

## SURVEYGIZMO STANDARD TERMS OF USE SURVEYGIZMO SERVICES AGREEMENT

This SurveyGizmo Services Agreement (this “**Agreement**”) is entered into by and between you and Vision Critical Communications Inc. (“**Vision Critical**”, “**we**” or “**us**”) and governs your access to and use of the SurveyGizmo Services (as defined below). Vision Critical has subsidiaries around the world and these subsidiaries may provide the SurveyGizmo Services to you on behalf of Vision Critical and this Agreement will also govern your relationship with the subsidiaries.

**Please read this Agreement carefully before you access or use the SurveyGizmo Services.** By using the SurveyGizmo Services, you accept and agree to be bound by this Agreement. If you do not agree to any of the terms or conditions of this Agreement, you must not access or use the SurveyGizmo Services. Notwithstanding any other agreement you may have with us, your use of the SurveyGizmo services shall be subject only to terms set out in this Agreement.

**1. SurveyGizmo Services.** During the term set forth in the applicable order (the “**Term**”), we will provide you with access to and use of the SurveyGizmo hosted survey tool (the “**SurveyGizmo Services**”).

**2. Access Rights.** Subject to your compliance with the terms and conditions of this Agreement, we grant to you and those users we authorize when you register for the SurveyGizmo Services (each, an “**Authorized User**”), during the Term, a non-exclusive, non-transferable, worldwide right to access and use the SurveyGizmo Services as set forth in this Agreement, for the purpose of collecting, processing and analyzing online surveys. For the avoidance of doubt, you shall be responsible and liable for the acts and/or omissions of your affiliates, employees, consultants, Authorized Users and/or any other third-party users who access or use the SurveyGizmo Services under your account. Any act or omission by any such third-party user that would constitute a breach of this Agreement if such third-party user were a party to this Agreement shall be deemed a breach of this Agreement by you. Vision Critical will also have access rights to your SurveyGizmo Services as an administrative user in order to make the SurveyGizmo Services available to you, including but not limited to setting up, skinning and provisioning the SurveyGizmo Services. Such services shall be performed through our support locations listed at <https://www.visioncritical.com/trust/subs/>. Vision Critical shall be solely responsible for the acts and omissions of the Vision Critical administrative user.

**3. Restrictions.** You agree that you will not, and will not permit your affiliates, employees, consultants, Authorized Users or any third party to: (a) copy, reproduce, modify, sell, lease, sublicense, market, resell, distribute or commercially exploit in any way the SurveyGizmo Services or any component thereof other than as expressly permitted in this Agreement; (b) disclose or grant access to the SurveyGizmo Services or any component thereof to any party not designated by you as an Authorized User; (c) use the SurveyGizmo Services to exchange federal or state identification information, passwords, social security numbers, banking, credit card, or any other financial information; (d) use the SurveyGizmo Services in violation of any applicable law or regulation, including without limitation those regarding intellectual property rights and privacy rights; (e) engage in any spamming activity in any use of SurveyGizmo Services; or (f) violate any U.S or foreign spamming, junk mail or other related laws or regulations prohibiting or discouraging unsolicited e-mail. You agree that you and your Authorized Users will: (i) use the SurveyGizmo Services in a manner that is ethical; (ii) respect the privacy of other users (i.e., you shall not seek data or passwords belonging to other users, nor will you modify files or represent yourself as another user unless explicitly authorized to do so by that user); and (iii) accept notifications of service changes presented through the SurveyGizmo Services or via email. The SurveyGizmo Services are of U.S. origin and may not be exported, re-exported, transferred, or used in violation of U.S. export law. The SurveyGizmo Services may include the export of your Information (as defined in the Section below) outside of the U.S.; therefore you must ensure that any Information provided to SurveyGizmo does not contain any data that is controlled for export purposes by the U.S. or other applicable governments. You represent and warrant that no Authorized User shall be in or a citizen of any countries embargoed or sanctioned by the U.S. government.

**4. Fees; Payments.**

**4.1 Fees.** The fees payable for your use of the SurveyGizmo Services during the Term are set out in the applicable order and are non-refundable and non-cancellable (the “**Fees**”). Unless stated otherwise in the applicable order, the Fees are invoiced in advance.

**4.2 Fee Increases.** We have the right to increase the Fees associated with the SurveyGizmo Services, except for during the first year of the Term and we shall give you at least 30 days notice of the increase and any such Fee increase shall not occur more frequently than once every calendar year and shall not exceed 10% of the preceeding year’s Fees.

**4.3 Nonrefundable Fees.** Due to the nature of technology and Internet stability, service interruptions may occur. No full, partial, or prorated refunds of Fees will be made as adjustment for any such service interruption. You hereby acknowledge that

errors and interruptions that are beyond our control do not constitute grounds for any full, partial or prorated refund of any Fees.

**5. Taxes.** All amounts payable by you to us under this Agreement are exclusive of any tax, levy or similar governmental charge that may be assessed by any jurisdiction, whether based on gross revenue, the delivery, sale or use of the SurveyGizmo Services or otherwise arising out of this Agreement, including without limitation all sales, use, excise, import or export, value added, governmental permit fees, license fees, and customs (collectively, “**Taxes**”). You are responsible for paying all Taxes, except that you shall have no liability for any income taxes assessed on us on amounts paid to us by you under this Agreement.

## **6. Your Information; Respondent Information.**

**6.1 Definitions.** “**Your Information**” means any and all information or data (including but not limited to pictures, photos, fonts, digital media, logos, survey questions, survey information, survey content, code embeds, CSS, JavaScript, and all other information not listed here) that you submit to the SurveyGizmo Services and/or to us directly. “**Respondent Information**” means any and all information and data obtained from persons responding to and/or having received surveys from you (a “**Survey Respondent**”). Your Information and Respondent Information are referred to collectively in this Agreement as the “**Information**.”

### **6.2 Security; Privacy; Use.**

(a) **Security.** We maintain industry standard administrative, physical, and technical safeguards for protection of the confidentiality, integrity, and availability of the Information.

(b) **License to Use.** You grant us a worldwide, royalty free license to use, reproduce, distribute, modify, adapt, create derivative works, make publicly available, and otherwise exploit the Information, but only to provide the SurveyGizmo Services to you, to prevent or address service or technical problems, as compelled by law, or as otherwise expressly permitted by this Agreement. Subject to our obligations of confidentiality pursuant to Section 9 below, you acknowledge and agree that we may capture the Information and aggregate and/or benchmark such information with other information (“**Aggregated Information**”); *provided* that under no circumstances will Aggregated Information or our use of Aggregated Information identify you or your Survey Respondents. The license granted to us in this Section 6.2(b) continues even after you stop using the SurveyGizmo Services with respect to Aggregated Information and any residual backup copies of the Information made in the ordinary course of our business. This license also extends to any trusted third parties we work with to the extent necessary to provide the SurveyGizmo Services to you.

(c) **Deleting Information.** You can delete individuals’ Respondent Information directly within the SurveyGizmo Services by following the instructions for permanent deletion (see: <https://help.surveygizmo.com/help/viewing-responses>) and also through APIs. Vision Critical’s automated data purge functionality for sensitive data available for Vision Critical’s Sparq software platform does not extend to data collected in the SurveyGizmo Services.

(d) **Hosting Information.** The Information collected through the SurveyGizmo Services will be hosted in datacenters located in the United States of America (US), Canada and/or Germany depending on your current hosting arrangements with Vision Critical. Specifically, the Information will be hosted as follows:

- (i) If you are currently hosted in the US with Vision Critical, you shall be hosted in SurveyGizmo’s US datacenter;
- (ii) If you are currently hosted in Germany with Vision Critical, you shall be hosted in SurveyGizmo’s German datacenter;
- (iii) If you are currently hosted in Canada, you shall be hosted in SurveyGizmo’s Canadian datacenter; and
- (iv) If you are currently hosted in Singapore, you shall be hosted in SurveyGizmo’s Canadian datacenter.

Notwithstanding the hosting location, all SurveyGizmo Services are provided out of the US.

**6.3 Customer Representations and Warranties.** You agree and warrant that (a) you have the necessary rights and licenses required to collect and provide the Information to us in connection with the SurveyGizmo Services, (b) you have obtained, from each of your customers, employees, contractors, Survey Respondents and other end users, appropriate and informed prior consent to the processing of their Respondent Information by us for purposes of providing the SurveyGizmo Services, and (c) your collection and use of the Information does not violate any intellectual property rights or privacy rights of third parties, confidential relationships, applicable privacy policies or other contractual obligations, or federal, state or local laws or regulations. You are responsible for the accuracy, quality and legality of, and the means by which you acquire, the Information, including any personally identifiable information of your Survey Respondents (“**Respondent Personal Information**”). Without limiting the generality of the foregoing, you shall provide all notices to, and obtain any consents from, your Survey

Respondents in connection with the transfer and processing of any Respondent Personal Information via the SurveyGizmo Services. You shall be solely responsible for ensuring that any processing of the Information via the SurveyGizmo Services does not violate any applicable laws or regulations. We will not be liable for any liabilities arising from your provision of the Information to us (including transmission of the Information over the internet or other network).

**7. Ownership.** Subject to the license granted to us in Section 6.2(b), we acknowledge and agree that you shall retain and own all right, title and interest and all intellectual property rights in and to the Information. You acknowledge and agree that we and/or our licensors retain and own all right, title and interest and all intellectual property rights in and to the SurveyGizmo Services, all materials used by us to provide the SurveyGizmo Services, and all copies thereof and customizations and modifications thereto (collectively, the “**Materials**”). Except for the limited access rights set forth in Section 2, nothing herein transfers or conveys to you any right, title or interest in or to the Materials. We reserve all rights in and to the Materials not expressly granted herein.

**8. Changes to the SurveyGizmo Services.** We may from time to time, in our sole discretion, change some or all of the functionality or any component of the SurveyGizmo Services.

## **9. Confidential Information.**

**9.1 Restrictions.** Each party (“**Recipient**”) acknowledges that confidential information (including trade secrets and confidential technical, financial and business information) of the other party (“**Discloser**”) may be disclosed pursuant to this Agreement (collectively, “**Confidential Information**”). Recipient shall use no less than the same means it uses to protect its similar confidential and proprietary information, but in any event not less than reasonable means, to prevent the disclosure and to protect the confidentiality of the Confidential Information of Discloser. Recipient agrees that it will not disclose or use the Confidential Information of Discloser except for the purpose of fulfilling its obligations or exercising its rights under this Agreement and as otherwise authorized herein. Recipient will promptly report to Discloser any unauthorized use or disclosure of Discloser’s Confidential Information that Recipient becomes aware of and provide reasonable assistance to Discloser (or its licensors) in the investigation and prosecution of any such unauthorized use or disclosure. Recipient shall, and shall cause all of its employees, contractors and consultants who have access to Confidential Information of Discloser to, safeguard and maintain the Confidential Information of Discloser in strict confidence and shall not, and shall cause its employees, contractors and consultants not to, disclose, provide, or make such Confidential Information or any part thereof available in any form or medium to any third party except to Recipient’s employees, contractors and consultants who have a need to access such Confidential Information in order to enable Recipient to fulfill its obligations or exercise its rights under this Agreement. You agree not to: (a) disclose to third parties (whether in writing or orally) any benchmark test information related to the SurveyGizmo Services, or (b) use our Confidential Information to create any computer software or documentation that is similar to the SurveyGizmo Services.

**9.2 Exceptions.** Information shall not be subject to the restrictions set forth in this Section 9 to the extent that such information is: (a) already known by Recipient without an obligation of confidentiality, (b) publicly known or becomes publicly known through no unauthorized act of Recipient, (c) rightfully received from a third party without any obligation of confidentiality, (d) independently developed by Recipient without use of the Confidential Information of the Discloser, (e) approved by Discloser for disclosure, or (f) required to be disclosed pursuant to a requirement of a governmental agency or law (provided that Recipient provides Discloser with notice of such requirement prior to any such disclosure and takes steps reasonably necessary to maintain the information in confidence).

## **10. Warranties and Disclaimer**

**10.1 By SurveyGizmo.** We warrant that the SurveyGizmo Services will be performed in a workmanlike manner in accordance with generally accepted industry standards. If you report any noncompliance with the foregoing warranty to us, and, if applicable, you provide us with such detailed information as we may reasonably require to permit us to reproduce such non-conformity, then we, in our sole discretion, shall use commercially reasonable efforts to correct such non-conformity. The foregoing states our sole obligation, and your exclusive remedy, in the event of the breach of any of the warranties set forth in this Section 10.1.

**10.2 Disclaimer.** **THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 10 ARE THE EXCLUSIVE WARRANTIES WE MAKE WITH RESPECT TO THE SURVEYGIZMO SERVICES OR OTHERWISE UNDER THIS AGREEMENT. WE EXPRESSLY DISCLAIM (TO THE GREATEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW) ALL OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, RELATING TO THE SURVEYGIZMO SERVICES, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT AND WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. WE DO NOT WARRANT**

**THAT (A) THE SURVEYGIZMO SERVICES WILL MEET YOUR BUSINESS REQUIREMENTS, (B) THE OPERATION OF THE SURVEYGIZMO SERVICES WILL BE COMPLETELY SECURE, ERROR-FREE OR UNINTERRUPTED, OR (C) ALL ERRORS WILL BE CORRECTED. WE SHALL HAVE NO LIABILITY FOR ANY DELAYS OR INTERRUPTIONS IN ACCESS TO OR USE OF THE SURVEYGIZMO SERVICES RESULTING FROM USE OF THE INTERNET AND/OR TELECOMMUNICATIONS CONNECTIONS OR EQUIPMENT. YOU ACKNOWLEDGE AND AGREE THAT OUR SUPPLIERS MAKE NO DIRECT WARRANTY OF ANY KIND TO YOU UNDER THIS AGREEMENT.**

**11. Indemnification.** You agree to defend, at your own expense, us and our affiliates, employees, officers, directors and shareholders from and against any claim, suit, action or proceedings that arises from: (i) use of the SurveyGizmo Services by you or any Authorized User, (ii) any Information; or (iii) any failure by you or any Authorized User to comply with all applicable laws and regulations. You agree to indemnify and hold us harmless against damages, losses, costs (including reasonable attorneys' fees) or judgments awarded against us in connection with any such claim.

## **12. Limitation of Liability**

**IN NO EVENT SHALL WE BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND ARISING OUT OF THE SURVEYGIZMO SERVICES OR THIS AGREEMENT (INCLUDING WITHOUT LIMITATION COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SURVEYGIZMO SERVICES, LOSS OF PROFITS OR LOSS OF DATA). OUR AGGREGATE, MAXIMUM LIABILITY FOR ANY LOSSES OR DAMAGES ARISING OUT OF OR RELATED TO THE SURVEYGIZMO SERVICES OR THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT OF THE FEES PAID TO US BY YOU PURSUANT TO THIS AGREEMENT IN THE TWELVE (12) MONTHS PRIOR TO THE EVENT(S) GIVING RISE TO SUCH LIABILITY. THE LIMITATIONS SET FORTH IN THIS AGREEMENT APPLY REGARDLESS OF THE LEGAL THEORY ON WHICH A CLAIM IS BROUGHT (WHETHER ON THE BASIS OF CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY OR ANY OTHER LEGAL THEORY), EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF LOSS OR DAMAGE AND NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY REMEDY PROVIDED IN THIS AGREEMENT. You acknowledge that our pricing reflects the allocation of risk set forth in this Agreement and that we would not enter this Agreement without these protections.**

## **13. Term and Termination.**

**13.1 Term.** This Agreement will commence on the date that you agree to in an applicable order or the date that you begin using the SurveyGizmo Services (whichever occurs first) (the “**Effective Date**”) and will continue until the end of the Term, as renewed, unless terminated earlier by either party in accordance with this Section 13. Except as otherwise specified in the applicable order, the Term shall automatically renew for an additional 12 month period unless either party gives the other party notice of non-renewal at least 60 days before the end of the relevant Term.

### **13.2 Termination.**

**(a) Suspension or Termination by Us.** We reserve the right to suspend or terminate your access and use of the SurveyGizmo Services, at any time without prior notice, for any reason, including but not limited to the following reasons: (i) you fail to make any payment when due under this Agreement, (ii) your use of the SurveyGizmo Service violates any term of Section 3 (Restrictions), (iii) you engage in conduct that SurveyGizmo believes is harmful to other users of the SurveyGizmo Services or our business or other third party information providers (including slowing down the servers and affecting other users), (iv) you engage in phishing attempts or schemes or Ponzi or pyramid schemes, or (v) you breach or violate any other term or condition of this.

**(b) Termination by You.** You may cancel the SurveyGizmo Services for which you are registered at any time, in which case this Agreement will terminate at the end of the then-current Term. You will not receive a refund for any Fees paid for the Term in which you cancel the SurveyGizmo Services, unless required by law.

**13.3 Effect of Termination.** Upon any termination of this Agreement: (a) we will immediately cease providing the SurveyGizmo Services; (b) we will immediately terminate your access to the SurveyGizmo Services (including without limitation any Information stored therein); and (c) the access rights granted under Section 2 will automatically terminate. You acknowledge that Respondent Information is returned to you as you run surveys using the SurveyGizmo Services. You may export the Information on your own by using the “export” function available to you through the SurveyGizmo Services.

**13.4 Survival.** The parties hereto agree that the provisions hereof requiring performance or fulfillment after the expiration or termination of this Agreement shall survive such expiration or termination. Without limiting the generality of the foregoing sentence, the provisions of this Agreement relating to ownership, Confidential Information, indemnification, warranty disclaimer, and limits of liability shall survive the expiration or termination of this Agreement.

## **14. General**

**14.1 Notice.** Any notice under this Agreement will be in writing and delivered by confirmed e-mail and will be deemed given upon confirmation of receipt of email. Notices will be sent to you at the addresses associated with your account, or at such other address as you may specify in writing pursuant to this Section 14.1. You may send notices to us at [legal@visioncritical.com](mailto:legal@visioncritical.com).

**14.2 Force Majeure.** If the performance of any obligation under this Agreement is prevented, restricted, or interfered with by reason of fire, flood, earthquake, explosion or other casualty or accident or act of God; strikes or labor disputes; inability to procure or obtain delivery of parts, supplies, power, telecommunication services, equipment or software from suppliers, war or other violence; any law, order, proclamation, regulation, ordinance, demand or requirement of any governmental authority; or any other act or condition whatsoever beyond the reasonable control of the affected party, the party so affected shall be excused from such performance to the extent of such prevention, restriction or interference; provided, however, that the party so affected shall take reasonable steps to avoid or remove such cause of non-performance and shall resume performance hereunder whenever such causes are removed.

**14.3 Independent Contractor.** Our employees shall not be deemed at any time to be your employees or servants and we are and shall remain an independent contractor for all purposes. Unless otherwise agreed to in writing, we do not undertake to perform any of your obligations whether regulatory or contractual, or to assume any responsibility for your business or operations.

**14.4 Severability.** To the extent that any provision, portion or extent of this Agreement is deemed to be invalid, illegal or unenforceable, such provision, portion or extent shall be severed and deleted or limited so as to give effect to the intent of the parties insofar as possible and the remainder of this Agreement, as the case may be, shall remain binding upon the parties.

**14.5 Assignment.** You may not assign or transfer, by operation of law or otherwise, this Agreement or any of your rights under this Agreement to any third party without our prior written consent. Any attempted assignment or transfer in violation of the foregoing will be null and void. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, and shall not confer any rights or remedies upon any person or entity not a party hereto.

**14.6 Entire Agreement; Waiver.** This Agreement sets forth the entire understanding and agreement of the parties, and supersedes any and all oral or written agreements or understandings between the parties, as to the subject matter of the Agreement. The waiver of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach.

**14.7 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario without reference to its conflict or choice of law rules or principles. You hereby submit to the exclusive jurisdiction of the courts of the city of Toronto for any legal action arising out of this Agreement or the performance of the obligations hereunder or thereunder.