

TRACKWISE DIGITAL® TRIALFORCE AGREEMENT

PLEASE READ ALL OF THE FOLLOWING TERMS CAREFULLY BEFORE USING THE TRIALFORCE ORG AND TRACKWISE DIGITAL (DEFINED BELOW). THIS IS A LEGAL AGREEMENT (“**AGREEMENT**”) BETWEEN YOU (“**COMPANY**”) AND SPARTA SYSTEMS, INC. (“**SPARTA**”) STATING THE TERMS AND CONDITIONS THAT GOVERN COMPANY’S ACCESS TO AND USE OF THE TRIALFORCE ORG AND TRACKWISE DIGITAL (DEFINED BELOW). BY SIGNING AN ORDER FORM WITH SPARTA THAT REFERENCES THIS AGREEMENT OR USING THE TRIALFORCE ORG AND/OR TRACKWISE DIGITAL, COMPANY AGREES TO ALL OF THE TERMS OF THIS AGREEMENT. THE INDIVIDUAL ACTING ON BEHALF OF COMPANY REPRESENTS THAT HE OR SHE HAS THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF COMPANY. IF COMPANY DOES NOT AGREE TO THESE TERMS, DO NOT USE THE TRIALFORCE ORG AND TRACKWISE DIGITAL. Sparta and Company 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 on the SFDC Service (defined below), with certain functions indirectly using functionality provided by Amazon Web Services. Sparta agrees to permit Company to access and use, and Company agrees to access and use, the TrialForce Org and TrackWise Digital in accordance with and subject to the terms and conditions set forth in this Agreement.

1. DEFINITIONS. As used in this Agreement:

1.1 “**Account**” means a unique SFDC Service administrator account that controls access to the TrialForce Org (including TrackWise Digital), to which Sparta grants Company access hereunder and through which Company 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 “**Company Data**” means any Company data, information or materials uploaded by Company or by Sparta on behalf of Company to TrackWise Digital or retrieved by Company from TrackWise Digital. Company Data shall comply with the requirements of Section 11.1 (Data Restrictions and Retrieval). Any sample data, information or materials provided by Sparta shall constitute Sparta Confidential Information, and shall not constitute Company Data.

1.4 “**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, including all technical, business, marketing, sales, financial and pricing information, know-how, 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 6 (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, however disclosed. Company Property (defined in Section 6) is Company’s Confidential Information, whether or not marked or identified as such.

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 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; and (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 references this Agreement and provides for Company’s access to the TrialForce Org and/or describes the Services purchased by Company. The Parties may enter into multiple Order

Forms. For Services, the term "Order Form" includes the applicable Statement of Work, if any. Each Order Form is hereby incorporated into and made a part of this Agreement.

1.9 **"Purpose"** has the meaning specified in Section 2.1.

1.10 **"salesforce.com"** means salesforce.com, inc. or the applicable salesforce.com, inc. subsidiary.

1.11 **"Services"** means the TrackWise Digital technical account management, configuration, training or other services provided by Sparta pursuant to an Order Form. For clarity, the term "Services" excludes TrackWise Digital and the SFDC Service. No services of any kind shall be provided to Company unless Company purchases such services pursuant to an Order Form. Company agrees that it shall not contact salesforce.com for support services or for any other reason in connection with this Agreement.

1.12 **"SFDC Service"** means the online service provided by salesforce.com through Sparta to Company in order to access and use TrackWise Digital under this Agreement.

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

1.14 **"Term"** has the meaning specified in in Section 5.1 (Term).

1.15 **"TrackWise Digital"** means Sparta's TrackWise Digital software-as-a-service modules and processes to which Sparta provides Company access under this Agreement via the TrialForce Org. The term "TrackWise Digital" includes all releases of such modules and processes that Sparta makes available to Company hereunder (including security fixes, critical patch updates and general maintenance releases).

1.16 **"TrialForce Org"** means the unique identifier used by the SFDC Service to represent and contain the end user portion of the SFDC Service, TrackWise Digital and Company Data residing therein, and to which Sparta grants Company access hereunder. For clarity, the TrialForce Org (including the Account) is in the name of Sparta; this Agreement only grants Company the right to use the Trial Force Org and the Account as expressly provided herein.

1.17 **"User"** means any individual natural human being who is an active employee or individual independent contractor of Company (a) who has completed Sparta's applicable training programs (as determined by Sparta), at Company's expense; (b) who is authorized by Company to use TrackWise Digital solely on behalf of Company and solely for the Purpose, (c) whom Company has designated as a User of TrackWise Digital in accordance with Section 2.5 (Users) and (d) to whom Company 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.** Subject to Company's payment in full of the applicable Fees, if any, and to the terms and conditions of this Agreement and the applicable Order Form(s), Sparta hereby grants Company the limited, non-exclusive, non-transferable, non-assignable right to access and use, and to permit up to the number and type of Users specified in the Order Form(s) to access and use, TrackWise Digital during the Term and solely for the purposes of:

- (a) internally designing, developing, testing and quality assurance of customer-neutral applications, connectors, APIs, plug-ins, interfaces, tools or other code that are compatible with and/or designed to be integrated with TrackWise Digital (collectively, **"Company APIs"**) provided that the Company APIs are solely for internal use by Company and TrackWise Digital customers only;
- (b) demonstrating the use of TrackWise Digital to prospective customers of TrackWise Digital with Sparta's prior written consent (including via email) in each case; and
- (c) training Company personnel on TrackWise Digital for the purposes specified in clauses (a) and (b) above;

in each case in accordance with this Agreement and the Documentation (collectively, the **"Purpose"**). Company shall not use or permit use of TrackWise Digital for production or other commercial purposes under any circumstances whatsoever.

2.2 **Access and Use Restrictions.** Company 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:

- (a) (i) reverse engineer, decompile, disassemble or otherwise attempt to discover 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, license, sublicense, distribute, sell, resell, assign 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 Services 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 Company;

(b) (i) violate the security of TrackWise Digital, including attempting to probe, scan or test the security or vulnerability thereof, 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;

(c) send automated queries of any kind to TrackWise Digital, 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;

(d) 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;

(e) 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 Company’s use of excessive storage capacity or bandwidth, 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

(f) (i) use the TrialForce Org for any purpose other than exclusively using TrackWise Digital; (ii) increase the number of custom objects within the TrialForce Org; (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 2.2, references to “TrackWise Digital” include any related system, software, service or network and data contained therein as well as the Documentation.

2.3 Company Responsibilities. Company 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.

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

2.5 Users. (a) Company shall designate the Users who will have access to TrackWise Digital through the Account and is responsible for activating and de-activating Users via the 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. For the avoidance of doubt, in no event shall Company designate any customer, prospective customer or other third party as a “User”. (b) Company shall not designate any individual as a User unless such User has first completed Sparta’s applicable training programs (as determined by Sparta), at Company’s cost and expense. (c) Company 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 Company), and for all activities that occur under the Account (excluding activities of Sparta under the Account), without limitation. Company shall immediately notify Sparta of any unauthorized access or use or any other breach of security known to Company. (d) 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 Company or otherwise permanently changed job status or function and no longer require use of TrackWise Digital. If a User is no longer authorized by Company to access and use TrackWise Digital, Company shall immediately disable such access.

2.6 Passwords. Company and its Users are responsible for maintaining the confidentiality of all passwords and any other access controls within TrackWise Digital that are managed by Company, and for ensuring that each password is used only by the assigned User. Sparta will have no liability for any loss or damage arising from Company’s or Users’ failure to comply with the terms of this Agreement.

2.7 Sparta Admin Log-in Account. Company acknowledges and agrees that Sparta shall have and maintain a single-user Admin log-in account, user ID and password for the TrialForce Org (including all environments in the TrialForce Org) and TrackWise Digital at all times. Company shall not take any action to prevent, change or disable such account. For purposes of this Agreement, Sparta shall not constitute a “User” as such term is used in this Agreement.

2.8 **Joint Product Demonstrations.** The Parties may from time to time conduct joint demonstrations of TrackWise Digital to prospective customers of TrackWise Digital, as mutually agreed.

2.9 **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 Company of any such material change.

2.10 **Monitoring.** Company acknowledges and agrees that salesforce.com may audit the use of TrackWise Digital within the TrialForce Org and provide the results of such audit to Sparta. Sparta reserves the right (but is not obligated) to record, monitor and/or audit activities occurring through the TrialForce Org. Company hereby consents to such activities and agrees not to block or interfere with such activities.

2.11 **Suspension.** Sparta may immediately suspend Company's (including Users') access to the TrialForce Org in the event of any breach by Company of Section 2.2 or Section 11 (Data), or in the event of any security breach or threat. Sparta will notify Company of any such suspension and the reason therefor as promptly as practicable.

3. SERVICES. If applicable, Sparta will provide Company with the requisite hours of Services identified in an Order Form. Services will be invoiced in advance, except as otherwise specified in the Order Form. Company shall reimburse Sparta for actual and verifiable out-of-pocket expenses (including travel and related expenses), if any, reasonably incurred by Sparta in connection with any Services. Expenses will be invoiced monthly in arrears as incurred. Sparta will not be responsible for any delay caused by Company or any third party under contract with Company. Sparta hereby grants to Company a non-exclusive, non-transferable license to use the deliverables from the Services during the Term solely in connection with Company's permitted use of TrackWise Digital hereunder and solely for the Purpose.

4. PAYMENTS. (a) All Fees will be invoiced and paid in US Dollars except as otherwise specified in the Order Form. Company shall remit payment to Sparta within 30 days of receipt of invoice. Additional payment terms may be set forth in the Order Form. All payments are non-refundable except as otherwise expressly provided herein. (b) If Company fails to pay any amounts when due, then, in addition to any other available rights and remedies, Sparta shall have the right to (i) assess a late payment charge on such overdue amounts equal to the lesser of (A) two percent per month or (B) the highest rate allowed by applicable law and/or (ii) upon five days prior written notice to Company, suspend providing the Services, without liability, in each case until such overdue amounts are paid in full. If Sparta seeks legal recourse for the collection of any unpaid Fees from Company, Sparta will be entitled to an award of reasonable attorneys' fees and other costs incurred by Sparta in such matter. (c) Upon execution of an Order Form, if required for Company's internal financial controls, Company shall issue a valid purchase order for the Services set forth in such Order Form. Company's failure to issue such purchase order shall not relieve Company of its obligation to purchase and pay for such Services. (d) 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 Company. If Company is required to withhold or deduct any Tax from any payment due hereunder, Company will increase the sum payable to Sparta such that Sparta receives an amount equal to the sum it would have received had Company made no withholding or deduction. Taxes shall not include taxes based upon Sparta's income.

5. TERM AND TERMINATION.

5.1 **Term.** The initial term of this Agreement and the TrackWise Digital subscription hereunder will commence on the "Order Start Date" and end on the "Order End Date" specified in the initial TrackWise Digital subscription Order Form, and thereafter shall automatically renew for subsequent one (1) year periods unless either Party delivers written notice to the other Party of its intent not to renew at least sixty (60) days prior to the renewal date, in each case unless earlier terminated as provided herein ("**Term**"). The term of any Services shall be as specified in the applicable Order Form and shall not automatically renew.

5.2 **Termination.** (a) Either Party may terminate this Agreement for convenience upon 15 days prior written notice to the other Party. If such termination is by Sparta, Sparta shall refund any prepaid unused portion of the Fees paid by Company for the remainder of the then-current Term. (b) 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 10 days of delivery of written notice thereof. (c) Either Party may terminate any SOW (but not this Agreement) upon written notice to the other Party if the other Party materially breaches such SOW and fails to cure such breach within 10 days of delivery of written notice thereof.

5.3 **Effect of Termination.** Upon termination of this Agreement: (a) all Order Forms, and all rights and licenses granted by Sparta hereunder and under all Order Forms (including Company's right to access and use TrackWise Digital and Company Data in the TrialForce Org), shall automatically terminate immediately; (b) Company shall immediately cease, and cause all Users to cease, all use of the TrialForce Org (including TrackWise Digital); (c) Sparta shall immediately disable Company's access to the TrialForce Org (including TrackWise Digital and all Company Data in the TrialForce Org); and (d) except as otherwise provided in Section 11.1 (Data Restrictions and Retrieval), each Party shall promptly return or destroy all Confidential Information of the other Party in its possession. All payment obligations of Company incurred, accrued or arising prior to the effective date of termination shall survive and be payable in accordance with the applicable payment terms herein.

5.4 **Survival.** The following provisions shall survive any termination of this Agreement: Sections 1 (Definitions), 2.2 (Access and Use Restrictions), 4 (Payments), 5.3 (Effect of Termination), 5.4 (Survival), 6 (Intellectual Property), 7

(Confidentiality), 8 (Warranty Disclaimer), 9 (Limitation of Liability), 10 (Indemnification), 11.1 (Data Restrictions and Retrieval), 11.2 (Company Data) and 12 (General).

6. INTELLECTUAL PROPERTY.

6.1 **Sparta.** 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 Services and deliverables (if any), data regarding Company’s use of TrackWise Digital, and all other software, technology, content, deliverables and materials (including sample data) 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, feedback, recommendations and other information provided by Company or any employee, agent or contractor of Company (all rights in which are hereby assigned to Sparta) or any other person or entity relating to any of the foregoing; (c) all derivative works, customizations, enhancements, modifications, extensions and improvements in or related to any of the foregoing; and (d) all Intellectual Property related to, developed with or from, or provided in connection with or as part of, any of the foregoing; but in each case excluding Company Confidential Information. Except for the rights expressly granted herein, Sparta does not grant, license or transfer to Company 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 Company herein are reserved by Sparta.

6.2 **Company.** As between the Parties, Company 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 “**Company Property**”): (a) the Company Data and the Company APIs; (b) all derivative works, customizations, enhancements, modifications, extensions and improvements in or related to any of the foregoing; and (c) all Intellectual Property related to, developed with or from, or provided in connection with or as part of, any of the foregoing; but in each case excluding Sparta Confidential Information. Except for the rights expressly granted herein, Company does not grant, license or transfer to Sparta or other third party any ownership or other rights to any Company Property.

7. CONFIDENTIALITY.

7.1 **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 7 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 case less than reasonable care; and (c) use the other Party’s Confidential Information only for the purposes described in this Agreement.

7.2 **Exceptions.** Confidential Information shall not include: (a) 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); (b) 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); or (c) any information that is independently developed by the receiving Party without use of or reference to Confidential Information of the other Party. Notwithstanding the foregoing, either Party may disclose Confidential Information of the other Party to any regulatory agency or court of competent jurisdiction (i) if such information to be disclosed is approved in writing by the other Party for disclosure or (ii) to the extent required by law, regulatory agency or court order to be disclosed by such Party, provided that, to the extent legally permitted, prompt prior written notice of such required disclosure is given to the other Party and provided further that such Party shall reasonably cooperate with the other Party (at such other Party’s cost and expense) to limit the extent of such disclosure.

8. WARRANTY DISCLAIMER. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW:

(a) TRACKWISE DIGITAL AND ALL DOCUMENTATION AND SERVICES ARE PROVIDED “AS IS” AND “AS AVAILABLE”, AND SPARTA MAKES NO 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;

(b) 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; AND

(c) WITHOUT LIMITING THE GENERALITY OF THE FOREGOING SUBSECTIONS (a) AND (b), SPARTA DOES NOT WARRANT THAT TRACKWISE DIGITAL OR ANY SERVICES WILL PERFORM CONTINUOUSLY OR WITHOUT INTERRUPTION, BE ERROR FREE, MEET COMPANY’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. COMPANY SHALL NOT MAKE OR PASS ON ANY REPRESENTATION OR WARRANTY ON BEHALF OF SPARTA TO ANY THIRD PARTY.

9. LIMITATION OF LIABILITY.

9.1 SUBJECT TO SECTION 9.2, IN NO EVENT SHALL SPARTA (OR ITS AFFILIATES OR LICENSORS OR OTHER PROVIDERS) HAVE ANY LIABILITY FOR: (A) ANY DAMAGES FALLING WITHIN ANY OF THE FOLLOWING CATEGORIES: (I) LOST PROFITS; (II) LOST BUSINESS, REVENUES OR SAVINGS; (III) BUSINESS INTERRUPTION; (IV) LOSS OF GOODWILL; (V) LOSS OF ANTICIPATED SAVINGS; OR (VI) LOSS, CORRUPTION OR MODIFICATION OF DATA OR OTHER INFORMATION; OR (B) ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHATSOEVER; IN EACH CASE ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT (INCLUDING THE ORDER FORM(S)), 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; UNLESS AND EXCEPT TO THE EXTENT (Y) THE FOREGOING EXCLUSION OF LIABILITY IS NOT ENFORCEABLE UNDER APPLICABLE LAW, IN WHICH CASE SPARTA'S AND ITS AFFILIATES' MAXIMUM AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENT (INCLUDING THE ORDER FORM(S)) SHALL NOT EXCEED \$1,000.00 OR (Z) COMPANY PURCHASES SERVICES FROM SPARTA, IN WHICH CASE SPARTA'S AND ITS AFFILIATES' MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH SUCH SERVICES SHALL NOT EXCEED THE AMOUNT PAID BY COMPANY FOR THE APPLICABLE SERVICES UNDER THE APPLICABLE ORDER FORM.

9.2 Nothing in this Agreement (including any Order Form) shall limit or exclude either Party's or its Affiliates' liability for: (i) death or personal injury caused by its or their negligence or the negligence of its or their employees, agents or subcontractors; (ii) fraud or fraudulent misrepresentation; or (iii) any other liability to the extent that it cannot be limited or excluded by applicable law. Section 9.1 shall not limit Sparta's payment obligations under Section 10 (Indemnification).

10. INDEMNIFICATION.

10.1 **Sparta Intellectual Property Infringement.** Notwithstanding anything to the contrary in this Agreement, and subject to Section 10.3, Sparta agrees to defend, or, at its option, settle, any third-party claim, suit or proceeding against Company to the extent based on a claim that TrackWise Digital infringes any third-party copyright, patent, trademark or trade secret that relates to Company's use of TrackWise Digital (a "**Third-Party IP Claim**"). Sparta shall pay the damages and reasonable and verifiable costs and expenses which are finally awarded against Company by final judgment of a court of competent jurisdiction (or pursuant to settlements agreed to in writing by Sparta) directly attributable to such Third-Party IP Claim. If TrackWise Digital becomes, or in Sparta's opinion is likely to become, the subject of a claim of infringement or injunction, Sparta shall have the right, at its option and expense, to: (a) procure the necessary rights to enable Company'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 refund to Company any prepaid unused portion of the Fees paid by Company for the remainder of the then-current Term. Sparta shall have no liability under this Section 10 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 software, hardware, 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.

10.2 **Company Indemnification.** Notwithstanding anything to the contrary in this Agreement, and subject to Section 10.3, Company shall defend, or, at its option, settle, any third-party claim, suit or proceeding against Sparta to the extent arising out of or related to: Company Property; any of Company's products or services; breach of Section 2.2 or of the SFDC Service Agreement (defined in Section 11.3); or negligent, reckless, illegal or improper conduct of any User(s). Company 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 Company) directly attributable to such claim.

10.3 **Conditions.** Each Party's indemnification obligations under this Section 10 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/or 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 10. 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.

10.4 **Sole Remedy.** SECTION 10.1 STATES SPARTA'S AND ITS AFFILIATES' SOLE AND EXCLUSIVE OBLIGATION AND LIABILITY, AND COMPANY'S SOLE AND EXCLUSIVE REMEDY, REGARDING INFRINGEMENT OR

MISAPPROPRIATION BY ANY PART OF TRACKWISE DIGITAL OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS. SECTION 10.2 STATES COMPANY'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 COMPANY PROPERTY.

11. DATA.

11.1 **Data Restrictions and Retrieval.** Company acknowledges that (a) the TrialForce Org is not designed for use with production data (including business content and personal data), (b) Sparta makes no assurances that any Company Data within the TrialForce Org will be secured and (c) other third parties may have access to the TrialForce Org following the termination of this Agreement; accordingly, Company shall not include any production data (including business content and personal data) in the Company Data or use the TrialForce Org or TrackWise Digital for any commercial or production purpose whatsoever. Upon termination of this Agreement, Company's ability to access and use TrackWise Digital (including Company Data in the TrialForce Org) will immediately cease, and Sparta has no obligation to maintain or forward Company Data. IN ORDER TO OBTAIN A COPY OF COMPANY DATA, COMPANY MUST EXPORT THE COMPANY DATA BEFORE THE END OF THE TERM. COMPANY ACKNOWLEDGES THAT ANY COMPANY DATA THAT IS ENTERED INTO TRACKWISE DIGITAL UNDER THIS AGREEMENT WILL BE PERMANENTLY LOST UNLESS COMPANY EXPORTS SUCH DATA BEFORE THE END OF THE TERM. As used above, "**personal data**" means any information relating to an identified or identifiable natural person; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data or an online identifier or to one or more factors specific to their physical, physiological, genetic, mental, economic, cultural or social identity.

11.2 **Company Data.** Company has sole responsibility for the content, accuracy, quality, integrity, legality, reliability, appropriateness and Intellectual Property ownership or right to use of all Company Data. Company represents and warrants that Company or its licensors own all right, title and interest in and to all Company Data. Sparta is not responsible or liable for Company's actions related to the deletion, correction, destruction, damage, loss or failure to store any Company Data.

11.3 **Access and Use.** (a) Company acknowledges that (i) with each use of TrackWise Digital, TrackWise Digital will use the functionality of TrackWise Digital and the SFDC Service to access, retrieve, manipulate, process and modify Company Data based on the configuration of TrackWise Digital and (ii) when using TrackWise Digital it can make permanent changes and edits to the Company Data in the TrialForce Org, including mass updates and mass alterations. (b) Company acknowledges that Sparta has and will have full access to the TrialForce Org and Company Data within the TrialForce Org at all times. Company hereby consents to and grants Sparta a nonexclusive license during the Term for TrackWise Digital and, if applicable, Sparta to access, use, transmit, modify and copy Company Data from time to time as necessary solely for the purpose of providing TrackWise Digital and the Services to Company and any related support and administration or otherwise as requested by Company or permitted hereunder. (c) Company's access to and use of TrackWise Digital is subject to, and Company 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**").

12. GENERAL.

12.1 **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 written notices or other written communications to Sparta shall be sent to it at 2000 Waterview Drive, Suite 300, Hamilton Township, New Jersey 08691 U.S.A., **ATTENTION: LEGAL DEPARTMENT.** All written notices to Company shall be sent to it at the primary address on file with Sparta.

12.2 **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.

12.3 **Assignment.** Neither this Agreement nor any Order Form nor any right or obligation hereunder or thereunder may be assigned, transferred, delegated or subcontracted, by operation of law or otherwise, in whole or in part, by Company without Sparta's prior written consent. Subject to the foregoing, this Agreement (including the Order Form(s)) shall be binding upon and inure to the benefit of the Parties and their successors and assigns.

12.4 **Trademarks, Publicity.** (a) Sparta 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. Company 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 Sparta or such licensors. (b) 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.

12.5 **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.

12.6 **Compliance with Laws.** Company shall not, and shall not permit Users to, access, use, export or re-export TrackWise Digital, or use TrackWise Digital to access, use, export or re-export Company Data, in or to a U.S.-embargoed country or in violation of any applicable export law, regulation, order or sanction. Sparta represents that neither it nor any of its Affiliates is named on any U.S. government denied-party list. Company represents that neither it nor any of its Affiliates nor any User is named on any U.S. government denied-party list. Company shall at all times comply and cause its 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.

12.7 **Governing Law and Dispute Resolution.** (a) This Agreement (including the Order Forms and this Section 12.7 but excluding the SFDC Service Agreement) 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, or 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. Except to the extent required by applicable law, 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 this Agreement protecting, and to otherwise protect, its Confidential Information and 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.

12.8 **Miscellaneous.** (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 it 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 Form(s) 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 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) this Agreement; (ii) the SFDC Service Agreement; and (iii) the applicable Order Form. (f) Except as otherwise provided in the SFDC Service Agreement, 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 shall have no right to enforce any part of it. (g) 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. (h) 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.