

## SPIRIT DSP

### PURCHASE AND LICENSE AGREEMENT

This Purchase and License Agreement (the "Agreement") is made and entered into by and between you and the company you represent ("Buyer" or "you") and Spirit DSP ("Spirit DSP").

IMPORTANT - READ THIS AGREEMENT AND THE DOCUMENTS INCORPORATED BY REFERENCE HEREIN CAREFULLY BEFORE DOWNLOADING, INSTALLING OR USING ANY PART OF THE SPIRIT DSP (AS DEFINED BELOW). UNLESS OTHERWISE AGREED TO IN WRITING BETWEEN YOU AND SPIRIT DSP, THIS IS A LEGAL DOCUMENT THAT STATES THE TERMS AND CONDITIONS GOVERNING YOUR PURCHASE AND USE OF THE SPIRIT DSP. SPIRIT DSP AGREES TO LICENSE THE SPIRIT DSP TO YOU ONLY IF YOU ACCEPT ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. BY CLICKING YOUR ACCEPTANCE OF THIS AGREEMENT DURING DOWNLOAD, REGISTRATION AND/OR INSTALLATION OF THE SPIRIT DSP , OR BY USING ANY SPIRIT DSP , OR PART THEREOF, YOU CERTIFY THAT YOU ARE A DULY AUTHORIZED REPRESENTATIVE CAPABLE OF LEGALLY BINDING THE COMPANY YOU REPRESENT, AND YOU AGREE TO BE LEGALLY BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, DO NOT DOWNLOAD, REGISTER, INSTALL OR USE THE SPIRIT DSP. IF THESE TERMS ARE CONSIDERED AN OFFER, ACCEPTANCE IS EXPRESSLY LIMITED TO THESE TERMS.

#### I. DEFINITIONS

"Appliance" means the Hardware together with the Spirit DSP included therein.

"Community Edition" shall mean freely distributed, unsupported, community releases made available by Spirit DSP.

"Documentation" means any user instructions, manuals, and technical specifications regarding the use of the applicable Spirit DSP that are provided by Spirit DSP to Buyer in connection with the purchase of the Spirit DSP.

"Hardware" means any tangible item of equipment sold by Spirit DSP to Buyer under this Agreement as part of an Appliance.

"Network Device" means any device that mediates data in a computer network, including without limitation, any gateway, router or similar device.

"Pre-Production Software" means any version or edition of the Spirit DSP designated as alpha, beta, pre-production or the like.

"Subscription" means licenses to the Spirit DSP, Technical Support and access to the Spirit DSP Website for which Buyer has paid the applicable fees.

"Subscription Editions" means the editions of the Spirit DSP supported and made available by Spirit DSP to customers that pay the applicable fees.

"Technical Support" means the technical support services provided by Spirit DSP in connection with the purchase by Buyer of Subscription Editions as specified in the applicable order form.

"Update(s)" means bug fixes, patches, modifications, and enhancements to the Spirit DSP, if and when made generally available by Spirit DSP to its licensees who have purchased Technical Support with respect to the Spirit DSP. Updates shall include forward numbered versions of the Spirit DSP whether

the numeric change of the version appears to the right or left of the decimal point (e.g. version 6.1, 6.2 or 7.0).

"Spirit DSP" means the Spirit DSP product purchased by Buyer (either on a standalone basis or as part of an Appliance) and for which Buyer has purchased a Subscription under this Agreement, including any Updates thereto.

"Spirit DSP Website" means the Spirit DSP web portal for (i) permitting purchases of the Spirit DSP, and (ii) providing access to the Spirit DSP, Documentation, support and other materials and information made available by Spirit DSP to its customers.

## II. TERMS AND CONDITIONS

### 1. Purchase of the Spirit DSP and Appliances.

1.1 Public Licenses. Portions of the Spirit DSP are licensed to Buyer under public licenses (including the GNU General Public License ("GPL"), the GNU Lesser General Public License ("LGPL"), and other public licenses, each a "public license"). Buyer's rights and obligations with respect to various components of the Spirit DSP are as set forth in the applicable public license and this Agreement. The electronic media downloaded from the Spirit DSP Website will identify the license that applies to certain application packages in the Spirit DSP, and a copy of each applicable license will be provided to Buyer in the source code of those portions of the Spirit DSP. Buyer must either agree to the terms of each applicable public license or it must not exercise such licensed rights. For clarity, this Agreement is not intended to change or restrict the terms of any public license, and Spirit DSP does not seek to restrict, or receive compensation for, the copying or redistribution of publicly licensed code which is otherwise freely redistributable to third parties (and not otherwise restricted by federal trademark or other laws).

1.2 Spirit DSP License. Subject to all the terms of this Agreement and payment of all fees, with respect to the Spirit DSP designated on a purchase order that is not offered under a public license, Company grants Buyer a limited, non-sublicensable, non-exclusive, non-transferable license for the duration of the applicable Subscription term, to use internally the number of instances of the Spirit DSP purchased by Buyer on equipment owned or controlled by Buyer, subject to any applicable limitations on the number of core processors. Buyer will not (and will not allow any third party to) (i) reverse engineer or attempt to discover any source code or underlying ideas or algorithms of any Spirit DSP (except to the extent that applicable law or any public license prohibits reverse engineering restrictions), (ii) use the Spirit DSP outside the scope of the licenses granted herein, provide, lease, lend, use for timesharing or service bureau purposes or (except as expressly required and contemplated by the Documentation) otherwise use or allow others to use the Spirit DSP for the benefit of any third party. All the limitations and restrictions on the Spirit DSP in this Agreement also apply to Documentation.

1.3 Spirit DSP Subscription Purchase. For Spirit DSP sold on a standalone basis, subscriptions are sold per instance per year; provided that all Subscriptions purchased must be of the same Subscription Edition (i.e., all Subscriptions must either be all Basic, all Enterprise or all Premium Editions). Further, Buyer shall not utilize a paid Subscription Edition to pass traffic in a network with an unpaid Community Edition. Buyer agrees to pay Spirit DSP the applicable Subscription Fee for each instance of the Spirit DSP used by Buyer. Buyer agrees that if the actual number of instances of the Spirit DSP used by Buyer exceeds the number of purchased Subscriptions, Buyer shall promptly notify Spirit DSP thereof and pay the Subscription Fees applicable to such usage beginning from the first date of such utilization. Subscriptions are not transferable between Network Devices except that Buyer may install the Spirit DSP on a replacement Network Device provided that Buyer does not utilize a single Subscription to the Spirit DSP on more than one Network Device concurrently.

1.5 Lab, Test & Development Use. Certain Subscriptions to the Spirit DSP may be offered at higher discount levels and be designated by Spirit DSP as "Lab, Test and Development Subscriptions." Buyer's use of Lab, Test and Development Subscriptions is restricted to non-production environments. Buyer can only deploy these licenses in a production type environment with Spirit DSP's prior written approval.

1.6 Pre-Production Software. Notwithstanding anything else in this Agreement to the contrary, all Spirit DSP Pre-Production is provided by Spirit DSP "AS IS" without warranty of any kind, and no warranty, indemnification, maintenance or support obligations of Spirit DSP will apply. Pre-production is not intended for use in a production environment. And any and all use of Pre-Production is at Buyer's sole risk.

1.7 Co-Terminus Right. Spirit DSP reserves the right, and Buyer agrees that Spirit DSP may, in its sole discretion, adjust the termination dates of Subscriptions purchased by Buyer to make such termination dates co-terminus. Buyer's fees will be pro-rated to the extent of any reduction in a term of a Subscription resulting from such adjustment.

1.8 Spirit DSP Delivery. Upon acceptance of a purchase order from Buyer or confirmation of payment by Buyer, Spirit DSP shall make the Spirit DSP available for download by Buyer. The Spirit DSP and Documentation licensed by Buyer pursuant to this Agreement will be delivered electronically to Buyer, unless otherwise agreed by Spirit DSP and Buyer. The Spirit DSP and Documentation shall be deemed "Delivered" and "Accepted" when Spirit DSP makes the Spirit DSP or Documentation available to Buyer by issuing to Buyer a password for electronically accessing the Spirit DSP or Documentation.

1.9 Appliance Shipment; Risk of Loss. Unless otherwise specified in writing, Appliances are sold F.O.B. Spirit DSP's location. Risk of loss and title to the Hardware will pass to Buyer, and delivery will have been deemed to have occurred, upon Spirit DSP's delivery to the F.O.B. point, regardless of the terms of payment or form of bill of lading, or the mode of or payment for. Title to the Spirit DSP shall not be transferred, except with regard to the media containing the Spirit DSP.

## 2. Warranties; Disclaimers.

2.1 Spirit DSP Limited Warranty. Spirit DSP warrants, for a period of ninety (90) days after the Spirit DSP is Delivered, that (i) the physical media which contains the Spirit DSP, if any, or the downloadable file containing the Spirit DSP received from the Spirit DSP Website, will be free from defects in material or workmanship and will be readable by industry standard devices and (ii) the Spirit DSP will perform in substantial accordance with its Documentation. This warranty will not apply with regard to Updates or backup copies thereof. Spirit DSP warrants the Spirit DSP to Buyer only, and any purported assignment of the warranty extended under this Agreement shall be null and void.

2.2 Manufacturer Hardware Warranties. Spirit DSP hereby assigns to Buyer those warranties provided by the manufacturer of the Hardware purchased by Buyer hereunder. Such warranties pass through directly to Buyer, and Spirit DSP shall have no liability or responsibility for fulfilling the terms of any Hardware manufacturer warranties. The only remedies for breach of any such Hardware warranties shall be those remedies specifically provided by the manufacturer of the Hardware with respect to which such warranties apply. Buyer hereby agrees to look solely to the manufacturer of the Hardware for performance, and/or implementation, of any remedies provided by the manufacturer for breach of such warranties. Buyer agrees to release and hold harmless Spirit DSP from any and all claims relating to breach of Hardware manufacturer warranties.

2.3 Exclusions. Spirit DSP will not have any liability or obligation for any claim or action as a result of (a) use of the Spirit DSP on any hardware or in combination with any not approved by Spirit DSP, (b) Buyer's negligent, accidental, or other improper use of the Spirit DSP or Hardware (including without limitation any use in breach of Section 1.2), (c) Buyer's or a third party's, direct or indirect,

modifications, alterations, upgrades or repairs of the Spirit DSP or Hardware, unless performed with the prior written consent of Spirit DSP or unless approved by Spirit DSP in writing, or (d) the installation of the Spirit DSP not in accordance with Spirit DSP's published instructions.

2.4 Exclusive Warranty Remedies. Spirit DSP's sole obligation and Buyer's exclusive remedy for a breach of any warranty provided by Spirit DSP herein will be limited to error correction or product replacement, or if neither is, in Spirit DSP's opinion, commercially feasible, refund of the Subscription Fee received by Spirit DSP from Buyer for the particular Spirit DSP in breach of the limited warranty.

2.5 Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 2, SPIRIT DSP MAKES NO WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, WITH REGARD TO THE SUBJECT MATTER OF THIS AGREEMENT, AND SPIRIT DSP HEREBY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY, ACCURACY, RELIABILITY, PERFORMANCE, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.

### 3. Terms and Conditions for all Spirit DSP.

3.1 License Grant to the Documentation. All Documentation is copyrighted Spirit DSP, Inc. Subject to the terms and conditions of the Agreement, Spirit DSP hereby grants to Buyer a limited, non-exclusive and non-transferable license to use the Documentation in connection with the Spirit DSP and to copy the Documentation only for internal use by its employees or consultants pursuant to this Agreement. Spirit DSP retains all rights in the Documentation not expressly granted to Buyer. Except as set forth in this Section 3.1, Buyer shall not itself, or through any parent, subsidiary, affiliate, agent or other third party, or permit any third party to (i) sell, lease, license, transfer, sublicense or in any way distribute the Documentation, (ii) provide, disclose, divulge or make available to, or permit use of the Documentation by any third party without Spirit DSP's prior written consent or (iii) take any action that would cause the Documentation, or any portion thereof, to be placed in the public domain.

### 3.2 Fees and Terms of Payment.

(a) Terms of Payment. Payment due Spirit DSP shall accrue on the date the Spirit DSP and, if applicable, Hardware, are Delivered to Buyer. All amounts due pursuant to this Agreement shall be paid within thirty (30) days of the date of the applicable invoice in United States Dollars. Except as expressly provided herein, all fees paid are non-refundable. For any amounts payable by Buyer hereunder that remain unpaid after the due date of an invoice, Buyer shall pay upon demand interest equal to one and one-half percent (1.5%) per month or the highest legal rate, whichever is less, from the due date until such amount is paid. Buyer acknowledges that its failure to pay timely any of the amounts owing (including during any cure period provided for in this Agreement), or any portion thereof, shall be a material breach of this Agreement for which Spirit DSP may, in addition to pursuing all other remedies, terminate this Agreement and all Subscriptions and licenses granted hereunder.

(b) Taxes. All stated prices are exclusive of any taxes, fees, and duties or other amounts, however designated, and including without limitation value added and withholding taxes that are levied or based upon such charges, or upon this Agreement. If any applicable law requires Buyer to withhold amounts from any payments hereunder, then Buyer will effect such withholding, remit such amounts to the appropriate taxing authorities and promptly furnish tax receipts evidencing the payments of such amounts.

3.3 Intellectual Property Ownership. Except to the extent licenses are expressly granted under the terms of a public license, Spirit DSP, or its licensors or suppliers, retain all right, title and interest to the Spirit DSP, Documentation, and any copyright, patents trademarks or other intellectual property or proprietary rights embodied in or used in connection therewith. All references in this Agreement to the "sale" of or "resale" of, "purchase" of or "selling" (or other similar terms) of any Spirit DSP shall mean the sale of a license to such Spirit DSP. All rights not expressly granted hereunder are reserved to Spirit

DSP. Buyer will not remove, alter, cover or obfuscate any copyright notices or other proprietary rights notices placed on or embedded in the Spirit DSP, Documentation or Hardware.

3.4 Remote Technical Support. Spirit DSP shall provide Remote Technical Support via phone/email for production environments and use reasonable commercial efforts to resolve issues that may arise by providing updates or workarounds.

3.5 Infringement and Indemnification.

(a) Spirit DSP Indemnity. Subject to each of the other provisions hereof, Spirit DSP (at its expense) shall (i) defend or, at its option, settle, any claim brought against Buyer by a third party alleging that any program contained in the Spirit DSP (provided that such program is both (A) solely copyrighted by Spirit DSP and (B) licensed under this Agreement) infringes or violates any United States patent, copyright, trademark or trade secret of any third party and (ii) pay any final judgments awarded or settlements entered into ("Damages"); provided that (1) such claims are made during a period when Buyer has a Subscription for the applicable Spirit DSP, (2) at the time that Buyer purchases the applicable Subscription, Buyer is not aware of any actual, pending or threatened claims that may give rise to Spirit DSP's indemnity obligations under this Agreement, and (3) Buyer provides Spirit DSP with (x) prompt written notice of such claim, (y) sole control and authority over the defense and settlement of such claim, and (z) proper and full information and reasonable assistance to defend and/or settle any such claim. This Section 3.5 states Spirit DSP's sole obligation and Buyer's exclusive remedy with respect to any infringement of intellectual property rights.

(b) Exclusions. Spirit DSP will not have any obligation pursuant to this Section 3.5 for any claim to the extent such claim arises as a result of (i) use of the Spirit DSP in connection or in combination with equipment, devices, or not provided by Spirit DSP (but only to the extent that the Spirit DSP alone would not have infringed); (ii) Spirit DSP developed or modified in compliance with Buyer's or Buyer's authorized design requirements or specifications; (iii) the use of Spirit DSP other than as permitted under this Agreement or in a manner for which it was not intended; (iv) use or distribution of other than the most current release or version of the Spirit DSP (if such infringement or claim would have been prevented by the use of such release or version) or (v) the installation or configuration of the Spirit DSP not in accordance with Spirit DSP's published instructions.

(c) Buyer Indemnity. Buyer shall indemnify and hold harmless Spirit DSP from any third party claims, damages, liabilities, costs and fees (including reasonable attorney fees) arising from Buyer's use of the Spirit DSP not in accordance with the applicable Documentation as well as from Buyer's failure to comply with any term of this Agreement.

3.6 Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT WITH RESPECT TO (1) CLAIMS FOR BODILY INJURY, (2) GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, (3) EITHER PARTY'S BREACH OF SECTION 3.7 OR (4) CLAIMS BASED UPON BUYER'S BREACH OF THE LICENSE RESTRICTIONS SET FORTH IN THIS AGREEMENT OR ANY APPLICABLE LICENSE, WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT AND UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY, (A) IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OR CORRUPTION OF DATA, COST OF COVER, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES OR INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, AND (B) UNDER NO CIRCUMSTANCES SHALL EITHER PARTY'S AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED THE AGGREGATE OF THE FEES PAID BY BUYER (PLUS AMOUNTS PAYABLE) WITH RESPECT TO THE APPLICABLE PRODUCT COMPONENT DURING THE SIX MONTH PERIOD PRIOR TO THE CAUSE OF ACTION. This Section 3.6 allocates risks under this Agreement between Buyer and Spirit DSP. Spirit DSP's pricing reflects this allocation of risks and limitation of liability. The foregoing limitations of liability (1) are independent of any exclusive remedies set forth in this Agreement and (2) shall apply even if any remedy available to Buyer hereunder is found to have failed of its essential purpose.

3.7 Confidential Information. "Confidential Information" means any information disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects, which is designated as "Confidential," "Proprietary" or some similar designation or, the nature of the information and the manner of disclosure are such that a reasonable person would understand it to be confidential. Confidential Information may also include information disclosed to a disclosing party by third parties. Confidential Information will not, however, include any information which (a) was publicly known and made generally available in the public domain prior to the time of disclosure by the disclosing party; (b) becomes publicly known and made generally available after disclosure by the disclosing party to the receiving party through no action or inaction of the receiving party; (c) is already in the possession of the receiving party at the time of disclosure by the disclosing party as shown by the receiving party's files and records immediately prior to the time of disclosure; (d) is obtained by the receiving party from a third party without a breach of such third party's obligations of confidentiality; or (e) is independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information, as shown by document and other competent evidence in the receiving party's possession. The receiving party may make disclosures required by law or court order provided the receiving party uses diligent reasonable efforts to limit disclosure and to obtain confidential treatment or a protective order and allows the disclosing party to participate in the proceeding. Confidential Information of Spirit DSP will include without limitation the Documentation. Each party agrees not to use any Confidential Information of the other party for any purpose except to exercise its rights and perform its obligations under this Agreement. Each party agrees not to disclose any Confidential Information of the other party to third parties or to such party's employees, except to those employees of the receiving party with a need to know. Except as expressly permitted under an applicable public license, neither party shall reverse engineer, disassemble or decompile any prototypes, or other tangible objects which embody the other party's Confidential Information and which are provided to the party hereunder. Each party agrees that it shall take reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information of the other party. Without limiting the foregoing, each party shall take at least those measures that it takes to protect its own most highly confidential information and shall ensure that its employees who have access to Confidential Information of the other party have signed a non-use and non-disclosure agreement in content similar to the provisions hereof, prior to any disclosure of Confidential Information to such employees. Neither party shall make any copies of the Confidential Information of the other party unless the same are previously approved in writing by the other party. Each party shall reproduce the other party's proprietary rights notices on any such approved copies, in the same manner in which such notices were set forth in or on the original. Upon the termination of this Agreement, each party shall either destroy or deliver to the other party all of such other party's Confidential Information that such party may have in its possession or control.

3.8 Termination. This Agreement and all licenses will terminate thirty days (ten days in the case of non-payment and immediately in the case of a breach of Section 1) after notice of any breach by Buyer remaining uncured at the end of such notice period. Upon termination, Buyer shall immediately cease use of the Spirit DSP and, at the option of Spirit DSP, either promptly return to Spirit DSP all copies of the Spirit DSP in Buyer's possession or destroy all such copies and certify in writing that all such copies have been returned or destroyed. Termination is not an exclusive remedy and all other remedies will be available whether or not termination occurs.

3.9 Audit. Upon reasonable notice, Spirit DSP shall have the right to audit and inspect Buyer's usage of the Spirit DSP to verify Buyer's compliance with terms of this Agreement (including all payment terms) during Buyer's normal business hours and in a manner that minimizes disruption to Buyer's business. Buyer shall promptly remedy any underpayments that are discovered, and if any underpayment exceeds 5% of the amount owed over the audited period, then Buyer shall reimburse Spirit DSP for the costs of the audit.

3.10 Miscellaneous.

(a) Assignment. Neither this Agreement nor any rights under this Agreement may be assigned or otherwise transferred by Buyer without the prior written consent of Spirit DSP, which consent will not be unreasonably withheld. Spirit DSP may assign this Agreement without consent to any successor to all or substantially all of its assets or business. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns.

(b) Notices. Any notices under this Agreement will be sent by U.S. mail or by nationally recognized overnight express courier, to the other party's principal place of business and shall be sent to the attention of the office of General Counsel.

(c) Survival of Provisions. Those provisions, which by their nature, survive termination shall continue after termination or expiration of this Agreement.

(d) Force Majeure. Neither party will incur any liability to the other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement if such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the control and without negligence of the parties.

(e) Integration/Severability. This Agreement (including the order form(s) and any addenda hereto) contains the entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all previous communications, representations, understandings and agreements, either oral or written, between the parties with respect to said subject matter. This Agreement may not be amended, except by a writing signed by both parties. No terms, provisions or conditions of any purchase order, acknowledgement or other business form that Buyer may use in connection with the acquisition or licensing of the Spirit DSP will have any effect on the rights, duties or obligations of the parties under, or otherwise modify, this Agreement, regardless of any failure of Spirit DSP to object to such terms, provisions or conditions. If any provision of this Agreement is held to be void, invalid, unenforceable or illegal, the other provisions shall continue in full force and effect.

(f) Reference. During the term of this Agreement, Buyer agrees: (a) to speak in good faith with media and/or Spirit DSP customers or prospects from time to time about its use of Spirit DSP products and services (subject to reasonable limits on quantity and mutually agreed content); (b) to make appropriate personnel available to be interviewed for a Spirit DSP case study that describes Buyer's successful use of the Spirit DSP, and Spirit DSP shall have the right to freely publish such case study, subject to Buyer's approval (which shall not be unreasonably withheld or delayed); and (c) that Spirit DSP may issue a press release relating to Buyer's Subscription to the Spirit DSP, subject to Buyer's approval (which shall not be unreasonably withheld or delayed).

Downloading, Installing or Using the Spirit DSP is deemed acceptance of these terms and conditions.