SPIRION
Formerly Identity Finder

Spirion, LLC
641 Lexington Avenue
13th floor
New York, NY 10022

Spirion License
Renewal Quote and Terms

Quote Number:	90204M4006
Quote Date:	02/04/2019
Valid Until:	05/31/2019

Licensee Information:
Texas A&M Provost Information Technology Office
ATTN: Accounts Payable
750 Agronomy Road
Suite 3101
College Station, TX 77843
United States

License Details:

License Type:	Subscription
Subscription Expiration:	05/31/2020
Seat Type/Fee Method:	Per-Employee
Payment Terms:	Net 30
Currency:	U.S. Dollars

QTY	UNIT TYPE	UNIT COST	SPIRION PRODUCT	AMOUNT
100	Employees	N/A	Subscription Fee (31/May/19 to 31/May/20)	$15,000.00
			TOTAL:	**$15,000.00**

SPIRION LICENSE AGREEMENT

THIS LICENSE AGREEMENT (the "**Agreement**") is made and entered into effective as of this ___ day of _____, 2019, by and between SPIRION, LLC —a Delaware Limited Liability Company with its principal place of business at 200 Central Ave., Suite 420, St. Petersburg, FL 33701 ("**Spirion**" or "**Licensor**")—and <u>Texas A&M University, a member of The Texas A&M University System, an agency of the State of Texas</u>, its employees, contractors or agents ("**Licensee**" or "**you**")—with offices at <u>College Station, TX</u>, each a "**Party**" and sometimes jointly referred to herein as the "**Parties**"—sets forth the terms and conditions under which Spirion will license the Licensed Products to Licensee.

NOW THEREFORE, in consideration of the payment of the applicable Fees (described below) and the mutual promises herein, Spirion hereby licenses the Licensed Products to Licensee subject to the terms and conditions of this Agreement.

1   Definitions: In addition to terms defined elsewhere in this Agreement, the following capitalized terms used in this Agreement shall have the meanings specified below, whenever applicable to this License:

1.1   Administrative Definitions

"**Addenda**" or "**Addendum**" has the meaning set forth in Section 3, *Integration and Superiority of Addenda*, below.

"**License Date**" means the date first appearing in this Agreement, or if no date exists, the date on which this Agreement was otherwise executed.

"**Authorized Technical Contact**" means a representative of the Licensee who is authorized to receive communication from Licensor regarding the Licensed Products or this Agreement.

"**Employee**" or "**Knowledge Worker**" means an employee, authorized contractor, or servant of the Licensee whose job functions require the individual to access or store data on one or more Devices.

"**Per-Employee**" means the method of licensing and calculating fees wherein the Licensee may use the Licensed Products to search or manage the data of the specific number of Employees defined in an Addendum, irrespective of the number of Devices upon which that data is stored. For purposes of this License, the number of Employees is equal to the Licensee's adjusted full-time employee (FTE) count ("**Adjusted FTE Count**") as follows: 1 full-time Knowledge Worker = 1 FTE; 1 part-time Knowledge Worker (faculty or staff) = one half FTE. The Adjusted FTE Count shall be re-computed no more than once annually prior to the anniversary of the License Date, for the purpose of calculating applicable Fees.

"**Per-Device**" means the method of licensing and calculating fees wherein the Licensee may use the Licensed Products to search or manage the data stored on the specific number of Devices defined in the Addenda.

"**Lifetime License**" means the method of licensing and calculating fees wherein the Licensee may perpetually use the licensed general release of the Licensed Products, not including any Updates or Upgrades, subject to the terms of this Agreement. See Section 4.1 for Updates and Upgrades terms.

"**Subscription License**" means the method of licensing and calculating fees wherein the Licensee may use the Licensed Products, including any Updates and Upgrades released during the subscription period defined in the Addenda, in exchange for the Subscription Fee (described below).

"**Limited-Execution License**" means the method of licensing and calculating fees wherein the Licensee may use the Licensed Products only until such time as the Software has been executed the certain number of times defined in the Addenda.

"**Sameness Rule**" means that if the License is issued on a Per-Device basis, then the License may only be internally transferred to a replacement Device whose business function(s) and storage size(s) are identical or substantially similar to the licensed Device's business function and storage size, if the original Device was retired or destroyed. If the License is issued on a Per-Employee basis, then the License may only be transferred to a new Employee whose job responsibilities are identical or substantially similar to the original authorized Employee's job responsibilities, if the original employee was severed from the company or assigned disparate job responsibilities. Provided, however, that in no case shall more than 33% of the licenses be transferred in any calendar year. The following examples illustrate how the Sameness Rule works:

- A company may not transfer Device or Employee Licenses to a different department. This transfer violates the Sameness Rule because neither the Employees' job descriptions nor the Devices are the same as the Authorized Employees or Devices in the original department.
- An IT manager may not temporarily install a single Per-Device-licensed copy of the Software on multiple Devices, even if the manager later uninstalls the Software. This transfer violates the Sameness Rule because the license extends only to a single Device.
- A company which regularly replaces old computers on a three-year cycle may transfer the Software to replacement computers because the new computers have an identical or substantially similar business function to the original authorized computers, and the original authorized computers were retired.
- After an Employee terminates employment from a company, the company may use a Per-Employee-licensed copy of the Software to search the data of a replacement Employee with the same or substantially similar job responsibilities.

- A venture capital firm may not purchase Device or Employee licenses and transfer them from an old acquired company to a new acquired company. This transfer violates the Sameness Rule because neither the new Employees nor the new Devices are the same.
- However, a company which is acquired may maintain its Per-Employee or Per-Device License if the company maintains its Employees or Devices.

1.2   Product, Edition, and Module Definitions

"**Software**" means the certain executable computer software program(s), designated by various Software Edition trade names, and all Updates and Upgrades (as defined below) produced by Spirion, which perform sensitive data management and loss prevention, or other related services. "Software" shall not mean the Software's source code.

"**Module**" means a set of functions designed to perform specific tasks within the Software, which may be licensed separately or as part of a Software Edition. No Modules are included as a part of your license unless specifically stated herein or in an Addendum hereto. Modules may include, by way of example and not limitation, the Enterprise Console, Website Search Module, Database Search Module, Exchange Search Module, Lotus Notes Search Module, and OCR Image Search Module.

"**Supported Platforms**" means the Windows operating system (Windows XP with Service Pack 3 and newer) and the Macintosh operating system (Mac OS X 10.4 and newer on Intel hardware).

"**Licensed Product(s)**" means the licensed Software, Software Module(s) and associated Software documentation ("**Documentation**").

"**Website**" means the domain "spirion.com," its subdomains, related domains, or any successor URL or domain, and all webpages therein.

"**Update**" means a change in the Software denoted by a fractional increase in the Software version number (for example from 7.0 to 7.1 or 7.1.0 to 7.1.1). An Update may be comprised of revisions, enhancements, corrections, bug fixes, additional features, adaptations of existing features, or removal of deprecated features or functions from the Software; or revisions to the Documentation including user guides or other printed or online material applicable to the Software.

"**Upgrade**" means a new general release of the Software denoted by a whole number change in the version, for example from 6.x to 7.0.

1.3   Device and Technical Definitions

"**Device**" means an electronic computing device—owned or leased by Licensee—which is capable of executing the Software program. A Device may have no more than four (4) Internal Drives, zero (0) External Drives, and two (2) Temporary Storage Devices connected to it over time as part of that Device's normal business function. Devices may include but are not limited to desktop or laptop computers, workstations, servers, Logical Hosts, and Physical Hosts. "Device" also means an External Drive, even if the External Drive is incapable of executing the Software program.

"**Physical Host**" means a physical Device or server—owned or leased by Licensee—which provides services to other programs, Devices, or users on the Physical Host or over a computer network.

"**Logical Host**" means a virtual Device or server which provides services to other programs, Devices, or users on a Physical Host or over a computer network. A Logical Host is instantiated on a Physical Host in such a way that it may share the Physical Host's computing or storage resources with other Logical Hosts. A single Physical Host may run a large number of Logical Hosts, each Logical Host operating as a separate Device on a computer network.

"**Server-Class Device**" means a Physical Host unless more than one Logical Host exists on a Physical Host, in which case "Server-Class Device" means a Logical Host.

"**Non-Server-Class Device**" means any Device other than a Server-Class Device, including but not limited to workstations, laptops, desktops or other Device.

"**Drive**" means a piece of electronic equipment—owned or leased by Licensee—which is capable of storing digital information that persists while the power to the equipment is turned off.

"**Internal Drive**" means a Drive physically located inside a Device which is not easily disconnected from the Device.

"**External Drive**" means a Drive which is capable of storing more than 32 Gigabytes (GB) of digital information, which may be easily connected to or removed from a Device. By way of example and not limitation, External Drives include external, network, removable, cloud, or temporary hard drives; or any Device or Temporary Storage Drive with more than 32 GB of digital storage capability, which may be easily connected to or removed from another Device.

"**Temporary Storage Drive**" means a Drive which is capable of storing not more than 32 GB of digital information, which may be easily connected to or removed from a Device. Temporary Storage Drives include, without limitation: Thumb drives, smart phones, MP3 players, or similar electronic equipment with not more than 32 GB of storage capacity.

2 General Terms of License

2.1 *Ownership: The Licensed Products are protected by United States copyright laws and international treaty provisions. The software is licensed, not sold. This Agreement only gives Licensee some rights to use the software. Spirion and its suppliers own and retain all right, title and interest in and to the Licensed Products, including all copyrights, patents, trade secret rights, trademarks and other intellectual property rights therein. Specific third-party license terms applying to portions of the Licensed Products are set forth at the following URL: http://www.spirion.com/us/Company/ThirdPartyLicensing and are hereby incorporated by reference. Licensee agrees to any additional terms that may apply to the extent permitted by the Constitution and laws of the State of Texas. Licensee's possession, installation, or use of the Licensed Products does not transfer to Licensee any title to the intellectual property in the Licensed Products, and Licensee shall not acquire any rights to the Licensed Products except for the use of the Licensed Products as expressly set forth in this Agreement. All copies of the Licensed Products must contain the same proprietary notices that appear on and in the Licensed Products. All rights not expressly set forth hereunder are reserved by Spirion.*

2.2 *Scope of License: Licensor grants to Licensee a personal, non-exclusive, non-transferable, limited-scope, License to use the Licensed Products specified in the Addenda, or otherwise licensed by operation of this Agreement.*

2.2.1 The functionality of the Licensed Products depends upon the licensed Edition of the Software and Modules, as defined at the Edition Function URL on the License Date, and as revised from time to time.

2.2.2 Unless applicable law gives Licensee more rights despite this limitation, Licensee may use the software only as expressly permitted in this Agreement. In doing so, Licensee must comply with any technical limitations in the Software that only allows Licensee to use it in certain ways.

2.2.3 Licensee may search only the data on specific Devices (if licensed Per-Device), or the data of a specific number of Employees (if licensed Per-Employee) authorized by this Agreement, on Devices owned or leased by Licensee ("**Authorized Devices**").

2.2.4 Unless otherwise specified, the License is non-transferable, except in accordance with the Sameness Rule

2.2.5 If the Software is licensed as a suite or bundle with more than one specified Software product, this license applies to all such specified Software products, subject to any restrictions or usage terms specified on the applicable price list, product packaging, or Addenda that apply to any of such Software products individually.

2.2.6 Licensee may not permit third parties to benefit from the use or functionality of the Software via a timesharing, service bureau, or other arrangement. Licensee may not distribute, license, sublicense, rent, lease, loan or resell the Software.

2.2.7 Licensee may not reverse engineer, decompile, or disassemble the Software.

2.2.8 Licensee may not modify or create derivative works based upon the Software in whole or in part. Notwithstanding, Licensee may copy the Documentation and create derivative works from the Documentation solely for Licensee's internal use and to facilitate Licensee's use of the Licensed Products.

2.2.9 Licensee may not remove any proprietary notices or labels on the Software without first receiving written permission from Licensor.

2.3 *Updates and Upgrades:* Licensor may, from time to time, provide Updates and Upgrades. Except as set forth elsewhere in this Agreement, Spirion reserves the right to change its products in its sole discretion. Licensor may add new Software functionality, modify existing functionality, but shall not materially reduce Software functionality without prior notification to Licensee.

Spirion has no obligation to modify the Software, provide Updates or Upgrades to the Software, provide Support (except as explicitly stated herein) for the Software, assist in installing the Software, change the Software to run on an unsupported platform or make any other changes to the Software except as set forth herein. Notwithstanding the foregoing, Spirion agrees to provide Updates to the Software to ensure ongoing compatibility with new releases of Supported Platforms within 120 days of general availability of such new releases, provided your license permits you to receive Updates.

Spirion agrees to notify Licensee's Authorized Technical Contacts within ten (10) business days following the release of Updates or Upgrades to the Software. Licensee may choose not to install an Update or Upgrade. However, failure to install any Update or Upgrade may permanently inhibit Licensee from installing future Updates or Upgrades and/or receiving Support.

2.4   *Support:* Provided your License permits you to receive maintenance and support services ("Support"), Spirion shall offer Support on the then current general release of the Software, as well as the most recent Update to the prior general release. Support shall include the following:

- Email or Website service ticket support service from 9:00 AM - 5:00 PM (Eastern Time), Monday through Friday except public holidays. Directions for submitting support requests can be found at http://support.spirion.com
- Spirion's efforts to correct reproducible Defects in the then current release of the Software. "**Defect**" means the failure of the software to substantially conform to the user manuals and Documentation, when such failure can be reproduced and documented by Spirion.
- Support shall not include on-site services.

With sixty (60) days' advance written notice, Spirion may change its Support policy from time to time provided that Support features and services are not reduced or limited from those set forth herein in any material way.

2.5   Payment: *Licensee agrees to pay Spirion all applicable Fees set forth in the Addenda.* Payment from TAMU will be due thirty (30) days from the date TAMU receives the invoice. All past due amounts will be subject to a finance charge in accordance with the Texas Prompt Payment Act, Chapter 2251, Texas Government Code.

Spirion agrees to invoice Licensee for the annual renewal of maintenance and Support at least thirty days in advance of the anniversary of the License Date. Licensee shall signify its desire to renew Maintenance and Support for an additional one-year term by paying said renewal invoice net thirty (30) days following its receipt.

2.6   *Audit Rights:* No more than once annually and with no less than ten (10) business days' advance written notice, Spirion may audit Licensee's written records regarding Licensee's use of the Software to verify compliance with the terms of this Agreement.

2.7   *Validation of License:* Spirion utilizes license keys or activation codes ("Activation Code") to activate Licenses and grant access to certain features in the Software. When Licensee installs the Software on a Device, the Software may from time to time automatically communicate the Activation Code to Spirion's servers to verify that the software is validly licensed. If the software is not validly licensed, Spirion shall attempt to contact Licensee to resolve the issue. The validation process of the Software does not transmit personally identifying information, and is used only for the purpose of validating the License.

Spirion reserves the right to remotely disable the Software if it reasonably and in good faith suspect gross abuse or fraud on the License, and has attempted to notify Licensee, and the Licensee has not cured the abuse or fraud within thirty (30) days.

2.8   *Product Enhancement Program:* The Software may, from time to time, automatically send non-identified feedback about usage habits, Software performance, bugs, etc. to Spirion servers. This information is used by Spirion to improve the Software, and not to identify you. Instructions for opting out of the Product Enhancement Program may be found in the Documentation.

3   **Integration and Superiority of Addenda:** Licensor may from time to time issue quotes and terms for additional licenses, or amendments to existing licenses. Each quote or purchase order executed by the Parties on or after the License Date shall be incorporated into this Agreement and considered an addendum hereto ("Addenda"). Additional terms in an Addendum shall only be applicable to that specific Addendum, and shall not govern or be applicable to any other Addendum, unless expressly stated therein. In the event of any conflict between the terms of this Agreement and the terms of an Addendum, the terms of the Addendum shall govern. Any licenses granted by Licensor prior to the License Date shall be subject to and governed by this Agreement.

4   **License-Specific Terms:** The following terms in this Section apply to the Licensed Products, based upon the License purchased by Licensee.

4.1   *Specific Terms for Lifetime Licenses:* The terms and conditions in this Subsection shall apply only to Lifetime Licenses.

4.1.1   **Lifetime License Fee:** Subject to the terms and conditions of this Agreement, payment of the one-time fee for the Licensed Products ("Software Fee") shall entitle the Licensee to a non-exclusive, non-transferable, fully paid-up perpetual license for Licensee to use the Licensed Products to search all Authorized Devices as set forth more completely herein and in the attached Addenda.

4.1.2   **Maintenance Fee:** Subject to the terms and conditions of this Agreement, payment of the annually recurring fee for Updates, Upgrades, and Support ("Maintenance Fee") shall entitle the Licensee to a non-exclusive, non-transferable, fully paid-up license for Licensee to download, install, and use any Updates and Upgrades issued by Spirion during the term covered by the Maintenance Fee. Payment of the Maintenance Fee shall also entitle Licensee to Support during the term covered by the Maintenance Fee.

Licensee's initial annual Maintenance Fee is set forth in the applicable Addenda. Licensor shall notify Licensee of annual increases to the Maintenance Fee at least thirty (30) days prior to the due date of an invoice. Failure to pay the Maintenance Fee at the beginning of the maintenance term shall terminate all rights to receive new Updates, Upgrades, and Support.

4.2 **Specific Terms for Subscription Licenses:** The terms and conditions in this Subsection shall apply only to Subscription Licenses.

4.2.1 **Subscription License Fees:** Subject to the terms and conditions of this Agreement, payment of the term-recurring fee for subscription to the Licensed Products ("Subscription Fee") shall entitle the Licensee to a non-exclusive, non-transferable license for Licensee to use the Licensed Products to search all Authorized Devices as set forth more completely herein and in the attached Addenda, for the term of the subscription. The term of the subscription shall be one year, unless otherwise agreed in an applicable Addendum.

Payment of the Subscription Fee shall also entitle the Licensee to Support, and a non-transferable license for Licensee to download, install, and use any Updates and Updates issued by Spirion, during the term of the subscription. Failure to pay the Subscription Fee at the beginning of each subscription term shall terminate the License and all rights to receive Updates, Upgrades, and Support.

4.3 **Specific Terms for the Limited-Execution License:** The terms and conditions in this Subsection shall apply only to the Limited-Execution License.

4.3.1 **Limited-Execution License Fees:** Subject to the terms and conditions of this Agreement, payment of the one-time fee for a Limited-Execution License ("Subscription Fee") shall entitle the Licensee to a non-exclusive, non-transferable license for Licensee to use the Licensed Products to search all Authorized Devices as set forth more completely herein and in the Addenda, only until such time as the Software has been executed the certain number of times defined in the Addenda ("Allowed Searches").

Payment of the Subscription Fee shall not entitle the Licensee to Updates, Upgrades or Support.

5 **Termination of License:** This Agreement shall remain in effect until terminated in accordance with its terms. Either Party shall have the right to terminate this Agreement in the event the other Party commits a material breach of any provision of this Agreement ("Event of Default") which remains uncured after thirty (30) days' written notice, or in accordance with any other provisions of this Agreement expressly giving rise to a right of termination.

5.1 **Consequences of termination for Event of Default:** *Upon termination of this Agreement resulting from an uncured Event of Default on the part of Licensor, Licensor agrees to refund to Licensee any unused Maintenance or Subscription Fees (as applicable), pro-rated on a 12-month term.*

Upon termination of this Agreement resulting from an uncured Event of Default on the part of Licensee, Licensee agrees to remove and destroy all copies of the Software installed on all Devices, and remove and destroy all copies of the Documentation in the possession of Licensee. Licensee agrees further to direct all Employees with a copy of the Software installed on an authorized personally owned Device, if any, to remove and destroy such Software and remove and destroy all copies of the Documentation in such Employees' possession.

5.2 **Consequences of natural expiration of non-Lifetime Licenses:** Upon the expiration of any License, other than a Lifetime License, for a cause other than an uncured Event of Default ("natural expiration"), the Software may automatically cease to operate correctly. At the natural expiration of a Subscription License, Licensee agrees to remove and destroy all copies of the Software installed on all Devices and remove and destroy all copies of the Documentation in the possession of Licensee. Licensee agrees further to direct all employees with a copy of the Software installed on a personally owned Device, if any, to remove and destroy such Software and remove and destroy all copies of the Documentation in such employees' possession.

6 **Public Announcements:** Spirion may identify Licensee by name and/or logo to the public as a customer of Spirion, and describe in a customer case study the services and solutions delivered by Spirion to you. Spirion may also issue one or more press releases containing an announcement of the execution and delivery of this Agreement and/or the implementation of the Software by you. Nothing contained in this Section shall be construed as an obligation by Licensee to disclose any of Licensee's proprietary or confidential information to any third party.

Neither Party shall use, register or take any other action with respect to any name, logo, trademark, service mark, or other identifier of the other Party, except to the extent authorized in writing by the other Party in advance. Spirion acknowledges that any use of TAMU's marks, names, or logos must be preapproved by TAMU's Office of Business Development.

7 **Compliance with Laws and Standards:** Laws, standards, regulations, and best practices regarding privacy and data security change on a regular basis. LICENSEE ACKNOWLEDGES THAT USING THE SOFTWARE, EVEN AS DIRECTED, DOES NOT GUARANTEE COMPLIANCE WITH ANY PARTICULAR LAW, REGULATION, STANDARD, OR BEST PRACTICE, EACH OF WHICH SPIRION EXPRESSLY DISCLAIMS TO THE FULLEST EXTENT OF

THE LAW. Seller shall not be liable under any theory for Licensee's violation or breach of any law, regulation or standard, even if such violation or breach involved Licensee's use of the Software. Further, Licensee expressly acknowledges that use of the Licensed Products as directed does not transfer Licensee's confidential or regulated information to Licensor, nor put Licensor in control or possession of the same. Licensee agrees to not share regulated or confidential information with Licensor.

Both Parties agree to comply with all federal, state and local laws and regulations applicable to this Agreement, the performance of this Agreement, or use of the Licensed Products.

8 Nature of Relationship

8.1 ***No Partnership:*** Nothing contained herein shall be deemed to create any association, partnership, joint venture or similar relationship between the Parties.

8.2 ***No Authority to Act on Other Party's Behalf:*** Neither Party shall have the authority to bind, commit the other Party, make financial commitments on behalf of the other Party, nor shall either Party have the authority to incur any financial obligations in the other Party's name without the express written approval of the other Party. Neither Party shall have the authority to make public statements on behalf of the other Party, unless agreed by both Parties. Any attempt to do so shall be considered a material breach of this Agreement. Neither Party nor any employee or subcontractor employed by either Party shall act, appear to act, or be deemed for any purpose whatsoever to be an agent, employee, servant or representative of the other Party.

9 Third Party Beneficiaries: Licensee and Licensor are the only parties to this Agreement. There are no third party beneficiaries.

10 Warranty and Disclaimer: Spirion warrants that Spirion has full legal right to enter into this agreement and that neither the services and/or products to be supplied hereunder, nor any work product to be provided hereunder, will violate or infringe the rights of any person, including any contract right or any patent, copyright, trade secret or other property right. Spirion further warrants that the software, if installed and operated in accordance with the documentation, will perform substantially in conformance with the documentation. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SPIRION DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS SET FORTH ELSEWHERE IN THIS AGREEMENT, LICENSEE ASSUMES RESPONSIBILITY FOR THE INSTALLATION OF, USE OF, AND RESULTS OBTAINED FROM THE SOFTWARE. WITHOUT LIMITING THE FOREGOING PROVISIONS, SPIRION MAKES NO WARRANTY THAT THE SOFTWARE WILL BE ERROR-FREE OR FREE FROM INTERRUPTIONS OR OTHER FAILURES OR THAT THE SOFTWARE WILL MEET LICENSEE'S REQUIREMENTS. SOME STATES AND JURISDICTIONS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES, SO THE ABOVE LIMITATION MAY NOT APPLY TO LICENSEE.

11 Limitation of Liability: UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, SHALL SPIRION OR ITS SUPPLIERS BE LIABLE TO YOU OR TO ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, OR FOR ANY AND ALL OTHER DAMAGES OR LOSSES. IN NO EVENT WILL SPIRION BE LIABLE FOR ANY DAMAGES IN EXCESS OF THE FEES ACTUALLY PAID BY LICENSEE, EVEN IF SPIRION SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR EVEN IF SUCH DAMAGES ARE THE RESULT OF SPIRION'S GOOD FAITH ACTIONS. THIS LIMITATION OF LIABILITY SHALL NOT APPLY TO LIABILITY FOR DEATH OR PERSONAL INJURY TO THE EXTENT THAT APPLICABLE LAW PROHIBITS SUCH LIMITATION. THE PARTIES ACKNOWLEDGE THAT TO THE EXTENT THE STATE OF TEXAS DOES NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION AND EXCLUSION THEN DOES NOT APPLY TO TAMU.

12 Indemnification

12.1 ***By Spirion: Spirion shall indemnify, defend and hold Licensee harmless from and against any claims, losses, damages, liabilities, costs and expenses (including reasonable attorneys' and professionals' fees and court costs) arising out of or in conjunction with any claim, suit or proceeding brought against Licensee, which alleges that the Licensed Products, as delivered and used in accordance with the terms and conditions of this Agreement and the Documentation, infringe any patent, copyright, trade secret, trademark or any other intellectual property right of any third party. Licensee agrees to notify Spirion of any such claim promptly in writing, and if approved by the Texas State Attorney General, tender the defense to Spirion and to allow Spirion to manage, control, and/or settle the proceedings. Licensee agrees to cooperate fully with Spirion during such proceedings. Spirion shall defend and settle at its sole expense all proceedings arising out of the foregoing.***

In the event of an infringement claim or should Spirion have reasonable concerns about infringement or potential infringement, Spirion may, at Spirion's option, replace, in whole or in part, the Licensed Products of concern (the "**Affected Licensed Products**") with a substantially compatible and functionally equivalent computer program or programs, modify the Affected Licensed Products to avoid the infringement and/or obtain such license(s) as it deems appropriate. Licensee agrees to promptly install any such replacement version(s) used on Authorized Devices and discontinue use of the superseded version(s). Licensee further agrees to promptly direct all employees with Software installed on a personally owned Device to promptly install any such replacement version(s) and discontinue the use of the superseded version(s) on such personally owned Devices. If Spirion reasonably determines that other

alternatives are not available at a cost that Spirion deems acceptable, Spirion may, at its option, terminate the license to the Licensed Product on thirty (30) days' notice, in which case, Spirion will refund the initial Software Fee for the Affected Licensed Products adjusted and reduced on a five (5) year straight-line depreciation basis over the period from the License Date to the termination date and refund any unused Maintenance or Subscription Fees pro-rated on a 12-month term.

13   **Notice:** Any notice or other communication to be given pursuant to this Agreement shall be in writing and shall be effective either when delivered personally to the Party for whom intended, or five days following mailing by first class mail postage prepaid or one business day following sending by overnight courier service, addressed to such Party at the address set forth at the outset of this Agreement, or to the address below. Either Party may designate different contact information by written notice in accordance with this Section.

If to Spirion: If to Licensee:

Company: Spirion, LLC   Company:Texas A&M University – Open Access Labs
Address: 200 Central Ave., Suite 420   Address: Suite 420 MS 4481
St. Petersburg, FL 33701   Attn:Chris Nugent & Richard Spiller
Fax: (646) 863-8302   Fax: 979-458-1808
Email: sales@spirion.com   Email: pito-software@tamu.edu

General communications between the Parties concerning the day to day performance of this Agreement may be by mail, facsimile, e-mail, Website Support ticket service, hand delivery or other appropriate means.

14   **Headings and Rules of Construction:** Section headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. Whenever used herein, the singular includes the plural and the plural includes the singular. The use of any gender, tense or conjugation includes all genders, tenses and conjugations.

15   **United States Government:** The Licensed Products are deemed to be "commercial computer software" and "commercial computer software documentation," respectively, pursuant to DFAR Section 227.72 et. seq. and FAR Section 12.212, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the Software and accompanying Documentation by the United States Government shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the terms of this Agreement.

16   **Export Controls:** Export Controls. Neither the Software nor the Documentation and underlying information or technology may be downloaded or otherwise exported or re-exported (i) into (or to a national or resident of) Cuba, Iran, Iraq, Libya, North Korea, Sudan, Syria or any other country to which the United States has embargoed goods; (ii) to anyone on the United States Treasury Department's list of Specially Designated Nations or the United States Commerce Department's Table of Denial Orders or (iii) to any country or organization prohibited by any agency of the government of the United States. By downloading or using the Software you are agreeing to the foregoing and you are certifying that you are not located in, under the control of, or a national or resident of any such country or on any such list. IN ADDITION, YOU SHOULD BE AWARE OF THE FOLLOWING: EXPORT OF THE SOFTWARE MAY BE SUBJECT TO COMPLIANCE WITH THE RULES AND REGULATIONS PROMULGATED FROM TIME TO TIME BY THE BUREAU OF EXPORT ADMINISTRATION, UNITED STATES DEPARTMENT OF COMMERCE, WHICH RESTRICT THE EXPORT AND RE-EXPORT OF CERTAIN PRODUCTS AND TECHNICAL DATA. IF THE EXPORT OF THE SOFTWARE IS CONTROLLED UNDER SUCH RULES AND REGULATIONS, THEN THE SOFTWARE SHALL NOT BE EXPORTED OR RE-EXPORTED, DIRECTLY OR INDIRECTLY, (A) WITHOUT ALL EXPORT OR RE-EXPORT LICENSES AND UNITED STATES OR OTHER GOVERNMENTAL APPROVALS REQUIRED BY ANY APPLICABLE LAWS, OR (B) IN VIOLATION OF ANY APPLICABLE PROHIBITION AGAINST THE EXPORT OR RE-EXPORT OF ANY PART OF THE SOFTWARE. SOME COUNTRIES HAVE RESTRICTIONS ON THE USE OF ENCRYPTION WITHIN THEIR BORDERS, OR THE IMPORT OR EXPORT OF ENCRYPTION EVEN IF FOR ONLY TEMPORARY PERSONAL OR BUSINESS USE. YOU ACKNOWLEDGE THAT THE IMPLEMENTATION AND ENFORCEMENT OF THESE LAWS IS NOT ALWAYS CONSISTENT AS TO SPECIFIC COUNTRIES. ALTHOUGH THE FOLLOWING COUNTRIES ARE NOT AN EXHAUSTIVE LIST THERE MAY EXIST RESTRICTIONS ON THE EXPORTATION TO, OR IMPORTATION OF, ENCRYPTION BY: BELGIUM, CHINA (INCLUDING HONG KONG), FRANCE, INDIA, INDONESIA, ISRAEL, RUSSIA, SAUDI ARABIA, SINGAPORE, AND SOUTH KOREA. YOU ACKNOWLEDGE IT IS YOUR ULTIMATE RESPONSIBILITY TO COMPLY WITH ANY AND ALL GOVERNMENT EXPORT AND OTHER APPLICABLE LAWS AND THAT SPIRION HAS NO FURTHER RESPONSIBILITY AFTER THE INITIAL SALE TO YOU WITHIN THE ORIGINAL COUNTRY OF SALE.

17   **High-Risk Activities:** The Software uses search algorithms to find data but is not guaranteed to find every occurrence of data searched. The Software is not fault-tolerant and is not designed or intended for use in hazardous environments requiring fail-safe performance, including without limitation, in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, weapons systems, direct life-support machines, machinery which might cause harm to a person or any other application in which the failure of the Software could lead directly to death, personal injury, or severe physical or property damage (collectively, "High-Risk Activities"). SPIRION EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR HIGH-RISK ACTIVITIES.

18   **Confidentiality: Confidential information ("Confidential Information") means information marked or otherwise identified in writing by a Party as proprietary or confidential and/or that a reasonable person would understand to be proprietary or confidential. It includes non-public information regarding either Party's products, features, marketing and promotions, information on employees, customers, alumni, students, systems and business practices. Confidential Information does not include (i) information which the recipient developed**

independently; (ii) information which the recipient knew before receiving it under the relevant agreement; or (iii) information which is or subsequently becomes publicly available or is received from another source, in either case other than by a breach of an obligation of confidentiality.

Each Party agrees to hold the other Party's Confidential Information in confidence. Each Party will exercise its best efforts to safeguard each other's Confidential Information. Such precautions will be at least as great as those that either Party takes to protect its own Confidential Information, but in no event less than a reasonable degree of protection. Each Party will disclose the other Party's Confidential Information to its employees consultants or agents only on a need-to-know basis and subject to the confidentiality obligations imposed here. When Confidential Information is no longer necessary to perform any obligation under the Agreement, it will be, at the option of the disclosing Party, returned to its owner or destroyed.

Neither Party will use the other's Confidential Information except in furtherance of this business relationship or disclose the other's Confidential Information except (i) to obtain advice from legal or financial consultants, or (ii) if compelled by law, in which case the disclosing Party will use its best efforts to give the other Party notice of the requirement so that the disclosure can be contested or limited. Neither Party may disclose the specific terms of this Agreement (including but not limited to purchase price and discounts) without obtaining the prior written consent from the other Party.

Spirion acknowledges that TAMU is obligated to strictly comply with the Public Information Act, Chapter 552, Texas Government Code, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law. Upon TAMU's written request, Spirion will provide specified public information exchanged or created under this Agreement that is not otherwise excepted from disclosure under Chapter 552, Texas Government Code, to TAMU in a non-proprietary format acceptable to TAMU. As used in this provision, "public information" has the meaning assigned Section 552.002, Texas Government Code, but only includes information to which TAMU has a right of access. Spirion acknowledges that TAMU may be required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), Texas Government Code.

The provisions of this Section shall survive termination of this Agreement.

19   **Suggestions and Feedback:** Either Party may from time to time provide suggestions, comments or other feedback to the other Party with respect to Licensed Products, Confidential Information, or any other subject ("Feedback"). Both Parties agree that all Feedback is and shall be entirely voluntary and shall not, absent separate agreement, create any confidentiality obligation for the receiving Party. Feedback may or may not be clearly designated as such and, except as otherwise provided herein, each Party shall be free to disclose, use, or commercially exploit such Feedback as it sees fit, entirely without obligation of any kind to the other Party. Licensee obtains no intellectual property rights, title, or interest in the Licensed Products, Upgrades or Updates, even if such intellectual property incorporates Feedback from Licensee. The foregoing shall not, however, affect either Party's obligations hereunder with respect to Confidential Information of the other Party.

20   **Jurisdiction and Governing Law:** This Agreement shall be exclusively construed and interpreted in accordance with the laws of the State of Texas, excluding conflict of laws provisions. No rules, regulations, laws or statutes of any kind or nature of any other city, county, state or other jurisdiction shall be given any force or effect. The application of the United Nations Convention of Contracts for the International Sale of Goods is expressly excluded. You agree to submit to the personal and the exclusive jurisdiction of the courts (both federal and state) located in Brazos County in the State of Texas for any action or proceeding initiated by you or any other person or entity. This includes all actions and proceedings of every kind and nature, even if they did not arise out of this Agreement. Service of a Summons and Complaint upon you by U.S. Mail, Federal Express at the address stated above or by e-mail shall be the equivalent as if you were personally served with said documents in the State of Texas.

21   **Dispute Resolution:** The dispute resolution process provided in Chapter 2260, Texas Government Code, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by TAMU and Spirion to attempt to resolve any claim for breac**h of contract made by Spirion that cannot be resolved in the ordinary course of business. Spirion shall submit written notice of a claim of breach of contract under this Chapter to the University Contracts Officer of Texas A&M University, who shall examine Spirion's claim and any counterclaim and negotiate with Spirion in an effort to resolve the claim.**

22   **Waiver:** No indulgence or forbearance by a Party shall be deemed to constitute a waiver of its rights to insist on performance in full and in a timely manner of all the terms and conditions hereof and any such waiver, in order to be binding upon a Party, must be express and in writing and signed by an authorized representative of such Party and then such waiver shall be effective only in the specific instance and for the specific purpose for which it is given. No waiver of any term or condition of this Agreement by a Party shall be deemed to be a waiver by

such Party of its rights to require full and timely compliance with the same term or condition thereafter, or with any other term or condition of this Agreement.

23 **Assignment:** Licensee agrees not to assign, or otherwise transfer this Agreement or such Party's rights under it, or delegate its obligations, without Licensor's prior written consent, and any attempt to do so is void. Notwithstanding, Licensee may assign this Agreement without prior written consent only to an entity which acquires all or substantially all of its assets, only if the assignment would not otherwise violate this agreement, including but not limited to the Sameness Rule. Any other attempt to assign is void, without written consent from Licensor. Licensor may assign this agreement without restriction, limitation, or notice to Licensee.

24 **Force Majeure:** Neither Party shall be responsible for any delay or failure of performance under this Agreement caused by events or circumstances beyond such Party's control, which may not be overcome by due diligence.

25 **Severability:** Notwithstanding anything to the contrary herein, all provisions hereof are hereby limited to the extent mandated by any applicable law, regulation or decision. If any one or more paragraphs, clauses or other portions hereof should ever be determined to be illegal, invalid or otherwise unenforceable by a court of competent jurisdiction, or to be illegal, invalid or invalidated or unenforceable by reason of any existing or later enacted law, regulation or statute, then to the extent it is within the jurisdiction illegal, invalid or unenforceable, it shall be limited or construed so as to be valid and enforceable or severed and deleted here from. The remaining provisions hereof shall survive, remain in full force and effect, continue to be binding and shall not be affected except insofar as may be necessary to make sense hereof, and shall be interpreted to give effect to the intention of the Parties insofar as that is possible. The Parties confirm that it is their wish that this Agreement has been written in the English language only.

26 **Survival:** Those provisions of this Agreement which by their nature and context are intended to survive the termination or expiration of this Agreement shall so survive.

27 **Counterparts:** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement.

28 **Remedies:** The rights and remedies of Spirion provided in this Agreement shall be in addition to (and not in substitution for) any rights and remedies to which Spirion shall be entitled at law or equity.

29 **Amendments or Modifications:** This Agreement may not be modified except by a written addendum executed by duly authorized representatives of the Parties. The terms and conditions of this Agreement (including Addenda) shall supersede all conflicting pre-printed terms and conditions contained in any purchase order or other business form submitted hereafter by either party to the other.

30 **Entire Agreement:** This Agreement including all Addenda sets forth the entire agreement between the Parties concerning the subject matter hereof and supersedes all prior agreements, negotiations, discussions, arrangements and communications, whether oral or written, with respect to the subject matter hereof.

31. **State Contracting Language:**

Delinquent Child Support Obligations. A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under an agreement to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. The *Texas Family Code* requires the following statement: "Under Section 231.006, *Texas Family Code*, the Spirion or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."

Payment of Debt or Delinquency to the State. Pursuant to Sections 2107.008 and 2252.903, *Texas Government Code*, Spirion agrees that any payments owing to Spirion under this Agreement may be applied directly toward certain debts or delinquencies that Spirion owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.

Prohibited Bids and Agreements. A state agency may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the bid or contract is based. The *Texas Government Code* requires the following statement: "Under Section 2155.004, *Texas Government Code*, the Spirion certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."

Access by Individuals with Disabilities. Spirion represents and warrants that the electronic and information resources and all associated information, documentation, and support that it provides to Customer under this Agreement (collectively, the "EIRs") comply with the applicable requirements set forth in Title 1, Chapter 213 of the Texas Administrative Code and Title 1, Chapter 206, §206.70 of the Texas

Administrative Code (as authorized by Chapter 2054, Subchapter M of the Texas Government Code). To the extent Spirion becomes aware that the EIRs, or any portion thereof, do not comply then Spirion represents and warrants that it will, at no cost to Customer, either (1) perform all necessary remediation or (2) replace the EIRs with new EIRs.

Franchise Tax Certification. If Spirion is a taxable entity subject to the Texas Franchise Tax (Chapter 171, *Texas Tax Code*), then Spirion certifies that it is not currently delinquent in the payment of any franchise (margin) taxes or that Spirion is exempt from the payment of franchise (margin) taxes.

Products and Materials Produced in Texas. Spirion agrees that in accordance with Section 2155.4441, *Texas Government Code*, in performing its duties and obligations under this Agreement, Spirion will purchase products and materials produced in Texas when such products and materials are available at a price and time comparable to products and materials produced outside of Texas.

Loss of Funding. Performance by TAMU under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature"). If the Legislature fails to appropriate or allot the necessary funds, TAMU will issue written notice to Spirion and TAMU may terminate this Agreement without further duty or obligation hereunder. Spirion acknowledges that appropriation of funds is beyond the control of TAMU.

State Auditor's Office. Spirion understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), *Texas Education Code*. Spirion agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. Spirion will include this provision in all contracts with permitted subcontractors.

Non-Waiver. Spirion expressly acknowledges that TAMU is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by TAMU of its right to claim such exemptions, privileges, and immunities as may be provided by law.

Spirion Certification regarding Boycotting Israel. Pursuant to Chapter 2270, *Texas Government Code*, Spirion certifies Spirion (1) does not currently boycott Israel; and (b) will not boycott Israel during the Term of this Agreement. Spirion acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

Spirion Certification regarding Business with Certain Countries and Organizations. Pursuant to Subchapter F, Chapter 2252, *Texas Government Code*, Spirion certifies Spirion (1) is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Spirion acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

Conflict of Interest. By executing and/or accepting this Agreement, Spirion and each person signing on behalf of Spirion certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief, no member of The Texas A&M University System ("TAMUS") or TAMUS Board of Regents, nor any employee, or person, whose salary is payable in whole or in part by TAMU or TAMUS, has direct or indirect financial interest in the award of this Agreement, or in the services to which this Agreement relates, or in any of the profits, real or potential, thereof.

32. **Execution:** By signing below, the Parties signify that they have read this Agreement and agree to its terms.

Spirion, LLC   Licensee

By:		By:	
Name:	Neil Stelzer	Name:	ROBERT C. BOUNDS
Title:	General Counsel	Title:	DIRECTOR, PROCUREMENT SERVICES
Date:	July 29, 2019	Date:	16 Jul 2019