

SpitFire Enterprise Dialer Conditions of Purchase

(with hosting option)

This SpitFire Enterprise Dialer Conditions of Purchase ("Agreement") constitutes a binding contract made by and between OPC Marketing, Inc. ("OPC"), located at 1069 Airport Parkway, Addison, TX 75001, and

("Purchaser" or "You"), located at:

on this day _____ OPC and Purchaser agree to the following terms and conditions under which Purchaser may purchase the selected dialing products and related hosting services outlined herein or otherwise at the time of purchase.

1. **OPC is Committed to Knowing its Customers (KYC):** Purchaser may not use any OPC products to violate the law. OPC may require Purchaser, at the time of purchase, and otherwise on a periodic basis in order to obtain or continue access to OPC's hosting and support services, to complete a know-your-customer ("KYC") questionnaire and other documents sufficient to demonstrate its compliance with applicable law, telephone carrier requirements and then-current industry best practices. OPC reserves the right to immediately terminate, pause or suspend this Agreement, or part or all of Purchaser's access to OPC's hosting and related services, in the event it obtains information showing that, in OPC's discretion, Purchaser may be in violation of the above requirements or otherwise creating legal or financial risk for OPC.
2. **Purchase Price:** Upon payment of all required fees, and the placement of a credit card on file for any OPC (optional) hosting services, Purchaser shall receive from OPC and own the software products and features selected by Purchaser on Purchaser's invoice. Technical support services are included for the first year. The end of the first year the tech support fees are calculated on a per-agent basis as reflected on Purchaser's annual invoice. If Purchaser fails to renew tech support, purchaser will no longer have access to updates, video portal and support ticket system. Purchaser is responsible for timely paying all fees and applicable taxes associated with the system purchase with a valid payment method. If Purchaser's payment method fails or account is past due, OPC may collect fees owed using other payment methods on file and adding a reconnect fee.
3. **Optional Domain Hosting Service.** Purchaser may prepay an additional, monthly, mutually agreed upon amount, as reflected by invoice amount, for OPC's optional domain hosting service, subject to these terms, and then may cancel this service only on 30 days' prior written notice. Pricing may be changed from time to time on advance written notice to Purchaser. OPC shall assign to Purchaser an appropriate spitfire.com sub ("wild card") domain name (example: [your company name].spitfireagent.com). OPC shall provide the hosting in a commercially reasonable manner, but otherwise disclaims all warranties and representations regarding the same. OPC 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 errors. Reasonable hosting down time may occur, including without limitation for provider outages, system upgrades, maintenance, repairs, and acts of God/nature. OPC assumes no legal responsibility or liability for Purchaser's use of the domain. Purchaser must operate in full compliance with all laws and regulations and must not use the assigned domain for any other purpose not contemplated herein. If Purchaser uses OPC's domain hosting service, OPC will provide and renew those certificates. Otherwise, Purchaser is responsible for obtaining and renewing their own SSL certificates.
4. **Refund Policy:** All purchases and payments are non-refundable.
5. **Compliance with Law:** Purchaser is required to use the purchased products and services 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/identification; (5) data privacy laws; (6) technology restrictions, including rules regarding autodialers/ATDS, prerecorded messages and artificial/AI voices; (7) consent revocation and opt-out rules; (8) call recording/monitoring prohibitions and disclosures; (9) rules imposed by telephone carriers; and (10) all other then-applicable laws and regulations. By making any use of the software, Purchaser expressly warrants to us that Purchaser is and shall continue to act in full compliance with the law. All OPC offers are void where prohibited by law. Purchaser 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. Purchaser should review these rules with Purchaser's own legal counsel to ensure that Purchaser understands and is fully compliant.

OPC is not your lawyer or compliance officer and does not assume responsibility for ensuring that your telephone campaigns meet applicable legal requirements. OPC will not assume any liability if Purchaser is ever held guilty or liable for any law violation. Notwithstanding the foregoing, Purchaser acknowledges that OPC has and is taking active steps to ensure the compliance of its customers, including by having Purchaser agree to these terms and otherwise.

6. **SMS:** Purchaser understands and acknowledges that text-marketing is a relatively high-risk medium of communication, heavily regulated by state and federal government agencies. Purchaser may only transmit SMS and MMS messages when it has in its direct possession, well-documented prior express written consent sufficient to meet the FCC's new TCPA "one to one" consent requirements, along with all other applicable legal requirements and then-current industry best practices. Only Purchaser's manager-level personnel may create SMS templates and manage SMS transmission. Purchaser will not permit agent-level personnel to setup SMS campaigns or engage in SMS conversations with consumers. Purchaser alone is responsible to ensure that its transmission of any text messages adheres to all applicable laws and carrier requirements, including without limitation, by transmitting the same only using an approved 10DLC number, within permissible call-time windows, not on prohibited no-call holidays, and not after the recipient has opted out or revoked consent through any reasonable means. Purchaser alone is responsible for ensuring that the content of its text messages adheres to all applicable laws and carrier requirements, including without limitation, by containing all required disclosures, identity information, a toll-free callback number and opt-out instructions. Purchaser may be required by OPC and/or its telephone carrier(s) to complete know-your-customer ("KYC") questionnaires, 10DLC compliance forms, or other documents, in order to begin or continue SMS-functionality. Purchaser alone will ensure that it promptly honors all opt-outs and consent revocations across all telephone channels, for marketing and non-marketing purposes. Purchaser will not transmit text messages to any number that has been reassigned and will actively suppress its leads against the national reassigned number database, at least every 30 days.
7. **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 or its affiliates and contractors, or by the software.
8. **Indemnification:** Purchaser shall assume, pay, indemnify, hold harmless, and reimburse OPC and its current and former owners, officers, 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 to the extent the same are related in any way to Purchaser's use of the products or software or which are attributable, at least in part, to the negligence or intentional acts or omissions by Purchaser, Purchaser's owners, officers, employees, agents and representatives, or unauthorized users making use of Purchaser's systems.
9. **Limitation of Liability:** Except for Purchaser's indemnity obligations hereunder, 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. OPC's total liability hereunder shall in no event exceed an amount equal to the amount actually paid by Purchaser to OPC in the month prior to a claim being made, regardless of the basis for the claim.
10. **Warranties:** Software and computers purchased or leased from OPC are warranted only from significant, material defects, and only for one (1) year from purchase. Any damage or failure cause in part by an act of god/nature, third-party tampering or virus, or misuse by Purchaser directly, including without limitation, any failure of (or failure to use) a proper surge protector or backup battery supply, voids this warranty. 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 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 PRODUCTS, EVEN IF PURCHASER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Purchaser 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. Reasonable down time will occur with or without notice and OPC will not be liable for the same. Even if OPC offers certain call recording and telephone number scrubbing services, it provides no warranties regarding the same whatsoever.
11. **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 principles. Except for a suit by OPC solely to collect

fees owed by Purchaser, 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.

12. **Minimum Requirements:** Bandwidth required per port is a minimum of 1MB per second upload and download, when the system uses the G.711 codec. Purchaser must provide high-speed internet connection for training, updates, and technical support. Purchaser alone is responsible for Network Configuration, Antivirus, VPN, Router and Firewall, Installation, Configuration and Setup. Agent IP information is required so the Dialer can determine which IP address to dial when the relevant agent logs on. SIP Carrier testing is required. These minimum Requirements are subject to change at any time.
13. **Minimum Requirements for Dialer Server:** No Laptops. Specific Server requirements vary depending on the configuration of the dialer. Purchaser is responsible for network configuration and antivirus protection. Surge protector and/or battery backup is required. Dot net (.NET) 4.0 Framework is required for Enterprise software. Spitfire Enterprise comes with SQL Server 2022 Express edition. This edition supports database sizes up to 10GB. If more storage capacity is required, Purchaser must purchase a SQL Standard edition. Additional requirements can be found on OPC's website at <https://www.spitfiredialers.com/resources>. Server requirements are subject to change at any time.
14. **Minimum Requirements for Agent Stations:** Agent station requirements can be found on OPC's website at <https://www.spitfiredialers.com/resources>.
15. **Terminal software / Thin Clients are allowed.** Terminal Server must run Dot.net (.NET) 4.0 and have sufficient capacity to run all services, including Dialer. Terminal software cannot run in a "standalone" configuration and must be integrated with a telephone system.
16. **Technical Support:** Technical support is available Monday through Friday from 7:30 a.m. to 6:30 p.m., Central Time. These times are subject to change upon reasonable advance notice to Purchaser, as posted on the then-current customer support web page. OPC will make reasonable effort to resolve questions and problems on a timely basis, within the times listed above; however, OPC may not always be able to resolve every problem, nor respond to every call immediately. OPC and Purchaser each agree to pay for their own long-distance calls placed to the other party for any assistance. OPC offers support ticketing at <https://www.spitfiredialers.com/support>
17. **SIP Service:** Purchaser alone must pay any service fees of third-party SIP Providers. Purchaser is responsible for determining the cost of installation and the monthly rates of the necessary SIP service. Static IP addresses are required for all SIP systems, and any IP address changes after initial setup will incur a \$100 reconfiguration fee.
18. **Changes To System:** OPC is not responsible or liable if Purchaser makes any modifications to the software, which would void all warranties granted by OPC hereunder or otherwise. OPCP will attempt to reconfigure the software for Purchaser for a \$250 reconfiguration fee, with no guarantees of success.
19. **Record Keeping:** Purchaser is responsible for making frequent backups of its system and data to protect against loss. OPC cannot be responsible for loss of data for any reason whatsoever. Purchaser must download and retain call logs and other records on its own, to the extent legally required, including by storing all marketing-related logs for at least 5 years beyond the end of the campaign.
20. **Confidentiality:** The parties will keep all business information related to the other strictly confidential, except as required by a subpoena, CID, court or regulator with competent jurisdiction. Notwithstanding the above, OPC may voluntarily reveal information, call logs and other documents related to Purchaser to a third-party if OPC determines, in its reasonable discretion, that doing so will protect the legal and financial interests of OPC. OPC may elect to invoice Purchaser, and Purchaser agrees to immediately reimburse OPC, for any research and out-of-pocket legal costs associated with responding to the third-party inquiring about Purchaser.
21. **CONSENT FOR MARKETING-RELATED CONTACT:** Further, Purchaser understands that by signing below, Purchaser is giving OPC, along with its employees, agents and assigns, express written consent to contact Purchaser and its personnel, at the telephone number, cell phone number and email address Purchaser has provided or provides later, with marketing offers and other information, including possibly using automated technology, texts, prerecorded messages and artificial/AI-voices, including outside of normal/permissible calling windows and regardless of any prior registration on a DNC list. Standard messaging rates apply. Consent is not a condition of purchase. By signing below, Purchaser expressly and affirmatively consents to receive such contact, and expressly requests the same. You also agree that your information will be used in accordance with our Privacy Policy at <https://www.spitfiredialers.com/privacy>.
22. **Updates to this agreement will be posted at the following link, and will be binding on Purchaser one week thereafter:** <https://www.spitfiredialers.com/privacy#conditions>

Accepted and agreed to by:

Subscriber:

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*