

**SPIRENT COMMUNICATIONS**  
**SOFTWARE LICENSE AGREEMENT**

This Software License Agreement (“Agreement”) is made by and between (i) Spirent Communications, Inc. and its affiliates (collectively “Spirent”), and (ii) you, the user (“Customer”), who, intending to be legally bound and for good and valuable consideration hereby acknowledge and agree as follows. If you are accepting the terms of this Agreement on behalf of an entity, you and such entity represent and warrant that you have the authority to bind such entity to this Agreement, and, in such event, “Customer” will refer to such entity.

THIS AGREEMENT GOVERNS CUSTOMER’S USE OF SPIRENT SOFTWARE, INCLUDING EMBEDDED OR PRE-INSTALLED SOFTWARE IN SPIRENT HARDWARE AND HOSTED SERVICES SOFTWARE, (THE “SOFTWARE”), UNLESS SPIRENT AND CUSTOMER HAVE EXECUTED A SEPARATE AGREEMENT THEREFORE BY CLICKING “I ACCEPT” OR OPERATING, DOWNLOADING, INSTALLING, REGISTERING OR OTHERWISE USING THE SOFTWARE, CUSTOMER IS EXPRESSLY ACKNOWLEDGING AND AGREEING THAT THIS IS A BINDING AGREEMENT AND CUSTOMER HEREBY AGREES TO THE TERMS OF THIS AGREEMENT. IF CUSTOMER DOES NOT ACCEPT ALL THE TERMS AND CONDITIONS SET FORTH HEREIN, CUSTOMER MAY NOT OPERATE, DOWNLOAD, INSTALL, REGISTER OR OTHERWISE USE THE SOFTWARE.

**1. SOFTWARE LICENSE**

1.1 **Licensed Rights.** Subject to the terms and conditions of this Agreement, Spirent grants to Customer a limited, nonexclusive, nontransferable license, without right of sublicense except as set out in Section 1.4, to use, solely for Customer’s internal business purposes, the Software, in object code form only and only in accordance with (a) the technical specification documentation generally made available by Spirent to its customers with regard to the Software (“Documentation”), (b) this Agreement and (c) any term, user, number of licenses or other restrictions set forth in the applicable Spirent quotation (“Quote”) or, if not expressly specified in such Quote, the number of licenses, users and/or test sessions for the part numbers listed in Spirent’s price list as of the date of such Quote. Licenses designated as “subscription” licenses are for a twelve (12) month period only (unless otherwise designated in the Quote) and shall automatically renew for subsequent periods of the same length at the then-current price unless either party provides the other party with notice of cancellation thirty (30) days or more prior to the expiration of the then-current term. Software shall also include any Documentation and any maintenance and support releases, improvements, enhancements, and other updates of the same Software product provided to Customer under this Agreement. The Quote may specify the following license type for each license of the Software, or abbreviation thereof:

**Global Floating:** Customer may install the Software on any number of internal systems and any of Customer’s employees, consultants or agents may use the Software on behalf of Customer, provided however, no more than the specified maximum number of simultaneous instances may be executed at any one time.

**Floating:** Customer may install the Software on any number of internal systems and any of Customer’s employees, consultants or agents may use the Software on behalf of Customer, provided however, that (i) no more than the specified maximum number of simultaneous instances may be executed at any one time, and (ii) the Software may not be installed on any system or used by any user outside of the specified jurisdiction(s).

**Named:** Customer may only permit one registered, unique named individual to use each licensed instance of the Software and may only be installed on a reasonable number of systems utilized by such individuals. Named licenses must be registered with the individual’s actual name and may not be shared by individuals or allocated to a job function. Once a license is associated with an individual, the license may not be transferred to another individual without the express prior written consent of Spirent.

**Node Locked:** Customer may install each license of the Software on one specific system and that system is the only one which may access that instance of the Software. Once a license is associated with a specific system, the license may not be transferred to another system without Spirent’s prior written consent.

**Pre-installed Software.** To the extent that the Software is pre-installed on Spirent hardware acquired by Customer, Customer may use such Software solely as installed on and to the extent necessary for the normal and intended uses of, such Spirent hardware, subject to the terms of this Agreement. Further, Customer may only use the Software in conjunction with the hardware with which it was supplied.

**Hosted Services.** Software that is hosted as a service by Spirent and is provided on a subscription basis, unless otherwise stated in the applicable Order Schedule.

Spirent and Customer may agree on alternate types of licenses as set forth in a Quote. If no license type is specified in a Quote, the Software may be licensed as a one-year subscription of a single Named license.

1.2 **Restrictions on Licensed Rights.** Customer acknowledges that the components of the Software are subject to copyrights owned by Spirent or its licensors and the Software is licensed, and not sold, to Customer. Customer is prohibited from modifying or permitting anyone else to modify the Software or any module or other portion thereof. Except as necessary to exercise the rights expressly granted in this Agreement, Customer is prohibited from copying or duplicating, or permitting anyone else to copy or duplicate the Software or any module or other portion thereof, other than for purposes of replacing a worn copy or creating an archive copy. Any such copy shall contain the same copyright notice and proprietary markings as the copy of the Software furnished by Spirent to Customer hereunder. In addition to the other restrictions in this Agreement, and other than as may be required or impermissible by applicable law or third-party licenses, Customer shall not, and shall not permit others to: (i) create derivative works, distribute, transmit, license or otherwise transfer the Software directly or through third parties; (ii) reverse engineer, disassemble, decompile the Software or any component of the Software or otherwise attempt to obtain the source code of the Software; (iii) use the Software in a service bureau environment nor use the Software to process any data other than Customer’s own internal data; or (iv) use the Software for any illegal or malicious purpose or to access any information not owned by Customer or for which it does not have express permission to access; (v) tamper with, or attempt to circumvent or disable, any license key;

**RESTRICTED-PROPRIETARY**

The information contained herein is the proprietary information of Spirent and is not for use or disclosure outside Spirent except under written Agreement.

(vi) use the Software on any networks, devices or applications not owned or controlled by the Customer; or (vii) publish information or details of any test scenarios or make test scenarios available online as freeware/free downloads. The Software may contain certain devices or mechanisms that Spirent may use to disable or terminate Customer's access to or use of the Software upon the breach or termination of Customer's license thereto. Nothing in this Agreement limits or restricts the rights granted to Customer under the license terms applicable to the open source or other third-party software provided hereunder.

1.3. U.S. Government Users. The Software is commercial computer software and commercial computer software documentation within the meaning of the applicable acquisition regulations. If acquired by or on behalf of a civilian agency of the United States government, the Software will be subject to terms of this Agreement as a "license customarily provided to the public" as specified in 48 C.F.R. Ch. 1 Part 12.212 of the Federal Acquisition Regulations and its successors. If acquired by or on behalf of units of the Department of Defense, it will be subject to the terms of this Agreement as a "license customarily provided to the public" as specified in 48 C.F.R. Ch. 1 Part 227.7202, DFAR Supplement and its successors. If Spirent receives a request from any Customer agency of the U.S. Government to provide Software with rights beyond those stated above, Spirent will promptly, in its sole discretion, accept or reject such request.

1.4 Sublicensing. The licenses granted in Section 1.1 are granted without right of sublicense, save that the Customer may grant sublicenses to systems integrators or other third party consultants or contractors to use the Software solely for the purposes of providing services to the Customer and PROVIDED (a) the relevant third party and the scope of such use have been approved in writing by Spirent (either in the Quote or in subsequent documentation), (b) the relevant third party does not exceed the scope of use approved by Spirent, (c) the relevant third party has no power to sublicense the use of the Software, and (d) the use by the third party (which shall be counted as use by the Customer for the purposes of any numerical restrictions on the license) does not cause the Customer to exceed any numerical limits on permitted use. The Customer undertakes to ensure that any such third party complies with all the terms of this license in all respects as if it were the Customer itself, save that the third party must not use the Software either for its own internal business purposes or to provide services to any person other than the Customer.

## 2. INVOICING/PAYMENTS

2.1 Application of this Section. You, the Customer understand and agree that, if and to the extent use of the Software is made available as a result of your business relationship with a reseller, you shall pay the reseller the Fees (defined below) and any other amounts owing for use of the Software. All Fees payable to the reseller or Spirent, as the case may be, are due and payable pursuant to the terms stipulated in the Quote.

2.2. License subject to Payment. The license of the Software granted under this Agreement is subject to the payment of Spirent's then-current list price for the Software or such other amount as set out in the Quote ("Fees").

2.3. Payment of Fees. Customer shall pay Spirent the Fees for the Software and any associated software or services net thirty (30) days from the date of Spirent's invoice for the same. Spirent reserves the right to establish or change credit terms based on Customer's payment history and financial condition. If Customer wishes to expand the scope of its license, additional agreed-upon license fees shall become due and payable to Spirent prior to the effective date of any expansion of the scope of the Customer's license. Such invoice shall be issued in accordance with the Quote or absent such a Quote upon the delivery or download of the Software whichever is the earlier. Any amounts not paid within such thirty (30) day period shall bear interest at the lesser of the maximum rate allowable in the Customer's state or two percent (2%) per month. Customer's payment of such interest on late payments shall not prevent Spirent from exercising any other rights under this Agreement or applicable law. Except as required by applicable law or as set forth in Section 5.2.1., all Fees are non-refundable and non-cancelable and will be paid in US dollars (or in the currency stated in the Quote).

2.4. Taxes. All amounts described herein are exclusive of all federal, state, municipal or other governmental excise, sales, value-added, use, personal property and occupational taxes, excises, withholding obligations and other levies now in force or enacted in the future and accordingly, all Fees are subject to an increase equal to the amount of any tax Spirent may be required to collect or pay in connection with the Software, other than any tax on the net income of the Spirent.

## 3. PROPRIETARY RIGHTS; CONFIDENTIAL INFORMATION

3.1. Ownership of Software. Other than the limited licenses set forth in this Agreement, any and all rights, title, and interest in and to the Software, and the intellectual property and proprietary rights to the Software, shall not pass to Customer, but shall remain the exclusive property of Spirent or its licensors.

3.2. Spirent Confidential Information. Customer acknowledges that the following categories of information constitute Spirent Confidential Information: (a) all components of the Software; and (b) the terms and conditions of this Agreement; and (c) other information disclosed by Spirent that would reasonably be understood to be confidential or proprietary. Spirent Confidential Information will not include, however, any information which: (a) is or becomes part of the public domain through no act or omission of Customer; (b) was in the Customer's lawful possession prior to the disclosure and had not been obtained by Customer either directly or indirectly from Spirent or the Software; (c) is lawfully disclosed to Customer by a third party without restriction on disclosure; or (d) is independently developed by the Customer. For a period of ten (10) years from and after disclosure of Spirent Confidential Information to Customer, Customer agrees to hold all such Spirent Confidential Information in strict confidence and agrees not to disclose (or permit others to disclose) it to others or use it in any way, commercially or otherwise, except in exercising its rights pursuant to this Agreement. Customer shall not disclose any Spirent Confidential Information to a recipient not authorized in writing by Spirent or use the Confidential Information for any purpose not expressly authorized by this Agreement. Any disclosures by Customer of Spirent Confidential Information shall only be to Customer's employees, consultants, or agents as expressly permitted hereunder on a "need to know" basis for the purposes of this Agreement and subject to such third parties' acceptance of terms and conditions with respect to the disclosed information at least as restrictive as those set forth in this Agreement. If Customer is compelled by law or a court of competent jurisdiction to disclose Spirent Confidential Information, Customer will promptly notify Spirent in writing and will cooperate at Spirent's expense in seeking a protective order or other appropriate remedy. If disclosure is ultimately required, Customer will furnish only that portion of Spirent Confidential Information that is legally required and will exercise reasonable efforts to obtain assurance that it will receive confidential treatment.

3.3. Equitable Relief. Licensee acknowledges that any breach of its obligations with respect to the proprietary rights or confidential information of Spirent or its licensors may cause Spirent and its licensors irreparable injury for which there would be inadequate remedies at law, and Spirent and its licensors will be entitled to equitable relief, in addition to all other remedies available to it, without the payment of any bond.

## 4. TERMINATION

### RESTRICTED-PROPRIETARY

The information contained herein is the proprietary information of Spirent and is not for use or disclosure outside Spirent except under written Agreement.

- 4.1. **Termination.** This Agreement may be immediately terminated by Spirent in the event: (a) Customer becomes insolvent, files or has filed against it a petition in bankruptcy, or ceases doing business; or (b) the Customer breaches the terms this Agreement. Bankruptcy shall include but is not limited to circumstances where Customer (i) becomes unable to pay its debts; (ii) enters into liquidation (excepts for the purposes of a solvent amalgamation or reconstructions); (iii) makes a arrangement with its creditors; (iv) has a receiver, administrator or administrative receiver appointed over all or any of its assets; (v) ceases or threaten to cease trading or dissolved; (vi) takes or suffers to be taken any similar action in consequence of a debt; or (vii) is subject to any procedure equivalent to any of the preceding matters in any other jurisdiction.
- 4.2. **Customer Obligations Upon Termination.** Upon termination of this Agreement for any reason, (a) all licenses granted to Customer hereunder shall immediately terminate and Spirent may disable access to the Software, (b) Customer shall discontinue use of the Software and the other Spirent Confidential Information, and any portion thereof, and return the Software and any and all other Spirent Confidential Information in its possession to Spirent, or, at Spirent's option, destroy the Software and such other Spirent Confidential Information, including all copies or partial copies thereof, and shall certify to Spirent in writing that Customer has retained none of the Spirent Confidential Information, and (c) all outstanding Fees shall become due and payable immediately. The following Sections will survive the expiration or termination of this Agreement: 1.2, 2, 3, 4.2, 5, 8, and 9.

## 5. LIMITED WARRANTIES AND INDEMNIFICATION; EXCLUSIVE REMEDIES

5.1. **Software.** For a period of ninety (90) days from the date of delivery of the Software to Customer, or such other period as stated in the Quote, Spirent warrants to Customer that the Software, if used in accordance with this Agreement, will operate in material conformity with the specifications for the Software which Spirent may publish. The warranties set forth herein do not apply to any material deviation from the accompanying documentation or specifications which results from (a) modification of the Software by anyone other than Spirent or in accordance with Customer's instructions, (b) use of the Software for any purpose other than intended, (c) use of Software in combination with any other software or devices, if such claim would have been avoided but for such combination, (d) any misuse or incorrect use of the Software, (e) Customer's failure to use the latest release of the Software provided by Spirent, or (f) any hardware malfunction. **CUSTOMER EXPRESSLY ACKNOWLEDGES THAT BECAUSE OF THE COMPLEX NATURE OF COMPUTER SOFTWARE, SPIRENT CANNOT AND DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE WILL MEET A SPECIFIC REQUIREMENT OR THAT THE OPERATION OF THE SOFTWARE WILL BE WITHOUT INTERRUPTION OR ERROR-FREE.** During the aforementioned warranty period, Spirent will, at Spirent's expense and as its entire liability (and Customer's exclusive remedy) for any breach of the warranty and provided Customer has notified Spirent in writing of the nature of the non-conformity within ten (10) days of Customer's discovery of the non-conformity and provided Spirent is able to verify such non-conformity: (i) correct the non-conformity or (ii) replace the non-conforming Software with Software meeting Spirent's then-current published specifications.

**Hardware.** To the extent that Spirent is supplying Customer with any hardware Spirent warrants that the hardware will conform to the description on the face of the order, that it will convey good title thereto, and that it will be delivered free from any lawful security interest or other lien or encumbrance. Further Spirent warrants that the hardware it supplies will be free from significant defects in materials and workmanship for a period of twelve (12) months, except as otherwise noted, from the date of the delivery ("Hardware Warranty Period") under normal use and conditions and that a claimed defect actually exists and was not caused by neglect, accident, misuse improper installation, improper environmental conditions, improper repair, fire, flood, lighting, power surges, earthquakes or alterations. Any defective hardware or software under warranty shall be at Spirent's discretion, repaired or replaced or a credit issued to Customer's account for an amount equal to the price paid provided that Customer follows Spirent's standard warranty procedure. Any claim for defective materials shall be deemed waived unless written notice is given to Spirent within the warranty period. Spirent reserves the right to change the warranty and service policy at any time, after reasonable notice and without liability.

### 5.2. **Infringement.**

5.2.1. **Cure.** In the event of a determination that the Software infringes, or is likely to infringe, any proprietary right of any third party, Spirent shall have the option, at its own discretion and expense, to (a) obtain for Customer the right to continue using the actual or potential infringing component of the Software or (b) replace the actual or potential infringing component of the Software or modify such component so that it becomes non-infringing, or (c) terminate the licensed rights granted herein and grant Customer a refund of the license fee, less reasonable depreciation based on usage, which shall in no event be less than the result of a straight-line computation based upon a five (5) year usable life.

5.2.2. **Indemnification.** Spirent shall indemnify, defend and hold Customer harmless from and against any and all liability, damages, loss or expense (including reasonable fees of attorneys) arising from any claim, demand, action or proceeding initiated by any third party alleging the Software infringes the copyright, US registered patent or trademark of any third party; provided, however, that as a condition to this indemnification obligation, Customer shall promptly (a) notify Spirent of any threat or initiation of any claim, demand, action or proceeding to which the indemnification obligation may apply, (b) assist Spirent in the defense or settlement of the matter, and (c) provide Spirent sole control over the defense and settlement of such matter.

5.2.3. **Exclusions.** Spirent shall have no obligations under Section 5.2 for any alleged infringement based upon: (a) modification of the Software by anyone other than Spirent, (b) use of the Software in combination with other software or any other Software or devices if such claim would have been avoided but for such combination, (c) Customer's continued use of the infringing Software after receipt of notice of an infringement claim or after receipt of a remedy from Spirent under this Agreement, (d) Customer's use of the Software other than in accordance with the terms of this Agreement or Documentation, or (e) modifications to the Software made pursuant to Customer's express instruction.

**THIS SECTION 5.2 STATES SPIRENT'S ENTIRE LIABILITY, AND CUSTOMER'S EXCLUSIVE REMEDY, WITH RESPECT TO ANY INFRINGEMENT OF ANY THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS.**

5.3. **Disclaimers.** THE LIMITED WARRANTIES AND INTELLECTUAL PROPERTY INDEMNIFICATION SET FORTH HEREIN ARE EXCLUSIVE AND IN LIEU OF, AND CUSTOMER HEREBY WAIVES, ALL OTHER REPRESENTATIONS, WARRANTIES AND GUARANTEES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS OF THE SOFTWARE FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT, AND ANY WARRANTIES ARISING BY STATUTE OR OTHERWISE IN LAW OR OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE.

5.4. **Indemnification.** Customer agrees to indemnify, protect, defend and hold Spirent and its suppliers, licensors, distributors, directors, employees, professional advisors, agents and representatives harmless from and against any and all claims, losses, damages (including without limitation reasonable attorneys' and experts' fees and disbursements) (I) arising from any and all of the following which may at any time be asserted against Spirent: (a) by any party for Customer's failure to perform any of the covenants, agreements, terms, obligations, provisions or conditions contained in this Agreement; (b) by any party for reason of Customer's use or misuse of the software or documentation supplied by Spirent; (c) resulting from any failure by Customer to comply with any term, condition or restriction in this Agreement; (d) alleging customer data infringes or misappropriates any intellectual property rights; or (e) arising from Customer failing to comply with any law or regulation including but not limited to any illegal content, and (II) arising from anything done in relation to the Software or Spirent Confidential Information by a sublicensee approved by Spirent under Section 1.4, and from any failure by such sublicensee to comply with any term, condition or restriction in this Agreement if such failure would have amounted to a breach of this Agreement if it had been done by the Customer. Customer shall be entitled to have sole control over the defense and/or settlement of any claim, provided however that Spirent may participate with counsel of its own choosing and at its own expense. Customer shall not settle any claim to the extent that such settlement includes any obligation or restriction on Spirent, or the Spirent indemnified party.

Page 3 of 5

### RESTRICTED-PROPRIETARY

The information contained herein is the proprietary information of Spirent and is not for use or disclosure outside Spirent except under written Agreement.

Version: 0822.4

## 6. REPRESENTATIONS AND WARRANTIES

6.1. Responsibilities of customer. The software is not intended for use in connection with any high-risk activity, including, without limitation, air travel, space travel, firefighting, police operations, power plant operation, military operations, rescue operations, hospital or medical operations, nuclear facilities or equipment, or the like. Customer agrees not to use or allow the use of the software for or in connection with any such high-risk activity. Customer is solely responsible for the proper installation and operation of the software in accordance with the instructions and specifications. Spirent shall have no responsibility or liability to Customer or any third party under the warranty or otherwise, for improper installation or operation of the software. Any output or execution errors resulting from improper installation or operation of the software shall not be deemed "defects" under the warranty. Customer shall be responsible for (a) the security, configuration and operation of any devices, applications, networks, and information technology systems that are subject to testing using Spirent products and/or services (each a "test target"), (b) obtaining and maintaining authorization to perform tests on the test target, and (c) the use of results of any test of a test target.

## 7. LIMITATION OF LIABILITY

7.1. Limitations and Exclusions. IN NO EVENT SHALL SPIRENT OR ANY OF ITS SUPPLIERS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, (INCLUDING WITHOUT LIMITATION ANY DAMAGES OR LIABILITY RELATING TO INTERRUPTION OF OR INABILITY TO USE THE SERVICE, ANY INACCURACY OR ERROR IN CONTENT, COST OF PROCUREMENT OF SUBSTITUTE SOFTWARE, LOST PROFITS, OR LOSS OF DATA), INCURRED BY THE CUSTOMER, WITHOUT REGARD TO CAUSE OR THEORY OF LIABILITY AND REGARDLESS OF WHETHER OR NOT SPIRENT OR ITS SUPPLIERS WERE ADVISED SUCH DAMAGES MIGHT ARISE.

7.2. Maximum Liability. THE LIABILITY OF SPIRENT AND ITS SUPPLIERS 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) OR ANY OTHER REASON, SHALL IN NO EVENT EXCEED THE TOTAL FEES PAID TO SPIRENT BY CUSTOMER FOR THE SOFTWARE TO WHICH SUCH LIABILITY RELATES DURING THE TWELVE (12) MONTH PERIOD PRIOR TO ANY SUCH CLAIM (OR IN THE CASE OF FIRMWARE, TOTAL FEES PAID BY CUSTOMER FOR THE APPLICABLE HARDWARE).

## 8. DISPUTE RESOLUTION & CHOICE OF LAW AND FORUM

8.1. Governing Law. This Agreement and any disputes arising from or related to it, or its subject matters, shall be governed, resolved and remedied in accordance with the laws of the State of California, USA, without resort to conflict of law principles. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement.

8.2. Forum. Any action to enforce, arising out of, or relating in any way to, any of the provisions of this Agreement shall be brought and prosecuted in the Federal and State courts of California and the parties consent to the jurisdiction of said courts.

8.3. Compliance with Laws; Export Control Laws. Customer shall be solely responsible for its compliance with, and agrees to comply with, all applicable laws in connection with its use of the Software. Customer acknowledges that the Software may be subject to export controls imposed by the U.S. Export Administration Regulations (the "EAR"). To the extent applicable by U.S. law, Customer will not export or reexport (directly or indirectly) the Software, or any derivatives of the Software without complying with the EAR. Customer agrees to export or reexport (directly or indirectly) in accordance with all applicable laws with respect to the export of technology from the United States and in accordance with all applicable United Kingdom laws.

## 9. GENERAL TERMS

9.1 Amendment; Waiver. No amendment, modification or discharge of this Agreement, and no waiver hereunder, shall be valid or binding unless set forth in writing and duly executed by the party against whom enforcement of the amendment, modification, discharge or waiver is sought. Failure of either party to insist upon strict performance of any of the terms and conditions hereunder, or the delay in exercising any of its remedies shall not constitute a waiver of such terms and conditions or a waiver of any default or remedy.

9.2 Audit. Customer shall maintain complete and accurate records of its use of the Software during the applicable subscription term (if applicable, or otherwise the term of the Agreement) and for 2 years thereafter. Upon 10 days' written notice from Spirent, and no more than once per calendar year, Customer shall provide Spirent with reasonable access to Customer's premises during normal business hours to conduct an audit of Customer's records and systems to verify compliance with this Agreement, including calculation of Fees. Spirent shall bear the costs of any such audit, except that if Customer is found to have violated the terms of this Agreement, in addition to any and all remedies available to Spirent in law or equity, Customer shall reimburse Spirent for all reasonable audit expenses.

9.3 Assignment. This Agreement and any rights granted hereby may not be assigned by Customer, directly or indirectly, including without limitation by merger, sale of assets or stock, change of control, or operation of law, without the prior written consent of Spirent. Spirent may assign any or all of this Agreement and its rights and obligations hereunder. Any attempt by Customer to assign any rights, duties or obligations without such consent shall be void and without force or effect.

9.4 Force Majeure. Spirent shall not be liable for any damages or penalty for any delay in performance of, or failure to perform, any obligation hereunder due to any elements beyond its reasonable control.

9.5 Attorneys' fees. If any action is necessary to enforce the terms of this Agreement, Spirent will be entitled to reasonable attorneys' fees, costs and expenses in addition to any other relief to which it otherwise may be entitled.

9.6 Severability. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be unenforceable, the remaining portions of this Agreement shall remain in full force and effect.

9.7 Entire Agreement. This Agreement, together with the Quotes, embodies the entire understanding and agreement between the parties with respect to the subject matter hereof and supersedes all oral and written prior or contemporaneous agreements related to such subject matter.

9.8 Headings. Section and subsection headings contained in this Agreement are inserted for convenience of reference only, shall not be deemed to be a part of this Agreement for any purposes, and shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof.

9.9 Relationship of the Parties. Spirent and Customer will be and shall act as independent contractors, and neither party is authorized to act as an agent or partner of, or joint venturer with, the other party for any purpose. Neither party by virtue of this Agreement shall have any right, power or

### RESTRICTED-PROPRIETARY

The information contained herein is the proprietary information of Spirent and is not for use or disclosure outside Spirent except under written Agreement.

authority to act or create any obligation, express or implied, on behalf of the other party.

9.10 Third-Party Components. Customer acknowledges that the Software contains components made available to Spirent by third-party suppliers, and Customer agrees that each such supplier is a third-party beneficiary of this Agreement with the right to enforce Customer's obligations hereunder with respect to the individual components such supplier has supplied.

9.11 Precedence of Documents: The terms and conditions of this Agreement, insofar as they relate to the rights licensed to the Software will control over any conflicting or inconsistent terms contained in any Quote, or Spirent invoice unless otherwise mutually agreed to in writing. No terms in any quotation, purchase quote, acknowledgment or other form provided by Customer will modify this Agreement, regardless of whether Spirent objects to such terms, and any such additional or conflicting terms are expressly rejected. Notwithstanding Section 9.7, the terms and conditions of this Agreement insofar as they relate to matters other than the rights licensed to the Software shall be subject to the terms and conditions of the master purchase agreement between Spirent and Customer (if any) (the "Master Agreement") only to the extent that such Master Agreement expressly contradicts the terms and conditions of this Agreement.