

SpitFire Enterprise Cloud Software Client Agreement

These SpitFire Dialer Conditions of Purchase (“Agreement”) constitute a binding contract made by and between OPC MARKETING, INC., and _____ (“Subscriber”) on this day _____. OPC MARKETING, INC. and Subscriber hereby agree to the following terms and conditions:

1. **Non-Exclusive Software License:** Upon receipt of the purchase price from Subscriber, Subscriber will be entitled to and OPC MARKETING, INC hereby grants Subscriber on a per-agent, a limited, non-exclusive license to use the software described on Subscriber’s invoice. This Agreement shall commence on the date above and continue for 90 days, after which shall automatically renew for successive 1-month renewal terms until terminated by either party on 30 day’s written notice. Subscriber alone is the authorized user of the software and Subscriber may not allow any other person or entity (“Unauthorized Users”) to make any use of the software. Subscriber must immediately report to OPC MARKETING, INC. any use or attempted use of the software by any Unauthorized Users. Subscriber may not, at any time, resell or re-license the software to any Unauthorized User. Upon termination by either party, this license shall immediately terminate and Subscriber shall make no further use of the software. Except as otherwise specifically permitted in this Agreement, Subscriber may not: (a) modify or create any derivative works of any software, service or documentation, including translation or localization (code written to published APIs (application programming interfaces) for the software shall not be deemed derivative works); (b) sublicense or permit simultaneous use of the software by more than one user; (c) reverse engineer, decompile, or disassemble or otherwise attempt to derive the source code for any software related to the software (except to the extent applicable laws specifically prohibit such restriction); (d) redistribute, encumber, sell, rent, lease, sublicense, use the software in a timesharing or service bureau arrangement, or otherwise transfer rights to any software; (e) remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in the software; (f) publish any results of benchmark tests run on any software to a third party without prior express written consent from OPC MARKETING, INC. Details of the SOFTWARE LICENSE are included in the “License Info” link on the Manager App. The software license shall immediately and automatically be suspended if at any time, Subscriber defaults under its obligations under this Agreement or nonpayment according to the invoice.
2. **Per-Agent, Unlimited Line Account.** During the term of this agreement and while Subscriber is in full compliance with these terms and with its monthly payment obligations, Subscriber’s license shall allow Subscriber generally to launch blended inbound and outbound call center campaigns. This license currently makes available up to 5 distinct dialing modes: predictive, fixed rate, quick connect, preview and manual calling. Using a pre-loaded list of Subscriber’s own uploaded numbers, the dialer places outbound calls and connects the answered calls to Subscriber’s available agents. The dialer monitors the call center volume and time per call, adjusting its dial rate in an attempt to minimize agent down time between conversations. The predictive dialing mode also attempts to allow Subscriber’s campaign manager to manually increase and decrease the amount of inbound and outbound calls in real time. The dialer is browser-based and includes reasonable, limited tech support and training as available. OPC MARKETING, INC. cannot guarantee the reliability of its third-party providers/suppliers related to the domains, or that the hosting services shall be available at all times or free from isolated errors. Reasonable hosting down time may occur, including without limitation for provider outages, system upgrades, maintenance, repairs, and acts of god/nature. OPC MARKETING, INC. assumes no legal responsibility or liability for Subscriber’s use of the domain. Subscriber must operate in full compliance with all laws and regulations and must not use the assigned domain for any other purpose not contemplated herein. Subscriber understands that if OPC MARKETING, INC. receives a court order, subpoena, civil investigative demand or other legal notice that OPC MARKETING, INC. deems in its discretion to be valid, OPC MARKETING, INC. may be required to either suspend or terminate the hosting. OPC MARKETING, INC may also be required to provide information about Subscriber as the user of the domain, to the requesting party. OPC MARKETING, INC. may suspend or terminate the hosting at any time in the event it reasonably believes Subscriber has violated the law, or subjected OPC MARKETING, INC. to unreasonable legal exposure.
3. **Record Retention.** OPC MARKETING, INC. will assume no obligation to maintain records related to Subscriber’s campaign or this agreement, including without limitation, call logs and recordings. Call logs and recordings shall be available for download via Microsoft Remote Desktop by Subscriber only for 90

days and it is Subscriber's sole obligation, if they elect to do so or as may be required by law, to download the same and maintain them on its own.

4. **Refund Policy:** Subscriber's monthly payment obligations are not refundable.
5. **Compliance with Law:** Subscriber is required to use the software in full compliance with all applicable laws and regulations, including without limitation, all state, federal and international: (1) Do-Not-Call ("DNC") list prohibitions; (2) telemarketer licensing and bonding requirements; (3) consumer cancellation rights; (4) mandatory disclosures; (5) cell phone restrictions; (6) auto dialer and pre-recorded message restrictions; (7) internal DNC/opt-out rules; (8) recording of any calls or information, including but not limited to calls or information pertaining to or in any way related to the use of the software; (9) record retention requirements; and (10) all other applicable laws and regulations. OPC MARKETING, INC. shall in no way or manner be liable for any matter involving or relating to the recording of any calls or information. Additionally, should the software or any item sold to Subscriber by OPC MARKETING, INC. fail to record any calls or information for any reason whatsoever, OPC MARKETING, INC. shall not be liable to Subscriber or any other party for any damages or matters caused by such failure to record. By making any use of the software, Subscriber expressly warrants to us that Subscriber is and shall continue to act in full compliance with the law. All OPC MARKETING, INC. offers are void where prohibited by law. Subscriber agrees that they have read and understand the FTC's Telemarketing Sales Rule ("TSR") and the FCC's Telephone Consumer Protection Act ("TCPA"), and all other applicable laws and regulations. Subscriber should review these rules with Subscriber's own legal counsel to ensure that Subscriber understands and is fully compliant. OPC MARKETING, INC. does not assume responsibility for ensuring that Subscriber's marketing campaigns meet applicable legal requirements. OPC MARKETING, INC. will not assume any liability if Subscriber is ever held guilty or liable for any law violation. Notwithstanding the foregoing, Subscriber acknowledges that OPC MARKETING, INC. has and is taking active steps to ensure the compliance of its customers, including by having Subscriber agree to these terms.
6. **SAN Numbers:** Subscriber acknowledges that it may be required to purchase its own Subscription Account Number ("SAN") from the FCC, including all area codes into which they call or transmit messages. Therefore, Subscriber agrees, if applicable, that Subscriber will obtain Subscriber's own SAN (or "exempt" SAN if applicable) and purchase all applicable area codes as required by law. Even if Subscriber is exempt from DNC rules, Subscriber may be required to obtain an "exempt" SAN if Subscriber chooses to voluntarily scrub against the DNC list. If applicable, Subscriber also agrees to purchase and scrub against any applicable state DNC lists. OPC MARKETING, INC. cannot and shall not maintain any SAN number for the Subscriber or obtain one on Subscriber's behalf.
7. **Call Abandonment Rate/Drop Rate:** Subscriber understands and agrees that among other things, telemarketers who use dialers that abandon some calls, such as the predictive dialing mode, are prohibited from abandoning (failing to connect to live operator within 2 seconds of the answer) more than 3% of all outgoing calls as measured on a successive 30-day basis per individual calling campaign. Subscriber is responsible (not OPC MARKETING INC.) for ensuring that Subscriber's abandonment rate does not exceed the maximum amount allowed by law. Subscriber is required to actively monitor Subscriber's abandonment rate and to scale back call volumes or cease calling as necessary in order to comply. Subscriber also understands that certain disclosures are required by the FCC for all abandoned calls and Subscriber agrees to comply with the same.
8. **Cell Phones:** Subscriber understands and acknowledges that it is generally a violation of the TCPA to make calls with any device capable of automated dialing to a cell phone without prior express written consent. Subscriber will be responsible for ensuring that Subscriber does not call cell numbers with any device capable of automated dialing without the appropriate consent. If Subscriber does not have appropriate cell consent leads to call, Subscriber will purchase and timely scrub against a national list of wireless numbers and numbers ported from landlines to cell phones. OPC MARKETING, INC. is not responsible for ensuring that Subscriber does not call cell phones in violation of the consent rules.
9. **Safe Harbor:** Subscribers who purchase OPC MARKETING, INC.'s software agrees to create and enforce their own internal safe harbor and DNC policies and procedures in full compliance with the law. Federal regulations provide for a limited "safe harbor" defense to certain DNC violations. Some of the elements of the safe harbor defense are: (1) establish and implement written procedures to comply with DNC restrictions; (2) train personnel, and any entity assisting in compliance, in the written procedures; (3) monitor and enforce compliance with the written procedures; (4) maintain an entity-specific DNC/opt-out list; (5) use a process to prevent telemarketing calls to numbers on the national, state (if applicable), and entity-specific internal DNC lists. A good safe harbor program and DNC policy is not a complete solution

to telemarketing compliance; they are only one component of telemarketing compliance. Subscriber will remain responsible to maintain, follow, and enforce good DNC procedures.

10. **No Legal, Financial or Tax Advice Provided:** No financial, legal, or tax advice or counsel is given, or shall be deemed to have been given by OPC MARKETING, INC. or its affiliates and contractors, or by the software.
11. **Indemnification:** Subscriber shall assume, pay, indemnify, hold harmless, and reimburse OPC MARKETING, INC. and its owners, employees, agents, affiliates, contractors, successors and assigns for any and all liabilities, damages, claims, suits, settlements, judgments, costs, and expenses (including reasonable attorney's fees and court costs) directly or indirectly incurred by OPC MARKETING, INC. to the extent the same are related in any way to Subscriber's use of the software or which are primarily attributable to the negligence or intentional acts or omissions by Subscriber, Subscriber's owners, officers, employees, agents and representatives, including any authorized or unauthorized users. Notwithstanding the foregoing, nothing contained herein shall release OPC MARKETING, INC. from any liability for its own gross negligence, except as allowed by law.
12. **Limitation of Liability:** Neither party shall be liable for any consequential, incidental, special, or indirect damages (including, but not limited to, loss of profits, goodwill, use, data, or other intangible items) even if the other party has been advised of the possibility of such damages or losses. With respect to any other damages, OPC MARKETING, INC.'s liability hereunder shall in no event exceed an amount equal to the amount actually paid by Subscriber to OPC MARKETING, INC. in the month prior to a claim being made, regardless of the basis for the claim. Subscriber understands that this is a significant limitation on Subscriber's right to sue OPC MARKETING, INC. and Subscriber should not proceed if Subscriber does not agree. OPC MARKETING, INC. shall not be bound by any typographical or other error or misprint in its marketing materials or online purchase websites, so long as OPC MARKETING, INC. provides prompt notice of any such error and corrects the same.
13. **Warranties:** Except as otherwise provided herein, THE SERVICES ARE PROVIDED "AS IS" WITHOUT ANY EXPRESS OR IMPLIED WARRANTY OF ANY KIND INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. IN NO EVENT SHALL OPC MARKETING, INC. OR ITS SUPPLIERS BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, BUSINESS INTERRUPTION, OR LOSS OF INFORMATION) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE, EVEN IF OPC MARKETING, INC. HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Computers, if purchased from OPC MARKETING, INC., are warranted for one (1) year from date of purchase, provided there has been no abuse or misuse. OPC MARKETING, INC. warrants that its software and hardware will be free of any significant defect. OPC MARKETING, INC. will correct or replace defective materials. This warranty is not valid if a surge protector and/or a battery backup (uninterruptible power supply) are not used to protect the system. OPC MARKETING, INC. cannot be held responsible for any kind of physical damages, including lightning, to the hardware or software. Any contamination of the system by viruses will void this warranty. OPC MARKETING, INC. cannot be responsible if Subscriber makes changes, misuses, or tampers with the software or hardware after Subscriber receives them. Any installation of other software or changes by Subscriber may void the warranty; any tech support required because of virus contamination will be at Subscriber's expense at the rate of \$150 per hour. This warranty and the obligations and liabilities of OPC MARKETING, INC. are in lieu of, and Subscriber waives, all other warranties, guarantees, conditions, or liabilities, expressed or implied, arising by law or otherwise, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, and further including without limitation consequential damages, whether or not caused by OPC MARKETING, INC.'s negligence. This warranty shall not be extended, altered, or varied except by a written agreement signed by OPC MARKETING, INC. and Subscriber. Subscriber is responsible for the cost of shipping on any returned hardware. OPC MARKETING, INC. is not responsible for any failure of a DNC or wireless list provider to deliver its data accurately, completely, or in a timely way. OPC MARKETING, INC. is not responsible for damages resulting from improper or incomplete use by Subscriber of OPC MARKETING, INC.'s products and services. OPC MARKETING, INC. cannot be responsible if Subscriber makes changes, misuses, or tampers with the software or hardware after Subscriber receives them. Any installation of other software or changes by Subscriber may void the warranty and Subscriber will be charged a \$295 reconfiguration fee.

14. **Intellectual Property:** “OPC MARKETING,” “SpitFire,” “SpitFire Dialer,” “SpitFire 10”, “SpitFire X”, “SpitFire Hybrid”, “SpitFire Enterprise” and “SpitFire Software” and all related trade and service marks are and shall remain the exclusive intellectual property of OPC MARKETING, INC. OPC MARKETING, INC. and Subscriber specifically acknowledge that this Agreement does not confer upon the other party any interest in or right to use any trademark or service mark of the other party or its affiliates, unless the party wishing to use a trademark or service mark receives the prior written consent of the owning party, which the owning party may grant or withhold in its sole discretion. Subscriber acknowledges that the software is protected by state, federal, and international copyright laws and treaties, and Subscriber hereby prospectively waives any challenges to the existence, ownership and enforceability of the same.
15. **Legal Relationship:** By this Agreement, no partnership, joint venture, independent contractor, or ownership relationship is formed beyond that of a product Subscriber and Seller, and that of a software licensor and licensee.
16. **Choice of Law:** This Agreement shall be governed by and construed according to the laws of the State of Texas, without giving effect to normal choice-of-law and conflict-of-law principles. Except for a suit by OPC MARKETING, INC. to collect the purchase price or other fees owed by Subscriber pursuant to the Agreement, the parties agree that a party asserting any claim or dispute regarding this Agreement shall file and litigate such claim/dispute only in a court in Dallas County, State of Texas.
17. **Other Important Disclaimers:** Subscriber is not purchasing a “franchise”, “business opportunity”, “strategic or targeted marketing plan”, or “exclusive territory” from OPC MARKETING, INC. Subscriber understands that computers and telecommunications are complex, and that it may take time, effort, and skill to install, understand, and operate the same. Subscriber must allow ample time to receive, set up, test, and understand his or her system before advertising or going on-line to the public. Subscriber is aware that there is a wide variety of computer hardware and software, as well as telephone companies and equipment. For this reason, OPC MARKETING, INC. does not warrant that its products will function in every environment. It is the Subscriber’s responsibility to obtain the necessary computer equipment to operate these products. It is the Subscriber’s responsibility to become aware of the cost and availability of telephone and electrical requirements. Subscriber is responsible for any business and miscellaneous expenses necessary to operate these products, including telephone service, advertising, computers, etc. OPC MARKETING, INC. will not be liable for these expenses for any reason. Even though Subscriber’s system may be designed to operate 24 hours a day, Subscriber should be aware that the system may be out of service periodically for backups, maintenance, improvements, or difficulties such as power outages, telephone line problems, hardware/software malfunctions, carrier outages, etc. OPC MARKETING, INC. will not be liable for any lost revenue, lost profits, advertising, or additional expenses due to loss of data, hardware/software problems, failure of the system (or phone carriers) to successfully record calls, or for any reason. Subscriber is aware there will be limitations as to the size of the software applications and to the number of telephone lines that can be used, due to hardware and software limitations. OPC MARKETING, INC. does not make any claims or guarantees that Subscriber will bring in any revenue or operate any profitable services or businesses by using the software or hardware sold by OPC MARKETING, INC. The suggestions, ideas, and techniques offered by OPC MARKETING, INC. are not guaranteed to bring success. The success of the Subscriber will be affected by many factors, including, but not limited to, his or her efforts and competence. Subscriber is responsible for the security of its own systems and data and for obtaining its own applicable insurance.
18. **Minimum Requirements:** Purchaser is required to obtain and maintain the latest version of the browser Google Chrome. Bandwidth required per port is a minimum of 100 Kilobits per second (Kbps) upload and download, when the system uses the G.711 codec. Subscriber must provide high-speed internet connection for training, updates, and technical support. The Subscriber is responsible for Network Configuration, Antivirus, Router and Firewall, Installation, Configuration, and Setup. SIP Carrier testing is required. Minimum Requirements are subject to change at any time.
19. **Technical Support:** Technical support is generally available (subject to reasonable down time) Monday through Friday from 9 am to 6 p.m., CT. These times are subject to change only upon reasonable advance notice to Subscriber, as posted on the then-current customer support web page. OPC MARKETING, INC. will make every reasonable effort to resolve questions and problems on a timely basis, within the times listed above; however, OPC MARKETING, INC. may not always be able to resolve every problem, nor respond to every call immediately. OPC MARKETING, INC. and Subscriber each agree to pay for their own long-distance calls placed to the other party for any assistance.
20. **SIP Service:** SIP services will be provided by a third party selected by OPC MARKETING, INC.’s.

21. **Backups:** Subscriber is responsible for making frequent backups of his or her system to protect against any loss of valuable data. OPC MARKETING, INC. cannot be responsible for loss of data for any reason whatsoever.
22. **Returned Banking Instrument:** Declined credit card transactions will incur a \$35 late fee after the third attempt to collect payment.
23. **Non-Payment:** Subscriber is responsible for paying all fees and applicable taxes associated with the it' monthly subscription. If Subscriber's payment method fails or account is past due, OPC MARKETING, INC. may collect fees owed using other payment methods on file and adding a reconnect fee of \$250. Any systems with outstanding balances on equipment or services will become the property of OPC MARKETING, INC. after 60 days. If at any time Subscriber defaults under this agreement for non-payment or otherwise, the software license shall immediately and automatically terminate until such time as Subscriber's account is current.
24. **Updates to this agreement will be posted:** <http://www.spitfiredialers.com/index.php/terms.html>.
25. **CONSENT FOR MARKETING-RELATED CONTACT:** Further, Subscriber understands that by signing below, Subscriber is giving OPC MARKETING, INC. and their employees permission to contact Subscriber at the telephone number and email address Subscriber has provided, regardless of any registration with state or national DNC lists. This includes through the use of automated telemarketing systems, SMS technology, emails, as well as prerecorded messages. Communications will be used for marketing and telemarketing purposes. The content will be relative to all products and services in which OPC MARKETING, INC. sells or services. The information Subscriber supplies will not be sold to any third party. Standard messaging rates apply. By signing below, Subscriber expressly and affirmatively consents to receive such contact.

I have read, understand, and agree to all terms above.

Subscriber Information:

Company Name: _____

Print Name: _____ Title: _____

Telephone number: _____ Email: _____

Authorized Signature: _____ Date: _____

OPC Marketing, Inc.

Manufacturer of **SpitFire Dialers** ®

By: **Michael Henochowicz**

President & CEO

Authorized Signature: *Michael Henochowicz*