

## 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 to the Services to be performed by Spirent by completing a Change Request Form, attached hereto as Exhibit B and submitting it 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 must 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 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 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 Fees.** Client shall pay Spirent the amount set forth in the SOW ("Fees").

**2.3 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 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 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 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 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**

**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 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, (c) Comprehensive General Liability of not less than \$1,000,000 per occurrence including personal injury but an annual aggregate in respect to Product Liability, (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 but an annual aggregate in respect to Product Liability. 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)** Client agrees to indemnify, protect, defend and hold Spirent and its suppliers, licensors and distributors and 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 (a) which may at any time be asserted against Spirent by any party for Client'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 Client's use or misuse of the software or documentation supplied by Spirent or (c) resulting from any failure by Client to comply with any term, condition or restriction in this Agreement. Client 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. Client 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 Responsibilities of client.** 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. Client agrees not to use or allow the use of the software for or in connection with any such high-risk activity. Client 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 Client 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. Client 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

**7.3 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.

**7.4 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 GIVINGRISE 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. 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.

**8.2** 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, 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 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 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.

**9.13 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.

**9.14 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, 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.

**9.15 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:**

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**To Spirent:**

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: \_\_\_\_\_

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

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

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

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

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

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

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

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

**EXHIBIT A**

**STATEMENT OF WORK**

**I. Assumptions**

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**II. Engagement Details/Deliverables**

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**III. Roles and Responsibilities**

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**IV. Scheduling**

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This engagement is expected to commence on \_\_\_\_\_ and conclude on \_\_\_\_\_.

Offsite       Onsite



**V. Pricing**

Services	Description	Quantity	Project Fee

**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 Services defined in this Statement of Work, Spirent shall provide written notification to Client. Except for training Services which shall be accepted upon completion of the training, Client shall have a period of seven (7) calendar days in which to confirm that the Services have been performed in all material respects in accordance with the test plan or with the functional requirements describing the Services, and to provide written notification of acceptance to Spirent. Such written notification of Acceptance by Client shall be provided to Spirent within seven (7) calendar days from Spirent's notification to Client that the Services have been completed. In the event Client fails to notify Spirent in writing of any material failure of the Services to conform in all material respects with this Agreement and the Statement of Work within the seven (7) calendar day period, the Services shall be deemed to have been Accepted. In Addition, if the Services provided are used by Client in a live commercial environment, Acceptance shall be deemed to have occurred.

FOR: SPIRENT COMMUNICATIONS INC

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

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

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

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

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

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

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

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

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

## **EXHIBIT B**

### **CHANGE CONTROL PROCESS**

#### **1.1 Overview**

- a. If at any time either party identifies a need for change to the scope of the Services set out in the Agreement, either party may request a change in accordance with this Change Control Process.
- b. Neither Spirent or Client shall unreasonably withhold its agreement to any change provided that Client shall not be obliged to agree to any change increasing prices payable by Client or requiring Spirent to incur material expenditure.
- c. Until such time a change is made in accordance with this Change Control Process, Spirent shall, unless otherwise agreed in writing, continue to supply the Services as if the request or recommendation had not been made.
- d. Any discussions which may take place between Client and Spirent in connection with a request or recommendation before the authorization of a resultant change to the Services Agreement shall be without prejudice to the rights of either party.

1.2 Any work undertaken by Spirent which has not been authorized in advance by a change to the Services Agreement in accordance with this Exhibit B, shall be undertaken entirely at the expense and liability of Spirent.

#### **1.3 Procedures**

- a. The Change Request form should be used in order to formally initiate a request for change to a project. Types of change requests to be initiated using this form includes changes to project:
  - I. A written request for a change by Spirent; or
  - II. Agreement not to proceed further; or
  - III. A written recommendation for a change by Client
- b. Where a written request for a change is received from Client, Spirent shall promptly upon receipt issue a written acknowledgment to Client and, unless otherwise agreed, submit a ChangeControl Note (“CCN”) to Client within 10 days of the date of the request in the form attached hereto and incorporated herein as Exhibit C.
- c. A recommendation for a change by Client shall be submitted as a CCN direct to Client at the time of such recommendation.
- d. Each CCN shall contain:
  - I. the title of the change;
  - II. the originator and data of the request or recommendation for the change;
  - III. the reason for the change;
  - IV. full details of the change;
  - V. the variation to prices for the Services, if any, resulting from such change;
  - VI. a timetable for implementation together with any proposals for trialling and acceptance testing of the change;

- VII. details of the likely impact, if any, of the change on other aspects of the Services including but not limited to:
  - i. the schedule for the Services;
  - ii. the personnel to be provided;
  - iii. the changes;
  - iv. the payment profile;
  - v. the documentation to be provided;
  - vi. the training to be provided;
  - vii. working arrangement; and
  - viii. other contractual issues;
  - ix. the date of expiration or validity of the CCN; and
  - x. provision for signature by Client and Spirent
  
- e. For each CCN submitted Spirent shall within the period of the validity of the CCN
  - I. allocate a sequential number to the CCN;
  - II. evaluate the CCN and as appropriate either:
  - III. request further information;
  - IV. approve the CCN; or
  - V. notify Client of the rejection of the CCN; and
  - VI. if the CCN is approved by Client, Spirent shall arrange for 2 copies of an approved CCN to be signed between Client and Spirent.
  
- f. A CCN signed by both parties shall constitute an amendment to the Agreement. In the event Client has included with their initial purchase Part No. SVC-60XX, Project Change Services, which is equal to 10% of the SOW total value (“Project Change Service”), and such Project Change Service amount, is equal to or less than the Project Change Service amount, then Client will not be required to issue an additional purchase order and Spirent will invoice up to the Project Change Service amount authorized by the CCN. In the event Client did not order Part No. SVC-60XX, Project Change Service with their initial purchase then, a separate purchase order may be required based on the approved CCN amount.

FOR: SPIRENT COMMUNICATIONS INC

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

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

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

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

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

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

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

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

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

## EXHIBIT C

### CHANGE REQUEST NOTE

In reference to Exhibit C (Change Control Process), both Parties hereby certify, by the signature of an authorized representative, that this Change Request Form will amend and be fully incorporated into the existing SOW.

**Project Name:** \_\_\_\_\_

**Change Number Request:** \_\_\_\_\_

**Reason for Change Request**

- Project Schedule
- Configuration Issues/Resources (Third Party)
- Test Plan/SOW
- Other (Specify Below): Change Description, Project Schedule Impact, Project Scope Impact, Technical Design Impact

\_\_\_\_\_

**Impact Assessment – SOW/Change Request**

	Services	T & E	TOTAL
Original Project Cost	\$	\$	\$
Change Request Cost	\$	\$	\$
New Value of SOW	\$	\$	\$

FOR: SPIRENT COMMUNICATIONS INC

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

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

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

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

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

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

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

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

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