

SPIRENT SYSTEM INTEGRATOR FRAMEWORK AGREEMENT

Cover Sheet for System Integrator Framework Agreement

THIS System Integrator Framework Agreement is made between the Spirent entity and the System Integrator entity named below and governs the appointment of the System Integrator in relation to the promotion and/or sale of Spirent products and services set out in the Particulars that follow.

Spirent Entity:

Spirent Entity Address:

("Spirent")

System Integrator Entity (Name and Address):

("System Integrator")

By signing this Cover Sheet, Spirent and the System Integrator are entering into a binding System Integrator Framework Agreement that consists of (i) this Cover Sheet, (ii) the System Integrator Framework Terms and Conditions attached to this Cover Sheet, (iii) the ancillary documents referenced in the System Integrator Framework Terms and Conditions.

PARTICULARS

1. Effective Date	
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4. Products

<p><i>Lifecycle Service Assurance</i></p> <p>Mobility/Landslide Service Assurance/ VisionWorks Automation/Velocity octoBox Testbeds</p>	<p><i>Networks & Security</i></p> <p>Security Solutions Cloud & IP Positioning (if this is checked you must also choose positioning entity on pg 1)</p>	<p><i>Connected Devices</i></p> <p>Wireless/Service Experience</p>	
<p>5. Services</p> <p>No Yes</p>	<p>PROFESSIONAL SERVICES</p> <ul style="list-style-type: none"> - Resident Engineering Service - Lab as a Service - Test as a Service - Turn-up Testing Service - Fit4Launch 	<p>SaaS</p> <ul style="list-style-type: none"> - SecurityLabs™ 	<p>MAINTENANCE & SUPPORT</p>
<p>6. Payment terms</p>	<p><i>Note: Insert applicable payment terms <u>ONLY</u> if different than the default payment terms in the System Integrator Framework Terms and Conditions.</i></p>		
<p>7. Shipment arrangements</p>	<p><i>Note: insert shipment arrangements <u>ONLY</u> if different from the default position of Incoterms 2020 FCA (Spirent location).</i></p>		
<p>8. Address for Notice – Spirent</p>	<p>Spirent Communications Inc. 27349 Agoura Road Calabasas, CA 91301 Attn: Legal</p> <p>Spirent Communications (Asia) Ltd. Suite 1603-05, 16th Floor 625 King's Road North Point, Hong Kong Attn: Legal</p> <p>Spirent Communications Inc. Bell Works 101 Crawfords Corner Road, Suite 4-216 Holmdel, NJ 07753 Attn: Legal</p>	<p>Spirent Communications International Division, a trading division of Spirent Communications plc Origin One 108 High Street Crawley, West Sussex, RH10 1BD, UK Attn: Legal</p> <p>Spirent Communications Positioning Technology Division, a trading division of Spirent Communications plc Aspen Way, Paignton, Devon TQ4 7QR, UK Attn: Legal</p>	
<p>9. Address for Notice – System Integrator</p>			
<p>10. Governing Law and Jurisdiction</p>	<p>If the contracting party is Spirent Communications Inc., then this Agreement shall be governed by and construed in accordance with the laws of California, without regard to conflict of law principles or the U.N. Convention on Contracts for the International Sale of Goods or the Sale of Goods provisions of the Uniform Commercial Code. Each party hereby submits to the jurisdiction and venue of both the California State and United States Federal Courts of California in relation to any claim, dispute or difference that may arise hereunder. Each party hereby waives any claim of lack of personal jurisdiction in regard to both the Federal and State Courts of California. This Agreement shall be enforceable and judgment upon any award rendered may be entered in any Court having jurisdiction.</p> <p>If the contracting party is Spirent Communications International Division, a trading division of Spirent Communications plc or Spirent Communications Positioning Technology Division a trading division of Spirent Communications plc, then this Agreement shall be governed by and construed in accordance with the laws of England and Wales, without regard to conflict of law principles or the U.N. Convention on Contracts for the International Sale of Goods. Each party hereby submits to, and waives any objection to, the jurisdiction of the Courts of England in relation to any claim, dispute or difference that may arise hereunder. This Agreement shall be enforceable and judgment upon any award rendered maybe entered in any Court having jurisdiction.</p> <p>If the contracting party is Spirent Communications (Asia) Ltd., then this Agreement shall be governed by and construed in accordance with the laws of Hong Kong, without regard to conflict of law principles or the U.N. Convention on Contracts for the International Sale of Goods. Each party hereby submits to, and waives any objection to, the jurisdiction of the Courts of Hong Kong in relation to any claim, dispute or difference that may arise hereunder. This Agreement shall be enforceable and judgment upon any award rendered maybe entered in any Court having jurisdiction.</p>		

11. Special provisions	
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IN WITNESS WHEREOF, the parties have signed this Cover Sheet by their authorized officers as of the Effective Date stated above.

Spirent	System Integrator
By:	By:
Name:	Name:
Title:	Title:
Date:	Date:

SYSTEMS INTEGRATOR FRAMEWORK TERMS AND CONDITIONS

1. Definitions

a) In this Agreement:

“Agreement” means the Systems Integrator Framework Agreement between Spirent and the Systems Integrator (in each case as named on the Cover Sheet), and consisting of:

- (i) the Cover Sheet;
- (ii) these Systems Integrator Framework Terms and Conditions; and
- (iii) any other relevant documents referenced in any of the foregoing.

“Compliance Requirements” means Spirent’s compliance requirements and policies as set out in Section 17(b) (Compliance Requirements) and Section 17(c) (Compliance with International Trade Controls).

“Confidential Information” means any non-public or proprietary information and trade secrets relating to a party’s business, disclosed or made available by that party to the other party, whether orally or in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as “confidential” (including any proprietary information and trade secrets of Spirent and/or its suppliers contained within Spirent’s software/firmware), but not including information that:

- (i) is or becomes publicly known through no act or omission of the receiving party;
- (ii) was in the receiving party’s lawful possession prior to the disclosure;
- (iii) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
- (iv) is independently developed by the receiving party, which independent development

can be shown by written evidence.

“Cover Sheet” means the cover sheet signed by Spirent and the Systems Integrator, setting out the scope of the Systems Integrator’s appointment, as the same may be amended from time to time by written agreement between the parties.

“Effective Date” means the date stated as such on the Cover Sheet.

“End Customer” means an entity named as such in the relevant Order for whose benefit the Systems Integrator places an Order for Products and/or Services in connection with the relevant Engagement.

“Engagement” means an engagement to be undertaken by the Systems Integrator for an End Customer, as more particularly described in any Order placed by the Systems Integrator under this Agreement.

“Hardware” means the hardware offerings made available by Spirent, excluding any software programs, firmware, code, routines or other intangible products.

“Insolvency Event” means, in relation to either party, that it becomes unable to pay its debts; or enters into liquidation (except for the purposes of a solvent amalgamation or reconstruction); or makes an arrangement with its creditors; or has a receiver, administrator or administrative receiver appointed over all or any of its assets; or ceases or threatens to cease trading or is dissolved; or takes or suffers to be taken any similar action in consequence of a debt; or is subject to any procedure equivalent to any of the preceding matters in any jurisdiction.

“Order” means an order agreed by the Parties in accordance with the Ordering Procedure, for the provision of specific Products and/or Services to the Systems Integrator and/or to the End-Customer named in the Order.

“Ordering Procedure” means the procedure for placing Orders for Products or Services under this Agreement, as set out in Appendix 2 to this Agreement (Ordering Procedure).

“Party” means either of Spirent and Systems Integrator (and “Parties” means both of them).

“Products” means Hardware and/or Software (as the context requires).

“Quote” means a document generated by Spirent that identifies the Products and/or Services being offered for sale or license by Spirent, as well as the applicable quantity and price for each such Product and/or Service.

“Services” means the Spirent services to be provided from time to time, as specified in any Order and as described in more detail in the applicable Statement of Work.

“Software” means the object code version of proprietary programs of Spirent or its licensors, as well as any firmware residing on Hardware, made available by Spirent.

“Spirent Brand Guidelines” means Spirent’s guidelines containing the standards for the use of its trademarks and brand names (as updated by Spirent from time to time), which are available at <https://partners.spirent.com/>.

“Spirent EULA” means Spirent’s standard End User License Agreement (as updated by Spirent from time to time), which is available at <https://www.spirent.com/home/terms-sale-license>.

“Spirent Terms and Conditions of Sale” means Spirent’s standard terms and conditions for the sale of products (as updated by Spirent from time to time), which are available at <https://www.spirent.com/home/terms-sale-license>.

“Statement of Work” or “SOW” means, in relation to the Services, the relevant Spirent standard terms and conditions for the provision of such Services (as updated by Spirent from time to time), which are available at <https://www.spirent.com/home/terms-sale-license>, including where applicable any Statement of Work that is associated with those terms and conditions.

“Third Party EULA” means the standard End User License Agreement (as updated from

time to time) applicable to any third party products that form part of the Software.

- b) All references in this Agreement to a specific website or URL include any future versions and replacements of, and successors to, that website or URL.
- c) If there is any conflict or ambiguity between the terms of the documents that form the Agreement, a term contained in a document higher in the following list shall have priority over one contained in a document lower in the list:
 - (i) the Cover Sheet;
 - (ii) these Systems Integrator Framework Terms and Conditions; and
 - (iii) any other relevant documents referenced in any of the foregoing.

2. Appointment

- a) On and subject to the terms and conditions of this Agreement, Spirent hereby agrees that the Systems Integrator may place Orders for Products and Services, for itself and for use by End Customers. Spirent reserves the right, without liability to the Systems Integrator, to sell Products and/or Services through intermediaries or to any End Customer directly.
- b) The Systems Integrator may from time to time ask Spirent to provide the Services to End Customers. The provision of such Services is subject to the execution between Spirent and the Systems Integrator of the relevant Statement of Work. The provision of the Services to the End Customer shall be solely governed by and subject to the terms and conditions set out in the relevant Statement of Work, and not by this Agreement.
- c) The Systems Integrator shall obtain, at its own expense, all approvals, consents, permits and other authorizations that are required under all applicable laws to undertake its activities in respect of the Products and the Services.
- d) The Systems Integrator undertakes:

- (i) to ensure that the End Customer understands that the Spirent EULA (and if applicable the relevant Third Party EULA) will govern the End Customer's use of Software;
- (ii) to ensure that the terms and conditions of the Spirent EULA (and if applicable the relevant Third Party EULA) are communicated to prospective End Customers in a timely manner before each Order is placed, and in such a way as to ensure that they are legally enforceable (including without limitation ensuring that the End Customer accepts such terms and conditions in a way that makes them directly enforceable by Spirent);
- (iii) to use reasonable efforts to ensure that the End Customer complies with the terms and condition of the Spirent EULA (and if applicable the relevant Third Party EULA);
- (iv) where the Systems Integrator is authorized by the End Customer to use Spirent Software as a sublicensee under the Spirent EULA (and if applicable the relevant Third Party EULA), (a) to use such Software only within the scope of the license granted to the End Customer, (b) not to cause the End Customer to exceed any numerical limits on permitted use, and (c) to comply with all the terms of the Spirent EULA (and if applicable the relevant Third Party EULA) in all respects as if it were the End Customer itself, save that the Systems Integrator must not use the Software either for its own internal business purposes or to provide services to any person other than the End Customer; and
- (v) to notify Spirent promptly of non-compliance with the Spirent EULA (and if applicable the relevant Third Party EULA) by any End Customer.

3. Ordering Procedure

- a) The parties intend to agree Orders for specific Engagements from time to time, in accordance with the Ordering Procedure.
- b) The matters to be agreed and documented in each Order will include, at a minimum, the following items:

- (i) the identity of the End Customer;
- (ii) the nature and scope of the Engagement;
- (iii) details of the Products to be provided by Spirent;
- (iv) details of the Services to be provided by Spirent (including a full Statement of Work for any Services other than routine support and maintenance);
- (v) the applicable charges, invoicing arrangements and payment terms; and
- (vi) any agreed deviations from the contract terms embodied in this Agreement.

4. **Orders, shipment and delivery**

- a) **Orders.** All orders for Products must be submitted in accordance with Spirent's then-current policy and procedures for ordering Spirent Products. No other terms and conditions on the form of purchase order or other business form issued by the Systems Integrator (or any End Customer) will apply to any order, and Spirent shall not be bound by any such other terms or conditions, unless expressly agreed in writing by Spirent. All orders are subject to and include (without limitation) (i) the Spirent Terms and Conditions of Sale, (ii) the Spirent EULA (and if applicable the relevant Third Party EULA) and (iii) the applicable invoice. All purchase order acceptances are expressly conditioned upon unqualified acceptance of these terms and conditions. Retention by the System Integrator or an End Customer of any Product delivered by Spirent shall be conclusively deemed acceptance of the terms of this Agreement.
- b) **Shipment, title and risk of loss.** Save where Spirent is selling Products directly to the End Customer:
 - (i) Shipments shall be Incoterms 2020 FCA (Spirent location) or as otherwise set out on the Cover Sheet. The Spirent location may vary depending on the Product being purchased and the location of the Systems Integrator. The Systems Integrator must contact its Spirent account manager (or other authorized Spirent representative) to

determine the FCA location for a specific order.

- (ii) Spirent reserves the right to ship from any of its warehouses or plants and, unless otherwise stated on the Systems Integrator's purchase order and agreed by Spirent, Spirent may make partial shipments to be separately invoiced and paid for when due provided the partial shipments are fully functioning units.
- (iii) Shipment of Product will be made by a carrier or freight forwarder selected by the Systems Integrator and a Routed Transaction authorization document will be provided to the Systems Integrator to complete and return to Spirent Global Trade (GlobalTrade@spirent.com) authorizing Spirent to file the EEI (Electronic Export Information). The carrier or freight forwarder is required to provide Spirent with information needed to prepare documents and secure export clearance. If the Systems Integrator's selected carrier or freight forwarder will not provide Spirent with the necessary information to compliantly prepare export documentation, Spirent, in its sole discretion, reserves the right to delay shipment until the information is provided. The Systems Integrator will be responsible for and pay all freight from origin to destination, including (without limitation) import and customs fees at the destination.
- (iv) Spirent will use reasonable efforts to meet the Systems Integrator's requested shipment schedule. In no event shall Spirent be liable for damages caused by failure to fulfill shipping commitments.
- (v) Title to Products that consist of Hardware and risk of loss shall pass to the End Customer at the time shipment leaves Spirent's factory, warehouse or other point of shipment. All customs duty, freight and insurance from the point of shipment to the destination territory will be paid by the Systems Integrator. Title to Products that consist of Software shall always remain with Spirent or its licensors, and the use of the Software is subject to the terms of the Spirent EULA and/or applicable Third Party EULA.

5. **Financial provisions**

- a) **Pricing.** The pricing for specific Products and Services will be provided by Spirent in the form of a Quote or as a price list, in Spirent's sole discretion.

- b) **Changes to pricing.** Spirent reserves the right, in its sole discretion, to change its pricing from time to time and shall incur no liability whatsoever by reason of any such change. Spirent will advise the Systems Integrator promptly in writing at least 30 days before any price increase is effective.
- c) **Quotation validity.** Price quotations from Spirent will generally be valid for 30 days. If the Systems Integrator wishes Spirent to issue a price quotation with a longer validity period, the Systems Integrator must request in writing such longer validity period. Spirent reserves the right to accept or refuse such request in its sole discretion, and any such longer period that Spirent agrees shall be stated on the relevant quotation. The Systems Integrator shall provide Spirent with such documentation may reasonably require in support of such request.
- d) **Taxes etc.** The price quoted by Spirent in relation to any potential Order does not include any taxes or customs duties, including without limitation, sales, use or privilege taxes, withholding taxes, excise or similar taxes levied by any government, now or hereafter enacted, applicable to the relevant Products and Services, which taxes may, at Spirent's discretion, be added to the sales price or billed separately. The Systems Integrator shall pay all such taxes, duties or levies that may be imposed upon Spirent. Without limiting the foregoing, the parties agree to cooperate in order to complete all necessary documents to determine if any withholding taxes are due, and in particular, to complete and sign if so required Form W-8 and the U.S. Withholding Tax Questionnaire which will determine if any withholding taxes are due. The Systems Integrator shall share any certificate of withholding in the event that it deducts withholding on any invoice.
- e) **Pricing or other special arrangements.** The Systems Integrator understands that any pricing or special terms and conditions must be approved in advance by Spirent.
- f) **No authority to bind Spirent.** The Systems Integrator is not authorized to accept orders on behalf of Spirent or to enter into written or oral agreements on behalf of Spirent.
- g) **Orders subject to acceptance.** All Orders are subject to acceptance by Spirent and once accepted will be shipped and billed by Spirent in accordance with the arrangements set out in the Order.

- h) Payment terms and payment arrangements.** Where the Systems Integrator is placing the Order for Products and Services with Spirent, the Systems Integrator shall make payment in full on placement of the Order, unless other payment terms have been agreed in writing with Spirent in the specific Order or on the Cover Sheet. The Systems Integrator shall in addition pay all freight, insurance, taxes, customs duties, and tariffs, including sales, use, value added, excise, import duty, and other taxes (excluding taxes on Spirent's income), and furnish Spirent with a valid tax exemption certificate issued by each taxing jurisdiction or entity where such certificate is required as a condition for the avoidance of applicable sales or use taxes covering any Products and/or Services. All payments shall be made by wire transfer of U.S. Dollars, free of any withholding tax and any currency control or restrictions, at the address designated by Spirent. The Systems Integrator shall pay all wire transfer charges imposed by its banks, without deduction from amounts due to Spirent. No payment shall be deemed to have been made until the payment is available to Spirent in funds so designated.
- i) Credit limits.** At no time shall the Systems Integrator's account with Spirent exceed the maximum credit limit (to be determined at Spirent's sole discretion). If the sum of the current outstanding balance and the value of new shipments exceed the credit limit, the Systems Integrator agrees to make a payment that will reduce such sum to within the credit limit. Spirent will not ship any products until the Systems Integrator has made such payment.
- j) Credit risk management and late payments.** Spirent reserves the right to change the Systems Integrator's payment terms and establish such other terms based on the Systems Integrator's credit history and financial strength. Such change may be made at any time PROVIDED THAT no such change will affect the terms applicable to any Order that has already been accepted by Spirent at the point that the change takes effect. If the Systems Integrator fails to make payment in accordance with these terms it is subject to an annual finance charge of the lesser of (i) 12% or (ii) the maximum amount allowed by law, calculated on a daily basis from the due date or as otherwise stated in the applicable Spirent Terms and Conditions of Sale.
- k) Suspension for non-payment.** Spirent reserves the right to suspend or terminate the provision of Services, if the Systems Integrator fails to comply with the payment obligations described in the relevant Order.

- l) **Payments requiring government approval.** The Systems Integrator shall, at its sole cost and expense, institute and complete whatever proceedings may be necessary in order to obtain approval of the payment of such purchase price from all relevant governmental authorities. If the Systems Integrator is prevented by government regulations from transferring funds to the U.S., Spirent shall have the right (in addition to its right to terminate this Agreement for the failure to receive payment as required by this section) to require the Systems Integrator to deposit the blocked funds due Spirent in a bank designated by Spirent and for its account.

6. **Limited Warranty**

- a) Save in relation to any third party products that form part of the Software (to which Section 6(b) applies), Spirent gives to the End Customer the hardware, software and product warranties set out in the Spirent Terms and Conditions of Sale and the Spirent EULA, for the duration of their respective warranty periods. Spirent's obligations under the Spirent Terms and Conditions of Sale and the Spirent EULA shall be the End Customer's sole remedy with respect to any defect arising during the relevant warranty period. The Systems Integrator agrees that it will not remove the Spirent EULA or other agreement contained within the packaging of any Product.
- b) In relation to any third party products that form part of the Software, the End Customer has the benefit of the warranties granted by the licensor in the relevant Third Party EULA.
- c) Spirent reserves the right to change its warranty and service policy at any time, after reasonable notice and without liability to the Systems Integrator. Any change in the warranty and service policy shall not apply to Products purchased prior to such change.
- d) EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, SPIRENT MAKES NO WARRANTY OF ANY KIND TO THE SYSTEMS INTEGRATOR. TO THE EXTENT PERMITTED BY APPLICABLE LAW, ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY EXCLUDED, AND THE LIABILITY OF SPIRENT, IF ANY, FOR DAMAGE RELATING TO ANY ALLEGEDLY DEFECTIVE PRODUCT SHALL BE LIMITED TO THE ACTUAL PRICE PAID BY THE SYSTEMS INTEGRATOR FOR SUCH PRODUCT. THE PROVISIONS SET OUT IN THIS

SECTION 6 AND IN THE DOCUMENTS REFERENCED IN THIS AGREEMENT STATE SPIRENT'S ENTIRE RESPONSIBILITY AND THE SYSTEM INTEGRATOR'S SOLE ANDEXCLUSIVE REMEDY WITH RESPECT TO ANY BREACH OF WARRANTY.

7. **Confidentiality**

- a) From time to time during the Term of this Agreement, either Party (as the “**Disclosing Party**”) may disclose or make available certain Confidential Information to the other Party (as the “**Receiving Party**”).

- b) Each party, as the Receiving Party shall:
 - (i) protect and safeguard the confidentiality of the Disclosing Party's Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care;

 - (ii) not use the Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this Agreement; and

 - (iii) not disclose any such Confidential Information to any third party, except as permitted by sub-section 7(c) below.

- c) The Receiving Party may disclose Confidential Information to its affiliates, employees, officers, directors, partners, shareholders, agents, attorneys, third-party advisors, successors, and permitted assigns (collectively, “**Representatives**”) who need to know the Confidential Information to assist the Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under the Agreement PROVIDED (i) that all such Representatives are bound by confidentiality terms at least as protective as those set out in this Section 7, and (ii) the Receiving Party will be responsible for breach of such terms by those Representatives.

- d) If either party is required to disclose any of the other's Confidential Information in order to comply with any law, regulation, valid court order or subpoena it may do so only to the extent

necessary for such compliance, and provided that the Receiving Party notifies the Disclosing Party of such requirement immediately in writing, and cooperates with the Disclosing Party to the extent that the Disclosing Party may reasonably require in seeking to ensure continued confidential treatment and/or to obtain a protective or similar order.

- e) At any time during or after the Term, at the Disclosing Party's written request, the Receiving Party shall promptly return or destroy, and shall require its Representatives to return and destroy, the Disclosing Party's Confidential Information, and shall promptly certify in writing that this has been done.
- f) Notwithstanding sub-section 7(e), the Receiving Party shall not be required to erase electronic files created in the ordinary course of business during automatic system back-up procedures pursuant to its electronic record retention and destruction practices that apply to its own general electronic files and information, so long as such electronic files (i) are maintained only on centralized storage servers (and not on personal computers or devices), (ii) are not accessible by any of its personnel (other than its information technology specialists), and (iii) are not otherwise accessed subsequently except with the written consent of the Disclosing Party or as required by law or legal process. Such retained copies of Confidential Information shall remain subject to the confidentiality and non-use obligations in this Agreement.
- g) In addition to all other remedies available at law, the Disclosing Party may seek equitable relief (including injunctive relief) against the Receiving Party and its Representatives to prevent the breach or threatened breach of this Section 7 and to secure its enforcement without the requirement of the posting of a bond.
- h) The Receiving Party's obligations of confidentiality and non-use concerning Confidential Information of the Disclosing Party shall survive termination of this Agreement indefinitely until such time as the Confidential Information becomes publicly known through no act or omission of the receiving party; and in the case of Confidential Information that is a trade secret, those obligations shall remain in force for so long as the trade secret remains a trade secret.
- i) The parties' rights and obligations set out in this Section 7 are in addition to and not in lieu of any right or obligations set out in any separate non-disclosure or confidentiality agreement

(“NDA”) entered in to by the parties, which shall not be superseded by this Agreement. To the extent reasonable, this Agreement and any such NDA shall be interpreted to be consistent with each other; to the extent such interpretation is not reasonable the provisions that are more protective shall govern to the extent of the conflict or inconsistency.

8. Trademarks

- a) During the term of this Agreement, the Systems Integrator may use the trademarks and brand names identifying the Products and Services, as such trademarks and brand names are actually affixed upon Products or upon the cartons or containers in which said Products are packaged or sold by Spirent, or used in Spirent’s own advertising and marketing materials.
- b) The Systems Integrator shall not remove Spirent’s trademarks or brand names from any Products or materials furnished by Spirent or affix any additional trademarks, logos or trade designations to any such Product or materials.
- c) All rights in Spirent’s trademarks and brand names shall, at all times during the term of this Agreement and thereafter, be and remain the sole property of Spirent, and all good will and other benefits associated therewith are hereby assigned to, and shall inure to, Spirent.
- d) The Systems Integrator shall not make any use of said trademarks or brand names with any products or services not furnished by Spirent, or in any manner which would injure or destroy their value, nor shall the Systems Integrator make use in its business of any other trademarks or brand names likely to be confused with Spirent’s trademarks and brand names.
- e) During the term of this Agreement, the Systems Integrator agrees that the nature and quality of all goods and services provided under the mark and all advertising, promotional and other related uses of the marks conform to Spirent’s standards as set out in the Spirent Brand Guidelines. Spirent reserves the right to amend the Spirent Brand Guidelines from time to time, and may audit the Systems Integrator, at any time within Spirent’s own discretion, to make sure that the Systems Integrator is complying with the Spirent Brand Guidelines.

9. Patent Infringement, Indemnity

- a) Spirent will defend the Systems Integrator and hold the Systems Integrator harmless against any final award made against the Systems Integrator by a Court of competent jurisdiction in respect of a claim that a Spirent Product or Service supplied under this Agreement infringes any third-party patent PROVIDED THAT:
- (i) the Systems Integrator notifies Spirent promptly in writing on becoming aware of the relevant claim;
 - (ii) the Systems Integrator gives Spirent sole control of the defense and all related settlement negotiations, and provides all information and assistance (at Spirent's expense) for the defense and disposition of the claim; and
 - (iii) the Systems Integrator does not make any admissions or take any steps to compromise or settle any claim without Spirent's prior written consent.
- b) The Systems Integrator agrees that if Products in the Systems Integrator's inventory, or the operation thereof, become or in Spirent's opinion are likely to become, the subject of such a claim, the Systems Integrator will permit Spirent, at Spirent's option and expense, either to procure the right for the Systems Integrator to continue marketing and using such Products, or to replace or modify them so that they become non-infringing. If neither of the foregoing alternatives is available on terms that Spirent, in its sole discretion, deems reasonable, the Systems Integrator will return such Products on written request from Spirent. Spirent will grant the Systems Integrator a credit equal to the price paid by the Systems Integrator for such returned Products (less reasonable depreciation for use, damage, and obsolescence), provided that such returned Products are in an undamaged condition.
- c) Notwithstanding the above, Spirent shall not be liable to the Systems Integrator for any claim:
- (i) arising from or based upon the combination, operation or use of any Spirent Product with equipment, data or programming not supplied by Spirent;
 - (ii) arising from any alteration or modification of Products;

- (iii) arising from or based upon products provided by Spirent pursuant to the designs, drawings or manufacturing specifications of the Systems Integrator or End Customers;
or
- (iv) arising from the use of Products other than for their ordinary purpose.

The Systems Integrator agrees to indemnify, defend and hold harmless Spirent (including reasonable attorneys' fees and costs of litigation) against and hold Spirent harmless from, allegations based on such combination claims.

- d) Spirent may cease shipping Products that it knows or has reason to believe may infringe third party rights, without being in breach of this Agreement and without liability to the Systems Integrator or End Customers.
- e) Spirent shall have no obligation to the Systems Integrator with respect to infringement of any patents beyond that stated in this Section 9.

10. INDEMNIFICATION

a) **Mutual indemnities**

Each party shall indemnify, defend, and hold harmless the other, and the other's respective affiliates, officers, directors, employees, successors, and assigns (together, the "**Indemnified Entities**"), against any third party claims, demands, charges, actions, causes of action or other proceedings:

- (i) for the death or bodily injury of any person caused by the wrongful conduct of the indemnitor; or
- (ii) arising out of or related to the indemnitor's breach of its confidentiality obligations under the Agreement.

b) **Indemnities by Systems Integrator**

The Systems Integrator shall indemnify, defend, and hold harmless Spirent and its respective affiliates, officers, directors, employees, successors, and assigns in respect of:

- (i) misrepresentations made by the Systems Integrator to End Customers or other third parties related to the Products and/or Services;
- (ii) modifications or repairs made to the Products by or on behalf of the Systems Integrator or its End Customers;
- (iii) failure by the Systems Integrator to obtain all necessary consents for the sharing of personal data with Spirent and its service providers; and
- (iv) any offer of warranties or contractual rights to End Customers that go beyond those set out in the Spirent Terms and Conditions of Sale, the Spirent EULA (and if applicable the relevant Third Party EULA) or the relevant Statement of Work (as applicable to the relevant Products or Services).
- (v) any third party claims of infringement of patent, trade secret, copyright, or other proprietary rights, arising out of or related to the Systems Integrator's performance of any Engagement, provided that the Systems Integrator shall have no liability under this indemnity where the infringement in question is the direct result of:
 - a. the Systems Integrator using any Products provided by Spirent, provided that the Systems Integrator has also complied with any terms of use of which Spirent has notified the Systems Integrator in writing; or
 - b. the Systems Integrator following any written instructions or specifications of Spirent, provided that the Systems Integrator did not know and could not reasonably have known that following such instructions or specifications would result in the infringement of the rights of any third party.

c) Indemnity Procedures

Where any indemnity (“**Indemnity**”) is given by one Party (“**Indemnifying Party**”) to the other (“**Other Party**”) the following terms (subject to the extent of any conflict or

inconsistency to any terms specifically stated in this Agreement to apply to the specific indemnity in question) shall apply to any claim, demand or action to which the Indemnity applies (in this Section 10(c), “**Relevant Claim**”):

- (i) the Indemnifying Party shall indemnify the Other Party against its legal costs and disbursements in relation to the Relevant Claim on a solicitor/client basis;
- (ii) each Party shall promptly notify the other of a Relevant Claim;
- (iii) the Other Party shall not make any admission or compromise (save where required by court order or governmental regulations) which is prejudicial to the defence or settlement of any matter in respect of any to which the Indemnity applies without the consent of the Indemnifying Party, such consent not to be unreasonably withheld or delayed;
- (iv) the Other Party shall give the Indemnifying Party full control over the Relevant Claim to contest or settle the Relevant Claim as the Indemnifying Party sees fit (provided that the Indemnifying Party shall not settle any claim without the Other Party’s consent to the extent that such settlement includes any obligation or restriction on the Other Party or its respective Indemnified Entities); and
- (v) the Other Party shall supply all reasonable assistance required by the Indemnifying Party for the purpose of contesting any Relevant Claim on receiving an indemnity from the Indemnifying Party in a form reasonably acceptable to it against its costs and expenses (including legal costs and disbursements on a solicitor/client basis) incurred in doing so.

d) Mitigation

In respect of any indemnity given by either Party to this Agreement, the Party which receives the benefit of the indemnity shall take all reasonable steps to reduce or mitigate the loss covered by the indemnity.

11. Change of Design, Product Discontinuance and Engineering Changes

- a) Spirent reserves the right to discontinue the manufacture or sale of any model or type of Product or parts and the right to improve or change the design of such Products, and Spirent shall not incur any liability thereby or any obligation to install such improvements on Products previously purchased or sold by the Systems Integrator. Spirent also reserves the right at any time to remove or discontinue any item from the list of Products covered by this Agreement without liability of any kind to the Systems Integrator. Spirent will endeavor to provide the Systems Integrator with a minimum of sixty (60) days' notice prior to discontinuing the manufacture or sale of a Product.
- b) If, in Spirent's opinion, changes are required in any Product, Spirent shall issue a field change order describing the change, whether in equipment or software, and how it is to be made, and shall at its own expense supply dated documents and parts necessary to make the changes called for by the field change order for each item of Product which does not incorporate the change and which in Spirent's opinion requires such change. At Spirent's request and option, the Systems Integrator shall implement the change or return such Product to Spirent. Spirent will reimburse the Systems Integrator for its reasonable labor and other pre-approved in writing expenses required for travel, transportation and/or related costs and authorized in writing by Spirent prior to the implementation of each such change.

12. Term and Termination

- a) **Duration.** This Agreement shall commence on the Effective Date and continue in force without limit of time, unless and until terminated in accordance with this Section 12.
- b) **Termination of the Agreement by Spirent**
 - (i) **Termination of the Agreement for cause.** Spirent may terminate this Agreement by written notice to the Systems Integrator, if:
 - a. the Systems Integrator fails to pay an undisputed sum due to Spirent under this Agreement by its due date, and such failure continues for thirty (30) days from receipt by the Systems Integrator of notice of non-payment from Spirent;

- b. the Systems Integrator materially breaches this Agreement and (a) such breach (if curable) is not cured within thirty (30) days of notice, or (b) such breach is not capable of being cured within thirty (30) days;
 - c. the Systems Integrator breaches any of its obligations in Section 17 (Compliance with Laws) or Spirent reasonably suspects such a breach;
 - d. the Systems Integrator commits multiple breaches of its duties or obligations under this Agreement, which have been notified to the Systems Integrator and which in the aggregate constitute a material breach; or
 - e. the Systems Integrator is subject to an Insolvency Event.
- (ii) **Termination of the Agreement for convenience.** Spirent may terminate this Agreement for convenience, upon sixty (60) days' prior written notice to the Systems Integrator (or such longer period of notice as may be required by applicable law).
- (iii) **Effect of termination of the Agreement.** Termination of the Agreement under this Section 12(b) shall not affect the continuance in force of any Order (including any Statement of Work) that is in progress as at the effective date of termination.
- c) **Termination of individual Orders by Spirent**
- (i) **Termination of individual Orders for cause.** Spirent may terminate any Order (including any Statement of Work referenced in any Order) by written notice to the Systems Integrator if:
 - a. the Systems Integrator fails to pay an undisputed sum due to Spirent under the relevant Order by its due date, and such failure continues for fifteen (15) days from receipt by the Systems Integrator of notice of non-payment from Spirent;
 - b. the Systems Integrator materially breaches the relevant Order and (a) such breach (if curable) is not cured within fifteen (15) days of notice, or (b) such breach is not capable of being cured within fifteen (15) days;

- c. the Systems Integrator commits multiple breaches of its duties or obligations under the relevant Order, which have been notified to the Systems Integrator and which in the aggregate constitute a material breach; or
 - d. the Systems Integrator is subject to an Insolvency Event.
 - (ii) **Effect of termination of individual Orders.** Termination of any individual Order under this Section 12(c) shall not affect the continuance in force of any other Order that is still in progress as at the effective date of termination.
- d) **Termination of the Agreement by the Systems Integrator**
 - (i) **Termination of the Agreement for cause.** The Systems Integrator may terminate this Agreement by written notice to Spirent, if:
 - a. Spirent materially breaches this Agreement and (a) such breach (if curable) is not cured within thirty (30) days of notice or (b) such breach is not capable of being cured within thirty (30) days;
 - b. Spirent commits multiple breaches of its duties or obligations under this Agreement, which have been notified to Spirent and which in the aggregate constitute a material breach; or
 - c. Spirent is subject to an Insolvency Event.
 - (ii) **Termination of the Agreement for convenience.** The Systems Integrator may terminate this Agreement for convenience, upon sixty (60) days' prior written notice to Spirent (or such longer period of notice as may be required by applicable law).
 - (iii) **Effect of termination of the Agreement.** Termination of the Agreement under this Section 12(d) shall not affect the continuance in force of any Order (including any Statement of Work referenced in any Order) that is still in progress as at the effective date of termination.
- e) **Consequences of termination.**

- (i) Upon termination of this Agreement or any Order (and except as otherwise provided in this Section 12):
 - a. the parties shall co-operate and use all reasonable endeavours to minimize the impact of termination on End Customers, including where appropriate agreeing a plan for Spirent to take over the direct provision of Services to End Customers; and
 - b. the Systems Integrator will (a) immediately return to Spirent all Confidential Information of Spirent then in its possession together with all marketing materials and sales aids provided by Spirent, and (b) cease all display, advertising and use of all Spirent names, marks, logos and designation.
- (ii) NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR DAMAGES OR TERMINATION PAYMENTS OF ANY KIND INCLUDING INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO LOST PROFITS, WHETHER OR NOT FORESEEABLE), ON ACCOUNT OF THE TERMINATION OF THIS AGREEMENT IN ACCORDANCE WITH THIS SECTION 12 (TERM AND TERMINATION).
- (iii) Section 12(e)(ii) shall not apply in relation to damages or termination payments that are stated in any individual Order to be payable on the termination of that Order.

13. **LIMITATION OF LIABILITY**

- a) **LIABILITIES THAT ARE NOT LIMITED OR EXCLUDED.** NOTHING IN THIS AGREEMENT SHALL LIMIT OR EXCLUDE ANY LIABILITY FOR THE FOLLOWING:
 - (i) EITHER PARTY'S LIABILITY FOR BREACH OF CONFIDENTIALITY UNDER THIS AGREEMENT;
 - (ii) SPIRENT'S LIABILITY FOR INDEMNITY REGARDING PATENT INFRINGEMENT AS SET FORTH UNDER THIS AGREEMENT;

- (iii) EITHER PARTY'S LIABILITY UNDER THE CONTRACTUAL INDEMNITIES IN THIS AGREEMENT ;
 - (iv) THE SYSTEMS INTEGRATOR'S LIABILITY FOR ANY BREACH OF ITS OBLIGATION TO COMPLY WITH LAWS UNDER THIS AGREEMENT ;
 - (v) THE FAILURE BY THE SYSTEMS INTEGRATOR TO COMPLY WITH THE TERMS OF ANY SPIRENT EULA OR THIRD PARTY EULA, OR USE OF ANY PRODUCT OUTSIDE THE SCOPE OF THE AUTHORISATIONS GRANTED UNDER THIS AGREEMENT; OR
 - (vi) ANY LIABILITY WHICH CANNOT LEGALLY BE LIMITED, INCLUDING BUT NOT LIMITED TO LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY NEGLIGENCE, OR FOR FRAUD OR FRAUDULENT MISREPRESENTATION.
- b) **EXCLUDED LOSSES ETC.** SUBJECT TO SECTION 13(A), IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER (AND SPIRENT SHALL IN ADDITION NOT BE LIABLE TO ANY END CUSTOMER), OR THEIR RESPECTIVE EMPLOYEES OR AGENTS IN ANY WAY FOR ANY REASON FOR BREACH OF WARRANTY, CONTRACT, TORT OR OTHERWISE, FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES INCLUDING WITHOUT LIMITATION LOST BUSINESS OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- c) **LIABILITY UNDER THE AGREEMENT.** SUBJECT TO SECTION 13(D) BELOW AND EXCEPT AS EXPRESSLY PROVIDED ELSEWHERE IN THIS AGREEMENT, THE LIABILITY OF EACH PARTY UNDER THIS AGREEMENT, WHETHER ARISING OUT OF BREACH OF CONTRACT (INCLUDING BUT NOT LIMITED TO BREACH OF WARRANTY) OR TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE AND STRICT LIABILITY), SHALL IN NO EVENT EXCEED THE SUM OF US\$ 1,000,000 (ONE MILLION US DOLLARS) IN AGGREGATE.
- d) **LIABILITY UNDER INDIVIDUAL ORDERS.** EXCEPT AS EXPRESSLY PROVIDED ELSEWHERE IN THIS AGREEMENT, THE LIABILITY OF EACH PARTY UNDER

EACH INDIVIDUAL ORDER, WHETHER ARISING OUT OF BREACH OF CONTRACT (INCLUDING BUT NOT LIMITED TO BREACH OF WARRANTY) OR TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE AND STRICT LIABILITY), SHALL IN NO EVENT EXCEED:

- (i) SUBJECT TO SECTION 13(D)(ii), IN RELATION TO CLAIMS RELATING TO THE SUPPLY OF SPECIFIC PRODUCTS OR SERVICES, 100% OF THE PRICE PAID BY THE SYSTEMS INTEGRATOR FOR THE SPECIFIC PRODUCTS OR SERVICES TO WHICH THE CLAIM RELATES, AND
- (ii) THE SUM OF US\$ 1,000,000 (ONE MILLION US DOLLARS) IN AGGREGATE.

14. Notices

Written notice shall be sent by registered or certified air mail or recorded delivery and shall be deemed to be duly served if addressed to the relevant Party at the Address for Notices stated on the Cover Sheet (as the same may be updated from time to time in accordance with this Agreement).

15. Governing Law

This Agreement shall be governed by and construed in accordance with the laws stated as governing law on the Cover Sheet, without regard to conflict of law principles or the U.N. Convention on Contracts for the International Sale of Goods. Each party hereby submits to, and waives any objection to, the jurisdiction stated on the Cover Sheet in relation to any claim, dispute or difference that may arise under this Agreement. This Agreement shall be enforceable and judgment upon any award rendered may be entered in any Court having jurisdiction.

16. Force Majeure

Neither Spirent nor the Systems Integrator shall be liable for failure or delay in performance of any obligation (other than the payment of money) under this Agreement if such failure or delay is caused by circumstances not directly under the control of the party concerned, including, but without limitation, failures resulting from force majeure, acts of God, acts of public authorities, wars and war measures, pandemics, strikes, fires or failures or delays of suppliers or carriers. In no event shall either party hereto

be liable to the other for indirect, special or consequential damages or for loss of anticipated profits.

17. Compliance with Laws

- a) **General.** In performing its obligations under this Agreement and any services and activities undertaken in connection therewith, the Systems Integrator shall comply with all applicable laws and regulations of the United States and of any other country or subdivision thereof in which such obligations, services and activities are performed.
- b) **Compliance Requirements.** Without limiting sub-section 17(a), the Systems Integrator shall at all times comply, and shall cause its employees, agents, sub-contractors and any person under its control at all times to comply, with the Compliance Requirements, which include requirements concerning compliance with US Export Administration Regulations, EU export controls, the US International Traffic in Arms Regulations, economic sanctions laws, anti-boycott laws and regulations, anti-money laundering laws and regulations, other international trade controls, anti-bribery and corruption laws and regulations, the EU Electronic Waste Directive, and Spirent's requirements concerning information security management systems and data protection.
- c) **Compliance with International Trade Controls.** The Systems Integrator acknowledges that the Products and all related services, technical information, documents, material, and payments (collectively, "**Items**") provided pursuant to this Agreement may be subject to international trade controls. The Systems Integrator agrees (1) to comply at all times with all international trade controls applicable to the Items, now or hereafter in effect, that may apply to the Systems Integrator; and (2) to take no action that would cause or result in Spirent being in violation of international trade controls. The Systems Integrator shall not import, export, re-export, transfer, use, sell, release, service or support any Items, without first obtaining any needed authorization pursuant to the international trade controls from the relevant U.S. or other country's government agency or agencies.
- d) **Consequences of non-compliance.** The Systems Integrator shall promptly notify Spirent upon becoming aware of any violation of the representations, warranties or covenants in this Section 17 or of the Compliance Requirements, and Spirent shall have the right to terminate this Agreement upon written notice to the Systems Integrator in the event of any such violation.

The Systems Integrator shall indemnify and hold harmless Spirent and its officers, directors, employees, agents, affiliates, successors, and permitted assigns (collectively, "**Indemnified Party**") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, that are incurred by Indemnified Party arising out of any such violation by the Systems Integrator or any person acting on behalf of the Systems Integrator. The provisions of this Section 17 shall survive termination of this Agreement.

18. Record-keeping and audit rights

- a) **Duty to maintain records.** The Systems Integrator shall maintain books and records and other documentation (together "**books and records**") that describe in accurate and reasonable detail all matters relevant to its business activities under this Agreement.

- b) **Audits.** Spirent (or at Spirent's option any designated representative of Spirent, other than a competitor of the Systems Integrator) may audit the Systems Integrator's books and records, and the Systems Integrator shall make such books and records available and provide Spirent with access to such other records, facilities, systems and supporting documentation as may be requested by Spirent, to the extent that Spirent reasonably requires from time to time in connection with this Agreement, including (without limitation) for the following purposes:
 - (i) to verify the correct reporting of sales, including the number of licences granted to and usage of Services by End Customers (a "**financial audit**"); and/or
 - (ii) to verify the Systems Integrator's compliance with this Agreement, including without limitation the Compliance Requirements (a "**compliance audit**").

The Systems Integrator will promptly pay Spirent the amount of any underpayment, or reimburse the amount of any overpayment, discovered during a financial audit. Financial audits will be undertaken at Spirent's cost unless the audit reveals a payment issue that exceeds 5% of the amounts payable to Spirent in respect of the period covered by the audit, in which case the Systems Integrator will reimburse Spirent in full for the costs of the audit.

- c) **Conduct of audits and notice.** Audits conducted under sub-section 18(b) will be conducted during normal business hours, at the Systems Integrator's facilities, subject to Spirent giving at least 5 days' notice in writing (except where there are reasonable grounds to suspect fraud or concealment in which case no notice is required).
- d) **Legal and regulatory investigations.** The Systems Integrator shall make available its books and records, and any other records, facilities, systems and supporting documentation that may be relevant to its business activities conducted pursuant to this Agreement, to any investigating authorities who wish to see them in connection with the Compliance Requirements.
- e) **Co-operation.** The Systems Integrator shall fully cooperate in any audit or investigation that may be conducted, including giving such access to facilities, premises, systems and personnel (besides books and records and other documentation) as may be reasonably requested. The Systems Integrator will also cause its affiliates, agents, subcontractors, independent contractors and consultants to provide such cooperation.
- f) **Duration of audit rights.** The audit rights in sub-section 18(b) are exercisable upon request by Spirent at any time during the term of this Agreement and for one (1) year following its expiry or termination.

19. **General**

- a) **Personal Data.** The Systems Integrator acknowledges that, in the course of performing this Agreement, it may be necessary to share certain personal data with Spirent (for example, concerning the Systems Integrator's staff and contacts, or contacts within End Customers), and that Spirent will hold and process such personal data in accordance with Spirent's privacy policy which is located at <https://www.spirent.com/home/gdpr-privacy-notice>, including transferring such personal data to the United States or other jurisdictions, and sharing it with its group companies or other business partners. The Systems Integrator represents and warrants to Spirent (i) that it has the authority to provide such personal data for processing in this manner, and (ii) if any applicable law requires a data subject to receive notice of or to provide consent to the processing and/or transfer of his/her personal data, that the Systems Integrator has provided such notice and has obtained such consent from the relevant data subjects, or that it will provide such notice or obtain such consent prior to sharing the personal data with

Spirent. If so requested by Spirent, the Systems Integrator will provide a copy of the relevant notice and/or consent to Spirent. If Spirent receives a request from a data subject to have access to personal data, or if Spirent receives any other request or complaint relating to the Systems Integrator's obligations under applicable data protection laws, the Systems Integrator is solely responsible for responding to the matter, and Spirent will not respond unless required by applicable law.

- b) **Spirent URLs.** The Systems Integrator acknowledges that it is the responsibility of the Systems Integrator to monitor all applicable URLs referenced in this Agreement, and undertakes to visit those URLs on a regular basis so that it is aware of any changes that Spirent may make. The Systems Integrator warrants that prior to entering into this Agreement it has read this Agreement, including all the elements described in the definition of "Agreement" in Section 1(a), and agrees to the terms and conditions contained in all those elements.
- c) **No Agency.** Each party is an independent contractor and is not the agent or legal representative of the other party for any purpose whatsoever, and shall not hold itself out as an agent or legal representative of that other party. This Agreement creates no relationship of joint venture, partners, associates, employment or principal and agent between the Parties, and both Parties are acting as principals. Neither party is not granted any right or authority to assume or create any obligation or responsibility for or on behalf of the other party. Neither party shall have any authority to bind the other party with any contract of employment, and shall bear all of its own expenses for its operations, including the compensation of its employees and salespersons and the maintenance of its offices and service and warehouse facilities. Each party shall be solely responsible for its own employees and salespersons and for their acts and omissions.
- d) **Entire Agreement.** This Agreement, together with any NDA previously entered into between the parties, constitutes the entire agreement of the Parties with respect to the subject-matter of this Agreement, and supersedes all prior agreements and understandings relating to such subject-matter. Any modifications of this Agreement must be in writing and signed by duly authorized officers of both Parties except as expressly provided herein.
- e) **Non-Waiver and Amendment.** No failure by Spirent to enforce or take advantage of any provisions hereof shall constitute a waiver of the right subsequently to enforce or take advantage of such provision.

- f) **Survival.** Spirent's rights and the Systems Integrator's obligation to pay Spirent all amounts due under this Agreement, as well as the obligation of both parties that are specified in this Agreement to survive, or which by their intent are of a continuing nature, shall survive termination of this Agreement.

- g) **Severability.** If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement 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 hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties 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.

- h) **Counterparts.** This Agreement may be executed in several counterparts each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. A signed copy of this Agreement delivered by email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

- i) **Assignment and Benefits.** Neither this Agreement nor any interest in it shall be assigned directly or indirectly by the Systems Integrator without the prior written consent of Spirent, which consent Spirent may withhold for any reason. This Agreement may be assigned by Spirent. Subject to the foregoing provisions of this section, this Agreement shall be binding upon and inure to the benefits of the legal representatives, successors and assigns of the parties.

APPENDIX 1

Engagement Cases

1. Introduction

- a) This Appendix describes the broad scenarios (“Cases”) in connection with which the Systems Integrator may ask Spirent to provide Products or Services under this Agreement.
- b) Where the Systems Integrator wishes to place an Order for Products or Services, the relevant Purchase Order must include a description of the applicable Case. This relevant to (a) Spirent’s pricing, and (b) the application or disapplication of certain provisions in the Spirent Terms and Conditions of Sale, the Spirent EULA (and if applicable the relevant Third Party EULA) and/or t the relevant Statement of Work.
- c) The Cases are as follows:

Case no.	Case name	Description	Title	Licences	Services	Contractual implications
1	SI Internal Use Only	The SI purchases Products and Services for its own internal use only.	Equipment is owned by the SI.	Licences are granted to the SI.	Services are provided by Spirent to the SI.	The standard Terms and Conditions of Sale, the Spirent EULA (and if applicable the relevant Third Party EULA) and the relevant Statement of Work will apply to this type of transaction as to any other direct sale. Where the SI requires only an evaluation or loaner licence, the applicable Spirent licence

						terms and process shall apply in place of the normal EULA.
2A	SI Purchase for End Customer - SI Engagement	The SI purchases Products and Services in order to provide integration and other services to an End Customer.	Equipment is owned by the End Customer.	Licences are granted to the End Customer. The End Customer is authorized under the EULA to permit the SI to use the Software to the extent required to perform the relevant engagement.	Services are provided by Spirent to the SI for the benefit of the End Customer. Spirent is in effect a subcontractor to the SI in the provision of Services to the End Customer.	The End Customer must agree to the standard Terms and Conditions of Sale and the Spirent EULA (and if applicable the relevant Third Party EULA). The SI must agree to the relevant Statement of Work. (In this case, provisions limiting the SI to “internal use” only will be disappplied.)
2B	SI Purchase for End Customer – Pass Through	The SI purchases Products and Services as a purchasing agent for the End Customer (e.g. where there are logistical or procurement reasons for the End Customer not to contract directly with Spirent).	Equipment is owned by the End Customer.	Licences are granted to the End Customer. The End Customer is authorized under the EULA to permit the SI to use the Software to the extent required to	Services are provided by Spirent to the SI for the benefit of the End Customer. Spirent is in effect a subcontractor to the SI in the provision of Services to the End Customer.	The End Customer must agree to the standard Terms and Conditions of Sale and the Spirent EULA (and if applicable the relevant Third Party EULA). The SI must agree to the relevant Statement of Work. (In this case, provisions limiting the SI to “internal use” only will be disappplied.)

				perform the relevant engagement.		

APPENDIX 2

Ordering Procedure

1. General ordering requirements

- a) To place an Order for Products or Services, the Systems Integrator must be authorized to purchase directly from Spirent and be in possession of a valid price for the specific Products and Services, provided by Spirent in the form of a Quote.

- b) In order for Spirent to be able to process and book an Order, the Systems Integrator must provide Spirent with a fully-executed Purchase Order with Purchase Order number and signature, made out to the correct Spirent entity as per the Quote, and containing the following information:
 - (i) an approved and valid Spirent Quote number, as applicable;
 - (ii) Product/service quantity, price, part number and description;
 - (iii) Support dates (which must match those on the Quote);
 - (iv) Payment terms (if different from those set out in this Agreement);
 - (v) Confirmation that shipment is to be Incoterms 2020 FCA (Spirent location) together with freight forwarder information with account number;
 - (vi) Ship to name, address and contact information;
 - (vii) End Customer name and street address, contact information including email address and company website (or the Systems Integrator's own details, if the Order is for SI Internal Use Only);
 - (viii) Engagement Case type (as described in Appendix 1 to this Agreement);

- (ix) Bill to name, address and contact information including email address of where to send the invoice;
 - (x) Email address to receive Sales Order Acknowledgment;
 - (xi) If there is a trade in or buyout, the relevant serial information;
 - (xii) Spirent's Statement of Work reference number, if required by Section 2 below; and
 - (xiii) Any other special instructions, if applicable.
- c) The currency on the Order must agree with the currency stated on the Quote.
 - d) For US and APAC, Orders should be emailed to Sales-Admin@spirent.com.
 - e) For EMEA, Orders should be emailed to the Systems Integrator's sales representative.

2. Special provisions applicable to placing Orders for Services

- a) The following additional provisions apply where a proposed order relates to Services other than Maintenance and Support Services. Such other services include, by way of example and without limitation, professional services, testing as a service certification as a service , lab as a service.
- b) The pricing of any such Services is dependent on the exact scope of work agreed between Spirent and the Systems Integrator. Spirent will accordingly not accept an order for such Services unless and until a formal Statement of Work has been agreed in the form set out at <https://www.spirent.com/home/terms-sale-license#intermediary-program---statement-of-work>, and assigned a SOW number by Spirent.
- c) Accordingly, although Spirent may provide the Systems Integrator with a Quote for the provision of the relevant Services prior to agreement of the Statement of Work, the pricing in any such Quote is provisional and subject to change.
- d) Once the Statement of Work has been agreed, Spirent will provide a further document, agreed to and signed by Spirent and the Systems Integrator, that sets out the exact payments (if any) to

be made to Spirent by the Systems Integrator (which may be linked to the achievement of milestones described in the formal Statement of Work). Once the pricing and payment arrangements described in that further document have been agreed in writing by the Systems Integrator, Spirent will update the Quote and any subsequent Order will be based on that updated Quote.

- e) It is the responsibility of the Systems Integrator to ensure that, in its own contract with the End Customer, it accurately reflects the pricing and payment arrangements agreed with Spirent (subject to whatever mark-up or discount the Systems Integrator may choose to make).