

## **CRITICAL OPS, LLC – WEB SITE TERMS AND CONDITIONS OF USE**

THE EFFECTIVE DATE OF THESE TERMS AND CONDITIONS IS MM/DD/2017

### **I. AGREEMENT BETWEEN THE USER AND CRITICAL OPS**

WELCOME TO CRITICALPS.COM. THESE TERMS AND CONDITIONS OF USE (“TERMS”) CONSTITUTE A BINDING AGREEMENT BETWEEN YOU, THE USER OF THIS WEBSITE (“SITE”), AND CRITICAL OPS, THE OWNER AND OPERATOR OF THIS SITE. YOUR ACCESS AND USE OF THIS SITE CONSTITUTES YOUR AGREEMENT TO ALL PROVISIONS OF THESE TERMS, AS WELL AS ALL APPLICABLE LAWS. IT IS THEREFORE IMPORTANT THAT YOU READ THESE TERMS CAREFULLY BEFORE USING THE SITE AS THEY AFFECT YOUR RIGHTS. **IF YOU DO NOT AGREE WITH THESE TERMS, PLEASE DO NOT ACCESS THIS SITE.**

**THESE TERMS INCLUDE AND INCORPORATE BY REFERENCE THE PRIVACY POLICY FOR THE SITE AND ANY NOTICES REGARDING THIS SITE AND CRITICAL OPS. THE PRIVACY POLICY, AND A COPY OF THESE TERMS, MAY BE REQUESTED A BY CALLING CRITICAL OPS AT 443-404-1879 DURING NORMAL HOURS OF OPERATION (MONDAY-FRIDAY 8:30 AM – 5:00 PM E.S.T.). CRITICAL OPS’ FAILURE TO EXERCISE OR ENFORCE ANY RIGHT OR PROVISION OF THESE TERMS SHALL NOT CONSTITUTE A WAIVER OF THE ENFORCEMENT OF SUCH RIGHT OR PROVISION.**

### **II. MODIFICATION OR CHANGES TO THESE TERMS**

THESE TERMS ARE SUBJECT TO CHANGE OR DELETION AT ANY TIME WITHOUT PRIOR NOTICE. ANY CHANGES WILL BE INCORPORATED BY REFERENCE INTO THE TERMS POSTED TO THIS SITE FROM TIME TO TIME. CRITICAL OPS ALSO RESERVES THE RIGHT IN ITS SOLE DISCRETION TO EDIT, DELETE, MODIFY, SUSPEND OR DISCONTINUE ANY CONTENT, FEATURE, ASPECT, PRODUCT, OR SERVICE AVAILABLE THROUGH THIS SITE AT ANY TIME. BY USING THE SITE, YOU AGREE TO REVIEW THE TERMS AS INCLUDED ON OR WITH ANY CONTENT AVAILABLE ON THE SITE, AS WELL AS ANY NOTICE THAT CRITICAL OPS MAY SEND YOU REGARDING THE TERMS. YOUR CONTINUED USE OF THE SITE REPRESENTS YOUR AGREEMENT TO ALL TERMS, INCLUDING NEW AND/OR MODIFIED PROVISIONS OF THE TERMS. IF YOU DO NOT AGREE WITH THE TERMS, YOU SHOULD NOT ACCESS THIS SITE, OR YOU SHOULD OTHERWISE NOTIFY US IN WRITING.

### **III. ELECTRONIC COMMUNICATIONS AND COMMUNICATIONS IN GENERAL, EXPRESS CONSENT OF USER**

Visiting a Site such as CRITICALOPS.COM or sending emails to Critical Ops constitutes electronic communications and results in electronic records with Critical Ops. You expressly consent to electronic communications and records from Critical Ops. You expressly consent to receive electronic communications from Critical Ops and you expressly agree that all communications that Critical Ops provides you electronically, via email or on this Site, satisfy any legal requirement that such communications

be in writing. You may withdraw such express consent at any time by contacting Critical Ops through email, mail, or telephone, as follows: info@criticalops.com, 500 Westover Drive #6028, Sanford, NC 27330, or 443-404-1879.

The user's withdrawal of express consent to electronic communications may, at Critical Ops' discretion, result in the termination of the relationship between Critical Ops and the user.

**CRITICAL OPS MAY ALSO PROVIDE YOU, BY EMAIL, REGULAR MAIL, FAX, TELEPHONE, OR POSTINGS ON THIS SITE, NOTICES OR SERVICE AND TRANSACTION-RELATED ANNOUNCEMENTS (THE ANNOUNCEMENTS), INCLUDING BUT NOT LIMITED TO CHANGES TO THESE TERMS, AND DATA BREACH NOTIFICATIONS. BY ACCESSING AND USING THIS SITE YOU EXPRESSLY AGREE THAT CRITICAL OPS MAY SEND YOU SUCH NOTICES AND ANNOUNCEMENTS BY EMAIL, REGULAR OR EXPRESS MAIL, FAX, TELEPHONE OR POSTINGS ON THIS SITE. WE WILL SEND NOTICES OR ANNOUNCEMENTS WHEN IT IS NECESSARY TO DO SO IN ORDER TO KEEP YOU INFORMED, IN PARTICULAR, BUT NOT LIMITED TO, WHEN SUCH NOTICES OR ANNOUNCEMENTS MAY AFFECT YOUR RIGHTS, YOUR SAFETY, THE SECURITY OF YOUR PERSONAL INFORMATION, OR AS REQUIRED BY THE LAW. For example, in the unlikely event that Critical Ops has reasons to suspect that its system has been the target of a cyber-attack, Critical Ops reserves the right to contact you by the most reasonable and expedient methods, including by email. In general, you may not opt-out altogether from these notices or announcements which are not intended to be promotional in nature. Please notify us by email, mail, fax, or telephone per instructions stated in this section if you do not wish to receive these messages by a certain method(s) of communication.**

Critical Ops may also send you promotional electronic or communications about products, special offers, promotions, services or events that we believe may be of interest to you. Critical Ops intends to send promotional emails and communication only to those persons who wish to receive them. Critical Ops provides instructions on how to unsubscribe at the bottom of each email.

#### **IV. PRIVACY**

**ANY ACCESS TO AND USE OF THIS SITE IS SUBJECT TO THE DATA PRIVACY PRACTICES SET FORTH IN THE CRITICAL OPS PRIVACY POLICY, WHICH CAN BE ACCESSED AS SET FORTH IN THE PARAGRAPH I AND IS HEREBY INCORPORATED BY REFERENCE WITH THESE TERMS. IF ANY OF THE CONDITIONS OR PROVISIONS SET FORTH IN THE PRIVACY POLICY SHALL BE DEEMED INVALID, VOID, OR FOR ANY REASON UNENFORCEABLE, THAT CONDITION OR PROVISION SHALL BE DEEMED SEVERABLE AND SHALL NOT AFFECT THE VALIDITY AND ENFORCEABILITY OF ANY REMAINING CONDITION OR PROVISION, NOR SHALL IT AFFECT THE VALIDITY AND ENFORCEABILITY OF THESE TERMS.**

#### **V. THIRD PARTY LINKS**

From time to time, this Site may contain links to other websites that are not owned, operated or

controlled by Critical Ops or its affiliates. All such links are provided solely as a convenience to you. If you use these links, you will leave this Site. Neither Critical Ops nor any of its affiliates are responsible for any content, materials or other information located on or accessible from any other web site. Neither Critical Ops nor any of its affiliates endorses, guarantees, or makes any representations or warranties regarding any other web site, or any content, materials or other information located or accessible from such web sites, or the results that you may obtain from using such web sites. If you decide to access any other web site linked to or from this Site, you do so entirely at your own risk.

## **VI. SITE SECURITY**

Users are prohibited from violating or attempting to violate the security of the Site, including, without limitation, (a) accessing data not intended for such user or logging onto a server or an account which the user is not authorized to access; (b) attempting to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without proper authorization; (c) attempting to interfere with service to any user, host or network, including, without limitation, via means of submitting a virus to the Site, overloading, "flooding," "spamming," "mail-bombing" or "crashing;" (d) sending unsolicited email, including promotions and/or advertising of products or services; or (e) forging any TCP/IP packet header or any part of the header information in any email or newsgroup posting. Violations of system or network security may result in civil or criminal liability. You agree not to use any device, software or routine to interfere or attempt to interfere with the proper working of this Site or any activity being conducted on this site. You agree, further, not to use or attempt to use any engine, software, tool, agent or other device or mechanism (including without limitation browsers, spiders, robots, avatars or intelligent agents) to navigate or search this Site other than the search engine and search agents available from CRITICALOPS.COM on this Site and other than generally available third party web browsers (e.g., Internet Explorer, Mozilla Firefox, Safari, Chrome).

## **VII. REGISTRATION**

In order to use and access the Services, each User must register an account with Critical Ops. As part of the registration, each User will select a user identification ("User ID") and password ("Password"). Users are responsible for keeping the User ID and Password confidential, and each User agrees not to disclose the User ID or Password to others. Users must be at least eighteen years of age to register an account and access the Services. A User may only register and maintain one active account with Critical Ops. Any use of multiple accounts is a breach of these Terms and Conditions. Each User will need to provide Critical Ops with your name, email address, and billing and shipping addresses, as well as credit card information. Each User certifies that all information provided is accurate and complete in all respects. Each User also agrees to maintain and update personal account information as necessary so that it remains accurate and current. In the event that any information provide by a User is inaccurate or not up-to-date, Critical Ops reserves the right to cancel the Services. Once registered, each User authorizes Critical Ops to charge the credit card provided for subscription and access to the Services. Each User agrees to pay the applicable subscription fee for the Services. A User cannot transfer a subscription. In the event a subscription is transferred, it will be deemed terminated at such date of transfer. In the event that Critical Ops terminates the Services, User will receive a pro-rated refund. Unless stated otherwise, membership to the Service is for online and/or electronic access only.

## **VIII. USE OF SERVICES AND CONTENT**

Critical Ops grants to user the right to transmit data and other materials created and prepared by user including, without limitation, lead source data, and which is uploaded to the Site by user (“Provider Data”). The Site will accumulate the Provider Data and thereafter provide access to products, packages, licenses, software, and other services generated from user data a transferred to the Site and as hosted on the Site (the “Services”). User hereby grants to Critical Ops a worldwide, non-exclusive, royalty-free, perpetual, non-transferable right and license to store, reproduce, modify, host, and maintain Provider Data for the purposes of: (a) making the Services available to users; (b) transforming the Provider Data to integrate with the Services; and (c) using Provider Data to create and develop analytical and statistical analysis to make commercial use of the Provider Data including, without limitation, sharing such Provider Data with users. User grants to Critical Ops a worldwide, non-exclusive, royalty-free, perpetual, irrevocable and fully transferable right and license to use or incorporate into the Services any customizations, suggestions, ideas, enhancement requests, feedback, recommendations or other information in connection with the Provider Data and to reproduce, distribute, modify, create derivative works of, publicly perform, publicly display and sublicense the Provider Data in connection with the operation of the Services. Upon request, User shall provide to Critical Ops all current Provider Data in electrical form.

## **IX. RESTRICTIONS ON USE**

User shall not: (a) copy all or any portion of the Services; or (b) decompile, disassemble or otherwise reverse engineer the Services. User shall (c) have sole responsibility for the legality of all Provider Data;(c) use reasonable efforts to prevent unauthorized access to, or use of, the Service, and notify Critical Ops in a timely manner of any known unauthorized use; and (e) comply with all applicable local, state, federal and foreign laws in connection with the Service. User further agrees to use the Service solely for its internal business purposes and further agrees that it will not: (f) license, sublicense, sell, resell, rent, lease, assign, distribute, timeshare or otherwise commercially exploit or make the Service; (f) send Spam (as defined below) or otherwise duplicative or unsolicited messages in violation of applicable law; (h) send or store infringing, obscene, threatening, libelous or otherwise unlawful or tortious material, including material that violates third party privacy or publicity rights; (i) send or store material containing software viruses, worms, Trojan horses or harmful computer codes, files, scripts, agents or programs; (5) intentionally interfere with or disrupt the integrity or performance of the Service or the data contained therein; or (j) attempt to gain unauthorized access to the Service or its related systems or networks.

## **X. PROFESSIONAL SERVICES, TRAINING**

Professional services, including software development and customization and integration of the Provider Data into the Services (“Customizations”), and training services provided to Provider by Critical Ops in connection with the Provider Data (“Consulting Services” and together with

Customizations, the “Professional Services”) shall be pursuant to a statement of work, incorporating the applicable provisions hereof, which sets forth the scope of work and applicable fees and shall be executed by authorized representatives of both parties (“Statement(s) of Work”). Critical Ops may terminate any Statement of Work upon two (2) weeks prior written notice to User and User shall pay for all services performed under such Statement of Work up to the date of termination. User shall render the Professional Services by the completion dates set forth the applicable Statement(s) of Work and in accordance with these Terms and any terms set forth in the applicable Statement(s) of Work. Subject to the foregoing, the manner and means by which User chooses to complete the Professional Services are in User’s control. In performing the Professional Services, User agrees to provide its own personnel, equipment, tools and other materials at its own expense. Critical Ops will, upon request, make its facilities and equipment available to User in connection with the Professional Services.

## **XI. SPAM**

User will not transfer, distribute or deliver unsolicited bulk or commercial email (“Spam”) through the Service. All emails sent, or caused to be sent, by User shall be 100% opt-in and shall not: (1) use or contain invalid or forged headers; (2) use or contain invalid or non-existent domain names; (3) employ any technique to otherwise misrepresent, hide or obscure any information in identifying the point of origin or the transmission path; (4) use other means of deceptive addressing; (5) use a third party's internet domain name, or be relayed from or through a third party's equipment, without permission of the third party; or (6) contain false or misleading information in the subject line or otherwise contain false or misleading content.

## **XII. WARRANTY**

User represents, warrants and covenants to Critical Ops that: (a) User has the right to grant the rights and licenses contemplated by these terms, without the need for any licenses, releases, consents, approvals or immunities not yet granted; (b) Critical Ops’ exercise of its rights under this Agreement do not infringe, misappropriate or violate any intellectual property rights, privacy or publicity rights, or other rights of any third party, or any law, rule or regulation promulgated by any government or regulatory body; (c) the Provider Data does not contain any viruses, worms, Trojan horses, web bugs, time bombs, “spyware” or other harmful or invasive code or components; (d) there is no claim, action, suit, proceeding, arbitration, complaint, charge or investigation pending or currently threatened against User that questions the validity of the Provider Data nor has User received any communications alleging that User has violated or, by conducting its business, would violate any of the patents, trademarks, service marks, tradenames, copyrights, trade secrets, mask works or other proprietary rights or processes of any other person.

## **XIII. PROPRIETARY RIGHTS**

Critical Ops shall retain all right, title and interest, including, without limitation, all of its intellectual property and trademarks and any goodwill associated therewith, and the Service, including any portion(s) thereof and updates thereto. As between User and Critical Ops, User owns and shall retain all right, title and interest in and to its intellectual property and the Provider Data; *provided, however*, User acknowledges and agrees that Critical Ops may manipulate the

Provider Data by removing or altering any aspect thereof that make such data personally identifiable to User and combine such data with other similar data from the same industry segment in rendering the Provider Data generic and unattributable to User, and thereafter use for its own use.

#### **XIV. LIMITATION OF LIABILITY**

THE SERVICES ARE PROVIDED ON AN "AS IS" AND ON AN "AS AVAILABLE" BASIS. CRITICAL OPS DOES NOT MAKE ANY REPRESENTATION OR WARRANTY REGARDING THE QUALITY AND/OR ACCURACY OF ANY CONTENT, INFORMATION, OR OTHER MATERIAL THAT USER PURCHASES OR IS OBTAINED FROM THE USE THE SERVICES. FURTHER, CRITICAL OPS MAKES NO REPRESENTATION OR WARRANTY THAT ANY CONTENT, INFORMATION, OR OTHER MATERIAL THAT USER PURCHASES OR IS OBTAINED FROM THE USE THE SERVICES WILL MEET A USER'S EXPECTATIONS. CRITICAL OPS MAKES NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF TITLE OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO ANY CONTENT OR THE SERVICES. USER EXPRESSLY AGREES TO ASSUME THE ENTIRE RISK AS TO THE QUALITY AND THE PERFORMANCE OF THE SERVICES AND THE ACCURACY OR COMPLETENESS OF THE CONTENT. UNDER NO CIRCUMSTANCES WILL CRITICAL OPS, ITS EMPLOYEES, OR ITS AGENTS BE LIABLE FOR ANY GENERAL, SPECIAL, DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES WHETHER IN AN ACTION UNDER THEORY OF CONTRACT, TORTIOUS CONDUCT, NEGLIGENCE OR ANY OTHER THEORY, ARISING OUT OF OR RELATING IN ANY WAY TO THE USE, PURCHASE, OR ACCESS OF ANY CONTENT, INFORMATION, OR OTHER MATERIAL THAT USER PURCHASES OR IS OBTAINED FROM THE USE THE SERVICES, INCLUDING WITHOUT LIMITATION, (A) USER'S USE OR INABILITY TO USE THE CONTENT OR SERVICES, (B) USER'S USE OR RELIANCE ON ANY INFORMATION CONTAINED ON THE CONTENT OR THE SERVICES, OR (C) ANY PRODUCTS OR SERVICES ADVERTISED BY CRITICAL OPS OR IN RELATION TO THE CONTENT OR SERVICES. THIS INCLUDES, WITHOUT LIMITATION, LOSS OR INJURY CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF CRITICAL OPS USER'S SOLE AND EXCLUSIVE REMEDY FOR DISSATISFACTION WITH CRITICAL OPS, THE CONTENT OR THE SERVICES IS TO STOP USING THE SERVICES.

#### **XV. INDEMNIFICATION**

User shall defend and hold harmless Critical Ops from and against any claim, suit, or proceeding resulting from any breach or threatened breach (or any claim that, if true, would constitute a breach) of these Terms, and shall indemnify and hold harmless Critical Ops from any damages, costs, losses or liability (including attorneys' fees and related costs) related to or resulting from any claim, suit or proceeding relating to (i) any breach of these Terms, (ii) any infringement, misappropriation or violation of any intellectual property right of any third party, and (iii) any

violation of law.

**XVI. GOVERNING LAW; SUBMISISON TO JURISDICTION.**

These Terms and all matters arising out of or relating to these Terms and the Services are governed by, and construed in accordance with, the laws of the State of Ohio, United States of America, without regard to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Ohio. Any action, controversy, claim or dispute arising out of or relating to these Terms, or to the interpretation, breach, or enforcement thereof, whether such action, controversy, claim or dispute is based in contract, negligence, any statute or governmental regulation or other theory of law shall be submitted to binding arbitration under the rules (as of the date of filing) of the Commercial Arbitration Rules of the American Arbitration Association (AAA) before a panel of three (3) arbitrators. The arbitrators shall be expeditiously chosen by the AAA. Any arbitration shall be administered by the AAA and shall include the use of AAA arbitrators. All issues regarding the arbitrability of a dispute shall be determined by the arbitrators. The arbitrators shall have experience in the financial industry of and business of Critical Ops. Any party initiating arbitration under this provision must bring all claims it has against the other party and the other party must bring all claims it has against the initiating party, whether or not said claims would be considered compulsory counterclaims under state law, all of which shall be in compliance with the applicable rules of arbitration. If either party to arbitration fails to bring all of its claims, the claims not brought in the arbitration are waived by that party. The location of any arbitration hearing shall be Canton, Ohio or at a location mutually agreed upon by both parties. The language of the arbitration shall be English. If any legal action, including, without limitation, an action for injunctive relief, is brought relating to these Terms or the breach hereof, the prevailing party in any final judgment or award, shall be entitled to the full amount of all reasonable expenses, including all court costs, and attorneys' fees paid or incurred in good faith

**XVII. NO THIRD PARTY BENEFICIARIES**

These Terms and the Services are solely for the benefit of, and shall inure to the benefit of, Critical Ops and User, as applicable, and shall not otherwise be deemed to confer upon or give to any third party any right, claim, cause of action or other interest herein.

**XVIII. SEVERABILITY**

The invalidity or unenforceability of any provision of these Terms shall not affect the validity or enforceability of its other provisions.

**XIX. MISCELLANEOUS.**

The captions and section headings set forth in these Terms are used for convenience only and shall not be used in defining or construing any of the terms and conditions set forth in these Terms. The term "including" or any variation thereof means "including, without limitation" and shall not be construed to limit any general statement that it follows to the specific items immediately following it. Unless the context indicate otherwise, words importing the singular number shall include the plural and vice versa, and words importing person shall include firms, association, partnerships and corporations, including public bodies and governmental entities, as well as natural persons, and words of masculine gender shall be deemed to include correlative words of the feminine gender and vice versa as the circumstances may require. Copies of these

Terms and Conditions in any electronic format shall be deemed the equivalent of an original for all purposes.

**[End of General Terms and Conditions]**