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|----------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------|
| <b>STATE OF NORTH CAROLINA</b><br><br><b>DEPARTMENT OF TRANSPORTATION</b><br>Integrated Mobility Division                                          | <b>REQUEST FOR BEST AND FINAL OFFER ONE / 54-12008772-CM-BAFO1</b> |
|                                                                                                                                                    | <b>Offers will be received until: January 8, 2025 12:00 p.m.</b>   |
|                                                                                                                                                    | <b>Issue Date:</b> December 31, 2024                               |
| <b>Refer <u>ALL</u> inquiries regarding this BAFO to:</b><br><br>Thomas Busshart<br><a href="mailto:tjbusshart@ncdot.gov">tjbusshart@ncdot.gov</a> | <b>Commodity Number:</b> 920                                       |
|                                                                                                                                                    | <b>Description:</b> Transit Software Solution                      |
|                                                                                                                                                    | <b>Using Agency:</b> NCDOT                                         |
| <b>See page 2 for mailing instructions.</b>                                                                                                        | <b>Requisition No.:</b> 12008772                                   |

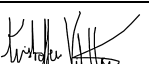
### **NOTICE TO VENDOR**

Offers, subject to the conditions made a part hereof, will be received via email at [tjbusshart@ncdot.gov](mailto:tjbusshart@ncdot.gov) until **12:00 p.m. EST** on the day of opening and then opened, for furnishing and delivering the goods and services as described herein. Refer to page 2 for proper mailing instructions. Bids submitted via facsimile (fax) machine in response to this Best and Final Offer (BAFO) will not be accepted. Bids are subject to rejection unless submitted on this form.

### **EXECUTION**

In compliance with this Request for Best and Final Offer (BAFO), and subject to all the conditions herein, the undersigned offers and agrees to furnish any or all goods and services which are offered, at the prices agreed upon and within the time specified herein. Pursuant to N.C.G.S. §143B-1354 and under penalty of perjury, the undersigned Vendor certifies that this offer has not been arrived at collusively or otherwise in violation of Federal or North Carolina law and this offer is made without prior understanding, agreement, or connection with any firm, corporation, or person submitting an offer for the same commodity, and is in all respects fair and without collusion of fraud.

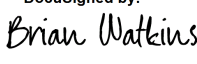
**Failure to execute/sign offer prior to submittal shall render offer invalid. Late offers are not acceptable.**

|                                                                                                                     |                                |                                                                                |
|---------------------------------------------------------------------------------------------------------------------|--------------------------------|--------------------------------------------------------------------------------|
| OFFEROR: Spare Labs, Inc.                                                                                           |                                |                                                                                |
| STREET ADDRESS: 815 West Hastings Street, STE 810                                                                   | P.O. BOX:                      | ZIP:                                                                           |
| CITY & STATE & ZIP: Vancouver, British Columbia, V6C1B4                                                             | TELEPHONE NO:<br>855-551-0585  | TOLL FREE TEL. NO                                                              |
| <b>PRINT NAME &amp; TITLE OF PERSON SIGNING:</b><br>Kristoffer Vik Hansen - Chief Executive Officer                 | FAX NUMBER:                    |                                                                                |
| <b>AUTHORIZED SIGNATURE:</b><br> | <b>DATE:</b><br>12 / 31 / 2024 | E-MAIL: <a href="mailto:kristoffer@sparelabs.com">kristoffer@sparelabs.com</a> |

Offer valid for forty-five (45) days from date of offer opening unless otherwise stated here: \_\_\_\_ days.

### **ACCEPTANCE OF OFFER**

If the State accepts any or all parts of this offer, an authorized representative of NC Department of Transportation shall affix his/her signature to the Vendor's response to this Request for BAFO. The acceptance shall include the response to this BAFO, any provisions and requirements of the original Request for Proposal (RFP) which have not been superseded by this BAFO and the Department of Information Technology Terms and Conditions. These documents shall then constitute the written agreement between the parties. A copy of this acceptance will be forwarded to the successful vendor(s).

|                                                                                                              |                                                                                                       |
|--------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|
| <b>FOR STATE USE ONLY</b>                                                                                    | 02/13/2025                                                                                            |
| Offer accepted and contract awarded this _____ day of _____, 20____, as indicated on attached certification, |                                                                                                       |
| Brian Watkins                                                                                                | DocuSigned by:<br> |
| by _____                                                                                                     | C9736C073AAC4D9... (Authorized representative of NC Department of Transportation).                    |

Brian Watkins

**DELIVERY INSTRUCTIONS:**

Deliver one (1) signed original executed offer to [tjbusshart@ncdot.gov](mailto:tjbusshart@ncdot.gov). The files must not be password-protected and must be capable of being copied to other media.

It is the responsibility of the Vendor to deliver the offer via electronic mail by the specified time and date of opening, regardless of the method of delivery. Address email and include RFP 54-12008772-CM-BAFO1.

| DELIVER TO:                                                                                                                                            |
|--------------------------------------------------------------------------------------------------------------------------------------------------------|
| RFP 54-12008772-CM-BAFO1<br>NC Department of Transportation<br>Attn: Thomas Busshart<br><a href="mailto:tjbusshart@ncdot.gov">tjbusshart@ncdot.gov</a> |

**Spare Labs, Inc. should submit their BAFO response via email only. Email response to [tjbusshart@ncdot.gov](mailto:tjbusshart@ncdot.gov) no later than the specified time and date of opening. Please include the BAFO number in the email subject line.**

**SOLICITATION REQUEST FOR BEST AND FINAL OFFER (BAFO)**

This request is to acquire a best and final offer from Spare Labs, Inc. for Transit Software Solution. The offer should integrate the previous response to the Request for Proposal 54-12008772-CM and any changes listed below. Any individual vendor can receive a different number of requests for BAFOs than other offerors.

**NOTE:** This bid is still in the evaluation period. During this period and prior to award, possession of the BAFO, original bid response and accompanying information is limited to personnel of the Department of Information Technology (DIT) Statewide IT Procurement Office, and to agencies responsible for participating in the evaluation. Bidders who attempt to gain this privileged information, or to influence the evaluation process (i.e., assist in evaluation) will be in violation of purchasing rules and their offer will not be further evaluated or considered.

In accordance with **RFP 54-12008772-CM**, the order of precedence will be as follows: Best and Final Offers, special terms and conditions specific to the RFP, Specifications of the RFP, the Department of Information Technology's Terms and Conditions, and the agreed portion of the awarded Vendor's offer.

**The Parties agree to the following:**

**A) Explanation regarding subparagraph (b) of the State’s “Limitation of Vendor’s Liability” clause.** In Paragraph 22 “Limitation of Vendor’s Liability in Section 1 of the “General Terms and Conditions Applicable to All Purchases” of Attachment B “Department of information Technology Terms and Conditions,” the State interprets the phrase “value of the Contract” to mean the DRO’s total purchase cost in a Participating Addendum.

**B) Incorporation of the Vendor’s Standard Agreement**

The Vendor Standard Agreement consists of the Spare Master “Software as a Service” Agreement dated December 5, 2023, with Exhibit A Service Level Terms and Exhibit B Support Terms. Together, these documents are referred to herein as the “Vendor Agreement”. The Vendor Agreement is attached hereto as Attachment L and is incorporated by reference into this RFP 54-12008772-CM in the manner shown below in Sections A (1) through A (3).

Terms and conditions in the Vendor Agreement may be modified as shown below (i) using strikethroughs to show deletions or underlining to show insertions; (ii) by stating certain phrases or sentences are deleted; or (iii) by stating text is added. Unless shown as modified, a term remains unchanged.

The terms “Agreement” or “this Agreement” as they are used in the text of the Vendor Standard Agreement shall mean this RFP No. 54-12008772-CM together with this BAFO.

Notwithstanding any term or condition in Vendor’s Agreement to the contrary, the term for Vendor’s Agreement with a DRO shall not exceed the term set forth in Section 2.2 (p.4) of RFP 54-12008772-CM.

Notwithstanding the definition of “Order Form” in section 1 of the Vendor Agreement, any order form utilized by the Vendor shall be subordinate to the Agreement established by RFP 54-12008772-CM and shall be utilized solely for administrative purposes. The terms and conditions in the order form shall have no force of effect. The duration of the contract between Vendor and the DRO shall be as set forth in Section 2.2 of RFP 54-12008772-CM (p. 4), and prices shall be those set forth in Vendor’s Response Proposal, Attachment E, and BAFO 54-12008772-CM.

**1. The following sections of the Vendor Agreement are hereby deleted and shall have no force or effect:**

2.5 and 2.7  
4.1 and 4.4  
5.1, 5.2, and 5.5  
6.1  
9.1  
10.1 and 10.2

**2. The following sections of the Vendor Agreement shall supersede NCDIT’s Terms and Conditions:**

2.1, 2.3, and 2.4

### 3.1

3.2 is modified as follows:

Customer represents, and covenants, ~~and warrants~~ that Customer will use the Services only in compliance with all applicable laws and regulations. ~~Customer hereby agrees to indemnify and hold harmless Spare against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys' fees) in connection with any claim or action that arises from an alleged violation of the foregoing or otherwise from Customer's use of Services. Although Spare has no obligation to monitor Customer's use of the Services, Spare may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of the foregoing.~~

3.5 is modified as follows:

Customer shall comply with all applicable local, state, and ~~provincial, federal and foreign~~ laws in using the Service.

### 4.2 and 4.5

4.3 is modified as follows:

Notwithstanding anything to the contrary, Spare shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies including, without limitation, aggregated or anonymized information derived from Customer Data ("Learning Data"). For clarity, Learning Data is anonymized so that it will not include any personally identifiable information. Spare shall hold all right, title and interest to Learning Data and, without limiting such ownership, will be free (during and after the term hereof) to (i) use such information and Learning Data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other Spare offerings; (ii) disclose such Learning Data solely in aggregate or other de-identified form in connection with its business (including without limitation for marketing and sales purposes). However, this section and the use of "Learning Data" shall be interpreted with the application of N.C.G.S. §143B-1320 definitions of cybersecurity incident and significant cybersecurity incident, N.C.G.S. §75-61 and §14-113-20(b) definitions of personal information, together with other Applicable Laws. The Parties acknowledge that some such information may include public information pursuant to N.C.G.S. §132-1 et seq., the N.C. Public Records Act, and non-public information or security information pursuant to Article 15 of Chapter 143B of the N.C. General Statutes, e.g. N.C.G.S. §143B-1375 et seq. and the State's NCDIT Security Manual. The Parties agree that the DRO, or the State as may be appropriate, may request use of filters or other technologies to prevent transmission, receipt or collection of information or data consistent with the State's NCDIT Security Manual or other security policies; and that the Parties will negotiate such measures in good faith.

7.1 is modified as follows:

Spare shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform the Implementation Services in a professional and workmanlike manner. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Spare or by third-party providers, or because of other causes beyond Spare's reasonable control, but Spare shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption. HOWEVER, SPARE DOES NOT WARRANT THAT

THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES AND IMPLEMENTATION SERVICES ARE PROVIDED "AS IS" AND SPARE DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

Exhibit A, General Service Level Terms and Downtime Management is modified as follows:

The Services shall be available 99.9%, measured monthly, excluding scheduled maintenance. If Customer requests maintenance during these hours, any uptime or downtime calculation will exclude periods affected by such maintenance. Further, any downtime resulting from outages of third party connections or utilities or other reasons beyond Spare's control will also be excluded from any such calculation. Customer's sole and exclusive remedy, ~~and Spare's entire liability~~, in connection with Service availability shall be that for each period of downtime lasting longer than one hour, Spare will credit Customer 0.3% of annual Service fees for each period of 30 or more consecutive minutes of downtime; provided that no more than one such credit will accrue per day. However, for avoidance of doubt, the foregoing sentence does not preclude Customer from exercising any other rights and remedies provided by law or under RFP No. 54-12008772-CM. Downtime shall begin to accrue as soon as Customer (with notice to Spare) recognizes that downtime is taking place, and continues until the availability of the Services is restored. In order to receive downtime credit, Customer must notify Spare in writing within 24 hours from the time of downtime, and failure to provide such notice will forfeit the right to receive downtime credit. Such credits may not be redeemed for cash and shall not be cumulative beyond a total of credits for one (1) week of Service Fees in any one (1) calendar month in any event. Spare will only apply a credit to the month in which the incident occurred. Spare's blocking of data communications or other Service in accordance with its policies shall not be deemed to be a failure of Spare to provide adequate service levels under this Agreement.

Exhibit A, Incident Management  
Exhibit B, Support Terms

**3. The following sections of the Vendor Agreement shall be superseded by NCDIT's Terms and Conditions:**

1  
2.2  
3.3, 3.4 and 3.6  
5.3 and 5.4

6.2 is modified as follows:

In addition to any other remedies it may have, either party may also terminate this Agreement upon thirty (30) days' notice (or without notice in the case of nonpayment), if the other party materially breaches any of the terms or conditions of this Agreement. Customer will pay in full for the Services up to and including the last day on which the Services are provided. ~~All sections of this Agreement which by their nature should survive termination will survive termination, including,~~

~~without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.~~

8.1

## ATTACHMENT A

# Spare Master "Software as a Service" Agreement

Last Modified: December 5, 2023

THIS SPARE MASTER "SOFTWARE AS A SERVICE" AGREEMENT ("Agreement") is made and entered into between SPARE LABS INC ("Spare") with a place of business at Suite 810, 815 W Hastings St, Vancouver, BC V6C 1B4, Canada, and customer stated in the applicable Order Form ("Customer") (individually a "Party"; collectively, the "Parties").

By agreeing to an Order Form referencing this Agreement or by accessing or using the Services offered by Spare, the Customer is confirming that the Customer has read, understood and accepted this Agreement. This Agreement can be updated from time to time in accordance with Section 2.5 below. Customer is responsible for regularly reviewing the most current version of this Agreement, which is published at: [sparelabs.com/msa](https://sparelabs.com/msa). When Spare changes this Agreement, Spare will update the "Last Modified" date above.

## RECITALS

1. WHEREAS, Spare is in the business of providing software as a service with respect to certain business application software and related services; and
2. WHEREAS, Customer desires to utilize such applications on a "software as a service" basis, and both Parties desire that Spare provide the services required and desire that all of the rights, duties, and obligations of the Parties be governed in accordance with the terms of this Agreement.

NOW, THEREFORE, based on the foregoing facts and in consideration of the mutual covenants and conditions contained in this Agreement, Spare and Customer hereby agree as follows:

## 1. DEFINITIONS

Defined terms used in this Agreement shall have the meanings given in this Agreement, including in any applicable Order Form.

"Fees" means the fees specified in the applicable Order Form, including without limitation any Subscription Fees;

"Open Fleet Provider" means a third party transportation network company ("TNC") such as Lyft whose TNC services can be accessed through the Spare Services on express approval by Customer;

"Open Fleet Service" means Spare's "Open Fleet" service where the services provided by Open Fleet Providers can be accessed through the Spare Platform, as described in greater detail at [sparelabs.com](https://sparelabs.com);

“Order Form” means a written document executed by the parties that specifies the Service, subscription period, Fees and any other additional commercial terms agreed by the parties;

“Services” means the subscription(s) pursuant to one or more Order Form(s) to the Spare’s transportation software as a service offering described in greater detail at [sparelabs.com](http://sparelabs.com);

“Subscription Fees” means the fees payable for subscription to the Services as specified in the applicable Order Form but excluding any trip or usage fees such as those payable to or in respect of Open Fleet Providers through the Services.

“Term” has the meaning given to in section 6.1.

## 2. SAAS SERVICES AND SUPPORT

2.1 Spare shall provide the Services and such other functions and responsibilities specified in this Agreement and any applicable Order Form, as they may be supplemented, enhanced, modified or replaced, and all updates thereto, during the Term pursuant to the terms of this Agreement.

2.2 Order Forms are binding on the parties only when executed by each party. Customer’s right to use the Services during the Term shall be in accordance with any additional conditions, restrictions or parameters specified in the Order Form(s) executed by the Parties. Services specified under an Order Form shall be provided during the term of that Order Form.

2.3 Subject to the terms of this Agreement, Spare will use commercially reasonable efforts to provide Customer the Services in accordance with the Service Level Terms attached hereto as Exhibit A. As part of the registration process, Customer will identify an administrative user name and password for the Spare account. Spare reserves the right to refuse registration of, or cancel passwords it deems inappropriate.

2.4 Subject to the terms hereof, Spare will provide Customer with reasonable technical support in accordance with the terms set forth in Exhibit B.

2.5 Amendment. Spare may change any part of this Agreement (including any terms or documents incorporated by reference in this Agreement) at any time by posting the revised terms on [sparelabs.com/msa](http://sparelabs.com/msa). It is important for Customer to review this Agreement before using Services and from time to time, though the Spare will notify the Customer of any changes that, in Spare’s sole discretion, materially impact this Agreement. The updated Agreement will be effective as of the time of posting, or on such later date as may be specified in the updated Agreement, and Customer’s continued use of the Services after any such changes are effective will constitute Customer’s consent to such changes.

2.7 Open Fleet. In the event that Customer opts to subscribe for or otherwise use the Open Fleet (as indicated in the applicable Order Form or as expressly elected by Customer through the Service), Customer agrees to be bound by the Spare Open Fleet Terms attached at Exhibit C.

### 3. RESTRICTIONS AND RESPONSIBILITIES

3.1 Customer will not, directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services or any software, documentation or data related to the Services ("Software"); modify, translate, or create derivative works based on the Services or any Software (except to the extent expressly permitted by Spare or authorized within the Services); use the Services or any Software for timesharing or service bureau purposes or otherwise for the benefit of a third-party; or remove any proprietary notices or labels. With respect to any Software that is distributed or provided to Customer for use on Customer premises or devices, Spare hereby grants Customer a non-exclusive, non-transferable, non-sublicensable license to use such Software during the Term only in connection with the Services.

3.2 Customer represents, covenants, and warrants that Customer will use the Services only in compliance with all applicable laws and regulations. Customer hereby agrees to indemnify and hold harmless Spare against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys' fees) in connection with any claim or action that arises from an alleged violation of the foregoing or otherwise from Customer's use of Services. Although Spare has no obligation to monitor Customer's use of the Services, Spare may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of the foregoing.

3.3 Customer Responsibilities. The successful operation of the Service is dependent on Customer use of proper procedures and systems and input of correct data. Customer agrees that it shall have the sole responsibility for inputting, protecting and backing up their original data used in connection with the Service. The Customer is responsible for providing Spare with the necessary information to appropriately integrate with the system and deliver all portions of the contract. Customer is solely responsible for the accuracy and adequacy of the information and data that it furnishes to Spare for use with the Service, and Spare is not responsible for reductions in Service quality due to Customer action or inaction.

3.4 Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, "Equipment"). Customer shall also be responsible for maintaining the security of the Equipment, Customer account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer account or the Equipment with or without Customer's knowledge or consent.

3.5 Customer shall comply with all applicable local, state, provincial, federal and foreign laws in using the Service.

3.6 Customer is solely responsible for (i) providing terms of service and privacy policy in respect of use of the Service by Customer's end users (which shall be an agreement solely between Customer and such end user); and (ii) obtaining the requisite permission, consent or other lawful basis from or in respect of end users for the use, storage and processing of their personal information by Spare through the provision of the Services, as required by applicable law.

#### 4. CONFIDENTIALITY; PROPRIETARY RIGHTS

4.1 Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "Proprietary Information" of the Disclosing Party). Proprietary Information of Spare includes non-public information regarding features, functionality and performance of the Service. Proprietary Information of Customer includes non-public data provided by Customer to Spare to enable the provision of the Services ("Customer Data"). The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information after five (5) years following the disclosure thereof or any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party or (e) is required to be disclosed by law.

4.2 As between Spare and Customer, Customer shall own all right, title and interest in and to the Customer Data. Customer Data shall include all data entered by end users through the Service at Customer's request. Spare reserves, owns and retains all right, title and interest in and to (a) the Services and Software, all improvements, enhancements or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with Implementation Services or support, and (c) all intellectual property rights related to any of the foregoing. No rights are granted to Customer hereunder other than as expressly set forth herein.

4.3 Notwithstanding anything to the contrary, Spare shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies including, without limitation, aggregated or anonymized information derived from Customer Data ("Learning Data"). For clarity, Learning Data is anonymized so that it will not include any personally identifiable information. Spare shall hold all right, title and interest to Learning Data and, without limiting such ownership, will be free (during and after the term hereof) to (i) use such information and Learning Data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other Spare offerings; (ii) disclose such Learning Data solely in aggregate or other de-identified form in connection with its business (including without limitation for marketing and sales purposes).

4.4 Customer hereby grants to Spare a limited, non-exclusive, free-of-charge license to use, reproduce, distribute, or publicly display (digitally or otherwise) the Customer's name, trade name, logo, or associated trademarks, solely for the purposes of marketing and promoting Spare's products or services. These marketing and promotional activities may include, for example, depicting Customer as a customer of Spare, depicting which Services Spare has provided to Customer, or promoting new launches of Spare's services and offerings.

4.5 No rights or licenses are granted except as expressly set forth herein.

## 5. FEES

5.1 Customer will pay Spare the then applicable fees described in any applicable Order Form for the Services with the terms therein (the "Fees"). If Customer's use of the Services exceeds the Service Capacity set forth on the Order Form or otherwise requires the payment of additional fees (per the terms of this Agreement), Customer shall be billed for such usage and Customer agrees to pay the additional fees in the manner provided herein. Spare reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the Term or then-current renewal term, upon thirty (30) days prior notice to Customer (which may be sent by email). If Customer believes that Spare has billed Customer incorrectly, Customer must contact Spare no later than 60 days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Spare's customer support department. All Fees are non-refundable once paid.

5.2 Spare may choose to bill through an invoice, in which case, full payment for invoices issued in any given month must be received by Spare thirty (30) days after the mailing date of the invoice. Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection and may result in immediate termination of Service.

5.3 Taxes. Unless otherwise stated, Spare's fees do not include any direct or indirect local, state, provincial, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including value-added, goods and services, harmonized, use or withholding taxes (collectively, "Taxes"). Customer is responsible for paying all Taxes associated with its purchases hereunder, excluding taxes based on Spare's net income or property. If Spare has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, the appropriate amount shall be invoiced to and paid by Customer, unless Customer provides Spare with a valid tax exemption certificate authorized by the appropriate taxing authority.

5.4 Spare will be billed according to payment schedules set out in any applicable Order Form.

5.5 CPI Increase. The Fees shall be increased on each anniversary of the first day of the Term (the "CPI Adjustment Date") by an amount equal to the greater of a) 5% or b) the increase, if any, in the CPI (as defined below) in effect for December of the immediately preceding calendar year (the "Most Recent Calendar Year") over the CPI in effect for December of the calendar year immediately preceding the Most Recent Calendar Year. The term "CPI" shall mean the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items (1984=100) published by the United States Department of Labor, Bureau of Labor Statistics.

## 6. TERM AND TERMINATION

6.1 Subject to earlier termination as provided below, this Agreement will commence on the date you agree to an Order Form and will continue in effect for the term described in such Order Form (the "Term"). Except as expressly stated otherwise in the applicable Order Form, each Order Form will automatically renew for subsequent one-year renewal periods unless the Customer or Spare gives written notice of non-renewal at least sixty (60) days prior to the end of the then-current term.

Notwithstanding the foregoing, in no event shall the term of this Agreement or any Order Form exceed the term agreed to in writing between Spare and Customer.

6.2 In addition to any other remedies it may have, either party may also terminate this Agreement upon thirty (30) days' notice (or without notice in the case of nonpayment), if the other party materially breaches any of the terms or conditions of this Agreement. Customer will pay in full for the Services up to and including the last day on which the Services are provided. All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

## 7. WARRANTY AND DISCLAIMER

7.1 Spare shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform the Implementation Services in a professional and workmanlike manner. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Spare or by third-party providers, or because of other causes beyond Spare's reasonable control, but Spare shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption, HOWEVER, SPARE DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES AND IMPLEMENTATION SERVICES ARE PROVIDED "AS IS" AND SPARE DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

## 8. INDEMNITY

8.1 Spare shall hold Customer harmless from liability to third parties resulting from infringement by the Service of any United States patent or any copyright or misappropriation of any trade secret, provided Spare is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity to assume sole control over defense and settlement; Spare will not be responsible for any settlement it does not approve in writing. The foregoing obligations do not apply with respect to portions or components of the Service (i) not supplied by Spare, (ii) made in whole or in part in accordance with Customer specifications, (iii) that are modified after delivery by Spare, (iv) combined with other products, processes or materials where the alleged infringement relates to such combination, (v) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (vi) where Customer's use of the Service is not strictly in accordance with this Agreement. If, due to a claim of infringement, the Services are held by a court of competent jurisdiction to be or are believed by Spare to be infringing, Spare may, at its option and expense (a) replace or modify the Service to be non-infringing provided that such modification or replacement contains substantially similar features and functionality, (b) obtain for Customer a license to continue using the Service, or (c) if neither of the foregoing is commercially practicable, terminate this Agreement and Customer's rights hereunder and provide Customer a refund of any prepaid, unused fees for the Service.

## 9. LIMITATION OF LIABILITY

9.1 NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR BODILY INJURY OF A PERSON, SPARE AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL EQUIPMENT AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND SPARE'S REASONABLE CONTROL; OR (D) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE SUBSCRIPTION FEES PAID BY CUSTOMER TO SPARE FOR THE SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT SPARE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## 10. MISCELLANEOUS

10.1 If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicensable by Customer except with Spare's prior written consent. Spare may transfer and assign any of its rights and obligations under this Agreement without consent. Notwithstanding the foregoing, it is understood and agreed by Customer and Spare that, subject to Spare's agreement, where Customer is a governmental, municipal or other form of publicly-funded entity then any entity reasonably associated with Customer ("Associated Entity") may purchase the services specified herein in accordance with the terms and conditions of this agreement, with the exception of the pricing provided. It is also understood and agreed that each such Associated Entity will establish its own contract with Spare, be invoiced therefrom and make its own payments to Spare in accordance with the terms of the contract established between the Associated Entity and Spare. It is also hereby mutually understood and agreed that Customer is not a legally bound party to any contractual agreement made between Spare and any entity other than Customer. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind Spare in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. This Agreement shall be governed by the laws of the Province of British Columbia, Canada, without regard to its conflict of laws provisions. Customer otherwise agrees to reasonably cooperate with Spare to serve as a reference account upon request.

10.2 This agreement is available to any other public agency (i.e., city, district, public authority, public agency, municipality and other political sub-division or public corporation). Customer shall incur no financial responsibility in connection with contracts executed with other parties under the authority of this provision or in making payments to the firms or contractor teams.

## **EXHIBIT A**

### **Service Level Terms**

#### **General Service Level Terms and Downtime Management:**

The Services shall be available 99.9%, measured monthly, excluding scheduled maintenance. If Customer requests maintenance during these hours, any uptime or downtime calculation will exclude periods affected by such maintenance. Further, any downtime resulting from outages of third party connections or utilities or other reasons beyond Spare's control will also be excluded from any such calculation. Customer's sole and exclusive remedy, and Spare's entire liability, in connection with Service availability shall be that for each period of downtime lasting longer than one hour, Spare will credit Customer 0.3% of annual Service fees for each period of 30 or more consecutive minutes of downtime; provided that no more than one such credit will accrue per day. Downtime shall begin to accrue as soon as Customer (with notice to Spare) recognizes that downtime is taking place, and continues until the availability of the Services is restored. In order to receive downtime credit, Customer must notify Spare in writing within 24 hours from the time of downtime, and failure to provide such notice will forfeit the right to receive downtime credit. Such credits may not be redeemed for cash and shall not be cumulative beyond a total of credits for one (1) week of Service Fees in any one (1) calendar month in any event. Spare will only apply a credit to the month in which the incident occurred. Spare's blocking of data communications or other Service in accordance with its policies shall not be deemed to be a failure of Spare to provide adequate service levels under this Agreement.

#### **Incident Management:**

If any service issue should arise throughout the duration of service, all issue shall be marked and prioritized as follows:

1. Fatal (Complete degradation -- 30 Minute response time during Support Hours (see Exhibit B)). All users and critical functions affected.
2. Severe (significant degradation -- 90 Minutes response time during Support Hours (see Exhibit B)). Large percentage of users or critical functions affected.
3. Medium (limited degradation -- 3 hour response time during Support Hours (see Exhibit B)). Limited number of users or non-critical functions affected. Business processes can continue.
4. Minor (small degradation -- 4 hour response time during Support Hours (see Exhibit B)). One user affected. Business processes can continue.

## **EXHIBIT B**

### **Support Terms**

Spare will provide support to Customer via electronic mail, chat, and over phone on a twenty-four (24) hour, seven (7) days a week basis ("Support Hours").

Customer may initiate a helpdesk ticket during Support Hours by emailing [support@sparelabs.com](mailto:support@sparelabs.com).

Spare will use commercially reasonable efforts to respond to all helpdesk tickets within one business day.

Brennon Fuqua

Marc Clifford

Chris Peoples

Director

Deputy CIO

Chief operating officer

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