



MULTI-TASK CONSULTING SERVICES AGREEMENT BETWEEN THE NORTHERN CALIFORNIA POWER AGENCY AND SPRYPOINT SERVICES INC.

This Consulting Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and SpryPoint Services Inc., a Corporation with its office located at 45 Queen Street, Suite #401, Charlottetown, PE Canada. ("Consultant") (together sometimes referred to as the "Parties") as of _____, 2022 ("Effective Date") in Roseville, California.

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to Agency the services described in the Scope of Services attached hereto as Exhibit A and incorporated herein ("Services"), at the time and place and in the manner specified therein.

- 1.1 Term of Agreement.** The term of this Agreement shall begin on the Effective Date and shall end when Consultant completes the Services, or no later than five (5) year from the date this Agreement was signed by Agency, whichever is shorter.
- 1.2 Standard of Performance.** Consultant shall perform the Services in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged and for which Consultant is providing the Services. Consultant represents that it is licensed, qualified and experienced to provide the Services set forth herein.
- 1.3 Assignment of Personnel.** Consultant shall assign only competent personnel to perform the Services. In the event that Agency, in its sole discretion, at any time during the term of this Agreement, requests the reassignment of any such personnel, Consultant shall, immediately upon receiving written notice from Agency of such request, reassign such personnel.
- 1.4 Services Provided.** Services provided under this Agreement by Consultant may include Services directly to the Agency or, as requested by the Agency and consistent with the terms of this Agreement, to Agency members, Southern California Public Power Authority ("SCPPA") or SCPPA members. If Consultant provides Services to Agency members, SCPPA or SCPPA members, the parties agree that each entity through and as part of the confirmation process will sign an individual Master Subscription Agreement with Consultant.
- 1.5 Request for Services.** At such time that Agency determines to use Consultant's Services under this Agreement, Agency shall issue a Purchase Order. The Purchase Order shall identify the specific services to be performed ("Requested Services"), may include a not-to-exceed monetary cap on Requested Services and expenditures authorized by that Purchase Order, and a time by which the Requested Services shall be completed. Consultant shall have seven calendar days from the date of the Agency's issuance of the Purchase Order in which to

respond in writing that Consultant chooses not to perform the Requested Services. If Consultant agrees to perform the Requested Services, begins to perform the Requested Services, or does not respond within the seven-day period specified, then Consultant will have agreed to perform the Requested Services on the terms set forth in the Purchase Order, this Agreement and its Exhibits.

Section 2. COMPENSATION. Agency hereby agrees to pay Consultant an amount **NOT TO EXCEED ONE MILLION** dollars (\$1,000,000) for the Services, which shall include all fees, costs, expenses and other reimbursables, as set forth in Consultant's fee schedule, attached hereto and incorporated herein as Exhibit B. This dollar amount is not a guarantee that Agency will pay that full amount to the Consultant, but is merely a limit of potential Agency expenditures under this Agreement.

2.1 Invoices. Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- The beginning and ending dates of the billing period;
- Services performed;
- The Purchase Order number authorizing the Services;
- At Agency's option, the total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder; and
- At Agency's option, when the Consultant's Scope of Work identifies tasks, for each work item in each task, a copy of the applicable time entries showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense, with supporting documentation, to Agency's reasonable satisfaction.

Invoices shall be sent to:

Northern California Power Agency
651 Commerce Drive
Roseville, California 95678
Attn: Accounts Payable
AcctsPayable@ncpa.com

2.2 Monthly Payment. Agency shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. Agency shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.

- 2.3 Payment of Taxes.** Consultant is solely responsible for the payment of all federal, state and local taxes, including employment taxes, incurred under this Agreement.
- 2.4 Authorization to Perform Services.** The Consultant is not authorized to perform any Services or incur any costs whatsoever under the terms of this Agreement until receipt of written authorization from the Contract Administrator.
- 2.5 Timing for Submittal of Final Invoice.** Consultant shall have ninety (90) days after completion of its Services to submit its final invoice for the Requested Services. In the event Consultant fails to submit an invoice to Agency for any amounts due within the ninety (90) day period, Consultant is deemed to have waived its right to collect its final payment from Agency.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the Services.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Consultant, at its own cost and expense, shall procure the types and amounts of insurance listed below and shall maintain the types and amounts of insurance listed below for the period covered by this Agreement.

- 4.1 Workers' Compensation.** If Consultant employs any person, Consultant shall maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant with limits of not less than one million dollars (\$1,000,000.00) per accident.
- 4.2 Commercial General and Automobile Liability Insurance.**
- 4.2.1 Commercial General Insurance.** Consultant shall maintain commercial general liability insurance for the term of this Agreement, including products liability, covering any loss or liability, including the cost of defense of any action, for bodily injury, death, personal injury and broad form property damage which may arise out of the operations of Consultant. The policy shall provide a minimum limit of \$2,000,000 per occurrence/\$2,000,000 aggregate. Commercial general coverage shall be at least as broad as ISO Commercial General Liability form CG 0001 (current edition) on "an occurrence" basis covering comprehensive General Liability, with a self-insured retention or deductible of no more than \$100,000. No endorsement shall be attached limiting the coverage.
- 4.2.2 Automobile Liability.** Consultant shall maintain automobile liability insurance form CA 0001 (current edition) for the term of this Agreement covering any loss or liability, including the cost of defense of any action, arising from the operation, maintenance or use of any vehicle (symbol 1),

whether or not owned by the Consultant, on or off Agency premises. The policy shall provide a minimum limit of \$2,000,000 per each accident, with a self-insured retention or deductible of no more than \$100,000. This insurance shall provide contractual liability covering all motor vehicles and mobile equipment to the extent coverage may be excluded from general liability insurance.

4.2.3 General Liability/Umbrella Insurance. The coverage amounts set forth above may be met by a combination of underlying and umbrella policies as long as in combination the limits equal or exceed those stated.

4.3 Professional Liability Insurance. Consultant shall maintain professional liability insurance appropriate to Consultant's profession performing work in connection with this Agreement in an amount not less than one million dollars (\$1,000,000) and two million dollars (\$2,000,000) aggregate covering the Consultant's errors and omissions. Any deductible or self-insured retention shall not exceed two hundred fifty thousand dollars (\$250,000) per claim. Such insurance shall be on a "claims-made" basis, subject to the following conditions: (1) the retroactive date of the policy shall be on or before the Effective Date of this Agreement; (2) the policy shall be maintained for at least five (5) years after completion of the Services and, if requested by Agency, evidence of coverage shall be provided during this period; and (3) if, within five (5) years of completion of the Services, coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Effective Date of this Agreement, Consultant shall purchase "extended reporting" coverage for a minimum of five (5) years after completion of the Services and, if requested by Agency, provide evidence of coverage during this period.

4.4 All Policies Requirements.

4.4.1 Verification of coverage. Prior to beginning any work under this Agreement, Consultant shall provide Agency with (1) a Certificate of Insurance that demonstrates compliance with all applicable insurance provisions contained herein and (2) policy endorsements to the policies referenced in Section 4.2, adding the Agency as an additional insured and declaring such insurance primary in regard to work performed pursuant to this Agreement.

4.4.2 Notice of Reduction in or Cancellation of Coverage. Consultant shall provide at least thirty (30) days prior written notice to Agency of any reduction in scope or amount, cancellation, or modification adverse to Agency of the policies referenced in Section 4.

4.4.3 Higher Limits. If Consultant maintains higher limits than the minimums specified herein, the Agency shall be entitled to coverage for the higher limits maintained by the Consultant.

4.4.4 Additional Certificates and Endorsements. If Consultant provides services to Agency members, SCPPA, and/or SCPPA members pursuant to this Agreement, Consultant shall provide certificates of insurance and policy endorsements, as referenced in Section 4.4.1, naming the specific Agency member, SCPPA or SCPPA member.

4.4.5 Waiver of Subrogation. Consultant agrees to waive subrogation which any insurer of Consultant may acquire from Consultant by virtue of the payment of any loss. Consultant agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. In addition, the Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of Agency for all work performed by Consultant, its employees, agents and subcontractors.

4.5 Consultant's Obligation. Consultant shall be solely responsible for ensuring that all equipment, vehicles and other items utilized in the performance of Services are operated, provided or otherwise utilized in a manner that ensures they are and remain covered by the policies referenced in Section 4 during this Agreement. Consultant shall also ensure that all workers involved in the provision of Services are properly classified as employees, agents or independent contractors and are and remain covered by any and all workers' compensation insurance required by applicable law during this Agreement.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.

5.1 Effect of Insurance. Agency's acceptance of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

5.2 Scope. Consultant shall protect, defend, hold harmless and indemnify Agency harmless against any loss, damage or costs in connection with claims, demands, suits or proceedings ("Indemnified Claims") made or brought against Agency alleging that the use of the Service infringes any third party's Intellectual Property Rights; provided, however, that Agency; (a) promptly gives written notice of the Claim to Consultant; (b) gives Consultant sole control of the defense and settlement of the Claim; and (c) provides to Consultant, at Consultant's cost, all reasonable assistance. Consultant's obligations set forth in this Section do not apply to the extent that an Indemnified Claim arises out of: (a) Agency's breach of this Agreement; (b) revisions to the Service made without Consultant's written consent; (c) Agency's failure to incorporate Upgrades that would have avoided the alleged infringement; (d) Modification of the Service by Agency, its

Employees, or Authorized Parties in conflict with Agency's obligations (e) Unauthorized use of the service by third parties; or (f) use of the Service in a manner inconsistent with the Documentation. Furthermore, the obligation to indemnify shall not apply if such liability is ultimately adjudicated to have arisen through the sole active negligence or sole willful misconduct of Agency. If Agency is enjoined from using the Service or Consultant reasonably believes it will be enjoined, Consultant shall have the right at its sole option, to obtain for Agency the right to continue use of the Service or to replace or modify the Service so that it is no longer infringing. If neither of the foregoing options is reasonably available to Consultant, then use of the Service may be terminated at either party's option and Consultant's sole liability shall be to refund any prepaid fees for the Service that were to be provided after the effective date of termination.

Section 6. STATUS OF CONSULTANT.

6.1 Independent Contractor. Consultant is an independent contractor and not an employee of Agency. Agency shall have the right to control Consultant only insofar as the results of Consultant's Services and assignment of personnel pursuant to Section 1; otherwise, Agency shall not have the right to control the means by which Consultant accomplishes Services rendered pursuant to this Agreement. Notwithstanding any other Agency, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by Agency, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of Agency and entitlement to any contribution to be paid by Agency for employer contributions and/or employee contributions for PERS benefits.

Consultant shall indemnify, defend, and hold harmless Agency for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of Agency. Consultant and Agency acknowledge and agree that compensation paid by Agency to Consultant under this Agreement is based upon Consultant's estimated costs of providing the Services, including salaries and benefits of employees, agents and subcontractors of Consultant.

Consultant shall indemnify, defend, and hold harmless Agency from any lawsuit, administrative action, or other claim for penalties, losses, costs, damages, expense and liability of every kind, nature and description that arise out of, pertain to, or relate to such claims, whether directly or indirectly, due to

Consultant's failure to secure workers' compensation insurance for its employees, agents, or subcontractors.

Consultant agrees that it is responsible for the provision of group healthcare benefits to its fulltime employees under 26 U.S.C. § 4980H of the Affordable Care Act. To the extent permitted by law, Consultant shall indemnify, defend and hold harmless Agency from any penalty issued to Agency under the Affordable Care Act resulting from the performance of the Services by any employee, agent, or subcontractor of Consultant.

6.2 Consultant Not Agent. Except as Agency may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of Agency in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind Agency to any obligation whatsoever.

6.3 Assignment and Subcontracting. This Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique professional competence, experience, and specialized professional knowledge. A substantial inducement to Agency for entering into this Agreement was and is the personal reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Agency. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors identified in Exhibit A, without prior written approval of the Agency. Where written approval is granted by the Agency, Consultant shall supervise all work subcontracted by Consultant in performing the services and shall be responsible for all work performed by a subcontractor as if Consultant itself had performed such work. The subcontracting of any work to subcontractors shall not relieve Consultant from any of its obligations under this Agreement with respect to the services and Consultant is obligated to ensure that any and all subcontractors performing any services shall be fully insured in all respects and to the same extent as set forth under Section 4, to Agency's satisfaction.

6.4 Certification as to California Energy Commission. If requested by the Agency, Consultant shall, at the same time it executes this Agreement, execute Exhibit C.

Section 7. LEGAL REQUIREMENTS.

7.1 Governing Law. The laws of the State of California shall govern this Agreement.

7.2 Compliance with Applicable Laws. Consultant and its subcontractors and agents, if any, shall comply with all laws applicable to the performance of the work hereunder.

- 7.3 **Licenses and Permits.** Consultant represents and warrants to Agency that Consultant and its employees, agents, and subcontractors (if any) have and will maintain at their sole expense during the term of this Agreement all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice their respective professions.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 **Termination.** Agency may cancel this Agreement at any time and without cause upon ten (10) days prior written notice to Consultant.

In the event of termination, Consultant shall be entitled to compensation for Services satisfactorily completed as of the effective date of termination; Agency, however, may condition payment of such compensation upon Consultant delivering to Agency any or all records or documents, as referenced in Section 9.1 hereof.

- 8.2 **Amendments.** The Parties may amend this Agreement only by a writing signed by all the Parties.
- 8.3 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between Agency and Consultant shall survive the termination of this Agreement.
- 8.4 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, including but not limited to those set forth in Section 4, Agency's remedies shall include, but not be limited to, the following:
- 8.4.1 Immediately terminate the Agreement;
 - 8.4.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;
 - 8.4.3 Retain a different consultant to complete the Services not finished by Consultant; and/or

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property

of the Agency. Consultant hereby agrees to deliver those documents to the Agency upon termination of the Agreement As specified in Paragraph 9.8 of the Master Subscription Agreement. Agency and Consultant agree that, unless approved by Agency in writing, Consultant shall not release to any non-parties to this Agreement any data, plans, specifications, reports and other documents.

- 9.2 Consultant's Books and Records.** Consultant shall maintain any and all records or other documents evidencing or relating to charges for Services or expenditures and disbursements charged to the Agency under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 Inspection and Audit of Records.** Any records or documents that this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the Agency. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of Agency or as part of any audit of the Agency, for a period of three (3) years after final payment under the Agreement.
- 9.4 Confidential Information and Disclosure.**
- 9.4.1 Confidential Information.** The term "Confidential Information", as used herein, shall mean any and all confidential, proprietary, or trade secret information, whether written, recorded, electronic, oral or otherwise, where the Confidential Information is made available in a tangible medium of expression and marked in a prominent location as confidential, proprietary and/or trade secret information, and specifically for purposes of this Agreement include all Agency or Agency Member asset information. Confidential Information shall not include information that: (a) was already known to the Receiving Party or is otherwise a matter of public knowledge, (b) was disclosed to Receiving Party by a third party without violating any confidentiality agreement, (c) was independently developed by Receiving Party without reverse engineering, as evidenced by written records thereof.
- THIS AGREEMENT DOES NOT CONTEMPLATE THE TRANSFER OF ANY PERSONALLY IDENTIFIABLE DATA TO OR FROM AGENCY, AGENCY MEMBERS OR CONSULTANT AND NO SUCH TRANSFER OF PERSONALLY IDENTIFIABLE DATA SHALL OCCUR.
- 9.4.2 Non-Disclosure of Confidential Information.** During the term of this Agreement, either party may disclose ("The Disclosing Party") confidential Information to the other party ("the Receiving Party"). The Receiving

Party: (a) shall hold the Disclosing Party's Confidential Information in confident; and (b) shall take all reasonable steps to prevent any unauthorized possession, use, copying, transfer or disclosure of such Confidential Information. A party shall not use Confidential Information for any purpose other than to facilitate this Agreement. Consistent with Paragraph 9.8 of the Master Subscription Agreement, Consultant shall delete all Agency and Agency Member Confidential Information sixty (60) days after expiration or termination of the earlier of any Master Subscription Agreement or this Agreement.

9.4.3 Permitted Disclosure. Notwithstanding the foregoing, the following disclosures of Confidential Information are allowed. Receiving Party shall endeavor to provide prior written notice to Disclosing Party of any permitted disclosure made pursuant to Section 9.4.3.2 or 9.4.3.3. Disclosing Party may seek a protective order, including without limitation, a temporary restraining order to prevent or contest such permitted disclosure; provided, however, that Disclosing Party shall seek such remedies at its sole expense. Neither party shall have any liability for such permitted disclosures:

9.4.3.1 Disclosure to employees, agents, consultants, contractors, subcontractors or other representatives of Receiving Party that have a need to know in connection with this Agreement.

9.4.3.2 Disclosure in response to a valid order of a court, government or regulatory agency or as may otherwise be required by law; and

9.4.3.3 Disclosure by Agency in response to a request pursuant to the California Public Records Act.

9.4.4 Handling of Confidential Information. Upon conclusion or termination of the Agreement, Receiving Party shall return to Disclosing Party or destroy Confidential Information (including all copies thereof). Notwithstanding the foregoing, the Receiving Party may retain copies of such Confidential Information, subject to the confidentiality provisions of this Agreement in files of Receiving Party's representatives only where such copies are necessary to comply with applicable law. Party shall not disclose the Disclosing Party's Information to any person other than those of the Receiving Party's employees, agents, consultants, contractors and subcontractors who have a need to know in connection with this Agreement.

9.4.5 Unauthorized Disclosure. If either Party believes there has been a Security Breach, such party must notify the other party upon the earlier of forty-eight (48) hours after discovery or any time frame required by applicable law unless legally prohibited from doing so. Each Party will

reasonably assist the other Party in mitigating or remediating any potential damage where appropriate. Each party shall bear the costs of such remediation or mitigation to the extent the breach or security incident was caused by it. As soon as reasonably practicable after any such Security Breach, upon Agency's request, Agency and Consultant will consult in good faith regarding the root cause analysis and any remediation efforts.

- 9.4.6 **Security Services.** Consultant is responsible for information technology security services ("IT Security Services") from the point of utility demarcation into the proposed solution data centers back through the infrastructure and applications provided by Consultant. IT Security Services include the evaluation, selection, deployment, and on-going management of Industry Standard security applications and tools. These services shall include but not be limited to monitoring virus/security alerts and vulnerabilities from manufacturers and determine appropriate action per procedure; and maintaining and supporting firewall subsystem software components where applicable (e.g., patches and software upgrades).

Section 10. LIMITATION OF LIABILITY.

Liability Cap. Consultant's liability arising out of or related to this Agreement shall in no event exceed the Subscription Fees paid by Agency within the twelve (12) months preceding the claim.

Clarifications & Disclaimer. TO THE MAXIMUM EXTENT PERMITTED BY LAW AND EXCEPT WITH RESPECT TO EITHER PARTY'S INDEMNIFICATION OBLIGATIONS, RECKLESS MISCONDUCT, GROSS NEGLIGENCE, WILLFUL MISCONDUCT AND/OR FRAUD, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, EXCEED THE FEES ACTUALLY PAID BY AGENCY IN CONSIDERATION FOR CONSULTANT'S SERVICE DELIVERY DURING THE IMMEDIATELY PRECEDING TWELVE (12) MONTH PERIOD FOR THE SERVICE FROM WHICH THE CLAIM AROSE. FOR THE AVOIDANCE OF DOUBT, EACH PARTY'S LIABILITY LIMITS APPLY TO EACH PARTY'S AFFILIATES, MEMBERS, PROVIDERS, AGENTS, SPONSORS, DIRECTORS, OFFICERS, EMPLOYEES, CONSULTANTS AND OTHER REPRESENTATIVES.

Exclusion of Damages. EXCEPT WITH RESPECT TO AMOUNTS TO BE PAID BY EITHER PARTY PURSUANT TO A COURT AWARD (OTHER THAN A DEFAULT JUDGMENT) OR SETTLEMENT AS WELL AS THE DEFENSE COSTS UNDER THE INDEMNIFICATION OBLIGATIONS NO MATTER HOW MUCH DAMAGES MAY BE CHARACTERIZED, IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED, OR FOR ANY LOST PROFITS,

LOSS OF US, COST OF DATA RECONSTRUCTION, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, WHETHER IN CONTRACT, TORT OR OTHERWISE, ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE SERVICE, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SERVICE, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT OR SUCH PARTY'S LICENSORS, OR SUBCONTRACTORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES.

Section 11. MISCELLANEOUS PROVISIONS.

- 11.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 11.2 Venue.** In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Placer or in the United States District Court for the Eastern District of California.
- 11.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 11.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 11.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.
- 11.6 Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of Agency or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any Agency official in the work performed pursuant to this Agreement. No officer or employee of Agency shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

11.7 Contract Administrator. This Agreement shall be administered by Monty Hanks, Assistant General Manager, or his/her designee, who shall act as the Agency's representative. All correspondence shall be directed to or through the representative.

11.8 Notices. Any written notice to Consultant shall be sent to:

Kyle Strang
Managing Partner
SpryPoint Services Inc.
45 Queen Street, Suite #401
Charlottetown, PE C1A 4A4
Canada

Any written notice to Agency shall be sent to:

Randy S. Howard
General Manager
Northern California Power Agency
651 Commerce Drive
Roseville, CA 95678

With a copy to:

Jane E. Luckhardt
General Counsel
Northern California Power Agency
651 Commerce Drive
Roseville, CA 95678

11.9 Professional Seal. Where applicable in the determination of the Agency, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.

11.10 Integration; Incorporation. This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between Agency and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein.

11.11 Alternative Dispute Resolution. If any dispute arises between the Parties that cannot be settled after engaging in good faith negotiations, Agency and Consultant agree to resolve the dispute in accordance with the following:

- 11.11.1 Each party shall designate a senior management or executive level representative to negotiate any dispute;
- 11.11.2 The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.
- 11.11.3 If the issue remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by negotiation between legal counsel. If the above process fails, the Parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.
- 11.11.4 The mediation process shall provide for the selection within fifteen (15) days by both Parties of a disinterested third person as mediator, shall be commenced within thirty (30) days and shall be concluded within fifteen (15) days from the commencement of the mediation.
- 11.11.5 The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.
- 11.11.6 The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative prior to either Party initiating legal action. This alternative dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code §§ 900 *et seq.*
- 11.12 **Controlling Provisions.** In the case of any conflict between the terms of this Agreement and the Exhibits hereto, a Purchase Order, or Consultant's Proposal (if any), the Agreement shall control. In the case of any conflict between the Exhibits hereto and a Purchase Order or the Consultant's Proposal, the Exhibits shall control. In the case of any conflict between the terms of a Purchase Order and the Consultant's Proposal, the Purchase Order shall control.
- 11.13 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.
- 11.14 **Construction of Agreement.** Each party hereto has had an equivalent opportunity to participate in the drafting of the Agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting party shall not apply hereto.
- 11.15 **No Third-Party Beneficiaries.** This Agreement is made solely for the benefit of the parties hereto, with no intent to benefit any non-signator third parties. However, should Consultant provide Services to an Agency member, SCCPA

and/or a SCPA member (collectively for the purposes of this section only "Member") pursuant to section 1.4, the parties recognize that such Member may be a third party beneficiary solely as to the Purchase Order and Requested Services relating to such Member.

The Parties have executed this Agreement as of the date signed by the Agency.

NORTHERN CALIFORNIA POWER AGENCY

SPRYPOINT SERVICES INC.

Date _____

Date _____

RANDY S. HOWARD, General Manager

RYAN CAWLEY, Managing Partner

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

DRAFT

EXHIBIT A

SCOPE OF SERVICES

SpryMobile can be deployed as two separate and independent applications depending on the needs of the utility. These deployments include:

1. SpryMobile - Mobile Field Service (MFS) – MFS is designed to execute field work typically associated with customer, meter and premise related work that is initiated in a Customer Information System. MFS requires an integration with the Customer Information System which serves as the system of record for this type of work.
2. SpryMobile – Work Orders & Asset Management (WAMS) – WAMS is designed to serve as the system of record for operational work on assets and equipment. WAMS is frequently integrated with the GIS and can also serve as the system of record for assets that are not maintained in the GIS such as Fleet, Plant, Facilities, etc. WAMS manages all preventive, corrective and ad-hoc Work Orders & Maintenance associated with utility assets.

Consultant can also deploy both applications to provide a utility with a single Field Solution to manage both customer centric and operational work.

SpryMobile – will, at a minimum, provide the functions and processes to support:

- Creation of short cycle work including service orders, scheduling, dispatch and mobile deployment to field users
- Ability to accept, process, complete and utilize relevant data from integrated CIS applications, and allow field users to process updates and notifications.
- Manage assets related to electric, water, sewer, gas, broadband, fleet or facilities operations
- Manage maintenance work including system repairs, inspections, preventive maintenance, and corrective maintenance to increase asset longevity
- Streamline the scheduling, tracking and reporting of all related field work
- More effectively and efficiently track and visualize the numerous inquiries that may take place over a long duration.
- Manage operations and how departments conduct daily and weekly business with staff, vehicles, tools, and materials
- Manage resources such as staff, tools, material, and inventory
- Automate and streamline dispatch functions.
- GIS integration via web map service
- Integration with ancillary systems as identified in individual statements of work
- Reporting/Data Access as defined within specific statements of work.

EXHIBIT B

COMPENSATION SCHEDULE AND HOURLY FEES

Compensation for all tasks, including hourly fees and expenses, shall not exceed \$200/hour. The hourly rates and or compensation break down and an estimated amount of expenses is as follows:

SaaS Pricing Schedule

The table below provides the details of the Consultant Software-as-a-Service products purchased, the usage metrics and amounts, and the annual fees for the initial subscription term.

Consultant SaaS Application Name/Module	Usage Metric	Price per metric
SpryMobile – Mobile Field Service	Full Users	\$100/per Full users/month
	Light Users	\$50/per Light user/Month
SpryMobile – Work Orders & Asset Management	Full Users	\$100/per Full users/month
	Light Users	\$50/per Light user/Month

SaaS Software Usage Metrics

Usage Metric Limitations stated above represent the maximum annual quantity of Usage Metrics over a 12-month period and are for Production Environment only. Agency is licensed “up to” the Usage Metric Limitation.

Usage Metric Definitions

Full Users

Full Users are defined as users who can access all SpryMobile’s functionality to create, edit, and share data.

Light Users

Light Users are defined as users who have read only access to data within SpryMobile.

Minimum Users

Consultant requires a minimum purchase of 5 users.

Archived Users

Archived Users are defined as user accounts that are no longer active or required. It is the Agency’s responsibility to archive users. All records associated with the archived user are maintained within the application for data integrity and activity logging, but archived users are not able to login or access resources within the application.

Usage Metric Verification Process

Agency has access to self-service metric usage on demand and within the Service. Agency System Administrators can add or remove Accounts and Users as needed. It is the Agency's sole responsibility to archive users in SpryMobile if they are no longer being used.

Consultant may verify metrics through a quarterly audit and will bill any changes annually. Audit results will be shared with Agency. Any use exceeding or decreasing from the usage metrics within scope and defined above will be subject to fee adjustments as indicated above. Fees accrue in the calendar month the excess use began and accordingly fees decrease from the calendar month of decreased use.

SaaS Products and Subscription Initial Term

The Initial Term of this agreement shall be for a period of one (1) year.

Annual Renewal

Unless stated otherwise, the Initial Term and any subsequent renewals will automatically renew for terms of 12 months, unless Agency notifies Consultant of their intention not to renew.

Annual Escalation

When the initial term comes to an end, each subsequent renewal will be subject to a pricing adjustment which will occur at the higher of the following parameters:

- a) 5% per year
- b) in accordance with the change in the Consumer Price Index (CPI-U) for January of the renewal year, US City Average for all items ("CPI") as published by the Government of the United States. The CPI will be determined based on the percentage increase in the CPI for the twelve (12) month period ending with the calendar month which is three (3) months prior to each anniversary of the Effective Date

Billing/Invoicing

Annual SaaS fees are due upon contract execution and will be invoiced in US Dollars at the yearly anniversary each subsequent year including any metric usage updates. Any Statement of Work or Change Order Fees will be billed according to the Payment Schedule determined within the associated Statement of Work.

Additional Terms

Integrated Notification Services:

The Consultant platform includes integrated notification services which can be enabled by Agency for the purposes of customer alerts and notifications. Consultant's Notification services include:

- Inbound & outbound SMS text messaging
- Outbound voice messaging
- Inbound & outbound email messaging

The ongoing usage costs will be invoiced quarterly based on actual usage according to the following table.

<u>Service</u>	<u>Rate</u>
Inbound & Outbound SMS Messaging	\$0.02 / Message segment
Local Outbound Voice Messaging	\$0.03 per minute
Toll-Free Outbound Voice Messaging	\$0.03 per minute
Optional Random Short Code	\$15,000/year

All fees are exclusive of any applicable communications service or telecommunication provider (e.g., carrier) fees or surcharges. Agency will pay all communications surcharges associated with your use of the Integrated Notification Services. Communications Surcharges will be shown as a separate line item on an invoice.

The character limit for a single SMS message is technically 160 characters. However, most modern phones and networks support message concatenation which means they split large messages into individual SMS messages (called "segments") and then re-create the large message at the receiving end.

When Agency sends an SMS message containing more than 160 characters, the message will be split into smaller messages for transmission. Large messages are split into 153-character 'segments' and sent individually, then re-assembled by the recipient's device. For example, a 161-character message will be sent as two messages: one with 153 characters and a second with eight characters. Consultant will invoice Agency for every segment sent.

Pricing for services to be performed at NCPA Member or SCPPA locations will be quoted at the time services are requested.

NOTE: As a public agency, NCPA shall not reimburse Consultant for travel, food and related costs in excess of those permitted by the Internal Revenue Service.

EXHIBIT C
MASTER SUBSCRIPTION AGREEMENT

DRAFT

Master Subscription Agreement

This Master Subscription Agreement, effective as of XXXXXXXX, is by and between SpryPoint Services, Inc ("SpryPoint") a Canadian Corporation with offices at 45 Queen Street, Charlottetown, PE C1A 4A4 and [REDACTED] ("Client") with offices at [REDACTED].

Whereas SpryPoint provides a subscription Service to which Client intends to subscribe, this Agreement establishes the business relationship and allocation of responsibilities regarding the Service and the parties therefore agree as follows.

The exhibits and schedules attached hereto are an integral part of this agreement and are deemed incorporated by reference herein.

SpryPoint agrees to perform the services described below in accordance with the terms and conditions of this Agreement. Should there be a conflict of terms or conditions, this Agreement shall control, and the order of precedence shall be as follows:

1. Master Subscription Agreement
2. Exhibit A – Statement of Work
3. Exhibit B – Pricing Schedule
4. Exhibit C – Service Level Agreement
5. Exhibit D – Insurance Requirements
6. Exhibit E – Security Provisions
7. Exhibit F – Escrow Agreement

DEFINITIONS. The following capitalized terms shall have the following meanings whenever used in this Agreement.

"Affiliate" means any entity which directly or indirectly controls, is controlled by, or is under common control by either party. For purposes of the preceding sentence, "control" means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"Agreement" means this Master Subscription Agreement, including any exhibits or attachments hereto.

"Authorized Named User" means an end user of the Client that has been given access by Client to use the Services.

"Authorized Parties" means Clients' or an authorized Affiliate's Employees and third-party providers authorized to access Client's Tenants and/or to receive Client Data by Client (i) in writing, (ii) through the Service's security designation, or (iii) by system integration or other data exchange process.

"Confidential Information" refers to the following types of material or content one party to this Agreement ("Discloser") discloses to the other ("Recipient"): (a) any information Discloser marks or designates as "Confidential" at the time of disclosure; and (b) any other non-public, sensitive information disclosed by Discloser including, but not limited to code, inventions, know-how, business, technical, and financial information, or other information which should reasonably be known by the Recipient to be confidential at the time it is disclosed, due to the nature of the information and the circumstances surrounding such disclosure Confidential Information does not include information that: (i) is in Recipient's possession at the time of disclosure; (ii) is independently developed by Recipient without use of or reference to Confidential Information; (iii) becomes known publicly,

before or after disclosure, other than as a result of Recipient's improper action or inaction; or (iv) is rightfully obtained by Recipient from a third party without breach of any confidentiality obligations.

"Client Data" means a subset of Confidential Information that is comprised of Client's data obtained, used in, or stored as the result of the use of the Services. Client Data shall include the following: (a) Data collected, used, processed, stored, or generated by the Client as the result of the use of the Service, including any personal identifiable information ("PII") and any information related to payment processing, such as credit card numbers and ACH account numbers. Client Data is and shall remain the sole and exclusive property of Client and all right, title, interest in same is reserved to Client.

"Client Input" means suggestions, enhancement requests, recommendations or other feedback provided by Client, its employees and Authorized Parties relating to the operation or functionality of the Service.

"Competitor" means any entity that may be reasonably construed as offering competitive functionality or the Service offered by SpryPoint.

"Documentation" means the Software's standard user manuals and any other accompanying documents related to the Software delivered to Client during Implementation.

"Implementation" means the process for gathering requirements, configuring, testing, training, and integrating the Service for Client's use, as set forth in a Statement of Work.

"Intellectual Property Rights" means any and all common law, statutory and other industrial property rights and intellectual property rights, including copyrights, trademarks, trade secrets, patents and other proprietary rights issued, honored or enforceable under any applicable laws anywhere in the world, and all moral rights related thereto.

"Implementation Services" means the services provided by Provider to Client for the integration, implementation, and use of the Service, which may include project management, analysis, configuration, data conversion, training, testing, development and ongoing maintenance & support, as outlined in Exhibit A - Statement of Work.

"Malicious Code" means viruses, worms, timebombs, trojan horses and other malicious code, files, scripts, agents or programs.

"Messaging Service" means SpryPoint's alerts, notifications, communications, campaigns & messaging capabilities provided with the Service.

"Parties" Collectively refers to SpryPoint and the Client.

"Personal Data" means any information that is related to an identified or identifiable individual and has been provided by Client or its Affiliates as Client Data within the SpryPoint Service to enable SpryPoint to process the data on its behalf.

"Production Deployment" means once the Client has provided User Acceptance Testing ("UAT") signoff and the Service has been moved into a production environment.

"Security Breach" means (i) any actual or reasonably suspected unauthorized use of, loss of, access to or disclosure of, Client Data; provided that an incidental disclosure of Client Data to an Authorized Party or SpryPoint or incidental access to Client Data by an Authorized Party or SpryPoint, where no reasonable suspicion exists that

such disclosure or access involves theft, or is fraudulent, criminal or malicious in nature, shall not be considered a "Security Breach" for purposes of this definition, unless such incidental disclosure or incidental access triggers a notification obligation under any applicable Law and (ii) any security breach (or substantially similar term) As defined by applicable law.

"Service" means the combination of SpryPoint's software-as-a service applications as described in the Documentation and subscribed to as set forth in Exhibit B - Pricing Schedule or through a Change Order.

"Service Level Agreement" (SLA). means SpryPoint's standard Service Level Availability policy which may be updated from time to time. No update shall materially diminish SpryPoint's responsibilities under the SLA.

"Subscription Service Fee" means the annual amount invoiced and payable for Client's use of the Service. The Subscription Service Fee does not include the one-time implementation fees for the Services as set forth in Exhibit A Statement of Work.

"Tenant" means a unique instance of the Service, with a separate set of Client data held by SpryPoint in a logically separated database.

"Term" means the Initial Term of this Agreement which commences on the Effective Date and will continue for one year.

"Updates" means all updates, improvements, enhancements, error corrections, bug fixes, release notes, upgrades and changes to the Service and Documentation as developed by SpryPoint and made generally available for Production use.

1. Provision of Service.

1.1 SpryPoint Obligations. During the Term of this Agreement, SpryPoint shall make the Service and Updates available to Client in accordance with the Documentation, the SLA and pursuant to the terms of this Agreement. SpryPoint shall not use Client Data except to provide the Service, or to prevent or address service or technical problems, verify Service Updates, in accordance with this Agreement and the Documentation, or in accordance with Client's instructions and shall not disclose Client Data to anyone other than Authorized Parties in accordance with this Agreement.

1.2 Client Obligations. Client may enable access of the Service for use only by Authorized Parties solely for the internal business purposes of Client and its Affiliates in accordance with the Documentation and not for the benefit of any third parties. Client is responsible for all Authorized Party use of the Service and compliance with this Agreement. Client shall: (a) have sole responsibility for the accuracy, quality, and legality of all Client Data and (b) take commercially reasonable efforts to prevent unauthorized access to, or use of, the Service through login credentials of Authorized Parties, and notify SpryPoint promptly of any such unauthorized access or use. Client shall not: (i) use the Service in violation of applicable Laws; (ii) in connection with the Service, send or store infringing, obscene, threatening or otherwise unlawful or tortious material, including material that violates privacy rights; (iii) send or store Malicious Code in connection with the Service or its related systems or networks in a manner not set forth in the Documentation. Client shall designate a maximum number of named contacts as listed in the applicable Order form to request and receive support services from SpryPoint. Named support contacts must be trained on the SpryPoint product(s) for which they initiate support requests. Client shall be liable for the acts and omissions of all Authorized Parties and Client Affiliates relating to this Agreement.

1.3 Acceptable Use. Client acknowledges and agrees that SpryPoint does not police the content of communications or data of Client or its users transmitted through the Service, and that SpryPoint shall not be responsible for the content of any such communications or transmissions. Client shall use the Services exclusively for authorized and legal purposes, consistent with all applicable laws and regulations. Client is solely responsible (a) for making sure that the disclosure and use of data, content and information provided to SpryPoint does not violate any applicable law or infringe upon the intellectual property rights of any third party and (b) for the appropriate use of any reports and other materials prepared by Client in a manner that will not violate any applicable law or infringe upon the intellectual property rights of any third party. Client agrees not to post or upload any content or data which (a) is libelous, defamatory, obscene, pornographic, abusive, harassing or threatening; (b) violates the rights of others, such as data which infringes on any intellectual property rights or violates any right of privacy or publicity; or (c) otherwise violates any applicable law. SpryPoint may remove any violating content posted or transmitted through the Services, without notice to Client. SpryPoint may suspend or terminate any user's access to the Service upon notice in the event that SpryPoint reasonably determines that such user has violated the terms and conditions of this Agreement.

2. Fees.

2.1 Invoices & Payment. SpryPoint will invoice Client the first-year subscription fee for the Service upon execution of this agreement. All fees are quoted and payable in United States Dollars. All invoiced charges are due net 30 days from the invoice date unless otherwise stated on the invoice. Client is responsible for providing SpryPoint complete and accurate billing and contact information including a valid email address prior to the commencement of your subscription. Upon SpryPoint's request, Client will make payments via electronic bank transfer. All remittance and invoice inquiries are to be directed to finance@SpryPoint.com.

2.2 Non-Cancelable & Non-Refundable. Except as specifically set forth to the contrary under Section 6 (Warranty) and Section 7 (Indemnification), all payment obligations are non-cancelable, and all payments made are non-refundable.

2.3 Non-Payment and Suspension of Service. If SpryPoint does not receive any invoiced amount by the due date as provided in Section 2.1 herein, then without limiting rights and remedies, the invoiced amount(s) may accrue interest at the rate of 1.5% per month. If any amount owing by Client for SpryPoint's services under this or any other agreement is net 30 or more days overdue, SpryPoint, without limiting its other rights and remedies reserves the right to suspend the Service until such amounts are paid in full.

2.4 Taxes. All fees invoiced pursuant to this Agreement do not include any applicable taxes. Client shall be solely responsible in the event any authority imposes a duty, tax, levy, or fee (excluding those based on Provider's net income) directly upon the Client in relation to this Agreement.

2.5 Tax Status. SpryPoint's fees do not include any Transaction Taxes. Client agrees that it is exempt from all Transaction Taxes, including but not limited to, any local, state, provincial, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including value - added, goods and services taxes, excise, use or similar taxes. In the event that Client's tax-exempt status changes such that it is no longer exempt from Transaction Taxes, Client shall become responsible for paying all Transaction Taxes associated with this Agreement. If SpryPoint has a legal obligation to pay or collect Transaction Taxes for which Client is responsible under this section, the appropriate amount shall be invoiced to and paid by Client. If Client itself, as a body entitled to assess taxes or fees, imposes any taxes or fees upon SpryPoint's provision of the Services, the fees in this Agreement are net of any such taxes or fees and SpryPoint will gross up its invoices to include such taxes or fees.

2.6 Additional Services. The Service includes optional variable services such as SMS messaging services and outbound IVR dialer services (collectively "Additional Services"). All Additional Services shall be invoiced by SpryPoint to Client upon the request of such services by Client at the pricing and rates provided in Exhibit B.

(a) For SMS text messaging services, an optional SMS Short Code fee shall be invoiced upon request of a Short Code by Client. SMS short code fees shall be invoiced annually, while in- bound and out-bound text message usage fees shall be invoiced monthly for actual amount used.

(b) For Outbound IVR services, usage fees shall be invoiced monthly for the actual amount used upon activation and usage of the outbound IVR services.

2.7 Enhancement Cost. Any enhancements to the Service beyond the initial scope as outlined in Exhibit A – the Statement of Work will be performed on a time and material basis, at an hourly rate of \$200 USD per hour. We will implement enhancements pursuant to the change control process as outlined in Exhibit A.

2.8 Additional Users. SpryPoint will be automatically notified when new users are added to Client's Service. If the number of active users, not including archived users, exceeds Client's current subscription, SpryPoint will invoice client for any incremental user additions during the calendar month. Invoice to client will be prorated to align with the remaining months in Client's subscription period.

3. Proprietary Rights

3.1 SpryPoint Intellectual Property Rights. SpryPoint retains all right, title, and interest in and to the Service, Documentation and other SpryPoint Intellectual Property Rights including any related methodologies, techniques, processes, and instruction developed by SpryPoint and used in the course of delivering the Service. under this Agreement and an applicable Statement of Work. No rights are granted to Client hereunder other than expressly set forth herein. Client shall not (and shall not allow or cause any third party to (i) reverse engineer, modify or copy the Service or Documentation or create any derivative works based on the Service and Documentation; (ii) copy and features, functions, interfaces, integrations or graphics of the Service or Documentation; (iii) access the Service or Documentation in order to build any commercially available product or service.

3.2 Client Rights. SpryPoint hereby grants Client's Authorized Named Users (and those of Client's Affiliates and Authorized Parties) a non-exclusive, non-transferable, non-perpetual limited right to use the Service and Documentation, solely for the internal business purposes of Client and Affiliates and solely during the Term, subject to the terms and conditions of this Agreement.

3.3 License to Host Client's Data. Client grants SpryPoint and SpryPoint's hosting partners a worldwide, limited-term license to host, copy, transmit and display Client's Data, as necessary for SpryPoint to provide the Service in accordance with this Agreement. As between SpryPoint and Client, SpryPoint acquires no right, title or interest from Client under this Agreement in or to Client's Data.

3.4 License to use Client's Feedback. Client grants to SpryPoint and its affiliates a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into the Service any suggestion, enhancement request, recommendation, correction or other Client feedback relating to the Service. SpryPoint shall have no obligation to make Client Input an Improvement.

3.5 Statistical Information. SpryPoint owns all aggregated and statistical data derived from the operation of the Service, including, without limitation, the number of records in the Service, the number and types

of transactions, configurations, and performance results for the Service. SpryPoint may anonymously compile statistical information related to the performance of the Service for purposes of improving the SaaS service, provided that such information does not identify Client's data or include Client's name.

4. Confidentiality

- 4.1 Confidentiality.** A party shall not disclose or use any Confidential Information of the other party except as reasonably necessary to perform its obligations or exercise its rights pursuant to this Agreement except with the other party's prior written permission.
- 4.2 Nondisclosure.** A party shall not use Confidential Information for any purpose other than to facilitate this Agreement. A Recipient: (a) shall not disclose Confidential Information to any employee or contractor unless such person needs access in order to facilitate the Agreement and executes a nondisclosure agreement with Recipient (b) shall not disclose Confidential Information to any third party without Discloser's prior written consent.
- 4.3 Protection.** Each party shall protect Confidential Information with the same degree of care it uses to protect its own confidential information, but in no event using less than a reasonable standard of care.
- 4.4 Injunctive Relief.** Recipient agrees that breach of Confidentiality would cause irreparable injury, for which monetary damages would be inadequate. If a recipient discloses or uses any Confidential Information of the other party in breach of confidentiality protections hereunder, the other party shall have the right, in addition to any other remedies available, to injunctive relief to enjoin such acts.
- 4.5 Retention of Rights.** This Agreement does not transfer ownership of Confidential Information or grant a license or any other right thereto. Discloser will retain all right, title and interest in and to all Confidential Information.

5. Data Privacy & Security

- 5.1 SpryPoint use of Data.** Client hereby grants SpryPoint a limited right to access, process, collect, store, generate, display, and use Client Data for the sole purpose of providing the Service. SpryPoint shall keep and maintain Client Data in strict confidence and shall not allow any third parties to use, disclose, or access Client Data without Client's prior written consent. Notwithstanding the foregoing, SpryPoint may disclose Client Data as required by applicable law or by proper legal or governmental authority. SpryPoint shall give Client notice of any such legal or governmental demand and reasonably cooperate with Client in any effort to seek a protective order or otherwise contest such required disclosure, at Client's expense.
- 5.2 Data Security.** Each Party shall be responsible for establishing and maintaining its own data privacy and information security policies, including physical, technical, administrative, and organizational safeguards to ensure the security and confidentiality of Client Data; protect against any anticipated threats or hazards to the security of Client data, protect against unauthorized disclosure, access to, or use of Client Data, ensure the proper disposal of Client Data, and ensure that all employees, agents, and subcontractors, if any, comply with the above.
- 5.3 Unauthorized Disclosure.** If either Party believes there has been a Security Breach, such party must notify the other party upon the earlier of forty-eight (48) hours after discovery or any time frame required by applicable law unless legally prohibited from doing so. Each Party will reasonably assist the other Party in mitigating or remediating any potential damage where appropriate. Each party shall bear the costs of such remediation or mitigation to the extent the breach or security incident was caused by it.

As soon as reasonably practicable after any such Security Breach, upon Client's request, Client and SpryPoint will consult in good faith regarding the root cause analysis and any remediation efforts.

6. Warranties & Disclaimers

6.1 From SpryPoint.

- a) **Function:** SpryPoint represents and warrants that, during the Term, the Service will perform materially in accordance with the Documentation.
- b) **Intellectual Property Rights:** SpryPoint represents and warrants that it owns the Service and has the power and authority to grant the rights in this Agreement without the further consent of any third party.
- c) **Malicious Code:** SpryPoint represents and warrants that to the best of its knowledge, the Service does not contain any Malicious code. SpryPoint further warrants that it will not knowingly introduce any Malicious Code into the Service.

6.2 From Both Parties. Each party represents and warrants that it has the full right and authority to enter into, execute, and perform its obligations under this Agreement and that no pending or threatened claim or litigation know to it would have a material adverse impact on its ability to perform as required hereunder.

6.3 Warranty Remedies. In the event of a breach of the warranty as set forth in Section 6.1, or upon the discovery of Malicious Code in the Service, (a) SpryPoint shall correct the non-conforming Service at no additional charge to Client or (b) in the event SpryPoint is unable to correct such deficiencies after good-faith efforts, SpryPoint shall refund Client amounts paid that are attributable to the defective Service from the date SpryPoint received such notice through the date of remedy, if any. At no time shall the refund exceed the subscription fees actually paid by Client in consideration for SpryPoint's service delivery during the immediately preceding twelve (12) month period for the Service.

6.4 Warranty Disclaimer. EXCEPT FOR THE EXPRESS WARRANTIES OUTLINED IN SECTION 6.1 AND 6.2 ABOVE, SPRYPOINT MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE SERVICE AND/OR RELATED DOCUMENTATION. SPRYPOINT DOES NOT WARRANT THAT THE SERVICE WILL PERFORM WITHOUT ERROR OR THAT IT WILL RUN WITHOUT IMMATERIAL INTERRUPTION. THE LIMITED WARRANTIES PROVIDED HEREIN ARE THE SOLE AND EXCLUSIVE WARRANTIES PROVIDED TO CLIENT IN CONNECTION WITH THE PROVISION OF THE SERVICE.

7. Indemnification

7.1 Indemnification. SpryPoint shall protect, defend, hold harmless and indemnify Client harmless against any loss, damage or costs in connection with claims, demands, suits or proceedings ("Indemnified Claims)" made or brought against Client alleging that the use of the Service infringes any third party's Intellectual Property Rights; provided, however, that Client; (a) promptly gives written notice of the Claim to SpryPoint; (b) gives SpryPoint sole control of the defense and settlement of the Claim; and (c) provides to SpryPoint, at SpryPoint's cost, all reasonable assistance. SpryPoint's obligations set forth in this Section do not apply to the extent that an Indemnified Claim arises out of: (a) Client's breach of this Agreement; (b) revisions to the Service made without SpryPoint's written consent; (c) Client's failure to incorporate Upgrades that would have avoided the alleged infringement; (d) Modification of the Service by Client, its Employees, or Authorized Parties in conflict with Client's obligations (e) Unauthorized use of the service by third parties; or (f) use of the Service in a manner inconsistent with the Documentation. Furthermore, the obligation to indemnify shall not apply if such liability is ultimately

adjudicated to have arisen through the sole active negligence or sole willful misconduct of Client. If Client is enjoined from using the Service or SpryPoint reasonably believes it will be enjoined, SpryPoint shall have the right at its sole option, to obtain for Client the right to continue use of the Service or to replace or modify the Service so that it is no longer infringing. If neither of the foregoing options is reasonably available to SpryPoint, then use of the Service may be terminated at either party's option and SpryPoint's sole liability shall be to refund any prepaid fees for the Service that were to be provided after the effective date of termination.

8. Limitation of Liability

- 8.1 Liability Cap.** SpryPoint's liability arising out of or related to this Agreement shall in no event exceed the Subscription Fees paid by Client within the twelve (12) months preceding the claim.
- 8.2 Clarifications & Disclaimer.** TO THE MAXIMUM EXTENT PERMITTED BY LAW AND EXCEPT WITH RESPECT TO EITHER PARTY'S INDEMNIFICATION OBLIGATIONS, RECKLESS MISCONDUCT, GROSS NEGLIGENCE, WILLFUL MISCONDUCT AND/OR FRAUD, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, EXCEED THE SUBSCRIPTION FEES ACTUALLY PAID BY CLIENT IN CONSIDERATION FOR SPRYPOINT'S SERVICE DELIVERY DURING THE IMMEDIATELY PRECEDING TWELVE (12) MONTH PERIOD FOR THE SERVICE FROM WHICH THE CLAIM AROSE. FOR THE AVOIDANCE OF DOUBT, SPRYPOINT'S LIABILITY LIMITS APPLY TO SPRYPOINT'S AFFILIATES, PROVIDERS, AGENTS, SPONSORS, DIRECTORS, OFFICERS, EMPLOYEES, CONSULTANTS AND OTHER REPRESENTATIVES.
- 8.3 Exclusion of Damages.** EXCEPT WITH RESPECT TO AMOUNTS TO BE PAID BY EITHER PARTY PURSUANT TO A COURT AWARD (OTHER THAN A DEFAULT JUDGMENT) OR SETTLEMENT AS WELL AS THE DEFENSE COSTS UNDER THE INDEMNIFICATION OBLIGATIONS NO MATTER HOW MUCH DAMAGES MAY BE CHARACTERIZED, IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED, OR FOR ANY LOST PROFITS, LOSS OF USE, COST OF DATA RECONSTRUCTION, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, WHETHER IN CONTRACT, TORT OR OTHERWISE, ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE SERVICE, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SERVICE, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT OR SUCH PARTY'S LICENSORS, OR SUBCONTRACTORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES. CLIENT WILL NOT ASSERT THAT ITS PAYMENT OBLIGATIONS ARE EXCLUDED AS SPRYPOINT'S LOST PROFITS.

9. Term & Termination

- 9.1 Term of Agreement.** The Term of this agreement commences on the Effective Date and will continue for one year.
- 9.2 Annual Renewal.** The initial Term shall automatically renew for successive terms of one year unless either party provides the other written notice of termination at least (30) days prior to the expiration of the current term.
- 9.3 Annual Escalation.** The annual Subscription Service Fee for the Service shall be subject to adjustment on each anniversary of the Effective Date at the higher of the following:
- a) in accordance with the change in the USA Consumer Price Index ("CPI") as published by the Government of the United States. The CPI will be determined based on the percentage increase

- in the CPI for the twelve (12) month period ending with the calendar month which is three (3) months prior to each anniversary of the Effective Date
- b) 5% per year.

9.4 Termination for Convenience. Client shall have the right to terminate this Agreement without cause or penalty, by giving not less than Thirty (30) days' prior written notice to SpryPoint. Upon termination, Client shall pay SpryPoint all fees due up to the time of termination.

9.5 Termination for Default. Either party may terminate this Agreement upon Thirty (30) days prior written notice in the event of a material breach by the other party if such breach remains uncured at the expiration of such notice period.

9.6 Termination for Non-Appropriation of Funds. Notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of this Agreement are not forthcoming or are insufficient, through the failure of any entity to appropriate funds or otherwise, Client will have the right to terminate at no additional cost or penalty by giving Thirty (30) days written prior notice documenting the lack of funding.

9.7 Effect of Termination. Upon any termination of this Agreement, Client shall, as of the date of such termination, immediately cease accessing and otherwise utilizing the applicable Service. Termination for any reason shall not relieve Client of the obligation to pay any fees accrued or due and payable to SpryPoint prior to the effective date of termination.

9.8 Access to Client Data. Upon written request by Client made prior to any expiration or termination of this Agreement, SpryPoint will make Client Data available to Client through the Service solely for purposes of Client retrieving Client Data for a period of up to sixty (60) days. After 60 days, SpryPoint will have no obligation to maintain or provide any Client data and shall thereafter, unless legally prohibited, delete all Client Data and will have no further obligation to make it available to Client.

10. Messaging.

10.1 Supplemental Messaging Terms. If Client elects to use SpryPoint's Alerts, Notifications, Communications, Campaigns & Messaging capabilities ("Messaging Service") provided with the Service the following supplemental terms ("Messaging Terms") will apply. For avoidance of doubt, Messaging Terms apply to all SpryPoint applications within the service involving automated phone calls, pre-recorded messages, text messages, emails, in-app notifications and any other bulk communications.

10.2 Responsibility & Risk. Client shall be solely responsible for the content of any communications which Client initiates or authorizes in connection with the Messaging Services. SpryPoint shall have no responsibility or liability with respect to messages or communications initiated or authorized by Client. Client assumes all risks associated with use of the Messaging Service

10.3 Messaging Indemnity. Client shall hold harmless, defend and indemnify SpryPoint and its officers, directors, employees, contractors and representatives from and against all claims, damages, losses and expenses including without limitation any statutory damages, penalties and attorney's fees arising out of or relating to the Messaging Service or any breach by Client of the Agreement including without limitation, these Messaging Terms, except in the event of SpryPoint's willful misconduct.

10.4 Compliance. SpryPoint is limited to delivering the Messaging Service to the Client as part of the Service, accordingly, compliance with applicable laws is strictly Client's responsibility with respect to the Messaging Service notwithstanding any provision to the contrary.

11. Miscellaneous

11.1 Independent Contractor. SpryPoint and all persons(s) employed by or contracted with SpryPoint to furnish labor and/or materials under this Agreement are independent contractors and do not act as agent(S) or employee(s) of Client. SpryPoint has full rights to manage its employees in their performance of the Service under this agreement. This agreement does not create nor is it intended to create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. There are no third-party beneficiaries to this Agreement.

11.2 Insurance. SpryPoint will maintain during the entire Term of this Agreement, at its own expense the insurance coverage as outlined in Attachment D. The policies shall name Client as an additional insured with respect to the provision of services provided under this agreement.

11.3 Governing Law. This Agreement shall be governed exclusively by the internal laws of the State of California.

11.4 Notices. All notices under this Agreement shall be in writing and shall be deemed to have been given upon the third business day after first class mailing.

Notices to the Client shall be sent to:

XXXXXXXXXX

Attention: XXXXXXXXXXXX

Notices to SpryPoint shall be sent to:

Kyle Strang
Managing Partner
45 Queen Street – Suite #401
Charlottetown, PE C1A 4A4

11.5 Waiver. No failure or delay by either party in exercising any right under this agreement shall constitute a waiver of that right or any other right. Neither Client's review, acceptance nor payments for any of the Service or the Implementation Services shall be constructed to operate as a waiver of any rights under this agreement or of any cause of action arising out of the performance of this Agreement.

11.6 Force Majeure. In no event shall either party be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that SpryPoint shall use reasonable efforts which are consistent with accepted software industry practices to resume performance as soon as practicable under the circumstances. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

11.7 Conflicts of Interest. SpryPoint certifies that to the best of its knowledge, no Client officer, employee or authorized representative has any financial interest in the business of SpryPoint and that no person associated with SpryPoint r has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement.

11.8 Fair Employment. SpryPoint shall not discriminate against any employee or applicant for employment because of race, sex, color, religion, religious creed, national origin, ancestry, age, gender, marital status, physical disability, mental disability, medical condition, genetic information, sexual orientation, gender expression, gender identity, military and veteran status, or ethnic background, in violation of federal, state or local law.

11.9 Time. Time is of the essence in the performance of this Agreement.

11.10 Assignment. Neither Party may may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other party (which consent shall not be unreasonably withheld). Except to the extent forbidden herein, this Agreement will be binding upon and inure to the benefit of the parties' respective successors and assigns. Notwithstanding the foregoing, either party may assign this Agreement in its entirety without consent of the other party in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets so long as the assignee agrees to be bound by all of the terms of this Agreement and all past due fees are paid in full. In no event shall Client have the right to assign this Agreement to a direct Competitor of SpryPoint. Any attempt by a party to assign its rights or obligations under this Agreement other than as permitted by this section shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

11.11 Severability. To the extent permitted by the law, the parties waive any provision of law that would render any clause of this Agreement invalid or unenforceable. In the even that a provision herein is held to be invalid or unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by the law, and the remaining provisions of this Agreement will continue in full force and effect.

11.12 Publicity. Except as set forth herein, SpryPoint shall not use Client's name, logos, or trademarks in any written press releases, advertisements and/or marketing materials without the prior consent of Client, SpryPoint is authorized to use Client's name and logo in lists of Clients and on its website, however, such usage shall not be classified as an advertisement but only identification as an entity who receives the Service from SpryPoint.

11.13 Piggyback. It is understood and agreed by Client and SpryPoint that any governmental entity may purchase the services specified herein in accordance with the prices, terms, and conditions of this agreement. It is also understood and agreed that each local entity will establish its own contract with SpryPoint, be invoiced therefrom and make its own payments to SpryPoint in accordance with the terms of the contract established between the new governmental entity and SpryPoint. It is also hereby mutually understood and agreed that Client is not a legally bound party to any contractual agreement made between SpryPoint and any entity other than Customer.

11.14 Amendment. This Agreement may only be amended in writing by authorized representatives of each party.

11.15 Execution in Counterparts: This Agreement may be executed in one or more counterparts. Each counterpart will be an original, but all such counterparts will constitute a single instrument.

Client Name

SpryPoint Services, Inc.

Signature:	Signature:
Name:	Name: Ryan Cawley
Title:	Title: Managing Partner
Date Signed:	Date Signed:

DRAFT