



## TRACKWISE DIGITAL® SERVICE AGREEMENT

PLEASE READ ALL OF THE FOLLOWING TERMS CAREFULLY BEFORE PURCHASING AND/OR USING TRACKWISE DIGITAL AND/OR THE ORG (DEFINED BELOW) AND/OR RELATED SPARTA SERVICES. THIS IS A LEGAL AGREEMENT (“**AGREEMENT**”) BETWEEN YOU (“**SUBSCRIBER**”) AND **SPARTA SYSTEMS, INC.** (“**SPARTA**”) STATING THE TERMS AND CONDITIONS THAT GOVERN SUBSCRIBER’S PURCHASE OF, ACCESS TO AND USE OF TRACKWISE DIGITAL, THE ORG AND RELATED SPARTA SERVICES. BY SIGNING AN ORDER FORM WITH SPARTA THAT REFERENCES THIS AGREEMENT OR ACCESSING OR USING TRACKWISE DIGITAL, THE ORG AND/OR RELATED SPARTA SERVICES, SUBSCRIBER AGREES TO ALL OF THE TERMS OF THIS AGREEMENT. THE INDIVIDUAL ACTING ON BEHALF OF SUBSCRIBER REPRESENTS THAT HE OR SHE HAS THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF SUBSCRIBER. IF SUBSCRIBER DOES NOT AGREE TO THESE TERMS, DO NOT PURCHASE, ACCESS OR USE TRACKWISE DIGITAL, THE ORG AND/OR RELATED SPARTA SERVICES. **TRACKWISE DIGITAL MAY NOT BE ACCESSED OR USED BY A DIRECT COMPETITOR OF SPARTA, EXCEPT WITH SPARTA’S PRIOR WRITTEN CONSENT. THIS AGREEMENT WAS LAST UPDATED ON JANUARY 16, 2023 AND IS EFFECTIVE AS OF THE DATE OF THE ORDER FORM (“EFFECTIVE DATE”).** Sparta and Subscriber are sometimes referred to herein individually as a “**Party**” and together as the “**Parties**”.

Sparta has developed an online service known as TrackWise Digital, which it has implemented primarily on the SFDC Service (defined below). Subscriber wishes to access and use TrackWise Digital, in accordance with the terms and conditions set forth herein.

### 1. DEFINITIONS. As used in this Agreement:

1.1 “**Account**” means a unique SFDC Service administrator account that controls Subscriber’s access to the Org (including TrackWise Digital) and through which Subscriber enables Users to access and use TrackWise Digital.

1.2 “**Affiliate**” means, with respect to either Party, any legal entity that directly or indirectly controls, is controlled by or is under common control with such Party, where “control” means (a) ownership of more than 50% of the equity of such Party or entity or (b) the power to direct or cause the direction of the management and policies of such Party or entity.

1.3 “**Confidential Information**” means any and all information disclosed or made accessible by or on behalf of one Party or its Affiliates to the other Party or its Affiliates (or any representative of any of them), whether orally, in writing or in any other form, which is either (a) marked or identified as “confidential” at the time of disclosure or (b) of a nature that a reasonable business person would understand, under the circumstances, to be confidential or proprietary provided that the disclosing Party generally treats it as confidential, including all technical, product, service, business, marketing, sales, financial and pricing information and data, techniques, methodologies, processes, algorithms, know-how, ideas, concepts, inventions, discoveries and trade secrets, including information of or about (including the identity of) employees, affiliates, customers, licensors, suppliers, subcontractors and representatives. The following information is Sparta’s Confidential Information whether or not marked or identified as such: (i) all Sparta Property (defined in Section 7 (Intellectual Property)); (ii) the terms of this Agreement including all Order Forms and pricing; and (iii) Sparta’s roadmaps, product plans, product designs, architecture, technology and technical information, and audit reviews, however disclosed. Subscriber Data is Subscriber’s Confidential Information, whether or not marked or identified as such.

1.4 “**Consulting Services**” means the TrackWise Digital technical account management, configuration and/or training services provided by Sparta pursuant to an Order Form. Consulting Services do not include Support Services.

1.5 “**Documentation**” means the published Sparta user manuals, guides, policies and instructions regarding TrackWise Digital that are made generally available by Sparta to its TrackWise Digital customers as formal documentation of the use and operation of TrackWise Digital and are posted by Sparta on its customer portal (currently located at <https://spartasystems.force.com/customercommunity>) for use in connection with TrackWise Digital, as such materials are updated by Sparta from time to time.

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

1.7 “**Intellectual Property**” means all: (a) 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, including all renewals of the same, and all goodwill associated therewith and symbolized thereby; (b) inventions and discoveries, whether patentable or not, invention disclosures and all patents, registrations, and like rights of exclusion and applications therefor, including divisions, continuations, continuations-in-part and renewal applications, and including renewals, extensions and reissues; (c) trade secrets and know-how, including

those included in Confidential Information; (d) 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; (e) moral rights, design rights, mask works, rights of privacy and publicity; and (f) all other intellectual property and proprietary rights including rights under unfair competition and market practice laws; in each case throughout the world and whether registered or not.

1.8 **“Order Form”** means a mutually executed order form that describes the TrackWise Digital modules and processes (and related Support Services) and/or Consulting Services purchased by Subscriber. For Consulting Services, the term "Order Form" includes the applicable Statement of Work, if any. All orders for TrackWise Digital subscriptions (and related Support Services) and Consulting Services must be made pursuant to an Order Form. The Parties may enter into multiple Order Forms. Each Order Form is hereby incorporated into and made a part of this Agreement.

1.9 **“Org”** means the unique identifier used by the SFDC Service to represent and contain Subscriber's end user portion of the SFDC Service, TrackWise Digital and Subscriber Data residing therein, and within which Sparta provisions TrackWise Digital for Subscriber hereunder. Subscriber acknowledges that Sparta has no access to the Org after TrackWise Digital is provisioned by Sparta in the Org unless special access is enabled by Subscriber.

1.10 **“Privacy Policy”** means the practices set forth regarding Sparta's collection, use and disclosure of personal data currently located at <https://www.spartasystems.com/legal/privacy-policy>, 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.

1.11 **“salesforce.com”** means Salesforce, Inc. or the applicable Salesforce, Inc. subsidiary.

1.12 **“SFDC Service”** means the online service provided by salesforce.com through Sparta to Subscriber in order to access and use TrackWise Digital.

1.13 **“Statement of Work”** or **“SOW”** means a statement of work for Consulting Services, signed by both Parties, setting forth the Consulting Services to be performed by Sparta and the corresponding Fees to be paid by Subscriber.

1.14 **“Subscriber Data”** means any data, information and materials submitted to TrackWise Digital by Subscriber and any Subscriber-specific data that is derived from Subscriber's use of TrackWise Digital in accordance with this Agreement (e.g. Subscriber-specific reports) as long as such derivative work is not a component of TrackWise Digital itself or other Sparta Property.

1.15 **“Support Services”** means the English-language technical support services for TrackWise Digital set forth in the TrackWise Digital Subscription Care Support Policy, as updated by Sparta from time to time, currently located at <https://www.spartasystems.com/legal> (the **“Support Policy”**), provided that Sparta shall not modify the Support Policy in a way that would be materially detrimental to Subscriber.

1.16 **“Term”** means the period beginning on the first day of the Initial Term (defined in Section 6.1 (Term)) and ending on the date that this Agreement terminates in accordance with the terms herein.

1.17 **“TrackWise Digital”** means Sparta's TrackWise Digital software-as-a-service modules and processes (including Releases thereto, as defined in the Support Policy) to which Subscriber actually purchases a subscription under one or more Order Forms.

1.18 **“User”** means any individual natural human being (a) who is an active employee, consultant, contractor or agent of Subscriber, (b) who is authorized by Subscriber to use TrackWise Digital solely on behalf of Subscriber for Subscriber's internal business purposes, (c) whom Subscriber has designated as a User of TrackWise Digital in accordance with Section 2.5 (Users) and (d) to whom Subscriber has supplied a single-user (i.e. named user) log-in account, user ID and password for TrackWise Digital.

Also, as used herein, the term “including” means “including but not limited to”, the term “shall” means “is required to” and the term “hereunder” means under this Agreement.

## 2. TERMS OF ACCESS.

**2.1 Grant of Right to Access and Use.** In consideration of Subscriber's payment in full of the applicable Fees and subject to the terms and conditions of this Agreement and the applicable Order Forms, Sparta hereby grants Subscriber the limited, non-exclusive, non-transferable and non-assignable (except as expressly permitted pursuant to Section 13.4 (Assignment)) right to access and use, and to permit Users to access and use, TrackWise Digital and the Documentation for the term identified in the applicable Order Form, by up to the number and type of Users specified in the Order Form(s), for Subscriber's internal business purposes only, and in accordance with this Agreement and the Documentation. Subscriber shall use and permit use of TrackWise Digital only for the modules and processes purchased by Subscriber as reflected in an Order Form.

**2.2 Flowdown Provisions.** Subscriber agrees to be bound by the mandatory third-party flowdown provisions from Sparta's third-party providers set forth in Schedule 1 attached hereto.

**2.3 Subscriber Responsibilities.** Subscriber is responsible for making all arrangements necessary for access to and use

of TrackWise Digital via the internet (including obtaining and maintaining all computer hardware, software and telecommunications equipment needed to access and use TrackWise Digital via the internet) and any associated charges. TrackWise Digital is dependent on Subscriber's proper implementation, configuration and use of TrackWise Digital and proper use of the SFDC Service, the availability and performance of technology from third-party software and hardware vendors (including any salesforce.com AppExchange products and custom applications, Microsoft, Google and the providers of various internet browsers) and other factors outside of Sparta's control. Sparta has no control over, and is not liable for performance issues or downtime of TrackWise Digital or any inability to access the Account to the extent caused by, any of the foregoing factors or any action or inaction on the part of Subscriber or any User that is not in accordance with this Agreement and the Documentation.

**2.4 Subscriber Account.** Sparta will provide Subscriber an Account for managing, requesting access for and granting access to its Users. Subscriber shall use the Account only to configure and administer TrackWise Digital in support of Subscriber's permitted use of TrackWise Digital and in accordance with this Agreement and the Documentation.

**2.5 Users.** Subscriber shall designate the Users who will have access to TrackWise Digital through its Account and is responsible for activating and de-activating Users via its Account. The number and type of Users shall not exceed the number and type of Users specified in the Order Form(s). Each User must be identified by a unique email address and user name. Subscriber shall be solely responsible for the actions of a User relating to access and use of TrackWise Digital, for any non-compliance by any User with the terms of this Agreement (which shall constitute a breach of this Agreement by Subscriber), and for all activities that occur under its Account. A User log-in account may not be shared or used by more than one User. User log-in accounts may only be reassigned to new Users who are replacing former Users who have terminated employment with Subscriber or otherwise legitimately changed job status or function and no longer require use of TrackWise Digital. If a User is no longer authorized by Subscriber to access and use TrackWise Digital, Subscriber shall immediately disable such access.

**2.6 Passwords.** Subscriber and its Users are responsible for maintaining the confidentiality of all passwords and any other access controls within TrackWise Digital that are managed by Subscriber, and for ensuring that each password is used only by the assigned User.

**2.7 Changes.** Sparta may change, update, alter and/or supplement all or any portion of TrackWise Digital and all or any portion of the information provided in connection therewith at its sole discretion and will provide commercially reasonable notice to Subscriber of any such material change. This Section 2.7 shall not be construed to limit Sparta's warranties under Section 9.2(a) below.

**2.8 Affiliates.** During the Term, a Subscriber Affiliate may request that Sparta provision a separate unique Org for such Affiliate and purchase subscriptions to TrackWise Digital (and related Support Services) and Consulting Services from Sparta for such purpose by entering into an Order Form with Sparta that incorporates the terms and conditions of this Agreement in a manner that binds such purchasing Affiliate to the terms and conditions hereof.

**3. SUPPORT.** Subject to payment of the Fees set forth in the Order Form, Sparta will provide technical support services for TrackWise Digital as set forth in the Support Policy. Subscriber must contact Sparta (and not salesforce.com) for all Support Services.

#### **4. CONSULTING SERVICES.**

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

**4.2 Fees and Expenses; Delays.** Sparta will invoice Subscriber on a monthly basis for all Consulting Services rendered and expenses incurred except as otherwise specified in the applicable Order Form. Subscriber shall reimburse Sparta for actual and verifiable pre-approved out-of-pocket expenses (including travel and related expenses) reasonably incurred by Sparta in connection with any Consulting Services. With Subscriber's consent, Sparta may charge for travel time at 50% of the applicable rate when travel time exceeds four hours. Sparta shall not be responsible for any delay caused by Subscriber or any third party under contract with Subscriber. Subscriber may delay Consulting Services by written notice to Sparta specifying the requested length of the delay (it being understood that the Parties will need to reschedule the Consulting Services at a mutually satisfactory time), provided that if Subscriber delays upon less than two weeks prior written notice and Sparta is unable to reallocate the applicable Sparta personnel on a billable basis to another customer project (which Sparta will use reasonable efforts to do), then Sparta will invoice Subscriber for any Consulting Services that are delayed by Subscriber without such two week notice, at the applicable daily rate for such Consulting Services.

**4.3 License.** In consideration of Subscriber's payment in full of all Fees due under an SOW, Sparta hereby grants to Subscriber a non-exclusive, non-transferable, non-assignable license to use the deliverables from the Consulting Services (if any) during the Term solely in connection with the applicable TrackWise Digital subscriptions and for Subscriber's internal business purposes.

## 5. PAYMENTS.

**5.1 Payment.** In consideration of the rights and services granted and provided hereunder, Subscriber shall pay Sparta the Fees set forth in the Order Form(s). All Fees will be invoiced and paid in US Dollars except as otherwise mutually agreed in an Order Form. Fees will be invoiced annually in advance except as otherwise provided in the applicable Order Form or, with respect to Consulting Services, in Section 4.2. Subscriber shall remit payment to Sparta within 30 days of receipt of invoice, excluding amounts that are the subject of a good faith dispute by Subscriber provided that Subscriber promptly notifies Sparta in writing of the amount disputed and the reasons for such dispute and reasonably cooperates with Sparta to resolve such dispute as promptly as practicable. If Subscriber fails to pay any amounts when due (other than amounts disputed as aforesaid), then, in addition to any other available rights and remedies, Sparta shall have the right to (a) assess a late payment charge on such overdue amounts equal to the lesser of (i) two percent per month or (ii) the highest rate allowed by applicable law and/or (b) upon five days prior written notice to Subscriber, suspend providing Support Services and Consulting Services to Subscriber, without liability, in each case until such overdue amounts are paid in full. Additional payment terms may be set forth in the Order Form. All payments are non-refundable and all subscriptions and services are non-cancelable except as otherwise expressly provided herein. If Sparta seeks legal recourse for the collection of any unpaid Fees from Subscriber (other than amounts disputed as aforesaid), Sparta will be entitled to an award of reasonable attorneys' fees and other costs incurred by Sparta in such matter. Upon execution of an Order Form, if required for Subscriber's internal financial controls, Subscriber shall issue a valid purchase order for the TrackWise Digital subscriptions, Support Services and Consulting Services set forth in such Order Form. Subscriber's failure to issue such purchase order shall not relieve Subscriber of its obligation to purchase and pay for such subscriptions and services.

**5.2 Taxes.** All Fees are exclusive of all taxes and duties. If Sparta is required to pay or account for any sales, use, value added, withholding or other taxes, public fees, duties, deductions or other withholdings (collectively "Taxes"), then such Taxes shall be borne by Subscriber. If Subscriber is required to withhold or deduct any Tax from any payment due hereunder, Subscriber will increase the sum payable to Sparta such that Sparta receives an amount equal to the sum it would have received had Subscriber made no withholding or deduction. Taxes shall not include taxes based upon Sparta's income.

## 6. TERM AND TERMINATION.

**6.1 Term.** The initial term of this Agreement, and the initial term of the subscriptions initially purchased by Subscriber hereunder, will commence on the "Order Start Date" and end on the applicable "Order End Date" specified in the initial Order Form ("**Initial Term**"), and thereafter will automatically renew as provided in Section 6.2 below, in each case unless this Agreement is terminated earlier as provided herein. The term of each subsequent subscription purchased by Subscriber hereunder will begin on the applicable "Order Start Date" and end on the applicable "Order End Date" specified in the applicable Order Form, and thereafter will automatically renew as provided in Section 6.2, in each case unless this Agreement is terminated earlier as provided herein.

**6.2 Renewal.** Sparta shall provide notice via electronic mail of the upcoming renewal of this Agreement and of the subscriptions purchased by Subscriber hereunder approximately 90 days (but in no event less than 60 days) prior to the end of the Initial Term and each subsequent renewal term. Unless either Party gives notice of its intent not to renew this Agreement and such subscriptions at least 45 days prior to the end of the then-current term, this Agreement and such subscriptions shall automatically renew for a subsequent 36 month period unless a different renewal period is specified in the Order Form, in which case each renewal term shall be for the renewal period specified in the Order Form.

**6.3 Termination for Cause.** Either Party may terminate this Agreement upon written notice to the other Party if the other Party materially breaches this Agreement and fails to cure such breach within 30 days of its receipt of written notice thereof. Notwithstanding the foregoing, Sparta may terminate this Agreement upon written notice to Subscriber if Subscriber fails to cure any payment default (other than a payment disputed in accordance with Section 5.1 (Payment)) within 10 days of delivery of written notice thereof. Either Party may terminate any Statement of Work (but not this Agreement) upon written notice to the other Party if the other Party materially breaches such Statement of Work and fails to cure such breach within 30 days of delivery of written notice thereof.

**6.4 Effect of Termination.** Upon termination of this Agreement: (a) all Order Forms, and all rights, subscriptions and licenses granted by Sparta hereunder and under all Order Forms (including Subscriber's right to access and use the Org, TrackWise Digital and Subscriber Data contained in TrackWise Digital, subject to the data retrieval provisions in Section 12.3 (Data Management and Retrieval)), shall automatically terminate; (b) Subscriber shall immediately cease all use of TrackWise Digital; and (c) subject to the data retrieval provisions of Section 12.3, each Party shall within a reasonable time return or destroy all Confidential Information of the other Party in its possession, except that each Party may retain one copy of such Confidential Information to the extent required to comply with applicable laws or regulations, applicable professional standards of conduct or bona fide written internal document retention practices or policies. All payment obligations of Subscriber incurred, accrued or arising prior to the effective date of termination shall survive and be payable in accordance with the applicable payment terms herein.

**6.5 Survival.** The following provisions shall survive any termination of this Agreement: Sections 1 (Definitions), 2.2 (Access and Use Restrictions), 5 (Payments), 6.4 (Effect of Termination), 6.5 (Survival), 7 (Intellectual Property), 8 (Confidentiality), 9.4 (Disclaimer), 10 (Limitation of Liability), 11 (Indemnification), 12.1 (Ownership of Subscriber Data), 12.3 (Data Management and Retrieval) and 13 (Miscellaneous).



**7. INTELLECTUAL PROPERTY.** Notwithstanding anything to the contrary, as between the Parties, Sparta retains and shall be the sole owner of all right, title and interest, including all Intellectual Property rights, in, to and under the following (the following being collectively referred to as “**Sparta Property**”): (a) TrackWise Digital, the Documentation, the Support Services, the Consulting Services and deliverables (if any), usage metrics and similar data regarding Subscriber’s use of TrackWise Digital, all other software, technology, content and materials provided or prepared by or on behalf of Sparta or used by Sparta in providing TrackWise Digital, and all other Sparta Confidential Information; (b) any and all suggestions, ideas, enhancement requests, recommendations, modifications, improvements or other feedback provided by Subscriber or any employee, agent or contractor of Subscriber relating to any of the foregoing, all rights in which are hereby assigned to Sparta; and (c) all derivative works, customizations, enhancements, modifications, translations, extensions and improvements in or related to any of the foregoing; but in each case excluding Subscriber Data. Except for the rights expressly granted herein, Sparta does not grant, license or transfer to Subscriber or any User or other third party any ownership or other rights to any Sparta Property. No implied licenses are granted herein and all rights not expressly granted to Subscriber herein are reserved by Sparta.

**8. CONFIDENTIALITY.**

**8.1 Obligations.** Each Party shall: (a) treat as confidential, and shall not disclose, any Confidential Information of the other Party other than to its 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 legally enforceable obligations consistent with and at least as restrictive as the provisions of this Section 8 and (ii) the receiving Party shall be responsible for any breach by its Representatives; (b) use the same degree of care to protect the other Party’s Confidential Information as it uses to protect its own Confidential Information of a similar nature, but in no event less than reasonable care; and (c) use the other Party’s Confidential Information only for the purposes described in this Agreement.

**8.2 Exceptions.** (a) Confidential Information shall not include: (i) any information that is or becomes generally available to the public (provided that such information did not become public as a result of the receiving Party’s or its Representative’s disclosure thereof in breach of this Agreement); (ii) any information received by the receiving Party (without restriction on use or disclosure) from sources other than the disclosing Party or its Representatives (provided that such source is not subject to a confidentiality obligation with regard to such information); (iii) any information that is independently developed by the receiving Party without use of or reference to Confidential Information of the other Party; or (iv) any information that was in the receiving Party’s possession (without restriction on use or disclosure) prior to the time of its disclosure by or on behalf of the disclosing Party. (b) Notwithstanding the foregoing, either Party may disclose Confidential Information of the other Party to any regulatory agency or court of competent jurisdiction if and to the extent: (i) approved by the other Party in advance and in writing; or (ii) required to comply with applicable law, regulatory agency or court order, provided that such Party provides prompt prior written notice of such required disclosure to the other Party (to the extent legally permitted) and reasonably cooperates with the other Party (at such other Party’s cost and expense) to limit the extent of such disclosure.

**9. REPRESENTATIONS AND WARRANTIES.**

**9.1 Due Organization, Conflicting Agreements.** Each Party represents that: (a) it is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization; (b) it has full corporate power and authority to execute and deliver this Agreement and comply with its obligations herein; and (c) it has no outstanding agreement that would conflict in any material way with the provisions of this Agreement or preclude it from complying with the provisions hereof.

**9.2 Sparta Warranties.**

**(a) TrackWise Digital.** Sparta warrants to Subscriber that during the Term: (i) TrackWise Digital will perform substantially in accordance with the Documentation; and (ii) Sparta will not materially decrease the overall functionality of TrackWise Digital. In the event of a breach of the foregoing warranty, and as Subscriber’s sole and exclusive remedy and Sparta’s sole and exclusive obligation and liability, Sparta shall either, at its option: (A) correct the non-conforming component of TrackWise Digital; or (B) terminate this Agreement and refund to Subscriber any prepaid unused subscription Fees covering the remainder of the then-current Term.

**(b) Services.** Sparta warrants to Subscriber that, during the period of performance and for 30 days thereafter, Sparta’s Consulting Services and Support Services hereunder will be performed in a competent, professional and workmanlike manner by personnel of adequate training and experience. Subscriber’s sole and exclusive remedy and Sparta’s sole and exclusive obligation and liability for any failure of services to conform to this warranty shall be for Sparta to re-perform the non-conforming services.

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

**9.4 Disclaimer.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 9.2 OF THIS AGREEMENT, TRACKWISE DIGITAL AND ALL DOCUMENTATION, SUPPORT SERVICES AND CONSULTING SERVICES ARE PROVIDED “AS IS” AND “AS AVAILABLE”, AND SPARTA MAKES NO OTHER REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER WRITTEN OR ORAL, EXPRESS, IMPLIED IN FACT OR BY OPERATION OF LAW, OR STATUTORY, AS TO ANY MATTER WHATSOEVER. SPARTA (FOR ITSELF AND ITS AFFILIATES, LICENSORS AND OTHER PROVIDERS) EXPRESSLY DISCLAIMS ALL IMPLIED

WARRANTIES, TERMS AND CONDITIONS, INCLUDING ALL IMPLIED WARRANTIES, TERMS AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, NON-INFRINGEMENT, OWNERSHIP, QUIET ENJOYMENT, SECURITY OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE, ALL OF WHICH ARE HEREBY EXCLUDED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SPARTA DOES NOT WARRANT THAT TRACKWISE DIGITAL OR THE SUPPORT SERVICES WILL PERFORM CONTINUOUSLY OR WITHOUT INTERRUPTION, BE ERROR FREE, MEET SUBSCRIBER'S REQUIREMENTS, OR BE TIMELY OR SECURE, OR THAT DATA PROVIDED THROUGH TRACKWISE DIGITAL WILL BE ACCURATE, UP-TO-DATE, COMPLETE OR FREE OF HARMFUL COMPONENTS OR NOT LOST OR DAMAGED. SUBSCRIBER SHALL NOT MAKE OR PASS ON ANY REPRESENTATION OR WARRANTY ON BEHALF OF SPARTA TO ANY THIRD PARTY.

**10. LIMITATION OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR SUBSCRIBER'S (A) NON-COMPLIANCE WITH THE PAYMENT OBLIGATIONS OR THE ACCESS OR USE LIMITATIONS OF THIS AGREEMENT, (B) BREACHES OF SECTION 8 (CONFIDENTIALITY) OR (C) VIOLATION, MISAPPROPRIATION OR MISUSE OF SPARTA'S INTELLECTUAL PROPERTY RIGHTS, IN NO EVENT SHALL SPARTA (OR ITS AFFILIATES, LICENSORS OR OTHER PROVIDERS) OR SUBSCRIBER BE LIABLE TO THE OTHER FOR: (I) ANY DAMAGES FALLING WITHIN ANY OF THE FOLLOWING CATEGORIES: (a) LOST PROFITS; (b) LOST BUSINESS, REVENUES OR SAVINGS; (c) BUSINESS INTERRUPTION; (d) LOSS OF GOODWILL; (e) LOSS OF ANTICIPATED SAVINGS; OR (f) LOSS, CORRUPTION OR MODIFICATION OF DATA OR OTHER INFORMATION; OR (II) ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHATSOEVER; IN EACH CASE ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT (INCLUDING ANY ORDER FORM), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IN THE EVENT OF FAILURE OF AN EXCLUSIVE REMEDY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SPARTA AND ITS AFFILIATES' AGGREGATE AND CUMULATIVE LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENT (INCLUDING ALL ORDER FORMS), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY OR OTHERWISE, SHALL IN NO EVENT EXCEED THE TOTAL AMOUNT OF THE FEES PAID BY SUBSCRIBER FOR TRACKWISE DIGITAL HEREUNDER DURING THE SIX MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE EVENT GIVING RISE TO LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SPARTA AND ITS AFFILIATES SHALL NOT BE LIABLE FOR, AND SPARTA (FOR ITSELF AND ITS AFFILIATES) HEREBY DISCLAIMS, ANY DAMAGES OR LOSSES CAUSED BY OR RESULTING FROM THE CONDUCT, SOFTWARE, CONTENT, PRODUCTS, SERVICES OR INFORMATION OF ANY THIRD PARTY OR ANY FAILURE OF SUBSCRIBER OR ANY USER TO COMPLY WITH THE TERMS OF THIS AGREEMENT.

Nothing in this Agreement (including any Order Form) shall limit or exclude either Party's or its Affiliates' liability for (a) death or personal injury caused by its or their negligence or the negligence of its or their employees, agents or subcontractors, (b) fraud or fraudulent misrepresentation or (c) any other liability to the extent that it cannot be limited or excluded by applicable law.

## **11. INDEMNIFICATION.**

**11.1 Sparta Intellectual Property Indemnification.** Notwithstanding anything to the contrary in this Agreement, and subject to Section 11.3, Sparta will, at its cost and expense, defend, indemnify and hold harmless Subscriber from and against all losses, awards and damages (including reasonable attorney's fees), solely to the extent arising out of claims by third-parties that Subscriber's use of TrackWise Digital as provided by Sparta and in accordance with the terms set forth herein, infringed, violated or misappropriated their valid intellectual property rights; provided that with respect to patents, Sparta's obligation is limited to United States patents issued before the Effective date (a "**Third-Party IP Claim**"). If TrackWise Digital becomes, or in Sparta's opinion is likely to become, the subject of a Third-Party IP Claim or injunction, Sparta shall have the right, at its option and expense, to: (a) procure the necessary rights to enable Subscriber's continued use of TrackWise Digital as set forth in this Agreement; (b) replace or modify TrackWise Digital so that it is no longer claimed to infringe; or (c) terminate this Agreement and the Order Form(s) as they relate to, and Subscriber's right to use, the affected portion of TrackWise Digital and refund to Subscriber any prepaid unused portion of the subscription Fees paid by Subscriber for such affected portion for the remainder of the then-current Term. Sparta shall have no liability under this Section 11 or otherwise to the extent that a Third-Party IP Claim arises out of or relates to: (i) use of TrackWise Digital in a manner that does not comply with this Agreement; (ii) use of TrackWise Digital in combination with products, services, applications, content or data not provided by Sparta; (iii) modifications to TrackWise Digital not made by Sparta; or (iv) use of any version other than a current release of TrackWise Digital, if infringement would have been avoided by use of the current release.

**11.2 Subscriber Indemnification.** Notwithstanding anything to the contrary in this Agreement, and subject to Section 11.3, Subscriber shall defend, indemnify and hold harmless Sparta from any third-party claim, suit or proceeding against Sparta to the extent arising out of or related to: Subscriber Data; any of Subscriber's products or services; or negligent, reckless, illegal or improper conduct of any User(s). Subscriber shall pay the damages and reasonable and verifiable costs and expenses which are finally awarded against Sparta by final judgment of a court of competent jurisdiction (or pursuant to settlements agreed to in writing by Subscriber) directly attributable to such claim.

**11.3 Conditions.** Each Party's indemnification obligations under this Section 11 are subject to the conditions that: (a) the indemnified Party provides the indemnifying Party with prompt written notice of the indemnifiable claim unless the delay in notification has no prejudicial effect on the indemnifying Party's ability to defend or settle such claim; (b) the indemnifying Party retains sole control of the defense and settlement of the indemnifiable claim; (c) the indemnified Party does not prejudice the defense of the indemnifiable claim; and (d) the indemnified Party provides the indemnifying Party with such cooperation, assistance, documents, authority and information as the indemnifying Party may reasonably require in relation to any indemnifiable claim and the defense and/or settlement thereof. The indemnified Party shall have the right, at its own expense, to participate in such litigation or defense and to retain its own separate counsel and advise the indemnifying Party on any proposed settlements, but only to the extent that such participation and advice do not unreasonably interfere with the indemnifying Party's ability to perform its obligations under this Section 11. The indemnifying Party shall not, without the indemnified Party's prior written consent (not to be unreasonably withheld), settle, compromise or consent to the entry of any judgment in any indemnifiable claim unless such settlement, compromise or consent is solely monetary in nature and does not include a statement as to, or an admission of fault by or on behalf of, the indemnified Party.

**11.4 Sole Remedy.** SECTION 11.1 STATES SPARTA'S AND ITS AFFILIATES' SOLE AND EXCLUSIVE OBLIGATION AND LIABILITY, AND SUBSCRIBER'S SOLE AND EXCLUSIVE REMEDY, REGARDING INFRINGEMENT OR MISAPPROPRIATION BY ANY PART OF TRACKWISE DIGITAL OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS. SECTION 11.2 STATES SUBSCRIBER'S SOLE AND EXCLUSIVE OBLIGATION AND LIABILITY, AND SPARTA'S AND ITS AFFILIATES' SOLE AND EXCLUSIVE REMEDY, REGARDING INFRINGEMENT OR MISAPPROPRIATION 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 of Subscriber Data.** As between the Parties, Subscriber retains sole ownership of all Subscriber Data. Subscriber has sole responsibility for the content, 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.

**12.2 Access and Use of Data.** (a) Subscriber acknowledges that when using TrackWise Digital, Subscriber can make permanent changes and edits to Subscriber Data, including mass updates and mass alterations. (b) Subscriber acknowledges that Sparta has no access to Subscriber's Org or Subscriber Data within the Org unless special access to the Org is enabled to Sparta by Subscriber for a specific purpose (e.g., as a temporary Admin User for the purpose of configuring TrackWise Digital as part of Consulting Services). Subscriber hereby consents to and grants Sparta a nonexclusive license during the Term (i) for Sparta to access the Org if and for so long as Subscriber enables such access, solely for the purpose for which such access was provided, and (ii) for TrackWise Digital and, if applicable, Sparta to access, use, transmit, modify and copy Subscriber Data from time to time as necessary solely for the purpose of providing TrackWise Digital, Support Services and Consulting Services to Subscriber and related support and administration or otherwise as requested by Subscriber or permitted hereunder.

**12.3 Security.** Sparta will implement, as part of TrackWise Digital, appropriate technical and organizational measures designed for the protection of the security and confidentiality of Subscriber Data resident in TrackWise Digital against accidental or unlawful loss, access or disclosure. Sparta's hosting service providers will implement appropriate technical and organizational measures for the protection of the security and confidentiality of Subscriber Data resident on such service providers' systems against accidental or unlawful loss, access or disclosure. Sparta and its hosting service providers will maintain, at a minimum, SOC-2 Type II report compliance audit documentation, or its equivalent, during the Term and will make available a copy (or provide a summary thereof in the case of AWS) to Subscriber once per year during the Term following written request. Subscriber shall use commercially reasonable efforts to prevent unauthorized access to and use of the Account, the Org and TrackWise Digital, and shall immediately notify Sparta of any such unauthorized access or use or any other breach of security known to Subscriber. Sparta reserves the right to suspend access to TrackWise Digital in the event of a security breach or threat. Subscriber acknowledges that Subscriber Data may leave the SFDC Service when using TrackWise Digital (e.g. when downloaded by Subscriber or in connection with the use of modules and/or processes hosted on AWS) and that salesforce.com has no responsibility for Subscriber Data that is not resident within the SFDC Service.

**12.4 Data Processing and Transfer.** To the extent that Sparta processes any personal data originating from the European Economic Area and Switzerland ("**Restricted Personal Data**") in the course of providing TrackWise Digital, Support Services and/or Consulting Services to Subscriber, any such processing shall be governed by Sparta's then current Data Protection Addendum (or such other agreement as Sparta may agree). Any and all transfers of Restricted Personal Data that are made to Sparta in the US shall be governed by one or more of the following data transfer mechanisms (at Sparta's option): (a) binding contractual or other provisions, such as the controller-to-processor standard contractual clauses approved by the European Commission from time to time; (b) Sparta's certification to any program approved by a competent authority and permitting the transfer of Restricted Personal Data, such as binding corporate rules, or any successor to the US-EU/US-Swiss Privacy Shield Framework; or (c) any other data transfer mechanism that is valid in the jurisdiction from which the Restricted Personal Data originates. For personal data originating from any other jurisdiction, the Privacy Policy shall apply.

## 13. MISCELLANEOUS.

**13.1 Notices.** Notwithstanding anything to the contrary, notices and other communications may be given or made pursuant to this Agreement electronically including via Sparta's customer portal. Notwithstanding the foregoing, any notice concerning a material breach or termination of this Agreement (including the Order Forms) must be in writing and delivered in person or sent by certified or registered mail or internationally recognized express courier or overnight delivery service, and shall be deemed given upon personal, confirmed or documented delivery. All notices concerning a material breach shall specify the nature of the breach in reasonable detail. All notices must be in English. All written notices or other written communications to Sparta shall be provided to the address first listed below, and addressed to: **ATTENTION: LEGAL DEPARTMENT**. All written notices to Subscriber shall be sent to the address first listed in the applicable Order Form that references this Agreement and addressed to the individual who signed such Order Form. With respect to notices and other communications by Sparta regarding Sparta's Privacy Policy, the Support Policy or any other information provided via the Account, such notices shall be deemed given when posted on Sparta's customer portal or at <https://www.spartasystems.com/legal> or e-mailed to the Subscriber's Account administrator(s). Sparta address for notice: Sparta Systems, Inc., 2000 Waterview Drive, Suite 300, Hamilton Township, New Jersey 08691 U.S.A.

**13.2 Entire Agreement; Modification; Waiver; Severability; Order of Precedence.** (a) 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. Each Party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (including negligently or innocently made statements) by or on behalf of any person or entity (whether or not a Party) that is not expressly set out herein. (b) This Agreement and the Order Forms may not be amended or modified, nor any of its provisions waived, except by mutually signed written agreement. Any failure or delay to enforce or exercise any right or remedy shall not be deemed a waiver of such or any other right or remedy. Any waiver of any breach shall not be deemed to be a waiver of any other or subsequent breach. (c) If any court of competent jurisdiction holds any provision of this Agreement or any Order Form 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 and shall not be affected thereby. (d) 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. (e) Any terms appearing on any purchase order, acknowledgment or confirmation that are different from or in addition to the terms of this Agreement or any applicable Order Form shall not be binding on the Parties, even if signed and returned. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (i) the SFDC Service Agreement; (ii) this Agreement; (iii) the applicable Order Form except to the extent the Order Form expressly supersedes a specified provision of this Agreement; and (iv) the Support Policy.

**13.3 Independent Contractors.** The Parties are independent contractors. This Agreement (including the Order Forms) does not create any partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties. Sparta shall be solely responsible for the conduct and supervision of its personnel in the performance of its obligations hereunder. Neither Party shall have any right or authority to assume or create any obligation or responsibility, express or implied, on behalf of the other Party or to bind the other Party in any way whatsoever.

**13.4 Assignment.** Neither this Agreement nor any Order Form nor any right or obligation hereunder or thereunder may be assigned, transferred or delegated, 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 means a transaction or series of transactions (a) pursuant to which direct or indirect control of Subscriber is acquired by persons or entities other than those who, directly or indirectly, control Subscriber as of the Effective Date (with "control" having the meaning specified in the definition of Affiliate in Section 1) or (b) resulting in the sale of all or substantially all of Subscriber's business or assets utilizing any part of TrackWise Digital. Subject to the foregoing, this Agreement (including the Order Forms) shall be binding upon and inure to the benefit of the Parties and their successors and assigns.

**13.5 Trademarks.** Each Party and its licensors reserve all rights in and to their trademarks, trade names, service marks and logos (collectively "Marks") and no right to use, modify or reproduce such Marks are granted. Each Party agrees not to take or permit any action that may jeopardize the owner's rights in and to the Marks. Any and all uses of the Marks, or applications for or registrations of such Marks, shall inure to the benefit of the Party that owns such Marks or its licensors.

**13.6 Publicity.** Neither Party may issue or make any press release, announcement or publication containing or otherwise use any of the other Party's Marks without the other Party's prior written approval; provided that, during the Term, Sparta may list Subscriber along with Subscriber's logo as a customer of TrackWise Digital on Sparta's website and in other TrackWise Digital marketing materials.

**13.7 Non-solicitation.** During the Term and for a period of one year thereafter, neither Party shall employ or solicit the employment or services of any employee of the other Party or any of its Affiliates without the prior written consent of the other Party. For purposes of this provision, the general 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.

**13.8 Force Majeure.** Except for payment obligations, neither Party will be liable for, or be considered to be in breach of this Agreement (including the Order Forms) on account of, any delay or failure to perform as a result of any cause or condition beyond such Party’s reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, epidemic, pandemic, Internet failure or delay, or denial of service attack. The affected Party shall use commercially reasonable efforts to avoid or remove such cause of non-performance or delay. If such cause or condition continues for a period of more than 60 days, then the other Party may terminate this Agreement for convenience upon 10 days’ written notice to the affected Party.

**13.9 Insurance.** Throughout the Term, each Party shall bind and keep in force appropriate insurance coverage in accordance with industry practice applicable to its business.

**13.10 Compliance with Laws.** (a) Subscriber shall not, and shall not permit its Affiliates or Users to, access, use, export or re-export TrackWise Digital, or use TrackWise Digital to access, use, export or re-export Subscriber Data, in or to a U.S.-embargoed country or in violation of any applicable export law, regulation, order or sanction. Subscriber shall at all times comply and cause its Affiliates and Users to comply with all applicable laws and regulations in its use of TrackWise Digital, including the United States’ Foreign Corrupt Practices Act and the United Kingdom’s Bribery Act 2010. (b) Without limiting the generality of the foregoing, through utilization of each of TrackWise Digital, Support Services and Consulting Services (collectively, the “Offerings”), Subscriber represents, warrants, and agrees that: Subscriber and each of its Affiliates and Users are not a “Sanctioned Person,” meaning any individual or entity: (1) named on a governmental denied party or restricted list, including but not limited to: the Office of Foreign Assets Control (“OFAC”) list of Specially Designated Nationals and Blocked Persons (“SDN List”), the OFAC Sectoral Sanctions Identifications List (“SSI List”), and the sanctions lists under any other Sanctions Laws; (2) organized under the laws of, ordinarily resident in, or physically located in a jurisdiction subject to comprehensive sanctions administered by OFAC (currently Cuba, Iran, North Korea, Syria, and the Crimea, Donetsk People’s Republic, or Luhansk People’s Republic regions of Ukraine/Russia) (“Sanctioned Jurisdictions”); and/or (3) owned or controlled, directly or indirectly, 50% or more in the aggregate by one or more of any of the foregoing. Relating to this transaction and/or Agreement, Subscriber, its Affiliates, and its Users are in compliance with and will continue to comply with all economic Sanctions Laws administered by OFAC, other U.S. regulatory agencies, the European Union and its Member States, the United Kingdom, and the United Nations (“Sanctions Laws”). Subscriber, its Affiliates, and Users will not involve any Sanctioned Persons in any capacity, directly or indirectly, in any part of this transaction and performance under this transaction. Subscriber will not take any action that would cause Sparta to be in violation of Sanctions Laws. Subscriber will not sell, export, re-export, divert, use, or otherwise transfer any Sparta products, technology, software, or proprietary information: (i) to or for any Sanctioned Persons or to or involving Sanctioned Jurisdictions; or (ii) for purposes prohibited by any Sanctions Laws. Subscriber, its Affiliates, and its Users will not source any components, technology, software, or data for utilization in Sparta products or services: (i) from any Sanctioned Persons or Sanctioned Jurisdictions or (ii) in contravention of any Sanctions Laws. Subscriber’s or any of its Affiliates’ or any User’s failure to comply with this provision will be deemed a material breach of the Agreement, and Subscriber will notify Sparta immediately if it or any of its Affiliates or Users violates, or reasonably believes that it or any of its Affiliates or Users will violate, any terms of this provision. Subscriber agrees that Sparta may take any and all actions required to ensure full compliance with all Sanctions Laws without Sparta incurring any liability. Notwithstanding any provision of this Agreement or any Order Form to the contrary, Sparta may limit, suspend, or terminate Subscriber’s or any of its Affiliates’ or any User’s access to or delivery of the Offerings or take other actions reasonably necessary to comply with applicable export laws and Sanctions Laws without liability. Subscriber agrees to indemnify Sparta if Sparta becomes subject to liability because of Subscriber’s or any of its Affiliates’ or any User’s non-compliance with applicable export laws or Sanction Laws.

**13.11 No Legal Advice.** Subscriber acknowledges and agrees that Sparta does not and shall not provide Subscriber with any legal advice regarding compliance with laws, rules or regulations in the jurisdictions in which Subscriber uses TrackWise Digital, including those related to data privacy or medical, pharmaceutical or health related data. Subscriber acknowledges that TrackWise Digital may be used in ways that do and do not comply with such laws, rules or regulations. It is Subscriber’s sole responsibility to monitor its (including Users’) compliance with all such relevant laws, rules or regulations. Subscriber is solely responsible for such Subscriber-specific use decisions and Sparta and its Affiliates disclaim all liability for such decisions.

**13.12 Federal Government End Use Provisions.** All cloud-hosted software and services provided by Sparta as part of TrackWise Digital including related software and technology (collectively, “Products”) as well as any documents describing or relating to TrackWise Digital are provided to the U.S. Government as “commercial items,” “commercial computer software,” “commercial computer software documentation” and “technical data” as those terms are defined by 48 CFR 2.101. The U.S. Government’s use, duplication or disclosure of the Products as well as any documents describing or relating to TrackWise Digital are subject to the terms and conditions of this Agreement as provided for in 48 CFR 12.212, 12.216 and 227.7202-3. If the terms of the Agreement do not meet the U.S. Government’s needs and/or are inconsistent in any respect with U.S. Federal law, the U.S. Government’s cognizant Contracting Officer must negotiate a mutually acceptable written addendum to

this Agreement specifically granting such additional rights to the U.S. Government and modifying this Agreement to be consistent with Federal law.

**13.13 Third Party Beneficiaries.** Except as otherwise provided in the SFDC Service Agreement or in any transfer mechanism under Section 12.5 (Data Processing and Transfer), nothing in this Agreement shall be construed as giving any right, remedy or claim hereunder to any person or entity that is not a Party hereto, and any person or entity that is not a Party hereto shall have no right to enforce any part of it.

**13.14 Governing Law and Dispute Resolution.** (a) This Agreement (including the Order Forms and this Section 13.14 but excluding the SFDC Service Agreement) and any disputes, controversies or differences arising out of or in connection with this Agreement, including the breach hereof, shall be governed by the substantive laws of the State of New York applicable to agreements made and wholly performed in New York, without regard to the application of any conflicts of laws principles. Application of the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act is expressly excluded. (b) Any and all disputes, controversies or differences which may arise between the Parties out of or in connection with this Agreement, including the breach hereof, which cannot be amicably settled by negotiation between the Parties within 30 days from delivery of written notice of that dispute by one Party to the other Party, shall be finally determined by arbitration administered by the International Centre for Dispute Resolution (ICDR) in accordance with its International Arbitration Rules. The place of arbitration shall be New York, New York. All documents to be filed in the course of an arbitration shall be filed in the English language and all oral proceedings shall be conducted in the English language. Each Party shall bear its own costs of translation, without prejudice to a final determination on the allocation of costs. Each arbitration hearing shall be conducted in person except when specifically prohibited by applicable law or the International Arbitration Rules. Subject to Section 8.2 (b), neither Party may disclose the existence, content or results of any arbitration hereunder (other than to its accountants and attorneys) without prior written consent of the other Party. Each Party shall cause its representatives, witnesses and any arbitrators to assume confidentiality obligations no less stringent than those provided in this Agreement, during and after the Term, with respect to the existence, content or results of any arbitration hereunder. Each Party shall be fully responsible for the observance of such confidentiality obligations by its representatives and witnesses during and after the Term. Each Party retains the right to apply to any court of competent jurisdiction at any time for provisional and/or conservatory relief, including prearbitral attachments or injunctions, to enforce the provisions of Section 8 protecting its Confidential Information and the provisions of this Agreement protecting, and to otherwise protect, its Intellectual Property rights, and any such request shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate.

**13.15 Remedies Cumulative.** Except as otherwise expressly provided in this Agreement, all remedies shall be cumulative and shall be in addition to every other remedy given in this Agreement or existing at law or in equity, by statute or otherwise.

**13.16 Counterparts.** Each Order Form 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 by electronic mail, electronic form (including execution by way of an electronic or other signature stamp ("E-signature")), website submission, facsimile or original manual signature, regardless of the means or any variation in pagination or appearance, shall be binding upon the Parties.

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Schedule 1  
Mandatory Salesforce Flowdown Provisions

**A. Access and Use Restrictions.** Subscriber shall not, and shall not attempt to (and shall not assist, enable or permit Users or others to, or to attempt to), directly or indirectly:

(i) reverse engineer, decompile, disassemble or otherwise attempt to discern or derive the source code or underlying ideas or algorithms of TrackWise Digital (unless and then only to the extent required to be permitted by applicable law); (ii) modify, copy, duplicate, translate, adapt or create derivative works of or based on TrackWise Digital or any portion thereof; (iii) rent, lease, share, lend, sell, resell, license, sublicense, distribute or otherwise transfer any rights to TrackWise Digital or any portion thereof; (iv) use or permit access to TrackWise Digital by any third party (other than Users as expressly permitted by this Agreement) or use TrackWise Digital for timesharing or service bureau purposes or otherwise for the benefit of a third party; (v) misappropriate TrackWise Digital or any portion thereof; (vi) access or use TrackWise Digital or information provided pursuant to any Consulting Service to create a competing product or service; (vii) perform or disclose any benchmark tests relating to TrackWise Digital; or (viii) remove, relocate, alter or obscure any trademark, copyright or other proprietary or restrictive marking or legend on TrackWise Digital or other materials delivered or made available by Sparta to Subscriber or any copies thereof;

(ii) violate the security of TrackWise Digital, including attempting to probe, scan or test the security or vulnerability thereof (except for such testing as is expressly permitted by salesforce.com and then only in accordance with salesforce.com's procedures), or breach any security or authentication measures, or otherwise avoid, bypass, remove, deactivate, impair, descramble or otherwise circumvent any technological measure; (ii) bypass or disable any protections that may be put in place against unlicensed use of TrackWise Digital, or otherwise gain access to or use any unauthorized portion of TrackWise Digital or gain unauthorized access to any related system, software, service or network or the data contained therein, or actually or effectively circumvent any contractual usage or other limit whether via automated means or otherwise; or (iii) use or access TrackWise Digital in any way that might interfere with, disrupt the integrity of or adversely affect the security, stability, performance or functions of TrackWise Digital;

(iii) send automated queries of any kind to TrackWise Digital without the express, advance, written permission of Sparta, including 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, or 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;

(iv) upload to or use TrackWise Digital to store or transmit infringing, obscene, threatening, libelous or otherwise unlawful or tortious material, including material that is harmful to children or that violates third-party rights, or use TrackWise Digital for or in connection with any unlawful, harmful or fraudulent use or activities;

(v) upload to or use TrackWise Digital to store or transmit viruses, worms, time bombs, Trojan horses or other harmful or malicious code, files, scripts, agents or programs, or use TrackWise Digital in any way that disrupts 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 otherwise use TrackWise Digital in any other manner that may cause Sparta to have legal liability or disrupt others' use of TrackWise Digital; or

(vi) use the Org for any purpose other than exclusively using TrackWise Digital; (ii) increase the number of custom objects within the Org other than those necessary to implement TrackWise Digital itself or as expressly permitted by the terms of a specific license as specified on an Order Form; (iii) access, distribute or use any customer relationship management functionality of the SFDC Service; or (iv) use TrackWise Digital in connection with or transfer any related subscriptions to another salesforce.com org.

As used in this Section A, references to "TrackWise Digital" include any related system, software, service or network and third party data contained therein as well as the Documentation.

**B. Audit.** Subscriber acknowledges and agrees that salesforce.com may audit Subscriber's use of TrackWise Digital within the Org and provide the results of such audit to Sparta.

**C. Data Management and Retrieval.** (a) All access and interaction between TrackWise Digital and Subscriber's Account are managed exclusively by Subscriber through its Account administration and security settings. Subscriber's access to and use of TrackWise Digital is subject to, and Subscriber shall comply and cause its Users to comply with, the salesforce.com terms and conditions, as updated from time to time, currently located at <http://spartasystems.com/legal/SFDC-service-agreement.pdf> (the "**SFDC Service Agreement**"). (b) As set forth in

the SFDC Service Agreement, in order to obtain a copy of Subscriber Data that is stored within the SFDC Service following termination of this Agreement, salesforce.com requires that Subscriber must first request a copy of such data, through Sparta, within 30 days from the termination date, which data will be made available to Subscriber in a .csv format via temporary access to the Account; salesforce.com has no obligation to retain such Subscriber Data after the end of such 30-day period. For clarity, upon termination, Subscriber's ability to access and use TrackWise Digital (including Subscriber Data in Subscriber's Org) will immediately cease and Sparta has no ability to, and no obligation to, maintain or forward any Subscriber Data that is stored within the SFDC Service. Any modifications to Subscriber Data made outside of the Platform (as defined in the SFDC Service Agreement), if any, will not be captured in Subscriber Data as returned by the SFDC Service. (c) Certain TrackWise Digital modules and/or processes may be hosted on Amazon Web Services (AWS) or other Sparta third-party hosting providers. Data management and retrieval upon termination may differ for data hosted on such providers. For TrackWise Digital modules and processes hosted on AWS, Subscriber will have 30 days from the date of termination of this Agreement to request that Sparta provide a copy of Subscriber Data that is resident on AWS (if any), and Sparta will promptly provide such files to Subscriber via a secured FTP site or similar commercially reasonable vehicle; Sparta and AWS have no obligation to retain such Subscriber Data after the end of such 30-day period.