



City of Jonesboro

300 S. Church Street
Jonesboro, AR 72401

Signature Copy

Ordinance: O-EN-053-2019

File Number: ORD-19:043

Enactment Number: O-EN-053-2019

AN ORDINANCE TO WAIVE COMPETITIVE BIDDING AND AUTHORIZE THE MAYOR TO ENTER INTO AN AGREEMENT FOR THE ANNUAL RENEWAL OF THE SPRINGBOOK FINANCIAL SOFTWARE FOR THE CITY OF JONESBORO

BE IT ORDAINED by the City Council for the City of Jonesboro, Arkansas that:

SECTION 1: That the Information Systems Department of the City of Jonesboro, Arkansas needs to renew our services agreement with Springbrook who is the current provider of financial services software for the City of Jonesboro.

SECTION 2: That the basic annual subscription for the software is \$62,745.00 and the money is already budgeted for this renewal. All other details of the agreement, including the scope of services to be provided are set out in the attached contract, which has an effective term from September 20, 2019 to September 19, 2020.

SECTION 3: That the City Council in accord with the terms of A.C.A. Section 14-58-303 states that bidding in this matter is not practical and hereby waives the requirement of competitive bidding. Springbrook has been used by the City for financial software for more than ten years and has been set up to integrate with all of our departments and our timeclocks system and it would be impracticable to make a change at this time, and therefore bidding is hereby waived.

PASSED AND APPROVED THIS 3RD DAY OF SEPTEMBER, 2019.



JONESBORO, AR- CITY OF
5/9/2019

Springbrook Operations Team
operations@sprbrk.com



JONESBORO, AR – ORDER FORM

<i>Product</i>	<i>Product Attributes</i>	<i>Amount</i>	<i>Comments</i>
Finance Suite	FST	\$26,922.00	
Human Resources Management	PHR	\$5,698.00	
Accounts Receivable	FAR	\$2,933.00	
Building Permits	FBP	\$3,438.00	
Licenses and Permits	FLP	\$3,438.00	
Payroll	PPR	\$20,316.00	
		\$62,745.00	

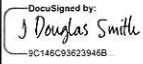


JONESBORO, AR – ORDER FORM

Order Detail	
General Information	
Customer Name	JONESBORO, AR- CITY OF
Customer Contact	
Customer Address	
Governing Agreement(s)	This Order Form is governed by the agreement attached to this order form.
Term(s):	20 SEPTEMBER 2019 – 19 SEPTEMBER 2020
Order Terms	
Order Start Date	Unless otherwise specified in the Special Order Terms: <ul style="list-style-type: none"> - Software Licenses & Subscriptions start on the date of delivery by Springbrook; and - Maintenance, Hosting and Support start on Springbrook's delivery of the software hosted and/or supported.
Order Duration	Unless otherwise specified in the Special Order Terms: <ul style="list-style-type: none"> - Any Software Licenses or Hardware are one-time, non-refundable purchases. - Subscriptions, Maintenance, Hosting and Support ("Recurring Services") continue from the Order Start Date through the number of months listed in this Order Form (or if not listed, twelve (12) months). - Fees for Recurring Services will be subject to an automatic annual increase by seven percent (7%) of the prior year's Recurring Fees ("Standard Annual Price Increase").
Special Order Terms	<ul style="list-style-type: none"> - In the event of an inconsistency between this Order Form, any governing agreement, purchase order, or invoice, the Order Form shall govern as it pertains to this transaction. - As applicable, Springbrook Holding Company, LLC shall replace any previously used Springbrook contracting entities as successor in interest of Springbrook. - As applicable, unless otherwise specified in this order form (e.g., as a result of the purchase of additional modules and/or conversion to SaaS, in each case to be agreed upon in writing between Springbrook and Customer), Customer shall have the same rights to Springbrook's Software based on Springbrook's new, consolidated SKUs that would otherwise exist as the result of a contract renewal between Springbrook and Customer.
Payment Terms	
Currency	USD
Invoice Date	Unless otherwise stated in the Special Payment Terms, Invoice for the Grand Total \$ above will be issued on the Order Start Date.
Payment Due Date	Unless otherwise stated in the Special Payment Terms or the Governing Agreement(s), all payments are due on the Invoice Date and payable net 30 days .
Special Payment Terms	None unless otherwise specified in this section.



JONESBORO, AR – ORDER FORM

Accounts Payable Contact Information <i>(Required)</i>			
First Name		Last Name	
Title			
Phone Number			
Email Address:			
Billing Address			
Delivery Address			
Method of Invoicing	All invoices will be sent electronically to the Email Address provided above unless otherwise specified in Special Invoicing Needs.		
Special Invoicing Need			
Signature Section <i>(Required)</i>			
Vendor	Springbrook Holding Company, LLC	Customer	JONESBORO, AR - CITY OF
Signed By		Signed By	
Date	7/25/2019	Date	
Title of Authorized Signatory	Head of Springbrook Northeast	Title of Authorized Signatory	
Name (Print) of Authorized Signatory	J Douglas Smith	Name (Print) of Authorized Signatory	
Additional Signatures Section <i>(Optional)</i>			
Customer		Customer	
Signed By		Signed By	
Date		Date	
Title of Authorized Signatory		Title of Authorized Signatory	
Name (Print) of Authorized Signatory		Name (Print) of Authorized Signatory	
Purchase Order Reference <i>(Optional)</i>			
<p>If Customer requires PO number on invoices, it must be provided to the right and Customer must provide Springbrook copy of the PO prior to invoice issuance. If no PO number provided prior to invoice issuance date, invoices issued on this Order Form will be valid without a PO reference.</p>			PO# (If required):

SPRINGBROOK MASTER SERVICES AGREEMENT – SOFTWARE AS A SERVICE

This Springbrook Master Services Agreement (this “**Agreement**”) is entered into as of the date of last signature (the “**Effective Date**”) by and between Springbrook Holding Company, LLC, a Delaware corporation with a principal place of business at 1000 SW Broadway, Suite 1900 Portland, Oregon 97205 (“**Springbrook**”) and Customer identified on the Order, together referred to as the “**Parties**” and each individually as a “**Party**.” Specific services terms, product details, and any applicable license and/or subscription terms will be set forth in applicable Order(s) which shall become binding on the parties and subject to this Agreement.

Purchase or use of the Subscription Service (defined below) is subject to this Agreement. If Customer is entering into this Agreement on behalf of a company, organization or another legal entity (an “**Entity**”), Customer is agreeing to this Agreement for that Entity and representing to Springbrook that it has the authority to bind such Entity to this Agreement.

1. DEFINITIONS

1.1 “**Authorized User**” means one individual natural person, authorized by Customer to use the Subscription Service and for whom Customer has purchased a subscription to the Subscription Service. Authorized Users may include but are not limited to Customer’s employees, contractors and agents. Each Authorized User will be associated with a single, unique email address for purposes of accessing (and being identified within) the Subscription Service.

1.2 “**Customer Data**” means any and all content, eDocuments, materials, data and information that Customer or its Authorized Users, or other end users enter into the Subscription Services including but not limited to, personal information, information exchanged between Customer and Authorized User or Authorized User and a third party using the Subscription Services, information used to identify account names or numbers, routing information, usernames, passwords, access codes and prompts.

1.3 “**Customer**” means the entity that purchases a subscription to the Subscription Service, directly from Springbrook or through an authorized reseller, distributor, or other channel partner of Springbrook.

1.4 “**Intellectual Property Rights**” means patent rights (including, without limitation, patent applications and disclosures), copyrights, trade secrets, know-how, and any other intellectual property rights recognized in any country or jurisdiction in the world.

1.5 “**Online Payments Schedule**” means service-specific terms and conditions applicable to the Springbrook Online Payments software, attached hereto as Exhibit C.

1.6 “**Open Source Software**” or “**OSS**” means software components that are licensed under a license approved by the Open Source Initiative or similar open source or freeware license and may be embedded in the delivered Software.

1.7 “**Optional Subscription Services**” mean the optional add-ons to the Subscription Service that may be available for purchase either directly from Springbrook or through an authorized reseller or partner of Springbrook, as more particularly described or identified in the applicable Order.

1.8 **“Order Form”** means written orders to purchase subscriptions and to use the Subscription Service (or, where applicable, to purchase Optional Subscription Services).

1.9 **“Services”** means the Software and services identified in a corresponding Order Form that are provided by Springbrook.

1.10 **“Software”** means the Springbrook proprietary software, in object code format, including documentation, updates, patch releases, and upgrades with respect thereto, Springbrook makes available for download or otherwise provides for use with the Subscription Service, but excludes any OSS and other third-party software.

1.11 **“Specifications”** means the online specifications for the Subscription Service, as made available by Springbrook at <https://acela.box.com/v/sprbrk-software-specs> (which URL location and content may be updated from time to time by Springbrook).

1.12 **“Subscription Period(s)”** means the duration of Customers and Authorized User’s active, paid access to the Subscription Service, as designated in the Order Form(s).

1.13 **“Subscription Service(s)”** means the cloud-based Software for which Customer has obtained a subscription either directly from Springbrook or through an authorized reseller or other partner of Springbrook, as more particularly described in the applicable agreement or order under which such subscription was obtained. If and as designated in the Specifications, the Subscription Service may be inclusive of application programming interfaces (“APIs”) developed by Springbrook to enable interaction and integration with the Subscription Service. Unless otherwise specified herein or other applicable contractual terms, all references to “Subscription Service(s)” will be deemed to include Optional Subscription Services that are Springbrook Software or other Springbrook proprietary products.

1.14 **“Supported Modification”** means a configuration of or modification to the Subscription Service requested by Customer that can be consistently supported by Springbrook via APIs, does not require direct database changes and is capable of being tested and maintained by Springbrook.

1.15 **“Third Party Services”** means products, services, technology and methods other than Springbrook proprietary Software and Services.

2. USAGE AND ACCESS RIGHTS

2.1. **Right to Access.** Springbrook hereby grants to Customer a limited, non-exclusive, non-transferrable right to (a) access and use the Software and (b) implement, configure and permit its Authorized Users to access and use the Software during the Subscription Period, solely for it and its affiliates’ internal business purposes, and in accordance with the Specifications. Customer may purchase the Services by submitting Order Form. No Order Form will be deemed accepted by Springbrook unless and until Springbrook accepts such Order Form in writing. Upon Order acceptance and subject to Customer’s payment of the corresponding Services fees, Springbrook will make the Services available to Customer. Any terms and conditions contained in any quote, invoice, purchase order or Order Form that are inconsistent with the terms and conditions of this Agreement will be deemed stricken, unless expressly agreed to in writing by Springbrook with explicit reference to the accepted terms and conditions. Upon acceptance of an Order Form, it will become part of this Agreement. Customer will ensure that all its Authorized Users using the Subscription Services under its

Account comply with all of Customer's obligations under this Agreement, and Customer is responsible for their acts and omissions relating to the Agreement as though they were those of Customer. Customer acknowledges and agrees the use of the Subscription Services may require Customer to enter into separate licenses with entities other than Springbrook for Third Party Services.

2.2. Restrictions on Use. Customer shall not, and shall not permit others to, do the following with respect to the Subscription Services:

- 2.2.1. make the Subscription Service available to anyone other than Authorized Users;
- 2.2.2. use the Subscription Services, or allow access to it, in a manner that circumvents contractual usage restrictions or that exceeds Customer's authorized use or usage metrics as set forth in this Agreement, including the applicable Order Form;
- 2.2.3. license, sub-license, sell re-sell, rent, lease, transfer, distribute or time share or otherwise make any portion of the Subscription Services available for access by third parties except as otherwise expressly provided in this Agreement or the express permission of Springbrook;
- 2.2.4. use the Subscription Service in a way that (i) violates or infringes upon the rights of a third party, including those pertaining to: contract, intellectual property, privacy, or publicity; or (ii) effects or facilitates the storage or transmission of libelous, tortious, or otherwise unlawful material including, but not limited to, material that is harassing, threatening, or obscene;
- 2.2.5. access or use the Subscription Services (inclusive of any APIs) for the purpose of developing or operating products or services intended to be offered to third parties in competition with the Subscription Services or allow access by a direct competitor of Subscription Services;
- 2.2.6. obtain intellectual property rights to the use of any component of the Subscription Services (inclusive of APIs);
- 2.2.7. create derivative works based on the Subscription Service;
- 2.2.8. reverse engineer, decompile, disassemble, copy, or otherwise attempt to derive source code or other trade secrets from or about any of the Subscription Services or technologies, other than copying or framing on Customer's own intranets or otherwise for Customer's internal business purposes in accordance with Springbrook's applicable documentation;
- 2.2.9. interfere with or disrupt the integrity, operation, or performance of the Subscription Services or interfere with the use or enjoyment of it by others by, among other things, using it to create, use, send, store, or run viruses or other harmful computer code, files, scripts, agents, or other programs or circumvent or disclose the user authentication or security of the Subscription Services or any host, network, or account related thereto or use any aspect of the Subscription Service components other than those specifically identified in an Order Form, even if technically possible. Springbrook assumes no responsibility for any fraudulent or unauthorized use of the Software or any portion of the Subscription Services;
- 2.2.10. use or allow the use of, the Subscription Services by anyone located in, under the control of, or that is a national or resident of a U.S. embargoed country or territory or by a prohibited end user under Export Control Laws (as defined in Section 11.3).

2.3 Data Usage and Storage. The Subscription Service is provided with a limit of five hundred gigabytes (500GB) of data storage for all cloud environments. Additional storage can be purchased from Springbrook by Customer in blocks of five hundred megabytes (500MB), with a price of one thousand dollars (\$1,000) per year. If the Subscription Service is nearing its expiration date or is otherwise terminated, Springbrook will initiate its data retention processes, including the deletion of Customer Data from systems directly controlled by Springbrook. Springbrook's Data Storage Policy can be accessed at <https://acela.box.com/v/sprbrk-datastorage-policy> (which URL location and content may be updated from time to time by Springbrook).

2.4 Springbrook's Responsibilities. Springbrook will: (i) make the Subscription Services available to Customer pursuant to this Agreement and any applicable Order Forms; (ii) provide to Customer support related to the Subscription Service in accordance with the Springbrook Support Terms accessible at <https://acela.box.com/v/sprbrk-saas-support-policy> (which URL location and content may be updated from time to time by Springbrook); (iii) provide the Subscription Service only in accordance with applicable laws and government regulations; and (iv) will maintain a current PCI-DSS Attestation of Compliance ("AOC") which shall be available upon request to Customer once per year.

2.5 Customer's Responsibilities. Customer will (i) be responsible for meeting Springbrook's applicable minimum system requirements accessible at <https://acela.box.com/v/sprbrk-minimum-requirements> (which URL location and content may be updated from time to time by Springbrook) for use of the Subscription Service; (ii) be responsible for Authorized Users' compliance with this Agreement and for any other activity (whether or not authorized by Customer) occurring under Customer's account, (iii) be solely responsible for the accuracy, quality, integrity and legality of Customer Data, (iv) use commercially reasonable efforts to prevent unauthorized access to or use of the Subscription Service under its account, and notify Springbrook promptly of any such unauthorized access or use, and (v) use the Subscription Service only in accordance with the applicable documentation, laws and government regulations, and any written instructions provided by Springbrook to Customer.

3. PAYMENT TERMS.

3.1. Invoicing and Payment. Springbrook will invoice Customer in advance for the Subscription Service. Subscription Service fees are due upon invoice and payable within thirty (30) days of the invoice date. Subscription Service fees will be due no later than the first day of each Subscription Period to which the payment relates. If Customer orders additional Authorized User quantities part-way through an existing Subscription Period, and the initial Subscription Period for the additional quantity is adjusted as described herein, then the Subscription Service fee for such additional quantity will be pro-rated accordingly. Optional Subscription Services will be due at the same time as payment for the corresponding Subscription Service, or (if applicable) as otherwise specified in the applicable Order Form or governing terms. Subscription Service fees and any other recurring fees will be subject to an automatic annual increase by not more than seven percent (7%) of the prior year's Subscription Service fees ("Standard Annual Price Increase"). Customer is responsible for keeping Springbrook accurately and fully informed of Customer's billing and contact information, including providing any purchase order numbers in advance of invoice issuance. Upon execution by Customer and Springbrook, each Order Form and/or SOW is non-cancellable and non-refundable except as provided in this Agreement.

3.2. Overdue Charges. If any fees owed are not received from Customer by the due date, then without limiting Springbrook's rights or remedies, those charges will accrue late interest at the rate of one and a half percent (1.5%) of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower.

3.3. No Requirement for Purchase Order. Customer acknowledges that a purchase order is not required and is for administrative convenience only, and that Springbrook has the right to issue an invoice and collect payment without a corresponding purchase order. Provided, however, that if a Customer's procurement procedure requires a purchase order number on a pertinent Order Form or SOW, the purchase order is required to be provided to Springbrook. If the Customer issues a purchase order, then it shall be for the full

amount set forth in the applicable Order Form or SOW, and Springbrook hereby rejects any additional or conflicting terms appearing in a purchase order or any other ordering materials submitted by Customer.

3.4. Suspension of Service and Acceleration. If any amount owing by Customer under this Agreement for any of the Subscription Services is thirty (30) or more days overdue, Springbrook may, without limiting Springbrook's other rights and remedies, accelerate Customer's unpaid fee obligations under this Agreement (including any Order Form or SOW) so that all such obligations become immediately due and payable and suspend any use of the Subscription Service until such amounts are paid in full. Moreover, if any amount owing by Customer under this Agreement for any Subscription Services is ninety (90) days delinquent, Springbrook may, in its sole discretion, temporarily cease providing Customer Subscription Services and/or any pertinent support until past due amounts are paid in full.

3.5. Taxes. Subscription Services fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). Customer is responsible for paying all Taxes. If Springbrook has the legal obligation to pay or collect Taxes for which Customer is responsible under this paragraph, the appropriate amount will be invoiced to and paid by Customer, unless Customer provides Springbrook with a valid tax exemption certificate authorized by the appropriate taxing authority prior to invoice issuance. For clarity, Springbrook is solely responsible for taxes assessable against it based on Springbrook's income, property and employees.

4. CONFIDENTIALITY

4.1. Definition. As used herein, "**Confidential Information**" means all confidential information disclosed by a party ("**Disclosing Party**") to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. However, Confidential Information will not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

4.2. Protection. Except as otherwise permitted in writing by the Disclosing Party and subject to the other terms of this Agreement (including Springbrook's Privacy Policy, accessible at <https://accela.box.com/v/sprbrkprivacy-policy>, which URL and its content may be updated from time to time by Springbrook), (i) the Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) the Receiving Party will limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who are legally bound to protect such Confidential Information consistent with this Agreement.

4.3. Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest, limit, or protect the disclosure.

5. OWNERSHIP

5.1. Subscription Services. Subject to the limited rights expressly granted hereunder, Springbrook reserves all rights, title and interest in and to the Subscription Service and any associated Software and documentation, including all related technology and Intellectual Property Rights, and no other license or ownership may be inferred to Customer or any third party. Springbrook reserves all rights not granted herein.

5.2. Customer Data. Customer reserves all its rights, title and interest in and to the Customer Data. No rights are granted to Springbrook hereunder with respect to the Customer Data, except that Springbrook may (i) store, copy, process, and transmit such Customer Data for purposes of providing the Subscription Service to Customer and (ii) otherwise utilize Customer Data if and as permitted by the Springbrook Privacy Policy.

5.3. Third Party Services. Customer may choose to obtain Third Party Services for use with the Springbrook Software and Services either directly through the third party providing the Third Party Services or indirectly through Springbrook where Springbrook acts as a reseller of the Third Party Services. Third Party Services may require Customer to enter into a license or other agreement with such third party for use of the Third Party Services. Customer is solely responsible for obtaining any such license or other agreement for the Third Party Services. CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES THAT THIRD-PARTY SERVICES ARE PROVIDED PURSUANT TO THE TERMS OF THE APPLICABLE THIRD-PARTY LICENSE OR SEPARATE AGREEMENT (IF ANY) BETWEEN THE LICENSOR OF THE THIRD-PARTY SERVICES AND CUSTOMER, CUSTOMER MAY ONLY SEEK REDRESS FOR USE OF THE THIRD-PARTY SERVICES FROM THE THIRD PARTY PROVIDING THE THIRD-PARTY SERVICES, AND SPRINGBROOK ASSUMES NO RESPONSIBILITY FOR, AND SPECIFICALLY DISCLAIMS ANY LIABILITY OR OBLIGATION WITH RESPECT TO, ANY THIRD-PARTY SERVICE.

5.4. Feedback. Customer grants Springbrook a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate into the Subscription Service (or Springbrook's other software or services) any suggestions, enhancement requests, recommendations, or other feedback provided by Customer or Authorized Users relating to the operation or features of the Subscription Service.

6. WARRANTIES AND DISCLAIMERS

6.1. Specifications. Subject to the limitations set forth below, Springbrook warrants that, during the Subscription Period, the Subscription Service will operate in all material respects in accordance with the Specifications. As Customer's sole and exclusive remedy and Springbrook's entire liability for any breach of the foregoing warranty, Springbrook will use commercially reasonable efforts to modify the Subscription Service so that it conforms to foregoing warranty.

6.2. Subscription Service Level Commitment. During the Subscription Period, Springbrook further warrants that the Subscription Service will meet the performance level specified in Exhibit A, which sets forth Customer's sole and exclusive remedy for Springbrook's failure to achieve the stated Subscription Service performance level.

6.3. Mutual Warranties. Each party represents and warrants that: (a) this Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against it in accordance with the terms of the Agreement; and (b) no authorization or approval from any third party is required in connection with its execution, delivery, or performance of this Agreement.

6.4. Disclaimers. EXCEPT AS EXPRESSLY PROVIDED HEREIN, SPRINGBROOK DOES NOT MAKE ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND SPRINGBROOK SPECIFICALLY

DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTIES ARISING OUT OF THE COURSE OF DEALING OR USAGE OF TRADE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. Springbrook will not be responsible to the extent failure of the Subscription Service to operate as warranted is caused by or results from: (i) any modification to the Subscription Service other than a Supported Modification; (ii) combination, operation or use of the Subscription Service with Customer's or Third Party Services, software or systems; (iii) abuse, willful misconduct or negligence by anyone other than Springbrook or Springbrook's designee; (iv) use of the Subscription Service other than in accordance with the terms of this Agreement and/or the applicable Specifications and Springbrook documentation or (v) any of the SLC Exclusions (as defined in the Subscription Service Level Commitment).

7. MUTUAL INDEMNIFICATION

7.1. Indemnification by Customer. Unless otherwise prohibited by applicable law, Customer will defend (or settle), indemnify and hold harmless Springbrook, its officers, directors, employees and subcontractors, from and against any liabilities, losses, damages and expenses, including court costs and reasonable attorneys' fees, arising out of or in connection with any third party claim that: (i) a third party has suffered injury, damage or loss resulting from Customer's or any Authorized User's use of the Subscription Service (other than any claim for which Springbrook is responsible under Section 8) in violation of this Agreement, applicable law, or the Specifications or (ii) the nature and content of all Customer Data processed by Subscription Services.

7.2. Indemnification by Springbrook. Springbrook will defend (or at Springbrook's option, settle) any thirdparty claim, suit or action brought against Customer to the extent that it is based upon a claim that the Subscription Service, as furnished by Springbrook hereunder, infringes or misappropriates the Intellectual Property Rights of any third-party, and will pay any costs, damages and reasonable attorneys' fees attributable to such claim that are awarded against Customer. Springbrook will have no liability under this Section 7.2 to the extent that any third-party claims described herein are based on (i) any combination of the Subscription Service with Third Party Services or products, services, methods, or other elements not proprietary to Springbrook; (ii) any use of the Subscription Service in a manner that violates this Agreement or the instructions given to Customer by Springbrook; (iii) any use of the Subscription Services in a manner that it was not intended (iv) Customer's failure to incorporate updates or upgrades that would have avoided the alleged infringement; (v) Customer's breach of this Agreement; and/or Customer's revisions of Subscription Services made without Springbrook's written consent.

THIS SECTION 7.2 STATES THE ENTIRE OBLIGATION OF SPRINGBROOK AND ITS LICENSORS WITH RESPECT TO ANY ALLEGED OR ACTUAL INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS BY THE SERVICE.

7.3. Indemnification Requirements. In connection with any claim for indemnification under this Section 7, the indemnified party as a condition to receive indemnity from the indemnifying party, must: (a) provide the indemnifying party prompt written notice of such claim; (b) reasonably cooperate with the indemnifying party, at indemnified party's expense, in defense and settlement of such claim; and (c) give sole authority to the indemnifying party to defend or settle such claim.

7.4. Mitigation Measures. In the event that (i) any claim or potential claim covered by Section 7.2 arises or (ii) Springbrook's right to provide the Subscription Service is enjoined or in Springbrook's reasonable opinion is likely to be enjoined, Springbrook may, in its discretion, seek to mitigate the impact of such claim or injunction by obtaining the right to continue providing the Subscription Service, by replacing or modifying the Subscription Service to make it non-infringing, and/or by suspending or terminating Customer's use of the Subscription Service with reasonable notice to Customer. In the case of a suspension or termination pursuant to this Section 7.4, Springbrook will refund to Customer a portion of fees prepaid by Customer for the then-current Subscription period, prorated to the portion of that Subscription period that is affected by the suspension or termination).

8. **LIMITATIONS OF LIABILITY.** EXCEPT FOR LIABILITY ARISING OUT OF (i) CUSTOMER'S BREACH OF SECTION 2.2 (RESTRICTIONS); (ii) EITHER PARTY'S BREACH OF SECTION 5 (CONFIDENTIALITY); OR (iii) EACH PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 8, NEITHER PARTY'S AGGREGATE LIABILITY FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR FROM THE USE OF OR INABILITY TO USE THE SERVICE, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER HEREUNDER IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE INCIDENT.

Exclusion of Damages. EXCEPT FOR LIABILITY ARISING OUT OF (i) CUSTOMER'S BREACH OF SECTION 2.2 (RESTRICTIONS) OR (ii) EITHER PARTY'S BREACH OF ITS INDEMNIFICATION OBLIGATIONS UNDER SECTION 7, IN NO EVENT SHALL EITHER PARTY OR ANY OTHER PERSON OR ENTITY INVOLVED IN CREATING, PRODUCING, OR DELIVERING THE SERVICE BE LIABLE FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOSS OF DATA OR LOSS OF GOODWILL, SERVICE INTERRUPTION, COMPUTER DAMAGE OR SYSTEM FAILURE OR THE COST OF SUBSTITUTE PRODUCTS OR SERVICES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR FROM THE USE OF OR INABILITY TO USE THE SUBSCRIPTION SERVICE, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY. THE FOREGOING EXCLUSIONS APPLY WHETHER OR NOT A PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, AND EVEN IF A LIMITED REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. NOTHING IN THIS AGREEMENT EXCLUDES OR RESTRICTS THE LIABILITY OF EITHER PARTY FOR DEATH OR PERSONAL INJURY RESULTING FROM ITS NEGLIGENCE.

8.1. Security and Other Risks. Customer acknowledges that, notwithstanding security features of the Subscription Service, no product, hardware, software or service can provide a completely secure mechanism of electronic transmission or communication and that there are persons and entities, including enterprises, governments and quasi-governmental actors, as well as technologies, that may attempt to breach any electronic security measure. Subject only to its limited warranty obligations set forth in Section 7, Springbrook will have no liability for any security breach caused by any such persons, entities, or technologies. Customer further acknowledges that the Subscription Service is not guaranteed to operate without interruptions, failures, or errors. If Customer or Authorized Users use the Subscription Service in any application or environment where failure could cause personal injury, loss of life, or other substantial harm, Customer assumes any associated risks and will indemnify Springbrook and hold it harmless against those risks.

9. SECURITY AND PERSONAL DATA

9.1. Security. Springbrook has implemented commercially viable and reasonable information security processes, policies and technology safeguards to protect the confidentiality and integrity of Customer Data, personal data protect against reasonably anticipated threats. Springbrook holds PCI-DSS certifications and leverages certified service providers who are vetted against industry standards such as ISO 27001 and SSAE 18 SOC 2 in the provision of the service

9.2. Customer Data. Customer shall be responsible for Customer Data as entered in to, applied or used in the Subscription Services. Customer is responsible for updating all Customer Data. In addition, Customer acknowledges that Springbrook generally does not have access to and cannot retrieve lost Customer Data. If Customer loses Customer Data, Customer may no longer have access to the Subscription Service. Customer grants to Springbrook the non-exclusive right to process Customer Data (including personal data) for the sole purpose of and only to the extent necessary for Springbrook: (i) to provide the Subscription Services; (ii) to verify Customer's compliance with the restrictions set forth in Section 2.2 (Restrictions) if Springbrook has a reasonable belief of Customer's non-compliance; and (iii) as otherwise set forth in this Agreement. Springbrook may utilize the information concerning Customer's use of the Subscription Services (excluding any use of Customer's personal data or Customer's Confidential Information) to improve Subscription Services, to provide Customer with reports on its use of the Subscription Services, and to compile aggregate statistics and usage patterns by customers using the Subscription Services.

9.3. Use of Aggregate Data. Customer agrees that Springbrook may collect, use, and disclose quantitative data derived from the use of the Subscription Services for industry analysis, benchmarking, analytics, marketing, and other business purposes. All disclosed data will be in aggregate form only and will not identify Customer, its Authorized Users, or any third parties utilizing the Subscription Services.

10. SUBSCRIPTION PERIOD AND TERMINATION

10.1. Term of Authorized User Subscriptions. Authorized User Subscriptions purchased by Customer commence on the start date specified in the applicable Order Form and, unless terminated earlier in accordance with this Agreement, continue for the term specified therein. A Subscription Period and/or pricing thereon may be subject to prorating where Springbrook deems it appropriate to cause newly purchased Subscriptions to expire or renew simultaneously with Customer's pre-existing Subscription(s). Except as otherwise specified in the applicable Order Form, all Subscriptions will automatically renew for additional Subscription Periods equal to the expiring Subscription Period or one year (whichever is shorter), unless either party gives the other at least sixty (60) days' notice of non-renewal before the end of the relevant Subscription Period. The per-unit pricing during any such renewal Subscription Period may be subject to annual pricing increase as designated by Springbrook and notified to Customer. Pricing increases will be effective upon renewal of the Subscription Period and annually thereafter, unless otherwise agreed to by the parties. If either party provides notice of non-renewal as set forth above, Customer's right to use the Subscription Service will terminate at the end of the relevant Subscription Period.

10.2. Termination or Suspension for Cause. A party may terminate any Subscription Service for cause upon thirty (30) days' written notice to the other party of a material breach if such breach remains uncured at the expiration of such thirty (30) day period. In addition, Springbrook may, at its sole option, suspend or terminate Customer's or any Authorized User's access to the Subscription Service, or any portion thereof, immediately if Springbrook, in its sole discretion: (i) suspects that any person other than Customer or an Authorized User is using or attempting to use Customer Data (ii) suspects that Customer or an Authorized User is using the Subscription Service in a way that violates this Agreement and could expose Springbrook or

any other entity to harm or legal liability, or (iii) is or reasonably believes it is required to do so by law or court order.

10.3. Effect of Termination. If this Agreement expires or is terminated for any reason: (i) Within thirty (30) calendar days following the end of Customer's final Subscription Period, Customer may request in writing Springbrook to provide a copy of Customer's data and associated documents in a database dump file format. Springbrook will comply in a timely manner with such request; provided that, Customer (a) pays all costs of and associated with such copying, as calculated at Springbrook's then-current time-and-materials rates; (b) pays any and all unpaid amounts due to Springbrook; (ii) licenses and use rights granted to Customer with respect to Subscription Services and intellectual property will immediately terminate; and (iii) Springbrook's obligation to provide any further services to Customer under this Agreement will immediately terminate, except any such services that are expressly to be provided following the expiration or termination of this Agreement; and the sections set forth in Section 11.4 of this Agreement.

10.4. Survival. Sections 4 (Confidentiality), 5 (Ownership and Proprietary Rights), 6.4 (Disclaimer), 7 (Mutual Indemnification), 8 (Limitation of Liability), 10.3 (Effect of Termination), 10.4 (Surviving Provisions), and 11 (General Provisions) will survive any termination or expiration of this Agreement.

11. GENERAL

11.1. Notice. Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder will be in writing and will be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, or (iii) sending by confirmed email if sent during the recipient's normal business hours (or, if not, then on the next business day). Notices will be sent to the address specified by the recipient in writing when entering into this Agreement or establishing Customer's account for the Subscription Service (or such other address as the recipient may thereafter specify by notice given in accordance with this Section 12.1).

11.2. Governing Law and Jurisdiction. This Agreement and any action related thereto will be governed by the laws of the State of Arkansas without regard to its conflict of laws provisions.

11.3. Compliance with Laws. Each party will comply with all applicable laws and regulations with respect to its activities under this Agreement including, but not limited to, export laws and regulations of the United States and other applicable jurisdictions. Without limiting the foregoing, Customer will not permit Authorized Users to access or use the Subscription Service in violation of any U.S. export embargo, prohibition or restriction. Further, in connection with the services performed under this Agreement and Customer's use of the Subscription Services, the Parties agree to comply with all applicable anti-corruption and anti-bribery laws, statutes, and regulations.

11.4. Relationship of the Parties. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or similar relationship between the parties.

11.5. Waiver and Cumulative Remedies. No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

11.6. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be modified by the court and interpreted so as best to accomplish the

objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement will remain in effect.

11.7. Assignment. Customer may not assign or transfer this Agreement, whether by operation of law or otherwise, without the prior written consent of Springbrook. Any attempted assignment or transfer, without such consent, will be void. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

11.8. Publicity. Subject to the provisions of Section 5, each party will have the right to publicly announce the existence of the business relationship between parties. In addition, during the Subscription Period of Customer's Subscription Service use, Springbrook may use Customer's name, trademarks, and logos (collectively, "**Customer's Marks**") on Springbrook's website and marketing materials to identify Customer as Springbrook's customer, and for providing the Subscription Service to Customer; provided that, Springbrook will use commercially reasonable efforts to adhere to any usage guidelines furnished by Customer with respect to Customer's Marks.

11.9. Force Majeure. Springbrook will not be liable for any delay or failure to perform under this Agreement to the extent such delay or failure results from circumstances or causes beyond the reasonable control of Springbrook.

11.10. Entire Agreement. This Agreement, including any attachments hereto as mutually agreed upon by the Parties, constitute the entire agreement between the Parties concerning its subject matter and supersedes all prior communications, agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by a duly authorized representative of each party against whom the modification, amendment or waiver is to be asserted. Notwithstanding any language to the contrary therein, no additional or conflicting terms or conditions stated in Customer's order documentation will be incorporated into or form any part of this Agreement, and all such terms or conditions will be null.

IN WITNESS WHEREOF, the parties hereto have executed this MSA as of the dates listed below.

SPRINGBROOK

DocuSigned by:
By: J Douglas Smith
(Signature) CC93623946B...
J Douglas Smith

(Print Name)
Its: Head of Springbrook Northeast

(Title)
Dated: 7/25/2019 (Month,
Day, Year)

EXHIBIT A AVAILABILITY AND SECURITY

Service Availability:

Springbrook will use commercially reasonable efforts to (a) provide bandwidth sufficient for Customer's use of the Subscription Services provided hereunder and in an applicable Order Form and (b) operate and manage the Subscription Services with a ninety-nine and one-half percent (99.5%) uptime goal (the "Availability SLA"), excluding situations identified as "Excluded" below.

"Excluded" means any outage that results from any of the following:

- a. Any maintenance performed by Springbrook during Springbrook's standard maintenance windows. Springbrook will notify Customer within forty-eight (48) hours of any standard maintenance and within twenty-four (24) hours for other non-standard emergency maintenance (collectively referred to herein as "Scheduled Maintenance").
- b. Customer's information content or application programming, or the acts or omissions of Customer or its agents, including, without limitation, the following:
 1. Customer's use of any programs not supplied by Springbrook;
 2. Customer's failure to provide Springbrook with reasonable advance prior notice of any pending unusual large deployments of new nodes (i.e., adding over ten (10) percent total nodes in less than twenty-four (24) hours);
 3. Customer's implementation of any significant configuration changes, including changes that lead to a greater than thirty percent (30%) change in a one week period or greater than fifty percent (50%) change in a one month period in the number of key objects in the system including but not limited to metrics, snapshots, nodes, events and business transactions; and
 4. Any mis-configuration by Customer (as determined in Springbrook's sole discretion), including, without limitation, configuration errors and bad or unintended usage of the Subscription Services; and
 5. Force majeure or other circumstances beyond Springbrook's reasonable control that could not be avoided by its exercise of due care.
- d. Failures of the Internet backbone itself and the network by which Customer connects to the Internet backbone or any other network unavailability.
- e. Any window of time when Customer agrees that Subscription Services availability/unavailability will not be monitored or counted.
- f. Any problems resulting from Customer combining or merging the Subscription Services with any hardware or software not supplied by Springbrook or not identified by Springbrook in the Specifications as being compatible with the Subscription Services.
- g. Interruptions or delays in providing the Subscription Services resulting from telecommunication or Internet service provider failures.
- h. Customer's or any third party's use of the Subscription Services in an unauthorized or unlawful manner.

Remedies for Excessive Downtime:

In the event the Availability of the Subscription Services falls below the Availability SLA in a given calendar month, Springbrook will pay Customer a service credit ("Service Credit") equal to the percentage of the fees set forth in the table below corresponding to the actual Availability of the Subscription Services during the applicable calendar month. Springbrook will apply any Service Credits only against future Service payments otherwise due from Customer. Service Credits will not entitle Customer to any refund or other payment from Springbrook. Service Credits may not be transferred or applied to any other account. Unless otherwise provided in this Agreement, Customer's sole and exclusive remedy for any unavailability, non-performance, or other failure by Springbrook to provide the Service is the receipt of a Service Credit (if eligible) in accordance with the terms of this Exhibit A.

System availability is measured by the following formula: $x = (n - y) * 100 / n$

Notes:

- (1) "x" is the uptime percentage; "n" is the total number of hours in the given calendar month minus scheduled downtime; and "y" is the total number of downtime hours in the given calendar month.
- (2) Specifically excluded from "n and "y" in this calculation are the exception times on scheduled upgrade and maintenance windows.

Service Availability	Percentage of Monthly Service Fees Credited
>99.5%	0%
95.0% - < 99.5%	5% (max of \$280)
90.0% - < 95.0%	10% (max of \$560)
80.0% - < 90.0%	20% (max \$840)
70.0% - < 80.0%	30% (max of \$1,120)
60.0% - < 70.0%	40% (max of \$1,400)
< 50%	50% (max of \$2,800)

Customer Account Login:

For Springbrook user interface access, Springbrook uses TLS 1.2 with AES 256 bit or similar encryption for protection of data in transit, which is supported by most modern browsers. Springbrook will also restrict applicable administrative user interface access to Customer corporate networks for additional security on written request by Customer.

Hosting:

Springbrook's SaaS platform (servers, infrastructure and storage) for the Subscription Services is and will remain hosted in one of the largest data centers in North America, specifically designed and constructed to deliver worldclass physical security, power availability, infrastructure flexibility and growth capacity. Springbrook's data center provider is and will remain SSAE 18 SOC2 compliant, meaning it has been fully independently audited to verify the validity and functionality of its control activities and processes. Every Server for the Services is and will

remain operated in a fully redundant fail-over pair to ensure high availability. Data is and will remain backed up nightly, stored redundantly and will be restored rapidly in case of failure. Security Patching and updates are actively evaluated by engineers and will be deployed based upon the impact and risk and stability benefits they offer to Springbrook's SaaS platform and Customers. Springbrook will attempt to provide customers reasonable prior notice to security changes, updates and patches, unless the delay will lead to a significant risk of impact to customer data.

EXHIBIT B
Order Form

Order form found on pages 1-4

Exhibit C ONLINE PAYMENTS SCHEDULE TO SPRINGBROOK SOFTWARE

1. Definitions

“Citizen” means the person who uses Online Payments (as defined below) to complete a payment processing that results in the debiting or charging of an amount to such person’s payment instrument and the crediting of funds to Customer.

“Online Payments” means an optional third-party add-on to the Software that Springbrook facilitates designed to collect payment information for the purpose of payment processing.

“Payment Application(s)” refers broadly to all third-party payment applications, gateway, processors, payment terminals, and service providers that store, process, or transmit cardholder data as part of authorization or settlement, where these payment applications are sold, distributed or licensed to Customer.

2. Online Payments

2.1 During the Term, and subject to compliance with the terms and conditions of this Exhibit, Springbrook will provide the right to access to, and use of, Online Payments to Customer’s Authorized Users with an Online Payments enabled Account. For the avoidance of doubt, Springbrook is only facilitating access to and use of Online Payments, and is not a provider of Online Payments.

2.2 To facilitate payments, Customer will be required to provide Springbrook with certain Customer Data, including specifically, information that allows Springbrook to: (a) transmit Customer’s identifying information to a Payment Application; (b) if applicable, receive appropriate payment authorization from a Payment Application; and (c) collect any other information that Customer or Payment Application requires of Springbrook in order to facilitate payment processing. Customer authorizes Springbrook to store, process, and transmit Customer Data as necessary for a Payment Application to facilitate payment processing between Customer and a third party designated by Customer. Unless otherwise provided, Online Payments will temporarily store information received from Customer, such as account information for a Payment Application only for the purpose of facilitating the payment processing.

2.3 The payment processing facilitated through Online Payments is processing activities between Customer and a third party and/or Customer and a Payment Application, and not with Springbrook. Payment Applications are independent contractors and not agents, employees or subcontractors of Springbrook. Springbrook does not control and is not responsible for the payment methods made available by the Payment Applications through Software nor the Third Party Services that are sold or purchased by Customer. Customer acknowledges and agrees that Springbrook cannot ensure that Citizen or third party will complete a payment processing or that it is authorized to do so.

3. Additional Customer Responsibilities

3.1 Springbrook’s provision of Online Payments is conditioned on Customer’s acknowledgement of and agreement of the following:

- (a) Customer is solely responsible for registering and maintaining an account with Online Payments in order to facilitate the payment processing via Online Payments;
- (b) Customer is solely responsible for complying with: (i) all laws applicable to the payment processing conducted by customer via Online Payments; (ii) all terms of use or other terms and conditions between Customer and Payment Applications.

- (c) Customer is solely responsible for the acts and omissions of its Authorized Users in relation to their use of Online Payments and for ensuring that such use complies with the terms of the Agreement;
- (d) Customer has exclusive control over and responsibility for the content, quality, and format of any payments processing it submits to be processed via Online Payments. Nothing in this Schedule may be construed to make Springbrook a party to any payment processed by Online Payments, and Springbrook makes no representation or warranty regarding the payment processing sought to be affected by Customer's use of Online Payments; and
- (e) Customer is solely responsible for any and all disputes with any Payment Applications or Citizens related to or in connection with a payment processing sought to be facilitated via Online Payments, including, but not limited to: (i) chargebacks; (ii) products or services not received; (iii) return of, delayed delivery of, or cancelled products or services; (iv) cancelled transactions; (v) duplicate transactions or charges; (vi) electronic debits and credits involving bank accounts, debit cards, credit cards, and check issuances;; and (vii) amount of time to complete payment processing.

4. Payment Warranties; Disclaimers' Limitation of Liability

4.1 Springbrook Payments Warranty. The parties acknowledge and agree that, notwithstanding any of the provisions of the Agreement, Customer's sole and exclusive warranties with respect to Online Payments are set forth in the following sentence. Springbrook warrants that Online Payments as delivered to Customer and used in accordance with the Agreement and its applicable specifications will perform substantially in accordance with the specifications associated with the Software.

4.2 Disclaimer. Except for the express warranties for the Software set forth above, Springbrook: (a) makes no additional representation or warrant of any kind-whether express, implied in fact or by operation of law, or statutory-with respect to Online Payments; (b) disclaims all implied warranties, including, but not limited to, merchantability, fitness for a particular purpose, and title; and (c) does not warrant that Online Payments will be error-free or meet Customer's requirements. Customer has no right to make or pass on any representation or warranty on behalf of Springbrook to any third party.

4.3 Limitation of Liability. Springbrook shall not be responsible or liable for any claims, demands and damages (actual and consequential) arising out of or in any way connected with a dispute that may arise between Customer and a Citizen, and /or Customer and a Payment Application regarding the payment processing ("Payment Processing Disputes"), and Customer hereby agrees that it will not bring or assert any action, claim or cause of action in jurisdiction or forum against Springbrook arising from or relating to a Payment Processing Dispute.

