

## **SpriteRE Software as a Service Subscription Agreement (Lender)**

*Last updated: March 21, 2018*

This Software as a Service (“SaaS”) Subscription Agreement (the “Agreement”) sets out the terms that apply to the SaaS provided and the relationship between SpriteRE, LLC, an Idaho limited liability company (“Provider” or “SpriteRE”), and you (together with your affiliates and subsidiaries, “Customer”). This is a legal agreement between Customer and SpriteRE. By clicking through this Agreement, Customer will generate an account, and upon the account creation date (the “Effective Date”) agrees to be bound by these terms and SpriteRE’s Privacy Policy. Please review carefully.

### **I. DEFINITIONS**

- A. “User Data” means the data that Customer will process using the Software.
- B. “Confidential Information” means (a) the Software and the System, its Documentation, training materials and methods, and related information; (b) the terms and conditions of this Agreement, including the pricing terms; (c) any other information expressly identified as confidential by the disclosing party, whether owned by the disclosing party or by a third party; and/or (d) information disclosed orally, provided such disclosure is identified at the time of disclosure as Confidential Information and subsequently described in writing and delivered to receiving party within thirty (30) days of the oral disclosure. Without limitation of the foregoing, all information and data pertaining to the disclosing party and its affiliates, and all other data, information and/or records of or pertaining to the disclosing party, including but not limited to names, addresses, telephone numbers, account numbers, social security numbers, account and transaction information, customer lists and pricing information shall be deemed “Confidential Information”. Confidential Information shall also include “Non-Public Personal Information” and shall have the meaning ascribed to such term by Title V of the Gramm-Leach-Bliley Act (Public Law No. 106-102) and the regulations promulgated pursuant thereto, and such term shall also include “Consumer Information,” as defined by the Fair and Accurate Credit Transactions Act of 2003 (Public Law No. 108-159) and the regulations promulgated pursuant thereto together with any other identifying or personal information of or about consumers, applicants, clients or customers and information protected under other applicable laws, rules and regulations relating to the protection of consumer and personal information, privacy or prevention of identity theft. Both parties shall comply with all applicable federal and state statutes, regulations, rules, and other laws regarding use, disclosure and safeguarding of any and all personal consumer information or consumer identifying information, and any other applicable state or federal law relating to privacy or the prevention of identity theft. Each party shall report to the other party as soon as reasonably possible any data security breach involving Confidential Information and any evidence of identity theft.
- C. “Documentation” means Provider’s then current published documentation for the Software.
- D. “Downtime” means the period of time when the System is not responding, or does not correctly respond because of: (a) Software failure or error; (b) failure of hardware within the control of Provider or its hosting subcontractor; (c) an electric utility failure at Provider’s hosting facility; or (d) a failure of the network to which the Host Server is connected, up to the point of connection to the public switched telephone network. Downtime does not include the period of time when the Host Server is not available as a result of (i) scheduled network, hardware or service maintenance and/or upgrades (“Scheduled Downtime”); or (ii) the acts or omissions of Customer’s employees, agents, contractors, or vendors, or anyone gaining access to Customer’s network by means of Customer’s passwords or equipment.
- E. “Host Server” means the server(s) on which Provider has the Software installed for Customer’s use.

- F. "Insolvent" means: (a) generally failing to pay, or admitting in writing to an inability to pay debts as they become due; (b) applying for or consenting to the appointment of a trustee, receiver, or other custodian, or making a general assignment for the benefit of creditors; or (c) voluntarily commencing any bankruptcy, reorganization, debt arrangement, or other case or proceeding under any bankruptcy or insolvency law seeking protection under such law; or (d) any bankruptcy, dissolution or liquidation proceedings commenced, foregoing protection (and in either circumstances such case or proceeding remaining undismissed for sixty (60) days); or (e) taking any corporate or other action to authorize, or in furtherance of, any of the foregoing.
- G. "Intellectual Property Rights" means any patent, patent application, copyright, moral right, trade name, trademark, trade secret, copyright, and any applications or right to apply for registration therefor, computer software programs or applications, tangible or intangible proprietary information, or any other intellectual property right, whether registered or unregistered.
- H. "Permitted Users" means persons, designated by Customer, to have access to the Software to create and use User Data.
- I. "SaaS" means Software as a Service – Provider's Services.
- J. "Software" means Provider's SpriteRE TM software program, as well as any updates made available by Provider via the Internet during the term of this Agreement and in any amendments thereto, in object code form. The term Software does not include source code in any form, nor shall it include any data inputted into the Software by Customer or processed by the User utilizing the Software.
- K. "System" means the Software, the Host Server, and all equipment and connections maintained by Provider or its hosting subcontractor to allow Customer to access the Software and User Data.
- L. "Account Creation Date" means the date on which Customer elects to accept all terms within the SpriteRE SaaS Subscription Agreement, funds the account, and affirms their election by checking the respective boxes indicating their intent on [www.SpriteRE.com](http://www.SpriteRE.com) . This affirmation is binding in all respects whether the election was made by: the Customer directly, an authorized representative or agent of the Customer, or by a SpriteRE representative assisting in the creation of the account.

#### **I. SAAS SERVICES**

Subject to the terms and conditions of this Agreement, Provider hereby grants to Customer's Permitted Users, during the Term, a nonexclusive, nontransferable, non-assignable right to (a) access the System; (b) use the Software; (c) process the User Data; and (d) store up User Data in a User database on the Host Server, as follows:

- A. Use of the Software is restricted to the Permitted Users.
- B. Customer may use and distribute reports generated using the Software, and may modify without restriction any reports generated using the Software.
- C. To use the Documentation delivered with the Software in support of Customer's use of the Software as authorized under this Agreement; provided that such Documentation may only be used by the Permitted Users.
- D. Customer may reproduce the Documentation solely for its own internal use provided that all titles, trademarks, trade names, copyright, restricted rights, and other proprietary notices of Provider are retained.

#### **I. OWNERSHIP**

- A. Customer acknowledges that the structure, organization, and code (both source code and object code) of the Software and all software components thereof are proprietary to

Provider and/or Provider's licensors and that Provider and/or its licensors retains exclusive ownership of the Software, documentation, trademarks, and any other Intellectual Property Rights relating to the Software and the SaaS Website, including all modifications, enhancements, derivatives, and other software and materials developed hereunder by Provider, and all copies thereof. Customer shall not sell, transfer, publish, disclose, display or otherwise make available the Software including any modifications, enhancements, derivatives, and other software and materials developed hereunder by Provider or copies thereof to others in violation of this Agreement. Further, the Software will be deemed to be Confidential Information of Provider, as defined herein, and any such confidentiality restrictions shall apply accordingly. Except as otherwise expressly permitted hereunder, Customer agrees not to copy or otherwise reproduce any of the Software, including any modifications, enhancements, derivatives, and other software and materials developed hereunder by Provider, in whole or in part. Customer shall not remove any proprietary, copyright, trademark, or service mark legend from any portion of any of the Software, including any modifications, enhancements, derivatives, and other software and materials developed by Provider. Customer agrees to make all necessary and reasonable efforts to comply with the above provisions in a manner which Customer takes to secure and protect its own highly confidential information in order to maintain Customer's rights therein and to take appropriate action by instruction or agreement with its Permitted Users.

- B. Any and all trademarks and service marks adopted by Provider to identify the Software and the SaaS Website and other Provider products and services belong to Provider. Customer has no rights in such marks except as specified in writing between the parties.
- C. Customer agrees not to decompile, disassemble, reverse engineer, transfer electronically, copy, modify, enhance, or create any derivative works with the Software or any other Provider proprietary or confidential information.
- D. Customer agrees not to rent, electronically distribute, timeshare or operate a service bureau for the use of the Software or market the Software by interactive cable, Internet, or remote processing services or otherwise distribute the Software unless expressly permitted by this Agreement.
- E. Customer shall immediately inform Provider of (a) any claim or proceeding involving the Software that comes to its attention; and (b) any facts of which it becomes aware indicating that any person is infringing any Intellectual Property Rights of Provider or is engaging in unauthorized distribution of the Software.

#### **I. PROVIDER SERVICES AND ENHANCEMENTS.**

Provider will:

- A. keep the System functional;
- B. provide Documentation explaining how to access the System and use all functions of the Software;
- C. provide telephone support services between the hours of 9:00 am to 5:00 pm, MST, Monday through Friday (except recognized U.S. holidays); and
- D. store and back-up the User Data in the System.

#### **I. CUSTOMER'S RESPONSIBILITIES**

Customer shall be exclusively responsible for supervision, management and control of its use of the Software, System and Documentation, including without limitation; (a) assuring proper machine configurations, audit controls and operating methods; (b) creating, modifying, entering or reentering User Data.

#### **I. OWNERSHIP OF CUSTOMER DATA**

Customer owns the User Data in any database created using the Software. Title to User Data

and any copy thereof remains with Customer. Notwithstanding Customer's ownership of its User Data, Provider shall have the right to utilize such User Data, without identifying specific Customer's customers, solely for the purpose of analyzing and publishing the results of such analyses. Customer's User Data may be deleted by Provider, without further notice to Customer and without any liability to Customer, in the event that Customer fails to pay all amounts when due hereunder and fails to cure such non-payment in full within thirty (30) days of written notice from Provider.

#### **I. RETURN OF CUSTOMER DATA**

Upon termination of this Agreement, and provided that Customer has fully paid all amounts due hereunder and under any hosting services agreement between Provider and Customer, Provider shall promptly return User Data to the Customer. Provider shall also provide a copy of User Data, as requested by Customer, on a mutually agreeable media during the term of this Agreement, upon thirty (30) business days written notice to Customer for the Data copying fee of two hundred and fifty dollars (\$250.00) per every five thousand (5,000) records.

#### **I. MARKETING**

Customer will allow Provider to use Customer's name and logo as a reference account for marketing purposes, including allowing Provider to reference Customer on its reference account list of companies in print and on its website. Customer retains the right to require Provider to withdraw any use of Customer's name and trademark where Customer reasonably considers that such use of such name or trademark is derogatory, defamatory or detrimental to Customer or in any way damages Customer's business or reputation.

#### **I. PAYMENT**

II. During the term of this Agreement, Customer shall pay SpriteRE an amount equal to the following: A per lead Fee of \$2.19 per record for use of the API on Licensee's URL located at

- a. Payments will be made quarterly, in advance, by ACH, wire transfer, or check. Payments will be estimated by multiplying the estimated average monthly number of leads to be supported by the API by three months.
- b. Initial payment is due upon inception. Subsequent payments will be billed in the second month of the term and are due on a 'Net 30' basis.
- c. Quarterly variances in lead volume will be added to, or subtracted from, the subsequent quarter's estimated billing.
- d. If Licensee's Sprite services are subject to a 'Letter of Intent' offering, as reflected in Addendum 'A', then Licensee will receive a 15% discount on services for a period of six (6) months

#### **III. TAXES**

The Fees listed in the Order Form do not include taxes; if Customer is required to pay sales, use, property, value-added or other taxes based on the SaaS or Professional Services in this Agreement then such taxes shall be billed to and paid by Customer.

#### **I. PERFORMANCE AND AVAILABILITY**

Provider guarantees that the System and Software will be accessible at least 99.5% of the time, except for Scheduled Downtime. As Provider's sole and exclusive remedy, if Downtime, other than Scheduled Downtime, exceeds the guaranteed level, then Provider agrees to credit toward the Customer's Fees a prorated amount equal to the Fees attributable to such Downtime. PROVIDER IS NOT RESPONSIBLE FOR LOST OR DESTROYED CUSTOMER DATA, WHICH LOSS OR DESTRUCTION SHALL BE AT CUSTOMER'S SOLE RISK.

Provider will use its commercially reasonable efforts to notify Customer at least twenty-four (24) hours in advance of any Scheduled Downtime. Provider will use reasonable commercial efforts to perform scheduled maintenance outside of Customer's normal business hours to provide the least amount of disruption.

#### **I. WARRANTIES AND REPRESENTATIONS; WARRANTY DISCLAIMERS**

Provider represents and warrants to Customer that: (a) Provider has the power and authority to enter into this Agreement; (b) Provider is the owner of or licensee of all rights necessary and appropriate to grant the rights hereunder; (c) the services performed under this Agreement will be performed in a professional and workman-like manner in accordance with normally accepted industry standards, and with a degree of care, skill and expertise as is standard for the provision of services of a similar nature; and (d) that the Software and System will perform substantially in accordance with the Documentation. **EXCEPT AS OTHERWISE PROVIDED HEREIN, PROVIDER MAKES NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF FITNESS, PURPOSE, OR MERCHANTABILITY, OR OF THE ACCURACY OF RESULTS OBTAINED THROUGH CUSTOMER'S USE OF THE SOFTWARE AND/OR SYSTEM. CUSTOMER ACKNOWLEDGES THAT ANY DATA OR REPORT GENERATED, OBTAINED OR ACQUIRED THROUGH THE USE OF THE SOFTWARE AND/OR SYSTEM IS USED AT CUSTOMER'S SOLE RISK AND DISCRETION. PROVIDER IS NOT LIABLE OR RESPONSIBLE FOR ANY RESULTS GENERATED THROUGH THE USE OF THE SOFTWARE OR SYSTEM. PROVIDER DOES NOT WARRANT OR REPRESENT THAT ACCESS TO THE SOFTWARE OR SYSTEM WILL BE UNINTERRUPTED, ERROR FREE OR SECURE. OPERATION OF THE SYSTEM MAY BE INTERFERED WITH BY NUMEROUS FACTORS OUTSIDE OF PROVIDER'S CONTROL.**

#### **I. CONFIDENTIAL INFORMATION**

- A. Each party acknowledges it may have access to Confidential Information of the other party. Each party agrees to keep the Confidential Information of the other party confidential and to take all reasonable precautions, at least to the same degree of care and precautions the recipient would take to protect the confidential nature of its own information, not to disclose, copy, distribute or otherwise disseminate the Confidential Information to any third parties. The receiving party may disclose the Confidential Information only to those employees, agents and subcontractors who have a legitimate business reason to have such access, and are subject to the requirement to abide by a non-disclosure agreement substantially similar to this Agreement's non-disclosure obligations.
- B. The obligations of this Section shall not apply to information (a) which is published or available to the public other than by breach of this Agreement; (b) otherwise rightfully received by the non-disclosing party from a third party without obligations of confidentiality; (c) independently developed by the non-disclosing party's employees having no access to the disclosed information; (d) known to the non-disclosing party before receiving the Confidential Information from the disclosing party under this or any prior agreement of the parties; (e) disclosed by the disclosing party to a third party without restrictions; or (f) is disclosed under operation of law; or (g) is disclosed by recipient with discloser's prior written approval.

#### **I. ENJOINED USE**

If Customer's use of the Software or the System under the terms of this Agreement is, or in Provider's opinion is likely to be, enjoined due to a claim of infringement or other violation of a third party's intellectual property rights, then Provider will, at its sole election and expense, either (a) obtain for Customer the right to continue using the Software or the System; (b) replace or modify the Software or System so that it becomes non-infringing provided such substitute or modified Software or System is functionally equivalent to the original or otherwise meets Customer's needs, and is compatible with the same items as the original, and further provided that Provider reimburses Customer for data conversion and other costs reasonably incurred by Customer as a result of such modification or replacement; or (c) if such remedies are not reasonably available, promptly refund to Customer the pro rata unused portion of the fees paid to Provider, terminate this Agreement, and relieve Customer of any further payment obligations hereunder.

## I. INDEMNIFICATION

- A. Customer will indemnify and hold harmless Provider, its parent company and legal affiliates, and Provider, parent company and legal affiliate's directors, managers, officers, members, employees and agents, from and against all liabilities, losses, costs, damages and expenses, (including reasonable attorneys' fees and court costs), relating to or arising from or in connection with: (i) the use of the Software by Customer or any of its Permitted Users, except for claims for which Provider is obligated to indemnify Customer pursuant to this Agreement; (ii) any information or results obtained through use of the Software and/or System; (iii) any negligent acts, omissions, or willful misconduct by Customer and/or Permitted Users, or by Customer's or Permitted Users' use of the Software and/or System; and (iv) any breach of this Agreement by Customer and/or its Permitted Users.
- B. Provider shall indemnify and hold harmless Customer, its directors, shareholders, officers, employees and agents, harmless from and against all liabilities, losses, costs, damages and expenses, (including reasonable attorneys' fees and court costs), relating to or arising from or in connection with: any third-party claim(s) that the Software and/or System, used as licensed herein, infringes any United States patent, license, trademark, copyright, trade secret or any other intellectual property right. If an infringement claim is made or appears possible, Provider will, at Provider's sole option: (i) secure for Customer the right to continue to use the Software and to access the System; (ii) modify or replace the Software and/or System so that they are non-infringing but functionally equivalent; or (iii) terminate the licenses granted hereunder and refund a prorata amount of paid but unearned Fees paid by Customer. Provider shall have no obligation to the extent any claim is based in whole on modification of the Software and/or System by Customer, or the use of the Software and/or System with any other software not authorized by Provider.
- C. The indemnification obligations indicated in this Section are contingent upon (a) the party to be indemnified ("Indemnified Party") promptly notifying the indemnifying party ("Indemnifying Party") in writing of the claim to be indemnified; (b) the Indemnified Party allowing the Indemnifying Party, at its expense, to reasonably direct and control all defense, settlement, or compromise negotiations; and (c) the Indemnified Party providing the Indemnifying Party with information and assistance that may be reasonably required to defend the claim.

### I. LIMITATION OF LIABILITY

**AGGREGATE LIABILITY FOR ALL CLAIMS ARISING FROM THIS AGREEMENT, REGARDLESS OF THE NATURE OF SUCH CLAIM, SHALL NOT EXCEED THE TOTAL SAAS FEES PAID BY CUSTOMER HEREUNDER DURING THE IMMEDIATELY PRECEDING ONE (1) MONTH. PROVIDER SHALL NOT BE LIABLE TO CUSTOMER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH THIS AGREEMENT, HOWEVER CAUSED, WHETHER BASED ON CONTRACT, TORT, WARRANTY, OR OTHER LEGAL THEORY, AND EVEN IF PROVIDER HAS BEEN INFORMED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES COULD HAVE BEEN REASONABLY FORESEEN BY PROVIDER. CUSTOMER AGREES THAT THE LIMITATIONS SPECIFIED IN THIS SECTION WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. CUSTOMER ACKNOWLEDGES THAT PROVIDER HAS SET ITS PRICES AND ENTERED INTO THIS AGREEMENT IN RELIANCE ON THE DISCLAIMERS OF WARRANTY AND THE LIMITATIONS OF LIABILITY SET FORTH IN THIS AGREEMENT AND THAT THE SAME FORMS AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES.**

### I. TERM, RENEWAL TERM, ADDITIONAL USERS, AND TERMINATION

- A. This Agreement shall become effective on the Effective Date, shall be valid for a period of one (1) year, and shall renew automatically for succeeding one year terms unless and until terminated by either party pursuant to Section XVII(B).
- B. At any time, either party may terminate this Agreement upon thirty (30) days written notice to the other party.
- C. The SaaS Hosting Services Fee for the Renewal Term shall be invoiced by Provider at Provider's then published list price for SaaS Hosting Services.

#### **I. MISCELLANEOUS**

- A. Force Majeure: Neither party shall be liable to the other for failure or delay in the performance of a required obligation if such failure or delay is caused by strike, riot, fire, natural disaster, governmental acts or orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the reasonable control of and is not caused by the negligence of the non performing party ("Force Majeure"), provided that such party gives prompt written notice of such condition and resumes its performance as soon as possible.
- B. Entirety of Agreement: Each party acknowledges that these terms and conditions, along with the Privacy Policy, are the complete and exclusive statement of the agreement between the parties, and that this Agreement supersedes and merges all prior proposals, understandings and all other agreements, oral and written, between the parties relating to this Agreement. This Agreement may not be modified or altered except by: (i) written instrument duly executed by both parties; or (ii) by a change to the Agreement by SpriteRE posted on its Website. For the avoidance of doubt, Customer's continued use of the Software after a change to this Agreement by SpriteRE posted on its Website shall constitute Customer's acceptance of those changes.
- C. Assignment: This Agreement may not be (i) assigned or (ii) transferred by merger by Customer without the written consent of Provider. This Agreement shall be binding upon, and shall inure to the benefit of, the parties to this Agreement and their respective successors, permitted transferees, and permitted assigns. No provision of this Agreement shall be deemed to confer upon any third party any remedy, claim, liability, reimbursement, cause of action, or other right whatsoever.
- D. Headings: The headings and captions of the sections and paragraphs of this Agreement shall be for convenience only.
- E. Severability: If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the remaining provisions of the Agreement shall remain in full force and effect.
- F. No Partnership Provider and Customer are not partners or joint venturers. Neither party is the agent, representative or employee of the other party and nothing in this Agreement will be construed to create any relationship between them other than an independent contractor relationship. Neither party will have any responsibility or liability for the actions of the other party except as expressly provided herein. Neither party will have any right or authority to bind or obligate the other party in any manner or make any representation or warranty on behalf of the other party. Customer's employees are not and shall not be deemed to be employees of Provider. Customer shall be solely responsible for the payment of all compensation to its employees, including provisions for employment taxes, workmen's compensation and any similar taxes associated with employment of Customer's personnel.
- G. Notices: All notices requests, reports, submissions and other communications permitted or required to be given by Customer to Provider under this Agreement shall be deemed to have been duly given if such notice of communication shall be in writing and sent by

personal delivery or overnight courier (e.g. FedEx, UPS, DHL), delivery prepaid, to Provider at the following address: 301 South Capitol Blvd., Boise, ID 83702, with an additional copy of such notice e-mailed to [legal@spritere.com](mailto:legal@spritere.com).

- H. Waiver: No course of dealing or failure of either party to strictly enforce any term, right, or condition of this Agreement shall be construed as a waiver of such term, right or condition.
- I. Jurisdiction: The construction, interpretation and performance of this Agreement and all transactions under it shall be governed by the laws of the State of Idaho, excluding its choice of law rules, and Customer further consents to jurisdiction by the state and federal courts sitting in Ada County, Idaho and, with respect to a claim for indemnity, any court wherein any action is commenced against Provider based on a claim for which Customer had indemnified Provider under this Agreement. Process may be served upon Provider by U.S. Mail, postage prepaid, certified or registered, return receipt requested, or by such other method as is authorized by law.