



MASTER SUBSCRIPTION AND SERVICES AGREEMENT

THIS MASTER SUBSCRIPTION AND SERVICES AGREEMENT (“AGREEMENT”) IS HEREBY INCORPORATED INTO AND MADE A PART OF AN ORDER FORM EXECUTED BY SPARTA SYSTEMS, INC. (“SPARTA”), A NEW JERSEY CORPORATION, WITH ITS PRINCIPAL PLACE OF BUSINESS AT 2000 WATERVIEW DRIVE, SUITE 300, HAMILTON, NJ 08691 AND THE ENTITY IDENTIFIED AS THE CUSTOMER OR SUBSCRIBER IN THE ORDER FORM (“SUBSCRIBER”) BETWEEN SPARTA AND SUBSCRIBER (EACH A “PARTY” AND COLLECTIVELY, THE “PARTIES”). BEFORE DOWNLOADING, ACCESSING, OR USING ANY PART OF THE SOFTWARE AND/OR SERVICES (COLLECTIVELY, THE “SPARTA PRODUCTS”, AS FURTHER DEFINED BELOW), PLEASE READ CAREFULLY THE FOLLOWING TERMS AND CONDITIONS CONTAINED IN THIS AGREEMENT AS THEY GOVERN ACCESS TO AND USE OF THE SPARTA PRODUCTS. THE SPARTA PRODUCTS MAY NOT BE ACCESSED BY A DIRECT COMPETITOR, EXCEPT WITH SPARTA’S PRIOR WRITTEN CONSENT. IN ADDITION, THE SPARTA PRODUCTS MAY NOT BE USED FOR ANY BENCHMARKING OR COMPETITIVE PURPOSE. THIS AGREEMENT WAS LAST UPDATED ON MAY 26, 2017 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 Sparta Products ordered by Subscriber from Sparta, any additional Order Forms incorporating these General Terms and related statements of work (each a “Statement of Work” or “SOW”), which are incorporated by reference into the Agreement.

GENERAL TERMS AND CONDITIONS

1. Definitions.

- 1.1. **“Account”** means a unique administrator account established by Subscriber to enable its Authorized Users to access and to use the Sparta Products.
- 1.2. **“Affiliate”** means any entity which controls, is controlled by, or is under common control with a Party, where “control” means the legal, beneficial or equitable ownership of at least a majority of the aggregate of all voting equity interests in such entity.
- 1.3. **“Authorized User”** means Subscriber’s administrators and end-users who are active employees of Subscriber, or are Authorized Third-Party Users; each of which are expressly authorized by Subscriber to access and to use the Sparta Products through Subscriber’s Account and solely for Subscriber’s internal business purposes. Subscriber is solely responsible for the actions of an Authorized User relating to access and use of the Sparta Products, without limitation. In the event Subscriber’s administrators, end-users, or its Authorized Third-Party Users are no longer authorized by Subscriber to access and to use Subscriber’s Account and the Sparta Products, Subscriber shall terminate or otherwise disable such access and, to the extent required to implement termination of such access, notify Sparta promptly. All Authorized Users must be identified by a unique e-mail address and user name.
- 1.4. **“Authorized Third-Party User”** means end-users of Subscriber’s third-party vendor, supplier, contractor, agent or other business relation that require limited access and use of the Sparta Products on behalf of Subscriber and for the benefit of Subscriber. All Authorized Third-Party Users must be authorized by Subscriber.
- 1.5. **“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, hardware reference manuals 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 shall be deemed Confidential Information whether or not marked or identified as such: (a) Sparta Products, including any related software code or Documentation; (b) Subscriber Content; (c) the terms of this Agreement including all Order Forms and pricing thereto; and (d) Sparta's roadmaps, product plans, product designs, architecture, technology and technical information, security audit reviews, business and marketing plans, and business processes, however disclosed.

- 1.6. **“Documentation”** means the then-current user documentation published and made generally available by Sparta for the Sparta Products and related Sparta services, as may be provided to Subscriber upon request or made electronically available to Authorized Users of the Sparta Products, in the form of manuals and functional descriptions, as the same may be modified by Sparta from time to time to reflect the latest release of the Sparta Products. The Documentation is hereby incorporated by reference into this Agreement.
- 1.7. **“Fees”** means the amounts payable to Sparta as specified in an Order Form for the Sparta Products.
- 1.8. **“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 (collectively, **“Trade Secrets”**); (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.
- 1.9. **“Malware”** means any software program or code which may destroy, interfere with, corrupt, or cause undesired effects on program files, data, or other information, executable code or application software macros.
- 1.10. **“Order Form”** means a mutually agreeable order form which describes the Sparta Products to be purchased by Subscriber. The Order Form is hereby incorporated by reference into this Agreement.
- 1.11. **“Privacy Policy”** means the practices set forth regarding Sparta's collection, use and disclosure of information as posted on Sparta's website (www.spartasystems.com), 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.
- 1.12. **“Sparta Products”** means: (i) the software-as-a-service product which extends the capabilities of Sparta's TrackWise® enterprise quality management system solution; and (ii) other software-as-a-service products or services developed and owned by Sparta, its Affiliates and/or their licensors as identified in an Order Form or purchase order.
- 1.13. **“Subscriber Content”** means all files, records, text, or data transmitted, stored or created by an Authorized User through use of the Sparta Products.



- 1.14. **“Subscription Support Services”** means the technical support services for the Sparta Products as set forth in Section 2 of the Subscription Support Policy, which Subscriber may purchase pursuant to a mutually agreeable Order Form between the Parties.
- 1.15. **“Subscription Support Policy”** means the support services for the Sparta Products as posted on Sparta’s website (www.spartasystems.com), which is incorporated into the Agreement and made a part thereof.
- 1.16. **“System”** means the software systems and programs, databases, communication and network facilities, and hardware and equipment used by Sparta, its suppliers or its agents to provide the Sparta Products.
- 1.17. **“Terms of Use”** means the terms and conditions accessible via the Sparta Products user interface and posted on Sparta’s website (www.spartasystems.com), which are incorporated by reference into this Agreement as if fully set forth herein. Each Authorized User’s continued use of the Sparta Products constitutes agreement to the Terms of Use, and it is solely Subscriber’s responsibility to ensure that its Authorized Users understand and follow the terms stated therein.
- 1.18. **“Third Party Products”** means third party applications and/or services made available through Sparta for use in connection with the Sparta Products, each of which is separately licensed by its provider.
- 1.19. **“Third Party Terms”** means the general terms and conditions pursuant to which Subscriber may use Third Party Products to the extent Subscriber has purchased a license from Sparta for such Third Party Products.
- 1.20. **“TrackWise Instance”** means the TrackWise® base license which Subscriber has licensed from Sparta pursuant to a separately signed perpetual license agreement.

2. Access and Use of the Sparta Products.

- 2.1. Access Authority and Conditions. Subject to Subscriber’s compliance with the terms of this Agreement and mutually agreeable Order Form or purchase order, Sparta hereby grants Subscriber (and to each Authorized User who accesses the Sparta Products by means of Subscriber’s Account and an authorized password) the right to access the Sparta Products (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 Content for the number of Authorized Users specified in an Order Form or purchase order accepted by Sparta.
- 2.2. Access Restrictions. Access by Subscriber and its Authorized Users to the Sparta Products and Subscriber Content shall be subject to the terms of this Agreement, the Documentation, and the Terms of Use, including, without limitation, the following terms:
 - A. Subscriber shall not use or access the Sparta Products or Confidential Information of Sparta or third-parties in any way that might, as determined by Sparta in its sole discretion, adversely affect the security, stability, performance or functions of the Sparta Products, including by introducing any Malware into the Sparta Products or Systems.
 - B. Subscriber shall not gain access, or attempt to gain access, by any means, to any unauthorized portion of the Sparta Products, Systems, software and databases related to the Sparta Products. Subscriber shall not take any actions to circumvent any limit on the number of Authorized Users permitted under this Agreement.
 - C. Subscriber shall not (and shall not permit others to), directly or indirectly: (i) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code or underlying ideas or algorithms of the Sparta Products; (ii) modify, translate, or create derivative works based on the Sparta Products; (iii) rent, lease, distribute, sell, assign or otherwise transfer rights to the Sparta Products; (iv) use the Sparta Products for timesharing or service bureau purposes or otherwise for the benefit of a party (except Authorized Third-Party Users, as expressly permitted in this Agreement); or (v) remove any Sparta notices from the Sparta Products.

- D. Subscriber shall not use or attempt to use the Sparta Products to obtain electronic data or other information except as authorized under this Agreement.
 - E. Sparta may terminate, update, alter or supplement all or any portion of the Sparta Products and all or any portion of the information provided in connection thereto at its sole discretion and Sparta shall provide commercially reasonable notice to Subscriber of any material change.
 - F. Subscriber agrees to comply with all security procedures established by Sparta. Subscriber shall not bypass or disable any protections that may be put in place against unlicensed use of the Sparta Products or perform load, technical, security, or other vulnerability testing of the Sparta Products.
- 2.3. Access and Support. Subscriber is responsible for making all arrangements necessary for internet access and any charges associated with such access. Sparta shall have no obligation to provide more than commercially reasonable support or maintenance for the Sparta Products, and, in no event, efforts greater than required pursuant to the Subscription Support Policy. Except as expressly specified elsewhere in this Agreement, Subscriber is responsible for obtaining and maintaining all computer hardware, software and communications equipment needed to access and to use the Sparta Products, including maintaining an operational and licensed TrackWise Instance local to Subscriber.
- 2.4. Not a System of Record. Subscriber acknowledges that the Sparta Products are not a system of record or a service for official record keeping, and that Subscriber's local TrackWise Instance is the system of record for all Subscriber Content.
- 2.5. Authorized Users. Subject to the terms and conditions of this Agreement and any limitations set forth in an Order Form accepted by Sparta, Sparta will provide to Subscriber and its Authorized Users access to the Sparta Products for Subscriber's internal business use. Subscriber shall designate Authorized Users to access the Sparta Products through its Account. In connection with the use of the Sparta Products by an Authorized User, Subscriber hereby agrees to: (i) make each such Authorized User aware of the terms of this Agreement, the Privacy Policy, the Documentation, and the Terms of Use, including, without limitation, the use limitations contained in this Section 2; (ii) monitor each such Authorized User's compliance with the terms contained in this Agreement, the Documentation, and the Terms of Use; and (iii) remain responsible and liable to Sparta for any and all violations of the terms contained in this Agreement, the Documentation, and the Terms of Use by any Authorized User.
- 2.6. Subscriber Primary Account. Subscriber shall be provided a primary administrator Account for managing, requesting access for, and granting access to its Authorized Users. In accordance with the Documentation, Subscriber may be required to utilize its local TrackWise Instance for managing, requesting access for, and granting access to its Authorized Third-Party Users, as may be appropriate. Sparta may, from time to time, revise the protocols for Subscriber to manage its Authorized Users. Subscriber is responsible for keeping up-to-date a log of its Authorized Users.
- 2.7. Passwords. Sparta shall issue to Subscriber, or shall activate the Account to issue, a password for each Authorized User. 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. Subscriber agrees to immediately notify Sparta of any unauthorized use of the Sparta Products or any other breach of security known to Subscriber. Sparta shall have no liability for any loss or damage arising from Subscriber's failure to comply with the terms of this Agreement.
- 2.8. Suspension of Service. Sparta may suspend Subscriber's access to the Sparta Products if it reasonably suspects that Subscriber's use of the Sparta Products 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 the Sparta Products; (iv) in any way connected to any Malware, malicious code, virus or other harmful code; or (v) disrupting the overall performance and up-time of the Sparta Products due to Subscriber's use of excessive storage capacity or bandwidth.



3. Third Party Products & Services.

- 3.1. Third Party Products are separately licensed by its copyright holder or sublicensed by Sparta. As of the Effective Date, in the event Subscriber purchases licenses for Third Party Products, the applicable terms for use of such Third Party Products are identified within this Agreement. For purposes of any purchases of Third Party Products after the Effective Date, in the event this Agreement does not contain the applicable Third Party Products terms, such terms shall be posted on Sparta's website (www.spartasystems.com). Subscriber agrees that its signature to this Agreement constitutes its acceptance of and signature to the Third Party Terms applicable to Third Party Products licenses purchased pursuant to this Agreement. Notwithstanding anything to the contrary, no additional rights or remedies are granted to Subscriber with respect to Third Party Products. The following provisions of this Agreement shall not apply with respect to Third Party Products and all references to "Sparta Products" therein shall be deemed to exclude Third Party Products: Sections 2.1, 10.3 and 12. All licenses of Third Party Products are granted subject to Subscriber's payment of all applicable license fees and compliance with all applicable terms of this Agreement, including Third Party Terms. Sparta and its licensors reserve the right to modify Third Party Terms at any time upon prior written notice to Subscriber, provided that, unless otherwise provided in any Third Party Terms, such modifications shall apply only to licenses purchased after such notice.

4. Subscriber Content Security; Data Privacy.

- 4.1. Security. Sparta will implement, or, as appropriate, require its service providers to implement, commercially reasonable administrative, physical, and technical measures designed to secure the Subscriber Content against accidental or unlawful loss, access or disclosure.
- 4.2. Data Location; Data Privacy. Sparta shall host the Sparta Products at a reputable third-party internet service provider and hosting facility that implements commercially reasonable security precautions to prevent unauthorized physical access to the Systems. Sparta may utilize data centers located in the United States and worldwide, geographically diverse backup locations.

5. Subscriber Content and Sparta Products Usage Data.

- 5.1. Ownership of Subscriber Content. Subscriber shall own all Subscriber Content. Sparta may access Subscriber's account, and access, use, transmit, modify, copy and distribute Subscriber Content from time to time as Sparta deems necessary, solely for the purpose of providing support and administration of the Sparta Products.
- 5.2. Sparta Products Usage Data. Subscriber acknowledges that Sparta may collect metrics, data or other information regarding Subscriber's and Authorized Users' use of the Sparta Products (collectively, "Sparta Products Usage Data"), that such Sparta Products Usage Data and other information shall be the sole property of Sparta, and that Sparta may utilize this data to monitor the Sparta Products and to improve the user experience of Subscriber and other users of the Sparta Products and for Sparta's other internal business purposes, both during and after the term of this Agreement, without Subscriber's consent.
- 5.3. Monitoring. Sparta reserves the right (but is not obligated) to record, monitor, edit or disclose activities occurring through or involving the Sparta Products and/or investigate any allegation that any activity occurring through or involving the Sparta Products does not conform to this Agreement. Subscriber agrees not to block or interfere with such monitoring. Sparta may remove any Subscriber Content that violates this Agreement, if properly notified that it infringes on another's Intellectual Property rights or to comply with law or any judicial, regulatory or other governmental order or request, and Sparta shall promptly notify Subscriber thereof unless prohibited by law. Subscriber will provide such information as is reasonably requested by Sparta to verify Subscriber's compliance with this Agreement. Further, Sparta may report any activity that it suspects violates any law or regulation to appropriate governmental or law enforcement officials or other appropriate third-parties, which reporting may include disclosing appropriate Confidential Information. Sparta may also cooperate with appropriate governmental or law enforcement officials or other appropriate third-parties to help



with the investigation and prosecution of illegal conduct by providing information relating to alleged violations of the law. The provisions of this sub-section shall supersede any contrary provision in this Agreement.

6. Subscriber Responsibilities.

- 6.1. Subscriber Content; Security. Subscriber shall: (i) be solely responsible for the quality and accuracy of the Subscriber Content; (ii) ensure that the Subscriber Content including the transmission and storage thereof complies with this Agreement, all applicable laws and regulations; (iii) promptly handle and resolve any notices sent to Subscriber by any other person claiming that any Subscriber Content violates any person's rights, including take-down notices pursuant to the Digital Millennium Act or other applicable laws; and (iv) maintain appropriate security, and protection of the devices accessing the Sparta Products. Sparta shall have no responsibility to Subscriber or any Authorized User for (a) any unauthorized disclosure or access to an Account or Subscriber Content as a result of Subscriber's or Authorized User's misuse of the Sparta Products or loss or theft of any password or username, or (b) any deletion, destruction, damage or loss of Subscriber Content.
- 6.2. Notification of Unauthorized Use. Subscriber will immediately notify Sparta in writing of any unauthorized use of any Account, Subscriber Content or the Sparta Products that comes to Subscriber's attention. In the event of any such unauthorized use by any third-party that obtained access to the Sparta Products directly or indirectly through Subscriber or through any Authorized User, Subscriber will take all steps necessary to terminate such unauthorized use. Subscriber will provide Sparta with such cooperation and assistance reasonably necessary to resolve such unauthorized use.

7. Subscription Support Services.

- 7.1. Subject to payment of the Fees associated with the Order Form, Sparta will provide the technical support services for the Sparta Products as set forth in the Subscription Support Policy.

8. Subscription Fees.

- 8.1. Payment. 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 law. Payment terms are set forth in the Order Form. All Fees paid pursuant to this Agreement and any applicable Order Form are non-refundable and all services provided pursuant to an Order Form are non-cancelable, unless expressly stated to the contrary.
- 8.2. 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 income.

9. Term & Termination.

- 9.1. Term of Agreement. The term of this Agreement shall commence on the Effective Date and end upon the later of: (i) twelve (12) months after the first date on which Subscriber is provided with access to the Account; or (ii) twelve (12) months after the Effective Date; in each case, unless this Agreement is terminated earlier as provided herein (such initial twelve (12) month period being referred to herein as the "Initial Term").
- 9.2. Renewal. Sparta shall provide notice via electronic mail of the upcoming termination of this Agreement approximately sixty (60) days and thirty (30) days prior to the end of the Initial Term (and any subsequent terms, "Renewal Terms"). Unless either Party gives notice of its intent to not renew the Agreement at least thirty (30) days prior to the end of the annual renewal period, this Agreement shall automatically renew for a subsequent twelve (12) month period under the terms of the then-current Subscription and Services Agreement, including any terms stated in a notice of material change, the then-current Documentation, the

then-current Terms of Use, and the then-current Subscription Support Policy as posted on Sparta's website (www.spartasystems.com).

- 9.3. **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 thirty (30) days of delivery of written notice. Notwithstanding the foregoing, if Subscriber fails to cure any payment default within ten (10) days of delivery of written notice thereof, Sparta may suspend or terminate Subscriber's ability to access the Sparta Products and any license(s) for other Sparta Products for which Subscriber has failed to pay.
- 9.4. **Post-Termination Obligations.** Upon termination or expiration of this Agreement, for any reason, Subscriber will have no further rights to access or otherwise use the Sparta Products.
- 9.5. **Surviving Provisions.** Upon any expiration of the subscription services or termination of this Agreement, the following sections shall survive: 3, 5, 6, and 11-14.

10. Representations and Warranties.

- 10.1. **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 power and authority to execute and deliver this Agreement and to carry out the transactions contemplated by this Agreement.
- 10.2. **Conflicting Agreements.** Each Party represents that it has no outstanding agreement or obligation that would conflict in any material way with the provisions of this Agreement, or that would preclude it from complying with the provisions hereof.
- 10.3. **Sparta Warranties.** Sparta represents and warrants that the Sparta Products provided to Subscriber substantially correspond to the descriptions set forth in the Documentation. In the event of a breach of the foregoing warranty, Sparta shall, at its option, (i) re-perform or correct the non-conforming development, implementation or support services, (ii) correct the non-conforming component of the Sparta Products, or (iii) refund to Subscriber at a pro-rata rate any prepaid fees paid for the remainder of the then in-effect subscription term. Upon Subscriber's receipt of any such refund under this provision, any licenses or access to the Sparta Products shall automatically terminate.
- 10.4. **Subscriber Warranties.** Subscriber represents and warrants to Sparta that Subscriber or its licensors own all right, title and interest to all Subscriber Content.

11. Limitation of Liability; Disclaimer of Warranties.

- 11.1. **Limitation of Liability.** TO THE EXTENT PERMITTED BY LAW, EXCEPT FOR SUBSCRIBER'S (I) NON-COMPLIANCE WITH THE USE RESTRICTIONS CONTAINED WITHIN THIS AGREEMENT OR VIOLATIONS OF SPARTA'S INTELLECTUAL PROPERTY RIGHTS; OR (II) BREACH OF SUBSCRIBER'S OBLIGATIONS PURSUANT TO SECTION 15.9 (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, 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 THE TERM APPLICABLE FOR THE SPARTA PRODUCTS GIVING RISE TO THE CLAIM.
- 11.2. **Disclaimer of All 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 THE SPARTA PRODUCTS (INCLUDING ANY SUBSCRIPTION SUPPORT SERVICES) WILL BE ERROR FREE, WILL MEET SUBSCRIBER'S REQUIREMENTS, OR WILL BE TIMELY OR SECURE. SUBSCRIBER WILL NOT HAVE THE RIGHT TO MAKE OR PASS ON ANY REPRESENTATIONS OR WARRANTY ON BEHALF OF SPARTA TO ANY THIRD PARTY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE SPARTA PRODUCTS AND SUBSCRIPTION SUPPORT SERVICES ARE PROVIDED "AS IS."

12. Intellectual Property Indemnification.

- 12.1. 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 the Sparta Products infringes any third-party copyright, patent, trademark or trade secret that relate to Subscriber's use of the Sparta Products (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.
- 12.2. Conditions for Indemnification as to Third-Party IP Claims. Sparta's indemnification obligations under Section 12.1 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 the Sparta Products 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 the Sparta Products, (b) replace the Sparta Products 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 the Sparta Products in a manner materially different than what is set forth in the Documentation, (x) use of the Sparta Products 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, the Sparta Products 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 the Sparta Products, if infringement would have been avoided by use of a current release.
- 12.3. Sole and Exclusive Remedy. SECTION 12 STATES SPARTA'S ENTIRE OBLIGATION AND LIABILITY, AND SUBSCRIBER'S SOLE RIGHT AND REMEDY, FOR INFRINGEMENT OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS.

13. Intellectual Property.

- 13.1. Sparta Intellectual Property. Notwithstanding anything herein to the contrary, Sparta retains all right, title and interest in all Intellectual Property and technology related to the Sparta Products. Except for the rights expressly granted herein, Sparta does not license or transfer to Subscriber or any Authorized User or other third-party any rights to any of Sparta's Intellectual Property or technology. All right, title and interest in and to Sparta's Intellectual Property and technology shall remain solely with Sparta.

14. Confidentiality.

- 14.1. 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 14; (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 of this Agreement.
- 14.2. 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.

15. Miscellaneous.

- 15.1. 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 identified on the Order Form and addressed to the individual signing said Order Form, 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 Support Policy, Terms of Use or other similar provisions, such notices shall be deemed given when posted to Sparta's website (www.spartasystems.com), or e-mailed to the Subscriber's Account administrator(s).
- 15.2. 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.
- 15.3. 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.

- 15.4. 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 Sparta Products. 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.
- 15.5. 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 as a subscriber of the Sparta Products or as a TrackWise® customer: (i) on Sparta's website; and (ii) in other Sparta marketing materials.
- 15.6. 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 sites, 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.
- 15.7. 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 sixty (60) days.
- 15.8. 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.
- 15.9. Export Controls.
- 15.9.1. Subscriber acknowledges and agrees that the Parties' performance under this Agreement, including Subscriber's ability to access or to use the Sparta Products 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 agrees that it will comply with Export Control Laws in its performance in furtherance of this Agreement. In particular, and without limiting Subscriber's agreement to comply with all Export Control Laws, Subscriber hereby acknowledges that:
- A.** It will not export, re-export, transfer or license any software, enable access to the Sparta Products, 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 the Sparta Products, 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.

15.9.2. If Subscriber knows, or if acting reasonably, should know, that the Sparta Products 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 the Sparta Products, and may also immediately terminate this Agreement without prior notice, and such refusal or termination will not be a breach of this Agreement.

15.9.3. 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.

15.9.4. Subscriber agrees at all times to comply with applicable laws and regulations in its use of the Sparta Products, including, without limitation, the provisions of the United States’ Foreign Corrupt Practices Act (“FCPA”) and the United Kingdom’s Bribery Act 2010 (“Bribery Act”).

15.10. 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.

15.11. Captions. The captions contained herein are used solely for convenience and shall not be deemed to define or limit the provisions of this Agreement.

15.12. 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. In the event of conflict between the terms of an Order Form and this Agreement, the terms of this Agreement shall prevail unless otherwise agreed to as set forth in writing and signed by an authorized representative of both Parties. 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.