

## SPIRENT TEST IN SPIRENT LAB AS A SERVICE AGREEMENT

This Spirent Test in Spirent Lab as a Service Agreement (this “Agreement”), effective as of the latest date set forth on the signature page (the “Effective Date”), is by and between Spirent Communications Inc. a Delaware corporation with offices located at 27349 Agoura Road, Calabasas, CA 91301 (hereafter “Spirent”) and \_\_\_\_\_, a \_\_\_\_\_ [corporation] with offices located at \_\_\_\_\_ (“Client”).

Preamble: Client is interested in having Spirent test Client’s device which is listed in the Statement of Work (the “Device(s)”). The specific testing to be performed on the Device shall also be specifically described in the Statement of Work (the “Test Services”). In order for Spirent to perform the Test Services on the Device(s) the Client will deliver the Device(s) to the specific Spirent Test Lab listed on the Statement of Work. Once the Test Services are completed the Device(s) will be returned to the Client.

### 1 SERVICES

**1.1 Statement(s) of Work.** To the extent Client wishes to procure Test Services from Spirent and Spirent wishes to provide Test Services to Client, the parties shall execute a statement of work in a format similar to Exhibit A attached which specifically references this Agreement and is signed by both parties (each an “SOW”). The SOW which may contain the following information: (a) the start date start date and end date of the Test Services; (b) a description of the Device(s) to be provided to Spirent for testing; (c) a description of the Test Services to be performed by Spirent; (d) the charges for the Test Services; (e) the Spirent Test Lab where the Device(s) shall be delivered for the Test Services to be performed; and (e) such other information as may be agreed to by the parties. In the event of a conflict between the terms of this Agreement and the SOW, the terms of the SOW shall govern. Upon execution of an SOW, Spirent shall perform the Test Services set forth in the SOW using generally accepted industry standards and practices. Spirent shall determine in its sole discretion what personnel is required to complete the work contemplated by this Agreement and may use third parties, as determined by Spirent in its sole discretion, to complete any work.

**1.2 Nonexclusive.** Spirent shall not be required to devote its Test Services or any other services exclusively to Client, and Spirent shall not be precluded from engaging in any other business activity during the term of this Agreement, including, without limitation, providing Test Services to other clients and/or competitors of Client.

**1.3 Client Cooperation.** Client shall cooperate with Spirent with providing the Device(s) in a reasonable, safe manner (including, without limitation, people, documents, systems and data) to perform the Test Services.

**1.4 Personnel.** The personnel assigned to perform Test Services (“Personnel”) shall have the skill, training and background sufficient to perform the Test Services. The term “Personnel” may also include such other person(s) as may be subsequently designated by Spirent in writing as its representative(s) for purposes of this Agreement or a SOW provided. The Personnel shall perform their assignments under the direction of Spirent and the Client’s Project Manager. If Spirent is required to perform any work at Client’s facilities in connection with the project, all Personnel assigned to work at Client’s facilities shall strictly abide by Client’s rules relating to security and safety applicable to the facility as advised by Client to Spirent.

**1.5 Client Obligations.** Client shall fulfill its obligations and responsibilities as set forth in this Agreement and the SOW so that Spirent can perform the Test Services efficiently and effectively. Client agrees that it shall have the sole responsibility for protecting and backing up its systems, networks, applications, content, and data used in connection with the Test Services. Client shall secure and provide to Spirent any rights and licenses necessary to allow Spirent to perform the Test Services. Client shall ensure the cooperation and performance of its employees and contractors as well as the accuracy and completeness of data and information provided to Spirent that are necessary to perform the Test Services. Client shall make and be responsible for all decisions and actions based or related to advice and recommendations provided by Spirent in connection with the performance of the Test Services hereunder.

### 2 FEES AND EXPENSES

**2.1 Application of this Section.** This Section 2 (Fees and Expenses) only applies where the Client is contracting directly with Spirent for the provision of the Test Services. If the Client’s contract is with a Spirent reseller, then Spirent directs the Client to follow the provisions of that contract concerning fees and expenses which shall apply instead of this Section 2.

**2.2 Pricing & Fees.** Client shall pay Spirent the amount set forth in the SOW (“Fees”).

**2.3 Expenses.** Any expenses incurred in transporting the Device(s) to the Spirent Test Lab those expenses will be addressed in the SOW.

### **3 INVOICES AND PAYMENTS**

**3.1 Application of this Section.** This Section 3 (Invoices and Payments) only applies where the Client is contracting directly with Spirent for the provision of the Test Services. If the Client’s contract is with a Spirent reseller, then Spirent directs the Client to follow the provisions of that contract concerning invoices and payments which shall apply instead of this Section 3.

**3.2 Payments.** For Test Services performed in accordance with this Agreement Client shall pay Spirent the fees and expenses for all Test Services as described in a SOW. Spirent shall submit invoice(s) to Client as described in a SOW and each invoice submitted by Spirent to Client shall be accompanied by appropriate supporting documentation.. All payments are due thirty (30) days after receipt of a correct invoice, provided, however, that no payment shall be due sooner than any due date specified on the invoice. All fees are exclusive of federal, state, municipal or other governmental excise, value-added, sales, use, excise, personal property, occupational, withholding obligations and other levies now in force or enacted in the future. Accordingly, all fees payable to Spirent are subject to an increase equal to the amount of any such tax, excise or levy Spirent may be required to collect or pay in connection with the Test Services, other than a tax on the net income of Spirent. Any applicable charge or tax shall be borne by Client in addition to the fees quoted. Any amounts not paid within such thirty (30) day period shall bear interest at the lesser of the maximum rate allowable under applicable law where Client is located or two percent (2%) per month. Client’s payment of such interest on late payments shall not prevent Spirent from exercising any other rights under this Agreement or applicable law. All payments shall be made in US dollars.

### **4 CONFIDENTIAL INFORMATION**

**4.1 Confidential Information.** Except as otherwise specified herein, Spirent and Client each expressly undertake to retain in confidence all information transmitted to it by the other party pursuant to this Agreement that the disclosing party identifies as being proprietary and/or confidential or that, by the nature of the circumstances surrounding the disclosure, ought in good faith to be treated as proprietary and/or confidential (“Confidential Information”), and will make no use of such Confidential Information except under the terms and during the existence of this Agreement. Spirent and Client shall treat the terms and conditions of this Agreement as confidential; however, either party may disclose the terms and conditions of this Agreement or the SOW in confidence to its immediate legal and financial consultants as required in the ordinary course of that party’s business, or to a government authority to support compliance with legal or regulatory obligations, or as otherwise required by law. The receiving party’s obligation hereunder shall extend for three (3) years following the disclosure of the Confidential Information. Client shall cause its employees, agents, affiliates, and assigns to retain Confidential Information in accordance with the terms of this Article 4.1.

**4.2 Exclusions.** Confidential Information shall not include any information that: (a) is at the time of disclosure or subsequently becomes publicly available without the receiving party’s breach of any obligations owed the disclosing party; (b) became known to the receiving party prior to the disclosing party’s disclosure of such information to the receiving party; (c) became known to the receiving party from a source other than the disclosing party other than by the breach of an obligation of confidentiality owed to the disclosing party; or (d) is independently developed by the receiving party without the use of the disclosing party’s Confidential Information.

**4.3 Independent Development.** The terms of confidentiality under this Agreement shall not be construed to limit Spirent’s right to independently develop or acquire products without use of the other party’s Confidential Information.

### **5 PROPRIETARY RIGHTS**

All right title and interest in any software or other materials used in the performance or delivery of the Test Services shall belong exclusively to Spirent, except as otherwise provided in this Agreement

**5.1** “Spirent Property” is the software, source code, object code, firmware, procedures, know- how, methodologies, independent utilities, tools and programs, processes and material owned, licensed or developed by

Spirent under this Agreement or any improvements thereof. All copyrights, patents, trade secrets, other intellectual property rights or other ownership rights associated with any Spirent Property shall belong exclusively to Spirent subject to Client's non-exclusive right to use such Spirent Property that is provided to Client as a deliverable as set forth below

**5.2** "Client Property" is the software, methodologies, processes and materials owned, licensed or developed by Client prior to the performance of any work under this Agreement or developed independently and outside the scope of any work performed under this Agreement. All copyrights, patents, trade secrets, other intellectual property rights or other ownership rights associated with any Client Property shall belong exclusively to Client.

**5.3** SPIRENT AND CLIENT EXPRESSLY AGREE THAT NONE OF THE TEST SERVICES DELIVERED BY SPIRENT SHALL BE CONSIDERED A "WORK FOR HIRE" AND ANY INTELLECTUAL PROPERTY CREATED IN PERFORMANCE OF THE TEST SERVICES REMAIN THE SOLE AND EXCLUSIVE PROPERTY OF SPIRENT. TO THE EXTENT THAT SPIRENT CREATES ANY INTELLECTUAL PROPERTY IN CREATING DELIVERABLES IN PERFORMING THE TEST SERVICES, SPIRENT SHALL GRANT A LIMITED LICENSE TO CLIENT TO USE SUCH DELIVERABLES FOR CLIENT'S INTERNAL USE ONLY.

**5.4** **License to Test Reports.** The parties acknowledge and agree that the reports of the Test Services made available to Client (the "Test Reports") shall be owned by Client. Client agrees to grant and does hereby grant to Spirent a perpetual, irrevocable, worldwide, royalty-free, nonexclusive, assignable, sub-licensable (including through multiple tiers), and transferable license and right to use, reproduce, modify, create derivative works of, perform, display, distribute, and make and have made the Test Reports for the purpose of maintaining and supporting the software used to provide the Test Services and otherwise providing the Test Services

## **6 INSURANCE AND INDEMNITY**

**6.1** **Insurance.** During the term of this Agreement, Spirent shall procure and maintain policies of insurance to include the following coverage: (a) Workers' Compensation Insurance for its own employees that meets the statutory limits of the states in which Spirent operates and all federal statutes and regulations, (b) Employers Liability of not less than \$1,000,000 combined single limit per occurrence, Comprehensive General Liability of not less than \$1,000,000 per occurrence including personal injury, (d) Comprehensive Automobile Liability (including Automobile Non-Ownership Liability) with a combined single limit of not less than \$1,000,000 per occurrence, and (e) Umbrella or excess Liability Insurance providing coverage in excess of the coverages listed in (c) and (d) above in an amount not less than \$5,000,000 per occurrence. Upon request by Client, Spirent shall furnish Client with a Certificate of Insurance evidencing such coverage.

### **6.2** **Indemnification.**

- (a) Each party shall indemnify, defend and hold harmless the other party, its principals, officers, directors, employees and agents from and against any and all third-party actions, damages, claims, liabilities, costs, expenses, and losses (including, without limitation, reasonable attorneys' fees and expenses) for bodily injury and property damage brought against, incurred by, or paid by any of them at any time, as a result of its intentional misconduct of its employees or agents. This provision shall apply regardless of the form of action, damage, claim, liability, cost, expense, or loss, whether in contract, statute, tort or otherwise
- (b) 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) 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; or (c) resulting from any failure by Customer to comply with any term, condition or restriction in this Agreement. 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 Spirent Indemnified Party.

**6.3 Indemnification Process.** Any party with a possible claim for indemnity under Section 6.2 or 6.3 shall promptly notify the indemnifying party of the potential claim, and shall cooperate with the indemnifying party, at the indemnifying party's cost, in the investigation and defense of the same. The indemnifying party shall have sole control over the defense and/or settlement of any such claim, but the indemnified party may participate at its own expense with counsel of its choosing and the indemnifying party will not settle any such claim without the indemnified party's prior written consent (unless such settlement does not impose any obligations, admissions, or liabilities upon the indemnified party).

## **7 REPRESENTATIONS, WARRANTIES AND LIABILITIES**

**7.1 Mutual Representations.** Each party represents to the other that (a) this Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against such party in accordance with its terms; (b) no authorization or approval from any third party is required in connection with such party's execution, delivery, or performance of this Agreement; and (c) the execution, delivery, and performance of this Agreement does not violate the laws of any jurisdiction or the terms or conditions of any other agreement to which it is a party or by which it is otherwise bound.

**7.2 Limitation on Warranties.** Client and Spirent agree that the Test Services are provided "as is" and "as available" and that Spirent makes no warranty as to the Test Services. Spirent disclaims all other warranties, either express or implied, including, without limitation, warranties of merchantability and fitness for a particular purpose. Spirent does not warrant the work performed by client or third-party contractors or that any systems or operation of systems will be defect or error- free.

**7.3 Exclusion of Damages; Limitation on Liabilities.** EXCEPT AS EXPLICITLY PROVIDED HEREIN, IN NO EVENT SHALL EITHER PARTY OR ITS SUPPLIERS BE LIABLE FOR (A) ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO LOSS OF PROFITS, LOSS OF DATA, AND/OR LOSS OF BUSINESS, ARISING OUT OF OR RESULTING FROM THIS AGREEMENT EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR (B) EXCEPT FOR ANY BREACH OF SECTIONS ENTITLED "CONFIDENTIAL INFORMATION", "PROPRIETARY RIGHTS", OR A CLAIM FOR INDEMNIFICATION PROVIDED FOR UNDER THIS AGREEMENT, DAMAGES IN EXCESS OF THE AMOUNTS PAYABLE HEREUNDER BY CLIENT FOR 12 MONTHS PRIOR TO THE EVENT GIVING RISE TO THE LIABILITY. THE FOREGOING SHALL APPLY REGARDLESS OF THE NEGLIGENCE OR OTHER FAULT OF EACH PARTY AND REGARDLESS OF WHETHER SUCH LIABILITY SOUNDS IN CONTRACT, NEGLIGENCE, TORT, OR ANY OTHER THEORY OF LEGAL LIABILITY.

## **8 TERM AND TERMINATION**

**8.1 Term and Termination.** This Agreement will commence on the Effective Date set forth on the signature page of this Agreement and will continue in effect for a period of one (1) year(s) and shall automatically renew on each annual anniversary date unless terminated in writing by a party with sixty (60) days advanced written notice or unless amended to establish a later expiration date by a written Agreement signed by both parties. Note, that notwithstanding the foregoing, if this Agreement or any SOW is terminated by a party prior to the completion of the Test Services in the relevant SOW, then Spirent shall be paid for the Test Services delivered up to and including the date the termination notice is received.

**8.2** Either party may terminate this Agreement and/or any individual SOW if the other party breaches a material provision of this Agreement or any SOW and fails to cure such breach within thirty (30) days of receipt of written notice of the breach from the other party.

**8.3** Notwithstanding the foregoing, this Agreement and any SOW or both, may be terminated immediately by either party in the event of (i) a breach of any confidentiality obligation, breach of the Proprietary Rights clause herein, or breach of the Export clause herein, or (ii) either party makes an assignment or trust mortgage for the benefit of its creditors, or shall file a voluntary petition under the bankruptcy or insolvency laws of any jurisdiction to which it is subject, or shall suffer an involuntary petition under such laws to be filed against it, or shall be adjudicated bankrupt or insolvent under the law of any jurisdiction to which it is subject, or (iii) either party is subject to U.S. export controls or sanctions incompatible with this Agreement (such as designation on the U.S. list of Specially Designated Nationals).

## **9 GENERAL**

**9.1 Entire Agreement.** This Agreement, together with the SOW, shall constitute the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous communications.

**9.2 Amendment.** No amendment, change, modification or alteration of this Agreement shall be effective unless in writing and signed by both parties.

**9.3 Assignment.** This Agreement shall be binding upon and for the benefit of the parties, their successors and assigns, provided that the Agreement may not be assigned without the prior written consent of the other party.

**9.4 Export.** Spirent and Client agree to comply with the United States Export Controls Act of 2018, as amended, (the "Act"), and with the U.S. Export Administration Regulations ("EAR") promulgated from time to time thereunder by the United States Department of Commerce.

**9.5 Waiver.** No waiver of any provision of this Agreement or of the rights and obligations of the parties shall be effective unless in writing and signed by the party waiving compliance. Any such waiver shall be effective only in the specific instance and for the specific purpose stated in such writing.

**9.6 Governing Law & Venue.** This Agreement shall be governed by the laws of the State of California, without regard to principles of conflicts of laws or the U.N. Conventions on Contracts for the International Sale of Goods or the Sale of Goods provision 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.

**9.7 Survival.** It is expressly agreed by both parties that the clauses herein entitled Confidential Information, Proprietary Rights, Limitations on Warranties, Exclusions of Damages; Limitation on Liabilities, and No Solicitation, shall survive the termination or expiration of this Agreement. The obligation of both parties that are of a continuing nature, shall survive termination of this Agreement.

**9.8 Severability.** If any term, clause, or provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining terms, clauses, and provisions shall remain in full force and effect.

**9.9 Construction.** This Agreement is the product of the efforts of both parties and shall not be interpreted in favor of or against either party because of its effort in preparing it.

**9.10 Injunctive Relief.** Each party agrees that a breach of the license rights granted hereunder and/or the restrictions thereon, or a breach of the confidentiality provisions hereof, may result in irreparable harm and significant injury to the other which may be difficult to ascertain. Accordingly, each party agrees that the other shall be entitled to equitable relief, including, without limitation, an immediate injunction enjoining any further breach, in addition to all other remedies available to such party at law or in equity.

**9.11 Attorneys' Fees.** If any claim, legal action or any arbitration or other proceeding is brought for the enforcement of this Agreement or because of a dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in that claim, action or proceeding, in addition to any other relief to which such party may be entitled. This attorneys' fees clause shall include all post-judgment attorneys' fees and expenses and shall not be merged into, but rather shall survive, the judgment.

**9.12 Compliance with Laws.** Each party agrees to comply with all applicable laws, rule and regulations in connection with its activities under this Agreement, including without limitation the applicable regulations of the U.S. Department of Commerce and the United States Export Controls Act as amended to ensure that hardware, software, and technology is not exported in violation of the United States Laws.

**9.13 Force Majeure.** Neither party will be deemed in default of this Agreement, except for defaulted obligations of payment, to the extent that performance of their obligations or attempt to cure any breach are delayed or prevented by reason of causes beyond its control, including but not limited to acts of God, war, riot, terrorism, sabotage, embargoes, acts of civil or military authorities, fire, floods, pandemic, accidents, strikes, or shortages of transportation, facilities, fuel, energy, labor or materials or Internet outages. In the event of any such delay, the delayed party may defer its performance for a period equal to the time of such delay, but in no event more than Three months, provided

that the delayed party gives the other party written notice thereof promptly and, in any event, within ten (10) calendar days of discovery thereof, and uses its good faith efforts to cure the excused breach.

**9.14 Relationship of Parties.** The relationship of the parties is that of independent contractors. No agency, partnership, joint venture, or employment relationship shall be created or inferred by the existence or performance of this Agreement, and neither party shall have any authority to bind the other in any respect whatsoever.

**9.15 Notices.** All notices shall be in writing and delivered in person or by courier service, overnight service, fax or e-mail to the addresses below. All notices shall be deemed as given on the date that the person or service delivers such notice or the date that such notice was refused, unclaimed or undeliverable by the person or service attempting to deliver such notice. Either party may change the address for purpose of giving notice by providing written notice to the other party.

**To Client:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**To Spirent:**

2708 Orchard Parkway, Suite  
20 San Jose, CA 95134

**with a copy to:**

Spirent Legal, Bell Works  
101 Crawford's Corner Road, Suite 4-  
216  
Holmdel, NJ 07733

**9.16 Headings.** The headings of the articles and sections of this Agreement are included for convenience only and shall not affect the construction or interpretation of its provisions.

**9.17 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but both of which together shall constitute one and the same instrument. This Agreement may be executed by facsimile signature and facsimile signatures shall be fully binding and effective for all purposes and shall be given the same effect as original signatures.

*IN WITNESS WHEREOF*, the parties hereto understand, accept, and agree to the above terms and conditions.

FOR: SPIRENT COMMUNICATIONS INC

FOR CLIENT: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**

**STATEMENT OF WORK**

**I. Device(s)**

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**II. Test Services to be performed:**

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**III. Start date of Test Services:**

**End date of Test Services:**

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**IV. Spirent test lab where the Device(s) will be delivered:**

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**Party responsible for delivery of Device(s) to test lab:**

**Party responsible for returning Device(s) after testing:**

**V. Pricing & Fees**

**VI. Contact Information**

Spirent Communications, Inc.

Account Representative \_\_\_\_\_

Phone \_\_\_\_\_

Mobile \_\_\_\_\_

Email \_\_\_\_\_

Project Manager \_\_\_\_\_

Phone \_\_\_\_\_

Mobile \_\_\_\_\_

Email \_\_\_\_\_

Service Delivery Manager \_\_\_\_\_

Phone \_\_\_\_\_

Mobile \_\_\_\_\_

Email \_\_\_\_\_

Client

Primary Contact \_\_\_\_\_

Phone \_\_\_\_\_

Mobile \_\_\_\_\_

Email \_\_\_\_\_

Project Manager \_\_\_\_\_

Phone \_\_\_\_\_

Mobile \_\_\_\_\_

Email \_\_\_\_\_



**VII. Acceptance**

Upon completion of the Test Services defined in this Statement of Work, Spirent shall provide written Test Report to Client. The Test Services shall be deemed accepted upon Client's receipt of the Test Report.

FOR: SPIRENT COMMUNICATIONS INC

FOR CLIENT: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_