

Spire Technologies Master Services Agreement

Version 1

This Master Services Agreement (“Master Services Agreement”) sets forth the terms and conditions which govern all IT services whether paid or unpaid which Spire Technologies, Inc. (“SpireTech”) performs and/or provides to any person or entity (“Client”), known together as the “Parties.” The Parties agree as follows:

Recital

SpireTech is in the business of providing Clients with IT management services, preventative maintenance, technical support, hardware and software products and services, data management and storage, information security practices and services, consulting services, and other work for their IT environments and business activities relating to IT equipment and use.

Terms

1. All Services and Work. Any services, work and equipment provided by SpireTech is governed by the Master Services Agreement and the terms provided.
2. Trade Secrets and Proprietary Information. During the term of this Agreement Client may disclose to SpireTech, or SpireTech may have access to, information Client has designated as proprietary, confidential or trade secret information relating to Client or Client’s customers, including, information relating to: (i) Client's business plans, costs, profits, pricing, business methods and customers; and (ii) confidential information obtained from Client’s customers or vendors under an obligation of confidentiality. SpireTech covenants not to reproduce, disclose or use any such information without Client's prior written consent, except as pre-approved under the performance of services under an applicable *Service Schedule*. SpireTech further covenants that it will bind all of its employees, subcontractors and agents to the terms of this paragraph for the benefit of Client. Disclosure of any confidential or trade secret information to SpireTech under this Master Services Agreement shall not be deemed to grant SpireTech any licenses in, or rights to, the intellectual property of Client or its customers or vendors.
3. SpireTech’s Limited Warranties.
 - a. SpireTech warrants that it will provide its services in a competent, professional manner. In the event any service event does not meet that standard, SpireTech will re-perform such services in a correct manner without additional charge, provided Client gives SpireTech written notice of Client’s problem with the service within ten (10) calendar days following the service event.
 - b. In the event Client, directly or through the use of a consultant other than SpireTech, modifies its IT system in any manner, through the installation or modification of hardware or software after a SpireTech service event, this warranty shall be void with respect to such service event.
 - c. If the services purchased by Client provides for SpireTech supplied anti-virus and anti-malware protection and management, SpireTech will attempt to remediate a virus, worm, adware, spyware or other malware infection. Specifically, SpireTech will attempt to remove infections and/or restore operations by providing up to sixteen hours of labor at no additional labor cost. If the same or another infection occurs within 90 days from the date the initial remediation work was performed it will be charged at normal labor and material rates. Additional terms set forth in the anti-virus and data backup agreements may apply to virus removal services.
 - d. In the event services performed by SpireTech require the installation of third-party software, hardware, components or parts, SpireTech will pass through to Client the manufacturers’ warranties, protections and benefits, if any, which

accompany and apply to those items purchased by Client but cannot and does not provide any direct warranty or assurances for them.

4. Client Work. Client shall pay SpireTech for costs incurred in the performance of SpireTech's services under a signed Statement of Work (the "SOW"). All SOW's that are pre-approved shall be invoiced and include written documentation of the charges, and shall be paid at the specified due date; exceptions to this may include invoices for hardware or software purchased specifically on behalf of client requiring earlier payment.
 - a. All invoices for services are due and payable by the first day of the month for the period being billed, and such invoice shall be provided at least 21 days prior to the due date.
 - b. Except as otherwise agreed in writing, the cost of computer hardware or software purchased by SpireTech specifically for Client are due and payable to SpireTech on a net 15 basis. Purchases of this nature in an amount, individually or in aggregate, exceeding five hundred dollars (\$500) may require an advance payment.
 - c. Bounced checks shall be subject to a fifty-dollar (\$50) fee. In addition, past due balances shall accrue interest at the lesser of: (i) the rate of 1.5% per month; or (ii) the highest rate of interest allowed under applicable law.
5. Change Orders. In the event Client wishes to alter or amend a SOW, all such changes must be made in a written change order signed by both parties. All change orders shall specify any resulting changes in fees or performance deadlines.
6. Use of Subcontractors. SpireTech may engage employees or subcontractors to provide all or part of the services described in a SOW. SpireTech shall cause its employees and subcontractors, if any, to comply with all terms and conditions in a SOW, and shall fully and timely compensate them for any work. The engagement of subcontractors by SpireTech shall not relieve SpireTech of any obligations assumed or liability imposed under this Master Services Agreement.
 - a. The above remedy is Client's sole remedy for breach of any warranty under this Master Services Agreement, and no representative of SpireTech is authorized to modify this warranty or its remedies in any manner.
7. Trade Secrets and Proprietary Information. During the term of this Agreement Client may disclose to SpireTech, or SpireTech may have access to, information Client has designated as proprietary, confidential or trade secret information relating to Client or Client's customers, including, information relating to: (i) Client's business plans, costs, profits, pricing, business methods and customers; and (ii) confidential information obtained from Client's customers or vendors under an obligation of confidentiality. SpireTech covenants not to reproduce, disclose or use any such information without Client's prior written consent, except as pre-approved under the performance of services under an applicable SOW. SpireTech further covenants that it will bind all of its employees, subcontractors and agents to the terms of this paragraph for the benefit of Client. Disclosure of any confidential or trade secret information to SpireTech under this Agreement shall not be deemed to grant SpireTech any licenses in, or rights to, the intellectual property of Client or its customers or vendors.
8. Client's Warranties and Covenants.
 - a. Client warrants that it is authorized to grant SpireTech access to the computer systems, and components thereof, that Client presents to SpireTech for services, to the extent, and in the manner, contemplated in this Master Services Agreement and applicable *Service Schedules*, and hereby grants SpireTech a license for such access.
 - b. Client covenants that it will fully and promptly disclose to SpireTech all functionality issues associated with its computer systems, and components thereof, prior to presenting them to SpireTech for services.
 - c. Client covenants to furnish SpireTech with safe access to the Client's computers and/or network for on-site or remote services, authorizes SpireTech to access the systems on-site or remotely, and will promptly provide any security passwords necessary for SpireTech to perform requested services.

- d. Client covenants that, prior to the provision of any services under this Master Services Agreement, Client will ensure that all of its data are adequately backed up, duplicated and documented. SpireTech will not be responsible for Client's data, nor for the cost of recovering or restoring any data lost during the course of the services provided except where Client has purchased specified backup services from SpireTech, has not made any unapproved changes to the implemented data storage architecture or operations, and then only to the extent of those written terms explicitly provided in the backup services.
 - e. Client covenants that, prior to the provision of any services under this Master Services Agreement, Client will evaluate whether third party warranty service can be provided for the computer system, or components thereof, and will determine whether it wishes to pursue such warranty service from an authorized provider. Client acknowledges that SpireTech does not act as a warranty service provider for any third-party products.
 - f. Client covenants that it will not, for a period of 24 months following the provision of any services by SpireTech under this Master Services Agreement, employ, or retain the services of, directly or indirectly, any SpireTech employee who performed services for Client on behalf of SpireTech.
 - g. Client warrants that all software contained on any computer within its system is properly licensed by client and that a licensed installation copy will be provided to SpireTech in the event reinstallation services are required.
9. Limitation of Warranties.
- a. Other than the warranties expressly set forth in this Master Services Agreement, SpireTech gives no warranties as to the services and deliverables provided under this Master Services Agreement, and makes no other warranties, express or implied. SpireTech specifically disclaims all implied warranties, including, without limitation, the implied warranties of merchantability and fitness for a particular purpose, noninfringement and any warranties under the Uniform Computer Informational Transactions Act, as may be adopted by any jurisdiction from time to time. Applicable law may not allow the exclusion of implied warranties, so the above disclaimer may not apply to Client as it relates to implied warranties.
10. Limitation of Remedies. In no event shall SpireTech be liable to Client for any indirect, incidental, special or consequential damages or lost profits arising out of or related to this Master Services Agreement or any SOW, the performance or breach thereof, even if SpireTech has been advised of the possibility thereof. In particular, SpireTech shall not be liable for the loss of information arising from the use of, or inability to use, any computer system, or components thereof, being serviced under this Master Services Agreement and/or any SOW. SpireTech's liability to Client, if any, whether arising under statute, contract, strict liability, or based upon a claim of negligence or some other tort claim, shall in no event exceed the total fee paid to SpireTech hereunder for the particular service event upon which a claim of liability is predicated. The warranties and remedies set forth above are exclusive and in lieu of all others, oral or written, expressed or implied. No SpireTech distributor, dealer, employee or agent is authorized to modify or extend the above warranties or remedies in any manner. Some states may have statutory consumer protection provisions which may supersede this provision of the Master Services Agreement. Some states do not allow the limitation or exclusion of implied warranties or the limitation of incidental or consequential damages, so the above exclusions may not apply to you. This warranty gives you specific legal rights, and you may also have other rights which vary from state to state. Client acknowledges that the limitations of remedies contained in this Section are an essential basis for the rights and obligations agreed to under this Master Services Agreement, and that SpireTech would not enter into this Master Services Agreement absent such limitations. Client waives all defenses based upon the doctrine that its remedies fail their essential purpose.
11. Relationship Between the Parties. The parties agree that SpireTech is an independent contractor, and that SpireTech shall have sole control over the manner and means of performing its obligations under this Master Services Agreement. Nothing in this Master Services Agreement shall be construed to create an employer-employee, partnership, joint venture or franchise relationship.

12. **Indemnity.** The parties agree that this Agreement and all SOW Agreements do not inure to the benefit of any third parties. Client shall indemnify, defend and hold SpireTech harmless from all claims, demands, liabilities, damages, costs and expenses, of any sort or nature (including, without limitation, attorney's fees) arising out of SpireTech's performance of services under this Master Services Agreement and any SOW.
13. **Notices.** Any notice, request, demand, or other communication to be provided under this Master Services Agreement and/or any SOW shall be in writing and shall be delivered to the parties at the addresses designated below, or at such other address as a party may later designate by written notice to the other parties. All notices shall be effective upon hand delivery or when placed in the United States mail, properly addressed, with postage prepaid as certified mail, and by email: legal@spiretech.net AND
Spire Technologies, Inc.
President
2140 SW Jefferson Street, Suite 300
Portland, Oregon 97201

Client/Customer at the email address provided
14. **Notice for Default.** Neither party shall be deemed in default until the party claiming the default has given notice to the other party, and the claimed default has not been remedied within 15 days after giving of the notice.
15. **Remedies Upon Default.** Subject to Section 16 below, in the event of a default or breach of any covenant, warranty or term of this Master Services Agreement, the non-defaulting party may pursue any legal or equitable remedies available under the laws of the state of Oregon or applicable laws of the United States. The parties agree that a breach by a party of the warranties or covenants contained in paragraph 8 above will result in irreparable and continuing damage to the other party in an amount which is not readily ascertainable and for which there will be no adequate remedy at law. In the event of any breach of the provisions of paragraph 8, the non-breaching party shall be entitled to injunctive relief and such other and further relief, including damages, as may be provided by law.
16. **Suspension of Work.** It is SpireTech's policy to suspend all services and work being performed if payment due for invoiced work or services is not made within sixty days of invoice date, and Client receives written notification from SpireTech. If SpireTech is required to terminate services for reason of failure to make timely payment for services Client will be obligated to pay for all services rendered to date and for the balance of any contract period, notwithstanding our inability to complete our engagement.
17. **Termination.**
 - a. Either party may terminate this Agreement immediately if the other party breaches, or is in default upon, any obligation hereunder, which breach or default is not cured within fifteen (15) days after receipt of written notice of such breach or default.
 - b. Either party may terminate this Agreement immediately if the other party ceases conducting business in the normal course, becomes insolvent, makes an assignment for the benefit of creditors, suffers or permits the appointment of a receiver, liquidator or trustee for its business assets, or becomes a debtor in any proceeding under the United States Bankruptcy Act or any other statute of any state relating to insolvency or protection from creditors.
 - c. If services are terminated by either party, and there are no outstanding invoices, then SpireTech will work with Client to reasonably hand over all Client system and user credentials and available Client data, if any.
 - d. Termination of this Agreement shall not relieve or terminate either party from any obligations set forth in Sections 8 through 12 above.
18. **Dispute Resolution/Arbitration.** In the event a dispute arises between the parties relating to or arising out of this Master Services Agreement, the parties agree to work in good faith to resolve such dispute informally. If the parties

are incapable of resolving such dispute informally, any party may submit the dispute to mediation with the Arbitration Service of Portland, located in Portland, Oregon ("ASP"), and such mediation shall occur under the ASP's then-current mediation rules. All parties shall participate in good faith in such mediation. In the event such mediation does not result in a resolution of the dispute, the dispute shall be resolved by binding arbitration, and a party may then, but only then, initiate an arbitration proceeding with the ASP under ASP's then-current arbitration rules. In such arbitration, the arbitrator's fees shall be shared equally by the parties during the course of the arbitration, but shall be recoverable as costs to the prevailing party. The arbitrator will control the scheduling of all events and will resolve all disputes, including disputes regarding pretrial procedure and discovery. The decision of the arbitrator (or arbitration panel) will be binding, and any party may submit the decision as an enforceable judgment with any court of competent jurisdiction. Nothing herein shall preclude a party from seeking declaratory or injunctive relief in a court of competent jurisdiction.

19. Force Majeure. Neither party shall be deemed in default by reason of its delay in the performance of, or failure to perform, any of its obligations hereunder if such delay or failure is caused by acts of God, the failure of the other party to cooperate, or any other event or circumstance beyond such party's reasonable control.
20. Non-Waiver. The failure or delay of any party to require performance of, or to otherwise enforce, any condition or other provision of this Master Services Agreement shall not waive or otherwise limit that party's right to enforce or pursue remedies for the breach of any such provision or condition. Any waiver by any party of any particular condition or provision of this Master Services Agreement, including this non-waiver provision, shall not constitute a waiver or limitation on that party's right to enforce performance or pursue remedies for the breach of any other condition or provision of this Master Services Agreement.
21. Successor Interests. Client may not assign its rights or interests under this Master Services Agreement without the prior written approval of SpireTech, which shall not be unreasonably withheld or delayed. Subject to this restriction, this Master Services Agreement is binding upon and shall inure to the benefit of the successors, assigns, bankruptcy estates, administrators, personal representatives, and executors of each of the parties.
22. Governing Law, Jurisdiction, Venue. This Master Services Agreement shall be governed by and construed in accordance with the laws of the state of Oregon without application of or regard to its choice of law provisions. The parties agree that any suit, action or arbitration proceeding arising out of or relating to this Master Services Agreement shall be brought in Multnomah County, Oregon, and the parties expressly consent to the personal jurisdiction over them of any state or federal court in Multnomah County, Oregon.
23. Attorney's Fees. If a party to this Master Services Agreement breaches any term of this Master Services Agreement, then the non-breaching party shall be entitled to recover all reasonable and standard expenses of whatever form or nature, costs and reasonable attorney's fees properly incurred to enforce the terms of the Master Services Agreement, whether or not suit is filed, including such costs or fees as may be awarded in arbitration or by a court at trial or on appeal. In addition, in the event either party to this Master Services Agreement becomes a debtor subject to the United States Bankruptcy Code, the non-debtor party shall be entitled to recover any expenses, costs and fees, including attorney's fees, incurred in connection with enforcing its rights against the debtor party, whether those rights arise under this Master Services Agreement or involve matters arising solely under the Bankruptcy Code. Further Actions. The parties agree to execute such documents and take such other actions as may reasonably be requested by any party to carry out the purposes and provisions of this Master Services Agreement, and shall use their own reasonable efforts to carry out the terms and conditions of the Master Services Agreement.
24. Severability. If any court of competent jurisdiction finds any term of this Master Services Agreement, or of any other document or instrument referred to or contemplated in this Master Services Agreement, to be invalid or unenforceable, such determination shall not affect the validity and enforceability of the remainder of the Master Services Agreement.

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25. Paragraph Headings. All paragraph headings in this Master Services Agreement appear for convenience of reference, and shall not affect the meaning or interpretation of the Master Services Agreement.
26. Entire Master Services Agreement, Amendments. This Master Services Agreement constitutes the entire Master Services Agreement between the parties pertaining to the subject matter of the Master Services Agreement, and supersedes all prior discussions, negotiations, understandings, representations, and Master Services Agreements, whether oral or written. All terms of this Master Services Agreement are contractual and not mere recitals. This Master Services Agreement may be amended or modified only by a written instrument executed by the parties which expressly states the intent of the parties to modify or amend this Master Services Agreement.