDATED ON MARCH 12, 2019 AND IS EFFECTIVE AS OF THE DATE OF THE ORDER FORM. IN THE EVENT OF A CONFLICT BETWEEN THE TERMS OF AN ORDER FORM AND THIS AGREEMENT, THE TERMS OF THIS AGREEMENT WILL PREVAIL.

References in these General Terms to “the Agreement” mean collectively the Order Form executed by the Parties and describing the products and services ordered by Subscriber from Sparta, any additional Order Forms incorporating these General Terms and related SOWs. Consulting Services (defined below) shall be provided pursuant to one or more separately signed statements of work (each a “Statement of Work” or “SOW”), which is incorporated by reference into the Agreement.

GENERAL TERMS AND CONDITIONS

1. DEFINITIONS.

As used in this Agreement:

1.1. “**TrackWise Digital**” means Sparta’s software-as-a-service applications as hosted and described in the Documentation and subscribed to under an Order Form, to which Subscriber is being granted access under this Agreement.

1.2. “**Account**” means a unique administrator account through which Subscriber enables its Authorized Users to access and use TrackWise Digital.

1.3. “**Authorized User**” means Subscriber’s administrators and end-users who are active employees of Subscriber, or are authorized by Subscriber to access and use TrackWise Digital solely for Subscriber’s internal business purposes. An Authorized User is always a Named User.

1.4. “**Confidential Information**” means any and all of the following, disclosed by one Party to the other Party orally, in writing or in any form which is either: (i) marked or identified as “confidential” at the time of disclosure; or (ii) of a nature that a reasonable business person would understand, under the circumstances, to be confidential or proprietary; and (iii) all software, research and development information, know-how, methodologies, materials, formulae, templates, brochures, configurations, books, compositions, manufacturing and production processes and techniques, technical data, training curricula, improvements, designs, drawings, specifications, customer and supplier lists and information (including, but not limited to, all account information, files, programs, plans, data and related information), sales data and plans, pricing and cost information, strategic plans, business and marketing plans and proposals, assembly, test, installation, service and inspection instructions and procedures, technical, operating and service and maintenance manuals and data and engineering, programming, service and maintenance notes and logs and related documentation or other information disclosed in connection with the performance of this Agreement or any Order Form. The following information is Sparta’s Confidential Information whether or not marked or identified as such: (a) TrackWise Digital, including any related software code and Documentation; (b) the terms of this Agreement including all Order Forms and SOWs and pricing; and (c) feedback from Subscriber or any of its employees, agents, or contractors related to TrackWise Digital or any other Sparta products and services and Sparta’s roadmaps, product plans, product designs, architecture, technology and technical information, security audit reviews, business and marketing plans, and business processes, however disclosed. Subscriber Data is Subscriber’s Confidential Information, whether or not marked or identified as such.

1.5. **“Consulting Services”** means technical account management, configuration or training provided by Sparta pursuant to a mutually agreeable Statement of Work. Consulting Services do not include Subscription Care Support Services.

1.6. **“Documentation”** means the explanatory written materials and electronic files regarding TrackWise Digital that are provided by Sparta to Subscriber, as updated by Sparta from time to time.

1.7. **“Error”** means a verifiable and reproducible failure of TrackWise Digital to materially conform to its Documentation.

1.8. **“Fees”** means the fees specified in the Order Form and/or invoice for TrackWise Digital, Consulting Services and/or Subscription Care Support Services.

1.9. **“Intellectual Property”** means: all (i) trademarks, service marks, brand names, certification marks, collective marks, d/b/a's, Internet domain names, logos, symbols, trade dress, assumed names, fictitious names, trade names, and other indicia of origin, all applications and registrations for the foregoing, and all goodwill associated therewith and symbolized thereby, including all renewals of the same; (ii) inventions and discoveries, whether patentable or not, and all patents, registrations, invention disclosures and applications therefor, including divisions, continuations, continuations-in-part and renewal applications, and including renewals, extensions and reissues; (iii) confidential information, trade secrets and know-how, including processes, schematics, business methods, formulae, drawings, prototypes, models, designs, customer lists and supplier lists; (iv) published and unpublished works of authorship, whether copyrightable or not (including databases and other compilations of information), copyrights and database rights therein and thereto, and registrations and applications therefor, and all renewals, extensions, restorations and reversions thereof; and (v) moral rights, design rights, mask works, rights of privacy and publicity, and all other intellectual property rights.

1.10. **“Named User”** means each of the specific individuals authorized to access TrackWise Digital at any given time under a Named User License. Individuals other than the ones specified may not access TrackWise Digital under a Named User License

1.11. **“Named User License”** means a license for a single-user log-in account for TrackWise Digital. Each Named User License shall be in addition to the number of log-in accounts included with a Concurrent User License, but shall be subject to the same limits as the Concurrent User Licenses on the maximum number of users who may be logged into TrackWise Digital at any given time.

1.12. **“Order Form”** means a mutually agreed order form that describes TrackWise Digital purchased by Subscriber. The Parties may agree to multiple Order Forms and each Order Form is hereby incorporated and made a part of this Agreement.

1.13. **“Privacy Policy”** means the practices set forth regarding Sparta's collection, use and disclosure of information as posted on TrackWise Digital, as the same may be modified by Sparta from time to time to reflect the latest protocols on the data collected, used and disclosed by Sparta. The terms of the Privacy Policy are hereby incorporated by reference into this Agreement.

1.14. **“salesforce.com”** means the service provided by salesforce.com to Subscriber in order to obtain the core functions of TrackWise Digital.

1.15. **“Statement of Work”** or **“SOW”** means a statement of work for Consulting Services, signed by both Parties, setting forth the Consulting Services and deliverables, if any, to be performed by Sparta as well as the corresponding fees to be paid by Subscriber.

1.16. **“Subscriber Data”** means any data, information or materials provided or submitted by Subscriber to TrackWise Digital or retrieved by TrackWise Digital from Subscriber's salesforce.com account.

1.17. **“Subscription Care Support Services”** means the technical support services for TrackWise Digital as set forth in Subscription Care Policy found online at <https://www.spartasystems.com/SpartaSystemsNew/files/a3/a3c9cefe-f452-4d03-9c10-75411de434eb.pdf>, which is included in the annual Fees for TrackWise Digital.

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2. TERMS OF ACCESS.

2.1. Access Authority and Conditions. Subject to Subscriber's compliance with the terms of this Agreement and applicable Order Forms, Sparta hereby grants Subscriber the right to access TrackWise Digital (for the term identified in an Order Form) on a limited, revocable, non-exclusive, non-transferable basis, solely for the purpose of creating, updating, transmitting, storing and retrieving Subscriber Data for the number of Authorized Users specified in an Order Form accepted by Sparta. Subscriber shall use TrackWise Digital in accordance with the Documentation and only for the quantity of processes purchased by Subscriber as reflected in an Order Form.

2.2. Access and Use Restrictions. Access and use by Subscriber and its Authorized Users to TrackWise Digital and Subscriber Data are subject to the terms of this Agreement, the Order Form and the Documentation, including, without limitation, the following terms:

2.2.1. Subscriber may not gain access, attempt to gain access, by any means, to any unauthorized portion of TrackWise Digital. Subscriber may not circumvent any limit on the number of Authorized Users permitted under this Agreement.

2.2.2. Subscriber may not (and may not permit others to), directly or indirectly: (i) reverse engineer or otherwise attempt to discover the source code or underlying ideas or algorithms of TrackWise Digital; (ii) modify, translate, or create derivative works based on TrackWise Digital; (iii) rent, lease, distribute, sell, assign or otherwise transfer rights to TrackWise Digital; (iv) use TrackWise Digital for timesharing or service bureau purposes or otherwise for the benefit of a party (except Authorized Users, as expressly permitted in this Agreement); or (v) misappropriate any of Sparta's software, technology or other services or use TrackWise Digital or any Consulting Service to, or permit, enable or assist a third party to, create a competing product or service.

2.2.3. Subscriber may not use or attempt to use TrackWise Digital to obtain electronic data or other information except as authorized under this Agreement.

2.2.4. Sparta may change, update, alter or supplement all or any portion of TrackWise Digital and all or any portion of the information provided in connection thereto at its sole discretion and Sparta will provide commercially reasonable notice to Subscriber of any such material change.

2.2.5. Subscriber may not bypass or disable any protections that may be put in place against unlicensed use of TrackWise Digital. Subscriber may not use or access TrackWise Digital or any Consulting Services or any Confidential Information of Sparta or third-parties in any way that might adversely affect the security, stability, performance or functions of TrackWise Digital, including by introducing any malware into TrackWise Digital or any part of TrackWise Digital.

2.2.6. Subscriber may not use the salesforce.com org provisioned by Sparta for any purpose other than exclusively using TrackWise Digital.

2.3. Access and Support. Subscriber is responsible for making all arrangements necessary for internet access to TrackWise Digital and any charges associated with such access. Subscriber is responsible for obtaining and maintaining all computer hardware, software and communications equipment needed to access and use TrackWise Digital. TrackWise Digital is dependent on Subscriber's implementation and configuration of TrackWise Digital and the availability and performance of technology from third-party software and hardware vendors including but not limited to salesforce.com, salesforce AppExchange products and custom applications, Microsoft, Google, and the providers of various internet browsers. Subscriber acknowledges that TrackWise Digital and its features and functionality are dependent on Subscriber's proper configuration of TrackWise Digital, the availability of and proper use by Subscriber of salesforce.com, or other factors outside of Sparta's control. Sparta has no control over, and is not liable for performance issues or downtime of TrackWise Digital to the extent caused by such factors. Furthermore, if and to the extent TrackWise Digital cannot for any reason access Subscriber's salesforce.com account, Sparta will be excused from any resulting nonperformance of TrackWise Digital. Subscriber acknowledges that to provide TrackWise Digital, Subscriber Data leaves the salesforce.com system and that Sparta is responsible for Subscriber Data only when it is resident within the salesforce.com system

2.4. Authorized Users. Subject to the terms and conditions of this Agreement and any limitations set forth in an Order Form, Sparta will provide to Subscriber and its Authorized Users access to TrackWise Digital for Subscriber's internal business use only. Subscriber shall designate the Authorized Users who will have access to TrackWise Digital through its Account. All Authorized Users must be identified by a unique email address and user name. In connection with the use of TrackWise Digital by an Authorized User, Subscriber will: (i) make each such Authorized User aware of the terms of this

Agreement, the Privacy Policy and the Documentation, including, without limitation, the use limitations contained in this Section; (ii) monitor each such Authorized User's compliance with the terms contained in this Agreement and the Documentation; and (iii) remain responsible to Sparta for any violations of this Agreement and the Documentation by any Authorized User. Subscriber is solely responsible for the actions of an Authorized User relating to access and use of TrackWise Digital, without limitation. In the event an Authorized User is no longer authorized by Subscriber to access and use TrackWise Digital, Subscriber shall terminate or otherwise disable such access and, to the extent required to implement termination of such access, notify Sparta promptly.

2.5. Subscriber Primary Account. Sparta will provide Subscriber a primary administrator Account for managing, requesting access for, and granting access to its Authorized Users.

2.6. Passwords. Subscriber shall be responsible for activating Authorized Users through use of the Account. Subscriber and its Authorized Users are responsible for maintaining the confidentiality of all passwords and for ensuring that each password is used only by the assigned Authorized User. Sparta will have no liability for any loss or damage arising from Subscriber's failure to comply with the terms of this Agreement.

2.7. Acceptable Use. Subscriber shall not and shall ensure that none of its Authorized Users or any other user under its Account:

2.7.1. transmit, post, distribute, store or destroy material in violation of any applicable law, rule or regulation (including, but not limited to, laws, rules or regulations governing the collection, processing or transfer of personal information);

2.7.2. violate or attempt to violate the security of TrackWise Digital including attempting to probe, scan or test the vulnerability of a system or network, or breach security or authentication measures, without proper authorization, or otherwise avoid, bypass, remove, deactivate, impair, descramble, or otherwise circumvent any technological measure implemented by Sparta or any of its providers to protect TrackWise Digital;

2.7.3. aggregate, copy or duplicate in any manner any part of TrackWise Digital;

2.7.4. frame or link to TrackWise Digital (including any page or information made available on TrackWise Digital), unless permitted by Sparta in writing;

2.7.5. input into TrackWise Digital any content or material that promotes or endorses false or misleading information or illegal activities, or endorses or provides instructional information about illegal activities or other activities prohibited in this Agreement or the terms of use made available on TrackWise Digital;

2.7.6. access data not intended for Subscriber, or log into a part of TrackWise Digital or account that Subscriber is not authorized to access;

2.7.7. harass, incite harassment or advocate harassment of any group, company, or individual;

2.7.8. send unsolicited mail or email via TrackWise Digital, make unsolicited phone calls or send unsolicited faxes promoting and/or advertising products or services to any user, or contact any users that have specifically requested not to be contacted by Subscriber;

2.7.9. attempt to interfere with service to any user of TrackWise Digital including, without limitation, via means of submitting a virus to TrackWise Digital or overloading, "flooding", "spamming", "mailbombing" or "crashing";

2.7.10. promote or endorse an illegal or unauthorized copy of another person's copyrighted work;

2.7.11. send automated queries of any kind to TrackWise Digital without the express, advance, written permission of Sparta, which includes, among other things: using any software that sends queries to TrackWise Digital to determine how a website or web page "ranks" for various queries, "meta-searching," and performing "offline" searches on TrackWise Digital;

2.7.12. use manual or automated software, devices, scripts, robots, backdoors or other means or processes to access, "scrape," "crawl" or "spider" any web pages or other services offered at TrackWise Digital;

2.7.13. systematically retrieve data or other content from TrackWise Digital to create or compile, directly or indirectly, in single or multiple downloads, a collection, compilation, database, directory or the like, whether by manual methods, through the use of bots, crawlers, or spiders, or otherwise; or

2.7.14. post, link to or submit any content that is defamatory, libelous, implicitly or explicitly offensive, vulgar, obscene, threatening, abusive, hateful, racist, discriminatory, of a menacing character or likely to cause annoyance, inconvenience, embarrassment, anxiety or could cause harassment to any person or include any links to pornographic, indecent or sexually explicit material of any kind, as determined in Sparta's reasonable discretion;

2.7.15. use TrackWise Digital in any way that is (i) in any way unlawful, illegal, fraudulent or harmful; (ii) in connection with any unlawful, illegal, fraudulent, or harmful purpose or activity; (iii) in a manner that may cause Sparta to have legal liability or disrupt others' use of TrackWise Digital; (iv) in any way connected to any malware, malicious code, virus or other harmful code; or (v) disrupting or risks disrupting the overall performance and up-time of TrackWise Digital due to Subscriber's use of excessive storage capacity or bandwidth outside of the ordinary course of business or

2.7.16. Use the salesforce.com org in which TrackWise Digital operates for any purpose other than to host and operate TrackWise Digital.

2.8. **Suspension of Service.** Sparta may suspend Subscriber's access to TrackWise Digital if Subscriber fails to cure a payment breach under this Agreement within ten (10) days after delivery of written notice thereof (without limiting Sparta's right to terminate this Agreement), or if Sparta reasonably suspects that Subscriber's use of TrackWise Digital violates any of the acceptable use criteria specified above

3. SUBSCRIPTION CARE SUPPORT.

Subject to payment of the Fees set forth in the Order Form, Sparta will provide the technical support services for TrackWise Digital as set forth in the Sparta Subscription Care Support Policy

4. CONSULTING SERVICES.

4.1. **General.** Sparta will provide Subscriber with the requisite hours of Consulting Services as identified within a Statement of Work. The Parties may choose to define a set of deliverables within a Statement of Work, provided however that Sparta will not be obligated to provide Consulting Services beyond the hours set forth in the Statement of Work.

4.2. **Fees, Expenses & Cancellation.** Sparta will invoice Subscriber on a monthly basis for all Consulting Services rendered and accrued expenses, provided however that for the purpose of any QuickStart Implementation Services, all fees will be as identified within the Order Form and due in accordance with Section 5.1 (Payment). Subscriber will reimburse Sparta for actual and verifiable out-of-pocket expenses (including travel and related expenses) reasonably incurred by Sparta in connection with any SOW. Sparta may charge for travel time at 50% of the applicable rate when travel time exceeds 4 hours. Sparta will not be responsible for any delay caused by Subscriber or any third party under contract with Subscriber. Subscriber may delay or cancel Consulting Services by written notice to Sparta, provided that if Subscriber delays or cancels upon less than 2 weeks prior written notice and Sparta is unable to reallocate the applicable Sparta personnel on a billable basis to another Subscriber project (which Sparta will use reasonable efforts to do), then Sparta will invoice Subscriber for any Consulting Services that are delayed or cancelled by Subscriber without such 2 week notice, at the applicable daily rate for such Consulting Services.

4.3. **Ownership.** Sparta will retain sole ownership of all right, title and interest, including without limitation all intellectual property rights, in and to the Consulting Services and deliverables (if any), including techniques, knowledge and processes. Subject to Subscriber's payment in full of all Fees due under an SOW and satisfaction of all claims, Sparta hereby grants to Subscriber a non-exclusive, non-transferable license to use the Consulting Services and deliverables for Subscriber's internal business purpose, for the Term of this Agreement.

5. PAYMENTS.

5.1. **Payment.** In consideration of the rights and services granted and provided hereunder (other than the Consulting Services), Subscriber shall pay Sparta the Fees set forth in the Order Form. Subscriber shall remit payment to Sparta within thirty (30) days of receipt of invoice. Sparta shall have the right to assess a late payment charge on any overdue amounts equal to the lesser of: (i) two percent (2%) per month; or (ii) the highest rate allowed by applicable law. Additional payment terms may be set forth in the Order Form. All Fees paid pursuant to this Agreement and any applicable Order Form are non-refundable and all services ordered pursuant to an Order Form are non-cancelable, unless expressly stated to the contrary. In the event that Sparta seeks legal recourse for the collection of any unpaid Fees from Subscriber, Sparta will be entitled to an award of reasonable attorney's fees and other costs incurred by Sparta in such matter.

5.2. **Taxes.** The Fees specified pursuant to this Agreement do not include taxes or duties. If Sparta is required to pay or account for any taxes, public fees, duties, deductions or withholdings (collectively "Taxes"), then such Taxes shall be borne by Subscriber. Taxes shall not include taxes based upon Sparta's income.

6. TERM AND TERMINATION.

6.1. **Term of Agreement.** The term of this Agreement will commence on the Subscription Start Date and will end on the Subscription End Date as identified in the Order Form ("Initial Term"), unless this Agreement is terminated earlier as provided herein. Upon termination, Subscriber's right to access or use Subscriber Data via TrackWise Digital immediately ceases, and Sparta will have no obligation to maintain or forward any Subscriber Data.

6.2. **Renewal.** Sparta shall provide notice via electronic mail of the upcoming renewal of a Subscription Term approximately 60 days prior to the end of the Initial Term and any subsequent renewal terms. Unless either Party gives notice of its intent not to renew the Agreement at least forty-five (45) days prior to the end of the then current term, this Agreement will automatically renew for a subsequent thirty six (36) month period under the terms of this Agreement, and the then-current Subscription Support Policy as posted at <https://www.spartasystems.com/SpartaSystemsNew/files/a3/a3c9cefe-f452-4d03-9c10-75411de434eb.pdf>, otherwise renewal Terms shall be for the period specified in the Order Form. As used herein, the Initial Term and any renewals thereof are referred to collectively as the "Term".

6.3. **Termination for Cause.** Either Party may terminate this Agreement upon written notice to the other Party if the non-terminating Party materially breaches this Agreement and fails to cure such breach within 30 days of delivery of written notice. Notwithstanding the foregoing, if Subscriber fails to cure any payment default within 10 days of delivery of written notice thereof, Sparta may terminate this Agreement.

6.4. **Survival.** Upon any expiration or termination of this Agreement, provisions which by their express terms or nature continue after expiration or termination will survive, including without limitation the following sections: 2.2, 2.7, 4.3, 5, 6.4, 7-11, 12.3, and 13.

7. INTELLECTUAL PROPERTY.

7.1. Notwithstanding anything herein to the contrary, Sparta retains all right, title and interest, including all Intellectual Property rights, in and to: (a) TrackWise Digital, TrackWise Digital, the Documentation, TrackWise Digital, the Consulting Services, Subscription Care Support Services, data regarding Subscriber's use of TrackWise Digital, and all other software, technology, content, deliverables and materials provided or prepared by or on behalf of Sparta or used by Sparta in providing TrackWise Digital; (b) all ideas, concepts, techniques, inventions, innovations, know-how, data, designs, software, systems, procedures, processes, tools, utilities, metrics, methodologies and technologies related to, developed with or from, or provided in connection with or as part of, any of the foregoing, and all derivative works, customizations, enhancements, modifications, extensions and improvements in or related to any of the foregoing; and (c) any and all suggestions, ideas, enhancement requests, feedback, recommendations and other information provided by Subscriber, any employee, agent or contractor of Subscriber, or any other person or entity relating to the foregoing. Except for the rights expressly granted herein, Sparta does not license or transfer to Subscriber, any Authorized User, or other third-party any rights to any of Sparta's Intellectual Property or technology. This Agreement is not a sale and does not convey to Subscriber any rights of ownership in or related to any of the foregoing. Sparta's names, logos, and product and service names are trademarks of Sparta and no right or license is granted to use them. No implied licenses are granted herein and all rights not expressly granted to Subscriber herein are reserved by Sparta.

8. CONFIDENTIALITY.

8.1. **Confidential Information.** Each Party shall treat as confidential and shall not disclose or transmit any Confidential Information of the other Party other than to such Party's employees, affiliates, contractors, consultants or advisors (each, a "Representative") who have a bona fide need-to-know such Confidential Information, provided that: (i) such Representatives are bound by written obligations consistent with and at least as restrictive as the provisions of this Section 8; (ii) the receiving party shall be responsible for any breach by its Representatives; and (iii) the Representative is required to use the same degree of care as it uses to protect the receiving party's own Confidential Information of a similar nature, but, in no case, less than reasonable care, or if more restrictive, the degree of care required by applicable law or regulation. The receiving party shall use the other party's Confidential Information only for the purposes described in this Agreement.

8.2. **Exceptions.** Confidential Information shall not include: (i) any information that is available to the public (provided that such information did not become public because of receiving party's disclosure of such information in breach of this Agreement), (ii) any information received by the receiving party from sources other than the providing party (provided that such source is not

subject to a confidentiality agreement with regard to such information), or (iii) any information that is independently developed by the receiving party without use of or reference to information from the providing party. Notwithstanding the foregoing, either Party may reveal Confidential Information to any regulatory agency or court of competent jurisdiction if such information to be disclosed is (x) approved in writing by the providing party for disclosure or (y) required by law, regulatory agency or court order to be disclosed by the receiving party, provided, unless prohibited by applicable law, that prior written notice of such required disclosure is given to the providing party and provided further that the receiving party shall cooperate with the providing party to limit the extent of such disclosure.

9. REPRESENTATIONS AND WARRANTIES.

9.1. **Due Organization.** Each Party represents that it is duly organized, validly existing, and in good standing in the jurisdiction in which it is incorporated, and that it has the full corporate power and authority to execute and deliver this Agreement and comply with its obligations herein.

9.2. **Conflicting Agreements.** Each Party represents that it has no outstanding agreement that would conflict in any material way with the provisions of this Agreement, or that would preclude it from complying with the provisions hereof.

9.3. **Sparta Warranties.** Sparta represents and warrants that TrackWise Digital will substantially correspond to the descriptions set forth in the Documentation, as it may be updated from time to time, provided that the Documentation's description of features and functionality of TrackWise Digital will not be materially diminished during the Term. In the event of a breach of the foregoing warranty, Sparta shall, at its option: (i) correct the non-conforming component of TrackWise Digital, or (ii) refund to Subscriber at a pro-rata rate any prepaid Fees for the remainder of the then in-current Term. Upon Subscriber's receipt of any such refund under this provision, any licenses or access to TrackWise Digital will automatically terminate.

9.4. **Subscriber Warranties.** Subscriber represents and warrants to Sparta that Subscriber or its licensors own all right, title and interest in and to all Subscriber Data.

9.5. **Disclaimer of All Other Warranties.** EXCEPT FOR EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT, SPARTA MAKES NO ADDITIONAL REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED IN FACT OR BY OPERATION OF LAW, OR STATUTORY, AS TO ANY MATTER WHATSOEVER. SPARTA EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SPARTA DOES NOT WARRANT THAT TRACKWISE DIGITAL OR THE SUBSCRIPTION SUPPORT SERVICES WILL BE ERROR FREE, WILL MEET SUBSCRIBER'S REQUIREMENTS, OR WILL BE TIMELY OR SECURE. SUBSCRIBER MAY NOT MAKE OR PASS ON ANY REPRESENTATIONS OR WARRANTY ON BEHALF OF SPARTA TO ANY THIRD PARTY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, SERVICES AND SUBSCRIPTION SUPPORT SERVICES ARE PROVIDED "AS-IS."

10. LIMITATION OF LIABILITY

10.1. **Limitation of Liability.** TO THE EXTENT PERMITTED BY LAW, EXCEPT FOR SUBSCRIBER'S (I) NON-COMPLIANCE WITH THE PAYMENT OBLIGATIONS OR THE ACCESS OR USE RESTRICTIONS CONTAINED IN THIS AGREEMENT, OR (II) VIOLATIONS OF SPARTA'S INTELLECTUAL PROPERTY RIGHTS, OR (III) BREACH OF SUBSCRIBER'S OBLIGATIONS PURSUANT TO SECTION 13.9 (EXPORT CONTROLS); NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, INCLUDING, BUT NOT LIMITED TO, LOSS OF USE, CONTENT, DATA, PROFITS OR GOODWILL, WHETHER IN AN ACTION BASED ON ANY LEGAL THEORY, CONTRACT, TORT OR OTHERWISE, REGARDLESS OF WHETHER EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE EXTENT PERMITTED BY LAW, SPARTA AND ITS AFFILIATES' AGGREGATE AND CUMULATIVE LIABILITY FOR DAMAGES (REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE) OR OTHERWISE) SHALL IN NO EVENT EXCEED THE AMOUNT OF FEES PAID BY SUBSCRIBER FOR TRACKWISE DIGITAL UNDER THIS AGREEMENT DURING THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY.

10.2. **Third-Party Liability.** TO THE EXTENT PERMITTED BY LAW, SPARTA SHALL NOT BE LIABLE TO SUBSCRIBER FOR, AND HEREBY DISCLAIMS, ANY DAMAGES OR LOSSES THAT ARE CAUSED BY OR RESULT FROM THE CONDUCT, SOFTWARE, CONTENT, PRODUCTS, SERVICES OR INFORMATION OF ANY THIRD PARTY.

11. INDEMNIFICATION.

11.1. **Sparta Intellectual Property Infringement.** Notwithstanding anything to the contrary in this Agreement, Sparta shall indemnify, defend, or, at its option, settle any third-party claim or suit against Subscriber based on a claim that TrackWise Digital infringes any third-party copyright, patent, trademark or trade secret that relate to Subscriber's use of TrackWise Digital (a "Third-Party IP Claim"). Sparta shall pay the damages, reasonable and verifiable costs, and expenses which are finally awarded against Subscriber by final judgment of a court of competent jurisdiction (or settlements agreed to in writing by Sparta), directly attributable to such Third-Party IP Claim.

11.2. **Conditions.** Sparta's indemnification obligations under Section 11.1 are subject to the following conditions: (i) Subscriber provides Sparta with prompt written notice of any Third-Party IP Claim; (ii) Sparta retains sole control of such defense and/or settlement; (iii) Subscriber will not prejudice the defense of any Third-Party IP Claim; and (iv) Subscriber will provide Sparta with such cooperation, assistance, documents, authority and information as it may reasonably require in relation to any Third-Party IP Claim and defense and/or settlement thereof. To the extent that use of TrackWise Digital is enjoined, in connection with an actual or threatened Third-Party IP Claim, Sparta may, at its option, either: (a) procure for Subscriber the right to use TrackWise Digital, (b) replace TrackWise Digital with other suitable products; or (c) refund any prepaid portion of the Fee(s) paid by Subscriber for the affected portion thereof. Sparta shall have no liability under this provision or otherwise to the extent a claim or suit is based upon (w) use of TrackWise Digital in a manner materially different than what is set forth in the Documentation, (x) use of TrackWise Digital in combination with software or hardware not provided by Sparta, if infringement would have been avoided in the absence of such combination, (y) modifications to, or combinations with, TrackWise Digital not made by Sparta, if infringement would have been avoided by the absence of such modifications or combinations, or (z) use of any version other than a current release of TrackWise Digital, if infringement would have been avoided by use of a current release.

11.3. **Subscriber Indemnification.** Notwithstanding anything to the contrary in this Agreement, Subscriber shall indemnify, defend, or, at its option, settle any third-party claim or suit against Sparta to the extent based on a claim or suit arising out of or related to Subscriber Data; any of Subscriber's products or services; or negligent, reckless, illegal, or improper conduct of Subscriber's Authorized Users. Subscriber shall pay the damages, reasonable and verifiable costs, and expenses which are finally awarded against Sparta by final judgment of a court of competent jurisdiction (or settlements agreed to in writing by Subscriber), directly attributable to such claim, including any reasonable attorneys' fees incurred by Sparta.

11.4. **Sole and Exclusive Remedy.** SECTIONS 11.1 AND 11.2 STATE SPARTA'S ENTIRE OBLIGATION AND LIABILITY, AND SUBSCRIBER'S SOLE RIGHT AND REMEDY, FOR INFRINGEMENT BY ANY AS PART OF TrackWise Digital OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS. SECTION 11.3 STATES SUBSCRIBER'S ENTIRE OBLIGATION AND LIABILITY, AND SPARTA'S SOLE RIGHT AND REMEDY, FOR INFRINGEMENT OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS BY ANY SUBSCRIBER DATA OR ANY OTHER SUBSCRIBER PRODUCT OR SERVICE.

12. DATA AND DATA SECURITY.

12.1. **Ownership.** Subscriber retains ownership of all Subscriber Data. Subscriber, not Sparta, has sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Subscriber Data, and Sparta is not responsible or liable for Subscriber's actions related to the deletion, correction, destruction, damage, loss or failure to store any Subscriber Data. Subscriber acknowledges that when using TrackWise Digital it can make permanent changes and edits to the Subscriber Data in its salesforce.com instance, including mass updates and mass deletions.

12.2. **Access and Processing of Data.** Subscriber acknowledges that with each use of TrackWise Digital initiated by its Authorized Users, TrackWise Digital will access Subscriber's salesforce.com account to retrieve, manipulate, process and modify Subscriber Data based on its configuration of TrackWise Digital. Subscriber consents to such access solely as is necessary to provide TrackWise Digital and related services. However, Subscriber acknowledges that Sparta and its employees have no access to Subscriber's data within salesforce.com unless (1) special access is granted by Subscriber for a specific purpose, or (2) in the case data is requested as part of agreement termination per clause 12.4. Subscriber hereby grants to Sparta a nonexclusive license during the Term to access Subscriber's account and access, use, transmit, modify, copy and distribute Subscriber Data from time to time as Sparta deems necessary, solely for the purpose of providing TrackWise Digital, Consulting Services and Subscription Care Support Services to Subscriber and related support and administration.

12.3. **Data Management and Retrieval.** All access and interaction between TrackWise Digital and Subscriber's salesforce.com account are managed exclusively by Subscriber through its salesforce.com administration and security settings. Subscriber acknowledges that salesforce.com, not Sparta, stores Subscriber Data (as such term is defined in the SFDC Service Agreement linked below), and in the event this Agreement is terminated, it will not be Sparta's responsibility to make available to Subscriber a file of Subscriber Data upon termination; salesforce.com requires Sparta to first receive a request from Subscriber. Subscriber's use of TrackWise Digital shall be subject to the salesforce terms and conditions found at: <http://spartasystems.com/legal/SFDC-service-agreement.pdf>. As set forth in the SFDC Service Agreement, Subscriber will have thirty (30) days from the date of termination of this Agreement to request a copy of Subscriber Data that is stored on salesforce.com in accordance with the terms of the SFDC Service Agreement, which data will be made available to Subscriber in a .csv format. Any modifications to Subscriber Data made by TrackWise Digital outside of the salesforce.com Platform (as defined in the SFDC Service Agreement linked immediately above), if any, will not be captured in Subscriber Data as returned by salesforce.com. Certain TrackWise Digital service offerings may be hosted on Amazon Web Services, Box.com or other Sparta third-party hosting providers. Data management and retrieval upon termination will differ for data hosted on such providers.

12.4. Sparta will implement, as part of TrackWise Digital, commercially reasonable administrative, and technical measures designed to secure the Subscriber Data against accidental or unlawful loss, access or disclosure. Sparta's service providers will implement commercially reasonable administrative, physical, and technical measures designed to secure the Subscriber Data against accidental or unlawful loss, access or disclosure. Sparta, and its service providers, will maintain, at a minimum, a SOC-2 Type II report compliance audit documentation, or its equivalent, during the Term and will provide a copy to Subscriber once per year during the Term upon prior written request. Subscriber will immediately notify Sparta of any unauthorized use of TrackWise Digital or any other breach of security known to Subscriber.

12.5. **EU-US and SWISS-US Privacy Shield Framework.** Sparta complies with the EU-US and Swiss-US Privacy Shield Frameworks as set forth by the US Department of Commerce regarding the collection, use, and retention of personal information from European Union member countries and the United Kingdom and from Switzerland. Sparta has certified that it adheres to the Privacy Shield Principles of Notice, Choice, Accountability for Onward Transfer, Security, Data Integrity and Purpose Limitation, Access, and Recourse, Enforcement and Liability. Sparta is committed to applying those Principles to any and all personal data received from the EU and Switzerland. If there is any conflict between this Agreement or Sparta's privacy policy and the Privacy Shield Principles, the Privacy Shield Principles shall govern. To learn more about the Privacy Shield program, and to view our certification page, please visit www.privacyshield.gov.

13. MISCELLANEOUS.

13.1. **Notices.** Notwithstanding anything to the contrary in this Agreement, notices and other communications may be given or made pursuant to this Agreement via electronic mail. Notwithstanding the foregoing, any notice concerning a material breach, violation or termination hereof must be in writing and will be delivered: (a) by certified or registered mail; or (b) by an internationally recognized express courier or overnight delivery service. All written notices or other written communications to Sparta shall be provided to the address first listed above, and addressed to: **ATTENTION: LEGAL DEPARTMENT**. All written notices to Subscriber shall be sent to the address first listed above and addressed to the individual signing this Agreement, and shall be deemed to have been duly given when delivered personally, when deposited in the U.S. mail, postage prepaid, or when deposited with an overnight courier or delivery service. With respect to notices and other communications regarding Sparta's Privacy Policy, Subscription Care Support Policy, or other similar provisions, such notices shall be deemed given when posted to Sparta's website, or e-mailed to the Subscriber's Account administrator(s).

13.2. **Entire Agreement; Modification; Severability; Waiver.** This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements, oral or written, and all other communications between the Parties relating to such subject matter. This Agreement may not be amended or modified except by mutual written agreement. In the event that any court holds any provision of this Agreement as null, void or otherwise ineffective or invalid, such provision shall be deemed to be restated to reflect as nearly as possible the original intentions of the Parties in accordance with applicable law, and the remaining provisions shall remain in full force and effect. The unenforceability of any provision of this Agreement shall not affect the validity of the remaining provisions hereof. A waiver by either Party of a breach or failure to perform hereunder shall not constitute a waiver of any subsequent breach or failure.

13.3. **Independent Contractors.** Nothing contained in this Agreement shall be deemed or construed as creating a joint venture or partnership between any of the Parties hereto. Neither Party is by virtue of this Agreement authorized as an

agent, employee or legal representative of any other Party. Neither Party shall have the power to control the activities nor operations of any other and their status is, and at all times, will continue to be, that of independent contractors with respect to each other. Neither Party shall have any power or authority to bind or commit the other. Neither Party shall hold itself out as having any authority in contravention of this provision.

13.4. **Assignment.** Neither this Agreement, nor any right or obligation hereunder, may be assigned, transferred, delegated or subcontracted, by operation of law or otherwise, in whole or in part, by Subscriber without Sparta's prior written consent. Due to the importance of Subscriber's ownership and management, a Change of Control of Subscriber shall be deemed an assignment of this Agreement. "Change of Control" of Subscriber shall mean a transaction or series of transactions (i) pursuant to which control of Subscriber is acquired by persons or entities other than those who control Subscriber as of the Effective Date of this Agreement, or (ii) resulting in the sale of all or substantially all of Subscriber's assets utilizing any part of TrackWise Digital. Subject to the foregoing, the provisions of this Agreement shall be binding upon and inure to the benefit of the Parties, and their permitted successors and assigns. Any attempted assignment or transfer of this Agreement in violation of this provision shall be null and void.

13.5. **Publicity.** Neither Party may issue or make any press release, announcement or publication containing or otherwise use any of the other Party's trademarks without the other Party's prior written approval; provided that, during the term of this Agreement, Sparta may list the Subscriber: (i) as a Subscriber of TrackWise Digital on Sparta's website and (ii) in other TrackWise Digital marketing materials.

13.6. **Non-solicitation.** During the Term of this Agreement and for a period of two (2) years thereafter, Subscriber will not employ or solicit the employment or services of a Sparta employee without the prior written consent of Sparta. For purposes of this provision, the advertisement of employment opportunities by Subscriber in any public forum (including magazines, trade journals, publicly accessible internet services, classified advertisements, or job fairs open to the public) shall not be considered "solicitation", and the hiring of an individual as a result of his or her response to such a general employment advertisement or in response to his or her unsolicited employment inquiry shall not constitute a breach of this Agreement.

13.7. **Force Majeure.** Except for any payment obligations, neither Party will be liable for, or be considered to be in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement as a result of any cause or condition beyond such Party's reasonable control, so long as such Party uses all commercially reasonable efforts to avoid or remove such causes of non-performance or delay and provided further that the other Party may terminate this Agreement if such condition continues for a period of 60 days.

13.8. **Insurance.** Each Party shall bind and keep in force, for the term of this Agreement, appropriate insurance coverage necessary to provide minimum protection from liabilities and errors and omissions that may result from the use of the materials detailed in this Agreement.

13.9. **Export Controls.**

13.9.1. Subscriber acknowledges and agrees that the Parties' performance under this Agreement, including Subscriber's ability to access or to use TrackWise Digital is subject to U.S. export control laws and regulations, which may include, but are not limited to, the Export Administration Regulations, the International Traffic in Arms Regulations, and the various sanctions administered by the Office of Foreign Assets Control ("OFAC"), as amended from time to time (collectively, the "Export Control Laws"). Subscriber shall comply with Export Control Laws in its performance of this Agreement. In particular, and without limiting Subscriber's agreement to comply with all Export Control Laws, Subscriber hereby agrees that:

(A) it will not export, re-export, transfer or license any software, enable access to TrackWise Digital, to any person that is prohibited by U.S. law, including those persons identified as a "Specially Designated National" or "Blocked Person" as designated by OFAC (which is currently published under the Internet address <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>), or the various lists of prohibited or blocked persons maintained by the U.S. Government (which is currently published under the Internet address http://export.gov/ecr/eg_main_023148.asp);

(B) it will not export, re-export, transfer or license any software, enable access to TrackWise Digital, to any country, or person located in or acting on behalf of a person located in any country, that is subject to country sanctions administered by OFAC or prohibitions on re-exports or transfers under the EAR, which as at the date hereof shall include Cuba, Iran, Syria, North Korea, and Sudan, as well as any subsequent additions to this list of countries by

the respective U.S. government agencies (which information is currently available under the Internet address <http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>);

(C) it is not listed as a person, nor is it owned or controlled by a person, whose property or interests in property are blocked or subject to blocking under Export Control Laws; and

(D) it will not use the services and information provided under this Agreement in furtherance of any conduct which is prohibited under Export Control Laws.

13.9.2 If Subscriber knows, or if acting reasonably, should know, that TrackWise Digital could be exported, transferred or licensed in a manner violating applicable Export Control Laws, Subscriber shall immediately notify Sparta. Furthermore, if Sparta suspects or determines, in its sole and absolute discretion, that any sale of the software to Subscriber may violate applicable Export Control Laws, Subscriber acknowledges and agrees that Sparta may refuse to accept such order for TrackWise Digital, and may also immediately terminate this Agreement without prior notice, and such refusal or termination will not be a breach of this Agreement.

13.9.3 Subscriber agrees to defend, indemnify, and hold harmless Sparta and its Affiliates and their respective directors, officers, agents, employees, contractors, and assigns from and against any and all losses, liabilities, demands, claims, damages, suits, judgments, fines and penalties including attorney's fees which arise from or in connection with any violation by Subscriber of applicable Export Control Laws.

13.9.4 Subscriber agrees at all times to comply with applicable laws and regulations in its use of TrackWise Digital, including, without limitation, the provisions of the United States' Foreign Corrupt Practices Act ("FCPA") and the United Kingdom's Bribery Act 2010 ("Bribery Act").

13.10 **Governing Law.** This Agreement will be governed by the substantive laws of the State of New Jersey applicable to agreements made and wholly performed in New Jersey, without regard to the application of any conflicts of laws principles. Subscriber agrees that any claims, legal proceedings, disputes and/or litigation arising out of or in connection with this Agreement, will be brought solely in the federal or state courts located in the State of New Jersey, and the Parties irrevocably consent to the exclusive personal jurisdiction of such courts. SUBSCRIBER HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A JURY TRIAL TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

13.11 **Captions.** Section headings in this Agreement are used solely for convenient reference and shall not be deemed to define or limit the provisions of this Agreement. The Parties drafted this Agreement without any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted.

13.12 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute only one agreement. The execution and delivery of counterparts of this Agreement by electronic mail, electronic form (including execution by way of an electronic or other signature stamp ("E-signature")), website submission, facsimile or by original manual signature, regardless of the means or any such variation in pagination or appearance shall be binding upon the Parties executing this Agreement.