

SpryPoint

SMART SOLUTIONS FOR SMART UTILITIES



CITY OF
GRAND RAPIDS
IT'S IN MINNESOTA'S NATURE



**GRAND RAPIDS
PUBLIC UTILITIES**
Service is Our Nature

Exhibit F - SpryPoint Data Processing Exhibit

This Data Processing Exhibit ("DPE") forms a part of and is subject to the SpryPoint Master Subscription Agreement ("Agreement"), applicable Pricing Schedule or Statement of Work or other written subscription agreement (together with any attachments issued thereunder, the "Agreement") between SpryPoint Services Inc. ("SpryPoint") and the Party identified as the "Client" in the Agreement, where Client is using SpryPoint's software and Services. This DPE reflects the Parties' agreement with regards to the applicable Data Protection Laws and governs the data processing related obligations of SpryPoint and Client for any applicable Subscription or Statement of Work involving the processing of Client's personal information. In delivering the Software or Services under the Agreement, SpryPoint may Process Personal Information/ Personal Data as a Data Processor on behalf of Client, which is the data controller. It is hereby agreed as follows:

Definitions

Unless otherwise defined below, all capitalized terms have the meaning given to them in the applicable Agreement and/or exhibits thereto.

"Covered Data" means (i) Client Data, (ii) technical services data, and (iii) any other electronic data or information submitted by or on behalf of Client to a Covered Service.

"Covered Service" means (i) any Service provided that specifically refers to this DPE, and/or, (ii) any technical services.

"Data Controller" means the entity which, alone or jointly with others, determines the purposes and means of the Processing of Personal Data.

"Data Processor" means the entity which Processes Personal Data on behalf of the Data Controller.

"Data Protection Laws" means all privacy and data protection laws applicable to the Processing of Personal Data under this DPE, including local, state, national and/or foreign laws, treaties, and/or regulations.

"Data Subject" means the person to whom the Personal Data relates.

"Personal Data" means any Covered Data that relates to an identified or identifiable natural person.

"Personal Data Breach" means any Security Breach affecting Personal Data.

"Processing" or **"Process"** means any operation or set of operations performed on Personal Data or sets of Personal Data, such as collecting, recording, organizing, structuring, storing, adapting or altering, retrieving, consulting, using, disclosing by transmission, disseminating or otherwise making available, aligning or combining, restricting, erasing or destroying.

"Security Incident" means an occurrence that actually or potentially jeopardizes the confidentiality, integrity, or availability of an information system or the information the system processes, stores, or transmits or that constitutes a violation or imminent threat of violation of security policies, security procedures, or acceptable use policies.

“Subprocessor” means a SpryPoint Affiliate or third-party entity engaged by SpryPoint or a SpryPoint Affiliate as a Data Processor under this DPE.

“Subprocessor List” means the subprocessor list identifying the Subprocessors that are authorized to Process Personal Data for the relevant Covered Service.

1. Subject and Scope

- 1.1. **Scope and Role of the Parties.** This DPE applies to the Processing of Personal Data by SpryPoint to provide the Covered Service. For the purposes of this DPE, Client and its Affiliates are the Data Controller(s) and SpryPoint is the Data Processor. SpryPoint shall Process Personal Information/ Personal Data under the Agreement(s) only as a processor acting on behalf of Client where Client is the Data Controller, SpryPoint agrees that it will Process Personal Information/ Personal Data for the sole purpose of providing the Services as described in the Agreement(s).
- 1.2. **Purpose.** Client discloses Personal Information/ Personal Data to SpryPoint solely for: (i) a valid business purpose; and (ii) SpryPoint to perform the Services.
- 1.3. **Instructions for Processing.** SpryPoint shall Process Personal Data in accordance with Client’s documented instructions. Client instructs SpryPoint to Process Personal Data to provide the Covered Service in accordance with the Agreement (including this DPE). Client may provide additional instructions to SpryPoint to Process Personal Data, however SpryPoint shall be obligated to perform such additional instructions only if they are consistent with the terms and scope of the Agreement and this DPE.
- 1.4. **Prohibitions.** SpryPoint is prohibited from: (i) selling Personal Information/ Personal Data; (ii) retaining, using, or disclosing Personal Information/ Personal Data for a commercial purpose other than providing the Services; and (iii) retaining, using, or disclosing the Personal Information/ Personal Data outside of the Agreement between SpryPoint and Client.
- 1.5. **Warranty.** Client warrants and represents that it is and will at all relevant times remain duly and effectively authorized to give such instruction.
- 1.6. **Sole Responsibility.** Client is solely responsible for obtaining all necessary consents, licenses and approvals for the collection of any Personal Information/ Personal Data.
- 1.7. **Compliance with Laws.** SpryPoint shall comply with all Data Protection Laws applicable to SpryPoint in its role as a Data Processor Processing Personal Data.. For the avoidance of doubt, SpryPoint is not responsible for complying with Data

Protection Laws applicable to Client or Client's industry (that are not applicable to SpryPoint in its role as a Data Processor Processing Personal Data) such as those not generally applicable to online service providers. Client shall comply with all Data Protection Laws applicable to Client as a Data Controller and shall obtain all necessary consents, and provide all necessary notifications, to Data Subjects to enable SpryPoint to carry out lawfully the Processing contemplated by this DPE.

2. Technical, Organizational Measures and Security

- 2.1. **Security Measures.** SpryPoint implements and maintains appropriate technical and organizational measures to ensure a level of security appropriate to the risk. The parties agree that the Security Measures are appropriate to protect Personal Information/ Personal Data against a Personal Information/ Personal Data Security Incident, and that these measures ensure a level of security appropriate to the risks presented by the Processing and the nature of the Personal Information/ Personal Data to be protected having regard to the state of the art and the cost of their implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons.
- 2.2. **Confidentiality.** SpryPoint shall ensure that any person authorized to Process the Personal Information/ Personal Data is subject to a strict duty of confidentiality and that they Process the Personal Information/ Personal Data only for the purpose of delivering the Services under the Agreement to Client.
- 2.3. **SOC 2 Compliance.** Upon request, SpryPoint can provide Client with a copy of its SOC 2 Type I report which attests to the controls at a service organization. SpryPoint is currently undergoing an audit for SOC 2 Type II Compliance. Upon successful completion, at a minimum, SpryPoint agrees to maintain SOC2 Type 2 compliance. SpryPoint may modify its Security Measures from time to time and at any time, provided, however, that it will not materially reduce the level of protection as provided in this DPE.
- 2.4. **Processing Terms.** At all times that SpryPoint Processes, and/or has access to Personal Information/ Personal Data, SpryPoint shall (a) Process such Personal Information/ Personal Data only in accordance with Client's documented instructions (b) not Sell (as defined under CCPA) Personal Information/ Personal Data, or retain, use, or disclose such Personal Information/ Personal Data (i) for any purpose other than for the specific purpose of performing the Services or (ii) outside the direct business relationship between Client and SpryPoint.
- 2.5. **Acknowledgement.** Acknowledging that Client (and not SpryPoint): (i) controls the nature and contents of Client Data (including any Personal Information/ Personal Data therein); and (ii) acts as its own system administrator and controls user access to Client Data (including any Personal Information/ Personal Data therein), Client represents and warrants that on the date of this DPE and during the Term:

- 2.5.1. Personal Information/ Personal Data has been and will be collected and Processed by Client in accordance with applicable Data Protection Laws.
- 2.5.2. Client will take all steps necessary to ensure it achieves the foregoing, including without limitation, by providing Data Subjects with appropriate privacy notices, obtaining any required consent, and ensuring that there is a lawful basis for contracted Data Processors to Process Personal Information/ Personal Data.

3. Subprocessors

3.1. Use of Subprocessors. Client hereby agrees and provides a general prior authorization that SpryPoint and SpryPoint Affiliates may engage Subprocessors. SpryPoint or the relevant SpryPoint Affiliate engaging a Subprocessor shall ensure that such Subprocessor has entered into a written agreement that is no less protective than this DPE and that such Subprocessor: (a) is qualified to perform the Processing in a professional, workmanlike manner, consistent with industry standards and in compliance with all laws and regulations applicable to it's role as a Subprocessor; and (b) will staff the project with a sufficient number of resources with skills and experience sufficient to perform the Processing in accordance with the requirements of the Agreement. SpryPoint shall be liable for the acts and omissions of any Subprocessors to the same extent as if the acts or omissions were performed by SpryPoint.

3.2. Notification of New Subprocessors. SpryPoint shall make available to Client a Subprocessor List and provide Client with a mechanism to obtain notice of any updates to the Subprocessor List. At least thirty (30) days prior to authorizing any new Subprocessor to Process Personal Data, SpryPoint shall provide notice to Client by updating the Subprocessor List.

3.3. Approved SpryPoint's Sub-Processors

Sub-Processor	Country	Website	Service Provided
Amazon Services	United States	aws.amazon.com	Cloud Infrastructure
Freshdesk	United States	www.freshworks.com	Customer Service
Heroku	United States	www.heroku.com	Cloud Infrastructure
Twilio	United States	www.twilio.com	SMS Delivery Service
Twilio Sendgrid	United States	www.twilio.com/sendgrid/email-api	Email Delivery Service
Solarwinds Papertrail	United States	www.papertrail.com	Log Management Service
Raygun	United States	www.raygun.com	Application Management Service

4. Rights of Data Subjects

4.1. Assistance with Data Subject Requests. SpryPoint will, in a manner consistent with the functionality of the Covered Service and SpryPoint's role as a Data Processor, provide reasonable support to Client to enable Client to respond to Data Subject requests to exercise their rights under applicable Data Protection Laws ("**Data Subject Requests**").

4.2. Handling of Data Subject Requests. For the avoidance of doubt, Client is responsible for responding to Data Subject Requests. If SpryPoint receives a Data Subject Request or other complaint from a Data Subject regarding the Processing of Personal Data, SpryPoint will promptly forward such request or complaint to Client, provided the Data Subject has given sufficient information for SpryPoint to identify Client.

5. Cooperation

SpryPoint will assist Client to comply with Data Protection Laws; in particular (i) SpryPoint will assist Client in responding to any request from a Data Subject exercising his or her rights under the Data Protection Laws; (ii) it will assist Client in responding to any request from regulatory or judicial bodies relating to the Processing of Personal Information/ Personal Data under the Agreement(s); (iii) it will promptly notify Client if its Processing of Personal Information/ Personal Data is likely to result in a high risk to the privacy rights of Data Subjects or is unable to comply with Client's instructions for any reason, and (iv) upon reasonable request, will assist Client to carry out data protection impact assessments.

6. SpryPoint Personnel

SpryPoint shall require screening of its personnel who may have access to Personal Data and shall require such personnel (i) to Process Personal Data in accordance with Client's instructions as set forth in this DPE and Data Protection Laws applicable to SpryPoint, (ii) to receive appropriate training on their responsibilities regarding the handling and safeguarding of Personal Data; and (iii) to be subject to confidentiality obligations which shall survive the termination of employment.

7. Personal Data Breach

In the event SpryPoint becomes aware of a Personal Data Breach it shall without undue delay notify Client in accordance with the Security Breach provisions of the Master Subscription Agreement. To the extent Client requires additional information from SpryPoint to meet its Personal Data Breach notification obligations under applicable Data Protection Laws, SpryPoint shall provide reasonable assistance to provide such information to Client taking into account the nature of Processing and the information available to SpryPoint.

8. Security Program

SpryPoint shall implement appropriate technical and organizational measures designed to protect Personal Data against accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal Data as set forth in the Security Exhibit. If SpryPoint becomes aware of

a Security Incident or has a reasonable suspicion of a Personal Information/ Personal Data breach in respect of the Personal Information/ Personal Data being Processed under the Agreement(s), it will inform Client without undue delay and will provide reasonable information and cooperation to Client so that Client can fulfill any Personal Information/ Personal Data Security Incident reporting obligations it may have under the applicable laws. SpryPoint will take reasonably necessary measures to remedy and mitigate the effects of the Security Incident as set forth in the Security Exhibit.

9. Audit

SpryPoint completed SOC2 Type I in 2022. SpryPoint will use external auditors to verify the adequacy of its security measures and controls for the Software and Services provided under the Agreement. The resulting audit will: (i) be performed according to AICPA SOC2 standards or such other alternative standards that are substantially equivalent to AICPA SOC2; (ii) be performed by independent third-party security professionals at SpryPoint's selection and expense; and (iii) result in the generation of a SOC 2 Type II report ("Audit Report"), which will be SpryPoint's Confidential Information. The Audit Report can be made available to Client upon written request no more than annually subject to the confidentiality obligations of the Agreement or a mutually agreed non-disclosure agreement covering the Audit Report. For the avoidance of doubt, each Audit Report will only discuss Software and Services in existence at the time the Audit Report was issued.

Client agrees that, to the extent applicable, SpryPoint's then-current SOC 2 audit reports will be used to satisfy any audit or inspection requests by or on behalf of Client. In the event that Client, a regulator, or supervisory authority requires additional information, including information necessary to demonstrate compliance with this DPE, or an audit related to the Covered Service, SpryPoint will (i) make available to Client on request all information necessary to demonstrate compliance with this DPE, and (ii) allow for and contribute to audits, including inspections, by an auditor mandated by Client in relation to the Processing of the Personal Information/ Personal Data by SpryPoint.

10. Return and Deletion of Client Data and Personal Data

Upon written request by Client made prior to or upon any expiration or termination of this Agreement, SpryPoint will make Client Data available to Client through the Service solely to allow Client to retrieve Client Data for a period of up to a total of sixty (60) days after such expiration or termination (the "Retrieval Period"). After such Retrieval Period, SpryPoint will have no obligation to maintain or provide any Client Data and shall thereafter, unless legally prohibited, delete all Client Data by deleting Client's Tenant. Provided, however, that SpryPoint will not be required to remove copies of the Client Data from its backup media and servers until such time as the backup copies are scheduled to be deleted, provided further that in all cases SpryPoint will continue to protect the Client Data in accordance with this Agreement. Client Data will be made available in a SpryPoint-supported format mutually agreed upon between the parties (for example, CSV, delimited text or Microsoft Excel). The foregoing deletion obligation will be subject to any retention obligations imposed on SpryPoint by law. Additionally, during the Term of the Agreement, Client may extract Client Data using SpryPoint's standard web services. Upon termination of the Covered Service, SpryPoint shall return and delete Personal Data in accordance with the relevant provisions of the Agreement.

11. General Provisions

- 11.1. Client Affiliates.** Client is responsible for coordinating all communication with SpryPoint on behalf of its Affiliates with regard to this DPE. Client represents that it is authorized to issue instructions as well as make and receive any communications or notifications in relation to this DPE on behalf of its Affiliates.
- 11.2. Termination.** The term of this DPE will end simultaneously and automatically at the later of (i) the termination of the Agreement or, (ii) when all Personal Data is deleted from SpryPoint's systems.
- 11.3. Intentionally Deleted.**
- 11.4. Client Affiliate Enforcement.** Client's Affiliates may enforce the terms of this DPE directly against SpryPoint, subject to the following provisions:
- 11.4.1. Client will bring any legal action, suit, claim or proceeding which that Affiliate would otherwise have if it were a party to the Agreement (each an "**Affiliate Claim**") directly against SpryPoint on behalf of such Affiliate, except where the Data Protection Laws to which the relevant Affiliate is subject require that the Affiliate itself bring or be party to such Affiliate Claim; and
- 11.4.2. for the purpose of any Affiliate Claim brought directly against SpryPoint by Client on behalf of such Affiliate in accordance with this Section, any losses suffered by the relevant Affiliate may be deemed to be losses suffered by Client.
- 11.5. Remedies.** Client's remedies (including those of its Affiliates) with respect to any breach by SpryPoint or its Affiliates of the terms of this DPE and the overall aggregate liability of SpryPoint and its Affiliates arising out of, or in connection with the Agreement (including this DPE) will be subject to the limitations of liability set forth in Section 8 of the Agreement.
- 11.6. Miscellaneous.** The section headings contained in this DPE are for reference purposes only and shall not in any way affect the meaning or interpretation of this DPE.