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9.2 C SPIRE shall promptly notify You of any claim subject to indemnification; provided that C SPIRE's failure to do so shall not affect Your obligations hereunder, except to the extent that C SPIRE's failure to promptly notify You materially delays or prejudices Your ability to defend the claim. At C SPIRE's option, You will have the right to defend against any such claim with counsel of Your own choosing (subject to C SPIRE's written consent) and to settle such claim as You deem appropriate, provided that You shall not enter into any settlement without C SPIRE's prior written consent and provided that C SPIRE may, at any time, elect to take over control of the defense and settlement of the claim.

10. Indemnification by C SPIRE

Notwithstanding C SPIRE's disclaimer of any warranty of non-infringement as set forth in Section 7 above, in special circumstances, in C SPIRE's sole discretion, C SPIRE may choose to indemnify You in accordance with the provisions of this Section 10.

10.1 **Indemnification.** C SPIRE may defend or settle, at its option and expense, any action brought by a third party against You, only to the extent such action arises from any third party claim brought against You alleging that the Software infringes any patent, copyright, trademark, trade secret, or other intellectual property right of any third party (the "**IP Claim**"), and may pay all costs, liabilities, damages and legal fees finally awarded against You in, or paid in settlement of, such action.

10.2 **Remedy by C SPIRE.** In the event that any Software or portion thereof is held, or in C SPIRE's reasonable opinion may be held, to constitute an infringement, C SPIRE, at its option and expense, may either (i) obtain for You the right to continue to use such Software as contemplated herein, (ii) modify such Software so that it becomes non-infringing, but without materially altering its functionality, (iii) replace such Software with a functionally equivalent non infringing Product, or (iv) terminate this Agreement and provide you with a refund in accordance with Section 6.2 above.

10.3 **Exceptions.** The foregoing does not apply to claims to the extent arising from: (i) the combination of a Software with other products not supplied by or on behalf of C SPIRE where such claim would not have arisen from the use of the Software standing alone, (ii) compliance by C SPIRE with Your specifications, (iii) any modification of the Software not made by or on behalf of C SPIRE, where such claim would not have arisen but for such modification, or (iv) where You continue an activity where such claim would not have arisen but for such activity after having

received and had a commercially reasonable time to install modifications from C SPIRE that would have completely avoided the activity.

10.4 Entire Liability. This section 10 states the entire liability of C SPIRE and Your exclusive remedy for any proceedings or claims that the Software infringes or misappropriates a third party's intellectual property, in respect of which C SPIRE chooses to provide indemnification.

10.5 Requirements for Indemnity. You agrees to provide C SPIRE with (i) prompt written notice of the IP Claim giving rise to C SPIRE's indemnity option hereunder,

(ii) sole control over the defense or settlement of such claim or action, if C SPIRE so requests (provided that C SPIRE shall not, without Your prior written consent, settle any such claim or action if such settlement contains a stipulation to or admission or acknowledgment of any liability or wrongdoing on Your part), and (iii) reasonable information and assistance in the defense and/or settlement any such claim or action at C SPIRE's option and expense.

11. Equipment

You agree that any and all Equipment, including devices, placed on Your premises shall at all times be and remain the sole property of C SPIRE. C SPIRE may retake possession of any of or disable its Equipment at any time in its sole discretion, and You shall provide C SPIRE with access to Your premises during regular business hours and upon reasonable notice to allow C SPIRE to maintain, repair, replace, and remove any C SPIRE Equipment. You shall promptly execute and deliver to C SPIRE such further documents and take such further actions as C SPIRE may request in order to document C SPIRE'S ownership of any of its Equipment located on Your premises. All of C SPIRE'S rights hereunder, including its right to retake possession of or disable its Equipment, shall survive the termination of this Agreement. You shall not tamper with the Equipment, or modify its configuration without C SPIRE'S prior written approval. C SPIRE reserves the right to terminate Your service should You tamper with the Equipment or modify its configuration without C SPIRE'S prior written approval. Your sole remedy for any defective or non-performing Equipment shall be the repair or replacement of the Equipment, at C SPIRE's sole discretion. The Limitation of Liability provisions in Section 8 herein apply to any Equipment placed on Your premises, including any loss of data caused by (a) Equipment failure or malfunction; (b) loss of power to you; (c) outage of, or termination of service with or by Your internet service provider and/or broadband provider; (d) Your acts or omissions or the acts or omissions of any person using the Equipment; or (e) any other cause that is beyond C SPIRE's control, including, but not limited to, failure of or defect in any Equipment, the inability of service connections to be completed, or the degradation of service quality, when any such data loss occurs prior to the data being transported to cloud storage.

12. Miscellaneous Provisions

12.1 The Software may be subject to export control laws of the State of Israel and/or may be subject to additional export control laws applicable to You or in Your jurisdiction. You shall not ship, transfer, or export the Software into any country, or make available or use the Software in any manner, prohibited by law. You warrant and agree that You are not: (i) located in, under the control of, or a national or resident of Cuba, Iran, North Korea, Syria or Sudan, or (ii) on the U.S Treasury Department list of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Orders.

12.2 This agreement will be governed by and construed in accordance with the laws of the State of Mississippi, without giving *effect* to any conflict of laws and provisions that would require the application of the laws of any other jurisdiction. The parties hereby expressly reject any application to this Agreement of (a) the United Nations Convention on Contracts for the International Sale of Goods; and (b) the 1974 Convention on the Limitation Period in the International Sale of Goods, as amended by that certain Protocol, done at Vienna on April 11, 1980.

12.3 All disputes arising out of this Agreement will be subject to the exclusive jurisdiction of the federal and state courts located in Jackson, Mississippi, USA, and the parties agree and submit to the personal and exclusive jurisdiction and venue of these courts, except that nothing will prohibit C SPIRE from instituting an action in any court of competent jurisdiction to obtain injunctive relief or protect or enforce its intellectual property rights.

12.4 The failure of C SPIRE to exercise or enforce any right or provision of this Agreement does not constitute a waiver of such right or provision. If for any reason a court of competent jurisdiction finds any provision or portion of this Agreement to be unenforceable, the remainder of this Agreement will continue in full force and effect.

12.5 This Agreement constitutes the entire agreement between C SPIRE and You with respect to the subject matter hereof and supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter. Any waiver of any provision of this Agreement will be effective only if in writing and signed by C SPIRE.

12.6 You may not assign or transfer any of Your rights or obligations under this Agreement to a third party without the prior written consent of C SPIRE. C SPIRE may freely assign this Agreement. Any attempted assignment or transfer in violation of the foregoing will be void.