

Master Services Agreement

THESE MASTER SERVICES TERMS & CONDITIONS ARE EFFECTIVE UPON THE DATE OF EXECUTION OF THE APPLICABLE STATEMENT OF WORK ("SOW"), SERVICES DESCRIPTION, OR QUOTATION MAKING REFERENCE TO THIS MASTER SERVICES AGREEMENT.

ANY AND ALL REFERENCES TO "CUSTOMER" SHALL BE DEEMED TO MEAN THE CUSTOMER SET FORTH IN AN APPLICABLE STATEMENT OF WORK ("SOW"), SERVICES DESCRIPTION, OR QUOTATION.

THIS AGREEMENT SETS FORTH THE GENERAL TERMS AND CONDITIONS UNDER WHICH CUSTOMER MAY PERIODICALLY ENGAGE CRITICAL START TO PROVIDE CERTAIN PROFESSIONAL, EDUCATIONAL, OPERATIONAL AND TECHNICAL SERVICES OR INFORMATION TECHNOLOGY PRODUCTS ("SERVICES" OR "PRODUCTS") TO CUSTOMER ON A PROJECT BASIS PURSUANT TO A STATEMENT OF WORK ("SOW"), SERVICES DESCRIPTION, OR QUOTATION THAT WILL BE ENTERED INTO BETWEEN CRITICAL START AND CUSTOMER FOR EACH ENGAGEMENT.

Customer is any business or person who buys products or services directly from CRITICAL START.

Customer and Critical Start, Inc., a Texas corporation having headquarters at 6851 Communications Parkway, Plano, TX 75024 ("CRITICAL START") being referred to individually herein as a "Party" and collectively as "Parties".

This Agreement may be superseded by written agreement signed by both Customer and CRITICAL START.

1. SERVICES.

CRITICAL START shall provide the Services or Products described in an SOW, services description, or quotation that details the relationship of the Parties with regard to a specific project or purchase. Each SOW or quotation shall (i) be signed by the parties; (ii) incorporate by reference this Agreement; and (iii) state the pertinent business parameters, including, but not limited to:

- pricing,
- payment,
- description of the Services or Products to be provided.

Such business parameters shall control as to the engagement described in an SOW, services description, or quotation, and any additional or conflicting legal terms that will apply to that specific SOW, services description, or quotation may be added to such SOW, services description, or quotation by express agreement. In such case, the additional or conflicting legal terms in the SOW, services description, or quotation shall prevail, but only as to the specific SOW, services description, or quotation to which such terms pertain. Services provided under each SOW are valid for one year unless specifically identified otherwise within the SOW.

2. TERM AND TERMINATION.

A. Term; Survival. The term of this Agreement commences on the Effective Date and shall remain in effect unless terminated as provided below.

Termination of this Agreement or any SOW shall not limit either Party from pursuing other remedies available to it, including injunctive relief, nor shall such termination relieve Customer of its obligation to pay all fees and expenses for all Services performed or Products purchased, including any deliverables associated with such Services, as of the date of termination.

B. Termination for Convenience. Either Party may terminate this Agreement for convenience by providing written notice to the other Party. Such termination shall become effective upon the later of (1) fourteen (14) days after receipt of such notice by such other Party or (2) completion and payment for the Services or Products set forth in any SOW(s) or quotation effective on the date of receipt of such notice. In addition, Customer may terminate any SOW hereunder fourteen (14) days after CRITICAL START's receipt of Customer's written notice and Customer shall pay CRITICAL START for the value of all work performed up to and including the date of termination.

C. Termination for Breach. Either Party shall have the right to terminate this Agreement upon thirty (30) days' written notice in the event that the other Party breaches a material provision of this Agreement and/or an applicable SOW, services description, or quotation and the recipient of such notice fails to effect a cure within such period.

3. PROPRIETARY RIGHTS.

A. Ownership of Deliverables. In consideration for Customer's payment of the Services rendered, CRITICAL START hereby assigns to Customer all copyright rights in written reports, analyses and other working papers delivered by CRITICAL START to Customer in the course of performing Services ("Deliverables"), as well as Customer's derivative works thereof, subject to CRITICAL START's rights in the underlying intellectual property of CRITICAL START embodied therein or used by CRITICAL START to perform the Services.

B. License Grant. Upon payment in full and subject to the terms and conditions of this Agreement, CRITICAL START grants Customer the worldwide, nonexclusive, non-transferable, non-sublicensable, perpetual, irrevocable (except as set forth in Section 2(C)) right to use, copy, and create derivatives of any materials provided by CRITICAL START in the course of performing Services solely for Customer's internal business operations as contemplated by the applicable SOW. The foregoing license excludes generally available products which are licensed to CRITICAL START via separate ordering agreement or pre-released products Customer may have received from CRITICAL START under a separate testing agreement.

C. Reservation of Rights. CRITICAL START reserves all rights not expressly granted to Customer in this Agreement. Except as provided in Section 3A, nothing herein shall be construed to (1) directly or indirectly grant to a receiving Party any title to or ownership of a providing Party's intellectual property rights in services or materials furnished by such providing Party hereunder, or (2) preclude such providing Party from developing, marketing, using, licensing, modifying or otherwise freely exploiting services or materials that are similar to or related to the Services or materials provided hereunder. Notwithstanding anything to the contrary herein, Customer acknowledges that CRITICAL START has the right to use any Customer-provided materials solely for the benefit of Customer in connection with the Services performed hereunder for Customer.

4. CONFIDENTIALITY.

A. Confidential Information. "Confidential Information" means the terms of this Agreement (including the terms of each SOW) and all confidential and proprietary information of CRITICAL START or Customer, including without limitation all business plans, product plans, financial information, software, designs, formulas, methods, know-how, processes, materials provided by either Party during the course of this Agreement, and technical, business and financial data of any nature whatsoever (including, without limitation, any marketing, pricing and other information regarding the Services), or any other such information that is marked or designated in writing as "confidential," "proprietary," or any other similar term or designation or which should reasonably be understood as being confidential based on the nature of the information and the context of its disclosure.

B. Exclusions. Confidential Information does not include information that is (i) rightfully in the receiving Party's possession without an obligation of confidentiality prior to receipt from the disclosing Party; (ii) a matter of public knowledge through no fault of the receiving Party; (iii) rightfully furnished to the receiving Party by a third party without restriction on disclosure or use; or (iv) independently developed by the receiving Party without use of or reference to the disclosing Party's Confidential Information.

C. Standard of Care. Each Party shall (i) use the Confidential Information of the other Party only for the purposes of exercising rights or performing obligations in connection with this Agreement or any SOW hereunder, and (ii) use at least reasonable care, but no less care than used in protection of its own Confidential Information, to protect from disclosure to any third parties any Confidential Information disclosed by the other Party for a period from the date hereof until three (3) years following the later of (i) the termination date of this Agreement or (ii) the last date of the completion or other termination of Services under each SOW entered into hereunder. Notwithstanding the foregoing, Confidential Information that constitutes, contains, or reveals, in whole or in part, the disclosing Party's proprietary rights shall not be disclosed by the receiving Party at any

time.

D. Compelled Disclosure. The receiving Party may disclose Confidential Information pursuant to a valid order of a court or authorized government agency provided that the receiving Party provides the disclosing Party with prompt notice of such order, to the extent legally permissible, so that the disclosing Party will have an opportunity to defend, limit or protect against such disclosure.

E. Publicity. Neither Party shall, and shall not authorize or assist another to, originate, produce, issue or release any written publicity, news release, marketing collateral or other publication or public announcement, relating in any way to this Agreement, any SOW, or quotation entered into hereunder, without the prior written approval of the other Party, which approval shall not be unreasonably withheld; provided, however, that CRITICAL START may identify Customer for reference purposes only.

5. PAYMENT TERMS.

CRITICAL START shall submit invoices for fees and reimbursable, pre-approved costs and expenses and Customer shall pay each invoice in the manner specified in the applicable SOW or quotation, notwithstanding, prior to the expiration of Professional Services, CRITICAL START shall refund Customer for any unused portion of purchased Professional Services in the event of termination of this Agreement pursuant to Section 2 (TERM AND TERMINATION). Customer will also pay all related taxes and withholdings, except for those based on CRITICAL START's net income. All Professional Services hours expire after 12 months of the date of the Purchase Order or SOW. If Customer is required to withhold taxes, then Customer will forward any withholding receipts to CRITICAL START. Subject to CRITICAL START's credit approval, all amounts are due in the currency stated on the invoice and in full thirty (30) days after the date of CRITICAL START's invoice, with interest accruing thereafter at the lesser of 1.5% per month or the highest lawful rate. Payments performed by credit cards incur a 4.5% increase for financing charges.

6. WARRANTY.

A. Warranty. CRITICAL START shall perform Services in a workmanlike manner in accordance with generally accepted industry standards. CRITICAL START represents that its employees, contractors, and other service providers are skilled in the areas necessary to perform the Services and are knowledgeable and experienced and fully qualified to provide the Services. Customer must notify CRITICAL START of any failure to so perform within ten (10) business days after the completion of the Services. CRITICAL START's entire liability, and Customer's sole remedy, for CRITICAL START's failure to so perform shall be for CRITICAL START to, at its option, (i) use reasonable efforts to correct such failure, and/or (ii) terminate the applicable SOW and refund that portion of any fees received that correspond to such failure to perform.

B. Intellectual Property Warranty. CRITICAL START represents and warrants that the use of any methods, processes, reports, or other items furnished in connection with the Services shall not infringe, misappropriate, or otherwise violate any intellectual property rights of any other person or entity. CRITICAL START has not received and is not aware of any actual or threatened notice, allegation, or claim that it is infringing, misappropriating, or otherwise violating any intellectual property rights of any other person or entity.

C. Disclaimer and Exclusions. Except as expressly stated in this Section 6, CRITICAL START (including its suppliers, subcontractors, employees and agents) provides Services "AS IS" and makes no other express or implied warranties, written or oral, and ALL OTHER WARRANTIES ARE SPECIFICALLY EXCLUDED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE.

7. IP INDEMNITY.

CRITICAL START shall (i) defend and indemnify Customer against any third party claim that the Services and the related materials provided by CRITICAL START to Customer, and used by Customer within the scope of the license evidenced by this Agreement, by itself/themselves infringe a patent, trademark, or copyright (enforceable in a country that is a signatory to the Berne Convention), and (ii) pay the resulting costs and

damages finally awarded against Customer by a court of competent jurisdiction or the amounts stated in a written settlement mutually approved in writing by CRITICAL START and Customer. Similarly, Customer shall (i) defend and indemnify CRITICAL START against any third party claim that the materials provided by Customer or its agents for use by CRITICAL START to fulfill its obligations hereunder infringe a patent, trademark, or copyright (enforceable in a country that is a signatory to the Berne Convention), and (ii) pay the resulting costs and damages finally awarded against CRITICAL START by a court of competent jurisdiction or the amounts stated in a written settlement mutually approved in writing by Customer and CRITICAL START.

The foregoing obligations are subject to the following: the indemnitee (a) notifies the indemnitor promptly in writing of such third-party claim, (b) grants the indemnitor sole control over the defense and settlement thereof, (c) reasonably cooperates in response to an indemnitor request for assistance, and (d) is not in material breach of this Agreement. Should such a claim be made, or in the indemnitor's opinion be likely to be made, the indemnitor may, at its option and expense, (1) procure for the indemnitee the right to make continued use of the affected item(s), (2) replace or modify the same so that it becomes non-infringing, (3) request the return of the affected item(s), or (4) discontinue the Service and refund the portion of any pre-paid Service fee that corresponds to the period of Service discontinuation.

The indemnitor shall have no liability under this Section 7 to the extent that the infringement or alleged infringement arises out of or relates to: (A) the use or combination of the subject Services and/or materials with third party products or services that were not furnished by the indemnitor, (B) use for a purpose or in a manner for which the subject Services and/or materials were not designed, (C) any modification to the subject Services and/or materials made by anyone other than the indemnitor or its authorized representatives, (D) any modifications to the subject Services and/or materials made by the indemnitor pursuant to the indemnitee's specific instructions, or (E) any technology owned or licensed by the indemnitee from third parties.

THIS SECTION STATES THE INDEMNITEE'S SOLE AND EXCLUSIVE REMEDY AND THE INDEMNITOR'S ENTIRE LIABILITY FOR THIRD PARTY INFRINGEMENT CLAIMS.

8. LIMITATION OF LIABILITY.

A. Limitation on Direct Damages. EXCEPT AS OTHERWISE PROVIDED IN SECTION 7 ABOVE, CRITICAL START'S TOTAL LIABILITY (INCLUDING THE LIABILITY OF ANY SUPPLIER, SUBCONTRACTOR, EMPLOYEE OR AGENT OF CRITICAL START), AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM OF ANY TYPE WHATSOEVER ARISING OUT OF OR IN CONNECTION WITH ANY SERVICES PROVIDED HEREUNDER, SHALL BE LIMITED TO PROVEN DIRECT DAMAGES CAUSED BY CRITICAL START'S SOLE NEGLIGENCE IN AN AMOUNT NOT TO EXCEED (i) US\$1,000,000, FOR DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY; AND (ii) THE PRICE PAID BY CUSTOMER TO CRITICAL START FOR THE SPECIFIC SERVICE FROM WHICH SUCH CLAIM ARISES, FOR DAMAGE OF ANY TYPE NOT IDENTIFIED IN (i) ABOVE BUT NOT OTHERWISE EXCLUDED HEREUNDER.

B. No Indirect Damages. EXCEPT WITH RESPECT TO CLAIMS REGARDING VIOLATION OF CRITICAL START PROPRIETARY RIGHTS (INCLUDING ANY LICENSE GRANTED THEREUNDER) OR CLAIMS FOR INDEMNITY ARISING UNDER SECTION 7 (IP INDEMNITY), CRITICAL START (INCLUDING CRITICAL START'S SUPPLIERS, SUBCONTRACTORS, EMPLOYEES AND AGENTS) SHALL (i) HAVE NO LIABILITY TO CUSTOMER FOR ANY SPECIAL, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, OR INDIRECT DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, REVENUES, DATA AND/OR USE), EVEN IF ADVISED OF THE POSSIBILITY THEREOF.

C. Time Bar to Legal Action. NEITHER PARTY WILL BRING ANY CLAIM BASED ON ANY SERVICE PROVIDED HEREUNDER MORE THAN EIGHTEEN (18) MONTHS AFTER THE CAUSE OF ACTION ACCRUES.

9. INSURANCE.

CRITICAL START shall maintain, at its own expense, in full force and effect, throughout the period of this Agreement, policies of insurance with a company or companies with a rating of "A" or better and lawfully authorized to do business where work is being performed in at least the following amounts and coverages: (a) Workers' Compensation and Employer's Liability coverage with a minimum of \$1,000,000 each accident,

\$1,000,000 disease-each employee and \$1,000,000 disease-policy limit; (b) Commercial General Liability insurance with a minimum limit of \$1,000,000 each occurrence and \$2,000,000 general aggregate; (c) commercial umbrella/excess liability insurance with a minimum limit of \$3,000,000 each occurrence and \$3,000,000 aggregate; (d) Automobile Liability insurance for hired/non-owned autos in a minimum amount of \$1,000,000 combined single limit, each accident; (e) Professional Liability insurance with a minimum limit of \$10,000,000 each claim and \$10,000,000 aggregate; (f) Network and Information Security Liability (CyberFirst) insurance with a minimum limit of \$10,000,000 each claim and \$10,000,000 aggregate.

With respect to these insurance policies, CRITICAL START shall provide that Customer be given prior written notice of any cancellation or adverse material change in these policies and that any cancellation or adverse material change is not effective as to Customer for at least thirty (30) days after receipt of written notice. CRITICAL START shall provide Customer with evidence of this insurance coverage (certificate of insurance) upon request after execution of this Agreement, and Customer can be listed as an additional insured on the certificate of insurance after execution of this Agreement.

10. GOVERNMENT REGULATIONS.

The Services and any technology delivered in connection therewith pursuant to this Agreement and/or any SOW entered into hereunder may be subject to governmental restrictions on (i) exports from the U.S.; (ii) exports from other countries in which such Services and technology may be provided or located; (iii) disclosures of technology to foreign persons; (iv) exports from abroad of derivative products thereof; and (v) the importation and/or use of such technology included therein outside of the United States (collectively, "Export Laws"). Diversion contrary to U.S. law is expressly prohibited. Customer shall, at its sole expense, comply with all Export Laws. Customer represents that it is not a Restricted Person, which shall mean and be deemed to include any person or entity:

(1) located in or a national of Cuba, Iran, North Korea, Sudan, Syria, or any other countries that may, from time to time, become subject to U.S. export controls for anti-terrorism reasons or with which U.S. persons are generally prohibited from engaging in financial transactions; or (2) on any restricted person or entity list maintained by any U.S. governmental agency. Certain information, Services or technology may be subject to the International Traffic in Arms Regulations. This information, Services or technology shall only be exported, transferred or released to foreign nationals inside or outside the United States in compliance with such regulations.

11. NOTICES.

Any notices permitted or required under this Agreement and/or any SOW entered into hereunder shall be in writing, and shall be deemed given when delivered (i) in person; (ii) by overnight courier, upon written confirmation of receipt; (iii) by certified or registered mail, with proof of delivery; (iv) by facsimile transmission with confirmation of receipt; or (v) by email, with confirmation of receipt. Notices shall be sent to the address, facsimile number or email address set forth above, or at such other address, facsimile number or email address as provided to the other Party in writing.

12. INDEPENDENT CONTRACTORS.

The Parties shall act as independent contractors for all purposes under this Agreement. Nothing contained herein shall be deemed to constitute either Party as an agent or representative of the other Party, or both Parties as joint venturers or partners for any purpose. Neither Party shall be responsible for the acts nor the omissions of the other Party, and neither Party will have authority to speak for, represent or obligate the other Party in any way without the prior written approval of the other Party.

13. MISCELLANEOUS.

A. Entire Agreement. This Agreement and any SOW(s) entered into hereunder (i) shall constitute the complete understanding of the Parties with regard to the subject matter hereof and (ii) may be modified only by a writing signed by authorized representatives of both Parties. All terms of any purchase order or similar document provided by Customer, including but not limited to any pre-printed terms thereon and any terms that are inconsistent, add to, or conflict with this Agreement and/or an SOW, shall be null and void and of no legal force or effect.

B. Force Majeure. Except for the payment of fees, neither Party shall be liable under this Agreement or any SOW because of a failure or delay in performing its obligations hereunder on account of any force majeure event, such as strikes, riots, insurrection, terrorism, fires, natural disasters, acts of God, war, governmental action, or any other cause which is beyond the reasonable control of such Party.

C. Customer Dependencies. CRITICAL START shall not be liable under this Agreement or any SOW because of failure or delay in performing its obligations hereunder on account of Customer's failure to provide timely access to facilities, space, power, documentation, networks, files, software, and Customer personnel that are reasonably necessary for CRITICAL START to perform its obligations.

D. Assignment. Neither Party may assign this Agreement to a separate legal entity, without the other Party's written consent. Neither Party shall unreasonably withhold or delay such consent; provided, however, that such written consent shall not be required if (i) either Party assigns this Agreement to a separate entity in connection with a merger, acquisition, or sale of all or substantially all of its assets with or to such other separate entity, unless the surviving entity of the merger, acquisition, or sale of assets is a direct competitor of the other Party. Nothing herein shall limit CRITICAL START's right to assign its right to receive and collect payments hereunder after written notice from the Customer.

E. Waiver. No waiver shall be deemed a waiver of any prior or subsequent default hereunder.

F. Severability. If any part of this Agreement and/or any SOW entered into hereunder is held unenforceable, the validity of the remaining provisions shall not be affected.

14. GOVERNING LAW.

This Agreement is governed by the laws of the State of Texas notwithstanding any conflict of laws rules that would call for the application of the law of any other jurisdiction. In the event of a dispute concerning this Agreement, the Parties each consent to the sole and exclusive personal jurisdiction of the courts of competency in the location where CRITICAL START is domiciled.

15. SURVIVABILITY.

Upon any termination of this Agreement, Sections 2, 3, 4, 5, 6(C), 7, 8, and 10 through 14 hereof shall survive in accordance with their terms.