

# Spirit EULA

Updated 10/30/2019

**IMPORTANT: THIS SPIRIT SOFTWARE AGREEMENT (THE "AGREEMENT") CONTAINS THE TERMS AND CONDITIONS CONCERNING ACCESS TO AND USE OF THE SPIRIT SOFTWARE AND SERVICES (EACH AS DEFINED BELOW) AND IS AN AGREEMENT BETWEEN SPIRIT APP, LLC ("SPIRIT") AND YOU OR THE ENTITY THAT YOU REPRESENT, SUCH AS THE SCHOOL, COMPANY OR ORGANIZATION THAT YOU WORK FOR ("CUSTOMER"). THIS AGREEMENT TAKES EFFECT WHEN YOU CLICK THE "SIGN UP" BUTTON OR CHECK THE BOX PRESENTED WITH THESE TERMS (THE "EFFECTIVE DATE"). BY CLICKING THE "SIGN UP" BUTTON OR CHECKING THE BOX PRESENTED WITH THE AGREEMENT, YOU HEREBY AGREE THAT YOU HAVE THE REQUISITE AUTHORITY, POWER AND RIGHT TO FULLY BIND THE CUSTOMER**

IF YOU DO NOT HAVE THE AUTHORITY TO BIND THE CUSTOMER OR THE CUSTOMER DOES NOT AGREE TO ANY OF THE TERMS BELOW, SPIRIT IS UNWILLING TO PROVIDE THE SPIRIT SOFTWARE AND SERVICES TO CUSTOMER AND YOU SHOULD NOT CLICK TO ACCEPT THE TERMS OF THIS AGREEMENT OR CHECK THE "I AGREE" BOX.

## **1. Definitions**

In addition to other terms that may be defined elsewhere in the text of this Agreement, the following terms as used in this Agreement shall have the meanings set forth below:

**"Account Holder"** means those third parties who are approved by The Customer to access and use the event information they publish through the getspirit.io website, the Spirit App Application, and related products and services.

**"Data"** means all data generated by the Services whether or not entered by Customer or User, and any information which Customer or User uploads or

populates or otherwise enters through the use of the [getspirit.io](https://getspirit.io) website, the Spirit App Application, and related products and services, including but not limited to, event information, calendar dates, photographs, ticket information and pricing, and surveys, comments, and other feedback from Account Holders.

**"Executable Code"** means a series of instructions executable, without further compilation or assembly, after suitable processing by a computer system.

**"Intellectual Property Rights"** means all intellectual property rights worldwide arising under statutory or common law or by contract and whether or not perfected, now existing or hereafter filed, issued, or acquired, including all (a) patent rights; (b) rights associated with works of authorship including copyrights; (c) trademark rights; (d) rights relating to the protection of trade secrets and confidential information; and (e) any right analogous to those set forth herein and any other proprietary rights relating to intangible property.

**"Privacy Policy"** means Spirit's privacy policy located at [getspirit.io/legal/privacy](https://getspirit.io/legal/privacy), the terms of which are incorporated herein by reference.

**"Services"** means the services provided by Spirit relating to event management and feedback tools.

**"SPIRIT Software"** means the computer software provided or made available by Spirit for event management and feedback tools.

**"Unique Access Code"** means the code Customers may provide to Account Holders to allow Account Holders to access specific information from Customer's SPIRIT Software and Services, including but not limited to calendars, event information, and ticket sales.

**"Users"** means those individuals authorized to access the Admin Section (defined below) and act on behalf of Customer.

**"User Information"** means all information held by Spirit for a Customer, User or Account Holder, including but not limited to their email address, unique user ID and password.

## **2. Account Set-Up**

**2.1 Account Set Up** Customer is responsible for all activities that occur through the Admin Section, regardless of whether the activities are undertaken by Customer (or its employees), any Users or a third party and, except to the extent directly caused by a breach by Spirit of this Agreement, Spirit is not responsible for any unauthorized access to the Customer Site. Customer will contact Spirit immediately if Customer believes that an unauthorized third party may be accessing or using the Customer Site or if any User Information is lost or stolen.

**2.2 Creation of Admin Section** Upon registration online at [getspirit.io](https://getspirit.io) and payment of the pro rata of the month of registration together with payment of the next month's fee, Customer will be given access to their Admin Section, which will act as the site through which Customer will access the SPIRIT Software and Services in accordance with the terms of this Agreement (hereinafter the "Admin Section"). The Admin Section will allow Customer or Users to access and use the event management and feedback tools. In order to access the Admin Section once registered, Customer or User will be required to sign in to [getspirit.io](https://getspirit.io) using the account name and unique password created upon registration.

**2.3 Minimum System Requirements** The necessary minimum requirements for Customer or User to access and use the SPIRIT Software and Services are: (a) access to the Internet; and (b) a standard web browser such as Mozilla Firefox, Google Chrome, Apple Safari, or Microsoft Internet Explorer.

### **3. Access to and use of SPIRIT Software and Services;**

#### **Restrictions.**

**3.1 Use of Computing Services** Subject to the terms of this Agreement, Spirit grants to Customer a limited, non-exclusive, non-assignable, non-transferable right to access and use, and to grant Users the right to access and use, the SPIRIT Software and Services in connection with Data, provided.

**3.2 License to SPIRIT Software** Subject to the terms of this Agreement, Spirit grants to Customer a limited, personal, non-exclusive, non-assignable, non-transferable license to use the SPIRIT software (in Executable Code form) to access and use the event management and feedback tools. Spirit is not obligated to provide Customer with the object and/or source code of the SPIRIT Software.

**3.3 Restrictions** No rights or licenses (either express or implied) are granted to Customer under this Agreement to the SPIRIT Software and/or Services or any portion thereof other than those limited rights and licenses set forth in this Section 3. Notwithstanding anything to the contrary, Customer will not: (a) attempt to reverse engineer, access, use, copy or to discover the source code of or trade secrets embodied in the SPIRIT Software and/or Services (including the logic and/or architecture thereof); (b) distribute, transfer, grant sublicenses to, or otherwise make available the SPIRIT Software and/or Services or any portion thereof to third parties (other than authorized Users in connection with providing access to the Services), including, but not limited to, making such SPIRIT Software and/or Services available as an application service provider, service bureau, or rental source; (c) embed or incorporate in any manner the SPIRIT Software and/or Services into other applications of Customer or third parties; (d) create modifications to or derivative works of the SPIRIT Software and/or Services; (e) reproduce the SPIRIT Software and/or Services; (f) attempt or permit any third party to attempt to modify, alter, or circumvent the license control and protection mechanisms within the SPIRIT Software and/or Services; (g) access or use the SPIRIT Software and/or Services in violation of any applicable law, rule or regulation, including any export/import laws, (h) remove, obscure or alter any copyright notices or any name, trademark, service mark, tagline, hyperlink or other

designation of Spirit displayed on any display screen within the SPIRIT Software, Services and/or Documentation ("SPIRIT Marks"). Customer shall not permit any third party to perform any of the foregoing actions and shall be responsible for all damages and liabilities incurred as a result of such actions. During and after the Term, Customer will not assert, or authorize, assist, or encourage any third party to assert, against Spirit, its affiliates, Subcontractors or licensors, any patent infringement or other intellectual property infringement claim regarding any of the Services accessed and used by Customer during the Term of this Agreement.

**3.4 Changes to the SPIRIT Software and Computing Services** Spirit is not obligated to provide any updates, upgrades or new releases to the SPIRIT Software and/or Services. From time to time, Spirit may modify or discontinue any of the SPIRIT Software and/or Services or change or remove functionality and/or features from the SPIRIT Software and/or Services. Spirit will notify Customer of any material change made to the SPIRIT Software and/or Services.

**3.5 License to Data** Customer hereby grants to Spirit a non-exclusive, royalty-free, license (with the right to grant sublicenses to the Subcontractors) to collect, store, access and use the Data and the related copyrights and other Intellectual Property Rights in any manner whatsoever, including but not limited to in connection with the provision of the SPIRIT Software and Services and sale of Data to third parties. Any sale of Data will strictly be on an aggregated basis and will not disclose any users Personally Identifiable Information, as outlined in our [Privacy Policy](#). You understand and agree that Spirit may send communications directly to Account Holders, including but not limited to surveys, questionnaires, and otherwise solicit feedback about the Data.

## **4. Use of Third Party Services**

Spirit has the right to subcontract all or any portion of the Services to one or more third parties (each a "Subcontractor" and collectively the "Subcontractors"), including but not limited to the processing of debit/credit cards.

## **5. Customer Responsibilities**

**5.1 Maintaining Customer Equipment** Customer agrees that it is responsible, at its own cost, to provide and maintain its own Internet access and all necessary telecommunications equipment, computers, hardware devices and other materials necessary for accessing the SPIRIT Software and Services.

**5.2 Users** Customer agrees to provide access to the SPIRIT Software and Services only to those Users who have been authorized by Customer and under this Agreement to access and use the SPIRIT Software and Services on behalf of Customer. Customer is responsible for User's access and use of the SPIRIT Software and Services and Customer shall ensure that all Users are made aware of and comply with all Customer's obligations under this Agreement. In the event Customer becomes aware of any access or use of the SPIRIT Software and Services by a User in violation of this Agreement, Customer will immediately notify Spirit and will immediately terminate such Users' access and use of the SPIRIT Software and Services, and will change Customer's password.

**5.3 Content of Admin Section** Customer is responsible for all of its content used, uploaded or populated in the Admin Section and subsequently provided to Customer's Account Holders, including but not limited to the Data. Spirit exercises no control over, and accepts no responsibility for, the content of the Data. Customer and its Users will not upload as part of the Data any of the following types of information: (a) information protected under the privacy or security regulations issued pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and (b) personally identifiable information including (i) driver's license numbers, (ii) passport numbers, (iii) social security, tax ID or similar numbers, or (v) bank, checking, credit card, debit card, or other financial account numbers. Customer represents, warrants, covenants and agrees that (i) the Data does not infringe upon or misappropriate any third party Intellectual Property Rights or other proprietary right of a third party; (ii) Customer and its Users possess all rights and/or licenses to the Data as contemplated under this Agreement, including but not limited to the right to create, transfer, upload, store, access, use and modify all Data in connection with the Computing Services; (iii) the Data will not contain any violent, sexual, or other objectionable material, including, without limitation, any material intolerant, offensive or otherwise offensive material regarding race, sex, religion, nationality, disability, sexual orientation, or age, or any material that is illegal or that may give rise to civil liability on the part of Spirit of any sort; (iv) no

Data and/or any other data Customer provides to Spirit shall contain any viruses, Trojan horses, malware, spyware, adware or other disruptive software, or any software code which is designed to disrupt, damage, or perform unauthorized actions on a computer system, or which transmits data from Spirit's web servers or other computer systems of Spirit or any third party; and (v) Customer will use the SPIRIT Software and Computing Services in compliance with applicable laws, rules and regulations and in a manner that does not violate or infringe any rights of any third party. Customer will indemnify Spirit for any losses incurred as a result of such Data. Any Data that is in violation of any provision under this Agreement will be deleted by Spirit.

## **6. Fees and Terms of Payment**

**6.1. Fees** Unless the parties to this agreement agree otherwise in writing, Customer shall pay the applicable monthly fees and charges as set out at [getspirit.io/plans](https://getspirit.io/plans) for access to the SPIRIT Software and Services (collectively the "Monthly Fees"). At the time of registration, Customer shall pay pro rata for the remainder of the first month and for the following month. The Monthly Fee will then be billed automatically on the first of each month for the following month until such time as either party terminates the agreement in accordance with Section 8.

**6.2 Increasing Fees** From time to time, Spirit may increase and/or add new fees and charges to the Monthly Fees for any Services and Spirit will provide notice to Customer of such increase or additional fees, provided, however, the increased and/or new fees and changes will not apply during the month in which such notice is provided so long as Customer has paid the Monthly Fee for such month.

**6.3 Payment Method** Upon registration, Customer will be required to provide a credit card, which will be automatically billed on the first of each month. Customer will be responsible for updating the credit card and billing information as needed. Failure to update Customer's billing and/or credit card information within thirty (30) days will result in automatic termination of this Agreement under Section 8 and may result in permanent loss of all Data.

**6.4 Taxes** All fees and charges payable by Customer under this Agreement are exclusive of applicable taxes.

## **7. Temporary Suspension**

Spirit may suspend Customer or any User's right to access or use any portion or all of the SPIRIT Software or Services immediately upon notice to Customer if Spirit determines that: (a) Customer or any User is in breach of this Agreement, including if Customer is delinquent in paying any amounts due under this Agreement; (b) Customer's or any User's continued use of and access to any portion or all of the SPIRIT Software and/or Services may subject Spirit, or its affiliates, or any third party including but not limited to any Subcontractors, to liability; or (c) Customer has ceased to operate in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding. If Spirit suspends Customer's or User's right to access or use any portion or all of the SPIRIT Software and/or Services, Customer will remain responsible for all fees and charges incurred through the date of suspension and Customer will remain responsible for any applicable fees and charges for any SPIRIT Software and/or Services to which Customer or any Users continue to have access, as well as applicable data storage fees and charges. Spirit's right to suspend Customer's or any User's right to access or use the Services is in addition to our right to terminate this Agreement pursuant to Section 8.

## **8. Term and Termination**

**8.1 Term** This Agreement commences when you click the "SIGN UP" Button or check the box presented with this Agreement. The Agreement shall remain in force unless and until either party provides written notice of termination with at least thirty (30) days' notice.

**8.2 Termination by Either Party** Subject to Section 8.3, if either party breaches any of the terms of this Agreement, and such breach remains uncured for a period of thirty (30) days after having received written notification of such violation, then the aggrieved party may thereafter immediately terminate this Agreement by so notifying the other party in writing. Such termination shall not prejudice the rights



of the terminating party and such terminating party shall have all of the rights and remedies available to them in this Agreement, at law, in equity, or otherwise.

**8.3 Termination by Spirit** Spirit may, without prejudice to any other rights Spirit may have, terminate this Agreement immediately upon notice to Customer: (a) for cause, if Customer fails to pay any and all amounts due under this Agreement; (b) for cause, if any act or omission by Customer or any User results in a suspension described in Section 7; (c) for cause, if any act or omission by Customer or any User results in any breach of this Agreement related to the access and/or use of the SPIRIT Software or Services; (d) if Spirit believes providing the SPIRIT Software and/or Services could create a substantial economic or technical burden or material security risk for Spirit; (e) in order to comply with the law or requests of governmental entities; (f) if Spirit's relationship with a third party partner who provides software, services or other technology used to provide the Services expires, terminates or requires Spirit to change the manner in which Spirit provides the SPIRIT Software and/or Services or other technology as part of the Services; (g) if Spirit determines that Spirit's provision of any of the Services to Customer or Users becomes impractical or unfeasible for any legal or regulatory reason; or (h) Customer ceases to operate in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding.

**8.4 Termination by Customer** Customer may terminate this Agreement for any reason upon thirty (30) days' notice to Spirit by changing the settings in the Admin Section to "Unsubscribe." When Spirit is notified of the termination, Spirit reserves the right to contact Customer to confirm the termination. Customer is solely responsible for any changes made to the settings of their Admin Section, regardless of whether the changes are made by Customer, by any User, or any third-party.

**8.5 Effect of Termination or Expiration** Upon expiration or termination of this Agreement: (a) Customer, its Users, and Account Holders associated with Customer shall have no further access to the data residing or which resided on or in Spirit's database, including but not limited to the Data, (b) Customer and its Users shall have no further access to the SPIRIT Software and/or Services and any other

Intellectual Property Rights made available to Customer and Users during the course of this Agreement and shall and hereby do revert to Spirit; (c) Customer and all Users shall immediately cease all use of the SPIRIT Software, Services and any other Intellectual Property Rights made available to Customer and Users during the course of this Agreement; and (d) Customer remains responsible for all fees and charges incurred through the date of expiration or termination.

**8.6 Survival** Sections 3.3, 3.5, 8.5, 10, 12, 13, 15, and 16 shall survive any expiration or termination of this Agreement.

## **9. Audit**

Not more than once a year, Spirit will have the right to perform an audit to verify that Customer is using the SPIRIT Software and Services in compliance with this Agreement. That audit will be performed during normal business hours upon not less than ten (10) days prior written notice to Customer. That audit will be conducted at Spirit's sole cost and expense and will be subject to reasonable security and access restrictions. Customer will be permitted to have Customer personnel present during the audit.

## **10. Ownership**

As between Spirit and Customer, Spirit shall, and hereby does, own all right, title and interest (including but not limited to all Intellectual Property Rights) in and to the SPIRIT Software and all Services (including, for both the SPIRIT Software and Services, all methods, data analysis and evaluation tools, information systems, technology, report formats, computer programs, processes, and the like, as well as any updates, upgrades, new releases, modifications, improvements or enhancements of any kind made by or on behalf of Spirit, even if made at Customer's request), SPIRIT Marks, and all suggestions and feedback provided by Customer or a User to Spirit (collectively "Spirit Work Product"). Should any such indicia of ownership of the Spirit Work Product (or any portion thereof) become vested in Customer by operation of law, or otherwise, Customer agrees to assign, and hereby assigns, all such ownership to Spirit without further consideration or documentation. Customer covenants and agrees not to (and will ensure that its Users do not) use, attempt to obtain and/or register, in any country, any trademarks resembling or confusingly similar to the SPIRIT Marks. As between Spirit and

Customer, Customer owns all right, title and interest in and to the Data, subject to the license granted in Section 3.5.

## **11. Data Protection**

**11.1 Use of Personal Information** To the extent any User Information or any other information or data provided to Spirit by or on behalf of Customer constitutes Personal Information (as defined in the Spirit Privacy Policy), Customer hereby consents to Spirit's collection, storage, use, processing and disclosure of such information, and to the transfer of such information, in accordance with this Agreement and the Privacy Policy. Customer acknowledges and agrees that Spirit uses commercially reasonable administrative, technical, personnel, and physical security measures designed to safeguard such information against loss, theft and unauthorized use, disclosure, or modification. Customer acknowledges that Spirit participates in the safe harbor programs described in the Privacy Policy. Customer agrees that Spirit can use any User Information or any other information or data provided to Spirit by or on behalf of Customer, even if it constitutes Personal Information, to inform Customer about Spirit software updates/upgrades or new releases that are part of the Services.

**11.2 Authorization to Use Personal Information** Customer represents, warrants, covenants and agrees that Customer has permission of all Users and Account Holders to (a) transmit such Users and Account Holders individual personal data to Spirit and/or its Subcontractors; (b) allow Spirit to transmit such personal data to its Subcontractors; (c) allow Spirit and/or its Subcontractors to store this personal data on the web servers of Spirit and/or its Subcontractors; and (d) allow Spirit and/or its Subcontractors to processes this personal data in connection with the Services. To the extent necessary, Customer shall execute written agreements with its users relating to the provisions of this Section.

## **12. Disclaimers and Limitation of Liability**

**12.1 DISCLAIMERS** THE SPIRIT SOFTWARE AND SERVICES ARE PROVIDED BY SPIRIT TO CUSTOMER ON AN "AS IS" BASIS. SPIRIT MAKES NO REPRESENTATIONS OR WARRANTY OF ANY KIND, EITHER EXPRESS, IMPLIED, OR STATUTORY OR OTHERWISE REGARDING THE SPIRIT SOFTWARE OR SERVICES, INCLUDING, WITHOUT LIMITATION, WARRANTIES THAT THE SPIRIT SOFTWARE OR SERVICES ARE

FREE OF DEFECTS, UNINTERRUPTED, ERROR FREE, THAT THE SPIRIT SOFTWARE OR SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR THAT ANY CONTENT, INCLUDING BUT NOT LIMITED TO ANY DATA OR TICKET TRANSACTIONS OR SALES, WILL BE SECURE OF NOT OTHERWISE LOST OR DAMAGED. EXCEPT TO THE EXTENT PROHIBITED BY LAW, SPIRIT AND ITS SUBCONTRACTORS EXPRESSLY DISCLAIM AND CUSTOMER HEREBY EXPRESSLY WAIVES ALL WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. THIS DISCLAIMER CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT AND NO USE OF THE SPIRIT SOFTWARE OR SERVICES IS AUTHORIZED UNDER THIS AGREEMENT EXCEPT UNDER THIS DISCLAIMER.

**12.2 LIMITATION OF LIABILITY** UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, WHETHER TORT (INCLUDING NEGLIGENCE), CONTRACT, OR OTHERWISE, WILL SPIRIT (ITS SUCCESSORS, ASSIGNS, AFFILIATES AND/OR SUBCONTRACTORS) BE LIABLE TO CUSTOMER, ITS CUSTOMERS, USERS, ACCOUNT HOLDERS, OR ANY OTHER THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES, EVEN IF SUCH PARTY WAS INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. SPIRIT (ITS SUCCESSORS, ASSIGNS, AFFILIATES AND/OR SUBCONTRACTORS) WILL NOT BE LIABLE FOR ANY COMPENSATION, REIMBURSEMENT, OR DAMAGES ARISING IN CONNECTION WITH: (A) CUSTOMER'S OR ANY USER'S INABILITY TO USE THE SPIRIT SOFTWARE OR SERVICES, INCLUDING AS A RESULT OF ANY (I) TERMINATION OR SUSPENSION OF THIS AGREEMENT OR CUSTOMER'S OR ANY USER'S USE OF OR ACCESS TO THE SPIRIT SOFTWARE OR, (II) SPIRIT'S DISCONTINUATION OF ANY OR ALL OF THE SPIRIT SOFTWARE AND/OR SERVICES, OR, (III) ANY UNANTICIPATED OR UNSCHEDULED DOWNTIME OF ALL OR A PORTION OF THE SPIRIT SOFTWARE AND/OR SERVICES FOR ANY REASON, INCLUDING AS A RESULT OF POWER OUTAGES, SYSTEM FAILURES OR OTHER INTERRUPTIONS; (B) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; (C) ANY INVESTMENTS, EXPENDITURES, OR COMMITMENTS BY CUSTOMER IN CONNECTION WITH THIS AGREEMENT OR CUSTOMER'S USE OF OR ACCESS TO THE SPIRIT SOFTWARE OR SERVICES; OR (D) ANY UNAUTHORIZED ACCESS TO, ALTERATION OF, OR THE DELETION, DESTRUCTION, DAMAGE, LOSS OR FAILURE TO STORE ANY DATA OR OTHER DATA. SPIRIT'S (ITS SUCCESSORS, ASSIGNS, AFFILIATES AND/OR SUBCONTRACTORS) AGGREGATE LIABILITY UNDER

THIS AGREEMENT WILL BE LIMITED TO THE AMOUNT CUSTOMER ACTUALLY PAID SPIRIT UNDER THIS AGREEMENT FOR THE SERVICES THAT GAVE RISE TO THE CLAIM DURING THE 12 MONTHS PRECEDING THE CLAIM.

### **13. Indemnification**

Customer shall indemnify, defend with counsel reasonably acceptable to Spirit, and hold harmless Spirit and its successors and assigns and the directors, officers, employees, and agents of each and the Subcontractors (collectively, the "Licensor Group") from and against any and all demands, claims, actions, or causes of action, assessments, losses, damages, liabilities, costs, and expenses, including reasonable fees and expenses of counsel, other expenses of investigation, handling, and litigation, and settlement amounts, together with interest and penalties (collectively, a "Loss" or "Losses"), asserted against, resulting to, imposed upon, or incurred by the Licensor Group, directly or indirectly, by reason of, resulting from, or arising in connection with a third party claim concerning: (a) any breach of applicable law and/or any representation, warranty, covenant or agreement of Customer contained in or made pursuant to this Agreement; (b) Customer's or any User's or Account Holder's access to and use of any portion of the SPIRIT Software or Services; (c) any Data, including but not limited to any claims that the content uploaded to the SPIRIT Software or Services infringes or otherwise misappropriates any third party Intellectual Property Rights; and (d) any disputes between Customer and any Users or any Account Holders. Spirit will promptly notify Customer of any third party claim, provided, however, if Spirit's failure to promptly notify Customer of such claim will only affect Customer's indemnification obligations to the extent that such failure directly prejudices Customer's ability to defend the claim. Customer may, subject to Spirit's prior written consent, use counsel of Customer's choice to defend against any claim and Customer may settle the claim, provided, however, Customer must obtain Spirit's prior written consent before entering into any settlement. Spirit may, at any time, assume control of the defence and settlement of the claim.

### **14. Modifications to the Agreement**

Spirit may, at its discretion, modify this Agreement (including the Privacy Policy) at any time by posting a revised version on the Spirit's website at [getspirit.io](https://getspirit.io) or by otherwise notifying Customer by e-mail in accordance with Section 16.4. The modified terms will become effective upon posting or, if Spirit notifies Customer by

email, as stated in the email message. By continuing to use the Spirit Software and Services after the effective date of any modifications to this Agreement, Customer agrees to be bound, and is hereby bound, by the modified terms. It is Customer's responsibility to check Spirit's website regularly for modifications to this Agreement.

## **15. Confidentiality**

Spirit has no obligation of confidentiality for any content uploaded to the SPIRIT Software or Services by Customer, Users, or Account Holders.

## **16. Miscellaneous**

**16.1 Force Majeure** Spirit, its affiliates or Subcontractors are not liable for any delay or failure to perform any obligation under this Agreement where the delay or failure results from any cause beyond our reasonable control, including but not limited to acts of God, labor disputes or other industrial disturbances, systemic electrical, telecommunications, power blackouts, destruction of data lines, or other utility failures, earthquake, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism, or war.

**16.2 Independent Contractors** Nothing in this Agreement is intended to create a partnership or the relationship of principal and agent or employer and employee between the parties other than that of customer and independent contractor. Neither party has the authority or power to bind, to contract in the name of or to create a liability for the other in any way for any purpose. The relationship of Spirit and Customer under this Agreement is and shall remain that of independent contractors. Nothing under this Agreement shall be construed as creating any other relationship.

**16.3 Third Party Rights** Nothing in this Agreement shall confer or purport to confer upon any third parties any rights or benefits whatsoever.

**16.4 Notices** (a) To Customer. Spirit may provide any notice to Customer under this Agreement by: (i) posting a notice on the Spirit website at [getspirit.io](https://getspirit.io); or (ii) sending a message to the email address provided upon Registration or as updated in the "Settings" of the Admin Section. Notices Spirit provides by posting on the Spirit website will be effective upon posting and notices Spirit provide by email will be effective when Spirit sends the email. It is Customer's responsibility to keep the email address current. Customer will be deemed to have received any email sent to the email address then associated with the Admin Section when Spirit sends the email, whether or not Customer actually receive the email.

(b) To Spirit. To give Spirit notice under this Agreement, Customer must contact Spirit via email at [help@getspirit.io](mailto:help@getspirit.io).

**16.5 Law Governing the Agreement** This Agreement shall be governed in all respects (including matters of construction, validity, and performance) by the internal laws of the State of Georgia without giving effect to conflicts of law principles. The parties irrevocably submit to the exclusive jurisdiction of the federal courts of the United States and the state courts of Georgia, with regard to any action, suit, proceeding, claim or counterclaim initiated under this Agreement. Spirit may seek injunctive or other relief in any state, federal, or national court of competent jurisdiction for any actual or alleged infringement of Spirit's, its affiliates, or any third party's (including Subcontractors') Intellectual Property Rights or other proprietary rights.

**16.6 Severability** In the event any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been part of this Agreement.

**16.7 Waiver** All waivers of any rights or breach hereunder must be in writing to be effective, and no failure to enforce any right or provision shall be deemed to be a waiver of the same or other right or provision on that or any other occasion.

**16.8 Assignment** Customer shall have no right to assign or transfer this Agreement (including by asset purchase, stock purchase, merger, acquisition, change of control or the like) and any attempt to do so without such prior consent shall be void. This Agreement will bind and inure to the benefit of the parties and their respective successors and permitted assigns.

**16.9 Entire Agreement** This Agreement and the [Privacy Policy](#) constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous representations, understandings, agreements, or communications between Spirit and Customer, whether written or verbal, regarding the subject matter of this Agreement. Spirit will not be bound by, and specifically objects to, any term, condition or other provision which is different from or in addition to the provisions of this Agreement (whether or not it would materially alter this Agreement) and which is submitted by Customer in any order, receipt, acceptance, confirmation, correspondence or other document.