

Spiff Master Subscription Agreement

This Master Subscription Agreement ("**MSA**") governs the procurement of Spiff Products and Services as set forth in the Sales Order (or other ordering document) which references this MSA. This MSA may govern multiple Sales Orders between Spiff and Customer.

1. Products and Services.

- 1.1. **Description.** The Products and Services consist of: (i) a cloud-based back-end which stores, analyzes, manages, distributes, and processes Customer Data; and (ii) front-end clients (e.g. mobile applications, web interface, plugins, system connectors) which allow for the retrieval, presentation, distribution, and management of Customer Data and related analytics. The Spiff platform provides solutions for managing and automating calculations of employee commissions.
- 1.2. **Future Functionality, Modifications, and Enhancements.** Customer's procurement is not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Spiff regarding future functionality or features. The Products and Services are regularly updated and enhanced using a continuous delivery model during the Subscription Term. In some cases Spiff may deprecate, diminish, or remove certain features and functionality, but such changes will not have a materially adverse impact on Customer's use of the Products and Services unless Customer consents to such change.
- 1.3. **Professional Services.** If Customer procures Professional Services from Spiff, the specific details of the Professional Services will be described on the Sales Order on a per-project basis. Spiff does not provide any custom deliverables or services under the Agreement which would qualify as work-made-for-hire. Professional Services are not subject to any acceptance procedure. Professional Services will be performed remotely unless otherwise specified, in which case, Customer will be invoiced at cost for pre-approved reasonable travel, hotel, and out-of-pocket expenses properly incurred by Spiff in connection with the Professional Services.
- 1.4. **Technical Support Services.** Spiff's standard technical support services are included at no additional charge during the Subscription Term. Access to technical support is provided to Customer's designated support administrators (up to 5) during normal business hours (Mon - Fri, 8am - 5pm Mountain Time). Access to online support resources (help.spiff.com) are available 24x7x365 to all Users.
- 1.5. **Feedback and Usage Analytics.** Customer may provide feedback to Spiff about the Products and Services (e.g. technical support input, suggestions, or enhancement requests) and generate usage analytics (e.g. non-identifiable technical data and metadata from usage of the Products and Services). Spiff may use Customer's feedback and anonymous usage analytics to: (i) compile statistical and performance information related to the Products and Services; (ii) improve the Products and Services; and (iii) develop and publish benchmarks and similar informational reports.

2. License Grant and Restrictions.

- 2.1. **License Grant and Reservation of Rights.** Subject to ongoing compliance with the Agreement, Spiff grants Customer a non-exclusive and non-transferable license during the Subscription Term to permit Users to access, install, implement, and use the Products and Services solely for Customer's direct beneficial business purposes. Customer's rights to use the Products and Services are limited to those expressly set forth in the Agreement, including limitations based on license type set forth in the Sales Order. Spiff retains all right, title, and interest in and to the Products and Services and all related intellectual property rights, including without limitation any modifications, updates, customizations, apps, or other add-ons.
- 2.2. **Restrictions and Acceptable Use.** Except as explicitly permitted under the Agreement, Customer must not do any of the following with the Products and Services: (i) use in violation of any applicable law or regulation; (ii) use in a manner that would cause a material risk to the security or operations of Spiff or any of its other customers; (iii) disassemble, decompile, or reverse engineer; (iv) redistribute, republish, sell, rent, lease, host, sub-license, or permit usage on a time-sharing basis as part of a hosted service or on behalf of any third party; (v) remove, obscure, or alter any proprietary notices; or (vi) circumvent, disable, or stress test any security or other technological features.
- 2.3. **Users.** Access to the Products and Services is limited to Users. User accounts may be reassigned by Customer, but accounts must not be shared among multiple individuals. Customer agrees to: (i) supervise and monitor Users' use of the Products and Services; (ii) promptly report to Spiff any violation of the Agreement by its Users; (iii) immediately disable access for anyone violating the Agreement on Customer's account; and (iv) ensure that no false or misleading personal information is used to create User accounts.

3. Customer Data, Privacy, and Security.

- 3.1. **Ownership and Permitted Use.** As between Spiff and Customer, all Customer Data is Customer's property. Customer grants Spiff a non-exclusive, worldwide, royalty-free license to process, reproduce, display, copy, communicate, and otherwise use Customer Data solely: (i) to the extent necessary to perform its obligations or enforce its rights under the Agreement or (ii) where required or authorized by law.

- 3.2. **Security.** Spiff will establish and maintain commercially reasonable administrative, technical, and physical safeguards and controls to: (i) ensure the ongoing confidentiality, integrity, availability, and resilience of the Products and Services and Customer Data; (ii) restore the availability and access to Customer Data in a timely manner in the event of a physical or technical incident; and (iii) have in place a process for regularly testing, assessing, and evaluating the effectiveness of technical and organizational measures for ensuring the security of the processing through the Products and Services.
- 3.3. **Data Processing.** The terms of the data processing addendum at <https://www.spiff.com/msadpa/> ("**DPA**") posted as of the Effective Date are hereby incorporated by reference. To the extent Personal Data from the European Economic Area ("**EEA**"), the United Kingdom and Switzerland are processed by Spiff, the Standard Contractual Clauses shall apply, as further set forth in the DPA. For the purposes of the Standard Contractual Clauses, Customer and its applicable Affiliates are each the data exporter, and Customer's execution of this Agreement, and an applicable Affiliate's execution of a Sales Order, shall be treated as its execution of the Standard Contractual Clauses and appendices.
- 3.4. **Customer Responsibility and Obligations Regarding Customer Data.**
 - 3.4.1. Customer acknowledges and agrees that the Products and Services are not designed to serve as master storage of Customer Data, and Customer is responsible for ensuring that master copies of Customer Data are stored in a separate system. Customer retains complete control over the installation, configuration, and usage of the Products and Services, and Spiff will not be responsible or liable for any deletion, corruption, damage, destruction, or unintended exposure of Customer Data due solely to acts or omissions of Customer.
 - 3.4.2. Customer is responsible for ensuring that all data and information provided to Spiff (including, without limitation, Customer Data) does not violate applicable laws and regulations, or third-party intellectual property rights, and Customer will take reasonable steps to identify and promptly remove any such data and information.
 - 3.4.3. Customer represents and warrants that data and information provided to Spiff will not include any Sensitive Personal Information other than remuneration details for Commissioned Users included in Customer Data, and that all of Customer's collection, transfer, and use of any personal data transmitted or otherwise processed through the Products and Services will comply with all applicable privacy laws, regulations, and self-regulatory guidelines (including proper disclosure via Customer's privacy policy and receipt of all consents required to process any Personal Data with the Products and Services).

4. Fees, Payments, & Taxes.

- 4.1. **Payments and Fees.** Customer must pay the Fees according to the payment terms in the Sales Order in the currency stated. All invoices will only be delivered electronically using the billing and contact information provided by Customer. Customer agrees to provide clear indication with its payment as to which invoices (or portions thereof) the payment should be applied. Alternatively, these payment details can be emailed to billing@spiff.com no later than the date of payment.
- 4.2. **Failure to Pay and Disputes.** If Customer believes that Spiff has billed Customer incorrectly, Customer must contact Spiff in writing within 30 days of the invoice date, specifying the error. Customer is not entitled to offset or deduct any amounts from Spiff's invoice unless: (i) Customer has properly notified Spiff of the dispute; (ii) the dispute is made in good faith; and (iii) Spiff has approved a payment limited to the undisputed amounts. If Customer fails to pay any amount due under the Agreement within 15 days of the due date, Spiff may suspend or restrict the Products and Services. Spiff may charge interest at a monthly rate equal to the lesser of 1% per month or the maximum rate permitted by applicable law on any overdue fees.
- 4.3. **Taxes.** The fees stated in a Sales Order do not include Taxes. Customer is responsible for paying all applicable Taxes. If Spiff determines that Spiff has a legal obligation to pay or collect Taxes, Spiff will add such Taxes to the applicable invoice and Customer will be obligated to pay such Taxes, unless Customer provides Spiff with a valid tax exemption certificate from the appropriate taxing authority. If a taxing authority subsequently pursues Spiff for unpaid Taxes for which Customer is responsible under the Agreement and which Customer did not pay to Spiff, Spiff may invoice Customer, and Customer will be obligated to pay such Taxes to Spiff or directly to the taxing authority, plus all applicable interest, penalties, and fees.

5. Obligations.

- 5.1. **Spiff Obligations.** Spiff will: (i) defend at its expense and (ii) pay any damages finally awarded by a court of competent jurisdiction (or settlement amounts agreed to in writing by Spiff) for third-party Claims alleging the following:
 - 5.1.1. The Products and Services directly infringe the third party's patent, copyright, or trademark; or Spiff has misappropriated the third party's trade secret.
 - 5.1.2. A breach by Spiff of its obligations under applicable data protection laws and regulations.
- 5.2. **Customer Obligations.** Customer will: (i) defend at its expense and (ii) pay any damages finally awarded by a court of competent jurisdiction (or settlement amounts agreed to in writing by Customer) for third-party Claims alleging the following:
 - 5.2.1. Erroneous results obtained due to inaccurate Customer Data or inaccurate compensation plan details and formulas provided by Customer.
 - 5.2.2. A breach by Customer of its obligations under applicable data protection laws and regulations (including failure to comply with its own data privacy policy).
- 5.3. **Conditions.** The indemnification obligations under this article are subject to the indemnified Party: (i) promptly giving written notice of the Claim to the indemnifying Party; (ii) giving the indemnifying party sole control of the defense, negotiation, and settlement of the indemnified portion of the Claim; and (iii) providing the indemnifying Party with all reasonable assistance required to effectively defend the Claim.

- 5.4. **IP Exceptions.** Neither party will have any indemnification obligation or liability regarding a third-party intellectual property infringement Claim when the infringement was caused by: (i) a combination of the Products and Services with any component not supplied by Spiff; (ii) unauthorized alteration or modification of the Products and Services by anyone other than Spiff; or (iii) failure by Customer to use the latest version of the Products and Services as requested by Spiff.
- 5.5. **IP Remedies.** In the defense or settlement of any third-party intellectual property infringement Claim, Spiff may, at its sole option and expense: (i) procure for Customer a license to continue using the Products and Services in the same manner as anticipated by the Agreement; (ii) replace or modify the allegedly infringing Products and Services to avoid the infringement at no additional cost to Customer; or (iii) terminate Customer's license and access to the Products and Services (or its infringing part) and refund any prepaid unused Fees as of the date of termination. Customer will not be entitled to direct damages for any third-party intellectual property infringement Claim resolved by Spiff pursuant to Section 5.
- 5.6. **Data Privacy Exceptions.** Neither Party will have any indemnification obligation or liability regarding a third-party data security and privacy Claim when acts or omissions of the indemnified Party impede or prevent the indemnifying Party's ability to meet its data security and privacy obligations under the Agreement.

6. Limitation of Liability.

- 6.1. **Exclusion of Consequential and Related Damages.** IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S OR ITS AFFILIATES' REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.
- 6.2. **Limitation of Liability.** IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EACH PARTY TOGETHER WITH ALL OF ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER AND ITS AFFILIATES HEREUNDER FOR THE PRODUCTS AND SERVICES GIVING RISE TO THE LIABILITY IN THE 12 MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, BUT WILL NOT LIMIT CUSTOMER'S AND ITS AFFILIATES' PAYMENT OBLIGATIONS UNDER THE "FEES, PAYMENTS, & TAXES" SECTION ABOVE.
- 6.3. **Third-Party Products.** This MSA does not govern Customer's use of Third-Party Products used in connection with the Products and Services. Third-Party Products are governed solely by the terms and conditions between Customer and the Third-Party Product developer. Spiff does not make any commitments or claims regarding security, confidentiality, or performance of any Third-Party Products, and Spiff specifically disclaims any liability regarding Third-Party Products. To the extent any Third-Party Product accesses, processes, or gathers Personal Data, the applicable third party is Customer's direct data processor, and is not acting as a data sub-processor of Spiff.

7. Term and Termination.

- 7.1. **Term.** The Subscription Term is set forth in the applicable Sales Order. This Master Subscription Agreement will apply to each Sales Order in which it is incorporated until the expiration of the Subscription Term, as modified by any applicable extension or early termination.
- 7.2. **Termination for Cause.** If either Party commits a material breach of the Agreement, the non-breaching Party may give written notice describing the nature and basis of the breach to the breaching Party. If the breach is not cured within 30 days of the notice date, the non-breaching Party may immediately terminate the Agreement, in whole or in part.
- 7.3. **Suspension.** Spiff may, without limitation to any other rights or remedies, temporarily suspend access to the Products and Services if Customer's use of Products and Services poses a security risk or may adversely impact Spiff's systems.
- 7.4. **Effect of Termination or Expiration.**
 - 7.4.1. All access to and use of the Products and Services must immediately cease upon termination or expiration of the Sales Order.
 - 7.4.2. If the Agreement is terminated for any reason other than Spiff's uncured material breach, Customer will be responsible for Fees covering the remainder of the then-current term.
 - 7.4.3. If the Agreement is terminated for Spiff's uncured material breach, Spiff will provide Customer a pro-rata refund of all prepaid but unused Fees.
 - 7.4.4. Each Party will return to the other Party, or destroy, all materials containing or reflecting any of the other Party's Confidential Information. Customer Data will be purged from Spiff systems in accordance with its internal data retention policies and procedures.
 - 7.4.5. Spiff is not obligated to retain any Customer Data for longer than 30 calendar days after the applicable Subscription Term. During such period, Customer will be able to retrieve all Customer Data in its native format from the Products and Services.
- 7.5. **Survival.** The termination or expiration of the Agreement will not affect any provisions of the Agreement which by their nature survive termination or expiration, including the provisions that deal with the following subject matters: definitions, payment obligations, confidentiality, term and termination, effect of termination, intellectual property, license compliance, limitation of liability, privacy, content monitoring, and the "General Provisions" section in this MSA.

8. Warranties, Disclaimers, and Remedies.

- 8.1. **Products and Services.** Spiff warrants that the Products and Services as delivered to Customer will materially conform to the Documentation and specifications set forth in the applicable Sales Order. Spiff further warrants that Spiff will perform Professional Services in a professional and workmanlike manner. Customer must notify Spiff of a claim under this warranty within 30 days of the date on which the condition giving rise to the claim first appears.
- 8.2. **Remedies.** To the extent permitted by law, Customer's sole and exclusive remedy arising out of or in connection with a breach of warranty is limited to replacement of the non-conforming Products and Services or re-performance of the Professional Service, as applicable. If in Spiff's sole discretion replacement or re-performance is not commercially reasonable, Spiff may terminate the applicable portion of the Sales Order and provide a refund of any prepaid unused fees for the applicable Product and Services.
- 8.3. **Implied Warranties.** To the maximum extent permitted by law and except for the express warranties in this section, Spiff provides the Products and Services on an "as-is" basis. Spiff disclaims and makes no other representation or warranty of any kind, express, implied, or statutory (including claims about merchantability, title, non-infringement, accuracy, or fitness for a particular purpose). Customer acknowledges that Spiff does not control, and Spiff is not responsible for, any interruptions, delays, cancellations, delivery failures, data loss, content corruption, packet loss, or other damage arising from: (i) Customer equipment or the transfer of data over communication networks, facilities, or devices (including the Internet); (ii) limitations, interruptions, delays, cancellations, or other problems inherent in the use of such communications networks, facilities, and devices not within Spiff's control; or (iii) Customer's failure to properly install appropriate security updates and patches to software and programs on networks and devices within Customer's control.

9. Confidentiality.

- 9.1. **Use and Protection.** The receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to: (i) only use Confidential Information for the purposes of the Agreement, and (ii) not reproduce, disseminate, or disclose Confidential Information to any person, except to the Party's and its Affiliates' employees and authorized representatives (e.g. temporary employees, consultants, and contractors) who need to know the Confidential Information for the purposes of the Agreement and are bound by confidentiality obligations at least as restrictive as those in this section. The receiving Party will treat Confidential Information with the same degree of care as it treats its own information of similar sensitivity, but never with less than reasonable care. The obligations in this section survive for three years following expiration or termination of the Agreement.
- 9.2. **Permitted Disclosure.** The receiving Party may disclose Confidential Information: (i) as approved in a writing signed by the disclosing Party; (ii) as necessary to comply with any law or valid order of a court or other governmental body; or (iii) as necessary to establish the rights of either Party, but in the case of (ii) and (iii), only if the receiving Party promptly notifies the disclosing Party of the details of the required disclosure and gives the disclosing Party all assistance reasonably required by the disclosing Party to enable the disclosing Party to take available steps to prevent the disclosure or to ensure that disclosure occurs subject to an appropriate obligation of confidence.

10. General Provisions.

- 10.1. **Relationship.** Spiff will be and will act as an independent contractor (and not as the agent or representative of Customer) in the performance of the Agreement. The Agreement does not create a partnership, franchise, joint venture, agency, or fiduciary relationship between the Parties.
- 10.2. **Notices.** Any notice given under the Agreement must be in writing and delivered by email to the following addresses (or alternative addresses provided in writing by each Party): legal.notifications@spiff.com (to Spiff); the primary billing email address set forth in the Sales Order (to Customer). All notices will be deemed to have been delivered the second business day after sending by email.
- 10.3. **Waiver, Modification.** No failure or delay by either Party in exercising any right under the Agreement will constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies. The Agreement may not be modified nor any rights under it waived, in whole or in part, except in writing signed by the Parties.
- 10.4. **Severability.** If any provision of the Agreement is held by a court of competent jurisdiction to be illegal, unenforceable, or invalid, the provision may be interpreted by the court so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining portions of the Agreement will remain in full force and effect.
- 10.5. **Independent Allocations of Risk.** Each provision of the Agreement that provides for a limitation of liability, disclaimer of warranties, or exclusion of damages is to allocate the risks of the Agreement between the Parties. This allocation is reflected in the pricing offered by Spiff to Customer and is an essential element of the basis of the bargain between the Parties.
- 10.6. **Assignment.** Neither Party may assign any of its rights or obligations under the Agreement without the prior written consent of the other Party (not to be unreasonably withheld or delayed). Notwithstanding the foregoing, Spiff may assign the Agreement in its entirety (including all rights and obligations) or in part without consent of Customer to an Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Any purported assignment in violation of this section will be null and void. Subject to the foregoing, the Agreement will bind and inure to the benefit of the Parties, their respective successors, and permitted assigns.
- 10.7. **Force Majeure.** Neither Party will be liable for, or be considered to be in breach of, the Agreement on account of any delay or failure to perform as required by the Agreement as a result of any unforeseeable or exceptional situation beyond its

- reasonable control, so long as the non-performing Party: (i) did not cause such situation by its own negligent acts or omissions and (ii) exercised all due diligence and used commercially reasonable efforts to avoid such situation and mitigate the impact.
- 10.8. **No Third-Party Beneficiaries.** There are no third-party beneficiaries to the Agreement, including, without limitation, Permitted Third Parties or Users.
- 10.9. **Entire Agreement.** The Agreement contains the entire understanding of the Parties relating to the subject matter and supersedes all earlier agreements, understandings, proposals, discussions, negotiations, representations, and warranties, both written and oral, regarding the subject matter.
- 10.10. **Customer's Purchase Order.** The Parties agree that any term or condition stated in a Customer purchase order or in any other Customer order documentation (excluding Sales Orders executed by both Parties) is void.
- 10.11. **Counterparts.** The Agreement (or a component) may be executed in counterparts, which taken together will form one legal instrument.
- 10.12. **Export Compliance.** The Products and Services, other Spiff technology, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Customer represents that it is not on any U.S. government denied-party list. Customer will not permit any User to access or use any Product or Service in a U.S.-embargoed country or region (currently the Crimea, Luhansk or Donetsk regions, Cuba, Iran, North Korea, or Syria) or as may be updated from time to time or in violation of any U.S. export law or regulation.
- 10.13. **Anti-Corruption.** Neither Party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other Party in connection with the Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction.
- 10.14. **Government Licensing.** For US Government end users: Customer acknowledges that Products and Services are "Commercial Item(s)," as that term is defined at 48 C.F.R. section 2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," as the terms are used in 48 C.F.R. section 12.212 or 48 C.F.R. section 227.7202, as applicable. Customer agrees, consistent with 48 C.F.R. section 12.212 or 48 C.F.R. sections 227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users: (i) only as Commercial Items and (ii) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. Unpublished rights are reserved under the copyright laws of the United States.
- 10.15. **Governing Law and Venue.** This Agreement, and any disputes arising out of or related hereto, will be governed exclusively by the internal laws of the State of California, without regard to its conflicts of laws rules or the United Nations Convention on the International Sale of Goods. The state and federal courts located in San Francisco County, California will have exclusive jurisdiction over any dispute relating to this Agreement, and each party consents to the exclusive jurisdiction of those courts.
- 10.16. **General.** Where relevant, a reference in the Agreement to Customer should be construed as equally including a reference to Customer's Affiliates and Users. Any obligation in the Agreement not to do something includes an obligation not to support or allow that thing to be done.

11. Definitions.

- 11.1. **"Admin User"** means any User for whom Customer is not using the Products and Services to track or calculate commissions.
- 11.2. **"Affiliate(s)"** means, for a Party, any other entity that controls, is controlled by, or under common control with, the Party. For the purposes of this definition, the term "control" means the direct or indirect power to direct the affairs of an entity through at least 50% of the shares, voting rights, participation, or economic interest in such entity.
- 11.3. **"Agreement"** means the applicable Sales Order and this Master Subscription Agreement (including all exhibits, addenda, and amendments which are properly attached or incorporated by reference).
- 11.4. **"Commissioned User"** means any User for whom Customer is using the Products and Services to track or calculate commissions.
- 11.5. **"Claim"** means a claim, demand, action, or legal proceeding filed against a Party.
- 11.6. **"Confidential Information"** means non-public or proprietary information about the disclosing Party's business (including copies, summaries, and extracts) which is: (i) disclosed in tangible form and is identified in writing as confidential at the time of disclosure; (ii) disclosed in non-tangible form that is unambiguously identified as confidential at the time of disclosure; or (iii) disclosed in such a manner, or of such a nature, that a reasonable person under the same circumstances would clearly understand the information to be confidential. Confidential Information does not include information that: (i) is or becomes generally publicly available through no fault of the receiving Party; (ii) was known to the receiving Party, free of any confidentiality obligations, before its disclosure by the disclosing Party; (iii) becomes known to the receiving Party, free of any confidentiality obligations, from a source other than the disclosing Party; or (iv) is independently developed by the receiving Party without use of or reference to the Confidential Information, as demonstrated by documents and other competent evidence in the receiving Party's possession.
- 11.7. **"Customer Data"** means all files, content (including audio, video, text, or images), and data (including Personal Data) belonging to or controlled by Customer which is submitted to the online software-as-a-service Products and Services.
- 11.8. **"Customer"** means the entity entering the Agreement with Spiff and identified in the Sales Order, including, as applicable, Customer's Affiliates.
- 11.9. **"Documentation"** means written technical and usage documentation about the Products and Services published by Spiff on help.spiff.com.
- 11.10. **"Fees"** means the fees payable for the Products and Services specified in the Sales Order.

- 11.11. "**Party**" means Spiff or Customer, as applicable.
- 11.12. "**Permitted Third Party**" means an individual or entity under contract with Customer who needs to access the Products and Services as part of its relationship with Customer and who is not Spiff's competitor.
- 11.13. "**Personal Data**" means any Customer Data relating to an identified or identifiable natural person (*i.e.*, a person who can be identified, directly or indirectly, by reference to an identifier or to one or more factors specific to such person's physical, physiological, genetic, mental, economic, cultural, or social identity).
- 11.14. "**Products and Services**" means the Spiff technology, software, and Professional Services (including any deliverables) set out in the Sales Order.
- 11.15. "**Professional Services**" means any consulting, training, implementation, or technical services provided by Spiff to Customer, as set out in the Sales Order.
- 11.16. "**Sales Order**" means the sales order form, statement of work, or other written document detailing the Products and Services being procured by Customer, and which references this MSA.
- 11.17. "**Sensitive Personal Information**" means information of a sensitive nature, including without limitation, financial account information, sexual orientation, personal medical or health information, personal information of children under 13, personal education records, and social security, national identity, national insurance, and similar personal identifiers. Where specific privacy or data protection laws apply (e.g. the General Data Protection Regulation (GDPR), the Gramm-Leach-Bliley Act (GLB), Health Insurance Portability and Accountability Act of 1996 (HIPAA), US Children's Online Privacy Protection Act (COPPA), Americans with Disabilities Act (ADA), Family Educational Rights and Privacy Act (FERPA)), and those laws define Sensitive Personal Information or a similar term (e.g. "Sensitive Personal Data," "Special Categories," or "Protected Health Information"), Sensitive Personal Information will adopt the meaning from the applicable law or regulation.
- 11.18. "**Spiff**" means Spiff, Inc., a Delaware corporation.
- 11.19. "**Spiff Privacy Policy**" means the privacy policy maintained at www.spiff.com/privacy-policy, as updated from time to time.
- 11.20. "**Subscription Term**" means the duration of the subscription for Products and Services, as stated in the Sales Order, and modified by any applicable extension or early termination.
- 11.21. "**Taxes**" means any local, state, provincial, federal, or foreign taxes (e.g., value-added, sales, or use taxes), or fees, duties, or other governmental charges resulting from the Agreement.
- 11.22. "**Third-Party Product(s)**" means any product, platform, or service not developed by Spiff which enhances, manipulates, integrates with, interacts with, interoperates with, or adds functionality to the Products and Services or Customer Data. Third-Party Products may include public APIs, stand-alone software, or hardware. Third-Party Products may be obtained directly from the developer or through a reseller. Spiff may act as a reseller for some Third-Party Products.
- 11.23. "**User**" means all Admin Users and Commissioned Users. Users must be an employee of Customer or its Affiliates, or a Permitted Third Party.