

SPRKLAB TERMS OF SERVICE

These Sprklab Terms of Service (these “**Terms**”) are entered into by and between Sprklab, Inc., a Delaware corporation (“**Sprklab**”), and the party identified as the customer (the “**Customer**”) in the applicable order form or other ordering document (“**Order Form**”) executed by the Parties or accepted by Customer by means of online acceptance by clicking “Subscribe” or “I Accept” or similar words of acceptance. These Terms are effective as of the date set forth in the Order Form (the “**Effective Date**”). By executing or otherwise accepting an Order Form that references these Terms, each Party signifies that it has read, understands, and agrees to be bound by these Terms and by Sprklab’s Privacy Policy available [HERE](#). Sprklab and Customer may be referred to herein collectively as the “**Parties**” or individually as a “**Party**.”

If you are an individual and are entering into these Terms on behalf of an entity, you represent that you have the authority to bind such entity to these Terms and Sprklab’s Privacy Policy.

Sprklab may revise, update or otherwise make changes to these Terms from time to time in Sprklab’s sole discretion. All changes are effective immediately when Sprklab posts them within the Services and apply to all access and use of the Services thereafter. Customer’s continued use of the Services after any such revisions, updates or other changes to these Terms constitutes Customer’s acceptance of and agreement to be bound by such revisions, updates or other changes.

1. Definitions.

(a) “**Aggregated or Anonymized Data**” means data and information provided by Customer or related to Customer’s use of the Services that is used by Sprklab in an aggregate or anonymized manner and includes any engineering data related to the projects that Customer manages within the Services. Without limiting the generality of the foregoing, Aggregated or Anonymized Data includes data and information used by Sprklab (i) to compile statistical and performance information related to the provision and operation of the Services, (ii) to compile and disclose statistical or trend-related information related to the projects of Sprklab’s customers, or (iii) to gather and disclose anonymized customer information regarding individual projects managed through the Services.

(b) “**Authorized User**” means Customer’s employees, consultants, contractors, and agents (i) who are authorized by Customer to access and use the Services under the rights granted to Customer pursuant to these Terms and (ii) for whom access to the Services has been purchased hereunder.

(c) “**Customer Data**” means, other than Aggregated or Anonymized Data, information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted by or on behalf of Customer or an Authorized User through the Services.

(d) **"Documentation"** means Sprklab's user manuals, handbooks, or other written guidance relating to the Services provided by Sprklab to Customer either electronically or in hard copy form.

(e) **"Sprklab IP"** means the Services, the Documentation, and any and all intellectual property provided to Customer or any Authorized User in connection with the foregoing. For the avoidance of doubt, Sprklab IP includes Aggregated or Anonymized Data and any information, data, or other content derived from Sprklab's monitoring of Customer's access to or use of the Services, but does not include Customer Data.

(f) **"Services"** means Sprklab's software-as-a-service offering known as SPRK HQ that allows Customer to manage its professional engineering firm by integrating the coordination of proposals, project execution, and invoicing, ensuring traceability from contract initiation to completion in a seamless experience that empowers Customer to focus on growing its firm..

(g) **"Third-Party Products"** means any third-party software, applications or components provided with or incorporated into the Services.

2. Services.

(a) Provision of Access. Subject to and conditioned on Customer's payment of Fees and compliance with all other terms and conditions of these Terms, Sprklab hereby grants Customer a non-exclusive, non-transferable right to access and use the Services during the Subscription Term, solely for use by Authorized Users in accordance with the terms and conditions of these Terms. Such use is limited to Customer's internal use. Sprklab shall provide to Customer the necessary passwords and network links or connections to allow Customer to access the Services. The total number of Authorized Users will not exceed the number set forth in the Order Form, except as expressly agreed to in writing by the Parties and subject to any appropriate adjustment of the Fees payable hereunder.

(b) Documentation License. Subject to the terms and conditions contained in these Terms, Sprklab hereby grants to Customer a non-exclusive, non-sublicensable, non-transferable license to use the Documentation during the Subscription Term solely for Customer's internal business purposes in connection with its use of the Services.

(c) Use Restrictions. Customer shall not use the Services for any purposes beyond the scope of access granted in these Terms. Customer shall not at any time, directly or indirectly, and shall not permit any Authorized Users to: (i) copy, modify, or create derivative works of the Services or Documentation, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Services or Documentation; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Services, in whole or in

part; (iv) remove any proprietary notices from the Services or Documentation; or (v) use the Services or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law.

(d) Reservation of Rights. Sprklab reserves all rights not expressly granted to Customer in these Terms. Except for the limited rights and licenses expressly granted under these Terms, nothing in these Terms grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party any intellectual property rights or other right, title, or interest in or to the Sprklab IP.

(e) Suspension. Notwithstanding anything to the contrary in these Terms, Sprklab may temporarily suspend Customer's and any Authorized User's access to any portion or all of the Services if Sprklab reasonably determines that (i) there is a threat or attack on any of the Sprklab IP; (ii) Customer's or any Authorized User's use of the Sprklab IP disrupts or poses a security risk to the Sprklab IP or to any other customer or vendor of Sprklab; (iii) Customer, or any Authorized User, is using the Sprklab IP for fraudulent or illegal activities; (iv) subject to applicable law, Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or (v) Sprklab's provision of the Services to Customer or any Authorized User is prohibited by applicable law (any such suspension, a "**Service Suspension**"). Sprklab shall use commercially reasonable efforts to provide written notice of any Service Suspension to Customer and to provide updates regarding resumption of access to the Services following any Service Suspension. Sprklab shall use commercially reasonable efforts to resume providing access to the Services as soon as reasonably possible after the event giving rise to the Service Suspension is cured if these Terms are not terminated as a result of such event. Sprklab will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized User may incur as a result of a Service Suspension.

(f) Aggregated or Anonymized Data. Notwithstanding anything to the contrary in these Terms, Sprklab may monitor Customer's use of the Services and collect and compile Aggregated or Anonymized Data. As between Sprklab and Customer, all right, title, and interest in Aggregated or Anonymized Data, and all intellectual property rights therein, belong to and are retained solely by Sprklab. Customer acknowledges that Sprklab may compile Aggregated or Anonymized Data based on Customer Data input into the Services. Customer agrees that Sprklab may (i) make Aggregated or Anonymized Data publicly available in compliance with applicable law, and (ii) use Aggregated or Anonymized Data to the extent and in the manner permitted under applicable law; *provided that* such Aggregated or Anonymized Data does not identify Customer or Customer's Confidential Information.

(g) Changes. Sprklab reserves the right, in its sole discretion, to make any changes to the Services and Documentation that Sprklab deems necessary or useful.

(h) Subcontractors. Sprklab may from time to time in its discretion engage third parties to perform the Services or make the Services available.

3. Customer Responsibilities.

(a) General. Customer is responsible and liable for all uses of the Services and Documentation resulting from access provided by Customer, directly or indirectly, whether such access or use is permitted by or in violation of these Terms. Without limiting the generality of the foregoing, Customer is responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of these Terms if taken by Customer will be deemed a breach of these Terms by Customer. Customer shall use reasonable efforts to make all Authorized Users aware of these Terms as applicable to such Authorized User's use of the Services, and shall cause Authorized Users to comply with such provisions.

(b) Projects; Data Importation. Customer is responsible for determining project types and setting up and managing all of Customer's projects within the Services. Customer is also responsible for importing all data and information related to such projects and the customers of Customer into the Services. Sprklab may assist Customer with the importation of data into the Services for a mutually agreed upon fee, which fee will be set forth in the Order Form or a separate work order or statement of work.

(c) Third-Party Products. Sprklab may from time to time make Third-Party Products available to Customer. Such Third-Party Products are subject to their own terms and conditions, which Customer will be required to agree to in order to use such Third-Party Products. If Customer does not agree to abide by the applicable terms for any such Third-Party Products, then Customer should not install or use such Third-Party Products.

4. Service Levels and Support; Data Backup.

(a) Service Levels. Subject to the terms and conditions of these Terms, Sprklab shall use commercially reasonable efforts to make the Services available in accordance with the service levels set out in **Exhibit A** during the Subscription Term.

(b) Support. In partial consideration of the Fees, Customer is entitled to the support services described on **Exhibit A** during the Subscription Term.

(c) Data Backup. The Services do not replace the need for Customer to maintain regular data backups or redundant data archives. SPRKLAB HAS NO

OBLIGATION OR LIABILITY FOR ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION, OR RECOVERY OF CUSTOMER DATA.

5. Fees and Payment.

(a) Fees. Customer shall pay Sprklab the fees ("**Fees**") as set forth in this Section 5 without offset or deduction. The Fees for access and use of the Services under these Terms during the Initial Term are as set forth in the Order Form. For any Renewal Term, unless otherwise agreed to in writing by the Parties, the Fees will be set at Sprklab's then-current pricing for the Services. Customer acknowledges that such then-current pricing may be higher than the Fees paid for the Initial Term or previous Renewal Term. Customer shall make all payments hereunder in US dollars on or before the due date(s) set forth in the Order Form. Fees will be payable in advance on either a monthly, annual or bi-annual basis as set forth in the Order Form. If Customer has elected to pay Fees on either an annual or bi-annual basis, Sprklab will invoice Customer for the Fees. If Customer has elected to pay Fees on a monthly basis, Sprklab will not invoice Customer for the Fees, but the Fees will remain due and payable by the due dates set forth in the Order Form. Sprklab accepts payment via credit card or, if Customer has elected to pay Fees on either an annual or bi-annual basis, via direct billing if Customer so requests.

(b) Late Payments. If Customer fails to make any payment when due, without limiting Sprklab's other rights and remedies: (i) Sprklab may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable law; (ii) Customer shall reimburse Sprklab for all costs incurred by Sprklab in collecting any late payments or interest, including attorneys' fees, court costs, and collection agency fees; and (iii) if such failure continues for 14 days or more, Sprklab may suspend Customer's and its Authorized Users' access to any portion or all of the Services until such amounts are paid in full.

(c) Taxes. All Fees and other amounts payable by Customer under these Terms are exclusive of taxes and similar assessments. Customer is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on Sprklab's income.

6. Confidential Information. From time to time during the Subscription Term, either Party may disclose or make available to the other Party information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as "confidential" (collectively, "**Confidential Information**"). Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) rightfully obtained by the receiving Party on a non-confidential

basis from a third party; or (c) independently developed by the receiving Party. The receiving Party shall not disclose the disclosing Party's Confidential Information to any person or entity, except to the receiving Party's employees who have a need to know the Confidential Information for the receiving Party to exercise its rights or perform its obligations under these Terms. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (ii) to establish a Party's rights under these Terms, including to make required court filings. On the expiration or termination of these Terms, the receiving Party shall promptly return to the disclosing Party all copies, whether in written, electronic, or other form or media, of the disclosing Party's Confidential Information, or destroy all such copies and certify in writing to the disclosing Party that such Confidential Information has been destroyed; *provided that* Sprklab may keep a copy of Customer's Confidential Information after termination or expiration of these Terms to the extent such Confidential Information is incorporated within the Aggregated or Anonymized Data in order for Sprklab to exercise its rights with respect to Aggregated or Anonymized Data under these Terms. Each Party's obligations of non-disclosure with regard to Confidential Information are effective as of the Effective Date and will expire five years from the date first disclosed to the receiving Party; *provided, however*, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of these Terms for as long as such Confidential Information remains subject to trade secret protection under applicable law.

7. Intellectual Property Ownership; Feedback.

(a) Sprklab IP. Customer acknowledges that, as between Customer and Sprklab, Sprklab owns all right, title, and interest, including all intellectual property rights, in and to the Sprklab IP and, with respect to Third-Party Products, the applicable third-party providers own all right, title, and interest, including all intellectual property rights, in and to the Third-Party Products.

(b) Customer Data. Sprklab acknowledges that, as between Sprklab and Customer, Customer owns all right, title, and interest, including all intellectual property rights, in and to the Customer Data. Customer hereby grants to Sprklab a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display the Customer Data and perform all acts with respect to the Customer Data as may be necessary for Sprklab to provide the Services to Customer, and a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to reproduce, distribute, modify, and otherwise use and display Customer Data incorporated within the Aggregated or Anonymized Data.

(c) Feedback. If Customer or any of its employees or contractors sends or transmits any communications or materials to Sprklab by mail, email, telephone,

or otherwise, suggesting or recommending changes to the Sprklab IP, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("**Feedback**"), Sprklab is free to use such Feedback irrespective of any other obligation or limitation between the Parties governing such Feedback. Customer hereby assigns to Sprklab on Customer's behalf, and on behalf of its employees, contractors and/or agents, all right, title, and interest in, and Sprklab is free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although Sprklab is not required to use any Feedback.

8. Limited Warranty and Warranty Disclaimer.

(a) Sprklab warrants that the Services will conform in all material respects to the service levels set forth in **Exhibit A** when accessed and used in accordance with the Documentation. Sprklab does not make any representations or guarantees regarding uptime or availability of the Services unless specifically identified in **Exhibit A**. The remedies set forth in **Exhibit A** are Customer's sole remedies and Sprklab's sole liability under the limited warranty set forth in this Section 8(a). THE FOREGOING WARRANTY DOES NOT APPLY, AND SPRKLAB STRICTLY DISCLAIMS ALL WARRANTIES, WITH RESPECT TO ANY THIRD-PARTY PRODUCTS.

(b) EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 8(a), THE SPRKLAB IP IS PROVIDED "AS IS" AND SPRKLAB HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. SPRKLAB SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 8(a), SPRKLAB MAKES NO WARRANTY OF ANY KIND THAT THE SPRKLAB IP, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE.

9. Indemnification.

(a) Sprklab Indemnification.

(i) Sprklab shall indemnify, defend, and hold harmless Customer from and against any and all losses, damages, liabilities, costs (including reasonable attorneys' fees) ("**Losses**") incurred by Customer resulting from any third-party claim, suit, action, or proceeding ("**Third-Party Claim**") that

the Services, or any use of the Services in accordance with these Terms, infringes or misappropriates such third party's US patents, copyrights, or trade secrets, provided that Customer promptly notifies Sprklab in writing of the claim, cooperates with Sprklab, and allows Sprklab sole authority to control the defense and settlement of such claim.

(ii) If such a claim is made or appears possible, Customer agrees to permit Sprklab, at Sprklab's sole discretion, to (A) modify or replace the Services, or any component or part thereof, to make it non-infringing, or (B) obtain the right for Customer to continue use of the Services. If Sprklab determines that neither alternative is reasonably available, Sprklab may terminate these Terms with respect to all or part of the Services, effective immediately on written notice to Customer, and require Customer to immediately cease any use of the Services or any specified part or feature thereof, *provided that* in the event of any termination of these Terms with respect to all the Services, Customer will be entitled to a refund of any prepaid Fees and Sprklab will pay such refund within 90 days after the termination date.

(iii) This Section 9(a) will not apply to the extent that the alleged infringement arises from: (A) use of the Services in combination with data, software, hardware, equipment, or technology not provided by Sprklab or authorized by Sprklab in writing; (B) modifications to the Services not made by Sprklab; (C) Customer Data; or (D) Third-Party Products.

(b) Customer Indemnification. Customer shall indemnify, hold harmless, and, at Sprklab's option, defend Sprklab from and against any Losses resulting from any Third-Party Claim that the Customer Data, or any use of the Customer Data in accordance with these Terms, infringes or misappropriates such third party's intellectual property rights and any Third-Party Claims based on Customer's or any Authorized User's (i) negligence or willful misconduct; (ii) use of the Services in a manner not authorized by these Terms; (iii) use of the Services in combination with data, software, hardware, equipment, or technology not provided by Sprklab or authorized by Sprklab in writing; or (iv) modifications to the Services not made by Sprklab, *provided that* Customer may not settle any Third-Party Claim against Sprklab unless Sprklab consents to such settlement, and further provided that Sprklab will have the right, at its option, to defend itself against any such Third-Party Claim or to participate in the defense thereof by counsel of its own choice.

(c) Sole Remedy. THIS SECTION 9 SETS FORTH CUSTOMER'S SOLE REMEDIES AND SPRKLAB'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SERVICES INFRINGE, MISAPPROPRIATE, OR OTHERWISE VIOLATE ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

10. Limitations of Liability. IN NO EVENT WILL SPRKLAB BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE

THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (b) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (c) LOSS OF GOODWILL OR REPUTATION; (d) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY, OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (e) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER SPRKLAB WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL SPRKLAB'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED ONE TIMES THE TOTAL AMOUNTS PAID TO SPRKLAB UNDER THIS AGREEMENT IN THE SIX-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

11. Term and Termination.

(a) Term. The initial term of these Terms begins on the Effective Date and, unless terminated earlier pursuant to these Terms' express provisions, will continue in effect for the initial subscription period set forth in the Order Form (the "**Initial Term**"). These Terms will automatically renew for additional successive terms equal to the length of the Initial Term (each a "**Renewal Term**" and together with the Initial Term, the "**Subscription Term**") unless either Party gives the other Party written notice of non-renewal at least 30 days prior to the expiration of the Initial Term or then-current Renewal Term or earlier terminated pursuant to these Terms' express provisions.

(b) Termination. In addition to any other express termination right set forth in these Terms:

(i) Sprklab may terminate these Terms, effective on written notice to Customer, if Customer: (A) fails to pay any amount when due hereunder, and such failure continues more than 30 days; or (B) breaches any of its obligations under Section 2(c) or Section 6;

(ii) either Party may terminate these Terms, effective on written notice to the other Party, if the other Party materially breaches these Terms, and such breach: (A) is incapable of cure; or (B) being capable of cure, remains uncured 30 days after the non-breaching Party provides the breaching Party with written notice of such breach; or

(iii) either Party may terminate these Terms, effective immediately upon written notice to the other Party, if the other Party: (A) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (B) files or has filed against it, a petition for voluntary or

involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (C) makes or seeks to make a general assignment for the benefit of its creditors; or (D) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

(c) Effect of Expiration or Termination. Upon expiration or earlier termination of these Terms, Customer shall immediately discontinue use of the Sprklab IP and, without limiting Customer's obligations under Section 6, Customer shall delete, destroy, or return all copies of the Sprklab Confidential Information and certify in writing to Sprklab that such copies of Sprklab Confidential Information has been deleted or destroyed. No expiration or termination will affect Customer's obligation to pay all Fees that may have become due before such expiration or termination or entitle Customer to any refund. Upon expiration or earlier termination of these Terms, Sprklab shall permanently erase all Customer Data and Customer's Confidential Information from all systems Sprklab directly or indirectly controls, *provided that*, Sprklab's obligations under this Section 11(c): (i) do not apply to any Customer Data that is incorporated into the Aggregated or Anonymized Data and (ii) Sprklab may retain such Customer Confidential Information as is necessary for Sprklab to include Customer in Sprklab's future marketing efforts, including through Sprklab's marketing nurture program.

(d) Survival. This Section 11(d) and Sections 1, 5, 6, 7, 8(b), 9, 10, and 12 survive any termination or expiration of these Terms. No other provisions of these Terms survive the expiration or earlier termination of these Terms.

12. Miscellaneous.

(a) Entire Agreement. These Terms, together with any other documents incorporated herein by reference and all related Exhibits, constitutes the sole and entire agreement of the Parties with respect to the subject matter of these Terms and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of these Terms, the related Exhibits, the Order Form and any other documents incorporated herein by reference, the following order of precedence governs: (i) first, the Order Form, (ii) second, these Terms, excluding its Exhibits; (iii) third, the Exhibits to these Terms as of the Effective Date; and (iv) fourth, any other documents incorporated herein by reference.

(b) Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") must be in writing and addressed to the Parties at the addresses set forth in the Order Form (or to such other address that may be designated by the Party giving Notice from time to time in accordance with this Section). All Notices must be delivered by personal

delivery, nationally recognized overnight courier (with all fees pre-paid) or email (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in these Terms, a Notice is effective only: (i) upon receipt by the receiving Party; and (ii) if the Party giving the Notice has complied with the requirements of this Section.

(c) Relationship of the Parties. The relationship between the Parties is that of independent contractors. Nothing contained in these Terms shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.

(d) Force Majeure. In no event shall Sprklab be liable to Customer, or be deemed to have breached these Terms, for any failure or delay in performing its obligations under these Terms, if and to the extent such failure or delay is caused by any circumstances beyond Sprklab's reasonable control, including but not limited to acts of God, flood, fire, earthquake, pandemic, epidemic, war, terrorism, invasion, riot or other civil unrest, or passage of law or any action taken by a governmental or public authority.

(e) Waiver. No waiver by any Party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in these Terms, (i) no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from these Terms will operate or be construed as a waiver thereof, and (ii) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

(f) Severability. If any provision of these Terms are invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of these Terms or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify these Terms so as to effect their original intent as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

(g) Governing Law. These Terms are governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Delaware.

(h) Dispute Resolution and Arbitration. ANY CLAIM, DISPUTE OR CONTROVERSY (WHETHER IN CONTRACT, TORT OR OTHERWISE,

WHETHER PRE-EXISTING, PRESENT OR FUTURE, AND INCLUDING STATUTORY, COMMON LAW, INTENTIONAL TORT, INJUNCTIVE AND EQUITABLE CLAIMS) BETWEEN CUSTOMER AND SPRKLAB ARISING FROM OR RELATING IN ANY WAY TO THESE TERMS OR CUSTOMER'S PURCHASE OR USE OF THE SERVICES, WILL BE RESOLVED EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION IN MARICOPA COUNTY, ARIZONA. The arbitration will be administered by the American Arbitration Association in accordance with the Rules of Arbitration of the American Arbitration Association. The arbitrator will have exclusive authority to resolve any dispute relating to arbitrability and/or enforceability of this arbitration provision, including any unconscionability challenge or any other challenge that this arbitration provision is void, voidable or otherwise invalid. The arbitrator will be empowered to grant whatever relief would be available in court under law or in equity. Any award of the arbitrator(s) will be final and binding on each of the Parties and may be entered as a judgment in any court of competent jurisdiction.

(i) Limitation of Time To Make Claims. Any cause of action or claim that Customer may have arising out of or relating to these Terms or purchase or use of the Services must be commenced within six months after the cause of action or claim accrues; otherwise, such cause of action or claim is permanently barred.

(j) Assignment. Customer may not assign any of its rights or delegate any of its obligations hereunder, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of Sprklab. Any purported assignment or delegation in violation of this Section will be null and void. No assignment or delegation will relieve the assigning or delegating Party of any of its obligations hereunder. These Terms are binding upon and inures to the benefit of the Parties and their respective permitted successors and assigns.

(k) Export Regulation. Customer shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), that prohibit or restrict the export or re-export of the Services or any Customer Data outside the US.

(l) Equitable Relief. Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under Section 6 or, in the case of Customer, Section 2(c), would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other Party will be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.

(m) Intepretation. These Terms shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The headings in these Terms are for reference only and do not affect the interpretation of these Terms.

EXHIBIT A

SERVICE LEVELS AND SUPPORT

Service Levels and Credits

Uptime Guarantee. Sprklab agrees to make the Services available with an Uptime of 99% each month ("**Uptime Guarantee**").

Remedy for Uptime Guarantee. If Sprklab fails to meet the Uptime Guarantee in a given month, Customer shall be entitled to a credit equal to 5% of the monthly subscription Fee, capped at 20% of the monthly subscription Fee for that month. Credits will only be applied to future subscription Fees. Sprklab has no obligation to refund Fees already paid. Customer acknowledges and agrees that the foregoing credits shall be the sole remedy for Sprklab's failure to meet the Uptime Guarantee. Credits are non-transferable and have no cash value. Unused credits will expire upon termination or expiration of the Terms.

Credit Request. Customer must request the credit within 30 days of the end of the month in which the Uptime Guarantee was not met; otherwise the credit will be forfeit.

Definition of Uptime. "**Uptime**" refers to the percentage of time during a given month that the Services are available and operational for Customer use, excluding scheduled maintenance and any outages due to circumstances beyond Sprklab's reasonable control.

Support Services

Sprklab agrees to provide technical support for the Services to Customer via email during Sprklab's normal business hours. Customer may submit technical support inquiries to support@sprklab.com and Sprklab shall use commercially reasonable efforts to respond to such inquiries in a timely manner.