

SPIRENT PROFESSIONAL SERVICES AGREEMENT

This Spirent Professional Services Agreement (this “Agreement”), effective as of _____ (“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”).

1 SERVICES

1.1 Statement(s) of Work. This Agreement, by itself, does not obligate Spirent to provide any services to Client nor does it obligate Client to procure any services from Spirent. To the extent Client wishes to procure services from Spirent and Spirent wishes to provide 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, location and scheduled completion of the project; (b) a description of the project and the services to be performed by Spirent; (c) the charges for the services; (d) any copyrightable works to be developed by Spirent and delivered to Client (“Deliverables”); 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 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 Change Control. Client may request changes in the Services to be performed by Spirent by completing a Change Request Form, attached hereto as Exhibit B and submitting to Spirent. Such requested changes will be made in writing and, in the event of acceptance by Spirent, signed by the authorized representatives of Spirent and Client. All changes will subsequently be incorporated in an amendment to the Agreement and will specify the change requested any changes in the price, adjustment to the schedule of performance and any changes to the terms and conditions. Until such time as the change is accepted by Spirent, Spirent shall continue to supply the Services as originally agreed.

1.3 Nonexclusive. Spirent shall not be required to devote its 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 services to other clients and/or competitors of Client.

1.4 Client Cooperation. Client shall provide Spirent with reasonable, safe access to workspace, facilities, equipment and resources (including, without limitation, people, documents, systems and data) to perform the services.

1.5 Personnel. The personnel assigned to perform Services (“Personnel”) shall have the skill, training and background sufficient to perform the 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.

1.6 Client Obligations. Client shall fulfill its obligations and responsibilities as set forth in this Agreement and the SOW so that Spirent can perform the Services efficiently and effectively. Client is responsible for the operation and security of its applications and the information technology environment in which the Services are to be performed. 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 Services. Client shall secure and provide to Spirent any rights and licenses necessary to allow Spirent to perform the 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 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 Services hereunder.

Client shall be liable for all Spirent owned equipment while in Client's possession or control and, if lost or damaged or not returned to Spirent upon expiration of the engagement, Client agrees to pay for such equipment upon receipt of an invoice referencing this Agreement. Equipment received by Spirent from Client more than five (5) calendar days after the end of engagement shall be subject to a fifteen (15%) per month late fee based on the list price of the equipment.

2 FEES AND EXPENSES

2.1 Fees. Client shall pay Spirent the amount set forth in the SOW ("Fees").

2.2 Expenses. Client shall reimburse Spirent for all expenses incurred in the performance of the services hereunder including, without limitation, reimbursement for actual and reasonable travel, transportation, telephone, and lodging expenses and reimbursement for meals, incidentals and mileage in accordance with Spirent's travel policy.

3 INVOICES AND PAYMENTS

3.1 Payments. For Services performed in accordance with this Agreement Client shall pay Spirent the fees and expenses for all 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 with detailed itemization to include status report for work actually performed. 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 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 such information in confidence to its immediate legal and financial consultants as required in the ordinary course of that party's business. 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

(a) "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

(b) "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.

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

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. 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 attorney's 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.

6.3 Indemnity For CyberFlood™ and Avalanche™ Services. If and to the extent that the Services include providing Services using Spirent's Cyberflood™ or Avalanche™ technologies, Client further agrees to indemnify, defend and hold harmless Spirent, any of Spirent's parent and affiliated companies, and the principals, officers,

directors, employees and agents of any of these (each, a “Spirent Indemnified Party”) from and against any and all actions, damages, claims, liabilities, costs, expenses, and losses (including, without limitation, reasonable attorney’s fees and expenses) incurred by a Spirent Indemnified Party resulting from third party claims arising from the consequences and effects of Spirent performing the Services on Client’s applications and information technology environment that have security or operational vulnerabilities.

6.4 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 SERVICES ARE PROVIDED “AS IS” AND “AS AVAILABLE” AND THAT SPIRENT MAKES NO WARRANTY AS TO THE 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 two (2) years unless amended to establish a later expiration date by a written Agreement signed by both parties, or until terminated as provided in this Agreement.

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 Article 4 (Confidential Information), Article 5 (Proprietary Rights), or Article 9.4 (Export), 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.

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 Administration Act of 1979, as amended, (the "Act"), and with the 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. This Agreement shall be governed by the laws of the State of California, without regard to principles of conflicts of laws.

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 Arbitration. Any controversy or claim arising out of or relating to this Agreement, with the exception of injunctive relief sought by either party, shall be submitted to arbitration before an arbitrator agreed upon by the parties, or if the parties cannot agree upon an arbitrator within thirty (30) days, to an arbitrator selected by the American Arbitration Association. The arbitration shall be conducted under the rules then prevailing of the American Arbitration Association and each party shall have no more than one day to present its case. The arbitrator may award attorneys' fees and costs as part of the award. The award of the arbitrator shall be binding and may be entered as a judgment in any court of competent jurisdiction.

9.11 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.

9.12 Attorney’s 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 attorney’s fees clause shall include all post-judgment attorney’s fees and expenses and shall not be merged into, but rather shall survive, the judgment.

9.13 Compliance with Laws. Each party agrees to comply with all applicable laws, rule and regulations in connection with its activities under this Agreement.

9.14 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, 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.

9.15 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.

9.16 No Solicitation. During the term of this Agreement and for one (1) year following the termination of this Agreement, Client shall not solicit, offer to employ, employ, or contract any employee, contractor, former employee (within the prior one (1) year), or former contractor (within the one (1) year) of Spirent, without (a) the prior written consent of Spirent or (b) paying Spirent one hundred percent (100%) of employee’s annual salary or contractor’s fees with Client for one (1) year (“Placement Fee”). Placement Fees shall be paid to Spirent within thirty (30) days from the first date of employment or contract, unless otherwise agreed upon in writing by Spirent. Placement Fees for which payment is not received by Spirent when due shall accrue a late charge of one and one-half percent (1.5%) per month or the highest rate allowable by law, whichever is less.

9.17 Publicity. Client agrees to allow Spirent to identify Client as a Client of Spirent.

9.18 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:

Spirent Communications Inc.
2708 Orchard Parkway, Suite 20
San Jose, CA 95134

With a copy to:

Spirent Legal
Bell Works
101 Crawfords Corner Road, Suite 4-216
Holmdel, NJ 07733

9.19 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.

9.20 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: _____

Name: _____

Name: _____

Title: _____

Title: _____

Signature: _____

Signature: _____

Date: _____

Date: _____