



## MASTER SUBSCRIPTION AGREEMENT

**THIS MASTER SUBSCRIPTION AGREEMENT** by and between Track and Client is made and entered into effective as of the Effective Date.

**WHEREAS**, Track provides certain software applications on a software as a service basis along with related professional services; and

**WHEREAS**, Client desires to acquire certain of the Services on behalf of itself and its Affiliates as more fully described in the applicable Order Form(s), and Track desires to provide the Services to Client and its Affiliates, in accordance with the terms and conditions of this Agreement and such Order Form(s).

**NOW, THEREFORE**, in consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties further agree as follows:

1. **Definitions.** In addition to the terms defined elsewhere in this Agreement, the following terms shall have the following meanings:

1.1 **“Affiliate”** means an entity that is (i) in control of, controlled by or under common control with Client, and (ii) expressly named as an Affiliate in the applicable Order Form. For the purposes of this Section 1.1, “control” and “controlled” mean the direct or indirect ability (a) to vote more than fifty percent (50.0%) of the outstanding voting interests, or (b) to direct or cause the direction of general management decisions, including, without limitation, through a management agreement. Unless otherwise set forth in the applicable Order Form, if an entity that is expressly named as an Affiliate ceases to be in control of, controlled by or under common control with Client, then such entity shall no longer be deemed an Affiliate for the purposes of this Agreement.

1.2 **“Agreement”** means this Master Subscription Agreement.

1.3 **“Client Content”** means Client’s Confidential Information and Client’s data and information provided and/or made available to Track under this Agreement. Client Content shall not include Track’s Confidential Information, the Services, Third Party Products or Track’s or Track’s Agents’ data or information.

1.4 **“Client”** means the individual or entity specified as the “Client” in the Order Form that is agreeing to this Agreement collectively with its Affiliates.

1.5 **“Competitor”** means an individual or entity that, directly or indirectly, as an employee, independent contractor, officer, manager, director, governor, owner, principal, partner, shareholder, member, agent, consultant or joint venturer calls upon, attempts to call upon, diverts, takes away, solicits, attempts to solicit, provides or contracts with individuals or entities with respect to services or software that are substantially similar to the Services.

1.6 **“Competitive Use”** means benchmarking, monitoring or testing availability or performance, or any other competitive use, including, but not limited to, creating services or software that are substantially similar to the Services.

1.7 “**Confidential Information**” means any and all information or data which is disclosed or otherwise made available by the Disclosing Party to the Receiving Party in any tangible or oral form, including, but not limited to, development and/or financial plans, ideas, concepts, drawings, designs, discoveries, improvements, specifications, formulas, trade secrets, prototypes, processes, notes, memoranda and reports concerning Track’s past, present or future research, technology, know-how, computer programs, products, sales and marketing plans, financial statements and business plans, product plans and/or costs, deliverables, the Software, Documentation and any other information, oral or written, that is designated as confidential or proprietary or should reasonably be considered confidential or proprietary. Confidential Information shall also include the terms of any Order Form(s).

1.8 “**Disabling Code**” means computer code designed to interfere with the normal operation of the Services, the Software or Track’s, Track’s Agents’ or a third party’s hardware or software, or any program routine, device or other undisclosed feature, including, but not limited to, a time bomb, virus, software lock, drop-dead device, malicious logic, worm, Trojan horse, or trap door which is designed to delete, disable, deactivate, interfere with or otherwise harm the Services, the Software or Track’s, Track’s Agents’ or a third party’s hardware or software.

1.9 “**Disclosing Party**” means the party that discloses or otherwise makes available Confidential Information to the Receiving Party.

1.10 “**Documentation**” means the electronic or physical technical documentation, manuals and user guides generally made available by Track from time to time that describe the functionality of the Services, as updated from time to time. Documentation shall not include demos, marketing materials, proposals or similar content or any documentation regarding Third Party Products.

1.11 “**Effective Date**” means the date of Client’s acceptance of this Agreement by signing an Order Form with Track.

1.12 “**Order Form**” means an order form signed by an authorized representative of each party that refers to this Agreement.

1.13 “**Receiving Party**” means the party to which the Disclosing Party discloses or otherwise makes available Confidential Information collectively with its Affiliates, as applicable.

1.14 “**Services**” means the services and the Software Track shall make available to Client as more fully described in this Agreement and the applicable Order Form(s). The Services shall not include Third Party Products.

1.15 “**Software**” means any software made available to Client through the Services. Software shall include any new releases, updates, upgrades and modifications which Track makes available to Client under the terms of this Agreement. Software shall not include Third Party Products.

1.16 “**Third Party Products**” means services and products that are owned, performed and/or supplied by a party other than Track. Third Party Products may be so designated on an Order Form.

1.17 “**Track**” means Track Hospitality Software, LLC, a Minnesota limited liability company, its successors and assigns.

1.18 “**Track’s Agents**” means Track’s employees and contractors.

1.19 “User” means an individual employee or contractor of Client that is authorized by Client to access or use the Services and has been issued a username and password by Client, Track or Track’s Agents.

2. Access to Services.

2.1 Services. Provided that Client is current with its payment obligations, Track hereby grants Client a limited, non-transferable (except in accordance with Section 17 below), non-exclusive license for Users to access the Services during the Term (as defined below) solely for Client’s internal business purposes and in accordance with the terms of this Agreement and any usage limitations set forth in the applicable Order Form(s). Upon signature by an authorized representative of each party, each Order Form shall be incorporated herein by reference and deemed a part hereof. The Services shall be provided in accordance with the terms and conditions of this Agreement. All of Client’s rights to the Services are subject to Client’s compliance with the terms of this Agreement.

2.2 Support and Hosting.

2.2.1 Support Obligations. During the applicable Subscription Period (as defined below) Track shall directly or indirectly provide telephonic or online standard support and maintenance related to the operation and functionality of the Software from Monday to Friday between 9:00 a.m. and 5:30 p.m. (CST), subject to any support policy adopted or modified by Track from time to time, which shall be made available at [www.TrackHS.com](http://www.TrackHS.com), at no additional charge. Client agrees that only its designated support personnel set forth on the applicable Order Form shall contact Track for support or maintenance. Client is solely responsible for (i) purchasing support services for any Third Party Products, and (ii) licensing and/or purchasing additional Third Party Products necessary to access and use any new releases, updates, upgrades or modifications of or to the Services. Track shall have no obligation to provide support or maintenance relating to matters outside of the operation and functionality of the Software, including, without limitation, issues arising from Client’s hardware, software, network or operating systems. Track does not support Third Party Products.

2.2.2 Hosting Obligations. Track shall use reasonable efforts to make the Services available 24/7/365 except for (i) planned outages, which Track shall use all reasonable efforts to schedule outside of normal business hours and to provide advance electronic notice to Client through the Services or otherwise, (ii) emergency maintenance, and (iii) those events described in Section 22 below. Track shall have no liability due to unavailability of the Services from these excluded events.

2.3 Fees.

2.3.1 Fees and Expenses. Client shall pay all fees set forth in the applicable Order Form and shall reimburse Track for reasonable expenses incurred in the provision and performance of the Services (such fees and expenses, collectively “Fees”). In addition, as part of the Fees, Track shall pass through and Client shall be responsible for any third party fees incurred in connection with the provision or performance of the Services. Unless otherwise specified in the applicable Order Form, Track shall invoice Client the applicable Fees monthly by email and all invoiced Fees are due thirty (30) days from the date of the invoice. All Fees paid are nonrefundable except as expressly set forth in this Agreement or the applicable Order Form. After the initial Subscription

Period (as defined below), Track may increase the Fees on thirty (30) days notice to Client, which notice may be given as part of an invoice or sent via email. The terms and conditions of this Agreement, the applicable Order Form and the applicable invoice shall control all payment terms, notwithstanding any conflicting terms stated on Client's purchase order or any other document supplied by Client.

2.3.2 Disputed and Overdue Fees. If Client disputes any portion of any invoice, Client shall notify Track in writing within thirty (30) days from the date of the invoice with sufficient detail to allow the parties to resolve the dispute in good faith; otherwise, such invoice shall be deemed approved for all purposes. Overdue Fees shall bear interest at the lesser of one and one-half percent (1.5%) per month or the maximum rate allowed by applicable law, until paid. In the event that any Fees become more than thirty (30) days overdue, Track may suspend performance of the Services and/or Client's access to the Services upon written notice to Client. Track shall have no liability due to such suspension. To the extent not prohibited by law, Client shall be responsible for all charges, fees and expenses (including, but not limited to, reasonable attorney's fees) incurred by Track in enforcing or attempting to enforce Client's payment obligations hereunder, regardless of whether suit is commenced.

2.3.3 Taxes. All Fees are exclusive of sales and other taxes and Client is solely responsible for payment of (or reimbursement for) any applicable federal, state, local and city taxes, except for any taxes based on Track's net income.

2.3.4 Changes in Law. If, after the Effective Date, an order or injunction issues, or there is any change (or reasonable likelihood of change) in any law, rule, regulation, standard or agreement between Track and its suppliers, that has or would have the effect of directly or indirectly increasing the cost to Track or its suppliers of providing the Services or Third Party Products or imposing additional costs on Track or its suppliers, then Track may increase the applicable Fees in an amount reasonably proportionate to such increase or additional costs on written notice to Client.

### 3. Ownership and Restrictions.

3.1 Ownership. Client acknowledges and agrees that as between Client and Track, Track is and shall remain the exclusive owner of the Services, Software, its Confidential Information and all patent, copyright, trade secret, trademark and other intellectual property rights therein. Except as expressly recited herein, no rights or obligations are to be implied from this Agreement and no license is hereby granted, directly or indirectly, under any patent, trade secret, copyright or other intellectual property right now held by, which may be obtained by or which are or may be licensable by Track. Track expressly reserves all rights not expressly set forth in this Agreement. Track acknowledges and agrees that as between Track and Client, Client is and shall remain the exclusive owner of Client Content and all patent, copyright, trade secret, trademark and other intellectual property rights therein. Client is solely responsible for the accuracy, integrity and reliability of Client Content.

3.2 Proprietary Materials. Client acknowledges that the Services are proprietary to Track and are protected by intellectual property and other laws. Client further acknowledges that Third Party Products are proprietary to their respective suppliers and are protected by intellectual property and other laws. Client agrees not to change or delete any copyright or proprietary notices contained on or provided through the Services or Third Party Products.

3.3 Restrictions on Use. Client shall not, and shall not allow or assist any Users or third parties to, (i) sublicense, rent, lease, use, permit use of, modify, create derivatives of or make available any part of the Services, Third Party Products or Documentation except as expressly permitted in this Agreement; (ii) decompile, reverse engineer or otherwise attempt to discover any underlying code which is part of the Services, Third Party Products or Software; (iii) use the Services other than in accordance with this Agreement, the applicable Order Form and Documentation; (iv) export any part of the Services or Third Party Products outside of the United States without Track's prior written consent and in accordance with applicable law; (v) have any right to receive a copy of the Software's or a Third Party Product's source code; (vi) use the Services or Third Party Products to post, upload or transmit any Disabling Code or any data, content or materials of any type that are illegal, threatening, obscene, defamatory, harmful, invasive to privacy or similar rights of Track or a third party or that infringe or violate any rights of any party, including, but not limited to, any patent, copyright, trademark, trade secret or any proprietary or other right of Track or a third party; (vii) use the Services or Third Party Products in an unauthorized manner or in a manner that would interfere with or disrupt the accuracy, integrity and reliability of the Services or Track's and/or Track's Agents' hardware or software, and/or (viii) copy the Documentation other than as necessary for use of the Services.

3.4 Accessibility. Client shall be solely responsible for providing, maintaining and ensuring compatibility with the access requirements for the Services, and all hardware, software, electrical or other physical requirements for use of the Services, including, without limitation, telecommunications and internet service provider access, connections, links, web browsers or other equipment, programs and services required to use the Services. The Services may not be available in all areas. Client will provide timely access to its personnel, systems, information and location(s) for which the Services are provided (each a "**Client Facility**"), which, in Track's reasonable judgment, are required for Track to perform its obligations under this Agreement.

3.5 User Accounts. Each User may not have more than one (1) User account and may not share his or her password with any third party. The security, confidentiality and integrity of each User account and password is Client's sole responsibility and Client agrees to bear all liability for the same as well as all use and/or charges incurred from use of the Services with all User accounts and/or passwords, including, but not limited to, unauthorized charges. Client shall take all reasonable steps to ensure that no unauthorized person shall have access to User accounts or passwords and shall immediately notify Track of any unauthorized access or use of which Client becomes aware. Notwithstanding anything to the contrary, Client hereby authorizes Track to use, sublicense and disclose User account information (i) if required by applicable law or where necessary to enforce this Agreement and/or to protect any of Track's or other parties' legal rights, and (ii) in an aggregated form which does not include User-identifying information.

#### 4. Third Party Terms.

4.1 Third Party Licenses. Access to the Services may include hardware, software elements and other proprietary materials from Track's third party suppliers (i.e. Third Party Products) that are subject to license rights and restrictions (collectively the "**Third Party Licenses**"). In such event, Client's rights to and Track's provision of the Services are expressly subordinate and subject to the Third Party Licenses. Third Party Licenses are available at [www.TrackHS.com/legal](http://www.TrackHS.com/legal), and where commercially reasonable, Track will provide copies of the Third Party Licenses upon written request. By agreeing to this Agreement, Client acknowledges access to and an opportunity to review the Third Party Licenses. If Track's rights provided by a

third party supplier are limited, suspended or terminated for any reason, the rights of Client shall also be so limited, suspended or terminated. Track shall provide Client notice of any such limitation, suspension or termination. To the extent of any conflict between the terms of this Agreement and the terms of a Third Party License, the terms of the Third Party License shall control with respect to the applicable Third Party Product.

4.2 Supplier Agreements. Client agrees to sign and deliver any agreements required by a third party supplier with regard to Client's access to or use of the Services (each a "**Supplier Agreement**"). If Client fails to sign and deliver a Supplier Agreement, or if a Supplier Agreement expires or terminates for any reason, then Client's right to use the relevant materials and Track's obligation to provide any related Services shall terminate upon written notice from Track to Client. Client represents and warrants that Client will comply with all of the Third Party Licenses and Supplier Agreements. Client's rights to and Track's provision of the Services and Third Party Products integrated into the Services are expressly subordinate and subject to any applicable Supplier Agreements. If Client's rights provided by a third party supplier are limited, suspended or terminated for any reason, the rights of Client shall also be so limited, suspended or terminated under this Agreement. Client shall provide Track notice of any such limitation, suspension or termination.

## 5. Term and Termination.

5.1 Term. This Agreement will commence upon the Effective Date and shall remain in effect until terminated in accordance with the terms of this Agreement (the "**Term**"). In the event this Agreement is duly terminated by either party, all Order Forms then in effect, if any, shall also terminate as of the effective date of termination of this Agreement. This Agreement shall terminate when all Subscription Periods (as defined below) expire and/or are terminated.

5.2 Subscription Period. The term of an Order Form (each a "**Subscription Period**") shall commence as of the "Start Date" of the Order Form and shall continue for the initial Subscription Period specified in such Order Form. Thereafter, unless otherwise specified in the applicable Order Form, the Subscription Period shall automatically renew for successive periods equal to the lesser of one (1) year or the length of the initial Subscription Period, unless Track or Client provides written notice of non-renewal to the other party at least sixty (60) days before the end of the current Subscription Period.

### 5.3 Termination of Agreement or Order Form(s).

5.3.1 Termination for Convenience. This Agreement may be terminated in a writing signed by each party.

5.3.2 Termination for Cause. Either party may terminate this Agreement for cause if the other party breaches a material term or condition of this Agreement and fails to cure such breach within ten (10) days of receipt of written notice of the breach for payment obligations or thirty (30) days of receipt of written notice of the breach for all other obligations. Further, either party may terminate this Agreement for cause immediately upon written notice of termination, if (i) the other party makes an assignment of all or part of its assets for the benefit of creditors, or becomes the subject of a voluntary or involuntary petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation or composition for the benefit of creditors (collectively "**Petitions**"), if such Petitions are not dismissed within sixty (60) days of

filing, or (ii) the other party fails to inform the terminating party of a Petition in writing within five (5) business days of the filing of the Petition.

5.4 Effect of Termination. Client shall pay for all Fees incurred and/or accrued up to and including the effective date of termination or expiration of this Agreement and any Order Form(s). Upon termination of this Agreement, (i) Client's license rights under this Agreement and any Order Form(s) shall immediately terminate, and (ii) each party shall return to the other party all documents and other tangible manifestations in whatever form of the other party's Confidential Information (as defined below) received by such party pursuant to this Agreement (and all copies and reproductions thereof), or, if the other party so requests, immediately destroy any such Confidential Information (and all copies and reproductions thereof), and certify such return and/or destruction to the other party, except for any information in which the returning party has a continuing license. For the avoidance of doubt, upon termination or expiration of an Order Form, Client's rights thereunder shall immediately terminate.

6. Representations and Warranties.

6.1 Track's Representations and Warranties. Track represents and warrants that (i) this Agreement constitutes the legal, valid and binding obligation of Track enforceable against Track in accordance with its terms, subject to the principles of equity, bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally; (ii) Track has all requisite authority to enter into this Agreement and to carry out the transactions contemplated by this Agreement, and the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorized by Track; (iii) Track is qualified to perform the Services and will perform the Services in a professional manner; (iv) Track is the lawful owner of the Services, or, to the extent it is not the lawful owner, it has all rights necessary for it to provide the Services to Client under this Agreement; (v) the Services will perform substantially in conformance with the applicable Documentation under normal use and circumstances; and (vi) Track has used reasonable efforts to scan the Services for Disabling Code.

6.2 Client's Representations and Warranties. Client represents and warrants that (i) this Agreement constitutes the legal, valid and binding obligation of Client enforceable against Client in accordance with its terms, subject to the principles of equity, bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally; (ii) Client has all requisite authority to enter into this Agreement and to carry out the transactions contemplated by this Agreement, and the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorized by Client; (iii) Client owns or has the rights and/or authorization necessary for Track to use Client Content under this Agreement; and (iv) Client is not a Competitor and shall not attempt to engage in or engage in, or assist a third party to attempt to engage in or engage in, any Competitive Use of the Services.

7. Confidential Information.

7.1 Confidentiality Obligation. The Receiving Party shall keep all Confidential Information confidential and shall not use or disclose Confidential Information except as permitted under this Agreement or as otherwise necessary to fulfill its obligations under this Agreement. The Receiving Party shall inform all of its employees, contractors and consultants with a need to know Confidential Information of their obligations under this Agreement and such contractors and consultants must agree in writing to be bound by confidentiality obligations as

least as restrictive as those set forth in this Agreement, either by means of an agreement directly with the Disclosing Party or pursuant to an agreement with the Receiving Party. The Receiving Party shall use the same degree of care it uses to protect its own proprietary information (but in no event less than a reasonable degree of care) to prevent the unauthorized use or disclosure of Confidential Information. Except as otherwise expressly provided, the Receiving Party may not “reverse engineer,” make derivatives or adaptations, duplicate or copy in any fashion any of the Disclosing Party’s Confidential Information, in whole or in part, without the prior written consent of the Disclosing Party. The Receiving Party shall immediately notify the Disclosing Party of any use or disclosure of Confidential Information not permitted by this Agreement of which it becomes aware.

7.2 Exceptions. The Receiving Party shall have no obligation to preserve the confidentiality of any information which (i) was previously known to the Receiving Party free of any confidentiality obligation and not through an unauthorized disclosure; (ii) becomes publicly available by any means other than unauthorized disclosure; or (iii) is independently developed by the Receiving Party without reliance on any of the Disclosing Party’s Confidential Information. The Receiving Party shall bear the burden of proof for relying on any of the foregoing exceptions. Notwithstanding anything to the contrary, in the event that the Receiving Party is legally compelled to disclose any of the Disclosing Party’s Confidential Information pursuant to a subpoena, order, process or other requirement of a judicial or other governmental agency, the Receiving Party may disclose such Confidential Information provided that the Receiving Party (a) notifies the Disclosing Party as soon as practicable prior to making such legally compelled disclosure, (b) provides any reasonably requested assistance to the Disclosing Party in obtaining a protective order, and (c) only discloses that portion of the Disclosing Party’s Confidential Information that, in the opinion of the Receiving Party’s legal counsel, it is legally compelled or otherwise required to disclose.

7.3 Enforcement. It is recognized that damages in the event of a breach or threatened breach of the covenants set forth in this Section 7 will be difficult, if not impossible, to ascertain. It is therefore agreed that either party, in addition to, and without limiting, any other remedy or right that it might have, shall have the right to an injunction against the other party issued by a court of competent jurisdiction, enjoining the other party from violating the provisions of this Section 7. Each party hereby consents to the issuance of any preliminary or permanent injunction without bond. Notwithstanding anything to the contrary, it shall not be a breach of this Agreement for a party to disclose the existence or the terms of this Agreement or any Order Form in order to enforce the terms hereof or thereof.

## 8. Indemnification and Assumption of Risk.

8.1 Indemnification by Track. Track shall indemnify, defend and hold Client, its employees, owners, officers, managers, governors, directors, successors and assigns harmless from and against any liability, loss, claim, action, demand and/or expense (including, but not limited to, reasonable attorneys’ fees) (collectively “**Claims**”) to the extent arising out of a third party’s claim that the Services infringe its valid United States patent, copyright, trade secret, trademark or other intellectual property rights; provided that Client (i) promptly notifies Track in writing of any Claim(s) of which it becomes aware, (ii) permits Track sole control to defend, compromise or settle Claim(s), and (iii) provides reasonable information, assistance and authority at Track’s expense to enable Track to defend Claim(s). Subject to the foregoing, Client may otherwise participate in the defense or settlement of any Claim(s) at its own expense. If the Services are held or are reasonably believed by Track to infringe a third party’s patent, copyright,



trade secret, trademark or other intellectual property rights, Track may, in its sole discretion, (a) modify the Services so that they are non-infringing, (b) replace the infringing portion of the Services with a non-infringing substitute of similar functionality, (c) obtain a license for Client to continue to use the Services, and/or (d) terminate the applicable Order Form upon thirty (30) days notice and provide Client a prorated refund of any prepaid Fees based on the remaining Subscription Period for which such Fees apply. This Section 8.1 shall not apply to the extent the applicable Claim arises out of a Third Party Product, Client's breach of this Agreement, a modification of the Services by anyone not expressly authorized by Track, use of a non-current release of the Services or use of the Services with any other hardware or software not provided by or through Track. THIS SECTION 8.1 STATES CLIENT'S SOLE AND EXCLUSIVE REMEDY AND TRACK'S SOLE LIABILITY FOR ANY THIRD PARTY CLAIM THAT THE SERVICES INFRINGE A THIRD PARTY'S PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK OR OTHER INTELLECTUAL PROPERTY RIGHTS.

8.2 Indemnification by Client. To the fullest extent permitted by law, Client shall indemnify, defend and hold Track, its employees, members, managers, governors, suppliers, agents, contractors, suppliers, affiliates, representatives, successors and assigns harmless from and against any Claims arising out of or related to (i) Client's breach of the terms of this Agreement, (ii) any disputes between or among Client and Client's employees, contractors, consultants and/or agents, (iii) claims that any Client Content or Client's or its supplier's other hardware, software or products (or the provision of the Services or Software in connection therewith) violate or in any way infringe on any patent, copyright, trademark, trade secret or any proprietary or other right of a third party, including, but not limited to, any third party agreement binding Client or such hardware, software, content or products, and/or (iv) chargebacks, ACH fees, reversals and/or similar fees arising for any reason from Client's or any User's use of the Services to process payments, including, without limitation, credit or debit card payments. Track shall (i) promptly notify Client in writing of any Claim(s) of which it becomes aware, (ii) permit Client sole control to defend, compromise or settle Claim(s), provided Client may not settle any Claim(s) without the consent of Track where the settlement involves a remedy other than the payment of money, and (iii) provide reasonable information, assistance and authority at Client's expense to enable Client to defend any Claim(s). Track may otherwise participate in the defense or settlement of any Claim(s) at its own expense.

8.3 Assumption of Risk. Client understands the risks associated with the access to and use of the Services. Client acknowledges that Client is using the Services at Client's own risk and Client is personally responsible for verifying their suitability for Client's needs.

9. Disclaimer and Limitation of Liability.

9.1 Disclaimer. **THE SERVICES, SOFTWARE AND ANY INFORMATION RELATED TO OR PROVIDED THROUGH THE SERVICES OR SOFTWARE ARE PROVIDED ON AN "AS IS" BASIS. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, TRACK DOES NOT MAKE ANY EXPRESS OR IMPLIED WARRANTIES, REPRESENTATIONS OR ENDORSEMENTS OF ANY KIND WHATSOEVER (INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT) WITH REGARD TO THE SERVICES OR SOFTWARE, OR WITH RESPECT TO ANY INFORMATION RELATED TO OR PROVIDED THROUGH THE SERVICES OR SOFTWARE. ALL THIRD PARTY PRODUCTS ARE PROVIDED ON AN "AS IS" BASIS AND TRACK DOES NOT MAKE ANY EXPRESS OR IMPLIED**

**WARRANTIES, REPRESENTATIONS OR ENDORSEMENTS OF ANY KIND WHATSOEVER (INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT) WITH REGARD TO THIRD PARTY PRODUCTS.**

9.2 Limitation of Liability. EXCEPT WITH RESPECT TO TRACK'S GROSS NEGLIGENCE OR WILLFULL MISCONDUCT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL TRACK OR ITS AFFILIATES, EMPLOYEES, MEMBERS, MANAGERS, GOVERNORS, AGENTS, CONTRACTORS, SUPPLIERS, REPRESENTATIVES, SUCCESSORS OR ASSIGNS BE LIABLE UNDER ANY LEGAL THEORY FOR ANY INDIRECT, SPECIAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF OR RESULTING FROM THIS AGREEMENT, THE SERVICES OR SOFTWARE, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, INTEREST OR INTERRUPTION OF BUSINESS, WHETHER BASED UPON CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE, DUTY TO WARN AND STRICT LIABILITY), WARRANTY OR ANY OTHER LEGAL OR EQUITABLE GROUNDS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ANY LIMITED WARRANTY'S OR REMEDY'S ESSENTIAL PURPOSE. SUBJECT TO THE LIMITATIONS CONTAINED IN THIS AGREEMENT, EXCEPT WITH RESPECT TO TRACK'S GROSS NEGLIGENCE OR WILLFULL MISCONDUCT, TRACK AND ITS AFFILIATES, EMPLOYEES, MEMBERS, MANAGERS, GOVERNORS, AGENTS, CONTRACTORS, SUPPLIERS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS SHALL ONLY BE LIABLE TO THE EXTENT OF ACTUAL, DIRECT DAMAGES INCURRED BY CLIENT, NOT TO EXCEED THE FEES PAID BY CLIENT TO TRACK UNDER THE AFFECTED ORDER FORM IN THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO SUCH DAMAGES. THE EXISTENCE OF MULTIPLE CLAIMS SHALL NOT INCREASE THIS LIMIT. Any claims arising in connection with this Agreement, the Services or Software except for claims arising out of Client's nonpayment must be brought within one (1) year of the date of the event giving rise to such action occurred.

9.3 Acknowledgement. CLIENT ACKNOWLEDGES AND AGREES THAT THE DISCLAIMERS AND LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION 9 ARE FUNDAMENTAL ELEMENTS OF THIS AGREEMENT AND THE SERVICES AND SOFTWARE WOULD NOT BE PROVIDED TO CLIENT ABSENT SUCH DISCLAIMERS AND LIMITATIONS OF LIABILITY. SOME JURISDICTIONS DO NOT ALLOW THE DISCLAIMER OF CERTAIN WARRANTIES OR THE LIMITATION OF CERTAIN LIABILITIES, SO THE ABOVE MAY NOT APPLY TO CLIENT.

10. Information and Audits. Upon Track's prior written request, Client shall promptly provide Track and/or its agents with remote and/or physical access during normal business hours to Client Facilities and any other location reasonably related to Client's access or use of the Services, along with all records, documents, policies and procedures relating to the Services, for purposes of enabling Track and/or its agents to determine compliance with the terms of this Agreement. If Track learns that Client has exceeded any use restrictions or is otherwise not in compliance with this Agreement, then Client shall promptly pay to Track the then current list price for any overage, if any, from the first date of such overage, plus a ten percent (10.0%) surcharge, and the reasonable costs of conducting the foregoing

determination and any subsequent determinations for the purpose of verifying the resolution of such issues.

11. Relationship.

11.1 Independent Contractors. The parties are independent contractors, and nothing in this Agreement shall be construed to make the parties partners, joint venturers, representatives or agents of each other, nor shall either party so represent to any third person. No employer-employee relationship is intended to be created by this Agreement.

11.2 Agents. Track's Agents may perform the Services (or any portion thereof) in Track's sole discretion. Track acknowledges and agrees that it is responsible for any Services performed by Track's Agents. Track is solely responsible for the payment of any compensation to Track's Agents, including taxes, contributions and benefits. Client will not have any obligation to directly pay any amount to Track's Agents, including, but not limited to, "overtime" or premium payments. Client acknowledges and agrees that it is responsible for all acts and omissions of Users, its Affiliates and their employees, contractors and agents. All acts and omissions of Users and Client's employees, contractors and agents shall be deemed Client's acts and omissions.

12. Client License Grants. Client hereby grants to Track and its contractors a non-exclusive license to use, host, sublicense, reproduce, create derivative works from, modify, publish, edit, translate, distribute, perform and display, including digitally or electronically, (i) Client Content as necessary to provide the Services, as specified under Third Party Licenses and/or for the interoperation of any Third Party Products, and (ii) Client's logos and/or marks on or in association with the Services (e.g. for branding purposes), as may be further specified in the applicable Order Form. Track acknowledges that Client is the owner of such logos and/or marks and agrees to include any reasonable mark notice specified by Client in writing to Track. Track further agrees that its use of any such logos and/or marks shall inure to the benefit of Client. Notwithstanding the foregoing, if Client submits any business information, ideas, concepts or inventions to Track through the Services or by other means, Client hereby grants, and/or warrants that the owner of such content or intellectual property has expressly granted to Track, a royalty-free, perpetual, irrevocable, world-wide, non-exclusive, transferable, sublicensable (through multiple tiers) license to use, reproduce, create derivative works from, modify, publish, edit, translate, distribute, perform and display, including digitally or electronically, such content or intellectual property in any media or medium, or any form, format or forum now known or hereafter developed.

13. Credit Card Payments. If Client elects to pay any Fees by credit card payment, and such method of payment is approved by Track, in its sole discretion, (i) Client is responsible for providing a valid credit card number at the time Client registers to pay by credit card, (ii) Client represents and warrants that Client is an authorized user of the credit card number provided, and Client agrees to pay all charges resulting from Client's use of a credit card, including, but not limited to, any unauthorized charges incurred prior to Client's notifying Track of such charges, and (iii) Client agrees that Track may pass Client's credit card information and personally identifiable information to its designated service provider(s) for their use in processing credit card payments.

14. Compliance with Applicable Laws. Client agrees that Client will not use the Services in violation of federal, state or local law or other applicable rules or regulations. If Client accesses the Services from outside the United States, Client does so at Client's own risk and responsibility for compliance with laws of Client's jurisdiction.

15. Governing Law and Disputes. This Agreement shall be governed by, construed and enforced according to the laws of the State of Minnesota, without regard to its conflict or choice of law principles. Subject to this Section 15, any action arising out of or relating to this Agreement shall be brought only in the state or federal courts of Hennepin County, Minnesota, and all parties expressly consent to such court's jurisdiction and irrevocably waive any objection with respect to the same, including any objection based on forum non conveniens. The parties agree to meet and confer in good faith on any matter of common interest and any controversy, claim, or dispute (collectively "**Dispute**") which materially affects the performance of any party under this Agreement. As soon as a Dispute is recognized by a party, it will communicate the substance of such Dispute to the other party's primary contact as indicated on the applicable Order Form (each a "**Primary Contact**"). Once a Dispute has been raised, the Primary Contacts will make all reasonable efforts to reach a resolution within fifteen (15) days. The Dispute resolution process amongst the Primary Contacts outlined in this Section 15 shall not apply to Disputes seeking injunctive or other equitable relief.

16. Headings. Section and subsection headings are not to be considered part of this Agreement. They are included solely for convenience and not intended to be full or accurate descriptions of the content hereof.

17. Successors and Assigns. Client may not assign this Agreement, or any of its rights or obligations hereunder, without the prior written consent of Track, and any attempted assignment without Track's prior written consent shall be null and void. For the avoidance of doubt, Track may assign this Agreement, or any of its rights or obligations hereunder, in the event of a transfer of all or substantially all of Track's assets or Track's restructuring, upon written notice to Client. All of the terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

18. Severability. Should any provision of this Agreement be held invalid or unenforceable, such invalidity will not invalidate the whole of this Agreement, but rather that invalid provision will be amended to achieve as nearly as possible the same effect as the original provision and the remainder of this Agreement will remain in full force and effect.

19. Parties in Interest. Nothing in this Agreement is intended to confer upon any person other than the parties hereto, and their respective successors and permitted assigns, any rights or remedies under or by reason of this Agreement, nor is anything in this Agreement intended to relieve or discharge the liability of any other party.

20. Counterparts. Any Order Form may be signed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature on an Order Form is delivered by facsimile transmission, e-mail delivery or other electronic means (e.g. a PDF), such signature shall create a valid and binding obligation of the signing party with the same force and effect as if such signature were an original thereof.

21. Counsel. Each of the parties hereto have been represented by independent legal counsel or afforded the opportunity of representation by independent legal counsel.

22. Force Majeure. Neither party shall be responsible for delays or failures of performance resulting from acts beyond the reasonable control of such party, except for payment obligations. Such acts shall include, but are not limited to, acts of God, strikes, public internet and private internet connection failures, lockouts, riots, acts of war, acts of terror, epidemics, government regulations superimposed after the Effective Date, fire, communication line failures, power failures, earthquakes and other disasters. In

